

7/21/15

THE STATE OF SOUTH CAROLINA **RECEIVED**
In the Court of Appeals

JUL 21 2015

APPEAL FROM HORRY COUNTY SC Court of Appeals
Court of Common Pleas

Larry B. Hyman, Circuit Court Judge

Case No. 2012-CP-26-3804
Court of Appeals No. 2014-001249

Mark Kelley,.....Respondent,

v.

David Wren and Sun Publishing Co., Inc., d/b/a *The Sun News*,.....Appellants.

**MOTION OF THE ASSOCIATED PRESS; GANNETT CO., INC. AND
GANNETT GP MEDIA, INC. d/b/a THE GREENVILLE NEWS; TEGNA INC.
AND PACIFIC AND SOUTHERN, LLC d/b/a WLTX-TV; AND OSTEEN
PUBLISHING COMPANY d/b/a THE SUMTER ITEM FOR LEAVE TO FILE A
BRIEF AS AMICI CURIAE IN SUPPORT OF APPELLANTS**

Wm. Grayson Lambert
S.C. Bar No. 10128
MCGUIREWOODS LLP
201 North Tryon Street
Suite 3000
Charlotte, NC 28202
Tel: (704) 343-2367
Fax: (704) 444-8738

Jonathan E. Buchan, Jr.
N.C. Bar No. 8205
MCGUIREWOODS LLP
201 North Tryon Street
Suite 3000
Charlotte, NC 28202
Tel: (704) 343-2063
Fax: (704) 444-8714
Pro Hac Vice Pending

Attorneys for Amici Curiae

Proposed *amici curiae* the Associated Press; Gannett Co., Inc. and Gannett GP Media, Inc. d/b/a *The Greenville News*; TEGNA Inc. and Pacific and Southern, LLC d/b/a WLTX-TV; and Osteen Publishing Company d/b/a *The Sumter Item* (collectively, *Amici*), by and through their counsel, hereby respectfully move this Court, pursuant to Rule 213, SCACR, for leave to file an *amici curiae* brief in support of Appellants David Wren and Sun Publishing Co., Inc., d/b/a/ *The Sun News*. *Amici*'s brief addresses questions of law relating to evidentiary and constitutional issues arising from the introduction of expert witness testimony to prove constitutional actual malice in public-figure libel cases. As permitted by Rule 213, SCACR, the *amici curiae* brief is being conditionally filed with this motion. In support of this motion, *Amici* further state as follows:

Interest of *Amici*

Amici are all news organizations who gather and disseminate news within the State of South Carolina, including news regarding public officials, public figures, and matters of significant public interest in this State and beyond its borders.

Specifically, the Associated Press (“AP”) is a not-for-profit news cooperative whose members are U.S. newspapers and broadcasters. The AP operates from more than 280 locations worldwide, and it has significant operations within the State of South Carolina. On any given day, the AP’s content can reach more than half of the world’s population, including people across South Carolina.

Gannett Co., Inc. (“Gannett”) is an international news and information company that publishes more than eighty daily newspapers in the United States—including *USA TODAY*—which reach 11.6 million readers daily. Each of Gannett’s daily newspapers

operates Internet sites offering news and advertising that is customized for the market served and integrated with its publishing or broadcasting operations. *The Greenville News*, a daily newspaper primarily serving the Piedmont area of South Carolina, is owned and operated under the corporate umbrella of Gannett Co., Inc.

TEGNA Inc. is a company that owns and operates television stations across the United States. It is a member of Pacific and Southern, LLC which owns and operates WLTX-TV, located in Columbia.

Osteen Publishing Company d/b/a *The Sumter Item* is the publisher of *The Sumter Item*, a daily newspaper which has published continually in South Carolina since 1894. Based in Sumter, it also publishes the *Clarendon Sun*, a weekly newspaper distributed with *The Sumter Item*.

Desirability of Amici Curiae Brief

The case pending before this Court presents questions of first impression on an issue of critical constitutional and evidentiary importance to journalists: whether a public-figure libel plaintiff may introduce expert witness testimony to prove that a defendant published a defamatory statement with constitutional actual malice. A second and related question raised by this case is whether, if expert witness testimony may be admitted to prove constitutional actual malice, the expert witness may offer his opinion as to the subjective “state of mind” of the statement’s publisher.

As companies which range from large national media companies to local South Carolina news organizations, *Amici* are well positioned to aid the Court in addressing this question of first impression on how a public-figure libel plaintiff may prove constitutional actual malice. A decision that would undermine the constitutional

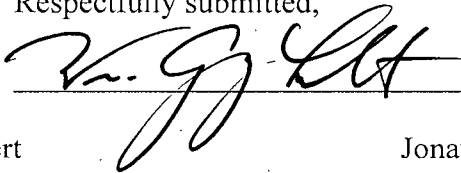
protections for speech about public officials, public figures, and public affairs would chill the “uninhibited, robust, and wide open” debate on public issues critical to a well-functioning democracy. *N.Y. Times v. Sullivan*, 376 U.S. 254, 270. (1964). *Amici’s* experience and perspective will assist the Court’s consideration of the broader impact that its ruling may have on the free flow of speech about matters of significant public interest.

Conclusion

Accordingly, *Amici* respectfully request leave to file the *amicus curiae* brief to assist the Court with understanding and considering the First Amendment and evidentiary issues raised in this case affecting the broader interests of *amici*, journalists, and the public.

This the 20th day of July, 2015.

Respectfully submitted,



Wm. Grayson Lambert
S.C. Bar No. 10128
MCGUIREWOODS LLP
201 North Tryon Street
Suite 3000
Charlotte, NC 28202
Tel: (704) 343-2367
Fax: (704) 444-8738

Jonathan E. Buchan, Jr.
N.C. Bar No. 8205
MCGUIREWOODS LLP
201 North Tryon Street
Suite 3000
Charlotte, NC 28202
Tel: (704) 343-2063
Fax: (704) 444-8714
Pro Hac Vice Pending

Attorneys for Amici Curiae

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

Larry B. Hyman, Circuit Court Judge

Court of Appeal No. 2014-001249

RECEIVED
JUL 21 2015
SC Court of Appeals

Mark Kelley,.....Respondent,

v.

David Wren and Sun Publishing Co., Inc., d/b/a/ *The Sun News*,.....Appellants.

CERTIFICATE OF SERVICE

The undersigned certifies that this Motion for Leave to File a Brief as *Amici Curiae* in Support of Appellants was served on counsel for the Appellants and Respondent by depositing a copy thereof in the United States Mail, first class, postage prepaid, addressed to:

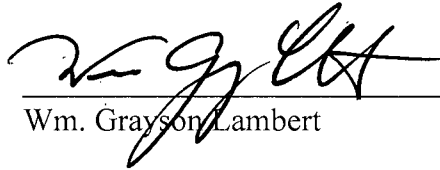
Jay Bender
Baker, Ravenel, & Bender, L.L.P.
P.O. Box 8057
Columbia, South Carolina 29202

Counsel for Appellants

James P. Stevens, Jr.
Natalie Stevens-Graziani
Stevens Law Firm, P.C.
P.O. Drawer 127
Loris, South Carolina 29569

Counsel for Respondent

This the 20th day of July, 2015.



Wm. Grayson Lambert