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THE STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

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JUL 27 2015

APPEAL FROM HORRY COUNTY SC Court of Appeals
Court of Common Pleas
Larry B. Hyman, Jr., Circuit Court Judge

Case No. 2014-001249

MARK KELLEY,

Respondent,

vs.

DAVID WREN AND SUN PUBLISHING COMPANY, INC., D/B/A THE SUN NEWS,

Appellants.

**MOTION OF GANNETT COMPANY, INC.,
FOR LEAVE TO FILE A BRIEF *AMICUS CURIAE*
IN SUPPORT OF APPELLANTS AND IN FAVOR OF REVERSAL**

Pursuant to Rule 213 of the South Carolina Appellate Court Rules, Gannett Company, Inc. ("Gannett") hereby moves for leave to file a brief *amicus curiae* in support of Appellants, David Wren and Sun Publishing Company, Inc., d/b/a The Sun News, and in favor of this Court's reversing the Circuit Court's judgment against Respondent, Mark Kelley. Gannett's proposed brief is attached to this motion.

Gannett is an international news media holding company headquartered in Tysons Corner, Virginia. It is the largest U.S. newspaper publisher as measured by total daily circulation, and the largest and most geographically diverse provider of local news content in the United States. It is the publisher of the award-winning publication, *USA Today*, and in South Carolina it publishes *The Greenville News*. Other Gannett publications include *The Arizona Republic* in Phoenix, Arizona, *The Indianapolis Star*, *The Cincinnati Enquirer*, *The Tennessean* in Nashville, Tennessee, *The Courier-Journal* in Louisville, Kentucky, the *Democrat and Chronicle* in Rochester, NY, *The Des Moines Register*, the *Detroit Free Press*, and *The News-Press* in Fort Myers.

Gannett also owns or operates 46 television stations through Gannett Broadcasting, Inc., and is the largest group owner of stations affiliated with NBC and CBS. In South Carolina it broadcasts over WLTX-TV in Columbia.

Gannett's mission is to provide trusted news and information and to actively support the people and businesses in the communities it serves. To this end, Gannett's newspapers and TV stations strive to meet the highest standards of journalistic excellence, accuracy, and fairness in their reporting. Nonetheless, because of the geographic breadth and diversity of their businesses, Gannett companies sometimes find themselves the targets of defamation lawsuits, including litigation, like this one, brought by public figures or public officials who did not like something that had been reported about them. Accordingly, Gannett has a vital interest in the correct and rigorous application of the constitutional protections for freedom of speech and of the press.

The importance of this appeal to Gannett stems from the Circuit Court's admission of the purported "expert testimony" of the Respondent's expert witness on journalistic standards. Over Appellants' objection, the Circuit Court allowed testimony from a Professor of the Grady

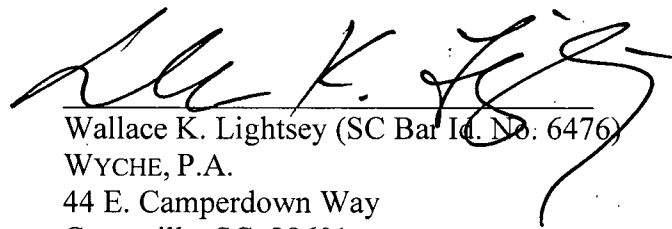
College of Journalism in Georgia, opining as an expert on standards of journalism, the application of the law of defamation to this case, and his conclusions that the Appellants did not act “in accordance with standards that would be followed by a responsible publisher” and that “the reporter knew or should have known that the reporting was false.” (R. p. 282, lines 18-19; p. 283, lines 11-12)

The Circuit Court’s decision to allow such testimony creates a real and serious threat to the protection of freedom of speech and of the press provided by the “actual malice” standard set out by the United States Supreme Court in *New York Times v. Sullivan* and elaborated upon in the many ensuing cases amplifying and applying that standard. In effect, the allowance of such “expert” testimony allows public figure plaintiffs to circumvent the intentionally demanding burden of proof inherent in the “actual malice” standard. It enables the plaintiff to confuse the jury as to whether “actual malice” may be based on the testimony of a journalism professor that a defendant deviated from “standards that would be followed by a responsible publisher” and that the defendant “should have known” that a false statement was being published. In effect, it converts actual malice into gross negligence or even simple negligence. That is exactly what happened in the trial below.

As shown in the brief of Gannett tendered with this motion, courts across the country have rejected such testimony in actual malice cases. The issue, however, has yet to be addressed in South Carolina. Reversal of the Circuit Court’s judgment on this ground would bring clarity to this area of the law in South Carolina and prevent the circumvention of the *New York Times* rule in this state by the use of expert testimony on journalistic standards in public figure and public official cases.

In contrast to the legal analysis contained in the Appellants' briefs, which address multiple issues arising from the particular facts and evidence of this case, Gannett's brief focuses on this discrete evidentiary issue because of its potential implications for other defamation actions brought by public figures and public officials, in South Carolina as well as other jurisdictions. For this reason, Gannett submits that the attached brief may be helpful to the Court in resolving this case, and asks the Court to grant leave to file it.

Respectfully submitted,



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Date: July 23, 2015

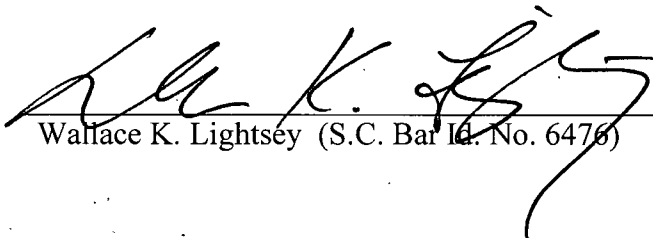
Attorneys for the *Amicus Curiae*

Certificate of Service

This is to certify that I have this date caused to be served a true and correct copy of the foregoing MOTION OF GANNETT COMPANY, INC., FOR LEAVE TO FILE A BRIEF *AMICUS CURIAE* IN SUPPORT OF APPELLANTS AND IN FAVOR OF REVERSAL on counsel in this action by causing the same to be deposited in the United States mail, first class postage affixed, addressed as follows:

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Wallace K. Lightsey (S.C. Bar No. 6476)

Date: July 23, 2015

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SC Court of Appeals

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Attorneys at Law

July 23, 2015

Hon. Jenny Abbott Kitchings
Clerk of Court
South Carolina Court of Appeals
Post Office Box 11629
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Re: *Mark Kelley v. David Wren and Sun Publishing Co. d/b/a The Sun News*
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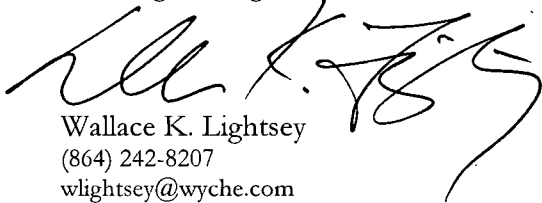
Dear Ms. Kitchings:

Enclosed please find the original and six (6) copies of the Motion of Gannett Company, Inc., for Leave To File a Brief *Amicus Curiae* in Support of Appellants and in Favor of Reversal, along with a check for the motion filing fee.

Also enclosed are fifteen (15) bound copies and one (1) unbound copy of the Brief *Amicus Curiae* of Gannett Company, Inc., in Support of Appellants and in Favor of Reversal, which are conditionally filed pending leave of the Court pursuant to rule 213, SCACR.

The certificates of service of both papers are included with them as the last page.

With highest regards,



Wallace K. Lightsey
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Enclosures

Cc with enclosures:

James P. Stevens, Esquire
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