THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM HORRY COUNTY
Court of Common Pleas

Larry B. Hyman, Jr., Circuit Court Judge

Opinion No. 5375 (S.C. Ct. App. Filed January 13, 2016)
Appellate Case No. 2016-000697

Mark Kelley, ... Respondent,

v.

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

RESPONDENT'S RETURN TO BRIEF OF THE THOMAS JEFFERSON CENTER FOR THE PROTECTION OF FREE EXPRESSION, THE SOCIETY OF PROFESSIONAL JOURNALISTS, THE REPORTERS COMMITTEE FOR FREEDOM OF THE PRESS, AND 7 OTHER NEWS MEDIA ORGANIZATIONS AS *AMICI CURIAE* IN SUPPORT OF PETITION FOR CERTIORARI BY DAVID WREN AND SUN PUBLISHING CO., INC., D/B/A *THE SUN NEWS*

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INTRODUCTION

Respondent submits that there are no unsettled questions or issues of law applied in this libel case which would justify granting Appellants' Petition for Writ of Certiorari. Respondent, a lobbyist, brought this action against the Appellants alleging that several articles published in its newspaper (*The Sun News*) contained false and defamatory statements accusing Respondent of delivering campaign contributions to Gresham Barrett, a gubernatorial candidate, at a private luncheon attended by Respondent, Gresham Barrett, Drea Byers (Barrett's campaign finance manager) and Brad Dean (President of the Myrtle Beach Chamber of Commerce). It is a crime under the South Carolina Ethics Laws for a lobbyist to facilitate or give campaign donations to a candidate running for a state office. All of the evidence adduced at trial revealed that only Brad Dean delivered the donations to Barrett, who then handed them to Mrs. Byers. Respondent was not aware when he attended the luncheon that campaign donations would be given to Barrett. Barrett and Byers, who were called by the Respondent as witnesses, testified that Respondent did not arrange the luncheon or give the donations to Barrett. The reporter, Appellant Wren, admitted in his deposition and at trial that he had no evidence that Respondent arranged the meeting, raised the donations, or handed the donations to Barrett.

The trial court ruled that Respondent was a public figure, and the subject of the articles were of public concern. Therefore, the trial court ruled that Respondent must prove that the publications were defamatory, were false, were published with constitutional actual malice, and damages. The trial court ruled that Respondent was required to prove all of the above elements by clear and convincing evidence. The jury was correctly charged concerning the elements of libel and that actual malice must be proved by clear and convincing evidence. However, Respondent maintains that the burden of proof as to the falsity of the publication was by a preponderance of

the evidence. However, in light of the trial judge's charge and the forms of verdicts submitted, the jury found that Respondent proved all elements of his libel case by clear and convincing evidence and awarded a verdict of $400,000 in actual damages and $250,000 in punitive damages.

Appellants' motions for directed verdict and Judgment NOV were denied and this appeal followed.

Both the trial court and the Court of Appeals correctly performed an independent *(de novo)* review of the evidence and found that the evidence sustained a finding that the Respondent had proved actual malice by clear and convincing evidence. The Court of Appeals affirmed the verdict of the jury and the rulings of the trial court denying the Appellants' post-trial motions. Appellants' motion for a rehearing was denied by the Court of Appeals. This Petition for Writ of Certiorari followed.

Respondent now responds to the legal issues raised by Amici in their brief.

I. THE COURT SHOULD DENY CERTIORARI BECAUSE THE PORTIONS OF THE PUBLICATIONS BY APPELLANTS WERE FOUND TO BE DEFAMATORY, FALSE, AND UNAMBIGUOUS.

Amici's arguments attempt to insert into defamation law two new legal terms: "substantial falsity" and "quantity of evidence". Amici claims that Respondent must prove "substantial falsity" to prevail in a defamation case against a media defendant and that he must follow "this Court's mandate" concerning the "quantity of evidence" Respondent needs to produce to meet his burden of proof. However, Appellants fail to cite any case by the South Carolina Appellate Courts discussing such terminology or making such a holding or mandate. In fact, there are no cases found in South Carolina jurisprudence using these terms in a defamation case. Amici do not define the terms "substantial falsity" and "quantity of evidence" in their brief. This is apparently because there are no South Carolina cases defining that terminology.

A. Falsity:

The trial court charged the jury that Respondent had the burden of proving falsity of the publication by clear and convincing evidence.[1] The issue as to the correct burden of proof as to falsity was before the U.S. Supreme Court in Hart-Hanks Communications, Inc. v. Connaughton, 491 U.S. 657, 109 S. Ct. 2678, 105 L. Ed. 2d 562 (1989), where the form of the verdict given to the jury in the trial stated, "Do you unanimously find by a preponderance of the evidence that the publication in question was false?" The Court, in footnote 2 of its opinion, stated, "[t]here is some debate as to whether the element of falsity must be established by clear and convincing evidence or by a preponderance of the evidence. (Citations omitted). We express no view on this issue." *Id.* at footnote 2.

The only case in South Carolina dealing with the burden of proof as to falsity is found in the case of Elder v. The Gaffney Ledger, Inc., 333 S.C. 651, 511 S.E.2d 383 (1999), where the S.C. Court of Appeals held that "[t]he statement's falsity must be proved by a preponderance of the evidence." (*See,* F. Patrick Hubbard & Robert L. Felix, The South Carolina Law of Torts, 494 n.191 and accompanying text (2d ed. 1997). It also held that the Court "need not conduct an independent *de novo* review on the issue of falsity." *See also,* Peeler v. Spartanburg Radiocasting, Inc., 324 S.C. at 265, 478 S.E.2d at 284 (S.C. 1996). The issue of falsity was a question of fact for the jury and was decided adversely to the Appellants. In order to prevail on motions for

[1] The trial judge's jury charge required that the Plaintiff prove both falsity and constitutional actual malice by clear and convincing evidence: "In order to prevail, the Plaintiff must prove his case by clear and convincing evidence as to falsity, actual malice and damages." (R. p. 570, lines 1-3). Moreover, the forms of verdict submitted to the jury by the trial judge made it clear to the jury that the only way the Plaintiff could prevail was to find that (1) "the Plaintiff has proven by clear and convincing evidence that the Defendants made a false statement about the Plaintiff, published the statement and that said statement injured the Plaintiff personally and in his occupation and profession," and (2) "the Plaintiff has proven by clear and convincing evidence that the statement was published with actual malice, which is the statement was made with knowledge of its falsity or reckless disregard of its truth or falsity..." (R .p. 573, lines 2-21).

directed verdict and judgment *n.o.v.*, the Appellants must show that there was *no evidence* to support the verdict. (Emphasis added). "In an action at law, on appeal of a case tried by a jury, the jurisdiction of the appellate court extends merely to the correction of errors of law, and a factual finding by the jury will not be disturbed unless a review of the record discloses that there is no evidence which reasonably supports the jury's findings." Erickson v. Jones Street Publishers, LLC, 368 S.C. 444, 629 S.E.2d 653 (S.C. 2006). Of course, the appellate court would have to perform its independent *de nono* review of the evidence on the issue of actual malice.

B. Amici Misinterprets the Holding in *Philadelphia Newspapers v. Hepps*

Amici incorrectly argue that Philadelphia Newspapers v. Hepps, 475 U.S. 767, 106 S. Ct. 1558, 89 L. Ed. 2d 783 (1986), held that "when the meaning of a particular *phrase* is inconclusive or ambiguous, the defendant must prevail." (Brief of Amici, pp. 2-3) (Emphasis added). This is a misinterpretation of the Court's holding and would, in effect, give a media defendant absolute immunity in defamation cases.

The court in Philadelphia Newspapers, *supra,* was discussing the "common law" rule, which provides that a defamatory publication is presumed to be false, and the defendant has the burden of proving the truth of the publication. The common law rule was previously used where the plaintiff was a private figure; however, the Court ruled that the common law rule did not apply where the publication related to a matter of public concern, and the burden of proof shifted to the plaintiff to show that the publication was false.

What Amici has done in their argument is, to coin a phrase used by Amici, "cherry-picked" certain phrases in the following language of the Court's opinion and used them in isolation to fit the purposes of their own argument which is contrary to the correct and full meaning of the Court's holding:

> Here, as in Gertz, [Gertz v. Welch, 418 U.S. 323, 94 S.Ct. 2997, 41 L.Ed.2d 789 (1974)], the plaintiff is a private figure and the newspaper articles are of public concern. In Gertz, as in New York Times, [New York Times v. Sullivan, 376 U.S. 254, 84 S.Ct. 710, 11 L.Ed.2d 686 (1964)], the common-law rule was superseded by a constitutional rule. We believe that the common law's rule on falsity -- that the defendant must bear the burden of proving truth – must similarly fall here to a constitutional requirement that the plaintiff bear the burden of showing falsity, as well as fault, before recovering damages.
>
> There will always be instances when the fact finding process will be unable to resolve conclusively whether the speech is true or false; it is in those cases that the burden of proof is dispositive. Under a rule forcing the plaintiff to bear the burden of showing falsity, there will be some cases in which plaintiffs cannot meet their burden despite the fact that the speech is in fact false. The plaintiff's suit will fail despite the fact that, in some abstract sense, the suit is meritorious. Similarly, under an alternative rule placing the burden of showing truth on defendants, there would be some cases in which defendants could not bear their burden despite the fact that the speech is in fact true. Those suits would succeed despite the fact that, in some abstract sense, those suits are unmeritorious. Under either rule, then, the outcome of the suit will sometimes be at variance with the outcome that we would desire if all speech were either demonstrably true or demonstrably false.
>
> This dilemma stems from the fact that the allocation of the burden of proof will determine liability for some speech that is true and some that is false, but *all* of such speech is *unknowably* true or false. Because the burden of proof is the deciding factor only when the *evidence* is ambiguous, we cannot know how much of the speech affected by the allocation of the burden of proof is true and how much is false. (Emphasis added). In a case presenting a configuration of speech and plaintiff like the one we face here, and where the scales are in such an uncertain balance, we believe that the Constitution requires us to tip them in favor of protecting true speech. To ensure that true speech on matters of public concern is not deterred, we hold that the common-law presumption that defamatory speech is false cannot stand when a plaintiff seeks damages against a media defendant for speech of public concern. *Id.* at 776-777.

When reading the entire passage above, it is clear that the Court means that shifting the burden of proof to the plaintiff to prove falsity (the constitutional rule) would result in some cases where the "fact finding process (meaning the jury) will be unable to resolve conclusively whether the speech is true or false; it is in those cases that the burden of proof is dispositive." Simplistically stated: if the burden of proving falsity shifts to the plaintiff because the case involves a matter of public concern and the plaintiff fails to carry his burden of proof, his failure to do so is

"dispositive" of his case. This is nothing more than the jury saying the plaintiff failed to carry his burden of proving falsity. On the other hand, if the plaintiff is a private figure and the defamatory publication is purely a matter of private concern, then the common law rule applies. In that case, if the jury is unable to resolve the issue of whether the speech is true or false, again the burden of proof is dispositive, and the defendant would lose because the defendant would have failed to carry the burden of proving that the publication was true.

C. **Ambiguity**

Once the above language of Philadelphia Newspapers, *supra*, is read in its correct context, the fallacy in Amici's argument becomes apparent. The Court did not hold, as Amici claims, that "when the meaning of a particular phrase is inconclusive or ambiguous, the defendant must prevail." Nowhere in the opinion did the Court discuss ambiguous phrases. The Court was only discussing the shifting of the burden of proof as to falsity from the common law rule to the constitutional rule where the matter was of public concern. What the Court held was that "[b]ecause the burden of proof is the deciding factor only when the *evidence* [not the *phrase*] is ambiguous, we cannot know how much of the speech affected by the allocation of the burden of proof is true and how much is false." (Emphasis added).

It then becomes clear that applying the correct holding of Philadelphia Newspapers, *supra*, and the rulings in the Peeler and Elder, *supra*, (there is no requirement for an independent *de novo* review by either the trial or appellate courts on the issue of ambiguity), the logical conclusion is that the issue of ambiguity is a question of fact for the jury. Therefore, the trial judge properly included that issue in his jury charge, to which the Appellants made no objection:

> If adoption of the language in question that was chosen by the Defendant was one of a number of possible, rational interpretations of an event that is ambiguous and presents descriptive challenges for the writer, the choice of such language, though

> reflecting a misconception, does not necessarily give rise to liability. (R. p. 567, lines 14-19).
>
> When the law places upon the party a burden of proof by clear and convincing evidence, the law means that the evidence is not ambiguous, doubtful, equivocal, or contradictory, but the evidence is pointed to the issue and satisfactory in the sense that the source from which it comes is one which you jurors can place credence. In order to prevail, the Plaintiff must prove his case by clear and convincing evidence as to falsity, actual malice and damages. (R. p. 570, line 21 – p. 571, line 3). (Emphasis added).

As a result of the above charge on the issue of ambiguity and the heightened burden of proof by clear and convincing evidence, the jury necessarily found that Respondent sufficiently proved falsity and that the evidence was unambiguous, not doubtful, unequivocal and uncontradictory.

The jury also must have, of necessity, rejected Appellants' interpretation of the defamatory language that Respondent was simply sitting beside Dean or was along with Dean at the luncheon. The interpretation placed on the defamatory language by Appellants was obviously recognized by the trial court, the appellate court, and the jury as being a strained interpretation made in an effort to avoid Appellants' liability to the Respondent for their false and defamatory statements. This is so, especially in light of the previous articles written by Appellant Wren using the words "along with" interchangeably with the word "and". (R. pp. 697-707, Plaintiff's Exhibits 18-20). Moreover, the Respondent introduced evidence that various dictionaries and a thesaurus defined the word "and" as meaning "along with". (R. pp. 691-694, Plaintiff's Exhibit 16).

"The objectionable words must be construed in their most natural meaning and in the sense in which they would be understood by those to whom they were addressed. Such words must be measured by the natural and probable effect on the mind of the average lay reader rather than subjected to the critical analysis of the legal mind." Digest Pub. Co. v. Perry, 284 S.W.2d 832, 834 (Ky. 1955). *See also*, Scheel v. Harris, 2012 U.S. Dist. LEXIS 121825, 2012 WL 121825

(E.D.C. Ky 2012), and Yancey v. Hamilton, 786 S.W.2d 854, 858 (Ky. 1989) (quoting McCall, 623 S.W.2d at 884).

II. THE COURT SHOULD DENY CERTIORARI BECAUSE THE CASES CITED BY AMICI ARE FACTUALLY DISTINGUISHABLE FROM RESPONDENT'S CASE, AND THE FACTS PRESENTED BY RESPONDENT, INCLUDING SWORN ADMISSIONS AND EMAILS AUTHORED BY THE APPELLANT SHOW HIS SUBJECTIVE STATE OF MIND AND SHOW BY CLEAR AND CONVINCING EVIDENCE CONSTITUTIONAL ACTUAL MALICE.

The cases of Peeler, *supra,* and Elder v. Gaffney Ledger, 341 S.C. 108, 533 S.E.2d 899 (SC 2000), cited by Amici are factually distinguishable from the Respondent's case.

In Peeler, *supra*, the plaintiff was unable to prove that the media defendant actually accused him of the crime of forgery. At best, all the plaintiff could prove was that the defendant accused Peeler's supporters [not Peeler] of forgery; that his campaign opponent stated that he did not know who might have forged the names on the document but claimed that Peeler or his supporters engineered the problem; that supporters of his campaign opponent believed someone in the Peeler camp set Stroupe up; that although Peeler said he had nothing to do with it, the reporter stated that Peeler will be hard pressed to convince a lot of people; and that another witness stated, "[m]y opinion is that Harvey's got something to do with it."

The Peeler court correctly pointed out that the accusations pointed to Peeler's supporters, not Peeler. Moreover, Stroupe stated he did not know who forged the signatures. Stating that Peeler or his supporters engineered the problem is not an accusation of a crime. Stating that Stoupe's supporters believe someone in the Peeler camp set Stroupe up does not accuse Peeler of a crime. Being "hard pressed to convince a lot of people that he had nothing to do with the forgeries is not an accusation of a crime. Giving an opinion that Peeler had something to do with it is not an accusation of a crime.

In Elder v. Gaffney Ledger, 341 S.C. 108, 533 S.E.2d 899 (2000), the media defendant printed the following in its "What's Your Beef?" column, which is an opinion column in which readers are invited to telephone the newspaper and express their opinion or "tell [the paper] what [they] think" on an answering machine. Callers need not identify themselves:

> **Are the drug dealers paying?**
>
> I'd like to know what the people think about this. The Chief of the Blacksburg Police Department *knows that these people are selling drugs and they have been selling them many years* and he hasn't done anything about it. Now *I often wonder* if the drug dealers are paying the Chief of Blacksburg. And too, I would like to know why the Gaffney police have to go over there and work in the police department and do their work because they work here in Cherokee County. Don't they have enough money over there to hire Blacksburg police to do their jobs? Elder, at 112-113. (Emphasis added).

In ruling for the defendant on the issue of actual malice the Court stated:

> The evidence relied upon in this case to demonstrate actual malice is as follows: 1) that Sossamon *failed to investigate* or verify the information left by the anonymous caller; 2) that the phone recording of the anonymous caller was "erased" by Newspaper; 3) that Sossamon pled guilty to manufacturing marijuana in 1991; and 4) that Sossamon had been "rude" to Chief Elder's wife on one occasion when she was at the Newspaper to place an ad for her husband. This evidence is patently insufficient to demonstrate Sossamon in fact entertained serious doubts as to the truth of the publication. Elder, at 115. (Emphasis added).

As stated in Elder, neither a failure to investigate or verify information, nor erasing a phone recording of an anonymous caller, nor the criminal record of the reporter, nor having ill will toward the publisher by being rude to plaintiff's wife, satisfies the elements of nor constitutes actual malice as set out in New York Times v. Sullivan, *supra*, and its progeny.

In the case at bar, Appellants admit delivery of campaign contributions by a lobbyist to a gubernatorial candidate would be a crime. Appellants went to great length in several articles to educate its readers to that fact.

In this case, the Respondent produced direct, documentary, and admission evidence that the Appellants published the defamatory statements concerning Respondent with knowledge of its falsity and/or with a reckless disregard of whether the publication was true or false.

Respondent called as witnesses third parties who directly testified that Appellants printed the defamatory publication with knowledge of its falsity. Gresham Barrett and Drea Byers both testified that Brad Dean and not the Respondent delivered the envelope containing campaign donations and, in fact, Respondent had no knowledge the donations were going to be delivered beforehand. Barrett also testified that he personally told Appellant Wren that Respondent had nothing to do with raising the donations or delivering them, giving Appellant eyewitness accounts that the Respondent was not guilty of the crime which Appellants accused him of. Barrett and Byers, along with Senator Alan Clemmons, Representatives Nelson Hardwick and George Hearn all testified that, when reading the articles published by Appellants, they all understood them to accuse Respondent of violating the State Ethics Rules which is a statutory crime subject to monetary penalties, fines, jail time, and/or revocation of Respondent's lobbying license for three years.

Respondent also called Cathy Hazelwood, attorney for the State Ethics Commission, who testified that simply being at luncheon was not illegal on the part of Respondent.

Respondent also introduced documentary evidence in the form of emails to and from Appellant Wren which revealed several elements of Appellant Wren's subjective state of mind and that he had knowledge of the falsity of its defamatory publication or that it was printed it with a reckless disregard:

1. An email from Tim Pearson, campaign manager for Nikki Haley, who was Barrett's opponent, told Appellant Wren on May 20, 2010, "maybe go ask Gresham Barrett directly who gave him the money". (R. p. 652, Plaintiff's Exhibit 10).

2. An email by Appellant Wren which stated that Trey Walker, Henry McMaster's campaign manager, denied having any knowledge from the Barrett campaign that would show Respondent distributed donations to Barrett. (R. p. 659-660, Plaintiff's Exhibit 10).

3. On May 3, 2010, Appellant Wren wrote an email calling Trey Walker a liar and stated that he knew "campaign managers have little or no ethics, but to flat out lie about something that eventually will be shown to be true isn't going to help him". (R. p. 659, Plaintiff's Exhibit 10).

4. Appellant Wren wrote an email to Justin Stokes (campaign worker for Barrett who "jumped ship" to the Haley campaign) and Tim Pearson which stated, ".... Also everyone seems to be bending over backward to protect Mark Kelley regarding his involvement in setting up the meeting with Barrett and handing him the money." (R. p. 661, Plaintiff's Exhibit 11).

5. Appellant Wren, in the same email as 4 above stated, "I asked B.J. Boling if Kelley had arranged the meeting and he quickly said, 'No, that would have been illegal.' Then he said he had to check and see who did arrange the meeting. A little while later he called back and said it was Brad Dean." (R. p. 661, Plaintiff's Exhibit 11).

6. Appellant Wren, in the same email as 4 and 5 above, also asked Stokes and Pearson, "Also, if there are any emails or documents that show .... Kelley's role in setting up the Barrett meeting would be a great help." (R. p. 661, Plaintiff's Exhibit 11).

Moreover, in both the direct and cross examination of Appellant Wren, he admitted the following facts:

1. That he did not recall Representative Tracy Edge make any suggestion about involvement by Mark Kelley in the campaign donations to Barrett. (R. p. 400, lines 18-29).

2. That in a conversation with Gresham Barrett, Barrett told him that it was Brad Dean who gave Barrett the money. (R. p. 404, line 17 – p. 405, line 3).

3. That in a phone call to Brad Dean, Dean told Appellant Wren the he, Brad Dean, handed Barrett an envelope with campaign donations. (R. p. 405, lines 14-20).

4. That neither Barrett nor Dean told Appellant Wren that Mark Kelley had passed the envelope containing campaign donations. (R. p. 409, lines 21-23).

5. That Appellant Wren had no information that Mark Kelley had delivered the envelope containing campaign donations. (R. p. 417, lines 11-13).

6. That Appellant Wren was "skeptical" of Justin Stokes and Tim Pearson. (R. p. 419, lines 8-11).

7. That Appellant Wren never found an answer that implicated Mark Kelley. (R. p. 424, lines 23-24).

8. That Appellant Wren had no evidence that the money (campaign donations) came from Mark Kelley. (R. p. 431, lines 11-12).

9. That Appellant Wren knew when he printed the articles that Respondent had no interest in any of the LLCs. (R. p. 438, lines 8-12).

10. That Appellant Wren's investigation revealed that Respondent had nothing to do with the LLCs, did not give money to or take money from the LLCs. (R. p. 439, lines 19-23).

11. That Appellant Wren had no evidence that Respondent had anything to do with setting up the meeting (where campaign donations were given to Barrett) (R. p. 439, line 24 – p. 440, line 4).

12. That B. J. Boling told Appellant Wren that Brad Dean set up the meeting (R. p. 441, line 25 – p. 442, line 3).

13. That both Dean and Barrett told Appellant Wren that Dean gave the contributions. (R. p. 443, lines 7-10).

14. That Appellant Wren had no emails accusing Respondent of setting up the meeting. (R. p. 451, lines 23-25).

15. That Appellant Wren had no emails accusing Respondent of giving money. (R. p. 452, lines-1-7).

16. That no one had told Appellant Wren by email, telephone, letter or whatever other source or method that Respondent handed the campaign donation to Barrett or anyone else. (R. p. 452, lines 8-13).

17. That Appellant Wren had no evidence that Respondent knew what was in the envelope before it was handed to Barrett or where it came from. (R. p. 462, lines 18-23).

As seen from the above references to the Record, testimony and exhibits, Respondent's case is factually distinguishable from Peeler and Elder, *supra,* cited by Amici. The overwhelming evidence of actual malice is seen in (1) Appellants' admitted knowledge of the articles' falsity, (2) Appellants' reckless disregard of the truth or falsity in accusing Respondent of a crime while relying on an admittedly "skeptical" and unreliable sources (the campaign manager and campaign

worker for an opposing candidate, one of whom had "jump ship" from Barrett's campaign), and (3) Appellant Wren's emails not only showing by direct evidence his subjective state of mind but also his admissions, during direct and cross examination, that he had no evidence that Respondent either organized or facilitated or called any campaign donations meeting or that he raised, requested, handled, or distributed campaign donations to Barrett. The above evidence revealed that Appellants had a substantial doubt as to the truth of what they were publishing. Not only was the evidence overwhelming but it was clear and convincing as the jury found and as the trial court and the Court of Appeals found in carrying out their duty to conduct an independent, *de novo* review of the evidence.

CONCLUSION

For the above reasons, the Respondent respectfully requests that this Court deny the Appellants' Petition for a Writ of Certiorari.

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PROOF OF SERVICE

I certify that I have served **Respondent's Return to *Amici Curiae* Brief** on attorneys for Petitioners and attorneys for *Amici Curiae* by depositing a copy of it in the United States Mail, postage prepaid, on July 12, 2016, addressed to the following attorneys of record:

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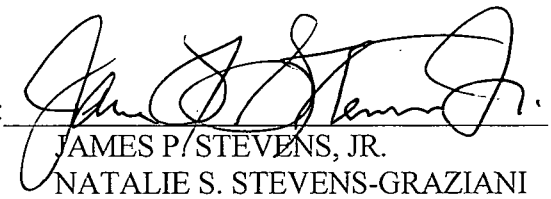
By: 

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CERTIFICATE OF COUNSEL

The undersigned certifies that Respondent's Return to *Amici Curiae* Brief complies with Rules 208(b) and 211(b), SCACR.

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