

ORAL ARGUMENT NOT YET SCHEDULED

**IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

YASSER ABBAS,

Plaintiff-Appellant,

- vs -

**FOREIGN POLICY GROUP, LLC and
JONATHAN SCHANZER,**

Defendants-Appellees

Case No.: 13-7171

District Court No.
12-CV-01565 (EGS)

**MOTION FOR LEAVE TO FILE BRIEF OF
AMICI CURIAE MEDIA ORGANIZATIONS**

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Under Federal Rule of Appellate Procedure 29(b) and Circuit Rule 29(b), Advance Publications, Inc., American Society of News Editors, The Associated Press, Association of Alternative Newsmedia, The Association of American Publishers, Bloomberg L.P., Center for Public Integrity, Dow Jones & Company, Inc., The Economist Newspaper Limited, The E.W. Scripps Company, Fox Entertainment Group, Inc., Gannett Co., Inc., Hearst Corporation, The McClatchy Company, Media Law Resource Center, The National Press Club, National Press Photographers Association, National Public Radio, Inc., NBCUniversal Media LLC, News Corporation, The New York Times Company, Newspaper Association of America, Online News Association, Online Publishers Association, ProPublica, Reporters Committee for Freedom of the Press, Reuters America LLC, Society of Professional Journalists, Tribune Company, Washington City Paper, and The Washington Post (collectively, "Media Amici") respectfully move this Court for leave to file the concurrently submitted *amici curiae* brief. Defendants-Appellees have consented to the filing of *amici's* brief. Plaintiff-Appellant has not.

1. Interests of Media Amici

Media Amici are 31 leading news organizations and trade organizations. They or their members gather and disseminate news and information across the country, including in Washington, D.C.¹ *Amici* or their members are frequent defendants in SLAPP lawsuits in federal court, and several *amici* – including Hearst, NBC, the Washington City Paper, and Fox – have invoked the protections of the D.C. Anti-SLAPP law when sued over a publication on a matter of public concern. *Amici* believe they can offer the Court unique guidance on the issues presented by this appeal, in which they – and their readers and viewers, the public – have a significant interest.

2. Issues on Appeal

This appeal asks this Court to review the grant of a motion to dismiss filed under the District of Columbia's Anti-SLAPP Act of 2010 (the "Act"), D.C. Code §§ 16-5501 – 16-5505, which permits a party to file a special motion to dismiss "any claim arising from an act in furtherance of the right of advocacy on issues of public interest" D.C. Code § 16-5502(a). The

¹ Corporate disclosure statements for each *amicus* party are included in an addendum to this motion.

central issue in this appeal – and the issue Media Amici will address in their brief – is whether the Act applies in federal court in cases invoking the Court’s diversity jurisdiction.

3. Media Amici Would Benefit the Court by Providing Practical Examples of How Anti-SLAPP Statutes Apply in Federal Court as Substantive Protections of the Media’s First Amendment Rights

Media Amici will argue that the D.C. Anti-SLAPP Act applies in federal court to diversity actions. Media Amici routinely face meritless defamation and other state-law claims in federal court that target their exercise of the constitutional right to disseminate information about important issues of public interest. Left unchecked, these lawsuits exploit the legal process to punish political commentary and chill the free flow of information. As a result, Media Amici closely monitor legal developments that affect the ability to gather and disseminate information, including jurisprudence concerning state anti-SLAPP legislation.

In many jurisdictions that have enacted anti-SLAPP statutes to curb this abuse, Media Amici regularly rely on these statutes in federal court. *See, e.g., Thomas v. L.A. Times Commc’ns LLC*, 189 F. Supp. 2d 1005 (C.D. Cal. 2002), *aff’d*, 45 F. App’x 801 (9th Cir. 2002) (granting anti-SLAPP motion by

affiliate of Media Amicus Tribune Company to dismiss claims arising out of a *Los Angeles Times* article); *Armington v. Fink*, 2010 WL 743524 (E.D. La. Feb. 24, 2010) (granting anti-SLAPP motion by Media Amici ProPublica and The New York Times to dismiss claims arising out of Pulitzer Prize-winning article about alleged euthanasia of hospital patients during Hurricane Katrina).

More specifically, several of the Media Amici have been subject to local suits in D.C. Superior and D.C. federal court, where they have invoked the D.C. Anti-SLAPP Act. In *Farah v. Esquire Magazine*, the D.C. District Court applied the D.C. Act to a libel claim against Media Amicus Hearst, and granted dismissal under both the Act and Rule 12(b)(6) of the Federal Rules of Civil Procedure. 863 F. Supp. 2d. 29 (D.D.C. 2012). On appeal to this Court - where many of the Media Amici here similarly submitted an *amici curiae* brief - this Court affirmed the motion to dismiss while declining to reach the anti-SLAPP motion. 736 F.3d 528 (D.C. Cir. 2013).

Another of the Media Amici, NBCUniversal, has faced a plaintiff's attempt at forum-shopping a libel claim to avoid the D.C. Act. The plaintiffs in *Dean v. NBCUniversal* dismissed their libel claim filed in D.C.

Superior Court, on the eve of arguing a motion under the D.C. Act, and re-filed the identical action in federal district court, hoping that the Act would not apply to his claim there. *Dean v. NBCUniversal*, No. 12 Civ. 00283, ECF No. 5-1 (D.D.C. filed Feb. 21, 2012) (plaintiffs' notice of voluntary dismissal in D.C. Superior Court states: "The Complaint has been refiled in the U.S. District Court for the District of Columbia due to the Court's recent decision in *3M v. Davis*, No. 11-cv-1527 (RLW)(D.D.C.)").

Media Amicus Fox successfully brought an anti-SLAPP motion under the D.C. Act in D.C. Superior Court, dismissing libel claims over a news report that the plaintiff, a public employee, earned excessive overtime. *Lehan v. Fox Television Stations, Inc.*, 2011 D.C. Super. LEXIS 14, at *3-4 (Nov. 30, 2011). The court granted Fox's motion, finding that the plaintiff failed to show a "likelihood of success" of proving falsity or fault. *Id.* And when Media Amicus Washington City Paper faced a libel claim by Redskins owner Dan Snyder over a column that criticized his management of the team, its invocation of the D.C. Act was instrumental in convincing the plaintiff to dismiss his suit voluntarily before the anti-SLAPP motion could be fully briefed and decided. *Snyder v. Creative Loafing, Inc.*, No. 2011-CA-003168-B (D.C. Super. Ct. filed Apr. 26, 2011).

Also of critical importance, Media Amici will be materially affected by the decision in this case, both as controlling precedent in this Circuit and persuasive authority beyond its borders. For this reason, appellate courts – including this Court – have regularly accepted accept *amicus* briefs from news organizations and media trade and advocacy groups, including many of the Media Amici, when the applicability or constitutionality of a state anti-SLAPP law is at issue. *See, e.g.,* Brief of *Amici Curiae* Advance Publications, Inc., et al. in Support of Appellees and in Favor of Affirmance, *Farah v. Esquire Magazine*, 736 F.3d 528 (D.C. Cir. 2013) (No. 12-7055); Brief of *Amici Curiae* Media Organizations in Support of Defendants-Appellants and Reversal, *Sherrod v. Breitbart*, 720 F.3d 932 (D.C. Cir. 2013) (No. 11-7088); Brief of *Amici Curiae* Advance Publications, Inc., et al. in Support of Defendants-Appellants and Reversal, *Intercon Solutions, Inc. v. Basel Action Network et al.* (7th Cir. filed Jan. 10, 2014) (No. 13-3148).

In short, Media Amici bring substantial experience to bear on the issues presented here – not simply in terms of legal expertise, but also in terms of describing the practical impact of anti-SLAPP statutes around the country. Media Amici therefore provide precisely the type of unique viewpoint that, as in prior cases, will aid this Court in deciding this appeal,

and they have a significant stake in its outcome. They therefore respectfully ask the Court to accept the proposed brief.

CONCLUSION

Media Amici respectfully request that the Court grant leave to file the proposed brief of *amici curiae* submitted concurrently with this motion.

Respectfully submitted,

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Dated: April 2, 2014

ADDENDUM:**CORPORATE DISCLOSURE STATEMENTS**

Under Circuit Rule 29(b), Rules 26.1 and 29(c)(1) of the Federal Rules of Appellate Procedure, and Circuit Rule 26.1, undersigned counsel for *amici curiae* provide the following disclosures of corporate identity:

Advance Publications, Inc. has no parent corporation, and no publicly held corporation owns 10% or more of its stock.

The **American Society of News Editors** is a private, non-stock corporation that has no parent.

The Associated Press has no parent corporation and no publicly held company owns more than 10% of its stock.

The **Association of Alternative Newsmedia** has no parent corporation and does not issue any stock.

The Association of American Publishers is a nonprofit corporation that has no parent company and issues no stock.

Bloomberg L.P. is a privately held company.

The **Center for Public Integrity** is a nonprofit organization. It has no parent company and issues no stock.

Dow Jones & Company, Inc. (“Dow Jones”) discloses that News Corporation, a publicly held company, is the indirect parent corporation of Dow Jones. Ruby Newco, LLC, a subsidiary of News Corporation and a non-publicly held company, is the direct parent of Dow Jones. No publicly held company owns 10% or more of the stock of Dow Jones.

The Economist Newspaper Limited (“The Economist”) is a U.K. corporation. Fifty percent of its stock is owned by The Financial Times Limited (“FT”), a U.K. publicly held corporation. FT is a subsidiary of Pearson PLC, a U.K. publicly held corporation.

The E.W. Scripps Company is a publicly traded corporation. It has no parent corporation, and no publicly owned company owns 10% or more of its stock.

Fox Entertainment Group, Inc. (“Fox”) is a wholly owned, indirect subsidiary of Twenty-First Century Fox., Inc., a publicly held company. No publicly held company owns 10% or more of Twenty-First Century Fox, Inc.

Gannett Co., Inc. is a publicly traded company and has no affiliates or subsidiaries that are publicly owned. No publicly held company holds 10% or more of its stock.

Hearst Corporation is a diversified, privately held media company. No publicly held company owns 10% or more of its stock.

The McClatchy Company is a publicly owned corporation.

The **Media Law Resource Center** has no parent corporation and issues no stock.

The National Press Club is a not-for-profit corporation that has no parent company and issues no stock.

The **National Press Photographers Association** is a 501(c)(6) nonprofit organization that has no parent company and issues no stock.

National Public Radio, Inc. is a privately supported, not-for-profit membership organization that has no parent company and issues no stock.

NBCUniversal Media LLC is indirectly owned by Comcast Corporation. Comcast Corporation is a publicly held corporation. No other publicly held corporation owns 10% or more of the equity of NBCUniversal Media, LLC.

News Corporation has no parent company and no publicly held company owns 10% or more of its shares.

The New York Times Company is a publicly traded company and has no affiliates or subsidiaries that are publicly owned. No publicly held company owns 10% or more of its stock.

The Newspaper Association of America is a non-stock corporation with no parent corporation, and no publicly held corporation owns 10% or more of any form of interest in it.

The Online News Association is a nonprofit organization. It has no parent company and issues no stock.

The Online Publishers Association is a nonprofit organization. It has no parent company and issues no stock.

Pro Publica, Inc. is a Delaware non-stock, nonprofit corporation.

The Reporters Committee for Freedom of the Press is an unincorporated association of reporters and editors with no parent corporation and no stock.

The Society of Professional Journalists is a 501(c)(3) nonprofit organization with no parent company and no stock.

Reuters America LLC is an indirect wholly-owned subsidiary of Thomson Reuters Corporation, a publicly held company. No publicly held company owns 10% or more of the stock of Thomson Reuters Corporation.

Tribune Company is a privately held company.

D.C. Communications, Inc., d/b/a **Washington City Paper**, is a wholly owned subsidiary of Southcomm Communications, a privately held company.

Nash Holdings LLC is the sole parent of WP Company LLC (d/b/a **The Washington Post**). Nash Holdings LLC is privately held and does not have any outstanding securities in the hands of the public.

Under Circuit Rule 26.1(b), the general nature and purpose of the Media Amici is to gather and disseminate the news, and to advocate for robust First Amendment and other legal protections for journalists and the news media.

CERTIFICATE OF SERVICE

I hereby certify that on April 2, 2014, copies of the foregoing were served by CM/ECF and first-class mail upon the following counsel:

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