No. 14-CV-60

IN THE DISTRICT OF COLUMBIA COURT OF APPEALS

JOHN KANDRAC,

DEFENDANT-APPELLANT,

V.

THE WASHINGTON TRAVEL CLINIC, PLLC *ET AL.*,

PLAINTIFF-APPELLEES

On Appeal from the Superior Court for the District of Columbia
Civil Division, No. 2013 CA 003233 B

BRIEF *AMICI CURIAE* OF THE REPORTERS COMMITTEE FOR FREEDOM OF THE PRESS AND 24 OTHER ORGANIZATIONS IN SUPPORT OF APPELLANT AND URGING REVERSAL

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The Newspaper Guild – CWA is an unincorporated association. It has no parent and issues no stock.

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Online News Association is a not-for-profit organization. It has no parent corporation, and no publicly traded corporation owns 10% or more of its stock.

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Society of Professional Journalists is a non-stock corporation with no parent company.

Time Inc. is a publicly traded corporation. No publicly held corporation owns 10% or more of its stock.

The Tully Center for Free Speech is a subsidiary of Syracuse University.

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

WP Company LLC d/b/a The Washington Post is a wholly owned subsidiary of Nash Holdings LLC. Nash Holdings LLC is privately held and does not have any outstanding securities in the hands of the public.

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STATEMENT OF INTEREST

Pursuant to D.C. App. R. 29, the Reporters Committee for Freedom of the Press and X other organizations, through undersigned counsel, respectfully submit this brief as *amici curiae* in support of appellant John Kandrac. *Amici* concurrently file a motion for leave to file this memorandum as *amicus curiae* in response to the order to show cause.

Media *amici* have an interest in ensuring anti-SLAPP statutes remain effective tools in protecting free speech. While all citizens who choose to speak out on public affairs benefit from anti-SLAPP statutes, which aim to deter the use of litigation to silence speech, as regular speakers news organizations have an especially strong interest in ensuring that these statutes provide meaningful relief. It is news organizations that choose every day to venture into the thick of public controversy to make sure citizens are fully informed about their world. This engagement with important issues makes the news media more liable to be drawn into court, particularly when a controversial figure decides to use litigation as a weapon to counter thorough reporting or challenging commentary.

The *amici* are: The Reporters Committee for Freedom of the Press, The American Civil Liberties Union of the Nation's Capital, American Society of News Editors, Association of Alternative Newsmedia, The Association of American Publishers, Inc., Atlantic Media, Inc., The E.W. Scripps Company, First Amendment Coalition, Gannett Co., Inc., Investigative Reporting Workshop at American University, The McClatchy Company, MediaNews Group, Inc., d/b/a Digital First Media, National Press Photographers Association, National Public Radio, Inc., NBCUniversal Media, LLC, Newspaper Association of America, The Newspaper Guild - CWA, North Jersey Media Group Inc., Online News Association, The Seattle Times Company, Society

of Professional Journalists, Time Inc., Tully Center for Free Speech, Washington City Paper, The Washington Post. Each is described more fully in Appendix A.

SUMMARY OF THE ARGUMENT

The District of Columbia enacted the District of Columbia Anti-SLAPP Act of 2010, D.C. Code §§ 16-5501 *et seq.* (2011), to prevent claims based on speech about matters of public interest from advancing past the initial stages of litigation unless a plaintiff can demonstrate a likelihood of success on the merits. Dr. Zaid Akl and the Washington Travel Clinic sued the defendant, John Kandrac, for defamation regarding statements he had made on Yelp.com regarding his experience as a patient of Dr. Akl. Kandrac moved to dismiss the complaint under the D.C. anti-SLAPP statute. The D.C. Superior Court disposed of the majority of the claims, but did not dismiss the claim that Kandrac had defamed Dr. Akl by writing that the doctor's office had erroneously given him another patient's information. The Superior Court held that the plaintiffs had provided enough evidence on that point to make a *prima facie* case. That partial denial of the motion prompted this appeal.

This Court recently found that the denial of a special motion to quash under the D.C. anti-SLAPP statute is immediately appealable under the collateral order doctrine. See *Doe No. 1 v. Burke*, 91 A.3d 1031, 1037D.C. 2014). *Amici* urge this court to hold that a special motion to dismiss under the anti-SLAPP statute is likewise immediately appealable.

Mann v. National Review, Inc., Nos. 13-cv-1043, 13-cv-1033 (D.C. Dec. 19, 2013), which was appealed to this Court in August 2014, involves the same jurisdictional question that is present in this case — whether the denial of a motion to dismiss under the D.C. anti-SLAPP statute is immediately appealable under the collateral order doctrine. In a brief filed in that appeal, which is still pending, *amici* similarly argued for the immediate right to appeal. The reappearance of this identical issue here in this case, so swiftly on the heels of *Mann* and other

recent cases presenting this question, underscores the importance of this Court's recognition of this substantive right when a motion to dismiss is denied.

ARGUMENT

I. THIS COURT HAS JURISDICTION TO HEAR IMMEDIATE APPEALS OF SPECIAL MOTIONS TO DISMISS UNDER THE D.C. ANTI-SLAPP STATUTE.

Under the collateral order doctrine and in tandem with this court's recent decision in *Doe No. 1 v. Burke*, 91 A.3d 1031 (D.C. 2014) (finding that denials of special motions to quash are immediately appealable), an order denying a special motion to dismiss under the D.C. anti-SLAPP statute is immediately appealable. Such a holding would be in keeping with numerous circuit and state courts that have found that the rights conveyed by anti-SLAPP statutes would be irreparably lost if not immediately appealable.

A. Under the Collateral Order Doctrine, Special Motions to Dismiss, Like Special Motions to Quash, Are Immediately Appealable

This court recognizes and applies the collateral order doctrine in determining whether it has jurisdiction over non-final orders. *See Stein v. United States*, 532 A.2d 641, 643-44 (D.C. 1987). Under the collateral order doctrine, three criteria must be met for the court to assert its jurisdiction: (1) the order "must conclusively determine a disputed question of law, (2) it must resolve an important issue that is separate from the merits of the case, and (3) it must be effectively unreviewable on appeal from a final judgment." *McNair Builders, Inc. v. Taylor*, 3 A.3d 1132, 1135 (D.C. 2010).

The D.C. anti-SLAPP statute is unique in that, in addition to providing an avenue for quickly dismissing a case, it allows anonymous speakers to quash subpoenas associated with meritless lawsuits when the speech is on an issue of public interest. D.C. Code § 16-5502

to -5503; *see also Burke*, *supra*, 91 A.3d at 1039. The statute's language for each motion is substantially similar:

> If a party filing a *special motion to dismiss* under this section makes a prima facie showing that the claim at issue arises from an act in furtherance of the right of advocacy on issues of public interest, then the motion shall be granted unless the responding party demonstrates that the claim is likely to succeed on the merits, in which case the motion shall be denied.

D.C. Code § 16-5502 (emphasis added).

> If a person bringing a *special motion to quash* under this section makes a prima facie showing that the underlying claim arises from an act in furtherance of the right of advocacy on issues of public interest, then the motion shall be granted unless the party seeking his or her personal identifying information demonstrates that the underlying claim is likely to succeed on the merits, in which case the motion shall be denied.

D.C. Code § 16-5503 (emphasis added).

In *Burke*, this court found that an order denying a special motion to quash under the D.C. anti-SLAPP statute met each criterion of the collateral order doctrine and was therefore immediately appealable. *Burke*, *supra*, 91 A.3d at 1036 n.6, 1040. Although the court declined at that time to decide whether special motions to dismiss were also immediately appealable, *id.*, the reasoning and analysis of the court in *Burke* applies in equal measure to special motions to dismiss, which should also be immediately appealable in this court.

1. Denial of a Special Motion to Dismiss Conclusively Determines a Disputed Question of Law.

To satisfy the first criterion of the collateral order doctrine – that the order conclusively determine a disputed question of law – the court in *Burke* found that an order denying an anti-SLAPP motion to quash effectively determines that the individual does not qualify for protection under the statute. *Id.* at 1038. By finding that the movant's "speech was not of the sort that the

Anti-SLAPP statute intends to protect," the trial court made a final determination on that question of law. *Id.*

The special motion to dismiss requires no different analysis than the special motion to quash in satisfying the first criterion. Denying a special motion to dismiss conclusively determines that the speaker will not be protected by the immunity from suit provided by the statute, just as the special motion to quash does. Both provisions offer special protections for speakers beyond the standard protections in the rules. *See* D.C. Council Report on Bill 18-893, "Anti-SLAPP Act of 2010," Council of the District of Columbia, Committee on Public Safety and the Judiciary (Nov. 18, 2010), at 4 ("Committee Report") (noting that the statute extends "immunity" and "substantive rights" to those who qualify for its protection). Denying an anti-SLAPP motion – whether it be a motion to quash or motion to dismiss – determines with finality that the individual is not eligible to benefit from the heightened protections of the statute.

2. Denial of a Special Motion to Dismiss Resolves an Important Issue That Is Separate from the Merits.

To satisfy the second criterion of the collateral order doctrine – that the order must resolve an important issue separate from the merits – the court in *Burke* held that a determination of who qualifies for protection under the anti-SLAPP statute and a determination of whether a party is liable for defamation are entirely separate. *Burke*, *supra*, 91 A.3d at 1038-39 ("Put another way, the '[d]enial of an anti-SLAPP motion resolves a question separate from the merits in that it merely finds that such merits may exist, without evaluating whether the plaintiff's claim will succeed.'") (quoting *Batzel v. Smith*, 333 F.3d 1018, 1025 (9th Cir. 2003)). While a plaintiff must show a likelihood of success on the merits to defeat both a special motion to quash and a special motion to dismiss, the purpose of that inquiry is different from the purpose of proving the merits at trial. *Id.* at 1038 (citing *Henry v. Lake Charles Am. Press LLC*, 566 F.3d 164, 175 (5th

Cir. 2009)). Proving the merits at trial results in liability for committing a tort, while proving likelihood of succeeding on the merits determines whether the defendant will be immune from suit or will be forced to litigate.

This court cited with approval the Fifth Circuit's opinion in *Henry* for the proposition that "issues of immunity [like those considered in evaluating a motion under an Anti-SLAPP statute] are decided prior to trial and then not normally revisited." *Id.* at 1038 n.10 (quoting *Henry*, *supra*, 566 F.3d at 176) (bracketed text in original). Denying a special motion to dismiss denies the defendant immunity from suit; once the case is tried, the defendant obviously cannot re-raise the issue of immunity. Therefore, the inquiry as to whether the defendant will be forced to litigate – the question raised by a special motion to dismiss – is separate from the inquiry into whether the defendant committed a tort, which satisfies the second criterion of the collateral order doctrine.

3. Denial of a Special Motion to Dismiss Confers an Immunity from Suit That Is Unreviewable on Appeal.

To satisfy the third criterion of the collateral order doctrine – that the order must be effectively unreviewable on appeal – this court in *Burke* held that the First Amendment right at issue (there, the right to anonymous speech), once lost, cannot be vindicated or reviewed on appeal. *Burke*, *supra*, 91 A.3d 1031 at 1039-40. While the court ruled solely on a special motion to quash, it strongly endorsed the notion that a special motion to dismiss also satisfies the third criterion. *See id.* at 1039. First, the court noted that a motion asserting immunity is commonly the kind found to satisfy the collateral order doctrine. *Id.* (citing *McNair Builders*, *supra*, 3 A.3d at 1136). Then the court said a special motion to dismiss "explicitly protects the right not to stand trial." *Id.* at 1039. Finally, the court concluded that a special motion to quash

"*also* confers an immunity of a sort from suit," in addition to a special motion to dismiss conferring immunity. *Id.* (emphasis added).

When drafting the anti-SLAPP legislation, D.C. lawmakers emphasized that the statute was designed to extend immunity to those engaged in protected activities. Committee Report at 4. The statute conveys a substantive right "to expeditiously and economically dispense of litigation." *Id.* The purpose of the statute, then, is to protect certain defendants from having to expend the time and money in defending meritless claims, because such claims chill speech on matters of public interest. Once defendants are forced to litigate, they have lost their immunity from trial, which is unreviewable on appeal.

Therefore, a special motion to dismiss meets the three criteria of the collateral order doctrine and is immediately appealable.

II. NUMEROUS OTHER JURISDICTIONS HAVE FOUND THAT THE RIGHTS CONFERRED BY AN ANTI-SLAPP STATUTE WILL BE IRREPARABLY LOST IF ORDERS DENYING ANTI-SLAPP MOTIONS ARE NOT IMMEDIATELY APPEALABLE

Because the D.C. Council based the language of its anti-SLAPP statute on similar laws in other states, *see* Committee Report at 4, this court may properly look to other jurisdictions for guidance. In that regard, the U.S. District Court for the District of Columbia has consulted decisions in other jurisdictions in interpreting the D.C. anti-SLAPP statute. *See, e.g.*, *Boley v. Atlantic Monthly Grp.*, 950 F. Supp. 2d 249, 255 (D.D.C. 2013) ("Where appropriate, then, the Court will look to decisions from other jurisdictions . . . for guidance in predicting how the D.C. Court of Appeals would interpret its own anti-SLAPP law."); *Abbas v. Foreign Policy Grp., LLC*, 975 F. Supp. 2d 1, 13 (D.D.C. 2013).

A. Five Federal Circuit Courts Have Found, Under the Collateral Order Doctrine, That Anti-SLAPP Statutes Are Immediately Appealable.

Federal courts routinely find that interlocutory orders denying anti-SLAPP motions must be immediately appealable to preserve the very rights conferred to defendants under statutes similar to the D.C. anti-SLAPP statute. The First, Second, Fifth, Ninth, and Eleventh Circuits have all relied on the collateral order doctrine, *see Cohen v. Beneficial Indus. Loan Corp.*, 337 U.S. 541 (1949), in finding that the anti-SLAPP statutes in Maine,[1] Louisiana,[2] California,[3] and Georgia[4] required the right of immediate appeals to preserve the purpose of the statutes. *See Royalty Network, Inc. v. Harris*, 42 Media L. Rptr. (BNA) 2011 (11th Cir. 2014); *Liberty Synergistics Inc. v. Microflo, Ltd.*, 718 F.3d 138 (2d Cir. 2013); *DC Comics v. Pac. Pictures Corp.*, 706 F.3d 1009 (9th Cir. 2013) (reaffirming *Batzel, supra*, 333 F.3d at 1024-26); *Godin v. Schencks*, 629 F.3d 79 (1st Cir. 2010); *Henry v. Lake Charles Am. Press, L.L.C.*, 566 F.3d 164 (5th Cir. 2009).

The Ninth Circuit held that the first two criteria of the collateral order doctrine (that the ruling was conclusive and resolved important questions separate from the merits) were clearly satisfied. *D.C. Comics, supra*, 706 F.3d at 1013. Analyzing the third criterion, the court held that California's anti-SLAPP statute, based on the language of the statute and the legislative history behind it, was meant to confer immunity and not merely a defense against ultimate liability. *Id.* Because immunity from suit is unreviewable on appeal from final judgment, the third criterion of the collateral order doctrine was met. *Id.* The Ninth Circuit noted that the protection of the right to free speech embedded in the anti-SLAPP statute requires "particular solicitude within the framework of the collateral order doctrine." *Id.* at 1016. The court further

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[1] Me. Rev. Stat. tit. 14, § 556 (1999) (amended 2012).

[2] La. Code Civ. Proc. Ann. art. 971 (1999) (amended 2012).

[3] Cal. Civ. Proc. Code § 425.16 (West 1992) (amended 2011). The California statute was addressed by both the Second and Ninth Circuits.

[4] Ga. Code Ann. § 9-11-11.1 (1998).

explained that "[t]he California legislature's determination, through its enactment of the anti-SLAPP statute, that such constitutional rights would be imperiled absent a right of interlocutory appeal deserves respect." *Id.*

The First Circuit similarly found that the first two criteria of the collateral order doctrine were met before concluding that the rights created by the Maine anti-SLAPP statute were akin to immunity and therefore unreviewable on appeal from final judgment. *Godin*, *supra*, 629 F.3d at 84-85. Looking at a Maine court's decision granting interlocutory review, the court found that "lawmakers wanted to protect speakers from the trial itself rather than merely from liability." *Id.* at 85.

The Fifth Circuit analyzed each criterion of the collateral order doctrine, likewise finding that interlocutory orders denying an anti-SLAPP motion fall under the "small class" of orders that are immediately appealable. *Henry*, *supra*, 566 F.3d at 173-81. Regarding the third criterion, the court found that anti-SLAPP statutes "provide defendants the right not to bear the costs of fighting a meritless defamation claim" and are therefore unreviewable on appeal from final judgment. *Id.* at 177-78. "[I]mmunity is not simply a right to prevail, but a right not to be tried," and that right is lost if the case proceeds to trial. *Id.* at 177. Echoing the Ninth Circuit, which held that free speech protections should be given greater import under the collateral order doctrine, *DC Comics*, *supra*, 706 F.3d at 1016, the Fifth Circuit noted that the importance of protecting First Amendment rights "weighs profoundly in favor of appealability," *Henry*, *supra*, 566 F.3d at 180. "The loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury." *Id.* (quoting *Elrod v. Burns*, 427 U.S. 347, 373

(1976)).[5] Following the lead of these other cases, the Second and Eleventh Circuits similarly concluded that the denial of an anti-SLAPP motion is immediately appealable under the collateral order doctrine. *Liberty Synergistics*, *supra*, 718 F.3d at 145-51; *Royalty Network*, *supra*, 42 Media L. Rep. at 2014-16.

B. At Least Two States Have Found That Anti-SLAPP Statutes Create Immunity from Suit, a Right That Is Irreparably Lost if Denials of Anti-SLAPP Motions Are Not Immediately Appealable.

Maine and Massachusetts have likewise held that denial of anti-SLAPP motions are immediately appealable, even though neither of their statutes explicitly provides for that right. *Morse Bros. v. Webster*, 772 A.2d 842 (Me. 2001); *Fabre v. Walton*, 781 N.E.2d 780 (Mass. 2002).[6] Both courts focused their analyses on whether the right in question will be irreparably lost if denials of motions to dismiss under anti-SLAPP laws are not immediately appealable, which is essentially the third element of the collateral order doctrine. *Morse Bros.*, *supra*, 772 A.2d at 847; *Fabre*, *supra*, 781 N.E.2d at 784.

The Massachusetts high court held that the right to avoid "the harassment and burdens of litigation" is similar to government immunity in that the right is lost if the defendant is forced to litigate a case beyond its initial stages. *Id.* Not only did the high court find that defendants *may* immediately appeal the denial of an anti-SLAPP motion, *id.*, but an appellate court later held that defendants *must* immediately appeal the interlocutory order or they lose their right to appeal after

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[5] While the Louisiana anti-SLAPP statute applied in *Henry* protected only speech "in furtherance of [a] person's right of petition or free speech under the United States or Louisiana Constitution," *Henry*, 566 F.3d at 170 (quoting La. Code Civ. Proc. Art. 971(A)(1)), thus making the reference to First Amendment rights accurate, the D.C. statute protects some speech that is not necessarily protected by the Constitution. Nevertheless, the prompt protection of speech covered by the statute remains an important public interest that weighs heavily in favor of appealability.

[6] The Massachusetts anti-SLAPP statute can be found at Mass. Gen. Laws ch. 231, § 59H (1994) (amended 1996).

final judgment. *Wendt v. Barnum*, 2007 Mass. App. Div. 93, 96 (App. Div. 2007). In *Wendt*, a defendant fully litigated his case after his anti-SLAPP motion was denied, and then he appealed the anti-SLAPP order along with other claims of error. 2007 Mass. App. Div. at 93-97. The court dismissed the anti-SLAPP appeal as moot because the defendant failed to appeal the interlocutory order immediately after it was issued. *Id.* at 96.

Much like the Massachusetts high court and the five federal circuits, the Maine high court found that anti-SLAPP statutes create a right to avoid the "cost and delay of litigating [a] claim," and forcing a defendant to continue litigation is the "precise harm that the statute seeks to prevent." *Morse Bros.*, *supra*, 772 A.2d at 848; *see also Schelling v. Lindell*, 942 A.2d 1226 (Me. 2008). The court explained that the statute was "designed to protect certain defendants from meritless litigation," as indicated by its provisions offering an expedited hearing on the motion and temporarily switching the burden of proof to the plaintiff. *Morse Bros.*, *supra*, 772 A.2d at 848. Ultimately, the court held that not immediately hearing an appeal of the denial of an anti-SLAPP motion would result in the "loss of substantial rights." *Id.*

Like the anti-SLAPP statutes in California, Georgia, Louisiana, Maine, and Massachusetts, the D.C. anti-SLAPP statute confers a right to avoid the costs and harassment of meritless litigation – a right that will be lost if an order denying that right is not immediately appealable. *See* D.C. Code §§ 16-5501 *et seq.* The D.C. anti-SLAPP statute is crafted to forestall litigation. *See id.* Much like the statute in Maine, *see Morse Bros.*, *supra*, 772 A.2d at 848, the D.C. statute requires the court to hold an expedited hearing on the special motion to dismiss and shifts the burden to the plaintiff to prove likelihood of success on the merits. D.C. Code §§ 16-5502 (b), (d); 16-5503 (b). Furthermore, it permits the court to award the costs of litigation to a party who prevails on an anti-SLAPP motion, another deterrent to litigation. *Id.*

§ 16-5504 (a). D.C. lawmakers recognized that the unique problem with SLAPP lawsuits "is that the goal of the litigation is not to win the lawsuit but punish the opponent and intimidate them into silence." Committee Report at 4. The anti-SLAPP statute, then, is a remedy to the litigation itself. Just as the court in *Godin* stated, "lawmakers wanted to protect speakers from the trial itself rather than merely from liability." 629 F.3d at 85. As five federal circuits have recognized, along with the high courts of Maine and Massachusetts, requiring a party to continue litigation before appealing the denial of an anti-SLAPP motion results in irreparable injury – the exact injury the statute was meant to guard against.

C. Contrary Decisions of Other Courts Indicating There Is No Right to Immediately Appeal the Denial of Anti-SLAPP Motions Are Distinguishable Because the D.C. Anti-SLAPP Statute Provides Immunity.

The Ninth Circuit distinguished between California's anti-SLAPP statute, *Batzel*, *supra*, 333 F.3d 1018, and those of Oregon, *Englert v. MacDonell*, 551 F.3d 1099 (9th Cir. 2009), and Nevada, *Metabolic Research, Inc. v. Ferrell*, 693 F.3d 795 (9th Cir. 2012), finding that appeals of anti-SLAPP motions are immediately appealable under California law because California lawmakers intended to confer immunity from suit, whereas Nevada's and Oregon's lawmakers did not. *See Metabolic Research*, *supra*, 693 F.3d at 801-02 ("We must presume the legislature selected its words with purpose, and immunity from "civil liability" is unquestionably different than immunity from "suit" or "trial."). In response to *Metabolic Research*, the Nevada legislature amended its statute so that denials of anti-SLAPP motions are immediately appealable. S.B. 286 (Nev. 2013) (amending Nev. Rev. Stat. § 41.637).

Like California lawmakers, D.C. lawmakers intended to confer immunity from suit in the D.C. anti-SLAPP statute. They expressly noted that they were following the lead of other jurisdictions in extending "immunity to individuals engaging in protected actions" and providing

"substantive rights to defendants in a SLAPP." Committee Report at 4. This court in *Doe No. 1 v. Burke* likewise found that a special motion to dismiss under the D.C. statute "explicitly protects the right not to stand trial." *Burke*, *supra*, 91 A.3d 1031 at 1039.

That the statute is silent as to the right of immediate appeal is irrelevant in light of the statute's unique legislative history. Lawmakers originally included a provision granting a defendant the right of immediate appeal but later removed it solely because they thought the provision might exceed their authority, based on this court's decision in *Stuart v. Walker*, 6 A.3d 1215 (D.C. 2010); *see* Committee Report at 7.[7] Even after lawmakers removed the provision, the report noted that the "Committee agrees with and supports the purpose of this provision." *Id.* This court in *Burke* chose to "read little into the absence of a provision that the Council may not have been empowered to include in the first place." *Burke*, *supra*, 91 A.3d at 1039 n.12.

The clear intention of the D.C. lawmakers to permit immediate appeals demonstrates that the statute confers immunity from litigation, which would be irreparably lost if the denial of an anti-SLAPP motion is not immediately appealable.

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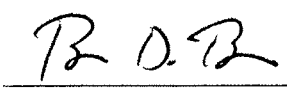
[7] The *Stuart* decision was subsequently vacated and set for rehearing en banc, *Stuart v. Walker*, 30 A.3d 783 (D.C. 2011), but was never decided on the merits as the Court was evenly divided.

CONCLUSION

For the foregoing reasons, this Court should accept jurisdiction to hear an appeal of the denial of appellants' anti-SLAPP motion to dismiss.

Respectfully submitted,



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APPENDIX A: DESCRIPTION OF *AMICI*

The Reporters Committee for Freedom of the Press is a voluntary, unincorporated association of reporters and editors that works to defend the First Amendment rights and freedom of information interests of the news media. The Reporters Committee has provided representation, guidance and research in First Amendment and Freedom of Information Act litigation since 1970.

The American Civil Liberties Union of the Nation's Capital is the Washington, D.C., affiliate of the American Civil Liberties Union (ACLU), a nonprofit membership organization dedicated to protecting and expanding the civil liberties of all Americans, particularly their right to freedom of speech. The ACLU of the Nation's Capital played a leading role in supporting passage of the D.C. Anti-SLAPP Act, and, having represented defendants in several SLAPP suits, is familiar with the intimidating effect such lawsuits can have on free speech.

With some 500 members, American Society of News Editors ("ASNE") is an organization that includes directing editors of daily newspapers throughout the Americas. ASNE changed its name in April 2009 to American Society of News Editors and approved broadening its membership to editors of online news providers and academic leaders. Founded in 1922 as American Society of Newspaper Editors, ASNE is active in a number of areas of interest to top editors with priorities on improving freedom of information, diversity, readership and the credibility of newspapers.

Association of Alternative Newsmedia ("AAN") is a not-for-profit trade association for 130 alternative newspapers in North America, including weekly papers like The Village Voice and Washington City Paper. AAN newspapers and their websites provide an editorial alternative to the mainstream press. AAN members have a total weekly circulation of seven million and a reach of over 25 million readers.

The Association of American Publishers, Inc. ("AAP") is the national trade association of the U.S. book publishing industry. AAP's members include most of the major commercial book publishers in the United States, as well as smaller and nonprofit publishers, university presses and scholarly societies. AAP members publish hardcover and paperback books in every field, educational materials for the elementary, secondary, postsecondary and professional markets, scholarly journals, computer software and electronic products and services. The Association represents an industry whose very existence depends upon the free exercise of rights guaranteed by the First Amendment.

Atlantic Media, Inc. is a privately held, integrated media company that publishes *The Atlantic*, *National Journal*, *Quartz* and *Government Executive*. These award-winning titles address topics in national and international affairs, business, culture, technology and related areas, as well as cover political and public policy issues at federal, state and local levels. *The Atlantic* was founded in 1857 by Oliver Wendell Holmes, Ralph Waldo Emerson, Henry Wadsworth Longfellow and others.

The E.W. Scripps Company is a diverse, 131-year-old media enterprise with interests in television stations, newspapers, local news and information websites and licensing and syndication. The company's portfolio of locally focused media properties includes: 19 TV stations (ten ABC affiliates, three NBC affiliates, one independent and five Spanish-language stations); daily and community newspapers in 13 markets; and the Washington-based Scripps Media Center, home of the Scripps Howard News Service.

First Amendment Coalition is a nonprofit public interest organization dedicated to defending free speech, free press and open government rights in order to make government, at all levels, more accountable to the people. The Coalition's mission assumes that government

transparency and an informed electorate are essential to a self-governing democracy. To that end, we resist excessive government secrecy (while recognizing the need to protect legitimate state secrets) and censorship of all kinds.

Gannett Co., Inc. is an international news and information company that publishes more than 80 daily newspapers in the United States – including *USA TODAY* – which reach 11.6 million readers daily. The company's broadcasting portfolio includes more than 40 TV stations, reaching approximately one-third of all television households in America. Each of Gannett's daily newspapers and TV stations operates Internet sites offering news and advertising that is customized for the market served and integrated with its publishing or broadcasting operations.

The Investigative Reporting Workshop, a project of the School of Communication (SOC) at American University, is a nonprofit, professional newsroom. The Workshop publishes in-depth stories at investigativereportingworkshop.org about government and corporate accountability, ranging widely from the environment and health to national security and the economy.

The McClatchy Company, through its affiliates, is the third-largest newspaper publisher in the United States with 29 daily newspapers and related websites as well as numerous community newspapers and niche publications.

MediaNews Group's more than 800 multi-platform products reach 61 million Americans each month across 18 states.

The National Press Photographers Association ("NPPA") is a 501(c)(6) non-profit organization dedicated to the advancement of visual journalism in its creation, editing and distribution. NPPA's approximately 7,000 members include television and still photographers, editors, students and representatives of businesses that serve the visual journalism industry. Since

its founding in 1946, the NPPA has vigorously promoted the constitutional rights of journalists as well as freedom of the press in all its forms, especially as it relates to visual journalism. The submission of this brief was duly authorized by Mickey H. Osterreicher, its General Counsel.

National Public Radio, Inc. is an award-winning producer and distributor of noncommercial news programming. A privately supported, not-for-profit membership organization, NPR serves a growing audience of more than 26 million listeners each week by providing news programming to 285 member stations that are independently operated, noncommercial public radio stations. In addition, NPR provides original online content and audio streaming of its news programming. NPR.org offers hourly newscasts, special features and 10 years of archived audio and information.

NBCUniversal Media, LLC is one of the world's leading media and entertainment companies in the development, production and marketing of news, entertainment and information to a global audience. Among other businesses, NBCUniversal Media, LLC owns and operates the NBC television network, the Spanish-language television network Telemundo, NBC News, several news and entertainment networks, including MSNBC and CNBC, and a television-stations group consisting of owned-and-operated television stations that produce substantial amounts of local news, sports and public affairs programming. NBC News produces the "Today" show, "NBC Nightly News with Brian Williams," "Dateline NBC" and "Meet the Press."

Newspaper Association of America ("NAA") is a nonprofit organization representing the interests of more than 2,000 newspapers in the United States and Canada. NAA members account for nearly 90% of the daily newspaper circulation in the United States and a wide range of non-daily newspapers. The Association focuses on the major issues that affect today's

newspaper industry, including protecting the ability of the media to provide the public with news and information on matters of public concern.

The Newspaper Guild – CWA is a labor organization representing more than 30,000 employees of newspapers, newsmagazines, news services and related media enterprises. Guild representation comprises, in the main, the advertising, business, circulation, editorial, maintenance and related departments of these media outlets. The Newspaper Guild is a sector of the Communications Workers of America. CWA is America's largest communications and media union, representing over 700,000 men and women in both private and public sectors.

North Jersey Media Group Inc. ("NJMG") is an independent, family-owned printing and publishing company, parent of two daily newspapers serving the residents of northern New Jersey: *The Record*(Bergen County), the state's second-largest newspaper, and the *Herald News* (Passaic County). NJMG also publishes more than 40 community newspapers serving towns across five counties and a family of glossy magazines, including (201) Magazine, Bergen County's premiere magazine. All of the newspapers contribute breaking news, features, columns and local information to NorthJersey.com. The company also owns and publishes Bergen.com showcasing the people, places and events of Bergen County.

Online News Association ("ONA") is the world's largest association of online journalists. ONA's mission is to inspire innovation and excellence among journalists to better serve the public. ONA's more than 2,000 members include news writers, producers, designers, editors, bloggers, technologists, photographers, academics, students and others who produce news for the Internet or other digital delivery systems. ONA hosts the annual Online News Association conference and administers the Online Journalism Awards. ONA is dedicated to advancing the

interests of digital journalists and the public generally by encouraging editorial integrity and independence, journalistic excellence and freedom of expression and access.

The Seattle Times Company, locally owned since 1896, publishes the daily newspaper *The Seattle Times*, together with *The Issaquah Press*, *Yakima Herald-Republic*, *Walla Walla Union-Bulletin*,*Sammamish Review* and *Newcastle-News*, all in Washington state.

Society of Professional Journalists ("SPJ") is dedicated to improving and protecting journalism. It is the nation's largest and most broad-based journalism organization, dedicated to encouraging the free practice of journalism and stimulating high standards of ethical behavior. Founded in 1909 as Sigma Delta Chi, SPJ promotes the free flow of information vital to a well-informed citizenry, works to inspire and educate the next generation of journalists and protects First Amendment guarantees of freedom of speech and press.

Time Inc. is the largest magazine publisher in the United States. It publishes over 90 titles, including *Time*, *Fortune*, *Sports Illustrated*, *People*, *Entertainment Weekly*, *InStyle* and *Real Simple*. Time Inc. publications reach over 100 million adults, and its websites, which attract more visitors each month than any other publisher, serve close to two billion page views each month.

The Tully Center for Free Speech began in Fall, 2006, at Syracuse University's S.I. Newhouse School of Public Communications, one of the nation's premier schools of mass communications.

Washington City Paper, founded in 1981, is an alternative media company located in Washington D.C. City Paper both serves as the definitive local guide to cultural and civic life in the District, and publishes groundbreaking coverage of local affairs – including a variety of diverse opinions and commentary, sometimes inspiring controversy. City Paper was sued in 2011

by billionaire and Washington Redskins owner Daniel Snyder over a commentary critical of him, and it filed a special motion to dismiss under the D.C. Anti-SLAPP statute, following which Snyder voluntarily dismissed his case. As such, City Paper has a particular interest in ensuring that the vital protections of the Anti-SLAPP statute remain robust for all speakers and publishers.

WP Company LLC (d/b/a The Washington Post) publishes one of the nation's most prominent daily newspapers, as well as a website, www.washingtonpost.com, that is read by an average of more than 20 million unique visitors per month.

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