No. 13-3148

IN THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

INTERCON SOLUTIONS, INC.,
Plaintiff-Appellee,

v.

BASEL ACTION NETWORK AND JAMES PUCKETT,
Defendants-Appellants.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
Case No. 12-CV-6814 (Hon. Virginia M. Kendall)

BRIEF OF *AMICI CURIAE* ADVANCE PUBLICATIONS, INC., ALLIED DAILY NEWSPAPERS OF WASHINGTON, AMERICAN SOCIETY OF NEWS EDITORS, ASSOCIATION OF ALTERNATIVE NEWSMEDIA, THE ASSOCIATION OF AMERICAN PUBLISHERS, INC., BLOOMBERG L.P., CABLE NEWS NETWORK, INC., DOW JONES & COMPANY, INC., THE E.W. SCRIPPS COMPANY, HEARST CORPORATION, THE MCCLATCHY COMPANY, MEDIA LAW RESOURCE CENTER, THE NATIONAL PRESS CLUB, NATIONAL PRESS PHOTOGRAPHERS ASSOCIATION, NATIONAL PUBLIC RADIO, INC., NEWS CORPORATION, NEWSPAPER ASSOCIATION OF AMERICA, ONLINE NEWS ASSOCIATION, PRO PUBLICA, INC., RADIO TELEVISION DIGITAL NEWS ASSOCIATION, REPORTERS COMMITTEE FOR FREEDOM OF THE PRESS, SEATTLE TIMES COMPANY, SOCIETY OF PROFESSIONAL JOURNALISTS, TIME INC., TRIBUNE COMPANY, THE WASHINGTON NEWSPAPER PUBLISHERS ASSOCIATION, AND THE WASHINGTON POST IN SUPPORT OF DEFENDANTS-APPELLANTS AND REVERSAL

Bruce E. H. Johnson
Ambika K. Doran
DAVIS WRIGHT TREMAINE LLP
1201 Third Avenue, Suite 2200
Seattle, WA 98101
(206) 622-3150

Thomas R. Burke
DAVIS WRIGHT TREMAINE LLP
505 Montgomery Street, Suite 800
San Francisco, CA 94111
(415) 276-6500

Laura R. Handman
Alison Schary
DAVIS WRIGHT TREMAINE LLP
1919 Pennsylvania Avenue, NW
Suite 800
Washington, DC 20006
(202) 973-4200

Counsel for *Amici Curiae*

*(*Of counsel listed on inside cover)*

OF COUNSEL

Richard A. Bernstein
SABIN, BERMANT & GOULD LLP
4 Times Square, 23rd Floor
New York, NY 10036
Counsel for Advance Publications, Inc.

Kevin M. Goldberg
FLETCHER HEALD & HILDRETH
1300 North 17th Street, 11th Floor
Arlington, VA 22209
Counsel for the American Society of News Editors and the Association of Alternative Newsmedia

Jonathan Bloom
WEIL, GOTSHAL & MANGES LLP
767 Fifth Avenue
New York, NY 10153
Counsel for The Association of American Publishers, Inc.

Randy L. Shapiro
BLOOMBERG L.P.
731 Lexington Avenue
New York, NY 10022
Counsel for Bloomberg L.P.

David Vigilante
CABLE NEWS NETWORK, INC.
One CNN Center
Atlanta, GA 30303
Counsel for Cable News Network, Inc.

Mark H. Jackson
Jacob P. Goldstein
Jason Conti
DOW JONES & COMPANY, INC.
NEWS CORPORATION
1211 Avenue of the Americas
New York, NY 10036
Counsel for Dow Jones & Company, Inc. and News Corporation

David Giles
THE E.W. SCRIPPS COMPANY
312 Walnut Street, Suite 2800
Cincinnati, OH 45202
Counsel for The E.W. Scripps Company

Jonathan Donnellan
Kristina Findikyan
HEARST CORPORATION
300 West 57th Street, 40th Floor
New York, NY 10019
Counsel for Hearst Corporation

Karole Morgan-Prager
Juan Cornejo
THE MCCLATCHY COMPANY
2100 Q Street
Sacramento, CA 95816
Counsel for The McClatchy Company

Sandra S. Baron
Kathleen A. Hirce
MEDIA LAW RESOURCE CENTER
520 Eighth Avenue
North Tower—20th Floor
New York, NY 10018
Counsel for Media Law Resource Center

Charles D. Tobin
HOLLAND & KNIGHT LLP
800 17th Street NW, Suite 1100
Washington, DC 20006
Counsel for The National Press Club

Mickey H. Osterreicher
NATIONAL PRESS PHOTOGRAPHERS ASSOCIATION
1100 M&T Center
3 Fountain Plaza
Buffalo, NY 14203
Counsel for National Press Photographers Association

Denise Leary
Ashley Messenger
NATIONAL PUBLIC RADIO, INC.
1111 N. Capitol Street NE
Washington, DC 20002
Counsel for National Public Radio, Inc.

Kurt Wimmer
COVINGTON & BURLING LLP
1201 Pennsylvania Avenue, NW
Washington, DC 20004
Counsel for Newspaper Association of America

Jonathan D. Hart
COOLEY LLP
1299 Pennsylvania Avenue, NW
Suite 700
Washington, DC 20004
Counsel for Online News Association

Richard J. Tofel
PRO PUBLICA, INC.
55 Broadway, 23rd Floor
New York, NY 10006
Counsel for Pro Publica, Inc.

Kathleen A. Kirby
WILEY REIN & FIELDING LLP
1776 K Street, NW
Washington, DC 20006
Counsel for Radio Television Digital News Association

Bruce D. Brown
Gregg P. Leslie
THE REPORTERS COMMITTEE FOR FREEDOM OF THE PRESS
1101 Wilson Boulevard, Suite 1100
Arlington, VA 22209
Counsel for The Reporters Committee for Freedom of the Press

Bruce W. Sanford
Laurie A. Babinski
BAKER & HOSTETLER LLP
1050 Connecticut Avenue, NW
Suite 1100
Washington, DC 20036
Counsel for Society of Professional Journalists

Andrew Lachow
TIME INC.
1271 Avenue of the Americas
New York, NY 10020
Counsel for Time Inc.

Karen H. Flax
Jeffrey Glasser
TRIBUNE COMPANY
435 North Michigan Avenue
Chicago, IL 60611
Counsel for Tribune Company

John B. Kennedy
James A. McLaughlin
THE WASHINGTON POST
1150 15th Street, NW
Washington, DC 20071
Counsel for The Washington Post

CORPORATE DISCLOSURE STATEMENTS

Pursuant to Circuit Rule 26.1 and Federal Rules of Appellate Procedure 29(c) and 26.1, *amici* state that they have not appeared earlier in this case and that they are represented in this brief by the law firm Davis Wright Tremaine LLP. *Amici* 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.

Allied Daily Newspapers of Washington is a nonprofit trade association with no parent corporation and no stock.

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

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

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

Bloomberg L.P. d/b/a Bloomberg News is a privately held company.

Cable News Network, Inc. is a wholly owned subsidiary of Turner Broadcasting System, Inc., which itself is a wholly owned subsidiary of Time Warner Inc., a publicly traded corporation.

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 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.

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.

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

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.

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

The **Radio Television Digital News Association** is a trade organization with no parent corporation and no stock.

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

Blethen Corporation owns a majority of the voting stock of **Seattle Times Company**, and The McClatchy Company owns 10% or more of its stock.

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

Time Inc. is a wholly owned subsidiary of Time Warner Inc., a publicly traded corporation. No publicly held corporation owns 10% or more of Time Warner Inc.'s stock.

Tribune Company is a privately held company.

The Washington Newspaper Publishers Association is a nonprofit trade organization with no parent corporation and no stock.

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.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

Federal Cases

State Cases

State Statutes

Rules

Other Authorities

IDENTITY AND INTEREST OF *AMICI*

Amici are 26 leading news organizations and trade associations. They or their members gather and disseminate news and information across the country, including in Illinois and Washington.[1] *Amici* or their members are frequent defendants in SLAPP lawsuits in federal court. They include Seattle Times Company, publisher of the most widely circulated newspaper in the State of Washington, and two organizations that, along with *amici*'s counsel, drafted and lobbied for the enactment of the anti-SLAPP statute at the core of this case, Rev. Code Wash. (RCW) 4.24.525. The membership of those two entities—Allied Daily Newspapers and the Washington Newspaper Publishers Association—comprises the overwhelming majority of newsgathering organizations in Washington. *Amici* believe they can offer the Court unique guidance on the issues presented by this appeal, in which they have a significant interest.

For the reasons explained below, *amici* urge this Court to reverse the district court's decision.[2]

SOURCE OF AUTHORITY TO FILE

Amici have concurrently moved for leave to file this *amici curiae* brief, pursuant to Fed. R. App. P. 29(a).

---

[1] The addendum to this brief contains a complete description of each *amicus*.

[2] Pursuant to Fed. R. App. P. 29(c)(5), no party's counsel authored this brief in whole or part. No party or party's counsel contributed money that was intended to fund preparing or submitting the brief. No person, other than *amici curiae*, their members, or their counsel, contributed money that was intended to fund preparing or submitting the brief.

ARGUMENT

In 2010, Washington enacted an anti-SLAPP statute, RCW 4.24.525, to encourage the swift dismissal of "Strategic Lawsuits Against Public Participation" ("SLAPPs")—actions "brought primarily to chill the valid exercise of the constitutional rights of freedom of speech and petition." As the state legislature noted, such suits are "typically dismissed as groundless or unconstitutional, but often not before the defendants are put to great expense, harassment, and interruption" of their constitutionally protected activities.[3] The statute requires plaintiffs in cases arising out of speech on matters of public concern to show a likelihood of success on the merits before subjecting defendants to burdensome and unnecessary litigation.

The Ninth Circuit and federal courts in Washington have applied RCW 4.24.525 on numerous occasions.[4] And, for more than fourteen years, the Ninth Circuit has applied California's analogous law, having expressly considered and rejected (as recently as two months ago) precisely the arguments made by Plaintiff-Appellee here: that the law conflicts with the Federal Rules of Civil Procedure. The only other circuits that have considered the issue—the First and the Fifth—have followed suit. The district court below, in refusing to apply RCW 4.24.525, erred in departing from this authority.

---

[3] 2010 c. 118(1), "Findings—Purpose."

[4] *See, e.g., Phoenix Trading, Inc. v. Loops LLC*, 732 F.3d 936 (9th Cir. 2013); *AR Pillow Inc. v. Maxwell Payton, LLC,* 2012 WL 6024765 (W.D. Wash. Dec. 4, 2012); *Aronson v. Dog Eat Dog Films, Inc.*, 738 F. Supp. 2d 1104 (W.D. Wash. 2010); *Davis v. Avvo, Inc.*, 2012 WL 1067640 (W.D. Wash. Mar. 28, 2012); *New York Studio, Inc. v. Better Business Bureau*, 2011 WL 2414452 (W.D. Wash. June 13, 2011); *Castello v. City of Seattle*, 2011 WL 6330038 (W.D. Wash. Dec. 19, 2010).

Amici do not attempt to fully explain the flaws in the district court's ruling. Instead, they briefly review the history of the Washington anti-SLAPP statute and then discuss the importance of such statutes in protecting free speech generally and media defendants in particular, as well as the public's corresponding interest in receiving information. As *amici* show, Washington's anti-SLAPP law facilitates speech on matters of public concern that lies at the heart of the First Amendment. Failing to apply the law in federal court would significantly weaken its impact and limit the utility of this important weapon against censorship by means of meritless litigation.

A. Washington's Anti-SLAPP Act Broadly Applies to Claims That Target the Exercise of Free Speech on Matters of Public Concern

Anti-SLAPP statutes are rooted in the central concern underlying *New York Times Co. v. Sullivan*, 376 U.S. 254 (1964): burdensome civil litigation has as much or more of a chilling effect on public debate as criminal prosecution. *See id.* at 277 ("The fear of damage awards … may be markedly more inhibiting than the fear of prosecution under a criminal statute."); *id.* at 279 ("[C]omparable 'self-censorship[]'" occurs when "would-be critics of official conduct may be deterred from voicing their criticism, even though it is believed to be true and even though it is in fact true, because of doubt whether it can be proved in court or fear of the expense of having to do so"). Accordingly, federal

courts have long held that claims involving protected speech should be resolved as early as possible to minimize the chilling effect of meritless lawsuits.[5]

In 1989, Washington became the first state to enact an anti-SLAPP law. RCW 4.24.510 provided immunity for communications to government agencies on matters of concern. *See* Bruce E.H. Johnson & Sarah K. Duran, *A View from the First Amendment Trenches: Washington State's New Protections for Public Discourse & Democracy*, 87 Wash. L. Rev. 495, 509 (June 2012). In 2010, following the lead of other states, the Washington Legislature enacted RCW 4.24.525 (the "Act"). The new law—modeled on California's anti-SLAPP statute[6]—expanded anti-SLAPP protections to all speech and petition on matters of public concern, speech that "occupies the highest rung of the hierarchy of First Amendment values." *Snyder v. Phelps*, 131 S. Ct. 1207 (2011) (quotation marks, citation omitted).

In practice, the Act expedites a court's finding that a SLAPP suit is not viable and reallocates the burdens of cost and proof on this subset of claims in order to winnow out meritless suits prior to discovery. The law authorizes a special motion to strike claims based on "action[s] involving public

---

[5] *See, e.g., Washington Post Co. v. Keogh*, 365 F.2d 965, 968 (D.C. Cir. 1966) (early adjudication is "even more essential" in cases implicating the First Amendment, "[f]or the stake here, if harassment succeeds, is free debate"); *Time, Inc. v. Hill*, 385 U.S. 374, 389 (1967) (recognizing that the expense in defending meritless defamation suits can have a chilling effect on First Amendment rights); *Russell v. ABC*, 1997 WL 598115, at *2 (N.D. Ill. Sept. 19, 1997) ("Summary judgment is especially appropriate in libel cases in order to avoid the chilling effect that extensive litigation may cause.").

[6] The Washington Act was "patterned after California's Anti-SLAPP Act," and the two laws are nearly identical. *Aronson*, 738 F. Supp. 2d at 1109-10.

participation and petition." RCW 4.24.525(2). The moving party bears the initial burden of demonstrating, by a preponderance of the evidence, that the claims concern an action within the scope of the Act. Such actions include, for example, statements "reasonably likely to encourage or to enlist public participation in an effort to effect consideration or review of an issue" in a government proceeding; those made "in a place open to the public or a public forum in connection with an issue of public concern"; or "any other lawful conduct in furtherance of the exercise of the constitutional right of free speech in connection with an issue of public concern, or in furtherance of the exercise of the constitutional right of petition." *Id.* Once the moving party has made this showing, the burden shifts to the non-movant to establish by clear and convincing evidence that it has a "probability of prevailing" on its claims. *Id.* 4.24.525(4)(b). If not, the court must dismiss the claim.

B. Federal Courts Have Applied Anti-SLAPP Statutes Consistently for More Than a Decade, and Every Federal Court Confronted with the Washington Statute Previously Has Applied It

Twenty-eight states, the District of Columbia, and Guam have enacted anti-SLAPP laws to mitigate the chilling effect of meritless lawsuits brought not with the expectation of winning, but of harassing, retaliating against, and silencing those who speak and publish on matters of public interest. Federal courts have acknowledged the laws' substantive, speech-protective nature by applying them in diversity actions.

In 1999, the Ninth Circuit held that California's nearly identical anti-SLAPP statute was applicable in federal court. *See U.S. ex rel. Newsham v.*

Lockheed Missiles & Space Co., 190 F.3d 963, 972-73 (9th Cir. 1999). For more than a decade thereafter, the court routinely resolved anti-SLAPP appeals. *See, e.g., DC Comics v. Pac. Pictures Corp.*, 706 F.3d 1009 (9th Cir. 2013); *Northon v. Rule*, 637 F.3d 937 (9th Cir. 2011); *Hilton v. Hallmark Cards*, 599 F.3d 894 (9th Cir. 2010); *Gardner v. Martino*, 563 F.3d 981 (9th Cir. 2009); *Batzel v. Smith*, 333 F.3d 1018 (9th Cir. 2003). The First and Fifth Circuits did the same, finding that the anti-SLAPP statutes in Maine and Louisiana apply in federal court. *See Godin v. Schencks*, 629 F.3d 79, 91 (1st Cir. 2010); *Henry v. Lake Charles Am. Press, LLC*, 566 F.3d 164, 168-70 (5th Cir. 2009).

The Ninth Circuit recently reaffirmed *Newsham*, declining a request by Chief Judge Alex Kozinski that the *en banc* court reconsider (and reverse) its earlier ruling. In April 2013, a three-judge panel in *Makaeff v. Trump University, LLC* affirmed the district court's application of the law to a defamation counterclaim. 715 F.3d 254 (9th Cir. 2013). In a strongly worded concurrence, Judge Kozinski urged the court to hear the case *en banc* and reverse its holding in *Newsham* on the ground that federal courts "have no business applying exotic state procedural rules which, of necessity, disrupt the comprehensive scheme embodied in the Federal Rules." *Id.* at 272. The full court refused to do so. *Makaeff v. Trump Univ., LLC*, 736 F.3d 1180 (9th Cir. 2013). In a concurrence, four judges opined that refusing to recognize the limitations placed on SLAPPs by seven state legislatures is "bad policy." *Id.* at 1187. They concluded: "If we ignore how states have limited actions under their own laws, we not only flush away state legislatures' considered decisions

on matters of state law, but we also put the federal courts at risk of being swept away in a rising tide of frivolous state actions that would be filed in our circuit's federal courts." *Id.*

This is precisely what the district court did here. It became the first court to refuse to apply the Washington law in federal court, despite the fact that the Ninth Circuit and Washington federal district courts have applied it numerous times.[7] The decision upon which the court relied, *3M Co. v. Boulter*, 842 F. Supp. 2d 85 (D.D.C. 2012), is a heavily criticized outlier in which a D.C. district court refused to apply the D.C. anti-SLAPP statute. Every district court to rule on the applicability of the D.C. law since *3M* has expressly rejected its reasoning,[8] and every federal appellate court to consider the issue has held that state anti-SLAPP statutes confer substantive immunities that do not conflict with the Federal Rules of Civil Procedure.

Although the district court acknowledged the weight of contrary federal precedent, it insisted that the Act's requirement that a plaintiff demonstrate a probability of prevailing by "clear and convincing evidence"—rather than by a simple preponderance—renders it incompatible with Federal Rule of Civil Procedure 56. *See Intercon Solutions, Inc. v. Basel Action Network*, 2013 WL

---

[7] *See supra* at note 4.

[8] *See Abbas v. Foreign Policy Grp., LLC*, 2013 WL 5410410 (D.D.C. Sept. 27, 2013) (rejecting *3M* as against the vast weight of authority and applying the D.C. anti-SLAPP Act in federal court), *appeal docketed*, No. 13-7171 (D.C. Cir. Oct. 25, 2013); *Boley v. Atlantic Monthly Grp.*, 2013 WL 3185154, at *2 (D.D.C. June 25, 2013) (same); *Farah v. Esquire Magazine*, 863 F. Supp. 2d. 29, 36 n.10 (D.D.C. 2012) (same), *aff'd on other grounds*, 736 F.3d 528 (D.C. Cir. 2013).

4552782 (N.D. Ill. Aug. 28, 2013), at *15, *19. This is wrong as a matter of constitutional law, as courts have repeatedly ruled in hundreds (and perhaps thousands) of cases, including many brought against the media, that Rule 56 motions are governed by the "clear and convincing evidence" burden of proof dictated by the claims asserted. In the landmark case *Anderson v. Liberty Lobby*, for example, the Supreme Court held that a defamation plaintiff can be required to meet the "clear and convincing evidence" standard imposed by *New York Times v. Sullivan* to establish actual malice at the summary judgment stage:

> Just as the "convincing clarity" requirement is relevant in ruling on a motion for directed verdict, it is relevant in ruling on a motion for summary judgment. When determining if a genuine factual issue as to actual malice exists in a libel suit brought by a public figure, a trial judge must bear in mind the actual quantum and quality of proof necessary to support liability under *New York Times*. For example, there is no genuine issue if the evidence presented in the opposing affidavits is of insufficient caliber or quantity to allow a rational finder of fact to find actual malice by clear and convincing evidence.
>
> Thus, in ruling on a motion for summary judgment, the judge must view the evidence presented through the prism of the substantive evidentiary burden.

477 U.S. 242, 254 (1986). To decide whether the plaintiff has sufficient evidence to meet his "clear and convincing" burden, the court does not weigh the evidence or determine credibility; instead, "[t]he evidence of the nonmovant is to be believed, and all justifiable inferences are to be drawn in his favor." *Id.* at 255. Courts in these cases have an independent obligation—at both the trial and appellate level—to scrutinize the record to determine whether the evidence

presented "is of the convincing clarity required to strip the utterance of First Amendment protection." *Bose Corp. v. Consumers Union of United States, Inc.*, 466 U.S. 485, 511 (1984).

This Court has recognized that the clear and convincing standard of proof "is no stranger to the civil law." *Woodby v. INS*, 385 U.S. 276, 285 (1966). It routinely has affirmed grants of summary judgment where a plaintiff failed to provide evidence sufficient to meet the "clear and convincing" standard on a state-law claim. *See, e.g., JPMorgan Chase Bank, N.A. v. Asia Pulp & Paper Co.*, 707 F.3d 853, 864-65 (7th Cir. 2013) (affirming summary judgment where defendant failed to meet "clear and convincing evidence" burden on fraudulent concealment claim); *Association Benefit Servs., Inc. v. Caremark RX, Inc.*, 493 F.3d 841, 853-54 (7th Cir. 2007) (same for fraud claim); *Chicago Dist. Council of Carpenters Pension Fund v. Reinke Insulation Co.*, 464 F.3d 651, 655-57 (7th Cir. 2006) (affirming summary judgment for defendant on defamation claim where "viewing [facts] through the prism of the higher clear and convincing evidence standard[] leads us to conclude that there exists no genuine issue of material fact as to actual malice"); *Jean v. Dugan*, 20 F.3d 255, 263-64 (7th Cir. 1994) (affirming summary judgment against defamation claim where court found plaintiff's evidence "of insufficient caliber or quantity to allow a rational finder of fact to find actual malice by clear and convincing evidence"). Media defendants often have prevailed on summary judgment motions (or motions for directed verdict, governed by the same standards) for decades where plaintiffs could not present evidence to meet the heightened

"clear and convincing" standard. *See, e.g.*, *Newton v. NBC*, 930 F.2d 662, 679 (9th Cir. 1990); *Mark v. Seattle Times*, 96 Wash. 2d 473, 496-97 (1981); *Washington Post Co. v. Keogh*, 365 F.2d 965, 971-72 (D.C. Cir. 1966). That standard should be preserved as a meaningful one at all stages of litigation.

Although this Court has not previously considered the applicability of an anti-SLAPP statute in federal court, its precedent confirms that the statute is precisely the type of substantive state law that must be given effect under *Erie Railroad Co. v. Tompkins*, 304 U.S. 64 (1938).[9] Where state rules, although undeniably "procedural" in the ordinary sense of the term, are "limited to a particular substantive area," such as contract or tort law, they are generally considered expressions of a state's "substantive" law and therefore are applicable in federal diversity cases. *S.A. Healy Co. v. Milwaukee Metro. Sewerage Dist.*, 60 F.3d 305, 310 (7th Cir. 1995) (Posner, J.) (collecting cases). In such cases, "the state's intention to influence substantive outcomes is manifest and would be defeated by allowing parties to shift their litigation into

[9] Supreme Court precedent instructs that before moving to an *Erie* analysis, courts must first determine whether there is a true conflict between a state law and federal rule, asking whether there is a "direct collision" between the state law and federal rule that "leave[s] no room for the operation of [the state] law." *Walker v. Armco Steel Corp.*, 446 U.S. 740, 749-50 (1980); *Burlington Northern R. Co. v. Woods*, 480 U.S. 1, 4-5 (1987). *See also Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 130 S. Ct. 1431, 1437 (2010) (courts must first decide whether federal rule is inapplicable or invalid before moving to *Erie* analysis). Engaging in thorough analyses of *Shady Grove* and its predecessors, the Ninth and First Circuits have explained why state anti-SLAPP laws do not "directly collide" with Rules 12 and 56. *See Godin*, 629 F.3d at 86-91; *Makaeff*, 736 F.3d at 1181-84. Defendants-Appellants address this issue in their brief, *see* BAN Br. at 18-23, and *amici* do not repeat their arguments here. In *amici*'s experience, the remedies provided under anti-SLAPP laws comfortably exist "side by side" with Rules 12 and 56, "each controlling its own intended sphere of coverage without conflict," and providing critical protection to the media disseminating news and information on issues of public concern. *See Walker*, 446 U.S. at 752.

federal court unless the state's rule was applied there as well." *Id.* *See also, e.g.*, *Hines v. Elkhart Gen. Hosp.*, 603 F.2d 646 (7th Cir. 1979) (applying Indiana law requiring submission of medical malpractice claim to medical review panel before instituting judicial action); *Barron v. Ford Motor Co.*, 965 F.2d 195, 199 (7th Cir. 1992) (applying North Carolina rule rendering evidence that plaintiff did not fasten his seatbelt inadmissible to establish that plaintiff did not exercise due care).

This Court has made clear that "where a state in furtherance of its substantive policy makes it more difficult to prove a particular type of state-law claim, the rule by which it does this … will be given effect in a diversity suit as an expression of state substantive policy." *Milam v. State Farm Mut. Auto. Ins. Co.*, 972 F.2d 166, 170 (7th Cir. 1992) (Posner, J.). States "are allowed to favor plaintiffs—or defendants—who engage in activities … that are governed by state law. Under *Erie*, this 'favoritism' is to operate even when the persons who have a dispute over state law find themselves in a federal court." *S.A. Healy*, 60 F.3d at 312. Thus, the district court's finding that the Act does not apply in federal court because it "impose[s] upon plaintiffs a burden of proof heavier than prescribed by the federal rules," *Intercon*, 2013 WL 4552782, at *19, cannot be squared with this Court's recognition that state substantive policy such as that embodied in the Act's burden of proof informs the application of, rather than conflicts with, Rule 56.

C. The District Court's Decision Threatens the Ability of Media Defendants to Publish and the Public to Receive News

Aside from being wrong on the law, the district court's decision threatens vital interests of media defendants, who are often subject to threats of litigation from the subjects of their stories—threats that may prevent an important story from being published if only to avoid the cost of litigation. However, in jurisdictions where media defendants can cite would-be plaintiffs to anti-SLAPP statutes and the potential for attorneys' fees and costs, plaintiffs who intend to use litigation to intimidate tend to back down. *See* Robert D. Richards, *A SLAPP in the Facebook: Assessing the Impact of Strategic Lawsuits Against Public Participation on Social Networks, Blogs & Consumer Gripe Sites*, 21 DePaul J. Art Tech. & Intell. Prop. L. 221, 245 (Spring 2011) (explaining that after plaintiffs review the anti-SLAPP statute, "[i]n most cases now you can just persuade them not to file the action at all"). If federal courts did not apply state anti-SLAPP laws, this salutary preemptive effect would dissipate, as plaintiffs would simply sue in federal court.

Even if a plaintiff does file suit, an anti-SLAPP motion can mitigate the chilling effect on media defendants. The Act forces a plaintiff to take an honest look at the merits early on because, in response to defendant's anti-SLAPP motion, he must demonstrate a likelihood of success or risk paying attorneys' fees and costs. RCW 4.24.525(5)(a). *See, e.g.*, Johnson & Duran, *A View from the First Amendment Trenches*, at 503 (this "particularly important" mechanism "requires the plaintiff to come forward early in the case to demonstrate that the

claims are viable, and if they are not viable, the court must dismiss the claims before the defendant is bogged down in expensive litigation"); Josh Gerstein, *Charity Drops Suit against Terrorism Analyst*, New York Sun (Aug. 16, 2007) (*available at* http://www.nysun.com/national/charity-drops-suit-against-terrorism-analyst/60635/) (after defendants filed California anti-SLAPP motion, Islamic charity dropped libel suit against author and publisher over book suggesting charity was funding Hamas). Where the parties attach material outside the pleadings, the Act—like the California law on which it was modeled—establishes a "summary-judgment-like procedure available at an early stage of litigation that poses a potential chilling effect on speech-related activities." *Makaeff*, 736 F.3d at 1183 (quotation marks omitted). The plaintiff

> must demonstrate that the complaint is both legally sufficient and supported by a sufficient prima facie showing of facts to sustain a favorable judgment if the evidence submitted by the plaintiff is credited. Though the court does not *weigh* the credibility or comparative probative strength of competing evidence, it should grant the motion if, as a matter of law, the defendant's evidence supporting the motion defeats the plaintiff's attempt to establish evidentiary support for the claim.

Hilton, 599 F.3d at 903.[10] As a result, the anti-SLAPP law functions, "at worst," "merely as a mechanism for considering summary judgment at the pleading stage as is permitted under Rule 12(d)." *Makaeff*, 736 F.3d at 1183.

[10] Courts in Washington have adopted the *Hilton* standard when considering motions to strike under the Washington statute. *See AR Pillow*, 2012 WL 6024765, at *2 (applying *Hilton*); *Phoenix Trading*, 732 F.3d at 941 (under the Act, like the California law, "[t]he burden on the plaintiff is similar to the standard used in determining motions for nonsuit, directed verdict, or summary judgment").

A strong anti-SLAPP statute is essential for the media to do its job of informing the public without being subject to the expense, harassment, and disruption caused by groundless reprisal lawsuits. Given strong First Amendment protections for speech regarding public figures and matters of public concern, suits brought against the media for reporting are frequently dismissed on purely legal grounds, such as lack of proof of falsity, application of the fair report privilege, and the absence of actual malice. In many cases, these suits can be exposed as meritless with little or no discovery where it is clear from the pleadings and supporting affidavits that the plaintiff cannot possibly meet the burdens of proving fault and falsity as required by the First Amendment. Anti-SLAPP motions add an "additional, unique weapon to the pretrial arsenal," shifting the burdens of cost and proof to immunize speech on matters of public concern from claims that have no hope of succeeding on the merits. *Newsham*, 190 F.3d at 973.

Media defendants regularly rely on these tools to combat abusive suits and avoid drawn-out litigation over reporting stories on matters of public concern. For example:

- The Ninth Circuit affirmed an Oregon district court's grant of an anti-SLAPP motion and award of attorneys' fees, dismissing false light and defamation claims against the author and publisher of a true-crime book describing the details of the plaintiff's killing of her husband—a crime to which the plaintiff had pleaded guilty. The court found that the plaintiff failed to show that any statements in the book were false or defamatory. *Northon v. Rule*, 409 F. App'x 146 (9th Cir. 2011) (affirming grant of anti-SLAPP motion); *Northon v. Rule*, 637 F.3d 937 (9th Cir. 2011) (affirming grant of attorneys' fees).

- A California federal district court granted an anti-SLAPP motion arising out of a *Los Angeles Times* article that questioned the plaintiff's claims in a published biography that he was a war hero, holding that no reasonable juror could find that the defendants intended to convey the impression that the plaintiff lied about his past. *Thomas v. L.A. Times Commc'ns LLC*, 189 F. Supp. 2d 1005, 1009-10 (C.D. Cal. 2002), *aff'd*, 45 F. App'x 801 (9th Cir. 2002).

- A D.C. federal district court granted an anti-SLAPP motion to dismiss claims by Yasser Abbas—a prominent Palestinian businessman, politician, and son of Palestinian Authority President Mahmoud Abbas—over an opinion piece in *Foreign Policy* magazine asking whether President Abbas's sons were improperly benefiting from their father's political position. Persuaded by the First, Ninth, and Fifth Circuits and the weight of federal authority that the D.C. anti-SLAPP statute applied in federal court, the court granted the motion, finding that the statements were non-actionable rhetoric and opinion. *Abbas v. Foreign Policy Grp., LLC*, 2013 WL 5410410 (D.D.C. Sept. 27, 2013), *appeal docketed*, No. 13-7171 (D.C. Cir. Oct. 25, 2013).

- A California federal district court granted an anti-SLAPP motion to dismiss invasion of privacy claims based on the Associated Press's publication of unaltered photographs of Navy SEALs allegedly mistreating Iraqi prisoners on the ground that the complaint failed to allege offensiveness or a reasonable expectation of privacy. *Four Navy Seals v. Associated Press*, 413 F. Supp. 2d 1136, 1140, 1149-50 (S.D. Cal. 2005).

- A New York federal court dismissed libel claims brought by Sheldon Adelson, a casino magnate and well-known funder of "Super PACs" supporting Republican candidates in the 2012 election (and a serial libel plaintiff), against the National Jewish Democratic Council and two of its leaders over a petition urging Republican candidates not to accept Adelson's money because it was "dirty" or "tainted." The court dismissed Adelson's claims under Rule 12(b)(6) and the Nevada anti-SLAPP statute, finding that the statements at issue were non-actionable opinion, the petition qualified for the anti-SLAPP statute's protection, and the plaintiff failed to allege even knowledge of falsity—much less facts to support such a conclusion—as the Nevada statute required. *Adelson v. Harris*, --- F. Supp. 2d ---, 2013 WL 5420973, at *15-16, *26-28 (S.D.N.Y. Sept. 20, 2013).

- A Washington federal district court granted an anti-SLAPP motion dismissing misappropriation and right of publicity claims against the

producers of *Sicko*, an Academy Award-nominated documentary film about the U.S. healthcare system. The court held that the plaintiff failed to show a likelihood of prevailing because the documentary was an expressive work, and the plaintiff's likeness was published in connection with a matter of public interest, and therefore immune from liability under both state statute and the First Amendment. *Aronson v. Dog Eat Dog Films, Inc.*, 738 F. Supp. 2d 1104, 1112-13 (W.D. Wash. 2010).

- A D.C. federal district court granted an anti-SLAPP motion to dismiss defamation claims brought by George Boley, a former Liberian public official ultimately deported from the United States for alleged war crimes, against *The Atlantic* over two articles that called Boley a "warlord." Whereas the defendants submitted public documents that showed both a lack of falsity and a lack of actual malice, Boley "adduced no *facts* indicating that the 'warlord' statements were false or made with actual malice, offering only broad and conclusory denials of Goldberg's comments." *Boley v. Atlantic Monthly Grp.,* 2013 WL 3185154, at *11 (D.D.C. June 25, 2013) (emphasis in original). Because Boley failed to present "clear and convincing evidence" of falsity and actual malice, the court granted the anti-SLAPP motion and dismissed his claims. *See id.* at *10-11.

- An Indiana district court granted an anti-SLAPP motion to dismiss claims brought against a local broadcaster by a Canadian prescription drug distributor on the grounds that defendant's news report on the safety and legality of pharmaceuticals involved a matter of public interest, was broadcast without serious doubts as to the truth, and was substantially true or not defamatory. *CanaRx Servs. v. LIN Television Corp.*, 2008 WL 2266348 (S.D. Ind. May 29, 2008).

- A Louisiana federal district court dismissed a doctor's libel and false light suit against Pro Publica and *The New York Times* over a Pulitzer Prize-winning article about alleged euthanasia of patients by hospital staff during Hurricane Katrina. The court held that the anti-SLAPP statute did not conflict with Rule 56, the article involved a matter of public interest, and even limited discovery could not rebut the media defendants' showing there was no negligence or substantial falsity in publishing the reports. *Armington v. Fink*, 2010 WL 743524, at *1, *5 (E.D. La. Feb. 24, 2010).

By applying state anti-SLAPP statutes, the court in each of these cases was able to efficiently dispose of meritless claims brought to retaliate against

speech on a matter of public concern, thereby significantly limiting the cost and burden of these abusive suits.

If the application of state anti-SLAPP laws was limited to state courts, SLAPP plaintiffs would simply evade them by filing in or removing to federal court, thus effectively commandeering the federal courts to help chill reporting on matters of public concern.[11] *See Newsham*, 190 F.3d at 973 ("Plainly, if the anti-SLAPP provisions are held not to apply in federal court, a litigant interested in bringing meritless SLAPP claims would have a significant incentive to shop for a federal forum."). As the Ninth Circuit recently warned:

> Without anti-SLAPP protections in federal courts, SLAPP plaintiffs would have an incentive to file or remove to federal courts strategic, retaliatory lawsuits that are more likely to have the desired effect of suppressing a SLAPP defendant's speech-related activities. Encouraging such forum-shopping chips at away at "one of the modern cornerstones of our federalism."

Makaeff, 736 F.3d at 1187 (quoting *Hanna v. Plumer*, 380 U.S. 460, 474 (1965) (Harlan, J., concurring)).

---

[11] These are not academic concerns. Following the *3M* decision, a defamation plaintiff attempted to abandon his action in D.C. Superior Court—seven months after its commencement, after extensive briefing, and on the eve of oral arguments on dispositive motions—for the admitted purpose of pursuing his claims in federal court because he assumed the D.C. anti-SLAPP act would not be applied there. *See* No. 1:12-cv-00283-RJL, ECF No. 5-1 (D.D.C. filed Feb. 21, 2012) (plaintiffs' notice of voluntary dismissal in D.C. Superior Court stating that "[t]he Complaint has been refiled in the U.S. District Court for the District of Columbia due to the Court's recent decision in *3M*"). *See also Forras v. Rauf*, No. 1:12-cv-282, ECF No. 2-3 (D.D.C. filed Mar. 22, 2012) (same); Eliza Krigman, *Yelp Pushes for Federal Anti-SLAPP Laws*, Politico (Jan. 4. 2013) (*available at* http://www.politico.com/story/2013/01/yelp-pushes-for-federal-anti-slapp-laws-85737.html) (positing that lawsuit was filed in Virginia, rather than plaintiff's home state of the District of Columbia, because Virginia has no anti-SLAPP law).

This concern is heightened here, in view of the fact that a California-based plaintiff was able to drag a Seattle defendant into an Illinois federal court and to persuade that court that Washington's substantive anti-SLAPP law cannot be used in federal court. This holding encourages plaintiffs to sue in federal courts where the anti-SLAPP statute does not apply and to which the plaintiff may have no connection. Such forum-shopping thwarts the purpose of anti-SLAPP statutes and undermines the interest of the state—in this case, Washington—in protecting its citizens from abusive lawsuits.

D. The Immediate Right of Appeal Is an Essential Feature of the Anti-SLAPP Statute

Amici also urge the Court to confirm that denials of anti-SLAPP motions are appealable under the collateral order doctrine. Every federal appellate court to consider the issue has so held where, as here, the state anti-SLAPP law provides a direct right of appeal or otherwise indicates that the process was intended to function as a qualified immunity from suit. *See Batzel*, 333 F.3d 1018 (California statute); *Henry*, 566 F.3d 164 (Louisiana statute); *Godin*, 629 F.3d 79 (Maine statute).[12] The Ninth Circuit has repeatedly reaffirmed *Batzel*'s reasoning in favor of allowing interlocutory appeal from the California statute.

[12] Two Ninth Circuit panels have declined to allow interlocutory appeals from the denial of state anti-SLAPP motions, under Nevada and Oregon law, respectively. In both cases, however, the panel relied on the fact that the statutes did not provide for interlocutory appeal and therefore provided immunity from liability, not suit. *See Metabolic Research, Inc. v. Ferrell*, 693 F.3d 795, 800-01 (9th Cir. 2012) (relying on statutory text and legislative history for Nevada law, including absence of provision for immediate appeal, to conclude that denial of motion was not collateral order); *Englert v. MacDonell*, 551 F.3d 1099, 1106-07 (9th Cir. 2009) (absence of provision for immediate appeal in Oregon statute was "compelling evidence" that denial of motion was not collateral order).

See Hilton, 599 F.3d at 900 (reaffirming *Batzel*); *DC Comics*, 706 F.3d at 1013-16 (reaffirming *Batzel*); *Makaeff*, 736 F.3d at 1187 (reiterating that *Batzel* was "correctly decided"). This Court should do the same for the Washington statute.[13] Indeed, it would be an odd result if the Ninth Circuit—but not this Court—heard appeals under the Washington anti-SLAPP law.

As the Ninth Circuit emphasized, "[i]t would be difficult to find a value of a 'high[er] order' than the constitutionally-protected rights to free speech and petition that are at the heart of California's anti-SLAPP statute. Such constitutional rights deserve particular solicitude within the framework of the collateral order doctrine." *DC Comics*, 706 F.3d at 1015-16. This is particularly true for media defendants, whose goal is to inform the public about newsworthy matters, whose speech is at the heart of the First Amendment, and who, along with others, routinely rely upon anti-SLAPP laws' immediate right of appeal in federal court. *See, e.g., Henry*, 566 F.3d 164 (reversing lower court's denial of anti-SLAPP motion, finding that plaintiff failed to establish fault

[13] The Court may also find jurisdiction over this appeal on a narrower ground. Because this is an appeal from an order concerning the availability of the state law's protections in federal court—and not from a denial of defendants' motion on the merits—it is the paradigmatic example of the "important" legal issue that is completely separate from the merits of the action and appropriate for interlocutory appeal. In the seminal case *Cohen v. Beneficial Indus. Loan Corp.*, the Supreme Court case carved out the collateral order doctrine for precisely this scenario. 337 U.S. 541, 546 (1949) (allowing interlocutory appeal from a district court's finding that a state statute was not applicable to a state-law claim brought in federal court). Every federal appellate court to consider a similar appeal has unequivocally found that this "narrower question" is well within the bounds of the collateral order doctrine. *See Godin*, 629 F.3d at 84 (order that Maine anti-SLAPP statute did not apply in federal court was immediately appealable as a collateral order); *Liberty Synergistics, Inc. v. Microflo Ltd.*, 718 F.3d 138, 150 n.11 (2d Cir. 2013) (order that plaintiff could not invoke protections of California anti-SLAPP statute in federal diversity case after transfer was immediately appealable as a collateral order).

against publisher); *Godin*, 629 F.3d 79 (reversing lower court's denial of anti-SLAPP motion to strike defamation claim brought by elementary school principal). Without that right, they risk facing costly and protracted lawsuits, in direct contravention of the anti-SLAPP statutes' purpose.

CONCLUSION

For these reasons, *amici* respectfully ask this Court to reverse the district court's ruling on the defendant's motion to strike under RCW 4.24.525, hold the Washington Anti-SLAPP Act applies in federal actions, and confirm that denials of special motions under that law are immediately appealable as collateral orders.

January 10, 2014

Respectfully submitted,

/s/ Bruce E. H. Johnson

Bruce E. H. Johnson
DAVIS WRIGHT TREMAINE LLP
201 Third Avenue, Suite 2200
Seattle, WA 98101
(206) 622-3150

CERTIFICATE OF COMPLIANCE WITH
FEDERAL RULE OF APPELLATE PROCEDURE 32(A)(5)-(7)

This brief complies with the length and type-volume limitations of Fed. R. App. P. 29(d) and Fed. R. App. P. 32(a)(7)(B) because it contains 6,009 words, excluding the parts of the brief exempted by Rule 32(a)(7)(B)(iii).

This brief complies with the typeface requirements of Circuit Rule 32 and Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because it has been prepared in a proportionally spaced typeface using Microsoft Word in 12-point Bookman Old Style font, with footnotes in 11-point Bookman Old Style font.

/s/ Bruce E. H. Johnson
Bruce E. H. Johnson

ADDENDUM:
DESCRIPTIONS OF *AMICI CURIAE*

Advance Publications, Inc., directly and through its subsidiaries, publishes 18 magazines with nationwide circulation, newspapers in over 20 cities, and weekly business journals in over 40 cities throughout the United States. It also owns many Internet sites and has interests in cable systems serving over 2.3 million subscribers.

Allied Daily Newspapers of Washington ("Allied") is a not-for-profit trade association representing 25 daily newspapers across the state. The group's member newspapers have been the targets of SLAPP lawsuits over the last two decades. Allied was also a vocal advocate of the passage of RCW 4.24.525, commonly referred to as the state's anti-SLAPP statute.

With some 500 members, the **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 credibility of newspapers.

The **Association of Alternative Newsmedia** ("AAN") was founded in 1978 and has grown to include 117 alternative news organizations covering every major metropolitan area and other less-populated regions of North America. AAN member publications reach more than 25 million active, educated and influential adults in print, on the web and on mobile devices. The association's members share a strong focus on local news, culture and the arts; an informal style; an emphasis on point-of-view reporting and narrative journalism; a tolerance for individual freedoms and social differences; and an eagerness to report on issues and communities that many mainstream media outlets ignore.

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.

Bloomberg L.P. d/b/a Bloomberg News is one of the world's largest newsgathering organizations, comprised of more than 2,500 journalists around the world in more than 120 bureaus. Bloomberg provides business, legal and financial news through the Bloomberg Professional Service, Bloomberg's website and Bloomberg Television.

Cable News Network, Inc. ("CNN"), a division of Turner Broadcasting System, Inc., a Time Warner Company, is the most trusted source for news and information. Its reach extends to nine cable and satellite television networks; one private place-based network; two radio networks; wireless devices around the world; CNN Digital Network, the No. 1 network of news web sites in the United States; CNN Newssource, the world's most extensively syndicated news service; and strategic international partnerships within both television and the digital media.

Dow Jones & Company, Inc., a global provider of news and business information, is the publisher of The Wall Street Journal, Barron's, MarketWatch, Dow Jones Newswires, and other publications. Dow Jones maintains one of the world's largest newsgathering operations, with nearly 2,000 journalists in more than fifty countries publishing news in several different languages. Dow Jones also provides information services, including Dow Jones Factiva, Dow Jones Risk & Compliance, and Dow Jones VentureSource. Dow Jones is a News Corporation company.

The E.W. Scripps Company is a diverse, 131-year-old media enterprise with interests in television stations, newspapers, and local news and information web sites. The company's portfolio of locally focused media properties includes: 19 TV stations (10 ABC affiliates, three NBC affiliates, one independent and five Azteca Spanish language stations); daily and community newspapers in 13 markets; and the Washington, D.C.-based Scripps Media Center, home of the Scripps Howard News Service.

Hearst Corporation is one of the nation's largest diversified media companies. Its major interests include the following: ownership of 15 daily and 38 weekly newspapers, including the *Houston Chronicle*, *San Francisco Chronicle* and *Albany (N.Y.) Times Union*; nearly 300 magazines around the world, including *Good Housekeeping*, *Cosmopolitan* and *O, The Oprah Magazine*; 29 television stations, which reach a combined 18% of U.S. viewers; ownership in leading cable networks, including Lifetime, A&E and ESPN; business publishing, including a joint venture interest in Fitch Ratings; and Internet businesses, television production, newspaper features distribution and real estate.

The McClatchy Company, through its affiliates, publishes 30 daily newspapers and related websites as well as numerous community newspapers and niche publications across the United States.

The **Media Law Resource Center** ("MLRC") is a nonprofit professional association for content creators and providers in all media, including associations, corporations, and individuals, and for their defense lawyers, providing a wide range of resources on media and content law and policy issues. These include news, analysis and resources regarding legal, legislative and regulatory developments; litigation and prepublication resources and practice guides; and national and international media law conferences and meetings.

The National Press Club is a membership organization dedicated to promoting excellence in journalism and protecting the First Amendment guarantees of freedom of speech and of press. Founded in 1908, it is the nation's largest journalism association.

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

National Public Radio, Inc. ("NPR") is a District of Columbia nonprofit membership corporation. It produces and distributes its radio programming through, and provides trade association services to, nearly 800 public radio member stations located throughout the United States and in many U.S. territories. NPR's award-winning programs include Morning Edition, and All Things Considered, and serve a growing broadcast audience of over 23 million Americans weekly. NPR also distributes its broadcast programming online, in foreign countries, through satellite, and to U.S. Military installations via the American Forces Radio and Television Service.

News Corporation is a global, diversified media and information services company focused on creating and distributing authoritative and engaging content to consumers throughout the world. The company comprises leading businesses across a range of media, including: news and information services, digital real estate services, book publishing, digital education, and sports programming and pay-TV distribution.

The **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 **Online News Association** ("ONA") is the nation's premier organization of digital journalists. ONA's members include reporters, news writers, editors, producers, designers, photographers and others who produce news for distribution over the Internet and through other digital media, as well as academics and others interested in the development of online journalism.

Pro Publica, Inc., is an independent, nonprofit newsroom that produces investigative journalism in the public interest. In 2010, it was the first online news organization to win a Pulitzer Prize. In 2011, Pro Publica won the first Pulitzer awarded to a body of work that did not appear in print. Pro Publica is supported primarily by philanthropy and provides the articles it produces free of charge, both through its own website and to leading news organizations selected with an eye toward maximizing the impact of each article.

The **Radio Television Digital News Association** ("RTDNA"), based in Washington, D.C., is the world's largest professional organization devoted exclusively to electronic journalism. RTDNA represents local and network news directors and executives, news associates, editors and students in broadcasting, cable and other electronic media in over 30 countries. RTDNA is

committed to enocuraging excellence in electronic journalism, and upholding First Amendment freedoms.

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.

Seattle Times Company publishes four newspapers in the State of Washington: The Seattle Times, Washington's most widely circulated daily newspaper; the Yakima Herald-Republic; the Walla Walla Union Bulletin; and The Issaquah Press. Seattle Times Company has been family owned since 1996.

The **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 web sites, which attract more visitors each month than any other publisher, serve close to two billion page views each month.

Tribune Company is one of the country's leading multimedia companies, operating businesses in publishing, digital and broadcasting. In publishing, Tribune's leading daily newspapers include the Chicago Tribune, Los Angeles Times, The Baltimore Sun, Sun Sentinel (South Florida), Orlando Sentinel, Hartford Courant, The Morning Call and Daily Press. The company's broadcasting group operates 42 television stations, WGN America on national cable and Chicago's WGN-AM. Popular news and information websites, including www.chicagotribune.com and www.latimes.com, complement Tribune's print and broadcast properties and extend the company's nationwide audience.

The Washington Newspaper Publishers Association ("WNPA") is a trade group representing about 130 community newspapers in the State of

Washington. Except for three small daily newspapers, WNPA's members are weekly or semi-weekly newspapers, most serving rural or suburban communities. WNPA has testified in support of the enabling legislation creating RCW 4.24.525, the statute limiting strategic lawsuits against public participation ("SLAPPs").

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.