

No. 19-11794-EE

**IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT**

NIKLESH PAREKH,

Plaintiff-Appellant,

v.

CBS CORPORATION AND
BRIAN CONYBEARE,

Defendant-Appellees.

On Appeal from the United States District Court
for the Middle District of Florida
Case No. 6:18-cv-00466-PGB-TBS

**MOTION OF THE REPORTERS COMMITTEE FOR FREEDOM OF THE
PRESS AND 33 MEDIA ORGANIZATIONS FOR LEAVE TO FILE
AMICUS CURIAE BRIEF IN SUPPORT OF DEFENDANT-APPELLEES**

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**CERTIFICATE OF INTERESTED PERSONS
AND CORPORATE DISCLOSURE STATEMENT**

Pursuant to Federal Rule of Appellate Procedure 26.1 and Eleventh Circuit Rule 26.1, counsel certify that, in addition to the persons listed in the certificate of interested persons filed by the parties, the following persons (amici curiae, their parent corporations, publicly held corporations that own 10% or more of the stock, and their counsel) have an interest in the outcome of this case.

1. Alden Global Capital
2. ALM Media, LLC
3. The Associated Press
4. Atlantic Media, Inc.
5. BlackRock, Inc. (BLK)
6. Bluestone Financial Ltd.
7. Brechner Center for Freedom of Information
8. Brown, Bruce D.
9. BuzzFeed
10. California Capital Equity, LLC
11. Canfield, Peter C.
12. Capitol News Company
13. Chatham Asset Management, LLC
14. Courthouse News Service

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15. The Daily Beast Company LLC
16. The E.W. Scripps Company (SSP)
17. The First Amendment Foundation
18. First Look Media Works, Inc.
19. Florida Press Association
20. Fox Television Stations, LLC
21. Gannett Co., Inc. (GCI)
22. Hearst Corporation
23. IAC/InterActiveCorp (IAC)
24. Inter American Press Association
25. Investigative Reporting Workshop at American University
26. Investigative Studios
27. Jones Day
28. Kincaid, Meredith C.
29. The McClatchy Company (MNI)
30. The Media Institute
31. MediaNews Group Inc.
32. MPA - The Association of Magazine Media
33. Nant Capital LLC
34. National Broadcasting Company

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35. National Freedom of Information Coalition
36. National Press Photographers Association
37. NBCUniversal Media, LLC
38. The New York Times Company (NYT)
39. News Media Alliance
40. POLITICO LLC
41. Radio Television Digital News Association
42. Reporters Committee for Freedom of the Press
43. Society of Environmental Journalists
44. Society of Professional Journalists
45. Soon-Shiong, Patrick
46. Syracuse University
47. TIME USA, LLC
48. Townsend, Katie
49. Tribune Publishing Company (TPCO)
50. Tully Center for Free Speech
51. Twenty-First Century Fox, Inc. (TFCF and TFCFA)
52. University of California, Berkeley
53. University of Florida College of Journalism and Communications
54. Vanguard Group, Inc.

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55. Vogus, Caitlin
56. Vox Media, LLC
57. Weeks, Lin

Dated: February 3, 2020

/s/ Peter C. Canfield
Peter C. Canfield
Counsel for Amici Curiae

MOTION FOR LEAVE

Amici curiae are the Reporters Committee for Freedom of the Press and 33 leading news and media organizations: ALM Media, LLC, The Associated Press, Atlantic Media, Inc., Brechner Center for Freedom of Information, BuzzFeed, Courthouse News Service, The Daily Beast Company LLC, The E.W. Scripps Company, The First Amendment Foundation, First Look Media Works, Inc., Florida Press Association, Fox Television Stations, LLC, Gannett Co., Inc., Hearst Corporation, Inter American Press Association, Investigative Reporting Workshop at American University, Investigative Studios, The McClatchy Company, The Media Institute, MediaNews Group Inc., MPA - The Association of Magazine Media, National Freedom of Information Coalition, National Press Photographers Association, The New York Times Company, News Media Alliance, POLITICO LLC, Radio Television Digital News Association, Society of Environmental Journalists, Society of Professional Journalists, TIME USA, LLC, Tribune Publishing Company, Tully Center for Free Speech, and Vox Media, LLC.¹

Pursuant to Federal Rule of Appellate Procedure 29(a)(2)–(3) and Eleventh Circuit Rule 29-1, amici move for leave to file an amicus brief in this case. A copy of the proposed brief is attached to this motion. Appellees consent to the filing of this brief; appellant states that he does not consent.

¹ A brief description of each amicus is in Appendix A to this motion.

As representatives of the news media, amici have a particularly powerful interest in this case. Strategic lawsuits against public participation, or “SLAPPs,” are meritless legal claims intended to chill the exercise of First Amendment rights. SLAPP plaintiffs intend that the targets of their complaints will settle, retract true statements, or be deterred from speaking or publishing about the litigant going forward, in order to avoid the time and expense of protracted litigation. Amici and their members or their affiliates—who gather and report news, and produce and distribute motion pictures and television news programs throughout the United States, including in Florida—are frequently the target of SLAPPs.

To combat this troubling trend, 30 states and the District of Columbia have adopted so-called “anti-SLAPP” laws, which typically provide a number of different mechanisms to lower the costs and other burdens of defending against meritless lawsuits aimed at chilling speech in connection with a public issue. Florida is one such state—its anti-SLAPP law provides for the recovery of fees successfully expended in defending suits against a person for exercising the “constitutional right of free speech in connection with a public issue.” Fla. Stat. § 768.295. Amici curiae’s brief is submitted in response to the issue raised by Plaintiff-Appellant as to whether the trial court, a federal district court sitting in diversity, erred in applying the fee-shifting provision of this statute.

As the proposed brief explains, the district court was correct to apply the Florida anti-SLAPP statute's fee-shifting provision. The provision is substantive state law, that does not conflict with the Federal Rules of Civil Procedure. If this Court holds that the state-law fee-shifting provision does not apply in federal court, Florida SLAPP plaintiffs will simply file their meritless lawsuits in this circuit's federal trial courts and chill constitutionally protected speech by amici and the organizations they represent. Accordingly, amici have an interest in ensuring that the fee-shifting provisions of anti-SLAPP laws are properly applied in federal court so that newsgathering, reporting, and other First Amendment-protected activities remain shielded from frivolous, retaliatory federal lawsuits.

CONCLUSION

For the reasons stated herein, the Court should grant the motion for leave to file the amicus brief.

Dated: February 3, 2020

Respectfully submitted,

/s/ Peter C. Canfield

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Counsel for Amici Curiae

APPENDIX A: DESCRIPTION OF AMICI

The Reporters Committee for Freedom of the Press is an unincorporated nonprofit association. The Reporters Committee was founded by leading journalists and media lawyers in 1970 when the nation's news media faced an unprecedented wave of government subpoenas forcing reporters to name confidential sources. Today, its attorneys provide pro bono legal representation, amicus curiae support, and other legal resources to protect First Amendment freedoms and the newsgathering rights of journalists.

ALM Media, LLC publishes over 30 national and regional magazines and newspapers, including *The American Lawyer*, *The National Law Journal*, *New York Law Journal* and *Corporate Counsel*, as well as the website Law.com. Many of ALM's publications have long histories reporting on legal issues and serving their local legal communities. ALM's *The Recorder*, for example, has been published in northern California since 1877; *New York Law Journal* was begun a few years later, in 1888. ALM's publications have won numerous awards for their coverage of critical national and local legal stories, including many stories that have been later picked up by other national media.

The Associated Press ("AP") is a news cooperative organized under the Not-for-Profit Corporation Law of New York. The AP's members and subscribers include the nation's newspapers, magazines, broadcasters, cable news services and

Internet content providers. The AP operates from 280 locations in more than 100 countries. On any given day, AP's content can reach more than half of the world's population.

Atlantic Media, Inc. is a privately held, integrated media company that publishes *The Atlantic*, *National Journal*, 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 Brechner Center for Freedom of Information (the "Brechner Center") at the University of Florida in Gainesville exists to advance understanding, appreciation and support for freedom of information in the state of Florida, the nation and the world. Since its founding in 1977, the Brechner Center has served as a source of academic research and expertise about the law of gathering and sharing information, and the Center regularly appears as a friend-of-the-court in federal and state appellate cases nationwide where the public's right to informed participation in government is at stake. The Center is exercising the academic freedom of its faculty to express their scholarly views, and is not

submitting this brief on behalf of the University of Florida or the University of Florida Board of Trustees.

BuzzFeed is a social news and entertainment company that provides shareable breaking news, original reporting, entertainment, and video across the social web to its global audience of more than 200 million.

Courthouse News Service is a California-based legal news service that publishes a daily news website with a focus on politics and law. The news service also publishes daily reports on new civil actions and appellate rulings in both state and federal courts throughout the nation. Subscribers to the daily reports include law firms, universities, corporations, governmental institutions, and a wide range of media including newspapers, television stations and cable news services.

The Daily Beast delivers award-winning original reporting and sharp opinion from big personalities in the arenas of politics, pop-culture, world news and more.

The E.W. Scripps Company serves audiences and businesses through local television, with 60 television stations in 42 markets. Scripps also owns Newsy, the next-generation national news network; podcast industry leader Stitcher; national broadcast networks Bounce, Grit, Escape, Laff and Court TV; and Triton, the global leader in digital audio technology and measurement services. Scripps

serves as the long-time steward of the nation's largest, most successful and longest-running educational program, the Scripps National Spelling Bee.

The First Amendment Foundation is a nonprofit foundation dedicated to safeguarding the free flow of information to all people in Florida. It was formed for the purpose of helping preserve and advance freedom of speech and access to government information as provided in the United States Constitution and the Florida Constitution.

First Look Media Works, Inc. is a non-profit digital media venture that produces *The Intercept*, a digital magazine focused on national security reporting. First Look Media Works operates the Press Freedom Defense Fund, which provides essential legal support for journalists, news organizations, and whistleblowers who are targeted by powerful figures because they have tried to bring to light information that is in the public interest and necessary for a functioning democracy.

The Florida Press Association was founded in 1879 as a nonprofit corporation to protect the freedoms and advance the professional standards of the press of Florida. The Florida Press Association includes all of the daily and most of the weekly newspapers in the state in its membership.

Directly and through affiliated companies, **Fox Television Stations, LLC**, owns and operates 28 local television stations throughout the United States. The 28

stations have a collective market reach of 37 percent of U.S. households. Each of the 28 stations also operates Internet websites offering news and information for its local market.

Gannett is the largest local newspaper company in the United States. Our 260 local daily brands in 46 states and Guam — together with the iconic USA TODAY — reach an estimated digital audience of 140 million each month.

Hearst is one of the nation's largest diversified media, information and services companies with more than 360 businesses. Its major interests include ownership of 15 daily and more than 30 weekly newspapers, including the San Francisco Chronicle, Houston Chronicle, and Albany Times Union; hundreds of magazines around the world, including Cosmopolitan, Good Housekeeping, ELLE, Harper's BAZAAR and O, The Oprah Magazine; 31 television stations such as KCRA-TV in Sacramento, Calif. and KSBW-TV in Monterey/Salinas, CA, which reach a combined 19 percent of U.S. viewers; ownership in leading cable television networks such as A&E, HISTORY, Lifetime and ESPN; global ratings agency Fitch Group; Hearst Health; significant holdings in automotive, electronic and medical/pharmaceutical business information companies; Internet and marketing services businesses; television production; newspaper features distribution; and real estate.

The Inter American Press Association (IAPA) is a not-for-profit organization dedicated to the defense and promotion of freedom of the press and of expression in the Americas. It is made up of more than 1,300 publications from throughout the Western Hemisphere and is based in Miami, Florida.

The Investigative Reporting Workshop, based at 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.

Investigative Studios Inc. is a nonprofit 501(c)(3) with an independent board and is formally affiliated with the University of California, Berkeley. It is dedicated primarily to producing and reporting journalism in the public interest that is authored by the University's Investigative Reporting Program.

The McClatchy Company is a 21st century news and information leader, publisher of iconic brands such as the *Miami Herald*, *The Kansas City Star*, *The Sacramento Bee*, *The Charlotte Observer*, *The (Raleigh) News and Observer*, and the *Fort Worth Star-Telegram*. McClatchy operates media companies in 28 U.S. markets in 14 states, providing each of its communities with high-quality news and

advertising services in a wide array of digital and print formats. McClatchy is headquartered in Sacramento, California.

The Media Institute is a nonprofit foundation specializing in communications policy issues founded in 1979. The Media Institute exists to foster three goals: freedom of speech, a competitive media and communications industry, and excellence in journalism. Its program agenda encompasses all sectors of the media, from print and broadcast outlets to cable, satellite, and online services.

MediaNews Group Inc. publishes the Mercury News, the East Bay Times, St. Paul Pioneer Press, The Denver Post, the Boston Herald and the Detroit News and other regional and community papers throughout the United States, as well as numerous related online news sites.

MPA – The Association of Magazine Media, (“MPA”) is the industry association for magazine media publishers. The MPA, established in 1919, represents the interests of close to 100 magazine media companies with more than 500 individual magazine brands. MPA’s membership creates professionally researched and edited content across all print and digital media on topics that include news, culture, sports, lifestyle and virtually every other interest, avocation or pastime enjoyed by Americans. The MPA has a long history of advocating on First Amendment issues.

The National Freedom of Information Coalition is a national nonprofit, nonpartisan organization of state and regional affiliates representing 45 states and the District of Columbia. Through its programs and services and national member network, NFOIC promotes press freedom, litigation and legislative and administrative reforms that ensure open, transparent and accessible state and local governments and public institutions.

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 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.

The New York Times Company is the publisher of *The New York Times* and *The International Times*, and operates the news website nytimes.com.

The News Media Alliance is a nonprofit organization representing the interests of digital, mobile and print news publishers in the United States and Canada. The Alliance focuses on the major issues that affect today's news publishing industry, including protecting the ability of a free and independent

media to provide the public with news and information on matters of public concern.

POLITICO is a global news and information company at the intersection of politics and policy. Since its launch in 2007, POLITICO has grown to nearly 300 reporters, editors and producers. It distributes 30,000 copies of its Washington newspaper on each publishing day and attracts an influential global audience of more than 35 million monthly unique visitors across its various platforms.

Radio Television Digital News Association (“RTDNA”) is the world’s largest and only professional organization devoted exclusively to electronic journalism. RTDNA is made up of news directors, news associates, educators and students in radio, television, cable and electronic media in more than 30 countries. RTDNA is committed to encouraging excellence in the electronic journalism industry and upholding First Amendment freedoms.

The Society of Environmental Journalists is the only North-American membership association of professional journalists dedicated to more and better coverage of environment-related issues.

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 is a global multimedia brand that reaches a combined audience of more than 100 million around the world. TIME's major franchises include the TIME 100 Most Influential People, Person of the Year, Firsts, Best Inventions, Genius Companies, World's Greatest Places and more. With 45 million digital visitors each month and 40 million social media followers, TIME is one of the most trusted and recognized sources of news and information in the world.

Tribune Publishing Company is one of the country's leading media companies. The company's daily newspapers include the Chicago Tribune, New York Daily News, The Baltimore Sun, Sun Sentinel (South Florida), Orlando Sentinel, Hartford Courant, The Morning Call, the Virginian Pilot and Daily Press. Popular news and information websites, including www.chicagotribune.com, complement Tribune Publishing's publishing properties and extend the company's nationwide audience.

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.

Vox Media, LLC owns New York Magazine and several web sites, including Vox, The Verge, The Cut, Vulture, SB Nation, and Eater, with 170 million unique monthly visitors.

CERTIFICATE OF COMPLIANCE

This motion complies with the type-volume limitations contained in Federal Rule of Appellate Procedure 27(d)(2)A) because, excluding the portions exempted by Rule 32(f), the motion contains 2,621 words, as determined by the Microsoft Word program used to prepare it.

This motion complies with the typeface requirements of Federal Rule of Appellate Procedure 32(a)(5) and the type-style requirements of Federal Rule of Appellate Procedure 32(a)(6) because the motion has been prepared in a proportionally spaced typeface using Microsoft Word in 14-point Times New Roman.

Dated: February 3, 2020

/s/ Meredith C. Kincaid
Meredith C. Kincaid
Counsel for Amici Curiae

CERTIFICATE OF SERVICE

I certify that on February 3, 2020, I electronically filed the foregoing motion with the United States Court of Appeals for the Eleventh Circuit using the CM/ECF system. Defendant-Appellees in this case are registered CM/ECF users, and service upon them will be accomplished by the appellate CM/ECF system. I further certify that on February 3, 2020, a true and correct copy of the foregoing has been served via U.S. mail and also provided via electronic mail to:

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Dated: February 3, 2020

/s/ Meredith C. Kincaid
Meredith C. Kincaid
Counsel for Amici Curiae