

IN THE THIRD DISTRICT COURT OF APPEAL
STATE OF FLORIDA

CARLOS ENRIQUE LUNA LAM and
IGLESIA CRISTIANA CASA DE RIOS,

Case No.: 3D19-2204

Appellants,

L.T. Case No.: 19-016891-CA-01

v.

UNIVISION COMMUNICATIONS,
INC., *et al.*,

Appellees.

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MOTION FOR LEAVE TO FILE *AMICI CURIAE* BRIEF

Pursuant to Florida Rule of Appellate Procedure 9.370, Brechner Center for Freedom of Information, Cox Media Group, The E.W. Scripps Company, The First Amendment Foundation, Inc., Florida Press Association, Fox Television Stations, LLC, Gannett Co., Inc., Inter American Press Association, International Documentary Association, Inc., The Media Institute, MPA - The Association of Magazine Media, National Press Photographers Association, Inc., News Leaders Association, News Media Alliance, Radio Television Digital News Association, Reporters Committee for Freedom of the Press, Reporters Without Borders USA, Sinclair Broadcast Group, Inc., Society of Environmental Journalists, Inc., Society of Professional Journalists, and Tully Center for Free Speech (collectively,

“*Amici*”) move for leave to file an *Amici Curiae* brief in support of Appellees. In support of this motion, *Amici* state as follows:

I. Identity and Interest of the *Amici*

1. The Brechner Center for Freedom of Information 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 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.

2. Cox Media Group is an Atlanta, Georgia-headquartered media company with 33 television stations in 20 markets, 54 radio stations in 10 markets and numerous multi-platform streaming video and digital platforms. Cox Media Group’s portfolio includes affiliates of ABC, CBS, FOX, NBC, and MyNetworkTV, as well as several independent stations. Additionally, Cox Media Group operates the National Advertising Platform business of CoxReps; and offers a full suite of local and regional advertising services with Local Solutions. In

Florida, it owns or operates television stations serving Jacksonville and Orlando markets, as well as several radio stations in the Jacksonville, Miami, Orlando, and Tampa markets.

3. E.W. Scripps Company is a Cincinnati, Ohio-headquartered broadcasting company that was founded in 1878. 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; 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. In Florida, Scripps owns or operates television stations serving Ft. Myers, Miami, Tampa, Tallahassee, and West Palm Beach markets.

4. First Amendment Foundation, Inc. is a Florida 501(c)(3) 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. The foundation operates a toll-free hotline for questions about Florida's open government laws, tracks legislation on

government transparency issues, conducts seminars and training programs, publishes the Government-in-the-Sunshine Manual and Pocket Guide.

5. 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.

6. Fox Television Stations, LLC is a New York-headquartered group of television stations located within the United States. Directly and through affiliated companies, Fox Television Stations 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. In Florida, Fox Television Stations owns or operates stations serving the Ocala, Orlando, and Tampa markets.

7. Gannett Co., Inc. is the largest local newspaper company in the United States. Its 260 local daily brands in 46 states and Guam — together with its iconic publication USA TODAY — reach an estimated audience of 140 million each month. Gannett publications in Florida include the *Daily Commercial*, *Daytona Beach News-Journal*, *Florida Today*, *Herald-Tribune*, *Naples Daily News*, *Northwest Florida Daily News*, *Ocala Star Banner*, *Panama City News Herald*, *Pensacola News Journal*, *TC Palm*, *Destin Log*, *Florida Times-Union*, *Gainesville*

Sun, The Ledger, News-Press, Palm Beach Post, The Star, Walton Sun, and Washington County News.

8. The Inter American Press Association is a 501(c)(3) nonprofit organization based in Miami, Florida that promotes and defends freedom of the press in the Americas. It is made up of more than 1,300 publications from throughout the Western Hemisphere. It monitors violations of freedom of the press, initiates public campaigns, promotes legislation on access to information and press freedom, and provides information on press freedom throughout the Americas.

9. International Documentary Association, Inc. is a Los Angeles, California-based 501(c)(3) nonprofit organization that supports the work of documentary storytellers and champions a thriving and inclusive documentary culture. It provides grants to filmmakers, programming, and defends the rights and freedoms of documentary artists, activists, and journalists around the globe.

10. The Media Institute is a 501(c)(3) nonprofit educational organization based in Arlington, Virginia. It exists to foster the promotion of free speech, encourage a competitive media environment and communications industry, and recognize excellence in journalism. Its program agenda encompasses all sectors of the media, from print and broadcast outlets to cable, satellite, and online services. It publishes policy papers, prepares regulatory filings and legal briefs, convenes

conferences, and sponsors the Communications Forum Luncheon Series in Washington, D.C.

11. MPA – The Association of Magazine Media, is a Washington, D.C.-based 501(c)(6) industry association and advocate 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.

12. National Press Photographers Association, Inc. is a membership-based 501(c)(6) nonprofit organization headquartered at the University of Georgia in Athens, Georgia. The association is 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.

13. The News Leaders Association was formed via the merger of the American Society of News Editors and the Associated Press Media Editors in

September 2019. It aims to foster and develop the highest standards of trustworthy, truth-seeking journalism; to advocate for open, honest and transparent government; to fight for free speech and an independent press; and to nurture the next generation of news leaders committed to spreading knowledge that informs democracy.

14. News Media Alliance is a Washington, D.C.-based 501(c)(6) nonprofit membership association that represents nearly 2,000 diverse news organizations in the United States. 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.

15. Radio Television Digital News Association is a Washington, D.C.-based 501(c)(6) nonprofit membership organization devoted exclusively to broadcast and digital 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.

16. 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.

17. Reporters sans frontieres is one of the largest international press freedom and freedom of information NGOs in the world. Through its U.S. chapter, Reporters Without Borders USA, Reporters sans frontieres advocates for press freedom in the United States and globally and provides legal assistance and training to journalists so they can protect themselves in the field and online.

18. Sinclair Broadcast Group, Inc. is a broadcast company headquartered in Cockeysville, Maryland. It is one of the largest and most diversified television broadcasting companies in the country. The Company owns, operates, and/or provides services to 191 television stations in 89 markets. The Company is a leading local news provider in the country and has multiple national networks, live local sports production, as well as stations affiliated with all the major networks. In Florida, it owns or operates stations serving Pensacola, West Palm Beach, Gainesville, and Tallahassee.

19. Society of Environmental Journalists, Inc., a Washington, D.C.-based 501(c)(3) nonprofit membership association, is the only North American membership association of professional journalists dedicated to enhancing

coverage of environment-related issues. It provides education and support to journalists of all media who cover complex environmental issues for the purpose of advancing public understanding.

20. Society of Professional Journalists 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.

21. The Tully Center for Free Speech is part of Syracuse University's Newhouse School, which prepares students for careers in journalism and media and communications. The Center promotes and supports free speech through research, education, and a series of events, including the annual Tully Award for Free Speech.

22. *Amici* are news organizations and nonprofit organizations that publish news and seek to protect the rights of journalists to report on matters of public interest.

23. *Amici* have a historic and ongoing interest in ensuring that journalists can report freely on matters of public interest without baseless litigation aimed at

suppressing speech and news reporting. *Amici* further have a continuing interest in ensuring that Florida courts correctly interpret section 768.295, Florida Statutes (the “anti-SLAPP statute”), to expeditiously resolve lawsuits aimed at suppressing speech, as the anti-SLAPP statute expressly contemplates. *Amici* are of the view that Appellants’ interpretation of the anti-SLAPP statute is at odds with the plain language and legislative purpose of the statute.

24. The issues raised in this appeal bear directly upon these interests and *Amici*’s expertise on such issues uniquely positions them to assist this Court.

II. Issues to Be Addressed

25. *Amici* wish to participate in this proceeding as *amici curiae* in support of Appellees. The trial court dismissed Appellants’ lawsuit with prejudice pursuant to the anti-SLAPP statute. See Order Granting Defendants’ Motion to Dismiss Pursuant to Florida’s Anti-SLAPP Statute, Fla. Stat. 768.295 (November 2, 2019). (R. 913–23). The lower court found that (1) it was Appellants’ burden below to demonstrate that their complaint was not “without merit” and (2) Appellants failed to meet that burden, as they did not adequately plead facts that, if proven, would establish actual malice. (See id.).

26. Appellants raise a series of arguments on appeal concerning the level of scrutiny of their allegations at the motion to dismiss stage. See Appellants’ Initial Brief 21–22. Appellants argue that there was improper burden shifting,

heightened scrutiny of alleged facts, and disputed evidence that the trial court weighed as a factfinder. Appellants' arguments blur the plain language and legislative purpose of the anti-SLAPP statute, which require expeditious review of lawsuits designed to curtail First Amendment-protected activities with a heightened level of scrutiny that Appellants reject.

27. This appeal raises important questions about First Amendment protections statutorily provided to litigants in Florida and the actual malice standard under Florida law. *Amici* will address: (1) the importance of the anti-SLAPP statute to journalists and news media organizations, (2) policy reasons for the statute, (3) why the anti-SLAPP statute's pleading standard was correctly applied in this case, (4) why Appellants failed to meet this pleading standard, and (5) the importance of the actual malice standard under Florida law to journalists.

28. In these respects, *Amici* are aligned with the Appellees, making their brief due on September 21, 2020, per Rule 9.370(c).

III. *Amici* Can Assist in the Disposition of this Case

29. *Amici* can assist this Honorable Court by providing legal argument and perspective on the purpose of the anti-SLAPP statute and the appropriate legal standards at issue in this case.

30. As longtime advocates for freedom of information and the First Amendment, *Amici* have unique expertise in the application and interpretation of

Florida's anti-SLAPP law and the actual malice standard. As such, *Amici* would provide a perspective that may not otherwise be provided by the parties in this case.

IV. Consent to the Filing of an *Amici Curiae* Brief

31. *Amici* certify that they have conferred with counsel for the parties listed on the Appellants' service list in this appeal. Appellees consent to the filing of an amicus brief. Appellants do not consent to the filing of an amicus brief.

WHEREFORE, *Amici* respectfully request this Court to grant it leave to file an *Amici Curiae* brief in this matter on September 21, 2020, or such other date as set forth by the Court.

Dated: August 31, 2020.

Respectfully submitted:

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of this Motion was filed on this August 31, 2020 with the Court through the Florida electronic filing portal, which will serve all counsel of record named below by electronic mail:

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CERTIFICATE OF COMPLIANCE WITH RULE 9.210

I hereby certify that this Motion is typed in 14-point (proportionately spaced) Times New Roman and otherwise meets the requirements of Florida Rule of Appellate Procedure 9.210.

By: /s/ Deanna K. Shullman
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