

# REPORTERS COMMITTEE

FOR FREEDOM OF THE PRESS

1101 Wilson Blvd., Suite 1100  
Arlington, Va. 22209-2211  
(703) 807-2100  
www.rcfp.org

Bruce D. Brown  
Executive Director  
bbrown@rcfp.org  
(703) 807-2101

## STEERING COMMITTEE

SCOTT APPLEWHITE  
*The Associated Press*

WOLF BLITZER  
*CNN*

DAVID BOARDMAN  
*Temple University*

CHIP BOK  
*Creators Syndicate*

JAN CRAWFORD  
*CBS News*

MICHAEL DUFFY  
*Time*

RICHARD S. DUNHAM  
*Tsinghua University, Beijing*

ASHLEA EBELING  
*Forbes Magazine*

SUSAN GOLDBERG  
*National Geographic*

FRED GRAHAM  
*Founding Member*

JOHN C. HENRY  
*Freelance*

NAT HENTOFF  
*United Media Newspaper Syndicate*

JEFF LEEN  
*The Washington Post*

DAHLIA LITHWICK  
*Slate*

TONY MAURO  
*National Law Journal*

JANE MAYER  
*The New Yorker*

DAVID McCUMBER  
*Hearst Newspapers*

JOHN McKINNON  
*The Wall Street Journal*

DOYLE MCMANUS  
*Los Angeles Times*

ANDREA MITCHELL  
*NBC News*

MAGGIE MULVIHILL  
*Boston University*

BILL NICHOLS  
*Politico*

JEFFREY ROSEN  
*The New Republic*

CAROL ROSENBERG  
*The Miami Herald*

THOMAS C. RUBIN  
*Seattle, Wash.*

ERIC SCHMITT  
*The New York Times*

ALICIA SHEPARD  
*Freelance*

MARGARET LOW SMITH  
*The Atlantic*

JENNIFER SONDAG  
*Bloomberg News*

PAUL STEIGER  
*Pro Publica*

PIERRE THOMAS  
*ABC News*

SAUNDRA TORRY  
*USA Today*

JUDY WOODRUFF  
*PBS/The NewsHour*

*Affiliations appear only  
for purposes of identification.*

November 3, 2014

Presiding Justice Norman L. Epstein  
and Associate Justices  
Court of Appeal of the State of California  
Second Appellate District, Division Four  
300 S. Spring Street  
Los Angeles, CA 90013

**Re: *People v. Raef*, Case No. B259792**

**Application for Leave to File Amicus Letter Brief and Amicus Letter  
Brief in Support of Defendant Paul Raef's Petition for Transfer or, in  
the Alternative, for Writ of Mandamus**

Dear Presiding Justice Epstein and Associate Justices:

The Reporters Committee for Freedom of the Press ("Reporters Committee"), the National Press Photographers Association ("NPPA"), and the following *amici* (collectively, "*Amici*") respectfully request that this Court grant leave to file the attached Letter Brief of Amicus Curiae in Support of the Petition of Defendant Paul Raef ("Raef") for Transfer to Court of Appeal or, in the Alternative, for Writ of Mandamus. *Amici* believe that this case presents an issue that could have grave repercussions for freedom of the press in California and that the Court's consideration of whether to grant the petition for transfer could be informed by a discussion of the First Amendment implications of enforcing California Vehicle Code 40008 and the dangers the law poses to newsgathering. Therefore, *Amici* request leave to file the attached letter brief in support of Defendant Raef's petition.

No party or counsel for any party, other than counsel for *Amici*, has authored this letter in whole or in part or funded the preparation of this letter.

## Interest of Amici

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

The National Press Photographers Association is a 501(c)(6) non-profit organization dedicated to the advancement of photojournalism in its creation, editing and distribution. NPPA's approximately 7,000 members (734 residing in California) include television and still photographers,

editors, students and representatives of businesses that serve the visual journalism community.

The Association of Alternative Newsmedia (“AAN”) is a diverse group of 125 alternative news organizations covering every major metropolitan area and other less-populated regions of North America. AAN member publications reach more than 50 million active, educated and influential adults in print, on the web and on mobile devices.

The Associated Press Media Editors (“APME”) is an association of editors at newspapers, broadcast outlets and journalism educators and student leaders in the United States and Canada. The Associated Press Photo Managers (“APPM”) is an association of visual journalists who oversee photography at their respective publications and educational institutions. APME and APPM work closely with the Associated Press to foster journalism excellence and to support a national network for the training and development of editors who will run multimedia newsrooms in the 21<sup>st</sup> Century. APME and APPM are nonprofit, tax-exempt associations under Section 501(c)(6) of the Internal Revenue Code. APME and APPM are on the front line in setting ethical and journalistic standards for newspapers and in the battle for freedom of information and the First Amendment.

The California Broadcasters Association (“CBA”) is the trade organization representing the interests of the over 1000 radio and television stations in our state. The CBA advocates on state and federal legislative issues, provides seminars for member education and offers scholarship opportunities to students in the communication majors. Many of our stations have extensive news operations and CA Vehicle Code 40008 puts them at legal risk each day for doing their jobs. This code section jeopardizes not only news reporters at our stations, but anyone who carries a camera, tape recorder, or other kinds of electronic equipment as a requirement of their employment.

The California Newspaper Publishers Association (“CNPA”) is a nonprofit trade association representing the interests of nearly 850 daily, weekly and student newspapers. For over 130 years, CNPA has worked to protect and enhance the freedom of speech guaranteed to all citizens and to the press by the First Amendment of the United States Constitution and Article 1, Section 2 of the California Constitution. CNPA strongly opposed AB 2479 (Bass), the legislation that established the enhancements at issue in this matter.

The E.W. Scripps Company owns 19 network affiliated television stations and Spanish language stations across the country, including ABC and Azteca affiliates in San Diego and Bakersfield. Scripps also owns daily newspapers in 14 markets, including Ventura and Redding. The company also operates web operations to support all of its newspaper and television stations.

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.

### ***Amici's Interest in this Petition for Transfer***

*Amici* seek leave to file this letter brief because of the significant free press issues presented by California Vehicle Code 40008. Section 40008 imposes additional penalties on violators of generally applicable reckless driving laws when those violators are driving with the intent to gather news for commercial purposes. The law imposes an additional punishment for driving while being a journalist, sweeping into its ambit not only paparazzi photographers seeking photos of celebrities, but also members of the mainstream press traveling on assignment to cover news and visual journalists on their way to capturing images of relevance to the community. The law directly threatens the First Amendment right of newsgathering that belongs to all photojournalists in California and nationwide.

### **Discussion**

The critical First Amendment issues presented by Section 40008 make it extremely important that the Court of Appeal take this case for review. The law strikes at the heart of the First Amendment's guarantee of press freedoms by penalizing newsgathering. A decision upholding the law's constitutionality would have devastating effects for journalists in California and nationwide and would set a negative example for other jurisdictions around the country considering this issue.

The State argues that Section 40008 does not have constitutional implications because it regulates the act of reckless driving, not of exercising First Amendment rights. Section 40008 imposes additional penalties on violators of generally applicable reckless driving laws when those violators are driving with the intent to gather news for commercial purposes. But newsgathering, which the Supreme Court has held is protected under the First Amendment,<sup>1</sup> does not commence only when a photograph is taken; rather, the process of gathering news includes the actions journalists take to physically bring themselves in proximity to where events of public interest occur. The law provides for additional penalties for what is, in effect, driving while being a journalist. It is a clear threat to the ability of California photojournalists to do their job.

Section 40008 appears to have been drafted to target the actions of paparazzi photographers who drive recklessly in pursuit of celebrities. But, as *Amici* wrote in a letter brief to the Los Angeles Superior Court, by subjecting to enhanced penalties the simple act of driving to a location where a picture for commercial use may be taken, the law sweeps into its ambit members of the mainstream press traveling on assignment to the places where news happens and the visual journalist on route to capture images of relevance to the community. Thus, the law directly threatens the First Amendment right of newsgathering that belongs to all photojournalists in California and nationwide.

---

<sup>1</sup> See, e.g., *Branzburg v. Hayes*, 408 U.S. 665, 681 (1972).

Given Section 40008's singling-out of constitutionally protected expressive activities for enhanced penalties, it is clear that this case presents an important issue that the Court of Appeal should resolve. Unfortunately, photojournalists around the country have historically faced many law enforcement challenges to their right to report on matters of public concern, such as being harassed or arrested while filming in public areas or having police guns pointed at them as in Ferguson. Several circuits around the country have issued opinions making plain that this right to report is clearly established under the Constitution,<sup>2</sup> but there continue to be regular incidents of law enforcement on the ground preventing photographers from doing their jobs.<sup>3</sup> *Amici* fear that Section 40008 will be used as another tool of harassment. It provides a legally sanctioned means for the police to chill free speech and press by the imposition of additional charges for committing the same infraction — reckless driving — where newsgathering was not implicated. Letting the law stand would be contrary to the First Amendment, against the tide of decisions around the country that protect the right to gather news, and counter-productive on the ground as journalists nationwide face unjustified arrest and harassment. It would also fly in the face of the U.S. Supreme Court's admonition that "without some protection for seeking out the news, freedom of the press could be eviscerated."<sup>4</sup>

///

(continued on following page)

---

<sup>2</sup> See, e.g., *Glik v. Cuniffe*, 655 F.3d 78 (1st Cir. 2011); *ACLU v. Alvarez*, 679 F.3d 583 (7th Cir. 2012).

<sup>3</sup> For example, Milwaukee Journal Sentinel photojournalist Kristyna Wentz-Graff was arrested while taking pictures of an Occupy Wall Street protest. See Karen Herzog, *JS photographer arrested while covering Occupy Milwaukee protest*, MILWAUKEE JOURNAL SENTINEL, Nov. 2, 2011, <http://www.jsonline.com/news/milwaukee/js-photographer-arrested-while-covering-occupy-milwaukee-protest-133090133.html>. Freelance journalist Phil Datz was arrested by Suffolk County police in Long Island, New York, while attempting to record a police investigation on a public street. Datz won a \$200,000 settlement from the police department, as well as promises of a new training program and a police-media relations committee. See Wills City, *NPPA Member Wins Major Victory Against Suffolk County Police Department*, NATIONAL PRESS PHOTOGRAPHERS ASSOCIATION, June 17, 2014, <http://blogs.nppa.org/advocacy/2014/06/17/nppa-member-wins-major-victory-against-suffolk-county-police-department>. Many other examples show that these incidents consistently punish journalists for engaging in protected activity.

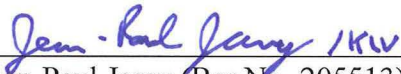
<sup>4</sup> *Branzburg*, 408 U.S. at 681.

The Supreme Court has also recognized the “profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open.”<sup>5</sup> Only if journalists are allowed to gather news without fear of retribution for simply being journalists can that national debate be sustained. For the foregoing reasons, *Amici* respectfully request leave to file this letter brief describing the First Amendment issues implicated by California Vehicle Code 40008 and the threat the law poses to the ability of California journalists to gather news.

Very truly yours,

Bruce D. Brown  
Gregg P. Leslie  
*For the Reporters Committee  
for Freedom of the Press*

Mickey H. Osterreicher  
*For the National Press Photographers  
Association*

  
\_\_\_\_\_  
Jean-Paul Jassy (Bar No. 205513)  
Jassy Vick Carolan LLP  
6605 Hollywood Boulevard, Suite 100  
Los Angeles, California 90028  
310-870-7048  
jppjassy@jassyvick.com  
*Counsel for Amici*

---

<sup>5</sup> *New York Times Co. v. Sullivan*, 376 U.S. 254, 270 (1964).

**PROOF OF SERVICE**

**STATE OF CALIFORNIA, COUNTY OF LOS ANGELES**

I do hereby declare and state that I am employed in the County of Los Angeles, I am over the age of eighteen years and not a party to the within action. My business address is 6605 Hollywood Blvd., Suite 100, Los Angeles, CA 90028.

On November 3, 2014 I served the foregoing documents described as:

**APPLICATION FOR LEAVE TO FILE AMICUS LETTER BRIEF AND AMICUS LETTER BRIEF IN SUPPORT OF DEFENDANT PAUL RAEF'S PETITION FOR TRANSFER OR, IN THE ALTERNATIVE, FOR WRIT OF MANDAMUS**

on the interested parties by placing a true copy thereof enclosed in a sealed envelope addressed as follows:

*SEE ATTACHED SERVICE LIST*

☒ **BY UNITED STATES MAIL:** I enclosed the documents in a sealed envelope or package addressed to the persons at the addresses listed in the attached Service List. I deposited the sealed envelope with the United States Postal Service at Los Angeles, California, for delivery, with the postage fully prepaid.

I am "readily familiar" with this firm's practice of collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on November 3, 2014, 2014 at Los Angeles, California.



Marlene Rios

**SERVICE LIST**

Michael N. Feuer, City Attorney  
Debbie Lew, Assistant City Attorney  
Katharine H. MacKenzie, Deputy City Attorney  
CRIMINAL APPELATE DIVISION  
500 City Hall East  
200 North Main Street  
Los Angeles, CA 90012  
Tel: (213) 473-6900  
Fax: (213) 978-8779

*Attorneys for Petitioner, PEOPLE OF THE  
STATE OF CALIFORNIA*

Honorable Thomas Robinson  
Judge of the Superior Court  
Van Nuys Courthouse, Dept. 113  
14400 Erwin Street Mall  
Van Nuys, CA 91401  
Tel: (818) 374-2731

*2VY03020*

Clerk of the Court  
Appellate Division of the Los Angeles Superior  
Court  
111 North Hill Street  
Department 70, Room 607  
Los Angeles, CA 90012

*BR050611*

Office of the Attorney General  
300 South Spring Street  
Los Angeles, CA 90013-1230  
Tel: (213) 897-2000

*Service on Attorney General Required by  
and Cal. Rules of Court, rules 8.29(c) and  
8.212(c)*

Jeremy Rosen  
Mark A. Kressel  
Barry Levy  
Horvitz & Levy, LLP  
15760 Ventura Blvd., 18<sup>th</sup> Floor  
Encino, CA 91436  
Tel: (818) 995-0800

*Counsel for Defendant, Paul Raef*