IN THE SUPREME COURT
OF THE STATE OF GEORGIA

NEW WORLD COMMUNICATIONS OF ATLANTA, INC. Petitioner,	)	
v.	)	No. S15C0592
SHANE LADNER, Respondent.	)	

AMICUS BRIEF OF THE REPORTERS COMMITTEE FOR FREEDOM OF THE PRESS, THE ASSOCIATED PRESS, GANNETT CO., INC. AND THE GEORGIA PRESS ASSOCIATION IN SUPPORT OF PETITION FOR CERTIORARI

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I. INTRODUCTION

Pursuant to Rule 23, the Reporters Committee for Freedom of the Press and three other *amici* ("*Amici*") respectfully file this amicus brief in support of Petitioner New World Communications of Atlanta, Inc.'s ("Petitioner") Petition for Writ of Certiorari. Respondent Shane Ladner ("Respondent") sued Petitioner's local news station, FOX 5, for defamation in response to news reports FOX 5 produced and broadcast regarding Respondent. The reports examined the civil lawsuit Respondent filed following a devastating accident during a wounded veterans parade, and continued by covering the law enforcement investigation of Respondent for allegedly lying about having been awarded a Purple Heart. Respondent was subsequently indicted for those alleged falsehoods. *Amici* reference and incorporate herein the Statement of Background Facts as set forth in the pleadings of the Petitioner.

The Supreme Court should accept this case for review to clarify the scope of the protections provided by the Georgia anti-SLAPP law, O.C.G.A. § 9-11-11.1. The anti-SLAPP law is a critical component of Georgia's First Amendment protections for speech in the public interest. The trial court applied an unduly narrow interpretation of the statute's protection for statements "made in connection with an issue under consideration or review by a legislative, executive, or judicial body, or any other official proceeding authorized by law." O.C.G.A. § 9-11-

11.1(c). *Amici* urge the Supreme Court to hold that media reports discussing official proceedings are protected under the statute as they are statements made in connection with the proceedings. The First Amendment values that underlie the anti-SLAPP law warrant this result.

II. STATEMENT OF INTEREST

The Reporters Committee for Freedom of the Press ("RCFP") 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. RCFP has provided representation, guidance and research in First Amendment and Freedom of Information Act litigation since 1970. RCFP has a strong interest in ensuring that anti-SLAPP statutes like the one at issue in this case serve their objective of providing journalists, publishers and others with an immediate means to dispose of lawsuits brought to chill speech about matters of public interest and concern.

The Associated Press ("AP") is a news cooperative organized under the Not-for-Profit Corporation Law of New York, and owned by its 1,500 U.S. newspaper members. The AP's members and subscribers include the nation's newspapers, magazines, broadcasters, cable news services and Internet content providers. The AP operates from 300 locations in more than 100 countries. On any given day, AP's content can reach more than half of the world's population.

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

The Georgia Press Association ("GPA") is a nonprofit trade association composed of 139 daily and weekly newspapers throughout the State of Georgia. A primary goal of the GPA is to protect, promote, foster and advance free expression and open government in Georgia. One way in which this is accomplished is to advocate for Georgia's statutory protections for free speech. While the GPA is an organization of newspapers, it joins this brief for the benefit of all Georgians who are served by free and responsible journalism.

III. ARGUMENT

A. The Supreme Court Should Accept Review of This Case to Clarify An Important Area of the Law

The phenomenon of "strategic lawsuits against public participation" ("SLAPPs") was first identified by two University of Denver professors in a series of articles in the 1980s and early 1990s. The term is a moniker for any "attempt[]

to use civil tort action to stifle political expression." George W. Pring & Penelope Canan, *Strategic Lawsuits Against Public Participation*, 35 SOC. PROBS. 506, 506-507 (1988) (conducting a study of attempts to use civil tort actions to stifle political activity). A SLAPP may come in the guise of any number of different causes of action, as "the traditional language of tort claims camouflages them among the hundreds of thousands of civil cases"[1] brought annually in American courts. *Id.* at 507. All SLAPPs share a common feature, however, in that they are intended to chill constitutionally protected speech and petition activity. *See* Carson Barylak, Note, *Reducing Uncertainty in Anti-SLAPP Protection*, 71 OHIO ST. L.J. 845, 846-47 (2010).

A SLAPP plaintiff typically does not seek to have legitimate rights vindicated by a court, but rather to intimidate speakers and bury defendants under the weight of litigation expenses, removing them from the public debate. *See supra SLAPPs: An Introduction* at 939-944. Indeed, SLAPPs are rarely victorious and usually dismissed, but they achieve the plaintiff's goal of chilling citizen involvement and public participation in government. *Id.* at 944.

[1] Pring and Canan identified a number of torts which often serve as vehicles of SLAPPs. These include, among others, libel, interference with business or contract, malicious prosecution, conspiracy, nuisance, and invasion of privacy. *See* George W. Pring & Penelope Canan, *Strategic Lawsuits Against Public Participation ("SLAPPs"): An Introduction for Bench, Bar and Bystanders*, 12 BRIDGEPORT L REV. 937, 947-48 (1992) (*hereinafter SLAPPs: An Introduction*).

Twenty-eight states, along with the District of Columbia and the U.S. territory of Guam, have some form of anti-SLAPP legislation.[2] These statutes all rely on the central premise espoused by the U.S. Supreme Court of the "profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open." *New York Times Co. v. Sullivan*, 376 U.S. 254, 270 (1964). In the same seminal opinion, the Court pointed to the dangers to free speech that can result when speakers are deterred from engaging with

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[2] *See* Ariz. Rev. Stat. Ann. §§ 12-751–12-752 (LexisNexis 2014); Ark. Code Ann. §§ 16-63-501–16-63-508 (2014); Cal. Civ. Proc. Code § 425.16 (Deering 2014); Del. Code Ann. tit. 10, §§ 8136-8138 (2014); D.C. Code § 16-5501 (2014); Fla. Stat. Ann. §§ 720.304(4), 768.295 (LexisNexis 2014); Ga. Code Ann. §§ 9-11-11.1, 51-5-7(4) (2014); Guam Code Ann. tit. 7 §§17101–17109 (2014); Haw. Rev. Stat. §§ 634F-1–634F-4 (LexisNexis 2014); 735 Ill. Comp. Stat. Ann. 110/15–110/25 (LexisNexis 2014); Ind. Code Ann. §§34-7-7-1–34-7-7-10 (LexisNexis 2014); La. Code Civ. Proc. Ann. art. 971 (2013); Me. Rev. Stat. Ann. tit. 14, §556 (2014); Md. Code Ann., Cts. & Jud. Proc. § 5-807 (LexisNexis 2014); Mass. Gen. Laws Ann. ch. 231, § 59H (LexisNexis 2014); Minn. Stat. Ann. §§ 554.01–554.05 (2014); Mo. Ann. Stat. § 537.528 (2014); Neb. Rev. Stat. Ann. §§ 25-21, 241–25-21, 246 (2014); Nev. Rev. Stat. Ann. §§ 41.637, 41.650–41.670 (LexisNexis 2013); N.M. Stat. Ann. §38-2-9.1 (LexisNexis 2014); N.Y. Civ. Rights Law §§70-a, 76-a (Consol. 2014); N.Y. C.P.L.R. 3211(g) (Consol. 2014); Okla. Stat. Ann. tit. 12, §1443.1 (West 2013); Or. Rev. Stat. Ann. §§31.150–31.155 (West 2014); 27 Pa. Cons. Stat. Ann. §§7707, 8301–8303 (West 2014); R.I. Gen. Laws Ann. §§ 9-33-1–9-33-4 (West 2014); Tenn. Code Ann. §§4-21-1001–4-21-1004 (2014); Tex. Civ. Prac. & Rem. Code Ann. §§27.001–27.011 (Vernon 2013); Utah Code Ann. §§78B-6-1401–78B-6-1405 (LexisNexis 2014); Vt. Stat. Ann. tit. 12, §1041 (2014); Wash. Rev. Code Ann. §§ 4.24.510–4.24.525 (LexisNexis 2014). In addition, anti-SLAPP bills were introduced in the Michigan and North Carolina legislatures and the U.S. Congress in recent legislative sessions, but none has become law. *See* Citizen Participation Act, H.R. 746, 2011-2012 Leg., Reg. Sess. (N.C. 2011); Citizen Participation Act of 2009, H.R. 4364, 111th Cong. (2009); H.R. 5036, 95th Leg., Reg. Sess. (Mich. 2009).

controversial issues for fear of the cost of litigation. This "self-censorship" occurs when "would-be critics of official conduct [] [are] 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." *Id*. at 279.

It is that commitment to examination of official conduct that is at the heart of anti-SLAPP statutes, including Georgia's law. By its express terms, O.G.C.A. § 9-11-11.1 applies to statements made in connection with issues under consideration by official bodies or any other official proceedings, thus protecting discussion of official conduct from meritless suits designed to silence that important category of speech.

Given the critical importance that courts and legislatures have assigned to the right to petition, it is clear that the right should not be unduly narrowed. As regular commentators on official proceedings, members of the news media have a great interest in a clarification of the law that will recognize their importance to the process of examining government action and informing the citizenry of the results of that scrutiny. Members of the public, who share in the right to petition the government, will also benefit greatly from such a clarification. The role that the media plays in informing the public of government actions is critical in enabling those petitions in the first place.

The Supreme Court must accept this significant case and make an important area of the law clear. Failing to engage with the fundamental rights at issue in this petition would result in a serious threat to freedom of speech and the press in Georgia.

B. The Georgia Anti-SLAPP Statute, O.C.G.A. § 9-11-11.1, Protects Media Reports In Connection With Official Proceedings

News reports in connection with official proceedings, including Petitioner's news reports regarding the Respondent, conducted by local station FOX 5, are emphatically within the ambit of the Georgia anti-SLAPP statute and the trial court's refusal to so recognize demonstrates the need for this Court to intervene and so rule. FOX 5 reports covered official proceedings and issues under review by government agencies. The official proceedings include Respondent's civil lawsuit following the parade accident and the arrest and indictment of Respondent for allegedly lying about receiving a Purple Heart. The issues under review by government agencies include the Armed Forces' search for records of the Purple Heart and the district attorney and sheriff's office investigations of Respondent for allegedly lying about receiving a Purple Heart.

O.C.G.A. § 9-11-11.1 clearly spells out what is required for protection: that the statements be made "in connection with" official proceedings. O.C.G.A. § 9-11-11.1(c). Contrary to the trial court's interpretation, there is no requirement that the speech also be a petition to the government to act and not merely incidental to

the official proceedings. Nor is there discussion of whether "sensationalistic" speech is protected or not. For the trial court to overlay such *ipse dixit* limitations on a statute plainly designed to afford broad and significant protection for speech *in connection with* official proceedings is clearly contrary to the statutory language and intent. This Court itself recognized the expansive principles that provide the foundation of the law, explaining that its purposes "are to encourage citizen participation in matters of public significance through the exercise of the right of free speech and the right to petition the government for redress of grievances, and to prevent their valid exercise from being chilled through abuse of the judicial process." *Atlanta Humane Soc'y v. Harkins*, 278 Ga. 451 (2004). There is nothing in the statute to indicate that the media's exercise of free speech in reporting on and examining government conduct in the interest of holding official processes accountable is in any way less protected than the free speech exercised by the citizen petitioners. Consequently, FOX 5's reports on the official proceedings and investigations concerning Respondent should clearly fall under the ambit of the statute as statements in connection with the proceedings.

The trial court's decision to engraft additional non-statutory requirements for obtaining protection under the anti-SLAPP statute is especially troubling because of its assumption that trial courts have some sort of free rein under the statute to decide which speech to protect from chilling litigation and which to expose based

on their own personal editorial preferences. That itself raises constitutional issues. *See generally Miami Herald Pub. Co. v. Tornillo*, 418 U.S. 241, 258 (1974) ("The choice of material to go into a newspaper, and the decisions made as to limitations on the size and content of the paper, and treatment of public issues and public officials -- whether fair or unfair -- constitute the exercise of editorial control and judgment. It has yet to be demonstrated how governmental regulation of this crucial process can be exercised consistent with First Amendment guarantees of a free press as they have evolved to this time.") Without confirmation from the Supreme Court that the text of the statute should not be construed as more restrictive, targets of potential SLAPP suits will face uncertainty about their rights and will be further deterred from speaking out on matters of public importance.

IV. CONCLUSION

For the preceding reasons, *Amici* respectfully request that the Court grant Petitioner's Petition for Certiorari.

Respectfully submitted this 2nd day of February, 2015.

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CERTIFICATE OF SERVICE

This is to certify that the foregoing **AMICUS BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI** was served by email and by depositing a true copy of same in the United States Mail, proper postage prepaid, addressed as follows:

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This 2nd day of February, 2015.

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