

COMMONWEALTH OF MASSACHUSETTS

BARNSTABLE, SS
DEPARTMENT

SUPERIOR COURT

JOSEPH F. DUGAS and)
PAUL REVERE III,)
)
Plaintiffs,)
)
v.)
)
PETER ROBBINS and)
JOHN DOE,)
)
Defendants.)

C.A. No. BACV2008-491

MOTION OF CITIZEN MEDIA LAW PROJECT ET AL.
FOR LEAVE TO FILE A MEMORANDUM OF LAW AS *AMICI CURIAE*

The Citizen Media Law Project, Globe Newspaper Company, Inc., Media Bloggers Association, New England Press Association, and Online News Association (collectively, “*Amici*”) hereby move, pursuant to Superior Court Rule 9A, to file a memorandum of law as *amici curiae* regarding the limited issues of whether members of the news media are entitled to the protections contained in the Massachusetts anti-SLAPP statute and whether a blogger who receives compensation for his publishing activities is barred from asserting rights protected under the statute. In support of their motion, *Amici* state:

1. *Amicus* briefs may be filed in Superior Court. See, e.g., *Alliance, AFSCME/SEIU, AFL-CIO v. Commonwealth*, 425 Mass. 534, 535 n.4 (1997) (noting that the “Governor appeared as *amicus curiae*” in the Superior Court); *In re Massachusetts Smokeless Tobacco Litigation*, No. 03-5038-BLS1, 2008 WL 1923063, at *1 n.1 (Mass. Super. Apr. 9, 2008) (noting the *amicus curiae* brief of the Attorney General “has greatly assisted this Court”); *Boston Phoenix, Inc. v. New England Telephone and Telegraph Co.*, No. CIV. A. 95-0059, 1996 WL 473998, at *1 &

n.3 (Mass. Super. Aug. 12, 1996) (noting the filing of *amicus* briefs by the New England Legal Foundation, the American Civil Liberties Union, the Massachusetts Newspaper Publishers Association and the New England Newspaper Association).

2. While there is no Superior Court rule directly governing *amicus* briefs, Rule 17 of the Massachusetts Rules of Appellate Procedure allows a “brief [to] be conditionally filed with the motion for leave.” Mass. R. A. P. 17. Therefore, *Amici*’s brief accompanies this Motion.

3. *Amici* are news organizations and non-profit organizations that publish on the Internet and seek to protect the rights of journalists and other citizens to publish online.

4. *Amicus* Citizen Media Law Project (“CMLP”) provides legal assistance, education, and resources for individuals and organizations involved in online and citizen media. CMLP is jointly affiliated with Harvard University’s Berkman Center for Internet & Society, a research center founded to explore cyberspace, share in its study, and help pioneer its development, and the Center for Citizen Media, an initiative to enhance and expand grassroots media. CMLP is an unincorporated association hosted at Harvard Law School, a non-profit educational institution. The CMLP has previously appeared as an *amicus* on legal issues of importance to the media, including in *Bank Julius Baer & Co. v. Wikileaks.org*, No. 08CV824 (N.D. Cal. Feb. 26, 2008), *Jones Day v. Blockshopper LLC*, No. 08CV4572 (N.D. Ill. Sept. 19, 2008), and *Hatfill v. Mukasey*, No. 08-5049 (D.C. Cir. March 28, 2008).

5. *Amicus* Globe Newspaper Company, Inc. (the “Globe”) is a subsidiary of The New York Times Company and is the publisher of *The Boston Globe* newspaper. The Globe has published a daily newspaper in New England for over 100 years and, since 1995, has operated boston.com, an electronic news web site. The Globe regularly reports on the activities of local, state, and federal governments and, in addition, publishes commentary and opinions concerning

governmental affairs. As such, the Globe has an interest in protecting the freedom to speak about government affairs and the closely related freedom to petition the government for redress of grievances.

6. *Amicus* Media Bloggers Association (“MBA”) is a nonpartisan non-profit organization dedicated to promoting, protecting and educating its members; supporting the development of blogging or “citizen journalism” as a distinct form of media; and helping to extend the power of the press, with all the rights and responsibilities that entails, to every citizen. The MBA works to protect its members by defending the rights of bloggers and citizen journalists generally, providing first-line legal advice to members, and partnering with organizations dedicated to promoting values enshrined in the First Amendment to the U.S. Constitution.

7. *Amicus* New England Press Association (“NEPA”) is a volunteer organization comprised of more than 460 member newspapers with a total circulation of 4.7 million and 9.5 million readers in the six-state region. NEPA was founded in 1950 for the purposes of sharing information and ideas, while promoting professionalism, growth and excellence in community journalism. NEPA administers a legal hotline offering pre- and post-publication advice free of charge, publishes a monthly bulletin distributed to every member newspaper and journalism school in New England concerning developments and trends in the newspaper industry, and offers other services designed to promote excellence in journalism.

8. *Amicus* Online News Association (“ONA”) is the premier United States-based organization of online journalists. ONA’s members include reporters, news writers, editors, bloggers, 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.

9. Defendant Peter Robbins has filed a special motion to dismiss plaintiffs' defamation claim pursuant to Massachusetts' anti-SLAPP law, Mass. Gen. Laws ch. 231, §59H (2008). In their opposition to defendant's special motion to dismiss, plaintiffs argue that if defendant is a member of the news media, he is not entitled to the protections contained in the Commonwealth's anti-SLAPP law. In addition, plaintiffs argue that, because defendant receives compensation for his blogging activities, he lacks a sufficient interest to qualify for protection under the law.

10. *Amici* have been informed that, at a hearing on defendant's motion held on September 26, 2008, the Court asked the parties to address whether the compensation Mr. Robbins receives for his blogging activities makes him a member of the "news media" and, if so, whether that status would put him outside the protections afforded in the Massachusetts anti-SLAPP law. *Amici* understand that a hearing on these issues is scheduled for November 13, 2008.

11. *Amici* offer unique and valuable perspectives on the legal questions before the Court. As online publishers and established advocates for the rights of those in online media, *amici* have a strong interest in ensuring that bloggers such as Mr. Robbins are afforded the full protections of laws designed to protect those who engage in petitioning activity. *Amici* do not opine in their Memorandum of Law as to the ultimate merits of the pending motion to dismiss but, rather, offer legal analysis of the Commonwealth's anti-SLAPP statute and conclude that petitioners who are members of the news media and compensated bloggers are entitled to the full protections of the anti-SLAPP law. *Amici's* interest in this case stems from their concern that a

decision by the Court to deny the news media and bloggers the important protections of the anti-SLAPP law would chill their efforts to inform the citizens of the Commonwealth about issues before the government.

12. On November 6, 2008, *Amici* and their counsel attempted to contact counsel for both parties seeking their consent to the filing of the attached Memorandum of *Amici Curiae* Citizen Media Law Project et al. in Support of Application of the Massachusetts Anti-SLAPP Law to Petitioning Activity By Members of the News Media and Bloggers. Counsel for defendant consented to the filing. Counsel for plaintiffs did not return a call from *Amici's* counsel by the time this Motion and accompanying Memorandum of Law were served.

13. Counsel for *Amici* served copies of this Motion and accompanying Memorandum of Law on counsel for both parties via email and first-class mail on November 7, 2008. *Amici* believe that plaintiffs and defendant will have had reasonable notice in advance of the November 13, 2008 hearing regarding the arguments and legal issues raised by *Amici* in the accompanying brief.

Wherefore, *Amici* Citizen Media Law Project, Globe Newspaper Company, Inc., Media Bloggers Association, New England Press Association, and Online News Association respectfully request that this Court grant their motion for leave to file a memorandum of law as *amici curiae* in this action.

Respectfully submitted,

C.T. B.

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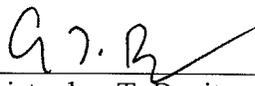
Dated: November 7, 2008

CERTIFICATE OF SERVICE

I, Christopher T. Bavitz, hereby certify that a true copy of the attached Motion of Citizen Media Law Project et al. For Leave to File a Memorandum of Law as *Amici Curiae* was served upon the attorney of record for each party by email and first-class mail on November 7, 2008.

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