IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT, DIVISION ONE

STEPHANIE SMITH, Plaintiffs and Respondent, v. PALISADES NEWS, SUE PASCOE, & MATT SANDERSON, Defendants and Appellants,	Case No. B292107 Los Angeles County Superior Court Case No. SC128999 Hon. Gerald Rosenberg, Presiding

APPLICATION FOR LEAVE TO FILE *AMICI CURIAE* BRIEF AND PROPOSED *AMICI* BRIEF OF THE REPORTERS COMMITTEE FOR FREEDOM OF THE PRESS AND 21 MEDIA ORGANIZATIONS IN SUPPORT OF APPELLANTS

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APPLICATION FOR LEAVE TO FILE *AMICI CURIAE* BRIEF

TO THE HONORABLE PRESIDING JUSTICE AND ASSOCIATE JUSTICES OF THE COURT OF APPEAL FOR THE STATE OF CALIFORNIA, SECOND APPELLATE DISTRICT, DIVISION 1:

Pursuant to California Rule of Court 8.200(c), the Reporters Committee for Freedom of the Press, American Society of News Editors, Associated Press Media Editors, Association of Alternative Newsmedia, California News Publishers Association, Californians Aware, Digital First Media, The E.W. Scripps Company, First Amendment Coalition, Fox Television Stations, LLC, Gannett Co., Inc., Greater Los Angeles Pro Chapter of the Society of Professional Journalists, Los Angeles Times Communications LLC, The McClatchy Company, The Media Institute, MPA – The Association of Magazine Media, National Press Photographers Association, News Media Alliance, The Northern California Chapter of the Society of Professional Journalists, Reuters America LLC, Society of Professional Journalists, and the Tully Center for Free Speech (collectively, "*amici*") respectfully request leave to file the attached brief as *amici curiae* in support of Appellants Palisades News, Sue Pascoe, and Matt Sanderson (collectively, the "Palisades News"). *Amici* are news media organizations or organizations who advocate on behalf of journalists and the press. Lead *amicus* the Reporters Committee for Freedom of the Press provides *amicus curiae* support in defamation litigation across the country and in California,

as do many of the other *amici*. (*See, e.g.*, *Hassell v. Bird* (2018) 5 Cal.5th 522; *Croce v. N.Y. Times* (6th Cir. 2019) No. 18-4158, ECF No. 32-1.)

INTEREST OF *AMICI CURIAE*

The determination of whether a plaintiff in a defamation action is a public figure is critical, because the United States Supreme Court has held that public figure plaintiffs in a defamation action must prove that a defendant acted with "actual malice." ((1991) *Masson v. New Yorker*, 501 U.S. 496, 510). Accordingly, *amici* have an interest in ensuring that California courts correctly interpret and apply legal doctrine concerning public figure status. *Amici* urge the Court to hold that Respondent Stephanie Smith is a limited purpose public figure, because she has engaged in public advocacy and media outreach concerning the integration of legal cannabis into her community and she sought licenses for those businesses.

In addition, members of the news media frequently rely on stories from wire services or other reputable news sources to inform the public. *Amici* write to urge the Court to hold that the neutral reportage privilege, which protects journalists and media organizations from liability if they are relying on credible sources when they report of events in the public interest, applies in this case. This protection extends even when some allegations or facts are in dispute, so long as the news outlet credits a legitimate source.

Amici also write to explain the history and rationales behind the wire service defense and to explain how this defense protects news organizations, and especially smaller newsrooms, who rely on wire services to report the daily news and carry out their constitutionally-protected role of informing the public. Not only do wire stories inform the public directly, but they are often the basis for local stories that journalists want to pursue. *Amici* urge this Court to adopt the wire service defense and hold that it applies in this case.

Amici respectfully request that this Court accept and file the attached *amici* brief. No party or counsel for any party, other than counsel for *amici*, authored this brief in whole or in part or funded its preparation.

Respectfully Submitted,

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CERTIFICATE OF INTERESTED ENTITIES OR PERSONS

Pursuant to California Rule of Court 8.208(e)(1) and (2), *amici* the Reporters Committee for Freedom of the Press, American Society of News Editors, Associated Press Media Editors, Association of Alternative Newsmedia, California News Publishers Association, Californians Aware, Digital First Media, The E.W. Scripps Company, First Amendment Coalition, Fox Television Stations, LLC, Gannett Co., Inc., Greater Los Angeles Pro Chapter of the Society of Professional Journalists, Los Angeles Times Communications LLC, The McClatchy Company, The Media Institute, MPA – The Association of Magazine Media, National Press Photographers Association, News Media Alliance, The Northern California Chapter of the Society of Professional Journalists, Reuters America LLC, Society of Professional Journalists, and the Tully Center for Free Speech by and through their undersigned counsel, certify that the following entities or persons have either (1) an ownership interest of 10 percent or more in the party or parties filing this certificate or (2) a financial or other interest in the outcome of the proceeding that the justices should consider in determining whether to disqualify themselves:

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Gannett Co., Inc. is a publicly traded company and has no affiliates or subsidiaries that are publicly owned. BlackRock, Inc., a publicly traded company, owns 10 percent or more of Gannett's stock.

The Greater Los Angeles Pro Chapter of the Society of Professional Journalists is a non-stock corporation with no parent company.

Los Angeles Times Communications LLC is wholly owned by NantMedia Holdings, LLC.

The McClatchy Company is publicly traded on the New York Stock Exchange American under the ticker symbol MNI. Chatham Asset Management, LLC and Royce & Associates, LP both own 10% or more of the common stock of The McClatchy Company.

The Media Institute is a 501(c)(3) non-stock corporation with no parent corporation.

MPA – The Association of Magazine Media has no parent companies, and no publicly held company owns more than 10% of its stock.

National Press Photographers Association is a 501(c)(6) nonprofit organization with no parent company. It issues no stock and does not own any of the party's or amicus' stock.

News Media Alliance is a nonprofit, non-stock corporation organized under the laws of the commonwealth of Virginia. It has no parent company.

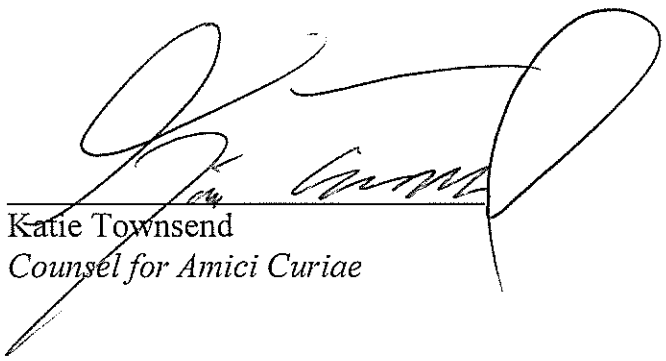
The Northern California Society of Professional Journalists has no parent corporation and issues no stock.

Reuters America, LLC is an indirect, wholly owned subsidiary of Thomson Reuters Corporation, a publicly held company. No publicly held company owns 10% or more of the stock of Thomson Reuters Corporation.

Society of Professional Journalists is a non-stock corporation with no parent company.

The Tully Center for Free Speech is a subsidiary of Syracuse University.

Dated: April 18, 2019



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INTRODUCTION

This case arises out of a small, community news outlet's publication of a news story regarding a matter of public concern and an individual who injected herself into an ongoing, public debate about large scale cannabis production. The Court should hold that Respondent Stephanie Smith ("Respondent") is a limited purpose public figure and that the neutral reportage doctrine protects the Palisades News from liability in this case. This defense applies to news stories about public figures and events of public interest, even if some allegations are disputed, thereby safeguarding the robust civic discourse at the core of the First Amendment.

Moreover, the wire service defense also should shield the Palisades News from liability. For decades, newsrooms across the country have relied on wire services and other reputable news sources to provide coverage of news stories that the newsroom itself would not otherwise have the resources to cover. And, for decades, the wire service defense has protected these news organizations from defamation liability for reporting based on a reputable news source's story. The wire service defense relieves newsrooms of the burden of independently verifying reputable stories before publication, and industry practice highlights how both small and large news media organizations rely on wire services on a daily basis *Amici* urge this Court to adopt the wire service defense, which makes it

possible for newsrooms to inform the public about national and global events in a timely manner.

For the reasons set forth herein, *amici*[1] respectfully urge this Court to reverse the portion of the trial court's order denying the Palisades News' special motion to strike pursuant to California's anti-SLAPP law, Code of Civil Procedure § 425.16.[2]

ARGUMENT

I. This Court should find that Respondent is a limited purpose public figure.

For more than fifty years, following the United States Supreme Court's seminal decision in *New York Times v. Sullivan* (1964) 376 U.S. 254, courts have recognized that the First Amendment provides greater protections for speech concerning individuals in the public eye. That recognition derives from what the Court has described as "a profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open," even when it involves "vehement, caustic, and sometimes unpleasantly sharp attacks" on prominent

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[1] A full description of *amici* is provided in Appendix A.

[2] *Amici* focus their brief on the neutral reportage doctrine and wire service defense. By focusing their brief on these issues, *amici* do not intend to suggest that the other grounds for reversal of the Superior Court's order raised by the Palisades News are without merit. Those grounds for reversal are addressed at length in the Palisades News' briefs.

individuals. (*Id.* at 270–71 (citing *Terminiello v. Chicago* (1949) 337 U.S. 1, 4; *De Jonge v. Oregon* (1937) 299 U.S. 353, 365).)

The importance of these protections to our democratic system cannot be overstated. As Justice Brennan has stated, "the First Amendment embodies more than a commitment to free expression and communicative interchange for their own sakes; it has a structural role to play in securing and fostering our republican system of self-government." (*Richmond Newspapers, Inc. v. Virginia* (1980) 448 U.S. 555, 587 (Brennan, J., concurring in the judgment).) Protections for speech involving matters of public importance ensure that the public's decisionmaking is "informed," and thus contribute to "th[e] process of communication necessary for a democracy to survive." (*Id.* at 587–88 (citing, *inter alia*, *Sullivan*, 376 U.S. at 270); *see also Garrison v. Louisiana* (1964) 379 U.S. 64, 74–75 ("[S]peech concerning public affairs is more than self-expression; it is the essence of self-government.").) Indeed, the Supreme Court has recognized that the First Amendment is "the matrix, the indispensable condition, of nearly every other form of freedom." (*Curtis Publ'g Co. v. Butts* (1967) 388 U.S. 130, 145 (citation omitted).)

Although *Sullivan* initially recognized those principles in connection with government and public officials, (376 U.S. at 279–80), the same important protections have been applied to speech about individuals who have achieved—or sought—public prominence and influence, (*e.g.*, *Gertz*

v. Robert Welch, Inc. (1974) 418 U.S. 323, 334–35). The rationale for this is straightforward: Much of this country's wealth and power is concentrated in the hands of individuals who may never run for public office, or hold a government job, but whose conduct nonetheless can dramatically affect their communities and the lives of individuals around them.

As Chief Justice Warren explained, "'public figures,' like 'public officials,' often play an influential role in ordering society" and "have as ready access as 'public officials' to mass media of communication, both to influence policy and to counter criticism of their views and activities." (*Butts,* 388 U.S. at 164 (Warren, C.J., concurring in the judgment).) Consequently, "[o]ur citizenry has a legitimate and substantial interest in the conduct of such persons, and freedom of the press to engage in uninhibited debate about their involvement in public issues and events is as crucial as it is in the case of 'public officials.'" (*Id.*) Indeed, "[t]he fact that they are not amenable to the restraints of the political process only underscores the legitimate and substantial nature of the interest, since it means that public opinion may be the only instrument by which society can attempt to influence their conduct." (*Id.*)

As discussed below, these underlying principles require an expansive application of the "public figure" doctrine. It should be applied not only to "household names," but also to individuals whose prominence,

access to media, and ability to influence important matters in their community warrant protecting speech that allows public scrutiny of their conduct. Respondent is a prominent spokesperson on a matter of substantial public concern—the operation and regulation of this state's burgeoning cannabis industry. She should be deemed to be a limited purpose public figure in her defamation suit against a small community newspaper that reported on allegations connected to her involvement in that industry.

A. Fundamental First Amendment principles require greater protections for speech about public figures relating to important public issues.

As the Palisades News explained in its Opening Brief, courts have recognized at least two types of public figures: (1) "all purpose" public figures, who have achieved general notoriety, and (2) "limited purpose" public figures, who are generally less known, but who have become involved in some public controversy. (Appellants' Opening Br. 40.) A limited purpose public figure is someone who "voluntarily injects h[er]self or is drawn into a particular public controversy" and has "undertaken some voluntary [affirmative] act[ion] through which [s]he seeks to influence the resolution of the public issues involved." (*Reader's Digest Ass'n v. Superior Court* (1984) 37 Cal.3d 244, 253–54 [208 Cal.Rptr.137] (quoting *Gertz*, 418 U.S. at 351).) Although not considered "public figures" for all purposes, courts have recognized that such individuals should be treated as

public figures with respect to "the particular issue or controversy with which they are associated." (*Denney v. Lawrence* (1994) 22 Cal.App.4th 927, 934 [27 Cal.Rptr. 556].)

The constitutional imperatives underpinning the Supreme Court's decisions in *Sullivan* and *Gertz* demonstrate why speakers like the Palisades News should receive heightened protection for articles about limited purpose public figures. Indeed, this category of speakers arguably is most closely connected to the principles underlying the First Amendment—including the importance of having open discussion of public issues. Limited purpose public figures, by definition, include those who voluntarily take a public role in a particular controversy ***in an attempt to influence its resolution***. By doing so, they "may fairly be said to have voluntarily invited comment and criticism." (*Khawar v. Globe Int'l, Inc.* (1998) 19 Cal.4th 254, 265 [79 Cal.Rptr.2d 178] (citing *Gertz*, 418 U.S. at 344–45).) Thus, as the United States Supreme Court has explained, "the communications media are entitled to act on the assumption that public officials *and public figures* have voluntarily exposed themselves to increased risk of injury from defamatory falsehood concerning them." (*Gertz*, 418 U.S. at 345 (emphasis added).)

In the case at hand, however, the trial court viewed the "controversy" at issue through a narrow lens, without regard to the broader constitutional imperatives underlying the public figure doctrine. According

to the trial court, the "public controversy" in which Respondent was involved only concerned the validity of specific ordinances governing cannabis facilities that Respondent had challenged in an unrelated lawsuits. (2AA319-320.) But the First Amendment requires a more expansive interpretation and application of these protections.

As one court explained, "the touchstone remains whether an individual has 'assumed [a] role[] of special prominence in the affairs of society . . . [that] invite[s] attention and comment.'" (*Tavoulareas v. Piro* (D.C. Cir. 1987) 817 F.2d 762, 773 (*en banc*) (alteration in original) (quoting *Gertz*, 418 U.S. at 345).) This is particularly true where, as here, the speech at issue addresses a matter of broad public concern. As another court explained, "[s]tanding as close as we are to the First Amendment's core, we must diminish th[e] risk [of 'chill[ing] speech precious by First Amendment standards'] by taking a view of 'relevance' broad enough to reveal whether the statement might affect public opinion without discriminating based on the reasons why." (*Kisser v. Coalition for Religious Freedom* (N.D. Ill. 1995) 1995 WL 3996, at *2.)

California courts have taken an appropriately broad view of these protections, focusing on the broader parameters of a particular controversy, rather than focusing narrowly on the particular speech that has been challenged. (*E.g.*, *Cabrera v. Alam* (2011) 197 Cal.App.4th 1077, 1092 [129 Cal.Rptr.3d 74] ("The public controversy here was the contested board

of directors' election . . . ."); *Gilbert v. Sykes* (2007) 147 Cal.App.4th 13, 25 [53 Cal.Rptr.3d 752] (public controversy was "the relative merits of plastic surgery"); *Anti-Defamation League of B'Nai B'rith v. Superior Court* (1998) 67 Cal.App.4th 1072, 1089–91 [79 Cal.Rptr.2d 597] (public controversy was described as "Israeli-Palestinian relations and other topical issues" and also as "Middle East and/or South African causes"; discussing cases); *Copp v. Paxton* (1996) 45 Cal.App.4th 829, 846 [52 Cal.Rptr.2d 831] (public controversy was emergency earthquake preparedness).) As the Court explained in *Copp*, "[i]f the issue was being debated publicly and if it had foreseeable and substantial ramifications for nonparticipants, it was a public controversy." (45 Cal.App.4th at 845 (citing *Waldbaum v. Fairchild Publications, Inc.* (D.C. Cir. 1980) 627 F.2d 1287, 1297). *Accord Gilbert*, 147 Cal.App.4th at 25 (same); *Annette F. v. Sharon S.* (2004) 119 Cal.App.4th 1146, 1164 [15 Cal.Rptr.3d 100] (same).)

The trial court's narrow focus here—limiting the "controversy" to the parameters of Respondent's prior litigation (2AA319-320)—is inconsistent with the broader approach taken by courts in California and elsewhere. The operation and regulation of the cannabis industry in California is a subject of widespread debate, and includes the integration of legal cannabis into communities (including Respondent's own community), and all aspects of state and local regulation (including zoning and land use). (*See City of Riverside v. Inland Empire Patients Health & Wellness Ctr.,*

Inc. (2013) 56 Cal.4th 729, 762–63 [156 Cal.Rptr.3d 409] (noting that the cannabis regulation is "an area that remains controversial"); *see also* 1AA095-096; 1AA098-100; 1AA131-143; 1AA157-158.) Questions about who should be allowed to operate cannabis related businesses, and where those businesses should be allowed to operate, easily fall within the scope of this broad controversy. In analyzing Respondent's status, this Court should find that the trial court applied an impermissibly narrow standard for evaluating the "controversy" at issue. When that "controversy" is properly defined, Respondent easily qualifies as a limited public figure: She engaged in public advocacy and media outreach concerning the integration of legal cannabis into her community, and she sought licenses for those businesses. (1AA074; *see also* Amici's Motion for Judicial Notice (MJN) Ex. A.) By doing so, she "may fairly be said to have voluntarily invited comment and criticism" about her involvement with the cannabis industry. (*Khawar*, 19 Cal.4th at 265 (citing *Gertz*, 418 U.S. at 344–45).)

B. Properly applied, Respondent meets the criteria for a limited purpose public figure.

In evaluating whether a plaintiff is a limited purpose public figure, California courts have considered the following criteria: (1) whether there is a public controversy, which may exist where "the issue was being debated publicly and . . . had foreseeable and substantial ramifications for nonparticipants"; (2) whether plaintiff took "some voluntary act through

which he seeks to influence the resolution of the public issues involved"; and (3) and whether the alleged defamation was "germane to the plaintiff's participation in the controversy." (*Copp,* 45 Cal.App.4th at 845–46 (emphasis, citations omitted). *Accord Cabrera*, 197 Cal.App.4th at 1092 (same); *Gilbert*, 147 Cal.App.4th at 24 (same).) It can hardly be contested that over the past several years, a public debate has been raging in California and elsewhere about legalization of cannabis, including how best to regulate this nascent industry, and what impacts legalization may have on local communities. Respondent inserted herself directly into this controversy, seeking to influence public opinion and affect the course of government regulation.

First, as the Palisades News established, Respondent voluntarily sought to influence this debate and affect its outcome by developing large-scale cannabis cultivation and distribution properties in the community, and by publicly advocating for less stringent cannabis regulations, both on social media and in the press. (Appellants' Opening Br. 43–45; Appellants' Reply Br. 15-23; 1AA132; *see also* Amici MJN Ex. A.) She was not an anonymous property owner, or a passive landlord whose tenant secretly turned her properties into giant cannabis centers; to the contrary, she deliberately and strategically sought out the opportunity to play in this field, no doubt recognizing the potential for dramatically higher rents. (1AA138-142.) She also voluntarily and enthusiastically sought public attention for

her role, describing herself as a "mother, business leader and advocate," "a well-known and recognized leader in large-scale cannabis real estate development," and a "leader in Cannabis." (Amici MJN Ex. A at 1, 3, 4, 7.) She proudly declared that "I am a Queenpin indeed." (*Id.* at 4.)

Moreover, both the public controversy and Respondent's role in it are significantly broader than a few city ordinances governing cannabis facilities—the restrictive view of the "controversy" identified by the trial court. (2AA319-320.) The alleged defamation—essentially that Respondent was the "operator" of a cannabis business—plainly relates to her role as a developer of, and advocate for, the controversial legal cannabis industry. (*See generally* Appellants' Opening Br. 43–45; Appellants' Reply Br. 15–23.)

Second, it long has been the law that a person who seeks government licensing or permits may deemed to be a limited purpose public figure, when that licensing is related to a controversial subject of serious public concern. The United States Supreme Court made this clear in *Greenbelt Cooperative Publishing Ass'n v. Bresler*, holding that a real estate developer who "was deeply involved in the future development of the city" "clearly fell within even the most restrictive definition of a 'public figure,'" given the significant public interest in the development at issue. ((1970) 398 U.S. 6, 8–9.) The Court explained the importance of providing

First Amendment protections for a newspaper reporting on the developer's activities:

> This case involves newspaper reports of public meetings of the citizens of a community concerned with ***matters of local governmental interest and importance. The very subject matter of the news reports, therefore, is one of particular First Amendment concern***. "The maintenance of the opportunity for free political discussion to the end that government may be responsive to the will of the people and that changes may be obtained by lawful means * * * is a fundamental principle of our constitutional system." [ ] "***Freedom of discussion, if it would fulfill its historic function in this nation, must embrace all issues about which information is needed or appropriate to enable the members of society to cope with the exigencies of their period***." [ ] Because the threat or actual imposition of pecuniary liability for alleged defamation may impair the unfettered exercise of these First Amendment freedoms, the Constitution imposes stringent limitations upon the permissible scope of such liability.

(*Id.* at 11–12 (citations omitted; emphasis added).) Even the plaintiff conceded that it was a public figure, which the Supreme Court found "was clearly correct" because it "was deeply involved in the future development of the city of Greenbelt." (*Id.* at 8.) The developer's past and proposed future agreements with the city—seeking favors and permits for its development plans, and an attempt to sell land to the city—exposed the developer to public discussion about its interactions with the city, and protected the newspaper's characterization of the developer's negotiating position as "blackmail." (*Id.*)

California courts similarly have applied this constitutional mandate in finding plaintiffs to be public figures. For example, in *Okun v. Superior Court*, the California Supreme Court followed *Greenbelt* in holding that a real estate developer whose only relevant conduct was attempting to develop property, including through a land swap with the city, was a public figure. ((1981) 29 Cal.3d 442, 451 [175 Cal.Rptr. 157] (citing *Greenbelt*, 398 U.S. at 8–9).) The Court rejected claims based on an article calling the actions of public officials—purportedly a result of improper influence by plaintiff—"unwise, 'incredible,' a product of 'suspicious' motives, and a flouting of the voters' wishes." (*Id.*) As the Court explained, permitting claims to arise from speech critical of a public official's affiliations and "how those affiliations seem reflected in decision-making . . . would inhibit a significant segment of the discourse vital in a democracy." (*Id.* (citation omitted).) This critical question—whether the claims at issue would hinder important public debate on an important issue—must be answered as broadly as the First Amendment demands.

Similarly, in *Mosesian v. McClatchy Newspapers*, the Court of Appeal held that an individual who applied for a license with the California Horse Racing Board was a limited purpose public figure, in part because he had voluntarily submitted himself to review by the state's "regulatory scheme" in a "controversial subject[] . . . deserving of serious public concern." ((1991) 233 Cal.App.3d 1685, 1698–1702 [285 Cal.Rptr. 430].)

The court described several factors that weighed in favor of public figure status: (1) a "controversy" existed regarding whether the plaintiff would win government approval for his horse racing license at a public fairgrounds; (2) the plaintiff "thrust[] himself into the center of the dispute to influence the decision makers as to the merits of the application"; (3) the plaintiff voluntarily "step[ped] from a cloak of privacy into public view for the purpose of his qualifications to be licensed"; and (4) "[h]orse racing and gambling are controversial subjects and are deserving of serious public concern . . . the California regulatory scheme for licensing and oversight [of horse racing] is detailed and replete with rules designed to protect the public from criminal elements." (*Id.* at 1701–02.) In light of these factors, the appellate court held that "an applicant's personal qualifications to be licensed ***are subject to public scrutiny and comment in every case***." (*Id.* at 1700–02 (emphasis added).) In doing so, the court emphasized the value in giving the press latitude to comment on individuals seeking government approval to operate in controversial spaces in the community. (*Id.* at 1693–95.)

The Court of Appeal reached the same result in *Hofmann v. Du Pont De Nemours*, holding that a land developer who sought government approval for his housing project was a public figure. ((1988) 202 Cal.App.3d 390, 404–05 [248 Cal.Rptr. 384].) In *Hofmann*, a land developer sued the owner of a nearby chemical plant based on comments

made by some of the plant's employees that living nearby could be hazardous. The court found that the developer was a limited purpose public figure in connection with "determining the uses to which land in Contra Costa County may be put." (*Id.* at 404.) The court explained that a person "who seeks necessary public approval for a . . . project . . . enters the public arena, invites public judgment, and is, for First Amendment purposes, similar to one who seeks government office" because he "runs the risk of closer public scrutiny than might otherwise be the case." (*Id.* (citation, internal quotes omitted).)[3]

The rationale behind these cases squarely applies here. Cannabis, like horse racing, gambling and many real estate developments, is a "controversial subject[] . . . deserving of serious public concern." (*Mosesian*, 233 Cal.App.3d at 1701.) Issues surrounding cannabis development—including the people involved, and proposed locations to

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[3] *See also Kaufman v. Fidelity Fed. Sav. & Loan Ass'n* (1983) 140 Cal.App.3d 913, 921 [189 Cal.Rptr. 818] (plaintiff became a public figure "by voluntarily injecting himself into [a] zoning dispute"); *Kensington Land Co. v. Zelnick* (Ct. Cmn. Pleas 1998) 95 Ohio Misc.2d 45, 54 ("[D]evelopers who significantly participate in the process of seeking recommendations and approvals from public agencies for rezoning and development are 'public figures' under a First Amendment analysis, even though such plaintiffs did not want any controversy over their applications." (citing cases)); *West v. Media General Ops., Inc.* (E.D. Tenn. 2001) 2001 WL 34079475, at *8 (plaintiffs were limited purpose public figures in connection with contract to provide probation services to court).

cultivate and distribute cannabis products—are contentious topics of debate in communities throughout the State. (*E.g.*, 1AA095-096; 1AA098-100; 1AA131-143; 1AA157-158; *see also Inland Empire Patients Health & Wellness Ctr.*, 56 Cal.4th at 762-63.) Respondent is "a well-known and recognized leader in large-scale cannabis real estate development." (1AA136.) As she admits, she was "already in the permitting process" for the raided properties and "already ha[d] a lot of licenses in other jurisdictions[]" prior to the publication of the Palisades News article at issue here. (1AA074; *see also* Amici MJN Ex. A.)

The trial court incorrectly defined Respondent's role in the controversy surrounding legalized cannabis as including only the lawsuits she filed that challenged several city ordinances governing cannabis facilities. (2AA319-320.) But Respondent was a vocal participant in the community debate on the issue of cannabis generally—not merely about the challenged ordinances—long before the Palisades News published the article at issue. By (1) publicly identifying herself as an advocate for cannabis (Amici MJN Ex. A) and making public statements to the press about cannabis in the community (Amici MJN Ex. A; 1AA071-081); and (2) voluntarily assuming a role as a "leader" in large-scale cannabis real estate development (1AA136), including by applying for government licensing for her cannabis related businesses (1AA074), Respondent became a limited purpose public figure with respect to her role in the

cannabis industry. Any contrary conclusion would improperly limit the constitutional protections that are essential for media organizations (especially small community newspapers) to report on matters of significance in the community. *Amici* urge this Court to reverse the trial court's decision, and reject its impermissibly narrow cabining of the limited purpose public figure doctrine.

II. This Court should recognize the neutral reportage doctrine to protect speech about public figures.

If this Court finds that Respondent is a limited purpose public figure—as it should—it also should find that the neutral reportage doctrine protects the publication at issue here. (Appellants' Reply Br. 20.) The Palisades News is a small community newspaper that relied on trustworthy news sources in reporting information about law enforcement actions that concerned Respondent's involvement in the cannabis industry. (Appellants' Opening Br. 85–86.) These issues are of importance to the Palisades News' readers, who benefit from having a local news organization committed to providing them with information about their community. The rationale underlying the First Amendment and its broad protection for reporting the news warrant this Court's adoption of the neutral reportage doctrine in California for lawsuits arising from speech about public figures.

A. The neutral reportage doctrine derives from bedrock First Amendment principles.

The decision of the United States Court of Appeals for the Second Circuit four decades ago that first enunciated the contours of the neutral reportage doctrine relied on well-established constitutional law concerning speech about public figures. (*Edwards v. Nat'l Audubon Society* (2d Cir. 1977) 556 F.2d 113, 115; *see* Section A, *supra*.) As the Second Circuit stated in its opening paragraph:

> In a society which takes seriously the principle that government rests upon the consent of the governed, freedom of the press must be the most cherished tenet. It is elementary that a democracy cannot long survive unless the people are provided the information needed to form judgments on issues that affect their ability to intelligently govern themselves.

(*Id.*) As it explained, in the years following the United States Supreme Court's decision in *Sullivan*, "federal courts have steadfastly sought to afford broad protection to expression by the media, without unduly sacrificing the individual's right to be free of unjust damage to his reputation." (*Id.*; *see also Thomas v. Bd. of Ed., Granville Cent. Sch. Dist.* (2d Cir. 1979) 607 F.2d 1043, 1047 ("At the heart of the First Amendment is the ineluctable relationship between the free flow of information and a self-governing people, and courts have not hesitated to remove the occasional boulders that obstruct this flow." (citing cases)).)

Guided by these important principles, in *Edwards* the court held that "when a responsible, prominent organization like the National Audubon

Society makes serious charges against a public figure, the First Amendment protects the accurate and disinterested reporting of those charges, regardless of the reporter's private views regarding their validity." (556 F.2d at 120 (citing *Time, Inc. v. Pape* (1971) 401 U.S. 279; *Medina v. Time, Inc.* (1st Cir. 1971) 439 F.2d 1129).) This doctrine, dubbed the "neutral reportage" doctrine, permits the press to publish fair and accurate reports of accusations against public figures without fear of liability, even if the allegations are disputed. It recognizes that "if we are to enjoy the blessings of a robust and unintimidated press, ***we must provide immunity from defamation suits where the journalist believes, reasonably and in good faith, that his report accurately conveys the charges made***." (*Id.* (emphasis added).) Thus, as the *Edwards* court concluded, "[t]he public interest in being fully informed about controversies that often rage around sensitive issues demands that the press be afforded the freedom to report such charges without assuming responsibility for them." (*Id.*)

In reaching its decision, the court explored "[t]he contours of the press's right of neutral reportage," declaring that those parameters "are, of course, defined by the principle that gives life to it." (*Id.*) Courts have recognized several factors—all derived from and furthering those constitutional principles:

- ***First***, the defendant is communicating newsworthy charges that create or relate to a public controversy. (*Id.*)

- ***Second***, the defendant relays those charges accurately and disinterestedly. (*Id.*)
- ***Third***, the charges are about a public official or a public figure. (*Id.*)
- ***Finally***, "because the whole purpose of the privilege is to inform the public and let it judge which side is true," "the 'trustworthiness' of the original defamer should not be at issue." (*Ward v. News Group Int'l, Ltd.* (C.D. Cal. 1990) 733 F.Supp. 83, 84 (citing *Barry v. Time, Inc.* (N.D. Cal. 1984) 584 F.Supp. 1110, 1126–27).) Any other rule—for example, limiting the neutral reportage doctrine because of questions about the original defamer's credibility—"would have a chilling effect on speech and dissemination of information." (*Ward*, 733 F.Supp. at 84.)

Cases where this protection has been recognized demonstrate its importance. In *Edwards*, for example, plaintiffs sued *The New York Times* and the National Audubon Society ("NAS"), based on the newspaper's publication of claims by the NAS that a group of scientists were behaving as "paid liars" on the issue of whether the insecticide DDT was harming bird populations. (556 F.2d at 115–17.) Although the reporter questioned whether the NAS would be able to prove its claims regarding plaintiffs, he also recognized the importance within the DDT debate of discussing the

possible conflict of interest. (*Id.* at 117–18.) The Second Circuit agreed, emphasizing that "[w]hat is newsworthy about such accusations is that they were made." (*Id.* at 120.)

Similarly, in *McCracken v. Gainesville Tribune, Inc.*, the court protected the republication of a land developer's statements during a town meeting that another developer was "unscrupulous." ((Ga. Ct. App. 1978) 146 Ga.App. 274, 275.) As the court explained:

> "The privilege exists because it is more important that the public be informed about the privileged proceeding than it is for the defamed person to have legal recourse for the publication of the defamatory matter. The public interest in being informed about public proceedings, ***public controversies***, public officials and public figures, demands freedom of the press to report such events without assuming responsibility for what was said by the speaker."

(*Id.* (emphasis added; citation omitted).)

In *Watson v. Leach*, the court applied the neutral reportage doctrine to protect a newspaper article concerning a state auditor's report suggesting that a town trustee exaggerated the damage of a snowstorm to gain access to emergency funds. ((Ohio Ct. App. 1996) 1996 Ohio App. LEXIS 2474.) The court embraced the Second Circuit's explanation that

> [t]he interest of a public figure in the purity of his reputation cannot be allowed to obstruct that vital pulse of ideas and intelligence on which an informed and self-governing people depend. It is unfortunate that the exercise of liberties so precious as freedom of speech and of the press may sometimes do harm that the state is powerless to recompense; but this is the price that must be paid for the blessings of a democratic way of life.

(*Id.* at *13 (quoting *Edwards*, 556 F.2d at 122); *see also Celebrezze v. Netzley* (Ohio Ct. App. 1988) 1988 Ohio App. LEXIS 3153 at *24–28 (doctrine protected a newspaper that reported the accusation in a political campaign brochure that the county's Italian-American judges had mafia connections).) In each case, the neutral reportage doctrine helped ensure that the media organization could publish information of importance to its readers, to help them better understand both sides of the ongoing debates about the issues reported.

California courts have applied the doctrine and its underlying principles in cases involving public figures or public officials. For example, in *Weingarten v. Block*, the court held that a report of allegations made by former city council members that a former city attorney made unfair and illegal profits in real estate transactions was protected. ((1980) 102 Cal.App.3d 129, 148 [162 Cal.Rptr. 701].) It emphasized that "[t]he First Amendment protects the reporting of charges against a public official or figure 'regardless of the reporter's private views regarding their validity.'" (*Id.*) Similarly, in *Grillo v. Smith*, the court held that a newspaper's publications about a former municipal court judge's conduct during a contempt proceeding was protected, in part because the interest in fully informing the public about controversies around sensitive issues required giving the press freedom to report charges without assuming responsibility for them. ((1983) 144 Cal.App.3d 868, 872 [193 Cal.Rptr.

414]; *see also Ward*, 733 F.Supp. at 85 (holding defendant's "accurate and neutral" republication of an article exposing lurid details about a public figure plaintiff's life was protected by the neutral reportage doctrine); *Barry*, 584 F.Supp. at 1125 (applying the neutral reportage doctrine to protect magazine's publication of a felon's allegation that a former college basketball coach violated NCAA rules finding that, without such protection for the press, "the public will be deprived of the opportunity to make informed judgments with respect to public controversies"); *see generally* Appellants' Opening Br. 82–84.)[4]

This Court should join these courts and others across the country that have recognized the First Amendment's protection for speech that meets the criteria set forth in *Edwards* and its progeny. Any other conclusion would give short shrift to the constitutional principles that the United States Supreme Court embraced decades ago, which are necessary for the full and fair discussion of public controversies and the public figures involved in those controversies.

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[4] Although the California Supreme Court rejected application of the doctrine to statements about **private** figures in *Khawar v. Globe Int'l, Inc.*, 19 Cal. 4th 254, 273 (1998), it did not disturb these well-considered decisions involving public officials and public figures, which are based on the foundational First Amendment principles discussed above.

B. The neutral reportage doctrine applies to the Palisades News article at issue here.

Perhaps more than ever before small community news organizations are threatened by harsh economic conditions.[5] With the shuttering of local news sources has come more political polarization, and a less informed populace.[6] Limited resources mean that many community newspapers must rely on the reporting of larger organizations, to ensure that their readers have information even about matters involving their own community. Without vigorous constitutional protections, these small local newspapers will pay a disproportionally steep price if they rely on news reports from a larger organization that turn out to be inaccurate.

Like many local newspapers, the *Palisades News* employs a small staff to report and comment on news and information relevant to the community. (1AA052.) It and other community newspapers necessarily

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[5] *See*, *e.g.*, Penelope Muse Abernathy, *The Loss of Local News: What It Means for Communities*, The Expanding News Desert, a Report of the UNC School of Media and Journalism, Center for Innovation and Sustainability in Local Media, University of North Carolina at Chapel Hill (2019), available at https://www.usnewsdeserts.com/reports/expanding-news-desert/loss-of-local-news/ (visited April 9, 2019).

[6] *See*, *e.g.*, Mike Colagrossi, *Loss of Local Newspapers is Making America More Politically Polarized*, Big Think (Feb. 8, 2019), https://perma.cc/2BFR-UN7T; David Bauder, *Loss of Newspapers Contributes to Political Polarization*, Associated Press (Jan. 30, 2019), https://perma.cc/Y6NW-H4YB.

rely on the reports of larger, reputable news organizations. (*See infra*, Part III.) Under Respondent's theory of the law, however, these small newspapers would be exposed to potentially devastating financial responsibility merely because they published information that already was reported by a reliable news organization.[7] The chaos invited by allowing such liability is easy to discern:

- On the eve of a hotly contested election, a local politician is reported to be involved in a controversy arising in Washington, D.C.—perhaps involving lobbying, or government contracts—based on interviews conducted by the D.C. bureau of a large national news organization. Unable to reach the source but attuned to the significance of the accusations in the local race if true, the local newspaper reports the story (crediting its source), while adding local perspective. It later learns that the larger news organization's source recanted.
- An outspoken local lawyer who has injected himself into large national controversies is alleged to be involved in an

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[7] Insofar as *amici* are aware, Respondent did not sue any of the larger news organizations on which the *Palisades News* relied. Instead, she chose the smallest, and most vulnerable, news organization as her target.

extortion scheme, based on documents that a national news organization obtained from the alleged victim. A local newspaper reports the extortion allegation, and is sued for defamation based on the lawyer's claim that the writings did not rise to the level of criminal extortion.

The neutral reportage doctrine ***should*** apply in these cases, and in this case. As detailed in the Opening Brief (Appellants' Opening Br. 85–86), the allegedly defamatory statements were accurately reported by the Palisades News concerning a local public figure and her involvement in a controversial public issue, based on publications by two reputable news organizations, CBS News and KTLA. (*Id.*) The Palisades News article detailed police raids on Respondent's home in Pacific Palisades, where it is published, and her properties in San Bernardino that had been leased to unlicensed cannabis businesses. (1AA020-025.) There can be no dispute that the fact that a local public figure's home and several business properties were raided in connection with unlicensed cannabis operations is newsworthy, particularly given the irrefutable public interest in legalization of cannabis and its effect on local communities. (*E.g.*, *Shulman v. Group W Prods., Inc.* (1998) 18 Cal.4th 200, 228–29 [74 Cal.Rptr.2d 843] (broadly defining newsworthiness to include—at issue there—a car accident and related events); *Gates v. Discovery Comm'n, Inc.* (2004) 34 Cal.4th 679, 696 [21 Cal.Rptr.3d 663] (holding that "an invasion of privacy claim based

on allegations of harm caused by a media defendant's publication of facts obtained from public official records of a criminal proceeding is barred by the First Amendment"). The First Amendment must be interpreted in a manner that provides journalists with the protections they need to inform the public about these important subjects, including the players involved. The Palisades News should not be subject to liability for seeking to inform the public about these critical issues.

Local newspapers play a vital role in our democracy by helping to shape robust, informed communities. To protect the First Amendment, and to safeguard this vital part of the First Amendment's role in ensuring the "uninhibited, robust, and wide-open" discussion of public issues, this Court should recognize the neutral reportage doctrine and protect news organizations, like Palisades News, from liability arising from the accurate and disinterested republication of newsworthy statements involving public figures.

III. Even if this Court finds Respondent to be a private figure, the wire service defense applies to the Palisades News article at issue.

The wire service defense provides that a news outlet does not act negligently when it republishes a news item from a reputable news service. (*See Appleby v. Daily Hampshire Gazette* (Mass. 1985) 478 N.E.2d 721, 725.) Because the wire service defense has been adopted by numerous courts around the country and, consistent with the First Amendment,

protects the news media's ability to report on matters of public concern, including those about a private figure, in a timely manner to the public, *amici* urge this Court to adopt the wire service defense and hold that it bars Smith's defamation claim against the Palisades News.

A. Since 1933, numerous courts around the country have recognized the wire service defense.

The Florida Supreme Court, in *Layne v. Tribune Co.*, first articulated what became known as the wire service defense in 1933. ((Fla. 1933) 146 So. 234.) There, Layne, a Congressman's secretary, sued *The Tampa Morning Tribune* for defamation for publishing two stories, both attributed to Washington, D.C.-based wire services, that said he was indicted for possession of alcohol. (*Id.* at 235–36.) The Court affirmed dismissal of the case, explaining that while newspapers face a "high degree of care" to ensure that they do not publish inaccuracies, the "mere reproduction in a newspaper of outside press dispatches . . . purporting on their face to have been solely derived from outside news agencies" does not face the same requirement. (*Id.* at 238.) Recognizing the news industry's reliance on wire services to inform the public every day, the *Layne* court explained:

> [N]o newspaper could afford to warrant the absolute authenticity of every item of its news, nor assume in advance the burden of specially verifying every item of news reported to it by established news gathering agencies, and continue to discharge with efficiency and promptness the demands of modern necessity for prompt publication, if publication is to be had at all.

(*Id.* at 239.) Consequently, the *Layne* court held that the local newspaper was acting as a "local 'screen'" to the wire service, and thus the local paper had no authorship—nor liability—of its own. (*Id.*)

The *Layne* court recognized that technology had drastically changed how newsrooms inform the public. (*See id.* at 237 (noting that legal principles should recognize "new factors of life and business arising from the complexities of a mechanized era of human progress").) Around the 1930s, premier wire services, which provide materials and facts for news outlets around the country to republish, were making the switch from relying on Morse code and the telegraph to the teletype printer, making wire services more reliable and efficient. (*See* Libby Quaid, *Morse was the Source: Telegraph Served AP for Eight Decades*, Associated Press, https://perma.cc/G9A2-PNTC; Jennifer L. Del Medico, *Are Talebearers Really as Bad as Talemakers?: Rethinking Republisher Liability in an Information Age*, Comment, 31 Fordham Urb. L.J. 1409, 1418 (2004) (noting how teletype improved accuracy and reliability of wire services).)

As the efficiency and reliability of wire services increased, courts across the country recognized that imposing a duty on news organizations to verify wire service stories, even about local events, "would impose a heavy burden on the media's ability to disseminate newsworthy material." (*See Appleby*, 478 N.E.2d at 725.) Courts therefore equated an independent duty to verify such stories to an *extraordinary* duty of care, not ordinary

care as required in defamation cases involving private figures. (*See O'Brien v. Williamson Daily News* (E.D. Ky. 1990) 735 F.Supp. 218, 225; *Brown v. Courier Herald Pub. Co., Inc.* (S.D. Ga. 1988) 700 F.Supp. 534, 537.) To date, federal and state courts in at least 16 states have recognized the wire service defense, or have held that a news publication does not act negligently when it relies on reputable news sources in its reporting.[8] Many

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[8] These states are **Alaska**, *Gay v. Williams* (D. Alaska 1979) 486 F.Supp. 12, 16–17 (holding local paper did not act with actual malice when it republished an Associated Press story without independently verifying the story); **Arizona**, *In re Medical Laboratory Mgmt. Consultants* (D. Ariz. 1996) 931 F.Supp. 1487, 1492 (dismissing claim against local television station that ran a national satellite feed); **Florida**, *Layne*, 146 So. at 238; **Illinois**, *Kapetanovic v. Stephen J. Productions, Inc.* (N.D. Ill. 2002) 2002 WL 475193 (noting local television station did not act with negligence in broadcasting national programing); **Georgia**, *Brown*, 700 F.Supp. at 537–38 (adopting wire service defense because it satisfies Georgia's requirement that local media organizations exercise "ordinary care"); **Hawaii**, *Mehau v. Gannett Pacific Corp.* (Haw. 1983) 658 P.2d 312, 322 (holding that local papers can rely on reputable wire services without independently investigating its content); **Kentucky**, *O'Brien*, 735 F.Supp. at 225 (noting the wire service defense captures a news organization's duty of reasonable care); **Maryland**, *Watkins v. Wash. Post* (D. Md. 2018) 2018 WL 805394 *7 (dismissing false light and defamation claims because journalist relied on reputable sources); **Massachusetts**, *Appleby*, 478 N.E.2d at 725 (adopting wire service defense); **Michigan**, *Howe v. Detroit Free Press, Inc.* (Mich. Ct. App. 1996) 555 N.W.2d 738, 740 (adopting wire service defense set out in *Layne*); **Minnesota**, *Cole v. Star Tribune* (Minn. Ct. App. 1998) 581 N.W.2d 364, 368 (adopting the wire service defense); **New York**, *Tzougrakis v. Cyveillance, Inc.* (S.D.N.Y. 2001) 145 F.Supp.2d 325, 331–32 (holding defendant's motion for summary judgment is appropriate when reporter relied on a trusted reporter's representations about a private plaintiff); **North Carolina**, *McKinney v. Avert Journal, Inc.* (N.C. Ct. App. 1990) 393 S.E.2d 295, 297 (holding journal cannot be found negligent for relying on reputable wire stories in reporting); **South Dakota**, *Hackworh v. Larson* (S.D. 1969) 165 N.W.2d 705, 711 (holding defamation cannot be

states that recognize the wire service defense have done so recently. (*See supra* note 8; Medico, *supra*, at 1411 n.23.)

As the Palisades News notes, at least one California trial court has also applied the wire service defense. (Appellants' Opening Br. 89 (citing *Peper v. Gannett Co., Inc.* (Cal. Super. Ct. Apr. 4, 2003) 2003 WL 22457121).)[9] In that case, the plaintiff sued numerous news organizations for defamation based on news reports about government officials' and grocery stores' responses to the health risks associated with jelly fruit cup candies. (*Peper*, 2003 WL at *1.) The Superior Court granted the defendant's anti-SLAPP motion on several grounds, noting the wire service defense as an independent grounds for dismissal. (*Id.* at *6–*7.) The court explained that "[d]efamation is not a strict liability tort," and that the

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predicated on an innocent or negligent misstatement and publisher does not need to independently investigate a news dispatch); **Virginia**, *Winn v. United Press Int'l* (D.D.C. 1996) 938 F.Supp. 39, 44 (holding that Virginia law would not find negligence in publication of reputable news articles); and **Wisconsin**, *Van Straten v. Milwaukee J. Newspaper-Pub.* (Wis.Ct.App. 1989) 447 N.W.2d 105, 112 (noting newspapers that rely on wire services are generally not negligent as a matter of law).

[9] *Amici* agree with Palisades News that *Peper* may be cited in light of Rule 8.1115 of the California Rules of Court because it is neither an unpublished opinion from the California Court of Appeals nor the superior court appellate division. (Appellants' Reply Br. 47; *see Brown v. Franchise Tax Bd.* (Cal. Dist. Ct. App. 1987) 197 Cal.App.3d 300, 306 n.6 (noting that unpublished trial court opinions may be relied upon and may be "illuminating and persuasive" on relevant points).)

plaintiff must show, at a minimum, that the news media publishers acted negligently. (*Id.* at *6 (citing *Gertz*, 418 U.S. at 323).) It subsequently held that relying on a reputably wire service "immunizes [the media company] from a finding of negligence, and bars any claim . . . based on the alleged falsity of its article." (*Id.*)

Since *Layne*, courts have held that "there is no triable issue of negligence with respect to those allegedly defamatory statements," if those statements were based on reputable news sources, even if the story is not repeated verbatim. (*Appleby*, 478 N.E.2d at 726; *see also Tzougrakis v. Cyveillance, Inc.* (S.D.N.Y. 2001) 145 F.Supp.2d 325, 331–32 ("Absent 'obvious reasons' to doubt the truth of an article, a [publisher] does not have the 'intolerable burden of rechecking every reporter's assertions and retracing every source before' publication." (quoting *Chaiken v. VV Pub. Co.* (2d Cir. 1997) 119 F.3d 1018, 1032)).) For instance, in *Winn v. United Press International*, a local paper wrote an article criticizing the annual Miss Black Virginia and Future Miss Black Virginia Pageants, where the plaintiff was the producer. (938 F.Supp at 41.) A wire service picked up the story, edited it, then redistributed it over its news wire. (*Id.* at 42.) The plaintiff sued the wire service for defamation on a variety of statements. (*Id.*) In dismissing the case, the United States District Court for the District of Columbia, applying Virginia law, explained that the plaintiff failed to provide any evidence that the wire service did not act with due care when it

published a story that came from a "reputable, reliable news source that employed 'reporters that knew what they were doing.'" (*Id.* at 45–46 (citing other federal courts applying Virginia law and neighboring state laws).)

B. The wire service defense is critical to the news media's ability to keep the public informed about national and global events.

The wire service defense ensures that newsrooms can fulfill their constitutional role in "informing and educating the public, offering criticism, and providing a forum for discussion and debate." (*See First Nat'l Bank of Boston v. Belloti* (1978) 435 U.S. 765, 781 (citing *Mills v. Alabama* (1966) 384 U.S. 214, 219 and *Saxbe v. Wash. Post Co.* (1974) 417 U.S. 843, 863–64).) Indeed, courts have recognized explicitly that the wire service defense is consistent with the purpose of the First Amendment, "which tolerates occasional, non-negligent mistakes for the sake of getting out the news people want." (*Nelson v. Associated Press, Inc.* (S.D. Fla. 1987) 667 F.Supp. 1468, 1480; *see also Brown v. Courier Herald Pub. Co., Inc.* (S.D. Ga. 1988) 700 F.Supp. 534, 537 (explaining that requiring publishers to independently verify wire stories would be "repugnant to the [F]irst [A]mendment"); *Appleby*, 478 N.E.2d at 726 (explaining that the First Amendment counsels against "apprehensive self-censorship" by the news media).)

For smaller publications, the wire service defense is particularly important. If small news outlets, with limited staff and budgets, were required to independently verify every news story based on a reputable news source to show ordinary care, they would likely be forced to "confine themselves to stories about purely local events." (*Appleby*, 478 N.E.2d at 725; *see also Winn v. Associated Press* (S.D.N.Y. 1995) 903 F. Supp. 575, 579 (same); *Brown*, 700 F.Supp. at 537 (same); *Nelson*, 667 F.Supp at 1479 (same); *Howe v. Detroit Free Press, Inc.* (Mich. Ct. App. 1996) 555 N.W.2d 738, 741 (verification requirements would "make it difficult for smaller, local news organizations to compete with publishers who could afford to either verify every story or assume the risk of litigation").)

In addition, the wire service defense allows news organizations to report news obtained from reputable sources at the moment it is most newsworthy. The Supreme Court of the United States has recognized the importance of timely reporting. It explained that, "[a]s a practical matter . . . the element of time is not unimportant if press coverage is to fulfill its traditional function of bringing news to the public promptly." (*Neb. Press Ass'n v.* Stuart (1976) 427 U.S. 539, 561; *see also Int'l News Serv. v. Associated Press* (1918) 248 U.S. 215, 235 ("The peculiar value of news is in the spreading of it while it is fresh.").)

The importance of timely reporting is only magnified in the digital age*, see Grove Fresh Distributors, Inc. v. Everfresh Juice Co.* (7th Cir.

1994) 24 F.3d 893, 897 (recognizing that "[t]he newsworthiness of a particular story is often fleeting"), and in today's online media world, timeliness is measured by minutes. For instance, the *Los Angeles Times* and *The New York Times* use minutes to indicate when breaking news stories were last updated. The wire service defense assures newsrooms that they may inform the public as news breaks, without having to go through the lengthy process of verifying each and every source that a reputable news source has already reported on.

C. News organizations around the country routinely rely on reporting from wire services and other reputable news outlets.

A recent study by the Pew Research Center found that more than half of the news that a reader receives about the national government comes from a wire service. *The Role of Wire Services*, Pew Res. Ctr. (Dec. 3, 2015), https://perma.cc/4NQE-FJWY. The Associated Press, one of the most used wire services, reports that more than 15,000 news outlets and businesses use its content. *See About Us | AP*, Associated Press, https://www.ap.org/about/ (last visited Apr. 18, 2019).

Both small local papers and industry titans rely on wire services, both for written material and photography. *See* Richard Pérez-Peña, *Some Papers in Financial Trouble Are Leaving the A.P. to Cut Costs*, N.Y. Times (Oct. 19, 2008), https://nyti.ms/2uPV7zq (noting that local papers were considering more affordable wire services). A study by the Pew Research

Center found that more than 70 percent of the stories in youth-oriented tabloids came from wire services. *See* Pew Research Center: Journalism & Media Staff, *The Stories: Short Wire Copy Versus Original Reporting*, Pew Res. Ctr. (Dec. 12, 2005), https://perma.cc/C9WB-DXJR. Although larger papers often have more original reporting, many still rely on wire services daily in their reporting. *See* Robinson Meyer, *How Many Stories Do Newspapers Publish Per Day?*, Atlantic (May 26, 2016), https://perma.cc/L3MJ-VC2E.

A recent survey of California news outlets shows how common it is for news organizations to rely on the reporting of wire services or other reputable news sources. For example, the *Los Angeles Times* supplemented its reporting of the family separation crisis with reports from Reuters and *The New York Times*. (Molly O'Toole, *Family Separations a Year Later: The Fallout—and the Separations—Continue*, L.A. Times (Apr. 12, 2019, 6:00 AM), https://perma.cc/ZER8-CJD3 (providing links to relevant news stories).) Similarly, California-based Reveal from The Center for Investigative Reporting used reports from *The Washington Post* to supplement its story the relationship between oil executives and the Department of Interior. (Lance Williams, *Recording Reveals Oil Industry Execs Laughing at Trump Access*, Reveal (Mar. 23, 2019), https://perma.cc/4EN2-6DU3 (same).) Local reporters rely on stories from other local papers as well. For instance, the *Orange County Register*

recently relied on a *Pasadena Star-News* story to report on state legislation of horse racing. (Jason Henry, *New Bill Would Allow State to Suspend Horse Racing at Troubled Tracks*, Orange County Reg. (Apr. 11, 2019, 4:49 PM), https://perma.cc/3N7N-CDET (same).)

These examples demonstrate that stories from wire services or other reputable sources are not only critical in informing the public directly, but also in providing the basis for more stories, tailored to a newspaper's audience. (*See* Justin Ellis, *How Buzzfeed Wants to Reinvent Wire Stories for Social Media* (July 26, 2012, 12:43 PM), https://perma.cc/EEC8-9JDG.) Reveal used *The Washington Post*'s coverage of the Department of Interior to provide context for its story, which focused on California "agribusinesses" and oil executives who met in Southern California and their relationship with the Interior. (*See* Williams, *supra*.) Similarly, the *Orange County Register* used *Pasadena Star-News*'s reporting on groups supporting state regulations of horse races to provide context for an issue of local importance. (*See* Henry, *supra*.) The wire service defense is critical to ensuring that the public can receive news from across the country, in a way that puts local happenings into context.

Moreover, the basic premise of the wire service defense—that news outlets are not acting negligently when they rely on wire services or other reputable news sources—is well founded. One count reported that the Associated Press issued 149 corrections from January 20, 2018 to February

19, 2018, a miniscule fraction of the 2000 stories it publishes each day. *See* Salem Solomon, *When Wire Services Make Mistakes, Misinformation Spreads Quickly*, Poynter. (Mar. 12, 2018), https://perma.cc/6PVZ-KUKA (noting that much of the content from wire services "meets the highest standards of journalism" and many wire services correct mistakes promptly). Individually verifying the information from these sources would unnecessarily monopolize a newsroom's resources and hamper their ability to inform the public.

CONCLUSION

For the foregoing reasons, *amici* urge this Court to grant Palisades News's anti-SLAPP motion in its entirety, and reverse the portion of the lower court's order denying the motion.

Respectfully Submitted,

REPORTERS COMMITTEE FOR
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CERTIFICATE OF WORD COUNT

Pursuant to Rule 8.204(c) of the California Rules of Court, I hereby certify that the attached *amicus curiae* brief was produced using 13-point Roman type, including footnotes, and contains 10,444 words. I have relied on the word-count function of the Microsoft Word word-processing program used to prepare this brief.

Dated: April 18, 2019

Counsel for Amici Curiae

APPENDIX A: DESCRIPTION OF *AMICI*

The Reporters Committee for Freedom of the Press 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 it provides pro bono legal representation, amicus curiae support, and other legal resources to protect First Amendment freedoms and the newsgathering rights of journalists.

With some 500 members, **American Society of News Editors** ("ASNE") is an organization that includes directing editors of daily newspapers throughout the Americas. ASNE changed its name in April 2009 to American Society of News Editors and approved broadening its membership to editors of online news providers and academic leaders. Founded in 1922 as American Society of Newspaper Editors, ASNE is active in a number of areas of interest to top editors with priorities on improving freedom of information, diversity, readership and the credibility of newspapers.

The **Associated Press Media Editors** is a nonprofit, tax-exempt organization of newsroom leaders and journalism educators that works closely with The Associated Press to promote journalism excellence. APME advances the principles and practices of responsible journalism; supports and mentors a diverse network of current and emerging newsroom

leaders; and champions the First Amendment and promotes freedom of information.

Association of Alternative Newsmedia (“AAN”) is a not-for-profit trade association for approximately 110 alternative newspapers in North America. AAN newspapers and their websites provide an editorial alternative to the mainstream press. AAN members have a total weekly circulation of seven million and a reach of over 25 million readers.

The **California News Publishers Association** ("CNPA") is a nonprofit trade association representing the interests of over 1300 daily, weekly and student newspapers and news websites throughout California.

Californians Aware is a nonpartisan nonprofit corporation organized under the laws of California and eligible for tax exempt contributions as a 501(c)(3) charity pursuant to the Internal Revenue Code. Its mission is to foster the improvement of, compliance with and public understanding and use of, the California Public Records Act and other guarantees of the public’s rights to find out what citizens need to know to be truly self-governing, and to share what they know and believe without fear or loss.

Digital First Media publishes the San Jose Mercury News, the East Bay Times, St. Paul Pioneer Press, The Denver Post and the Detroit News and other community papers throughout the United States, as well as numerous related online news sites.

The **E.W. Scripps Company** serves audiences and businesses through television, radio and digital media brands, with 33 television stations in 24 markets. Scripps also owns 33 radio stations in eight markets, as well as local and national digital journalism and information businesses, including mobile video news service Newsy and weather app developer WeatherSphere. Scripps owns and operates an award-winning investigative reporting newsroom in Washington, D.C. and serves as the long-time steward of the nation's largest, most successful and longest-running educational program, the Scripps National Spelling Bee.

First Amendment Coalition is a nonprofit public interest organization dedicated to defending free speech, free press and open government rights in order to make government, at all levels, more accountable to the people. The Coalition's mission assumes that government transparency and an informed electorate are essential to a self-governing democracy. To that end, we resist excessive government secrecy (while recognizing the need to protect legitimate state secrets) and censorship of all kinds.

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 Co., Inc. is a leading news and information company which publishes USA TODAY and more than 100 local media properties including the Palm Springs Desert Sun, Redding Record Searchlight, Salinas Californian, Tulare Advance-Register, Ventura County Star and Visalia Times-Delta. Each month more than 125 million unique visitors access content from USA TODAY and Gannett's local media organizations, putting the company squarely in the Top 10 U.S. news and information category.

The **Greater Los Angeles Pro Chapter of the Society of Professional Journalists** ("SPJ/LA") is a chapter of the Society of Professional Journalists. SPJ/LA is dedicated to improving and protecting journalism in the greater Los Angeles area. Founded in 1934, SPJ/LA provides educational programming for journalists and the public and promotes First Amendment issues of concern.

Los Angeles Times Communications LLC is one of the largest daily newspapers in the United States. Its popular news and information website, www.latimes.com, attract audiences throughout California and across the nation.

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, Calif., and listed on the New York Stock Exchange under the symbol MNI.

The Media Institute is a nonprofit research 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.

MPA – The Association of Magazine Media, ("MPA") is the largest industry association for magazine publishers. The MPA, established in 1919, represents over 175 domestic magazine media companies with more than 900 magazine titles. The MPA represents the interests of weekly, monthly and quarterly publications that produce titles on topics that cover 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 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 News Media Alliance is a nonprofit organization representing the interests of online, mobile and print news publishers in the United States and Canada. Alliance members account for nearly 90% of the daily newspaper circulation in the United States, as well as a wide range of online, mobile and non-daily print publications. 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.

The Northern California Chapter of the Society of Professional Journalists ("SPJ NorCal") is dedicated to improving and protecting journalism. It is a Chapter of the national Society of Professional Journalists, the nation's most broad-based journalism organization. Founded in 1909 as Sigma Delta Chi, the Society of Professional Journalists promotes the free flow of information vital to a well-informed citizenry, works to inspire and educate the next generation of journalists, and protects the First Amendment guarantees of freedom of speech and

press. SPJ NorCal has a Freedom of Information Committee of journalists and First Amendment lawyers, which assists in its free speech and government transparency advocacy. Also, in collaboration with its Freedom of Information Committee, it hosts the annual James Madison Freedom of Information Awards and offers training to journalists on free press and access issues.

Reuters, the world's largest international news agency, is a leading provider of real-time multi-media news and information services to newspapers, television and cable networks, radio stations and websites around the world. Through Reuters.com, affiliated websites and multiple online and mobile platforms, more than a billion professionals, news organizations and consumers rely on Reuters every day. Its text newswires provide newsrooms with source material and ready-to-publish news stories in twenty languages and, through Reuters Pictures and Video, global video content and up to 1,600 photographs a day covering international news, sports, entertainment, and business. In addition, Reuters publishes authoritative and unbiased market data and intelligence to business and finance consumers, including investment banking and private equity professionals.

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.

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.

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PROOF OF SERVICE

I, Daniel J. Jeon, do hereby affirm that I am, and was at the time of service mentioned hereafter, at least 18 years of age and not a party to the above-captioned action. My business address is 1156 15th St. NW, Suite 1020, Washington, DC 20005. I am a citizen of the United States and am employed in Washington, District of Columbia.

On April 18, 2019, I served the foregoing documents: **Application for Leave to File *Amici Curiae* Brief; *Amici Curiae* Brief of The Reporters Committee for Freedom of the Press and 21 Media Organizations in Support of Appellants; and Motion for Judicial Notice by *Amici Curiae* The Reporters Committee for Freedom of the Press, American Society of News Editors, Associated Press Media Editors, Association of Alternative Newsmedia, California News Publishers Association, Californians Aware, Digital First Media, The E.W. Scripps Company, First Amendment Coalition, Fox Television Stations, LLC, Gannett Co., Inc., Greater Los Angeles Pro Chapter of the Society of Professional Journalists, Los Angeles Times Communications LLC, The McClatchy Company, The Media Institute, MPA – The Association of Magazine Media, National Press Photographers Association, News Media Alliance, The Northern California Chapter of the Society of Professional Journalists, Reuters**

America LLC, Society of Professional Journalists, and Tully Center for Free Speech; Declaration of Nicolette Vairo with Exhibit A as follows:

[x] By email or electronic delivery:

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

Executed on the 18th of April 2019, at Washington, D.C.

By: _____
Daniel J. Jeon