No. 16-1996

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

JOHN W. STEINMETZ and JANE C. STEINMETZ,

Plaintiffs-Appellants,

v.

COYLE & CARON, INC.,

Defendant-Appellee.

United States District Court, District of Massachusetts
Honorable Denise J. Casper
15-cv-13594-DJC

BRIEF OF *AMICI CURIAE* THE REPORTERS COMMITTEE FOR FREEDOM OF THE PRESS AND 4 MEDIA ORGANIZATIONS IN SUPPORT OF DEFENDANT-APPELLEE COYLE & CARON, INC.

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RULE 29(C)(5) CERTIFICATION

Pursuant to Federal Rule of Appellate Procedure 29(c)(5), *amici* state that no party's counsel authored this brief in whole or in part; no party or party's counsel contributed money intended to fund preparing or submitting the brief; and no person—other than *amici*, their members or their counsel—contributed money intended to fund the preparation or submission of this brief.

CORPORATE DISCLOSURE STATEMENTS

The parties to this *amici curiae* brief are The Reporters Committee for Freedom of the Press, The Associated Press, Gannett Co., Inc., New England First Amendment Coalition, and New England Newspaper and Press Association, Inc.

Pursuant to Federal Rule of Appellate Procedure 26.1, *amici* make the following disclosures:

The Reporters Committee for Freedom of the Press is an unincorporated association of reporters and editors with no parent corporation and no stock.

The Associated Press is a global news agency organized as a mutual news cooperative under the New York Not-For-Profit Corporation law. It is not publicly traded.

Gannett Co., Inc. is a publicly traded company and has no affiliates or subsidiaries that are publicly owned. No publicly held company holds 10% or more of its stock.

New England First Amendment Coalition has no parent corporation and no stock.

New England Newspaper and Press Association, Inc. is a non-profit corporation. It has no parent, and no publicly held corporation owns 10% or more of its stock.

SOURCE OF AUTHORITY TO FILE BRIEF

Defendant-Appellee has not given consent for *amici* to file this brief. As set forth in the accompanying motion, pursuant to Rule 29(a)(3) *amici* have applied to move for leave to file this brief.

STATEMENT OF INTEREST OF *AMICI CURIAE*

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.

As set forth in the accompanying motion, RCFP and other *amici* have a strong interest in minimizing "strategic lawsuits against public participation" ("SLAPPs") and ensuring that anti-SLAPP statutes like the one at issue in this case continue to provide journalists, publishers, sources, and others with an effective means of disposing of lawsuits brought to chill protected speech and petitioning activities. Every day, news organizations exercise freedom of press and speech rights by venturing into the thick of public controversy to ensure sure citizens are fully informed about their world and to promote public discourse. As such, the ability of the news media to disseminate information is an essential element of the First Amendment right to petition the government. *Amici* also have substantial experience using anti-SLAPP statutes and believe they can provide a unique perspective on their purpose and benefit to democratic society.

The Reporters Committee for Freedom of the Press is joined in this brief by The Associated Press, Gannett Co., Inc., New England First Amendment Coalition,

and New England Newspaper and Press Association, Inc. Descriptions of all parties to this brief are given more fully in Appendix A.

INTRODUCTION AND SUMMARY OF ARGUMENT

One of the primary issues in this appeal is whether the Massachusetts anti-SLAPP law—a law designed to foster free speech and the free exchange of ideas—violates Plaintiffs-Appellants' Seventh Amendment right to a jury trial in civil suits. While Defendant-Appellee and another *amicus* party, the ACLU of Massachusetts, address the constitutionality of the Massachusetts anti-SLAPP law directly, *amici* write separately to stress the important public policy underpinnings of anti-SLAPP statutes and how they preserve fundamental free speech values without compromising access to courts for meaningful claims. A decision that finds this State's anti-SLAPP law unconstitutional would have a substantial, detrimental effect on public discourse.

The district court's order dismissing Plaintiffs-Appellants' case pursuant to the Massachusetts anti-SLAPP law, Mass. Gen. L. c. 231, § 59H, should be affirmed. For more than two decades, anti-SLAPP statutes enacted in 28 states and the District of Columbia have provided a mechanism for speakers engaged in public controversies to swiftly resolve meritless lawsuits. The public interest in upholding statutory anti-SLAPP protections for speech is significant; spurious suits designed to silence speech impose significant financial burdens on speakers,

including news organizations, and create a chilling effect. Anti-SLAPP statutes help relieve this burden and promote speech on newsworthy topics.

ARGUMENT

I. The Massachusetts statute is consistent with the longstanding history of anti-SLAPP statutes dedicated to protecting speech interests.

The phenomenon of strategic lawsuits against public participation or 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, 506–07 (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. The common feature of SLAPP suits is that they appear to be specifically targeted at chilling speech and petition activity related to public controversies. *See* Carson Barylak, Note, *Reducing Uncertainty in Anti-SLAPP Protection*, 71 OHIO ST. L.J. 845, 846–47 (2010).

[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*).

A SLAPP plaintiff typically is interested in intimidating speakers and burying defendants under the weight of litigation expenses, removing them from the public debate. *See supra SLAPPs: An Introduction* at 939–44. Indeed, even if these suits are later disposed of through motions to dismiss or for summary judgment, they often achieve the plaintiff's goal of getting the defendant into court and imposing significant financial costs on them, thereby chilling citizen participation in public controversies. *Id*. at 944. Therefore, anti-SLAPP statutes aim to "protect speakers from the trial itself rather than merely from liability." *Godin v. Schencks*, 629 F.3d 79, 85 (1st Cir. 2010) (*citing Batzel v. Smith*, 333 F.3d 1018, 1025 (9th Cir. 2003)).

In 1984, the Colorado Supreme Court first developed a procedure to identify and dispose of SLAPP suits at an early stage of litigation. *Protect Our Mountain Env't, Inc*. *v*. *District Court*, 677 P.2d 1361 (Colo. 1984). The Court held that, from that point on, in any case involving a meritless claim where a petitioner files a motion to dismiss, the motion would be converted into a summary judgment motion and the plaintiff would have to show that the petitioning activities "were devoid of reasonable factual support." *Id*. at 1369 (stating that plaintiffs must meet "heightened standard" premised on First Amendment protection).

Over the next decade, states began enacting statutes with even stronger protections than the Colorado procedure. In 1992, California enacted an anti-

SLAPP statute that became a model for other jurisdictions seeking to protect citizen participation in government affairs. *See* Cal. Civ. Proc. Code § 425.16 (West 2004 & Supp. 2015). Twenty-eight states, along with the District of Columbia and the U.S. territory of Guam, now have some form of anti-SLAPP legislation.[2]

Moreover, some states without anti-SLAPP statutes, such as Connecticut and West Virginia have followed Colorado's lead by establishing common law defenses to lawsuits that target speech acts aimed at petitioning the government. *See Protect Our Mountain Env't*, 677 P.2d at 1367–69 (discussing the importance of public grievances protected under the First Amendment); *Royce v. Willowbrook*

[2] *See* Ariz. Rev. Stat. Ann. §§ 12-751–12-752 (2016); Ark. Code Ann. §§ 16-63-501–16-63-508 (2016); Cal. Civ. Proc. Code § 425.16 (West 2004 & Supp. 2015); Del. Code Ann. tit. 10, §§ 8136-8138 (2016); D.C. Code §§ 16-5501–5502 (2016); Fla. Stat. §§ 720.304(4), 768.295 (2016); Ga. Code Ann. §§ 9-11-11.1, 51-5-7(4) (2016); 7 Guam Code Ann. §§ 17101–17109 (2014); Haw. Rev. Stat. Ann. §§ 634F-1–634F-4 (West 2016); 735 Ill. Comp. Stat. 110/15–110/25 (2014); Ind. Code §§ 34-7-7-1–34-7-7-10 (2016); La. Code Civ. Proc. Ann. art. 971 (2016); Me. Rev. Stat. tit. 14, § 556 (2016); Md. Code Ann., Cts. & Jud. Proc. § 5-807 (West 2016); Minn. Stat. §§ 554.01–554.05 (2016); Mo. Rev. Stat. § 537.528 (2016); Neb. Rev. Stat. §§ 25-21,241–25-21,246 (2016); Nev. Rev. Stat. §§ 41.637, 41.650–41.670 (2015); N.M. Stat. Ann. § 38-2-9.1 (2016); N.Y. Civ. Rights Law §§ 70-a, 76-a (McKinney 2016); N.Y. C.P.L.R. 3211(g) (McKinney 2016); Okla. Stat. tit. 12, § 1443.1 (2011); Or. Rev. Stat. §§ 31.150–31.155 (2015); 27 Pa. Cons. Stat. Ann. §§ 7707, 8301–8303 (West 2016); R.I. Gen. Laws §§ 9-33-1–9-33- 4 (2016); Tenn. Code Ann. §§ 4-21-1001–4-21-1004 (2016); Tex. Civ. Prac. & Rem. Code Ann. §§ 27.001–27.011 (West 2015); Utah Code Ann. §§ 78B-6-1401–78B- 6-1405 (West 2016); Vt. Stat. Ann. tit. 12, § 1041 (2016). 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* H.R. 5036, 95th Leg., Reg. Sess. (Mich. 2009); 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).

Cemetery, Inc., No. X08CV010185694, 2003 WL 431909, at *2 (Conn. Super. Ct. Feb. 3, 2003) (identifying a SLAPP suit as one that is "objectively baseless … and … conceal[ing] an effort to interfere improperly with the defendant's rights"); *Harris v. Adkins*, 189 W. Va. 465, 468, 432 S.E.2d 549, 552-53 (1993) (ruling that exercising the constitutional right to petition the government cannot give rise to liability unless a plaintiff can show the defendant acted with actual malice).

Falling directly in line with this national trend, on December 29, 1994, the Massachusetts House and Senate enacted G.L. c. 231, § 59H to provide a "very broad" protection against meritless suits filed to "intimidate opponents' exercise of rights of petitioning and speech." *Duracraft Corp. v. Holmes Prods. Corp.*, 427 Mass. 156, 161, 691 N.E.2d 935, 940 (1998). As explained by the Massachusetts Supreme Court, "the right of petition protected in the anti-SLAPP statute is that right enumerated in the First Amendment." *Kobrin v. Gastfriend*, 443 Mass. 327, 333, 821 N.E.2d 60, 64 (2005).

The Massachusetts statute ensures a party may bring a special motion to dismiss where there has been a suit involving "petitioning activity." § 59H; *see also Duracraft Corp.*, 427 Mass. at 165, 691 N.E.2d at 942 (discussing the statutory focus on "petitioning activity"). A court applying the statute must determine whether the plaintiff has established that the petitioning activities "lacked any reasonable factual support or any arguable basis in law." *Fustolo v.*

Hollander, 455 Mass. 861, 920 N.E.2d 837 (2010). If so, the court will dismiss the claims and allow the defendant to recover fees. *See* § 59H ("If the court grants such special motion to dismiss, the court shall award the moving party costs and reasonable attorney's fees, including those incurred for the special motion and any related discovery matters.") The law was originally meant "to protect private citizens when exercising their constitutional right to speak out against development projects or other matters of concern to them and their communities and to seek governmental relief." *Kobrin*, 443 Mass. at 337, 821 N.E.2d at 67.

The statute has been consistently upheld in a series of state Supreme Court cases. *See, e.g.*, *Duracraft Corp.*, 427 Mass. at 168, 691 N.E.2d at 941 (adopting the burden-shifting mechanism); *Fabre v. Walton*, 436 Mass. 517, 524-25, 781 N.E.2d 780, 786 (2002) (holding a Section 59H motion should have been granted). The statute has also been applied in federal court in a series of district court cases. *See Bargantine v. Mechanics Co-op. Bank*, No. 13-cv-11132-NMG, 2013 WL 6211845, at *3 (D. Mass. Nov. 26, 2013) (concluding that the Massachusetts statute applies in federal court); *Sullivan v. Flaherty*, No. 14-cv-14299-ADB, 2015 WL 1431151, at *5 n.5 (D. Mass Mar. 27, 2015) (same); *Pomponio v. Town of Ashland*, No. 15-cv-10253-IT, 2016 WL 471285, at *6 (D. Mass. Feb. 5, 2016) (same).

II. The legislative history of the statute shows there was both a compelling need for protection from frivolous suits and a recognition of the right to litigate valid claims.

The legislative history shows the Massachusetts General Assembly adopted Section 59H to combat a precipitous trend of meritless suits. In January 1993, several developers brought suits to silence critics of their building projects. *See* Michael Kenney, *Local Dispute Led Walsh to Press for 'SLAPP' Law*, BOSTON GLOBE, Jan. 9, 1994. One lawsuit, in particular, was an impetus for the legislation. In *Northern Provinces, Inc. v. Feldman*, No. 91-2260 (Mass. Sup. 1992), fifteen Massachusetts residents, concerned with the preservation of nearby wetlands, signed a petition opposing a housing construction project. The developer sued, and the petitioners incurred more than $30,000 in legal fees before the suit was dismissed nine months later. *Id.*; *see also Duracraft Corp*, 427 Mass. at 161, 691 N.E.2d at 939 (discussing the legislative history including *Northern Provinces*).

The *Northern Provinces* case and others like it illustrated for the General Assembly the clear dangers of the growing number of SLAPP suits. These lawsuits were "not brought to redress an injury but to intimidate [a] citizen" from exercising their right to petition the government. Kenney, *supra*. As Representative Cohen, sponsor of Massachusetts's anti-SLAPP law explained, such suits "are 'dismissed as frivolous' in 'virtually every case.'" State House News Service, SLAPP, Dec. 14, 1994. Yet the time and cost required to get

SLAPP suits dismissed made them an effective tool "to harass people who participate in government forums." *Id.* (quoting Rep. Cohen). The increasing number of such suits was perhaps the greatest concern of the General Assembly. Enacting the statute in 1994, the Legislature openly criticized the "disturbing increase in [SLAPP] lawsuits." Preamble to 1994 House Doc. No. 1520. Similarly, the preamble to the first draft declared it to be an "emergency law, necessary for the immediate preservation of the public convenience." Preamble to 1993 House Bill ("H.B.") 3033.

Given this epidemic of SLAPP suits, the bill was passed with overwhelming support. After Representative Cohen first introduced the anti-SLAPP legislation in 1993, the statute, H.B. 3033 passed both Chambers during that session. Legislative Record, 85H-86H (1994). After Governor William Weld vetoed the initial legislation, Cohen reintroduced the bill in 1994 as H.B. 1520 and again, it passed both Chambers. Although it was vetoed again, the House voted overwhelmingly to override the second veto, passing the bill 128 to 17. State House News Service, House Sess., Dec. 29, 1994. In the Senate, the vote was 33 to 1 in favor of an override. State House News Service, Senate Sess., Dec. 29, 1994.

Even critics of the bill recognized the negative impact of the increasing number of SLAPP suits. Governor Weld stated that "[f]rivolous lawsuits brought to chill the public's right to petition government . . . are condemnable and have no

place in our judicial system." Karen Curran, *Fighting Intimidation by Lawsuit: Bill Would Protect Public Against Developers Going to Court to Silence Opponents*, BOSTON GLOBE, May 7, 1994. Legislators who opposed the bill similarly noted the potential for litigation to be used as a "weapon" to cut off petitioning activity. *See* State House News Service, House Sess. May 2, 1994. While opponents believed that the courts' ability to dispose of frivolous suits was sufficient to address meritless suits, they agreed that petitioning activity is an important right that needed protection. *See* State House News Service, House Sess. Dec. 29, 1994; State House News Service, Senate Sess. Dec. 29, 1994; *see also* State House News Service, SLAPP, Dec. 14, 1994 (some opponents ultimately found that existing judicial remedies were insufficient to address the growing problem of SLAPP suits).

The opposition's concerns were taken into consideration and the final bill was measured in its approach, balancing the Legislature's sense of urgency with the concern for protecting appropriate litigation. *See Duracraft*, 427 Mass. at 162–63, 691 N.E.2d at 940–41. The Legislature sought to expedite the dismissal of SLAPP suits by placing the burden on the filing party to show that there was no basis for the defendant's petitioning conduct, but also made it clear that the bill was not intended to interfere with legitimate lawsuits. *See* Curran, *supra*; *see also*

Kenney, *supra*. Today, the bill exists in substantially the same form as the Legislature enacted in 1994.

Specifically, to defend against an anti-SLAPP motion under Section 59H, a plaintiff does not need to demonstrate a likelihood of success on the merits. Rather, as proponents of the bill explained, plaintiffs would need to show only that there was some legal or factual basis for their suit—in other words, that it is not "frivolous." State House News Service, Senate Sess., Dec. 29, 1994 (quoting Senator Marian Walsh). This shows the careful balance that the Massachusetts Legislature struck between enforcing the First Amendment right to petition and protecting access to the courts for all parties with genuine grievances.

In fact, unlike other broader statutes, such as the one passed in California, the Supreme Judicial Court of Massachusetts has observed that Section 59H was modeled on the expedited summary judgment procedure set out in *Protect Our Mountain Environment, Inc.*, 677 P.2d 1361. Under the Colorado model, if a defendant moved to dismiss a SLAPP suit, the court could convert it into a motion for summary judgment, and the plaintiff would have to show that the defendant's activities were "devoid of reasonable factual support." *Id.* at 1368–69. Unlike other statutes, this requirement balanced the danger of "sham" petitioning being used to defeat actionable claims, while simultaneously protecting the right to

petition for redress of grievances. David A. Kluft, *The Scalpel or the Bludgeon? Twenty Years of Anti-SLAPP in Massachusetts*, 58 BOSTON BAR J. (2014).

III. Striking down the Massachusetts anti-SLAPP statute would have significant deleterious effects on free speech rights of the news media and the public, at a time when there is the utmost need for protection.

SLAPP suits pose a serious risk to the media. *See* KRISTEN RASMUSSEN, SLAPP STICK: FIGHTING FRIVOLOUS LAWSUITS AGAINST JOURNALISTS 1 (2011). The frequency of SLAPP suits is still a significant problem. *See, e.g.*, Cal. Civ. Code § 425.16(a) (West 2004 & Supp. 2015) (noting a "disturbing increase in [SLAPP] lawsuits"); 7 Guam Code Ann. § 17102(a)(5) (2012) (noting that "the number of SLAPPs has increased significantly"); Marc J. Randazza, *The Need for a Unified and Cohesive National Anti-SLAPP Law*, 91 OR. L. REV. 627, 627–28 (2012) (documenting the increasing importance of protecting speech on the Internet from SLAPPs). Given this antagonistic climate, striking down the anti-SLAPP statute would especially harm freedom of the press and freedom of speech, at a time when the need for protection is great.

The sheer cost of defending a SLAPP suit, usually against an opponent with greater resources, can significantly hurt even a financially stable news organization. *See* RASMUSSEN, *supra* at 4 (describing SLAPPs as "costly and time-consuming" suits that can result in "a mountain of attorney fees"). Unwarranted litigation costing millions of dollars over multiple years can have a crippling effect

on a media company. *See, e.g.*, *Auvil v. CBS 60 Minutes*, 67 F.3d 816, 818-19 (9th Cir. 1995) (dismissing a case in California against 60 Minutes that dragged out over the course of six years, ultimately leading to the passage of California's anti-SLAPP statute); *Aldoupolis v. Globe Newspaper Co.*, 398 Mass. 731, 732, 500 N.E.2d 794, 795 (1986) (reversing a $5 million libel award after three years of litigation filed against the Boston Globe and Pulitzer Prize winning reporter).

Anti-SLAPP statutes provide powerful protection for news organizations by shielding them from the harms of such drawn out litigation. Although many anti-SLAPP statutes were not necessarily designed with the news media in mind, the procedures to quickly dispose of meritless suits under these statutes are frequently utilized by news media around the country. *See*, *e.g.*, *Shepard v. Schurz Communications, Inc.*, 847 N.E.2d 219, 226-27 (Ind. Ct. App. 2006) (affirming dismissal of a defamation case against newspaper and award of nearly $36,000 in attorneys' fees); *Gates v. Discovery Communications, Inc.*, 34 Cal. 4th 679, 698, 101 P.3d 552, 563 (Cal. 2004), *cert. denied*, 126 S. Ct. 368 (2005) (affirming dismissal of suit against television station pursuant to anti-SLAPP statute); *Stern v. Doe*, 806 So. 2d 98, 103 (La. Ct. App. 2001) (upholding trial court's decision to strike complaint against television station pursuant to anti-SLAPP statute); *Henry v. Lake Charles Am. Press, LLC*, 566 F.3d 164, 168 (5th Cir. 2009) (affirming dismissal of defamation lawsuit against local newspaper under state anti-SLAPP

statute); *see also* Corey Hutchins, *How California's Anti-SLAPP Law Helped a Nonprofit News Site Prevail in Court*, CPJ.COM, Sept. 10, 2015, http://www.cjr.org/united_states_project/inewsource_sdsu_cory_briggs.php.

Commentators have noted that as more states adopt anti-SLAPP statutes, a body of law favorable to promoting public discourse through the news media is emerging. Matthew D. Bunker, et. al., *Anti-SLAPP Statutes Offer Tool for Media Defendants*, 35 NEWSPAPER RESEARCH J. 1, 7 (2014) (citing Shannon Hartzler, Note: *Protecting Informed Public Participation: Anti-SLAPP Law and the Media Defendant*, 41 VAL. U. L. REV. 1235 (2007)).

The Massachusetts law is no exception to this trend, and Section 59H has been especially effective at protecting the news media. While the benefits of the statute were initially limited because of a strict definition of 'petitioning activities,' that interpretation has become more broad. *See, e.g.*, *MacDonald v. Paton*, 57 Mass. App. Ct. 290, 295, 782 N.E.2d 1089, 1093-94 (Mass. Ct. App. 2003) (statements made on a website that was an interactive public forum amounted to petitioning activities); *N. Am. Expositions Co. Ltd. P'ship v. Corcoran*, 452 Mass. 852, 862, 898 N.E.2d 831, 841 (2009) (stating that "[p]etitioning includes all statements made to influence, inform, or at the very least, reach governmental bodies—either directly or indirectly") (internal citation and quotation marks omitted).

As a result, many cases involving statements made in or by the news media have been protected as "petitioning activities" under Massachusetts' anti-SLAPP statute. *See, e.g.*, *Salvo v. Ottaway Newspapers, Inc.*, 57 Mass. App. Ct. 255, 256, 782 N.E.2d 535, 537 (2003) (reversing district court's opinion dismissing newspaper's petition under the anti-SLAPP statute but prior to the more expanded definition of 'petitioning activities'); *Wynne v. Creigle*, 63 Mass. App. Ct. 246, 254-55, 825 N.E.2d 559, 566 (Mass. Ct. App. 2005) (holding that alleged defamatory statements printed in a newspaper were protected petitioning activities); *Joyce v. Slager*, No. 081240B, 2009 WL 4282113, at *3 (Mass. Super. Apr. 6, 2009) (statements about a public officials' job performance published in two newspapers were protected); *Blanchard v. Steward Carney Hosp., Inc.*, 89 Mass. App. Ct. 97, 46 N.E.3d 79, *review granted*, 474 Mass. 1106 (2016) (holding hospital president's statements as quoted in newspaper constituted protected petitioning activity under anti-SLAPP statute). Declaring this important statute unconstitutional would not only have a detrimental effect on the news media and general public in Massachusetts but also undermine this decade-long trend established by the State's courts.

Moreover, anti-SLAPP statutes are more important than ever for the news media. In recent years, costly litigation targeted at news organizations has become a successful tactic for attacking the press. *See, e.g.*, Emily Bazelon, *Billionaires*

vs. the Press in the Era of Trump, N.Y. TIMES, Nov. 22, 2016, http://nyti.ms/2j2KoLc; Mike Masnick, *TechDirt's First Amendment Fight For Its Life,* TECHDIRT.COM, Jan. 11, 2017, http://bit.ly/2jETiBT; Tiffany Kary and Steven Church, *Gawker Founder in Bankruptcy After Losing Hulk Hogan Case*, POLITICO, Aug. 1, 2016, http://bloom.bg/2jlbMns; Sydney Ember, *Gawker, Filing for Bankruptcy After Hulk Hogan Suit, Is for Sale*, N.Y. TIMES, June 10, 2016 (stating, "[t]he company is under significant financial pressure from a $140 million legal judgment in an invasion-of-privacy lawsuit by the former wrestler Hulk Hogan"); Ryan Cooper, *How billionaires can destroy journalism*, THE WEEK, May 25, 2016, http://theweek.com/articles/626140/how-billionaires-destroy-journalism.

In this new era of strategic litigation against the press, anti-SLAPP statutes, like the Massachusetts law, are increasingly important, serving as a vital barrier between a healthy press and its possible financial ruin. *See* Zoe Tillman, *In Melania Trump Suit, Journalist Invokes Maryland's Anti-SLAPP law*, LAW.COM, Oct. 18, 2016, http://www.law.com/sites/almstaff/2016/10/18/in-melania-trump-suit-journalist-invokes-marylands-anti-slapp-law/?slreturn=20170010195443; Benjamin Mullin, *What does Peter Thiel's lawsuit against Gawker mean for a resource-strapped news industry?*, POYNTER.ORG, May 25, 2016, http://www.poynter.org/2016/what-does-peter-thiels-lawsuit-against-gawker-mean-for-a-resource-strapped-news-industry/413707/ (stating "Many states have

anti-SLAPP statutes to prevent these cases"); Cooper, *supra* (stating "anti-SLAPP laws…protect individuals (and especially journalists) from being harassed into silence through legal attrition…").

Anti-SLAPP laws play a crucial role in thwarting "significant litigation costs and chilling [of] protected speech." *Godin*, 629 F.3d at 81. Without these valuable state laws protecting substantive free speech rights, litigants could easily use the courts as battlegrounds for suppressing speech and punishing news outlets for unfavorable reporting.

CONCLUSION

For the foregoing reasons, *amici curiae* respectfully request that this Court uphold the district court's order and hold the Massachusetts statute is constitutional.

Respectfully submitted,

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APPENDIX A: STATEMENTS OF INTEREST

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

The 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 109 daily newspapers in the United States and Guam, including USA TODAY. Each weekday, Gannett's newspapers are distributed to an audience of more than 8 million readers and the digital and mobile products associated with the company's publications serve online content to more than 100 million unique visitors each month.

New England First Amendment Coalition is a non-profit organization working in the six New England states to defend, promote and expand public access to government and the work it does. The coalition is a broad-based organization of people who believe in the power of transparency in a democratic society. Its members include lawyers, journalists, historians and academicians, as well as private citizens and organizations whose core beliefs include the principles of the First Amendment. The coalition aspires to advance and protect the five freedoms of the First Amendment, and the principle of the public's right to know in our region. In collaboration with other like-minded advocacy organizations, NEFAC also seeks to advance understanding of the First Amendment across the nation and freedom of speech and press issues around the world.

New England Newspaper and Press Association, Inc. ("NENPA") is the regional association for newspapers in the six New England States (including Massachusetts). NENPA's corporate office is in Dedham, Massachusetts. Its purpose is to promote the common interests of newspapers published in New England. Consistent with its purposes, NENPA is committed to preserving and ensuring the open and free publication of news and events in an open society.

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CERTIFICATE OF COMPLIANCE

I, Christopher T. Bavitz, do hereby certify: (1) Brief of *Amici Curiae* complies with the type-volume limitation Fed. R. App. P. 32(a)(7)(B) because it contains 3,934 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(a)(7)(B)(iii); (2) Brief of *Amici Curiae* complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because it has been prepared in a proportionally spaced typeface using Microsoft Office Word 2016 in 14-point Times New Roman; and (3) Brief of *Amici Curiae* has been scanned for viruses and is virus-free.

Dated: January 24, 2017

/s/ Christopher T. Bavitz
Counsel for Amici Curiae

CERTIFICATE OF SERVICE

I, Christopher T. Bavitz, hereby certify that on January 24, 2017, I electronically filed the foregoing document with United States Court of Appeals for the First Circuit by using the CM/ECF system. I certify that the following parties or their counsel of record are registered as ECF filers and that they will be served through the CM/ECF system: John W. Steinmetz and Jane C. Steinmetz, Plaintiff-Appellants; Coyle v. Caron, Inc., Defendant-Appellee; and the American Civil Liberties Union of Massachusetts, *amicus curiae*.

Dated: January 24, 2017

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