

STATE OF MINNESOTA
IN COURT OF APPEALS

Jerry L. Moore,

Plaintiff/Respondent,

vs.

John Hoff a/k/a Johnny Northside,

Defendant/Appellant

REQUEST FOR LEAVE TO FILE BRIEF
AMICI CURIAE BY MINNESOTA PRO
CHAPTER, SOCIETY OF PROFESSIONAL
JOURNALISTS; REPORTERS COMMITTEE
FOR FREEDOM OF THE PRESS; AND
SILHA CENTER FOR THE STUDY OF
MEDIA ETHICS & LAW

Case No.: A111923

TO: Parties above-named and their attorneys of record Jill Clark, 2005 Aquila Avenue North, Golden Valley, Minnesota 55427, and Paul Godfread, Godfread Law Firm, P.C., 100 South Fifth Street, Suite 1900, Minneapolis, Minnesota 55402

Minnesota Pro Chapter, Society of Professional Journalists; The Reporters Committee for Freedom of the Press; and Silha Center for the Study of Media Ethics & Law (collectively “Applicants”) respectfully request that the Court of Appeals grant them leave to participate in this case, as *amici curiae*, pursuant to Rule 129 of the Minnesota Rules of Civil Appellate Procedure.

The trial court granted the prior motion of Minnesota Pro Chapter, Society of Professional Journalists (“MN-SPJ”) to participate as *amicus*. The Reporters Committee and Silha Center would jointly participate as *amici* with MN-SPJ on appeal.

I. STATEMENT OF APPLICANTS’ INTEREST.

The Applicants’ interest is both public and private. The **Society of Professional Journalists**, a voluntary, non-profit organization, was founded as Sigma Delta Chi in 1909. It is the largest and oldest organization of journalists in the United States, representing every branch and rank of print and broadcast journalism, and for more than a century has been dedicated to perpetuating a free press. The Minnesota Pro Chapter has become one of the nation’s largest and

most active professional chapters since its founding in 1956. The work of the Society's members centers upon written and broadcast journalism, and increasingly appears online.

The **Reporters Committee for Freedom of the Press** ("Reporters Committee") is a voluntary, unincorporated association of reporters and editors that works to defend the First Amendment rights and freedom of information interests of the news media. Reporters Committee is based in Arlington, Virginia, and its executive director is Lucy A. Dalglish. Reporters Committee has provided representation, guidance and research in First Amendment and freedom of information litigation since 1970. In recent years, it has taken the lead in building coalitions with other media-related organizations to protect reporters' rights to keep sources confidential and to monitor legislative efforts that impact the public's right to know. It also has aggressively sought opportunities to speak out nationwide through *amicus curiae* briefs filed on behalf of journalists. In the last four decades Reporters Committee has played a role in virtually every significant press freedom case that has come before the U.S. Supreme Court—from *Nebraska Press Association v. Stuart* to *U.S. v. Moussaoui*—as well as in hundreds of cases in federal and state courts. Reporters Committee has also emerged as a major national and international resource in free speech issues, disseminating information in a variety of forms, including a quarterly legal review, a bi-weekly newsletter, a 24-hour hotline, and various handbooks on media law issues.

Silha Center for the Study of Media Ethics & Law ("Silha Center") is a research center located within the School of Journalism and Mass Communication at the University of Minnesota. Its primary mission is to conduct research on, and promote understanding of, legal and ethical issues affecting the mass media. The Center also sponsors an annual lecture series, hosts forums and symposiums, produces a newsletter and other publications, supports graduate students, and provides information about media law and ethical issues to the public.

In the present case, the jury awarded damages to Plaintiff/Respondent despite a finding that an online statement of Defendant/Appellant was true. News of that result generated confusion, consternation, and commentary in Minneapolis and around the country. *See, e.g.*, http://www.abajournal.com/news/article/firestorm_re_60k_award_against_blogger_despite_lack_of_defamation/ ; http://minnesota.publicradio.org/collections/special/columns/news_cut/archive/2011/03/sometimes_the_truth_doesnt_set.shtml ; <http://www.thedeets.com/2011/03/11/johnny-northside-trial-follow-up/> ; <http://volokh.com/2011/03/11/60000-damages-for/> ; <http://www.skjoldparrington.com/newsroom/articlebank/JohnnyNorthsideVerdict.php>. As reflected in comments to those postings, some commenters expressed fears that they might face similar consequences despite the truth of their own statements, and wondered how the law could permit that result.

Defendant/Appellant moved for judgment as a matter of law or, alternatively, for a new trial, but the trial court denied these motions in August 2011. It held that even though the jury found the statements to be true,

[Defendant's] conduct, taken as a whole, amounted to an intentional interference with Plaintiff's employment contract and prospective employment advantage. Despite Defendant's argument to the contrary, Plaintiff provided direct and circumstantial evidence in support of his tortious interference claims, independent of and distinct from his defamation claim. These findings are not "palpably contrary to the evidence," nor is the evidence "so clear as to leave no room for differences among reasonable people."

This development, likewise, attracted attention—and skepticism—both in the Twin Cities and elsewhere. *See, e.g.*, <http://www.tcdailyplanet.net/news/2011/06/06/johnny-northside-60000-judgment-upheld-northside-blog-suit>; <http://bloglawblog.com/blog/?p=3367>.

In cases raising First Amendment issues, the U.S. Supreme Court has “repeatedly held that an appellate court has an obligation to ‘make an independent examination of the whole record’ in order to make sure that ‘the judgment does not constitute a forbidden intrusion on the field of free expression.’” *Bose Corp. v. Consumers Union of United States, Inc.*, 466 U. S. 485, 499 (1984) (quoting *New York Times Co. v. Sullivan*, 376 U. S. 254, 284-286 (1964)). Statements appearing online should have the same level of protection as other means of mass communication. Jury verdicts that hold journalists and others liable for tortious interference based either on truthful statements or on a different standard than defamation could impair the free flow of information and vigorous debate on public issues.

Applicants have a significant, continuing interest in ensuring that in cases such as this, where First Amendment issues are at stake, courts take an exacting view of the record to ensure that the jury based its verdict on something other than constitutionally protected speech. Applicants have a public interest in assisting this Court in analyzing the tradition of legal protections for such speech.

Accordingly, Applicants respectfully move this Court to grant them leave to participate in this action as *amici curiae*.

II. STATEMENT OF PARTY SUPPORTED AND POSITION TAKEN.

The Applicants support Defendant/Appellant John Hoff in seeking a new trial untainted by the possibility of a verdict impermissibly based on truthful statements or otherwise-protected speech.

The Applicants take the position that the verdict violates the First Amendment and must be reversed if the jury relied or may have relied, even in part, on protected speech as evidence of tortious interference.

III. STATEMENT OF WHY PARTICIPATION OF *AMICI CURIAE* IS DESIRABLE.

Briefs *amicus curiae* can “broaden the discussion of important points of law” in pending cases; “inform the court of facts or matters of law that may have escaped its consideration,” and “point out to the court practical or legal consequences of a particular decision beyond those involved in the case pending before the court.” D. Herr & S. Hanson, APPELLATE RULES ANNOTATED §§129.1 & 129.3, p. 650 (2009).

An *amici curiae* brief is desirable in this action because the issues it raises affect interests extending far beyond those of the parties. Increasingly, members of the public turn to blogs created by “citizen journalists” such as Defendant/Appellant to learn about what is happening in their communities and around the world. It is vital that existing laws, developed to protect traditional forms of media from end-runs around the constitutional requirements of libel law, apply as well to online expression.

Applicants have an extensive background of thorough and objective research on matters involving freedom of expression and constitutional rights. They believe they can offer valuable experience and perspective regarding the important issues implicated by this lawsuit. Specifically, they believe their brief will assist the Court by expanding the information available to the Court with respect to the practical impact of the decision below and with respect to the constitutional protects afforded speakers such as Defendant/Appellant.

IV. CONCLUSION.

For all the above reasons, Applicants Minnesota Pro Chapter, Society of Professional Journalists, The Reporters Committee for Freedom of the Press, and Silha Center for the Study of Media Ethics & Law respectfully request the opportunity to participate in this case as *amici curiae*.

Respectfully submitted,

Dated: November 14, 2011

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AFFIDAVIT OF SERVICE BY MAIL

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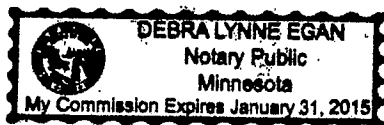
Shelley Beety of the City of Shakopee, County of Scott, in the State of Minnesota, being duly sworn, says that on the 20th day of October, 2011, she served the following documents:

1. Request for Leave to File Brief Amici Curiae by Minnesota Pro Chapter, Society of Professional Journalists; Reporters Committee for Freedom of the Press; and Silha Center for the Study of Media Ethics & Law

on the following attorneys in this action, by placing a copy thereof in an envelope and arranging for the deposit of same, postage prepaid, in the United States Mails at Minneapolis, Minnesota, directed to said attorneys at the following addresses:

Jill Clark
2005 Aquila Avenue North
Golden Valley, MN 55427

Paul Godfread
Godfread Law Firm, P.C.
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Minneapolis, MN 55402



Shelley Beety

Subscribed and sworn to before me
this 14th day of November, 2011.

Debra L. Egan

Notary Public
fb.us.7602045.01