DISTRICT OF COLUMBIA COURT OF APPEALS



COMPETITIVE ENTERPRISE INSTITUTE, et al.,

Appellants,

No. 14-CV-101

MICHAEL E. MANN,

Appellee.

NATIONAL REVIEW, INC.,

Appellants,

v.

No. 14-CV-126

MICHAEL E. MANN,

Appellee.

NOTICE OF FILING

PLEASE TAKE NOTICE that, by their undersigned attorneys, *amici curiae* have submitted the attached letter to the Clerk of the Court this same day.

Dated: February 13, 2019 Respectfully submitted,

BALLARD SPAHR LLP

By: /s/ Seth D. Berlin

Seth D. Berlin (D.C. Bar No. 433611)

Mara J. Gassmann (D.C. Bar No. 1014532)

BALLARD SPAHR LLP

1909 K Street, NW, 12th Floor

Tel: (202) 508-1122

Fax: (202) 661-2299

Washington, DC 20006-1157 berlins@ballardspahr.com gassmanm@ballardspahr.com

Counsel for Amici Curiae

CERTIFICATE OF SERVICE

I hereby certify that on this 13th day of February 2019, I caused a true and correct copy of the foregoing Notice of Filing to be served through the Court's electronic filing system on all counsel registered for e-filing, and via first-class mail upon:

Michael A. Carvin Anthony J. Dick Jones Day 51 Louisiana Avenue, N.W. Washington, D.C. 20001 (202) 879-3939 macarvin@jonesday.com

Counsel for Appellant National Review, Inc.

Andrew M. Grossman
David B. Rivkin, Jr.
Mark I. Bailen
Baker & Hostetler LLP
Washington Square, Suite 1100
1050 Connecticut Avenue, N.W.
Washington, D.C. 20036
(202) 861-1697
agrossman@bakerlaw.com

Counsel for Appellants Competitive Enterprise Institute and Rand Simberg John B. Williams Williams Lopatto PLLC 1707 L St., N.W., Suite 550 Washington, D.C. 20036 (202) 296-1665 jbwilliams@williamslopatto.com

Peter J. Fontaine Cozen O'Connor 1650 Market St., Suite 2800 Philadelphia, PA 19103 (215) 665-2723 pfontaine@cozen.com

Counsel for Appellee

/s/ Seth D. Berlin

Seth D. Berlin (D.C. Bar No. 433611)

Ballard Spahr

1909 K Street, NW 12th Floor Washington, DC 20006-1157 TEL 202.661.2200 FAX 202.661.2299 www.ballardspahr.com Seth D. Berlin
Tel: 202.508.1122
Mara J. Gassmann
Tel: 202.508.1104
Fax: 202.661.2299
berlins@ballardspahr.com
gassmannM@ballardspahr.com

February 13, 2019

Clerk District of Columbia Court of Appeals 430 E Street, NW, Room 115 Washington, DC 20001

> Re: Competitive Enterprise Institute, et al. v. Mann, National Review, Inc. v. Mann,

> > Nos. 14-CV-101 & 14-CV-126 (consolidated)

Dear Clerk:

Together with attorneys from the Reporters Committee for the Freedom of the Press, we represent a group of twenty-four organizations, listed in the attached appendix, all of which joined an *amicus* brief in support of appellants during the initial round of briefing before the panel that decided this appeal. We understand that appellants then sought rehearing, that the panel issued an amended opinion, and that appellants have now sought rehearing *en banc*.

Because many of the *amici* we represent do not typically file *amicus* submissions at the petition stage, we did not submit an *amicus* brief in support of appellants' rehearing petitions. However, we want to advise the Court that we believe rehearing *en banc* is indeed warranted. Although we believe the panel correctly held that the denial of a special motion to dismiss under the District of Columbia's Anti-SLAPP Act is immediately appealable, we believe that the panel's decision on the merits of plaintiff's defamation claim, including as amended by the Court, may have unintended and undesirable consequences in future cases implicating the exercise of *amici*'s right to freedom of speech and of the press. If rehearing *en banc* is granted, we would plan to file a merits *amicus* brief articulating those concerns in greater detail and would also be available to take part in argument at the rehearing stage, should our participation prove helpful to the Court in addressing the ruling's broader impact.

Should you or the Court have any questions, please do not hesitate to contact me. Thank you for your consideration.

Respectfully submitted,

/s/ Seth D. Berlin

Seth D. Berlin Mara J. Gassmann

cc: All Counsel of Record

APPENDIX

List of Amici Curiae

The Reporters Committee for Freedom of the Press

American Civil Liberties Union of the District of Columbia

American Society of News Editors

Association of Alternative Newsmedia

First Amendment Coalition

First Look Media Works, Inc.

Fox News Network LLC

Gannett Co., Inc.

Investigative Reporting Workshop at American University

Las Vegas Review-Journal, Inc.

The National Press Club

National Press Photographers Association

NBCUniversal Media, LLC

News Media Alliance

Online News Association

Radio Television Digital News Association

Reveal from The Center for Investigative Reporting

The Seattle Times Company

Society of Professional Journalists

TIME magazine

Tribune Publishing Company

Tully Center for Free Speech

MDE City Paper Holdings, LLC d/b/a Washington City Paper

The Washington Post