

NORTH CAROLINA COURT OF APPEALS

DTH MEDIA CORPORATION;)
CAPITOL BROADCASTING)
COMPANY, INC.; THE CHARLOTTE)
OBSERVER PUBLISHING COMPANY;)
and THE DURHAM HERALD)
COMPANY,)

Plaintiffs-Appellants)

v.)

From Wake County
16 CVS 14300

CAROL L. FOLT, in her official capacity)
as Chancellor of the University of North)
Carolina at Chapel Hill, and GAVIN)
YOUNG, in his official capacity as)
Senior Director of Public Records for the)
University of North Carolina at Chapel)
Hill,)

Defendants-Appellees)

MOTION TO FILE BRIEF OF *AMICUS CURIAE* STUDENT PRESS LAW
CENTER IN SUPPORT OF PLAINTIFFS-APPELLANTS

RELIEF REQUESTED

Pursuant to Rule 28(i) of the North Carolina Rules of Appellate Procedure, the Student Press Law Center (hereinafter “SPLC” or “*amicus*”) moves this Court for leave to file the accompanying Brief *Amicus Curiae* in support of Plaintiffs-Appellants in the above-captioned matter. Counsel for *amicus* has conferred with counsel for the parties in this matter, neither of whom objects to this filing.

GOOD CAUSE FOR LATE FILING

An amicus brief must typically be filed “within the time allowed for the filing of the brief of the party supported.” N.C. R. App. P. 28(i). Motions for leave to file an *amicus* brief filed after this time “are disfavored in the absence of good cause.” *Id.* Such good cause exists here.

The SPLC took on a new executive director on September 6 after a lengthy nationwide search process. Before this, *amicus* was without a full-time executive director for over a month and the Center’s headquarters office was being managed by a part-time contract employee. The newly hired director is in the process of relocating her home from California to Washington, D.C., and thus is not working full-time in the Center’s headquarters office during that transition. Because of these exigencies, the SPLC only learned of the existence of this appeal and briefing schedule on September 19.

Upon learning of the case, SPLC immediately began seeking *pro bono* counsel. However, the counsel that *amicus* normally uses is already involved in this case, and was therefore unavailable. Nonetheless, SPLC was able to quickly retain other *pro bono* counsel, and over the course of six days the organization and counsel drafted the *amicus* brief and accompanying motion. *Amicus* therefore asks the Court to allow its motion and accompanying brief for good cause.

IDENTITY AND INTEREST OF AMICUS CURIAE

The Student Press Law Center (“SPLC”) is an IRS 501(c)(3) non-profit organization that helps journalists access records about schools and colleges. SPLC also advocates for the transparency of educational institutions. Founded in 1974, SPLC is the nation’s leading provider of training and curriculum about the law governing the publication of news in the campus setting. SPLC’s attorney hotline regularly takes calls from journalists across the country whose access to public records has been obstructed in misguided reliance on student privacy laws. The organization has appeared as *amicus* across the country dozens of times in support of journalists’ rights to gather and publish information about educational institutions.

REASONS WHY AN AMICUS BRIEF IS DESIRABLE

The SPLC has been at the forefront of issues involving freedom of information and student privacy for over forty years. It seeks to bring its

knowledge and expertise to bear on this issue by informing the Court about the broader national context in which this dispute takes place. In addition to pure arguments of law, *amicus* will use news articles and relevant studies to inform the Court about how similar disputes at the intersection of public records and privacy have already been decided in other jurisdictions.

ISSUE OF LAW TO BE ADDRESSED

Whether the trial court erred in concluding, as a matter of law, that to the extent the North Carolina Public Records Act requires the Defendants to disclose the records requested by the Plaintiffs, the Act is preempted by federal law.

POSITION OF AMICUS CURIAE

It is the position of SPLC that the trial court erroneously ruled that federal law preempts the North Carolina Public Records Act in this case. *Amicus* therefore seeks to have this Court reverse the ruling of the trial court and order production of the records sought by the Appellants.

CONCLUSION

For the foregoing reasons, SPLC respectfully requests that the Court grant it leave to file an *amicus curiae* brief in support of Plaintiffs-Appellants.

Respectfully submitted, this the 27th day of September, 2017.

ELECTRONICALLY SUBMITTED

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that he served a copy of the foregoing
MOTION TO FILE BRIEF AMICUS CURIAE by depositing copies, contained in
a first-class postage paid wrapper, into a depository under the exclusive care and
custody of the United States Postal Service, addressed as follows:

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Respectfully submitted, this the 27th day of September, 2017

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