CASE NO. S239686

SUPREME COURT
FILED

APR 20 2018

Jorge Navarrete Clerk

Deputy

IN THE SUPREME COURT
OF THE STATE OF CALIFORNIA

STANLEY WILSON,

Plaintiff and Appellant,

v.

CABLE NEWS NETWORK, INC., ET AL.,

Defendants and Respondents.

APPLICATION TO FILE AMICUS CURIAE BRIEF AND BRIEF OF AMICUS CURIAE CALIFORNIA TAXPAYERS ACTION NETWORK IN SUPPORT OF PLAINTIFF STANLEY WILSON

AFTER A DECISION BY THE COURT OF APPEAL,
SECOND APPELLATE DISTRICT, DIVISION ONE
CASE NO. B559720

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REQUEST TO FILE *AMICUS CURIAE* BRIEF IN SUPPORT OF STANLEY WILSON

Pursuant to Rule 8.520(f) of the California Rules of Court, California Taxpayers Action Network ("CTAN") respectfully submits this application for leave to file an *amicus curiae* brief in support of Plaintiff and Appellant Stanley Wilson ("Mr. Wilson"). CTAN's counsel has reviewed the parties' briefing in this matter and believes the Court will benefit from the attached *amicus curiae* brief because it does not merely duplicate arguments raised by Mr. Wilson, but instead focuses on public-policy concerns implicated by the Court's forthcoming decision. The *amicus curiae* brief was authored entirely by CTAN's counsel and was not authored by counsel for either party to this case. No person or entity, other than CTAN and its counsel, has contributed – monetarily or otherwise – to the preparation or submission of the attached *amicus curiae* brief. The delay in filing this application sooner was solely due to the inadvertence of CTAN's counsel.

STATEMENT OF INTEREST OF *AMICUS CURIAE*

CTAN is a non-profit corporation whose primary function is advocating for open, accountable, and responsive government, and for the protection of public rights on matters affecting taxpayers. CTAN is interested in this case because its members are increasingly concerned that Code of Civil Procedure Section 425.16 (the "anti-SLAPP Statute") is being used by monied defendants for the purpose of deterring legitimate legal action by those with lesser means.

In particular, this case involves a billion-dollar news organization using the anti-SLAPP Statute to bring the weight of all its resources to bear on a single individual bringing a discrimination claim. Such a use of the anti-SLAPP Statute does not comport with its original purpose, which "arose out of legislative concern that large private interest ***plaintiffs*** were using meritless tort actions to deter or punish individual activists who opposed their views." See *Metcalf v. U-Haul International, Inc.*, 118 Cal. App. 4th 1261, 1264 (2004) (emphasis added).

This case is relevant to CTAN because a ruling in Cable News Network's ("CNN") favor will embolden another group of well-funded defendants – public agencies – to utilize the anti-SLAPP Statute to immunize themselves from liability for unlawful action masquerading as free speech and/or petitioning rights. For these reasons, CTAN respectfully requests permission to file the attached *amicus curiae* brief.

Dated: April 12, 2018. Respectfully submitted,

BRIGGS LAW CORPORATION

By: _____
Anthony N. Kim

Attorneys for *Amicus Curiae* California Taxpayers Action Network

INTRODUCTION

Code of Civil Procedure "Section 425.16 permits a court to dismiss certain nonmeritorious claims in the early stages of the lawsuit. These SLAPP suits 'are generally meritless suits ***brought by large private interests*** to deter common citizens from exercising their political or legal rights or to punish them for doing so.'" *Jewett v. Capital One Bank*, 113 Cal. App. 4th 809, 810 (2003) (citations omitted; emphasis added). Indeed, "[t]he anti-SLAPP statute arose out of legislative concern that large private interest ***plaintiffs*** were using meritless tort actions to deter or punish individual activists who opposed their views. *Metcalf, supra*, 118 Cal. App. 4th at 1264 (citations omitted; emphasis added).

Despite these origins, the anti-SLAPP Statute has been used to shield unlawful action by monied defendants from being adjudicated on the merits. In other words, the anti-SLAPP Statute is now consistently used to punish the very persons it was intended to protect. Such an application of the anti-SLAPP Statute in the public-interest context means the erosion of the public's right to challenge unlawful actions by public agencies. As the parties have thoroughly discussed the issues in their briefing, CTAN simply wants to highlight some of the ways in which public agencies have successfully utilized the anti-SLAPP Statute against the very citizens the statute was intended to protect.

CTAN urges this Court to affirm the Court of Appeal, not only to curb the transformation of the anti-SLAPP Statute into a tool to disempower the

citizenry, but because in this case it is good public policy to encourage employees to challenge an employer's discriminatory practices.

ARGUMENT AND ANALYSIS

In *San Diegans for Open Government v. San Diego State University Research Foundation et al.*, 13 Cal. App. 5th 76 (2017), a citizen group alleged that a public employee violated Government Code Section 1090 when she used her public position to procure contracts between San Diego State University ("SDSU"), where she served as a professor, and iNewsource, a private news agency for whom she served as executive director. Not only did the trial court grant the defendants' anti-SLAPP motions, it also awarded over $160,000 in attorney's fees against the plaintiff, a non-profit watchdog group. Mot. for Judicial Not., Ex A. The trial court was affirmed by the Court of Appeal. This Court granted review of that opinion on August 16, 2017.[2] *San Diegans for Open Government v. San Diego State University et al.*, Docket No. S242529.

In another recent case, *The Inland Oversight Committee v. Yates*, Docket No. E064787, a citizen group brought a lawsuit alleging that an eight-year city attorney contract violated the Chino Municipal Code's prohibition on "professional services" contracts exceeding three years in length. Mot. for Judicial Not., Ex. B. Specifically, the group alleged that each payment made

[2] The amount of the fee award was not appealed.

to the city attorney pursuant to the contract past the three-year mark constituted an unlawful expenditure of public funds. *Id.* The Court of Appeal affirmed the trial court's granting of the City's anti-SLAPP motion. *Id.* In each of these cases, the anti-SLAPP Statute operated against the very group it was intended to protect: "***common citizens*** . . . exercising their political or legal rights. . . ." *Jewett, supra*, 113 Cal. App. 4th at 810 (citations omitted; emphasis added).

The anti-SLAPP Statute's attorney fee provision exacerbates the problem. For example, in both *San Diegans for Open Government* and the case at bar, the plaintiffs – one a non-profit citizen group and one a lone individual – were ordered to pay well in excess of $100,000 in attorney fees to a large university in one case, and one of the largest news networks in the world in the other case. Again, the anti-SLAPP Statute "arose out of legislative concern that large private interest plaintiffs were using meritless tort actions to deter or punish individual activists who opposed their views." *Metcalf, supra*, 118 Cal. App. 4th at 1264. As evidenced by this case, and those discussed above, the statute is accomplishing the very ***opposite*** of what was intended: deterring plaintiffs with little means from bringing legal action for fear of being punished by a large attorney fee award. If this Court rules against Mr. Wilson, this case will undoubtedly be used in the public-interest context as a tool to deter citizens from challenging unlawful government action. Thus, it is of the utmost importance that the Court find for Mr. Wilson

and curb the alarming erosion of plaintiffs' rights through an unintended use of the anti-SLAPP Statute. Sadly, the law is being turned on its head, against the very people it was designed to protect.

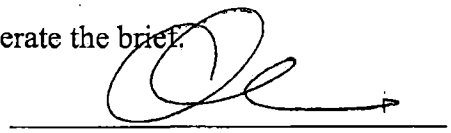
CONCLUSION

For these reasons, CTAN respectfully requests that the Court find in favor of Mr. Wilson and affirm the Court of Appeal's opinion.

CERTIFICATION OF WORD COUNT

I, Anthony N. Kim, certify that this brief is set in 13-point Times New Roman font and contains less than 1,000 words, as counted by the WordPerfect program used to generate the brief.

Dated: April 12, 2018.



Anthony N. Kim

PROOF OF SERVICE

1. My name is **Keri Taylor**. I am over the age of eighteen. I am employed in the State of California, County of **San Bernardino**.

2. My ✓ business ___ residence address is **99 East "C" Street, Suite 111, Upland, CA 91786**.

3. On **April 12, 2018**, I served ___ an original copy ✓ a true and correct copy of the following documents: **Application to File Amicus Curiae and Brief of Amicus Curiae Brief, California Taxpayers Action Network in Support of Stanley Wilson**

4. I served the documents on the person(s) identified on the attached mailing/service list as follows:

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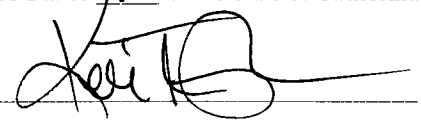
I declare under penalty of perjury under the laws ___ of the United States ✓ of the State of California that the foregoing is true and correct.

Date: **April 12, 2018** Signature: 

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Stanley Wilson v. Cable News Network, et al.

California Supreme Court Case No. S239686
California Court of Appeal, Second Appellate District, Division One, Case No. B559720
Los Angeles County Superior Court Case No. BC559720

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