

**VIRGINIA:**

**IN THE CIRCUIT COURT OF FAIRFAX COUNTY**

**John C. Depp, II**  
**Plaintiff,**

**v.**

**Amber Laura Heard**  
**Defendant.**

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Case No. CL-2019-0201

FILED  
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2019 OCT 25 AM 9:44  
JOHN T. FREY  
CLERK  
CIRCUIT COURT  
FAIRFAX, VA

**OPPOSED MOTION OF THE VIRGINIA PRESS ASSOCIATION FOR LEAVE TO FILE AMICUS CURIAE BRIEF**

COMES NOW the Virginia Press Association (“VPA”), by counsel, pursuant to Rule 5:30(c) of the Rules of the Supreme Court of Virginia, and files this Motion for Leave to File an *Amicus Curiae* Brief in support of the Demurrer and Plea in Bar Seeking Dismissal of All Claims filed by Defendant Amber Laura Heard (“Defendant” or “Ms. Heard”). In support of this Motion, VPA states as follows:

**RELEVANT FACTS**

1. On September 5, 2019, Ms. Heard sought leave to file an Amended Responsive Pleading—specifically, a Demurrer and Plea in Bar—and further sought leave to file a Memorandum in Support pursuant to subsections 1.04, 1.05, and 6.00 of Section E of the Fairfax Circuit Court Practice Manual (2018 ed.).

2. Defendant’s Motion for Leave to File her Amended Demurrer and Plea in Bar is set for hearing on November 8, 2019. The Amended Responsive Pleading and Memorandum in Support have not yet been accepted for filing by this Court.

3. The VPA is comprised of 225 members, including daily and weekly newspapers based throughout Virginia. These members report on matters of public concern on a daily basis, including matters involving public figures like Mr. Depp and Ms. Heard.

4. The VPA has previously appeared as *amicus curiae* in cases within the Commonwealth regarding claims of defamation. *See, e.g.*, Brief of Amicus Curiae Virginia Press Association, et al., *Webb v. Pilot Media Companies, LLC*, Record No. 122024 (2013).

5. Counsel for the VPA hereby respectfully requests that this Motion be heard at 10:00 a.m. on Friday, November 8, 2019, because it is a contested Civil Action matter than can be heard in 30 minutes or less. Further, counsel for both Plaintiff and Defendant are scheduled to appear before this Court on November 8 for a hearing on Defendant's Motion for Leave, and resolution of Defendant's Motion for Leave is directly related to VPA's Motion for Leave.

6. Counsel for the VPA has conferred in good faith with counsel for both parties about the proposed date and time for the hearing, and in an effort to resolve the subject of this Motion, as required by Section E, Rule 4.08 of the Fairfax Circuit Court Practice Manual. Defendant consents to the relief requested by this Motion. Plaintiff opposes the relief requested by this Motion, and intends to file an opposition to this Motion.

#### **APPLICABLE LAW**

7. *Amicus curiae* briefs may be accepted at this Court's discretion. This Court has previously granted a motion from a third party seeking leave to file an *amicus curiae* brief. *See, e.g.*, Unopposed Mot. for Digital Recognition Network, Inc. and Vigilant Solutions, Inc. for Leave to File an *Amicus Curiae* Br., *Neal v. Fairfax County Police Dep't*, Case No. CL-2015-5902, (Va. Cir. Ct. filed July 22, 2016).

8. Supreme Court of Virginia Rule 5:30 permits “any person or entity seeking to file a brief *amicus curiae*” to seek leave of the Court by motion. Rule 5:30 further states that a brief *amicus curiae* is timely filed where it is “filed on or before the date on which the brief of the party supported is required to be filed.” *Id.*

9. In line with Supreme Court of Virginia Rule 5:30, where this Court has previously accepted *amicus curiae* briefs, those briefs were considered timely when filed on or before the date on which the brief of the party supported was filed with and accepted by the Court. *See, e.g., supra* ¶ 7; *see also* Supreme Court of Virginia Rule 5:30(d).

### **ARGUMENTS & CONCLUSIONS**

10. If Defendant’s Motion for Leave is granted and her Proposed Demurrer and Plea in Bar and Memorandum in Support are accepted for filing by this Court, this Court should grant the VPA’s Motion for Leave to File an *Amicus Curiae* Brief of no more than ten pages by (a) November 8, 2019, or (b) within 5 days of this Court’s order granting Defendant’s Motion for Leave.

11. The VPA’s Motion for Leave is timely. The Motion, set for hearing on the same day as Defendant’s Motion for Leave, allows this Court to efficiently decide both motions at the same time and, if granted, permits Defendant’s Amended Demurrer and Plea in Bar and VPA’s *amicus curiae* brief to be accepted by this Court on the same day. *See* Supreme Court of Virginia Rule 5:30(d).

12. Proposed *amicus* will not duplicate the parties’ arguments, and will offer no comment on the claims and defenses raised by either party vis-à-vis any party’s allegations of domestic abuse.

13. Proposed *amicus* has a strong interest in the outcome of this case, which involves a claim of defamation by implication arising from an op-ed published by *The Washington Post*, a member of VPA.

14. Both Plaintiff and Defendant are Hollywood actors with no significant ties to the Commonwealth of Virginia. The VPA and its media members, on the other hand, reside and work within the Commonwealth, and the outcome of this defamation by implication case could have a significant effect on those journalists and their work within the Commonwealth. As a result, VPA respectfully asserts that the First Amendment interests of the Virginia news media are not being adequately represented by the parties to this case.

15. Specifically, as set forth in the proposed *amicus curiae* brief, the preservation of a pleading standard for defamation by implication that satisfies the First Amendment is of critical concern to the VPA. Broad applications of the defamation by implication doctrine can chill the free press as it would require publishers to consider every potential defamatory implication that could possibly extend from otherwise accurate statements.

16. Defendant's Proposed Demurrer and Plea in Bar and Memorandum in Support argues that the four challenged statements in her op-ed were, *inter alia*, opinions incapable of falsehood. The *amicus curiae* brief for proposed *amicus*, on the other hand, will respectfully urge the Court to engage in its critical gatekeeping role to determine whether a statement is actionable consistent with the First Amendment. *See Chapin v. Knight-Ridder, Inc.*, 993 F.2d 1087, 1092 (4th Cir. 1993) (citing *Chaves v. Johnson*, 230 Va. 112 (1985)) (whether a statement is actionable consistent with the First Amendment "is a matter of law to be determined by the court.").

17. Also absent from Defendant's Proposed Demurrer and Plea in Bar, proposed *amicus* will detail the history and purpose of the Virginia anti-SLAPP law, noting the Virginia Legislature's intention to expand the anti-SLAPP protections necessary to permit reporting on matters of public concern without fear of expensive, prolonged, retaliatory litigation.

18. Finally, as also unaddressed in Defendant's Proposed Demurrer and Plea in Bar, proposed *amicus* intends to discuss the elevated chilling risks for allowing public figure plaintiffs like Mr. Depp to state a claim for defamation by implication.

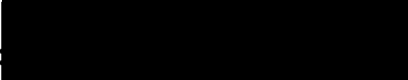
WHEREFORE, the VPA respectfully moves this Court, if Defendant's Motion for Leave is granted, to enter an Order granting leave for the VPA to file an *amicus curiae* brief of no more than ten pages by (a) November 8, 2019, or (b) within 5 days of this Court's order granting Defendant's Motion for Leave.

Dated: October 25, 2019

Respectfully submitted,

VIRGINIA PRESS ASSOCIATION  
By Counsel

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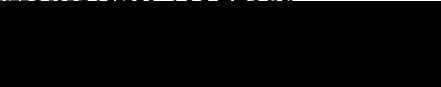
**CERTIFICATE OF SERVICE**

I hereby certify that on this 25th day of October, 2019, I caused a true and correct copy of the foregoing document to be served by electronic mail, and also to be mailed via U.S. Mail (postage prepaid), to the following:

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