NO. 22-906

In the Supreme Court of the United States

ALAN GRAYSON,

PETITIONER,

v.

NO LABELS, INC. ET AL.,

RESPONDENTS.

On Petition for Writ of Certiorari to the United States Court of Appeals for Eleventh Circuit

REPLY IN SUPPORT OF MOTION FOR LEAVE TO FILE BRIEF OF AMICUS CURIAE PROFESSOR DAVID A. LOGAN IN SUPPORT OF PETITIONER

Professor David A. Logan
Amicus Curiae and
Member of Supreme Court Bar
Roger Williams University School of Law
10 Metacom Avenue
Bristol, RI 02809
(401) 254-4501
dlogan@rwu.edu

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REPLY IN SUPPORT OF MOTION FOR LEAVE TO FILE BRIEF OF AMICUS CURIAE PROFESSOR DAVID A. LOGAN IN SUPPORT OF PETITIONER

Amicus curiae Professor David Logan files this brief reply regarding his motion for leave to file an *amicus* brief in support of the petition for writ of certiorari in this case, No. 22-906. The Defendants' response fails to provide grounds to deny the Court the benefit of a brief that may be "of considerable help to the Court," Sup. Ct. R. 37.1, given that a scholarly article authored by *amicus curiae* was cited sixteen times in the Court's most recent ruling on this crucially important public issue, the future of the Actual Malice defamation rule. *See Berisha v. Lawson*, No. 20-1063, *cert. denied*, 594 U.S. ___ (2021) (Gorsuch, J., dissenting from a denial of a writ of certiorari), citing David A. Logan, *Rescuing our Democracy by Rethinking New York Times. v. Sullivan*, 81 OHIO STATE L. J. 772, 784-93 (2020).[1]

The fact that the Defendants' response to the *amicus curiae* notice may have landed in a spam folder did not alter the course of this motion for leave to file this *amicus curiae* brief, nor did it prejudice the Defendants. Since the 2023 Rules Changes obviate the need for consent, the Defendants' response to the *amicus curiae* notice is irrelevant.

[1] Nearly 40 years ago, Justice O'Connor said that the Supreme Court already was "struggl[ing] . . . to define the proper accommodation between the law of defamation and the freedoms of speech and press protected by the First Amendment." *Philadelphia Newspapers, Inc. v. Hepps*, 475 US 767, 768 (1986). That struggle continues.

Rather, the *amicus curiae* included a motion for leave because — as the motion itself discloses — due to a personal health issue, Professor Logan (who is in his mid-seventies), was unable to determine whether he could file an *amicus curiae* brief and motion until a week ago last Tuesday (six days before filing), at which point the Defendants were provided notice immediately. The Defendants did not require ten days to respond [*see* Sup. Ct. R. 37.2]; instead, they required only "15 minutes." Response at 1. *A fortiori,* the Defendants were not at all prejudiced by the somewhat abbreviated notice.

The "bottom line," so to speak, for every *amicus curiae* is that we are all here to provide the Court with whatever help we can, as the Court wrestles with the weightiest issues that any court can face. Professor Logan respectfully submits that this *amicus curiae* brief accomplishes this, and that the Defendants are not prejudiced by the 41 years of legal scholarship and commitment to the central issue in this case that are brought to bear to aid the Court in the Logan *amicus curiae* brief.

Respectfully submitted,

Professor David A. Logan
Amicus Curiae and
Member of Supreme Court Bar
Roger Williams University School of Law
10 Metacom Avenue
Bristol, RI 02809
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dlogan@rwu.edu

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