No. S125171

IN THE SUPREME COURT

OF THE STATE OF CALIFORNIA

AMAANI LYLE, Plaintiff and Appellant, vs. WARNER BROTHERS TELEVISION PRODUCTIONS, et al., Defendants and Respondents.	2d Civ. No. B 160528 Los Angeles County Superior Court No. BC239047

Review after Judgment of the Court of Appeal,
Second Appellate District, Division Seven
(Justice Dennis M. Perluss, Presiding Justice)

AMICUS CURIAE BRIEF OF CALIFORNIA NEWSPAPER PUBLISHERS ASSOCIATION, THE REPORTERS COMMITTEE FOR FREEDOM OF THE PRESS, THE DAILY JOURNAL CORPORATION, THE COPLEY PRESS, INC., LOS ANGELES TIMES COMMUNICATIONS LLC, CALIFORNIA FIRST AMENDMENT COALITION, FREEDOM COMMUNICATIONS, INC., AND THE AMERICAN SOCIETY OF NEWSPAPER EDITORS IN SUPPORT OF DEFENDANTS AND RESPONDENTS

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IN THE SUPREME COURT

OF THE STATE OF CALIFORNIA

AMAANI LYLE,

Plaintiff and Appellant,

vs.

WARNER BROTHERS TELEVISION PRODUCTIONS, et al.,

Defendants and Respondents.

TO THE HONORABLE RONALD M. GEORGE, CHIEF JUSTICE OF THE STATE OF CALIFORNIA, AND TO THE ASSOCIATE JUSTICES OF THE CALIFORNIA SUPREME COURT:

California Newspaper Publishers Association, The Reporters Committee for Freedom of The Press, The Daily Journal Corporation, The Copley Press, Inc., Los Angeles Times Communications LLC, California First Amendment Coalition, Freedom Communications, Inc., and The American Society of Newspaper Editors (collectively "Media amici"), respectfully submit this Amicus Curiae Brief in support of Defendants and Respondents Warner Bros. Television Productions Inc., Bright, Kauffman, Crane Productions, Adam Chase, Gregory Malins and Andrew Reich (collectively "Warner Bros. TV").

For the reasons set forth below, Media amici urge this Court to reject the Court of Appeal's decision, which potentially subjects Warner Bros. TV to protracted litigation and possible liability for alleged sexual harassment based on the free-wheeling and sometimes ribald discussions among writers engaged in the creative process for a comedic television series. In

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particular, Media amici urge this Court to reject the remarkably intrusive test adopted by the Court of Appeal for evaluating such claims, which would allow judges and juries to decide after-the-fact whether statements made in the context of the creative process, which were neither directed to nor about the plaintiff, were "necessary" to that process.

As discussed below, this broad-reaching decision poses a serious threat to news organizations like Media amici, whose businesses involve open, frank, and uncensored discussion of sensitive topics on virtually a daily basis. Under the test adopted by the Court of Appeal, employers such as Media amici could be required to engage in protracted jury trials to prove that a particular discussion was "necessary" to the media company's business (or even to a particular news story) – a burden that is wholly antithetical to the deference to internal editorial processes that this Court has recognized, and that the First Amendment requires.

The Court of Appeal's decision also is inconsistent with well-established constitutional principles that apply broad protections to speech that may be offensive, even where the offensive speech is directed to or about the prospective plaintiff.[1] Applying a lower level of protection to speech that is not about or directed to the plaintiff – like the speech at issue here – inevitably would chill the free exchange of ideas and information within newspapers and other publishing entities throughout the State.

Consequently, for the reasons discussed below, Media amici urge this Court to reverse the Court of Appeal and reinstate the trial court's decision in this case.

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[1] E.g., Hustler v. Falwell, 485 U.S. 46, 55 (1988); Pring v. Penthouse International, Ltd., 695 F.2d 438, 443 (10th Cir. 1982).

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I.
STATEMENT OF THE CASE[2]

Plaintiff/Appellant Amaani Lyle ("Lyle") was employed as a writer's assistant by Warner Brothers Television Productions on the television show "Friends," "a show about the lives of young sexually active adults." (Court of Appeal Opinion ("Op.") at 3.) Before she was hired, Lyle was warned that the discussions in the writer's room could be explicit. She responded that she previously had worked at Nickelodeon, where "things got very racy in the [writers'] room at times," and said that "[y]ou know, I'm not a complete babe in the woods. I have been around writers that have said things before." (CT 0499.) It is undisputed that part of Lyle's job was to take copious notes of ideas generated during the writers' brainstorming sessions. (Op. at 2.) It also is not disputed that during at least some of those sessions, there were sexually explicit statements and other expressive conduct by defendants Adam Chase, Gregory Malins and Andrew Reich, including jokes, explicit drawings, and gestures.[3]

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[2] Except where indicated by a specific cite to the record, Media amici draw these facts from the Court of Appeal's decision, which relied on the record below.

[3] In her brief before this Court, Lyle claims that she believes at least one joke was directed at her. (Answer Brief at 27-28.) As Warner Bros. TV's Reply Brief in this Court explains, however, Lyle previously conceded that none of the allegedly offensive statements, gestures, or drawings were directed at her. (Reply Brief at 1-2, 5-6 (citations omitted).)

Furthermore, contrary to Lyle's assertions, many of the sexually explicit discussions about which she complains ultimately found their way into episodes of "Friends." Citing only a few examples that pertain directly to the statements at issue here, the Federal Communications Commission just recently rejected indecency complaints by the Parents Television Council ("PTC"), a non-profit organization that reviews and rates television programming, about "Friends" episodes involving: (1) a cake shaped like a penis (and commentary that the cake "looked more delicious when it was a penis"); (2) repeated expletives and references to a man with "his hand up his kilt" and "a pretty serious latex fetish"; and (3) a discussion of "hidden porn" and a character's question "Do you know how many women I had to

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After Lyle was fired for poor job performance, she filed a complaint under the Fair Employment and Housing Act ("FEHA") asserting a number of claims, including race and gender discrimination, retaliation and hostile environment sexual harassment. The trial court entered summary judgment in defendants' favor. (Op. at 4.) As relevant here, the trial court found that Lyle's FEHA claims found no factual support. (Id.) The trial court also awarded defendants their attorneys' fees, finding that the FEHA claims were "frivolous, unreasonable and without foundation." (Id.)

The Court of Appeal reversed in part. Although the appellate court affirmed the trial court's rulings on Lyle's claims of race and gender discrimination and retaliation, the Court of Appeal found that "triable issues of fact exist as to Lyle's causes of action for sexual and racial harassment against Warner Brothers, BKC, Chase, Malins and Reich." (Id. at 4-5.)

On July 21, 2004, this Court granted Warner Bros. TV's Petition for Review, limited to the following issues:

> (1) Can the use of sexually coarse and vulgar language in the workplace constitute harassment based on sex within the meaning of the Fair Employment & Housing Act (FEHA) (Gov. Code, § 12900 et seq.)?
>
> (2) Does the potential imposition of liability under FEHA for sexual harassment based on such speech infringe on defendants' rights of free speech under the First Amendment or the state Constitution?

Media amici's brief specifically addresses the second issue, although the interpretation of FEHA is implicated by the constitutional concerns it poses.[4] As framed, the second question must be answered in the affirmative:

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sleep with to get over you?" Federal Communications Commission, Memorandum Opinion and Order, FCC 04-280 (1/24/2005) at 4-7.

[4] To the extent that FEHA can be interpreted in a way that avoids the constitutional defects discussed by Media amici, this Court should so interpret it. McClung v. Employment Development Dep't, 34 Cal. 4th 467,

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if FEHA were to be interpreted as prohibiting "sexually coarse and vulgar language" in the workplace, regardless of the context in which the language arises, the statute clearly would run afoul of constitutional protections that apply to editorial and creative processes. Moreover, to require that the speech be "necessary" to the workplace is, in the context of a business involving expressive works, a severe infringement on the free flow of ideas that is essential to the creation and publication of those works. Consequently, as set forth below, Media amici urge this Court to find that where, as here, speech takes place in the context of the creative and/or editorial process for works that are subject to First Amendment protection, and the underlying speech was not about or directed to the plaintiff, the First Amendment and the state Constitution prohibit the government from imposing liability for that underlying speech.

II.
THE MEDIA ALWAYS HAVE BEEN AND CONSTITUTIONALLY MUST BE UNIMPEDED IN THE EDITORIAL PROCESS.

The United States Supreme Court long has recognized the importance of affording the media broad protection for decisions made and actions taken during the editorial and creative processes. This deference did not come from the naïve supposition that the speech being protected always would be inoffensive; to the contrary, the framers of the Constitution recognized that the ultimate preservation of liberty mandated broad protection of even offensive speech. Thomas Jefferson, for example, declared that while he "knew how base and obnoxious the press could be,"

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477 (2004) ("[a]n established rule of statutory construction requires [the Court] to construe statutes to avoid constitutional infirmit[ies]") (citations, internal quotes omitted); accord NBC Subsidiary (KNBC-TV), Inc. v. Superior Court, 20 Cal. 4th 1178, 1216 (1999); People v. Superior Court (Romero), 13 Cal. 4th 497, 509 (1996).

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> it is however an evil for which there is no remedy, our liberty depends on the freedom of the press, and that cannot be limited without being lost.

Thomas Jefferson, Democracy, at 150-51 (Saul K. Podover, ed., D. Appleton-Century Co. 1939) James Madison concurred, writing that:

> Among those principles deemed sacred in America, among those sacred rights considered as forming the bulwark of their liberty, which the Government contemplates with awful reverence and would approach only with the most cautious circumspection, there is no one of which the importance is more deeply impressed on the public mind than the liberty of the press. That this liberty is often carried to excess; that it has sometimes degenerated into licentiousness, is seen and lamented, but the remedy has not yet been discovered. Perhaps it is an evil inseparable from the good with which it is allied; perhaps it is a shoot which cannot be stripped from the stalk without wounding vitally the plant from which it is torn. However desirable those measures might be which might correct without enslaving the press, they have never yet been devised in America.

6 Writings of James Madison, 1790-1802, at 336 (G. Hunt ed. 1906), quoted in Rosenbloom v. Metromedia, Inc., 403 U.S. 29, 51 (1971) (emphasis omitted).

In keeping with these principles, the United States Supreme Court has acted to protect against the spectre of government censorship by drawing a demarcation at the newsroom door, recognizing that to allow the State to intrude into internal editorial and creative processes inevitably would have an effect on the content of the speech that results from those processes.

These underlying principles were first recognized in cases involving regulations that either prevented the publication of information, or imposed severe penalties on its publication. In such cases, the Supreme Court had little difficulty in finding the restrictions to be unconstitutional, notwithstanding the justification offered by the government for limiting offensive speech. For example, in Near v. Minnesota, 283 U.S. 697 (1931), the Supreme Court rejected the rationale behind a state law that allowed for

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injunctive relief and other penalties against newspapers that published "malicious" or "scandalous" material, noting:

> Some degree of abuse is inseparable from the proper use of everything, and in no instance is this more true than in that of the press. It has accordingly been decided by the practice of the States, that it is better to leave a few of its noxious branches to their luxuriant growth, than, by pruning them away, to injure the vigour of those yielding the proper fruits.

Id. at 718.

Similarly, the Supreme Court has struck down regulations that would have permitted government actors (or even outside parties) to substitute their judgment for the editorial judgment of the publishers. For example, in rejecting a Florida statute affording a "right of reply" to political candidates, the United States Supreme Court stated:

> [T]he Florida statute fails to clear the barriers of the First Amendment because of its intrusion into the function of editors. A newspaper is more than a passive receptacle or conduit for news, comment, and advertising. The choice of material to go into a newspaper, and the decisions made as to limitations on the size and content of the paper, and treatment of public issues and public officials – whether fair or unfair – constitute the exercise of editorial control and judgment. It has yet to be demonstrated how governmental regulation of this crucial process can be exercised consistent with First Amendment guarantees of a free press as they have evolved to this time.

Miami Herald Publ'g Co. v. Tornillo, 418 U.S. 241, 258 (1974) (emphasis added);[5] accord id. at 259 ("[r]egardless of how beneficent-sounding the purposes of controlling the press might be, we prefer 'the power of reason as applied through public discussion' and remain intensely skeptical about

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[5] A footnote within this text quotes Zechariah Chafee: "As soon as the facts are set in their context, you have interpretation and you have selection, and editorial selection opens the way to editorial suppression. Then how can the state force abstention from discrimination in the news without dictating selection?" Miami Herald Publ'g, 418 U.S. at 258 n.24 (citation omitted).

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those measures that would allow government to insinuate itself into the editorial rooms of this Nation's press") (White, J., concurring; footnote omitted).

The same rationale convinced the Court to refuse government oversight of broadcasters' decisions about whether to accept certain editorial advertisements:

> For better or worse, editing is what editors are for; and editing is selection and choice of material. That editors – newspaper or broadcast – can and do abuse this power is beyond doubt, but that is no reason to deny the discretion Congress provided. Calculated risks of abuse are taken in order to preserve higher values. The presence of these risks is nothing new; the authors of the Bill of Rights accepted the reality that these risks were evils for which there was no acceptable remedy other than a spirit of moderation and a sense of responsibility – and civility – on the part of those who exercise the guaranteed freedoms of expression.

Columbia Broadcasting System, Inc. v. Democratic Nat'l Comm., 412 U.S. 94, 124-25 (1973) (emphasis added).

This Court, too, has recognized the importance of affording broad protection to the media in its exercise of editorial functions. In Shulman v. Group W Prod., Inc., 18 Cal. 4th 200 (1998), this Court explained:

> An analysis measuring newsworthiness of facts about an otherwise private person involuntarily involved in events of public interest by their relevance to a newsworthy subject matter incorporates considerable deference to reporters and editors, avoiding the likelihood of unconstitutional interference with the freedom of the press to report truthfully on matters of legitimate public interest. In general, it is not for a court or jury to say how a particular story is best covered. The constitutional privilege to publish truthful material ceases to operate only when an editor abuses his broad discretion to publish matters that are of legitimate public interest. By confining our interference to extreme cases, the courts avoid unduly limiting ... the exercise of effective editorial judgment.

Id. at 224-25 (citations, internal quotes omitted; emphasis added); accord Eisenberg v. Alameda Newspapers, Inc., 74 Cal. App. 4th 1359, 1391 (1999) ("the courts have long held that the right to control the content of a

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privately published newspaper rests entirely with the newspaper's publisher" (citations omitted)); Ross v. Midwest Comm'n, Inc., 870 F.2d 271, 275 (5th Cir. 1989) ("judges, acting with the benefit of hindsight, must resist the temptation to edit journalists aggressively").

But even when the impact on content is less direct, courts repeatedly have limited government regulation of the press, so as to avoid the possibility of even indirect censorship. For example, in Smith v. California, 361 U.S. 147 (1959), the United States Supreme Court struck down a Los Angeles ordinance that eliminated the element of scienter as a requirement for holding a book seller responsible for selling obscene materials. The Court held that although the legislative branch may choose to dispense with a scienter requirement when dealing with general distributors of merchandise, "the constitutional guarantees of the freedom of speech and of the press stand in the way of imposing a similar requirement on the bookseller." Id. at 152-53. As the Court explained:

> The bookseller's self-censorship, compelled by the State, would be a censorship affecting the whole public, hardly less virulent for being privately administered. Through it, the distribution of all books, both obscene and not obscene, would be impeded.

Id. at 154. Thus, even though the potential effect on speech in such an instance arguably was indirect, rather than a result of direct government restrictions, the Court nonetheless held that the Constitution forbade it:

> Our decisions furnish examples of legal devices and doctrines in most applications consistent with the Constitution, which cannot be applied in settings where they have the collateral effect of inhibiting the freedom of expression by making the individual the more reluctant to exercise it.

Id. at 150-51 (citations omitted).

Similarly, in Pittsburgh Press Co. v. Pittsburgh Comm'n on Human Relations, 413 U.S. 376 (1973), the Supreme Court reiterated the

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constitutional concerns that arise from statutes or regulations that have a negative effect on the media organization, even if the law is generally applicable to other industries. In that case, although the Court upheld a general ordinance that had the effect of restricting certain kinds of advertisements, the Court used the occasion to reiterate its prior rulings "recogniz[ing] ... the special institutional needs of a vigorous press." Id. at 383 (citations omitted). Thus, even though the Court held that there could be a limited restriction on what it deemed to be "commercial speech" (before such speech was recognized as having constitutional protection),[6] it also noted:

> Nor, a fortiori, does our decision authorize any restriction whatever, whether of content or layout, on stories or commentary originated by Pittsburgh Press, its columnists, or its contributors. On the contrary, we reaffirm unequivocally the protection afforded to editorial judgment and to the free expression of views on these and other issues, however controversial.

Id. at 391 (emphasis added).[7]

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[6] Id. at 384, 389. Since that decision, the Supreme Court has held that commercial speech also has at least limited First Amendment protection. See, e.g., Virginia State Board of Pharmacy v. Virginia Citizens Consumer Council, Inc., 425 U.S. 748, 773 (1976).

[7] Even in its decisions that are viewed as restricting press protections, the United States Supreme Court has been careful to limit the extent to which the editorial process can be impacted. For example, in Herbert v. Lando, 441 U.S. 153 (1979), the Court rejected a newspaper's claim that there was an absolute privilege that protected it from having to reveal prepublication discussions about a plaintiff who had sued for defamation. See id. at 169. But the Court made clear that its decision was limited to the unique circumstance of a defamation claim, where a statement had been made about the plaintiff, was alleged to be false and defamatory – thereby diminishing any constitutional protection – and where the plaintiff was faced with proving the state of mind of the publishers in order to establish liability. 441 U.S. at 170. The Court cautioned that "[t]here is no law that subjects the editorial process to private or official examination merely ... to serve some general end such as the public interest; and if there were, it would not survive constitutional scrutiny as the First Amendment is presently construed." Id. at 174. In his concurrence, Justice Powell was even more direct, making clear that even though the editorial process protection was

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The Court of Appeals for the District of Columbia Circuit explained the line that must be drawn to protect First Amendment freedoms:

> To be sure, otherwise valid laws may become invalidated in their application when they invade constitutional guarantees, including the First Amendment's guarantee of a free press. ... So it would be with an interference by government with editorial content or other matters lying at the heart of a newspaper's independence.

Newspaper Guild of Greater Philadelphia, Local 10 v. National Labor Relations Board, 636 F.2d 550, 558 (D.C. Cir. 1980) (citations omitted; emphasis added).

Similarly, even where the need to protect First Amendment interests conflicts with the rights of employees, courts have held that the wall between government regulations and the media's editorial functions must be preserved. For example, in Newspaper Guild, the Court of Appeals for the District of Columbia Circuit held that a newspaper had the right to unilaterally adopt certain rules of ethics to ensure editorial integrity, notwithstanding the collective bargaining requirements of the National Labor Relations Act. Although recognizing the important policies advanced by the NLRA, the Court of Appeals noted:

> [P]rotection of the editorial integrity of a newspaper lies at the core of publishing control. In a very real sense, that characteristic is to a newspaper or magazine what machinery is to a manufacturer. At least with respect to most news publications, credibility is central to their ultimate product and

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not absolute, the trial judges "must ensure that the values protected by the First Amendment ... are weighed carefully in striking a proper balance." Id. at 180 (Powell, J., concurring).

Thus, even in circumstances where the speech at issue was about the plaintiff, and the constitutional protections were limited by its alleged falsity, the Court nonetheless made clear the importance of protecting against undue intrusion into the editorial process. Clearly, where – as here – the speech at issue is not about the plaintiff or directed to her, even greater deference must be given to the First Amendment interests.

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> to the conduct of the enterprise. Moreover, as noted supra, editorial control and the ability to shield that control from outside influences are within the First Amendment's zone of protection and therefore entitled to special consideration.

Id. at 560 (footnote omitted).

Applying a similar analysis, the Washington Supreme Court more recently held that the strong constitutional protections against government intrusion into the editorial process prevented the State from interfering with a newspaper's rules that prohibited employees from engaging in political activities. Nelson v. McClatchy Newspapers, Inc., 936 P.2d 1123 (Wash. 1997). In reaching this result, the Washington Supreme Court pointed to the historical antipathy in this country towards government regulation of the press, and relied on Tornillo and other cases in concluding that the newspaper's First Amendment interests trumped the employees' rights under state law. As the Court explained, "the First Amendment freedom of the press is the constitutional minimum regardless of the legal source of government abridgement." 936 P.2d at 1133. Consequently, the court held that the newspaper's First Amendment right to maintain control of its editorial processes, which included taking measures necessary to eliminate any appearance of bias in its reporting, justified the newspaper's requirement that its employees refrain from engaging in political activities.

The principles espoused in all these decisions make clear the sensitivity that must accompany any possible government intrusion into editorial processes. This is not to suggest that newspapers or other speech-oriented businesses are immune from employment laws, or that employees in these industries have no recourse for sexual or racial harassment. But contrary to Lyle's assertion, the scope of even some generally applicable laws may have constitutional limitations when applied to industries whose fundamental purposes depends on the free exercise of speech. As this Court

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has recognized, constitutional concerns may arise when the government regulates such businesses, such that some laws that can be generally applied to other industries may be invalid as applied to the press:

> Courts have impliedly recognized that a generally applicable law might, under some circumstances, impose an impermissible burden on newsgathering ...; such a burden might be found in a law that, as applied to the press, would result in a significant constriction of the flow of news to the public, and thus eviscerate the freedom of the press.

Shulman, 18 Cal. 4th at 239 (quotations and citations omitted). Thus, as Justice Douglas, concurring in Columbia Broadcasting, explained: "[T]he First Amendment puts beyond the reach of Government federal regulation of news agencies save only business or financial practices which do not involve First Amendment rights." 412 U.S. at 155 (emphasis added).

There can be no question that the editorial process is an integral part of news reporting, just as the creative writing process is an integral part of producing scripted comedic television programs. Newspapers cannot inform the public about important issues, including sensitive ones, without the freedom to talk about those issues during the editorial process. So too, television writers cannot produce entertaining programming, worthy of public attention, without a free exchange of ideas and information during the creative process.[8] Any interference with that process abridges rights protected by the First Amendment and must be rejected.

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[8] The deference afforded to Media amici in their editorial and creative processes applies with equal force to other creators of works protected by the First Amendment, like Warner Bros. TV. This Court's decision in Shulman involved a documentary television show; however, this Court made clear that "the constitutional guarantees of freedom of expression apply with equal force to the publication whether it be a news report or an entertainment feature." 18 Cal. 4th at 225 (citation, internal quotes omitted; emphasis added). Similarly, in Weaver v. Jordan, 64 Cal. 2d 235 (1966), this Court explained that "encompassed [within the rights of freedom of speech and the press] are amusement and entertainment as well as the exposition of ideas. 'The line between the informing and the entertaining is

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III.
THE "NECESSITY" TEST ADOPTED BY THE COURT OF APPEAL INEVITABLY INTERFERES WITH EDITORIAL AND CREATIVE PROCESSES, IN VIOLATION OF THE FIRST AMENDMENT.

The Court of Appeal's decision impermissibly limits First Amendment protections for speech in newsrooms, writers' rooms, and other similar workplaces. According to the Court of Appeal, free speech guarantees extend only to speech that is shown to be "necessary" to the work being performed. This "necessity" test, which has been rejected as an improper content restriction in other contexts, also ignores the broad protection given to even offensive speech. As a consequence, under the Court of Appeal's standard, the ultimate publication of a news story could be deemed to be constitutionally protected, while the discussions about it in the newsroom – if ultimately deemed to be "unnecessary" to the eventual publication – could give rise to liability. Such an incongruous result is directly contrary to this Court's prior decisions concerning the constitutional protections for editorial functions, and squarely contradicts a wide array of cases that have found First Amendment protection for even highly offensive speech. It also will inevitably result in self-censorship as publishers choose to avoid dealing with certain sensitive topics altogether, rather than risking

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too elusive for the protection of that basic right. Everyone is familiar with instances of propaganda through fiction. What is one man's amusement, teaches another's doctrine.'" Id. at 242 (citations omitted). See also Schad v. Borough of Mt. Ephraim, 452 U.S. 61, 65 (1981) ("[e]ntertainment, as well as political and ideological speech, is protected [by the First Amendment]; motion pictures, programs broadcast by radio and television, and live entertainment, such as musical and dramatic works, fall within [its] guarantee."); Zacchini v. Scripps-Howard Broad. Co., 433 U.S. 562, 578 (1977) ("[t]here is no doubt that entertainment, as well as news, enjoys First Amendment protection"); Joseph Burstyn, Inc. v. Wilson, 343 U.S. 495, 501-02 (1952) (motion pictures are included within free speech and press protections).

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potential liability that could arise from internal discussions about those topics.

A. This Court Has Rejected A "Necessity" Test For First Amendment Protected Activities Even Where The Speech Was About Or Directed To The Plaintiff.

This Court has made clear in other contexts that First Amendment rights and the freedom of the press during the editorial and creative processes cannot be limited by a requirement that the speech be "necessary." Such a restrictive test imposes far too great a burden on the writer or publisher. Thus, in holding that a broadcast was protected against a claim for public disclosure of private facts notwithstanding the plaintiff's argument that revealing her identity was not "necessary" to the program, this Court explained:

> The standard, however, is not necessity. That the broadcast could have been edited to exclude some of Ruth's words and images and still excite a minimum degree of viewer interest is not determinative. Nor is the possibility that the members of this or another court, or a jury, might find a differently edited broadcast more to their taste or even more interesting. The courts do not, and constitutionally could not, sit as superior editors of the press.

Shulman, 18 Cal. 4th at 229 (citations omitted; first and third emphases added).

Furthermore, where First Amendment rights are at stake, it is unacceptable to leave a determination of liability to the vagaries of a jury to decide, in hindsight, whether the speech was "necessary." This Court has

> recognized the strong constitutional policy against fact-dependent balancing of First Amendment rights against other interests. Because the categories with which we deal – public and private, newsworthy and non-newsworthy – have no clear profile, there is a temptation to balance interests in ad hoc fashion in each case. Yet history teaches us that such a process leads too often to discounting society's stake in First Amendment rights. We therefore strive for as much predictability as possible within our system of case-by-case

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> adjudication, lest we unwittingly chill First Amendment freedoms.

Id. at 221 (citing Briscoe v. Reader's Digest Ass'n, Inc., 4 Cal. 3d 529 (1971) (emphasis added)). As this Court concluded:

> The articulation of standards that do not require "ad hoc resolution of the competing interest in each case" ... is favored in areas affecting First Amendment rights, because the relative predictability of results reached under such standards minimizes the inadvertent chilling of protected speech, and because standards that can be applied objectively provide a stronger shield against the unconstitutional punishment of unpopular speech.

Shulman, 18 Cal. 4th at 225-26 (citations omitted).

Indeed, permitting a jury to evaluate, after-the-fact, whether a publisher should be held liable for the content of speech during the editorial process arguably is worse than regulations that vest some measure of discretion in licensors, because juries operate with fewer standards and little oversight. Importantly, this Court repeatedly has invalidated such regulations that do not precisely limit the scope of licensors' discretion:

> The crucial factor here is our zealous solicitude for rights falling within the protection of the First Amendment. In considering the constitutionality of ordinances in the category of that involved here precision of regulation must be the touchstone ... and the standards set forth therein must be susceptible of objective measurement. ... Such precision is exacted because the threat of sanctions may deter almost as potently as the actual application of sanctions.

Burton v. Municipal Court, 68 Cal. 2d 684, 690-91 (1968) (citations omitted; emphasis added).

Justice Frankfurter, in his concurring opinion in Joseph Burstyn, cogently explained why the courts must protect speech by rejecting vague regulations:

> To allow such vague, undefinable powers of censorship to be exercised is bound to have stultifying consequences on the creative process of literature and art – for the films are derived largely from literature. History does not encourage reliance on

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> the wisdom and moderation of the censor as a safeguard in the exercise of such drastic power over the minds of men.

343 U.S. at 531; accord Smith, 361 U.S. at 151 ("this Court has intimated that stricter standards of permissible statutory vagueness may be applied to a statute having a potentially inhibiting effect on speech; a man may the less be required to act at his peril here, because the free dissemination of ideas may be the loser" (citation omitted)).

Here, too, the appropriate test cannot be whether the words were "necessary" to the creative or editorial process, any more than the ultimate publication can be evaluated by a court's or jury's determination about whether particular words were "necessary" to an article. The former is no less substantial an intrusion by the government into the newsroom than the latter, and no less dangerous to the ultimate exercise of free speech.

Moreover, application of a "necessity" test inevitably runs afoul of the well-established desire to expeditiously resolve claims that arise from protected First Amendment activities. As this Court repeatedly has acknowledged, the mere fact of litigation may impermissibly chill the exercise of First Amendment rights. E.g., Shulman, 18 Cal. 4th at 228 ("[b]ecause unnecessarily protracted litigation would have a chilling effect upon the exercise of First Amendment rights, speedy resolution of cases involving free speech is desirable" (citations, internal quotes omitted)). Any test that treats the context in which a statement was made as only a "factor" in assessing whether that speech is protected – and gives the jury the power to balance that context against other factors – is antithetical to the goal of "speedy resolution." Proving that certain speech was "necessary" to the final product inevitably would be a time-consuming and largely factual inquiry, making litigation expensive and summary judgment difficult. Different views on what was or was not "necessary" would increase the

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likelihood that virtually every case would have to be determined by a jury, further increasing costs and making the outcomes unpredictable. The consequence would be the very same "chilling effect" that this Court sought to prevent in Shulman, where publishers will avoid dealing with certain topics altogether, because the potential for claims arising from internal discussions about those topics is too great.[9]

This Court's decision in Aguilar v. Avis Rent A Car System, Inc., 21 Cal. 4th 121 (1999), which has been heavily relied upon by plaintiff, did not involve the same constitutional issues implicated here; it involved the use of racial epithets directed at employees of a rental car company. In upholding the application of FEHA in Aguilar, this Court did not go beyond the particular circumstances of that case; to the contrary, this Court recognized that tremendous academic debate exists regarding "the extent to which sexually and racially discriminatory speech may be regulated." 21 Cal. 4th at 136 n.5 (emphasis in original). Furthermore, of the experts cited by the

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[9] The California Court of Appeal for the First District, applying this principle to a television program, cogently explained why protection against liability imposed after-the-fact is necessary to protect First Amendment freedoms:

> [T]he chilling effect of permitting negligence actions for a television broadcast is obvious. "The fear of damage awards . . . may be markedly more inhibiting than the fear of prosecution under a criminal statute." ... Realistically, television networks would become significantly more inhibited in the selection of controversial materials if liability were to be imposed on a simple negligence theory. "[T]he pall of fear and timidity imposed upon those who would give voice to public criticism is an atmosphere in which the First Amendment freedoms cannot survive." ... The deterrent effect of subjecting the television networks to negligence liability because of their programming choices would lead to self-censorship which would dampen the vigor and limit the variety of public debate.

Olivia N. v. National Broadcasting Co., 126 Cal. App. 3d 488, 494 (1981), citing New York Times v. Sullivan, 376 U.S. 254, 279 (1964).

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Court in Aguilar, only two contemplated a circumstance like this one – where the employer's business is to develop products protected by the First Amendment – and both declared that regulation in such a context would not be permissible.[10] As Professor Fallon wrote:

> If prominently or pervasively displayed in a workplace, sexually explicit and hostile materials that are not legally obscene or otherwise prohibitable in other contexts could contribute to a hostile work environment under Title VII. Yet if an employee of a producer or distributor of such materials could claim that their display violates Title VII, the hostile environment cause of action could become the engine of suppression reaching far beyond the workplace. To prevent this result, a partial exception to the hostile environment prohibition is probably needed for the workplaces of producers and disseminators of constitutionally protected materials that might, in other contexts, create or contribute to a prohibited hostile environment.

Richard H. Fallon, Jr., Sexual Harassment, Content Neutrality, and the First Amendment Dog that Didn't Bark, 1994 Sup. Ct. Rev. 1, 50 (footnote omitted; emphasis added).

Similarly, Professor Volokh declared:

> An even more serious problem arises if the speech that creates the hostile work environment is an inherent part of the employer's business. A bookstore's decision to stock – or specialize in – racist literature could easily create a hostile work environment for many employees, especially minority employees.... But it seems clear that, if the First Amendment protects the products sold in the store, it must immunize the seller from liability for a hostile work environment caused by the products.

Eugene Volokh, Freedom of Speech and Workplace Harassment, 39 UCLA L. Rev. 1791, 1853 (1992) (emphasis added).

This Court should not allow the square peg of Aguilar to be pounded into the round hole of statements made in a workplace devoted to the

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[10] Aguilar, 21 Cal. 4th at 137 n.5 (citing Professors Richard Fallon, Jr., and Eugene Volokh, inter alia).

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creation of constitutionally protected works, so that the particular circumstances of Aguilar dictate the scope of First Amendment guarantees in newsrooms, writers' rooms, and similar workplaces. It is not for a court or jury to decide – years later – what is "necessary" to the creative or editorial process. As Professor Volokh recognized, it would be incongruous to find that a finished product is subject to constitutional protection, while imposing liability for statements made during the process of creating that constitutionally-protected work. For this reason alone, the Court of Appeal's decision – and its improper "necessity" test – should be rejected.

B. The Mere Fact That Speech May Be Offensive Does Not Eliminate Its Strong Constitutional Protections.

Lyle's position is predicated on the supposition that speech that is offensive to some listeners warrants a lower standard of constitutional protection. But the First Amendment specifically was designed to protect unpopular – and even offensive – speech. As the Supreme Court declared nearly six decades ago:

> [I]f there is any principle of the Constitution that more imperatively calls for attachment than any other it is the principle of free thought – not free thought for those who agree with us but freedom for the thought that we hate.

Girouard v. United States, 328 U.S. 61, 68 (1946) (emphasis added; quoting United States v. Schwimmer, 279 U.S. 644, 654 (1929) (Holmes, J., dissenting)). More recently, the Supreme Court explained the "good reason" for the special protection afforded speech under the Constitution:

> The line between speech unconditionally guaranteed and speech which may legitimately be regulated, suppressed, or punished is finely drawn. ... Error in marking that line exacts an extraordinary cost. It is through speech that our convictions and beliefs are influenced, expressed, and tested. It is through speech that we bring those beliefs to bear on Government and on society. It is through speech that our personalities are formed and expressed. The citizen is entitled to seek out or

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> reject certain ideas or influences without Government interference or control.

United States v. Playboy Ent. Group, Inc., 529 U.S. 803, 817 (2000) (citations omitted). Consequently, the Court held that the speech at issue – even though it might be offensive to some – was fully protected by the Constitution:

> We cannot be influenced, moreover, by the perception that the regulation in question is not a major one because the speech is not very important. The history of the law of free expression is one of vindication in cases involving speech that many citizens may find shabby, offensive, or even ugly.

Id. at 826 (emphasis added). See also Reno v. American Civil Liberties Union, 521 U.S. 844, 874-75 (1997).

Indeed, even speech that is directed at and clearly offensive to a particular individual has constitutional protection, except in very limited circumstances. As the United States Supreme Court explained in one of its key decisions affirming this principle, "the fact that society may find speech offensive is not a sufficient reason for suppressing it." Hustler v. Falwell, 485 U.S. 46, 55 (1988) (citing FCC v. Pacifica Foundation, 438 U.S. 726, 745-746 (1978)). In Hustler, a well-known pornography magazine published a parody advertisement depicting Moral Majority leader Jerry Falwell recalling a drunken incestuous encounter with his mother in an outhouse. Despite the obvious – and intentional – offensive nature of the parody, the Court held that the publication was protected by the First Amendment because the portrayal of the well-known religious leader was obviously a "caricature," and "a distant cousin of the political cartoon," and "could not 'reasonably be understood as describing actual facts about [respondent] or actual events in which he participated.'" 485 U.S. at 56. The Court expressly rejected Falwell's argument that Hustler should be held liable because its actions were "outrageous," finding that "outrageousness"

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was too vague a standard to be applied consistently with the First Amendment:

> "Outrageousness" in the area of political and social discourse has an inherent subjectiveness about it which would allow a jury to impose liability on the basis of the jurors' tastes or views, or perhaps on the basis of their dislike of a particular expression. An "outrageousness" standard thus runs afoul of our longstanding refusal to allow damages to be awarded because the speech in question may have an adverse emotional impact on the audience.

Id. at 55 (citations omitted; emphasis added). This same rationale must be equally applicable to a claim by an employee at Hustler magazine that he or she was offended by internal discussions about the ad parody.

Similarly, in Cohen v. California, 403 U.S. 15 (1971), the Court emphasized that the government cannot punish speech simply because it offends some people. Consequently, in reversing the criminal conviction of a man for wearing a jacket in a public courthouse that read "Fuck the Draft," the Supreme Court recognized that the protection of "the process of public debate" sometimes requires the protection of an "offensive utterance" or "vulgarity." Id. at 25. As the Court explained:

> [T]he principle contended for by the State seems inherently boundless. How is one to distinguish this from any other offensive word? Surely the State has no right to cleanse public debate to the point where it is grammatically palatable to the most squeamish among us. Yet no readily ascertainable general principle exists for stopping short of that result were we to affirm the judgment below. For, while the particular four-letter word being litigated here is perhaps more distasteful than most others of its genre, it is nevertheless often true that one man's vulgarity is another's lyric. Indeed, we think it is largely because governmental officials cannot make principled distinctions in this area that the Constitution leaves matters of taste and style so largely to the individual.

Id. at 25 (citations omitted; emphasis added). The Court reiterated that "[w]e cannot lose sight of the fact that, in what otherwise might seem a

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trifling and annoying instance of individual distasteful abuse of a privilege, these fundamental societal values are truly implicated." Id.

Thus, even highly offensive speech about a particular person is protected unless it falls into one of the few recognized exceptions to the First Amendment's protection.[11] As one Court of Appeal explained, "[i]t is not for the court to evaluate the parody as to whether it [goes] 'too far.'" San Francisco Bay Guardian, Inc. v. Superior Court, 17 Cal. App. 4th 655, 662 (1993) (citation omitted). Nor may a court "pass[] judgment on [the statement's] skill or clumsiness, its sensitivity or coarseness; nor on whether it pains or pleases." Polygram Records, Inc. v. Superior Court, 170 Cal. App. 3d 543, 554 n.14 (1985) (citation omitted). Even if the statements are "gross, unpleasant, crude [and] distorted" and lacking in "redeeming features whatever," rendering "an objective analysis of the law difficult," the court must "not make a moral judgment" about the statements or the speaker. Pring v. Penthouse International, Ltd., 695 F.2d 438, 443 (10th Cir. 1982).

If offensive speech is protected even when it is directed at or about someone – as the United States Supreme Court and other courts consistently have held – it necessarily follows that such speech should not get less protection when it is not directed at or about the person asserting the claim.

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[11] If speech is obscene, involves fighting words, or is defamatory, courts have found that some limitations on that speech are permissible. R.A.V. v. St. Paul, 505 U.S. 377, 382-383 (1992). Yet, courts have made clear that any content-based proscription on speech, even obscene speech or "fighting words," is subject to strict limitations imposed by the First Amendment. Id. at 387.

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C. The Court Of Appeal's Opinion Would Interfere Profoundly With The Editorial And Creative Processes That Are The Predicate To Every Protected Work.

The First Amendment cannot adequately protect speech unless its protections extend to the discussions, debates, and dialogues that provide the fertile ground in which creative thoughts can grow and flourish. The United States Supreme Court long has recognized the need to protect more than simply the end product; for the product to exist, the courts must protect the process that leads to that product. For example, in N.A.A.C.P. v. Alabama, 357 U.S. 449 (1958), the Court reiterated that association is protected largely because it is a fundamental predicate to speech. The Court explained:

> Effective advocacy of both public and private points of view, particularly controversial ones, is undeniably enhanced by group association, as this court has more than once recognized by remarking upon the close nexus between the freedoms of speech and assembly. ... It is beyond debate that freedom to engage in association for the advancement of beliefs and ideas is an inseparable aspect of the "liberty" assured by the Due Process Clause of the Fourteenth Amendment, which embraces freedom of speech.

Id. at 460 (court may not compel disclosure of membership lists of nonprofit membership corporation); accord First National Bank of Boston v. Bellotti, 435 U.S. 765, 783 (1978) ("the First Amendment goes beyond protection of the press and the self-expression of individuals to prohibit government from limiting the stock of information from which members of the public may draw" (emphasis added)).

Here, too, the constitutional protection afforded to expressive works – including newspapers and books published by Media amici, and television programs produced by Warner Bros. TV – rings hollow if the process through which those works are inspired, created, and prepared is unprotected. Television producers will be faced with the Hobson's choice

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of curbing the discussions among their writers – inevitably stifling creativity, given the vagaries of determining what is and is not "necessary" speech – or accepting unpredictable tort liability as a cost of doing business.

The same risk applies to the editorial processes in which Media amici engage on a daily basis. It is not difficult to imagine a scenario in which a newspaper employee could claim to be offended by frank discussion of a newsworthy topic, just as the plaintiff here complained after her termination about the subjects discussed among the "Friends" writing staff. Indeed, a number of high-profile stories involving sensitive sexual topics come immediately to mind.

- Coverage of the recent Abu Ghraib prison scandal – a story of unquestionable importance – included some graphic discussions of the means by which Iraqi prisoners were tortured. The Washington Post reported about an Army translator's alleged rape of a teenage boy, and about an officer's alleged sodomizing of an Iraqi prisoner with a phosphoric light, both of which were photographed by a female soldier.[12] The Los Angeles Times reported an allegation that a prisoner who was disabled had been pulled around by his penis, and had a water bottle forced up his rectum.[13] CBS News went even further, posting pictures of the abuse on their website; although the prisoners' genitalia were obscured, the pictures relayed the horror and tragedy of the abuse.[14] The editorial decisions made by each of these publishers undoubtedly involved extensive internal discussions about the information obtained, and about what level of detail should be presented

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[12] Request for Judicial Notice ("RJN") Exh. A.

[13] RJN, Exh. B at 3.

[14] RJN, Exhs. C, D.

to the public. There is no question that the publications were of enormous public interest, and that they were protected by the First Amendment. That protection is illusory, however, if the publishers could face legal action by a newsroom employee who was offended by the discussions taking place during the editorial process, and be forced to defend why each statement made during the internal discussions was "necessary" to the story.

- A compelling article in the Los Angeles Times described the practice in some cultures of female genital mutilation, where young girls are subjected to surgery to remove external sexual organs.[15] Revealing information about this practice, which is estimated to affect as many as two million girls annually, is clearly of public importance. Yet this topic involves sensitive sexual and cultural issues that a publisher might choose to avoid if discussions among reporters and editors about the subject could give rise to claims for sexual or racial harassment.

- ABC's broadcast of a report about the pornography industry, which followed revelations about the spread of the HIV virus in the industry, also undoubtedly was preceded by extensive internal discussions. In its "Primetime Thursday" news program, ABC discussed the risks associated with the industry, including a discussion about the types of sex acts that "porn stars" – many of whom start out as teenagers – are required to perform. The program's descriptions occasionally were graphic, but necessary to fully explore the danger and psychological harm that may be faced by actors who are involved in pornographic films.[16] Internal discussions about what to include in the report – or even whether to report

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[15] RJN, Exh. U.

[16] RJN, Exh. E at 7, 8, 9, 11, 12, 14.

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on this issue at all – no doubt were extensive. It does not require a stretch of the imagination to envision an employee, like Lyle, who was within earshot of the newsroom discussions claiming that the commentary among newsroom staff was not "necessary" to the broadcast and therefore potentially actionable.

- The impeachment proceedings involving former President Bill Clinton prompted countless stories discussing whether oral copulation is "sex."[17] This scandal, and the ensuing debate about whether oral sex constitutes "sexual relations," almost led to the impeachment of a sitting president. Not surprisingly, the scandal also gave rise to a number of political cartoons, some explicit, others not, but all conveying political views concerning the scandal and the impeachment proceedings it spawned.[18] If the discussion in a newsroom included comments on individual experiences and beliefs, or editorial cartoonists traded jokes about the subject, the Court of Appeal's decision could allow an inquiry into the "necessity" for these discussions.

- Even local interest stories fall within this category, such as the trial last year in Orange County of three teenagers, one of them the son of a former deputy sheriff, who videotaped the alleged rape and sodomizing of a high school student who had been drugged into unconsciousness. The defendants claim that the victim faked unconsciousness and actually wanted to be assaulted and sodomized. One local newspaper chose to discuss the

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[17] Compare "When Is Sex Not 'Sexual Relations,'" reported on CNN.com (RJN, Exh. F), with "Lip Service; A Loud and Lusty Public Give-and-Take on Oral Sex is Blowin' in the Wind," published in the "Metro Santa Cruz" (RJN, Exh. G).

[18] E.g., RJN, Exhs. H, I.

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defendants' claims by detailing the contents of the videotape – a remarkably vivid way to cover the trial and to contrast the positions taken by the prosecution and defense.[19] This decision almost certainly was preceded by internal discussions about the contents of the videotape – probably very graphic discussions – and about the propriety of publishing the details ultimately found in the article. And because the Orange County trial lasted for several weeks, discussions regarding coverage of the trial and the evidence disclosed there undoubtedly lasted at least that long. Under the Court of Appeal's standard, an employee who merely overheard these discussions might have a claim against the newspaper and the participants for creating a "hostile" work environment, which could lead to an inquiry into whether everything said in the newsroom was "necessary."

- The Court of Appeal's decision is not even limited to sexually explicit discussions; it could include a variety of topics, including age, race, religion, sexual orientation, and national origin. Thus, a discussion of racial profiling – a topic that has given rise to the publication of many divergent views[20] – arguably could lead to a claim by an employee who was offended by the tenor of the internal discussions.

- Sexual orientation also is a protected class under FEHA, and is a subject of extensive political debate, particularly given the recent controversy surrounding gay marriages. The student newspaper at Baylor University in Waco, Texas – a college known to have a generally conservative student body – stirred up tremendous controversy when it published an editorial supporting gay marriage, in apparent violation of the

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[19] RJN, Exh. I.

[20] Eg., RJN, Exhs. K, L, M.

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Student Handbook "prohibiting the advocacy of any understandings of sexuality that are contrary to biblical teaching."[21] Many other articles and political cartoons have discussed this controversial subject.[22] The internal discussions leading up to the publication of those editorials, articles and cartoons easily can be imagined to include comments that might be offensive to someone present; certainly, a plaintiff could argue as to any of those discussions that some of the comments made were not "necessary."

The examples of stories where the Court of Appeal's decision could come into play are innumerable, and its potential chilling effect on internal discussions is immeasurable. At best, the Court of Appeal's decision creates a serious risk that the open, frank, and free-flowing discussion that serves to "vet" these issues internally before anything is published would be harmed. At worst, news organizations faced with the Court of Appeal's standard would shy away from stories that could give rise to sensitive – and potentially dangerous – internal discussions. The First Amendment protects against such an intrusion by the government into newsroom operations and editorial processes. Regardless of the form of the incursion – whether by way of predetermined regulations, or liability imposed after-the-fact – the government should not be allowed to directly or indirectly censor discussions that occur during the editorial process.

IV.
CONCLUSION

The Court of Appeal devalued the important rights at stake here when it held that a jury may decide whether Warner Bros. TV's speech was

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[21] RJN, Exhs. N, O.

[22] RJN, Exhs. P, Q, R, S, T.

"necessary" to the creative process. Although the underlying case arguably involves a unique setting, allowing such a restrictive test to be applied to the process by which protected First Amendment works are created has implications that go far beyond its particular facts. As the United States Supreme Court explained in reiterating the importance of closely adhering to the requirements of the First Amendment:

> The fundamental freedoms of speech and press have contributed greatly to the development and well-being of our free society and are indispensable to its continued growth. Ceaseless vigilance is the watchword to prevent their erosion by Congress or by the States. The door barring federal and state intrusion into this area cannot be left ajar; it must be kept tightly closed and opened only the slightest crack necessary to prevent encroachment upon more important interests. ... This ordinance opens that door too far.

Smith, 361 U.S. at 155 (citation omitted). Here, too, the standard adopted by the Court of Appeal could have profound consequences on every business that engages in creating and developing protected works. The standard is particularly ominous for members of the media, whose role it is to provide the public with complete information on newsworthy subjects, no matter how offensive the topics may be to some.

The rule that Media amici propose is simple: Where, as here, an employer's product is protected by the First Amendment – whether it be a television program, a newspaper, a book, or any other similar work – the challenged speech should not be actionable if the court finds that the speech arose in the context of the creative and/or editorial process, and it was not directed at or about the plaintiff. Without such a rule, the First Amendment rights of Media amici, their members, and all similar businesses will be impermissibly chilled. Media amici therefore urge this Court to reverse the

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decision of the Court of Appeal, and to reinstate the trial court's grant of summary judgment in Warner Bros. TV's favor.

Dated: February 4, 2005

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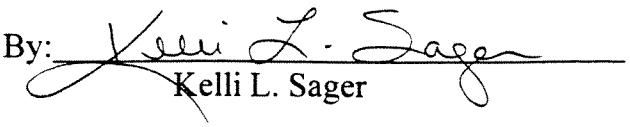
By: 
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Pursuant to CRC 14(c), the text of this brief, including footnotes and excluding the table of contents and tables of authorities, consists of 9810 words in 13-point Times New Roman type as counted by the Microsoft Word 2003 word-processing program used to generate the text.

Dated: February 4, 2005

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I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is Davis Wright Tremaine LLP, Suite 2400, 865 South Figueroa Street, Los Angeles, California 90017-2566.

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Adam Levin, Esq. MITCHELL, SILBERBERG & KNUPP 11377 W. Olympic Blvd. Los Angeles, California 90064-1863	**Attorneys for Defendants/Respondents**
Clerk of the Court of Appeal Ronald Reagan Building 300 South Spring Street Second Floor Los Angeles, CA 90013-1233	**Appeal Case No.: B160528**
Clerk of the Superior Court Los Angeles Superior Court Department 30 111 North Hill Street Los Angeles, CA 90012	**LASC Case No.: BC239047**

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☐ Federal I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct and that I am employed in the office of a member of the bar of this Court at whose direction the service was made.

Antonia Reynoso
Print Name

/s/
Signature

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