

**COMMENTS ON BEHALF OF THE SOUTH CAROLINA PRESS  
ASSOCIATION TO PROPOSED RULE 141(c) OF THE SOUTH CAROLINA  
RULES OF CRIMINAL PROCEDURE**

**TO: THE CHIEF JUSTICE AND ASSOCIATE JUSTICES OF THE SUPREME COURT OF SOUTH CAROLINA.**

The South Carolina Press Association, a not-for-profit South Carolina corporation representing almost all of the newspapers published in South Carolina, submits the within comments in opposition to proposed Rule 141(c) of the South Carolina Rules of Criminal Procedure.

The proposed rule as promulgated provides:

**(c) After Trial.** After a jury or juror has been dismissed, no person or entity, including but not limited to counsel, defendants, witnesses, victims, or anyone acting on their behalf shall initiate contact with, directly or indirectly, any juror regarding that juror's service on any case. However, upon a motion and hearing showing the necessity of contacting or interviewing one or more jurors, the Court may permit such contact upon specified terms and conditions.

The notes to the proposed amendments state with respect to the new subsection (c), "Section (c) is included because of a growing concern regarding post trial contact with jurors."

It seems unlikely that "a growing concern regarding post trial contact with jurors" could provide an adequate basis for the imposition of a prior restraint. The demand that no person or entity contact any juror is an impermissible restriction on the right of citizens to speak to jurors. If the proposed rule were broadly interpreted, it could also prohibit the publication of comment regarding juror service.

The proposed rule is consistent with both the history of the jury trial in this country and the consistent interpretation that the First Amendment guards against governmentally-imposed prior restraint. The history of the jury trial indicates that jurors have never been insulated and isolated. As Chief Justice Burger noted in Richmond Newspapers, Inc. v. Virginia, 448 U.S. 555, 100 S.Ct. 2814, 65 L.Ed. 2d 973 (1980), juries were comprised of the freemen of the community who were compelled to attend court to render judgment. In South Carolina, service as a juror has long been regarded as the performance of a public duty, the performance of which by any juror is subject to commentary and criticism. Oliveros v. Henderson, 116 S.C. 77, 106 S.E. 855 (1921).

The First Amendment has been interpreted consistently by the Supreme Court of the United States to require a government to meet a heavy burden to overcome the presumption that prior restraint is unconstitutional. Nebraska Press Ass'n. v. Stuart, 427 U.S. 539, 96 S.Ct. 2791, 49 L.Ed. 2d 683 (1976); New York Times Co. v. United States, 403 U.S. 713, 91 S.Ct. 2140, 29 L.Ed. 2d 822 (1971); Organization for a Better Austin v. Keefe, 402 U.S. 415, 91 S.Ct. 1575, 29 L.Ed. 2d 1 (1971); Near v. Minnesota ex rel. Olson, 283 U.S. 697, 51 S.Ct. 625, 75 L.Ed. 1357 (1931). It seems that no matter how well-intentioned the proposed rule is, the rule cannot survive the strict scrutiny required in a situation where the government seeks to abridge speech on the basis of the content of the speech. A more appropriate approach to protecting jurors from contact that the jurors do not wish to entertain is found in Section 16-3-21 of the South Carolina Code of Laws. That statute provides that jurors shall be notified of their right to terminate any conversation that the juror does not wish to be a party to, and provides a remedy in the

event the person in communication with the juror after the juror indicates a desire to terminate the discussion, continues to pursue a discussion of the verdict.

It is clear in our society that harassment of any juror for the juror's service should not be tolerated, but, by the same token, the imposition of a broad prior restraint cannot be justified even if there is a concern that the jurors might be contacted following their service.

For the reasons stated above, the South Carolina Press Associate requests that subsection (c) of proposed Rule 141 not be adopted.

RESPECTFULLY SUBMITTED.

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