

UNITED STATES DISTRICT COURT
DISTRICT OF VERMONT

JOHN D. HAYWOOD,

Plaintiff,

v.

ST. MICHAEL'S COLLEGE,
LOGAN R. SPILLANE, and
CHRISTOPHER HARDY,

Defendants.

Civil Action No. 2:12-cv-164

MOTION TO DISMISS

Defendants, CHRISTOPHER HARDY and LOGAN R. SPILLANE (hereafter “the students”), by and through their attorney of record, WILLIAM B. TOWLE, ESQ., hereby submit this motion to dismiss the complaint pursuant to F.R.C.P. 12.(b)(6) for failing to state a claim. In support of the motion, the students state as their memorandum:

- I. THE STUDENTS ADOPT AND INCORPORATE BY REFERENCE THE ST. MIKE'S MOTION TO DISMISS FILED ON SEPTEMBER 26, 2012.**
- II. AS A PUBLIC FIGURE, PLAINTIFF MUST ALLEGE OR PLEAD “ACTUAL MALICE,” WHICH IS ABSENT FROM THE COMPLAINT.**
 - A. There is nothing malicious about the students' journalism assignment.**

Except for Mr. Haywood's use of the word “malice” once in the thirteen (13) page complaint, there is nothing malicious about the students' reporting. *Sworn Complaint*, Document 1, page 3.

Simply using the word “malice” does not make an action malicious.

“Actual malice” is an element of libel in this case. *New York Times Co. v. Sullivan*, 376 U.S. 254, 270 (1964).

Mr. Haywood admits he was a candidate for the President of the United States on the Democratic ballot. There can be little question that, as a matter of law, Mr. Haywood is a public figure. As such, “actual malice” is a necessary element. When the U.S. Supreme Court decided *New York Times Co. v. Sullivan*, it transformed “actual malice” from a common law matter into a constitutional one. In *New York Times*, the Court held that, pursuant to the First Amendment, a public official or figure cannot recover “damages for a defamatory falsehood ... unless he proves that the statement was made with ‘actual malice.’” *Id.* at 280.

Assuming, for the sake of the Rule 12 motion, all allegations contained within the complaint are true, there is nothing in the complaint that rises to the level of “actual malice” required to state a claim for libel for a public figure.

Mr. Haywood’s complaint correctly alleges that the students reported on John D. Haywood’s candidacy for U.S. President as part of a journalism assignment as students at St. Michael’s College in the “College Media and American Politics” class. As part of the assignment, the students interviewed Mr. Haywood and Mr. Haywood’s acquaintances, and summarized the positions outlined on Mr. Haywood’s official “John Haywood for President” website. As part of the assignment, these reports were posted on the St. Michael’s College website by their St. Michael’s College professor.

The plaintiff’s *only* suggestion of conduct constituting malice contained within the complaint is the *mere existence* of the interviews conducted by the students, which Haywood considers “pressure.” The “malice” alleged in the complaint is that the students “contacted the

plaintiff's friends" and, in the process of interviewing them, revealed that Haywood was running as a Democrat for president. Complaint paragraph 6.(b).

The *entirety* of the malice allegation is contained in one sentence on page 3 of the brief:

Plaintiff doesn't contend that the Defendants' attempted pressure is actionable, but *does contend that it is evidence of the malice behind their libels as alleged below.* Emphasis added.

In the course of these interviews, Haywood alleges, the journalism students revealed a "libelous" statement – that Haywood was running for President on the Democratic ticket in New Hampshire. See complaint, p. 3.

This is not malice. This is not libel. It is a fact.

Haywood *was* running for President. Indeed, elsewhere in the Complaint Haywood explains that Haywood was spending over \$120,000 in media advertisements publishing this same fact – *that John Haywood was a candidate for Democratic nomination.* See complaint, paragraph 6, and prayer for relief. It is nonsensical for a candidate to spend \$120,000 advertising his campaign and then claim it is malice that two journalism students interviewed the candidates friends for a story about the same campaign. Most campaigns *want* media stories about their candidates.

Mr. Haywood's complaint fails to his establish a claim because his central premise is deeply flawed – that the journalism's students' interviews were "for one purpose only: pressuring the Plaintiff from continuing his campaign." Complaint, p. 3.

This is a conclusion that is illogical and is not supported by the allegations.

Mr. Haywood should not be entitled to continue a lawsuit on such specious grounds.

The plaintiff states "these calls to Plaintiff's friends in North Carolina...had no legitimate

journalistic purpose when it came to preparing a ‘Profile’ as to what Plaintiff stood for in his issue-oriented campaign.” See complaint, p. 3. Interviewing the candidate and his colleagues is, without question, a “legitimate journalistic” device. Indeed, interviewing the candidate and his colleagues are standard and logical practices for a reporter to gather information.

Conducting the interviews is certainly not malicious, and its certainly not *New York Times v. Sullivan* malice. Revealing that a person is a candidate for President is not a scandalous or hurtful statement. It is simply the truth – John Haywood voluntarily ran for the highest office in the land – the Presidency of the United States. Mentioning that fact in any forum cannot form the basis of a libel claim.

The plaintiff’s descriptions of this alleged “harm” are not legally or logically credible. The harm the plaintiff alleges is that his wife’s good friend heard he was running for President as a *Democrat* (emphasis in original) and that a North Carolina Republican leader and his brother-in-law (a Republican fundraiser) found out he was running in the New Hampshire primary as a Democrat. See complaint, p. 3.

It is likely that very few Presidential candidates have promised their spouses that they would hide their New Hampshire Democratic primary activities from their Republican friends and families. Despite the oddity of this premise, it does not lead to a recognizable legal claim when student reporters, in the course of their interview, reveals that the *reason they are interviewing the person* is that John Haywood is a candidate for President in the New Hampshire Democratic primary. It is hard to fathom why a man would run for President but be embarrassed when people found out.

Whatever this is, it is not libel.

All fourteen enumerated claims in the complaint are quibbles about the students' summaries of the positions detailed on Mr. Haywood's official "John Haywood for President" website. Objectively, it is good reporting. Nonetheless, for these claims to be libel, there must be a connection or nexus with these summaries (which must be proved false) and "actual malice." The only nexus to "actual malice" contained within the complaint is the undisputed fact that the students interviewed colleagues and friends of Mr. Haywood. Complaint, p. 3.

Mr. Haywood is a North Carolina lawyer (UNC-Chapel Hill School of Law, 1970) and surely understands *New York Times Co. v. Sullivan*. Despite the apparent embarrassment of Mr. Haywood to be identified as a Democratic candidate for President, the complaint does not correctly allege "actual malice" nor do the allegations in the complaint support an inference that conducting interviews of a Presidential candidate's colleagues as part of an assignment for a college journalism class constitutes "actual malice."

As neither the pleadings, nor the reasonable inferences from the pleadings, can support a claim for "actual malice" as the law requires, this Court should dismiss.

B. The complaint does not allege recognizable injury.

Haywood can show no injury recognizable at law.

The complaint only alleges two injuries.

The first injury alleged is that Mr. Haywood's friends, who are all apparently North Carolina Republicans, might have learned that Mr. Haywood was running as a Democrat in New Hampshire from the student journalists. Complaint ¶ 6.(a). Mr. Hayward alleges, in sum, that the students caused him to "come out" of the closet as a Democrat in Jesse Helm's Republican

North Carolina.

This is simply not a damage claim that the law recognizes.

Being a Democrat (or to be found out as one) is not libel *per se*, which is what Mr. Haywood apparently suggests.

Admittedly, “[i]mpairment of reputation and standing in the community, personal humiliation, and mental anguish and suffering” are all recognizable as “general damages.” *Ryan v. Herald Association, Inc.*, 152 Vt. 275, 283 (1989). Haywood claims \$1,000,000 in general damages due to alleged damage to his reputation in North Carolina. Haywood claims \$50,000,000 in punitive damages due to this general insult to his reputation in North Carolina.

These general damages are all related, by the clear terms of the complaint, to revealing the Democratic nature of Mr. Haywood to his friends and colleagues. But the Plaintiff’s Exhibit A, page 1, acknowledges that he is a “lifelong Democrat.” As this is a true statement, it is axiomatic that Mr. Haywood cannot claim general or punitive damages.

Further, punitive damages are only due “where plaintiff proves malice, in both the constitutional and common-law senses.” *Ryan* at 286. Mr. Haywood does not and cannot allege constitutional malice as outlined *supra*. Nor does he plead or allege common law malice supporting punitive damages. Malice in the common law sense “may be shown by conduct manifesting personal ill will or carried out under circumstances evidencing insult or oppression, or even by conduct showing a reckless or wanton disregard for one’s rights.” *Shortle v. Central Vermont Public Service Corp.*, 137 Vt. 32, 33 (1979), cited with approval in a libel case in *Ryan* at 281.

Mr. Haywood’s complaint fails even the lower threshold of common law malice. Even

accepting the “pressure” theory posited by Mr. Haywood, it is not common law malice to try to pressure a political candidate to withdraw his campaign by repeating public undisputed facts. Indeed, trying to convince someone to run, or to not run, for office is a constitutionally protected act.

Finally, “special damages” are a requirement, unless actionable per se. See *Lent v. Huntoon*, 143 Vt. 539, 545-50 (1983). This means pecuniary damages suffered as a result of the defamation. *Ryan* at 281.

Haywood only pleads only one category of special damages – his New Hampshire primary advertising expenses which totaled \$120,202.15. Such claim is speculative at best and can only be an injury if somehow the student’s reporting conceivably caused Mr. Haywood to lose his advertising investment New Hampshire primary (and subsequent Democratic nomination) to President Barack Obama (who Mr. Haywood acknowledges was “an incumbent widely presumed to be a shoo-in for renomination”). See complaint, p. 3.

In general, general principles of foreseeability and proximate cause are principles which apply to defamation damages. John J. Walsh, Steven J. Selby, and Jodie L. Schaffer, *Media Misbehavior and the Wages of Sin: The Constitutionality of Consequential Damages for Publication of Ill-Gotten Information*, 4 Wm. & Mary Bill of Rts. J. 1111, 1132-1137. It is not a reasonable inference nor reasonably foreseeable nor a proximate cause that a St. Mike’s freshman journalism class assignment actually derailed a fringe candidate’s campaign to unseat an incumbent President. Nor does the law permit a failed candidate to use the Court to make these defendants fund Mr. Haywood’s 2016 Presidential campaign, as Mr. Haywood requests in the prayer for relief.

WHEREBY, the students respectfully request that this Court dismiss the suit.

Dated at South Burlington, Vermont, October 1, 2012.

WARD & BABB
Attorneys for LOGAN R. SPILLANE, and
CHRISTOPHER HARDY

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Certificate of Service

On October 1, 2012, I electronically filed the foregoing document with the Clerk of Court using the CM/ECF system. The CM/ECF system will provide service of such filing via Notice of Electronic Filing (NEF) to the following NEF parties:

Jeffrey J. Nolan, Esq, attorney for St. Mike's.

A copy of the foregoing has also been served upon the following parties by mailing a copy thereof via U.S. first class, postage prepaid mail, to *pro se* party at:

John D. Haywood, Esq.
3116 Cornwall Road
Durham, NC 27707-5102.

Dated at South Burlington, Vermont, October 1, 2012.

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