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11
12 IN THE UNITED STATES DISTRICT COURT
13 FOR THE DISTRICT OF ARIZONA

14
15 Phoenix New Times, L.L.C., John
Dougherty, and Paul Rubin,

16 Plaintiffs,

17 vs.

18 County of Maricopa, Arizona, and
19 Dennis I. Wilenchik, in his official
20 capacity as a special deputy Maricopa
County attorney,

21 Defendants.

NO. CV

COMPLAINT

22 Plaintiff alleges:

23 1. Plaintiff Phoenix New Times, L.L.C. is a limited liability company engaged
24 in the reporting and gathering of news, and the preparation and publication of a
25 weekly newspaper, the Phoenix New Times, in Phoenix, Arizona. The publication
26

1 of the newspaper is also accomplished through website posting in addition to
2 conventional paper printing and distribution. Plaintiff John Dougherty is a
3 journalist and, at times pertinent to this Complaint, was employed by Phoenix New
4 Times as a reporter. Plaintiff Paul Rubin is a journalist and is, and at times
5 pertinent to this Complaint was, employed by Phoenix New Times as a reporter.

6 2. Defendant County of Maricopa, Arizona, is a political subdivision of the
7 State of Arizona, and is amenable to suit in this Court under the provisions of 42
8 U.S.C. § 1983. Defendant Dennis I. Wilenchik is a special deputy Maricopa
9 County Attorney and is amenable to suit in this Court in his official capacity as
10 such, under the provisions of 42 U.S.C. § 1983.

11 3. This Court has jurisdiction of this matter under 28 U.S.C. § 1343, and 42
12 U.S.C § 1983.

13 4. Defendants, through elected county officers, including the Maricopa
14 County Attorney, or special deputy Maricopa County attorneys designated by the
15 Board of Supervisors of Maricopa County in this instance, are charged with
16 authority and responsibility for investigating and prosecuting violations of the
17 criminal code of the State of Arizona, Title 13 of the Arizona Revised Statutes.
18 When they exercise that authority and responsibility through its elected, or
19 specially designated, officers, their actions are actions of Maricopa County and
20 Defendant Wilenchick taken under color of state law.

21 5. One of the provisions in the criminal code of Arizona is A.R.S. § 13 - 2401
22 provides, in pertinent part:

23 "A. It is unlawful for a person to knowingly make available on the
24 world wide web the personal information of a peace officer, justice,
25 judge, commissioner, public defender or prosecutor if the
26 dissemination of the personal information poses an imminent and
serious threat to the peace officer's, justice's, judge's,

1 commissioner's, public defender's or prosecutor's safety or the safety
2 of that person's immediate family and the threat is reasonably
3 apparent to the person making the information available on the world
4 wide web to be serious and imminent.

5 "B. It is not a violation of this section if an employee of a county
6 recorder, county treasurer or county assessor publishes personal
7 information, in good faith, on the web site of the county recorder,
8 county treasurer or county assessor in the ordinary course of carrying
9 out public functions."

10 6. Among other kinds of journalistic activities, Plaintiffs engage in extensive
11 reporting and publication of stories about the performance of their official duties by
12 public officials in Maricopa County. In addition, such reporting and publication
13 includes reporting of and comment upon the fitness for office of such public
14 officials, both as reflected in their official duties, and as reflected in unofficial but
15 relevant activities.

16 7. One of the public officials of Maricopa County about which Plaintiff has
17 done extensive reporting and coverage is Maricopa County Sheriff Joe Arpaio.
18 Such reporting and publication about Sheriff Arpaio occurred during his campaign
19 in the summer and fall of 2004 for re-election, as well as at other times.

20 8. On July 1, 2004, Plaintiff published an article about Sheriff Arpaio. The
21 story contained wide-ranging reporting and commentary about Sheriff Arpaio's
22 performance of duty, and included facts about Sheriff Arpaio's evident enrichment
23 of himself arising out of the public image and fame engendered by his performance
24 of duty. The story reported about Sheriff Arpaio's apparent extensive real estate
25 investments. The story reported about difficulties in obtaining information about
26 real estate holdings of Sheriff Arpaio.

9. On July 8, 2004, Plaintiff published an article, part of which concerned the
continued expansion of Sheriff Arpaio's real estate empire, further reporting about

1 difficulties in obtaining information about the Sheriff's real estate holdings, and
2 commentary about why information relating to Sheriff Arpaio should not be as
3 available as that of the reporter himself. The story concluded with a publication of
4 the home address of Sheriff Arpaio.

5 10. The Phoenix New Times stories of July 1 and July 8, 2004 were posted
6 on the world wide web.

7 11. As a result of the publication of the story of July 8, 2004, New Times is
8 subject to investigation and threatened prosecution for allegedly violation A.R.S. §
9 13-2401. The threat is real and immediate.

10 12. A.R.S. § 13-2401 is invalid and unconstitutional because it violates the
11 guarantees of free speech and free press contained in the First Amendment to the
12 Constitution of the United States.

13 13. The action of Maricopa County through its officers, of investigating
14 violations of, and threatening prosecution of Plaintiff for violation of, a statute which
15 is unconstitutional under the First Amendment of the United States Constitution
16 constitutes deprivation of a right guaranteed Plaintiff, its reporters and editors
17 under the Constitution of the United States.

18 14. Plaintiff, its reporters and editors have suffered and continue to suffer
19 damages by the Defendant's activities in investigating and threatening prosecution
20 of them for violating A.R.S. § 13-2401. The damage consists of a deprivation of
21 their First Amendment rights under the United States Constitution. The damage is
22 current, ongoing, and irreparable. Plaintiff has no adequate remedy at law for
23 damages to redress its damage. Plaintiff is entitled to injunctive relief restraining
24 and prohibiting Defendant, its officers, and any persons acting in aid and concert
25 with Defendant from using investigative procedures and compulsion to investigate
26 Plaintiff, its reporters, editors, officers, directors, employees, or agents about, or

1 prosecuting them for, a violation of A.R.S. § 13-2401.

2 15. Plaintiff's irreparable injury is immediate and substantial, and Plaintiff is
3 entitled to issuance of a Temporary Restraining Order and a preliminary injunction,
4 to the effect set forth in paragraph 14., *supra*.

5 16. Plaintiff is entitled to recover its attorneys' fees from Defendant pursuant
6 to the provisions of 42 U.S.C. § 1988(b).

7 WHEREFOR, Plaintiff prays for the following relief:

8 a) For judgment in its favor and against Defendant, declaring and determining
9 that A.R.S. § 13-2401 is unconstitutional and unenforceable, both against Plaintiff
10 under these pleaded circumstances, and in general;

11 b) For issuance of a Temporary Restraining Order, a Preliminary Injunction,
12 and a Permanent Injunction, enjoining Defendant, its officers, and any persons
13 acting in aid and concert with Defendant from using investigative procedures and
14 compulsion to investigate Plaintiff, its reporters, editors, officers, directors,
15 employees, or agents about, or prosecuting them for, a violation of A.R.S. § 13-
16 2401;

17 c) For judgment in its favor and against Defendant, for reasonable attorneys'
18 fees; and

19 d) For such other and further relief as to the Court seems just.
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Dated this 5th day of October, 2007.

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