
September 30, 2011

By Electronic Mail

Mr. Albin H. Gess, Esq.
Snell & Wilmer, LLP
Plaza Tower
600 Anton Boulevard, Suite 1400
Costa Mesa, California 92626-7689

RE: “Totally”, “Meghan McCain”
Your File: 55278.0003
My File: 1013.0001

Dear Mr. Gess:

The undersigned represents Leon Wolf, the author of the “Totally Meghan McCain” columns at RedState.com. Please direct all correspondence regarding this matter to me.

My client forwarded me your September 23, 2011 letter to Eric(*sic*) Ericson(*sic*) concerning the “Totally Meghan McCain” parodies at RedState.com. I confess that I first took the letter itself as a metatextual parody. To my surprise, on a re-reading, I discovered that you were apparently serious.

Initially, on the nominal merits of your letter: As I am sure you know, 47 U.S.C. § 230 completely immunizes any site that publishes my client’s material from Federal or State liability, insofar as such liability is based solely on the fact that such site publishes his material. This would be true even were Mr. Wolf a paid employee of that website, as explained in *Blumenthal v. Drudge*, 992 F.Supp. 44 (D.D.C. 1998), which is considered one of the great pathbreaking cases in this area of the law. Your threats against the websites that publish my client’s content are completely without legal merit; your only recourse for this content would be against Mr. Wolf personally, under the black letter of Federal law.

Of course, you also have no recourse against my client individually, as his actions were clearly a parody of your client, a well-known *public* political figure. This activity is protected by the First Amendment from state law suits, including false light invasion of privacy. *See generally, Hustler Magazine, Inc. v. Falwell*, 485 U.S. 46 (1988), which is of course directly on point here. *See also Horsley v. Rivera*, 292 F.3d 695, 701 (11th Cir.

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2002) (“the Supreme Court has clarified that the Constitution provides protection for ‘rhetorical hyperbole’ that ‘cannot reasonably be interpreted as stating actual facts about an individual.’ ... This protection reflects ‘the reality that exaggeration and non-literal commentary have become an integral part of social discourse.’”) (Citations omitted.); *cf.*, *Dworkin v. Hustler Magazine Inc.*, 867 F.2d 1188, 1195 (9th Cir. 1989).

Of course, the subject matter of your letter is a fairly obvious parody to any person of even barely functional literacy. Thus – and your client probably didn’t tell you this – even she recognized that the posts were parodies (or “parody’s,” as she put it). At approximately 8:25 p.m. EDT on September 17th, your client posted to her Twitter feed, “I don’t care about parody’s(*sic*) or fake names – but falsely putting my name on someone else’s writing is illegal.” She then subsequently deleted this Tweet, presumably when someone told her that “parody’s” were constitutionally protected and it might look bad in a subsequent lawsuit if she were caught admitting in public that these posts were obvious parodies. Not to worry: My client has screenshots.

(I treat as obvious humor the assertions in your letter that the parodies in question were appropriations of your client’s likeness for advertising purposes, and that persons with no minimum contacts at all with California would in any way be susceptible to jurisdiction there. It is my sincere suggestion that your client do so as well.)

My client will not be bullied out of exercising his First Amendment right to make clear his belief that your client is a spoiled, brainless twit who is cheapening the political discourse in this country. Therefore, henceforth, the “Totally Meghan McCain” series may be found at <http://pajamasmedia.com> for your client’s reading pleasure.

On the off chance that your client actually files the baseless litigation you threatened in your September 23, 2011 letter, Mr. Wolf will pursue all available remedies available under any applicable anti-SLAPP statutes, State law malicious prosecution/abuse of process actions, and/or Rule 11 sanctions. Although I do not envy you the Herculean task before you, please make sure your client understands the potential consequences to her personally – in addition to those her attorney would face – for pursuing this ill-advised course of action.

On a personal and professional note, I am of the firm conviction that the world is a worse place because of unscrupulous lawyers who force people and companies to forego their legal rights simply because they don’t want to pay the fees lawyers to defend themselves – even from suits that are meritless on their face. It is particularly obnoxious when it is used as an effort to chill free speech – political speech, no less – as has become all too common in response to unflattering internet postings.

This sort of activity is condemned by the every State Bar association of which I am aware, and is contrary to both the letter and spirit of the ABA’s Model Rules of Professional Conduct.

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Made into a lawsuit, it is also a ground for sanctions.

Govern yourself accordingly.

With kindest regards, I remain

Very truly yours,

A handwritten signature in blue ink, appearing to read "Christopher Scott Badeaux". The signature is written in a cursive style with a large initial "C".

Christopher Scott Badeaux

cc: Client