

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
Greenbelt Division**

AARON WALKER)	
)	
Plaintiff,)	
)	
v.)	Civil Case No. <u>JFM-12-1852</u>
)	
BRETT KIMBERLIN,)	
)	
JUSTICE THROUGH MUSIC,)	AMENDED COMPLAINT
)	
VELVET REVOLUTION,)	
All Defendants at:)	
8100 Beech Tree Road)	
Bethesda, MD 20817)	
Montgomery County)	
)	
JOHN DOE 1)	
Proprietors of the Breitbartunmasked.com)	
)	
Defendants.)	

**PLAINTIFF’S AMENDED COMPLAINT AND REQUEST FOR INJUNCTION,
DECLARATORY RELIEF AND DAMAGES**

NOW COMES, Plaintiff, by and through counsel, and pursuant to the Sept. 5, 2012 ORDER of this Court, amends its complaint filed on June 20, 2012. Plaintiff Aaron Walker, through this action, prays for an injunction, a declaration pursuant to the Declaratory Judgment Act 28 U.S.C. 2201-01, and damages arising from tort claims. In support, Plaintiff states as follows:

JURISDICTION

1. This dispute invokes federal jurisdiction through 28 U.S.C. § 1331 because it directly implicates the United States Constitution.

2. This Court also has original jurisdiction under 28 USC § 1332 as the plaintiffs all live in different jurisdictions than the defendants and the amount in controversy exceeds \$75,000.

VENUE

3. Venue is proper under 28 U.S.C. § 1391(b)(2) as the district in which a substantial part of the events or omissions giving rise to the claim occurred.

PARTIES

4. Plaintiff Aaron Walker is domiciled in the Commonwealth of Virginia. He runs a well-trafficked internet “blog” site called “Allergic to Bull,” located on the internet at <http://allergic2bull.blogspot.com/>.
5. Defendant Brett Kimberlin is domiciled in the State of Maryland. Defendant Kimberlin is a self-styled progressive activist and political leader.
6. “Justice Through Music” is a nonprofit organization registered in the State of Maryland. Its website describes the organization as one “that uses famous musicians and bands to organize, educate and activate young people about the importance of civil rights, human rights and voting.” Tax forms list Defendant Kimberlin as the Director of this organization. See Exhibit “A.”
7. “Velvet Revolution” is a nonprofit organization located in the State of Maryland. Tax records list its address as Defendant Kimberlin’s home address. See Exhibit “B.” Its website describes the organization as “a non partisan 501(c)4 organization founded for the purpose of providing a means for citizens and organizations to mobilize and create a clean, transparent and accountable government. Velvet Revolution focuses on election protection, media reform, and corporate and government accountability.”

8. The website <http://www.breitbartunmasked.com/> is upon information and belief controlled and/or is being directed by Defendant Kimberlin.

FACTS

9. Defendant Kimberlin has a disreputable past. He has federal convictions for among other things: perjury, domestic terrorism, impersonating a federal officer, and drug trafficking.
10. The family of one of his bombing victims also won a civil suit against him. When he failed to make any attempts at restitution, federal authorities revoked his parole and he served another four years in prison; finally released in 2001. *Kimberlin v. Dewalt*, 12 F.Supp.2d 487 (D. Maryland 1998).
11. The above facts apparently do not sit well with the people he works with through his nonprofits or his donors, which include foundations connected to George Soros, Theresa Heinz-Kerry, and Barbara Streisand.
12. Defendant Kimberlin has in fact lamented in a previous court hearing that he has been asked about his past by various donors and notable figures. *Kimberlin v. Allen* Hr'g Tr at 20, Nov. 11, 2011, available at <http://www.scribd.com/doc/92455345/Brett-Kimberlin-v-Seth-Allen-Transcript-11-14-11-OCR>.
13. Because of the political nature of Defendant Kimberlin's work and the high public profiles of some of his donors, his criminal past became a matter of public interest to various media entities, including Plaintiffs. See, e.g. Exhibit "C."
14. Defendant Kimberlin through Google Alerts gets notified when any media entity (blogger) writes about him on the internet. See Exhibit "D."

15. Defendant Kimberlin has threatened to sue various media entities who have written factually accurate content about him on the internet. See Exhibit “E.”
16. When these media entities have asked Defendant Kimberlin for factual inaccuracies in their stories about him, he cannot produce any. See Exhibit “F.”
17. Defendant Kimberlin has not just used the threat of lawsuits to silence media entities. He threatens “bar complaints, sanctions . . . criminal complaints, peace orders and other administrative actions.” See Exhibit “G.”
18. Defendant Kimberlin’s tactic of multipronged, vexatious, and meritless litigation has acquired the name “lawfare.” This tactic seeks to silence media entities’ legitimate inquiry into matters of public concern with the constant threat of protracted litigation, harm to professional reputation, and possibly loss of employment.
19. Some states, including Maryland, have sought to counter frivolous and vexatious litigation that seek to silence speech related to public policy by providing a remedy to putative plaintiffs speaking on public issues. See ex. Md. COURTS AND JUDICIAL PROCEEDINGS Code Ann. § 5-807. (Strategic Lawsuits Against Public Participation). See also <https://www.eff.org/deeplinks/2012/08/new-federal-anti-slapp-legislation-introduced-good-start>
20. “Lawfare” enthusiasts, even though private parties, employ the machinery of the state through both the civil and criminal law, the court system, state-created processes, administrative boards, and other authority to subvert the United States Constitution’s mandate for a society of free and open debate regarding public issues.
21. In his pursuits to silence critics, Defendant Kimberlin is perhaps the originator of “lawfare.” He has filed over 100 lawsuits, and numerous peace orders, bar complaints and other administrative

actions. Defendant Kimberlin has been partially successful in limiting negative media exposure, making this lawsuit necessary.

22. When filing “peace orders,” Defendant Kimberlin uses the Maryland “Commissioner” to attempt to silence media entities from writing about him. See Exhibit “H.” When he files bar complaints he employs state administrative bodies to silence his critics. State action may be implicated even though the dispute involves private parties. “State power may be exercised as much by a jury's application of a state rule of law in a civil lawsuit as by a statute”; *New York Times Co. v. Sullivan*, 376 U.S. 254, 265 (1964) (it is not “the form in which state power has been applied” that matters “but, whatever the form, whether such power has in fact been exercised”) quoting *Gibson v. Am. Cyanamid Co.*, 719 F. Supp. 2d 1031 (D. Wis. 2010).
23. Upon information and belief Defendant Kimberlin uses the nonprofits he runs as cover for less than honorable and tortious conduct in the same manner he once used a health-food store and other legitimate businesses to run a high-level drug-smuggling operation. Mark Singer, Citizen K, The Deeply Weird American Journey of Brett Kimberlin 52-53 (1996); see also Exhibit “I.”
24. The website www.breitbartunmasked.com has posted numerous inflammatory, untrue and scurrilous diatribes about this lawsuit, Plaintiff Walker’s Virginia lawsuit, and even about Counsel in an effort to intimidate Plaintiffs from bringing this lawsuit. Plaintiff intends to discover through the legal process to what extent the proprietor of this website is connected to the other Defendants.
25. Mr. Kimberlin corresponds to legal matters from Counsel using the email address of justicejtmp@comcast.net, which upon information and belief is a “Justice Through Music” email address.

26. Defendant Kimberlin has encountered blowback from First Amendment devotees. He has inspired a “Blog about Brett Kimberlin” day on the internet to retaliate against his “lawfare” tactic. See Exhibit “J.”

27. Defendant Kimberlin’s “lawfare” practices are abhorrent to the First Amendment.

Because such a "chilling" effect would be antithetical to the First Amendment's protection of true speech on matters of public concern, we believe that a private-figure plaintiff must bear the burden of showing that the speech at issue is false before recovering damages for defamation from a media defendant. To do otherwise could “only result in a deterrence of speech which the Constitution makes free.”

Phila. Newspapers v. Hepps, 475 U.S. 767 (1986) (internal citations omitted).

28. First Amendment guarantees are not for the press alone, but for the benefit of all; to that end a “broadly defined freedom of the press [helps assure] the maintenance of our political system and an open society.” *Time, Inc. v. Hill*, 385 U.S. 374, 389 (1967).

29. Far from being only actual lawsuits that chill free speech, courts have also found the threat of a lawsuit by private individuals has the same effect:

The State can neither impede the exchange of ideas nor make that exchange costly through litigious action. *Even the mere threat of unfounded liability would have a "chilling effect" on the discussion of public issues. No less of a limitation is imposed when, as in this case, the action is taken by a private plaintiff under the aegis of state civil law.* Civil actions by private parties will violate the free-speech guarantee when the discussion alleged to be defamatory concerns public issues and no unlawful activity occurs.

Gaylord Entertainment Co. v. Thompson, 1998 OK 30 (1998) (Emphasis Added).

30. The internet is the very vanguard of the free exchange of political ideas and its speakers deserve the utmost protection.

With respect to the Internet, the Supreme Court has noted that there is, “no basis for qualifying the level of First Amendment scrutiny that should be applied to this medium.” *Reno v. ACLU*, 521 U.S. at 870. Courts and commentators alike have emphasized the importance of extending free speech protections to the Internet, recognizing the Internet as capable of “democratizing” the very “nature of public discourse,” *Doe v. Cahill*, 884

A.2d 451, 455 (Del. 2005), by permitting anyone with a computer to "become a town crier with a voice that resonates farther than it could from any soapbox."

Indep. Newspapers, Inc. v. Brodie, 407 Md. 415.

31. Defendant Kimberlin is a public figure and works on public issues. He has had a book written about him, his various crimes and suspected criminal activity, and his substantial time in federal prison. Throughout his incarceration, Defendant Kimberlin sought the media spotlight, indeed he claimed to have sold marijuana to former Vice President Dan Quayle and sought to tell his tale through a jailhouse press conference.
32. His current work is related to any number of public issues including election law, voter fraud, and indoctrinating young people to work for progressive political causes. He has said himself, he works with "Congress members every single day of the week" to accomplish his public-policy goals. *Kimberlin v. Allen Hr'g Tr* at 20, Nov. 11, 2011, available at <http://www.scribd.com/doc/92455345/Brett-Kimberlin-v-Seth-Allen-Transcript-11-14-11-OCR>.
33. The U.S. Supreme Court has held that "[t]he loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury." *Elrod v. Burns*, 427 U.S. 347, 373 (1976).

SPECIFIC AVERMENT TO MALICE

34. Defendant Kimberlin on his own behalf and in concern with other Defendants has acted with malice, *i.e.* evil intent, intent to injure, intent to harm and/or intent to oppress Plaintiff Walker.

Count One Violation of the First Amendment to the United States Constitution

35. Plaintiff hereby incorporates by reference each of the allegations set forth in the preceding paragraphs as if re-alleged fully herein.

36. A violation of the First Amendment's right to free speech constitutes irreparable harm. *Elrod v. Burns*, 427 U.S. 347 (1976).
37. Defendant's actions have had and continue to have a chilling effect on Plaintiff's and others right to free speech secured by the First Amendment of the United States Constitution.
38. The First Amendment of the United States Constitution gives the highest possible protection to media entities.
39. Defendant Kimberlin has unlawfully retaliated against Plaintiff for exercising his First Amendment rights as a media entity.
40. Defendant Kimberlin's unlawful actions have damaged and injured Plaintiff by chilling his constitutionally protected prerogative to express his viewpoint on public issues.

**Count Two
Abuse of Process**

41. Plaintiff hereby incorporates by reference each of the allegations set forth in the preceding paragraphs as if re-alleged fully herein.
42. Defendant Kimberlin has "willfully misused civil [and] criminal process" against another party for a purpose different than the proceeding's intended purpose and thereby caused that party damage (e.g., arrest, seizure of property, economic injury). *Krashes v. White*, 275 Md. 549, 555, 341 A.2d 798, 802 (1975); see also *One Thousand Fleet Ltd. Partnership v. Guerriero*, 346 Md. 29, 694 A.2d 952 (1997) quoted in *State v. Rendelman*, 404 Md. 500, 518 n.9 (2008).
43. Defendant Kimberlin has also violated Maryland Rule 1-341 because he has brought, threatened, or maintained actions against Plaintiffs in bad faith and without substantial justification.
44. The actions have included frivolous bar complaints and threats to sue media entities for publishing truthful information.

45. Defendant Kimberlin, through his actions, has sought to intimidate Plaintiffs and curb their rights as media entities; as a result Plaintiff has been damaged.
46. These damages have included expenses in defending against frivolous civil and criminal actions and even being arrested on unconstitutional grounds.

**Count Three
Malicious Use of Process**

47. Plaintiff hereby incorporates by reference each of the allegations set forth in the preceding paragraphs as if re-alleged fully herein.
48. Defendant Kimberlin has initiated a civil proceeding against Plaintiff Walker with malice and without justification. *One Thousand Fleet Ltd. Partnership*, 346 Md. at 34, 694 A.2d at 954 quoted in *State v. Rendelman*, 404 Md. 500, 518 n.9 (2008).
49. These proceedings include bar complaints filed with the State Bar of Virginia against Plaintiff Walker.
50. As a result, Plaintiff has been damaged by harm to professional reputation and potentially higher malpractice insurance.

**Count Four
Tortious Interference with Contract**

51. Plaintiff hereby incorporates by reference each of the allegations set forth in the preceding paragraphs as if re-alleged fully herein.
52. Defendants or his cohorts have interfered with Plaintiff's employment by contacting employers and threatening baseless lawsuits and administrative actions and trying to intimidate Plaintiffs employers and have Plaintiffs terminated. In one case, Defendants have been successful.

53. Maryland has long recognized tortious interference with contractual or business relationships even in the absence of an actual contract when interfering with “economic relationships.” *Kaser v. Fin. Prot. Mktg.*, 376 Md. 621, 628 (2003).

PRAYER FOR RELIEF

54. Plaintiffs ask this Court to award a permanent injunction against Defendant Kimberlin or any other “lawfare” proponent from using state machinery to threaten media entity from writing truthfully on matters of public concern. State law already protects against what is known as Strategic Lawsuits Against Public Participation (“SLAPP lawsuits”) that injure an ordinary citizen’s right and ability to fully participate in public discussions, see Md. Code Ann, CJ §5-807. A federal counterpart that takes special note of media entities’ particular First Amendment characteristics protects specifically against criminal abuse of process: SCALP (Suits Criminalizing Actual Lawful Participation) would ensure vigorous protection from dishonest legal threats.
55. Plaintiffs ask this Court to declare Defendant Kimberlin a vexatious “SCALPer” and require him to seek approval from an administrative law judge before he can bring any type of ex parte criminal proceeding such as “peace orders,” against media entities. This declaration would save scarce judicial resources from those wishing to silence the constitutional and lawful rights of media report on matters of public concern.
56. Plaintiffs ask this Court to declare Defendant Kimberlin a vexatious litigant and require any litigation he may seek to initiate, particularly against media entities, be approved by an Administrative Law Judge before filing.
57. One hundred fifty thousand dollars in punitive damages.

58. Attorney's Fees with interest.
59. Such other relief as deemed mete and proper.

Respectfully submitted,

/s/
Dan Backer, Esq.*
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Washington, DC 20003
(202) 210-5431
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Attorney for Plaintiffs

**Admitted Pro Hac Vice on September 10, 2012*

CERTIFICATE OF SERVICE

I hereby certify that on this September 19, 2012, a copy of the foregoing PLAINTIFFS' AMENDED COMPLAINT AND REQUEST FOR INJUNCTION, DECLARATORY RELIEF, AND DAMAGES

shall be served by first class mail, postage prepaid, upon:

Mr. Brett Kimberlin
8100 Beech Tree Road
Bethesda, MD 20817

Justice Through Music Project
8100 Beech Tree Road
Bethesda, MD 20817

Velvet Revolution US
8100 Beech Tree Road
Bethesda, MD 20817

September 19, 2012

Dan Backer, Esq.