

DOCKET NO.: CV-10-5013419-S

LISA "LEE" WHITNUM : SUPERIOR COURT

V. :

DANIEL MALLOY : JUDICIAL DISTRICT OF STAMFORD,
: AT STAMFORD
:
: OCTOBER 4, 2010

PLAINTIFF LISA "LEE" WHITNUM'S RESPONSE TO MALLOY'S MOTION TO STRIKE and MEMORANDUM OF LAW IN SUPPORT OF MOTION TO STRIKE

RESPONSE TO MALLOY'S MOTION TO STRIKE

Plaintiff Lisa "Lee" Whitnum ("Whitnum") hereby provides her response to Defendant Daniel Malloy's ("Malloy") Motion to Strike. Whitnum hereby moves this court to support her valid causes of action against him as a matter of law.

Plaintiff believes the facts in the complaint are provable and would support the causes of action. In the event the court does not agree, the plaintiff is pro se and respectfully requests the court allow some latitude, especially since the plaintiff has allowed the defendant latitude: the defendant never responded to the plaintiff's Complaint with an Answer in a timely manner instead filing three Motion to Extend Time of which the Plaintiff received no such Order from a judge. If the court believes the defense attorney's claim that the facts are not sufficient to support a cause of action, the plaintiff respectfully requests the court allow some latitude for her to file an Amended Complaint or whatever resolution the court favors.

PRELIMINARY

On August 11, 2008 Dan Malloy, called a press conference and stated that the Plaintiff made "anti-Semitic comments" and "comments about Jews." Whitnum claims she made no such comments and that she has been damaged by Mr. Malloy's attempt to stifle her First Amendment right; and, his motivation is defamatory and clearly malice.

FIRST COUNT

CONTRARY to Defense Attorney's assertion that "Malloy did not distort the underlying factual statements published by Whitnum," Plaintiff asserts that Malloy did distort the facts and he has continued to distort the facts since the filing of the complaint. His deliberate lies and misquotes of Ms. Whitnum's positions are designed to paint Whitnum as a

racist which case law states is defamation. We also cite case law refuting the Defense Attorney's claims that Malloy is protected by "Opinion" and "Motivation" because he attributed lies as quotes and his "opinion" as fact. His actions will forever effect how Plaintiff will be perceived in her personal and profession life.

SECOND COUNT

PLAINTIFF believes Malloy abused his power as a public speaker in violation of her First Amendment rights. He used his position as Mayor to gather the press for the singular purpose of defaming her and her work. In the legal memorandum Motion to Strike it states "Notably, no dispute exists regarding the underlying factual statements made by Whitnum." So, Malloy admits that Whitnum's words were truthful, apparently he just doesn't like her saying them and he will attribute lies to her in order to brand her a racist and to stifle her.

RESPONSE TO MALLOY'S MEMORANDUM OF LAW

CASE LAW

Standing

In terms of the Defense Attorney's statement that Plaintiff has no standing, the Connecticut Supreme Court has held that:

"Standing is established by showing that the party claiming it is authorized by statute to bring suit or is classically aggrieved..... Agreement is established if there is a possibility, as distinguished from a certainty, that some legally protected interest has been adversely affected."

Plaintiff case law will prove she has a right to fight for her good name: 1. her credibility as a writer and candidate, and 2. Redress against Malloy painting her as a racist.

New York Times v. Sullivan

Although both defense attorney and plaintiff cite *New York Times Co. v. Sullivan*, 376 U.S. 254 (1964),^[1] the US Supreme Court case which established the actual malice standard for public officials, Plaintiff does not feel it actually applies to this circumstance. *New York Times Co. v. Sullivan* is about reporting on a public figure by a news organization. *Whitnum v. Malloy* is about two public figures, Malloy a major public figure maligning a minor public figure, Whitnum. They are from the same political party, Democrats, and they were never political rivals, therefore we could not find any case law to cover this instance. Plaintiff feels that the privileges afforded the press do not apply to Mr. Malloy's action. He is a public

figure and he should be held to a different standard. His position, motive and duty also cannot be ignored. That fact that Ms. Whitnum does not have the same level of power to call a press conference for redress is further indication of the differing levels of power of the Defendant and Plaintiff.

Color-of-Law

Malloy's position cannot be separated from the man, his statements would, by common people, be construed to constitute state action. His ability to call the press conference *was because of his position as the Mayor*. You are always the Mayor and you are always "on-duty". Malloy called the press conference during regular business hours. Malloy violated color-of-law and duty as defined below.

"Misuse of power, possessed by virtue of state law and made possible only because the wrongdoer is clothed with the authority of state law, is action taken 'under color of' state law." *United States v. Classic, 313 U.S. 299, 326 (1941)*"

Malloy was able to call the press conference because he was a public official at the time and not a candidate. Regarding the question of standing as claimed by the Defendant's attorney:

"Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress . . ." 42 *U.S.C. S 1983 (1988)*

Clearly Plaintiff is entitled to "proper proceeding for redress.." as stated above. And in Connecticut law, "...to state a claim under Section 1983, a plaintiff must allege facts indicating that some official action has caused the plaintiff to be deprived of his or her constitutional rights" *Spear v. Town of W. Hartford, 954 F.2d 63, 67 (2d Cir.1992)*.

DERELICTION OF DUTY IS NEGLIGENCE

Dereliction of duty is negligence, negligence is a test of malice.

"Duty is a legal conclusion about relationships between individuals, made after the fact, and imperative to a negligence cause of action. The nature of a duty, and the specific persons to whom it is owed are determined by the circumstances surrounding the conduct of the individual . . . The determination of whether a duty exists . . . is a question of law." *Lodge v. Arett Sales Corp., 246 Conn. 563, 571, 717 A.2d 215 (1998)*.

It is a matter of law to determine if Malloy violated his duty to stifle a woman's First Amendment right. In the June 23, 2010 *Jewish Ledger* he gave an explanation as to why he publicly called a press conference to urge voters not to vote to Ms. Whitnum he stated, "I wasn't politically motivated – she was never going to win the primary; she was not a substantial candidate." So if it was not for the public good then what is his justification for painting Plaintiff as a racist and holding her up to public scorn as a racist? And to state blatant falsehoods to further that aim? Taking to the podium for sole purpose of maligning her is negligence as stated in *Lodge v. Arett Sales Corp*, "Duty is a legal conclusion about relationships between individuals, made after the fact, and imperative to a negligence cause of action." Malloy exploited his duty as mayor.

FACTS

Plaintiff talks about several political topics in her writing; she knows that there are people of more than one religion on all sides of each issues therefore, she does not single out any particular religion. Plaintiff is a writer and she is extremely well-versed about her topics. In her writing, she relies only on verifiable facts from mainstream sources. The fact that Malloy continues to misquote her as recently as June 23, 2010 in the *Jewish Ledger* is downright shocking. Her current book "Anti-AIPAC, NOT Anti-Semitic: Breaking the Israel Lobby's Control, a Patriot's Guide" has close to 300 footnotes from mainstream sources to support her conclusions. Malloy's words will affect Ms. Whitnum's credibility as a writer and standing among the peace community, the intellectual community, foreign policy scholars, and other credible experts in Middle Eastern affairs.

"...libel per se involves a charge of "improper conduct or lack of skill or integrity in one's profession or business and is of such a nature that it is calculated to cause injury to one [*10] in his profession or business."
(Citations omitted.) *Charles Parker Co. v. Silver City Crystal Co.*, *supra*, 142 Conn. at 612."

Ms. Whitnum is very precise. Malloy stating his "opinion" of what he thinks she said is damaging as it puts her in a false light. Stating his "opinion" and her "motivation" as fact does her and her work a great disservice. His actions can only be defined as malicious, self-serving, and ignorant. The following are some of the facts Ms. Whitnum talked about during her campaign and below is Mr. Malloy's *interpretation* of them:

Whitnum's words

1. Whitnum said, "The Neoconservatives, the right wing branch of AIPAC, were

- instrumental in our decision to invade Iraq..."(*This is very well documented FACT.*)
2. Whitnum said, "Osama bin Laden was clear about 9/11 as "retaliation against the American-Israeli alliance's aggression against our people in Palestine and Lebanon."
(*This is a direct quote from a mainstream source.*)
 3. Whitnum said, "Our primary focus should be to eliminate al-Qaida and to demand a successful resolution to the source of widespread anti-American sentiment: the Israeli-Palestinian conflict..." (*This point of view is very well documented; the sentiment was recently echoed by General Patreaus in April 2010 when he stated "the Israeli-Palestinian conflict foments anti-American sentiment"*)

Mr. Malloys public interpretation of Ms. Whitnum's stated facts:

1. Ms. Whitnum has made "anti-Semitic" "anti-Israel" and "comments about Jews" (*she made no comments about religion as she knows there are people of more than one religion on all sides of the issues she writes about*)
- 2 " During her brief run [Whitnum] has used every stereotype of Jewish power in the book." (*Plaintiff knows no such stereotypes*)
3. "She[Whitnum] has blamed the 9/11 attack and the war in Iraq on Israel, the Jewish lobby, the Jewish media control. " (*Plaintiff said no such thing. She is very specific whom she blames for what. Also, she never talked about "Jewish Media Control"*)
4. " candidate for public office wages this campaign of anti-Semitism, (*Plaintiff says not true*)
5. "It is intended to divide Americans, not unite them." (*plaintiff says not true*)
6. "...claiming that AIPAC is morally guilty of the attacks of 9/11 and the individuals who perpetrated them." (*What! Plaintiff says not true*)
7. " ..running for Senator is another way to get her message out - and her message is hate." (*Plaintiff says not true*)

Motivation is not a defense

Further, defendant's attorney claims in the Motion to Strike that Malloy admits he did not question Ms. Whitnum's judgment but her "motivation." As far as we know the concept of *thought-police* is not yet in Federal or Connecticut law, therefore was must rely on current statutes. Speculating on someone's "motivation" when stating it as fact in a public forum is not a defense although the defense attorney tries to make it one. By his own admission Malloy claims that he knew Mr. Whitnum's words were true, he apparently claims he does not have a problem with her words just her "motivation." As stated in the Motion to Strike:

"Here, Malloy's comments represented his own opinion that Whitnum's underlying statements regarding the Israeli-Palestinian conflict, the "neoconservative" agenda and the "Israel Lobby's" undue and detrimental influence on American affairs were motivated by her own "Anti-Semitic" views as manifested by her statements. **Notably, no dispute exists regarding the underlying factual statements made by Whitnum.**"

Malloy's states that the Plaintiff's statements are accurate but it is her "motivation" he questions and labels as being "anti-Semitic". So, in Malloy's mind, Whitnum has some deep-seated "anti-Semitism" that drives her and he is obligated to use his power as a public figure to "out" her to the public by calling a press conference to denounce her as a racist. So, judging from this attorney's defense, Malloy maintains that he is an expert on Ms. Whitnum's mind and her deep-seated "motivation." Perhaps Mr. Malloy is not aware of the much publicized 2006 Walt and Mearsheimer study about AIPAC which "dictates U.S. foreign policy" a "situation has no equal in American political history.." A well-respected study that has sparked much controversy and continued study and is of particular interest to Ms. Whitnum. Perhaps Mr. Malloy is just not intellectually curious about any topics and so he cannot understand Plaintiff's motivation. That is fine, but he crossed the line when he got behind a televised microphone and attributed lies to her ("comments about Jews") for the singular purpose of holding her up to public scorn as a racist. The fact that he continues misquoting her is unacceptable.

Additionally, in *Goodrich v. Waterbury Republican American Inc.*, 188 Conn. 107, 118, 448 A.2d 1317 (1982), spoke generally and instructively on this issue

"an opinion must be based upon facts; if the facts are neither known nor stated, then a defamatory opinion implies that there are undisclosed defamatory facts which justify the opinion . . . The damage of such an implication is that the person defamed [*11] becomes the victim of the prejudiced and distorted judgment of not only the defamer but also of everyone who hears and believes the opinion without knowing it is based on incorrect and untrue facts."

This is exactly what has happened. It is horrifying to the Plaintiff that the public gets to form an opinion about her, her writing and her worth as a political candidate, friend, neighbor, etc. based on Dan Malloy's opinion! A man she has never met. This unfortunate reality is multiplied ten-fold when the speaker of the "opinion" is a person of authority like Dan Malloy the Mayor of Stamford – a man who should presumably know better.

Public Speaker's Responsibility – Reckless Disregard

Whitnum believes Malloy chose to capitalize on Whitnum's political stands to twist them to his own ends in order to grab headlines and to pander to a constituent group. Malloy stated that Whitnum said "anti-Semitic comments" "anti-Israel" and "comments about Jews" and to urge voters not to vote for her. Plaintiff feels Malloy, as a public speaker, demonstrated reckless disregard for the truth by failing to investigate the veracity of his claims; this

deliberate negligence is malice::

in *Bentley v. Bunton*, 94 S.W.3d 561 (Tex. 2002),

“...failure to investigate is contrary to a speaker's usual practice and motivated by a desire to avoid the truth may demonstrate the reckless disregard required for actual malice.”

And also:

“*Izzo v. Deafenbaugh*, 1998 Conn. “..The phrase "actual malice" is unfortunately confusing in that it has nothing to do with bad motive or ill will. The real question to be addressed by the court is whether the allegedly defamatory statement was published with knowledge of falsity or reckless disregard as to truth or falsity.”

We reserve the right to have the court make that determination as to whether the defendant acted with and reckless disregard. We believe we have that right:

St. Amant v. Thompson, 390 U.S. 727 “ the phrase "reckless disregard" cannot be fully encompassed in one infallible definition and inevitably its outer limits will be marked out by case-to-case adjudication....”

It was Mr. Malloy's responsibility to get it right. His reckless disregard was malice.

Fair Comment

The defense attorney's claims of “Fair Comment” also do not apply as Fair Comment is defined as a

"common law defense [that] guarantees the **freedom of the press** to express statements on matters of public interest, as long as the statements are not made with ill will, spite, or with the intent to harm the plaintiff".

Mr. Malloy is not a member of the press and while it is true that both Ms. Whitnum and Mr. Malloy are public figures, their status is very different. Ms. Whitnum's inability to demand redress and equal time for the Channel 12 after the news report, which aired three times to hundreds of thousands of people, is evidence of her lack of clout. A press conference called by Whitnum during both her Congressional race and her subsequent Senate race typically drew no members of the press. Malloy's situation is very different. Their differing status levels of influence, as “public figures” needs to be weighed accordingly by the court. It is also important to note Constitutional Law 925 which states “that speech is used as a tool for political ends does not automatically bring it under the protective mantle of the Federal Constitution.” In this case his motive was to stifle.

Additionally, in *Sargeant v. Serrani*, 866 F. Supp. 657:

Facts, as distinguished from opinions, are susceptible to proof or disproof of their falsity. As a general rule an opinion is privileged as fair comment only when the facts on which it is based are truly stated or privileged or otherwise known because the facts are of common knowledge or because, though perhaps unknown to a particular recipient of the communication, they are readily accessible. If the facts that are commented upon are not commonly known, however, then fair comment is no defense. This is so because an opinion must be based upon facts, and if the facts are neither known nor stated, then a defamatory opinion implies that there are undisclosed defamatory facts which justify the opinion. The status of such "mixed" opinions has not been clearly articulated, but they generally are privileged only where made by members of the press or news media; about matters of public interest or concern; and without knowingly or recklessly distorting the facts upon which they are based.

Mr. Malloy distorted the facts and as stated above, "a defamatory opinion implies that there are undisclosed defamatory facts which justify the opinion." Since Whitnum was allowed comparable redress the listening public will assume Malloy speaks from fact. This is defamation.

Legal Argument to Request Discovery

Plaintiff respectfully requests the court allow Discovery so we can determine Mr. Malloy's motives. The plaintiff has that right to know.

Referencing the *New York Times v. Sullivan* 376 U.S. 254, 301-302, 84 S. CT. 710, 737, 11 L. ED. 2d. 5686 (1964,) Chief Justice Warren concurring in the Curtis Publishing case suggested that. "...a plaintiff must be allowed reasonable opportunity for discovery."

Ms. Whitnum, plaintiff, respectfully requests the court to allow Discovery and if found, allows additional findings of Mr. Malloy's words to be admitted into the court. as evidence. We believe there are other words, video tapes from the press conference and other writings that further this case. When Mr. Malloy said Ms. Whitnum "made anti-Semitic" "comments about Jews" that was a lie and completely **false**. We respectfully request the court to come to the same conclusion as Justice Warren and allow Discovery.

Defamation

Whitnum feels she has been defamed by Malloy's actions:

"Under Connecticut law, a defamation is defined as a false and malicious publication of a person, which exposes him to public ridicule, hatred or contempt, or hinders virtuous men from association with him...*Zupnick v. the Associated Press, Inc.*, 31 F. Sup. 2nd 70, 72 (D. Conn. 1998)

Aside from the blatant falsehoods already mentioned, Malloy also stated the following that are not true or accurate and display Whitnum in an unfavorable and inaccurate light. Including but not limited to:

“ During her brief run [Whitnum] has used every stereotype of Jewish power in the book.”

“She[Whitnum] has blamed the 9/11 attack and the war in Iraq on Israel, the Jewish lobby, the Jewish media control.”

“ candidate for public office wages this campaign of anti-Semitism, “It is intended to divide Americans, not unite them.”

“..claiming that AIPAC is morally guilty of the attacks of 9/11 and the individuals who perpetrated them.”

“ ..running for Senator is another way to get her message out - and her message is hate.”

a. False statements

Ms. Whitnum has experienced some of these reactions from strangers and acquaintances. Defense attorney’s claims of protection cannot be supported when an actual lie is evident. Supporting this: Ms. Whitnum made no “comments about Jews.”

Masson v. New Yorker Magazine, No. 89-1799, SUPREME COURT OF THE UNITED STATES, 501 U.S. 496; 111 S. Ct. 2419; 115 L. Ed. 2d 447; 1991 U.S. LEXIS 3630; 59 U.S.L.W. 4726:

“..Falsity is required, by the Federal Constitution's First Amendment, for recovery by a public figure in a defamation action.”

And also,

Decker v. Martin, 2010 Conn. Super. LEXIS 168 A **defamation** action is based on the unprivileged communication of a false statement that tends either to harm the reputation of another by lowering him or her in the estimation of the community or to deter others from dealing or associating with him or her.

b. Racial Prejudice is Defamation

Additionally, for a statement to be Anti-Semitic they had to have "purpose and intent was to encourage hatred" Ms. Whitnum has no hatred for anyone. Her writing, teachings and public stands are political and based on fact not on religious prejudice. Whitnum is a politician and a writer is especially damaging and libel per se as it effects her livelihood as the public will see her as unable to put “professional duty above personal bias”:

Birnbaum v. Trussell, 371 F.2d 672 “Charges of race prejudice permanently brands the person accused as one who is unable to put public and professional duty above personal bias.”

The effect of Malloy's actions is "chilling" as Ms. Whitnum is demonized in the eyes of the public and therefore, not taken seriously by the public. When she is marginalized by his well-publicized message, her message is marginalized and she is dismissed as a racist. She is a writer and a politician and this does and will affect her life for the remainder of her life as anything on the Internet never goes away. Defense Attorney comments she will "defiantly" continue her work - her research, her books, her candidacy, her ideas. That is not issue. How she is treated is the issue. She is viewed differently based on Malloy's words and, she has proof of such.

c. Opinion as fact

"Opinion" when stated as an opinion, is protected but Malloy went much further when he attributed to Ms. Whitnum false statements as fact. Statements she never said – blatant falsehoods. Stating an "opinion" as though fact is damaging:

"...both the First Circuit and the state of Connecticut recognize that determining the nature of an alleged **defamation** is highly contextual. See Fudge, 840 F.2d at 1016 ("In making this determination, we examine the statement itself, the article as a whole, and its social context."); *Goodrich v. Waterbury Republican-American, Inc.*, 188 Conn. 107, 111, 448 A.2d 1317 (1982) ("This distinction between fact and opinion cannot be made in a vacuum, however, for although an opinion may appear to be in the form of a factual statement, it remains an opinion if it is clear from the context that the maker is not intending to assert another objective fact.").

In Mr. Malloy's case he never prefaced his words with "I believe Ms. Whitnum is....." Quite the contrary, he is adamant to this day that he knows her mind and she is harboring some deep-seeded anti-Semitism and she must be outed as a racist and publicly scorned and he is making this as an assertion. It is his continued duty to enlighten the public on the inner workings of Ms. Whitnum's mind. A woman he has never met.

Continuing on the falsity issue, in *Philadelphia Newspapers, Inc. v. Haps*, 475 U.S. 767, it states: "[A] public figure plaintiff must show the **falsity of the statements at issue** in order to prevail in a suit for defamation." Malloy saying Ms. Whitnum made "comments about Jews" which paints her as a racist and is defamation. Additionally, in *Daley v. Aetna Life and Casualty Co.*, 249 Conn. 766, 795, 734 A.2d 112 (Conn. 1999). "... a charge of defamation is only actionable if the statement at issue "conveys an objective fact, as generally, a defendant cannot be held liable for expressing a mere opinion." Mr. Malloy stated a lie as an objective fact when he said Mr. Whitnum made "anti-Semitic" "comments about Jews." Ms.

Whitnum made no such comments.

The defendant's attorney bizarrely argues that the Court not "punish Malloy for maintaining a different opinion over the message and motivation behind Whitnum's comments." That is not the case at all. Mr. Malloy's opinions are not the same as the examples in the cases cited by the defense attorney. This was not the case of a citizen making a slip-of-the-tongue. See:

Milkovich v. Lorain Journal Co., No. 89-645, SUPREME COURT OF THE UNITED STATES, 497 U.S. 1; 110 S. Ct. 2695; 111 L. Ed. 2d 1; 1990 U.S. LEXIS 3296; 58 U.S.L.W. 4846; 17 Media L. Rep. 2009, April 24, 1990, Argued, June 21, 1990, In defamation suit..... there was no absolute privilege for opinion speech. Petitioner had to show that the defamatory implications made were false and made with some level of fault.

Plaintiff has shown a "level of fault" by Malloy as he had an obligation to get it right before he called a press conference for the purpose of painting plaintiff as a racist. Should the baseless "opinion" of every person-with-an agenda, every bully with a microphone, be given the same level of worth? What if that same angry "opinion" damages a person's good-name, profession, work, and opportunities in the process? What if their "opinion" is not accurate and supported by a lie? We beg the court to take this into consideration and allow this case to progress. What rights do intellectuals who painstakingly seek the truth and document accordingly have?

In Connecticut Law, Article at § 161 page 452 says that: "The determination whether an allegedly defamatory statement is a statement of fact or opinion is a question of law."

We leave this issue up to this court to determine.

Additionally, *Goodrich, 188 Conn, at 117* "opinions are protected so long as the underlying facts forming the opinion have not been distorted or are otherwise discoverable". Clearly Mr. Malloy distorted the truth when he stated Ms. Whitnum made "comments about Jews." Which she never did.

And, . *Goodrich, 188 Conn, at 116.* "But there is no constitutional value in a false statement of fact." Therefore, Mr. Malloy had no right either through ignorance or negligence to make a "false statement of fact." about Ms. Whitnum.

d. Statements must be made in context

And in *Celle v. Filipino Reporter Enters., 209 F.3d 163*

“Challenged statements are not to be read in isolation, but must be perused as the average reader would against the whole apparent scope and intent of the writing.”

Malloy can't pull out words out of context in order to make a malicious point. “Both Connecticut and federal cases support the position that the allegedly libelous remarks must be considered in their totality and in the context in which they were published.” Malloy took an email Whitnum sent to him after the press conference to twist the facts to justify the reasons for his press conference. Stating in the *Jewish Ledger* on June 23, 2010 his interpretation of why she sent it is damaging. This is especially so since she stated she did “not know” as it was part of a larger study not yet completed. The hypothesis was to determine the reasons for the outcome of a survey which concluded that 98 out of 100 Fairfield County residents, when polled, had no idea who AIPAC was, the most powerful lobby group in the world. Since that time, her research has concluded that there are several reasons, most significant being the overall reluctance of news directors to discuss certain topics AIPAC related due in part to United States cultural taboo.

e. Ordinary Reader Standard

“Under New York law, the inquiry into whether a statement should be viewed as one of fact or one of opinion must be made from the perspective of an ordinary reader of the statement.”

Because of Malloy's position as Mayor, ordinary people will rely upon his words and never guess he is lying, or misinformed, using her work to call a press conference to pump himself up to a constituent group. The “ordinary reader” will believe Malloy. Ms. Whitnum was not allowed comparable redress and so they have no choice but to believe Malloy.

f. Libel and Libel Per Se

While this act was not an “arbitrary state action” but instead a deliberate state action by a sitting city official.

Defined as: “An employee's reputation and the ability to pursue a profession effectively are both ordinarily accorded meticulous protection, by the libel laws and the latter, in particular, by rules designed to prevent direct injury by arbitrary state action.”

Also,

“*Proto v. Bridgeport Herald Corporation, supra*, where the Supreme Court held that libel per se, like slander per se, must fall into one of several discrete

recognized categories of defamation to be actionable per se. In *Proto*, as in the instant case, the Court held that the defamation must fall into either of two categories: "(1) *libels* charging crimes and (2) *libels* which injure a man in his profession and calling." *Id.*, at 566."

The Connecticut Superior Court's explanation in *Lega Siciliana Soc. Club v. St. Germaine*, CV000159363 , superior court of CT, Judicial District of Waterbury. 2002 Conn. Super. LEXIS 1535, May 2, 2002, Decided , May 2, 2002, is particularly instructive on whether a statement constitutes libel per se:

"Thus it is actionable without proof of damages to say of a physician that he is a butcher ...or of an attorney that he is a shyster, of a school teacher that he has been guilty of improper conduct with pupils, of a clergyman that he is the subject of scandalous rumors, of a chauffeur that he is habitually drinking .."

The defense attorney's claim that the case should be dismissed for failure to state damages is refuted with the aforementioned. Also, Mr. Malloy's words imply a "a lack of skill in the conduct of its business" on the part of Ms. Whitnum as a politician and a writer has been damaged by Mr. Malloy's words are accurate. And additionally,

Birnbaum v. Trussell, 371 F.2d 672 "“An employee's reputation and the ability to pursue a profession effectively are both ordinarily accorded meticulous protection, by the libel laws and the latter, in particular, by rules designed to prevent direct injury by arbitrary state action.

Also,

in *Troche v. Smith*, 1998 WL 516292 (Conn. Super. J.D. New Haven 1998) Connecticut law recognizes libel per se as: "lack of integrity or skill in the conduct of one's business or profession."

g. Politicians should be held to a higher standard

It is interesting that the defense attorney mentions *Strada v. Connecticut Newspapers, Inc.*, 193 Conn 313, 326, 477 A.2d 1005, and quotes the following "It is of the utmost consequences that the people should discuss the character and qualifications of candidates for their suffrages." This is a direct contradiction of Malloy's claims "she [Whitnum] was never going to win the primary; she was not a substantial candidate" then why bring attention to her message? His motivation was self-serving, abuse of his position and pandering to a constituent group. It is Malloy's character and intellect that needs to be examined. He does his country a disservice, by attempting to stifle a woman willing to bring controversial, timely topics to the public forum for discussion – topics vital to our country's well-being. If anything should be brought into the public regarding a candidate is Mr. Malloy's inability to grasp

shades of meaning. His actions show him to be severely lacking in the ability to engage in intellectual discourse, quote respectfully or check facts before getting behind a microphone. For this reason alone the court should allow this case to continue. The public has right to know Mr. Malloy.

h. First Amendment

Malloy chose to stifle Ms. Whitnum's constitutional right to comment on matters of substantial public interest. Malloy seeks to silence the debate and discourse. Under the law, Whitnum's statements were unquestionably protected because they are based on fact. Article 1, Section 4 of the Connecticut Constitution: "Every citizen may freely speak, write and publish his sentiments on all subjects.."

To reiterate, as stated in the beginning of this document, the color of law combined with the First Amendment makes Malloy's actions, as a high-ranking politician, so much more serious.

i. Damages

Mr. Malloy's words and subsequent Internet postings because of his words contributed to her dismissal from her place of employment and other detrimental consequences such as comments by acquaintances, being yelled at in a bar by a stranger, not being taken seriously as a candidate or a writer, emotional distress, and respect of the intellectual community and more. And, as in keeping with the following definition:

And, "The New York Court of Appeals has defined a defamatory statement as one that exposes an individual to public hatred, shame, obloquy, contumely, odium, contempt, ridicule, aversion, ostracism, degradation, or disgrace, or induces an evil opinion of one in the minds of right-thinking persons, and deprives one of confidence and friendly intercourse in society."

Conclusion

In *Herring v. Signs, 2000.* "... it was written "the court must construe the facts in the complaint [*2] most favorably to the plaintiff." We would appreciate it if your honor would do just that and allow this case to continue. Additionally, your honor, in *Lyons v. Heid, 1998 Conn.* "Every person who is entitled to the protection of our laws, is entitled to protection against injuries to his reputation, and to redress for them when committed." Ms. Whitnum has been allowed no redress and is counting on this court to give her just that. The day a politician wins the right to twist facts and stifle the well-documented words of a writer is sad day for our

country. No matter how unpopular the reality, if it is truth, written with care, it should be protected.

“Who steals my purse steals trash; 'tis something, nothing;
'Twas mine, 'tis his, and has been slave to thousands;
But he that filches from me my good name
Robs me of that which not enriches him,
And makes me poor indeed.” WILLIAM SHAKESPEARE, *Othello*

For the foregoing reasons, Plaintiff Lisa “Lee” Whitnum respectfully requests that this Court dismiss Malloy’s Motion to Strike.

PLAINTIFF,



LISA “LEE” WHITNUM



JYOTI DEDHIA
Notary Public - Connecticut
My Comm. Expires 09-30-2015