

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF VERMONT

---

JANET JENKINS, ET AL.,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	Docket No. 2:12-cv-00184
	)	
KENNETH L. MILLER, ET AL.,	)	
	)	
Defendants.	)	
	)	

---

**DEFENDANTS LIBERTY COUNSEL, MATHEW D. STAVER, AND RENA M. LINDEVALDSEN’S SPECIAL MOTION TO STRIKE PLAINTIFFS’ CLAIMS PURSUANT TO VERMONT’S ANTI-SLAPP STATUTE**

Pursuant to 12 Vt. Stat. Ann. § 1041, Defendants Liberty Counsel, Mathew D. Staver (“Staver”), individually and as alleged agent of Liberty Counsel, and Rena M. Lindevaldsen (“Lindevaldsen”), individually and as alleged agent of Liberty Counsel (collectively “Defendants”), move this Court for an order dismissing Plaintiffs’ Revised Second Amended Complaint (“RSAC”) on the grounds that all of the claims against these Defendants arise solely from and are based entirely upon these Defendants’ exercise of the right to freedom of speech under the United States Constitution.

A memorandum of law in support of this Motion is filed concurrently herewith.

Respectfully submitted,

Dated: June 5, 2017

Anthony R. Duprey  
NEUSE, DUPREY, & PUTNAM  
1 Cross Street  
Middlebury, VT 05743  
Phone: (802) 388-7966  
Fax: (802) 388-9713  
Email: anthony@ndp-law.com

/s/ Daniel J. Schmid  
Horatio G. Mihet\*  
Daniel J. Schmid\*  
Roger K. Gannam\*  
LIBERTY COUNSEL  
P.O. Box 540774  
Orlando, FL 32854  
Phone: (407) 875-1776  
Fax: (407) 875-0770  
Email: dschmid@lc.org

*Attorneys for Defendants Liberty Counsel,  
and Staver and Lindevaldsen (in their  
individual capacities)*

\*Admitted pro hac vice

**CERTIFICATE OF SERVICE**

I hereby certify that on this 5th day of June, 2017, I caused the foregoing to be electronically filed with this Court. Service will be effectuated on all counsel of record via this Court's ECF/electronic notification system.

/s/ Daniel J. Schmid  
Horatio G. Mihet\*  
Daniel J. Schmid\*  
Roger K. Gannam\*  
LIBERTY COUNSEL  
P.O. Box 540774  
Orlando, FL 32854  
Phone: (407) 875-1776  
Fax: (407) 875-0770  
Email: dschmid@lc.org

*Attorneys for Defendants Liberty Counsel, and Staver and Lindevaldsen (in their individual capacities)*

\*Admitted pro hac vice

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF VERMONT**

_____	)	
JANET JENKINS, ET AL.,	)	
	)	
Plaintiffs,	)	
	)	Docket No. 2:12-cv-00184
v.	)	
	)	
KENNETH L. MILLER, ET AL.,	)	
	)	
Defendants.	)	
_____	)	

**MEMORANDUM OF LAW IN SUPPORT OF DEFENDANTS  
LIBERTY COUNSEL, MATHEW D. STAVER, AND RENA M.  
LINDEVALDSEN’S SPECIAL MOTION TO STRIKE PLAINTIFFS’  
CLAIMS PURSUANT TO VERMONT’S ANTI-SLAPP STATUTE**

Defendants Liberty Counsel, Mathew D. Staver (“Staver”), individually and as alleged agent of Liberty Counsel, and Rena M. Lindevaldsen (“Lindevaldsen”), individually and as alleged agent of Liberty Counsel (collectively “Defendants”), by and through the undersigned counsel, hereby submit this memorandum of law in support of their Special Motion to Strike under 12 Vt. Stat. Ann. § 1041(a). For the reasons that follow, all claims in Plaintiffs’ (“Jenkins”) Revised Second Amended Complaint (“RSAC”) against Liberty Counsel, Staver, and Lindevaldsen should be dismissed in their entirety.

**INTRODUCTION**

Jenkins’ RSAC represents an astounding and unconscionable attempt to punish and silence the protected speech of Liberty Counsel, Staver, and Lindevaldsen. Jenkins’ RSAC paints a fanciful narrative concerning a wide-ranging alleged conspiracy spanning over 13 years, four states, and five countries. Yet, Jenkins’ allegations concerning Liberty Counsel, Staver, and

Lindevaldsen arise from nothing more than the exercise of their right to free speech and from their lawful representation of Miller in a previous state-court matter. Both their speech and their lawful representation of Miller are protected activities under Vermont's anti-SLAPP statute. 12 Vt. Stat. Ann. § 1041. Thus, boiled down to their essence, Jenkins' claims are nothing more than a direct assault on the inviolable right which "lies at the foundation of free government by free men." *Schneider v. N.J.*, 308 U.S. 147, 151 (1939). Such a brazen attempt to punish speech cannot be permitted. Indeed, preventing such attacks on free speech is the *raison d'être* for Vermont's anti-SLAPP statute. *See Felis v. Downs Ranchlin Martin PLLC*, 133 A.3d 836, 847 (Vt. 2015) (noting that the purpose of Vermont's anti-SLAPP statute is to prevent the "disturbing increase in lawsuits brought primarily to chill the valid exercise of the constitutional rights to freedom of speech and freedom to petition the government"). Jenkins' RSAC must be dismissed.

### ARGUMENT

Vermont's anti-SLAPP statute provides that "[a] defendant in an action arising from the defendant's exercise, in connection with a public issue, of the right to freedom of speech or to petition the government for redress of grievances under the United States or Vermont Constitution may file a special motion to strike under this section." 12 Vt. Stat. Ann. § 1041(a).

Analysis under the anti-SLAPP statute proceeds through a two-step burden-shifting process. First, the party bringing the motion to strike must make a threshold showing that the case arises from his or her exercise of the freedom of speech or freedom to petition the government. A defendant meets this burden by demonstrating that the act underlying the plaintiff's cause of action fits one of the categories spelled out in subsection (i) of the anti-SLAPP statute. If the court concludes that this showing has been made, the burden shifts to the plaintiff. At this stage, the court must grant the special motion to strike unless the plaintiff shows that "the defendant's exercise of his or her right to freedom of speech and to petition was devoid of any reasonable factual support and any arguable basis in law[,] and . . . the defendant's acts caused actual injury to the plaintiff."

*Haywood v. St. Michael's College*, No. 2:12-CV-164, 2012 WL 6552361 (D. Vt. Dec. 14, 2012)

(quoting 12 Vt. Stat. Ann. § 1041) (emphasis added); *see also Felis v. Downs Rachlin Martin PLLC*, 133 A.3d 836, 848-49 (Vt. 2015).

Vermont’s anti-SLAPP statute protects a defendant’s exercise of the right to free speech when it involves *inter alia* “any written or oral statement made before a legislative, executive, or judicial proceeding,” “any written or oral statement concerning an issue of public interest made in a public forum,” and “any other statement or conduct concerning a public issue or an issue of public interest.” 12 Vt. Stat. Ann. § 1041(i). As the Vermont Supreme Court has recognized, the purpose of the anti-SLAPP statute is to protect “First Amendment rights and to prevent the misuse of the courts as a vehicle to punish people for expressing their opinions on issues of *public interest*.” *Felis*, 133 A.3d at 848 (emphasis original).

Liberty Counsel, Staver, and Lindevaldsen easily satisfy the threshold requirement because Jenkins’ allegations in the RSAC concerning these Defendants all arise from the exercise of their right to free speech and to petition the government. Thus, “the **law plainly places the burden on [Jenkins]** to show that defendants’ exercise of their right to freedom of speech was devoid of any reasonably factual support and any arguable basis in law and that defendants’ acts caused actual injury.” *Chandler v. Rutland Gerald Publ’g*, No. 2015-265, 2015 WL 7628687 \*2 (Vt. Nov. 1, 2015) (emphasis added). Because Jenkins cannot satisfy this demanding burden, “the court **must** grant the motion to strike.” *Id.* at \*1 (emphasis added).

**I. JENKINS’ RSAC MUST BE DISMISSED AGAINST LIBERTY COUNSEL, STAVER, AND LINDEVALDSEN BECAUSE IT ARISES SOLELY FROM AND IS BASED ENTIRELY UPON DEFENDANTS’ RIGHT TO FREE SPEECH IN CONNECTION WITH A PUBLIC ISSUE.**

Liberty Counsel, Staver, and Lindevaldsen easily satisfy the threshold requirement under Section 1041(a). Jenkins’ claims against Liberty Counsel, Staver, and Lindevaldsen arise entirely from the exercise of their right to free speech and to petition the government. Liberty Counsel,

Staver, and Lindevaldsen's exercise of their right to free speech was in connection with an issue of public interest.

**A. Jenkins' Claims Against Liberty Counsel, Staver, and Lindevaldsen Arise Entirely From The Exercise Of Their Right To Free Speech Under The United States Constitution.**

The allegations of Jenkins' RSAC demonstrate that the claims against Liberty Counsel, Staver, and Lindevaldsen arise entirely from their protected First Amendment activity and from their lawful representation of Miller in a previous proceeding. Their speech and alleged conduct thus falls squarely under the protection of the anti-SLAPP statute and cannot serve as the basis for a lawsuit "brought primarily to chill the valid exercise of the constitutional rights of freedom of speech and freedom to petition the government for the redress of grievances." *Felis*, 133 A.3d at 847.

As the statute makes plainly evident, "**any written or oral statement** made before a . . . judicial proceeding" is protected. 12 Vt. Stat. Ann. § 1041(i)(1) (emphasis added). The vast majority of Jenkins' allegations arise from Liberty Counsel, Staver, or Lindevaldsen's lawful and ethical representation of Miller in a **judicial proceeding**. (RSAC ¶ 21) (alleging that Staver and Lindevaldsen agreed to represent Miller in previous matter); (*id.* ¶ 31) (alleging that Staver and Lindevaldsen appeared in Virginia court); (*id.* ¶ 32) (alleging that "Miller's attorneys" participated in hearings via telephone); (*id.* ¶ 41) (alleging that Liberty Counsel allegedly provided certain advice to Miller); (*id.* ¶ 49) (alleging that Liberty Counsel filed an appeal on behalf of their client Miller); (*id.* ¶ 50) (alleging that Lindevaldsen testified to courts in Vermont regarding her representation of Miller); (*id.* ¶ 57) (alleging that Liberty Counsel attorneys told courts they did not know of Miller's whereabouts); (*id.* ¶ 61) (alleging that "Miller's attorneys" continued to press appeals until they were exhausted).

These allegations all arise from Liberty Counsel, Staver, and Lindevaldsen's exercise of their right to free speech, and all such allegations involve alleged activity unquestionably protected by the First Amendment. Indeed, agreeing to represent a client and advocating on their behalf (RSAC ¶21) involves protected speech. *See, e.g., NAACP v. Button*, 371 U.S. 415, 436 (1963). Liberty Counsel, Staver, and Lindevaldsen's statements made during the course of their representation of Miller (RSAC ¶¶ 31, 32, 41, 49, 50, 57, 61) all constitute protected speech. *See, e.g., Legal Servs. Corp. v. Valazquez*, 531 U.S. 533 (2001) (arguments of counsel on behalf of client are protected speech); *Holder v. Humanitarian Law Project*, 561 U.S. 1, 28 (2010) (legal advice is protected speech); *King v. Governor of New Jersey*, 767 F.3d 216, 225 (3d Cir. 2016) ("the Supreme Court had no difficulty characterizing legal counseling as 'speech'") (citing *Holder*, 561 U.S. at 28); *Batagiannis v. West Lafayette Cmty. Sch. Corp.*, 454 F.3d 738, 742-43 (7th Cir. 2006) (speech of attorneys in court is protected by the First Amendment).

Other of Jenkins' allegations involve a combination of the protection of Section 1041(i)(1) and the protection afforded under Section 1041(i)(4), which extends protection to "any other statement or conduct concerning a public issue or an issue of public interest which furthers the exercise of the constitutional right to freedom of speech." 12 Vt. Stat. Ann. § 1041(i)(4). Indeed, some allegations concern statements made during the course of Liberty Counsel, Staver, and Lindevaldsen's representation of Miller in a judicial proceeding and other statements and conduct exercised in support of that representation. (RSAC ¶ 26) (alleging that Miller's attorneys established a Facebook page to inform the public of Miller's case and solicit support); (*id.* ¶ 29) (alleging that Liberty Counsel attorneys attempted to raise money to support their pro bono representation of Miller in a judicial proceeding); (*id.* ¶ 31) (alleging that Staver and Lindevaldsen appeared at a press conference on Miller's behalf outside a Virginia courthouse); (*id.* ¶ 61)

(alleging that Staver and Lindevaldsen stated in media appearances that they did not know of their client's whereabouts); (*id.* ¶ 62) (alleging that Lindevaldsen wrote a book about her representation of Miller in a judicial proceeding and that Staver and Lindevaldsen appeared on radio and television to promote the book).

Under unequivocal First Amendment precedent, all such allegations are unquestionably directed at protected speech. Jenkins' allegations concerning Liberty Counsel, Staver, and Lindevaldsen's alleged attempts to raise money to support their representation of Miller in a judicial proceeding (RSAC ¶¶ 26, 29) involve speech and conduct unquestionably protected by the First Amendment. *See, e.g., Village of Schaumburg v. Citizens for a Better Env.*, 444 U.S. 620, 629 (1980) ("soliciting funds involves interests protected by the First Amendment's guarantee of freedom of speech"); *Bates v. State Bar of Arizona*, 433 U.S. 350, 363 (1977) ("our cases have long protected speech even though it is in the form of . . . solicitation to pay or contribute money"). Jenkins' allegations concerning the establishment of a Facebook page to help solicit funds (RSAC ¶21) also unquestionably attack activity protected by the First Amendment. *See Grutzmacher v. Howard Cnty.*, 851 F.3d 332 (4th Cir. 2017) (Facebook postings are protected speech); *Keefe v. Adams*, 840 F.3d 523 (8th Cir. 2016) (Facebook postings are protected speech and "[t]he First Amendment fully applied to that speech"). Jenkins' allegations concerning Staver and Lindevaldsen attending a press conference (RSAC ¶ 31) also arise from protected speech. *See Gentile v. State Bar of Nevada*, 501 U.S. 1030, 1034 (1991) (attorney holding press conference about representation of client is "pure speech"). Jenkins' allegations concerning Lindevaldsen writing a book about her representation of Miller in a judicial proceeding and Staver and Lindevaldsen appearing on television and radio to discuss that book (RSAC ¶ 62) arise from unquestionably protected speech. *See, e.g., Simon & Schuster, Inc. v. Members of N.Y. State Crime*

*Victims Bd.*, 502 U.S. 105, 116 (1991) (writing and publishing books are protected speech); *Mandel v. Cnty. Of Suffolk*, 316 F.3d 368 (2d Cir. 2003) (media interviews are protected speech); *Eisenhour v. Weber Cnty.*, 744 F.3d 1220 (10th Cir. 2014) (same).<sup>1</sup>

**B. Liberty Counsel, Staver, and Lindevaldsen’s Exercise Of Their Right To Free Speech Was In Connection With Issues Of Public Interest.**

Speech deals with a matter of public interest “when it can be fairly considered as relating to any matter of political, social, or other concerns to the community . . . or when it is the subject of legitimate news interest, that is, a subject of general interest and of value and concern to the public.” *Snyder v. Phelps*, 562 U.S. 443, 452 (2011) (internal citations omitted); *see also Lane v. Franks*, 134 S. Ct. 2369, 2380 (2014) (same). The allegations of Jenkins’ RSAC all demonstrate that Liberty Counsel, Staver, and Lindevaldsen’s speech dealt with matters of significant public concern. Defendants therefore easily satisfy the threshold requirements for protection under the anti-SLAPP statute.

First, Liberty Counsel, Staver, and Lindevaldsen’s speech all arose out of their representation of Miller in a judicial proceeding concerning issues related to homosexuality, same-sex marriage/civil unions, and children. (RSAC ¶¶ 18-19). The cases demonstrating the extraordinary public interest in such topics are legion. *See, e.g., Snyder*, 562 U.S. at 454 (speech relating to matters of homosexuality “are matter of public import” and “fairly characterized as

---

<sup>1</sup> Jenkins’ RSAC contains only four additional allegations concerning Liberty Counsel, Staver, or Lindevaldsen. (RSAC ¶¶ 44-46, 60). However, the allegation in RSAC ¶ 60 alleges no activity on the part of these Defendants and merely notes that certain telephone lines registered to Liberty Counsel allegedly were called by Zodiates. The allegation also ignores substantial evidence presented to this Court concerning the alleged phone call. *See Memorandum in Support of Motion to Dismiss at Argument*, Section III.A.3 and n.6. The only other allegations concern only Lindevaldsen and completely mischaracterize Jenkins’ own evidence, intentionally omit critical facts from her own evidence, and are designed only to mislead this Court concerning such allegations. *See Memorandum in Support of Motion to Dismiss at Factual Background*, Section IV.C.

constituting speech on a matter of public concern”); *Obergefell v. Hodges*, 135 S. Ct. 2584, 2605 (2015) (noting the significant and expansive public interest in issues surrounding homosexuality and same-sex marriage); *id.* at 2638 (Thomas, J., dissenting) (noting that the topics of homosexuality and same-sex marriage have been the “subject of heated debate in the States” and garnered the public interest of every state in the nation); *United States v. Windsor*, 133 S. Ct. 2675 (2013) (noting the significant public interest in same-sex marriage issues); *id.* at 2710-11 (Scalia, J., dissenting) (noting that the topics of homosexuality and same-sex marriage result in extraordinary public interest and stating that “[f]ew public controversies touch on an institution so central to the lives of so many, and few inspire such attendant passion by good people on all sides”); *Sable Commc’ns of Cal., Inc. v. F.C.C.*, 492 U.S. 115 (1989) (noting that the protection of children is certainly of public interest); *Ashcroft v. Free Speech Coalition*, 535 U.S. 234 (2002) (significant public interest in protecting children). Because Jenkins’ allegations concerning Liberty Counsel, Staver, and Lindevaldsen all arise from speech related to their representation of Miller in a judicial proceeding concerning topics of significant public interest (RSAC ¶¶ 21, 26, 29, 31, 32, 41, 49, 50, 57, 61, 62), their speech is necessarily in connection with an issue of public interest. It therefore falls squarely under the protection of the anti-SLAPP statute.

Liberty Counsel, Staver, and Lindevaldsen’s speech is also necessarily connected to a matter of public interest by virtue of being specifically tied to their representation of Miller in a judicial proceeding. Since time immemorial, courts have recognized that speech in connection with and occurring in a judicial proceeding is of vital public concern. *See, e.g., Gentile v. State Bar of Nevada*, 501 U.S. 1030, 1034 (1991) (holding that an attorney’s speech in a press conference concerning ongoing judicial proceedings was certainly connected to the public interest in the court’s operations); *Lugosch v. Pyramid Co. of Onondaga*, 435 F.3d 110 (2d Cir. 2006) (noting

that the First Amendment and the common law recognize the significant public interest pertaining to court proceedings); *Datson v. Bravo*, 321 F.3d 663, 668 n.4 (7th Cir. 2003) (noting the significant public interest of court proceedings and that it arises from the fact that “the public has a right to know who is using the courts”). Thus, Liberty Counsel, Staver, and Lindevaldsen’s speech concerning the judicial proceedings in their client’s previous matter occurred in connection with an issue of public concern. “Plainly, it would be difficult to single out any aspect of government of higher concern and importance to the people than the manner in which [judicial proceedings] are conducted.” *Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555, 575 (1980).

That Liberty Counsel, Staver, and Lindevaldsen’s speech was made on behalf of their client in some instances does not diminish in any respect the protection afforded to their speech under the anti-SLAPP statute. Indeed, “[t]he statute does not require that a defendant moving to strike demonstrate that its protected statements or writings were made *on its own behalf*.” *Haywood v. St. Michael’s College*, No. 2:12-CV-164, 2012 WL 6552361 (D. Vt. Dec. 14, 2012) (emphasis original). Thus, Liberty Counsel, Staver, and Lindevaldsen’s speech on their own behalf and on behalf of their client falls squarely within the protection of the anti-SLAPP statute.

## **II. JENKINS CANNOT SATISFY HER DEMANDING BURDEN UNDER VERMONT’S ANTI-SLAPP STATUTE.**

Because Liberty Counsel, Staver, and Lindevaldsen have made the threshold showing that the allegations of Jenkins’ RSAC arise from the exercise of their right to free speech under the First Amendment, “the court must grant the motion to strike unless the plaintiff shows that (A) the defendant’s exercise of his or her right to freedom of speech and to petition was devoid of any reasonable factual support and any arguable basis in law; and (B) the defendant’s acts cause actual injury to the plaintiff.” *Chandler v. Rutland Gerald Publ’g*, No. 2015-265, 2015 WL 7628687 \*2 (Vt. Nov. 1, 2015). The law “plainly places the burden” on Jenkins. *Id.* Indeed, once the threshold

showing under the anti-SLAPP statute has been made, “**defendants ha[ve] no burden.**” *Id.* at \*1 (emphasis added). To satisfy the burden that clearly falls on Jenkins’ shoulders, “generalized contentions are insufficient.” *Id.* at \*2.

**A. Jenkins Cannot Demonstrate That Liberty Counsel, Staver, Or Lindevaldsen’s Exercise Of Their Right To Free Speech Was Devoid Of Factual Support Or Arguable Basis In Law.**

In considering this element of Jenkins’ burden, this Court has often looked at the merits of a defendant’s motion to dismiss. *See Haywood*, 2012 WL 6552361 at \*15 (considering the arguments of a defendant’s motion to dismiss to determine whether his speech had an arguable basis in law). “At the very least, to meet the first prong of this test, Plaintiff must demonstrate that his claim is legally sufficient.” *Id.* For the numerous reasons demonstrated in Liberty Counsel, Staver, and Lindevaldsen’s motion to dismiss, Jenkins has not and cannot prove that her claims are legally sufficient. Indeed, each one of them fails as a matter of law for myriad reasons:

- Jenkins’ claims against Liberty Counsel, Staver, and Lindevaldsen are grossly untimely and thus must be dismissed against these Defendants. *See Memorandum in Support of Motion to Dismiss at Argument, Section I.*
- Jenkins’ purported next-friend claims against Liberty Counsel, Staver, and Lindevaldsen do not and cannot save her untimely RSAC. *See id.* at Section II.
- This Court lacks personal jurisdiction over Liberty Counsel, Staver, and Lindevaldsen. *See id.* at Section III.
- This Court is not the proper venue for Jenkins’ claims against Liberty Counsel, Staver, and Lindevaldsen. *See id.* at Section IV.
- Jenkins’ custodial interference claims fail to state a claim as a matter of settled law. *See id.* at Section V.A.1-2.

- Jenkins' purported custodial interference claim on behalf of Isabella fails to state a claim as a matter of law. *See id.* at Section V.A.3.
- Jenkins cannot state a claim for civil conspiracy. *See id.* at Section V.B.
- Jenkins cannot state a claim for aiding and abetting liability. *See id.* at Section V.C.
- Jenkins' Section 1985(3) claims against Liberty Counsel, Staver, and Lindevaldsen fail to state a claim. *See id.* at Section V.D.1-3.
- Jenkins' purported Section 1985(3) claims on behalf of Isabella fail to state a claim as a matter of law. *See id.* at Section V.D.4.

Thus, because Jenkins' claims are time barred, jurisdictionally improper, and fail to state a claim upon which relief can be granted, she cannot satisfy her high burden of demonstrating that her claims are legally sufficient. *Haywood*, 2012 WL 6552361 at \*15. Indeed, because Jenkins' claims must be dismissed against Liberty Counsel, Staver, and Lindevaldsen, the exercise of their First Amendment rights "have much more than an **arguable** basis in law; **they have a decidedly firm basis in law.**" *Id.* (emphasis added). Jenkins' cannot satisfy her burden under the first prong of the burden shifting analysis in Vermont's anti-SLAPP statute. Liberty Counsel, Staver, and Lindevaldsen's motion to strike must therefore be granted and all claims against them dismissed.

**B. Jenkins Cannot Demonstrate That Liberty Counsel, Staver, Or Lindevaldsen's Exercise Of Their Right To Free Speech Caused Jenkins Actual Injury.**

Where, as here, Jenkins cannot show that "the petitioning activity in issue was devoid of any reasonable factual basis or basis in law, it is not necessary to reach the question whether the activity caused the plaintiffs actual injury." *Office One, Inc. v. Lopez*, 769 N.E.2d 749, 758 (Mass. 2002). This is because, as the Vermont Supreme Court recognized, once the threshold showing has been made, Liberty Counsel, Staver, and Lindevaldsen "have no burden." *Chandler*, 2015 WL

7628687 at \*1. Because Jenkins' RSAC is time barred, jurisdictionally improper, and fails to state a claim as a matter of law against Liberty Counsel, Staver, and Lindevaldsen, this Court need not even consider the actual damage prong. If the burden shifting "standard is not met for one or both elements, the special motion to dismiss must be allowed." *Wenger v. Aceto*, 883 N.E.2d 262, 265 (Mass. 2008).

Nevertheless, even if Jenkins could somehow demonstrate that her claims had any legal sufficiency, which she cannot, Liberty Counsel, Staver, and Lindevaldsen's special motion to strike must still be granted unless she can demonstrate actual injury **caused** by Liberty Counsel, Staver, and Lindevaldsen's protected speech. She simply cannot do so. To satisfy the second prong of her burden, Jenkins must demonstrate with specificity that Liberty Counsel, Staver, and Lindevaldsen caused her actual injury. "[G]eneralized contentions are insufficient to meet [her] burden." *Chandler*, 2015 WL 7628687 at \*3. Jenkins cannot rest her claims against Liberty Counsel, Staver, and Lindevaldsen on a "highly speculative" assertion of actual injury caused by these Defendants. *Haywood*, 2012 WL 6552361 at \*16. Indeed, a showing of actual injury requires Jenkins to demonstrate "affirmative evidence of an injury." *Lynch v. Christie*, 815 F. Supp. 2d 341, 350 (D. Me. 2011). Most importantly, Jenkins must "meet her burden to prove causation through prima facie evidence." *Camden Nat'l Bank v. Weintraub*, 143 A.3d 789, 794 (Me. 2016) (the second element in the burden shifting analysis "**requires the nonmoving party to show that the moving party's acts caused actual injury to the responding party.**" (bold emphasis added; italics original)).

For any one of numerous reasons, Jenkins has not and cannot demonstrate that Liberty Counsel, Staver, or Lindevaldsen caused her actual injury as a result of their protected speech:

- Jenkins' custodial interference claim against Liberty Counsel, Staver, and

Lindevaldsen fails to state a claim as a matter of law because she cannot allege that Liberty Counsel, Staver, and Lindevaldsen engaged in any acts post-January 1, 2010 when she became entitled to custody. *See* Memorandum in Support of Defendants' Motion to Dismiss at Argument, Section V.A.2.

- Jenkins' civil conspiracy claim against Liberty Counsel, Staver, and Lindevaldsen fails as a matter of law because she has failed to allege any agreement and cannot allege any underlying act liability. *See id.* at Section V.B.
- Jenkins' aiding and abetting claim against Liberty Counsel, Staver, and Lindevaldsen fails to state a claim as a matter of law because Jenkins has not and cannot demonstrate that Liberty Counsel, Staver, and Lindevaldsen's speech activities were part of some common design or plan or that they engaged in any tortious act. *See id.* at Section V.C.1.
- Jenkins' aiding and abetting claim against Liberty Counsel, Staver, and Lindevaldsen fails to state a claim as a matter of law because Jenkins has not and cannot demonstrate that Liberty Counsel, Staver, and Lindevaldsen knew of Miller's alleged plans, that they provided substantial assistance to Miller in the carrying out of those alleged plans, or that they were the proximate cause of Jenkins' alleged injuries. *See id.* at Section V.C.2-3.
- Jenkins' Section 1985(3) claims against Liberty Counsel, Staver, and Lindevaldsen fail to state a claim as a matter of law. *See id.* at Section V.D.1-3.
- Jenkins' purported Section 1985(3) claims on behalf of Isabella also fail to state a claim as a matter of law. *See id.* at Section V.D.4.

Because all of Jenkins' claims against Liberty Counsel, Staver, and Lindevaldsen fail to

state a claim upon which relief can be granted, she simply has not and cannot demonstrate that Liberty Counsel, Staver, and Lindevaldsen's protected speech caused her any injury whatsoever. Her generalized claims that her alleged injuries were the result of the actions of these Defendants fall far short of the mark. She therefore cannot meet her burden under the second prong of the anti-SLAPP statute. Liberty Counsel, Staver, and Lindevaldsen's special motion to strike "must be granted." 12 Vt. Stat. Ann. § 1041(e).

### **CONCLUSION**

Because Liberty Counsel, Staver, and Lindevaldsen satisfy the threshold burden to demonstrate that Jenkins' claims against them are based upon and arise from the exercise of their right to free speech under the United States Constitution, Jenkins has the burden to show that her claims are legally sufficient and that Liberty Counsel, Staver, and Lindevaldsen caused her actual injury. Jenkins' RSAC is devoid of any support for such a showing, her claims are without merit, and these Defendants caused her no injury. Liberty Counsel, Staver, and Lindevaldsen's special motion to strike under Vermont's anti-SLAPP statute must be granted.

Respectfully submitted,

Dated: June 5, 2017

Anthony R. Duprey  
NEUSE, DUPREY, & PUTNAM  
1 Cross Street  
Middlebury, VT 05743  
Phone: (802) 388-7966  
Fax: (802) 388-9713  
Email: anthony@ndp-law.com

/s/ Daniel J. Schmid  
Horatio G. Mihet\*  
Daniel J. Schmid\*  
Roger K. Gannam\*  
LIBERTY COUNSEL  
P.O. Box 540774  
Orlando, FL 32854  
Phone: (407) 875-1776  
Fax: (407) 875-0770  
Email: dschmid@lc.org

*Attorneys for Defendants Liberty Counsel,  
and Staver and Lindevaldsen (in their  
individual capacities)*

\*Admitted pro hac vice

**CERTIFICATE OF SERVICE**

I hereby certify that on this 5th day of June, 2017, I caused the foregoing to be electronically filed with this Court. Service will be effectuated on all counsel of record via this Court's ECF/electronic notification system.

/s/ Daniel J. Schmid  
Horatio G. Mihet\*  
Daniel J. Schmid\*  
Roger K. Gannam\*  
LIBERTY COUNSEL  
P.O. Box 540774  
Orlando, FL 32854  
Phone: (407) 875-1776  
Fax: (407) 875-0770  
Email: dschmid@lc.org

*Attorneys for Defendants Liberty Counsel, and Staver and Lindevaldsen (in their individual capacities)*

\*Admitted pro hac vice