

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

JANET JENKINS, et al.,)	
)	
Plaintiffs,)	
)	
v.)	CIVIL CASE NO. 2:12-cv- 00184-wks
)	
KENNETH L. MILLER, et al.,)	
)	
Defendants.)	

**DEFENDANT LINDA M. WALL’S SPECIAL MOTION TO STRIKE PLAINTIFFS’
REVISED SECOND AMENDED COMPLAINT**

Defendant Linda M. Wall, by and through counsel, moves this Court for an order striking Plaintiffs’ Revised Second Amended Complaint on grounds that it violates Vermont’s Anti-SLAPP Act, 12 Vt. Stat. Ann. §1041(a), because it is premised almost entirely on Ms. Wall’s protected free speech and petitioning activities. As grounds for this motion, Ms. Wall states as follows:

1. Plaintiffs’ Revised Second Amended Complaint (“Complaint”) was filed on May 4, 2017. Dkt. #223.
2. The Complaint states two causes of action, one alleging that Ms. Wall conspired with Lisa Miller to engage in the “intentional tort of kidnapping” Ms. Miller’s daughter, Isabella, and one alleging that Ms. Wall and others conspired to violate Plaintiffs’ civil rights in violation of 42 U.S.C. §1985(3). *See* Compl. at 12.
3. The claims against Ms. Wall arise out of her exercise of her right to freedom of speech and her freedom to petition the government for redress of grievances on a public issue, which rights are protected under both the United States Constitution and the Vermont

Constitution. *See* U.S. Const. amend. I; Vermont Const. Art. 13; *see also*, Compl., ¶¶ 21 (Ms. Wall allegedly assisted in securing legal representation for Lisa Miller); 26 (Ms. Wall allegedly assisted in forming Protect Isabella Coalition, the purpose of which was to ask “fellow Virginians to contact their state delegates and senators and ask them to uphold the state’s marriage laws, rein in judicial tyranny and stand up for Isabella”¹); 54 (Ms. Wall allegedly appeared on television to speak out against court rulings); 57 (Ms. Wall allegedly sought donations to support Ms. Miller’s case).

3. The Vermont Anti-SLAPP Act, 12 Vt. Stat. Ann. §1041, specifically permits such a special motion to strike under these circumstances.

4. This motion is timely, because it is being filed within sixty (60) days of the filing of the Revised Second Amended Complaint. *See* §1041(b) (setting forth time limit).

5. Ms. Wall easily satisfies the threshold requirement of demonstrating that the case arises from her exercise of protected constitutional rights, as shown above. Accordingly, the burden of proof shifts to Plaintiffs, who are unable to meet their burden of showing that Ms. Wall’s exercise of her rights were “devoid of any reasonable factual support and any arguable basis in law” and that Ms. Wall’s exercise of protected constitutional rights caused actual injury to Plaintiffs. *See* §1041(e)(1)(A) and (B). The motion should therefore be granted.

6. The grounds for this motion are more fully set forth in the memorandum of law in support thereof filed simultaneously herewith.

WHEREFORE, Defendant Linda Wall respectfully moves this Court for entry of an Order striking Plaintiffs’ Revised Second Amended Complaint as against her, and for such other and further relief to which she may be entitled.

¹ *See, e.g.*, “Virginia Citizens Launch ‘Protect Isabella Coalition’”, available online at <http://www.christiannewswire.com/news/619749965.html> (last accessed 051017)

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Norman C. Smith, Esq., attorney for Defendant Linda Wall, certify that, on June 8, 2017, I served the foregoing Special Motion to Strike Plaintiffs' Revised Second Amended Complaint through the CM/ECF system on the following individuals:

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**DEFENDANT LINDA M. WALL’S MEMORANDUM OF LAW IN SUPPORT OF HER
SPECIAL MOTION TO STRIKE PLAINTIFFS’ REVISED SECOND AMENDED
COMPLAINT**

Defendant Linda M. Wall, by and through counsel, submits this Memorandum of Law in support of her special motion to strike Plaintiffs’ Revised Second Amended Complaint (“Complaint”) on grounds that it violates Vermont’s Anti-SLAPP Act, 12 Vt. Stat. Ann. §1041(a).

INTRODUCTION

Plaintiffs’ latest Complaint is founded almost entirely on speculation and innuendo arising from core constitutionally protected activities such as free speech and the petitioning of government for a redress of grievances. In brief, the allegations against Ms. Wall involve her befriending a single mother who was fighting for custody of her only daughter against enormous odds and a well-funded adversary some 700 miles away. That Ms. Wall vocally and publicly disagreed with the rulings of Vermont courts that held for the first time in history that a woman with no biological or legal ties to the child was her “second mother” and that Ms. Miller should be stripped of custody for refusing to put her child in harm’s way is no legitimate basis for this federal lawsuit. Nor does the fact that Ms. Wall assisted in raising funds for Ms. Miller’s

mounting expenses provide grounds for this legal witch hunt. Finally, Ms. Wall's participation in an effort to petition the Virginia Assembly for redress of grievances does not confer any basis for this lawsuit. In truth, this lawsuit is a carefully crafted attempt to silence protected speech and petitioning activity on a matter of great public concern, which Vermont's Anti-SLAPP Act, 12 Vt. Stat. Ann. §1041, prohibits. The motion to strike should therefore be granted.

ARGUMENT

I. THE CASE AGAINST MS. WALL IS A "QUINTESSENTIAL 'SLAPP'" AIMED AT SILENCING MS. WALL'S PROTECTED SPEECH.

Vermont Stat. Ann. §1041 provides in pertinent part: "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). Section 1041 is "commonly referred to as Vermont's 'anti-SLAP' statute." *Haywood v. St. Michael's College*, Civil Action 2:12-CV-164 (D. Vt. 2012) (Magis. Jg. Conroy opinion). "The purpose of anti-SLAPP statutes is to discourage litigants from 'filing baseless lawsuits known as Strategic Lawsuits Against Public Participation (SLAPP).'" *Id.* (quoting Bruce E.H. Johnson & Sarah K. Duran, *A View from the First Amendment Trenches: Washington State's New Protections for Public Discourse and Democracy*, 87 WASH. L. REV. 495, 496 (2012)) (hereafter "*A View from the Trenches*").

SLAPP lawsuits usually consist in weak claims – like this one -- filed "with the goal of silencing speakers because they fear the expense and travails of litigation." *Id.* (quoting "*A View from the Trenches*"). "The quintessential SLAPPs are 'generally meritless suits brought by large private interests to deter common citizens from exercising their political or legal rights or to punish them for doing so.'" *Id.* (quoting *Duracraft Corp. v. Holmes Products Corp.*, 691 N.E.2d

935, 940 (Mass. 1998) (quoting *Wilcox v. Superior Court*, 27 Cal.App.4th 809, 816-17 (Cal. App.2d 1994)).

A. Ms. Wall’s Speech and Petitioning Activities form the Core of Plaintiffs’ Case against Her.

Ms. Wall, a Virginia resident with no ties to Vermont but who happens to be an outspoken proponent of natural marriage and biblical morality, is a defendant in an action that fits the above descriptions to a “T”. This case arises from one of the most highly publicized and controversial legal disputes Vermont has probably ever seen, and the allegations against Ms. Wall are almost entirely based upon her exercise of the rights to freedom of speech and to petition the government for redress of grievances. *See generally* Motion to Dismiss by Zodiates Defendants and Memorandum of Law in Support thereof (dkt #227), incorporated herein by reference (detailing at pp. 4-6 other allegations of Plaintiffs that target constitutionally protected speech and conduct).

Plaintiffs allege in paragraph 21 of the Complaint that Ms. Wall was “asked to meet with Lisa Miller” in order to screen her as a possible client of Liberty Counsel. *See* Compl., ¶21. The right to legal representation, of course, is a constitutionally protected one, and there is nothing improper in meeting with Ms. Miller for such a purpose. Plaintiffs further allege that Ms. Miller “formed a friendship with Defendant Wall” – again, hardly a crime. *Id.* Plaintiffs further allege that Ms. Wall assisted in the formation of the Protect Isabella Coalition (“PIC”), *id.* at ¶26. But the stated purpose of that organization is hardly nefarious, as Plaintiffs insinuate without evidentiary basis¹; instead it was “to create awareness of what it labels ‘judicial tyranny’ in the

¹ Throughout their Complaint, Plaintiffs assign the most despicable motives and place otherwise benign activities in the most negative light imaginable in a desperate attempt to create something out of nothing and to manufacture evidence of wrongdoing by Ms. Wall. Here, for example, Plaintiffs assert – without a shred of evidence – that the PIC was formed “to prevent court ordered contact between Isabella Miller-Jenkins and Janet Jenkins.” Compl., ¶26. But as shown herein, its actual purpose was wholly permissible

child custody/visitation case involving [Lisa] Miller, Isabella's biological mother, and Vermonter Janet Jenkins, her lesbian former partner.” See “Virginia Citizens Launch ‘Protect Isabella Coalition’”, available online at <http://www.christiannewswire.com/news/619749965.html>, last accessed June 7, 2017. The sub-heading of the article reads: “Group Asking Legislators to Uphold Virginia’s Marriage Laws,” and the body goes on to explain that “[t]he Protect Isabella Coalition is asking fellow Virginians to contact their state delegates and senators and ask them to uphold the state's marriage laws, rein in judicial tyranny and stand up for Isabella.” *Id.* Such activity, of course, is precisely the sort of petitioning the government for redress of grievances that the anti-SLAPP Act is intended to protect, not the conspiratorial activity that Plaintiffs imagine.

The PIC also produced television and radio ads, addressing issues of enormous public concern – the redefinition of marriage, the dissolution of the family, and a runaway judiciary – that highlighted the refusal of Virginia courts to uphold the Virginia Marriage Amendment, which defined marriage as “only a union between one man and one woman.” See, e.g., television ad of April 7, 2009, available online at

<https://www.bing.com/videos/search?q=protect+isabella+coalition&qs=PF&cvid=c5991794e0aa42888a5000a0f28264e3&cc=US&setlang=en-US&ru=%2fsearch%3fq%3dprotect%2bisabella%2bcoalition%26form%3dEDGTCT%26qs%3dPF%26cvid%3dc5991794e0aa42888a5000a0f28264e3%26cc%3dUS%26setlang%3den-US&view=detail&mmscn=vwrc&mid=6A1B788F25BAB643A1076A1B788F25BAB643A107&FORM=WRVORC>, last accessed June 7, 2017. Such ads are fully protected under both the

and indeed quite publicly stated. Plaintiffs smear tactics in their pleadings only underscore the utter lack of admissible evidence supporting their claims as well as their true intent to censor and silence those with whom they disagree.

United States and the Vermont Constitutions, and thus fall squarely within the purview of Vermont's anti-SLAPP Act.

Again, Plaintiffs allege in paragraph 54 of the Complaint that Ms. Wall "appeared on television with several members of the PIC" in order "to endorse the kidnapping," and that Ms. Wall compared herself to Harriet Tubman.² *Id.* In fact, the appearance took place several months after Ms. Miller had apparently left the country, and what Ms. Wall actually said was recorded contemporaneously at the time: "Like when Harriet Tubman risked her life in the Underground Railroad for the black community. *Maybe* I am committed to this for the children. I *might be* that one voice." *See* Bilerico.com, "Sharing custody of a child with a former partner is like slavery," available online at

http://www.bilerico.com/2010/03/sharing_custody_of_a_child_with_a_former_partner_i.php#eAtEY1Q5tLDeTRF5.99 (emphasis added), last accessed June 7, 2017. Whether or not Ms. Wall thought Ms. Miller's actions justified under the circumstances – as Harriet Tubman thought and most of the world today think *her* actions justified under *her* circumstances – is irrelevant to Plaintiffs' case. As the Zodiates Defendants point out, mere advocacy of behavior that might violate the law is fully protected under the First Amendment. *See* Zodiates' Memorandum at 9-10. Ms. Wall's musings as to what she *might* feel called to do for children she feels are in danger at some unspecified time in the *future* is of no consequence to the issue whether she assisted Ms. Miller in the *past*. And the unsworn suggestion that Ms. Wall assisted in any wrongdoing is directly refuted in her sworn declaration previously filed in this case (dkt #109-1) and

² Harriet Tubman, of course, was the heroic former slave who, after escaping in 1849, "risked her life and freedom and returned many times to rescue both family members and other slaves from the plantation system." *See, e.g.*, Biography.com's "Synopsis", available online at <https://www.biography.com/people/harriet-tubman-9511430>, last accessed June 7, 2017. "In honor of her life and by popular demand via online poll, in 2016, the U.S. Treasury Department announced that Harriet Tubman will replace Andrew Jackson on the center of a new \$20 bill." *Id.* It goes without saying that Ms. Tubman's actions consisted in civil disobedience, being in violation of the law of the land at that time.

incorporated herein by reference. Plaintiffs' lawsuit thus seeks to punish Ms. Wall for protected speech, in clear violation of Vt. Stat. Ann. §1041.

Again, in paragraph 57 of the Complaint, Plaintiffs charge that Ms. Wall "sought donations for Lisa Miller *after January 2010*." *Id.* (emphasis added). This is yet another falsehood perpetrated on the Court. Ms. Wall has testified that she did indeed solicit donations for Ms. Miller "**[d]uring the school year 2008-2009**." Decl. Linda Wall (dkt #109-1), ¶30 (emphasis added). Her purpose in so doing was simply "to help defray her travel costs to Vermont related to child custody issues concerning Isabella." *Id.* (One would think Plaintiffs would commend rather than condemn such actions.) As for the assertion that Ms. Wall raised money after January 1, 2010, Ms. Wall directly and unequivocally refuted it: "I did not ask people to donate money to Lisa Miller **subsequent to June, 2009**." *Id.* at ¶31 (emphasis added). And if that were not enough, Ms. Wall has also testified that "[a]t **no time** did I ask people to give money or anything else of value to Lisa Miller **for the purpose of or in furtherance of disobeying or disregarding court orders**." *Id.* at ¶32 (emphasis added). Ms. Wall's testimony remains unrefuted. The bogus and unsworn allegations against her should not be allowed to stand.

Moreover, soliciting charitable donations is protected under the First Amendment. *See, e.g., Schaumburg v. Citizens for a Better Environment*, 444 U.S. 620, 632 (1980) ("Prior authorities . . . clearly establish that charitable appeals for funds . . . involve a variety of speech interests -- communication of information, the dissemination and propagation of views and ideas, and the advocacy of causes -- that are within the protection of the First Amendment."); *see also, Secretary of State of Maryland v. Joseph H. Munson Co., Inc.*, 467 U.S. 947, 959 (1984)

(“charitable solicitations are so intertwined with speech that they are entitled to the protections of the First Amendment”).

Other unsworn allegations of illicit behavior by Ms. Wall have also been directly refuted under oath. For example, Plaintiffs allege in paragraph 25, “upon information and belief,” that Ms. Wall and Ms. Miller “decided and agreed as early as June of 2008 that Lisa Miller should flee with Isabella.” *Id.* In truth, however, this allegation proves yet again to be another empty accusation. Ms. Wall has testified flatly that she “**never** told or suggested to Lisa Miller that she should leave the United States to avoid enforcement of court orders” and that she “**never** told or suggested to Lisa Miller that she disobey **any** court orders.” Decl. Linda Wall (dkt #109-1), ¶¶25 and 24, respectively (emphasis added). Further, Ms. Wall testified that Ms. Miller “never told or discussed with me that she was intending to or would leave the United States in order to avoid enforcement of court orders.” *Id.* at ¶26. The evidence could not be clearer: Ms. Wall has done nothing criminal or tortious; her offense is nothing more than outspoken ideological opposition. Such conduct is not actionable, and Plaintiffs’ Complaint should be dismissed.

B. Plaintiffs’ Case is being Prosecuted by “Large Private Interests” Ideologically Motivated to Punish Ms. Wall for Her Speech.

Not only are the allegations against Ms. Wall rooted in her First Amendment protected activities, as is the case in most classic SLAPP cases, but the forces arrayed against her also consist in “large private interests,” just as the proponents of anti-SLAPP legislation warned. *See* “A View from the Trenches”, *supra*, 87 WASH. L. REV. 495, 496 (“The quintessential SLAPPs are ‘generally meritless suits brought by large private interests to deter common citizens from exercising their political or legal rights or to punish them for doing so.’”) (citations omitted).

Plaintiffs here are represented by one of the largest law firms in Vermont³, together with the Southern Poverty Law Center, an ideologically driven public interest law firm that boasts offices in four states and an endowment of some \$302.8 million⁴ and that has labeled supporters of natural marriage “hate groups”⁵, as well as Sarah Star, Esq. The case against Ms. Wall thus appears to be a quintessential SLAPP aimed at silencing Ms. Wall or punishing her for her speech in opposition to their political agenda. This case is therefore uniquely appropriate for application of the Vermont anti-SLAPP Act.

II. APPLICATION OF THE ANTI-SLAPP ACT REQUIRES DISMISSAL OF THE CASE AGAINST MS. WALL.

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.”

³ See “Our Firm,” Langrock Sperry & Wool, available online at <https://www.langrock.com/our-firm/>, last accessed June 6, 2017.

⁴ “Financial information”, available online at <https://www.splcenter.org/about/financial-information>, last accessed June 6, 2017.

⁵ See, e.g., “Federal Court Permits Vermont Lesbian to Sue Liberty Counsel, Mat Staver for Role in International Kidnapping,” available online at <https://www.splcenter.org/news/2017/03/20/federal-court-permits-vermont-lesbian-sue-liberty-counsel-mat-staver-role-international> (labeling Liberty Counsel a “hate group”) (last accessed June 6, 2017); see also “Hate Map,” available online at <https://www.splcenter.org/hate-map> (locating and labeling “anti-LGBT” groups as “hate groups”). Included in the SPLC’s broad sweep are such otherwise benign entities as the American College of Pediatricians, which is “a national organization of pediatricians and other healthcare professionals dedicated to the health and well-being of children.” See “About Us,” available online at <https://www.acped.org/about-us>, last accessed June 6, 2017. Similarly, SPLC condemns the World Congress of Families, whose mission is “to unite and equip leaders, organizations, and families to affirm, celebrate, and defend the natural family as the only fundamental and sustainable unit of society.” See “Mission”, available online at www.profam.org/mission, last accessed June 6, 2017. The SPLC’s smear of all those who oppose same-sex marriage as “haters” is the non-litigation equivalent of a SLAPP – a Strategic **L**abeling Against Public Policy, if you will, similarly aimed at intimidating the opposition into silence.

Haywood v. St. Michael's College, supra (quoting 12 Vt. Stat. Ann. § 1041). See also analysis in the Memorandum of Law in Support of Defendants Liberty Counsel, Mathew D. Staver, and Rena M. Lindevaldsen's Special Motion to Strike (Dkt #239), incorporated herein by reference.

A. Ms. Wall's Motion is Timely.

As an initial matter, Ms. Wall's motion is timely. Under the statute, a special motion to strike under the Anti-SLAPP Act must be filed "not more than 60 days after the filing of the complaint." 12 Vt. Stat. Ann. § 1041(b). Although Plaintiffs here originally filed this action in 2012 (Dkt #1), the Revised Second Amended Complaint was not filed until May 4, 2017 (Dkt #223). As this Court has recently ruled, however, "the complaint" in Sec. 1041(b) should be interpreted "to include amended complaints." *Ernst v. Kaufman*, 50 F.Supp. 3d 553, 559 (D.Vt. 2014) (Crawford, J.). After all, "[T]he purpose of the anti-SLAPP suit law would be readily circumventable if a defendant's only opportunity to strike meritless SLAPP claims were in an attack on the original complaint,' because anti-free-speech claims could be omitted from the original complaint and then added after the sixty-day period ran." *Id.* (quoting *Lam v. Ngo*, 91 Cal.App.4th 832, 840, 111 Cal.Rptr.2d 582 (Cal. Ct. App. 2001)). Ms. Wall's motion is being filed with thirty-five (35) days of Plaintiffs' filing of their Revised Second Amended Complaint, and is thus well within the 60 day time limit. It is therefore timely.

B. Ms. Wall Easily Satisfies Her Threshold Showing that the Case Arises from Her Exercise of Protected Rights.

As shown above, the Anti-SLAPP Act requires that Ms. Wall first show that the case arises from her exercise of protected constitutional rights in connection with a public issue. Sec. 1041(a). Under Sec. 1041(i),

“the 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 U.S. or Vermont Constitution” includes

. . .

(2) any written or oral statement made in connection with an issue under consideration or review by a legislative, executive, or judicial body, or any other official proceeding authorized by law; [or]

(3) any written or oral statement concerning an issue of public interest made in a public forum or a place open to the public . . .

Id.

1. Ms. Wall’s activities were undoubtedly undertaken in connection with a public issue.

That Ms. Wall’s activities were in connection with a public issue is beyond dispute; the impact of this case on the laws of the State of Vermont as well as the laws of the State of Virginia can hardly be overstated. It was this case, and the actions of the courts of both states, that plainly served as Ms. Wall’s motivation and the essence of her speech and petitioning activities. As such, Ms. Wall easily satisfies the “in connection with a public issue” element of the statute.⁶

2. Ms. Wall’s activities fall within the categories set forth in Sec. 1041(i).

Additionally, Ms. Wall’s statements fall squarely within the categories set forth in Sec. 1041(i), and are therefore within the ambit of Vermont’s Anti-SLAPP Act. During the entire period material to the allegations of Plaintiffs’ Complaint, the custody dispute between Ms. Jenkins and Ms. Miller was being litigated in both Vermont and Virginia, and Ms. Wall’s activities were all made “in connection with” the issue “under consideration or review” by those judicial bodies, and therefore fall within subsection (2). Most glaringly, Ms. Wall’s alleged activities in assisting in the formation of the Protect Isabella Coalition, her speaking out against

⁶ The Vermont Supreme Court’s ruling in *Felis v. Downs Rachlin Martin PLLC*, 133 A.3d 836, ¶¶35 (Vt. 2015), then, requiring that actions of a defendant must be in connection with a public issue regardless whether they occur in public or in a judicial proceeding, does not affect the analysis here, as Ms. Wall’s activities meet this standard.

what she considered to be “judicial tyranny”, and her appealing to fellow citizens to contact the legislature to take action to uphold the Virginia State Constitution are the essence of constitutionally protected conduct Section 1041 was intended to protect. Some of Ms. Wall’s statements to the press such as the musings about Harriet Tubman, also fall within the coverage of subsection (3) of Sec. 1041(i), because they concerned “an issue of public interest made in a public forum or open to the public.” *Id.*⁷ Either way, Ms. Wall easily satisfies her initial burden under Sec. 1041, so the burden shifts to Plaintiffs.

C. Plaintiffs Cannot Meet Their High Burden Under the Anti-SLAPP Act.

Once a defendant shows that the lawsuit arises from her protected constitutional activities in connection with a public issue, as Ms. Wall has here, “the burden shifts to the plaintiff to show 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 that ‘the defendant’s acts caused actual injury to the plaintiff.’” *Id.* at 559 (citing § 1041(e)(1)). The law is clear that “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) *emphasis added*). Once the threshold has been met, as it has here, “defendant[] ha[s] no burden.” *Id.* at *1. Plaintiffs cannot begin to meet their high burden here.

⁷ Indeed, Ms. Wall’s primary offense in the eyes of Ms. Jenkins and her activist counsel seems to be that she is a “*Virginia* anti-gay activist” who opposes, on religious and ideological grounds, the aggressive agenda promoted by Ms. Jenkins and her allies. *See* Compl. at ¶21 (*emphasis added*). Ms. Jenkins and her allies thus seek to silence Ms. Wall – who has never set foot in Vermont, transacted business in Vermont, or had anything whatsoever to do with Vermont -- and her vocal opposition to Plaintiffs’ agenda. *See* Declaration of Linda Wall. As the Liberty Counsel Defendants observed, “preventing such attacks on free speech is the *raison d’etre* for Vermont’s anti-SLAPP statute.” *See* Liberty Counsel’s Memorandum of Law at 2 (citing *Felis v. Downs Ranchlin Martin PLLC*, 133 A.3d 836, 847 (Vt. 2015)).

It is not that Plaintiffs must simply show that Ms. Wall's position was mistaken, or that it was incorrect. Instead, under the first prong of the test, it is incumbent upon Plaintiffs to show that Ms. Wall's speech and petitioning activities were "**devoid of any reasonable factual support and any arguable basis in law.**" § 1041(e)(1) (emphasis added). As a matter of law, Plaintiffs cannot meet this burden. This Court's own analysis in its Opinion and Order granting Plaintiffs' motion to lift the stay (Dkt #220) attests to the fact that the law governing same-sex marriage has changed even between the time of the Court's last ruling before its Opinion and Order. *See* Opinion and Order at 15-16 (citing *Obergefell v. Hodges* and commenting on the "public's interest" in this litigation that deals with "contentious and sensitive issues"). Ms. Wall's position on the issue of same-sex marriage and the traditional family falls within the mainstream of the law and the history of this nation. In fact, Ms. Wall's statements and positions reflect the unbroken history of this nation's jurisprudence since the Founding, not to mention millennia of Western civilization before then.

Ms. Wall's vocal support for Ms. Miller, to the extent Plaintiffs can adduce evidence to support their claim, is also supported in both reason and law. This nation's rich history of civil disobedience to unjust laws predates the Constitution itself. Sir William Blackstone, whose Commentaries were foundational to American jurisprudence, wrote: "These laws laid down by God are the eternal immutable laws of good and evil...This law of nature dictated by God himself, is of course superior in obligation to any other. It is binding over all the globe, in all countries, and at all times: no human laws are of any validity if contrary to this." William Blackstone, COMMENTARIES ON THE LAWS OF ENGLAND, sec. 2 (1765), available online at <http://lonang.com/library/reference/blackstone-commentaries-law-england/bla-002/>, last

accessed June 7, 2017. And Dr. Martin Luther King, Jr., whose nonviolent civil disobedience revolutionized race relations, wrote:

One may well ask: “How can you advocate breaking some laws and obeying others?” The answer lies in the fact that there are two types of laws: just and unjust. I would be the first to advocate obeying just laws. One has not only a legal but a moral responsibility to obey just laws. Conversely, one has a moral responsibility to disobey unjust laws. I would agree with St. Augustine that “an unjust law is no law at all.”

Martin Luther King, Jr., Letter from a Birmingham Jail, April 16, 1963, available online at www.africa.upenn.edu, last accessed June 7, 2017. It may well be argued that America has embraced the concept of civil disobedience as something of a national charter.

To suggest that Ms. Wall’s protected speech questioning the justice of court rulings severing a biological mother from her daughter in furtherance of the activist agenda of a small but vocal and powerful minority is devoid of **any** arguable basis in fact or law is to blink reality and to do violence to the anti-SLAPP Act. Plaintiffs therefore cannot satisfy their burden under the first prong of the Section 1041(e) test, and Ms. Wall’s motion should be granted.

Even if Plaintiffs could satisfy the first prong, however, which they cannot, still they would fail to meet the high burden imposed on them under Section 1041(e). Plaintiffs’ claims against Ms. Wall are fatally flawed on their merits. “At the very least, to meet the first prong of this test, Plaintiff must demonstrate that his claim is legally sufficient.” *Haywood*, 2012 WL 6552361 at *15. As a threshold matter, the Court lacks jurisdiction over Ms. Wall, as her previous motion to dismiss explained, and which is incorporated herein by reference. Ms. Wall has no ties whatsoever to Vermont, and has never met or communicated with the co-defendants save for the minor role she played in introducing Ms. Miller to Liberty Counsel attorneys. *See* Decl. Linda Wall, ¶¶44-51.

On the merits, too, though, Plaintiffs' claims are not well taken. First, although this Court previously ruled that Plaintiffs could proceed on a claim of interference with custodial rights, Plaintiffs have failed to plead such a claim, instead repeatedly denominating their cause of action as one for "intentional *kidnapping* and conspiring to *kidnap*." See Revised Second Amended Complaint at 1 (Plaintiffs "complain against Defendants *for intentionally kidnapping and conspiring to kidnap* Isabella Miller Jenkins"), 12 (styling first cause of action as "**COUNT ONE -- INTENTIONAL TORT OF KIDNAPPING**"), ¶¶34 ("Lisa Miller and her co-conspirators had devised a plan *to kidnap* Isabella"), 64 ("Lisa Miller did commit *the intentional tort of kidnapping*") (emphases added). As this Court has already ruled, conspiracy to kidnap is not a valid claim in Vermont. Plaintiffs' refusal to plead their claim as one for interference with custodial relations should not be countenanced. See, e.g., *Naharaja v. Wray*, 3:13-cv-01261-HZ (D. Ore. 2015) (plaintiff's repeating same claims after court had instructed him as to how to replead resulted in dismissal of case with prejudice).

Second, Plaintiffs' claim of conspiracy to interfere with custodial rights (assuming they have actually pled such a claim) is fatally flawed, as the Zodhiates Defendants forcefully argue, see Zodhiates' Memorandum at 10-11, incorporated herein by reference, and the Liberty Counsel Defendants make plain. See Memorandum of Law in Support of Motion to Dismiss on behalf of Defendants Liberty Counsel, Mathew Staver, and Rena Lindevaldsen, dkt #240, at 62-100, incorporated herein by reference. Third, Plaintiffs' claim of violation of 42 U.S.C. §1985(3) is defective, as the Zodhiates Defendants and the Liberty Counsel Defendants also persuasively argue. See Zodhiates' Memo at 11-20, Liberty Counsel's Memo at 100-114, incorporated herein by reference.

Finally, even if Plaintiffs could somehow satisfy the first prong of the test, they would still fail the second prong, which requires that they demonstrate that Ms. Wall's advocacy somehow caused direct injury to Plaintiffs. "[G]eneralized contentions are insufficient to meet [her] burden." *Chandler*, 2015 WL 7628687 at *3. A showing of actual injury requires Plaintiffs to demonstrate "affirmative evidence of an injury." *Lynch v. Christie*, 815 F. Supp. 2d 341, 350 (D. Me. 2011). Plaintiffs have no such evidence.

It is beyond the pale even to suggest that Ms. Wall's unsuccessful petitioning the Virginia legislature for relief and her public comments concerning what she perceived to be the refusal of Virginia courts to abide by the Virginia Constitution could somehow cause direct injury to Ms. Jenkins in Vermont. Nor can it be divined how Ms. Wall's appeal to the people of Virginia to help defray Ms. Miller's travel expenses could cause injury to Ms. Jenkins. Especially in light of the compelling and unrefuted testimony of Ms. Wall detailing her constitutionally protected activities and her complete lack of involvement in any wrongdoing, Plaintiffs simply cannot show *any* damages arising from Ms. Wall's actions.

CONCLUSION

Ms. Wall has met her initial burden of showing that Plaintiffs' claims against her arise from her free speech and petitioning activities that are protected under both the United States and the Vermont Constitutions. She has also shown that her speech and activities were undertaken in connection with a very public issue. The heavy burden then must shift to Plaintiffs to show what they cannot, namely that Ms. Wall's exercise of her rights was devoid of any reasonable factual support and any arguable basis in law and that Ms. Wall's activities rights caused actual injury to Plaintiffs. Because Plaintiffs cannot hope to meet this high burden, the motion should be granted.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Norman C. Smith, Esq., attorney for Defendant Linda Wall, certify that, on June 8, 2017, I served the foregoing Memorandum of Law in Support of Linda Wall's Special Motion to Strike Plaintiffs' Revised Second Amended Complaint through the CM/ECF system on the following individuals:

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