

STATE OF NORTH CAROLINA
COUNTY OF WAKE

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
FILE NO. 24CV018884-910

T. CRAIG TRAVIS,
Plaintiff,
v.

P. KEVIN BERGER, DIANE P. PARNELL,
DONALD T. POWELL, MARK F.
RICHARDSON, NORTH CAROLINA
CONSERVATIVES FUND, ATLAS
POLITICAL CONSULTING, LLC, and
GOPAC, INC.,
Defendants.

**PLAINTIFF'S MEMORANDUM OF
LAW IN OPPOSITION TO
DEFENDANTS' MOTIONS TO
DISMISS FOR FAILURE TO STATE A
CLAIM UPON WHICH RELIEF MAY
BE GRANTED**

NOW COMES Plaintiff T. Craig Travis, by and through his undersigned counsel, and offers the following authority in opposition to Defendants' motions to dismiss for failure to state a claim upon which relief may be granted pursuant to Rule 12(b)(6) of the North Carolina Rules of Civil Procedure.

INTRODUCTION

1. This case arises from a coordinated campaign of demonstrably false statements published by Defendants to influence the outcome of the 2024 Republican primary election for the Rockingham County Board of Commissioners. As detailed in the Complaint, these false statements caused Plaintiff to lose the election by a mere three votes. The First Amendment protection of political speech offers Defendants no refuge in this case, because their conduct falls squarely within the established category of defamatory speech that receives no constitutional protection. As the United States Supreme Court recognized more than half a century ago, "[T]he use of the known lie as a tool is at once at odds with the premises of democratic government and with the orderly manner in which economic, social, or political

change is to be effected.” *Garrison v. Louisiana*, 379 U.S. 64, 75 (1964). The law does not permit politicians or political organizations to knowingly publish false statements of fact about candidates, even in the context of a political campaign.

2. The Complaint in this action details how each Defendant orally made or published in writing demonstrably false statements about Plaintiff with knowledge that the statements were false or, at the very least, with reckless disregard for their truth or falsity. This Court should deny Defendants’ motions to dismiss and determine that Plaintiff has alleged claims for defamation upon which relief may be granted.

SUMMARY OF FACTS ALLEGED IN COMPLAINT

3. For nearly twelve years (January 2011 through December 2022), Plaintiff T. Craig Travis (“Plaintiff”) served as a respected member of the Rockingham County Board of Commissioners. (Compl. ¶ 8). After voluntarily stepping down due to his belief in term limits, Plaintiff decided to run again for the Board of Commissioners in the 2024 election. (Compl. ¶¶ 9, 52). Plaintiff’s decision to run was motivated in part by his opposition to the then-serving Commissioners’ support for bringing a commercial casino to Rockingham County, which was an initiative deeply unpopular among county residents. (Compl. ¶¶ 18, 51).

4. The incumbent Commissioners, Defendant P. Kevin Berger (“Defendant Berger”), Defendant Donald T. Powell (“Defendant Powell”), and Defendant Mark F. Richardson (“Defendant Richardson”), had surreptitiously traveled to Maryland to meet with representatives of Cordish, a casino operator and then concealed this trip from their constituents for several months. (Compl. ¶¶ 26-30). Defendants Berger, Powell, and Richardson then voted to approve Cordish’s rezoning application for the Stokesdale Property despite overwhelming public

opposition, with approximately 900 residents attending the August 21, 2023 Board of Commissioners meeting to express their disapproval. (Compl. ¶¶ 38-41).

5. When Plaintiff filed to run in the 2024 election in December 2023, Defendants engaged in a coordinated effort to damage Plaintiff's candidacy and reputation within his community. (Compl. ¶¶ 53-57). Defendants' defamatory statements were published in mailers funded by Defendant GOPAC and distributed by Defendants NCCF and APC, as well as in oral statements, text messages, emails, and Facebook posts by the individual Defendants. (Compl. ¶¶ 58-70). The defamatory statements included:

- a. False statements that Plaintiff "voted for higher property taxes" when in fact he had only opposed an unrelated salary increase for the Register of Deeds that was improperly tied to a tax rate amendment through logrolling. (Compl. ¶ 60(a)).
- b. False statements that Plaintiff "voted against funding the Sheriff's Office to fight crime" when he had never opposed any funding request by the Sheriff's Office and was consistently supportive of law enforcement. (Compl. ¶ 60(b)).
- c. False statements that Plaintiff had vandalized Defendant Powell's vehicle by damaging its tire valve stems, despite the Reidsville Police Department having investigated and cleared Plaintiff of any wrongdoing. (Compl. ¶¶ 65, 82(b)).
- d. False statements that Plaintiff had stolen campaign signs belonging to Defendants Berger, Powell, and Richardson. (Compl. ¶¶ 66-70, 82(c)).
- e. False claims that Plaintiff was lying about the Defendants' involvement with casino interests, when the Defendants Berger, Powell, and Richardson had deliberately concealed their meeting with Cordish executives from the public to

avoid the backlash they knew would occur if they acknowledged their involvement with and support of Cordish's development efforts. (Compl. ¶¶ 64, 82(a)).

6. Defendants made the statements described in paragraph 5(a)-(e) above with actual malice. Defendants either knew that the statements were false or published the statements with reckless disregard for their truth or falsity. (Compl. ¶ 82). The defamatory statements were targeted at issues of importance to Rockingham County voters and designed to damage Plaintiff's reputation and candidacy. (Compl. ¶¶ 82(e)-(f)).

7. The proximate result of Defendants' defamation was that Plaintiff lost the Republican primary election by a mere three votes. (Compl. ¶¶ 76-79). But for the Defendants' defamatory statements, Plaintiff would have secured one of the three open seats on the Rockingham County Board of Commissioners. (Compl. ¶ 79).

ARGUMENT

I. IN RULING ON DEFENDANTS' MOTIONS, THE COURT MUST LIBERALLY CONSTRUE THE COMPLAINT IN PLAINTIFF'S FAVOR.

8. When ruling on a motion to dismiss under Rule 12(b)(6) of the North Carolina Rules of Civil Procedure, the Court must determine "whether, as a matter of law, the allegations of the complaint, treated as true, are sufficient to state a claim upon which relief may be granted under some legal theory." *Harris v. NCNB Nat'l Bank*, 85 N.C. App. 669, 670, 355 S.E.2d 838, 840 (1987). The Court must liberally construe the complaint and accept all allegations as true, viewing them in the light most favorable to the plaintiff. *Meyer v. Walls*, 347 N.C. 97, 111-12, 489 S.E.2d 880, 888 (1997).

9. A complaint should not be dismissed under Rule 12(b)(6) "unless it appears beyond

doubt that the plaintiff can prove no set of facts in support of his claim that would entitle him to relief.” *Sutton v. Duke*, 277 N.C. 94, 102, 176 S.E.2d 161, 165-66 (1970) (adopting the federal standard for 12(b)(6) motions). This standard “generally precludes dismissal except in those instances where the face of the complaint discloses some insurmountable bar to recovery.” *Id.* at 102, 176 S.E.2d at 166. This is a “generous” standard that “errs on the side of allowing potentially meritorious claims to survive.” *Concrete Serv. Corp. v. Investors Grp., Inc.*, 79 N.C. App. 678, 681, 340 S.E.2d 755, 758 (1986). “[O]n a Rule 12(b)(6) motion, ‘[t]he issue is not whether a plaintiff will ultimately prevail but whether the claimant is entitled to offer evidence to support the claims.’” *Andrews v. Elliot*, 109 N.C. App. 271, 275, 426 S.E.2d 430, 432 (1993) (citing *Johnson v. Bollinger*, 86 N.C. App. 1, 4, 356 S.E.2d 378, 381 (1987)).

II. THE COMPLAINT ADEQUATELY STATES CLAIMS FOR DEFAMATION AGAINST ALL DEFENDANTS.

10. To state a claim for defamation, a plaintiff must allege: (1) that the defendant made false, defamatory statements of or concerning the plaintiff; (2) that the statements were published to a third person; (3) that the statements were defamatory; and (4) that the statements caused injury to the plaintiff’s reputation. *Boyce & Isley, PLLC v. Cooper*, 153 N.C. App. 25, 29, 568 S.E.2d 893, 897 (2002). Additionally, when the plaintiff is a public figure or the statement concerns a matter of public concern, the plaintiff must also allege that the defendant acted with actual malice—that is, with knowledge that the statement was false or with reckless disregard for whether it was false. *Id.*

11. The Complaint meticulously alleges each of these elements with respect to each Defendant and each defamatory statement. Plaintiff has identified specific false statements made by each Defendant, (Compl. ¶¶ 55-70), how those statements were published to third

parties, (Compl. ¶¶ 55-70), why those statements were defamatory, (Compl. ¶¶ 60(a)-(b), 63-70, 82(a)-(f)), and how they injured his reputation and candidacy, (Compl. ¶¶ 73-75, 79, 83). The Complaint also contains detailed factual allegations supporting the inference that each Defendant acted with actual malice. (Compl. ¶ 82).

A. The statements upon which Plaintiff's defamation claims are based are actionable false statements of fact, not protected opinion.

12. Defendants may argue that some or all of their statements constitute protected political opinion rather than actionable false statements of fact. This argument fails, because the statements at issue in this case are precisely the type of factual assertions that courts have determined can form the basis of a defamation claim.

13. North Carolina courts distinguish between statements of fact, which may be defamatory, and statements of opinion, which generally are not. *Desmond v. News & Observer Publ'g Co.*, 375 N.C. 21, 38, 846 S.E.2d 647, 659 (2020). However, even statements phrased as opinions may be actionable if they imply the existence of undisclosed defamatory facts. *Id.* “[T]he United States Supreme Court has cautioned against ‘an artificial dichotomy between opinion and fact’ and has stated that ‘expressions of opinion may often imply an assertion of objective fact.’” *Id.* (quoting *Milkovich v. Lorain Journal Co.*, 497 U.S. 1, 18-19 (1990)).

14. The statements alleged in Plaintiff's Complaint not mere expressions of political opinion or rhetorical hyperbole common in political campaigns. Rather, they are specific (false) factual assertions that Plaintiff:

- a. Voted to raise taxes, (Compl. ¶ 60(a));
- b. Voted against funding law enforcement, (Compl. ¶ 60(b));
- c. Committed criminal acts of vandalism, (Compl. ¶¶ 65, 67(b));

- d. Stole campaign signs, (Compl. ¶¶ 66, 68);
- e. Was banned from Republican Party headquarters for “cussing and carrying on,” (Compl. ¶ 67(a)); and
- f. Lied about the incumbents’ actions regarding the casino, (Compl. ¶¶ 63-64).

15. Each of these assertions presents a statement that is “susceptible of being proved true or false,” rendering them actionable. *Milkovich*, 497 U.S. at 21. Indeed, the Complaint details precisely why each statement is demonstrably false. (Compl. ¶¶ 60, 82).

16. North Carolina courts have recognized that false statements about a candidate’s voting record, criminal conduct, or truthfulness are actionable even in a political context. In *Boyce & Isley, PLLC v. Cooper*, the North Carolina Court of Appeals held that false statements in a campaign advertisement claiming the plaintiff “charged the state \$28,000 per hour” as legal fees constituted an actionable false statement of fact, not protected opinion. 153 N.C. App. at 31, 568 S.E.2d at 899. Similarly, in *Desmond v. News & Observer Pub. Co.*, the court held that statements falsely suggesting a state firearms examiner had falsified evidence to be actionable factual assertions. 263 N.C. App. 26, 823 S.E.2d 412 (2018), *aff’d*, 375 N.C. 21, 846 S.E.2d 647 (2020).

17. Courts in other jurisdictions have likewise held that false factual claims about a candidate’s voting record or criminal conduct are actionable, even in political campaigns. *See, e.g., Harte-Hanks Commc’ns, Inc. v. Connaughton*, 491 U.S. 657 (1989) (false allegations of criminal behavior in political context); *Goldwater v. Ginzburg*, 414 F.2d 324 (2d Cir. 1969) (false statements about candidate’s mental stability).

B. The Complaint adequately alleges actual malice by each Defendant.

18. For public figure plaintiffs or statements involving matters of public concern, North Carolina law requires a plaintiff to establish that the defendants acted with “actual malice,” meaning knowledge that the statement was false or that it was made with reckless disregard for its truth or falsity. *Desmond*, 263 N.C. App. at 41, 823 S.E.2d at 424, *reversed on other grounds*, 375 N.C. 21, 72 (2020). North Carolina courts have also held that actual malice may also “be proven by evidence of ill will or personal hostility on the part of the declarant.”). *Dobson v. Harris*, 352 N.C. 77, 86, 530 S.E.2d 829, 837 (2000) (citing *Kwan-Sa You v. Roe*, 97 N.C. App. 1, 12, 387 S.E.2d 188, 193 (1990)).

19. The Complaint contains extensive factual allegations supporting the inference that each Defendant acted with actual malice:

- a. Defendants Berger, Powell, and Richardson knew they had secretly met with Cordish to discuss a casino in Rockingham County, yet falsely stated that Plaintiff was lying when he said they had taken actions to facilitate bringing a casino to the county. (Compl. ¶ 82(a)).
- b. Defendant Powell knew that Plaintiff had not vandalized his vehicle, as the Reidsville Police Department had thoroughly investigated the allegation and cleared Plaintiff. (Compl. ¶ 82(b)).
- c. Defendants had no basis to believe Plaintiff had stolen campaign signs, yet published statements to that effect with reckless disregard of the truth or falsity of those statements. (Compl. ¶ 82(c)).
- d. Defendant Parnell knew the falsity of the statements she published but did so

anyway due to her personal animus toward Plaintiff. (Compl. ¶ 82(d)).

- e. Defendants made false statements about Plaintiff's position on property taxes by deceptively editing a video clip from an interview to misrepresent his statements. (Compl. ¶ 82(e)).
- f. Defendants NCCF, APC, and GOPAC published false statements about Plaintiff's voting record that were contradicted by the very sources they cited. (Compl. ¶ 82(f)).

20. These allegations, taken as true for purposes of this motion, are more than sufficient to establish actual malice. Courts have found similar circumstances sufficient to establish actual malice. *See, e.g., Harte-Hanks*, 491 U.S. at 692 (finding actual malice where defendant purposefully avoided the truth); *Curtis Pub. Co. v. Butts*, 388 U.S. 130, 157-58 (1967) (finding actual malice where defendant failed to verify information that was contradicted by readily available information).

C. The type of political speech upon which Plaintiff's defamation claims are based is not absolutely protected, because it contains demonstrably false claims.

21. While the First Amendment provides significant protection for political speech, this protection has never extended to knowing falsehoods. As the North Carolina Court of Appeals has recognized, "the First Amendment does not protect an individual's right to publish false and defamatory statements of fact." *Boyce & Isley*, 153 N.C. App. at 30, 568 S.E.2d at 898. This principle applies even in the context of political campaigns.

22. In *Garrison v. Louisiana*, the United States Supreme Court emphasized:

That speech is used as a tool for political ends does not automatically bring it under the protective mantle of the Constitution. For the use of the

known lie as a tool is at once at odds with the premises of democratic government and with the orderly manner in which economic, social, or political change is to be effected.

379 U.S. 64, 75 (1964) (internal citation omitted).

23. North Carolina courts have applied this principle in political contexts. In *Boyce & Isley*, the Court of Appeals expressly rejected the argument that maliciously false political advertisements deserve heightened First Amendment protection. 153 N.C. App. at 33-35, 568 S.E.2d at 900-01.

24. As the United States Supreme Court observed, “there is no constitutional value in false statements of fact. Neither the intentional lie nor the careless error materially advances society’s interest in ‘uninhibited, robust, and wide-open’ debate on public issues.” *Gertz v. Robert Welch*, 418 U.S. 323, 340 (1974) (quoting *New York Times Co. v. Sullivan*, 376 U.S. 254, 270).

D. The Complaint adequately alleges each Defendant’s role in the publication of the defamatory statements that injured Plaintiff.

25. The Complaint sets out each Defendant’s specific role in publishing or causing to be published the defamatory statements that give rise to Plaintiff’s claims:

- a. Defendants Berger, Powell, and Richardson made false statements about Plaintiff orally and in text messages and other written communications. (Compl. ¶¶ 55-56, 63-66).
- b. Defendant Parnell made false statements about Plaintiff on her Facebook page and in messages to subscribers of the Rockingham County Republican Party email list. (Compl. ¶¶ 67-70).
- c. Defendant NCCF, using funds from Defendant GOPAC, made false statements about Plaintiff in mailers sent by Defendant APC. (Compl. ¶¶ 57-60).

- d. Defendants conspired to publish the defamatory statements as part of a coordinated campaign to defeat Plaintiff. (Compl. ¶¶ 92-95).

26. These allegations establish each Defendant's direct participation in the defamation and provide sufficient notice of the claims against them, satisfying North Carolina's pleading standards. See *Desmond*, 263 N.C. App. at 37, 823 S.E.2d at 422 (holding that plaintiff must plead "the defamatory words, the circumstances of publication, and the understanding of those who heard or read those words").

III. THE COMPLAINT SUFFICIENTLY ESTABLISHES LIBEL *PER QUOD* AND THE SPECIAL DAMAGES SUFFERED BY PLAINTIFF.

27. While this Court should find that Defendants' statements constitute libel *per se*, Plaintiff has also properly pled an alternative claim for libel *per quod* supported by special damages. Under North Carolina law, even if the Court were to determine that the statements at issue are not defamatory on their face, they are unquestionably defamatory when considered in context and have resulted in quantifiable, special damages to Plaintiff.

A. North Carolina recognizes a distinct cause of action for libel *per quod*.

28. North Carolina law distinguishes between defamation *per se* and defamation *per quod*. *Renwick v. News & Observer Pub. Co.*, 310 N.C. 312, 316, 312 S.E.2d 405, 408 (1984). When a publication is defamatory *per se*, a plaintiff need not prove special damages because damages are presumed. *Id.* Conversely, when a publication is defamatory *per quod*, a plaintiff must specifically plead and prove special damages. *Id.*

29. Libel *per quod* occurs when a statement is not defamatory on its face, but becomes defamatory when considered alongside extrinsic facts or explanatory circumstances. The North Carolina Supreme Court in *Badame v. Lampke*, 242 N.C. 755, 757, 89 S.E.2d 466, 468 (1955),

explained that with libel *per quod*, “the injurious character of the statement appears, not on its face as a matter of general acceptance, but only in consequence of extrinsic, explanatory facts showing its injurious effect.” *Id.* at 757, 89 S.E.2d at 467.

30. Special damages in the defamation context are losses that are pecuniary rather than emotional distress or humiliation. *See Johnson v. Bollinger*, 86 N.C. App. 1, 11, 356 S.E.2d 378, 384-385 (1987); *Tallent v. Blake*, 57 N.C. App. 249, 253, 291 S.E.2d 336, 339-40 (1982); *Stutts v. Duke Power Co.*, 47 N.C. App. 76, 82, 266 S.E.2d 861, 865 (1980).

B. Plaintiff has properly alleged special damages.

31. The Complaint sets forth specific allegations of special damages with the requisite particularity required by North Carolina law. Unlike many defamation plaintiffs who can only speculate about potential lost business opportunities or reputational harm, Plaintiff can point to an extraordinarily concrete and quantifiable special damage: the loss of an election by just three votes. (Compl. ¶¶ 78-79).

32. Although the North Carolina Court of Appeals held in *Aycock v. Padgett*, 134 N.C. App. 164, 167-168, 516 S.E.2d 907, 910 (1999), that the loss of an election may not meet the special damages requirement for pleading defamation *per quod*, this case is distinguishable in that it presents a far more compelling scenario for special damages than most election-related defamation cases. Here, Plaintiff lost the election by a mere three votes. (Compl. ¶ 79). Given the razor-thin margin, there is a direct and non-speculative causal connection between Defendants’ defamatory statements and Plaintiff’s loss of the election. As the Complaint alleges, “the false statements made by Defendants about Plaintiff in the False Attack Ads, Facebook posts, email, and other communications described above caused Plaintiff to lose the election for

a seat on the Board of Commissioners in the 2024 primary election to Defendant Berger by only three votes.” (Compl. ¶ 79).

33. The economic value of this lost opportunity is readily quantifiable and consists of the salary, benefits, and other compensation Plaintiff would have received as a County Commissioner over the four-year term. *See Robb v. Lincoln Publ’g (Ohio)*, 114 Ohio App. 3d 595, 622-623, 683 N.E.2d 823, 841 (1996) (holding that the loss of the election and resulting loss of pecuniary benefits of the office constituted special damages for purposes of the plaintiff’s libel *per quod* claim).

34. Furthermore, the Complaint alleges, “Plaintiff had to spend substantial personal funds to counter the malicious, false, derogatory statements made about him by Defendants and to mitigate the damage to his reputation and candidacy caused by the defamatory statements made by Defendants.” (Compl. ¶ 83). These expenditures would have been unnecessary but for Defendants’ defamatory statements and meet the requirement of special damages.

CONCLUSION

For the foregoing reasons, the Court should deny Defendants’ motions to dismiss for failure to state a claim upon which relief may be granted.

This the 16th day of April, 2025.

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CERTIFICATE OF SERVICE

I hereby certify that on the 16th day of April, 2025 the foregoing Plaintiff's Memorandum of Law in Opposition to Defendants' Motion to Dismiss for Failure to State a Claim Upon Which Relief May be Granted was served upon Defendants as follows:

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