IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ROY COCKRUM, ET AL., *Plaintiffs*, v. DONALD J. TRUMP FOR PRESIDENT, INC., ET AL., *Defendants*.	Case No. 1:17-cv-1370-ESH

DEFENDANT ROGER STONE'S REPLYMEMORANDUM ON SPECIAL MOTION TO DISMISS AMENDED COMPLAINT UNDER THE D.C. ANTI-SLAPP ACT

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Defendant Roger Stone (Stone) respectfully files this reply memorandum and requests that the Court dismiss Plaintiffs' claims in ECF No. 17 for public disclosure of private facts and intentional infliction of emotional distress in accordance with the District of Columbia Anti-SLAPP Act (D.C. Code § 16-5502(a)). In accordance with the Anti-SLAPP Act (D.C. Code § 16-5504(a)) and Federal Rule of Civil Procedure 54(d)(2), Stone reserves the right to seek the costs of litigation, including a reasonable attorney's fee, if the Court grants the motion.

Dated: December 29, 2017

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

REPLY

To claim the protection of the act, the defendant must first make a "prima facie showing that the claim at issue arises from an act in furtherance of the right of advocacy on issues of public interest." § 16-5502(b). In conjunction with the rule 12(b) motion to dismiss, Roger Stone makes the case that he is being punished for speech when there is not a directly stated allegation when, where, and how he joined the conspiracy Plaintiffs complain of prior to the publication of their emails. Plaintiffs claim their emails are a product of support and advocacy, but Roger Stone's public posts about the presidential campaign of 2016 is not, this is hypocritical.

Roger Stone recognizes this District Court has ruled in *Deripaska v. Associated Press,*[1] that the D.C. Anti-SLAPP statute does not apply in diversity cases. Stone, therefore, focuses his reply on Plaintiffs' claim that even if this Court were to be in a position to recognize that the Anti-SLAPP statute did apply to diversity cases, it would apply to Roger Stone as an available defense.

Based upon Plaintiffs' claims, with no nexus to Roger Stone but mere correlations to selectively occurring events after Plaintiffs emails were disseminated by WikiLeaks, Plaintiffs will not likely meet their evidentiary burden at the pleadings stage or at summary judgment. The application of the Anti-SLAPP statute would offer Roger Stone early relief from this meritless lawsuit. Plaintiffs do not challenge the merit of the Defendant's attack that they cannot sufficiently describe the Russian hacking of DNC database and thus, by their silence prove their allegations is an obstacle too high. (Decl. Griffith, ECF No. 15-1). Ironically, they claim they

[1] No. 1:17-cv-913-ESH

cannot wait for the federal government to explain it.[2] The D.C. Anti-SLAPP Act applies in federal court. The Act requires dismissal of Plaintiffs' D.C.-law claims.

I. PLAINTIFFS' CLAIMS ARISE FROM AN ACT IN FURTHERANCE OF THE RIGHT OF ADVOCACY ON ISSUES OF PUBLIC INTEREST.

The D.C. Anti-SLAPP Act applies to any claim that "arises from an act in furtherance of the right of advocacy on issues of public interest." § 16-6502(b). As relevant here, "act in furtherance …" includes (1) "any written or oral statement made … in a place open to the public or a public forum in connection with an issue of public interest" as well as (2) "any other expression or expressive conduct that involves … communicating views to members of the public in connection with an issue of public interest." § 16-5501(1).

Plaintiffs' D.C.-law tort claims arise from the publication of DNC emails on WikiLeaks "right before the Democratic National Convention." (Am. Compl. ¶ 165.) In fact, the only relevant publication of Plaintiffs' emails would be from the database that held their emails – the DNC's database. (Am. Compl. ¶¶ 7, 8, 160). Defendants must therefore show that their publication satisfies one of the two parts of the definition set out above. It satisfies both.

To begin, the publication both (1) occurred "in a place open to the public or a public forum" and (2) involved "communicating views to members of the public." It occurred in a place open to the public or a public forum, because "websites" qualify as "places open to the public" and as "public forums." *Competitive Enterprises Institute v. Mann*, 150 A.3d 1213, 1227 (D.C. 2016). And it involved "communicating views to members of the public," since (in Plaintiffs' own words) the emails were "published to the entire world." (Am. Compl. ¶ 1.)

[2] ". . . plaintiffs cannot wait for other law enforcement and intelligence investigations into coordination between Russia and Trump associates to run their course. . ." https://unitedtoprotectdemocracy.org/privacylawsuit/

In addition to the dissemination of Plaintiffs' emails as part of the WikiLeaks tranche, Plaintiffs cite Roger Stone's public social media postings on Twitter in their complaint. These are the actual postings alleged in the amended complaint. The postings are speech – political speech. And political speech about people other than Plaintiffs and published databases that contained data about people other than Plaintiffs, as it appears to have been sourced from places other than the DNC, the alleged source of the Plaintiffs' information.

> 174. On August 21, 2016, Defendant Stone tweeted: "Trust me, it will soon the [sic] Podesta's time in the barrel. #CrookedHillary."
>
> 175. In mid-September, Stone said on a radio interview that he expected "Julian Assange and the Wikileaks people to drop a payload of new documents on a weekly basis fairly soon."
>
> 176. On October 1, 2016, Defendant Stone tweeted: "Wednesday @HillaryClinton is done."
>
> 177. Two days later, on October 3, 2016, Defendant Stone tweeted: "I have total confidence that @wikileaks and my hero Julian Assange will educate the American people soon # LockHerUp."
>
> 178. Then, on October 4, 2016, Defendant Stone tweeted: "Payload coming. #Lockthemup."

This is political speech in a public forum communicating views on those public issues. *See Mann*, 150 A.3d at 1227. Realize, the amended complaint describes three separate hacks (break in) and thefts (stealing data) from three separate data sources (databases) – Democratic National Committee ("DNC"), Democratic Congressional Campaign Committee ("DCCC"), and the Clinton Campaign (John Podesta's emails). The DNC database held Plaintiffs' data but the DCCC hack did not include any of Plaintiffs' data. And presumably, the Clinton campaign or John Podesta's private email was hacked since it held John Podesta's emails, both personal and

work related. The only relevant inquiry is whether the lawsuit alleges Roger Stone conspired to disseminate Plaintiffs' emails – and no one else's.

Roger Stone did not target Plaintiffs; rather, Plaintiffs targeted Roger Stone as a means of pursuing their political agenda outside of their injuries claimed by reason of the dissemination of their emails. This lawsuit is a SLAPP suit meant to deter that political speech. If Roger Stone is being lumped together with the Trump campaign, then the Court can also consider The Campaign in its special motion to dismiss refers to emails discussing political matters within the DNC. Reference to that political controversy demonstrates the applicability of the Anti-SLAPP statute as well for Roger Stone. The publication of Stone's "tweets" and the DNC's emails has an obvious "connection" with issues "of public interest." The emails also revealed the nature of the Democratic Party's interactions with wealthy donors, information that should interest any citizen who wants to find out "whether elected officials are in the pocket of … moneyed interests." *Citizens United v. FEC*, 558 U.S. 310, 370 (2010). [3]

The Act turns on the character of the defendants' speech as a whole, not on the character of each individual statement that the defendant utters. Indeed, Plaintiff frames both Defendants participation "in a conspiracy to publicize private information about private individuals in the course of interfering in the 2016 presidential election." (Opp. 6-7). It applies if the "act" from which the claim arises furthers the right of public advocacy. § 16-5502(a). In this case, the "act" from which Plaintiffs' claims arise is the publication of a large collection of emails. The single

[3] The pleading stage is not a typical point for *amici* to appear. Former Intelligence officials, former campaign officials, and a civil rights group, attempt to infuse facts into Plaintiffs' lawsuit that were not alleged. But the only help the *amici* offer is proof this lawsuit is political – and the conduct criticized is speech. Plaintiffs cannot introduce such allegations through *amici. See* Fed. R.Civ.P. 8.

act of publication has the requisite connection with an issue of public interest (not whether each individual email does). It does, and the Act thus applies to Plaintiffs' claims.

The Act also turns on the primary purpose of the speech, not on its ancillary effects. To distinguish "issues of public interest" from issues of private interest, courts must consider whether the defendant's statements are "*directed primarily toward*" "commenting on or sharing information about a matter of public significance," or instead toward "protecting the speaker's commercial interests." § 16-5501(3) (emphasis added). WikiLeaks' publication of the DNC emails was plainly directed primarily toward sharing information about a matter of public significance—namely, information about the misdeeds of officials at the Democratic National Committee. (*See* Am. Compl. ¶ 165.) No allegation is made that the dissemination of Plaintiff Comer's emails were "directed primarily toward" exposing his sexual preference or Plaintiffs Cockrum and Schoenberg's emails were to expose their financial information of Plaintiffs Cockrum and Schoenberg. Again, the Act applies to Plaintiffs' claims.

The Act's language is broad and encompasses all of the emails published by WikiLeaks. The Act applies where the defendant engages in speech "*in connection with*" an issue of public interest. § 16-5501(1) (emphasis added). "Issue of public interest," in turn, includes any issue "*related to*" public affairs. § 16-5501(3). "In connection with" and "related to" are broad phrases. Work emails sent by officials of a political party necessarily have a "connection" with issues that are "related to" public affairs, even if not every single email specifically discusses public affairs. That, once more, means that the Act applies to Plaintiffs' claims.

The D.C. Council could not have intended a lawsuit like Plaintiffs' be immune to the Anti-SLAPP Act "to protect a particular value of a high order—the right to free speech

guaranteed by the First Amendment." *Mann*, 150 A.3d at 1231. The Anti-SLAPP Act applies to Plaintiffs' claims.

CONCLUSION

In accordance with the District of Columbia Anti-SLAPP Act, the Court should dismiss Plaintiffs' claims for public disclosure of private facts and intentional infliction of emotional distress.

Dated: October 25, 2017

Respectfully submitted,

/s/ Robert Buschel
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CERTIFICATE OF SERVICE

I certify that on October 25, 2017, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which will send a notice of electronic filing to all registered parties.

Dated: October 25, 2017

/s/ Robert C. Buschel
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