

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION

craigslist, Inc.,

Civil Action No. 2:09-1308-CWH

Plaintiff,

**Declaration of E. Bart Daniel in Support
of Plaintiff craigslist, Inc.'s Motion for
Temporary Restraining Order**

v.

**HENRY D. McMASTER, in his official
capacity as ATTORNEY GENERAL OF
THE STATE OF SOUTH CAROLINA,
et al.,**

Defendants.

I, E. Bart Daniel, declare as follows:

1. I am an attorney at law, duly licensed to practice before all courts of the State of South Carolina, counsel for Plaintiff craigslist, Inc. ("craigslist") in this action. I have personal knowledge of all facts set forth in this Declaration, and I am competent to so testify if called upon as a witness.

2. On May 5, 2009, Defendant, joined by a number of South Carolina law enforcement officials including Anderson County Sheriff John Skipper, Pickens County Sheriff David Stone, and Oconee County Sheriff James Singleton, held a press conference relating to craigslist.

3. At the press conference, Defendant threatened craigslist with criminal investigation and prosecution if certain types of third-party content were not removed and blocked from the South Carolina-directed portions of craigslist's website. During this press conference, Defendant referenced a letter he had addressed to craigslist's CEO, Jim Buckmaster. The same day, Defendant prominently posted this letter on his office's official website, along with a press release about his threat.

4. In particular, Defendant's May 5, 2009 letter to Mr. Buckmaster stated "please be advised that the craigslist management may be subject to criminal investigation and prosecution by this office if the portions of [craigslist's] site dedicated to South Carolina and its municipal regions and which contain categories for and functions allowing for the solicitation of prostitution and the dissemination and posting of graphic pornographic material are not permanently removed on or before 5:00pm EST, the close of business Friday, May 15, 2009."

5. The following day, on May 6, 2009, a news article displayed on the website of *The State* newspaper (TheState.com) reported that “[Defendant] threatened Tuesday to charge Craigslist’s [sic] chief executive, contending the popular Internet classified ad service company hasn’t done enough to stop solicitation for prosecution and obscenity on its Web site.” According to that article, Defendant told *The State* that, to his knowledge, South Carolina is the first state to explore the possibility of criminal charges against CEO Jim Buckmaster and other top officers of the San Francisco-based company. The article also reported that Defendant had stated that he will seek to charge Mr. Buckmaster and other company officials under state prostitution or obscenity laws.

6. On May 13, 2009, I met with officials within of the Office of the Attorney General of South Carolina to discuss the additional voluntary measures craigslist had implemented the previous day — including the closure of the erotic services subcategory and the employment of manual advance review of new postings to the newly opened adult services category — and to discuss Defendant’s public threat to conduct a criminal investigation and prosecution of craigslist’s management. Among other things, I explained that federal law, including 47 U.S.C. § 230 and the First Amendment, shield craigslist from any such prosecution.

7. Later, on May 13, 2009, TheState.com displayed an article reporting that Defendant will not withdraw his “threat of criminal prosecution.” The article reported that Defendant derided craigslist’s latest efforts as “nothing” and quoted Defendant as saying, “The only agreement we could have is they block everything (related to prostitution and obscenity) in South Carolina.”

8. On May 14, 2009, craigslist's counsel informed Defendant by letter of the extensive measures craigslist had undertaken and set forth the legal principles barring any potential prosecution of craigslist.

9. On May 15, 2009, Deputy Attorney General John McIntosh replied to craigslist's letter of May 14 expressing his office's concern about "the facilitation of prostitution in South Carolina" and assuring craigslist that "[p]rior to any prosecution in which this office is involved, you will certainly be allowed a reasonable opportunity to respond."

10. Later on May 15, 2009, just a few hours after craigslist's counsel received McIntosh's letter, Defendant's office posted on its official website at www.scattorneygeneral.com the following announcement:

"As of 5:00 p.m. this afternoon, the craigslist South Carolina site continues to display advertisements for prostitution and graphic pornographic material. This content was not removed as we requested. We have no alternative but to move forward with criminal investigation and potential prosecution."

11. On May 16, 2009, the AP newswire reported: "The South Carolina attorney general says the clock for Craigslist to clean up its online classified site starts Friday evening, and he will prosecute executives if prostitution ads from the state remain on the site." The newswire quoted Defendant as follows: "'We were hoping at 5 p.m. all those ads would be gone, and we'd be able to move on to other things,'" [McMaster] said. "'Because they're not off, we won't be able to end our monitoring and scrutiny. ... All we're asking Craigslist to do is take the prostitution ads off its Web site.'"

12. Also on May 16, 2009, theState.com reported: "Attorney General Henry McMaster has launched his own investigation of Craigslist for possible prostitution and

pornography as his own deadline to block such classified ads passed Friday afternoon. ‘We will have an active investigation in the office into Craigslist,’ McMaster said. ‘This content was not removed as we requested. We have no alternative.’” The article further reported: “McMaster, widely believed to be a GOP candidate for governor, said he is unaware of any other attorney general who is considering criminal charges. He cited aiding and abetting prostitution, obscenity and conspiracy as possible offenses. Craigslist executives could be tried in their absence and face extradition to South Carolina after a third offense of aiding in prostitution.”

13. Defendant also participated in an interview with Fox News on May 16, 2009, wherein he stated:

“We opened an investigation at 5:01 on Friday, as promised. . . . We are preparing for a prosecution. We are investigating. We are moving forward. . . . The #1 defendant is Mr. Jim Buckmaster, who is the man in charge of craigslist. . . . craigslist is a big promoter and facilitator of prostitution.”

14. On May 18, 2009, the *Wall Street Journal*, in its online edition, reported:

“On May 5, the Palmetto State’s Attorney General Henry McMaster threatened to prosecute executives from the online classifieds site [craigslist], if ads on the site play a role in a prostitution case in South Carolina.

Then last week, Craigslist announced steps to introduce a new review system for every single adult services listing on the site. It did this after consulting with the attorneys general from several states, who complained the site had become a preferred way for prostitutes to advertise their services.

McMaster wasn’t satisfied. On Friday, he reiterated his threat, saying the South Carolina portion of the site still displayed ads for prostitution. ‘We have no alternative but to move forward with criminal investigation and potential prosecution, McMaster wrote on his site.’”

[. . .]

On Monday afternoon, McMaster's communications director Mark Plowden said that the 'matter is under criminal investigation,' and that the AG's statement from Friday was still current."

15. On May 18, in an interview on the Fox Business network, Defendant again stated that he is conducting an active criminal investigation against craigslist for aiding and abetting prostitution, and likened craigslist "to a hotel or motel owner that knows prostitution is going on on their premises and fails to do anything about it especially after having been told."

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct, and this Declaration is executed on May 19, 2009, in Charleston, South Carolina.



E. Bart Daniel