VIRGINIA: IN THE CIRCUIT COURT FOR ALBEMARLE COUNTY

EDWARD DICKINSON TAYLOE, II,

Plaintiff,

v.

C-VILLE HOLDINGS, LLC

and

LISA PROVENCE

and

JALANE SCHMIDT,

Defendants.

Case No. CL19-868

REPLY IN SUPPORT OF
DEFENDANT JALANE SCHMIDT'S DEMURRER

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INTRODUCTION

It bears repeating, for reference, the entirety of Professor Jalane Schmidt's statement that has led to her being named as a defendant in this lawsuit:

> **"For generations this family has been roiling the lives of black people, and this is what [plaintiff Tayloe] chooses to pursue."**

Ex. A at 5. Plaintiff Tayloe concedes, as he must, that Professor Schmidt's statement was not factually false or defamatory. Pl. Br. at 7–8. He concedes also that he does not, and cannot, allege that Professor Schmidt's statement about 'roiling the lives of black people' is about Plaintiff himself. Pl. Br. at 10, 13. What Plaintiff would have this Court nevertheless accept is nothing short of Orwellian in its reach: that Professor Schmidt's *truthful words* about *persons other than Plaintiff*, may nevertheless be found to defame Plaintiff – by implication – because, when read in the context of an article she *did not even write*, the words *might* give a reader the impression that Plaintiff is racist. Such a rule would turn the First Amendment on its head. It would lead journalists, academics, or anyone who might otherwise comment on a matter of public controversy to refrain from doing so – especially if, as is normally the case, they do not have full control over the precise context in which their words are used – lest they be brought into expensive litigation over an impression that their words and opinions might have on the eventual listener's mind.

But this is, thankfully, not the rule. And Plaintiff's lawsuit and argument to the contrary is precisely what Virginia's anti-SLAPP immunity statute, Va. Code Ann. § 8.01-223.2, was designed to protect against: an effort to chill participation in a matter of public concern.

ARGUMENT

I. Professor Schmidt's words contain no discernible false implications of fact about Plaintiff, let alone the ones he claims.

Plaintiff rests his defamation-by-implication claim on the theory that Professor Schmidt's comment, read in context of the article, leads the average reader to the conclusion that Plaintiff is

racist, had racist motivations for participating in the Statue Litigation, or intentionally roiled the lives of black people. But Plaintiff's claim fails because, first, Professor Schmidt's comment implies no factually false statement about Plaintiff; second, it does not in any event reasonably imply the purported implications that Plaintiff ascribes to it; and third, even if the comment did imply anything about Plaintiff or his motivations, those implications are, at most, opinions.

A. Professor Schmidt's comment does not imply any false statements of fact regarding Plaintiff.

In defamation-by-implication claims such as this one, where the statement at issue is not defamatory but the purported implication of the statement is alleged to be, the implication at issue must itself be both factual and false. *Schaecher v. Bouffault*, 290 Va. 83, 98 (2015) (noting that the standard articulated by the Virginia Supreme Court is whether a statement can "reasonably be understood . . . to convey a false representation of fact"). To determine whether the implication of Professor Schmidt's words meets that standard, this Court must examine their "plain and natural meaning . . . according to the sense in which they appear[ed]." *Carwile v. Richmond Newspapers*, 196 Va. 1, 7 (1954). This is a question of law that is appropriately decided on a demurrer. *Handberg v. Goldberg*, 831 S.E.2d 700, 706 (Va. 2019) (also citing *Schaecher*, 290 Va. at 89–91; *Pendleton v. Newsome*, 290 Va. 162, 173 (2015); *Webb v. Virginian-Pilot Media Cos.*, 287 Va. 84, 89–90 (2014)).

Here, the plain and natural meaning of Professor Schmidt's comment does not reasonably imply any false fact regarding the Plaintiff. Even considering the broader context of the article in which the comment appeared – which Professor Schmidt did not write – her statement merely summarizes the information in the profile and conveys, at most, that Plaintiff chose to pursue litigation defending the preservation of the Charlottesville monuments notwithstanding his family's history of roiling the lives of black people for generations. Professor Schmidt does not

insinuate or hypothesize regarding Plaintiff's motives, nor does she characterize in any way Plaintiff's reasons for involvement in the litigation – let alone anything false about those motivations. Accordingly, where a defamatory meaning is not discernible from a reasonable and natural reading of the publication in context, as is true for Professor Schmidt's statement, dismissal is required. *See Webb*, 287 Va. at 90–91; *Carwile*, 196 Va. at 7.

B. Professor Schmidt's words cannot reasonably bear the implications foisted on them by Plaintiff.

In asserting his claim that Professor Schmidt's comment conveys somehow that "Plaintiff (1) was a racist, (2) participated in the Statute Litigation to antagonize people of color, and/or (3) intentionally roiled the lives of black people," Plaintiff reads into Professor Schmidt's comment meaning that was simply not conveyed, explicitly or implicitly, by the words she used. Professor Schmidt's statement does not ascribe a motivation or intention to Plaintiff Tayloe's pursuits, but simply references Plaintiff Tayloe's current lawsuit and his family history,[1] the mere juxtaposition of which is wholly insufficient as a matter of law to convey the purported implication. *Webb*, 287 Va. at 89 (finding no defamation where publication "juxtapose[ed] an insinuation of special treatment with the reported facts that he was an assistant principal at another school in the same school system").

To reach the three purported implications from Professor Schmidt's comments, Plaintiff improperly attempts to stack a series of inferences on top of the uttered words, which fall well short of insinuating that Plaintiff is a racist, had racist motivations for participating in the Statue

[1] Plaintiff is barred from bringing a claim based on the characterization of his family or family's actions because the statement published was not "of and concerning" him. *Schaecher v. Bouffault*, 290 Va. 83, 99 (2015) (citing *Gazette, Inc. v. Harris*, 229 Va. 1, 37 (1985); *Dean v. Dearing*, 263 Va. 485, 488 (2002)) (holding that "[a] pleading for defamation must allege or otherwise make apparent on the face of the pleading that the alleged defamatory statements are 'of and concerning' the plaintiff").

Litigation, or intentionally roiled the lives of black people. Because Plaintiff's "proposed interpretation stretches the 'natural meaning' of [Professor Schmidt's] statement too far" and would require the jury to "pile[] one inference upon the other" to reach the purportedly false and defamatory implications, his claim fails as a matter of law. *Mann v. Heckler & Koch Def., Inc.*, 639 F. Supp. 2d 619, 635–36 (E.D. Va. 2009), *aff'd*, 630 F.3d 338 (4th Cir. 2010); *Carwile*, 196 Va. at 8 ("[t]he meaning of the alleged defamatory language cannot, by innuendo, be extended beyond its ordinary and common acceptation").

Professor Schmidt's statement stands in stark contrast to other cases where intentionally misleading statements created a defamatory implication, including several on which Plaintiff mistakenly relies. For instance, in *Pendleton*, the defendants falsely implied that the student's death was caused by her mother's "fail[ure] to provide necessary information and medications to" the school; as such, the student's death was characterized "as a wake-up call for parents and stat[ed] that the plan requires parents to provide accurate and timely information about their child's allergy, to provide a health action plan . . . and to provide access to the resources and medications." *Pendleton v. Newsome*, 290 Va. 162, 167, 170 (2015) (internal quotations omitted). That implication resulted from defendants' intentional framing of their statements as a response to "misinformation" shared by the mother, which led to a "fair and just inference . . . that the defendants . . . [due] to privacy laws, were unable to express the true version" of events. *Id.* at 173. The school's recitation of its policy was intended to and did convey a false fact. By comparison, Professor Schmidt does not draw conclusions about Plaintiff's character or motivation, nor does she omit or mischaracterize key information that would create a false implication or insinuation. Therefore, it is not possible for Plaintiff Tayloe to demonstrate that "the statements were designed and intended by [Professor Schmidt] . . . to imply the defamatory innuendo of which the plaintiff

complains." *Eramo v. Rolling Stone, LLC*, No. 3:15-CV-00023, 2016 LEXIS 142185, at *4 (W.D. Va. October 31, 2016) (quoting *Pendleton*, 290 Va. at 175) (internal punctuation omitted). Here, Professor Schmidt's statement does not lead the reader to a conclusion; rather the article "discloses the factual basis" surrounding the Statue Litigation, Tayloe family, and Plaintiff Tayloe, and empowers each individual "reader to draw her own conclusion." *Schnare v. Ziessow*, 104 F. App'x 847, 852 (4th Cir. 2004) (holding that statements in an article critiquing the plaintiff and his perspective were not defamatory). That Plaintiff believes readers could draw inferences to reach the conclusion that he is a racist, had racist motivations for participating in the Statue Litigation, or intentionally roiled the lives of black people does not allow him to punish Professor Schmidt for a statement that does not by itself imply as much.[2]

C. Even if Professor Schmidt's statement can be read to convey a negative implication about Plaintiff, any such implication is a non-actionable opinion, at best.

The plain and natural implication of Professor Schmidt's statement goes no farther than that Plaintiff chose to pursue litigation defending the preservation of the Charlottesville monuments notwithstanding his family's history of roiling the lives of black people for generations. Anything further that Professor Schmidt may have implied is a classic statement of opinion, not susceptible of being proven true or false, and thus protected under the federal and state constitutions. *See Schaecher*, 290 Va. at 93, 102-04. Any implication read into Professor Schmidt's statement must be considered an opinion because it is "relative in nature and depends largely on a speaker's viewpoint." *Hyland v. Raytheon Tech. Servs. Co.*, 277 Va. 40, 47 (2009). The subjective nature of the implication is highlighted by the fact that Plaintiff alleges three

[2] Moreover, Plaintiff selectively quoted Professor Schmidt's brief to make it appear like Schmidt made concessions to this effect, when she did no such thing. Pl. Br. at 15 (citing *Schmidt Dem.*, at 7).

different implications that could arise from Professor Schmidt's statement, making clear that the reader's interpretation affects how her statement is received. Additionally, "opinions fully disclosing their factual bases constitute a subjective view and are not actionable." *Schaecher*, 290 Va. at 105, 772 (referencing *Biospherics, Inc. v. Forbes, Inc.*, 151 F.3d 180, 185 (4th Cir. 1998)). Professor Schmidt's statement contains the factual basis for any opinion implied thereby, so is not actionable.

Contrary to Plaintiff's assertion that there is "no indicia of opinion specifying that the statement is only the speaker's viewpoint," Pl. Br. at 27, the context in which her statement appears makes it clear she is providing her opinion. For example, Professor Schmidt is clearly quoted, making it evident that her words are separate from the factual recitation of Plaintiff's family history. Additionally, Plaintiff fails to acknowledge that Tayloe Emery, his cousin, was also quoted in the article. Emery's statement provides another perspective on Plaintiff's litigation, providing another "view" in the piece, to contrast with Professor Schmidt's. Emery's quote underscored the hope that Plaintiff and other members of the Tayloe family "might see things from a different perspective and understand the bitter feelings and abhorrent racism associated with Confederate monuments." Ex. A, at 4–5. Finally, the article explains Plaintiff's basis for standing in the lawsuit, including additional context about his military service and prior involvement with monument preservation, allowing the reader to consider all statements, including Schmidt's individual viewpoint along with the facts and perspectives also shared within the article.

Even if the implications of intentional racism that Plaintiff alleges could be reasonably drawn from the plain language of Professor Schmidt's comment – which, for the many reasons explained above, they cannot – it is not an actionable statement because those implications amount to a charge of racism that is not capable of being proven false. Statements about the character and

motivation of Plaintiff – including how his actions and intent could be characterized by others – are inherently subjective. *Chaves v. Johnson*, 230 Va. 112, 119 (1985) (finding the implication that fees were "excessive" or that a person was "inexperienced" were not actionable as such implications are relative in nature).

To understand why, consider that if Professor Schmidt's comment had simply explicitly called Tayloe a racist, such a comment would, too, be a nonactionable statement of opinion. *See, e.g.*, *Stevens v. Tillman*, 855 F.2d 394, 402 (7th Cir. 1988) (explaining that the word "racist" has many meanings and is not actionable unless it implies the existence of undisclosed, defamatory facts); *Beverly Hills Foodland v. United Food & Commercial Workers Union, Local 655*, 39 F.3d 191, 195–96 (8th Cir. 1994) (statements questioning whether employer was discriminatory and asserting that it was "unfair to black employees" were not reasonably read as assertions of false facts). Surely, then, statements that imply but not do not state explicitly that someone is a racist are also nonactionable statements of opinion. *Fleming v. Moore*, relied upon by Plaintiff, is not to the contrary. *Fleming v. Moore*, 221 Va. 884, 891 (1981). In *Fleming*, the Supreme Court concluded that a developer's statement in an advertisement that a man who opposed a high-density development on adjoining land "does not want any black people within his sight" alongside the caption "RACISM" was not defamatory *per se*. *Id.* The *Fleming* court did not consider whether the statements at issue in that case were susceptible to being proven true or false. But even if they could be actionable statements of fact, the advertisement contained within it the explicit charge that the plaintiff did "not want[] blacks to reside within sight of his home," *id.* – a statement far more verifiable and factual than an alleged innuendo amounting to no more than that someone is "racist" – a term that is relative and subjective rather than one of fact.

Plaintiff's allegation that Professor Schmidt's comment implied that he is racist is itself far afield of what was actually said or implied. *See supra* Part I–B. Perhaps in an effort to convert this supposed implication into something more factual-sounding and thus actionable, he also proffers that the comment implies that he "participated in the Statue Litigation to antagonize people of color" and/or that he "intentionally roiled the lives of black people." Pl. Br. at 1. Plaintiff's effort is unconvincing, both because under no reasonable interpretation of Professor Schmidt's words can these implications be sustained without piling inference upon inference, and because in effect they amount simply to the inherently subjective charge of "racist" by another name.

II. Plaintiff's status as a limited purpose public figure requires a showing of actual malice, but Plaintiff fails to allege any fact that would even satisfy the negligence standard.

The question whether "[P]laintiff is a 'limited-purpose public figure' is an issue of law." *Edwards v. Schwartz*, 378 F. Supp. 3d 468, 505–06 (W.D. Va. 2019); *Sharpe v. TWCC Holding Corp.*, No. CL09-6738, 2010 LEXIS 357, at *23 (Va. Cir. February 24, 2010) (noting "collateral estoppel should be applied with 'less vigor'" to the question of whether plaintiff is a public figure, because it is a question of law). Even if this Court were to consider it a mixed question of law and fact, relying on those facts presented in Plaintiff's pleadings there is no disputed question of material fact regarding his involvement in the Charlottesville monument litigation. Despite Plaintiff's assertion that it would be "premature for the court to conclude that the plaintiff is a public or private figure," Pl. Br. at 16, this Court has more than adequate information to undertake the inquiry, between the allegations in the complaint and the article at issue, attached thereto, which is properly considered at the demurrer stage. *See, e.g.*, *TC MidAtlantic Dev., Inc. v. Commonwealth*, 280 Va. 204, 212 (2010); *Flippo v. F & L Land Co.*, 241 Va. 15, 16 (1991).

Plaintiff makes no effort in his response to rebut Professor Schmidt's arguments with respect to any of the prongs of the *Carr v. Forbes* five-factor limited-public figure analysis, Pl. Br.

at 16, and thus waives any argument to the contrary. *Carr v. Forbes, Inc.*, 259 F.3d 273, 280 (4th Cir. 2001). Nor could he have done so successfully. As the *C-Ville Weekly* article recognizes, "much has been written about . . . the idea of removing Confederate monuments from the center of town." Ex. A at 3. This highlights the controversy leading up to and surrounding the Statue Litigation, which has been brewing since at least "[t]hree years ago, [when] some City Council members and local activists raised the idea of removing the Confederate statues from downtown." Ex. A at 2. By voluntarily assuming a role of special prominence in this very public controversy and seeking to influence its resolution through high-profile litigation, Plaintiff Tayloe qualifies as a limited-purpose public figure. *Edwards*, 378 F. Supp. 3d at 506 (describing a limited purpose public figure as one who "voluntarily assumed a role of special prominence in a public controversy by attempting to influence the outcome") (quoting *Fitzgerald v. Penthouse Int'l, Ltd.*, 691 F.2d 666, 669 (4th Cir. 1982)).

As a public figure, Plaintiff Tayloe fails to satisfy the actual malice standard, which requires that "the defendant either knew the statements he made were false at the time he made them, or that he made them with a reckless disregard for their truth." *Gov't Micro Res., Inc. v. Jackson*, 271 Va. 29, 42 (2006) (original emphasis removed). That is not the case here. Professor Schmidt's statement is more akin to those made in *Chapin*, where a newspaper and reporter were sued by the president of a charity for an article concerning the organization's gift packages to soldiers. *Chapin v. Knight-Ridder, Inc.*, 993 F.2d 1087, 1091 (4th Cir. 1993). As in *Chapin*, the question posed by Professor Schmidt's quotation "simply provokes public scrutiny of [P]laintiff[']s[] activities"; there the court found that "[v]oluntary public figures must tolerate such examination." 993 F.2d at 1094. The *Pendleton* court even distinguished its holding from the circumstances in *Chapin*; the court noted that unlike *Chapin*, in *Pendleton* "the plaintiff was not a

public figure, the defendants were employed by government agencies but were not officials generally known, the publicity attending the subject matter lasted only a few days, and the freedom of the press is in no way impacted." *Pendleton*, 290 Va. 162 at 174, n. 5; *Chapin*, 993 F.2d at 1091–92 (noting that "[a]lthough Virginia's common law of libel governs . . . the First Amendment's press and speech clauses greatly restrict the common law . . . [w]here, as here, all of these considerations are present").

Moreover, even if Plaintiff is found to be a private figure, he fails to satisfy the requisite negligence standard because he pleads no facts that show Professor Schmidt "acted negligently in failing to ascertain the facts on which the publication was based." *Gazette Inc. v. Harris*, 229 Va. 1, 15 (1985); *see also Dem.*, at 14. Compared to *Gazette* – where negligence was found as a result of "the reporter's admitted inability to interpret the symbols" on the docket page, lack of "verification of the information finally gathered" by the reporter, lack of oversight by a "publisher who did not review the article before printing," and other substantive errors – there are no comparable failings on Professor Schmidt's part. *Gazette*, 229 Va. at 24; *see also WJLA-TV v. Levin*, 264 Va. 140, 157 (2002) (finding liability where allegations were reported as fact because the defendant "simply ignored or minimized competent data and opinions that contradicted the image of [the plaintiff] that it conveyed to its viewing audience").

Because Plaintiff cannot allege that Professor Schmidt exhibited recklessness or negligence as to the truth of her actual statements – indeed, he never alleged that they were false – he grasps at alleged implications and claims Professor Schmidt was somehow reckless with respect to these implications. Pl. Br. at 18–19, n. 1. But it would stretch the First Amendment beyond all recognition if we were to require potential speakers to be so careful in their speech that they consider, not simply the truth or falsity of the actual words they plan to utter, but the truth or falsity

of the implications a reader could *possibly* interpret from those words, especially when those implications *are not plain from the words themselves.*

Professor Schmidt's statement that "for generations this family has been roiling the lives of black people, and this is what [plaintiff Tayloe] chooses to pursue," cannot as a matter of law be reckless or negligent with respect to the truth or falsity of the implications alleged by Defendant: that Tayloe was a racist, that he joined the Statue Litigation out of racial animus, and that he intended to roil the lives of black people. Pl. Br. at 10, 13. It is crucial to recognize that even if each of those propositions were true: even assuming Tayloe *is not* a racist, *did not* join the Statute Litigation out of racial animus, and *has no* intention to roil the lives of black people, these facts could exist, side-by-side, compatibly with Professor Schmidt's factually accurate statement, without rendering it nonsensical or incongruent, let alone reckless or negligent. As a limited public figure, Tayloe has opened himself up to commentary and speculation regarding his actions, and Professor Schmidt's basic statement of fact was a simple exercise of her First Amendment right in commenting on one of the chief matters of public concern in Charlottesville in this present moment.

III. Professor Schmidt is immune from liability under Virginia Code § 8.01-223.2, which allows courts to dismiss lawsuits aimed as stifling public participation.

Professor Schmidt is immune from civil liability under Virginia law because her statement involved matters of public concern protected by the First Amendment and it was not made with actual or constructive knowledge, or reckless disregard for any falsity. Va. Code Ann. § 8.01-223.2. Bolstered by the General Assembly's 2017 amendments, Virginia's statute allows "[a]ny person who has a suit against him dismissed pursuant to the immunity provided by this section [to be] be awarded reasonable attorney fees and costs." Va. Code Ann. § 8.01-223.2.

It is evident Professor Schmidt's quotation is regarding an issue of widespread importance, not only within the Charlottesville community, but throughout the country, as even Plaintiff acknowledges that the statues' proposed removal has "spawned widespread debate and disagreement." Compl. ¶ 9; *see* Ex. A at 3 (*C-Ville Weekly* article notes that "much has been written about . . . removing [the] Confederate monuments"). Discussion regarding the public officials, public litigation, and public controversy surrounding the Confederate monuments is speech on a matter of public concern. The statues, their historical legacy, and their current place in our society is protected – as is Professor Schmidt's statement – as a "matter of political, social, or other concern to the community" that is of significant "value and concern to the public." *Snyder v. Phelps*, 562 U.S. 443, 453 (2011) (quoting *San Diego v. Roe*, 543 U.S. 77, 83–84 (2004)). Moreover, Plaintiff fails to assert any facts that indicate Professor Schmidt "realized that h[er] statement was false or that [s]he subjectively entertained serious doubt as to the truth of h[er] statement" at the time of publication that would show negligence, let alone actual malice. *Jordan v. Kollman*, 269 Va. 569, 577 (2005); *supra* Section II. As such, her statement is entitled to protection under Va. Code Ann. § 8.01-223.2, which aims to protect against meritless claims, such as this.

Virginia's statute allows for the "[d]ismissal of these frivolous tort claims [to] save[] defendants the cost and burden of trial and minimize[] the chilling effect of these lawsuits" as a means to "protect[ ] the First Amendment right of advocacy" and "weed out meritless suits." *ABLV Bank v. Ctr. for Advanced Def. Studies Inc.*, 2015 U.S. Dist. LEXIS 181218, at *4 (E.D. Va. Apr. 21, 2015). Correspondingly, it is not only appropriate for courts to dismiss defamation claims on a preliminary motion, *see Agbapurunowu v. NBC*, No. 18-cv-01555-AJT-MSN, Dkt. No. 24 (E.D. Va. Feb. 1, 2019), appeal pending No. 19-1236 (4th Cir.); rather, it "is an essential gatekeeping

function of the court." *Sroufe v. Waldron*, 829 S.E.2d 262, 263 (Va. 2019) (quoting *Webb*, 287 Va. at 90).

As part of the court's gatekeeping function, judges must be vigilant in safeguarding against strategic lawsuits against public participation, known as SLAPP suits, which are designed to chill or punish the speech of individuals or organizations who speak out on issues of public interest or concern. George W. Pring & Penelope Canan, *Strategic Lawsuits Against Public Participation (SLAPPs): An Introduction for Bench, Bar and Bystanders*, 12 Univ. Bridgeport L. Rev. 937, 962 (1992).[3] SLAPP lawsuits are effective in deterring disfavored speech because of the cost and inconvenience of defending against these actions in litigation. *Id.* at 962. It is for this reason that SLAPP suits have been referred to as "legal bullying," because they are used "to intimidate opponents' exercise of rights of petitioning and speech" and "to obtain a financial advantage over one's adversary by increasing litigation costs until the adversary's case is weakened or abandoned." 61A Am. Jur. 2d Pleading § 435 (referring to SLAPP as "Strategic Lawsuits Against Public Policy"); Maria LaHood, *Legal Bullying May Chill Speech, But Ultimately Cannot Stop a Movement*, CTR. FOR CONSTITUTIONAL RIGHTS (June 17, 2015),

[3] These suits have also gained traction as strategy for silencing critics in a range of contexts: employment, animal rights, environmental activism, the Black Lives Matter Movement, and others. *See, e.g.*, *The Growing Use Of Anti-SLAPP In Employment Cases*, LAW360 (Feb. 19, 2019), https://www.law360.com/articles/1128064/the-growing-use-of-anti-slapp-in-employment-cases; *Defending Our Rights Under the Texas Anti-SLAPP Statute: Landry's, Inc v. Animal Legal Defense fund, et al.*, ANIMAL LEGAL DEF. FUND (2019), https://aldf.org/case/defending-our-rights-under-the-texas-anti-slapp-statute/; *Federal Court Dismisses Resolute SLAPP Suit Against Greenpeace*, GREENPEACE (Oct. 16, 2017), https://www.greenpeace.org/usa/news/federal-court-dismisses-racketeering-case-against-greenpeace/; Jacqueline Thomsen, *Court strikes down far-right activist's lawsuit over Twitter ban*, HILL (June 6, 2018), https://thehill.com/policy/technology/technology/391096-court-strikes-down-far-right-activists-lawsuit-over-twitter-ban.

https://ccrjustice.org/home/blog/2015/06/17/legal-bullying-may-chill-speech-ultimately-cannot-stop-movement.

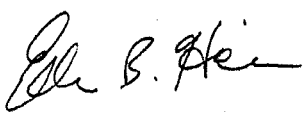
Given both the purpose and effect of SLAPP lawsuits, there are several aspects of this litigation that should not escape notice: the stark power imbalance between a wealthy businessman and descendant of a First Family of Virginia and a woman who works as a college professor and local historian; the steep, yet unsupported, requests for compensatory and punitive damages that would leave the average citizen with sticker shock; and the broader context of the surrounding debate regarding the Confederate statutes, as recounted in the *C-Ville Weekly* publication. There are no barriers to the Court deciding this issue on demurrer, pursuant to Va. Code Ann. § 8.01-223.2, and in accordance with the legislature's intent to provide judicial remedy for the speedy resolution of meritless claims, most especially those designed to suppress expression.

CONCLUSION

For the reasons stated in her demurrer and this reply, Defendant Jalane Schmidt respectfully requests that this Court sustain her Demurrer against Plaintiff's Complaint, dismiss the claim against Professor Schmidt with prejudice, award attorney's fees under Va. Code Ann. § 8.01-223.2 for having to defend this action, and grant all such general and further relief this Court deems appropriate.

Dated: October 21, 2019

Respectfully submitted,



Eden B. Heilman (VSB No. 93554)
Nicole Gloria Tortoriello (VSB No. 91129)
Jennifer Safstrom (VSB No. 93746)
AMERICAN CIVIL LIBERTIES UNION FOUNDATION OF VIRGINIA, INC.

701 E. Franklin Street, Suite 1412
Richmond, Virginia 23219
Phone: (804) 644-8080
Fax: (804) 649-2733
eheilman@acluva.org
ntortoriello@acluva.org
jsafstrom@acluva.org

Deborah C. Wyatt (VSB No. 17918)
342 Key West Drive
Charlottesville, VA 22911
434-227-6830
dwesq@aol.com

Counsel for Defendant Jalane Schmidt

CERTIFICATE OF SERVICE

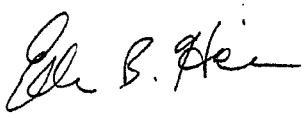
I hereby certify that, on this 21st day of October 2019, I caused a true and correct copy of the foregoing Reply in Support of Defendant Jalane Schmidt's Demurrer to be served on the following persons by the indicated means:

By First-Class and Electronic Mail:

Thomas E. Albro
Tremblay & Smith, PLLC
105 East High Street
Charlottesville, Virginia 22902-5115
Tom.Albro@tremblaysmith.com
Counsel for Plaintiff

Jay Ward Brown
Mara J. Grassmann
Ballard Spahr LLP
1909 K Street NW, 12th Floor
Washington, DC 20006-1157
brownjay@ballardspahr.com
grassmannm@ballardspahr.com
Counsel for Defendants C-Ville Holdings, LLC and Lisa Provence

Respectfully submitted,



Eden B. Heilman (VSB No. 93554)
ACLU Foundation of Virginia
701 E. Franklin St., Suite 1412
Richmond, VA 23219
Telephone (804) 644-8080
Fax (804) 649-2733
eheilman@acluva.org

Counsel for Defendant Jalane Schmidt