

State of South Carolina)
County of Greenville)
Lucas Marchant,)
Plaintiff,)
-vs-)
John Doe and John Doe d/b/a)
Democrats For Marchant,)
Defendants.)

IN THE COURT OF COMMON PLEAS
FOR THE THIRTEENTH CIRCUIT

ORDER

2018-CP-23-5309

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SC Court of Appeals

This matter comes before the Court upon Defendants' Motion to Quash a Subpoena issued by the Plaintiff. Present at the hearing on January 24, 2019 were Joshua Kendrick on behalf of the Plaintiff and Amie Carpenter on behalf of Defendants.

The Plaintiff filed a Complaint against John Doe and John Doe d/b/a Democrats for Marchant for the use of a Facebook page which the Plaintiff claims was fraudulent and was merely for the purpose of a smear campaign against the Plaintiff who was running for 13th Circuit Solicitor as a Petition Candidate. The Plaintiff issued a subpoena to Facebook for information regarding the identity of the person registered for this page in connection with his lawsuit for defamation and other claims. Defendants moved to quash this subpoena.

The Defendants have not asserted any defects in the subpoena or the process involving the issuance of the subpoena, but argue that the Subpoena should be quashed because the Defendants have a constitutional right under the First Amendment to remain anonymous. (At the hearing, the Defendants' attorney argued that the speech was protected and the claims asserted by the Plaintiff were not actionable, but those matters are not before the Court since the Motion was to Quash a subpoena and not a Motion to Dismiss). In support of Defendants' position, counsel cited McIntyre v. Ohio Election

Commission, 115 S.Ct 1511 (U.S. Sup Ct. 1995) for the proposition that the Defendants have the constitutional right to remain anonymous. In McIntyre, the Court was addressing an Ohio statute which prohibited anonymous publications in connection with an election or referendum. The Court found that under those particular circumstances the constitutional "right to remain anonymous" outweighed the State's interests and the restrictions of the statute and declared the statute unconstitutional.

The Court finds that a more apposite opinion can be found in John Doe 1 v. Reed, 130 S.Ct. 2811 (U.S. Sup. Ct 2010). In this decision, the U.S. Supreme Court considered citizens' 1st Amendment rights in connection with a Washington statute which allowed citizens to challenge state laws by referendum. The initiation of the challenge was by way of a Petition to be signed by 4% of the voters and the signatories were required to list their names and addresses. The Plaintiffs in that case argued that the disclosure of the names and addresses of such signatories violated their 1st Amendment rights to remain anonymous. First, the Supreme Court weighed the interests of the State with the rights of its citizens. Since this was a state action, the Court applied the "strict scrutiny" test:

That standard "requires a 'substantial relation' between the disclosure requirement and a 'sufficiently important' governmental interest." *Citizens United, supra*, at 366 – 367, 130 S.Ct., at 914 (quoting *Buckley, supra*, at 64, 66, 96 S.Ct. 612). To withstand this scrutiny, "the strength of the governmental interest must reflect the seriousness of the actual burden on First Amendment rights." *Davis, supra*, at 744, 128 S.Ct., at 2774 (citing *Buckley, supra*, at 68, 71, 96 S.Ct. 612).
John Doe No. 1 v. Reed, 561 U.S. 186, 196, 130 S. Ct. 2811, 2818, 177 L. Ed. 2d 493 (2010)

In Reed, the Court found that the State met this standard by showing that its interest in adopting the provisions were:

to protect the integrity and reliability of the initiative process, as they have with respect to election processes generally." *ACLF, supra*, at 191, 119 S.Ct. 636. The State's interest is particularly strong with respect to efforts to root out fraud, which not only may produce fraudulent outcomes, but has a systemic effect as well: It "drives honest citizens out of the democratic process and breeds distrust of our government." *Purcell v. Gonzalez*, 549 U.S. 1, 4, 127 S.Ct. 5, 166 L.Ed.2d 1 (2006) (*per curiam*); John Doe No. 1 v. Reed, 561 U.S. 186, 197, 130 S. Ct. 2811, 2819, 177 L. Ed. 2d 493 (2010)

The Reed Court identified reasons why a citizen's 1st Amendment rights would be outweighed by a State's interest under a "strict scrutiny" test. The case at hand does not involve a government action nor a state or federal statute, so the "strict scrutiny" test would not apply. But the reasons for allowing disclosure in Reed would seem to apply to the matter before this Court. Further, the Plaintiff has shown that he has a legitimate reason for the information sought by the subpoena—to seek redress for alleged defamation and violation of state election laws. The Defendants have not set forth any evidence nor argument of a burden on them, that their rights outweigh the reasons set forth for the disclosure of the information, nor that they would suffer any "reprisals" for the disclosure other than being named in a civil lawsuit.

Therefore, this Court finds that the Defendants have not established any constitutional right that would defeat the Plaintiff's right to the information through the subpoena to Facebook which may or may not even disclose anyone's identity. Such request for this information is clearly within the parameters of the discovery provisions of the South Carolina Rules of Civil Procedure. (The Court would note, that although not entirely on point, such subpoenas to Facebook and similar entities are routinely filed by the Solicitor's office along with Orders requiring the production of identifying information in criminal investigations).

Based on the review of applicable law, the South Carolina Rules of Civil Procedure and the arguments of counsel, the Defendants' Motion to Quash the Facebook subpoena is respectfully denied and the Plaintiff shall be allowed to proceed with obtaining the information and records listed in his subpoena to Facebook.

It is so Ordered.

E-Signature of Judge Gravely on following page

January 24, 2019
Greenville, South Carolina



Greenville Common Pleas

Case Caption: Lucas Marchant vs. John Doe , defendant, et al

Case Number: 2018CP2305309

Type: Order/Discovery and Disclosure of Evidence

So Ordered

s/ Honorable Perry H. Gravely, #2755