

RONALD F. AVERY

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IN THE DISTRICT COURT

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VS.

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GUADALUPE COUNTY, TEXAS

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DYLAN BADDOUR;
HEARST COMMUNICATIONS,
INC.

*

2nd 25TH JUDICIAL DISTRICT

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PLAINTIFF'S OUTLINE OF ORAL ARGUMENT

TO THE HONORABLE JUDGE OF SAID COURT:

Now comes the Plaintiff, Ronald F. Avery, and submits the attached copy of his Outline of Oral Argument he was not permitted to present to the Court on Thursday March 10, 2016. The Texas Citizen Participation Act specifies a three step hearing procedure. This procedure was not employed and explained to the Court by the Defendant who opened their Motion resulting in a truncated hearing that combined all three parts into one. The Defendant asked for only 15 minutes to hear all argument for this large case with many facets. Therefore, the Plaintiff submits his Outline of Oral Argument to assist the Court in reviewing all the pleadings and evidence which has been taken under advisement. Plaintiff had this outline at the hearing but was not able to orally present it to the Court at that time due to Defendant rushing the hearing and combining all three parts into one. The outline simply argues the case from the evidence and pleadings on record of both parties.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on March 11, 2016, I served a copy of Plaintiff's Outline of Oral Argument on the parties listed below by Certified Mail RRR 7009 0960 0000 7721 9575:

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Outline of Plaintiff's Argument to Defendants' Motion to Dismiss (TCPA)

Elements	Facts	Established	Refuted by Plaintiff
<p>Step One: Defendants have Burden to show they were exercising their free speech: TCPA Anti-SLAPP Legislation passed in 2011. CPRC 27.001(3): "Exercise of the right of free speech" means communication made in connection with a matter of public concern.. CPRC 27.001(1): "Communication" includes the making or submitting of a statement or document in any form or medium, including oral, visual, written, audiovisual, or electronic.</p>			<p>Defendants motion to dismiss is 33 pages long, large even for a Summary Judgment with 22 exhibits containing 138 pages. Plaintiff has on record a Response to the Motion to Dismiss of 39 pages with an 8 page Affidavit and 10 Exhibits containing 44 pages. Plaintiff also has an Original Petition with 29 pages. I would therefore like the Court to take this case under advisement and rule upon it only after they have fully read all the pleadings, affidavits and declarations by both sides. This is a very large Motion with many facets to consider and cannot be fully discussed in this hearing today by either party to this suit.</p> <p>This Act is titled the Texas Citizen Participation Act and its purpose is to: "Sec. 27.002. PURPOSE. The purpose of this chapter is to encourage and safeguard the constitutional rights of persons to petition, speak freely, associate freely, and otherwise participate in government to the maximum extent permitted by law and, at the same time, protect the rights of a person to file meritorious lawsuits for demonstrable injury."</p> <p>No party can use this Act without a showing that the suit is in response to the Moving Party's exercise of their own free speech, petition and association.</p> <p>Sec. 27.005(b) Except as provided by Subsection (c), on the motion of a party under Section 27.003, a court shall dismiss a legal action against the moving party if the moving party shows by a preponderance of the evidence that the legal action is based on, relates to, or is in response to the party's exercise of:</p> <ul style="list-style-type: none"> (1) the right of free speech; (2) the right to petition; or (3) the right of association. <p>News Reporters, by professional definition, are not "citizen participants" exercising their rights of free speech, petition and association. They are OBSERVERS, BYSTANDERS, NON-PARTICIPANTS and REPORTERS of other citizens that are exercising their rights of free speech, petition and</p>

			<p>association. Exhibit J Addendum #2 to P affid in rt Dmtd.</p> <p>BUBBLE: News reporters are in a clear bubble of NON-PARTICIPANT until they take part in the event they are covering. This bubble remains in place in the writing and publication of their news story until they notify their readers to distinguish between their facts and their opinion.</p> <p>Defendant Baddour never broke this bubble during his attendance at the meetings he covered or at any time in the articles he wrote and published. All he said is a matter of fact obtained by his observance.</p>
<p>1. Baddour exercising Free Speech</p>	<p>Defendants wrote and published two articles, one on-line web article and a print article on the front page of the Houston Chronicle. They were sued for both.</p> <p>Baddour wrote an article as a reporter of facts which in reality fails to establish he was exercising his own right of free speech instead of reporting on the facts of others doing so. He never broke the bubble of non-participant.</p> <p>There is no evidence submitted that Dylan Baddour is even a citizen of Texas or the United States of America much less a participant in the events he covered.</p>	<p>duh</p>	<p>Plaintiff P4-9 discusses this in his Response</p> <p>No news journalists should be able to use this Act without a some evidence that they ceased to be a reporter of facts about others exercising their rights and became a citizen exercising their own rights to free speech, petition and association. Without this showing they are merely reporters of facts about others and subject to potential libel actions if their facts are wrong and damaging.</p> <p>The Defendants have not provided a scintilla of evidence that this libel suit was engineered to prevent them from exercising their own rights to free speech, petition and association.</p> <p>The definition in the TCPA makes everything a newspaper does an exercise of their Constitutional right of free speech and all suits resulting there from are automatically defined as SLAPP suits.</p> <p>This Act is seriously flawed and makes all libel and slander cases against newspapers to be SLAPP suits without proof that they were actually Strategic Lawsuits Against Public Participation. This present libel suit was not filed to stop Defendants from exercising any of their constitutional rights to express their own views regarding any matter involved in the lawsuit. This suit was designed to stop the Defendants from telling lies about the Plaintiff that injure him.</p> <p>It is simply presumed by media companies that this Act applies to anything and everything they write because of the presumed "freedom of the Press." But the purpose of the TCPA is not to protect the "free press" or media companies but rather to protect ordinary citizens from SLAPP suits against them for participating in community and governmental affairs. The press and media companies are already protected by the U.S. Constitution from attack. The free press does not need this Act to do its job and remain free and effective.</p> <p>This Act is seriously flawed by providing specific definitions which allows</p>



all major media Defendants to essentially **skip the first step of this act**. And this is exactly how the Defendants herein have applied it. **They have skipped it**. They have provided no evidence other than their news articles they wrote and the fact that I sued them. They have simply said we wrote and published two articles and we were sued for it.

The TCPA speaks as if it's some kind of burden on the Defendants to establish by a preponderance of evidence that a SLAPP suit was brought to prevent the Defendants' exercise of their rights of free speech, petition and association. But all a media defendant has to say is; "we published article, we got sued." And since we know they really don't exercise any such rights professionally in their news coverage they get to skip the first step that others must prove by a preponderance and greater weight of evidence.

In reality the Defendants cannot show they were exercising their own rights of free speech, petition and association outside of this ridiculous definition provided in the flawed TCPA. This evidence is not obtainable from their observation of the events they covered or from the articles they wrote and published. They have no other evidence. In fact, there is no evidence on record that Dylan Baddour is even a citizen of the State of Texas, but he can use this Act! It is outrageous!

This Act has made all libel and slander cases into SLAPP suits subject to this fast track dismissal system before a Plaintiff has a chance to fully develop their case and do discovery.

Further, this Act only requires that the Plaintiff show a prima fascia case for all elements of their case while the Defendants then get to develop a full blown defense to it in the third step of the Act. A Defendant can more easily defend against a case that is not fully developed and based only on prima fascia evidence.

It is absurd to suggest that the intent of this Act is to let all media companies skip step one merely because they wrote an article about a civic or governmental event and got sued for it. All other citizen defendants must show by a preponderance of evidence that they were exercising their rights while the news media simply says, "we wrote article, got sued."

This Act should be re-titled the News Media Protection and Citizen Participation Punishment Acceleration Act.

It is clear in Herrera v. Stahl 441 SW3d 739, 741 (Tex App-San Antonio 2014, no pet. "Therefore, the movant bears the initial burden to show by the

		<p>greater weight and degree of credible evidence that the action is based on, relates to, or is in response to the [movant's] exercise of certain rights."</p> <p>It is not enough to show that someone's rights of free speech, petition and association were being exercised, it must be their own rights that were the subject of the suit. They have not supplied this evidence in light of the definition of professional journalism.</p> <p>Yes indeed an article is a communication but it must be shown to be an exercise of their own rights of free speech, petition or association. Printing false facts about someone to their damage is not protected rights of free speech, petition and association. This Act has automatically determined that all suits against newspapers are SLAPP suits prior to trial and subject them all to early dismissal before they can be developed as in other causes of action.</p> <p>Journalistic libel cases must determine whether or not the statements are of fact or opinion. The defense of freedom of speech comes under doctrine of "Fair Comment" and is based upon statements of opinion but not statements of fact. There is no Constitutional right to publish false facts. And when all the statements are statements of fact and when taken together as a whole they are false and damaging there is no exercise of ones own freedom of speech but merely a reporting of false damaging facts.</p> <p>The Real SUMMARY OF this CASE Follows:</p> <ol style="list-style-type: none"> 1. Plaintiff, a citizen, exercised his right of free speech by addressing a meeting of a group calling themselves the "Republic of Texas" on April 11, 2015. 2. Defendant, a news reporter, covered the meeting and the speech made by Plaintiff and never broke the BUBBLE of NON-PARTICIPATION. 3. Defendant published their news report of that meeting online on Sept. 13, 2015 and in print form the next day and never broke the BUBBLE of NON-PARTICIPATION in their articles. 4. Defendant was sued for publishing false damaging facts. 5. The greater weight of evidence shows that the Plaintiff was the citizen exercising their rights of free speech, petition and association. It is the Plaintiff that was punished by the major media for exercising his personal rights of free speech, petition and association by a libelous article. 6. There is no evidence that the news reporter was exercising any of his rights of free speech, petition and association at any time related to
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			<p>this suit either in any meetings or in the reports they published.</p> <p>7. It does appear however that this so-called Texas Anti-SLAPP legislation just past in 2011 is nothing more than extra protection for major news media corporations to smear anyone who has the courage to speak of modern tyranny, as some attorneys have pointed out. By defining the right of free speech specifically for this Act as being "any communication regarding a public matter" has allowed all news media companies to file these Motions to Dismiss when their own professional rules of conduct forbid the exercise of their free speech, petition and association at every event they cover and even in the articles they write as a result.</p> <p>8. The TCPA is fatally flawed and fails to accomplish its real stated purpose to protect the citizen when they participate in community affairs and has the consequences of being used by the major media companies to smear citizens and dismiss their cases before they have a chance to develop them.</p>
2. Baddour exercising right to Petition	No facts at all.	No.	"
3. Baddour exercising right of Association	<p>Baddour attended two meetings he covered as a news reporter.</p> <p>There is no evidence that Baddour participated in those meetings.</p> <p>Fails to establish fact he was exercising his own right of association.</p>	No.	<p>"</p> <p>It's disgraceful that major media companies can brutalize the citizens with their lies and then subject their victims to this short circuit kind of justice system. The major media companies are a main part of the problems we citizens face in America and now they can enjoy this kind of protection from the Texas Legislature when they destroy the citizens for participating in civic affairs.</p>
<p>Step Two:</p> <p>Plaintiff has burden to show a Prima Fascia case for all the elements of a Libel suit:</p> <p>I can't ask this Court to do anything other than find what is outlined in this ill constructed TCPA. Therefore, I am unjustly forced to move to the second part to show this Court that I have Prima Fascia Evidence for every</p>	Facts	Established?	Refuted by Defendant?

element of a libel case.			
1. Printed Fact not Opinion	Facts	Established?	Refuted by Defendant?
1.1 Man in Photograph in on-line article was Ronald Avery.	Member of RT Defendants published an on-line web article on Sunday 9/13/15 showing someone wearing a "Republic of Texas" blue jacket and they said in the caption beneath it that it was the Plaintiff, Ronald Avery. Jennifer Bishop Declaration Exh B P Affid Exh.F	Yes	No. Admitted by Defendants saying they corrected this.
1.2 Man in Photograph on Front page of Houston Chronicle was Ronald Avery.	Defendants published a print article on the front page of the Houston Chronicle the following day Monday 9/14/15 showing the same photograph with a Caption beneath photo saying man was Ronald Avery wearing the blue jacket. JB Dec Exh A	Yes	No. Admitted by Defendants saying they corrected this.
1.3 Paper article called Plaintiff a secessionist by caption and photographic implication and Title of Front Page Article.	The Front Page Print Article was titled "Secessionists hopeful despite odds" The Front page article was about a group calling themselves the "Republic of Texas" JB Dec Exh A	Yes	No. Admitted and still admit that Plaintiff is Secessionist Un-refuted and unable to refute.
1.4 Web article called Plaintiff a secessionist by caption and photographic implication and Title of on-line web article.	The on-line web article was titled "Ever hopeful and determined, Texas secessionists face long, long odds" The on-line article was about a group calling themselves the "Republic of Texas" JB Dec. Exh B.	Yes	No. Admitted and still admit that Plaintiff is Secessionist. Un-refuted and unable to refute. Baddour admitted that he labeled the Plaintiff a secessionist for his own reasons in an email to Plaintiff. P Affid Exh B-3 p4/8.
1.5 Publication of photo #3 in on-line	The on-line article contained 10	Yes	Un-refuted and unable to refute.

article.	photographs, all taken at the Plaintiff's building aka, "the Silver Eagle Taphouse" on Sat. 4/11/15. Picture #3 was of Plaintiff, Ronald Avery, standing at the microphone reading his paper on the dissolution of the United States of America. P Affid Exh A,G.		
1.6 Plaintiff contacted Baddour via writing on the blog under the on-line article.	Avery wrote on blog underneath the on-line article that he was considering a lawsuit for libel against the Houston Chronicle and could prove 1) The man in the jacket was not Plaintiff. 2) Plaintiff is not a member of the ROT. 3) Plaintiff is not anti-government....4) Plaintiff does not want nor advocate secession. P Affid Exh B-4 p7.	Yes	Un-refuted and unable to refute.
1.7 Baddour contacted Plaintiff about his articles.	Baddour sent email to Plaintiff Avery on 9/14/15 at 7:55 AM and Plaintiff replied by email same day at 9:25 AM that he was not the man in the picture and was not a member of the ROT. P Affid Exh B-4 p5-6.	Yes	No. Admission by Partial Correction Baddour says he corrected the Front page print article on Wednesday 9/16/15 by saying that the man in the blue ROT jacket was not Ronald Avery and that Ronald Avery is not a member of the ROT. DB Dec Statement #8.
1.8 Defendants do not make attempt to partially correct the on-line article until 11/9/15, three days after they had been served with this lawsuit.	Defendants put this statement at bottom of on-line web article on 11/9/15: " <i>This article has been edited to reflect the following information: In a photo caption accompanying this article about the Republic of Texas, a secessionist organization, the Chronicle incorrectly identified a man wearing a Republic of Texas</i>	Yes	No. Admission by Partial Correction Date of attempted partial correction is 11/9/15.

	<p><i>jacket as Ronald Avery. Avery is not a member of the organization and was not in the photograph."</i> JB Dec Exh B p7.</p>		
<p>1.9 Plaintiff calls all these "corrections" only partial as he can prove.</p>	<p>The resistance of Defendants to fully correct these articles clearly shows bad faith and malice.</p> <p>A full request for correction clarification and retraction statement was sent to Defendants on 9/29/15 by certified mail and by email. P Orig Pet Exh A. P Affid Exh B-1, B-2, B-3.</p>	<p>Yes</p>	<p>They refute unsuccessfully and say they have made full correction of false information in their two news stories.</p>
<p>1.10 Plaintiff calls all these "corrections" only partial because the on-line web article still shows Plaintiff as a member of the ROT in Photo #3.</p>	<p>Photo #3 of on-line web article shows Plaintiff, Ronald Avery, at the microphone reading his paper on dissolution of the USA. The caption beneath the photo says; "I n April, the Texian congress assembled beneath the blue-and-yellow flag of the old Republic, on the dance floor of the shuttered Silver Eagle Taphouse near the banks of the Guadalupe River in McQueeny. They follow a speaker list, and members take turns at the microphone. In this photo, an individual lists grievances with the U.S., including the 2008 bank bailout, NSA surveillance, the "police state" and "immoral wars." (Bolding added)</p> <p>Clearly, the photo and caption imply that Avery is still a member of the ROT.</p> <p>P Affid Addend #1 Exh I</p>	<p>Yes</p>	<p>No. Not refuted and cannot refute.</p>

2. Facts Referred to Plaintiff.	Facts	Established?	Refuted by Defendant?
2.1 Man in photograph wearing blue ROT jacket was identified in caption under photograph as Plaintiff, Ronald Avery.	The photograph of the man in the blue "Republic of Texas" jacket was identified by the on-line web article by name of Ronald Avery. JB Dec Exh. A	Yes	No. Not able to refute. Admitted by correction statement re: 1.8 Admitted by correcting Photo #1. Photo #3 is still not corrected.
2.2 Man in photograph wearing blue ROT jacket was identified in caption under photograph as Plaintiff, Ronald Avery.	The photograph of the man in the blue "Republic of Texas" jacket was identified by the paper article by name of Ronald Avery. JB Dec Exh. A	Yes	No. Admitted by Defendants saying they corrected it. But there is no concrete evidence before us showing the printed correction.
2.3 Implication that Plaintiff was a secessionist referred to Plaintiff.	Plaintiff being shown as member of a secessionist group referred to the Plaintiff.	Yes	No. Admitted and still admit that Plaintiff is a secessionist
2.4 Implication that Plaintiff was a secessionist connected him to the TNM and "Putin's Plot to Get Texas to Secede."	Baddour forced the ROT and Plaintiff to be secessionists so he could connect A linked article about a member of the TNM, a real secessionist group, going to Russia and meeting other "far right" types: "Nathan Smith, who styles himself the "foreign minister" for the Texas Nationalist Movement, appeared last Spring at a far-right confab in St. Petersburg, Russia. Despite roaming around in his cowboy hat, Smith managed to keep a low-key presence at the conference, which was dominated by fascists and neo-Nazis railing against Western decadence." JB Dec Exh D.	Yes	No. Baddour admitted and still admits that ROT and Plaintiff are secessionists. The article he linked to other secessionists was about the attraction secessionists have to the far-right, fascists and neo-Nazis. Upon showing this affinity Baddour connected other links to the far-right types further characterizing the Plaintiff by links and implications. Baddour claims he used links to "contrast" the peace loving ROT to other groups. If that were so he would not continue to stubbornly insist that the ROT and Plaintiff are secessionist. Baddour has made his articles dependent upon the ROT being a secessionist far-right group so he could attach other links to make enemies of the state out of them. The Hearst newspapers are known to have reported news of things that did not happen to cause the Spanish American War. Could it now be that they are making false statements about people to create domestic terrorists out of ordinary citizens?
2.5 Expression that Plaintiff as member of ROT is a secessionists and has affinity for far-right further implied Plaintiff was part of the "Growing	If Plaintiff is a secessionist then he is attracted to the far-right and would work with Putin and Russia to get Texas to secede. He would	Yes JB Dec Exh C.	Baddour says links draw "contrast." If they can contrast they can also characterize by drawing a parallel. Baddour says links cannot apply to Plaintiff as he is not mentioned by name. This is false. Guilt by association is applicable here and we must consider the

<p>Right-wing Terror Threat" in America.</p>	<p>also be part of the Growing Right-wing Terror Threat that is now worse than Muslim terrorism. JB Dec Exh E.</p>		<p>whole article and how it reads as one thing. We are to determine the gist and sting of the article to determine who and its harmfulness. 40% of the unsolicited blog replies show that the readers think that the ROT and the Plaintiff are ignorant, uneducated, gun freak malcontents, fanatics, traitors, wasting energy, deluded, cracked pots, or terrorists needing water boarding at GITMO. 0% were complimentary of Plaintiff and the ROT. No blog replies indicated they knew the Plaintiff and ROT were not secessionist.</p>
<p>2.6 Implication of Plaintiff as secessionist, far-right also implies he is also part of he Sovereign Citizen Extremist Movement.</p>	<p>Baddour makes the link in his on-line article to a DHS intelligence assessment about the Sovereign Citizen Extremist that will drive violence at home, during travel and in government facilities. JB Dec. Exh F All facts in the article apply to Plaintiff at this very hour as he is still shown as a member of the ROT, a secessionist group, in photo #3. P Affid Adden#1 Exh I.</p>	<p>Yes</p>	<p>Refuted but not conclusively and unable to refute conclusively. Defendants determined to maintain that the ROT and Plaintiff are secessionist because their whole article characterized by the links depends on secessionism and its association with the far-right. If the ROT and Plaintiff are not secessionists then the whole article is false along with all its links and they know it.</p>
<p>3. Facts were Defamatory: Statutory definition of libel TCPRC Sec 73.001: "A libel is a defamation expressed in written or other graphic form that tends to blacken the memory of the dead or that tends to injure a living person's reputation and thereby expose the person to public hatred, contempt or ridicule, or financial injury or to impeach any person's honesty, integrity, virtue, or reputation or to</p>	<p>Facts</p>	<p>Established?</p>	<p>Refuted by Defendant?</p>

publish the natural defects of anyone and thereby expose the person to public hatred, ridicule, or financial injury."			
3.1 Baddour expressed by caption and photographs that Plaintiff is a member of the ROT.	Plaintiff does not believe that the ROT still exists but rather that it was abandoned in favor of becoming a state by those who founded it.	Yes	No. Admitted by partial correction.
3.2 Baddour expressed by caption and photographs that Plaintiff is a secessionist which Baddour said in same two articles is a federal crime that would bring war to Texas. To charge a person with pursuing a crime is libel per se not requiring any showing of specific damages.	Secession was ruled by the Supreme Court of the United States to be illegal. The case is Texas v. White 1869 finding unilateral secession illegal and null and void. To pursue secession is illegal.	Yes	No. Not refuted and unable to refute.
3.3 Baddour expressed that Plaintiff, as a secessionist, is also "Far Right" wing and would work with other far right wing groups like Fascists and Neo-Nazis in foreign nations like Russia to get Texas to secede. JB Dec Exh D.	Defendant's blog under on-line article shows public hatred towards Plaintiff from as many as 40% of the readers who responded to the article. JB Dec Exh C	Yes	Yes & No Defendants claim links to article show "contrast." The preponderance of evidence shows that these links were taken by the readers to further characterize the ROT and the Plaintiff and draw parallels rather than a contrast. The Preponderance of evidence also shows that the Plaintiff was exposed to public hatred as readers replied that Plaintiff and members of the ROT should be sent to GITMO and be water boarded. JB Dec. Exh C pp 2,7.
3.4 Baddour expressed that Plaintiff as a secessionist member of the ROT and therefore, "far right" that Plaintiff was also part of the Growing Right Wing Terror Threat. JB Dec Exh E.		Yes	"
3.5 Baddour expression by link that Plaintiff as secessionist, and far right terrorist that Plaintiff was also part of the "Sovereign Citizen Extremists" that would "drive violence at home, during		Yes	"

travel and at government facilities." JB Dec Exh F.			
4. Facts were False	Facts	Established	Refuted by Defendant?
4.1 ROT not secessionists	P Affid Exh. E. email from V.P. JB Dec Exh G p. 6/12 ROT website JB Dec Exh A & B introduction.	Yes	Yes and No and unable to refute. Defendants argue that their definition of secession makes Plaintiff and ROT secessionist. Preponderance of evidence shows that the ROT is not a secessionist group. Evidence shows that both articles admit in the introduction that the ROT is not a secessionist group.
4.2 Plaintiff is not member of ROT & never has been.	No member of the ROT can deny that.	Yes	No. Admitted by partial correction made by Baddour
4.3 Plaintiff is not a secessionist but vehemently opposed to it.	P Affid Exh C&D.	Yes	
4.4 Plaintiff is not "far-right" or attracted to "fascists or neo-Nazis" or part of the "Growing Right Wing Terror Threat worse than Muslim terrorist" or the "Sovereign Citizen Extremist" that will "drive violence at home, during travel and at government facilities."	No one can show any evidence of these things.	Yes	No. Did not refute and unable to refute.
5. Baddour had Malice Definition: publishing a statement with knowledge of or reckless disregard for its falsity.	Facts	Established?	Refuted by Defendants
5.1 Baddour heard the Plaintiff read his paper on dissolution of the USA he made at the meeting of the ROT.	P Affid Exh. A Dissolution	Yes	No. Unable to refute Defendants claim their personal definition of secession includes dissolution. An absurdity on its face.
5.2 If Baddour slept through the Plaintiff's presentation on dissolution, Baddour and the Houston Chronicle learned the same day they published the	P Affid Exh B4 p 7/8. email to Baddour from Plaintiff not secessionist.	Yes	

<p>paper article 9/14/15 that Plaintiff was not a member of the ROT and was not a secessionist and why Plaintiff could not be a secessionist.</p> <p>On 9/16/15 Baddour says he corrected the paper article but continued to call the ROT a secessionist group even in the correction in spite of what the intro to his article stated about the ROT never being a part of the union.</p>	<p>JB Dec Exh. A&B. Baddour article introduction.</p>		
<p>5.3 After some 15 days of showing Baddour why Plaintiff and the ROT cannot be secessionist, and 3 days after Hearst was served, Baddour "corrected" his on-line web article by saying the ROT was a secessionist group.</p>	<p>P Affid Exh B-4 p1/8 Plaintiff questions why ROT is not protesting Chronicle claim that ROT are secessionist?</p>	<p>Yes</p>	<p>No. Unable to refute.</p>
<p>5.4 Baddour argues with Plaintiff in email and insists on labeling Plaintiff as secessionist in spite of being shown otherwise. This is evidence of intention to say false statements about the Plaintiff.</p>	<p>P Affid B-4 p 4/8</p> <p>Defendants maintain even in their pleadings that the Plaintiff is really a secessionist in spite of the fact that he is vehemently opposed to it.</p> <p>This is malice in the highest degree to force a man to be what he is not.</p>	<p>Yes</p>	<p>Yes & No</p> <p>Defendants argue that their definition of secession outweighs the Plaintiff's and that the Plaintiff is making a distinction without a difference.</p> <p>This is an absurd assertion. Defendants are free to write all their opinions about what secession is and isn't but they are not free to say that Plaintiff is a secessionists when the Plaintiff has proven otherwise and argues against secession at every opportunity as shown by all the evidence herein.</p> <p>P Affid Exh A, C, D, E.</p>
<p>5.5 The refusal of Defendants to correct photo #3 which still shows Plaintiff as a member of the ROT, a secessionist organization, shows malice and intent to make false statements about the Plaintiff.</p>	<p>P Affid adden#1 Exh I. DB Dec statement #8 JB Dec Exh B p 7/7</p>	<p>Yes</p>	<p>No! Admitted and even now plead that Plaintiff is a secessionist against the great weight of evidence to the contrary.</p>
<p>6. Plaintiff suffered damage: Defamation per se: Common law libel is per se with presumed damages if Plaintiff is falsely</p>	<p>Facts</p>	<p>Established</p>	<p>Refuted by Defendants</p>

<p>claimed to be involved in a crime like secession.</p> <p>If malice is shown in regard to a publication of public concern the injury is presumed <u>Snead v. Redland Aggregates Ltd. 998 F.2d 1325.</u></p>			
<p>6.1 Defendants published that Plaintiff was a secessionist, an illegal activity and federal crime, compelling use of federal force in Texas to thwart.</p>	<p>JB Dec Exh A&B p.5.</p>	<p>Yes</p>	<p>No! Unable to refute.</p>
<p>6.2 Malice was shown in that Baddour argued with Plaintiff and knowingly continues to call Plaintiff a secessionist in spite of vast preponderance of evidence to the contrary.</p>	<p>Re: 5.4</p>	<p>Yes</p>	<p>No! Unable to refute.</p>
<p>6.3 Both Articles taken as a whole express the falsehood that Plaintiff is Secessionist, Far Right, Fascist, Neo-Nazis, Sovereign Citizen Extremist, driving violence at home, in travel and at government facilities and a part of the Growing Right Wing Terror Threat worse than Muslim Terrorists exposing Plaintiff to Public Hatred.</p>	<p>JB Dec Exh C p 6/7: Otimio says Plaintiff is terrorist like Muslims, and should be sent to Gitmo and given enhanced interrogation.</p> <p>JB Dec Exh C p 2/7: Terrance Steele says "Maybe these flks need to be sent to Gitmo."</p>	<p>Yes</p>	<p>No. Unable to refute.</p>
<p>Step Three: If the Court finds that the Plaintiff has established Prima Fascia Evidence for every element of a Libel Suit the Burden shifts to the Defendants to show by a Preponderance of Evidence Each Essential Element of a Valid Defense:</p>	<p>Facts / Assertions / Law</p>	<p>Established?</p>	<p>Refuted by Plaintiff</p> <p>The Defendants are given an opportunity under this flawed legislation to defend themselves against a mere prima fascia case for libel under suspended discovery preventing Plaintiff from developing his case. This is another flaw in this legislation which defeats its intended and stated purpose.</p> <p>Defendants Motion to Dismiss is a lot more complimentary of Plaintiff then their original three page article they published. And their Motion to Dismiss is ten times larger than the full retraction they should have printed at the request of</p>

			<p>the Plaintiff prior to filing this libel suit.</p> <p>Defendants should not have opportunity to defend against this case when there is no evidence on record showing that this lawsuit is a SLAPP suit to prevent public participation by the defendants.</p>
1. Article incapable of Defamatory Meaning	Facts	Established?	Refuted by Plaintiff:
<p>1.1 Fair Comment: Fair to say one who makes <i>observation of dissolution</i> is advocate of secession.</p>	There are no facts to support such a notion in this case.	<p>No</p> <p>Baddour made no fair comments of his opinion understood by readers. No evidence readers picked up on any such opinion but only false facts reported.</p>	<p>Yes</p> <p>Comment must appear to reader as opinion only based on facts known by reader or reasonably assumed to be known by readers PRp14.</p> <p>Article reads as statement of fact not opinion PRp14.</p> <p>Where statements of Opinion do not accord with facts it is not comment but treated as statement of fact. <u><i>393 S.W.2d 671 Assoc Press v. Edwin Walker</i></u></p> <p>3 requirements of Fair Comment:</p> <ol style="list-style-type: none"> 1. Limited to Public Concern; 2. Must be Opinion not Statement of Fact; 3. Must be reasonable, fair and made in good faith. <p>It is not fair or reasonable to insist one who opposes secession is a secessionist just to make the person or group fit into another category like far right, right wing terrorist. Without the secession link the Plaintiff cannot be shown to be any of those other things.</p> <p>It is not good faith to refuse to correct false facts even after being informed of it.</p>
1.1.1. Must be Limited to Public Concern;		Maybe in broadest sense possible.	<p>Yes.</p> <p>No one needed to know anything about what was discussed at the meetings Baddour reported on as there was nothing they could do with the information regarding government or civic affairs.</p> <p>No public figures there at meeting. Defendants call Plaintiff a "self proclaimed Political Philosopher." Defendants knew Plaintiff was not public figure. PRp16</p>
1.1.2. Must be Opinion not Statement of Fact;	No facts to support this	No	<p>Yes.</p> <p>Articles read as Statements of Fact based upon facts. No one questioned Baddour's opinions because they appeared to reader as statements of fact.</p>
1.1.3. Must be reasonable, fair and	No facts to support this	No	Yes.

made in good faith			<p>It is not reasonable or fair to say that sovereign nations seek secession from other sovereign nations. PRp17 Beginning of both articles say the ROT does believe that Texas was never a part of the union and has remained a sovereign nation.</p> <p>ROT website says "no need to secede." JB Dec Exh G p6.</p> <p>V.P. of ROT says "RT does not support seceding from anything." P Exh E.</p> <p>No evidence that anyone in the ROT supports or advocates secession but rather opposes it.</p> <p>All evidence shows that Plaintiff is not a secessionist but rather an outspoken opponent of secession. A silly Google definition of secession does not make Plaintiff a secessionists in light of all the other evidence on record herein.</p>
1.2. Articles not Defamatory as matter of Law	Facts	Established?	Refuted by Plaintiff?
1.2.1. Political Dissent is not Defamatory. Right to dissent is not defamatory as matter of law.	Some facts negate this application of case law.	No	<p>Yes.</p> <p>Right of Dissent (ROD) does not include violation of federal law. JB Dec Exh A&B.</p> <p>ROD does not include going to Russia and meeting with neo-Nazis and Fascists to breakup America as part of Putin's Plot. JB Dec Exh D.</p> <p>ROD does not include acts of violence worse than Muslim Terrorists as part of a "Growing Right Wing Terror threat." JB Dec Exh E.</p> <p>ROD does not include driving violence at home, during travel and in government facilities as part of the "Sovereign Citizen Extremist Ideology." JB Dec Exh F.</p>
1.2.2. Articles not defamatory by reference to extrinsic facts as matter of law.	No facts support this application of case law	No	<p>Yes.</p> <p>Defendants in their Reply Memorandum of Law DMemo p 6 assert that Plaintiff has admitted that Defendants are not liable for extrinsic facts. This is false. Plaintiff made it clear in his Response p 19 that the Defendants were not liable for copyright violations for reprinting the contents of those links but were liable for the misuse of those links to characterize the Plaintiff.</p> <p>Defendants assert that use of links to other stories cannot be used to characterize or color the Plaintiff.</p> <p>But Defendants say they used the links to "contrast" between the ROT and other groups. Dmtd p 19. & Pr-mtd p 19.</p>

			<p>Defendants assert links can be used to contrast but not to characterize. That's ludicrous! If links can do one they can do the other! What determines their use is the language used to make the link or connection. There is no language that states the reader is to make a contrast. Without that language the reader easily draws a parallel between the two.</p> <p>Read quotes from article at Pr mtd p 20-21. Show us the contrasting language.</p> <p>A one time statement in the article that the RT "now forswears violence" without a link at that location is insufficient to make all those other links contrast rather than directly characterize.</p>
1.2.3. Articles not defamatory as matter of law because they don't mention Plaintiff or ROT.	<p>No facts or law to support this assertion.</p> <p>Implication: A person can be defamed by implication when a publication conveys a false and defamatory impression by omitting material facts or juxtaposing facts. Turner, 38 S.W.3d at 115.</p>	No	<p>Yes.</p> <p>Just because linked material does not mention the Plaintiff does not mean he is not characterized by those links. Some of their readers made the direct parallel between Plaintiff and links as did the Plaintiff. JB exh C p6/7. "They are traitors, terrorists wanting to harm the U.S.A., just like Muslim terrorists, round them up and put them in GITMO, give them the "Enhanced Interrogation." Who are traitors? The ROT and Plaintiff is a member by caption and photographs.</p>
1.2.4. Links are not defamatory as matter of law because they accused Plaintiff "of absolutely nothing except what he had a [well-established and celebrated First Amendment] right to do."	What Law?	No	<p>Yes.</p> <p>This is absurd! The linked material referred to groups that were a threat the people and their property and to law enforcement. Law enforcement does not issue intelligence and assessments on those who are not a threat.</p> <p>A parallel was drawn between the ROT, "a secessionist group," and other secessionists and other far right anti-government groups.</p> <p>And their web article to this day shows Plaintiff as a member at the microphone saddled with all that goes with being an ROT member and their characterization in the article with juxtaposing of links.</p>
1.3. Articles Not defamatory as matter of law because Articles are Substantially True	Facts	Established?	Refuted by Plaintiff?
1.3.1. Defendants assert that any one wanting out from under federal control is a secessionist.	There are no facts to support the notion that Plaintiff wants out from under federal control in the first place. An observation of	No	<p>Yes.</p> <p>Secession is the withdrawal of one entity from another. One cannot withdraw from a dissolved entity.</p> <p>The action or course people take to obtain lawful government depends upon</p>

	dissolution has nothing to do with Plaintiff's desire to be out from under federal control.		an accurate assessment of the lawful and legal standing of each of the governments in question. If a government containing states is dissolved the solution to obtain a lawful union cannot be secession.
1.3.2 Defendants assert: if the facts underlying the gist of the statement that Plaintiff is a secessionists are true or undisputed, courts can disregard any variance with respect to items of secondary importance and determine Substantial Truth as matter of Law.	There are no facts or law to support this assertion that Plaintiff is a secessionist when he opposes it with reason and principle.	?	Yes. The Ds think their Google definition of Secession will transform Plaintiff into a secessionist even when he has aggressively opposed it publicly for years on radio shows and in national newspapers PA statement #9 and exh A,C,D.
1.3.3 Defendants assert: that the end determines the cause and means. If a man is dead, he's dead, and it matters not how he died. Death by natural causes is the same as death by murder.	There is no authority or facts to support this assertion.		Yes Defendants have tried to equate secession to dissolution simply because one or more states would be independent rather than be part of a union after both a dissolution of the union or secession of one or more states. This is ridiculous. There is a vast difference between withdrawal of states and a dissolution of the union containing all states as has been shown on record herein P Affid Exh C.
1.4 Falsehood must be worse than Truth	Facts	Established?	Refuted by Plaintiff?
1.4.1. Defendants assert calling Plaintiff a "secessionist" is better than calling Plaintiff a "dissolutionist."	There are no facts or law to support this assertion.	No	That might be true if the Defendants got to tell the public how they think Plaintiff is a "dissolutionist." It would not be true if Plaintiff was to describe himself to the public. Pr mtd p 23-26. Plaintiff is really an unwilling victim of a dissolution of the union and state caused by tyrannical actions of those in the seats of it. That cannot possibly be worse than a secessionist going to Russia to meet with neo-Nazis and Fascists to participate in Putin's plot to get Texas to Secede; or drive violence at home, during travel and in government facilities as part of the Sovereign Citizen Extremists; or do violence more dangerous than Muslim terrorists as a part of the growing right wing terrorist threat.
1.4.2 Defendants assert Plaintiff's admitted political beliefs render articles substantially true & non-actionable by law	There are no facts or law to support this assertion	No	This despicable assertion is an outright lie told by Defendants when referring to Plaintiffs advocacy of the 2nd Amendment right to keep and bear military style arms. Defendants attempt to make Plaintiff into a advocate of violent revolution to overthrow the nation and state.

			<p>Plaintiff never "admitted" to the "political beliefs" that the Defendants have hung around his neck for millions to read which they have not corrected or retracted to this very day.</p> <p>Plaintiff has never been treated like this by any other source that has heard him speak.</p> <p>Plaintiff has never received such hateful comments as a result of characterizations of him such as midpage Pr mtd p 27.</p> <p>"Maybe these flks need to be sent to Gitmo. Just a bunch of gun freak malcontents. This is the result of under-funded public education. Headline should read ever hopeful and DELUDED, Texas secessionists face long, long odds. What a sad and deluded bunch. They are traitors, terrorists wanting to harm the U.S.A., just like the Muslim terrorists, round them up and put them in GITMO, give them the "Enhanced Interrogation." Crackpots!</p> <p>Would these readers had said the same thing if they learned that Plaintiff was an unwilling victim of the tyrannous dissolution of his nation and state of which they too are victims?</p>