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**UNITED STATES DISTRICT COURT
DISTRICT OF MONTANA
MISSOULA DIVISION**

ROBERT MYERS,)	
)	Case No. _____
Plaintiff,)	
)	
v.)	VERIFIED COMPLAINT
)	
WILLIAM E. FULBRIGHT, in his official)	
capacity as the County Attorney for Ravalli)	
County; TIMOTHY C. FOX, in his official)	
capacity as Attorney General for the State)	<u>Related Matter Pending:</u>
of Montana,)	
)	<i>Myers v. Thompson,</i>
Defendants.)	CV-16-45-H-DWM-JCL
)	

PRELIMINARY STATEMENT

1. This case arises from the 2016 campaign for Ravalli County District Judge between Plaintiff Robert Myers and Judge Jeffrey Langton. Myers asserted during the campaign that Judge Langton was unfit for office. Montana’s Office of Disciplinary Counsel (ODC), the state agency established to enforce the state’s

rules of professional conduct, filed two complaints against Myers during the campaign, at least one of which came at the behest of Judge Langton.

2. During the closing weeks of the campaign, Myers published campaign advertisements asserting that Judge Langton had abused his power as a judge by having impermissible conflicts of interest in criminal cases when he was the presiding judge. In one case, he was accused of purchasing drugs from, and providing alcohol to, a 13-year-old boy over whom he later sat in judgment. These allegations are corroborated by sworn affidavits from witnesses.

3. In January 2017, ODC filed a third complaint against Myers based upon these campaign advertisements. Myers has since been preparing his defense to this latest ODC complaint, which includes marshaling additional evidence of illegal drug use and other evidence of Judge Langton's abuses of power.

4. Earlier this week, these efforts ground to a halt when Myers received a telephone call from the Missoula County Sheriff's Department. A sheriff's detective stated that Judge Langton had filed a criminal defamation complaint against Myers based upon Myers' campaign statements. The detective stated further that he was "investigating" the criminal complaint and "interviewing" witnesses.

5. The ODC's multiple disciplinary complaints against Myers did not deter him from exposing Judge Langton's misconduct. So now the government has

doubled-down by threatening him with criminal prosecution based upon a patently unconstitutional criminal defamation statute.

6. The government is also “investigating” witnesses who are needed by Myers to defend himself against its pending attorney disciplinary charges. When these witnesses discover that there is an investigation of Myers for criminal defamation based upon Myers’ allegations of misconduct by Judge Langton, they will become hesitant, to put it charitably, about testifying regarding their own knowledge of Judge Langton’s misconduct.

7. Myers is therefore asking this Court to promptly strike down Montana’s criminal defamation statute as unconstitutional not only to prevent himself from being illegally prosecuted in a criminal proceeding, but also to encourage other witnesses to come forward without fear that their testimony about Judge Langton’s misconduct will result in *them* being charged with criminal defamation.

JURISDICTION AND VENUE

8. This Court has jurisdiction under 28 U.S.C. §§1331, 1343, 42 U.S.C. §1983, and the First and Fourteenth Amendments to the United States Constitution.

9. Venue for this action properly lies in the Missoula Division of the District of Montana because Defendant Fulbright is believed to reside within the Missoula Division.

PARTIES

10. Plaintiff Robert Myers resides in Ravalli County in the State of Montana and is licensed to practice law in the State of Montana.

11. Defendant William Fulbright is the County Attorney for Ravalli County. He is responsible for prosecuting violations of Montana criminal statutes committed within the county, including Mont. Code Ann. § 45-8-212, the state's criminal defamation statute. Myers is informed, believes, and therefore alleges that Defendant Fulbright resides in Ravalli County in the State of Montana.

12. Defendant Timothy Fox is Montana's Attorney General and has authority to investigate and prosecute violations of Montana's criminal statute by and through the county attorneys under his supervision. Myers is informed, believes, and thereon alleges that Defendant Fox resides in Lewis & Clark County in the State of Montana.

STATEMENT OF FACTS

I. Commencement of Myers' Campaign to Challenge Judge Langton

13. On or about January 14, 2016, Judge Langton announced his campaign for re-election to the position of District Judge for the Twenty-First Judicial District of Montana, Department 1.

14. The boundaries of the Twenty-First Judicial District of Montana are

coterminous with those of Ravalli County, Montana.

15. On or about March 15, 2016, Myers announced his campaign to seek election to District Judge for the Twenty-First Judicial District of Montana, Department 1.

16. Myers' campaign included informing voters that Judge Langton was unfit for office by describing for voters instances in which he abused his power.

17. For example, the Montana Supreme Court publicly reprimanded Judge Langton in September 2005 for his "conduct involving past alcohol abuse and related incidents."

18. A true and correct copy of this reprimand is attached as Exhibit 1.

19. This was a reference to Judge Langton's arrest and conviction for driving a motor vehicle in February 2005 while his blood alcohol content was over twice the legal limit.

20. At the time Langton was arrested for drunk driving, he told the officer, "I hope you know what you are doing."

21. On June 11, 2005, police found Judge Langton passed out drunk in a hotel hallway in Missoula in violation of the terms of a court order to refrain from consuming alcohol.

22. In January 2006, Robert Deschamps (who is now a Montana district court judge) issued a report involving an additional violation by Judge Langton of

the court's order not to visit bars and other locations where alcohol is served.

II. ODC's First Complaint Against Myers

23. A month after Myers announced his candidacy in March 2016, ODC filed a complaint against Myers.

24. A true and correct copy of this complaint (Case No. PR-16-0245, filed April 22, 2016), is attached as Exhibit 2.

25. The complaint contains allegations of professional misconduct allegedly occurring in 2013 and 2014 during a divorce matter in which Myers was counsel of record.

26. ODC waited until a month after Myers declared his candidacy in March 2016 before filing the complaint.

III. ODC's Second Complaint Against Myers

27. On or about April 30, 2016, the *Ravalli Republic* newspaper contacted Myers for his response to the ODC complaint.

28. Myers provided a written statement asserting, *inter alia*, that Judge Langton abused his position of power.

29. A true and correct copy of the statement is attached as Exhibit 3.

30. On May 1, 2016 the *Ravalli Republic* published an article concerning the

complaint as well Myers' response.¹

31. Later in May 2016, Judge Langton's law clerk complained to ODC about Myers' campaign statements.

32. ODC responded with what this Court later described as a "fishing expedition"² against Myers by demanding that he "provide ODC with digital copies of all published campaign materials, whether written, video, or audio, including all television or radio advertisements, with written transcripts, aired by your campaign. ODC also requires the invoices and publishing contracts related to all advertising materials, including the publishing dates and frequency of all materials." ODC also demanded that Myers to produce "any internet/social network posting by yourself, your campaign, or affiliated campaign committees/groups."

33. A true and correct copy of these demands is attached as Exhibit 4.

34. Myers responded by filing an action in this Court on June 6, 2016, challenging the constitutionality of various disciplinary rules prohibiting attorneys from making false or misleading statements against a judicial officer.³

¹ A copy of the story can be found at ravallirepublic.com/news/local/article_05d0cf56-0f17-11e6-ae26-9b8160403b42.html

² See *Myers v. Thompson*, (9th Cir. No. 16-35540), DktEntry 8-2, ER 56.

³ See *Myers v. Thompson* (D. Mont., CV-16-45-H-DWM-JCL), *ECF No. 1*.

35. ODC filed another disciplinary complaint, (Case No. PR 16-0411), against Myers on July 15, 2016.

36. A true and correct copy of this complaint is attached as Exhibit 5.

37. Among other allegations, the complaint alleges that Myers' accusation to the *Ravalli Republic* concerning Judge Langton's abuse of power was false.

Exhibit 5, ¶¶ 14-15.

38. On September 12, 2016, Myers filed an amended complaint in this Court in which Myers identified his statement to the *Ravalli Republic* as one of his campaign statements.⁴

39. Myers asserted that the rules that ODC was attempting to use to discipline him were unconstitutional on their face and as applied to him.

40. Myers intends to show that, even if the rules are constitutional on their face, they cannot be constitutionally applied to him because his allegations of abuse of power by Judge Langton are true.

41. He intends to show this by, *inter alia*, offering testimony from witnesses who have observed Judge Langton using illegal drugs and have witnessed other instances of abuses.

42. On September 26, 2016, Myers supplemented his witness list in *Myers v. Thompson* in accordance with Fed. R. Civ. Proc. 26(a), by identifying Rex Walker

⁴ See *Myers v. Thompson* (D. Mont., CV-16-45-H-DWM-JCL), *ECF No. 40*

as someone who was “expected to testify that he was on juvenile probation under Judge Langton and that Judge Langton abused his authority in his dealings with Mr. Walker.”

43. A true and correct copy of this disclosure is attached as Exhibit 6.

44. In that same disclosure, Myers identified Heather Portner as someone who was “expected to testify with regard to how Judge Langton abused his power when he sentenced her ex-boyfriend and ordered his incarceration in state prison.”

IV. ODC’s Third Complaint Against Myers

45. On October 11, 2016, Myers obtained from Rex Walker a sworn affidavit stating that Walker sold methamphetamine to Judge Langton on several occasions when Mr. Walker was thirteen years of age. The affidavit also alleges that Judge Langton provided Mr. Walker alcohol when he delivered the methamphetamine to Judge Langton’s house. It also states that Judge Langton later sat in judgment of Mr. Walker.

46. A true and correct copy of this affidavit is attached as Exhibit 7.

47. On October 13, 2016, Myers obtained from Robert Farmer a sworn affidavit stating that Heather Portner had admitted to Farmer that she and Judge Langton used illegal drugs together and that Heather Portner had a sexual relationship with Judge Langton.

48. A true and correct copy of this affidavit is attached as Exhibit 8.

49. In October 2016, Myers' campaign advertising included allegations that witnesses had "come forward with first-hand knowledge of Langton's drug use but are afraid of retaliation. Fear of retaliation was the primary reason that the recall petition against Langton failed...."

50. Langton defeated Myers at the polls on November 8, 2016.

51. ODC filed a third complaint, (Case No. PR 17-0026), against Myers on January 13, 2017, based upon Myers' campaign advertisements published in October 2016.

52. A true and correct copy of this complaint is attached as Exhibit 9.

53. Myers began preparing his defense to the allegations contained in PR 17-0026.

54. This defense includes attempting to locate and interview other persons who have witnessed Judge Langton using illegal drugs and other instances of his abuse of power.

V. The Criminal Defamation Complaint & "Investigation" of Witnesses Who Can Corroborate Evidence of Illegal Drug Use by Judge Langton

55. On May 1, 2017, Detective Garrett Van Hoose of the Missoula County Sheriff's Office left a telephone message for Myers and requested that Myers

contact him.

56. Myers did so moments later and inquired as to the reason for the message.

57. Detective Van Hoose informed Myers that Judge Langton had filed a criminal defamation complaint against Myers based on Mont. Code Ann. § 45-8-212.

58. Detective Van Hoose stated that the complaint had been forwarded from the Ravalli County Sheriff's Office to the Missoula County Sheriff's Office for investigation.

59. Myers asked Detective Van Hoose about the subject matter of the investigation.

60. Detective Van Hoose stated that the complaint was based upon Myers' campaign advertising published during the last part of the 2016 campaign for district court judge.

61. Detective Van Hoose identified persons he was seeking to interview, including Rex Walker, Robert Farmer, and Heather Portner.

62. Myers explained to Detective Van Hoose that he was very careful in preparing his campaign advertising and had affidavits from both Farmer and Walker to support the claims he made in his campaign advertising.

63. Detective Van Hoose stated that when the Missoula County Sheriff's

Department completes its investigation, the Department would forward a report to the Ravalli County Attorney's Office.

64. The government's "investigation" of Myers' alleged criminal defamation and impending filing of criminal charges is preventing him from preparing his defense against the government's disciplinary proceedings by inhibiting him from speaking with witnesses concerning Judge Langton's misconduct.

65. It is also inhibiting Myers from continuing to speak out about Judge Langton's misconduct.

CAUSES OF ACTION

FIRST CLAIM FOR RELIEF

Montana's Criminal Defamation Statute Violates the Free Speech Clause of the First Amendment to United States Constitution On Its Face

66. All previous paragraphs are incorporated by reference.

67. Section 45-8-212 of the Montana Code Annotated imposes criminal penalties for defamation.

68. The statute violates the First Amendment on its face.

69. Until this Court grants relief, Myers will continue to suffer irreparable injury to his First Amendment right to interview witnesses in preparation to defend against the government's attorney disciplinary proceedings and will likely soon suffer a criminal prosecution for defamation.

70. Myers is therefore entitled to immediate declaratory and injunctive relief from this Court.

SECOND CLAIM FOR RELIEF

Montana's Criminal Defamation Statute Violates the Free Speech Clause of the First Amendment to United States Constitution as Applied to Myers

71. All previous paragraphs are incorporated by reference.

72. Myers has never made an accusation about Judge Langton with actual malice.

73. Moreover, the criminal defamation "investigation" initiated by Judge Langton as a result of Myers' allegations of misconduct by Judge Langton will chill witnesses of ordinary firmness from corroborating those allegations.

74. Myers is therefore entitled to immediate declaratory and injunctive relief from this Court.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Robert Myers requests the Court grant the following relief:

- a) Declare that Mont. Code Ann. § 45-8-212, is unconstitutional;
- b) Enjoin Defendants from enforcing Mont. Code Ann. § 45-8-212;
- c) Award Myers nominal damages against Defendants;
- d) Award Myers his costs of litigation, including reasonable attorneys' fees and expenses, pursuant to 42 U.S.C. § 1988; and

e) Grant such other relief to which Plaintiff Myers may be entitled, or as this Court deems necessary and proper.

DATED: May 4, 2017

Respectfully submitted,

By: /s/ Matthew G. Monforton
Matthew G. Monforton
Attorney for Plaintiff


VERIFICATION BY ROBERT MYERS

I, Robert Myers, declare as follows:

1. I am the Plaintiff in the above-entitled matter.
2. I have reviewed the attached Complaint and declare that the facts and allegations contained therein are true, except insofar as they are stated to be on information, and that, insofar as they are stated to be on information, I believe them to be true.

I declare under penalty of perjury under the laws of the United States of America that the statements contained in this Declaration are true and correct.

Executed on May 4, 2017, in Hamilton, Montana.



Robert Myers
Declarant