

IN THE CIRCUIT COURT FOR THE SIXTEENTH JUDICIAL CIRCUIT
KANE COUNTY, ILLINOIS

ELIZABETH and ROBERT EARL, MIKE)
FRALIC, MARY LU and GREG GUEST, CAROL)
HAYES, CAROLYN and PETER KRYSIAK,)
CYNTHIA LINN, MARY ELLEN and)
RICHARD O'ROURKE, DIANE PICCIUOLO,)
MAUREEN and WILLARD POTT, APRIL and)
ERIC SCHEIDLER, MARY and RICHARD)
VILIM, and JOHN WIESNER, and PRO-LIFE)
ACTION LEAGUE, INC., an Illinois non-profit)
corporation)

Plaintiffs,)

vs.)

STEVEN TROMBLEY, PLANNED)
PARENTHOOD OF ILLINOIS, as successor to)
PLANNED PARENTHOOD CHICAGO AREA,)
and GEMINI OFFICE DEVELOPMENT LLC)

Defendants.)

No. 07 LK 513

Hon. Judith M. Brawka

**MEMORANDUM IN SUPPORT OF DEFENDANTS' MOTION TO DISMISS
AMENDED COMPLAINT PURSUANT TO SECTION 2-619.1 AND FOR
FURTHER RELIEF UNDER THE CITIZEN PARTICIPATION ACT**

Plaintiffs' Amended Complaint does nothing to change the improper nature of the lawsuit they have attempted to bring. Illinois' Citizen Participation Act specifically protects the constitutional right to engage in the very type of speech that is at issue here. The Act was passed to put an end to lawsuits like this which attack citizens' exercise of their constitutional rights to participate in government. Moreover, the alleged statements are not defamatory -- plaintiffs' improper motive is evidenced by the complete absence of a viable claim. The alleged defamatory statements do not refer to or even mention any of the individual plaintiffs. Moreover, these plaintiffs have no possibility of stating a claim as these statements are capable of a reasonable innocent construction. The statements about the Pro-Life Action League are both true and protected by a qualified privilege. Allowing plaintiffs' defamation action to proceed would prohibitively compound the already significant burdens and risks faced by those who seek to participate publicly on issues of public concern and controversy. Plaintiffs' amended complaint should be dismissed with prejudice pursuant to Section 2-619.1.

BACKGROUND

The Opening of Planned Parenthood in Aurora

The heated community controversy surrounding Aurora's Planned Parenthood of Illinois¹ health center began in mid-2007 when it became known that a medical facility under construction was to have a Planned Parenthood clinic. (*See* Am. Compl. ¶ 11.) The Aurora Planned Parenthood health care center provides comprehensive gynecological services, including breast exams, pap tests, pregnancy tests, screening and treatment for sexually transmitted infections and abortion services. (*Id.* Ex. A, p. 1.)

¹ On March 1, 2008, Planned Parenthood Chicago Area changed its name to Planned Parenthood of Illinois.

Notwithstanding that the facility provides many important services for families in the community, Planned Parenthood faced vigorous opposition from persons who opposed it and its constitutionally protected healthcare activities. (*See id.* ¶¶ 10-11.) In response to this opposition, Planned Parenthood and its president, Steven Trombley, appealed to the citizens of Aurora and Aurora officials explaining the organization’s plans and goals, as well as its concerns about safety. (*See id.* Ex. A & B.)

The individual plaintiffs are 17 individuals residing in Aurora or nearby communities who purportedly belong to an “*ad hoc* unincorporated association” called Fox Valley Families Against Planned Parenthood (“Fox Valley Families.”) (*Id.* ¶¶ 1, 5.) According to plaintiffs, they are among the “hundreds and thousands of persons who had opposed the opening and continue to oppose the ongoing operation” of the Planned Parenthood facility in Aurora. (*Id.* at ¶ 5.) As identified in the Amended Complaint, Fox Valley Families has taken various actions to protest the opening of the facility, including writing protest letters, contacting public officials, participating in prayer vigils and attending protests and rallies. (*Id.* ¶¶ 5,11.)

In response to Defendants’ motion to dismiss, plaintiffs have added the Pro-Life Action League as a party to their Amended Complaint. (Am. Compl. ¶ 1.) The Pro-Life Action League “has over 5,000 members”. *See* <http://www.prolifeaction.org/faq/league.htm#members> (last visited May 14, 2008), a copy of which is attached hereto as Exhibit A.² According to plaintiffs, the Pro-Life Action League engages in “pro-life

² This Court may take judicial notice of the information about the organization contained on the Pro-Life Action League website for the purposes of the 2-619 motion. *People v. Young*, 355 Ill. App. 3d 317, 321 n.1 (2d Dist. 2005) (taking judicial notice of information on Department of Corrections website); *see also, Shen Wei (USA) Inc. v. Sempermed, Inc.*, 2007 U.S. Dist. LEXIS 7235, at *8 n.3 (N.D. Ill. Jan. 30, 2007) (“a court may take judicial notice of information publicly announced on a party’s website [on motion to dismiss] as long as the website’s authenticity is not

activism” throughout the United States. (Am. Compl. ¶ 1.) Eric Schiedler is the only individual plaintiff who is alleged to be both a member of the Fox Valley Families and the Pro-Life Action League. (*Id.*) Eric Scheidler established an office for the Pro-Life Action League in Aurora and acts as the Pro-Life Action League’s Communications Director. (*Id.* ¶ 1, 17)

The Publications At Issue

Plaintiffs’ claims arise from statements in two publications. First, plaintiffs have alleged that they were defamed by a letter Mr. Trombley wrote to Aurora Alderman Lawrence (“Letter to Alderman Lawrence”) on September 4, 2007. (*See Id.* ¶ 12, Ex. A.) While Plaintiffs only attach the letter sent to the alderman, the Amended Complaint acknowledges that Mr. Trombley also sent the letter to various other officials of the city of Aurora, including the Mayor. (*Id.*) At the time Mr. Trombley sent his letter, there was significant publicity over -- and much public debate regarding -- the manner through which Planned Parenthood obtained building permits for the Aurora facility. (*See Id.* ¶¶ 6-7.) Mr. Trombley's letter was written in response to persons who were asking the city of Aurora to prevent the opening of the Planned Parenthood facility because a Planned Parenthood subsidiary, Gemini, rather than Planned Parenthood itself, had developed and built the clinic. *Id.* He explained, “those that oppose these services and this facility have asked the city of Aurora to take action to prevent the opening of the facility” and “I am aware that last week you heard from a number of residents organized by the Pro-Life Action League....” (*Id.* Ex. A, at 1.) Mr. Trombley acknowledged his awareness of the

in dispute and it is capable of accurate and ready determination.”) (internal quotations omitted); *Lan Lan Wang v. Pataki*, 396 F. Supp. 2d 446, 458 (S.D.N.Y. 2005) (taking judicial notice of real estate listings on website and granting motion to dismiss).

politically-charged nature of the dispute surrounding the facility and the opposition that the organization faced among some in the community. (*Id.*) In addition to providing information about the various health care services Planned Parenthood was bringing to Aurora, Mr. Trombley's letter sought to explain to the city officials why Planned Parenthood found it necessary to develop the clinic through a subsidiary to protect the privacy and safety of those involved in the project during the permitting process. (*Id.* at 1-2 (stating "you will understand the urgency of our concerns [regarding safety] when you consider the following facts about the Pro-Life Action League and...Joe Schiedler.") Seeking to illustrate the dangers faced by Planned Parenthood, its clients, as well as its vendors, Mr. Trombley described his past experiences with the Pro-Life Action League and its leader, Joe Scheidler. (*Id.* at 2-3 (stating "the activists of the Pro-Life Action League...have a well-documented history of violence against both persons and property as well as other related criminal activity.")) Mr. Trombley explained a prior jury verdict reached against the Pro-Life Action League for its unlawful activities and Joe Scheidler's praise for the misdeeds of anti-abortion extremists. (*Id.*) The 1998 jury verdict unanimously found that the Pro-Life Action League orchestrated 121 crimes involving threats of force or violence against health facilities that offered abortions. (*Id.*) *See also*, Jury Verdict from *NOW v. Schiedler, et al.*, No. 98 C 7808 (attached as Exhibit B) at 2.³ Mr. Trombley also included statements made by Joe Schiedler that advocated violence and actions that had been taken by members of the Pro-Life Action League towards those participating in the construction of the facility. (*Id.*) The letter defended Planned

³ This Court may take judicial notice of the jury verdict form previously submitted to the Court as Attachment C to plaintiffs' response to the original Motion to Dismiss. *Primax Recoveries, Inc. v. Atherton*, 851 N.E.2d 639, 644 (5th Dist. 2006) (taking judicial notice of order entered by another court).

Parenthood's actions in the permitting process and assured the alderman of Planned Parenthood's intent to serve the people of Aurora by providing them high-quality family health care services. (*Id.* at 3.) Mr. Trombley invited the alderman to contact him in order to ask any questions or to obtain any information regarding the issues in dispute. (*Id.*)

Plaintiffs also identify a Planned Parenthood announcement published in the *Aurora Beacon News* (the "Beacon Public Notice"). (Am. Compl. ¶ 21, Ex. B.) The Beacon Public Notice sought public support for the upcoming opening of the Planned Parenthood facility. (*Id.*) It explained Planned Parenthood's mission of meeting the health care needs of the community. (*Id.*) Most importantly, the Beacon Public Notice was a call to action for the citizens of Aurora. Planned Parenthood implored: "DON'T LET THE EXTREMISTS DENY VITAL HEALTH CARE TO THE PEOPLE OF AURORA." (*Id.*) The notice described the violent opposition Planned Parenthood had faced in the past, identifying the actions taken by the Pro-Life Action League and Joe Scheidler. (*Id.*) Highlighting concerns about the safety of those associated with Planned Parenthood, the notice also explained the prior jury verdict reached against the Pro-Life Action League for its unlawful activities. (*Id.*) The Beacon Public Notice assured the community that Planned Parenthood would not be deterred from its goals and would continue its pursuit of providing much needed family health care services. (*Id.*) The notice finished with the following appeal to all readers: "CALL YOUR ALDERMAN IN THE AURORA CITY COUNSEL AT 630.844.3619 AND LET THEM KNOW YOU SUPPORT PLANNED PARENTHOOD." (*Id.*)

Neither the Letter to Alderman Lawrence nor the Beacon Public Notice mentioned a single one of the individual plaintiffs, nor their organization—Fox Valley Families. (*See Am. Compl., Ex. A, B.*) The only anti-abortion activists identified in either publication were Joe Schiedler, not a plaintiff here, and the Pro-Life Action League. (*See id.*)

The Allegations Of Plaintiffs’ Amended Complaint

Plaintiffs allege the Defendants “have committed libel *per se*” by virtue of the statements contained in these two publications. (*Id.* ¶¶ 16, 23.) Notwithstanding that the Letter to Alderman Lawrence only referred to Joe Schiedler and the Pro-Life Action League, plaintiffs contend that the letter stated falsehoods that “pertained directly and unmistakably to the plaintiffs as well as others who have been opposing defendants’ proposed operation in Aurora.” (*Id.* ¶ 13.) The Amended Complaint suggests that Mr. Trombley’s statements are defamatory because “they cast the plaintiffs, and each of them, as well as others affiliated with Fox Valley Families in a false light as violent criminals guilty of serious felonies.” (*Id.* ¶ 16.)

Plaintiffs also allege that Defendants “*intended*” the Beacon Public Notice “to refer to plaintiffs who ‘opposed’ defendants’ facility and thus were *deemed by defendants* to be ‘extremists’ who were said to have well-documented criminal histories as well as a history of advocating criminal activity by others.” (*Id.*) (emphasis added). Plaintiffs provide no facts in support of these conclusions about Defendants’ “intentions”. (*See id.*)

Individual plaintiffs conclusorily allege that Defendants’ statements have harmed their reputations with and among their neighbors in Aurora and surrounding

communities. (*Id.*, at 18, 23.) Without any factual support, the new allegations of the Amended Complaint assert that plaintiffs' property values plummeted "owing to defendants' publicizing the fact" that the new facility contained bulletproof glass. (*Id.* at 23.) Finally, plaintiffs contend that, as a result of Defendants' statements the City of Aurora has limited their activities. (*Id.*)

ARGUMENT

SECTION 2-615 MOTION TO DISMISS

I. ILLINOIS'S CITIZEN PARTICIPATION ACT⁴ PROTECTS DEFENDANTS' RIGHT TO EXERCISE FREE SPEECH AND GRANTS THEM ABSOLUTE IMMUNITY AGAINST PLAINTIFFS' CLAIMS

The Citizen Participation Act provides persons who seek to petition government and speak out on political issues, like Defendants, the "utmost protection for free exercise of these rights..." 735 ILCS 110/5 (2007). Recognizing that the "rights of citizens and organizations to be involved and participate freely...must be encouraged and safeguarded with great diligence" the Act expressly immunizes the Defendants' exercise of free speech and disposes of this lawsuit in its entirety. *See id.*; 735 ILCS 110/15.

A. Purpose and Language of Illinois' Citizen Participation Act

The Illinois Legislature has recently joined a growing number of states⁵ in enacting legislation that provides added protection to individuals who speak out on matters of public concern. The Citizen Participation Act provides a remedy to individuals

⁴ Illinois' Citizen Participation Act is commonly referred to as an "Anti-SLAPP" statute. The statute is intended to address the "disturbing increase in lawsuits termed 'Strategic Lawsuits Against Public Participation'..." 735 ILCS 110/5.

⁵ States that have enacted Anti-SLAPP legislation include: AZ, AK, DE, FL, GA, HI, IN, LA, ME, MA, MN, MS, NE, NV, NM, NY, OK, OR, PA, RI, TN, UT, WA.

faced with harassing lawsuits whose purpose is to chill protected expression. *See* 735

ILCS 110/1 *et seq.* The very language of the Act explains this concern stating:

The threat of SLAPPs significantly chills and diminishes citizen participation in government, voluntary public service, and the exercise of these important constitutional rights. This abuse of the judicial process can and has been used as a means of intimidating, harassing, or punishing citizens and organizations for involving themselves in public affairs.

735 ILCS 110/5. Acknowledging the profound importance of safeguarding the ability of citizens and organizations to exercise their right of public speech and the methods of doing so, the Citizen Participation Act provides that any “acts in furtherance of the constitutional rights to petition, speech, association, and participation in government...*are immune from liability, regardless of intent or purpose*, except when not genuinely aimed at procuring favorable government action, result, or outcome.” 735 ILCS 110/15 (emphasis added.) In providing this unqualified immunity, the Act further explains that the statute “shall be construed liberally to effectuate its purposes and intent fully.” 735 ILCS 110/30(b). By creating this broad scope of protection for *any* speech aimed at procuring favorable government action, Illinois’ General Assembly was even more expansive in its language than many of the early Anti-SLAPP statutes it followed.

B. Defendants Are Protected From Plaintiffs’ Allegations Under the Citizen Participation Act

Both the Letter to Alderman Lawrence and the Beacon Public Notice are precisely the type of speech seeking to procure favorable governmental action that the Illinois legislature sought to protect with the Citizen Participation Act. Plaintiffs concede that both publications were made in the midst of the very public effort to stop Planned Parenthood from opening its facility. (*See* Am. Compl. ¶¶ 11, 12, 14.) This effort

included those opposed to the clinic's opening seeking support for their position from public officials. Indeed, plaintiffs describe their activities in opposition to Planned Parenthood and the facility as exercising "their First Amendment rights and civic duties to speak out on public issues of the utmost gravity..." (*See id.* ¶¶ 11-12.)

The Letter to Alderman Lawrence was written to a city official seeking government support for Planned Parenthood and the opening of the new facility. It was written in direct response to the protests and political action taken by persons opposing the opening of the facility and their complaints about how Planned Parenthood handled the permitting process. (*See id.*, Ex. A.) The letter expressed Mr. Trombley's views on the dispute, defended the actions that Planned Parenthood took to safeguard the facility, and shared his concerns about the safety of citizens associated with the Planned Parenthood facility—particularly those building the facility in the midst of such a politically charged situation. (*See id.*) Mr. Trombley sought the cooperation of the City of Aurora and requested that the alderman contact him with any questions. (*See id.* at 1, 3.) Without question, Mr. Trombley was openly and directly participating in the process of government by responding to his organization's opponents through an appeal to relevant government officials and seeking their support. As such, his statements are just the form of speech Illinois has deemed most important and worthy of its statutory protection: "the public policy of the State of Illinois is that the constitutional rights of citizens and organizations to be involved and participate freely in the process of government must be encouraged and safeguarded with great diligence." 735 ILCS 110/5.

The Beacon Public Notice was, on its face, a direct appeal to the citizens of Aurora to participate in government and voice their opinion in the public debate: "CALL

YOUR ALDERMAN IN THE AURORA CITY COUNCIL AT 630.844.3619 AND LET THEM KNOW YOU SUPPORT PLANNED PARENTHOOD.” (See Am. Compl., Ex. B.) Like the letter, the Beacon Public Notice explained Planned Parenthood’s plans and goals and expressed concerns about the safety of those citizens associated with the new facility. (*Id.*) Such an advertisement clearly relates to the process of government—a direct appeal for support from local citizens on an issue of grave public concern.

Plaintiffs’ attack on the Defendants for these statements is precisely what the Citizen Participation Act was enacted to remedy -- private citizens having to face burdensome, expensive, and distracting litigation for exercising their First Amendment rights to seek governmental action. See *Shoreline Towers Condominium Ass’n v. Gassman*, No. 07 CH 06273 (March 25, 2008) (attached as Exhibit C) at 8 (recognizing that “the most frequent type of SLAPP suit is for defamation...” (internal citation omitted).)⁶

II. PLAINTIFFS’ DEFAMATION CLAIM FAILS AS A MATTER OF LAW

Even if Illinois’ Citizen Participation Act had not been enacted, plaintiffs’ Amended Complaint still warrants dismissal. As discussed in detail below, there is no legal basis for plaintiffs’ purported defamation claim.

When assessing a motion to dismiss where the conduct at issue is protected by the First Amendment the court must be particularly vigilant. See, e.g., *Kottle v. Northwest Kidney Ctrs.*, 146 F.3d 1056, 1063 (9th Cir. 1998) (quoting *Franchise Realty Interstate*

⁶ In *Shoreline*, Judge Pantle applied the Citizen Participation Act to dismiss the majority of the plaintiffs’ claims. Yet, she allowed the remaining counts to proceed based on her determination that the left over claims were related to conduct by the plaintiff that could not be deemed as genuinely aimed at procuring favorable government action. *Id.* at 13-14. There can be no question here that Defendants’ statements were aimed at procuring favorable action from the Aurora City Council.

Corp. v. San Francisco Local Joint Exec. Bd. of Culinary Workers, 542 F.2d 1076, 1083 (9th Cir. 1976)). Courts routinely grant motions to dismiss defamation claims that, like plaintiffs', are insufficiently pleaded and meritless. See *Seith v. Chicago Sun-Times, Inc.*, 371 Ill. App. 3d 124 (1st Dist. 2007) (innocent construction); *Salamone v. Hollinger Int'l, Inc.*, 347 Ill. App. 3d 837 (1st Dist. 2004) (same); *Kirchner v. Greene*, 294 Ill. App. 3d 672 (1st Dist. 1998) (same).

A. The Alleged Defamatory Statements Are Not “Of and Concerning” Individual Plaintiffs.

Plaintiffs' Amended Complaint states it is alleging a claim for defamation *per se*. (See Am. Compl. ¶¶ 16, 23.) Yet, the Illinois Supreme Court has instructed that in order to be considered defamatory *per se*, a challenged statement “must be so obviously and naturally harmful to the person to whom it refers that a showing of special damages is unnecessary.” *Anderson v. Vanden Dorpel*, 172 Ill. 2d 399, 411-12 (1996). Hence, to state a *per se* claim, the challenged statement “must be ‘of and concerning’ the plaintiff... *i.e.* that the alleged defamatory statement be identifiable about the plaintiff.” *Schivarelli v. CBS, Inc.*, 333 Ill. App. 3d 755, 765 (1st Dist. 2002) (internal citation omitted). Courts have further determined that if a statement “may reasonably be innocently interpreted or reasonably interpreted as referring to someone other than plaintiff, it cannot be actionable *per se*.” *Anderson*, 172 Ill. 2d at 412 (citing various cases). Despite plaintiffs' attempts to cast them otherwise, neither of the publications identify any of the individual plaintiffs or their organization Fox Valley Families nor can they be reasonably interpreted to have done so.

While the individual plaintiffs conclusorily contend that the challenged statements “pertained directly and unmistakably to the plaintiffs,” (Am. Compl. ¶ 13), a review of

