

Colin G. Bell, Esquire
Attorney ID# 018552015
HANKIN SANDMAN PALLADINO WEINTROB & BELL
Counsellors at Law
a Professional Corporation
30 South New York Avenue
Atlantic City, New Jersey 08401
coling@hankinsandman.com
(609) 344-5161
Attorneys for Plaintiff David Henderson

DAVID HENDERSON,
Plaintiff,

v.

TOWNSHIP OF HAMILTON (MERCER COUNTY); KELLY YAEDE; MARTIN FLYNN; DANIEL SCHARFENBERGER; HAMILTON TOWNSHIP REPUBLICAN COMMITTEE; FRIENDS OF KELLY YAEDE FOR MAYOR; JOHN DOES 1-10 AND XYZ CORPORATIONS 1-10.
Defendant.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION
MERCER COUNTY
DOCKET NO.:

Civil Action

COMPLAINT AND JURY DEMAND

Plaintiff David Henderson (“Henderson”), for his Complaint, against the Township of Hamilton (“Township”), Kelly Yaede in her official and individual capacities (“Yaede”), Martin Flynn in his official and individual capacities (“Flynn”), Daniel Scharfenberger (“Scharfenberger”), the Hamilton Township Republican Committee (“Republican Committee”), Friends of Kelly Yaede for Mayor (“Mayor’s Committee”), John Does 1-10, and XYZ Corporations 1-10, says as follows:

NATURE OF ACTION

1. This is an action seeking redress from the retaliatory, corrupt, and criminal actions of Hamilton Township Mayor Kelly Yaede, who abused her official position, in concert with the other defendants in this matter, to use the municipal machinery of the

Hamilton Township government to punish Plaintiff David Henderson for running against her in 2019 primary election.

2. As detailed herein, Yaede directed a conspiracy to illegally access Henderson's expunged records in the Hamilton Township Police Department, release them to her agents, create what she thought to be anonymous blog website that served as a front for her re-election campaign in violation of New Jersey campaign finance law, and then publish and distribute the illegally obtained records on that website (among other places).

3. The provisions of the New Jersey Tort Claims Act, N.J.S.A. 59:8-1 et seq, and specifically N.J.S.A. 59:8-8, prohibit Henderson from pursuing common law tort claims until at least December 3, 2019, and, as such, this Complaint shall be amended at the appropriate to include common law claims and the facts supporting them.

PARTIES

4. Plaintiff Henderson is an individual residing at 92 Sharps Lane, Hamilton, New Jersey, 08610.

5. Defendant Township is a municipality and political subdivision of the State of New Jersey having a principal place of business at 2090 Greenwood Avenue, Hamilton, New Jersey 08650

6. Defendant Yaede is the elected mayor of the Township, having a principal place of business at 2090 Greenwood Avenue, Hamilton, New Jersey, 08650 and residing at 187 Applegate Drive, Hamilton, NJ 08690.

7. Defendant Flynn is employed by the Township as Yaede's chief of staff, having a principal place of business at 2090 Greenwood Avenue, Hamilton, New Jersey, 08650 and residing at 106 Monte Carlo Drive, Hamilton, NJ 08691

8. Defendant Scharfenberger served as the campaign manager of Yaede's 2019 re-election campaign during all relevant times and resides at 20 Seagull Lane, Lincroft, New Jersey 07738.

9. Defendant Republican Committee is the municipal political organization of the Hamilton Township Republican Party and registered with the New Jersey Election Law Enforcement Commission ("ELEC") as a political party committee, having a principal place of business at 121 Josiah Lane, Hamilton, NJ 08691

10. Defendant Mayor's Committee is registered with ELEC as Yaede's political candidate committee, having a principal place of business at 187 Applegate Drive, Hamilton, New Jersey 08690.

11. Defendant John Does 1-10 are individuals who aided, assisted, abetted, and/or served as co-conspirators of the named defendants in this action such that they are jointly and severally liable for their conduct and are named pursuant to R. 4:26-4 because, despite diligent inquiry, they have not yet been identified.

12. Defendant XYZ Corporations 1-10 are business entities and other non-individuals who aided, assisted, abetted, and/or served as co-conspirators of the named defendants in this action such that they are jointly and severally liable for their conduct and are named pursuant to R. 4:26-4 because, despite diligent inquiry, they have not yet been identified.

FACTS COMMON TO ALL COUNTS

13. On June 27, 2008, the New Jersey Superior Court entered an order expunging various criminal charges and arrest records from Henderson's record, including records arising from incidents that were alleged to have occurred in the Township. A true and correct copy of that order is annexed hereto as Exhibit A.

14. The expungment order applied to a June 22, 2001 arrest of Henderson in the Township on charges of sexual assault and violation of a domestic violence restraining order that were eventually dismissed in their entirety.

15. The expungment order directed the Township to, among other things, require that "the expunged records, or the information therein shall not be released...and [the Township] take sufficient precautions to ensure that such records and information are not released," and "that in response to requests for information or records, [the Township] shall reply, with respect to the arrest and charges which are the subject of this Order, that there is no record."

16. The expungment order was served on the Township on July 2, 2008.

17. Yaede, who serves as Township's director of public safety in addition to her duties as mayor, is ultimately responsible for the Township's compliance with the expungment order and has the authority to *inter alia* "supervise all departments of the Township government." See Hamilton Township Code, §5-4(a)(3).

18. The Township's police division is part of the Township's department of public safety. See Township Code, at §5-58.

19. As director of public safety, Yaede was responsible to "direct and supervise the work of the department and its employees." See Township Code, §5-43(B).

20. In early 2019, Henderson began exploring a challenge to Yaede in the 2019 Republican primary election for the office of Township mayor, and announced his candidacy on or about March 15, 2019.

21. Upon information and belief, Yaede, Flynn, Scharfenberger, the Republican Committee, the Mayor's Committee, John Does 1-10, and XYZ Corporations 1-10 (collectively, the "Defendants") conspired to illegally obtain Henderson's expunged records from the Township and to disseminate and publicize them.

22. The motivation for the plan was to retaliate against Henderson for running against Yaede, for speaking out against her in the political arena, and for associating with her political opponents as well as to increase Yaede's likelihood of defeating Henderson in the election.

23. Upon information and belief, the Defendants created the website "Hamilton Spotlight" to serve as a surreptitious propaganda machine for Yaede's political campaign.

24. The Hamilton Spotlight masqueraded as an independent news organization, but, upon information and belief, was actually funded by the Republican Committee, the Mayor's Committee, and/or political contributions to Yaede.

25. In violation of New Jersey election law and ELEC regulations, the Hamilton Spotlight did not contain a "Paid for By" identification statement. See N.J.S.A. 19:44A-22.3

26. Upon information and belief, and despite knowing it was unlawful to do so, Yaede, using her authority as mayor and director of public safety, caused or directed Henderson's expunged records to be provided to Flynn.

27. Flynn, despite knowing it was unlawful to do so, using his authority as the Township's chief of staff, facilitated and assisted in the wrongful disclosure of the expunged records.

28. Such disclosure is explicitly forbidden by N.J.S.A. 2C:52-30 and the New Jersey Supreme Court in G.D. v. Kenny, 205 N.J. 275, 300 (2011) stated that "those employed in...government agencies that have custody of the expunged records are clearly bound by N.J.S.A. 2C:52-30."

29. Yaede, as the director of public safety, which includes the Township's police department, is such a public official bound by N.J.S.A. 2C:52-30

30. Flynn, with knowledge that the disclosure of Henderson's records was unlawful, then worked with the Defendants to cause those records to be published on the Hamilton Spotlight in the guise of a legitimate news article.

31. The Defendants then widely distributed, publicized, and disclosed the contents of the Hamilton Spotlight "news article," including on Yaede's official Township media platforms and campaign social media accounts.

32. Defendants publicized Henderson's arrest and the other contents of the expunged records, falsely accusing him of being a "felon" and having been guilty of sexual assault and domestic violence.

33. When confronted about the disclosure, Defendants knowingly and falsely claimed that they had no connection to the Hamilton Spotlight nor any knowledge as to how the expunged records were released.

34. Yaede also knowingly falsely claimed that the expungement order was not legitimate and that the Township had never received it.

35. Public records later revealed that the Republican Committee had made payments on behalf of the Hamilton Spotlight and that the Township's business administrator, David Kenny, had negotiated for those payments.

36. As a result of the Defendants' wrongful and illegal disclosure of Henderson's expunged records, he was damaged.

37. At all relevant times, the Defendants acted in concert and as co-conspirators such that each is jointly and severally liable for the conduct of one another.

38. At all relevant times, Defendants acted with actual malice, or with willful and wanton disregard for Henderson's rights.

39. At all relevant times, Yaede and Flynn acted under color of law and the remaining defendants, by virtue of their conspiracy with Yaede and Flynn, likewise acted under color of law.

40. As mayor, Yaede is the chief policy making official of the Township with the authority to direct all departments of the local government and all of the aforementioned actions were taken at her direction, with her actual knowledge, acquiescence, deliberate indifference, or in connection a policy, practice, or custom maintained by Yaede and the Township.

COUNT I
(Violation of Civil Rights 42 U.S.C. § 1983)

41. The allegations of all preceding paragraphs are incorporated herein as if set forth at length.

42. Henderson is a person entitled to the protections of the Constitution of the United States of America as defined by 42 U.S.C. § 1983

43. Defendants are person as defined by 42 U.S.C. § 1983.

44. The foregoing acts of Defendants, acting under color of law, violated Henderson's rights secured by the Constitution of the United States of America, including, but not limited to, the right to freedom of speech and freedom of association under the 1st Amendment and the right to equal protection of the laws and due process of law under the 14th Amendment.

45. As a direct and proximate result of Defendants' aforementioned conduct, Henderson has been damaged.

WHEREFORE, Plaintiff David Henderson demands judgement against Defendants Township of Hamilton, Kelly Yaede, Martin Flynn, Daniel Scharfenberger, the Hamilton Township Republican Committee, Friends of Kelly Yaede for Mayor , John Does 1-10, and XYZ Corporations 1-10, jointly, severally, and in the alternative for:

- A. Compensatory Damages
- B. Nominal Damages.
- C. Punitive Damages
- D. Attorney's fees, interest and costs of suit.
- E. An injunction prohibiting them from further violating Henderson's rights.
- F. Such other and further relief as the Court may deem just and proper.

COUNT II
(Conspiracy to Violate Civil Rights pursuant 42 U.S.C. §1983)

46. The allegations of all preceding paragraphs are incorporated herein as if set forth at length.

47. By way of the foregoing conduct, Defendants conspired to deprive Henderson of rights secured by the Constitution of the United States of America, including, but not limited to, the right to freedom of speech and freedom of association

under the 1st Amendment and the right to equal protection of the laws and due process of law under the 14th Amendment.

48. As a direct and proximate result of Defendants' aforementioned conduct, Henderson has been damaged.

WHEREFORE, Plaintiff David Henderson demands judgement against Defendants Township of Hamilton, Kelly Yaede, Martin Flynn, Daniel Scharfenberger, the Hamilton Township Republican Committee, Friends of Kelly Yaede for Mayor, John Does 1-10, and XYZ Corporations 1-10, jointly, severally, and in the alternative for:

- A. Compensatory Damages
- B. Nominal Damages.
- C. Punitive Damages
- D. Attorney's fees, interest and costs of suit.
- E. An injunction prohibiting them from further violating Henderson's rights.
- F. Such other and further relief as the Court may deem just and proper.

COUNT III
(Violation of New Jersey Civil Rights Act, N.J.S.A. 10:6-1 and the New Jersey Constitution)

49. The allegations of all preceding paragraphs are incorporated herein as if set forth at length.

50. By way of the foregoing conduct, Defendants have deprived, interfered with, or attempted to interfere with Henderson's rights, privileges and immunities secured by the Constitution of the United States of America and/or the Constitution of the State of New Jersey, including, but not limited to, the right to freedom of speech and freedom of association, equal protection of the laws and due process of law.

51. As a direct and proximate result of Defendants' conduct, Henderson has been damaged.

WHEREFORE, Plaintiff David Henderson demands judgement against Defendants Township of Hamilton, Kelly Yaede, Martin Flynn, Daniel Scharfenberger, the Hamilton Township Republican Committee, Friends of Kelly Yaede for Mayor , John Does 1-10, and XYZ Corporations 1-10, jointly, severally, and in the alternative for:

- A. Compensatory Damages
- B. Nominal Damages.
- C. Punitive Damages
- D. Attorney's fees, interest and costs of suit.
- E. An injunction prohibiting them from further violating Henderson's rights.
- F. Such other and further relief as the Court may deem just and proper.

COUNT IV

(Conspiracy to Violate Civil Rights Act and under the New Jersey Civil Rights Act, N.J.S.A. 10:6-1 and the New Jersey Constitution)

52. The allegations of all preceding paragraphs are incorporated herein as if set forth at length.

53. By way of the foregoing conduct, Defendants conspired to deprive, interfere with, or attempt to interfere with Henderson's rights, privileges and immunities secured by the Constitution of the United States of America and/or the Constitution of the State of New Jersey, including, but not limited to, the right to freedom of speech and freedom of association, equal protection of the laws and due process of law.

54. As a direct and proximate result of Defendants' aforementioned conduct, Henderson has been damaged.

WHEREFORE, Plaintiff David Henderson demands judgement against Defendants Township of Hamilton, Kelly Yaede, Martin Flynn, Daniel Scharfenberger, the Hamilton Township Republican Committee, Friends of Kelly Yaede for Mayor, John Does 1-10, and XYZ Corporations 1-10, jointly, severally, and in the alternative for:

- A. Compensatory Damages
- B. Nominal Damages.
- C. Punitive Damages
- D. Attorney's fees, interest and costs of suit.
- E. An injunction prohibiting them from further violating Henderson's rights.
- F. Such other and further relief as the Court may deem just and proper.

DESIGNATION OF TRIAL COUNSEL

Colin G. Bell, Esquire is hereby designated as trial counsel.

JURY DEMAND

Please take notice that demand is hereby made for trial by jury on all issues so triable.

DEMAND FOR INSURANCE INFORMATION

PLEASE TAKE NOTICE THAT DEMAND IS HEREBY MADE pursuant to R. 4:10-2b that Defendants produce any and all insurance agreements under which an insurance business may be liable to satisfy part or all of any judgment entered in this action or which may entitle any Defendant to reimbursement or indemnification for any payments made to satisfy the judgment.

CERTIFICATION

I hereby certify that the matter in controversy is not the subject of any other action pending in any Court of a pending arbitration proceeding, except common law claims by Henderson and claims by additional plaintiffs that may be added to this action after the N.J.S.A. 59:8-8 waiting period has expired.

I further certify that I am aware of no other party who should be joined in this action.

HANKIN SANDMAN PALLADINO
WEINTROB & BELL, P.C.

BY: /s/ Colin G. Bell
COLIN G. BELL, ESQUIRE
Attorneys for Plaintiff David Henderson

DATED: September 9, 2019