

IN THE CIRCUIT COURT OF MINGO COUNTY, WEST VIRGINIA

DON BLANKENSHIP,

Plaintiff,

v.

Civil Action No. 19-C- 26

HONORABLE ANDREW NAPOLITANO (RET.);
FOX NEWS NETWORK, LLC;
CABLE NEWS NETWORK, INC;
MSNBC CABLE LLC;
NATIONAL REPUBLICAN SENATORIAL COMMITTEE;
35TH INC; ASSOCIATED PRESS;
BOSTON GLOBE MEDIA PARTNERS, LLC;
BREITBART NEWS NETWORK, LLC;
CLARITY MEDIA GROUP, INC;
THE WASHINGTON TIMES, LLC;
TRIBUNE PUBLISHING COMPANY, LLC;
LOS ANGELES TIMES COMMUNICATIONS, LLC;
WP COMPANY LLC
d/b/a THE WASHINGTON POST;
NEIL CAVUTO; CHRIS HAYES;
SARAH ELIZABETH CUPP;
BRADLEY BLAKEMAN; JOHN LAYFIELD;
STEPHANIE HAMILL; KEVIN McLAUGHLIN;
LEIGH ANN CALDWELL;
MICHAEL PATRICK LEAHY; JOSH DAWSEY;
JENNA JOHNSON; BEN WOLFGANG;
MICHAEL WARREN; CATHLEEN DECKER;
and DOES 1-50, inclusive,

Defendants.

ADMITTED TO RECORD
2019 MAR 14 PM 4: 18
MINGO COUNTY CIRCUIT CLERK

COMPLAINT

INTRODUCTION

A Case of “Weaponized Defamation”

1. The mainstream media and much of the political establishment today routinely, and with actual malice, set out to destroy public figures with outright lies. The competition for viewers is intense and nothing brings in eyeballs like scandal and degradation. So too is the establishment media’s bloodthirsty desire to destroy those with whom they disagree politically. We live in an age of weaponized defamation where lies can be repeated in more ways at more times in more places with more speed than anyone could possibly have imagined even five years ago, much less in 1964 when the seminal case in the area of defamation of public figures was decided. This lawsuit will help determine whether the media and the political establishment, in this increasingly malevolent and digitized environment, can continue to tell outright lies about what they consider public figures running for office, as part of their effort to sway elections and tarnish non-establishment candidates, while intentionally putting blinders on, and completely hoodwinking, the American public in the process.

2. In the 2018 election cycle, plaintiff Don Blankenship (sometimes referred to herein as “Plaintiff”) was one of several Republican candidates vying to be the next United States Senator from West Virginia. Mr. Blankenship personified and epitomized what it is to be a non-establishment candidate for office. As such, the DC establishment “swamp” and the establishment media united against Mr. Blankenship. The entire establishment media spectrum – from conservative to liberal, from fringe social media to mainstream media – commenced a search and destroy mission to take out Mr. Blankenship.

3. Prominent mainstream beltway “swamp” Republicans, led by Senate Majority Leader Mitch McConnell, told all who would listen that Mr. Blankenship had to be stopped at all costs.

4. McConnell set in motion the wheels of a clandestine campaign – including a “menu of items” – to destroy Mr. Blankenship and blatantly interfere in a federal election, using among other things, the National Republican Senatorial Committee (“NRSC”) and his contacts in the establishment media, including Fox News in particular, to do McConnell’s (and in turn, the NRSC’s) bidding.

5. Not to be outdone, the establishment left-wing media, including its leading mouthpieces CNN, MSNBC and The Washington Post, joined in the defamation chorus. They too set out to destroy Mr. Blankenship and to subvert an election, but for their own particular reasons – doing so would protect their incumbent Senator of choice, Democrat Joe Manchin (who had been beaten in the past in both legal and political battles with Mr. Blankenship), and also fit perfectly within the leftwing media’s tried and true agenda of using certain prominent conservatives as poster boys to paint a false picture of purported conservative evil and depravity across the board.

6. This toxic environment provided the venue in which multiple news persons disregarded their obligation to report the truth and lied about Mr. Blankenship, reporting *ad nauseum* in the days leading up to the May 8, 2018, West Virginia Primary that he was a “convicted felon” or had “gone to jail for manslaughter.” Mr. Blankenship is well-acquainted with the rough and tumble of politics. This is not that. Mr. Blankenship *is not and never was a felon* and has never been convicted of a felony, neither manslaughter nor any other. These false claims were not simple insults, but rather were part of a concerted plot by the

establishment media to destroy Mr. Blankenship personally and interfere in a federal election.

**Brief Background Leading to the Weaponized Defamation
of Don Blankenship**

7. Mr. Blankenship was raised in the small West Virginia town of Delorme. He began in the mines, working his way through school as a coal miner. Following graduation, he rose in the coal business from an accounting job to becoming CEO of Massey Energy in 1992. He worked in the business for thirty-eight years. Under his leadership, Massey Energy grew from a small outfit into the largest coal producer in Central Appalachia, which employed thousands of miners and provided energy to millions of consumers. Mr. Blankenship's leadership helped destroy the coal miner's union, which resulted in the creation of thousands of new jobs and earned Mr. Blankenship the permanent enmity of union boss and Obama minion, Richard Trumka.

8. On April 5, 2010, a tragic explosion at Massey's Upper Big Branch Mine took the lives of twenty-nine miners. The explosion occurred *just a few hours after* ventilation changes required by the Obama Administration were completed, which cut the mine's airflow in half. President Obama immediately sought to divert blame from his Administration's culpability and to continue to curry favor with union boss Trumka (who had visited Obama in the White House more than any other person). Obama purported to show sympathy for the miners' families by holding a press conference only ten days after the explosion – long before anyone even was able to enter the mine to investigate – in which the President told the world the explosion was the fault of Massey's management – *i.e.* Don Blankenship. In fact, a scientific analysis of the explosion itself has ultimately shown that the detonation was caused by ill-advised and ill-conceived ventilation

regulations imposed by the Obama Administration's Mine Safety and Health Administration (MSHA) which were completed just hours before the tragedy.

9. The Obama Justice Department ("DOJ") followed with a politically supercharged and motivated indictment against Mr. Blankenship, accusing him of three separate felonies and a misdemeanor. The Obama Administration detested Don Blankenship. Mr. Blankenship had long been well-known as the most prolific provider and defender of coal miners' jobs in West Virginia. He had also almost singlehandedly revived the conservative brand and the Republican party in West Virginia and had long been a vocal critic of Obama. He was therefore an easy mark for the coal-hating Obama Administration and a target of its unrelenting war on coal.

10. The aggressive federal prosecution went to trial in October 2015 and Mr. Blankenship *was found innocent by a West Virginia jury on all felony counts*. He was convicted, however, *only of a misdemeanor. Notably, at that time, many of the Defendants in this lawsuit accurately reported that Mr. Blankenship was convicted only of a misdemeanor and not for any of the felony counts he was facing.*

11. A first-time misdemeanant is never (or virtually never) sent to prison, but thanks to the overarching and outrageous pressures brought to bear against him by the government, Mr. Blankenship was sent to prison by the Obama DOJ for one year (the maximum for which any misdemeanant can be sentenced) and served time in prison. Mr. Blankenship may have been the only prisoner in any federal prison who had been convicted of just a misdemeanor.

12. The Department of Justice Office of Professional Responsibility has since investigated the conduct of the United States Attorneys who prosecuted Mr. Blankenship -- Booth Goodwin and Steve Ruby. The OPR found that massive

prosecutorial misconduct had occurred in the prosecution of Mr. Blankenship, stating, among other things, that, “because Ruby and Goodwin recklessly violated the Department’s discovery policies regarding the disclosure of discoverable statements, they committed professional misconduct.”

The West Virginia Republican Primary

13. In 2017, Mr. Blankenship announced his plans to run for the West Virginia Senate seat held by Democrat Joe Manchin. The May 8, 2018, Republican Primary pitted Mr. Blankenship against West Virginia Congressman Evan Jenkins and Attorney General Patrick Morrisey. Thanks to Mr. Blankenship’s longstanding prominence in West Virginia, the significant financial resources he brought to bear, his effective ads, and success in debates, by early May 2018, his opponents’ internal polls showed Mr. Blankenship had moved into contention.

14. The potential election of Mr. Blankenship was an anathema to Mitch McConnell and the GOP Establishment. As Mr. Blankenship rose in the polls, Leader McConnell and his colleagues determined that they would do whatever they could, including lying and smearing, to stop Mr. Blankenship from winning the primary. At or about this time, it was widely reported that McConnell convened clandestine meetings of the NRSC to formulate a plan, including a “menu” of options, to stop Mr. Blankenship from winning the Primary. Some of these meetings took place in McConnell’s office in the Capitol. One attendee, Senator John Thune, the third-ranking member of the Senate leadership, was quoted as “hop[ing] and pray[ing]” that Blankenship would not win the nomination.

The Defamatory Attacks

15. What followed next was Mr. Blankenship’s conviction by the media, not once, but dozens of times, of being a felon.

16. The desire to stop Mr. Blankenship began to be given voice on April 25, 2018, when Judge Andrew Napolitano appeared on the Fox News Channel program, *Outnumbered*, and falsely claimed that Mr. Blankenship “went to jail for manslaughter after being indicted.”

17. Judge Napolitano has been an attorney since 1975 and was a judge of the Superior Court of New Jersey for eight years. Fox News holds Judge Napolitano out as their “Senior Judicial Analyst.” No one with these credentials can claim not to know what manslaughter is. Judge Napolitano and Fox News (which had previously reported the Blankenship misdemeanor conviction) knew this “manslaughter” claim was false. This was hardly the only instance of Judge Napolitano’s disregard for the truth; in 2017, Fox News suspended him for some nine days for certain wholly inaccurate statements he had made at the time.

18. Just days later, on April 29, 2018, Kevin McLaughlin – now the NRSC’s Executive Director and at that time an ally of Leader McConnell – appeared on CNN and falsely said about Mr. Blankenship: “Well, I mean, pick your poison with this guy, right? He doesn’t live in West Virginia, he’s a *convicted felon*.”¹ CNN had previously reported accurately about Mr. Blankenship’s felony acquittals and both CNN and Mr. McLaughlin knew this slur was false.

19. McConnell (among others), by and through his surrogates in and out of the media, sought to interfere in a Federal election by silencing Mr. Blankenship, preventing him from winning a seat in the United States Senate, and using Mr. Blankenship’s public figure status to chill his free speech.

20. The defamatory attacks on Mr. Blankenship escalated after he walloped his opponents in a nationally televised May 1, 2018 Fox News Debate,

¹ In this Complaint, the word “*felon*” and other defamatory utterances have been highlighted in *bold italics*. This emphasis has been added and was not in the original text unless specifically stated.

which took place just a week before the Primary. Polling by Mr. Blankenship's opponents estimated his performance gained him an eight-point lead in the race.

21. Over the ensuing week, multiple news personalities, lubricated by their disdain for Mr. Blankenship, and some at the direction of McConnell and other GOP leaders, repeatedly and falsely called Mr. Blankenship a "felon" and "convicted felon." These defamatory statements were made on Fox News and in other venues by conservative commentators.

22. In addition, Mr. Blankenship was repeatedly defamed by the left-leaning mainstream media, including Defendants CNN and MSNBC. Examples include MSNBC's Chris Hayes calling Mr. Blankenship a "felon" on MSNBC at least twice and Joy Reid calling him a "convicted felon" on May 5, 2018. Others did the same.

23. Moreover, many of the defamatory statements were made in conjunction with reference to the mine disaster and thus, had the additional effect, through inference, implication, *innuendo*, and/or insinuation, of further defaming Mr. Blankenship by falsely attributing to him responsibility for murder.

24. The evidence in this case will prove the Defendants acted with actual malice and reckless disregard for the truth. As a result, Mr. Blankenship has suffered enormous damages. Mr. Blankenship possesses a proven record of adding billions of dollars in value to an enterprise. As Massey's CEO, Mr. Blankenship grew the company from a valuation of \$150 million to \$7.8 billion (while most others in the marketplace were failing). The defamation of Mr. Blankenship as a "felon" and a person sent to prison "for manslaughter" has so smeared his reputation that he has been prevented from pursuing other businesses and opportunities and generating similar returns of billions of dollars. Because of this harm and a variety

other injuries Mr. Blankenship has suffered, he seeks damages in an amount not less than \$2 billion dollars.

25. In addition, Mr. Blankenship seeks substantial punitive damages in the amount of 10 billion dollars. The purpose of punitive damages is to punish a defendant for outrageous conduct and/or to reform or deter the defendant and others from engaging in conduct similar to that which formed the basis of the lawsuit. Some of the defendants in this case are massive media companies (for example, CNN, owned by Warner Media, a division of AT&T, and MSNBC, owned by NBCUniversal, a subsidiary of Comcast) and a large punitive damage award is necessary to adequately punish and/or deter these Defendants from repeating this conduct. Additionally the damage that has been done to the public confidence in the federal election process is incalculable if this conduct continues.²

² While the evidence will support the requested relief under the prevailing standard of *New York Times v. Sullivan* (and its progeny), scrutiny of that actual malice standard is significantly increasing. See for example, the very recent Opinion of Justice Clarence Thomas (dated February 19, 2019), in which he concurred with the denial of *certiorari* in the case, *McKee v. Cosby, Jr.*, 2019 WL 659764. Justice Thomas describes at length, how the controlling law (which originated with *New York Times Co. v. Sullivan*, 376 U.S. 254, 84 Sc.D. 710, 11 L.Ed.2d 686 (1984)), applies an actual malice standard to public figures ***that was nowhere found in the Constitution or in common law.*** *Id.* at *1. “The common law of libel at the time the First and Fourteenth Amendments were ratified did not require public figures to satisfy any kind of heightened liability standard as a condition of recovering damages. Typically, a defamed individual needed only to prove ‘a false written publication that subjected him to hatred, contempt, or ridicule.’” *Id.* at *3 *citing among others, Dun & Bradstreet*, 105 S. Ct. 2939 (1985). Justice Thomas continued, “Far from increasing a public figure’s burden in a defamation action, the common law deemed libels against public figures to be, if anything, more serious and injurious than ordinary libels.” *Id.* at *4 *citing* 3 Blackstone *124 (“Words also tending to scandalize a magistrate, or person in a public trust, are reputed more highly injurious than when spoken of a private man”) (Other citations omitted). Justice Thomas continued, “There are sound reasons to question whether either the First or Fourteenth Amendment, as originally understood, encompasses an actual-malice standard for public figures or otherwise displaces vast swaths of state defamation law.” He concluded, “We should reconsider our jurisprudence in this area. *Id.* at *5, *6.

JURISDICTION AND VENUE

26. Mingo County Circuit Court has original and general jurisdiction pursuant to West Virginia Code § 51-2-2(b).

27. Mingo County Circuit Court has personal jurisdiction over each Defendant pursuant to West Virginia Code § 56-3-33 for reasons including, but not limited to: that the Defendants, and each of them, transacted business in this state; that they contracted to supply services or things in this state; that they caused tortious injury to Plaintiff by an act or omission in this state; and that they caused tortious injury in this state by an act or omission outside this state while regularly doing and/or soliciting business in this state and/or engaging in a persistent course of conduct and/or deriving substantial revenue from goods used or consumed or services rendered in this state.

28. In addition, Mingo County Circuit Court has personal jurisdiction over all of the Defendants because of the West Virginia effects of their conduct. Indeed, West Virginia was the focal point of their comments and stories, both with respect to the underlying story itself (i.e. Mr. Blankenship's criminal proceedings in West Virginia) and with respect to a significant portion of the harm Mr. Blankenship suffered (i.e. the effect on the West Virginia election). Accordingly, all of the Defendants purposely directed their actions toward West Virginia and should reasonably have anticipated being haled into court in West Virginia.

29. Venue is proper in Mingo County Circuit Court pursuant to West Virginia Code § 56-1-1(a)(1).

PARTIES

30. Plaintiff Don Blankenship is an individual who has resided in West Virginia and was in 2018 a candidate for the United States Senate from West Virginia.

31. As to Defendant Andrew Napolitano, Plaintiff is informed and believes, and based thereon alleges, that Andrew Napolitano is an individual domiciled in the State of New Jersey. Mr. Napolitano is an attorney, former litigator, and judge of the Superior Court of New Jersey, and a current commentator for the Fox News Channel, providing legal analysis and commentary on programs such as *The Fox Report with Shepard Smith*, *Fox & Friends*, *Special Report with Bret Baier*, and *Outnumbered*. Napolitano was suspended by Fox News in 2017 after making baseless claims that British intelligence spied on President Trump.

32. As to Defendant Fox News Network LLC (“Fox News LLC”), Plaintiff is informed and believes, and based thereon alleges, that Fox News LLC is a Delaware limited liability company. Fox News LLC is the operator of the Fox News Channel, a national 24-hour news network which is the most viewed cable network in the United States, as well as the Fox Business Network, also a national 24-hour news network. Fox News LLC is part of the family of national and international media companies owned by Rupert Murdoch, which includes numerous Fox-branded networks (including Fox News Channel, Fox Business Network, and local Fox Television stations throughout the country), News Corp. (owner of Dow Jones and the Wall Street Journal, among others), and Sky News.

33. As to Defendant Cable News Network, Inc. (“CNN”), Plaintiff is informed and believes, and based thereon alleges, that CNN is a Delaware corporation. CNN is the owner and operator of the eponymous CNN cable network, a national 24-hour news network. CNN also owns HLN, also known as Headline News, another 24-hour cable news network. CNN is owned by Warner Media, which is itself a division of AT&T, Inc., the multinational communications and media conglomerate.

34. As to Defendant MSNBC Cable LLC (“MSNBC”), Plaintiff is informed and believes, and based thereon alleges, that MSNBC is a Delaware limited liability company. MSNBC is the owner and operator of the eponymous MSNBC cable network, a national 24-hour news network. MSNBC is owned by NBCUniversal Media, which is a subsidiary of Comcast Corporation, a national telecommunications and mass-media conglomerate.

35. As to Defendant National Republican Senatorial Committee (“NRSC”), Plaintiff is informed and believes, and based thereon alleges, that the NRSC is an entity of unknown form headquartered in Washington, DC. NRSC’s goal is to “strengthen...the Republican Senate Majority and elect...Republicans to the United States Senate.”

36. As to Defendant 35th Inc. (“35th PAC”), Plaintiff is informed and believes, and based thereon alleges, that 35th PAC is a West Virginia non-profit corporation. 35th PAC is an independent expenditure-only committee which received substantial contributions from persons and entities aligned with the Republican national establishment, including two mega-donors. 35th PAC describes itself as “supporting West Virginia Attorney General Patrick Morrisey’s 2018 campaign for U.S. Senate.”

37. As to Defendant Breitbart News Network, LLC (“Breitbart”), Plaintiff is informed and believes, and based thereon alleges, that Breitbart is a Delaware limited liability company whose principal place of business is in Santa Monica, California. Breitbart is the owner of the eponymous national news website. The controlling shareholders in Breitbart all donated the maximum allowable by law to Mr. Blankenship’s opponent.

38. As to Defendant Associated Press (“AP”), Plaintiff is informed and believes, and based thereon alleges, that AP is a New York non-profit corporation

whose principal place of business is in New York, New York. AP is a national print and online news consortium which provides news stories to numerous print outlets, such as the Boston Globe (among many others), as well as on its own national news website.

39. As to Defendant Boston Globe Media Partners, LLC (“Boston Globe”), Plaintiff is informed and believes, and based thereon alleges, that Boston Globe is a Delaware limited liability company whose principal place of business is in Boston, Massachusetts. Boston Globe is the publisher of the eponymous national newspaper, The Boston Globe. Boston Globe is a subsidiary of Globe Newspaper Company, Inc.

40. As to Defendant Clarity Media Group, Inc. (“Clarity Media Group”), Plaintiff is informed and believes, and based thereon alleges, that Clarity Media Group is a Delaware corporation. Clarity Media Group was the publisher of the national magazine The Weekly Standard, until it ceased publication in December 2018. Clarity Media Group is a subsidiary of the Anschutz Corporation, a privately-held holding company located in Denver, Colorado.

41. As to Defendant The Washington Times, LLC (“Washington Times”), Plaintiff is informed and believes, and based thereon alleges, that Washington Times is the publisher of the eponymous nationally-distributed newspaper, The Washington Times. Washington Times is a subsidiary of Operations Holdings, Inc., a holding company based in New York.

42. As to Defendant Tribune Publishing Company, LLC (“Tribune”), Plaintiff is informed and believes, and based thereon alleges, that Tribune is a Delaware limited liability company whose principal place of business is in Chicago, Illinois. Tribune (formerly known as Tronc) is a national print and online media company and is the publisher of numerous national newspapers, including the

Chicago Tribune, the New York Daily News (the “Daily News”), and, until June 2018, the Los Angeles Times newspaper.

43. As to Defendant Los Angeles Times Communications, LLC (“LA Times”), Plaintiff is informed and believes, and based thereon alleges, that LA Times is a Delaware limited liability company whose principal place of business is located in Los Angeles, California. LA Times is the current publisher of the eponymous daily newspaper whose circulation Plaintiff is informed and believes is the fourth largest in the country. Since June of 2018, LA Times has been owned by Nant Capital, part of the NantWorks biotechnology conglomerate based in Culver City, California.

44. As to Defendant WP Company LLC, d/b/a The Washington Post (“Washington Post”), Plaintiff is informed and believes, and based thereon alleges, that Washington Post is a Delaware limited liability company whose principal place of business is in Washington, DC. Washington Post is the owner and publisher of The Washington Post newspaper, one of the most popular and prestigious print newspapers in the country. Washington Post is ultimately owned by Jeff Bezos, the founder of Amazon, through his company Nash Holdings, LLC.

45. As to Defendant Neil Cavuto, Plaintiff is informed and believes, and based thereon alleges, that Neil Cavuto is an individual domiciled in the State of New Jersey. Mr. Cavuto is a career newscaster and a Senior Vice President and Managing Editor of Business News for the Fox News Channel and Fox Business Network and affiliated outlets. Mr. Cavuto is also the host of the programs *Your World with Neil Cavuto* on the Fox News Channel and *Cavuto Coast to Coast* on the Fox Business Network.

46. As to Defendant Chris Hayes, Plaintiff is informed and believes, and based thereon alleges, that Chris Hayes is an individual domiciled in the State of

New York. Mr. Hayes is the host of the television program *All In With Chris Hayes* on MSNBC, as well as an editor at large at the nationally-distributed magazine, *The Nation*. Mr. Hayes is also an active personality on Twitter with over 1.8 million followers.

47. As to Defendant Sarah Elizabeth "S.E." Cupp ("S.E. Cupp"), Plaintiff is informed and believes, and based thereon alleges, that S.E. Cupp is an individual domiciled in the State of Connecticut. Ms. Cupp is a political commentator and the host of the television program *S.E. Cupp Unfiltered* on CNN.

48. As to Defendant Bradley Blakeman, Plaintiff is informed and believes, and based thereon alleges, that Bradley Blakeman is an individual domiciled in the State of Virginia. Mr. Blakeman is a political consultant and was a senior staffer to President George W. Bush during his first administration. Mr. Blakeman is also an attorney, having been a member of the State Bar of New York for over thirty years, and obviously knows the vast difference between a misdemeanor and a felony. Mr. Blakeman is active on Twitter and regularly appears on cable news, including on Fox News and FBN programs.

49. As to Defendant John Layfield, Plaintiff is informed and believes, and based thereon alleges, that John Layfield is an individual domiciled in the State of Texas. Mr. Layfield is a former professional wrestler and current businessman and commentator on the Fox News Channel and Fox Business Network.

50. As to Defendant Stephanie Hamill, Plaintiff is informed and believes, and based thereon alleges, that Stephanie Hamill is an individual domiciled in the District of Columbia. Ms. Hamill is a political commentator and video columnist.

51. As to Defendant Kevin McLaughlin, Plaintiff is informed and believes, and based thereon alleges, that Defendant Kevin McLaughlin is an individual domiciled in the State of Virginia. Mr. McLaughlin is a longtime Republican Party

operative and, since December 2018, is the current Executive Director of the Republican National Senate Committee.

52. As to Defendant Leigh Ann Caldwell, Plaintiff is informed and believes, and based thereon alleges, that Leigh Ann Caldwell is an individual domiciled in the District of Columbia. Ms. Caldwell is a journalist and the Washington DC correspondent for NBC News.

53. As to Defendant Michael Patrick Leahy, Plaintiff is informed and believes, and based thereon alleges, that Mr. Leahy is an individual domiciled in the State of Tennessee. Mr. Leahy is an author and journalist and has been a contributor to Breitbart's news website since 2010.

54. As to Defendant Josh Dawsey, Plaintiff is informed and believes, and based thereon alleges, that Mr. Dawsey is an individual domiciled in the District of Columbia. Mr. Dawsey is a journalist, formerly a reporter for Politico, and currently a reporter for The Washington Post newspaper.

55. As to Defendant Jenna Johnson, Plaintiff is informed and believes, and based thereon alleges, that Ms. Johnson is an individual domiciled in the District of Columbia. Ms. Johnson is a journalist and reporter for The Washington Post newspaper.

56. As to Defendant Ben Wolfgang, Plaintiff is informed and believes, and based thereon alleges, that Ben Wolfgang is an individual domiciled in the State of Maryland. Mr. Wolfgang is a reporter, journalist, and podcast host who contributes to The Washington Times, among other outlets.

57. As to Defendant Michael Warren, Plaintiff is informed and believes, and based thereon alleges, that Michael Warren is an individual domiciled in the State of Virginia. Mr. Warren is a journalist and was a reporter for the Weekly

Standard until it ceased publication in December 2018. Mr. Warren is currently a reporter for CNN.

58. As to Defendant Cathleen Decker, Plaintiff is informed and believes, and based thereon alleges, that Cathleen Decker is an individual domiciled in the District of Columbia. Until May of 2018, Ms. Decker was a reporter for the LA Times newspaper and is now a correspondent for the Washington Post.

59. Plaintiff does not know the true names and capacities of the Defendants sued in this Complaint as Does 1 through 50, and therefore sues these Defendants by such fictitious names. Plaintiff will amend this Complaint to allege the true names and capacities of those Doe Defendants when the same are ascertained. Plaintiff is informed and believes, and based thereon alleges, that each of the fictitiously named Defendants is responsible in some manner for the occurrences alleged in this Complaint, as further set forth herein, and that Plaintiff's damages, as alleged in this Complaint, were proximately caused by these Defendants' conduct.

GENERAL ALLEGATIONS

Background

60. Plaintiff Don Blankenship was born into a poor family in Appalachia, one of four children in a single-parent home. Mr. Blankenship's first job was as a worker at his mother's small gasoline filling station, which also served as the family's home. Mr. Blankenship graduated from high school in 1968 and earned a degree in accounting from Marshall University in Huntington, West Virginia in 1972, spending his summers working in the West Virginia coal mines.

61. Mr. Blankenship worked for ten years in the food business, until he was offered an accounting job with Massey Energy Company in 1982, then a mining concern partly owned by Royal Dutch Shell. Mr. Blankenship climbed the

ranks, and in 1992, became president and CEO of Massey Energy, its first chief executive outside the Massey family. With Mr. Blankenship at the helm, Massey Energy grew from a family-run outfit into the largest coal producer in West Virginia with billions of dollars in annual revenue.

The Upper Big Branch Explosion

62. On April 5, 2010, tragedy struck Raleigh County at the Upper Big Branch Mine. Flammable gas deep in the mine ignited, causing an explosion which took the lives of twenty-nine miners.

63. President Obama and others in his administration immediately claimed that the managers of the Upper Big Branch Mine – *i.e.* Mr. Blankenship – were responsible for the explosion. Just ten days after the accident, President Obama attributed the accident to “a failure first and foremost of management.” However, owing to large concentrations of toxic gas, no one accessed the mine to determine the explosion’s cause until *long after* the President had pointed the finger of blame.

64. The Federal Government’s investigation into the explosion was conducted by the Mining Safety and Health Administration (MSHA). However, any conclusions reached by MSHA were inherently suspect because it was necessarily investigating itself. In the months leading up to the accident, MSHA had required Massey to implement a new ventilation system at the Upper Branch Mine. Airflow into a mine is measured in “cubic feet per minute” (CFM). At about the time of the accident, the law required that airflow be measured in the mine at 30,000 CFM. Prior to MSHA requiring ventilation changes, the Upper Branch Mine was measured at four times the legal requirement: 120,000 CFM. After the MSHA ventilation changes were implemented, the CFM dropped to 50,000 CFM. Thus, the changes required by MSHA cut the mine’s airflow by sixty-percent.

65. Eight months after the disaster, on December 6, 2010, MSHA concluded that a coal bed methane build-up ignited and created an explosion. According to MSHA, the ventilation deficiencies in the mine – *which it had caused* – were a critical factor in causing the explosion. Nonetheless, MSHA placed the blame on Massey and Mr. Blankenship.

66. In April 2014, Mr. Blankenship released a documentary which refuted the MSHA's findings and challenged the inherent conflict of having a regulatory agency investigate an explosion where it was likely at fault. Among other things, the documentary identified powerful scientific evidence, which refuted MSHA's conclusion that the explosion was caused by an influx of methane. An analysis of the air vented from the mine at the time of the explosion revealed that the explosion almost certainly resulted from a very rare inundation of natural gas through a crack in the mine's floor, which gas would have been swept out of the mine by a stronger airflow, but for MSHA's required pre-explosion ventilation changes.

67. The Obama Administration was irate over the documentary and almost immediately began a renewed investigation of Mr. Blankenship, following Senator Manchin's demand that Mr. Blankenship be indicted. Seven months after the documentary was released, on or about November 13, 2014, federal prosecutors from the Obama Administration charged Mr. Blankenship with three felonies, including conspiracy to defraud the Federal mine regulators. He was also charged with a misdemeanor, conspiring to violate mine safety laws.

68. The Federal Government brought the full weight of its infinite resources to bear on Mr. Blankenship. The matter went to trial in October 2015 and lasted about two months.

69. Following lengthy deliberations, the West Virginia jury found Mr. Blankenship innocent on *all* felony charges on December 3, 2015. The jury convicted him of the misdemeanor offense.

70. On April 6, 2016, the Judge sentenced Mr. Blankenship to one year in prison. The Judge refused to stay Mr. Blankenship's sentence pending his appeal, and he served one year at Taft Prison in Kern County, California.

71. Mr. Blankenship was released from custody in the Spring of 2017.

Mr. Blankenship Runs For Senate

72. In January 2018, Mr. Blankenship formally announced his plans to run as a Republican for the U.S. Senate seat held by Senator Joe Manchin, a Democrat. The Republican primary was scheduled for May 8, 2018. In light of the then-recent events, Mr. Blankenship's candidacy was viewed as a long-shot.

73. The fight for the Republican nomination was joined in earnest in January 2018. The race ultimately pitted Mr. Blankenship against West Virginia Congressman Evan Jenkins and Attorney General Patrick Morrisey.

74. Mr. Blankenship outperformed expectations in the primary campaign. He campaigned well, expended significant resources in support of his campaign, and produced effective campaign ads.

75. About a month before the May 8, 2018 primary, based on internal polling, it became clear to Senate Majority Leader McConnell, the NRSC, and others in the GOP Establishment, as well as many in the mainstream media, that Mr. Blankenship had drawn even in the race with the other two contenders. Plaintiff is informed and believes that in the weeks before the May 8th Primary, several meetings occurred, attended by Leader McConnell, members of the NRSC, and others, in which a "menu" describing possible ways to defeat Mr. Blankenship was discussed. Some of these meetings may have occurred in Federal Government

offices in violation of Federal Campaign finance laws. At these meetings, the attendees determined and agreed that Mr. Blankenship's candidacy must be stopped at all costs, including by smearing Mr. Blankenship in the media with false stories. At the end of April 2018, Leader McConnell expressed his disdain for Mr. Blankenship this way: "I hope we actually nominate someone who can actually win the election."

A Scheme Is Implemented to Defeat Mr. Blankenship

76. On or about March 25, 2018, persons unknown (sued here under the fictitious names of Does 1-25) created and carried out a "push poll" wherein phone operators would call potential voters in West Virginia purporting to conduct political polling and asking the voters questions predicated on the idea that Mr. Blankenship was a "felon." Rather than simply to collect information to assist with the defamation campaign against Mr. Blankenship, the "push poll" also was intended to defame Mr. Blankenship and derail his campaign by planting the false idea in the mind of the voters "polled" that Mr. Blankenship was a felon and/or had been convicted of a felony. Plaintiff intends to amend this Complaint once the identities of the persons or entities responsible for this defamatory "push polling" is ascertained.

77. On April 10, 2018, the political action committee ostensibly supporting Mr. Morrissey's campaign – Defendant 35th PAC – responded to a tweet by Mr. Blankenship, with the following defamatory tweet: "You are also a convicted *felon* hurting West Virginia families." Mr. Blankenship communicated directly with the major funders of this PAC and advised that this tweet was false. No correction was ever issued. At the time this tweet was issued, the authors (and likely the PAC's top donors as well) knew that it was false, but nonetheless proceeded to publish because of their malice toward Mr. Blankenship.

78. On April 25, 2018, Defendant Judge Andrew Napolitano intensified the attacks on Mr. Blankenship and his candidacy by deploying falsehoods on Fox News, an extremely influential source of information for West Virginia voters. Judge Napolitano appeared on Fox News' daytime program *Outnumbered*, alongside host Marie Hart, among others. During a segment concerning the West Virginia Primary, Defendant Napolitano took part in the following exchange:

Harf: "Don Blankenship has long been a very polarizing figure in West Virginia. He went to jail, actually, after a really tragic coal-mining incident—"

Napolitano: "*He went to jail for manslaughter*, after being indicted."

Harf: "Yes, exactly."

79. Fox News knew this was false. In fact, Fox News had reported, on December 3, 2015, that Mr. Blankenship had been acquitted of the felonies, convicted of a misdemeanor, and certainly never charged with "manslaughter."³ Judge Napolitano – a former Judge – also knew that this was false. Mr. Napolitano nonetheless uttered this false and defamatory statement, in part, in furtherance of the coordinated effort to defeat Mr. Blankenship's candidacy by any means. Mr. Blankenship used personal connections close to Napolitano to inform him that the "manslaughter" claim was utterly false and requested an apology and correction. On April 26, 2018, Defendant Napolitano responded by e-mail as follows:

³ "Mine Explosion Trial: Ex-Coal CEO Blankenship Convicted On 1 Count, Acquitted On 2", <https://www.foxnews.com/us/mine-explosion-trial-ex-coal-ceo-blankenship-convicted-on-1-count-acquitted-on-2>

“I understand now that yesterday I mistakenly misstated the nature of Mr. Blankenship’s lamentable conviction and failed to mention his acquittals. I will be happy to address this thoroughly and accurately in air on Monday. I feel very badly about this; especially since I am fond of him and wish him well in his Senate race.

Kind regards,

apn.”

80. This “promise” was not honored until well after the May 8, 2018 primary and – *lamentably* – after the damage to Mr. Blankenship was fully realized. The Judge waited until May 22, 2018, two weeks after the Primary when he appeared on the Fox News program *Your World with Neil Cavuto* and made the following statement:

Napolitano: “Let me say first that Don Blankenship is correct. I once inadvertently said on air that he was a convicted felon. He was not. He was acquitted of the charges, the felony charges against him. The only thing he was convicted of was a misdemeanor.”

Plaintiff is informed and believes that Defendant Napolitano never publicly retracted or corrected his statement that Mr. Blankenship “went to jail for manslaughter.”

81. On April 29, 2018, Defendant Kevin McLaughlin, now the Executive Director of the NRSC, appeared on the program *CNN Newsroom* on Defendant CNN’s network, alongside host Dana Bash and guest Alex Isenstadt, as part of a segment about Mr. Blankenship’s candidacy. Mr. McLaughlin was introduced as “working with the National Republican Party in West Virginia, the last time Republicans tried to beat [current West Virginia Senator] Joe Manchin” and was titled as a “GOP Political Strategist.” Several clips of Mr. Blankenship were aired during the segment. During the segment, Defendant McLaughlin stated the following, referring to Mr. Blankenship:

McLaughlin: “Well, I mean, pick your poison with this guy, right? He doesn’t live in West Virginia, he’s a *convicted felon*, you know, he says -”

Bash: “He’s got a house in Nevada.”

McLaughlin: “Exactly.”

82. CNN knew this statement was false and defamatory because, among other reasons and without limitation, on December 3, 2015, CNN reported that Mr. Blankenship had been acquitted of all felonies and only convicted of a misdemeanor.⁴ Mr. McLaughlin also knew that Mr. Blankenship was not a convicted felon. Mr. McLaughlin nonetheless uttered this false and defamatory statement, in part, in furtherance of the coordinated effort to defeat Mr. Blankenship’s candidacy by any means. Defendant CNN has never made any attempt to retract or correct the statement that Mr. Blankenship is “a convicted felon” nor has Mr. McLaughlin.

**Mr. Blankenship Crushes His Opponents In The May 1st Nationally-
Televised Fox Debate Causing The Smears To Escalate**

83. On May 1, 2018, one week before the primary election, Mr. Blankenship participated in a debate with the other two Primary candidates which was televised nationally on the Fox News Channel. The national broadcast, hosted by Fox News stars Bret Baier and Martha MacCallum, resulted from the intense national interest in the West Virginia primary in political circles, because of concerns about Mr. Blankenship, and a by-then-widespread belief that the Republican primary winner could defeat Democrat Joe Manchin in the general election because of the state’s massive support for President Trump in 2016. Mr. Blankenship addressed his conviction and imprisonment right out of the gate,

⁴ “*Former Massey Energy CEO Don Blankenship Found Guilty Of Conspiracy*”, <https://www.cnn.com/2015/12/03/us/west-virginia-don-blankenship-verdict-massey-energy/index.html>

stating in no uncertain terms: “I faced thirty years in prison for a fake charge, and I beat all three of the felonies. ... It’s incredible, they sent me to prison for a misdemeanor. I was the only prisoner there that was a misdemeanor.” Most objective observers concluded that he won the debate handily and, by some estimates, gained eight points against his opponents. Plaintiff is informed and believes that this prompted the Defendants to double-down on the smear campaign. In the week leading up to the May 8th Primary, there were multiple instances of defamation.

84. For example, on May 3, 2018, Defendant Washington Times – a conservative outlet – published an article by Defendant Ben Wolfgang on the West Virginia Republican primary campaigns titled “WV’s Morrissey sends Jenkins cease-and-desist letter over ‘fake campaign ads’.” The article stated that the West Virginia Republican primary “also includes former Massey Energy CEO and *convicted felon* Don Blankenship[.]”

85. Both Washington Times and Mr. Wolfgang knew that this claim about Mr. Blankenship was false because, among other reasons and without limitation, The Washington Times had reported *mere weeks before* that Mr. Blankenship had served a year in prison for a misdemeanor conviction.⁵ Nonetheless, The Washington Times and Mr. Wolfgang published the statement with malicious intent and as part of a coordinated effort to defeat Mr. Blankenship’s candidacy. Neither Washington Times nor Mr. Wolfgang have ever retracted or corrected the statement that Mr. Blankenship was a “convicted felon.”

⁵ “*Motion Seeks to Erase Ex-Massey CEO Blankenship’s Conviction*”, <https://www.washingtontimes.com/news/2018/apr/18/motion-seeks-to-erase-ex-massey-ceo-blankenships-c/>

86. On May 7, 2018, Defendant Neil Cavuto and the Fox News defamed Mr. Blankenship on the Fox Business Network program *Coast to Coast with Neil Cavuto*. Mr. Cavuto falsely and maliciously described Mr. Blankenship as “the outside candidate, the one that’s a *convicted felon*....” As described above, Fox News knew this to be false because, among other reasons and without limitation, it had previously reported the opposite, i.e., that Mr. Blankenship had been acquitted of all felonies. Mr. Cavuto either knew, or plainly should have known, that this vile statement was false. Plaintiff is informed and believes that neither Defendant Cavuto nor Defendant Fox News has ever retracted or corrected the statement that Mr. Blankenship is a “convicted felon.”

87. Also on May 7, 2018, Defendant Stephanie Hamill appeared on Fox News’s Fox Business Network. During her appearance, Ms. Hamill observed of Mr. Blankenship, that “it might be difficult for him to actually win a general election because of his issue being a *convicted felon*....” As noted, Fox Business knew this was false. Plaintiff is informed and believes that Ms. Hamill made this statement, in part, as part of a concerted effort to defeat Mr. Blankenship by falsely smearing him. Plaintiff is informed and believes that neither Defendant Hamill nor Defendant Fox News has ever retracted or corrected the statement that Mr. Blankenship is a “convicted felon.”

88. Also, on May 7, 2018, during the Fox Business program *Evening Edit*, Defendant John Layfield stated “we got a *felon* who’s got a probation officer, who could end up in Congress[,]” referring to Mr. Blankenship. During the same program, Defendant Bradley Blakeman, a former George W. Bush advisor and Fox News political analyst, stated that “[w]e can’t have the standard bearer of our party running for statewide office, and the guy is a *felon*.” Fox News and Messrs. Layfield and Blakeman knew that these statements were false because, as noted

above, Fox News had reported on Mr. Blankenship's misdemeanor conviction, but Plaintiff is informed and believes that neither Layfield nor Blakeman nor Fox News has ever retracted or corrected these statements that Mr. Blankenship is a "felon."⁶

The Other Media Piles On

89. On April 16, 2018, Defendant Chris Hayes host of *All In With Chris Hayes* broadcast daily on MSNBC posted the following to his Twitter feed: "The GOP may very well nominate a *felonious* coal baron found responsible for dozens of miners' deaths to as their senate nominee in WV." A reasonable person would know from the references to "coal baron" and "senate nominee in WV" that this post referred to Mr. Blankenship. Moreover, Hayes knew this statement was false because, among other reasons and without limitation, MSNBC reported on April 6, 2016, that Mr. Blankenship had been only convicted of a misdemeanor.⁷

90. On April 23, 2018, on his show *All In With Chris Hayes* on MSNBC's network, Mr. Hayes doubled down on his statement about Mr. Blankenship. After showing a clip from one of Mr. Blankenship's campaign ads, Mr. Hayes stated:

⁶ On the eve of the Primary, the GOP establishment gave further voice to the desire to stop Mr. Blankenship from becoming their nominee. A BuzzFeed article on May 7, 2019 includes the following: "Republicans fear Blankenship would jeopardize their ability to compete for a seat that should be one of their best Senate pickup opportunities this year. Internal polling from one of the campaigns opposing him, confirmed to BuzzFeed News, has Blankenship narrowly edging his competitors in the final weekend." And "If Blankenship does pull off a win on Tuesday, Republicans said, it would have broader implications outside of West Virginia." And "It would be a 'blow for the party,'" said former Rep. Tom Davis, who chaired the House Republican campaign arm, taking a great pickup opportunity and making it "a much longer shot." See "*Republicans Are Worried A Race-Baiting Coal Baron Is About To Win A Senate Primary*", <https://www.buzzfeednews.com/article/alexislevinson/don-blankenship-west-virginia-trump-senate-worry>

⁷ "*Former Coal Mine Executive Sentenced to Prison*", <https://www.msnbc.com/msnbc/former-coal-mine-executive-sentenced-prison/>

Hayes: That was a campaign ad in the Year of our Lord 2018 for a *convicted felon* Don Blankenship who spent a year in jail for his role in a mine disaster that killed 29 people....”

91. On May 5, 2018, Defendant Joy Reid guest-hosted the MSNBC program *All In With Chris Hayes*. She too identified Plaintiff as “coal baron and *convicted felon* Don Blankenship.”

92. Mr. Hayes, Ms. Reid, and MSNBC knew this statement was false and defamatory because, among other reasons and without limitation, on April 6, 2016, MSNBC reported that Mr. Blankenship had been convicted of a misdemeanor charge.⁸ Plaintiff is informed and believes that neither Reid nor Hayes nor MSNBC has ever retracted or corrected the statement that Mr. Blankenship is a “convicted felon.”

93. On May 8, 2018, Defendant LA Times published an article authored by Defendant Cathleen Decker titled “West Virginia voters side with a safer Republican candidate in hotly contested U.S. Senate race,” which referenced “Don Blankenship, a wealthy *felon*[.]” Ms. Decker and the Los Angeles Times knew this was false because the newspaper had previously reported his conviction of only a misdemeanor.⁹ Plaintiff is informed and believes that neither the LA Times nor Ms. Decker has ever retracted or corrected the statements that Mr. Blankenship is a “felon.”

94. Mr. Blankenship lost his bid to be the GOP nominee on May 8, 2018. In addition to the injuries to Mr. Blankenship’s reputation and other harm visited

⁸ *Ibid.*

⁹ “Sentencing set April 6 for former Massey Energy CEO”, <https://www.latimes.com/sdut-sentencing-set-april-6-for-former-massey-energy-2015dec10-story.html>

upon him by the defamatory statements alleged above, these unlawful statements were also a material cause of his loss in the Primary.

The Smears Continue Even After The Election

95. On May 9, 2018, Defendant Hayes, again speaking of Mr. Blankenship's campaign on MSNBC's network, referred to Plaintiff as "convicted felon Don Blankenship." As noted above, Mr. Hayes and MSNBC knew this statement was false as MSNBC had previously reported that Mr. Blankenship was convicted only of a misdemeanor. Plaintiff is informed and believes that neither Mr. Hayes nor MSNBC ever corrected or retracted this statement.

96. Also, on May 9, 2018, Defendant Michael Warren, writing for Defendant Clarity Media Group's magazine, *The Weekly Standard*, described Mr. Blankenship as a "coal baron (and *felon*)" while noting internal polling had showed him progressively gaining. Plaintiff is informed and believes that neither Mr. Warren nor Clarity Media Group ever corrected or retracted this statement.

97. On May 10, 2018, Defendant Michael Patrick Leahy, writing for Defendant Breitbart's website, authored an article in which he thrice described Mr. Blankenship as a "convicted felon," while again recognizing that in the final week of the campaign, Mr. Blankenship had been poised to seize the nomination. Plaintiff is informed and believes that neither Mr. Leahy nor Breitbart ever corrected or retracted its claim that Mr. Blankenship was a "convicted felon."

98. On July 25, 2018, as Mr. Blankenship was preparing to continue his race for Senate on the Constitution Party ticket, Defendants Jenna Johnson and Josh Dawsey, reporting in *The Washington Post*, described Mr. Blankenship as a "former coal mine owner and *felon*." Plaintiff is informed and believes that neither Ms. Johnson, nor Mr. Dawsey, nor *The Washington Post* ever corrected or retracted this statement.

COUNT I

DEFAMATION/CONSPIRACY TO DEFAME – ALL DEFENDANTS

99. Plaintiff reincorporates and re-alleges paragraphs 1 through 98 above as though set forth fully herein.

100. Defendants, and each of them, made statements of fact as set forth above, which were materially false, namely that Mr. Blankenship was a felon, and/or that Mr. Blankenship had been convicted of a felony, and/or that Mr. Blankenship went to jail for manslaughter. To the extent any of Defendants' above-described statements were statements of opinion (and they were not), each such purported opinion implied the existence of undisclosed defamatory facts as the basis for the opinion, in that such opinions would appear to a reasonable person to be based on the untrue and defamatory facts that Mr. Blankenship was a felon and/or had been convicted of a felony and/or had gone to jail for manslaughter.

101. Defendants, and each of them, caused to be published the above-described defamatory statements about Mr. Blankenship.

102. Defendants' statements were defamatory in that they reflected shame, contumely, and disgrace upon Mr. Blankenship by stating that he was a felon and/or had been convicted of a felony and/or had gone to jail for manslaughter.

103. Defendants' statements were defamatory *per se* in that they were and are incapable of an innocent meaning and charged Mr. Blankenship with the commission of crimes of which he was acquitted, and were imputations as affecting his business, trade, profession, and/or office.

104. Defendants' statements with respect to the Mr. Blankenship were materially and entirely false in that Mr. Blankenship is not a felon and has never been convicted of a felony, neither manslaughter nor any other felony, and in fact was acquitted of all felony charges with which he had ever been charged.

105. Moreover, many of the defamatory statements were made in conjunction with reference to the mine disaster and thus, had the additional effect, through inference, implication, *innuendo*, and/or insinuation, of further defaming Mr. Blankenship by falsely attributing to him, responsibility for murder.

106. Defendants, and each of them, made their respective defamatory statements with actual malice, that is, actual knowledge of the falsity of their statements or, at a minimum, with reckless and willful disregard of the truth or falsity of the statements. Among other reasons and without limitation, Defendants' wrongful conduct was motivated by the matters discussed herein above.

107. Anyone who consulted the freely-available public records of Mr. Blankenship's trial and conviction (including previous accurate reports of Mr. Blankenship's acquittals by the Defendant media organizations themselves), would know that Mr. Blankenship was acquitted of all felony charges, that Mr. Blankenship was convicted only of a misdemeanor, and that Mr. Blankenship has never been convicted of a felony, whether for manslaughter or any other reason.

108. In addition, Mr. Blankenship is further informed and believes, and based thereon alleges, that the media organization Defendants, and each of them, failed to follow or comply with their own policies and procedures regarding the reporting of criminal convictions.

109. Defendants, and each of them, intended to cause injury to Mr. Blankenship by publishing their false defamatory statements.

110. Plaintiff is further informed and believes, and based thereon alleges, that Defendants NRSC, 35th PAC, and Kevin McLaughlin, along with DOES 26-50 (the "Conspiracy Does," and together with NRSC, 35th PAC, and McLaughlin, the

“Conspiracy Defendants”), and each of them, shared in a common plan for the commission of the tort of defamation.

111. In particular, the Conspiracy Defendants shared the common plan of ensuring that Plaintiff did not win the West Virginia Primary Election. To that end, the Conspiracy Defendants agreed that McLaughlin and the Conspiracy Does would themselves disseminate, and cause and/or encourage others to disseminate, the false claim that Plaintiff was a “felon” or “convicted felon.” The Conspiracy Defendants, and each of them, knew that this claim was untrue as Plaintiff had been convicted only of a misdemeanor and had been acquitted of all felony charges.

112. McLaughlin committed overt acts in furtherance of the conspiracy as discussed above in paragraphs 18, 51, 81, and 82, by appearing on CNN as a “GOP Political Strategist” and stating that Plaintiff was a “convicted felon.”

113. The Conspiracy Does, and each of them, also committed overt acts in furtherance of the conspiracy by publishing false and defamatory claims about Mr. Blankenship. Plaintiff will amend this Complaint to allege further facts concerning the Conspiracy Does’ overt acts when the same are ascertained.

114. Mr. Blankenship was damaged by Defendants’ defamatory statements in an amount to be proven at trial, but which exceeds the jurisdictional minimum of this Court.

DEMAND

Plaintiff demands judgment against all Defendants in excess of the jurisdictional limit of Mingo County Circuit Court for the following damages and other relief:

1. Judgment for general damages for defamation;
2. Judgment for special damages for defamation;
3. Judgment for punitive damages;

4. A permanent injunction against Defendants, and each of them, prohibiting republication of the defamatory statements and requiring the removal of the defamatory statements from public access;

5. Statutory judgment interest pursuant to West Virginia Code § 56-6-31;


6. Costs of suit herein;

7. Attorneys' fees to the extent permitted by law; and

8. Such further relief as the Court may deem just and proper.

***PLAINTIFF DEMANDS A JURY TRIAL**

DON BLANKENSHIP
By Counsel



Jeffrey S. Simpkins, Esq.
WVSB #9806
SIMPKINS LAW
102 E. 2nd Ave.
Williamson, WV 25661
304.235.2735
simpkinslawoffice@gmail.com

Eric P. Early, Esq.
(CA State Bar No. 166275, *pro hac vice* pending)
Jeremy Gray, Esq.
(CA State Bar No. 150075, *pro hac vice* pending)
Kevin S. Sinclair, Esq.
(CA State Bar No. 254069, *pro hac vice* pending)
EARLY SULLIVAN WRIGHT GIZER & McRAE LLP
6420 Wilshire Blvd., 17th Floor
Los Angeles, CA 90048
323.301.4660
eearly@earlysullivan.com
jgray@earlysullivan.com
ksinclair@earlysullivan.com