SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

BRADLEE DEAN, ET AL.,	
Plaintiffs,	Civil Action No. 0006055-11
v.	Next Event: Initial Scheduling Conference November 4, 2011 at 9:30 a.m.
NBC UNIVERSAL (NBC), ET AL.,	Judge: Hon. Joan Zeldon
Defendants.	RULE 24 NOTIFICATION REQUIRED

REPLY MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF SPECIAL MOTION TO DISMISS PURSUANT TO D.C. ANTI-SLAPP ACT OF 2010 AND MOTION TO DISMISS PURSUANT TO SUPER. CT. CIV. R. 12(b)(6)

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Introduction

Defendants NBC Universal, Inc., MSNBC and Rachel Maddow (collectively "MSNBC parties" or "MSNBC") have demonstrated that Plaintiffs' claims lack merit. In response, Plaintiffs have merely recited, nearly verbatim, the conclusory allegations of the Complaint. They have set forth no additional facts to counter that the MSNBC broadcasts were truthful reports of and opinionated commentary on the inflammatory rhetoric of Bradlee Dean. While contending repeatedly that "material quotes" were omitted from MSNBC's quotes of Dean's May 15th statements, they do not identify a single word from Dean's statements that was deleted to alter the meaning of his statements.

Faced with this obstacle, Plaintiffs have resorted to an attack on the constitutionality of the District of Columbia statute that requires dismissal of their claims. Plaintiffs' argument not only misinterprets the Home Rule Act, on which the challenge is based, but it has been rejected by nearly every court to consider a near identical issue. The Anti-SLAPP Act is valid legislation and should be applied to dismiss the Complaint with prejudice. Even if the Anti-SLAPP Act were not applied, Superior Court Civil Rule 12(b)(6) compels dismissal of the claims.

Argument

I. PLAINTIFFS FAIL TO STATE A CLAIM AS A MATTER OF LAW

Plaintiffs give scant attention to the MSNBC parties' motion to dismiss under Superior Court Civil Rule 12(b)(6), citing authority that dismissal is warranted "only when the plaintiff can prove no set of facts supporting their claims." Opp'n at 29 (*citing Duncan v. Children's Nat'l Med. Ctr.*, 702 A.2d 207, 210 (D.C. 1997). The legal framework set forth by Plaintiffs, however, is outdated. The Supreme Court has abandoned the standard of *Conley* v. *Gibson*, 355 U.S. 41 (1957), on which *Duncan* relies, and now requires a complaint to "contain sufficient

factual matter, accepted as true, to state a claim for relief that is 'plausible on its face.'" *Bell Atl. Corp.* v. *Twombly*, 550 U.S. 544, 570 (2007); *see also Ashcroft* v. *Iqbal*, 556 U.S. 662 (2009). In *Mazza* v. *Housecraft LLC*, the Court of Appeals signaled its intent to follow this standard. 18 A.3d 786, 791 (D.C. 2011) ("[W]e take this opportunity to recognize that *Twombly* and *Iqbal* apply in our jurisdiction"), *vacated as moot by Mazza* v. *Housecraft LLC*, 22 A.3d 820 (D.C. 2011).

As set forth in Section II below, Plaintiffs cannot meet this 12(b)(6) standard. The Court of Appeals has recognized that in the area of defamation, "perhaps more than any other, the early sifting of groundless allegations from meritorious claims made possible by a 12(b)(6) motion is an altogether appropriate and necessary judicial function." *Myers* v. *Plan Takoma, Inc.*, 472 A.2d 44, 50 (D.C. 1983).

III. PLAINTIFFS' CLAIMS SHOULD BE DISMISSED UNDER SUPER. CT. CIV. R. 12(b)(6) AND THE ANTI-SLAPP ACT

Dismissal of the Complaint is warranted under both Superior Court Civil Rule 12(b)(6) and the District of Columbia Anti-SLAPP Act of 2010. In their Opposition, Plaintiffs merely recycle, verbatim, the bare and conclusory allegations in the Complaint. They have marshaled no additional facts or relevant evidence establishing a claim for relief that is "plausible on its face" let alone likely to succeed on the merits.

A. The Opposition is Replete With Mischaracterizations of Fact

What is noteworthy about the Opposition, and perhaps the strongest signal of the inadequacy of Plaintiffs' claims, are the distortions and mischaracterizations of fact on which it is predicated. Several facts bear clarifying:

- MSNBC *did not* add "their own fabricated statements" to Dean's May 15th statements. Dean's statements were quoted verbatim. Opp'n at 3. *See* Handman Aff. Exs. 35-36 (transcripts of broadcasts).

- Dean *did not*, as the Opposition intimates, specifically reject in his May 15th statements "the Islamic doctrine and actual practice of executing homosexuals." Opp'n at 2. Nowhere in Dean's May 15th statements did Dean denounce this practice. In fact, he called Muslims more "moral" than American Christians. *See* Handman Aff. Ex. 6E (May 15th radio show transcript).

- MSNBC *did not* state, quote: "Plaintiffs advocated using foreign enemies against America because Christians aren't doing the jobs by killing gays and lesbians." Opp'n at 12. Maddow quipped "foreign enemies rising up against America because Christians aren't doing the jobs of killing the gays" immediately after playing Dean's statements – commentary which her viewers would understand to be a caustic appraisal of Dean's remarks. *See* Handman Aff. Ex. 36 (transcript of broadcast).

- MSNBC *did not* present the statements "as if they were the complete declarations" of Dean and "avoid any mention that the statements came from a larger context." Opp'n at 20. Dean's statements were presented as separately quoted sentences and the radio show was sourced on each screen displaying the quote. *See* Handman Aff. Exs. 35-36 (transcripts of broadcasts).

Plaintiffs cling to these mischaracterizations in a continued attempt to blame MSNBC for the consequences of Dean's own words, and continue to confuse disagreement and criticism with defamation. These allegations are easily rebutted by the record and are insufficient to state a claim that is plausible on its face. Moreover, Dean's unvoiced "intent" in making his May 15th statements and the public outcry his full statements caused (even before the first MSNBC broadcast) are irrelevant to whether MSNBC truthfully broadcast what Dean said. The evidence submitted by MSNBC establishes that MSNBC truthfully and accurately reported Dean's statements, and therefore, the reports cannot be defamatory as a matter of law.

B. Plaintiffs Do Not Identify Any Material Omissions in the Broadcasts

Plaintiffs hinge their falsity argument on the allegation that "material quotes" were omitted from the broadcasts. Yet, nowhere in the thirty-page Opposition do Plaintiffs identify a single word or statement in Dean's May 15th statements that was omitted that was material or that would have altered the meaning of the statements that were played. Nor can they. While

Plaintiffs complain that only five of his nineteen sentences were broadcast, the statements that were not played included: "They're lawless people, and they're playing with the fire that's going to burn them"; "God the Heavens in Jesus' name is warning you to turn from the wrath to come"; "You have Muslims calling for your execution" ; and an invocation of Leviticus 26. *See* Handman Aff. Ex. 6E. Plaintiffs' argument does nothing more than demand that MSNBC be compelled to broadcast Dean's entire speech or none of it at all. Nothing in law or common sense supports this view.

The sole "omission" that Plaintiffs point to is not an omission at all. Opp'n at 16. Plaintiffs refer repeatedly to Dean's written "disclaimer," admonishing the MSNBC parties as if they were under some obligation to report on it. That disclaimer, however, was *not* part of Dean's May 15th statement, but rather a statement made at a different time, in a different forum, through a different medium, and *which does not alter the fact that he made the statements he did on his radio show*. Moreover, reasonable people were free to – as Plaintiffs suggest Maddow did – opine on the sincerity of that disclaimer and discount its significance. Indeed, Maddow was free to disregard it as a hollow and belated attempt to quell the public outcry his statements caused.

C. Plaintiffs Ignore The Context Of Maddow's Protected Commentary

Plaintiffs correctly assert that context is critical in evaluating whether a statement is protected opinion or rhetorical hyperbole, but err in the application of this principle. Plaintiffs contend that MSNBC misled the Court by failing to present the "context" in which Maddow's commentary appeared. Opp'n at 16. Yet, complete transcripts of both broadcasts were attached to MSNBC's motion and lengthy descriptions of the same were included in the brief. Plaintiffs also charge that the fact that Maddow's commentary immediately followed the broadcast of

Dean's statement proves that Maddow was stating facts, not opinion. Plaintiffs are wrong again: The fact that Maddow's commentary followed the broadcast of Dean's statement is more consistent with a conclusion that Maddow was critiquing Dean's statement. The context that is significant, and which Plaintiffs utterly fail to address, is (1) Maddow is a well-known liberal journalist; (2) who hosts a primetime political commentary television show; (3) in a politically charged atmosphere; and (4) is expected by her viewers to offer opinionated, hyperbolic and polemic commentary. These facts compel the conclusion that her commentary is non-actionable opinion. *See, e.g., Guilford Transp. Indus.* v. *Wilner*, 760 A.2d 580, 583 (D.C. 2000). Moreover, Plaintiffs' contention that the Fair Comment Privilege is no longer recognized in the District is unquestionably wrong. *See Lane* v. *Random House, Inc.*, 985 F. Supp. 141, 150 (D.D.C. 1995).

D. Plaintiffs Have Not Demonstrated Requisite Falsity For False Light Claim

While Plaintiffs devote significant attention in the Opposition to the various elements of a false light claim, for the reasons discussed above, Plaintiffs have not established the central and requisite element of falsity. *Klayman* v. *Segal*, 783 A.2d 607, 613 (D.C. 2001). Truth and assertions of opinion are defenses to both false light and defamation claims. *White* v. *Fraternal Order of Police*, 909 F.2d 512, 518, 285 U.S. App. D.C. 273 (D.C. Cir. 1990). The false light claim, which is based on the same alleged false statements as the defamation claim, fails for these reasons. *See Browning* v. *Clinton*, 292 F.3d 235, 248, 352 U.S. App. D.C. 4 (D.C. Cir. 2002).

III. THE ENACTMENT OF THE ANTI-SLAPP ACT WAS A PROPER EXERCISE OF AUTHORITY BY THE COUNCIL OF THE DISTRICT OF COLUMBIA

Plaintiffs' contention that the District of Columbia Anti-SLAPP Act is unconstitutional is without merit.[1]

The District of Columbia Home Rule Act established the Council of the District of Columbia ("the Council") as the legislative branch of the District government and empowered, with limited exception, the Council to enact local legislation consistent with self government. *See* District of Columbia Self-Government and Government Reorganization Act, D.C. Code § 1-204 (2010) (the "Home Rule Act"). As have more than twenty-five states, the Council exercised its legislative authority in enacting the District of Columbia Anti-SLAPP Act of 2010, D.C. Code § 16-5501 et seq. (2011) (the "Anti-SLAPP Act"). As detailed in MSNBC's moving brief, the Anti-SLAPP Act provides defendants to a SLAPP "with substantive rights to expeditiously and economically dispense of litigation aimed to prevent their engaging in constitutionally protected actions on matter of public interest." Report of the D.C. Committee on Public Safety and the Judiciary, Report on Bill 18-893, Anti-SLAPP Act of 2010 (Nov. 19, 2010) ("Committee Report") at 4. Plaintiffs now maintain that the Council exceeded its authority under the Home Rule Act when enacting the Anti-SLAPP Act and urges this Court to take the extraordinary and unwarranted step of overturning this legislation.[2]

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[1] This case does not raise, and Plaintiffs do not raise, the issue of retroactivity. The critical events – the broadcast that is the focus of the Complaint (May 11, 2011) and the lawsuit (July 27, 2011) – both occurred after the effective date of the statute (March 31, 2011).

[2] As Plaintiffs have challenged the constitutionality of the Anti-SLAPP Act under the Home Rule Act, Plaintiffs were required to alert the Court with the inscription "RULE 24 NOTIFICATION REQUIRED" on their Opposition. Super. Ct. Civ. R. 24(c). MSNBC will respectfully request an opportunity to provide additional briefing on this issue should the Court deem it necessary to notify and accept briefing from the Corporation Counsel of the District of Columbia. The District did move to intervene in *Snyder* v. *Creative Loafing, Inc.*, No. 2011-CA

Plaintiffs' argument rests on the erroneous conclusion that the Anti-SLAPP Act is in direct conflict with the Federal Rules of Civil Procedure, Rule 8 in particular. Opp'n at 5-7. Specifically, Plaintiffs point to Section 602(4) of the Home Rule Act, D.C. Code § 1-206.02(a)(4) (2010), which states that the Council shall have no authority "to enact any act, resolution, or rule with respect to any provision of title 11 of the District of Columbia [Official] Code (relating to organization and jurisdiction of the District of Columbia's Courts)." *Id.* Plaintiffs then cite Section 11-946 of the D.C. Official Code, which states that "the Superior Court shall conduct its business according to the Federal Rules of Civil Procedure." *Id.* Reading these provisions together, Plaintiffs declare that the Anti-SLAPP Act is in conflict with the Federal Rules and therefore an improper exercise of the Council's authority. *Id.* This argument, however, is contravened by the language and the purpose of both the Home Rule Act and the Anti-SLAPP Act.

As an initial matter, "[d]etermining whether the D.C. Council exceeded its authority under the Home Rule Act is a question of statutory interpretation which requires the court to focus on the intent of Congress." *United States* v. *Alston*, 580 A.2d 587, 597 (D.C. 1990). With respect to the Home Rule Act, the stated intent of Congress was to "delegate certain legislative powers to the government of the District of Columbia...and to the greatest extent possible, consistent with the constitutional mandate, relieve Congress of the burden of legislating upon essentially local matters." Home Rule Act § 102(a), D.C. Code § 1-201.02 (2010); *see also McIntosh* v. *Washington*, 395 A.2d 744, 753 (D.C. 1978). The language of the Home Rule Act as well as its legislative history are devoid of any indication that Congress intended to prohibit

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003168 B, 2011 WL 4520628 (D.C. Super. Ct. Jul 18, 2011) (J. Edelman), for the purpose of defending the validity of the Anti-SLAPP Act against a constitutional challenge similar to the one Plaintiffs raise here. The plaintiff in *Snyder* dismissed the lawsuit before the matter could be fully briefed or decided.

the Council from enacting legislation that conferred substantive rights on defendants that are targeted with meritless litigation as a result of speaking on an issue of public concern. Rather, the language makes plain that the Council's power was limited to exclude matters that affect the "organization and jurisdiction" – namely the structure and authority – of the District's courts. The Anti-SLAPP Act does neither. In addition, after the Anti-SLAPP Act was approved by the Council it was submitted to Congress for 30-day congressional review. Home Rule Act § 602(c)(1), D.C. Code § 1-206.02 (2010). Congress had the express opportunity to disapprove the Act during this period if it concluded that the Council had overstepped its authority. Congress did not.

Equally critical, Plaintiffs' argument has been rejected by nearly every court to consider the issue. Virtually identical arguments as those raised by Plaintiffs have been raised in challenging the applicability of anti-SLAPP statutes in diversity cases in federal court – the argument being that state anti-SLAPP statutes (on which the Anti-SLAPP Act was modeled, Committee Report at 1) conflict with the Federal Rules of Civil Procedure. The Ninth Circuit, in *United States ex rel. Newsham* v. *Lockhead Missiles & Space Co.*, 190 F.3d 963 (9th Cir. 1999), was the first court to fully articulate the flaw in this position. In determining that the California anti-SLAPP statute could be applied in federal court, the *Newsham* court acknowledged that the anti-SLAPP statute "can exist side by side" with the Federal Rules, "each controlling its own intended sphere of coverage." *Id.* at 972. It explained:

> [The Plaintiff] correctly points out that the Anti-SLAPP statute and the Federal Rules do, in some respects, serve similar purposes, namely the expeditious weeding out of meritless claims before trial. The commonality of purpose, however, does not constitute 'direct collision' – there is no indication that Rule 8, 12, and 56 were intended to 'occupy the field' with respect to pretrial procedures aimed at weeding out meritless claims. The Anti-SLAPP statue, moreover, is crafted to serve an interest not directly addressed by the

> Federal Rules: the protection of 'the constitutional rights of freedom of speech and petition for redress of grievances.'

Id. (internal citations omitted).

Since *Newsham*, nearly all subsequent courts – including every other Circuit Court presented with the question – has concluded that Anti-SLAPP statutes *are not* in direct conflict with the federal rules of civil procedure and therefore must be applied in federal diversity cases. *See Northon* v. *Rule*, 637 F.3d 937 (9th Cir. 2011) (Oregon anti-SLAPP statue applied in federal court); *Godin* v. *Schencks*, 629 F.3d 79, 91 (1st Cir. 2010) (Maine anti-SLAPP statute applied in federal court); *Henry* v. *Lake Charles American Press, L.L.C.*, 566 F.3d 164, 168-69 (5th Cir. 2009) (Louisiana anti-SLAPP applied in federal court); *Global Relief* v. *New York Times Co.*, 2002 WL 31045394, at *11-12 (N.D. Ill. Sept. 12, 2002) (applying California anti-SLAPP statute in district court in 7th Circuit); *USANA Health Servs., Inc.* v. *Minkow*, 2008 WL 619287, at *1-3 (D. Utah Mar. 4, 2008) (applying California anti-SLAPP statute in district court in the 10th Circuit); *Buckley* v. *DIRECTV, Inc.*, 276 F. Supp. 2d 1271, 1275 n.5 (N.D. Ga. 2003) (Georgia anti-SLAPP statute applied in federal court); *Bible & Gospel Trust* v. *Twinam*, 2008 WL 5216845 (D. Vt. July 18, 2008) (Vermont anti-SLAPP statue applied in federal court).

Plaintiffs carefully omit this extensive authority and rely exclusively on three cases from the District of Massachusetts. Yet, the three cases cited by Plaintiffs cannot be reconciled with the subsequent and governing law of the First Circuit. In *Godin* v. *Schencks,* the First Circuit held that the Maine anti-SLAPP statute could be applied in federal court even though it has "both substantive and procedural aspects." 629 F.3d at 88. Appearing to reject the reasoning articulated in the district court cases cited by Plaintiffs, the *Godin* court concluded that

> Federal Rules 12(b)(6) and 56 are addressed to different (but related) subject-matters. Section 556 [the Maine anti-SLAPP statute] on its face is not addressed to either of these procedures, which are general federal procedures

> governing all categories of cases. Section 556 is only addressed to special procedures for state claims based on a defendant's petitioning activity. ...Section 556 does not seek to displace the Federal Rules or have Rules 12(b)(6) and 56 cease to function. In addition, Rules 12(b)(6) and 56 do not purport to apply only to suits challenging the defendants' exercise of their constitutional petitioning rights. Maine itself has general procedural rules which are the equivalents of Fed.R.Civ.P. 12(b)(6) and 56. That fact further supports the view that Maine has not created a substitute to the Federal Rules, but instead created a supplemental and substantive rule to provide added protections, beyond those in Rules 12 and 56, to defendants who are named as parties because of constitutional petitioning activities.

Id.

The same reasoning is applicable here. The D.C. Anti-SLAPP Act does not seek to displace or supplant the Federal Rules. Nor do the Federal Rules aim to address the issue specifically addressed by the Act – a mechanism for prompt dismissal of meritless claims based on a defendant's exercise of First Amendment rights on an issue of public concern. And Plaintiffs' contention that the Act shifts the burden to a plaintiff upon a prima facie showing by a defendant hinders rather then helps their argument. *See Miles* v. *I.R.S.*, 2007 WL 809789, at *3 (D.D.C. March 15, 2007) ("The Supreme Court has recognized that the burden of proof qualifies as a 'substantive' aspect of a claim.") (*citing Raleigh* v. *Illinois Dep't of Revenue*, 530 U.S. 15, 20-21 (2000)); *see also Godin*, 629 F.3d at 89 ("One of the substantive aspects of [the Maine Anti-SLAPP statute] shifts the burden to plaintiff to defeat the special motion.").[3] Federal Rule of Civil Procedure 8, which Plaintiffs point to specifically, merely sets forth minimum pleading standards. It does not, as Plaintiffs suggest, set forth the maximum a plaintiff must establish to have a claim proceed. (If this interpretation were true, it would negate the need for Rule 12(b)(6).) The Act's requirements are thus in no way conflicting. These factors compel the conclusion that the Council "has not created a substitute to the Federal Rules but instead created

[3] The Anti-SLAPP Act's provision for attorney fees is another substantive protection as well. D.C. Code § 16-5504(a) (2010).

a supplemental and substantive rule to provide added protections" beyond those in the Federal Rules. *Id.* at 88.

Moreover, in interpreting the application of the Home Rule Act, "the D.C. Council's interpretation of its responsibilities under the Home Rule Act is entitled to great deference." *Tenley & Cleveland Park Emergency Comm.* v. *Dist. of Columbia Bd. of Zoning Adjustment*, 550 A.2d 331, 334 n.10 (*citing Marshall* v. *District of Columbia Rental Hous. Comm'n*, 533 A.2d 1271, 1274 (D.C. 1987)). Both the District of Columbia Court of Appeals "and the United States Court of Appeals for the District of Columbia Circuit have consistently held...that restrictions on the legislative authority of the Council in § 1-206.02(a)(4) [the Home Rule Act provision cited by Plaintiffs] must be narrowly construed, so as not to thwart the paramount purpose of the HRA, namely, to 'grant to the inhabitants of the District of Columbia powers of local self-government.'" *Bergman* v. *District of Columbia*, 986 A.2d 1208, 1226 (D.C. 2010) (internal citations omitted); *see also Umana* v. *Swidler & Berlin, Chartered*, 669 A.2d 717, 723-724 (D.C. 1995) ("Statutes should generally be construed to avoid any doubt as to their validity."). The court should "decline to adopt a construction that would open to question the validity of the statute when it is not compelled by the language or the purpose of the statute." *Umana*, 669 A.2d at 723-24.

District of Columbia courts have adhered to this guidance in determining that the Home Rule Act did not prohibit the Council from enacting other local legislation. For example, in *Bergman*, the appellant argued that the White Collar Insurance Fraud Prosecution Enhancement Amendment Act regulated the conduct of attorneys and was therefore impermissible because it concerned Title 11 of the District Code. 986 A.2d at 1225-26. Rejecting appellant's argument, the court declined to construe the Home Rule Act as conferring *exclusive* authority on the courts

to regulate attorney conduct. *Id.* Recognizing that the Home Rule Act precluded "the Council from amending the fundamental organization and jurisdiction of the District of Columbia courts" and concluding the Act did not do so on its face, the court cautioned "that restrictions on the legislative authority of the Council in § 1-206.02(a)(4) must be narrowly construed." *Id.* at 1225-26. The court went on to emphasize that "overlapping powers only constitute a violation of separation of powers if the intruding branch 'impermissibly undermines the powers' of the other branch or 'disrupts the proper balance between the coordinate branches by preventing the [allegedly intruded on] branch from accomplishing its constitutionally assigned functions.'" *Id.* at 1230 (*citing Hessey* v. *Burden*, 584 A.2d 1, 5 (D.C. 1990) (internal citations omitted). In upholding the validity of the Act, the court held that "the Council's passage of the Act, in the exercise of its power to enact legislation of general applicability, does not impermissibly burden or unduly interfere with this court's authority to exercise its core functions." *Id.* at 1231.

Similarly, in *Dimond* v. *District of Columbia*, 792 F.2d 179, 189-90, 253 U.S. App. D.C. 111 (D.C. Cir. 1986), the court held that the Council did not exceed its authority in enacting the No Fault Insurance Act, which restricts an automobile accident victim's right to bring a tort suit to recover non-economic losses unless the victim incurs $5,000 or more in medical expenses. The court noted that the Act "says absolutely nothing about the jurisdiction" of the District courts but "merely sets forth the conditions on which a [plaintiff] may maintain a cause of action." *Id.*; *see also McIntosh* v. *Washington*, 395 A.2d 744, 751-52 (D.C. 1978) (holding that Firearms Act was a valid exercise of Council's authority and concluding the proper inquiry "is not whether the legislature and municipality have both entered the same field, but whether in doing so they have clashed").

This analysis confirms the constitutionality of the Anti-SLAPP Act as well. The Act's history makes clear that the Council intended to create "substantive rights" and a substantive immunity from suit. *See* Committee Report at 1, 4. Accepting the broad interpretation of the limits on the Council's authority advanced by Plaintiffs "would be to hold the Council powerless to act in many areas which have traditionally fallen within its local regulatory domain." *McIntosh*, 395 A.2d at 751.

Finally, the Court should disregard Plaintiffs' argument that the Anti-SLAPP Act should not apply because their intent in bringing suit was to "vindicate their legally cognizable right" and they have not succeeded in actually chilling MSNBC's speech. Opp'n at 7-10. There is no requirement in the Anti-SLAPP Act that the plaintiff must have intended or succeeded in chilling the defendant's speech. Courts in other jurisdictions with similar legislation have declined to read such a requirement into the plain language of the statutes. *See, e.g., Equillon Enters. LLP* v. *Consumer Cause, Inc.*, 52 P.3d 685, 690 (Cal. 2002). For the Anti-SLAPP Act to apply, Defendants need only establish that the claim arose from an act in furtherance of the right of advocacy on an issue of public interest. D.C. Code § 16-5502 (2010). Defendants have done so – a point Plaintiffs concede in their silence.

Conclusion

For the foregoing reasons, and the reasons set forth in Defendants' Memorandum of Points and Authorities in Support of Special Motion to Dismiss Pursuant to D.C. Anti-SLAPP Act of 2010 and Motion to Dismiss Pursuant to Superior Court Civil Rule 12(b)(6), the MSNBC parties respectfully request that the Complaint be dismissed with prejudice.

Dated: October 31, 2011

Respectfully submitted,

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