

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION

Brian Musgrave,)	Civil Action No.: 2:25-CV-01823-RMG
)	
Plaintiff,)	
)	
vs.)	PLAINTIFF’S MEMORANDUM IN
)	OPPOSITION TO DEFENDANTS’
Nancy Mace and Jane/John Does 1-5,)	MOTIONS TO DISMISS¹
)	
Defendants.)	
_____)	

INTRODUCTION

Defendant Nancy Mace and her yet to be identified co-conspirators and co-Defendants ask by their Motion to Substitute the United States of America, and if so substituted to dismiss this Complaint, that the American taxpayers pick up the tab associated with their decision to defame and victimize Brian Musgrave. On June 23, 2025, Bryan P. Stirling, United States Attorney for the District of South Carolina, certified to this Court that having read the Plaintiff’s First Amended Complaint, “Defendant Nancy Mace acted within the scope of her employment as a Member of Congress at the time the alleged conduct took place.” In doing so, the United States Attorney certified that Ms. Mace acted within the course and scope of her employment as a Member of Congress:

- a. In purchasing real estate in common with her ex-fiancé, Patrick Bryant (First Amended Complaint, para. 29);
- b. In gaining access to Mr. Bryant’s cell phone without his consent (First Amended Complaint, para. 31);

¹ This memorandum in opposition applies to both Entry Numbers 22 and 24 filed by the Defendants.

- c. In recruiting her ex-campaign manager, Wesley Donehue, to use the hacked “evidence” of images of women in compromising positions found on Bryant’s phone to blackmail Bryant into capitulating to her demands for money and/or for the division of properties they owned together (First Amended Complaint, paras. 33-37);
- d. In asking Donehue to approach Bryant and demand that if he did not give her 100% of the interests in both the Isle of Palms and Washington, DC properties that they owned in common, she would destroy Bryant by making the pictures she found on his phone public (First Amended Complaint, para. 38);
- e. In issuing an evidence preservation letter to Bryant on November 12, 2023, in which Ms. Mace instructed Bryant to preserve the information on his phone and warning Bryant that unless he capitulated to her demands, he would face disastrous financial consequences (First Amended Complaint, para. 41);
- f. In plotting to make good on her promise to destroy Bryant after he refused her financial demands by delivering a speech on the floor of Congress on February 10, 2025 (First Amended Complaint, para. 43 - 45);
- g. In adding Brian Musgrave’s name and image to a poster of “Predators” for the purpose of inflicting pain on Bryant’s friend (First Amended Complaint, para. 53); and most notably
- h. In labeling Brian Musgrave a predator, a rapist and a sex trafficker without a shred of evidence.

Based on the premise that Ms. Mace was in fact acting within the course and scope of her employment as a member of the United States Congress at all times described in the Complaint, Ms. Mace urges the Court to dismiss Brian Musgrave’s Complaint on the grounds that his sole remedy would be to seek relief under the Federal Tort Claims Act (“FTCA”). Applying a Rule 12(b)(6) standard, Mace essentially argues that even if she engaged in all of the conduct described, she is still afforded the protections of the FTCA. Brian Musgrave rejects the conclusory determination that these and other acts described in his First Amended Complaint fall within the course and scope of Ms. Mace’s employment as a Member of Congress so as to make relief under

the FTCA his sole remedy, and offers the following arguments in opposition to the two Motions to Dismiss filed by the Defendants in this matter.²

STANDARD OF REVIEW

On a motion to dismiss under Rule 12(b)(6), a "complaint must be dismissed if it does not allege 'enough facts to state a claim to relief that is plausible on its face.'" *Giarratano v. Johnson*, 521 F.3d 298,302 (4th Cir. 2008) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). "In reviewing a motion to dismiss an action pursuant to Rule 12(b)(6) ... [a court] must determine whether it is plausible that the factual allegations in the complaint are 'enough to raise a right to relief above the speculative level.'" *Andrew v. Clark*, 561 F.3d 261, 266 (4th Cir. 2009) (quoting *Twombly*, 550 U.S. at 555). "In considering a motion to dismiss, [the court] accept[s] the complainant's well-pleaded allegations as true and view[s] the complaint in the light most favorable to the non-moving party." *Stansbury v. McDonald's Corp.*, 36 F. App'x 98, 98-99 (4th Cir. 2002) (citing *Mylan Labs., Inc. v. Matkari*, 7 F.3d 1130, 1134 (4th Cir.1993)).

ARGUMENT

In short, the United States argues that all of the conduct described in the Plaintiff's First Amended Complaint is conduct within the course and scope of Nancy Mace's employment as a result of which, the United States should be substituted as the proper party, and also as a result of which, Musgrave's exclusive remedy would be within the confines of the FTCA. As Musgrave did not first make an administrative claim for relief under the FTCA, the United States contends that his Complaint must be dismissed. But Ms. Mace is not bullet-proof from liability by virtue of her office as a United States Congresswoman, and for the reasons set forth herein, her motion must fail.

² Musgrave incorporates herein all arguments advanced in his Memorandum in Opposition to Certification.

It is anticipated that Ms. Mace will contend that the entirety of her hour-long speech on February 10, 2025, and its subsequent republications and related defamatory swipes at Brian Musgrave, are protected by the United States Constitution's Speech or Debate Clause, Article I, Section 6 (the "Clause"). As such, Ms. Mace would contend that any and all statements made by members on the House floor are quintessentially legislative acts. However, Mace downplays and fails to appreciate that her off-floor weaponization of the speech through a media campaign is far afield from any such protections.

"The 'central role' of the Speech and Debate Clause is to 'prevent intimidation of legislators by the Executive and accountability before a possibly hostile judiciary.'" *United States v. Menedez*, 831 F.3d 155, 165 (3d Cir. 2016) (citations omitted). It was "not written into the Constitution simply for the personal or private benefit of Members of Congress, but to protect the integrity of the legislative process by insuring the independence of individual legislators." *United States v. Brewster*, 408 U.S. 501, 507; *see also Tenney v. Brandhove*, 341 U.S. 367, 377 (1951) (stating that legislators must be "immune from deterrents to the uninhibited discharge of their legislative duty, not for their private indulgence but for the public good").

The limitations on immunity reflect the judiciary's long-standing awareness of ambitious politicians who use their positions for self-promoting political activity. As far back as 1833, esteemed Justice Joseph Story, in his Commentaries on the Constitution of the United States, made clear that [n]o man ought to have a right to defame others under colour of a performance of the duties of his office. And if he does so in the actual discharge of his duties in congress, that furnishes no reason, why he should be enabled through the medium of the press to destroy the reputation, and invade the repose of other citizens....Every citizen has as good a right to be protected by the laws from malignant scandal, and false charges, and defamatory imputations, as

a member of congress has to utter them in his seat. *Hutchinson v. Proxmire*, 443 U.S. 111, 128 (1979) (quoting 2 J. Story, Commentaries on the Constitution § 863, p. 329 (1833)).

The protection is limited to the Legislator’s “legislative activities.” Legislative acts have “consistently been defined as [those] generally done in Congress in relation to the business before it.” *Brewster*, 408 U.S. at 512. They do not include “all things in any way related to the legislative process.” *Id.* at 516; *see also Gravel v. United States*, 408 U.S. 606, 625 (1972) (“That Senators generally perform certain acts in their official capacity as Senators does not necessarily make all such acts legislative in nature.”). Rather, the clause protects only acts that are “an integral part of the deliberative and communicative processes by which Members participate in committee and House proceedings with respect to the consideration and passage or rejection of proposed legislation or with respect to other matters which the Constitution places within the jurisdiction of either House.” *Gravel*, 408 U.S. at 625.

Courts recognize that our elected officials engage in both legislative and non-legislative acts. The latter, however, receives no protection under the Clause. Merely political activities, such as “preparing so-called ‘news letters’ to constituents, news releases, and speeches delivered outside the Congress,” often done as “a means of developing continuing support for future elections,” are not legislative and are not protected under the Clause. *Brewster*, 408 U.S. at 512. While legislators’ “informing function” is a key component of their political activities, the Supreme Court nevertheless excludes the informing function from the legislative function. *Hutchinson*, 443 U.S. at 132. “Valuable and desirable as it may be in broad terms, the transmittal of such information by individual Members in order to inform the public and other Members is not a part of the legislative function or the deliberations that make up the legislative process.” *Id.* at 133. The Supreme Court understands that “[n]ewsletters and press releases...represent the views and will of a single

Member”—even if they address matters of legislative importance, they do not represent “the individual and collective expressions of opinion within the legislative process.” *Id.*

Representatives cannot claim “an absolute privilege from liability or suit for defamatory statements made outside the Chamber.” *Hutchinson*, 443 U.S. at 127. This includes the out-of-chamber republication of in-chamber statements. The Supreme Court rejects the notion that the Clause “grant[s] immunity for defamatory statements scattered far and wide by mail, press, and the electronic media.” *Id.* at 132. Despite the post-speech bravado from Mace’s office, the divergent posts on Mace’s office and campaign accounts suggest she is aware of the potential restrictions. Mace appears to launch her most vitriolic content into the public sphere through her office accounts, where she has posted clips of her floor remarks and the “PREDATORS” poster. Her personal/campaign account then amplifies the official account’s narrative by sharing news articles and quotations. Mace appears to believe that washing the inflammatory content through her office accounts extends the “legislative activities” bubble, but the Supreme Court draws no such distinction. Mace interchangeably uses both types of accounts to communicate with the public at large, carrying out the non-legislative informing function, and neither is entitled to blanket immunity.

In *Hutchinson*, for example, the Supreme Court declined to expand the “legislative activities” bubble to include legislators’ public reporting to their constituents. The plaintiff, a scientist, sued a senator for defamation arising out of a speech on the Senate floor. In addition to delivering the speech, the senator incorporated the text of his address into an advance press release and distributed copies to 275 journalists. The Supreme Court held that the Speech or Debate Clause did not protect the transmittal of allegedly defamatory material in the senator’s press releases and newsletter. “A speech by [the Senator] in the Senate would be wholly immune and

would be available to other Members of Congress and the public in the Congressional Record. But neither the newsletters nor the press release was ‘essential to the deliberations of the Senate’ and neither was part of the deliberative process.” *Hutchinson*, 443 U.S. at 130.

The Court reached a similar conclusion in *Gravel*, a matter involving a senator who read from the classified Pentagon Papers at a Senate subcommittee meeting, placed the entire 47 volumes of the study in the public record, and arranged for the papers to be published by a publishing company. Like *Hutchinson*, the Supreme Court concluded:

[P]rivate publication by Senator Gravel through the cooperation of Beacon Press was in no way essential to the deliberations of the Senate....The Senator had conducted his hearings; the record and any report that was forthcoming were available both to his committee and the Senate. Insofar as we are advised, neither Congress nor the full committee ordered or authorized the publication. We cannot but conclude that the Senator’s arrangements with Beacon Press were not part and parcel of the legislative process.

Gravel, 408 U.S. at 625-26.

Finally, *Doe v. McMillan* also considered the publication and distribution of a Congressional committee report. 412 U.S. 306 (1973). The Supreme Court recognized committee reports as the individual and collective expressions of opinion within the legislative process. However, it also made clear that “[a] Member of Congress may not with impunity publish a libel from the speaker’s stand in his home district, and clearly the Speech or Debate Clause would not protect such an act even though the libel was read from an official committee report.” *Id.* at 314.

Congresswoman Mace is likewise not protected by the Federal Tort Claims Act (FTCA), as amended by the Westfall Act, 28 U.S.C. § 2679(b)(1). The Westfall Act arises when federal employees “acting within the scope of employment” are subject to “state tort lawsuits for money damages.” *Council on Am. Islamic Rels. v. Ballenger*, 444 F.3d 659, 662 (D.C. Cir. 2006). The United States can replace the employee as the defendant, rendering the FTCA the exclusive means of recovery for the plaintiff. *Carroll v. Trump*, 49 F.4th 759, 765 (2d Cir. 2022), *certified question answered*, 292 A.3d 220 (D.C. 2023).

As a threshold matter, the Westfall Act does not apply because Mace’s personal vendettas are outside the scope of her employment.³ Courts determine whether a federal employee was acting within the scope of her employment by applying the law of the state in which the tort occurred; South Carolina law governs here as the named individuals are South Carolina citizens and Rep. Mace’s social media posts were accessible in the state. *See Haaland*, 973 F.3d at 599; *Williams*, 71 F.3d at 506. Under South Carolina law, “[a]n act is within the scope of a servant’s employment where reasonably necessary to accomplish the purpose of his employment and in furtherance of the master’s business.” *Armstrong v. Food Lion, Inc.*, 371 S.C. 271, 276, 639 S.E.2d 50, 52 (2006). “The act of a servant done to effect some independent purpose of his own and not with reference to the service in which he is employed, or while he is acting as his own master for the time being, is not within the scope of his employment so as to render the master liable therefor.” *Id.* at 276, 53. Mace should be disappointed if she planned to rely on FTCA’s taxpayer funding to backstop judgments resulting from her conduct, or deploy the FTCA’s limitations to avoid such lawsuits.

³ See also Plaintiff’s Memorandum in Opposition to Certification which is incorporated herein by reference.

Doe v. Beaufort Jasper Acad. for Career Excellence, 2021 WL 118300, at *3 (S.C. Ct. App. Jan. 13, 2021) provides a recent example from South Carolina appellate courts. In *Doe*, plaintiff sued his employer after his wife received a series of anonymous letters accusing the plaintiff of engaging in an extramarital affair with a co-worker. The court held that the publication was not within the scope of official duties of any employees as the contents and the forum (letter to plaintiff's wife) demonstrate "personal animus" against the plaintiff intended principally to disrupt the plaintiff's personal life. *Id.* Other South Carolina cases are in accord. See *Loadholt v. S.C. State Budget & Control Bd., Div. of Gen. Servs., Ins. Reserve Fund*, 339 S.C. 165, 171–72, 528 S.E.2d 670, 674 (Ct. App. 2000) (finding even though an on-duty sheriff was "working in his county office and allegedly 'discussing county business' prior to and at the time of the alleged assaults" against his coworkers, the sheriff operated outside the course of his employment at the time of the assaults because he was not furthering the business of his employer); *Padgett v. S.C. Ins. Reserve Fund*, 340 S.C. 250, 254, 531 S.E.2d 305, 307 (Ct. App. 2000) (finding a teacher's sexual harassment of a student was not within the scope of his official duties because he was "not providing instruction, acting in his capacity as a faculty member, or furthering [the appellant]'s education"); *Hamilton v. Davis*, 300 S.C. 411, 417, 389 S.E.2d 297, 300 (Ct. App. 1990) (finding even though the manager of rental properties had been collecting debris and removing it from the yard in furtherance of the property owners' business, he was outside the scope of employment when he placed his truck in reverse and pushed victim with the open truck door because "he momentarily stepped away from" furthering the owners' business to commit an assault that "was clearly of a personal nature, indulged in for his own personal amusement").

Mace's remarks and online posts — offered with great fanfare — had uniquely personal targets: four private citizens in her social circle, the law enforcement agency investigating her

claims, and her political rival. While only Mace knows her controlling motivation with certainty, context illuminates the numerous possibilities: regaining the narrative from a tumultuous romantic relationship, exacting revenge, influencing pending investigations, promoting an upcoming run for the South Carolina governorship, and/or attacking a political rival. Mace has remained unusually silent on any supposed legislative hook since her speech. Even the “hotline” Ms. Mace purported to establish for victims of sexual assault was nothing more than a front to gather dirt on her former fiancé and his friends, as her spokesperson and website clarified that the number was intended *only for people reporting allegations about the four men*.

While the United States Attorney General has the first opportunity to determine if a government employee acted within the scope of employment, Mace must then convince this Court as well. *See De Martinez v. Lamagno*, 515 U.S. 417, 432 (1995) (explaining that the “the scope-of-employment . . . can and properly should be checked by the court” as Attorney General certification is “the first, but not the final word”).

In the end, Mace’s legislative shield is not a sword to settle personal scores.

CONCLUSION

The decline in moral and ethical conduct in politics in this Country notwithstanding, Musgrave rejects the notion that blackmail and defamation have become so ubiquitous among American politicians that it falls within the job description for members of the United States Congress. When Nancy Mace blackmailed her ex-fiancé, Patrick Bryant, that she would release photos and videos that she obtained from his phone without his consent unless he capitulated to her demands for money, she acted outside of the scope of her employment as a member of Congress. When Nancy Mace took to the floor of Congress on February 10, 2025, and called Brian Musgrave a rapist, a sex trafficker and a predator, she acted outside of the scope of her

employment as a member of Congress. When Nancy Mace used her social media platforms and appeared on newscasts and podcasts to spread the lie that Brian Musgrave is a rapist, a sex trafficker and a predator, she acted outside of the scope of her employment as a member of Congress. Rather than apologize to Brian Musgrave and apologize for her behavior, Ms. Mace has chosen instead to ask that the United States taxpayers pick up the tab for her improper conduct. Mace is not entitled to hide behind the shield of her office under the rouse that what she did was done in the course and scope of what is customary for a United States Congresswoman. Therefore, both of the Defendants' Motions to Dismiss must be denied.

Charleston, South Carolina
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