

motion for an order staying all discovery and related proceedings pending resolution of National Review's appeal on its special motion to dismiss under the DC Anti-SLAPP Act; and allow Defendant Steyn and Plaintiff Michael E Mann, PhD, to continue with discovery, deposition and other pre-trial matters; and, in support thereof, states as follows:

1. Defendant Steyn believes in the core legal principle that justice delayed is justice denied. The link between justice and timeliness has been explicit in the legal inheritance of this jurisdiction since the Assize of Clarendon, signed by Henry II in the year 1166, a half-century before Magna Carta, Article Six of which commands that when the accused "are given over to the sheriffs, they also shall receive them *straightway without delay.*"

2. Defendant Steyn would also like to be received straightway without delay. It is now 515 days since Plaintiff filed his original complaint over Steyn's 270-word blog post. That works out to almost two days per word - and National Review now demands that the parties remain idling in the "Anti-SLAPP" phase for another three or four months. Clearly, the Anti-SLAPP law is not, as it purports to be, an expedited means for unjustly accused individuals to resume "public participation" but merely another addition to the lethargic procedural roundelay that has rendered US justice the 21st century version

of trial by ordeal. This breaches inter alia the Universal Declaration of Human Rights, to which the United States is a signatory.

3. The charge that a man is a defamer is a serious one and profoundly damaging. With criminal charges, this nation provides a constitutional right to a speedy trial. It offers no such protections in civil court, even though to be accused as a defamer is certainly as damaging to one's reputation and honor as all but the most serious criminal charges. For an independent writer such as Defendant Steyn, this is especially so: His livelihood depends entirely on his reputation, and as long as this charge stains his character without being answered he is being damaged. As the accused, he asserts his right to confront his accuser in open court in a timely manner.

4. Likewise, the Plaintiff is owed the courtesy of being received straightway without delay. As this Court noted in its Order of January 22nd, the allegedly defamatory statements "go to the heart of scientific integrity", and thus to the heart of the Plaintiff's character. If the Court truly believes that, then Dr Mann is entitled to a timely trial that settles the truth of the matter wheresoever it be.

5. Because the charge of defamer is so damaging, Defendant Steyn has taken this process seriously. Unlike his Co-Defendants, who have not bothered to answer Plaintiff's

Complaint, Steyn has filed his answers with the Court. On February 12th, he responded to Dr Mann's Requests for Discovery, and is looking forward to Plaintiff reciprocating. He is preparing to depose Mann.

6. Co-Defendant National Review, Inc, by contrast, is not a named individual but a corporate entity and thereby considerably more insulated from a direct assault on character. Are they suffering in any other way? Their motion advances no serious argument other than that answering Plaintiff's Discovery Requests is an "undue burden or expense". Having already responded to Plaintiff's Discovery Requests, Defendant Steyn feels it can hardly be described as much of a burden, or indeed as expensive as having counsel file motions obstructing it. But, accepting for the purposes of argument that it is a "burden", it cannot outweigh the profound damage done to the named individuals in this case inflicted by further delay in a trial date, continued imputation to their character, and the ongoing chill to freedom of expression on important matters of public policy.

7. The nearest National Review comes to advancing grounds for further delay is their counsel's assertion that Plaintiff's counsel indicated to him that it would be "impracticable to proceed with discovery between himself and Steyn without the involvement of the other Co-Defendants". This is really an

argument for the Plaintiff to make rather than National Review, but Defendant Steyn cannot see what would be so "impracticable" about such an arrangement.

8. Co-Defendant's Motion argues that, "if National Review's appeal succeeds, then the claims against Steyn will almost certainly need to be dismissed as well". But Steyn has filed his own counterclaims against the Plaintiff, so his case will continue regardless. National Review is thus obstructing a case to which it is not a party.

9. National Review's attempt to stay discovery is also at odds with its publicly stated position in "Get Lost", its editorial of August 22nd 2012, authored by the editor Rich Lowry. In said editorial, National Review stated that the principal reason it would welcome Dr Mann's suit was the opportunity it afforded for an "investigation of Mann through discovery".

10. This is not a minor discrepancy between an editorial position and legal strategy. The Lowry editorial is itself the subject of Count IV of Plaintiff's Amended Complaint. A defendant's belief in the truth of what he said is critical to a libel defense. As stated in his Affirmative Defenses, Steyn stands on the truth of what he wrote. However, in abandoning its editorial braggadocio for procedural opportunism, National Review has indicated it no longer believes what Mr Lowry wrote in the "Get Lost" column. That is potentially gravely

prejudicial to National Review's fellow defendants - especially in a case where the Court in its most consequential order (Combs Greene, J, July 19th) has already confused one defendant with another.

11. Unlike National Review, Defendant Steyn has responded to Plaintiff's Discovery Requests. Unlike National Review, Defendant Steyn has answered Plaintiff's Complaint. Unlike National Review, Defendant Steyn has filed counterclaims against Dr Mann. Unlike National Review, Defendant Steyn wishes to proceed to his own discovery and deposition of Dr Mann. Unlike National Review, Defendant Steyn is a named individual on whom an already unnecessarily protracted process imposes great costs. Unlike National Review, Defendant Steyn recognizes that the Plaintiff is entitled to his day in court without further delay.

12. Therefore, in acknowledgment of the essentially different situations in which the Co-Defendants find themselves, if the Court chooses not to dismiss National Review's motion to stay discovery, Defendant Steyn asks that he be separated from the other defendants so that he and the Plaintiff can proceed to trial in a timely manner.

WHEREFORE Defendant Steyn respectfully requests that this Honourable Court:

- a) Dismiss National Review's Motion for Protective Order Staying Discovery Pending Appeal; or
- b) Separate Defendant Steyn from his Co-Defendants and permit him and Plaintiff to proceed to trial;
- c) Schedule a hearing on National Review's Motion; and
- d) Grant such other and further relief as may be just and equitable.

Dated: Woodsville, New Hampshire
March 21st 2014

/s/ Mark Steyn
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 21st day of March 2014 I caused a copy of the foregoing *Defendant's Response to National Review's Motion for Protective Order Staying Discovery Pending Appeal* to be served via CaseFileXpress on the following:

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