

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

SARAH MCVAY PAWLICK and)
MASSACHUSETTS CITIZENS FOR)
MARRIAGE)
Plaintiffs,)
v.)
THE NEW YORK TIMES COMPANY)
Defendant)

COMPLAINT FOR DAMAGES

INTRODUCTION

Plaintiffs are an individual resident of Massachusetts and a Massachusetts nonprofit corporation. Defendant is a New York corporation. The suit is for money damages resulting from libel.

THE PARTIES

1.

Plaintiffs are Sarah McVay Pawlick [**Pawlick**], a Massachusetts resident, and Massachusetts Citizens for Marriage [**MCM**], a Massachusetts corporation, of which Pawlick is the founding President. Their offices are at One Cameron Street, Wellesley, Massachusetts 02482.

2.

Defendant is a New York corporation, a diversified media company with over 12,000 employees and annual sales over \$3 billion, which owns the New York Times newspaper

[**Times**] and the Boston Globe newspaper [**Globe**]. Its corporate offices are at 229 West 43rd Street, New York, New York.

JURISDICTION

3.

This court has jurisdiction in this diversity action in that Pawlick is a Massachusetts resident and MCM is a Massachusetts corporation, and the defendant is a New York corporation. The damages are over \$75,000.

VENUE

4.

The facts of the case were almost exclusively in Massachusetts. In addition, both the Times and the Globe are active in selling their newspapers, selling their advertising and gathering news in the Boston market. The offices of the Globe are at 135 Morrissey Boulevard, Boston, Massachusetts 02125. The Boston offices of the Times are 2 Faneuil Hall Market, Boston, Massachusetts 02109.

BACKGROUND INFORMATION

5.

Plaintiffs have been actively working to pass the Protection of Marriage Amendment [**Amendment**] under the procedure of the Massachusetts Constitution, amend. art. 48, which would codify the existing definition of marriage (one man and one woman) as it has always been. Plaintiffs believe that the family structure in this state has been the foundation of our society and any change in that definition will seriously weaken and damage that structure. A change would damage the purpose for marriage, i.e., children, by causing them to become of secondary importance, instead of the primary purpose of marriage. They agree with the Vermont Supreme Court which said in its ruling in 1999 that its ruling could "destabilize" the institution of marriage and affect it in "unpredictable" ways. The Vermont court acknowledged it had no idea what would happen as the result of its tampering with the basic foundation of society.

6.

The Times and the Globe disagree passionately with the plaintiffs, as is their right, and have led the fight to oppose the Amendment and to have the courts impose homosexual marriage in the state, which would not be allowed if the Amendment is approved.

7.

Both the Times and the Globe have gone far beyond the ethics of journalistic standards and have used their news columns to promote their beliefs, including false and libelous statements about Pawlick and MCM.

Count I

Times Newspaper Libeled Plaintiffs with Its Story and Headline: "Drive to Ban Gay Marriage Is Accused of Duping Signers."

8.

Although the Globe and other opponents of the Amendment attempted to avoid an obvious libel of the plaintiffs, the Times threw the full weight of its national edition against the plaintiffs on Sunday, April 7, 2002, in an attempt to influence a hearing of the Massachusetts Legislature which was to occur on Wednesday, April 10. But the Times apparently failed to tell its headline writer to be cautious and he wrote in the headline what was obvious: that the story accused the plaintiffs of "duping," i.e., "deceiving" and "cheating." The story went across the entire country in the national edition of the Times with a banner headline across the top of the page in section 1, page 22. There was no news "event" to explain the story; it merely rehashed what the Globe had reported for months. The story did not mention the imminent hearing in the Legislature.

9.

At the legislative hearing that Wednesday, many legislators attacked the plaintiffs. Two of them, Representatives David Torrissi and Paul Demakis, continually talked about the fraud of which the plaintiffs had been falsely accused. Pawlick testified before that very hostile hearing at which she was accused of fraud.

Count II

Libels Have Been Continuing Since November 2001

10.

The Amendment process began in August 2001 and signature-gathering started in September. At first the Globe ignored the Amendment, not wishing to help publicize it, until it became clear that the number of signatures would far-exceed the required number. Their friends, the opponents of the Amendment, were sending "blockers," in violation of the First Amendment, across the state to every shopping mall where signatures were being gathered. As a result of this illegal intimidation and harassment, Pawlick and MCM were concerned about the safety of the petition gatherers. Therefore, they hired professional signature gatherers who were already in the state working for Carla Howell, a Libertarian candidate for Governor, and an organization, Save Our Horses [horse], which was attempting to prohibit the consumption of horsemeat by humans.

11.

On November 21, 2001, near the end of the signature-gathering period, the first story to appear in the Globe about the Amendment was published on the front page of the Metro

section, under the headline, "Battle over gay marriage petition gets ugly." The story gave the impression that Pawlick and MCM were lying and using deceptive practices, particularly in regard to those who wanted to sign the horse petition and who had been "tricked" into signing the plaintiffs' petition instead.

12.

On January 9, 2002, immediately after the Amendment was certified and the signatures had gone unchallenged, it was apparent that the Amendment was not going to fade into the woodwork and its opponents were going to attack it again. Thereafter, on cue, the same reporter wrote a second story about the Amendment on the front page of the City & Region section under the headline, "Accusations swirl on petition tactics."

13.

On March 26, 2002, two weeks before the Legislature held its hearing on the Amendment (and twelve days before the Times story), the Globe published another article by the same reporter about the horse people with the headline, "Horse lovers say they were duped." This repeated the assertion of the horse people that they had been cheated. Although the horse people were careful never to *directly* implicate the plaintiffs, any reasonable reader would assume that the Globe kept running these bogus charges because they, the editors, believed that Pawlick and MCM were guilty of fraud.

14.

The horse people also kept up the mantra that they had been cheated. After six months of publicity, they were able to report the names of only 13 people (although they loudly claimed, thanks to the defendant, to know hundreds, even thousands) who said they had been tricked into signing the marriage petition (out of over 100,000 who had signed the marriage petition). The horse people sent letters to 6,000 signers of the Amendment (telling them about "fraud" by signature gatherers) on February 21, to 2,438 more on March 15 and a final 19,613 on March 23. These were obviously intended to impact the hearings in the legislature and to discourage the petition-signers. The horse people began a suit against the Commonwealth but that was dismissed in Suffolk Superior Court at the end of April (which has never been reported by the defendant).

15.

Numerous other instances of libel have continued unabated to the present day.

Count III

Libel Was Malicious and Willful

16.

Plaintiffs do not believe they are "public figures" under the U.S. Supreme Court ruling and there is no need to prove that the libel was made with "actual malice." Therefore, the plaintiffs do not want to indicate that they believe they need to prove that in order to recover.

17.

However, as a part of their proof, they will show that the intent of the defendant was, as a partisan, to damage and attack the Amendment and that it libeled the plaintiffs willfully for that purpose.

DAMAGES

18.

MCM spent \$1,761,086.54 and Pawlick contributed \$1,560,398.22 of that amount in the successful attempt to place the Amendment on the ballot.

19.

All the parties appear to agree that the Amendment would have been approved if the Legislature had not violated the Constitution on July 17, 2002. The Globe itself wrote the next day, "The legislative opponents of the ballot question, led by Senate President Thomas F. Birmingham, lacked the votes necessary to defeat it outright. Instead they voted 137-53 to adjourn the constitutional convention indefinitely, effectively blocking the question from appearing on the election ballot. *** The legislator's move was a victory for gay-rights activists but set off anger from the hundreds of supporters of the ballot question assembled at the State House yesterday. They had gathered twice the requisite number of signatures to put the question on the 2004 election ballot. The question also needed approval from 25 percent of House and Senate members at a constitutional convention during this legislative session and next to be placed before voters. The ballot question appeared to have that support and more [in the legislature], but no vote was taken on the question itself."

20.

Despite the large amounts of money spent by the plaintiffs to inform the citizens, they were no match for the continuing and ongoing libel of the defendant which dominated the discussion of the Amendment across the state.

21.

The defendant publicly, through its news columns, urged Senate President Birmingham to violate the state Constitution. Despite a clear advisory ruling to the Governor by the Supreme Judicial Court on December 20, 2002, that the Legislature did violate the state Constitution by failing to vote on the Amendment, the Globe has never reported that fact

to its readers to this day. Rather, it continues to say that the Amendment was defeated by a "procedural" device.

22.

Most people believe that the Amendment "died" on December 31, 2002, because the Legislature refused to vote on it despite a clear ruling from the Supreme Judicial Court on December 20, 2002 that they were required to do so. However, Pawlick and MCM filed a suit before the Single Justice Session, Suffolk County, on January 2, 2003, requesting that the SJC instruct the Secretary of State to send the Amendment to the new Legislature as though it had been approved by the old one. A Single Justice dismissed that action, an appeal was taken and oral argument is scheduled before the full Court on May 9, 2003. The Globe has never reported the January 2 suit.

23.

The amount of actual damages that were suffered because of the tortious conduct of the defendant will be determined by whether the Supreme Judicial Court refuses the January 2 suit and whether the entire \$1.7 million has been lost or whether it is only the approximate \$.5 million which was expended after July 31, 2002, in the attempt to counter the ongoing libel of the defendant.

24.

Pawlick has suffered severe emotional distress as a result of the intentional, extreme and outrageous, ongoing libel of the defendant. As a direct and proximate result of the libel of the defendant, the plaintiff has been caused to feel oppressed and intimidated. She has incurred great mental and physical anguish, anxiety, nervousness, embarrassment and has suffered severe emotional distress.

WHEREFORE, the plaintiffs demand judgment against the defendant for damages, including cost and reasonable attorney fees.

Respectfully submitted by Massachusetts Citizens for Marriage and Sarah McVay
Pawlick, Plaintiffs.

By Their Attorney,

J. Edward Pawlick
BBO No. 392160

