

FILED
IN CLERKS OFFICE
UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS
2020 DEC 14 AM 11:30

Dr. SHIVA AYYADURAI)	CASE NO. 1:20-CV-11531-ADB
Plaintiff,)	U.S. DISTRICT COURT
)	DISTRICT OF MASS.
v,)	
)	JURY DEMANDED
MAYOR MARTIN WALSH,)	
in his official capacity, and)	
BILL EVANS, in his former)	
official capacity as Police)	
Commissioner)	
Defendants.)	

PLAINTIFF'S OPPOSITION TO THE DEFENDANTS' MOTION TO DISMISS

Defendants Walsh and Evans claim that Plaintiff was simply one of many scheduled speakers at the Free Speech Rally, that they all are in privity with each other, and that this court must dismiss this complaint without testing its merits because the Massachusetts court dismissed the *Navom* complaint. Defendant Walsh further claims that this court must accept his false narrative that he was speaking generally about hate and racism and not about the scheduled 2017 Free Speech Rally in particular; his speech is government speech; and, that the whole thing is not actionable anyway. In this Opposition, Plaintiff shall robustly rebut the Defendants' atrocious legal argument as well as Walsh's false narrative.

Plaintiff however recognizes that his previous counsel failed to include claims against Walsh and Evans in their individual capacities and shall soon file an amended complaint, *pro se*, to rectify the error committed by his previous counsel.

If the motion to dismiss is granted on the official capacity claims, the court must freely allow Plaintiff to amend his complaint.

PLAINTIFF Dr. SHIVA IS NOT IN PRIVACY WITH ANYBODY ELSE

In August 2017, Plaintiff was running a large campaign operation, Shiva 4 Senate, in order to effectively compete in the 2018 U.S. Senate race against Elizabeth Warren. The campaign held numerous outdoor rallies in order to get the campaign's message out. In early summer of 2017 one of the ideas discussed within the campaign was a Free Speech Rally at the Parkman Bandstand. Plaintiff thought this idea had merit and green-lighted it to happen in August 2017. Plaintiff then delegated the task of obtaining the relevant permits from the City of Boston to John Medlar, the campaign's Outreach Coordinator, who obtained the permits in due course. Affidavit as EXHIBIT 1.

At all times, from start to finish, the 2017 Free Speech Rally was a Shiva 4 Senate campaign rally that was under the campaign's explicit control. Plaintiff and campaign volunteers controlled who the scheduled speakers would be and were responsible for the arrangements as well as the clean-up after the rally. The City of Boston was officially aware of this fact. Plaintiff naturally was the declared Keynote Speaker at his own campaign's Free Speech Rally.

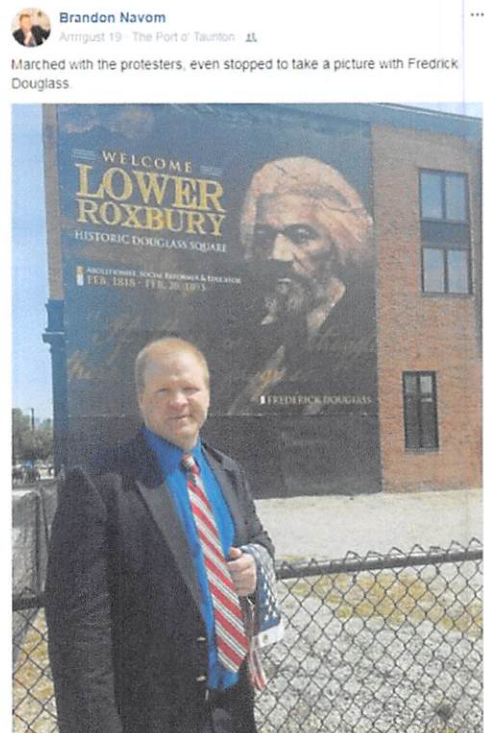
Boston Police deployed to provide security for Plaintiff and his Shiva 4 Senate campaign at the Parkman Bandstand, as the official permit-holder. At some point, as a result of Defendant Walsh's cynical and malicious manipulation of the media and the beliefs of thousands of ordinary people in order to gain an advantage over African-American Mayoral candidate Tito Jackson in the 2017 Mayoral race, civil unrest resulted in and around Boston Common which placed countless rank and file Boston Police Officers at risk of physical harm. At that point, rank and file Officers formed a protective cordon around Plaintiff and escorted him and his campaign staff to safety away from the violence manufactured by Walsh as part of his own campaign

effort. Thus, the official organs of the City of Boston were officially aware that the Plaintiff and his campaign were the official organizers of the 2017 Free Speech Rally and were legally permitted to be present at the Parkman Bandstand, unlike everyone else that the Defendants cite as being in privity with the Plaintiff.

It is atrocious and unacceptable for the City's corporation counsel to claim that Plaintiff is in privity with random visitors on the Common who were not officially associated with the Shiva 4 Senate campaign and were not scheduled to speak at Shiva 4 Senate's 2017 Free Speech Rally. It is inevitable that defendants are unable to cite one single case in the United States, let alone in the First Circuit, in which any court accepted that a party organizer was in privity with random gatecrashers.

The letter sent to Defendant Walsh well-prior to litigation explicitly informed Walsh about the lack of privity, and specifically in the case of Brandon Navom. EXHIBIT 2. Navom was never a scheduled speaker at Shiva 4 Senate's Free Speech rally at the Parkman Bandstand and in fact protested the Rally itself in association with Antifa, as he noted on social media:

One would be hard-pressed to find two persons who are less in privity with each other than the Plaintiff and Navom. Walsh knew that Navom marched with the protesters that day against Plaintiff's campaign rally and yet claimed to this court that the Plaintiff is in privity with



Navom and that this case must be dismissed based on one case involving one group of investors

in swamp land. It is unacceptable that Walsh knowingly made this false argument in his motion to dismiss despite being fully aware of this fact.

This lack of privity applies equally to anyone else who was not part of the Shiva 4 Senate campaign rally and was not a scheduled speaker at the Bandstand.

RES JUDICATA DOES NOT APPLY TO BAR THIS COMPLAINT

Barry-Smith was a close associate of Walsh before he was appointed a judge. Walsh and Barry-Smith together worked on and publicly advocated for 72-hour involuntary confinement of persons with opioid use disorder, knowing that this violated the founding principles of the United States. On November 16, 2015, both testified in favor of involuntary confinement without an individual court order or *even an iota of due process*.



<https://www.cityofboston.gov/news/Default.aspx%3Fid%3D20430>

Barry-Smith, Baker, Walsh

Per se it is not a big surprise that Barry-Smith ruled in the *Navom* case that Walsh's speech was conditionally privileged. An ethical judge would have recused himself instead. Predictably, Walsh does not mention any of this in his motion to dismiss when he attempts to use

an unpublished Rule 1:28 summary affirmance of his former associate's state trial court decision in his favor to get a Federal court to dismiss this complaint, filed by a totally different litigant with totally different claims, dismissed on the basis of *res judicata*. A summary decision pursuant to rule 1:28 is not binding precedent. *Chace v. Curran*, 71 Mass. App. Ct. 258 (2008) And Massachusetts flat out refuses to use unpublished decisions to throw unrelated litigants out of state court. "However, as we said in *Lyons*, unpublished decisions involving other parties are not to be relied upon." *Horner v. Boston Edison*, 45 Mass. App. Ct. 139 (1998)

The atrociousness of Walsh's attempt to use a summary affirmance in state court to throw an unrelated litigant out of Federal court is documented by his inability to cite one single authority in the Federal court system to support his position.

Walsh then cites a most inapposite case, *Gonzalez v. Banco Cent. Corp.*, 27 F.3d 751, 757 (1st Cir. 1994), to claim that the litigants in *Gonzalez* were not related to each other, when the reality is that they all were one common group of investors who had lost money on the same patch of swamp land to the same developer, and had the same curiously "ineffective" counsel.

As detailed above, Plaintiff has no privity with anyone else on Boston Common that day because he is Dr. Shiva, the candidate who ran the Shiva 4 Senate campaign and organized the rally in question. It was his show from first to last. And Walsh's attempt to use the doctrine of *res judicata* must fail as a matter of law. The Supreme Court ruled 80 years ago already that ***his approach violates due process***. *Hansberry v. Lee*, 311 US 32 (1940)

This court has an "unflagging obligation" to hear this Plaintiff on the merits of his Federal claims.

"There are fundamental objections to any conclusion that a litigant who has properly invoked the jurisdiction of a Federal District Court to consider federal constitutional claims can be compelled, without his consent and through no fault of his own, to accept instead a state court's determination of those claims.[...]"When a Federal court is properly

appealed to in a case over which it has by law jurisdiction, it is its duty to take such jurisdiction. . . . The right of a party plaintiff to choose a Federal court where there is a choice cannot be properly denied. ""

England v. Medical Examiners, 375 U.S. 411 (1964), *Sprint Communications, Inc. v. Jacobs*, 571 U.S. ____ (2013) (*unanimous*), *New Orleans Public Service, Inc. v. Council of City of New Orleans*, 491 US 350 (1989).

DEFENDANT WALSH MALICIOUSLY FABRICATED A PUBLIC SAFETY CRISIS AND CAUSED BOSTON POLICE OFFICERS HARM JUST TO DEFEAT TITO JACKSON

This is the Plaintiff, the sole organizer of the 2017 Free Speech rally:



This is Tito Jackson, Walsh's opponent in the 2017 Mayoral race:



This is Defendant Walsh:



This is State House News Service (December 10, 2020) on Defendant Walsh:

Kennedy says farewell, but is he really going away?

NBC Boston's [Alan Fram reports](#) on U.S. Rep. Joseph Kennedy's farewell speech at the U.S. Capitol in Washington yesterday and ... enough with the farewell stuff. What politically lies ahead for Kennedy here in Massachusetts? [WBZ's Jon Keller](#) thinks he has a bright political future. The Herald's [Lisa Kashinsky](#) reports his future is cloudy. The Globe's [Joan Vennoch](#) thinks the Kennedy era has probably come and gone in Massachusetts.

And Joan provides this brutal quote from Michael McCormack, the former Boston city councilor: "It was a great run for the Kennedys, Murphys, and McCormacks. But does anyone really not believe that Marty Walsh is the last white, Irish male mayor of Boston?"

Walsh's false narrative about *outsider Nazis coming in* to Boston was repeated and amplified by local 'establishment journalists' such as Adam Gaffin and his UniversalHub.com, the premier local news website in Boston, who loyally presents the views of the authorities as *the* reality, and did not disappoint this time either. Gaffin's stark headline on August 12, 2017, "Nazis Plan Rally In Boston Common" surely pleased Walsh, as it greatly aided his campaign against Tito, just as the Falklands War greatly aided Margaret Thatcher in winning reelection.

"The prime minister's decision to go to war in 1982, with her government on the brink of collapse, changed everything" *The Guardian*,
<https://www.theguardian.com/politics/2013/apr/09/margaret-thatcher-falklands-gamble>

Just like Maggie, Marty found his moment. No African-American undercapitalized opponent could ever compete with "Walsh the National Statesman" single-handedly defending Boston from assault by outsider White Supremacists. The race for Mayor was decided that day. Tito was toast.

Naturally, Tito also was not helped by then-City Councillor Ayanna Pressley, who did not endorse Tito, refusing to apply to Tito the same identity-politics argument she applied to herself in her own run against an older White male, Michael Capuano, who for years was the sole anti-foreign-wars Democrat. <https://theintercept.com/2018/08/18/mike-capuano-ayanna-pressley-massachusetts-primary/>

But for his campaign against Tito, Defendant Walsh would have had no reason to grandstand about White Supremacists and claim he would defend his city from an assault by haters and nationalists. Mayors of cities closer to Charlottesville did not engage in an equal level of rhetoric and Walsh has been unable to explain, despite a lot of ink at public expense, why White Supremacists would ignore a dozen large cities between Virginia and the Canadian Border and aim at Boston. Can it be true that southern White Supremacists consider Boston the hub of

the universe? Why Boston? Why a city that voted overwhelmingly for Obama and Clinton? Why the capital of a state with an all-Democrat Congressional delegation? Why a city filled with people who openly identify as Democratic Socialists and progressive liberals? Why a state with an Attorney General who ran for office as a progressive activist in charge of the People's Law Firm? Why Boston?

Because Tito was running for Mayor against Marty Walsh.

The evidence is overwhelming that Defendant Walsh fabricated a nonexistent crisis, pointed to a nonexistent enemy, publicly identified the Plaintiff's campaign rally as a White Supremacist rally at the heart of Boston, drove the people of Boston and Massachusetts into a panic that they were under siege and about to lose all that they cherished, portrayed himself as their brave savior, turned the voters of Boston into believers who voted emotionally rather than on a rational analysis of the candidates and their platforms, and crushed his African-American election opponent two-to-one at the election in majority-minority Boston. It was *divide et impera* political demagoguery in its purest form. Robert Penn Warren couldn't have penned it better.

If only journalists in Boston, such as UniversalHub.com and the Globe, were critical of those in power rather than their loyal unquestioning mouthpieces, the ordinary voters of Boston would have been better informed by those who claim to possess degrees in political science or journalism. The Boston Globe, in particular, did not inform its readers of the analysis above and did not ensure it had a reporter with the Shiva 4 Senate campaign inside the Bandstand, which is where one should have been. Instead, the Globe was far away, beyond two barricades, with the protesters driven to act by Walsh and simply amplified Walsh's false message by reporting that the crowd chanted "Go Home Nazis." BuzzFeed News alone reported the facts from the rally.

But for Walsh lying to the people of Massachusetts and America about Plaintiff and his campaign rally, 40,000 people would not have shown up in Boston that day, there would have been no violence, there would have been no property damage, there would have been no disruption to local businesses plying their trade, and there certainly would have been no harm done to rank and file officers from Boston Police who came under physical assault from left-wing activists. Every red cent spent by the City and Boston Police that day must be reimbursed by Defendant Walsh's campaign fund.

THE MASSIVE DISCONNECT BETWEEN WALSH'S FABRICATION AND REALITY
NECESSITATED CONCEALMENT OF THE TRUTH FROM THE VOTERS

Just as the Chinese Communist Party has concealed from Chinese citizens within China the truth of the giant famine and millions of unnecessary deaths and misery to untold millions more due to progressive "reforms" that ensured crop failure, Defendant Walsh endeavored to conceal fundamental facts about the 2017 Free Speech Rally from the voters of Boston, in order to win an election, as an older White male, against a popular, young, well-known, African-American opponent, in a city where minorities are in the majority.

This fact perforce required the total silencing of the Plaintiff and his rally in order to prevent his message from reaching voters' ears and confusing them. It also required keeping television reporters and their TV cameras from displaying the numerous brown faces at the Bandstand on the evening news, and further confusing the voters: *'Hey.....these don't look like White Supremacists.....They look more like... Tito!'*



In addition, the Plaintiff, a long-time pro-environment, anti-war, anti-racist activist, was the Keynote speaker, with his volunteers holding banners from his Shiva 4 Senate campaign, which read, “Black Lives DO Matter,” “No to GMOS,” “STOP Monsanto,” “Free Speech,” “Clean Food, Clean Air, Clean Water.” Walsh did not allow any of this to be shown by the media to the citizens of Boston.



Solely due to Walsh’s cynical manipulation of voters’ emotions through consciously false statements that promoted fear and distress among ordinary listeners and a sense of being under siege from outsider White Nationalists, a huge crowd of motivated citizens was driven to

physically present themselves at Boston Common to oppose what in reality was a Shiva 4 Senate campaign rally, a reality which was kept from them by Walsh physically ensuring, via loyal sidekick Evans, that they never saw with their own eyes or heard with their own ears who was standing under the Bandstand and what they had to say, and could not learn later from the local TV or print news either. Walsh consciously and actively ensured a total information vacuum in order to keep the people uninformed, agitated, and unaware that they had been emotionally manipulated just so Walsh could defeat Tito. All those people of Massachusetts were simply a means to an end, nothing more.

CONCEALING REALITY FROM THE VOTERS OF BOSTON REQUIRED WALSH TO VIOLATE PLAINTIFF'S FIRST AMENDMENT RIGHTS UNDER COLOR OF LAW

The information vacuum engineered by Walsh violated Plaintiff's First Amendment right under the color of law. But for Walsh occupying the post of Mayor of the City of Boston, he would not have been able to engineer the silencing of the Plaintiff, and Walsh's slanderous description of the Plaintiff and his rally would not have been accorded respect and deference. A Monell claim is thus appropriate. If the court wishes a clearer complaint on this point, Plaintiff would be happy to amend.

The conscious cynical manipulation of the emotions and beliefs of thousands of voters required Defendant Walsh to violate Plaintiff's constitutional rights. Once Walsh decided to give full rein to his essential nature in order to remain the Mayor of Boston, this violation was inevitable.

Walsh and the Plaintiff had aims that were diametrically opposed. Walsh was committed to ensuring an information vacuum about the reality of who was the sole organizer of the Free

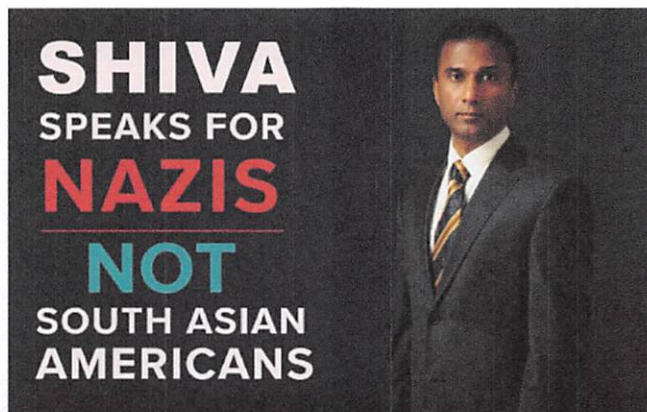
Speech rally and that it was not an assault on Boston by White Supremacists and nationalists. Plaintiff was committed to getting across his message of independence from the two-party system, GMO-free food security, Black Lives DO Matter and Love, Love, Love.

Walsh had total control over the City of Boston and disproportionate power in this contest. Plaintiff was effectively silenced under the color of office and the people of Massachusetts kept on the boil until Tito was cooked.

By no stretch can any of Walsh's speech be classed as "government speech." This was Walsh, a candidate, willfully abusing his official position and gravitas as Mayor to lie to the voters of Boston about a person of color, the Plaintiff here, in order to win an advantage against another person of color, his African-American election opponent, Tito Jackson. The City government and Boston Police were merely tools at Walsh's disposal.

**WALSH'S AND EVANS' STATEMENTS WERE DIRECTLY AIMED AT PLAINTIFF
AND PLAINTIFF'S FULLY-PERMITTED CAMPAIGN RALLY**

Defendant Walsh has spilt a lot of ink to mislead the court into thinking all of his statements were general statements about national events and not aimed directly at the Plaintiff. The contemporaneous response from all sectors of the public, whether laypersons, social activists or journalists, proves this claim false. Plaintiff, in addition to being classed as a Nazi by the local media, was publicly condemned by members of the Indian-American community in Massachusetts, who too instantly understood Defendant Walsh's statements as aimed directly at the Plaintiff. See -



<https://southasiasolidarityinitiative.wordpress.com/2017/11/14/shiva-ayyadurai-betrays-his-community-by-standing-with-nazis-and-white-nationalists/>

Immediately prior to the Shiva 4 Senate campaign rally titled “Free Speech Rally” that Walsh’s office issued a permit for knowing that the arrangements were being made by the City and Police with the official campaign for a federal candidate of color, Walsh publicly declared “Boston does not welcome you here. Boston does not want you here. Boston rejects your message. We reject racism, we reject white supremacy, we reject anti-Semitism, we reject the KKK, we reject neo-Nazis, we reject domestic terrorism, and reject hatred. We will do every single thing in our power to keep hate out of our city.”

Walsh, Evans, and everyone inside City Hall and the Boston Police knew internally that the rally had nothing to do with “racism, white supremacy, anti-Semitism, KKK, neo-Nazis, domestic terrorism, hatred,” because they were dealing with the actual organizers to make the arrangements, signing the required waiver of liability forms etc. They knew the specific people involved.

But in his pronouncements to the public, Walsh willfully postured as if the rally was an assault on Boston by *outsiders who were coming in to his city*. Not once did Walsh make a single public statement that he personally knew that Dr. Shiva, an Indian-American scientist now running for U.S. Senate, was not a supporter of “racism, white supremacy, anti-Semitism, KKK,

neo-Nazis, domestic terrorism, hatred” and was not an outsider given that Dr. Shiva has been a citizen of Massachusetts from 1981 and has built his life here. This was malice aforethought.

Evans, as the Police Commissioner aided and abetted Walsh the Candidate against the interests of his own rank and file Officers by echoing Walsh’s consciously false and malicious statement that the organizers of the rally were *outsiders coming in to assault Boston*: “Any group that’s gonna come and push for hate and divisiveness - that’s not what this city is about. I know the Mayor is against them coming. Everybody is against them coming...I don’t want them to have the march or demonstration at all.”

Naturally this is totally at odds with the internal reality in his own Police Department where the Shiva 4 Senate staff were holding meetings with Evans’ staff to ensure the rally conformed to rules and all the i’s dotted and t’s crossed.

Immediately after Walsh turned the Shiva 4 Senate rally into a silenced bust that was terminated early by Boston Police officers risking their life and limb to personally escort the campaign personnel to safety away from the baying emotional crowd roused by Walsh in order to crush Tito at the polls, Walsh publicly addressed that crowd: “I want to thank all the people that came out there, that message of love, not hate...to fight back on racism, to fight back on anti-Semitism, to fight back on the supremacists that were coming to our city, on the Nazis that were coming to our city.” The brainwashed crowd certainly deserved at least that from the man who had manipulated their thoughts and actions that day and drew them there in the first place. Walsh followed up by admitting that he did not want the public to know what was said by the Shiva 4 Senate campaign at the Bandstand: “I am not sure what was said in there. There were a mix of people that went into the free speech area. There was a candidate for senate against Elizabeth Warren.” This itself was consciously misleading given that Walsh, and Evans, fully

knew that everyone at the Bandstand was closely connected to the Shiva 4 Senate campaign. And Walsh knew a “free speech area” violated the U.S. Supreme Court’s unanimous ruling in *McCullen v. Coakley*, 573 U.S. ___ (2014) which condemned the penchant in Boston to express contempt for the First Amendment.

Defendant Evans also proved his complete contempt for the First Amendment and said, “You know what, we had a job to do, we did a great job. I’m not going to listen to people who come in here, who want to talk about hate. And, you know, what if they didn’t get in, that’s a good thing, **because their message isn’t what we want to hear.**”

But in saying what they did, Defendants now cannot claim that their words were not aimed specifically at the Shiva 4 Senate campaign rally at the Parkman Bandstand. The perfidy speaks for itself. *Res ipsa loquitur*.

The conclusion is inescapable that Walsh aimed his words directly and specifically at the Plaintiff and his campaign rally at the Parkman Bandstand that day.

This caused Plaintiff overwhelming distress. Plaintiff was unable to effectively compete with Defendant Walsh, who abused his position to project an official color to his false messaging on behalf of his campaign against Tito. *Goldwater v. Ginzburg*, 414 F.2d 324 (2nd Cir. 1969)

DEFENDANT WALSH ACTED WITH MALICE TOWARDS THE PLAINTIFF

In order to defeat Tito, Defendant Walsh turned Plaintiff into his sacrificial bogeyman, maliciously defamed Plaintiff knowing the claims were totally fabricated, caused him severe reputational and personal damage within the Indian-American community as well as damage to Plaintiff’s run for federal office, then and in the future. Still to this day, Plaintiff is hounded by persons, convinced he is a racist, White Supremacist and Nazi. This is all due to Walsh. No one who emotionally believed Defendant Walsh then, is ever going to vote for the Plaintiff going

forward. Many of his colleagues shy away from scientific and business collaborations with Plaintiff, because they believe Defendant Walsh. Plaintiff has been prejudiced severely.

“A statement is defamatory if it “may reasonably be read as discrediting [the plaintiff] in the minds of any considerable and respectable class of the community.” Disend v. Meadowbrook Sch., 33 Mass. App. Ct. 674 (1992) (citing Sharratt v. Housing Innovations, Inc., 365 Mass. 141 (1974))” *Noonan v. Staples, Inc.*, 556 F.3d 20 (1st Circuit 2009) Also see *Van Liew v. Eliopoulos*, 92 Mass. App. Ct. 114 (published full opinion, 2017) (FAR-25605 denied by SJC)

The First Circuit’s definition of “actual malice” is “ill will” or “malevolent intent.” *Noonan v. Staples, Inc.*, 556 F. 3d 20 (1st Circuit 2009) citing *Conner v. Standard Publ'g Co.*, 183 Mass. 474 (1903) Here in Massachusetts, the Plaintiff must show that:

- (a) The defendant made a statement, concerning the plaintiff, to a third party,
- (b) The statement could damage the plaintiff's reputation in the community,
- (c) The defendant was at fault in making the statement; and
- (d) The statement either caused the plaintiff economic loss (traditionally referred to as "special damages" or "special harm"), or is actionable without proof of economic loss. Four types of statements are actionable without proof of economic loss: statements that constitute libel; statements that charge the plaintiff with a crime; statements that allege that the plaintiff has certain diseases; and statements that may prejudice the plaintiff's profession or business. *Ravnikar v. Bogojavlensky*, 438 Mass. 627 (2003)

In *Ravnikar*, the defendant told patients that the plaintiff physician had cancer. He lost.

In order to crush Tito, Walsh sold the entire country the false narrative that Plaintiff supports White Supremacy and characterized Plaintiff's campaign rally as an assault on Boston, a message immediately understood as such by millions of people, including members of Plaintiff's own Indian-American community. Per binding precedent in this Circuit and Commonwealth, Walsh must lose.

WALSH CANNOT AVAIL OF ABSOLUTE PRIVILEGE FOR HIS SPEECH

Walsh invites this court to become the first in the nation to declare, firstly, that he is a “high-ranking government official” on par with the President of the United States, Secretaries in the Federal Cabinet, the Chief Justice of the Supreme Court, and Federal judges, and secondly, that this court must become the first in the nation to declare that all of Walsh’s speech enjoys absolute privilege.

The next Huey Long has indeed arrived!

If this court grants Walsh’s request, the damage to the United States shall be incalculable. Even the tenuous availability of a private defamation action shall be lost. We all would suffer.

Walsh is not a Federal or State official, be it high-ranking or low-ranking. He is just the mayor of a small city with a population under one million, where, per the Federal Reserve of Boston, White families have net assets of \$247,500 and Black families have net assets of Eight Dollars (\$8). <https://www.bostonfed.org/-/media/Documents/color-of-wealth/color-of-wealth.pdf>

That statistic has not and is unlikely to change under Walsh.

In 2017 Walsh received a total of 70,197 votes to become Mayor. **Total.** City councilors in Mumbai and Delhi receive triple that number of votes in just a single precinct. In 2017 Bill de Blasio received a total of 726,361 votes to become the Mayor of New York City. That’s *ten times as many* votes as Walsh.

Walsh’s argument to this court that his speech deserves absolute privilege as he is a high-ranking government official tells us all about him and nothing about the law. Walsh also has avoided a discussion of the **Hatch Act** in his arguments to this court.

WALSH CANNOT AVAIL OF CONDITIONAL PRIVILEGE FOR HIS SPEECH

As detailed above, none of Walsh’s public statements was made in the course of his official duties. His only statements while performing his official duties were to permit the Plaintiff’s

rally and make arrangements with the campaign to hold its rally at the Parkman Bandstand with the cooperation of Boston Police.

Walsh made numerous false statements in public, as detailed above, that were solely on behalf of his election campaign, meaning they may be attributed solely to Walsh the candidate rather than Walsh performing his official duties.

The Shiva 4 Senate campaign rally was not a matter of national media attention and public concern until Walsh deliberately made it so, through his various false statements in public, aimed at employing demagoguery in order to defeat Tito and win reelection as Mayor.

Consider, when the President flies to a campaign rally on Air Force One, and works as President in-flight, the entire flight is still paid for by the campaign.

National case law does not support Walsh's argument that statements made *as a candidate* qualify as statements made during the performance of official duties.

Walsh attempts to get around this point by citing an unpublished summary decision from the Massachusetts Appeals Court in the *Navom* case to mislead this court into dismissing the present complaint. As detailed above in the *res judicata* section (p.4), no decision in the *Navom* case may be used to dismiss this complaint at the Rule 12 stage.

CONCLUSION

Plaintiff is not in privity with anybody else; res judicata cannot apply especially on the basis of an unpublished summary decision that may not be cited as precedent in a different court with different claims; Walsh made defamatory statements as a candidate and not in the performance of his official duties; Walsh is not a high-ranking government official with a right to absolute privilege; and, the availability of private actions against intentional torts must be preserved by this court. This court must therefore deny the motion to dismiss.

Respectfully submitted under the pains and penalties of perjury,

/s/ Dr. Shiva Ayyadurai

December 14, 2020

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CERTIFICATE OF SERVICE

I certify that this document, filed through Clerk's Office in-person, was also sent electronically by email to opposing counsel Nicole M. O'Connor, Esq. at the City of Boston Law Department.

Respectfully submitted under the pains and penalties of perjury,

/s/ Dr. Shiva Ayyadurai

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