

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF WEST VIRGINIA
CHARLESTON DIVISION

FILED
JUL 26 2005
TERESA L. DEPPNER, CLERK
U.S. District & Bankruptcy Courts
Southern District of West Virginia

<p>DON BLANKENSHIP,</p> <p style="text-align: center;"><i>Plaintiff,</i></p> <p>v.</p> <p>JOE MANCHIN III, in his individual capacity and in his official capacity as Governor of the State of West Virginia,</p> <p style="text-align: center;"><i>Defendant.</i></p>	<p>Civ. No. <i>2:05-0606</i></p> <p style="text-align: center;"><i># 16911</i></p>
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COMPLAINT FOR DAMAGES, DECLARATORY AND INJUNCTIVE RELIEF

Plaintiff Don Blankenship ("Plaintiff" or "Blankenship"), by counsel and for his Complaint, states as follows:

NATURE OF ACTION

1. This is a civil action brought under 42 U.S.C. § 1983 for declaratory relief, injunctive relief and monetary damages. Plaintiff, who is the Chairman, Chief Executive Officer and President of Massey Energy Company ("Massey"), claims that Defendant West Virginia Governor Joe Manchin III ("Defendant" or "Governor"), while acting under color of state law, violated Plaintiff's rights to free speech under the First Amendment by threatening to use the Governor's official power to cause executive branch agencies to enforce the law selectively against Plaintiff and Massey, all in retaliation for Plaintiff's public opposition to the Governor on matters of public interest. The Governor's threats against Plaintiff and Massey constitute an unconstitutional retaliation against Plaintiff for the Plaintiff's exercise of his First Amendment right to freedom of speech.

JURISDICTION AND VENUE

2. This action arises under 42 U.S.C. § 1983, and the First Amendment to the United States Constitution.

3. This Court has subject matter jurisdiction over the Plaintiff's claims pursuant to 28 U.S.C. §§ 1331 and 1343(a).

4. This Court has personal jurisdiction over the Defendant because the Defendant resides in West Virginia.

5. Venue is proper under 28 U.S.C. § 1391(b) because the sole Defendant resides within the Charleston Division of the United States District Court for the Southern District of West Virginia and all or a substantial portion of the events giving rise to the claims occurred in this District.

PARTIES

6. Plaintiff is a citizen and resident of Mingo County. Plaintiff is the Chairman, Chief Executive Officer and President of Massey Energy Company, which is a publicly traded corporation to which Plaintiff owes fiduciary duties as an officer and director.

7. Defendant Manchin is the Governor of the State of West Virginia and is a citizen and resident of Kanawha County. Defendant Manchin was elected Governor of West Virginia on November 2, 2004.

8. Defendant is being sued both as an individual and in his official capacity. At all relevant times herein, Defendant acted under color of state law.

FACTS

9. Plaintiff is the Chairman, Chief Executive Officer and President of Massey, one of the largest coal producers and employers in West Virginia. In 2004, Plaintiff opposed and financially contributed to the opposition to the reelection bid of Justice Warren McGraw for the position of Chief Justice of the West Virginia Supreme Court. In early 2005, Plaintiff also publicly opposed legislation, supported by the Governor, to finance workers' compensation benefit plans through an increase in the coal severance tax.

10. The most recent issue on which Plaintiff has been prominently vocal concerns the Governor's recent plan to sell \$5.5 billion in bonds in order to fund state pension programs. On February 25, 2005, the West Virginia Legislature passed S.B. 261, which proposed that an amendment to the Constitution of the State of West Virginia be submitted to the voters of the state for ratification or rejection at a special election scheduled for June 25, 2005. The proposed constitutional amendment, listed as Senate Joint Resolution Number 101 and adopted by the Legislature on January 29, 2005, authorized the submission of a proposed amendment to the Constitution of the State numbered "Amendment No. 1," and designated the "Pension Bond Amendment."

11. The Legislature summarized the pension bond amendment as follows: "To amend the state Constitution to permit the issuance and sale of additional state general obligation bonds not exceeding five billion five hundred million dollars to help provide for the fiscal soundness of the State Teachers Retirement System, the Judges' Retirement System and the Public Safety Death, Disability and Retirement System. These additional state general obligation bonds will help the state to fund the unfunded actuarial accrued liabilities of these systems."

12. No question or issue other than the ratification of the proposed pension bond amendment was to be voted upon at the special election.

13. Between the Legislature's approval of the referendum and the special election, a contentious statewide campaign was waged between proponents of the constitutional amendment and those who opposed the plan.

14. Plaintiff opposed the constitutional amendment, believing it to be fiscally unsound. Beginning in approximately early June 2005, Plaintiff made his opposition to the constitutional amendment known publicly through radio and newspaper interviews. In addition, Plaintiff personally financed television, radio and direct mail advertisements that encouraged voters to reject

the pension bond amendment. During the campaign, Plaintiff also personally called the Governor to inform him that Plaintiff opposed the constitutional amendment.

15. The Governor launched a campaign in support of the pension bond amendment. As part of the public debate over this issue, the Governor's campaign devoted a disproportionate amount of its resources to negative public comments and advertisements against Plaintiff, including inaccurate characterizations of Plaintiff as an outsider who was simply interested in raising taxes and who sought revenge for the recent raise in severance taxes. Upon information and belief, during the course of the campaign, members of the Governor's staff even made inquiries at the office of the West Virginia Secretary of State regarding Plaintiff's residency.

16. On Friday, June 17, 2005, the Governor appeared at the American Electric Power Company's John Amos power plant in Putnam County. One purpose of the Governor's appearance was to promote the pension bond amendment. After a brief speech, the Governor answered some questions from the media concerning the pension bond amendment and Plaintiff's role in campaigning against the proposal. In response to these questions, the Governor threatened Plaintiff by warning that the government would scrutinize the affairs of Plaintiff and Massey even more closely in light of Plaintiff's decision to participate in the public debate over the pension bond amendment. The Governor went on to say, "I think that is justified now, since Don has jumped in there with his personal wealth trying to direct public policy." The Governor also alleged that Massey was guilty of "many violations" of state environmental regulations.

17. On Saturday, June 18, 2005, the Governor's threats against Plaintiff were reported in the Charleston Gazette.

18. On June 25, 2005, West Virginia voters rejected the pension bond constitutional amendment.

19. In retaliation for Plaintiff's public campaign against the pension bond amendment, the Governor also has used state government resources to reinforce his threat against Plaintiff and Massey. On June 30, 2005, the West Virginia Department of Environmental Protection ("DEP") approved Massey's application for several permits, including one to build a second coal silo in Raleigh County, because the permits met all of the requirements of the West Virginia Surface Coal Mining and Reclamation Act and the West Virginia Surface Mining Reclamation Rule. Despite the permit approval, the Governor publicly ordered members of his senior staff to meet thereafter with DEP representatives, the Department of Health and Human Resources and the West Virginia Office of Miners' Health, Safety and Training to investigate alleged "possible safety concerns" related to the site. These same concerns had already been raised by various interest groups without any meaningful response from the Governor prior to the special election and the permit approval. Upon information and belief, the Governor caused this investigation not out of concern for the safety of residents, but instead, in retaliation for Plaintiff's campaign against the pension bond amendment.

20. As a result of the Governor's threat of retaliatory regulatory sanctions of Massey and Plaintiff, a potential landlord of Massey informed Massey that it would be reluctant to enter into a lease with Massey because, based on the Governor's threats, Massey might be the subject of retaliatory regulatory sanctions that would impair Massey's ability to perform on any lease.

21. The Governor's threat to cause state regulators to investigate and exercise greater scrutiny over Plaintiff and Massey in retaliation for Plaintiff's public opposition to the pension bond amendment interfered with and restrained Plaintiff in the exercise of his First Amendment right to free speech. Because Massey is a publicly traded corporation, to which Plaintiff owes fiduciary duties as an officer and director, the Governor's threats pose a difficult dilemma, in which Plaintiff

is forced to choose between continuing to exercise his First Amendment rights, on the one hand, and protecting the business affairs of Massey from retaliatory government scrutiny on the other.

22. As a direct and proximate result of the Governor's constitutional violation, Plaintiff has suffered and will continue to suffer the irreparable harm of deprivation of his rights under the First Amendment of the Constitution unless granted the relief requested in this complaint.

23. Plaintiff has no adequate remedy at law.

24. Plaintiff, a private citizen, had a First Amendment right to publicly express his views on political issues in West Virginia, including his opposition to the pension bond amendment.

25. The Governor retaliated against Plaintiff for exercising his First Amendment right to free speech by publicly threatening closer governmental scrutiny of the affairs of Plaintiff and Massey in response to Plaintiff's participation in the public debate over the pension bond amendment.

26. The Governor's threat adversely affected Plaintiff's First Amendment rights because the Governor's threat would likely deter a person of ordinary firmness from the exercise of the First Amendment right to freedom of speech.

27. As a direct and proximate result of the Governor's threat, Plaintiff has been damaged by deprivation of his rights to freedom of speech under the First Amendment.

28. The Governor's public threat against Plaintiff violated 42 U.S.C § 1983.

PRAYER FOR RELIEF

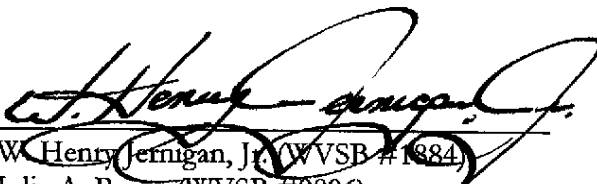
WHEREFORE, Plaintiff respectfully requests that this Court:

- 1) Declare that Defendant violated Plaintiff's First Amendment right to free speech by stating, on Friday, June 17, 2005, at the American Electric Power Company's John Amos power plant in Putnam County, that the government would scrutinize the affairs of Plaintiff and Massey more closely in light of Plaintiff's decision to participate in the public debate over the pension bond amendment;

- 2) Permanently enjoin Defendant, his successor in office, agents, employees and persons acting in concert with him, from threatening governmental investigation and/or regulation of Plaintiff or Massey in retaliation for Plaintiff's exercise of his First Amendment right to free speech;
- 3) Permanently enjoin Defendant, his successor in office, agents, employees and persons acting in concert with him, from any form of retaliation against Plaintiff or Massey in response to Plaintiff's exercise of his First Amendment right to free speech;
- 4) Award Plaintiff his compensatory damages in an amount to be determined at trial;
- 5) Grant Plaintiff his costs in this action, including reasonable attorney's fees, pursuant to 42 U.S.C. § 1988 and any other applicable authority; and
- 6) Grant Plaintiff such other relief as may be just and equitable.

DATE: July 26, 2005

Respectfully submitted



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