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**IN THE SUPREME COURT OF APPEALS  
FOR THE STATE OF WEST VIRGINIA**

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**CHARLOTTE PRITT,**

**Plaintiff,**

**vs.**

**Appeal No. 29326**

**THE REPUBLICAN NATIONAL  
COMMITTEE, ET AL.,**

**Defendants.**

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**APPELLANT'S BRIEF**

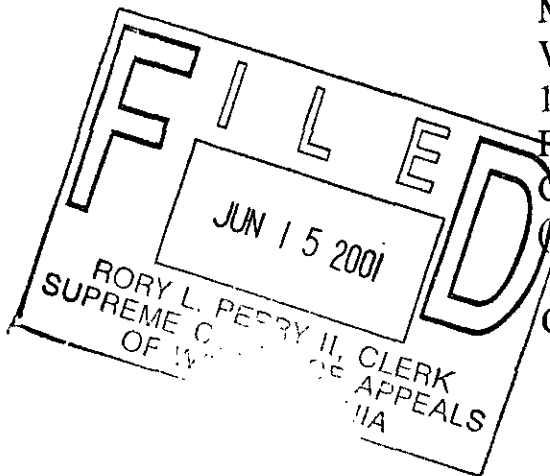
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IN THE SUPREME COURT OF APPEALS  
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CHARLOTTE PRITT,

Appellant,

v.

Appeal No. 29326

THE REPUBLICAN NATIONAL  
COMMITTEE, ET AL.,

Appellees.

**APPELLANT'S BRIEF  
IN SUPPORT OF APPEAL.**

This Brief is submitted in support of Appellant's appeal of a Summary Judgment granted for the Appellees by the Fayette Circuit Court on May 15, 2000 and denial of Appellant's Motion for Reconsideration, by which the Circuit Court denied the Appellant relief she sought in a Libel action against Appellees.

**I. Kind of Proceeding:**

This is an Appeal of a Summary Judgment granted by the Circuit Court of Fayette County against Appellant in favor of Appellees. The Appellant's case is based on and emanates from a series of libelous and defamatory statements which Appellees published, by radio and television, about Appellant, a school teacher and a candidate for Governor in the 1996 general election. These were fabricated by and paid for by Appellees or their agents.

## **II. Nature of Ruling in Lower Tribunal:**

By Order dated May 15<sup>th</sup>, 2000, the Circuit Court of Fayette County, West Virginia granted a Motion for Summary Judgment for Appellees (Copy attached as Exhibit I). By order, dated June 13<sup>th</sup>, 2000, the Circuit Court denied Appellant's motion to reconsider its decision. Appellant is appealing the May 15<sup>th</sup> Order as well as the June 13, 2000 which denied her the right to proceed further with her case.

## **III. Statement of Facts:**

Appellant, Charlotte Pritt is a school teacher, with a total of 17 years in the public school system, including 12 years in the class room. She was also the Democratic nominee for Governor in the 1996 General Election.

Appellees include two national political committees and a West Virginia political action committee, to wit:

[1] the West Virginia State Victory Committee ("Victory Committee"), a West Virginia political action committee which was organized on October 4, 1996 by the National Republican Senatorial Committee ("Senatorial Committee") under the requirements of West Virginia Election Laws,

[2] the Senatorial Committee, a national political action committee registered with the Federal Election Commission and devoted to the election of Republican candidates to the United States Senate, a common objective of the Republican National Committee (RNC) and

[3] the RNC is a national political action Committee under the Federal Election Commission and which represents the Republican party on a national basis.

At the primary election, on May 15, 1996, Appellant was nominated as the Democratic candidate for Governor. On October 4, 1996, as required by West Virginia Election laws, a "Political Action Committee Statement of Organization"<sup>1</sup> for the Victory Committee was filed with the West Virginia Secretary of State's Office (Copy attached as Exhibit I). The Statement of Purpose indicated "SUPPORT NON-FEDERAL REPUBLICAN CANDIDATES". This form was signed by Mary M. Dotter, Treasurer and transmitted by facsimile. The address given for the Victory Committee was 425 2<sup>nd</sup> Street, N. E., Washington, D.C. 20002 with phone No. (202) 675-6000, the same as the address for the Senatorial Committee. John D. Heubusch, Chairman of the Victory Committee, also gave this same address. Heubusch and Dotter were employees of the Senatorial Committee.

On or about October 24, 1996, eleven days before the November 5, 1996 General Election, Appellees published, certain false negative statements about Appellant in the form of radio and television advertisements. These advertisements continued until election day on November 5, 1996.<sup>2</sup> Mentzer Media Service, Inc., Appellees' media service, referred to these as "Ads opposing Pritt". Mentzer Media reported to the Secretary of State's office that they were aired on four West Virginia Television stations; one Maryland Television station; thirteen West Virginia Radio Stations; two Ohio Radio stations; and two Maryland Radio stations at the initial costs of \$69,261.46. The listening and viewing audience of West Virginia was literally inundated with broadcasts of the "Ads

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<sup>1</sup> A "Political Action Committee Statement of Organization" is a form provided by the Secretary of State's Office.

<sup>2</sup> Appellees "Statement of Undisputed Material Facts", par. 10, filed with "Notice of Motion" for Summary Judgment dated June 13, 1999. Designated Record page 404(*DR pge 404*)

opposing Pritt". In Fayette County alone, the "Ads opposing Pritt" were broadcast 106 times by Radio Stations WTNJ-FM and WAXS-FM.<sup>3</sup>

A transcript of the "Ads opposing Pritt" that were broadcast by these Fayette County Radio Stations is found as Exhibit I to the Appellant's Amended Complaint (Attached hereto as Exhibit II).

Because the "Ads opposing Pritt" started so late and so near to the election date, Appellant had little or no opportunity to formally refute them.

Immediately upon learning of the "Ads opposing Pritt", Appellant's opponent, former Governor Cecil Underwood, verbally and in writing ask that the "Ads opposing Pritt" be terminated.<sup>4</sup> Appellees refused to do so.<sup>5</sup>

The Secretary of State's office file shows the Victory Committee ultimately spent a total of \$95,353.50 in sponsoring the "Ads opposing Pritt". This came from a \$100,000 loan which the Senatorial Committee provided for the Victory Committee. This loan was part of a \$5.5 Million loan which the Senatorial Committee, in turn, obtained from Signet Bank. (See Exhibit II attached to Amended Complaint).

Appellant was defeated in the November 5, 1996 general election.

On April 6, 1998, a "Notice of Dissolution of Campaign or Political Committee" was filed by Mary M. Dotter, treasurer, on behalf of the Victory

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<sup>3</sup> "Certification" from Anthony P. Gonzalez, Sr., attached as Exhibit IV to Appellant's Memorandum in Response to Appellees' Motion for Summary Judgment. *(DR pp 750 & 1001)*

<sup>4</sup> See pg. 10, 11 & 12 of Transcript of Cecil Underwood's deposition taken on March 18, 1999, attached Exhibit XII to Appellant's Memorandum in Support of Motion for Reconsideration. *(DR pps 785 & 1000)*

<sup>5</sup> See Exhibit #2 to Underwood deposition, supra. *(DR pp 785, 788, 1030)*

Committee. The report accompanying this notice reported a total of current itemized contributions in the amount of \$96,592.00 which was used to repay the \$100,000.00 loan. Of the 358 contributors listed, there is no indication that anyone from West Virginia contributed to the payment of the Victory Committee's loan.

#### IV. Assignments of Error:

Notwithstanding that on appeal, Summary Judgments are reviewed *de novo* by the Supreme Court of Appeals, Appellant assigns the following areas of error:

1. The Court's May 15, 2000 Order, (hereafter referred to as "the Decision") was prepared and submitted by Appellees 6 ½ months before the Decision. The Decision does not fairly depict the evidence the parties submitted in regard to Appellees' Motion for Summary Judgment and thus is erroneous as to the law and the facts.<sup>6</sup>

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<sup>6</sup> The lower Court observed at page 4 & 5 of the Transcript of the May 11, 2000 Hearing, that Appellant had objected to Appellees filing an unsolicited proposed Order granting Summary Judgment (which incidentally the Court signed after merely changing the date from 1999 to 2000) (*RD pge 41*).

*"But the objection having been filed by Mr. Roberts and there being no response to it, I didn't want to proceed in any manner until I knew exactly what his position was and the position of other counsel, should you have a position and you want to let it be known to the Court.*

*"I can be perfectly candid with you. Not having a clerk and not having the motions of some of the other people, I - - and the volume of the materials contained in this case, I could spend a long time drafting such a order setting forth my ruling and setting forth these findings of fact and conclusion of law*

*"I'll be perfectly candid with you. I'm not going to do that. I'm going to try to figure out some way to give you an answer to this thing without doing it. I've read the rules that indicate that I don't have to even give you findings of fact and conclusions of law pursuant to this motion for summary judgment.*

*"I've also read some of the case law that's been articulated by the Court that indicate that, in spite of the rule that we do such and, you know, to what extent it - those matters are going to be contained in an order. It is a little bit troubling to the Court when we've got to, in essence try these cases twice, oftentimes."*

2. The Decision states that "The Court must 'decide initially' whether the statements at issue are 'capable of a defamatory meaning,' *Long v. Egnor*, 176, W.Va. 629 at page 637", but the Court erroneously failed to address this issue in any way and made no finding in that regard to it.
3. The Decision erroneously concluded that the deposition testimony of Michael Withers and Lyle Sattes "is not probative unless provided by an expert witness designated pursuant to W.Va. R. Civ. P. 26(b)(4)". Contrary to this, Withers and Sattes were offered as (1) "corroborating witnesses" under W.Va. Rules of Evidence, Rules 601 and 602; (2) fact witnesses under W.Va. Rules of Evidence, Rules 601 and 602 and (3) lay witnesses qualified to give opinion under W.Va. Rules of Evidence, Rule 701. This ruling in the Decision, excluding this evidence, is contrary to the law, is poorly stated and is reversible error.<sup>7</sup>
4. The Decision erroneously concluded that, "There is no genuine issue of material fact concerning 'actual malice'." This conclusion is reached after a misstatement of Appellant's position; an erroneous citation of law; reliance on self-serving statements by Welch<sup>8</sup> and Craig Engle<sup>9</sup> and total disregard of Appellant's proof in regard to "actual malice".

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<sup>7</sup> In response to Appellant's contention that Withers and Sattes are qualified "fact witnesses" as to the Appellant's voting record on the "drug abuser" statement and the "Gulf War veterans" statement, Appellees raised a new reason as to why the testimony of these witnesses was not "probative". They contend that the "Speech or Debate" clause is an absolute bar to their testimony. This is a "red herring" argument by a party desperate to exclude evidence. "The Speech or Debate Clause was designed to assure a co-equal branch of the government with freedom of speech, debate, and deliberation **without intimidation or threats from the Executive Branch.**"(emphasis provided). See *Gravel v. United States*, 408 US 606, 616, 33 L Ed. 583, 597, 92 S Ct. 2614. The Supreme Court, quoting *United States v. Cooper*, 4 Dall 341, 1 L Ed 859(1800) with favor said: "'The constitution gives to every man, charged with an offense, the benefit of compulsory process, to secure the attendance of his witnesses. I do not know of any privilege to exempt members of congress from the service, or the obligations, of a *subpoena*, in such cases.'" See also 70 A.L.R. 36 and 94 A.L.R. 1466.

<sup>8</sup> David Welch, the political consultant for Appellees, who composed and arranged for the publication of the "Ads opposing Pritt" was deposed by Appellant at Berkley Springs, W.Va. on May 14, 1999. The content of his deposition is discussed in the "VI Analysis of Proof Before Lower Court:", hereafter.

<sup>9</sup> Craig Engle is the General Counsel of the Senatorial Committee. He gave an Affidavit to the effect that he had reviewed the "Ads opposing Pritt" and compared them with Appellants legislative record and concluded that the "advertisements truthfully portrayed the legislation on which plaintiff voted."

5. The Decision is erroneous in that it fails to rule on Count II of the Amended Complaint which is a tort claim by Appellant based W.Va. Code § 55-7-9 for the violation of W.Va. Election Law §3-8-11(c).
6. The Decision is erroneous in that it fails to rule on Count III of the Amended Complaint, which is a claim of libel *per se* based on the false statements about Appellant which attacked her moral character and attacked her professionally with the conclusion that “parents can’t trust Charlotte Pritt to protect our children”.
7. The Decision is erroneous in that it fails to rule on Count IV which is a “direct and proximate cause” claim.

#### **V. Comparative Proof Presented by Parties to Circuit Court:**

Near the conclusion of Appellant’s Oral Presentation at the April 3, 2001 hearing for the Petition for Appeal, Justice Davis inquired about the proof which Appellant had presented to resist the Motion for Summary Judgment. This section, in response to her inquiry, is somewhat redundant to a later section of this Brief entitled “*Analysis of Proof before the Lower Court*” The elements of proof required from Appellant to prevail are set forth in more detail hereafter in discussion under “*Criteria for review of Summary Judgment*” and *The Law of the Case*” with specific reference to *Sprouse v. Clay Communications, Inc.*, 158 W.Va. 426, 211 S.E.2<sup>nd</sup> 674(1975). Briefly these include:

- (1) Proof that the libelous statements were published, the time, the place and how published.  
Note: This is uncontested and is conceded in the Appellee’s “Statement of Undisputed Material Facts”.
- (2) Identification of the language deemed libelous by Appellant.  
Note: This is uncontested and is conceded in the Appellees’ “Statement of Undisputed Material Facts.”

- (3) A showing that the libelous statements were defamatory.  
Note: This question was never addressed by the Circuit Court in its decision granting Summary Judgment but it is clear that the allegations about “condoms for first graders”, “pornographic Videos for children” and “Drug abusers in the school system.” as well as the conclusion “parents can’t trust Charlotte Pritt to protect our children” are defamatory to a school teacher.
- (4) Proof by a preponderance of the evidence that the libelous statements were false.
- (5) Proof, by clear and convincing evidence, that the Appellees “knew the publications were false or that they published the ads with willful, wanton disregard as to their truth or falsity”.

Only the 4<sup>th</sup> and 5<sup>th</sup> elements of proof listed above can be fairly contested by the Appellees. In its decision, the Circuit Court stated:

**“Summary judgment on all four Counts is warranted because the statements at issue are not false. Defendants analyzed the legislative record and explained at length why all but one of the statements at issue are true, and why the last one is a protected expression of opinion.**

Keep in mind that this Order was not written by the Circuit Court, as such, but was an unsolicited order submitted by the Appellees approximately six and a half months before the Court actually rendered its decision.

At the summary judgment stage, judge’s function is not, himself, to weigh the evidence and determine the truth of the matter but to determine whether there is a genuine issue for trial. *Anderson v. Liberty Lobby, Inc.* 477 U. S. 242 at 249, 106 S. Ct. 2505 at 2511, 91 L.Ed.2<sup>nd</sup> 202 at 213(1986); *Painter v. Peavy*, 192 W.Va. 189 at 193, 451 S.E.2<sup>nd</sup> 755 at 781(1994); *Williams v. Precision Coil, Inc.*, 194 W.Va. 53 at 59, 459 S.E.2<sup>nd</sup> 329 at 335(1995).

In a contest involving Summary Judgment, the burden is on the movant (the Appellees in this case). To prevail, the Appellees had to demonstrate their absolute defense of “the truth of the matter asserted” and demonstrate that there was no reasonable method by which the Appellant could show “actual malice” as defined by *New York Times v. Sullivan*, 376 U.S. 254, 84 S.Ct. 710, 11 Led.2<sup>nd</sup> 686(1964).

To successfully resist summary judgment, the non-moving party is given the benefit of the doubt and needs to produce evidence sufficient for a reasonable jury to find in nonmoving party’s favor. Nonmoving party need not come forward with evidence in a form that would be admissible at trial in order to avoid summary judgment; however, to withstand motion, nonmoving party must show there will be enough competent evidence available at trial to enable a finding favorable to nonmoving party. *Williams v. Precision Coil*, 194 W.Va. 52, 459 S.E.2<sup>nd</sup> 329(1995),

Prior to the August 26, 1999 hearing for the Summary Judgment, both parties had submitted Memorandum with Exhibits. No evidentiary hearing held. .

Returning to Justice Davis’ inquiry, the following is a commentary on the comparative proof of the parties.

The Appellees(the movants) base their defense on the proposition that certain parts of Appellant’s record, while in the legislature, support the truth of the “Ads opposing Pritt”. Appellant contends that the “Ads opposing Pritt” were solely, exclusively and entirely the product of David Welch. Granted they were reviewed and approved by Craig Engle, General Counsel for the Senatorial Committee, but Engle did not compose them.

**A. Proof offered by the Appellees:**

(1) Comments in David Welch's deposition that he:

**“read the bills, both Senate and House, and I read—that also included the content of the bill and the members of the legislature who voted yea and nay on those bills, (and) relied only upon the open record of the published legislative records...all we used was her public voting record. We used nothing else...(and believed that they were)...Absolutely truthful.”**  
(Parenthetical expressions added for clarity).

(2) Affidavit of Craig Engle, General Counsel for the Senatorial Committee wherein he stated that that he:

**( he reviewed) “the advertisements at issue in this case several days before their initial publication date...reviewed both the scripts and the on-screen graphics for both the radio and televisions versions...read each piece of supporting legislation and bill summaries...(which) demonstrated to me(him) that the statements contained in the advertisements truthfully portrayed the legislation on which plaintiff voted and her actual votes...(and) because the advertisements were both truthful and accurate, I approved them for publication”.**  
(Parenthetical expressions added for clarity).

“The defendant in a defamation action brought by a public official cannot, however, automatically insure a favorable verdict by testifying that he published with a belief that the statements were true. The finder of fact ( a jury) must determine whether the publication was indeed made in good faith. Professions of good faith will be unlikely to prove persuasive, for example, where a story is **fabricated** by the defendant, is the product of his **imagination...**”(Emphasis provided), See *St. Amant v. Thompson*, 390 U.S. 727, 88 S.Ct. 1323, 20 L.Ed.2<sup>nd</sup> 262 (1968).

- (3) Appellees’ attempt to “bootstrap” their defense by mischaracterizing certain answers given by the Appellant in a three day deposition. In their Memorandum in Support of Motion for Summary Judgment, they frequently paraphrase the Appellants answers and refer to irrelevant evidence and documents with the result that Appellant is completely misquoted and the Court is misled.

Examples:

- (a) They reference to a December 15, 1995 Memo by Mike Plante that discussed a “negative ad” by Joe Manchin about the Appellant. What does this have to do with the present case?
- (b) They contend that earlier “negative ads” about the Appellant aired the same criticisms when in fact the earlier ads, not only being irrelevant, never mentioned “condoms”, “pornography” or “drug abusers”. These earlier “negative ads” were not the same.
- (c) They reference to the fact that there were other “negative ads” during the 1996 gubernatorial election as if this justifies the “Ads Opposing Pritt”.
- (d) They conclude that “the statement plaintiff ‘proposed teaching first-graders about condoms’ is true” based on Appellant’s Deposition. What the Appellant in fact said was:

**“I think that it would be crazy to extrapolate from that piece of legislation to say---and not only crazy,**

**but unethical and libelous and slanderous to say that from that piece of legislation, that I proposed teaching first graders about condoms. That is what I think is crazy and unreasonable and irrational”.**

Note: This answer was so damaging to the Appellees' case that Attorney Burchfield who was taking the deposition moved "to strike the answer", notwithstanding there was no judge present to strike it.

- (e) In reference to the Appellant's deposition, the Appellees state "Moreover, though plaintiff would be 'very uncomfortable' with teaching first graders about condoms, she might not oppose it if a child psychologist convinced her that 'there would be no harm done to children". Compare this with Appellant's answer:

**"I have never said that we should start teaching contraception in kindergarten. I have never said that....I would feel very uncomfortable with that. That was not the intent of the bill...Would I rule it out? I would probably speak against that. I would want to be convinced that there would be no harm done to children."**

**B. Proof offered by the Appellant:**

- (1) The Verified Amended Complaint. Appellant recognizes that verified pleading alone is not sufficient to preclude summary judgment, but it is some proof. It is at least equal to the self-serving statements by Appellees' witnesses David Welch and Craig Engle.
- (2) A comparison of the language in the "Ads Opposing Pritt" and the legislative action involved reveals that there is no literary connection between the "Ads" and the actual legislative record of Appellant. **Literally the "Ads opposing Pritt" are false.** The "Ads" do not use the same or similar language to that found in the Appellant's legislative record. They are composed of imaginative interpretation of Petitioner's record written by David Welch. In short the "Ads opposing Pritt" are a fiction written by David Welch. (See *Masson v. New Yorker Magazine*, 111 S.Ct 2419, 115 L.Ed.2<sup>nd</sup> 447, 501 U.S. 496 where the United States Court of Appeals ruled that if the language by the

publisher does not represent a rational interpretation of the language actually used by the Plaintiff, then the Court can compare and reach a conclusion, as a matter of law that the statements attributed to the Plaintiff are false. While this a “quotation” case it is analogous to our case in that the Appellees representation of what Appellant proposed can not be defended as “rational interpretation”.

- (3) David Welch deposition: David Welch’s deposition revealed that he had no training in the law. He had little or no experience with legislative matters. His career was that of a political worker or a political consultant. He was not qualified to correctly interpret legislative records. When David Welch wrote the “Ads opposing Pritt” he obviously was not aware of the universal principle of construction of statutes or legislation that statutes and laws are never interpreted to reach an absurd result<sup>10</sup>. The “Ads opposing Pritt” were a distortion and misrepresentation of Appellant’s legislative record and voting record, through David Welch’s absurd interpretation. As to credibility and demeanor, David Welch stated that it would be a “silly notion” to consider the Appellant’s complete legislative record on a subject in preparing the subject ads and he further stated that he would use only that part of her record that **“would be most important to the people who are sponsoring the ad”**. David Welch is the best witness to demonstrate that the Appellees knew the “Ads opposing Pritt” were false or published them without regard as to their truth or falseness.
- (4) The Appellants Deposition: The Appellees took three days of video deposition of the Appellant. During this, the Appellees dwelled a great deal of the time on earlier “negative ads” aired by the Appellant’s primary opponent, Joe Manchin. They also gave a large amount of attention to “negative ads” which the Appellant had aired or which were aired by her supporters. They framed hypothetical situations in an effort to get Appellant to concede that there was some truth in the “Ads Opposing Pritt”. They were not successful. Throughout this three

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<sup>10</sup> *United States v. Kirby*, 7 Wall. 482-487, 19 L. Ed. 278, “Construction of statutes should be sensible. General terms should be so limited as not to lead to injustice, oppression or **absurd consequences.**” (Emphasis provided).

See also 73 Am. Jur. 434, “Statutes; §265. Unreasonableness or absurdity.” For additional cases.

day deposition, Appellant steadfastly held to the position that the "Ads opposing Pritt" were a false, libelous distortion of her voting record while she was in the legislature and were an absurd interpretation of a proposed amendment to the Human Growth and Development Law which she had sponsored on behalf of some of her constituents. No relevant evidence was gathered by Appellees as a result of three days of deposition and the Appellant's position in the case was further buttressed by her own sworn statements during deposition.

- (5) Mike Plante Deposition: Mike Plante will testify that at the time the "Ads opposing Pritt" were aired, he was her campaign manager and that research was done on the Appellant's legislative record and it was concluded that these "Ads" were false.
- (6) Lyle Sattes Deposition: Lyle Sattes will testify that on one occasion he voted the same as the Appellant did on one of the "Ads opposing Pritt" legislation and that it would be false to say that the Appellant voted as the "Ads" depict her vote.
- (7) Mike Withers Deposition: Mike Withers will testify that on two occasions he voted the same as the Appellant did on certain of the "Ads opposing Pritt" legislation and that it would be false to say that the Appellant voted as the "Ads" depict her vote.
- (8) Cecil Underwood Deposition: Former Governor Underwood will testify that his campaign had nothing to do with the "Ads opposing Pritt" and that he did not even know that they were going to be aired. He will further testify that he requested that the Appellees terminate the "Ads" because he did not like the "tone" of them. He will also tell us that negative ads of this nature are very disturbing to a candidate and disruptive to a campaign.

From the foregoing, the Appellant has presented a case that would preclude summary judgment. Credibility and demeanor are very big factors in this case. There was no evidentiary hearing by the Circuit Court, the issue of credibility and demeanor are reserved to the province of the jury. It is the Appellant's position that a jury will find it "incredible" that the Appellees did

not know the “Ads Opposing Pritt” were false or were oblivious to all this, published them without regard as to their truthfulness or falseness.

#### **VI. Points, Authorities and Discussion of Law:**

The gravamen of Appellant’s Amended Complaint is that the Senatorial Committee, which was created to forward the objectives of the RNC; on the eve of the 1996 general election, created and registered the Victory Committee with the West Virginia Secretary of State’s office. The sole purpose, objective and ultimate accomplishment of the Victory Committee was the publication of these false negative ads against the Appellant, by radio and television.

The “Ads opposing Pritt” were aired an estimated 600 to 700 times in an eleven day period, immediately prior to the 1996 Gubernatorial Election. They were aired by radio, 106 times in Fayette County, West Virginia. The “Ads opposing Pritt” consisted of 30 second TV and 60 second radio “spot ads.”

A transcript of the 60 second radio “spot ad”, aired in Fayette County, is attached as Exhibit I to the Appellant’s Amended Complaint. The text of the 30 second TV “spot ads” is the same as the first part of the 60 second radio ads.

The “Ads opposing Pritt” were fabricated by Appellees’ consultant, David Welch, with approval by the General Counsel for the Senatorial Committee and initially funded by the Senatorial Committee.

The “Ads opposing Pritt” consisted of a series of false, gross distortions and misrepresentations of Appellant’s legislative record while she was a member of the House of Delegates and the State Senate. The “Ads opposing

Pritt” were not only false, but were either known to be false by Appellees, or were published by Appellees with wanton, willful disregard for the truth.

As the result of the publication of the “Ads opposing Pritt”, Appellant’s personal, professional and political reputations have been damaged or destroyed. Appellant has suffered and continues to suffer emotional and mental distress and pecuniary damages.

**A. Criteria for Review of Summary Judgments:**

One of the clearest cases setting forth the criteria for review by the Court of Appeals of a Summary Judgment is found in the libel case of *Greenfield v. Schmidt*, 199 W.Va. 447, 451, 485 S.E.2<sup>nd</sup> 391,395. Judge Davis stated:

**“On appeal, ‘ [a] circuit court’s entry of summary judgment is reviewed *de novo*” ... We have repeatedly held that under Rule 56(c) ‘[a] motion for summary judgment should be granted only when it is clear that there is no genuine issue of fact to be tried and inquiry concerning the facts is not desirable to clarify the application of law’”.**<sup>11</sup>

At page 452, Judge Davis further recited the standard of how evidence is to be construed in Appellate review of a Summary Judgment:

**“Finally, ‘[i]n determining on review whether there is a genuine issue of material fact between the parties, this Court will construe the facts ‘in a light most favorable to the losing party,’ *Masinter v. WEBCO Co.*, 164 W.Va. 241, 242, 262 S.E.2d 433, 435 (1980)’”.**<sup>12</sup>

In *Williams v. Precision Coil*, Judge Cleckley stated:

**“The circuit court’s function at summary judgment stage is not ‘to weigh the evidence and determine the**

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<sup>11</sup> *Greenfield v. Schmidt Baking Co., Inc.*, 199 W.Va. 447, 451; 485 S.E.2<sup>nd</sup> 391, 395 (1997)

<sup>12</sup> *Supra*, pg. 452; 392.

**truth of the matter but to determine whether there is a genuine issue for trial'. ...Consequently the court must draw any permissible inference from the underlying facts in the most favorable light to the party opposing the motion. ...Similarly, when a party can show that demeanor evidence legally could affect the result, summary judgment should be denied.”<sup>13</sup>**

The evidence which the lower Court had before it in considering Defendant's Motion for Summary Judgment is discussed in more detail under "D. Analysis of Proof Before the Lower Court:" hereafter.

In reviewing this case, the Appellate Court should, unlike the lower Court, consider all of the Appellant's evidence. This evidence should be construed most favorable for Appellant. The Appellant's Deposition, the Depositions of Mike Plante, Mike Withers and Lyle Sattes cannot be discounted or disregarded as they were by the lower Court's Decision. Of equal significance is the Deposition of David Welch which has to be given particularly close scrutiny as to credibility.

The credibility and demeanor of these witnesses are a very important element of Appellant's case and could legally affect the results of this case. If Appellant's witnesses are believed and/or if David Welch is not believed, the Plaintiff's have no defense in this case.<sup>14</sup> Consistent with the *Williams* case, Summary Judgment should never have been granted in this case.

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<sup>13</sup> *Williams v. Precision Coil*, 194 W.Va. 52, 59; 459 S.E.2<sup>nd</sup> 329, 336.

<sup>14</sup> The Defendant, National Republican Senatorial Committee "is a political committee registered with the FEC under FECA. It is devoted to the election of Republican candidates to the United States Senate". *Federal Election Commission v. National Republican Senatorial Committee*, 761 F. Supp. 813, 816 (D.D.C. 1991). In regard to the "Ads opposing Pritt" the Senatorial Committee is completely out of its area of responsibility. This could affect their credibility.

## **B. The Law of the Case:**

There are innumerable decisions that related to libel of a public figure. It is important to distinguish the facts of these decisions to determine if or how they relate to our present case. Briefly tabulated, these cases consist of:

- |                                  |     |                                   |
|----------------------------------|-----|-----------------------------------|
| (1) Individuals (not candidates) | vs. | The News Media.                   |
| (2) Individuals (not candidates) | vs. | Organizations (not part of Media) |
| (3) Candidates                   | vs. | Candidates                        |
| (4) Candidates                   | vs. | The News Media                    |
| (5) Candidates                   | vs. | A Political Organization.         |

Overlaid across these categories is the question of whether the defendant “fabricated” the alleged statements or whether it was merely “reporting” what it has received from others.

A survey of the decisions which have been cited by the parties in this case indicate there are few decisions involving candidates.

Our present case is in category (5) above. Research did not reveal any reported decisions in this category. There are two recent two cases brought in Florida, by candidates, against the National Republican Senatorial Committee which fall in category (5).<sup>15</sup> The dearth of early cases and the increase of recent cases involving candidates and political organizations may be attributed to the recent increased spending we have witnessed in the political arena by the national political organizations which have a lot more money with which to do mischief.

The most relevant decision I find is our own West Virginia decision of *Sprouse v. Clay Communications*, 211 S.E.2<sup>nd</sup> 674 (1975). The *Sprouse* case was

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<sup>15</sup> *Dicks v. National Republican Senatorial Committee*, Case No. 96-7441, 13<sup>th</sup> Judicial Circuit, Hillsborough County, Fla., which was settled by payment of \$99,000 by the Defendants and *Delaney v. National Republican Senatorial Committee*, Case No. 96-9369, 15<sup>th</sup> Judicial Circuit, Palm Beach County, Fla. Plaintiff decided not to appeal Summary Judgment against him.

also brought in the Circuit Court of Fayette County. Justice Neely stated:

**“This appeal presents a question of first impression in the United States with regard to the law of libel in light of *New York Times v. Sullivan*, supra”.**

The *Sprouse* decision is not on “all fours” with our present case, but it does have three out of the four. First, the plaintiff is a public figure; second, the plaintiff is a candidate; third, the defendant “fabricated” the libelous statements. *Sprouse* does not include the fourth point, a political organization, however. In *Sprouse*, the defendant was the news media, with an implicit obligation to truthfully report the news. In our present case, the defendant is a political organization with the avowed objective of publishing statements about the Appellant intended to sway the voters against her and influence the election in favor of her opponent. With this important distinguishment in mind, the *Sprouse* case is by far the best authority, especially since it is a West Virginia decision.

The instructions given in the *Sprouse* case, which were specifically considered and approved of by the Court, appear to be substantially applicable to our present case. Viewed in their totality, briefly stated, these instructions directed the jury that they should find for the Plaintiff if they found:

- (1) That the Plaintiff, by a preponderance of the evidence, had shown that the Defendant had published the alleged libelous statements.
- (2) That the Plaintiff, by a preponderance of the evidence, had shown that the alleged libelous statements were false.
- (3) That the Plaintiff, by clear and convincing proof, had shown that the alleged libelous statements were published with knowledge that they were false or were published with disregard of whether they were true or false.

- (4) That the Plaintiff, by a preponderance of the evidence, had to show that the alleged libelous statements tended to injure the reputation of the nominee, to throw contumely or to reflect shame and disgrace upon him, or to hold him up as an object of scorn, ridicule, or contempt.
- (5) That the Plaintiff, by a preponderance of the evidence, had shown that he had suffered emotional and mental distress, damage to or loss of reputation, and pecuniary or monetary loss.

Unlike the press, the Victory Committee, the Senatorial Committee, and the RNC had no implicit duty to report the truth in their ads. Quite the contrary, it was their objective and to their best interest to publish only statements that would injure the reputation of Appellant, throw contumely or reflect shame or disgrace on her or hold her up as an object of scorn, ridicule or contempt in order to defeat her in her bid to become governor.

### ***C. Constitutional Considerations:***

#### **(1) First Amendment Right of Freedom of Speech vs. Fourteenth Amendment Right to Due Process.**

The Constitutional implications of this case are more complex than one would think at first blush. To some degree, both the United States and the West Virginia Constitutions are involved. While the decisions usually speak in terms of the protection of freedom of speech under the United States First Amendment, read in depth, they also display an awareness of the individuals due process rights under the Fourteenth Amendment. That is to say, the common law libel cause of action (due process) is at odds with First Amendment protection of freedom of speech. The *Sprouse* case, which is very insightfully written, considers this conflict with the *New York Times* case in mind.

**“Obviously, as the U. S. Supreme Court frequently notes, there is great tension between (1) government by free discussion as assured by the First Amendment, and (2) the protection of individuals from libel. Historically since *New York Times* the clearest legal principle emerging from a reading of libel cases is that each case must be considered by an appellate court on its facts with strong sympathy toward protection of robust political discussion contemplated by the First Amendment. At some point, however, cumulative evidence will show that the line of protection is breached, and a jury must be permitted to find malice...”<sup>16</sup>**

**(2) First Amendment Right to Freedom of Speech  
vs.  
Constitutional Right to Elect Officials.**

There is a third Constitutional consideration apparently involving only one case.<sup>17</sup> Both the United States and West Virginia Constitutions provide for the election of our leaders. Not only are the First Amendment right to freedom of speech and the Fourteenth Amendment right to due process important, even more important, cherished more and held more dearly to the people, is the right to select their leaders in free and meaningful elections.

Historically this is one of the most distinguishing characteristic of our form of government. The right and freedom of the people to elect their leaders depends greatly on the people being correctly informed and knowledgeable about the issues involved and the candidates. It is meaningless if the people's choice is

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<sup>16</sup> *Sprouse v. Clay Communication, Inc.*, 158 W. Va. 427, 448, 211 S.E.2<sup>nd</sup> 674(1975)

<sup>17</sup> *Sweeney v. Baker*, 13 W.Va. 158 (1878). Compare (1) the right of freedom of speech—Amendment I of the U.S. Constitution with (2) Amendment XIV—Citizenship rights not to be abridged by States and (3) the right to free elections secured by Article IV of the W.Va. Constitution.

based on false representations by political organizations with practically unlimited amounts of money with which to purchase media time.

Toward this end, election laws are put in place. In the present case, W.Va. Code § 3-8-11(c) was adopted to add integrity to the election process by forbidding “the publication of any false statement in regard to a **candidate.**”(Emphasis provided).

Again, I am pleased to note, that it is a West Virginia Decision that preserves this issue that has been ignored or forgotten in our zeal to protect the First Amendment freedom of speech right. *Sweeney v. Baker*, a case decided only fifteen years after the formation of the state, places the issues of our present case in proper perspective.

At page 195 the Court said:

**“On the other hand a person, who publishes in a newspaper falsely, that a candidate for such an office is a professional gambler, a bully, a thief, and a whoremaster, ought to be severely punished. The fact, that the party is a candidate for an office to be bestowed by the vote of the people, so far from its being a justification for such falsehoods, makes the outrage greater. If published against a private person, not seeking such an office, it is admittedly a great outrage, for which the law affords redress not only by civil action by the party injured, but also by indictment. But if such falsehoods are published against a candidate for popular suffrage, the outrage committed is still greater. If it were allowed by law to be done with impunity, it would be utterly destructive of a republican government. Who would be a candidate for office in such a government, if falsehoods of this infamous character could be published against him? None would be such candidates but abandoned men, who had no respect for their characters. And how intolerable would the**

**government become, whose offices were filled by men of such character. The law, as well as the juries, must suppress such licentiousness of the press.”<sup>18</sup>**

In *Sweeny*, the jury verdict awarded the plaintiff \$8,000.00<sup>19</sup> in damages. The lower court rendered judgment on the verdict and the Defendant appealed. The Supreme Court affirmed the lower court’s judgment.

**D. Analysis of Proof Before Lower Court:**

For our purpose, some of the items of proof listed above relate to matters which are not in dispute between the parties or of little significance. Appellant’s discussion hereafter relates only to the items considered of significance and importance.

**(1) David Welch’s Deposition:**

David Welch acknowledges in his deposition that the intent of the “Ads opposing Pritt” were meant to have voters not vote for the Appellant.<sup>20</sup> The Appellees’ contention that David Welch “thoroughly researched the advertisements and believed them to be true” cannot be supported by Welch’s deposition. Welch admits that in preparing the “Ads opposing Pritt” that he did not consider Appellant’s complete “voting record” on any of the given subjects.<sup>21</sup> His reaction to the suggestion that he should have was:

**“A           Hugh, I don’t even know how to respond to that. That’s such a silly notion.”<sup>22</sup>**

Appellees were not as concerned about publishing truthful ads as Welch contends they were. They were only interested in publishing statements that would take votes away from the Appellant and influence the election in favor of her opponent. David Welch stated in drafting such “Ads”, he would consider

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<sup>18</sup> *Sweeney v. Baker*, 13 W.Va. 156, 194.(1878).

<sup>19</sup> *Supra*, pg. 172.

<sup>20</sup> Transcript of David Welch Deposition, pgs. 37 & 38, Exhibit II to “Plaintiff’s Response to Defendants’ Motion for Summary Judgment and Exhibit III to Plaintiff’s Memorandum in Support of Motion for Reconsideration. See also page 37 when ask about the goal of the “Ads opposing Pritt” Welch stated, “To the degree that the West Virginia State Victory Committee wanted Charlotte Pritt to lose the election and Cecil Underwood to win the election, I suppose there could be a stated goal there...” (*DR pge 693*).

<sup>21</sup> Welch Transcript, *Supra*, pgs. 48 through 51. (*DR pp 701-703*).

<sup>22</sup> Welch Transcript, *Supra*, pgs. 48, 49. (*DR pp 701-703*).

only that part of the Appellant's record that **"would be most important to the people who are sponsoring the ad"**,<sup>23</sup> in this case the Appellees. He also acknowledges that he did not remember much about her involvement in education. In short he apparently did not know that she was a school teacher.<sup>24</sup>

When ask about the language in the "Ads opposing Pritt"---"If parents can't trust Charlotte Pritt to protect our children" Welch's explanation bordered on the bazaar. He admitted that he "word-smithed" this language.<sup>25</sup> He further admitted that the only basis upon which he could support this language were the **three allegations he fabricated** about Appellant concerning "drug abusers in the schools", "pornographic videos" and "condoms".<sup>26</sup>

A reading of the excerpts of Welch's deposition cited by Appellant in her Memorandums submitted to the Circuit Court, however, can leave no doubt that the Appellees' political zeal led them from the truth. David Welch wrote a fiction when he composed the "Ads opposing Pritt". Likewise, David Welch and Appellees pushed forward with the publication of the "Ads opposing Pritt" with wanton, willful disregard for the truth.

**(2) Appellant's Verified Amended Complaint and her sworn Deposition:**

The individual who knows most of what she did, as distinguished from what the "Ads opposing Pritt" allege she did, is the Appellant. Appellant knows, to a moral certainty, that she did not **"propose teaching first graders about condoms"**. She knows to a moral certainty that she never **"voted to permit the sale of pornographic Videos to children"**. She knows to a moral certainty that she never voted to **"allow convicted drug abusers to work in our public schools"**. By the verification of her Amended Complaint and the sworn testimony she gave at her Deposition, she attested to the falseness of the "Ads opposing Pritt". The Appellant is a school teacher. She had the reputation of being one of the foremost advocates for protection of children when she was in the

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23 Welch Transcript, *Supra* pgs 49,50: (DR pp 701-703)

"Q Let me phrase this a little different way, here. If I say Charlotte's voting record, in regard to Gulf War veterans, and I look at the record on her vote on Gulf War Veterans, and I only look at one vote she took, is that her voting record?

A It would be part of the voting record that perhaps would be most important to the people who are sponsoring the ad."

24 Welch Transcript *Supra*, pg. 45.

"Q Did you know that she had taught school for fifteen years?

A I know that she had been involved in education. I did not know the specifics of that." (DR pge 698)

25 Welch Transcript pg. 42. (DR pge 695)

26 Welch Transcript pg. 45. (DR pge 698)

legislature. Appellant realizes that verification of her Complaint, alone, may not be considered enough to defend against a Summary Judgment. Her verification, given in the context that she is a school teacher, plus a comparison of her legislative record with the language of the "Ads opposing Pritt", present a much stronger case than a simple verification by a Plaintiff. For additional proof, Appellant enlisted fact witnesses who were privy to her legislative performance. Mike Withers and Lyle Sattes were offered as samples of the testimony which Appellant will present in support of the proposition that she did not "vote" the way the "Ads opposing Pritt" say she did. At the Summary Judgment level, a party is not required to present their whole case.

**(3) Cecil Underwood Deposition:**

The despicable nature of the "Ads opposing Pirtt" is echoed by the fact that her opponent, Cecil Underwood, within a day or so of when the "Ads" started, asked Appellees to terminate them since he did like the tone of them. This should have alerted the Appellees that they "were crossing the line". Appellees ignored Underwood's request and in their zeal to "play politics" continued the "Ads" up to the eve of the election day.

**(4) Mike Plante's Deposition:**

Mike Plante was one of the campaign managers for the Appellant. He had worked with her for almost a year. One of his functions was to be familiar with her legislative voting record. He concluded that the "ads mischaracterized Charlotte's record, particularly as it related to teaching first graders about condoms".<sup>27</sup> Plante also confirmed that the "Ads opposing Pritt" including "condoms" for first graders, "drug abusers" in the schools and the observation Appellant couldn't be "trusted to protect our children" was damaging to her reputation as a teacher.<sup>28</sup> Plante also confirmed that the Appellant was very disturbed, very upset, by the "Ads opposing Pritt".<sup>29</sup> Plante, in his capacity as a campaign manager for Appellant, and with his political background as a professional political consultant, was present on the scene when the "Ads opposing Pritt" commenced. His testimony is very probative in regard to many elements of Appellant's case. The excerpts of his deposition included with Appellant's Memorandum in Support of Response to the Motion for Summary Judgment is of particular value.

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27 Transcript of Mike Plante Deposition attached as Exhibit VIII to Appellant's Memorandum in Support of her Response to the Motion for Summary Judgment, pg. 99. (DR pge 805)

28 Plante transcript, *Supra*, pgs. 91-92. (DR pp 797-798).

29 Plante transcript, *Supra*, pg. 89. (DR pge 795).

**(5) Mike Withers' Deposition:**

Mike Withers, a former State Senator, worked for Appellant, in her headquarters, during the 1996 General Election. He also was in the Senate with the Appellant. He has a dual role as a witness. In his Deposition, he relates the disturbing effect that the "Ads opposing Pritt" had on Appellant's campaign. He also relates that as a member of the Senate, he was present in the Senate, with the Appellant, when votes were taken in regard to the "men and women of West Virginia who fought in the Gulf War." There were two issues voted on concerning these Gulf War veterans. First, was a resolution encouraging President to use U. S. troops against Iraq, if required, and second, a State bonus for veterans, including primarily the Gulf War Veterans. Like the Appellant, Withers voted against sending the troops to Kuwait and like the Appellant, he voted for the veterans bonus. He tells us that is false to say that either he or the Appellant "voted against honoring the men and women of West Virginia who fought in the Gulf War". While the resolution sending troops to Kuwait had the word "honor" in it, it was not intended to honor them, instead it was a resolution supporting President Bush's decision to send them off to war. The issue was never "honoring" them. The bonus vote, however, truly "honored" the Gulf War Veterans by giving them a bonus.<sup>30</sup>

**(6) Lyle Sattes' Deposition**

Lyle Sattes was the Chairman of the Education Committee in the House of Delegates when the Appellant was a member of the House. He was present on March 10, 1988, when he and the Appellant voted on an Amendment to Senate Bill No. 639. This is the vote upon which Appellees based their "drug abusers" in the schools allegation. Sattes tells us that this was never an issue on that vote. He voted the same way as the Appellant and it is false to say that either he or the Appellant "voted to allow convicted drug abusers to work in our public schools".<sup>31</sup> As a matter of fact, a total of 53 of the House Members (a majority) voted the same way as Sattes and Appellant. It is incredible to say that the majority of the House of Delegates "voted to allow convicted drug abusers to work in our public schools."

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<sup>30</sup> Excerpts of transcript of Mike Withers' Deposition was included as Exhibit V to Appellant's Memorandum in Support of Response to Motion for Summary Judgment and as Exhibit IV to Appellant's Memorandum in Support of Motion for Reconsideration. (*DR pge 797*)

<sup>31</sup> Transcript of excerpts from Lyle Sattes' Deposition is included in the Appellant's Memorandum in Support of Response to Motion for Summary Judgment as Exhibit VI and as Exhibit V to Memorandum in Support of Motion for Reconsideration. (*DR pge 782*).

**(7) Items of Proof Not Discussed Above:**

Appellees' items of proof, (9), (10) and (14), merely address uncontested matters of proof and therefore no discussion is needed.

Appellees' items of proof, (17) and (18) are not pertinent. Two memoranda written by Mike Plante, on December 12, 1995, **nine months before** the "Ads opposing Pritt" were broadcast. These Memos have nothing to do with this case.

Appellees' item (13), the original Complaint, has nothing to do with the case. The case is being considered under the Amended Complaint.

Appellees' item (11) a David Welch Associates internal notation merely describes the TV ad and does nothing to help the Appellees' Motion for Summary Judgment. As a matter of fact, Appellant provided Appellees with copies of the TV version of the "Ads opposing Pritt" in answer to discovery.

Appellees item (12), a report in the Charleston Gazette, dated 10-25-96 does nothing to help Appellees' Motion for Summary Judgment.

**(8) Senate Bill No. 531**

Item (5) in Appellee's "Appendix of Exhibits" in support of their motion for summary judgment is a copy of Senate Bill No. 531 and purports to support their "condom" allegation. Just a reading of the language in the bill demonstrates the falseness of the Appellees' publication. The significant language in this bill is:

**"The state board of education shall determine the necessary time of instruction of human growth and development which shall be provided to grades kindergarten through twelve. Textbooks on the subject of human growth and development adopted for use in the public schools of the state shall contain appropriate material for teaching that subject".**  
(Underscore provided).<sup>32</sup>

In interpreting this Bill, "seeker of truth" David Welch, totally ignored this language. He fell on the word "contraception" which was one of many words used to generally define what areas the proposed human growth and development program could cover. It is an unwarranted "leap" from that word to the conclusion that the Appellant was proposing "teaching first graders about condoms". It is a "leap" to an "absurd" result.

First, the subject Bill was drafted and written by Legislative Services to satisfy the request of certain educators. Appellant merely sponsored the Bill.

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<sup>32</sup> Exhibit 7 to Appellees Appendix of Exhibits in Support of Appellees Motion for Summary Judgment" page 3 lines 18 through 24. (DR pge 574).

Second, Appellant unequivocally swears that it is false to say that this Bill proposed "teaching first graders about condoms". Third, to interpret the Bill to mean "teaching first graders about condoms" presupposes that the State Board of Education would determine that this was **appropriate material** for first graders and that the first grade was the **necessary time** for "teaching first graders about condoms". Absurd!!

***E. Legal Conclusions Supporting Appellant's Appeal:***

By this Appeal and request for a jury trial of the case, Appellant is not seeking to make new law. Appellant merely seeks application of the law in a manner that considers the appropriate aspects of the facts of this case. The case is unique, however, in that my inquiry among knowledgeable people does not disclose another instance in West Virginia where a National Political Committee, whose ostensible purpose is to support National Senatorial candidates of a given party, sends \$100,000 to West Virginia to buy negative ads about a gubernatorial candidate of the opposite party.

The following principles of law support Appellant's appeal:

- (1) A motion for summary judgment should be granted only when it is clear that there is no genuine issue of fact to be tried and inquiry concerning the facts is not desirable to clarify the application of the law. *Aetna Co. v. Federal Co.*
- (2) Circuit court's function at summary judgment stage is not to weigh evidence and determine truth of matter, but is to determine whether there is genuine issue for trial. *Painter v. Peavy.*
- (3) Supreme Court of Appeals will reverse summary judgment if it finds, after reviewing entire record, a genuine issue of material fact exists or if moving party is not entitled to judgment as a matter of law. *Williams v. Precision Coil.*
- (4) Summary judgment should be denied even where there is no dispute as to evidentiary facts in case but only as to conclusions to be drawn therefrom; similarly, when a party can show that demeanor evidence legally could affect the result, summary judgment should be denied. *Williams v. Precision Coil*
- (5) Non-moving party need not come forward with evidence in a form that would be admissible at trial in order to avoid summary judgment; however, to withstand motion, nonmoving part must show there will be enough competent evidence available at trial to enable a finding favorable to nonmoving party. *Williams v. Precision Coil.*

- (6) While a verified complaint can be considered as summary judgment evidence, self-serving assertions without factual support in records will not defeat a motion for summary judgment. *Williams v. Precision Coil*.
- (7) Circuit Court's entry of summary judgment is reviewed de novo. *Greenfield v. Schmidt Baking Co., Inc*
- (8) "Genuine issue", for purposes of summary judgment rule, is simply one half of trial worthy issue, and does not arise unless there is sufficient evidence favoring nonmoving party for reasonable jury to return verdict for that party; opposing half of trial worthy issue is present, and summary judgment is improper, where nonmoving party can point to one or more disputed "material" facts. *Greenfield v. Schmidt Baking Co., Inc.*
- (9) "Material fact," genuine issue as to which will preclude summary judgment, is one that has capacity to sway outcome of litigation under applicable law. *Greenfield v. Schmidt Baking Co., Inc.*
- (10) A candidate for political office is governed by the same rules with regard to recovery for libel as a public official and can sustain an action for libel only if he can prove that: (1) the alleged libelous statements were false or misleading; (2) the statements tended to defame the plaintiff and reflect shame, contumely, and disgrace upon him; (3) the statements were published with knowledge at the time of publication that they were false or misleading or were published with a reckless and willful disregard of truth; and (4) the publisher intended to injure the plaintiff through the knowing or reckless publication of the alleged libelous material. *Sprouse v. Clay Communications, Inc.*
- (11) Where a candidate for public office, who is plaintiff in a libel action, can demonstrate an overall plan or scheme, the object off which was to injure plaintiff through the publication of defamatory material, this evidence of reckless and willful disregard for truth may considered by the jury along with other evidence on the question of actual malice. *Sprouse v. Clay Communication, Inc.*
- (12) Where a candidate for public office is the plaintiff in a libel action, to prevail, said plaintiff may show by a preponderance of the evidence that the statements were false and misleading and that the statements were defamatory, but the plaintiff must show by clear and convincing evidence that the statements were published with "actual malice" knowledge that they were false or wanton, willful disregard as to whether they were true or false. *Sprouse v. Clay Communications, Inc.*
- (13) The 1878 decision of *Sweeney v. Baker* is not inconsistent with or overruled by the *Sprouse* decision or the *New York Times v. Sullivan*

decision. These later decisions merely establish a threshold which a public figure must cross in regard to libel actions against the news media. The political philosophy expressed in *Sweeny* is as applicable today as it was in 1878.

- (14) Where it is apparent that the lower Court failed to take into account most, if not all of the evidence submitted by the Appellant, on this basis, the lower Court's decision granting the Summary Judgment should be reversed.
- (15) Where a plaintiff offers witnesses, as lay opinion witnesses, on the basis of what they perceived, under Rule 701 of the Rules of Evidence and the defendants are given an opportunity to examine these witnesses at deposition, it is reversible error for the lower Court to disregard the testimony of these witnesses and grant summary judgment for the defendants, contrary to the testimony of these witnesses.
- (16) Proof by a plaintiff, a school teacher, in a libel action that the defendants published statements about her that "parents can't trust (her) to protect their children" is proof of a *prima facie* case of *libel per se* and the burden is on the defendants to justify their statements.
- (17) The lower Court failed to address at least two of the Counts in Appellant's Amended Complaint. Count II is a "stand alone" claim arising from the violation of W.Va. Code § 3-8-11(c). The nature of the duty imposed by a statute and the benefits resulting from its performance usually determine what persons are entitled to its protection.<sup>33</sup> Section 11(c) specifically mentions "candidates".
- (18) The "Ads opposing Pritt" left the area of "robust political discussion" and launched into pure, unadulterated character assassination of the Appellant based on distortion and misrepresentation of Appellant's legislative record.<sup>34</sup>
- (19) The Appellant is a school teacher. The "Ads opposing Pritt" constituted an attack on her moral character and her fitness to continue in her chosen profession of education. These "Ads" are defamatory *per se*.<sup>35</sup>

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<sup>33</sup> *Hurley v. Allied Chemical Corp.*, 164 W.Va. 268, 262 S.E.2<sup>nd</sup> 391(1980).

<sup>34</sup> "But there is no constitutional value in false statements of fact. Neither the intentional lie nor the careless error materially advances society's interest in 'uninhibited, robust, and wide-open' debate on public issues." *Gertz v. Welch*, 94 S.Ct. 2997, 3001, 418 U.S. 323, 41 L.Ed. 789 (1974).

<sup>35</sup> For a collection of decisions on libel, slander and defamation of a school teacher, See 40 ALR3rd 490-508.

- (20) The only proof that Appellees have presented that they did not know the “Ads opposing Pritt” were false are the self serving statements in David Welch’s deposition and the Affidavit of Craig Engle. Appellees, in a defamation action brought by a public official cannot, however, the defendants cannot automatically insure a favorable verdict by testifying that they published the ads with the belief that they were true. Professions of good faith will be unlikely to prove persuasive, for example, where a story is fabricated by the defendant and is the product of his imagination.<sup>1</sup>
- (21) Under the facts and circumstances of this case no violence is done to the First Amendment right of freedom of speech to allow a jury trial. To deprive the Appellant of a trial, does great violence to her Fourteenth Amendment right to due process. To deprive the common people of the opportunity to judge the “Ads opposing Pritt” does great violence to their cherished right to free and meaningful elections.

### **VII. Relief Prayed For:**

The Appellant respectfully requests that the Court reversed the Decision by the Circuit Court of Fayette County granting the Appellees’ Motion for Summary Judgment and that the case be remanded to said Circuit Court with direction to conduct a jury trial of this case.

Respectfully Submitted,

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<sup>1</sup> *St. Amant v. Thompson*, 390 U. S. 727, 730, 1326, 89 S.Ct. 1323, 1326 (1968).

**TABLE OF AUTHORITIES:**  
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<b><u>Reported Decisions:</u></b>	<b><u>Citations</u></b>	<b><u>Page</u></b>
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<i>Hurley v. Allied Chemical Corp.</i>	164 W.Va. 268, 262 S.E.2 <sup>nd</sup> 757(1980)	31
<i>Long v. Egnor</i>	176 W.Va. 629, 346 S.E.2 <sup>nd</sup> 778(1986)	6
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<i>New York Times v. Sullivan</i>	376 U.S. 254, 84 S.Ct. 710, 11 L.Ed.2 <sup>nd</sup> 686(1964)	9,20,30
<i>Painter v. Pearvy</i>	192 W.Va. 189, 451 S.E.2 <sup>nd</sup> 755(1994)	8
<i>Sprouse v. Clay Communication, Inc.</i>	158 W.Va. 426, 211 S.E.2 <sup>nd</sup> 674(1975)	7,18,19 20,21,30
<i>St. Amant v. Thompson</i>	390 U. S. 727, 89 S.Ct. 1323 (1968)	11,31
<i>Sweeney v. Baker</i>	13 W.Va. 156 (1878)	21,22,23,30
<i>United States v. Kirby</i>	7 Wall. 482, 19 L. Ed. 278	13
<i>Williams v. Precision Coil</i>	194 W.Va. 52, 459 S.E.2 <sup>nd</sup> 329(1995).	9,16,17

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<b><u>Statutes:</u></b>		
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IN THE CIRCUIT COURT FOR  
FAYETTE COUNTY, WEST VIRGINIA

CHARLOTTE PRITT,

Plaintiff,

v.

No. 97-C-380 (v)

THE REPUBLICAN NATIONAL COMMITTEE,  
et al.,

Defendants.

SUMMARY JUDGMENT ORDER

The Court, having considered defendants' motion for summary judgment and the parties' memoranda of law, and having heard oral argument on August 26, 1999, hereby GRANTS defendants' motion for summary judgment.

FINDINGS OF FACT

Plaintiff, Charlotte Jean Pritt, a former member of the West Virginia state legislature, was the Democratic nominee for Governor of West Virginia in 1996. She lost that election. Defendants are the Republican National Committee, the National Republican Senatorial Committee, and the West Virginia State Victory Committee. From October 24 until November 5, 1996 (Election Day), the Victory Committee sponsored radio and television advertisements that discussed the legislative voting record of plaintiff. These advertisements were created by political consultant David Welch, who is not a defendant.

**EXHIBIT I**

Plaintiff filed a complaint against defendants on October 31, 1997, and filed the Amended Complaint that is the subject of this Order on October 26, 1998. The Amended Complaint asserts that through the advertisements, defendants defamed plaintiff per quod (Count I) and per se (Count III), violated W. Va. Code § 3-8-11(c) (Count II), and exposed plaintiff to "false light" publicity (Count IV). Plaintiff attached the radio advertisement to her Amended Complaint and has identified several statements as the basis of her claims.

#### CONCLUSIONS OF LAW

As a former state legislator and candidate for the officer of Governor, plaintiff is a "public figure" for purposes of this lawsuit. *Long v. Egnor*, 176 W. Va. 628, 630 (1986); *Sprouse v. Clay Commun., Inc.*, 158 W. Va. 427, 432, cert. denied, 434 U.S. 882 (1975).

As a public figure, plaintiff must prove by "clear and convincing evidence" that the statements at issue were both false and published with "actual malice" -- that defendants had "knowledge at the time of publication that they were false" or published them with "reckless and willful disregard for the truth." *New York Times Co. v. Sullivan*, 376 U.S. 254, 280 (1964); *Gertz v. Robert Welch, Inc.*, 418 U.S. 323, 350-51 (1974). West Virginia courts are familiar with these requirements. *Long*, 176 W. Va. at 630; *Sprouse*, 158 W. Va. at

432. The Court must "decide initially" whether the statements at issue are "capable of a defamatory meaning," *Long*, 176 W. Va. at 637, and "independently decide" whether plaintiff has come forward in response to a well-supported summary judgment motion with clear and convincing evidence of actual malice. *Bose Corp. v. Consumers Union of U.S.*, 466 U.S. 485, 511-12 (1984).

Summary judgment on all four Counts is warranted because the statements at issue are not false. Defendants analyzed the legislative record and explained at length why all but one of the statements at issue are true, and why the last one is a protected expression of opinion. *Maynard v. Daily Gazette Co.*, 191 W. Va. 601, 604-06 (1994). In particular, defendants set forth plaintiff's legislative votes that supported each statement and countered the interpretations giving rise to plaintiff's claims. Plaintiff's only record evidence concerning falsity (other than her own assertion) consists of deposition testimony from Michael Withers and Lyle Sattes, who served with plaintiff in the state legislature. These witnesses offered their opinion that two of the statements at issue falsely construed their intent in voting as they and plaintiff voted on the bills at issue. Opinion testimony, however, is not probative unless provided by an expert witness designated pursuant to W. Va. R. Civ. P. 26(b)(4), and plaintiff has not designated either of these witnesses as an expert.

Neither witness disputed that plaintiff cast the votes at issue, or that the legislation could reasonably be interpreted as summarized in the advertisements. Their testimony does not create a genuine issue of material fact.

Summary judgment on all four Counts is also warranted because there is no record evidence that any defendant acted with "actual malice." Plaintiff contends that David Welch, who created the advertisements but is not a defendant, "should have known" the statements at issue were false. What Mr. Welch "should have known" is irrelevant because negligence does not satisfy plaintiff's burden of proof. *Masson v. The New Yorker Magazine*, 501 U.S. 496, 510 (1991). Further, Mr. Welch testified at his deposition that he reviewed the legislative record and believed the advertisements were "absolutely truthful." Craig Engle, General Counsel of defendant National Republican Senatorial Committee, also stated in an Affidavit that he studied the advertisements, compared their statements with plaintiff's votes, and approved them for publication only after he was satisfied that they were true. There is no genuine issue of material fact concerning "actual malice."<sup>1</sup>

---

<sup>1</sup> The Court notes but does not consider defendants' contentions that all four Counts are time-barred, that plaintiff cannot prove any injury caused by the advertisements, and that neither Count II nor Count IV states a sufficient claim.

CONCLUSION

It is therefore ORDERED that defendants' motion for summary judgment is GRANTED as to plaintiff's Amended Complaint.

CHARLES M. VICKERS  
JUDGE

\_\_\_\_\_  
Judge Charles M. Vickers  
Circuit Court of Fayette County

ENTERED this 15 day of May, 2000  
~~1999.~~

A TRUE COPY of an order entered

May 15 2000  
Teste: [Signature]  
Circuit Clerk Fayette County, WV

**IN THE CIRCUIT COURT OF  
FAYETTE COUNTY, WEST VIRGINIA**

**CHARLOTTE PRITT**

**Plaintiff,**

**vs.**

**Case No . 97-C-380(V)**

**THE NATIONAL REPUBLICAN COMMITTEE, A.K.A.  
THE NATIONAL REPUBLICAN PARTY,  
THE NATIONAL REPUBLICAN SENATORIAL  
COMMITTEE, THE WEST VIRGINIA STATE  
VICTORY COMMITTEE, AND JOHN DOE and JANE DOE,**

**Defendants.**

**AMENDED COMPLAINT**

Now comes the Plaintiff, Charlotte Pritt, by her Counsel ,  
H. H. Roberts, and for her Amended Complaint says:

**COUNT I**

1. That Plaintiff is and was at the time of the incidents alleged in this Amended Complaint, a Citizen of the United States and a resident of the State of West Virginia, and resides at 2712 RummelBrown Drive, Charleston, West Virginia, 25302.
2. That Plaintiff is a graduate of the University of Marshall with an undergraduate degree in Language Arts and a Masters degree in English.
3. That from 1973 to 1990, Plaintiff was employed by the Board of Education of Kanawha County and worked for the Board as a teacher and educator during this period.

**EXHIBIT II.**

4. That Plaintiff is a former member of the West Virginia House of Delegates from Kanawha County, having served from 1985 to 1989 and a former member of the West Virginia State Senate, having served from 1989 to 1993, after being duly elected to these offices.
5. That at a duly conducted Primary election in the State of West Virginia, on May 7, 1996, Plaintiff was the successful candidate for and received the nomination of the Democratic Party as the party's candidate for the State wide office of Governor.
6. That Defendant, the National Republican Committee, a.k.a. the National Republican Party, is a national political party registered with the Federal Election Commission with the address of 310 First Street, S.E., Washington D.C. 20003-1801.
7. That Defendant, the National Republican Senatorial Committee, is a national party committee of the National Republican Party and is registered with the Federal Election Commission with an address of Ronald Reagan Republican Center, 425 Second Street, N.E., Washington, D.C. 20002-4914.
8. That Defendant, the West Virginia State Victory Committee, is a "person" as defined by West Virginia Code Chapter 3, Article 8, Section 4(d), generally referred to as the "Election Laws" and is a political action committee which was registered with the West Virginia Secretary of State's Office on October 4, 1996, with an address of Ronald Reagan Republican Center, 425 Second Street, N.E., Washington, D.C. 20002-4914.
9. That John Doe and Jane Doe are persons, associations, organizations or other entities unknown to Plaintiff at this time who in any way participated in the events and actions which are the subject of this Amended Complaint.
10. That in October of 1996, Defendants, collectively and/or individually, through their representatives, employees and/or agents, with malice and with intent to do harm to Plaintiff; wantonly and recklessly, with total disregard of the truth, and with knowledge of the falseness of the

material fabricated by them, commenced a conspiracy and a publicity campaign, replete with lies and falsehoods, that libeled, slandered and defamed Plaintiff with the objective of defeating Plaintiff in her efforts in running as the Democratic Party nominee for the office of Governor. Said campaign by Defendants did not terminate until the conclusion of the 1996 West Virginia General Election, on November 4, 1996.

11. That as part of this conspiracy and publicity campaign, Defendants, severally, collectively and/or individually, through their representatives, employees and/or agents, fabricated and caused to be published, aired, televised, broadcast and distributed in other forms to the general public of the State of West Virginia, in particular, directed to the Voters of the State of West Virginia, communications and statements about Plaintiff, referred as "Ads opposing Pritt" which were known to Defendants to be false and which libeled, slandered and defamed Plaintiff, which said communications included among others; paid political Television advertisements by four(4) Television Stations in West Virginia, one Television Station in Maryland, which effectively saturated the state population of TV viewers; and the paid political radio advertisements in eleven(11) radio stations in West Virginia, including two stations in Fayette County, West Virginia, namely, WAXS-FM, located at 609 Main Street, Mount Hope, Fayette County, West Virginia and WTNJ-FM, located at 609 Main Street, Mount Hope, Fayette County, West Virginia, two(2) in Maryland and two(2) in Ohio which effectively saturated the radio listening audience in the State of West Virginia, including Fayette County, West Virginia. The text of said false and libelous communications and statements, among others, included the language set forth on "Exhibit I", attached hereto and made a part of this Amended Complaint.
  
12. That with actual malice, Defendants, severally, collectively and/or individually, through their representatives, employee and/or agents continued the publication by radio and television of the false and libelous communications and statements about Plaintiff even after the Republican Nominee for Governor opposing Plaintiff, on October 25, 1996, expressed disapproval of the television advertisements aimed at Plaintiff and ask Defendants to discontinue them.

13. That Defendant, the West Virginia State Victory Committee, spent approximately Ninety Thousand Dollars (\$90,000.00) in financing the aforementioned publicity campaign, which amount was taken from a loan of One-Hundred Thousand Dollars (\$100,000.00) obtained by said Defendant, the West Virginia State Victory Committee from Defendant, the National Republican Senatorial Committee on October 24, 1996. National Republican Senatorial Committee, in turn, obtained said One-Hundred Thousand Dollars as part of a loan from Signet Bank. A copy of said "Loan Agreement", dated March 13, 1997, is attached as "Exhibit II" to this Amended Complaint. None of the moneys involved were from West Virginia sources.

14. That Defendant's communications, allegations and statements in the publicity campaign against the Plaintiff were unprivileged.

## COUNT II

15. In support of Count II of this Amended Complaint, Plaintiff reiterates the recitations and allegations contained in the foregoing paragraphs 1. through 14.

16. That in conducting the aforementioned conspiracy and publicity campaign by which Defendants, collectively and/or individually, through their representatives, employees and/or agents, caused to be published, aired, televised, broadcast and distributed in other forms to the general public of the State of West Virginia, directed to the Voters of the State of West Virginia, with intent to affect the voting and the outcome of the election for Governor, certain communications which were false and known by Defendants to be false about Plaintiff as a candidate for the office of Governor, Defendants were in violation of the Election Laws of the State of West Virginia, namely, West Virginia Code Chapter 3, Article 8, Section 11(c) which forbids the knowledgeable publication of any false statement in regard to a candidate, which statement is intended or tends to affect the voting at any election and by violation of said law, Defendants, caused harm, injury and damage to Plaintiff.

### COUNT III

17. In support of Count III of this Amended Complaint, Plaintiff reiterates the recitations and allegations contained in the foregoing paragraphs 1. through 14.
18. That among the false allegations and statements in Defendants' publicity campaign against Plaintiff is the statement that Plaintiff voted to permit "the sale of pornographic Videos to children." This is an allegation that accuses Plaintiff of advocating the commission of the crime of selling pornography to minors, a violation of the law and a crime of moral turpitude. This false allegation and statement is libelous per se and has caused harm to Plaintiff.
19. That among the false allegations and statements in Defendants' publicity campaign against Plaintiff is the proposition that "parents can't trust Charlotte Pritt to protect our children." This false allegation, in effect says that Plaintiff is unfit to practice her profession as an educator and thus is libelous per se and has caused harm to Plaintiff.

### COUNT IV

20. In support of Count IV of this Amended Complaint, Plaintiff reiterates the recitations and allegations contained in the foregoing paragraphs 1. Through 14.
21. As a direct and proximate result of Defendant's false allegations and statements about Plaintiff, a highly offensive false impression of Plaintiff has been created, placing the Plaintiff in a false light before the public and Plaintiff has suffered and will continue to suffer, actual damage to her personal and professional reputation, as well as embarrassment, humiliation and outrage.

## DAMAGES

22. As a result of the aforementioned intentional, malicious, reckless, wanton and knowledgeable acts of Defendants which libeled, slandered and defamed the Plaintiff, and as a result of Defendants violation of the provisions of West Virginia Code Chapter 3, Article 8, Section 11(c), Plaintiff suffered the following detrimental consequences and damages:

- a. Plaintiff's reputation as an educator was sullied making it difficult for her to return to her profession as an educator, resulting in an estimated loss of income of Three-Hundred Thousand Dollars (\$300,000.00) over the remaining estimated period of her career of Fifteen (15) years.
- b. Plaintiff was forced to spend an additional sum, estimated at One-Hundred Thousand Dollars (\$100,000.00), in her campaign for Governor to refute the last minute false allegations made against her.
- c. Plaintiff lost her bid for Governor, either directly or in part, as a result of the false allegations against her, with an estimated loss of income of approximately Three-Hundred Sixty Dollars (\$360,000.00)
- d. Plaintiff's reputation as a individual was sullied making it difficult for her to get gainful employment outside her field of education resulting in an estimated loss of income of Two-Hundred Forty Thousand Dollars (\$240,000.00).
- e. Plaintiff suffered and continues to suffer great emotional distress and mental anguish for which Plaintiff should be compensated the sum of One Million Dollars(\$1,000,000.00).

## PRAYER

Now therefore, Plaintiff requests a jury trial of the issues raised in this Amended Complaint and prays that Plaintiff be awarded damages in the amount of Two Million Dollars(\$2,000,000.00) or such other amount as

the Court and jury determines is appropriate, along with such other relief as the Court deems just, and further that the issue of punitive damages be considered by a jury and that punitive damages in the amount of Ten Million Dollars (\$10,000,000.00) be assessed against Defendants, jointly and severally on the basis of their malicious, wanton, reckless and knowledgeable acts in libeling, slandering and defaming Plaintiff, and on the basis of Defendants violation of the Election Law provisions as set forth in West Virginia Code Chapter 3, Article 8, Section 11(c).

Respectfully submitted by

H. H. Roberts

H. H. Roberts, Attorney  
W.V.S.B.# 3127  
Suite 214-Professional Bldg.  
1036 Quarrier Street  
Charleston, W. Va. 25301  
(304) 344-9672

and

John M. "Jack" Thompson, Attorney,  
W.V.S.B. # 3745  
P.O. Box 85  
Oak Hill, W.Va. 25901  
(304) 465-1700

CO-COUNSEL FOR PLAINTIFF

**Transcript of "Ad Opposing Pritt" aired by WTNJ-FM and WAXS-FM, located at 609 Main Street, Mount Hope [Fayette County] West Virginia, as a paid political advertisement from October 29 through November 1, 1996—for W.Va. State Victory Committee.**

**"Behind Charlotte Pritt's campaign smile is a liberal voting record she can't hide from.**

**In the State Senate, Charlotte Pritt proposed teaching first graders about condoms.**

**Surprised? You shouldn't be.**

**Senator Pritt also voted to permit the sale of pornographic Videos to children.**

**She even voted to allow convicted drug abusers to work in our public schools.**

**If parents can't trust Charlotte Pritt to protect our children, think also of our veterans.**

**Charlotte Pritt voted against honoring the men and women of West Virginia who fought in the Gulf War.**

**Senator Pritt voted to allow the burning of the American Flag that all veterans fought so hard to defend.**

**She even opposed requiring students to begin their day with the Pledge of Allegiance.**

**Look behind the Smile.**

**Charlotte Pritt—wrong on the issues.**

**Wrong for West Virginia**

**Paid for by West Virginia State Victory Committee**

**Mary M. Dotter, Treasurer**

**Not authorized by Underwood for Governor"**

# National Republican Senatorial Committee

SENATOR MITCH MCCONNELL  
CHAIRMAN

STEVEN J. LAW  
EXECUTIVE DIRECTOR

## LOAN AGREEMENT

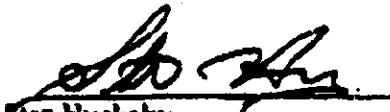
On October 24, 1996 the West Virginia State Victory Committee received a loan from the National Republican Senatorial Committee (NRSC) in the amount of \$100,000. The original source of the loan came from a \$500,000 line of credit drawdown by the NRSC of which \$100,000 was allocated by the NRSC to the West Virginia State Victory Committee. Furthermore, this \$500,000 drawdown by the NRSC was made in accordance with the terms and conditions of a \$5,500,000 line of credit agreement dated September 9, 1996 and amended October 21, 1996 and February 27, 1997 between the NRSC and Signet Bank.

The \$100,000 allocated by the NRSC to the West Virginia State Victory Committee is considered a loan and is governed by the same terms and conditions set forth in the Line of Credit Agreement, as amended between the NRSC and Signet Bank. Specifically:


1. Interest shall be calculated at a rate equal to Signet Bank's prime rate of interest plus one-half percent.
2. Collateral shall include all future receipts deposited into the account of the West Virginia State Victory Committee.
3. Repayment shall be made prior to December 31, 1997, the NRSC's final repayment due date as provided for in the February 27, 1997 amended line of credit agreement.

Further, both parties agree that repayment shall be made only from funds raised under the contribution limits of West Virginia State law.

Dated: March 13, 1997



Stan Huebaly  
Treasurer, National Republican Senatorial Committee



Mary M. Dotter  
Treasurer, West Virginia State Victory Committee

RONALD REAGAN REPUBLICAN CENTER  
426 SECOND STREET, N.E. • WASHINGTON, D.C. 20002 • (202) 678 6000

PREPARED AND AUTHORIZED BY THE NATIONAL REPUBLICAN SENATORIAL COMMITTEE

EXHIBIT II

VERIFICATION

STATE OF WEST VIRGINIA

COUNTY OF KANAWHA, to Wit:

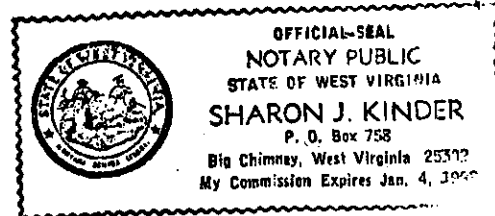
The undersigned, Charlotte Pritt, after being duly sworn, verifies, that upon information and belief, to the best of her knowledge, the statements and allegations contained in the attached Amended Complaint, styled "Charlotte Pritt vs. The National Republican Committee, a.k.a. the National Republican Party, The National Republican Senatorial Committee, The West Virginia State Victory Committee, John Doe and Jane Doe" are true.

Charlotte Pritt  
Charlotte Pritt

Subscribed and sworn to before me, this October 26, 1998.

Sharon J. Kinder  
Notary Public

My Commission expires Jan 4, 1999.



CERTIFICATE OF SERVICE

The undersigned, H. H. Roberts, attorney for the Plaintiff in the case of Pritt v. National Republican Committee, Case No. 97-C-380(V) in the Circuit Court of Fayette County, West Virginia, hereby certifies that he served the foregoing Amended Complaint on the Defendants, National Republican Committee, National Republican Senatorial Committee and the West Virginia State Victory Committee by hand delivery of a true and exact copy thereof to the office of Michael W. Carey, Esquire, Attorney for the Defendants, at 1700 Bank One Center, 707 Virginia Street, East, Charleston, W.Va., 25301, on the 26<sup>th</sup> day of October, 1998, and by facsimile transmission to Jason Levine, Esquire, Attorney for Defendants, at Covington & Burling, P.O. Box 7566, Washington, D. C. 20044, at his facsimile number, (202) 662-6291 on the 26<sup>th</sup> day of October, 1998.

*H. H. Roberts*

---

H. H. Roberts, Attorney  
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Attorney for Plaintiff  
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