

**SUPERIOR COURT OF THE DISTRICT OF COLUMBIA  
CIVIL DIVISION**

**TWO RIVERS PUBLIC CHARTER SCHOOL,  
INC., et al.,**

Plaintiffs,

v.

**ROBERT WEILER, JR., et al.,**  
3203 Maygreen Ave  
Forestville, MD 20747  
(301) 310-2798  
weilerrobertjr@gmail.com

Defendants.

**Case No.:** 2015 CA 009512 B

**Judge:** Judge Jeanette J Clark

**Next Event:** Initial Conference  
March 11, 2016

**DEFENDANT ROBERT WEILER, JR.'S  
SPECIAL MOTION TO DISMISS PLAINTIFFS' COMPLAINT**

Under the authority of section 16-5502 of the District of Columbia Code and Rule 12(b)(6) of the Superior Court Rules of Civil Procedure, Defendant Robert Weiler, Jr. hereby move for entry of an order dismissing Plaintiffs' Complaint, with prejudice, on the grounds that: (1) Weiler has made a *prima facie* showing that Plaintiffs' claims arise from acts in furtherance of the right of advocacy on issues of public interest, and (2) Plaintiffs cannot demonstrate that their claims are likely to succeed on the merits.

**ORAL HEARING REQUESTED**

In accordance with Section 16-5502(d)<sup>1</sup> of the District of Columbia Code, Weiler requests the Court schedule an expedited hearing on his Special Motion to Dismiss.

**RULE 12-I(a) CERTIFICATE**

Undersigned Defendant hereby certifies that, despite diligent efforts, he was unable to obtain Plaintiffs' consent to Weiler's Special Motion to Dismiss.

Dated: February 03, 2016

Respectfully Submitted,

/s/ Robert Weiler, Jr.  
Robert Weiler, Jr., *pro se*  
3203 Maygreen Ave  
Forestville, MD 20747  
weilerrobertjr@gmail.com  
(301) 310-2798

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<sup>1</sup> "The court shall hold an expedited hearing on the special motion to dismiss, and issue a ruling as soon as practicable after the hearing. If the special motion to dismiss is granted, dismissal shall be with prejudice."

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**ORDER GRANTING  
DEFENDANT ROBERT WEILER, JR.'S SPECIAL MOTION TO DISMISS**

THIS MATTER HAVING COME BEFORE THE COURT on the Special Motion to Dismiss filed on February 03, 2016 by Defendant Robert Weiler, Jr. under the authority of section 16-5502 of the District of Columbia Code and Rule 12(b)(6) of the Superior Court Rules of Civil Procedure;

THE COURT HAVING CONSIDERED the motion and its supporting papers, Plaintiffs' Opposition, and the entire record herein;

THE COURT HAVING DETERMINED that Weiler has made a *prima facie* showing that Plaintiffs' claims arise from acts in furtherance of the right of advocacy on issues of public interest, and that Plaintiffs cannot demonstrate that their claims are likely to succeed on the merits; and

GOOD CAUSE OTHERWISE APPEARING.

IT IS, this \_\_\_\_ day of \_\_\_\_\_ 2016, hereby

ORDERED that Weiler's Special Motion to Dismiss be, and it hereby is, in all respects GRANTED; and it is further

ORDERED that Plaintiffs' Complaint be, and it hereby is, DISMISSED WITH PREJUDICE in its entirety as to Weiler.

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Jeanette J. Clark  
Judge of the Superior Court

Copies to:

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*Counsel for Defendant Larry Cirigano*

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**MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF DEFENDANT  
ROBERT WEILER JR.'S SPECIAL MOTION TO DISMISS PLAINTIFFS' COMPLAINT**

Defendant Robert Weiler, Jr., *pro se*, submits this Memorandum of Points and Authorities in support of his Special Motion to Dismiss Plaintiffs' Complaint.

**FACTUAL AND PROCEDURAL BACKGROUND**

Plaintiffs are the Two Rivers Public Charter School and its Board of Trustees. (Compl. At Page 2.) They bring two claims, one for intentional infliction of emotional distress and one for private nuisance/conspiracy to commit private nuisance. (*Id. at Page 1.*) They assert that their purpose is "to protect the well-being of the students" of the school from the Defendants' demonstrations against the construction of a Planned Parenthood facility across the street from the Two Rivers Middle School and next door to Two Rivers Elementary School. (*Id. at Page 2.*) The Complaint alleges that on four occasions, August 27, 2015, November 16, 2015, November 23, 2015, and December 07, 2015, a few individuals have appeared on the public ways nears the

schools and displayed signs, distributed leaflets, and orally expressed their opposition to Planned Parenthood, its practices of offering abortions, and the erection of the facility at that location. (*Id.* at Paragraphs 33-66.) Significantly, Weiler was present on only one of those four days, November 16, 2015, and he is substantively mentioned only once in the entire Complaint<sup>1</sup> (See *id.* at ¶ 41).

The Complaint alleges that Weiler held “A banner measuring approximately 8’ by 3’ [that] read: ‘The kill babies nearby! Tell your parents to stop them.’” (See *id.* at ¶¶ 40&41). Weiler never yelled anything at any person on this occasion, nor does the complaint allege that he did. Weiler never held a sign graphically depicting a dead fetus on this occasion, nor does the complaint allege that he did. Holding a banner on a public sidewalk is the only action directly attributed Weiler in the complaint.

Moreover, Weiler was not even present on August 27, November 23, or December 2 2015, and he had nothing to do with the alleged actions of those who were alleged to have been present on those days. Accordingly, the activities alleged to have occurred on those days cannot be held against Weiler.<sup>2</sup>

Weiler’s activities were constitutionally protected speech and expressive conduct in a traditional public forum. Plaintiffs’ attempt to censor him by means of a content-based restriction on speech is a direct violation of the District of Columbia’s Anti-SLAPP Act. For this reason, and

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<sup>1</sup> The mentions of Weiler’s previous convictions and arrests have no bearing on this case, are entirely irrelevant, and clearly mentioned to attempt to vilify Weiler, and by association, the other defendants in this case.

<sup>2</sup> Plaintiffs’ naked allegation of conspiracy, without more, is insufficient as a matter of law. See, e.g., *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 556-57 (2007).

because Plaintiffs lack standing and are otherwise unable to show a likelihood of success on the merits, Plaintiffs' injunction should be denied and their Complaint dismissed with prejudice.

### **ARGUMENT**

Weiler incorporates herein by this reference the Memorandums of Points and Authorities in Support of Special Motions to Dismiss filed by Defendants Larry Cirignano and Ruby Nicdao, through their attorneys (hereafter "Cirignano Memo." and "Nicdao Memo.").

The Nicdao and Cirignano Memorandums support dismissal as to Weiler with even greater force and effect as the Plaintiffs' allegations specific to Weiler pale in comparison to those leveled against Cirignano and Nicdao. Weiler has not been accused of following or shouting at or to any person, as Ms. Nicdao has (*See Compl.* ¶¶ 57-58), or of holding any graphic sign as Mr. Cirignano has (*See Id.* ¶ 54). The only allegation specific to Weiler is in Paragraphs 40 and 41 of the Plaintiffs' complaint and consists of Weiler holding a text based banner on a public sidewalk.

Weilers' Declaration attached hereto as "Exhibit 1" establishes a prima facie showing that his activity was in furtherance of his right to advocacy on an issue of public interest, and therefore entitled to the protections of the Anti-SLAPP Act (District of Columbia Code § 16-5502). It is therefore incumbent on the Plaintiffs to show a likelihood of success on the merits or the Court must dismiss the Complaint, with prejudice. The Points and Authorities for this are contained in Ms. Nicdao's Memorandum and are incorporated here by reference. (*See Nicdao Memo. Section I (on pages 3-6)*)

For the reasons set forth in the Cirignano and Nicdao Memorandums, incorporated here by reference, the Plaintiffs cannot show a likelihood of success on the merits. (*See Cirignano Memo. Page 4; also see Nicdao Memo. Section II (on Pages 6-15)*). In fact, Plaintiffs are even less

able to show a likelihood of success against Weiler. Since the Plaintiffs will be unable to meet the high bar of their IIED claim, and do not have standing to assert such claims on behalf of their students, their claim of nuisance necessarily fails (*See Nicdao Memo. at 6-15 (§II)*).

Actionable IIED claims require proof of “extreme and outrageous conduct” which causes “severe emotional distress” *Ortberg v. Goldman Sachs Grp.*, 64 A.3d 158, 163 (D.C. 2013). No reasonable reading of the Complaint connects Weiler to any allegation of either. The single instance of a child allegedly feeling “sick,” which is the only allegation even approaching the level of “severe emotional distress” required to support an IIED claim, was tied specifically to a particular “incident” not even alleged to involve Weiler, and occurred on a date that Weiler is not even alleged to have been present (*See Compl. ¶¶ 59-61*).

Furthermore, even if the Plaintiffs somehow redefine “extreme and outrageous conduct” to include holding a banner on a public sidewalk, it would still fail to advance their IIED claim because of the special protection afforded to Weiler’s conduct by the First Amendment. Speech occurring in a “public place on a matter of public concern” is “entitled to ‘special protection’ under the First Amendment.” *Snyder v. Phelps* 562 U.S. at 458. “[T]hat protection cannot be overcome” by a finding that the expression was outrageous. *Id.*

Finally, for the same reasons expressed by Nicdao and Cirignano as to their conduct, Plaintiffs cannot establish “substantial harm” to their school as a result of Weiler’s expressive activities, and any injunction against Weiler’s expressive conduct would be unconstitutional. (*Nicdao Memo. at 14-15, §II.C*).



**Conclusion**

For the various reasons listed above, Weiler's Special Motion should be granted and the Plaintiffs' Complaint dismissed, with prejudice, as to Weiler.

DATED February 04, 2016.

Respectfully Submitted:

/s/ Robert Weiler, Jr.

Robert Weiler, Jr., Pro se  
3203 Maygreen Ave  
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(301) 310-2798

**Certification of Service**

I certify that a true and correct copy of the forgoing was filed through the Court's authorized eFiling system, which will provide a courtesy copy to Chambers and effect eService upon the following parties or counsel of record:

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And

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**Exhibit 1**

**DECLARATION OF ROBERT WEILER, JR.**

1. I am a named defendant in this case, and have personal knowledge of the matters set forth in this Declaration, and if called on to do so I would testify competently as to them.
2. I was not present on the public ways adjacent to the Two Rivers Charter School on August 27, November 23, or December 07, 2015, and had no involvement in the activities of the individuals whom the Plaintiffs allege were present on those days.
3. To the best of my knowledge and belief I have never met Defendant Larry Cirigano or Defendant Ruby Nicdao.
4. Prior to November 16, 2015, I had never met or spoken to the person identified in the Complaint as John Doe 1.
5. Prior to November 16, 2015, I had met Defendant Lauren Handy briefly on a single occasion. On that occasion, we did not discuss or plan future protests nor did either of us

even mention Two Rivers Public Charter School, or the construction of a Planned Parenthood adjacent to Two Rivers.

6. I am familiar with Defendant Jonathan Darnel as he and I have both been very active in anti-abortion activity in Maryland for some time. We have been present at the same events and demonstrations on several occasions, sometimes by design but more often by coincidence, owing to the high amount of anti-abortion activity in which we both participate.
7. The majority of my anti-abortion activity occurs in the State of Maryland, as I reside in that State.
8. November 16, 2015 was the first and only day that I was present at a demonstration on 4<sup>th</sup> St NE prior to the filing of the Plaintiffs' complaint. Furthermore, I had no particular plans to return to that site for demonstration or for any other reason prior to the filing of the Plaintiffs' Complaint.
9. Defendant Jonathan Darnel notified me a couple of days prior to the demonstration on November 16, 2015 that a new Planned Parenthood was being constructed at that location, and that he would be protesting there that morning.
10. When I arrived at near Two Rivers Elementary School I held a banner that read "They Kill Babies Nearby! Tell your parents to stop them", I did move a few times as parents and staff from the school attempted to block signs from view, and rerouted the students and newly arriving parents to other entrances of the school. For maximum visibility of the banner I was holding, I eventually moved to the corner of 4<sup>th</sup> and Florida Avenues NW.
11. At no time did I block access to the school, follow any person, or yell at any person.

12. Other than holding the banner, I did not attempt to communicate in any way with elementary school students. I did converse with a few adults who approached me and wished to speak with me.
13. Police Officers were present during the demonstration, and took no actions in respect to my activity.
14. I violated no laws in holding a banner on a public sidewalk.
15. My purpose in being present on November 16, 2015 and holding a banner in that location was in furtherance of my right of advocacy of an issue of public interest, specifically the construction and operation of an abortion business generally, and the specific decision of Planned Parenthood to locate next door to an elementary school and across the street from a middle school, and the District governments' allowance of them to do so.

I DECLARE under penalty of perjury that the foregoing is true and correct.

EXECUTED this 4th day of February, 2016.

/s/ Robert Weiler, Jr.  
Robert Weiler, Jr.