

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NORTH CAROLINA  
SOUTHERN DIVISION  
CIVIL ACTION NO. 7:14-cv-00214-FL**

ANTHONY NOBLES,

Plaintiff,

v.

RODERICK BOYD, an Individual;  
KEITH LARSEN, an Individual; and  
SOUTHERN INVESTIGATIVE  
REPORTING FOUNDATION, a  
North Carolina Corporation,

Defendants.

**DEFENDANTS' OPPOSITION TO  
PLAINTIFF'S REQUEST FOR  
TEMPORARY RESTRAINING ORDER AND  
FOR EXPEDITED BRIEFING**

Defendants Roderick Boyd, Keith Larsen, and the Southern Investigative Reporting Foundation (“SIRF”), through counsel, hereby submit this Opposition to Plaintiff Anthony Nobles’ request for an ex parte temporary restraining order (“TRO”) and for expedited briefing on his “Emergency” Motion for Temporary Restraining Order and Preliminary Injunction (the “Motion”). For the reasons set forth below, no injunction should issue without the benefit of full briefing, and Plaintiff’s request for expedited briefing should be denied.<sup>1</sup>

**PROCEDURAL BACKGROUND**

Plaintiff’s Complaint was filed on October 2, 2014 (DE 13), more than two weeks after the article at issue in this case (the “Nobles Article”) was published on the SIRF website.

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<sup>1</sup> At such time as the Court orders, Defendants will file their brief in opposition to Plaintiff’s Motion for a preliminary injunction. This Opposition addresses only the request for an ex parte TRO and for expedited briefing.

(Compl. ¶ 24.) Indeed, according to the Complaint, Plaintiff had notice that the Nobles Article was going to be published, and he or someone on his behalf was conducting Internet research about Mr. Boyd as early as September 11, 2014. (Compl. ¶¶ 44, 48, 53.) Plaintiff did not file a motion for a TRO or a preliminary injunction at the time he filed the Complaint. Rather, he waited more than a month before doing so. In short, more than six weeks have passed since the publication of the Nobles Article, which Plaintiff now asserts warrants “emergency” action by the Court.

### ARGUMENT

For more than 80 years, it has been a bedrock principle of constitutional law that “the chief purpose of [the First Amendment] is to prevent previous restraints upon publication.” *Near v. Minnesota*, 283 U.S. 697, 713 (1931). Broadly speaking, “liberty of the press, historically considered and taken up by the Federal Constitution, has meant, principally although not exclusively, immunity from previous restraint or censorship.” *Id.* at 716.

The Supreme Court has made clear that the broad prohibition of prior restraints articulated in *Near* applies to preliminary injunctions precisely of the sort Plaintiff requests in this matter. In *Organization for a Better Austin v. Keefe*, 402 U.S. 415 (1971), for example, the Court struck down a temporary injunction banning a community civil rights organization from distributing leaflets concerning the business practices of a local real estate agent. In invalidating the injunction, the Court held that “the injunction, so far as it imposes prior restraint on speech and publication, constitutes an impermissible restraint on First Amendment rights.” *Id.* at 418 (citing *Near*, 283 U.S. 697). This is so, the Court held, because “[a]ny prior restraint on expression comes to this Court with a ‘heavy presumption’ against its constitutional validity.”

*Id.* at 419 (quoting *Carroll v. President and Comm'rs of Princess Anne*, 393 U.S. 175, 181 (1968)).<sup>2</sup> The fact that the Nobles Article has already been published in no way renders the injunction Plaintiff seeks any less of a prior restraint, since he requests that Defendants be enjoined from future publication about Plaintiff. In *Keefe*, for example, the state court had enjoined the *further* distribution of leaflets. The Supreme Court held this to be a prior restraint even though many leaflets had already been handed out. *Id.* at 418-19.

In light of the near-absolute prohibition on temporary or preliminary injunctions in cases involving a prior restraint, Plaintiff must overcome a “heavy presumption,” yet he fails to establish *any* right to injunctive relief, much less to a TRO and expedited briefing.

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Despite styling his Motion as an “Emergency,” Plaintiff offers nothing more than boilerplate assertions of speculative harm in arguing for issuance of a TRO and setting an expedited briefing schedule. In fact, the Motion makes it clear that this is not an “emergency,” and neither a TRO nor expedited briefing is required or appropriate.

A party seeking a TRO must establish *each* of the following:

- (1) that it is likely to succeed on the merits;
- (2) that it is likely to suffer irreparable harm in the absence of preliminary relief;
- (3) that the balance of equities tips in its favor; and
- (4) that an injunction is in the public interest.

*Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008); *Pashby v. Delia*, 709 F.3d 307, 320-21 (4th Cir. 2013). Plaintiff fails to establish any of the four *Winter* factors.

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<sup>2</sup> See also *Vance v. Universal Amusement Co., Inc.*, 445 U.S. 308, 317 (1980) (invalidating Texas statute providing for preliminary injunction against showing of a movie even before it had been adjudged obscene); *Bantam Books, Inc. v. Sullivan*, 372 U.S. 58, 70 (1963) (invalidating state statute that gave morality commission power to enjoin publication of certain books).

For reasons that will be more fully detailed in briefing on Plaintiff’s Motion for a preliminary injunction, Plaintiff cannot establish a likelihood of success on the merits. Among other problems, Plaintiff fails to state claim upon which relief can be granted, and the statements of which he complains are not actionable because they are not defamatory or are otherwise privileged.

In addition, Plaintiff offers no evidence or specific allegations of irreparable harm that it is likely to suffer and that can only be avoided by a TRO and expediting briefing. To the contrary, the purported harms that Plaintiff cites as a result of the Nobles Article *have already allegedly occurred*—Plaintiff “lost” a nomination for the Horatio Alger Award, and shareholders in Nobles’ companies have already seen the Nobles Article. (Pl. Mem. (DE 24) at 11-13.<sup>3</sup>) Moreover, Plaintiff offers no explanation as to how, even if his allegations are proven, money damages would not suffice to make him whole.

Finally, as to the final two factors, Plaintiff’s request for a TRO should be summarily denied, and this action should proceed in accordance with the Court’s standard scheduling procedures for several reasons. *First*, because Plaintiff’s Complaint implicates core First Amendment rights, any order abridging those rights faces a “‘heavy presumption’ against its constitutional validity” and should be issued only with the benefit of full and considered briefing by the parties, and, if the Court deems it necessary, a hearing. *See Keefe*, 402 U.S. at 417-19. This is particularly true here, where, after spending almost two months preparing a lengthy brief and six declarations, Plaintiff now asks the Court for a TRO on an “emergency” basis and to

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<sup>3</sup> The cited page numbers are from the CM/ECF file stamp.

require Defendants to respond on an expedited basis. There is simply no basis for such relief under these circumstances.

*Second*, the underlying Complaint is legally and factually deficient, and Plaintiff's claims are without foundation. Defendants will be filing a motion to dismiss all claims on or before December 9, 2014, pursuant to the Court's October 21, 2014 Order, and consideration of Defendants' motion will necessarily overlap with the Court's consideration of Plaintiff's Motion. Accordingly, after briefing on Defendants' motion to dismiss is complete, the Court will be able to consider all pending motions together.

Neither a TRO nor a preliminary injunction is appropriate in this case, but, to the extent the Court is considering anything other than denying Plaintiff's Motion, Defendants request the opportunity to fully brief and argue the weighty constitutional issues presented by Plaintiff's Complaint and Motion.

### CONCLUSION

Defendants respectfully request that the Court deny Plaintiff's Motion summarily or, in the alternative, allow full briefing on the Motion in accordance with the Rules of Civil Procedure.

Respectfully submitted, this the 5th day of November, 2014.

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**CERTIFICATE OF SERVICE**

I hereby certify that on this day I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

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*Attorney for Plaintiff*

I hereby certify that on this day the foregoing document was served by depositing a copy of the same in the United States mail, postage prepaid and addressed as follows:

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*Attorneys for Plaintiff*

This the 5th day of November, 2014.

/s/ Eric M. David

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