YELLOWHAMMER FUND, on behalf of itself and its clients.

Plaintiff,

v.

A ORNEY ! ENERAL OF A'

WE# ALA"AMA WOMEN1# (EN ER, on behalf of the2selves and thei3 staff4 et al.,

Plaintiffs,

v.

E$E MAR#HALL, in his official ca%acit& as Alaba2a Atto3ne& ! ene3al,

Defendant.

(A#E NO.)*)+,cv,--./-,MH

(0$0L A(0ON

Cases

Statutes

Other Authorities

Rules

Constitutional Provisions

access la ; f7l abo3tion ca3e in othe3 states, and Defendant1s asse3tion that he can c3i 2 inali9e %eo%le ; ho s7%%o3t s7ch ca3e offends the val7es of sove3ei8nt& and co 2 it& that a3e fo7ndational to o73 constit7tional st37ct73e.

Me2 be3s of Plaintiff1s staff lea3ned abo7t Defendant1s state2ents afte3 his a%%ea3ance on the 6eff Poo3 #ho;. Fo7ntain Decl. K))4 McLain Decl. K)+. Yello; ha2 2e3 F7nd believed that Defendant1s th3eats s%ecificall& ta38eted the2. ee McLain Decl. K)+4 Fo7ntain Decl. KK ?,))L)+. 0n the 2onths since his 3adio a%%ea3ance, Defendant has 3e%eatedl& 3eaffi32ed his belief that he can ta38et abo3tion hel%e3s ; hen the& assist ; ith la; f7l, o7t,of,state abo3tion ca3e.+ ee Fo7ntain Decl. KK).L)<,)@L+-4 McLain Decl. KK).L)/, ++.

Yello; ha2 2e3 F7nd is a 3e%3od7ctive E7stice o38ani9ation fo7nded in)-5<. Fo7ntain Decl. KK ?L<4 McLain Decl. K 5<. Re%3od7ctive E7stice o38ani9ations a3e t&%icall& "lacB,led o38ani9ations that believe all %eo%le have the 3i8ht to decide ; hethe3 to have child3en, ; hen to have child3en, and ho; to %a3ent the child3en the& have in safe and health& envi3on2ents. Fo7ntain Decl. K ?4 McLain Decl. K 5<.

?

Fo7ntain Decl. KK)=L+-. Plaintiff also ; o7ld 3es7 2 e %3ovidin8 info3 2 ation to calle3s

es%eciall& dan8e3o7s fo3 ce3tain %o%7lations. P3e8nanc&,3elated deaths dis%a3atel& i2%act co2 27nities of colo3. Id. at K +/. Acco3din8 to a)-)5 3e%o3t, the 2ate3nal 2o3talit& 3ate fo3 "lacB ; o2en is).? ti2es hi8he3 than the 3ate fo3 non,His%anic ; hite ; o2en. Id. #%ecificall&, the 2ate3nal 2o3talit& 3ate fo3 non,His%anic ; hite ; o2en in)-)5 ; as)?.? deaths %e3 5--,--- live bi3ths, ; hile the 2ate3nal 2o3talit& 3ate fo3 "lacB ; o2en ; as ?@.@ deaths %e3 5--,--- live bi3ths. Id. at K +?.

=

fact7al dis%7te bet ; een the %a3tiesG ; ill not defeat a s7 2 2 a3& E7d8 2 ent 2 otion 7nless the dis%7te is 8en7ine and the fact is 2 ate3ial to the o7tco 2 e of the case. Anderson, .<< U.#. at) . <L . =.

R7le /? %e3 2 its a %a3t& to 2 ove fo3 s7 2 2 a3& E7d8 2 ent at an& ti 2 e. ee **2**eflectone+ Inc. v. Farrand **0**ptical Co., =?) F.)d =. 5, =. + A55th (i3. 5@=@' A%e3 c73ia 2 ' Ae : %lainin8 that the3e is no FblanBet %3ohibition on the 83antin8 of s7 2 2 a3& E7d8 2 ent 2 otions befo3e discove3&G'4 **.** allace v. Bro**#**nell Pontiac&**!** - C Co., <-+ F.)d /)/, /)< A55th (i3. 5@=+'. A co73t can dela& conside3ation of a 2 otion fo3 s7 2 2 a3& E7d8 2 ent to allo ; the non 2 ovin8 %a3t& Fti 2 e to obtain affidavits o3 decla3ations o3 to taBe discove3&,G Fed. R. (iv. P. /?Ad'A)', b7t onl& if the non, 2 ovin8 %a3t& identifies ; ith s%ecificit& ho ; dela&in8 the 37lin8 F ; ill enable hi 2 , b& discove3& o3 othe3 2 eans, to 3eb7t the 2 ovant1s sho ; in8 of the absence of a 8en7ine iss7e of fact.G **.** allace, <-+ F.)d at /)< Acitation o 2 itted'. #7 2 2 a3& E7d8 2 ent is a%%3o%3iate if Fthe %e3tinent facts a3e obvio7s and indis%7table f3o 2 the 3eco3d,G and Fthe onl& 3e 2 ainin8 t37l& debatable 2 atte3s a3e le8al N7estions that a co73t is co 2 %etent to add3ess.G

is a c3edible th3eat of %3osec7tion. *(*acobs v. *6*he Florida Bar, /- F.+d @-5, @-. A55th (i3. 5@@/'.

Plaintiff is entitled to s7 2 2 a3& E7d8 2 ent beca7se the3e a3e no fact7al dis%7tes that %3ecl7de 3esol7tion of its clai 2 s. As a 2 atte3 of la;, Alaba 2 a1s Abo3tion "an 3eaches onl& as fa3 as its bo3de3s, and the D7e P3ocess (la7se st3ictl& fo3bids Defendant f3o 2 a%%l&in8 Alaba 2 a la; s o7tside of the state1s b

Indians

Id. 67st as 0ndiana co7ld not %7nish la ; f7l cond7ct occ733in8 in 0llinois, Alaba2a cannot %7nish abo3tion occ733in8 in states ; he3e it is le8al.

0t then necessa3il& follo ; s that a violation of Alaba2a1s cons%i3ac& o3 accesso3& liabilit& la ; s in connection ; ith the Abo3tion "an can %e3tain onl& to abo3tions %e3fo32ed in Alaba2a. (ons%i3ac& 3eN7i3es intent to violate an Alaba2a c3i2inal offense. Ala. (ode > 5+A,.,+Aa'. Accesso3& liabilit& involves holdin8 a %e3son acco7ntable fo3 an Alaba2a c3i2inal offense, if that %e3son assists in the co22ission of that offense. Ala. (ode > 5+A,),)+. As a 3es7lt, Ala. (ode >> 5+A,.,+ and 5+A,),)+ do not a%%l& to Plaintiff1s desi3ed activities beca7se Plaintiff seeBs to assist Alaba2ians in obtainin8 la ; f7l, o7t,of,state abo3tion ca3e, ; hich Alaba2a1s Abo3tion "an does not 3each. ee supra at 55.

Defendant has th3eatened to %3osec7te s7ch cond7ct as cons%i3ac& 7sin8 Alaba2a (ode > 5+A,.,.. hat stat7te %3ovides that F0aP cons%i3ac& fo32ed in this state to do an act be&ond the state, ; hich, if done in this state, ; o7ld be a c3i2inal offense, is indictable and %7nishable in this state in all 3es%ects as if s7ch cons%i3ac& had been to do s7ch act in this state.G Id. Alaba2a (ode > 5+A,.,. ; as onl& intended to codif& ***6***hompson v. tate, 5< #o. /5) AAla. 5=@/', and this (o73t sho7ld inte3%3et it in line ; ith that case.

0n ***6***hompson, the Alaba2a #7%3e2e (o73t dete32ined that a %3osec7to3 co7ld indict on a cons%i3ac& to F7nla; f7ll& taBe one tho7sand dolla3s . . . f3o2 0the victi21sP %e3son, and a8ainst his ; ill, b& violence.G Id. at /5+. he victi2 of the 3obbe3& lived in !eo38ia at the ti2e of the offense. Id. he3e ; as no N7estion in ***6***hompson that the act of 3obbe3& ; o7ld have been a c3i2e in the state ; he3e it ; as %lanned to occ73. Id. 0n fact, the indict2ent e:%licitl& acBno; led8ed the ille8alit& of the act ; he3e it occ733ed. Id. at /5+, /5?. While the co73t in ***6***hompson a83eed the3e ; as no stat7te that e:%licitl& c3i2inali9ed cons%i3acies to co22it 7nla; f7l acts in othe3 states, the co73t e:%lained that the clea3l& 7nla; f7l nat73e of the act in both states ; as s7fficient to E7stif& the indict2ent. Id. at /5/L5?.

Alaba2a (ode > 5+A,.,. H ; hich 2e3el& codified the decision in ***6***hompson H sho7ld not be inte3%3eted to a%%l& 7nde3 these ci3c722stances. He3e, the th3eats of %3osec7tion 3elate to activities that ; o7ld be le8al in the state ; he3e the& occ73. Alaba2a (ode > 5+A,.,. can onl& conceivabl& 3each cons%i3acies to en8a8e in cond7ct that is ille8al ; he3e it occ73s. U%on info322ation and belief, Alaba2a (ode > 5+A,.,. has neve3 been 7sed to %3osec7te an e:t3ate33ito3ial cons%i3ac&, and it ce3tainl& has not been 7sed to %3osec7te so2eone ; ho fo32ed an alle8ed cons%i3ac& to en8a8e in le8al cond7ct. #ince it is i2%ossible fo3 Plaintiff to Fcons%i3eG to s7%%o3t la; f7l, o7t,of,state abo3tions, its desi3ed activities a3e not %3ohibited b& Alaba2a (ode > 5+A,.,..

his ; as also t37e in Cruthers, ; hich eval7ated a stat7te liBe Alaba2a (ode >

5+A,.,.. hat 0ndiana stat7te stated*

> Aidin8 Felon& in Anothe3 #tate. Eve3& %e3son ; ho shall, ; hile in this state, aid in and abet the perpetration or attempt to perpetrate an offense in another state #hich by the la#s of this state is a felony, shall be dee2ed 87ilt& of a felon&, and 7%on conviction the3eof shall be %7nished in the sa2e 2anne3 and to the sa2e e:tent as accesso3ies befo3e the fact to the co22ission of s7ch a felon& a3e %3osec7ted and %7nished b& the c3i2inal la ; s of the state4 and it shall not be essential to the conviction of s7ch %e3son of said felon& that the %3inci%al be %3osec7ted fo3

beca7se the ; elfa3e and health of its o ; n citi9ens 2a& be affected ; hen the& t3avel to that #tate.G Bi*elo# v. ,ir*inia, .)5 U.#. =-@, =). A5@</'. A state cannot ba3 the disse2ination of info32ation abo7t an activit& that is le8al in anothe3 state, even F7nde3 the 87ise of e:e3cisin8 inte3nal %olice %o ; e3s.G Id. at =).L)/. he sa2e is t37e he3e* Plaintiff is seeBin8 to s7%%o3t abo3tions taBin8 %lace in anothe3 state, ; hich a3e obvio7sl& Factivities that 0Alaba2a1sP %olice %o ; e3s do not 3each.G Id. at =)=.

"eca7se a conviction of cons%i3ac& 7nde3 Alaba2a (ode >> 5+A,.,+ and 5+A,.,. o3 aidin8 and abettin8 7nde3 Alaba2a (ode >5+A,),)+ 3eN7i3es effo3ts to s7%%o3t a criminal offense, if the 7nde3l&in8 c3i2inal offense is 7nconstit7tional, it follo ; s that a conviction of cons%i3ac& to co2 2it o3 aidin8 and abettin8 an 7nconstit7tional offense ; o7ld also be 7nconstit7tional. 0n s72, if the stat7tes a3e inte3%3eted to cove3 Plaintiff1s activities, the e:t3ate33ito3ial a%%lication of Alaba2a1s la ; s ; o7ld violate the D7e P3ocess (la7se and %3inci%les of state sove3ei8nt& and co2it&.

As e:%lained above, Plaintiff1s s7%%o3t fo3 o7t,of,state la ; f7l abo3tion ca3e does not violate Alaba2a la ;. ee supra at 5)L5.. Even if this (o73t disa83ees, Defendant 2a& not %3osec7te Plaintiff beca7se doin8 so ; o7ld violate the Fi3st A2end2ent 3i8hts of Plaintiff and othe3 Alaba2ians. F0APbove all else, the Fi3st A2end2ent 2eans that 8ove3n2ent has no %o ; e3 to 3est3ict e:%3ession beca7se of its 2essa8e, its ideas, its

s7bEect 2atte3, o3 its content.G Police /ep)t of Chic. v. - osley, .-= U.#. @), @/ A5@<)'.= On thei3 face, Defendant1s th3eats blatantl& ta38et e:%3ession and association beca7se of the 2essa8es the& conve& and the %e3s%ectives the& e2b3ace. As f73the3 e:%lained belo;, Plaintiff is entitled to s7222a3& E7d82ent on its Fi3st A2end2ent clai2s beca7se Defendant1s th3eats i2%e32issibl& seeB to c3i2inali9e s%eech, cond7ct, and association on the basis of thei3 content and vie;%oint, and Defendant1s asse3ted inte3ests cannot satisf& st3ict sc37tin&.

he Fi3st A2end2ent Fba3s the 8ove3n2ent f3o2 dictatin8 ;hat ;e see o3 3ead o3 s%eaB o3 hea3.G Ashcroft v. Free peech Coal., /+/ U.#.)+.,).//A)--)'. 0t %3otects the 3i8ht of all %eo%le to 2aBe thei3 o;n decisions abo7t Fthe ideas and beliefs dese3vin8 of e:%3ession, conside3ation, and adhe3ence,G

A5@=@'. 0n addition to s%eech, the Fi3st A2end2ent also %3otects cond7ct that is Fs7fficientl& e:%3essive.G ee id.4 Fort Lauderdale Food "ot Bombs v. City of Fort Lauderdale, @-5 F.+d 5)+/, 5).- A55th (i3.)-5=' Ahe3einafte3 FFLF"BG'.

As a 2atte3 of la;, Defendant1s th3eats a3e inf3in8in8 on Plaintiff1s 3i8ht to en8a8e in %73e s%eech 3elated to la;f7l o7t,of,state abo3tion ca3e. he3e can be no 8en7ine dis%7te that Plaintiff1s abo3tion f7nd ;ishes to %3ovide info32ation to %3e8nant Alaba2ians abo7t la;f7l o7t,of,state abo3tion ca3e, incl7din8 3efe33als, 87idance, and 2o3al s7%%o3t. ee+ e.*., Fo7ntain Decl. KK 5/4 McLain Decl. KK <,)@. his t&%e of co2 27nication clea3l& constit7tes F%73e s%eechG that indis%7tabl& N7alifies fo3 Fi3st A2end2ent %3otection. ee 303 Creative LLC, 5.+ #. (t. at)+5) AFAll 2anne3 of s%eech Hf3o2 Q%ict73es, fil2s, %aintin8s, d3a;in8s, and en83avin8s,1 to Qo3al 7tte3ance and the %3inted ;o3d1HN7alif& fo3 the Fi3st A2end2ent1s %3otections.G AN7otin8 *7*aplan v. California, .5+ U.#. 55/, 55@L)- A5@<+'''.

Defendant1s th3eats %3event Plaintiff f3o2 en8a8in8 in e:%3essive cond7ct. he #7%3e2e (o73t has anno7nced a t;o,%a3t test to dete32ine ;hethe3 cond7ct is %3otected b& the Fi3st A2end2ent* A5' ;hethe3 the s%eaBe3 has FOaPn intent to conve& a %a3tic7la3i9ed 2essa8e,G and A)' ;hethe3 Fin the s733o7ndin8 ci3c72stances o72sc h 4@a6

so3t of 2essa8e, not ; hethe3 an obse3ve3 ; o7ld necessa3il& infe3 a specific 2essa8e.G *1*olloman e*5* rel. *1*olloman v. *1*arland, +<- F.+d 5)/), 5)<- A55th (i3.)--.' Ae2%hasis in o3i8inal'4 see also te#art v. Bald#in Cnty. Bd. of Educ., @-= F.)d 5.@@, 5/-5, 5/-/ A55th (i3. 5@@-' Aa school e2%lo&ee1s FN7iet and non,dis37%tiveG ea3l& de%a3t73e f3o2 a 2andato3& 2eetin8 ; as e:%3essive'.

As a hel%e3 that %3ovides s7%%o3t to %eo%le seeBin8 healthca3e, Plaintiff is necessa3il& en8a8ed in e:%3essive cond7ct. ee+ e.*., FLF"B, @-5 F.+d at 5).-L.5 Ae:%lainin8 that %3ovidin8 access to a necessa3& h72an 3i8ht is a fo32 of e:%3essive cond7ct'. Plaintiff intends to conve& a 2essa8e of solida3it&, love, and s7%%o3t ; hen it hel%s %3e8nant Alaba2ians access la ; f7l o7t,of,state abo3tion ca3e. ee+ e.*., Fo7ntain Decl. KK 5-L5+, 5=L)-4 McLain Decl. KK 55L5.,)@L+-, +). Plaintiff is a 2ission,d3iven o38ani9ation that envisions a ; o3ld ; he3e all %eo%le can access 3e%3od7ctive healthca3e, 3e8a3dless of thei3 inco2e level o3 %lace of 3esidence. ee Fo7ntain Decl. K ?. he3e can be no dis%7te that Plaintiff1s abo3tion f7nd seeBs to advance the o38ani9ation1s 2ission and 2essa8e b& hel%in8 co22 7nit& 2e2be3s affo3d abo3tion ca3e and 3ed7cin8 ba33ie3s that li2it access to ca3e. ee Fo7ntain Decl. K 55L5). F73the3, as a %3evio7s f7nde3 of abo3tion, Plaintiff seeBs to cont3ib7te financiall& to %3e8nant Alaba2ians1 o7t,of,state abo3tions and %3ovide lo8istical s7%%o3t fo3 t3avel, childca3e, lod8in8, and othe3 3elated needs. ee McLain Decl. KK +)L++. (o73ts have 3e%eatedl& 3eco8ni9ed that donatin8 2one& to a %olitical, cha3itable, o3 social ca7se N7alifies as e:%3essive cond7ct. ee+ e.*., -cCutcheon v.

Fed. Election Comm)n

)

at 5)<- Ae:%lainin8 that cond7ct is e:%3essive if an obEective, 3easonable obse3ve3 ; o7ld inte3%3et it as Fsome so3t of 2essa8eG'.

Fo3 these 3easons, Plaintiff1s activities a3e e:%3essive, 3e%3esentin8 %73e s%eech and e:%3essive cond7ct, and a3e the3efo3e %3otected b& the Fi3st A2end2ent.

"& th3eatenin8 to %3osec7te Plaintiff fo3 s7%%o3tin8 la;f7l abo3tion ca3e, Defendant ta38ets Plaintiff1s s%eech on the basis of its content and vie;%oint. (ontent, based la;s Fta38et s%eech based on its co2 27nicative content,G ; hile vie;%oint,based la;s %3ohibit s%eech based on the F%a3tic7la3 vie;s taBen b& s%eaBe3s on a s7bEect.G peech First+ Inc. 3sm*E*eFm*3*o

)?

He3e, the3e can be no dis%7te that Defendant1s th3eats %3ohibit s%eech based on the 2essa8e it co2 27nicates and the 8oals it advances. Defendant1s th3eats s%ecificall& ta38et abo3tion hel%e3s that F%3o2 ot0eP the2 selvesG as f7nde3s of o7t,of, state abo3tions and 7se f7nds to FfacilitateG o7t,of,state abo3tions. ee #7el9le Decl. K ?. o dete32 ine if a s%eaBe3 violated these 3est3ictions, Defendant ; o7ld have to e:a2 ine the content of Plaintiff1s 2essa8e to %3e8nant Alaba2 ians, abo3tion s7%%o3te3s, vol7ntee3s, and 2e2 be3s of the %7blic to decide ; hethe3 it ; as %3o2 otin8 and facilitatin8 o7t,of,state abo3tions. ee ***2***eed, /<? U.#. at 5?. Ae:%lainin8 that a 3est3iction is content,based if its enfo3ce2 ent de%ends Fenti3el& on the co2 27nicative contentG of the s%eech'4 see also ***0***tto v. City of Boca ***2***aton, @=5 F.+d =/ ., =/@ A55th (i3.)-)-' Aholdin8 that a ban on conve3sion the3a%& ; as content,based beca7se it %3ohibited ce3tain the3a%& based on Fthe content of the ; o3ds 7sed in that the3a%&G'4 **.** ollschlae*****er v. ***!*** overnor of Fla., =.= F.+d 5)@+, 5+-<L-= A55th (i3.)-5<' Aholdin8 that la ; ; as content,based beca7se it 3est3icted docto3s f3o2 asBin8 %atients abo7t fi3ea32 o ; ne3shi% b7t did not a%%l& to othe3 t&%es of docto3,%atient co2 27nications'.

Defendant1s th3eats also %3ohibit s%eech based on the vie ; %oint it advances. "& th3eatenin8 to %3osec7te %eo%le ; ho s7%%o3t and f7nd la ; f7l o7t,of,state abo3tions, Defendant ta38ets s%eech that e:%3esses the vie ; that abo3tion ca3e sho7ld be accessible. LiBe the 3est3iction on conve3sion the3a%& in ***0***tto, Defendant1s th3eats seeB to Fcodif& a %a3tic7la3 vie ; %ointGH that abo3tion ca3e sho7ld be inaccessible to %3e8nant Alaba2 iansH and %7nish abo3tion hel%e3s liBe Plaintiff fo3 Fadvancin8 an&

)=

an indis%ensable 2eans of %3ese3vin8 othe3 individ7al libe3ties.G Id. at ?5=. Rest3ictions on the 3i8ht to associate can be s7stained onl& if the& satisf& st3ict sc37tin&.

Defendant1s th3eats invoBed Alaba2a1s e:t3ate33ito3ial cons%i3ac& stat7te, Alaba2a (ode > 5+A,.,.. 0f const37ed to %e32it the %3osec7tion of la;f7l, o7t,of, state cond7ct, that stat7te c3i2inali9es a s7bstantial n72be3 of constit7tional acts FE7d8ed in 3elation to the stat7te1s %lainl& le8iti2ate s;ee%.G Bonta

; hich the 0stat7teP cannot be a%%lied constit7tionall&.G "e# $or% tate Club Ass)n+ Inc. v. City of "e# $or%, .=< U.#. 5, 5. A5@==', .

0f const37ed cont3a3& to 6hompson, see supra at 5.L5/, Alaba2a (ode > 5+A, .,. ; o7ld e:tend to an& a83ee2ent to co2 2it an act that ; o7ld be c3i2inal in Alaba2a, 3e8a3dless of ; hethe3 the a83eed,7%on act is a c3i2e in the state ; he3e it is co2 2itted. As a 3es7lt, the stat7te on its face c3i

that the stat7te ; o7ld b3in8 ; ithin its s ; ee% is st3iBin8* vi3t7all& an& a83ee2ent to en8a8e in la ; f7l o7t,of,state cond7ct, co7%led ; ith an ove3t act, co7ld be c3i2inali9ed. Alaba2a co7ld %7nish an& e:%3ession o3 association that f73the3s le8al o7t,of,state cond7ct, E7st beca7se it disa83ees ; ith the 2essa8e o3 obEect of the a83ee2ent.

(o73ts have held that a stat7te is ove3b3oad ; hen, b& its %lain te32s, it contains no li2itin8 %3inci%le to na33o ; the cond7ct that is %3ohibited. 0n Board of Airport Commissioners of City of Los An*eles, fo3 e:a2%le, the #7%3e2e (o73t st37cB do ; n a la ; that banned all FFi3st A2end2ent activitiesG in a s%ecific %a3t of Los An8eles 0nte3national Ai3%o3t. .=) U.#. at /<.L</. he (o73t held that Fthe ; o3ds of he(o)-5.2360

Alaba2a (ode > 5+A,.,. s7ffe3s f3o2 the sa2e defects as the handbillin8 o3dinance in FF Cosmetics and the ai3%o3t s%eech %3ohibition in Board of Airport Commissioners of City of Los An*eles. Even if Alaba2a has a co2%ellin8 inte3est in %3osec7tin8 o7t,of,state unla#ful activities, Alaba2a (ode > 5+A,.,. 7nconstit7tionall& s;ee%s in %3otected e:%3ession and association abo7t la#ful o7t,of, state activities, allo;in8 Alaba2a to %7nish an& s%eech, a83ee2ent, o3 association ;ith ;hich it disa83ees. "eca7se the e:t3ate33ito3ial cons%i3ac& stat7te has an Fi2%e32issible chillin8 effect on %3otected s%eech,G id. at 5+-), Plaintiff is entitled to s7222a3& E7d82ent on its clai2 that Alaba2a (ode > 5+A,.,. is 7nconstit7tionall& ove3b3oad.

he si2ila3ities bet;een Ed#ards and this case a3e st3iBin8. LiBe M3. Ed;a3ds, Plaintiff is a hel%e3 seeBin8 to t3ans%o3t %eo%le ;ho do not have the f7nds to t3avel to anothe3 state. ee+ e.*., Fo7ntain Decl. K)-. LiBe M3. Ed;a3ds, Plaintiff is facin8 %otential c3i2inal liabilit& if it aids in anothe31s t3avel. ee+ e.*., Fo7ntain Decl. K).4 McLain Decl. KK)+,).. And liBe M3. Ed;a3ds, Yello;ha2 2e3 F7nd is bein8 de%3ived of the f7nda2ental 3i8ht to 2ove f3eel& bet;een states ;hile bein8 faced ;ith a state1s effo3ts to isolate itself and its 3esidents f3o2 othe3 states in the Union. ee Fo7ntain Decl. KK 5?,)?.

#i2ila3l&, Crandall also establishes that Plaintiff is a %3o%e3 %a3t& and that Defendant1s th3eats violate the constit7tional 3i8ht to t3avel. 0n 5=?/, Nevada enacted a la;that levied a ta: of one dolla3 7%on an& %e3son leavin8 the state b& 3ail3oad, sta8ecoach, o3 othe3 vehicle fo3 hi3e.

. -

Washin8ton afte3 co2%letion of 3ese3ve 2ilita3& d7t& at Fo3t "ennin8, !eo38ia, and the 3ash of 3acial 2otivated te33o3 inflicted on Athens a3o7nd the ti2e of the shootin8. Id.4 see also -yers v. *3*nited tates, +<< F.)d .5), .5? A/th (i3.5@?<' Adesc3ibin8 facts of the 273de3 that ;e3e the basis of *!*uest'.[55] Afte3 a local E73& failed to convict the s7s%ects of 273de3, the fede3al 8ove3n2ent so78ht to %3osec7te the 2en fo3 cons%i3in8 to de%3ive "lacB %eo%le of thei3 constit7tional 3i8hts, incl7din8 the 3i8ht to t3avel. *!*uest, +=+ U.#. <.< n.5. 0nitiall& the dist3ict co73t dis2issed the indi

a de%3ivation of thei3 (onstit7tional 3i8hts at the hands of %3ivate acto3s.[5] " 7t the case is 3ooted in the constit7tional 3i8ht to t3avel. Id. at </<. he #7%3e 2e (o73t stated that

.+

Ed#ards and Crandall 2 aBe clea3 that Plaintiff can b3in8 this clai2 on its o ; n behalf. Ho ; eve3, Plaintiff also has thi3d,%a3t& standin8 to vindicate the 3i8ht to t3avel on behalf of those it se3ves. hi3d,%a3t& standin8 is a %37dential doct3ine, not a constit7tional 3eN7i3e2ent, and the 37le disfavo3in8 it Fis ha3dl& absol7te.G *(*une - ed. ervs. L.L.C. v. ***2***usso, 5. - #. (t.)5-+,)55<L5= A)-)-' A%l73alit& o%inion'4 accord id. at)5+@ n.. ARobe3ts, (.6., conc733in8'. he #7%3e2e (o73t has, fo3e:a2%le, %e32itted thi3d,%a3t& standin8 in cases ; he3e a liti8ant has A3ticle 000 standin8 to challen8e the constit7tionalit& of a la ; , %olic&, o3 action, and the F3i8hts of thi3d %a3ties . . . ; o7ld be Qdil7ted o3 adve3sel& affected1 sho7ld 0itsP constit7tional challen8e fail.G Carey v. Pop. ervs. Int***)***l, .+5 U.#. ?<=, ?=. A5@<<' AN7otin8 Crai* v. Boren, .)@ U.#. 5@-, 5@/ A5@<?''. #7ch cases have entailed a va3iet& of fact %atte3ns and inte3ests. ee+ e.*., Po#ers v. ***0***hio, .@@ U.#. .--, .5/ A5@@5' Aholdin8 that a c3i2inal defendant had thi3d, %a3t& standin8 to asse3t the 3i8hts of %otential E73o3s e:cl7ded f3o2 E73& se3vice'4 Carey+

Aholdin8 that ; hite %3o%e3t& o ; ne3s had thi3d,%a3t& standin8 to asse3t the 3i8hts of %otential "lacB %73chase3s'.

H659(t)3.93657(o)3.32676(l)3.hH659(t)3.93633(hf)3a3d3IRBT46JR0-P6700-96167207.I59 3H675

thi3d,%a3t& standin8 to asse3t the eN7al %3otection 3i8hts of its tenants'. 0n fact, thei3 inte3ests a3e one and the sa2e* Plaintiff1s 2ission is to %3ovide abo3tion f7ndin8 and

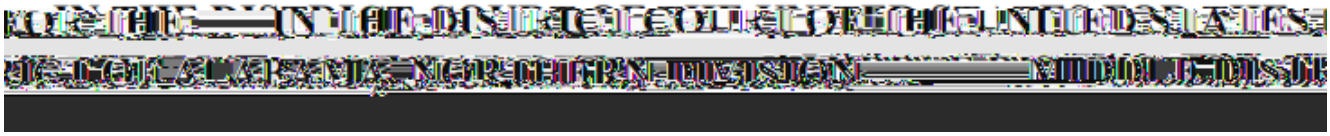
been i33evocabl& lost.G'. 0n cont3ast, Plaintiff is F7niN7el& %ositionedG to asse3t clai2s on behalf of its clients. ee $oun* Apartments+ Inc., /)@ F.+d at 5-... As a f7nde3 of o7t,of,state abo3tions, Plaintiff is the s7bEect of Defendant1s th3eatened %3osec7tion and has s7ffe3ed si8nificant inE73& to its o38ani9ational 2ission s7ch that Fit has st3on8 incentives to %73s7eG the 3i8ht to t3avel clai2 on its clients1 behalf. Id. As a 3es7lt, Plaintiff is the Fobvio7s clai2antG beca7se it is the %a3t& 7%on ; hich the th3eatened

Pai8e #7el9leI
HE LAWYER0N ! PRO6E(
)/-5 #W 3enton #t3eet T5-@<
#eattle, WA @=5-?
A+.<' /5/,?-<+
%s7el9leUla ; &e3in8%3oEect.o38

Ashle& Li8ht, A#" 5-/@,F?@L
#OU HERN PO$ER Y LAW
(EN ER
.-- Washin8ton Ave
Mont8o2e3&, AL +?5-.
A++.'<.?,5/+-
ashle&.li8htUs%lcente3.o38

C3ista DolanI
#OU HERN PO$ER Y LAW
(EN ER

A+/-' /5+,5-'-



0, 6a2ila 6ohnson, do he3eb& (e3tif& that a t37e and co33ect co%& of the fo3e8oin8 has been f73nished b& E(F elect3onic se3vice, on this)=th da& of A787st)-)+, to co7nsel of 3eco3d fo3 Defendant #teve Ma3shall.

Date* A787st)=,)-)+

<s< (amila (ohnson
6a2ila 6ohnson