

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
(Northern Division)**

THE BALTIMORE SUN COMPANY,
et al.,

vs.

Case No. 1:04-cv-03822-WDQ

ROBERT L. EHRLICH, JR.,
et al.

**PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION
AGAINST AN UNCONSTITUTIONAL RETALIATION FOR THE
EXERCISE OF FREE SPEECH AND PRESS**

Plaintiffs The Baltimore Sun Company, publisher of *The Sun*, David Nitkin, and Michael Olesker move for a preliminary injunction against Defendants Robert L. Ehrlich, Jr., in his official capacity as Governor of Maryland (the "Governor"), Shareese DeLeaver, in her official capacity as a Press Secretary to the Governor, and Gregory Massoni, in his official capacity as Deputy Communications Director and Press Secretary to the Governor.

1. *The Sun*, Mr. Nitkin, and Mr. Olesker request that this Court enjoin the Governor, Ms. DeLeaver, and Mr. Massoni from enforcing an unconstitutional policy that violates the First Amendment rights of all citizens to be free from government retaliation for their exercise of freedom of expression. The Defendants have issued a directive that prohibits every employee in the executive branch of Maryland government from speaking to David Nitkin, a reporter for *The Sun*, and Michael Olesker, a columnist for *The Sun*.

2. The Governor, Ms. DeLeaver, and Mr. Massoni implemented the directive through an e-mail sent by Ms. DeLeaver. It provides as follows:

Effective immediately, no one in the Executive Department or Agencies is to speak with David Nitkin or Michael Olesker until further notice. Do not return calls or comply with any requests. The Governor's Press Office feels that currently both are failing to objectively report on any issue dealing with the Ehrlich-Steele Administration. Please relay this information to your respective department heads. Any questions or concerns can be directed to the following contact information:

Gregg Massoni
Press Secretary to Governor Ehrlich
410-974-2316
gmassoni@gov.state.md.us

3. By its express terms, the Governor and his aides implemented the gag order to retaliate for the content of *The Sun*. Moreover, the Governor has cavalierly proclaimed in public appearances that the purpose of the policy is to create a chilling effect on future speech by Mr. Nitkin and Mr. Olesker.

4. The policy takes away from Mr. Nitkin and Mr. Olesker access to basic government information they previously had available to them and which is freely given to the public and all other members of the press.

5. By taking away access they previously had to basic government information, the Governor, Ms. DeLeaver, and Mr. Massoni have punished *The Sun*, Mr. Nitkin, and Mr. Olesker based solely on disagreement with the content of the newspaper.

6. As more fully discussed in the Memorandum of Law filed with this motion, the Court should issue a preliminary injunction because: (a) there is a substantial likelihood of success on the merits of the case; (b) irreparable harm will result unless the injunction issues; (c) the irreparable harm outweighs any injury the Defendants will suffer if the injunction is granted; and (d) the award of the injunction will not disserve the public interest. See *Child Evangelism Fellowship of Maryland, Inc. v. Montgomery County Pub. Schs.*, 373 F.3d 589, 593 (4th Cir. 2004).

7. The Governor, Mr. Massoni, and Ms. DeLeaver have notice of this motion. The Complaint was filed with the Court on December 3, 2004 and served on December 7, 2004. This Emergency Motion for Preliminary Injunction and accompanying Memorandum of Law were filed with the Court on December 29, 2004 and served on the same date.

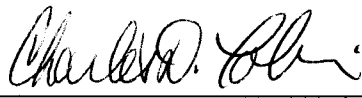
8. *The Sun's* and its journalists' First Amendment rights have been, and continue to be, violated. As fully demonstrated in the accompanying Memorandum of Law, the unconstitutional deprivation of such First Amendment rights has caused, and is continuing to cause, irreparable harm. Therefore, expedited review, including an expedited briefing schedule, is warranted.

9. In support, *The Sun*, Mr. Nitkin, and Mr. Olesker rely upon this motion, the accompanying Memorandum of Law, the Complaint for Injunctive and Declaratory Relief, with exhibits, and the First and Fourteenth Amendments to the United States Constitution.

WHEREFORE, *The Sun*, Mr. Nitkin, and Mr. Olesker request that this Court issue a preliminary injunction enjoining the Governor, Ms. DeLeaver, and Mr. Massoni from enforcing the unconstitutional gag order, and grant any other relief that it deems appropriate under the circumstances.

Dated: December 29, 2004

Respectfully submitted,

By 

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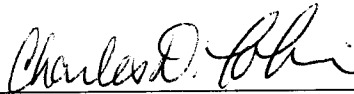
Counsel for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that, on this 29th day of December 2004, I caused the foregoing Motion For Preliminary Injunction Against An Unconstitutional Retaliation For The Exercise Of Free Speech And Press to be served by first-class mail upon:

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