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17 and Defendant DAVID ALLEN

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

18
19 RIGHTHAVEN LLC, a Nevada limited-liability)
20 company,)
21 Plaintiff,)
22 v.)
23 DEMOCRATIC UNDERGROUND, LLC, a)
District of Columbia limited-liability company;)
24 and DAVID ALLEN, an individual)
25 Defendants.)

Case No. 2:10-cv-01356-RLH-RJJ
ANSWER OF DEFENDANTS
DEMOCRATIC UNDERGROUND, LLC
AND DAVID ALLEN AND
COUNTERCLAIM OF
COUNTERCLAIMANT DEMOCRATIC
UNDERGROUND, LLC
JURY DEMAND

26
27 **CAPTION CONTINUES ON NEXT PAGE**
28

1)
2 DEMOCRATIC UNDERGROUND, LLC, a)
3 District of Columbia limited-liability company,)
4 Counterclaimant,)
5 v.)
6 RIGHTHAVEN LLC, a Nevada limited-liability)
7 company, and)
8 STEPHENS MEDIA LLC, a Nevada limited-)
liability company)
Counterdefendants.)

9 Democratic Underground, LLC (“Democratic Underground”) and David Allen (referred to
10 together below as “Defendants”) respond to the Plaintiff’s Complaint as follows:

- 11 1. Defendants admit that this is an action for copyright infringement but deny that any
12 infringement underlies this action.
- 13 2. Defendants lack enough information to admit or deny the allegations of paragraph 2
14 of the Complaint and therefore deny the allegations.
- 15 3. Defendants lack enough information to admit or deny the allegations of paragraph 3
16 of the Complaint and therefore deny the allegations.
- 17 4. Defendants admit that Democratic Underground is a District of Columbia limited-
18 liability company. Defendants lack enough knowledge to admit or deny the remaining allegations of
19 paragraph 4 of the Complaint and therefore deny the allegations.
- 20 5. Defendants admit that Democratic Underground is identified by the current registrar,
21 Dotster, Inc. (“Dotster”), as the registrant for the Internet domain found at
22 democraticunderground.com (the “Democratic Underground Domain”). Defendants lack enough
23 knowledge to admit or deny the remaining allegations of paragraph 5 of the Complaint and therefore
24 deny the allegations.
- 25 6. Defendants deny that Democratic Underground is identified by Dotster as an
26 administrative contact and technical contact for the Democratic Underground Domain. Defendants
27 lack enough knowledge to admit or deny the remaining allegations of paragraph 6 of the Complaint
28 and therefore deny the allegations.

1 7. Defendants admit that Mr. Allen is identified by Dotster as an administrative contact
2 and technical contact for the Democratic Underground Domain. Defendants lack enough knowledge
3 to admit or deny the remaining allegations of paragraph 7 of the Complaint and therefore deny the
4 allegations.

5 8. Defendants admit that Mr. Allen is the owner of Democratic Underground, and that
6 Mr. Allen is identified as such on the Democratic Underground Domain. Defendants lack enough
7 knowledge to admit or deny the remaining allegations of paragraph 8 of the Complaint and therefore
8 deny the allegations.

9 9. Defendants admit that this Court has subject matter jurisdiction pursuant to 28 U.S.C.
10 §§ 1331 and 1338(a). Defendants deny the remaining allegations of paragraph 9 of the Complaint.

11 10. Defendants lack enough information to admit or deny the allegations of paragraph 10
12 of the Complaint and therefore deny the allegations.

13 11. Defendants admit that the Work in Exhibit 2 states “Copyright © Las Vegas Review-
14 Journal.” Defendants lack enough information to admit or deny the remaining allegations of
15 paragraph 11 of the Complaint and therefore deny the allegations.

16 12. Defendants deny the allegations of paragraph 12 of the Complaint.

17 13. Defendants deny the allegations of paragraph 13 of the Complaint.

18 14. Defendants deny the allegations of paragraph 14 of the Complaint.

19 15. Defendants admit that the subject matter of the Work includes the candidacy of
20 Sharron Angle for the Republican nomination for United State Senator for Nevada, support for Ms.
21 Angle by members of a conservative movement called the “Tea Party,” and the effect of such
22 support on the viability of Ms. Angle’s candidacy as reflected in polling data. Defendants deny the
23 remaining allegations of paragraph 15 of the Complaint.

24 16. Defendants deny the allegations of paragraph 16 of the Complaint.

25 17. Defendants admit that the Work was and is of specific interest to Nevada residents.
26 Defendants deny the remaining allegations of paragraph 17 of the Complaint.

27 18. Defendants deny the allegations of paragraph 18 of the Complaint.

28 19. Defendants deny the allegations of paragraph 19 of the Complaint.

- 1 42. Defendants deny the allegations of paragraph 42 of the Complaint.
- 2 43. Defendants deny the allegations of paragraph 43 of the Complaint.
- 3 44. Defendants deny the allegations of paragraph 44 of the Complaint.
- 4 45. Defendants deny the allegations of paragraph 45 of the Complaint.
- 5 46. Defendants deny the allegations of paragraph 46 of the Complaint.

6 DEFENSES

7 Defendants assert the following defenses, without regard to whether they are “affirmative”
8 defenses or matters as to which the Plaintiff has the burden of proof.

- 9 1. Plaintiff’s Complaint, and each cause of action within it, fails to state a cause of
10 action.
- 11 2. Process has been insufficient.
- 12 3. Service of process has been insufficient.
- 13 4. This court lacks personal jurisdiction over Defendants.
- 14 5. This court is not a proper venue for this action.
- 15 6. Plaintiff’s claims are barred by its failure to join indispensable parties.
- 16 7. Plaintiff’s claims are barred by the doctrine of fair use.
- 17 8. Plaintiff’s claims are barred by the First Amendment to the United States
18 Constitution.
- 19 9. Plaintiff’s claims are barred by consent, waiver, acquiescence, license, and estoppel.
- 20 10. Plaintiff’s claims are barred by its failure to mitigate damages.
- 21 11. Plaintiff’s claims are barred by the equitable doctrine that the law does not concern
22 itself with trivial matters (commonly known as *de minimis non curat lex*).
- 23 12. Plaintiff’s claims are barred by laches.
- 24 13. Plaintiff’s claims are barred by the doctrine of unclean hands.
- 25 14. Plaintiff’s claims are barred to the extent any persons, based on whose behavior
26 Plaintiff seeks to hold Defendants liable, are innocent infringers.
- 27 15. Plaintiff’s claims are barred due to copyright misuse.
- 28 16. Plaintiff’s claims are barred to the extent it has caused fraud upon the Copyright

1 Office.

2 17. Plaintiff's claims are barred to the extent it has forfeited or abandoned copyright.

3 18. Plaintiff's claims are barred because Plaintiff is engaging in barratry, champerty, and
4 maintenance.

5 19. Plaintiff's claims for statutory damages are barred or limited by the United States
6 Constitution.

7 20. Plaintiff's claims are barred because Plaintiff lacks standing.

8 COUNTERCLAIM

9 Defendant Democratic Underground brings this Counterclaim against Plaintiff and
10 Counterdefendant Righthaven LLC ("Righthaven") and Counterdefendant Stephens Media LLC
11 ("Stephens Media").

12 JURISDICTION

13 1. The Court has jurisdiction over this Counterclaim pursuant to 28 U.S.C. §§ 1331,
14 1338, and 2201.

15 INTRODUCTION

16 2. This case is a particularly abusive instance of a broad and aggressive strategy by
17 Stephens Media, working in conjunction with its "little friend" Righthaven as its front and sham
18 representative, to seek windfall recoveries of statutory damages and to exact nuisance settlements by
19 challenging a fair use of an excerpt of an article that Stephens Media makes freely available on the
20 Internet, and which it encourages its users to "Share & Save" at least 19 different ways.

21 PARTIES

22 3. Stephens Media is the publisher of the Las Vegas Review-Journal ("LVRJ").

23 4. Righthaven claims a copyright, by assignment from Stephens Media, in the news
24 article underlying this action shown in Exhibit 2 to the Complaint (the "News Article"). Righthaven
25 asserts that Stephens Media was the "author" of the News Article as a work made for hire.

26 5. Counterclaimant believes and therefore alleges that Stephens Media has not fully
27 assigned to Righthaven all rights in the copyright, and retains some copyright rights, in the News
28 Article.

1 6. Righthaven’s counsel in this case identify themselves in the caption as employed by
2 or affiliated with Plaintiff Righthaven LLC. On August 26, 2010, after the filing of this lawsuit,
3 Plaintiff’s lead counsel Steven A. Gibson filed a notice of firm name change in case no. 2:09-cv-
4 02045-RLH-LRL, *Stephens Media LLC v. US Commerce Association et al.*, to reflect a change of
5 name of his law firm from Gibson Lowry Burriss LLP (counsel for Stephens Media LLC) to
6 Dickinson Wright PLLC, with no change in the firm’s address. The address in that filing is a
7 different address from the address Righthaven’s counsel used for their identification with
8 Righthaven LLC in this lawsuit. In this litigation, Mr. Gibson uses as part of his email address as
9 counsel a “righthaven.com” domain, whereas in other current litigation he uses as part of his email
10 address a “dickinsonwright.com” domain.

11 7. Counterclaimant believes and therefore alleges that Mr. Gibson’s association with
12 Righthaven as counsel in this case is in his capacity as an employee or corporate representative of
13 Righthaven and not as “outside” counsel.

14 **PLAINTIFF’S BUSINESS PLAN OF WINDFALL DEMANDS AND NUISANCE**
15 **SETTLEMENTS**

16 8. Steven Gibson formed Righthaven in March 2010 for the express purpose of filing
17 lawsuits for copyright infringement.

18 9. Counterclaimant believes and therefore alleges that the name “Righthaven” connotes
19 that the business of Righthaven is to serve as a haven for copyright rights of Stephens Media.

20 10. Counterclaimant believes and therefore alleges that a principal aspect of Righthaven’s
21 business model is to file copyright infringement lawsuits in the hopes of intimidating defendants into
22 quickly settling for amounts in the thousands of dollars.

23 11. Counterclaimant believes and therefore alleges that, as of the filing of this Answer
24 and Counterclaim, Righthaven has not engaged in the business of licensing copyright rights other
25 than in the context of litigation.

26 12. Counterclaimant believes and therefore alleges that, as of the filing of this Answer
27 and Counterclaim, Righthaven has filed at least 135 lawsuits to enforce copyrights it has acquired.

28 13. Counterclaimant believes and therefore alleges that at no time does Righthaven, in

1 any manner, inform any defendant of allegedly infringing material on the defendant’s website before
2 filing suit against that defendant.

3 14. Counterclaimant believes and therefore alleges that at no time does Righthaven ever
4 use the provisions of the Digital Millennium Copyright Act, 17 U.S.C. § 512, to notify any
5 defendant of claimed infringements on the defendant’s website before filing suit.

6 15. Counterclaimant believes and therefore alleges that Righthaven’s business practice,
7 including in this case, is to search the Internet for excerpts of news articles originally published by
8 the *Las Vegas Review-Journal* newspaper (“LVRJ”).

9 16. Counterclaimant believes and therefore alleges that, on multiple occasions, after
10 finding such an excerpt, Righthaven has obtained the relevant copyright from LVRJ, registered the
11 copyright, and then filed suit for infringement of the copyright.

12 17. Righthaven has already sued numerous noncommercial bloggers, such as Allegra
13 Wong; individuals who have been a subject of LVRJ stories, such as Anthony Curtis; political
14 advocacy groups such as Citizens for Responsibility and Ethics in Washington, Inc.; political parties,
15 such as the Democratic Party of Nevada; and political candidates, such as Sharron Angle.

16 18. Counterclaimant believes and therefore alleges that Righthaven is already in the
17 process of preparing scores more of these copyright infringement lawsuits.

18 19. Counterclaimant believes and therefore alleges that Righthaven’s business plan is to
19 expand this pattern by obtaining more copyright rights in newspaper articles from other newspapers
20 and filing even more lawsuits.

21 **PLAINTIFF RIGHTHAVEN WORKS IN CONJUNCTION WITH STEPHENS MEDIA**

22 20. Counterclaimant believes and therefore alleges that LVRJ or personnel affiliated with
23 LVRJ is acting in concert with Righthaven in order to propagate these lawsuits.

24 21. Sherman Frederick is the President and CEO of Stephens Media LLC (“Stephens
25 Media”).

26 22. Counterclaimant believes and therefore alleges that Stephens Media is the parent
27 company of the LVRJ and the publisher of the LVRJ.

28 23. Mr. Frederick and Stephens Media grubstaked Righthaven by supplying Righthaven

1 with funds in return for a promised share of profits.

2 24. Counterclaimant believes and therefore alleges that Mr. Frederick and/or Stephens
3 Media provided the initial funding for Righthaven.

4 25. Counterclaimant believes and therefore alleges that in exchange for copyright rights
5 in individual news articles, Stephens Media receives from Righthaven a share of any settlement or
6 recovery related to preparing and filing copyright lawsuits.

7 26. Counterclaimant believes and therefore alleges that, in exchange for copyright rights
8 in individual news articles, Stephens Media receives from Righthaven a share of income derived
9 from legal services related to preparing and filing copyright lawsuits.

10 27. Counterclaimant believes and therefore alleges that SI Content Monitor LLC and Net
11 Sortie LLC jointly own Righthaven.

12 28. Counterclaimant believes and therefore alleges that members of Warren Stephens'
13 family own SI Content Monitor LLC, at least in part, and that members of the Stephens family also
14 hold an ownership interest in Stephens Media.

15 29. Counterclaimant believes and therefore alleges that SF Holding Corp. and/or
16 Stephens Holding Company manage Stephens Media.

17 30. Counterclaimant believes and therefore alleges that Jackson Farrow is the Secretary
18 of SF Holding Corp. and Stephens Holding Company.

19 31. Counterclaimant believes and therefore alleges that Jackson Farrow is the
20 incorporator of SI Content Monitor LLC.

21 32. Counterclaimant believes and therefore alleges that Steven Gibson, lead counsel for
22 Righthaven, owns, at least in part, Net Sortie LLC.

23 33. Stephens Media has published a manifesto by Sherman Frederick, the publisher of the
24 LVRJ, stating "we've gotten tough with content stealers by using a company called Righthaven,
25 which has developed software to effectively identify and sue copyright infringers." In that manifesto,
26 Mr. Frederick warned: "don't steal our content. Or, I promise you, you will meet my little friend
27 called Righthaven."

28 34. Counterclaimant believes and therefore alleges that Stephens Media has not registered

1 any copyrights in its own name as a copyright owner as of the filing of this Answer and
2 Counterclaim.

3 35. Counterclaimant believes and therefore alleges that Stephens Media has not sued to
4 enforce any copyrights in its own name as of the filing of this Answer and Counterclaim.

5 36. Counterclaimant believes and therefore alleges that Righthaven has not published any
6 works with a copyright notice identifying itself as copyright owner of the published work.

7 37. Counterclaimant believes and therefore alleges that Righthaven has not sued to
8 enforce any copyrights other than copyrights in works in which it claimed the initial author was
9 Stephens Media.

10 38. Counterclaimant believes and therefore alleges that the assignment of copyright from
11 Stephens Media to Righthaven underlying the claims in this case is a sham.

12 39. Counterclaimant believes and therefore alleges that Stephens Media and Righthaven
13 were not adverse parties with respect to negotiations relating to the alleged assignment of copyright
14 underlying this litigation.

15 40. Counterclaimant believes and therefore alleges that Stephens Media retains some
16 legal or equitable interest in some copyright rights in the News Article.

17 41. Counterclaimant believes and therefore alleges that Righthaven is acting as agent of
18 Stephens Media in connection with the claims Righthaven asserts in this case.

19 42. Counterclaimant believes and therefore alleges that Stephens Media is an alter ego of
20 Righthaven for the purposes of this case and that any separation between them for the purposes of
21 this lawsuit is a sham.

22 43. Counterclaimant believes and therefore alleges that as of the filing of this Answer and
23 Counterclaim Stephens Media and Righthaven had not entered into a common interest agreement
24 with respect to this litigation.

25 **THE DEMOCRATIC UNDERGROUND WEBSITE AND FORUMS**

26 44. David Allen owns and operates Democratic Underground.

27 45. Democratic Underground maintains a website devoted to disseminating and
28 discussing political news and progressive policies (the “Democratic Underground Website”). The

1 domain name for the Democratic Underground Website is democraticunderground.com.

2 46. The Democratic Underground Website launched in January 20, 2001, in response to
3 the result in the 2000 presidential election. It consists primarily of user-generated content in the
4 form of postings by readers in the forums. The forums contain core political speech by over one
5 hundred thousand users.

6 47. As of the filing of this Answer and Counterclaim, there were more than 162 thousand
7 registered users of and more than 51 million posts on the Democratic Underground Website. These
8 users have made thousands of posts per day to the forums of the Democratic Underground Website.

9 48. Counterclaimant does not pre-screen the user-generated content in posts made by
10 users.

11 49. Counterclaimant cannot provide its service if it manually pre-screens the user-
12 generated content in posts made by users.

13 50. Once a user makes a post, it is added through an automated process to a database on
14 the server that hosts the Democratic Underground Website. When a reader loads the web address of
15 a particular post (such as by clicking a link on a browser), a request is automatically sent to the
16 database and the software will automatically retrieve the contents of that post and send them to the
17 reader through the Internet.

18 51. The automatic copying, storage, and transmission of posts are instigated by users of
19 Democratic Underground.

20 52. Mr. Allen does not and cannot read every single post made by users on the
21 Democratic Underground Website.

22 53. Democratic Underground and its moderators do not and cannot read every single post
23 made by users on the Democratic Underground Website.

24 54. Democratic Underground proactively works against copyright infringement by
25 advising users to post only short excerpts and to provide a link to the original article when posting
26 about a news article. On the Latest Breaking News forum, where the post in question was located,
27 users must identify the source and provide a link to the news article they post about in the form they
28 fill out to post. In addition, Democratic Underground also encourages registered users to notify

1 moderators when a post contains an entire article by clicking on an “Alert” link that is on every post.
2 The moderator will edit the post to contain only a short excerpt or delete the post.

3 **CONDUCT OF STEPHENS MEDIA AND RIGHTHAVEN**

4 55. A website for the LVRJ is at www.lvrj.com.

5 56. That website bears a copyright notice in the name of Stephens Media LLC.

6 57. The LVRJ website does not, on its “home page” (the page rendered by
7 www.lvrj.com), provide terms of service or provide an obvious link to terms of service.

8 58. That website, on its home page, provides a link entitled “Privacy Statement,” which
9 leads directly to the page www.stephensmedia.com/privacy-statement/. On that page Stephens
10 Media states “we do not and cannot monitor materials transmitted by users or third parties into
11 bulletin boards, chat rooms, and the like.”

12 59. Counterclaimant believes and therefore alleges that that statement is true.

13 60. Counterclaimant believes and therefore alleges that Stephens Media makes that
14 statement because it cannot, as a practical matter, monitor materials transmitted by users or third
15 parties into bulletin boards, chat rooms, and the like.

16 61. Counterclaimant believes and therefore alleges that Stephens Media does not screen
17 all materials transmitted by users or third parties into bulletin boards, chat rooms, and the like before
18 they appear.

19 62. Counterclaimant believes and therefore alleges that Stephens Media has removed
20 some materials transmitted by users or third parties into bulletin boards, chat rooms, and the like
21 because they were offensive.

22 63. Stephens Media states in its “Privacy Statement” that it reserves the right to remove
23 any content posted on its site and to terminate any user’s access to Stephens Media at any time for
24 any reason. The Privacy Statement is located at www.stephensmedia.com/privacy-statement/.
25 Exhibit A is a copy of it.

26 64. Stephens Media provides “Review-Journal eForum Message Boards,” which allow its
27 website users to comment on the news. Stephens Media asserts these message boards are subject to
28 the comment policy set forth at <http://www.lvrj.com/home/6729126.html>. Exhibit B is a copy of that

1 comment policy.

2 65. In the comment policy, Stephens Media, while stating that users must agree not to
3 post copyrighted content unless they own the copyright or have consent from the owner of the
4 copyrighted material, goes on expressly to state that it allows users to post copyrighted content, not
5 restricted to Stephens Media content, and links to copyrighted content, as sources during discussion
6 on the message boards. It merely imposes a one-paragraph limitation on the copyrighted content
7 posted pursuant to that provision. That one-paragraph limitation applies no matter how long the
8 original copyrighted content is, even if the original copyrighted content is only one paragraph long.

9 66. In the comment policy, Stephens Media states, in connection with its message boards,
10 that it is not responsible for the content of the message boards that it maintains. It encourages
11 persons who feel that a posted message is objectionable to notify an administrator of the forum
12 immediately.

13 67. In the comment policy, Stephens Media announces on that page that it is impossible
14 for it to confirm the validity of posts on its eForums.

15 68. In the comment policy, Stephens Media also announces that removing objectionable
16 content from its forums is a manual process and that Stephens Media may not be able to remove or
17 edit particular messages immediately.

18 69. The LVRJ maintains, on its website, comments and posts of its readers in connection
19 with the articles it displays.

20 70. Counterclaimant believes and therefore alleges that Stephens Media has not, at the
21 time of the filing of this Answer and Counterclaim, properly filed a designation of agent to receive
22 notification of copyright infringement as provided under 17 U.S.C. § 512.

23 71. Counterclaimant believes and therefore alleges that the LVRJ has not, at the time of
24 the filing of this Answer and Counterclaim, properly filed a designation of agent to receive
25 notification of copyright infringement as provided under 17 U.S.C. § 512.

26 72. Counterclaimant believes and therefore alleges that employees of Stephens Media
27 have cut and pasted excerpts of copyrighted materials to which Stephens Media has no license or
28 copyright rights on multiple occasions.

1 *required*). Roll over each icon to reveal the name of the website. Simply click the icon to submit the
2 news article and in a new window follow the directions provided by the community or bookmarking
3 website in order to share and/or save the news article.”

4 85. The LVRJ website offers and invites its users to “Share & Save” all of its articles
5 through third parties including Newsvine, Digg, Technorati, Reddit, StumbleUpon, Del.icio.us,
6 Slashdot, Propeller, Mixx, Furl, Twitter, Myspace, Facebook, Google bookmark, Yahoo! Bookmark,
7 Microsoft Live favorites, Ask bookmark, and myAOL favorites.

8 86. Counterclaimant believes and therefore alleges that Righthaven or its personnel are
9 aware that the LVRJ promotes a “Share & Save” feature for articles on its website.

10 87. For each article, the LVRJ website encourages and invites its users to “Email This.”

11 88. For each article, the LVRJ website encourages and invites its users to “Save This.”

12 89. For each article, the LVRJ website encourages and invites its users to “Print This.”

13 90. When a user clicks on “Print This,” a new window opens containing the text of the
14 full article and no advertising. In this window is a button labeled “Click to Print.” When a user
15 clicks this button, it launches the user’s printer options so that the user may print a physical copy of
16 the article.

17 91. For each article, the LVRJ website encourages and invites the public to subscribe to
18 its “RSS Feeds.”

19 92. Exhibit C is a copy of how the News Article appeared on the LVRJ website on
20 September 14, 2010. Counterclaimant believes, and therefore alleges, that, as of the filing of this
21 Answer and Counterclaim, Exhibit C accurately depicts the “Share & Save,” “Email This,” “Save
22 This,” “Print This,” and “RSS Feeds” features as they have appeared since May 13, 2010.

23 93. The LVRJ website has a robots.txt file located at www.lvrj.com/robots.txt. Exhibit D
24 is a copy of that file.

25 94. Web site owners can also communicate with search engines’ robots by placing a
26 “robots.txt” file on their Web site. For example, if the Web site owner does not want robots to crawl
27 the owner's Web site, the owner can create a robots.txt file with the following text: “User-agent: *
28 Disallow: /”. The above text tells the robots that they should not crawl the owner’s Web site.

1 95. Stephens Media created the robots.txt file for the LVRJ site.

2 96. As of the filing of this Answer and Counterclaim, the LVRJ robots.txt stated “User-
3 agent: * Disallow: /search”.

4 97. The statement “User-agent: * Disallow: /search” permits crawling of all pages on the
5 LVRJ website except those beginning lvrj.com/search.

6 98. Stephens Media set the permissions within this file to allow all robots to visit and
7 index all of the pages on the site except those beginning lvrj.com/search.

8 99. Stephens Media included three sitemaps in this file. Sitemaps are XML¹ files that
9 provide the web address of pages on the LVRJ website that the website is expressly asking robots to
10 visit, along with additional information such as page title and date. One of the sitemaps is the News
11 Sitemap, located at www.lvrj.com/templates/news-sitemap.xml.

12 100. Counterclaimant believes and therefore alleges that it is the usual practice of Stephens
13 Media to include new news articles in the News Sitemap.

14 101. Counterclaimant believes and therefore alleges that on or about May 13, 2010, the
15 URL of the LVRJ page containing the full News Article was included in the News Sitemap.

16 **FAIR USE**

17 102. Pursuant to 17 U.S.C. sections 106 and 107, a fair use is not an infringement of the
18 rights of a copyright holder.

19 103. Legal evaluation is required to determine whether a reproduction or a work in copies;
20 preparation of a derivative work; distribution of a copy to the public by sale or other transfer of
21 ownership, or by rental, lease, or lending; or public display of a work is a “fair use” within the
22 meaning of section 107 of the Copyright Act.

23 104. Righthaven is aware of the decisions denying a motion to dismiss and granting a
24 summary judgment motion by the United States District Court for the Northern District of California
25 in *Lenz v. Universal Music Corp.*, published at 572 F. Supp. 2d 1150 (N.D. Cal. 2008) and filed on
26 Feb. 25, 2010 as docket number 250 in civil action no. C 07-3783 JF.

27 105. Counterclaimant believes and therefore alleges that sometime in July 2010,

28

¹ Extensible Markup Language (XML) is a set of rules for encoding documents in machine-readable form. See en.wikipedia.org/wiki/XML

1 Righthaven searched the Internet for the phrase “Tea Party power fuels Angle” in order to find
2 copies of an article by that title from the LVRJ.

3 106. Counterclaimant believes and therefore alleges that, using such a search, Righthaven
4 found a five- sentence excerpt of a news article entitled “Tea Party power fuels Angle” in a post on
5 the forums of the Democratic Underground Website. A copy of that post is Exhibit 3 to the
6 Complaint.

7 107. The News Article reports on polling data concerning the support for the various
8 candidates for the Republican nomination for United States Senator for Nevada and support for
9 Sharron Angle's candidacy among self-identified members of the conservative “Tea Party”
10 movement.

11 108. The content of the News Article is predominantly informational, factual or news.

12 109. The News Article contains information concerning the future of nationwide policies,
13 such as health care policy and taxes. The News Article contains information that is of concern to
14 persons nationwide.

15 110. The News Article at issue, exclusive of headline, byline, copyright notice, and polling
16 data, is more than 50 sentences long.

17 111. The excerpt of the News Article was posted to the Democratic Underground Website
18 on May 13, 2010 by a user posting under the pseudonym of “pampango.”

19 112. Three users replied to the post, commenting on the subjects in the News Article.

20 113. The five-sentence excerpt does not substitute for the full article.

21 114. In *Righthaven LLC v. Realty One Group, Inc.*, 2:10-cv-01036-LRH-PAL,
22 Righthaven’s counsel conceded in its Opposition to Defendant’s Motion to Dismiss (document 12)
23 that an excerpt consisting of the first two paragraphs of the news article in that case would have been
24 a fair use.

25 115. The first two paragraphs of the news article in that case contained three sentences,
26 and the article as a whole contained 28 sentences.

27 116. Three sentences out of 28 are more than ten percent, whereas the excerpt at issue in
28 this case was less than ten percent of the News Article.

1 117. “pampango” is not an agent or employee of Mr. Allen or Democratic Underground.

2 118. Mr. Allen did not make the post contained in Exhibit 3 to the Complaint, and has
3 never posted under the pseudonym “pampango.”

4 119. Counterclaimant believes and therefore alleges that “pampango” posted the excerpt to
5 draw attention to and foster discussion of important political news.

6 120. In the post on the Democratic Underground Website at issue, the five sentences
7 accompanying the link to the News Article on LVRJ’s website provided context for the link to the
8 LVRJ website.

9 121. In the post on the Democratic Underground Website at issue, the five sentences
10 accompanying the link to the News Article on LVRJ’s website served to stimulate interest in the
11 article displayed on the LVRJ website.

12 122. Counterclaimant believes and therefore alleges that “pampango” received no financial
13 benefit of any kind in posting the excerpt.

14 123. In posting the excerpt and the link, “pampango” was attracting attention to matters of
15 political interest.

16 124. In posting the excerpt and the link, “pampango” was attracting attention to the LVRJ.

17 125. In posting the excerpt, “pampango” made a fair use of the News Article.

18 **LACK OF HARM AND THE TRIVIALITY OF THE CLAIM (*DE MINIMIS NON CURAT***
19 ***LEX*)**

20 126. Counterclaimant believes and therefore alleges that Righthaven did not acquire a
21 copyright interest in the News Article until July 9, 2010, nearly two months after the posting.

22 127. Counterclaimant believes and therefore alleges that Righthaven acquired a copyright
23 interest in the News Article for the sole purpose of pursuing this litigation, and not because
24 Righthaven wished itself to republish the News Article or to license copyright rights in the News
25 Article commercially in a non-litigation context.

26 128. Before Righthaven acquired a copyright interest in the News Article, Righthaven had
27 no information or evidence suggesting that Defendants would refuse or fail to remove the News
28 Article from the Democratic Underground Website upon Stephens Media’s or Righthaven’s request.

1 129. Before transferring to Righthaven a copyright interest in the News Article, Stephens
2 Media had no information or evidence suggesting that Defendants would refuse or fail to remove the
3 News Article from the Democratic Underground Website upon Stephens Media’s or Righthaven’s
4 request.

5 130. The post of the excerpt on the Democratic Underground Website credited the LVRJ
6 and linked to the full article, which was available without charge for access on the LVRJ website.

7 131. As of the filing of this Answer and Counterclaim, more than a month after filing suit,
8 the LVRJ still displayed, without charge to the reader, a copy of the News Article on its website at
9 www.lvrj.com/news/tea-party-power-fuels-angle-93662969.html.

10 132. As of the filing of this Answer and Counterclaim, the LVRJ displayed a copy of the
11 News Article on its website at www.lvrj.com/news/tea-party-power-fuels-angle-93662969.html with
12 a copyright notice as follows: “Copyright © Las Vegas Review-Journal.”

13 133. As of the filing of this Answer and Counterclaim, that copyright notice was false.

14 134. Counterclaimant believes and therefore alleges that as of the filing of this Answer and
15 Counterclaim, Righthaven had granted a license to Stephens Media to maintain and display the
16 News Article on its website.

17 135. Counterclaimant believes and therefore alleges that as of the filing of this Answer and
18 Counterclaim, Righthaven had granted permission to Stephens Media to maintain and display the
19 News Article on its website.

20 136. Counterclaimant believes and therefore alleges that as of the filing of this Answer and
21 Counterclaim, Righthaven had no objection to Stephens Media maintaining and displaying the News
22 Article on its website.

23 137. Counterclaimant believes and therefore alleges that as of the filing of this Answer and
24 Counterclaim, Righthaven knew that Stephens Media maintained and displayed the News Article on
25 its website.

26 138. Counterclaimant believes and therefore alleges that as of the filing of this Answer and
27 Counterclaim, Righthaven had granted Stephens Media the right to sublicense certain rights in the
28 News Article to users of its website.

1 139. Counterclaimant believes and therefore alleges that as of the filing of this Answer and
2 Counterclaim, Righthaven had granted permission to Stephens Media to allow or authorize users to
3 save, share, email, or print, in part or in whole, the News Article.

4 140. Counterclaimant believes and therefore alleges that as of the filing of this Answer and
5 Counterclaim, Righthaven had no objection to Stephens Media allowing users to save, share, email,
6 or print, in part or in whole, the News Article.

7 141. Counterclaimant believes and therefore alleges that as of the filing of this Answer and
8 Counterclaim, Righthaven knew that Stephens Media allowed users to save, share, email, or print, in
9 part or in whole, the News Article.

10 142. Counterclaimant believes and therefore alleges that Righthaven does not reproduce in
11 copies; make derivative works of; distribute copies to the public by sale or other transfer of
12 ownership, or by rental, lease, or lending; or publicly display the News Article.

13 143. Counterclaimant believes and therefore alleges that Righthaven does not distribute
14 copies to the public by sale or other transfer of ownership, or by rental, lease, or lending, or publicly
15 display, any of the copyrighted works it owns.

16 144. Counterclaimant believes and therefore alleges that Righthaven has no specific plan
17 to distribute copies to the public by sale or other transfer of ownership, or by rental, lease, or
18 lending, or to display publicly any of the copyrighted works it owns.

19 145. Counterclaimant believes and therefore alleges that Righthaven has not attempted to
20 sell or license copies of the News Article.

21 146. Counterclaimant believes and therefore alleges that Righthaven has no specific plan
22 to sell or license copies of the News Article.

23 147. Counterclaimant believes and therefore alleges that Righthaven has never exploited
24 the copyright in the News Article for financial gain apart from litigation.

25 148. Counterclaimant believes and therefore alleges that Righthaven has no specific plans
26 to exploit the copyright in the News Article for financial gain apart from litigation.

27 149. The publisher of the LVRJ has quoted with approval a letter by a columnist of that
28 paper indicating that he allows “WEEKS to laboriously seek ‘permissions’ to quote even two lines

1 from a song lyric.”

2 150. Counterclaimant believes and therefore alleges that Righthaven does not have a
3 regular business model of deriving revenue from licensing copyright rights with respect to any
4 information or content other than in connection with litigation, if at all.

5 151. Counterclaimant believes and therefore alleges that the copyright at issue has no
6 monetary value apart from these lawsuits.

7 152. Counterclaimant believes and therefore alleges that Righthaven’s sole revenue is
8 settlements from the copyright infringement cases it has filed.

9 153. Counterclaimant believes and therefore alleges that “pampango” accessed the News
10 Article via the LVRJ website or through some other Internet resource.

11 154. Counterclaimant believes and therefore alleges that the posting of the excerpt shown
12 in Exhibit 3 to the Complaint increased traffic to the full News Article on the LVRJ’s website.

13 155. Counterclaimant believes and therefore alleges that Stephens Media or the LVRJ can
14 and does track “hits” on a page on its website that contains the News Article.

15 156. Counterclaimant believes and therefore alleges that Stephens Media or the LVRJ
16 detected “hits” on a page on its website that contained the News Article that resulted from a referral
17 from Democratic Underground.

18 157. Counterclaimant believes and therefore alleges that Stephens Media or the LVRJ
19 gained revenue because of “hits” on a page on its website that contained the News Article that
20 resulted from a referral from Democratic Underground.

21 158. Counterclaimant believes and therefore alleges that Stephens Media or the LVRJ has
22 presented advertising on a page on its website that contained the News Article, which page was
23 accessed by a reader of the website resulting from a referral from Democratic Underground.

24 159. Counterclaimant believes and therefore alleges that Stephens Media or the LVRJ has
25 charged advertisers for advertising impressions on a page on its website that contained the News
26 Article, which page was accessed by a reader of the website resulting from a referral from
27 Democratic Underground.

28

1 **FAILURE TO MITIGATE DAMAGES**

2 160. Before the filing of this suit, Mr. Allen was not even aware that the excerpt had been
3 posted to the forum of the Democratic Underground Website.

4 161. Before filing this suit, Counterdefendants and their agents never contacted
5 Democratic Underground or Mr. Allen about any alleged copyright infringement.

6 162. Counterclaimant believes and therefore alleges that, before filing suit,
7 Counterdefendants and their agents did not even attempt to contact Democratic Underground or Mr.
8 Allen.

9 163. Before filing suit, Counterdefendants and their agents never provided notice to
10 Defendants that it believed there was infringing material on the Democratic Underground Website.

11 164. Counterclaimant believes and therefore alleges that, other than by preparing and
12 engaging in this litigation, Righthaven and its agents did not take any action to mitigate possible
13 damages caused by any infringement alleged in this case.

14 165. Counterclaimant believes and therefore alleges that, other than by preparing and
15 engaging in this litigation, the LVRJ did not take any action to mitigate possible damages caused by
16 any infringement alleged in this case.

17 166. Counterclaimant believes and therefore alleges that, other than by preparing and
18 engaging in this litigation, Stephens Media did not take any action to mitigate possible damages
19 caused by any infringement alleged in this case.

20 167. On or about August 11, 2010, Mr. Allen and Democratic Underground first learned
21 that Righthaven had sued them when Steven Green, a reporter from the *Las Vegas Sun* contacted Mr.
22 Allen to ask for his comment on a lawsuit pending against them by Righthaven.

23 168. Democratic Underground promptly took steps to identify the allegedly infringing
24 material at issue and removed it from the Democratic Underground Website before Plaintiff served
25 the Complaint.

26 169. As of the date Plaintiff served the Complaint, the allegedly infringing material was no
27 longer available on the Democratic Underground Website.

28 170. Democratic Underground received approximately one dollar in advertising revenue

1 attributable to the webpage the post appeared on.

2 171. The post on the Democratic Underground Website containing the excerpt and link to
3 the News Article shown in Exhibit 3 to the Complaint was viewed approximately 565 times,
4 including any multiple views by the same person, the views by Plaintiff and its agents, and any
5 views to the comments.

6 172. Neither Mr. Allen nor Democratic Underground took any volitional act with regard to
7 posting the excerpt of the News Article shown in Exhibit 3 to the Complaint.

8 **SEIZURE OF THE DOMAIN NAME IS INAPPROPRIATE**

9 173. The domain name democraticunderground.com is registered with Dotster, Inc., a
10 domain name registrar that is incorporated and has its primary place of business in Washington
11 State. Dotster is not a party to this action.

12 174. Dotster is not in active concert or participation with any party to this action.

13 175. The domain name democraticunderground.com points to a website containing over 51
14 million posts, only one of which is at issue in this case.

15 176. The domain name is unrelated to Plaintiff's claims for copyright infringement.

16 177. Counter-defendants are not claiming that the domain name itself is infringing.

17 178. Depriving Democratic Underground of its domain name would interfere with the First
18 Amendment rights of Counterclaimant and hundreds of thousands of its readers.

19 179. Depriving Democratic Underground of its domain name would not be narrowly
20 tailored to achieve any compelling government interest nor be the least restrictive means of
21 advancing any such interest.

22 180. Depriving Democratic Underground of its domain name would interfere with political
23 speech by Defendants and hundreds of thousands of readers.

24 181. Depriving Democratic Underground of its domain name would interfere with the
25 public's right to receive information on important political matters.

26 182. Depriving Democratic Underground of its domain name would interfere with
27 substantial lawful activity.

28 183. Depriving Democratic Underground of its domain name would interfere with

1 substantial noninfringing uses.

2 **FIRST CAUSE OF ACTION**

3 **Declaration of No Copyright Infringement**

4 184. Counterclaimant incorporates and realleges the paragraphs of the Counterclaim
5 above.

6 185. Righthaven alleges that Defendants willfully infringed Plaintiff's exclusive rights
7 under 17 U.S.C. §§ 106(1)-(3), and (5).

8 186. As alleged above, Defendants did not engage in any volitional act of copyright
9 infringement.

10 187. As alleged above, Defendants did not engage in any act of copyright infringement.

11 188. As alleged above, the user "pampango" posted a five-sentence excerpt from a 54-
12 sentence news article.

13 189. Based on the circumstances described above, a use of only five sentences is de
14 minimis.

15 190. Based on the circumstances described above, the posting of the excerpt from the
16 News Article was a fair use.

17 191. Based on the circumstances described above, Righthaven failed to mitigate damages.

18 192. Based on the circumstances described above, Defendants have not infringed
19 Plaintiff's rights under 17 U.S.C. § 106(1).

20 193. Based on the circumstances described above, Defendants have not infringed
21 Plaintiff's rights under 17 U.S.C. § 106(2).

22 194. Based on the circumstances described above, Defendants have not infringed
23 Plaintiff's rights under 17 U.S.C. § 106(3).

24 195. Based on the circumstances described above, Defendants have not infringed
25 Plaintiff's rights under 17 U.S.C. § 106(5).

26 196. Based on the circumstances described above, Defendants have not infringed
27 Plaintiff's copyright and are entitled to a declaration to that effect.

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PRAYER FOR RELIEF

Defendants and the Counterclaimant seek relief as follows:

- a. That the Court enter judgment in favor of Defendants and against Plaintiff and Counterdefendant Righthaven on all causes of action of its Complaint;
- b. That the Court enter judgment in favor of Counterclaimant Democratic Underground and against Counterdefendants Righthaven and Stephens Media on Counterclaimant’s Counterclaim;
- c. That the Court award Defendant David Allen and Defendant and Counterclaimant Democratic Underground costs of suit, including attorney’s fees; and
- d. That the Court grant such additional relief as is just and equitable.

DEMAND FOR JURY TRIAL

Defendants and Counterclaimant hereby demand a jury trial for all issues triable by jury.

Dated: September 27, 2010

WINSTON & STRAWN LLP

By: /s/

ANDREW P. BRIDGES

CA State Bar Number: 122761 (*pro hac vice*
petition is in preparation; will comply with LR IA
10-2 within 45 days)

J. CALEB DONALDSON

CA State Bar Number: 257271 (*pro hac vice*
petition is in preparation; will comply with LR IA
10-2 within 45 days)

KATHLEEN LU

CA State Bar Number: 267032 (*pro hac vice*
petition is in preparation; will comply with LR IA
10-2 within 45 days)

101 California Street, 39th Floor
San Francisco, CA 94111-5802

ELECTRONIC FRONTIER FOUNDATION

By: /s/

KURT OPSAHL

CA State Bar Number: 191303 (*pro hac vice*)
Corynne McSherry

CA State Bar Number: 221504 (*pro hac vice*)
454 Shotwell Street
San Francisco, CA 94110

CHAD A. BOWERS, LTD.

By: /s/

Chad A. Bowers

NV State Bar Number: 7283
3202 W. Charleston Blvd.
Las Vegas, Nevada 89102

Attorneys for
Defendant and Counterclaimant
DEMOCRATIC UNDERGROUND, LLC and
Defendant DAVID ALLEN

EXHIBIT A



PRIVACY STATEMENT

Stephens Media LLC. care about your privacy. This privacy policy sets forth the privacy policies of Stephens Media LLC.

We believe that protecting your personally identifiable information, while also offering you a quality experience with Stephens Media LLC., is among our most important tasks.

Information Sharing and Disclosure

We do not rent, sell, or share your personal information with any third party. We may bring you selected offers from third parties, but all such offers shall be transmitted from Stephens Media LLC., and the third party shall not have access to your personal information. If you have given us your postal address, you may receive mailings with information on products and services from Stephens Media LLC. or third party vendors. If you do not wish to receive such mailings, please email us, write us at the address below or visit us and remove your contact information. If you have given us your telephone number, we will not call you unless to follow up on an order you have placed.

Gathering Information

We gather information from users of our site in two ways.

First, our Web server recognizes automatically I.P. (Internet Protocol) addresses from users who access the site. Users can, without registering or providing any information, visit a pages or pages up to a specified limit, which we may change from time to time.

Second, we may require users to voluntarily register in order to access features of the site, become members, to request certain features, to request subscriptions or to make purchases, such as editorial or other archives. Users may also volunteer information when they participate in contest and sweepstakes, chat rooms and other interactive areas of our site. We use the information we collect to improve the content of our site, customize content, notify users and consumers about updates to our site and provide support for internal operations as well as contact users and consumers for marketing purposes.

We will disclose, when legally required to do so, information about users. We also disclose information to verify or enforce compliance with the policies governing our website and applicable laws or to protect against misuse or unauthorized use of our website or when use may be harmful to Stephens Media LLC.. We may combine information from many users to determine usage patterns.

Registration

When you register with Stephens Media LLC., we will collect personal information about you. Only individuals may register for Stephens Media LLC.. That information will include things such as your email address, first and last name, postal or physical address, birth date, gender, ZIP code, password prompts or security questions and portions of our site you may be interested in. We may require additional information or payment in the future from users to continue use of Stephens Media LLC.. We do not currently collect or store any credit card information about users but may do so in the future.

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We may set cookies on your computers. Cookies are small computer files set on your computer that can store, and sometimes track, information about you. You can, of course, disable cookies on your browser, but you may be required to re-enter information onto our site. Stephens Media LLC. set cookies do not contain personally identifiable information.

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In order to continue to bring you the site for free, we place advertising on our web pages. Some of these advertisements, if clicked upon, may contain cookies, collect information, such as your IP address and domain type. You should consult the privacy policies of any advertisers with respect to their information gathering practices.

We may display targeted advertisements to you based on information you have supplied to us. For

instance, if you have expressed an interest in casino information, we may supply you with advertisements from selected casino marketing partners. They will not, however, receive your personal information unless you volunteer it to such advertisers.

Yahoo! is an ad network partner that displays ads on our Web Site. To improve your ad experience on our Web Site and elsewhere on the Internet, we may send non-personal information to Yahoo! based on your browser's activities, such as type of pages viewed and categories of interests, so that the advertising you see is relevant to you. Yahoo! also may use information regarding its own users to select which ads to display. Click [here](#) to learn more about Yahoo!'s ad practices, including how to opt out of using anonymous information to select which ads to show you.

General

You can edit your account information at any time. From time to time, we may add new areas of interest to our preferences page. You can opt out of receiving any communications from us by updating your information. We may send you information relating to our service, such as announcements of outages or administrative messages, without allowing you to opt out of receiving them. You can delete your account at any time.

Security

We limit access to your personal information to those employees who we think need to have an access to it in order to provide you with a quality experience on our site.

Updating

We reserve the right to update this policy at any time, with or without notice.

Children's Privacy

The Internet is an excellent learning environment for children. Stephens Media LLC. will not knowingly collect any information from children under the age of 13. Children under the age of 13 should not send any information about themselves, including name, address, or email to Stephens Media LLC.. Registrations from children under 13 will be rejected. If we should collect information from children under the age of 13, we will do so only with a verified parental consent before we collect such information. In the event that we learn that we have collected any personal information from a child under the age of 13 without parental consent, we will delete that information from our database as soon as we can.

Archives

Stephens Media LLC. operates a paid archive system. Currently, archives are provided free of charge for seven (7) days. Thereafter, stories must be purchased from the archive site, which is operated by NewsBank. In purchasing materials from NewsBank, users must provide personal information to the NewsBank database. The information provided to NewsBank is used to complete a credit card transaction with NewsBank, not Stephens Media LLC.. NewsBank requires full name, street address, email address and credit card information.

Security Systems

While we attempt to provide you with a safe Internet experience, all security systems can be breached by persons engaged in willful or malicious criminal conduct. Therefore, we do not guarantee the security of our database, nor can we provide you with a guarantee that information you send over the Internet will not be intercepted enroute to Stephens Media LLC.. Should our database be breached, we will comply with all applicable state and federal laws with respect to such computer intrusions.

When you register with us, you are agreeing that you have provided accurate and complete information on registration pages. You agree that you have provided us with your correct legal name and address. You also agree to accept responsibility for activities that occur using your account or password. Members of Stephens Media LLC. are responsible for maintaining password confidentiality. You should ensure that others do not use your computer to access the site in your name. We do not and cannot monitor materials transmitted by users or third parties into bulletin boards, chat rooms and the like. In such chat rooms, safe computing should be practiced, including not divulging personal information such as phone numbers or addresses that could be used to locate or identify you. In using chat rooms or bulletin boards on our site, users are prohibited from posting material that is fraudulent, deceptive or misleading. Material that is libelous, defamatory, obscene, offensive, profane or false is also prohibited. Users should not post any material which violates copyright or trademark laws or infringes upon the intellectual property rights of another. Users are not allowed to post material which violates privacy rights of third parties or is in violation of any state, federal or local law. We reserve the right to remove any content posted on our site and to terminate any user's access to Stephens Media LLC. at any time for any reason.

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Contests and promotions that appear on Stephens Media LLC. may be by companies other than Stephens Media LLC. or may be co-sponsored with Stephens Media LLC.. Data collected during contests may be made available to the sponsor. Sponsors may have their own privacy policies and users are urged to consult such privacy policies. Stephens Media LLC. is not responsible for actions of third parties. Some of our online contests are sponsored by third parties. If our contests are sponsored by third parties, we will let you know that and that your entry in the contest may be shared with that third party. If you do not wish to have personal information shared as a result of entering a contest, please do not enter the contest. If you use our Click-ability service to send someone an article, we will utilize your email address, as well as the recipient's email address. Neither your email address nor the recipients email address or any other information contained in the Click-ability service are stored in our systems after the message is transmitted.

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We love to hear from our fans and our critics. If you have any questions about this privacy police, call or write us.

Postal contact:

Stephens Media LLC,
Attn: Customer Privacy,
P.O. Box 70, Las Vegas, NV 89125
E-mail contact: privacy@stephensmedia.com
Telephone contact: (702) 387-2918

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EXHIBIT B

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Spamming and advertising is prohibited. We consider spamming to be any post that is not related to the article and/or contains links that advertise other websites.

We do allow links that are related to this article and provide more information to readers.

You agree, through your use of article commenting, that you will not post any material which is false, defamatory, inaccurate, abusive, vulgar, hateful, harassing, obscene, profane, sexually oriented, threatening, invasive of a person's privacy, or otherwise in violation of ANY law. You also agree not to post any copyrighted material unless you own the copyright or you have consent from the owner of the copyrighted material. We encourage members to post links as sources to support their comments. You may post a link to the copyrighted material and up to one paragraph of quoted material for other users to review. Spam, flooding, advertisements, chain letters, pyramid schemes, and solicitations are all inappropriate.

Note that it is impossible for us to confirm the validity of comments posted. Please remember that we do not actively monitor the posted messages and are not responsible for their content. We do not warrant the accuracy, completeness or usefulness of any information presented. The messages express the views of the author, not necessarily the views of The Las Vegas Review-Journal, reviewjournal.com or Stephens Media, LLC. Anyone who feels that a posted message is objectionable is encouraged to notify [Online staff](#). We maintain the right to remove objectionable content if we determine that removal is necessary. This is a manual process, however, so please realize that we may not be able to remove particular messages immediately.

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May. 13, 2010

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U.S. SENATE RACE: Tea Party power fuels Angle

Ex-Reno assemblywoman moves up in crowded GOP primary field

By LAURA MYERS

LAS VEGAS REVIEW-JOURNAL

MORE INFO

- Tea Party
- Elections
- Opinion Polls



NAME	PARTY	PERCENTAGE
SUE LOWDEN	REP	30%
SHARRON ANGLE	REP	25%
DANNY TARKANIAN	REP	22%



Republican candidate for U.S. Senate Sue Lowden speaks out Wednesday on behalf of local subcontractors. Lowden, a front-runner for the GOP nomination to challenge Democrat Sen. Harry Reid, is losing ground to Republican candidate Sharron Angle, a former assemblywoman.
JASON BEAN/LAS VEGAS REVIEW-JOURNAL

Fueled by a burst of support from the Tea Party, Sharron Angle has rocketed into a near dead heat with Sue Lowden in the white-hot U.S. Senate Republican primary, according to a new poll commissioned by the Las Vegas Review-Journal.

Lowden, who had been the Republican front-runner since February, lost support to Angle, the former Reno assemblywoman seen by likely Republican voters as the most conservative candidate in a contest in which three-quarters of Republican voters say they're somewhat or very conservative, the poll showed.

Danny Tarkanian lost ground to Angle, too. She passed him after gaining a bit of political star power and a bunch of financial support from an endorsement by the Tea Party Express, which launched radio and TV ads to help her win the GOP nomination to face U.S. Sen. Harry Reid in the fall.

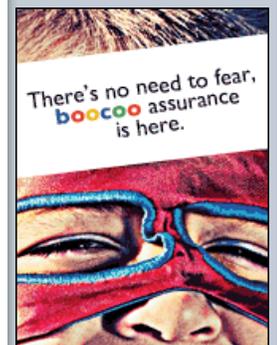
All three top GOP candidates are capable of beating Reid, according to previous polls that have shown the Democratic Party incumbent in an uphill battle to win a fifth Senate term on Nov. 2.



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- Smith Center may just rock and roll





U.S. Senate candidate Sharron Angle, who seeks the Republican nomination to run against Democratic incumbent Harry Reid, speaks at a November GOP candidates forum. A new poll shows Angle in a near dead heat with GOP candidate Sue Lowden.
LAS VEGAS REVIEW-JOURNAL FILE

"I'm confident that we'll be able to win the primary and also to defeat Harry Reid," Angle said Wednesday from rural Fallon, where she campaigned door to door, spoke to a group at the convention center and attended a gun supporters event. "These numbers really confirm what we've been fairly certain of

all along: that if people heard my conservative message, they would respond."

Angle said voters can look at her eight-year record in the Assembly that shows a consistent pattern of opposing taxes and supporting smaller government. Those are two tenets of the Tea Party movement and conservative values in opposition to the Democratic Party's hold on Congress and the White House, government bailouts of industry, and Reid's and President Barack Obama's signature health insurance overhaul.

Lowden said she wasn't worried about the tightening primary race nine days before early voting starts May 22 and three weeks before the June 8 vote.

"We're confident that our lead will hold," Lowden said in an interview in Las Vegas. "We'll have a strong get-out-the-vote effort. You only need one more vote to win, but we'll win by more than that."

According to the Mason-Dixon poll, if the Republican primary were held today: Lowden would win 30 percent of the vote; Angle 25 percent; Tarkanian 22 percent; John Chachas 3 percent; and Chad Christensen 2 percent.

The telephone survey of 500 likely Republican voters in Nevada was taken on Monday and Tuesday and has a margin of error of plus or minus 4.5 percentage points.

In a similar Mason-Dixon survey taken April 5 to 7, Lowden led the crowded field of 12 Republicans with 45 percent support compared with 27 percent for Tarkanian, 5 percent for Angle, 4 percent for Las Vegas Assemblyman Christensen and 3 percent for Chachas, an Ely native and Wall Street investment banker.

"Lowden's loss has been Angle's gain," said Mason-Dixon pollster Brad Coker. "Lowden has been the anointed front-runner for a couple of months, which made her a target for everybody. And Angle got the Tea Party endorsement, and she's the most conservative candidate running."

Angle also has a history "of running strong down the stretch" in close elections, Coker added.

In 2006, Angle was all but counted out in a congressional GOP primary until the last few weeks, and then she narrowly lost to Rep. Dean Heller by fewer than 500 votes. Two years ago, she almost beat state Senate Minority Leader Bill Raggio, R-Reno, one of Nevada's most powerful lawmakers.

"Obviously, Angle still has her homestretch legs," Coker said, although he added that anything can happen in such a competitive race. "I think you have to be conservative and say it's a three-way race. But trend-wise, Angle has jumped out quickly and has the momentum."

The Tea Party Express, the national group that held an anti-Reid protest in the senator's hometown of Searchlight in late March, shook up the race April 15 when it endorsed Angle at a Tax Day news conference in Washington, D.C. The group's political action committee has been raising money for Angle with a goal of \$500,000. It already has spent \$200,000 for her, including on radio and TV ads.

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Meantime, Angle has been stacking up endorsements from more than two dozen conservative groups and people, from Gun Owners of America to "Joe the Plumber."

Angle's name recognition has jumped to 85 percent compared with 67 percent about a month ago. Only 4 percent of GOP primary voters do not know Lowden's name, and only 3 percent do not know Tarkanian, a real estate developer and former basketball star for the University of Nevada, Las Vegas, whose dad is well-known ex-basketball coach Jerry Tarkanian.

The Tarkanian campaign expressed skepticism that Angle had risen so high so fast. Jamie Fisfis, consultant to the campaign, said his tracking polls show Angle moving up to 16 percent support, Lowden dropping to 30 percent and Tarkanian gaining to tie the GOP front-runner in his best showing so far.

"In my mind it's still a two-way race because Angle does not have the name recognition to be ahead of either of the two candidates in contention," Fisfis said.

Lowden blamed part of her recent drop in the polls to attacks from both her GOP foes -- especially Tarkanian -- and Reid, whose campaign has focused on her, criticizing her record as a casino executive who with her husband, Paul Lowden, has owned and managed four hotel-casinos.

The Reid campaign has released records that show problems with health and safety violations at the Lowden properties over the years that resulted in heavy fines and offered details of angry disputes with the unions over medical benefits for their workers.

Tarkanian has criticized Lowden for voting for fees as a lawmaker in the early 1990s and for telling a reporter recently that she understood why some members of Congress voted for the first government bailout during the Bush administration when lawmakers said it was needed to avoid massive business failures and a depression. She since has said she wouldn't have voted for bailouts then or now.

"It's not unexpected that the race would tighten after Harry Reid has spent \$8 million going after me," Lowden said Wednesday, referring to how much his campaign has spent. "The Reid campaign and Harry Reid do not want me to come out of this primary, and so they have targeted me."

In the past month, Lowden has been dogged by near daily attacks by the Democratic Party for suggesting people could barter with their doctors for cheaper health care.

She defended her remarks made at a town hall meeting in Mesquite by saying that in the old days, people even used chickens to barter, a comment that prompted video spoofs and late-night talk show jokes about her.

The gaffe hasn't had much effect on Republican primary voters, however, according to the new Mason-Dixon poll, which asked what effect her remarks would have on support for her.

Some 70 percent of those polled said Lowden's bartering remarks would have "no effect" on their voting decision, 15 percent said they would be "less likely" to vote for her, and 12 percent said they would be "more likely" to vote for her. Another 3 percent said they weren't sure.

Lowden said that during her campaign stops in rural Nevada, voters have told her that they're still bartering with doctors to get cheaper medical care in some cases.

"I never said this was my health care policy, but bartering is still happening out there in rural Nevada," Lowden said Wednesday. "Harry Reid is the one who's out of touch if he doesn't know that."

Lowden has been running a primary and general campaign at the same time, which has cost her support among staunch conservatives and Tea Party movement supporters.

According to the new poll, 58 percent said they consider themselves "a supporter of the Tea Party movement." Another 27 percent do not, and 15 percent said they don't know or refused to answer.

"I am a member of the Tea Party movement, as well, and many of my supporters and volunteers are members," said Lowden, who spoke at the Tea Party Express event in Searchlight and has attended many local Tea Party group events as candidates compete for that key slice of the 2010 vote.

"It's not unexpected that Sharron would get their support, but they know I'm one of them, too."

Contact Laura Myers at lmyers@reviewjournal.com or 702-387-2919.

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Bob Dobolina wrote on *May 20, 2010 08:59 PM*:

I think Lowden is out of this. Her poll numbers are down 20 points since she suggested that people should pay their doctors with chickens, then denied that she had ever said it. Saying something dumb is one thing. But lying about it later (especially when you said it on camera) is really stupid.

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Just_Me wrote on *May 17, 2010 02:30 PM*:

What to do - what do do

Lowden blew the GOP convention - NO
Tarkanian - nothing but daddy's name -NO
Angle - Nice , but dingy -Enough with the California-style property taxes -NO

That leaves ChaChas & Christensen. Chachas' family lives in New York - NO

Chad Christensen gets my vote!

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Brigham wrote on *May 16, 2010 12:08 PM*:

Reid is the most corrupt of all of them. We don't need anymore of his back door deals, bribes and name calling. He got more money from Wall St. than any of the republicans yet he pointing a finger just like Obama. Reid wants to make the illegals legal for the votes. Then they can take more of our jobs and services.

Reid is nothing but a disgusting despicable crook.

Vote for anyone but Reid!

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Dan Fitzgerald wrote on *May 14, 2010 06:54 PM*:

Sue Lowden was the GOP chair who delayed, then adjourned the state convention when it became apparent that Ron Paul was going to win delegates to the National Convention. She put John McCain above Nevadans, and ignored the rules when they led to a result she didn't like.

Report abuse

Wallbanger wrote on *May 14, 2010 07:10 AM*:

Tea Party Express is made up of RINO's...Republican Party thinks they can co-opt the Tea Party movement to help them elect the same status-quo Oath-Breaking politicians they always have!!

Our military, law enforcement, and ELECTED OFFICIALS need to HONOR THEIR OATH TO THE U.S. CONSTITUTION!!!

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Brigham Young wrote on *May 14, 2010 07:04 AM*:

Reid, Tark and Lowden have corruption in common, Reid being public enemy #1

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Peter.K wrote on *May 14, 2010 06:42 AM*:

There are a great number of 48-year-old men that have a lot better resume than Mr. Tarkanian. The problem they have is that they don't have a famous father and, ergo, a recognizable name. Other than his name, Mr. Tarkanian is an unremarkable person. He offers no qualifications for the office which he seeks other than his name. He has pointed-out Sue Lowden's shortcomings and flip-flops and for that Republicans should be grateful but he has really advanced no reason why he is qualified to represent us and no record by which we can measure his steadfastness to the principles he preaches. Accordingly, it appears that Angle is the candidate who measures up to the job as she has a solid record of upholding the constitutions of Nevada and the USA.

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Tark is a Gun Hater wrote on *May 14, 2010 02:09 AM*:

Danny Tarkanian will take your gun rights.

http://media.washingtontimes.com/media/docs/2009/Dec/16/Nevada_Tarkanian.pdf

<http://media.washingtontimes.com/media/audio/2009/12/17/brady.mp3>

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Hairy Weed wrote on *May 13, 2010 08:45 PM*:

Great News, now people need to wake up and support Montandon for Governor as well. NO MORE RINOs. Kenny Guinn was a disaster for Nevada, now his right hand guy Sandoval is running? - No f-ing way.

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Sue is a JOKE! wrote on *May 13, 2010 08:22 PM*:

Sue LOWden's version of capitalism: Marry a Rich Man!

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