

# EXHIBIT D

**Subject:** RE: Citations for Fix Wilson Yard?  
**From:** "Tom Johnson" <tjohnson@jsgd.com>  
**Date:** Mon, 28 Sep 2009 13:25:12 -0500  
**To:** "Matt Zimmerman" <mattz@eff.org>

I just gave you one example. I really don't want to go through all the statements on all the sites.

-----Original Message-----

From: Matt Zimmerman [<mailto:mattz@eff.org>]  
Sent: Monday, September 28, 2009 1:01 PM  
To: Tom Johnson  
Subject: Re: Citations for Fix Wilson Yard?

Tom,

Thanks for this. Although we obviously fundamentally agree on the controlling legal standard, I will consider your statement for my reply.

This begs the question, though: what reason do you have for targeting UptownUpdate.com or Whatthehelen.com? Statements on Buena Park Neighbors have nothing to do with statements made on either of the other two sites.

Matt

Tom Johnson wrote:

We have gone back and forth by email repeatedly and tried to thrash this out on the phone. My point remains the same: since February of this year, I have been clear that the only thing I seek by way of the subpoena are the statements plaintiffs made on these websites. I am not interested in anyone's else's statements. The problem is that the plaintiffs have refused to identify the names they use on the internet. I believe the judge would force them to disclose their names, but the court has not yet tangled with the discovery issues. If we cannot get their names from the plaintiffs, then I have no choice but to pursue my subpoena. I am attaching, by way of example, the kind of statements we have identified, where we need to confirm the author. In this case, we believe (but do not know) that the author is plaintiff

Katherine Boyda.

As I have said countless times before, we have no problem with the judge's existing order that stays the enforcement of our subpoena. We also have no problem with withdrawing the subpoena without prejudice to our seeking the statements at a later date. This is not a pressing issue in the litigation, which may well be dismissed again.

-----Original Message-----

From: Matt Zimmerman [<mailto:mattz@eff.org>]  
Sent: Sunday, September 27, 2009 2:02 PM  
To: Tom Johnson  
Subject: Re: Citations for Fix Wilson Yard?

Tom,

Checking in for what is now by my count the sixth time to see if you have any factual basis -- any at all -- for asserting as a fact in your Opposition that my clients are the plaintiffs. (See, e.g.,

Opposition at p.

"2": "The prior July 9, 2009 order more than adequately protects the 'Anonymous Speakers' who are really not 'anonymous' critics of

government policy but rather the plaintiffs in this case trying to avoid the statements they have made under pseudonyms.") If you are unable or unwilling to give me anything to support your position, please let me know as I was under the impression (based on our telephone conversation on Wednesday of this week) that you intended to send me something along those lines. Recall that my reply brief is due on Tuesday so unless I get something from you that materially changes the situation by 12:00 pm PT on Monday, I'll have to move forward under the assumption that you stand behind those statements but have nothing to add.

Matt

Matt Zimmerman wrote:

Tom,

Just wanted to check in and see if you were still planning to send the web site citations we discussed on Wednesday; that is, citations that you believe indicate that the operators of or posters to the Anonymous Speakers' sites are the plaintiffs. As we discussed, while that would not in and of itself solve our overall dispute (the viability of the legal defenses you've asserted remains at issue), it may well be able to help narrow down the issues truly in play. When we last spoke on Wednesday, I thought you said that you had specific identified statements that you were going to share, at least for the Buena Park Neighbors site, but I have not yet seen them.

Thanks in advance,

Matt

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No virus found in this incoming message.  
Checked by AVG - [www.avg.com](http://www.avg.com)  
Version: 8.5.409 / Virus Database: 270.13.113/2400 - Release Date:  
09/28/09 05:51:00

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Version: 8.5.409 / Virus Database: 270.13.113/2400 - Release Date: 09/28/09  
05:51:00