IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 1:23-cv-01463-RMR-SKC

AMERICAN MUCKRAKERS PAC, INC., a foreign entity, and
DAVID B. WHEELER, an individual, North Carolina resident,

Plaintiffs,

v.

LAUREN OPAL BOEBERT, an individual and Colorado resident, and
JOHN DOES (1-25),

Defendants.

REPRESENTATIVE LAUREN BOEBERT'S RESPONSE IN OPPOSITION TO PLAINTIFFS' MOTION FOR LEAVE TO AMEND COMPLAINT

Plaintiffs American Muckrakers PAC, Inc. and David Wheeler (collectively, Muckrakers or Plaintiffs) filed this defamation suit in an improper effort to entangle the court system in their crude political campaign against Representative Lauren Boebert's re-election and to silence her political speech. Rep. Boebert's motion to dismiss Plaintiffs' original complaint explained that defensive statements made during a political campaign, like hers made against Muckrakers' extraordinary attacks, are almost always incapable of being given a defamatory meaning under the First Amendment, and thus Muckrakers' original complaint must be dismissed.

Rather than respond to the motion to dismiss, Plaintiffs have requested leave to file a first amended complaint. Yet Plaintiffs' proposed first amended complaint does not solve the constitutional deficiencies attendant to Plaintiffs' original complaint: the context of Rep. Boebert's allegedly defamatory statements remains a vigorous partisan campaign; Rep. Boebert adequately disclosed the basis for her defensive statements; and Muckrakers' has pleaded no evidence that Rep.

Boebert harbored subjective doubt regarding the truth of her defense. That Plaintiffs have attempted to remove some of the context of Rep. Boebert's statements from their proposed first amended complaint only highlights that context is dispositive here. And although Plaintiffs have requested to add a new, abuse-of-process claim, *a)* they have not pleaded sufficient facts to state a claim for relief, *b)* the underlying judicial records fatally undermine Plaintiffs' allegations, and *c)* the fact that Plaintiffs have sat on this claim demonstrates bad faith under F.R.C.P. 15. Rep. Boebert thus submits this response in opposition to Plaintiffs' motion for leave to file an amended complaint (Doc. 35).

BACKGROUND

1. The alleged defamation

The lengthy background to this dispute is set forth at pages 2-8 of Rep. Boebert's motion to dismiss, Doc. 15, which Rep. Boebert incorporates by reference. In short, Mr. Wheeler formed American Muckrakers PAC to attack certain conservative members of Congress. Mr. Wheeler's chosen means of doing so was publishing a series of widely shared, misogynistic, and false articles that Rep. Boebert got her start in politics as a paid "escort" for the Koch brothers and Ted Cruz; that her work as an "escort" resulted in her having two abortions; that she is a meth addict; and that she is stripper. Doc. 15 at p. 3.

In response, Rep. Boebert defended herself against these untruthful claims. She first explained that Wheeler and Muckrakers published their false accusations for partisan purposes. She said that Muckrakers was a "political committee, funded by far-left Democrat donors and run by two left-wing political operatives." Doc. 15 at p. 4. She said that "[r]adical Democrats want me out of office, and they will lie and break the law to try to beat me." *Id.* at p. 5. She explained that "this is

what people hate about politics. They hate the lies and they hate the personal destruction." *Id.* She explained that, in her view, Muckrakers's attack was consistent with a two-faced strategy that, on the one hand, Muckrakers purported to support "the party of believe all women," but, on the other hand, used "sexist" tactics similar to those used against "Sarah Palin and nearly every conservative fighter." *Id.* at p. 6. She stated that Mr. Wheeler was a "political hack" whose conduct "demonstrates why people are fed up with politics." *Id.* at p. 5. And she noted that Mr. Wheeler's attacks had their intended effect, the "allegations trended number one on Twitter." *Id.* at p. 6.

Rep. Boebert next explained that Wheeler's allegations weren't true. She explained, "I've never had two abortions. I've never been an escort. I've never been a drug addict as they claim or stripper or whatever else." Doc. 15 at p. 6; *see also* Doc. 15-14 at ¶¶ 5, 8-11 (declaration testifying to same). Indeed, as explained in her declaration in support of her motion to dismiss, the abortions alleged by Muckrakers were a physical impossibility given that she was pregnant with her sons during the dates alleged by Mr. Wheeler. Doc. 15-14 at ¶ 9. She cited the shakiness of Muckrakers' report, that one of its "sources" told Mr. Wheeler her "story" was "totally made up." Doc. 15 at p. 5. She noted that when it was brought to Mr. Wheeler's attention that "woman in lingerie in a bed . . . was proven not to be me," Muckrakers left the picture up on its website. *Id.* at p. 6. Through counsel, she explained that "with even a 5-minute web search, Muckrakers [would have] kn[own] those statements to be false." *Id.* at p. 6. And she explained that, given Mr. Wheeler's political motivations and the substantial holes in his reporting, Rep. Boebert stated that his statements were "completely baseless," "completely false," and constituted "defamation." *Id.* at p. 5.

Mr. Wheeler did not respond to Rep. Boebert's defense of herself with his own counter speech. Rather, he responded with this suit, the aim of which is to suppress political activity and debate.

After Muckrakers' filed its suit, Rep. Boebert responded with a combined motion to dismiss under F.R.C.P. 12(b)(6) and a special motion to dismiss under Colorado's Anti-SLAPP statute. Doc. 15. The Court referred the motion to Magistrate Judge Starnella, who held a lengthy oral argument on October 5, 2023. Doc. 34. Muckrakers then filed a motion for leave to file a first amended complaint, Doc. 35, which is the subject of this response brief.

2. Muckrakers's proposed changes to the complaint and the alleged abuse of process

Muckrakers and Wheeler have not materially amended the core of their original complaint—that Rep. Boebert's statements made about Plaintiffs during the 2022 election were allegedly defamatory, giving rise to claims for defamation and related torts. Muckrakers and Wheeler have instead proposed to make three primary changes, none of which save their case from dismissal.

First, Muckrakers and Wheeler have proposed to remove some of the partisan as well as defensive context of Rep. Boebert's statements that fatally undermines the viability of Plaintiffs' claims. For example:

- Doc. 35-1 at p. 8: proposing to remove the statements showing the political context of the dispute that "Radical Democrats want me out of office, and they will lie and break the law to beat me" and "We're going to make sure this political hack never has the opportunity to do this to anyone else again."
- Doc. 35-1 at pp 13-14: proposing to remove statements made by Rep. Boebert on the Sean Hannity Show that provide the basis for her opinions, including "[t]his man was told by his source that one of his allegations was made up before he released it. He knew it was false and moved forward anyway . . . . And he changed his story later."

- Doc. 35-1 at p. 15: proposing to remove statements of Rep. Boebert showing the political context of the dispute, "[f]or them to go after me in this manner is absolutely sexist and disgusting."
- Doc. 35-1 at p. 17: proposing to remove admission that Plaintiffs published a picture of a "women in lingerie in bed" without corroboration and who was not Rep. Boebert.
- Doc. 35-1 at p. 19: proposing to remove statements by Rep. Boebert on FoxNew.com showing the political context of the dispute that, "Partisan organizations putting out blatantly false and disgusting accusations won't stop me from advancing freedom and conservative values, this group's vile conduct demonstrates why people are fed up with politics. I am not going to stand by and pretend this is normal behavior."

Plaintiffs' attempts to erase this context is a tacit concession of its materiality to the viability of their case.

Second, Plaintiffs have proposed to remove their "First Amendment Claim," Doc. 35-1 at p. 28-29, tacitly conceding that this claim is not viable under *Buentello v. Boebert*, 545 F.Supp.3d 912 (2021). Rep. Boebert does not oppose this requested amendment. This claim should be dismissed with prejudice.

Third, Plaintiffs have proposed to add a new sixth claim for abuse of process. (Doc. 35-1 at p. 27-28). Notably, however, this proposed claim is devoid of any factual content sufficient to state a claim for relief. The proposed first amended complaint merely states that Rep. Boebert "initiated a Court proceeding for a temporary restraining order, for the ulterior purpose of preventing Plaintiffs from reporting on her for a critical period of time right before the election" and that Rep. Boebert "delayed the proceeding intentionally . . . and then abandoned the proceeding when it

came time to have to present evidence before a Judge, not even showing up at the scheduled hearing on the temporary restraining order." ECF 35-1 at p. 27, ¶¶ 31-32. This is also false, as Rep. Boebert had counsel present at the scheduled hearing.

The Court can also take judicial notice of the filings and orders in the underlying case, *Lauren Boebert v. David Wheeler*, 2022C30220 (Garfield County, Colorado County Court), consistent with Federal Rule of Civil Procedure 12(b)(6). *See Bruce v. City & Cnty. of Denver*, 57 F.4th 738, 742 n.3 (10th Cir. 2023). The verified complaint in *Boebert v. Wheeler*, attached as Exhibit A hereto, expressly exempted Plaintiffs' First Amendment speech from the requested civil protection order. Rep. Boebert stated that she "understands that, as a public official and a public figure, I am subject to public scrutiny and strongly support the First Amendment rights of the American people, but David Wheeler's actions have expanded to physical and verbal threats that has caused me to fear for my safety and the safety of my family." Exhibit A at ¶ 3. Rep. Boebert further averred that "I have been repeatedly stalked, contacted, harassed and threatened by David Wheeler," including:

- "On May 26, 2022, David Wheeler approached me after a public debate, physically grabbed my right hand and would not let go until after I forcibly pulled it away."
- "On June 19, 2022, David Wheeler posted a public tweet seeking information about my physical location, stating "Anyone know where @repboebert is today and tomorrow?"
- "On June 19, 2022, David Wheeler publicly posted a picture of him close to my home in Silt, Colorado."
- "For approximately the past month, David Wheeler has posted multiple pictures of my family, including my minor children."

Exhibit A at ¶¶ 5.a.-g. Mr. Wheeler's conduct "caused" Rep. Boebert "to fear for my safety and the safety of my family," and she thus requested the court enter a civil protection order only against stalking and physical assault. *Id.* at ¶ 6. The court then entered a temporary civil protection order on June 23, 2023, a copy of which is attached as Exhibit B. The Garfield County Sheriff's Office attempted to serve Mr. Wheeler but was unable to do so because Mr. Wheeler had left Garfield County and would not return the calls of the Sherriff's Office. Exhibit C, Affidavit of Garfield County Sheriff's Office filed in case number 2022C30220 (June 30, 2023). The court then vacated the temporary restraining order on July 20, 2022. Exhibit D, copy of the public docket in 2022C30220.

Although Plaintiffs' proposed claim for abuse of process fails on its face under the *Twombly-Iqbal* pleading regime, the underlying judicial record makes clear that the suit was not filed for an ulterior purpose and there was no intentional delay. This new abuse-of-process claim is instead another attempt by Mr. Wheeler to enlist the court system in his campaign against Rep. Bobert.

LEGAL STANDARD

A request to file an amended complaint under Federal Rule of Civil Procedure 15(a)(2) is entrusted to the sound discretion of the Court. *Minter v. Prime Equip. Co.*, 451 F.3d 1196, 1204 (10th Cir. 2006). Leave to amend may be permitted only "[i]f the underlying facts or circumstances relied upon by a plaintiff may be a proper subject of relief." *Id.* Amendment is not proper, moreover, if the proposed amended complaint is futile (*i.e.* it would not withstand a motion to dismiss), *Ketchum v. Cruz*, 961 F.2d 916, 920 (10th Cir. 1992), or if the proposed amendment is made in bad faith or with a dilatory motive, *Minter*, 451 F.3d at 1204.

ARGUMENT

Because (1) Muckrakers' remedy under the First Amendment is making its case to the electorate of Colorado's Third Congressional District, not a civil suit, (2) Muckrakers' proposed amended complaint does not cure the deficiencies in its original complaint, and (3) Muckrakers' amendment is not made for a proper purpose and with dilatory motive, its motion for leave to file an amended complaint must be denied.

1. The proposed amended complaint is futile.

1.1. The First Amendment continues to bar Plaintiffs' claims for defamation and related torts.

Rep. Boebert's motion to dismiss gave three primary reasons why the First Amendment barred Plaintiffs' claims for defamation and related torts. Those reasons for dismissal render the proposed first amended complaint futile.

First, Muckrakers's complaint failed to allege clear and convincing evidence (*i.e.* evidence "unmistakable and free from serious or substantial doubt") that Rep. Boebert made her defensive statements with actual malice. Doc. 15 at p. 11 (citing *DiLeo v. Koltnow*, 613 P.2d 318, 323 (Colo. 1980)). Specifically, the complaint failed to allege that Rep. Boebert "harbored subjective doubt" regarding the truth of her statements, because the complaint provided a good-faith basis for her statements: that Wheeler had been told by at least one source that her stories were "made up" and that the other sources relied on by Mr. Wheeler included unverifiable subtweets, which is *per se* evidence that *Plaintiffs*, not Rep. Boebert, acted with actual malice. Doc. 15 at p. 12-13 (citing *St. Amant v. Thompson*, 390 U.S. 727, 732 (1968) (statements based "on an unverified anonymous telephone call" is evidence of actual malice under *New York Times v. Sullivan*)). No material change has been made to the proposed first amended complaint that alters this conclusion. Plaintiffs

continue to admit that one of their sources told Plaintiffs her story was totally made up[1]; they continue to admit that the bulk of their sources were unverifiable subtweets; and they have failed to come forward with factual allegations that Rep. Boebert herself harbored subjective doubt that Mr. Wheeler was motivated by partisan ire, that she had not engaged in the conduct alleged, and that Mr. Wheeler's "sources" were largely unreliable.

Second, the complaint made clear that Rep. Boebert disclosed the bases for her defensive opinions that Muckrakers' attack were "defamatory" and "completely baseless," stating:

- "This man [Wheeler] was told by his source that one of his allegations was made-up before he released it," Compl. ¶ 34.2;
- "[H]e [Wheeler] changed his story later," *id.*;
- American Muckrakers is funded by "Democrat donors and run by two left-wing political operatives," *id.* at ¶ 41.b;
- "Mother Jones, a far-left leaning publication called these sexist and disgusting claims," *id.* at ¶ 46;
- "I've never had two abortions," *id.*;
- "I've never been an escort," *id.*;

[1] Plaintiffs have proposed to add allegations to their complaint that Rep. Boebert "knew" that the totally-made-up statement was "sarcastic." Doc. 35-1 at p.3. These new allegations miss their mark. First, the totally-made-up statement is only one of a constellation of facts disclosed by Rep. Boebert to support her defensive statements. Even if disregarded, there are numerous other bases that Rep. Boebert relied on in justifying her statement that Muckrakers's articles were "completely baseless." Second, apart from conclusory allegations as to knowledge, the amended complaint pleads no facts that Rep. Boebert understood Ms. Hooper's disavowal as sarcastic. To the contrary, the only facts pleaded as to Rep. Boebert's understanding of the totally-made-up statement is that Rep. Boebert knew it to be true and part and parcel with Mr. Wheeler's tactics. *See, e.g.*, ECF 135-1 at ¶ 8 (quoting Rep. Boebert that "This man was told by his source that one of his allegations was mad-up before he released it."). The complaint alleges no facts to the contrary.

- "I've never been a drug addict as they claim or stripper," *id.*;
- "Their source told them in a text, and I quote, this story is made up," *id.*; and
- "[T]hat photo was proven not to be me," *id.*

Under *Hill v. Cosby*, 665 F. App'x 169, 176 (3d Cir. 2016), when a plaintiff defames a defendant, and the defendant responds by stating plaintiff's claims were false and defamatory, the defendant is immune from any suit regarding its defensive opinions if, as here, the defendant "adequately disclosed" the basis of her opinion. Faced with the kind of disclosure made by Rep. Boebert, it is up to the "listener"—the electorate of Colorado's Third Congressional District—not a court, to "choose to accept or reject [an opinion] on the basis of an independent evaluation of the facts." *Redco*, 758 F.2d at 972.

Third, defamatory meaning cannot be determined by isolating individual phrases (say, "completely baseless" or "the law on this kind of defamation is clear" or "disgusting"), but instead must be determined by considering the context in which the allegedly defamatory statements were made. *Burns v. McGraw-Hill Broad. Co.*, 659 P.2d 1351, 1360 (Colo. 1983). Here, it is undisputed that the context of Mr. Wheeler's attacks and Rep. Boebert's response is a heated, partisan political campaign, and "[w]hen we read charges and countercharges about a person in the midst of [a political] controversy we read them as hyperbolic, as part of the combat, and not as factual allegations whose truth we may assume." *Ollman v. Evans*, 750 F.2d 970, 1002 (D.C. Cir. 1984) (Bork, J., concurring). During "an intense political campaign, . . . many cruel and damaging things [a]re said about various candidates for major political offices." *Ollman*, 750 F.2d at 1005 (Bork, J., concurring). But "[w]e expect people who engage in controversy to accept that kind of statement as their lot." *Id.* Here, Rep. Boebert's statements about Plaintiffs were expressed in terms of non-

actionable campaign rhetoric: "Radical Democrats," "political hack," "far-left Democrat donors," "left-wing political operatives," "conservative fighter," "advancing freedom and conservative values," and "[p]artisan organizations putting out blatantly false and disgusting accusations." In other words, Mr. Wheeler is asking the Court to hold a trial regarding whether he is, in fact, a "left-wing political operative[]" and whether Rep. Boebert is, in fact, a "conservative fighter." Such a trial, absurd on its face, is plainly barred by the First Amendment.

In a tacit concession of the dispositive import of the context of Rep. Boebert's statements for this case, Plaintiffs have attempted to erase much of that context from the proposed first amended complaint. This is misguided.

At the outset, Plaintiffs have not removed the exhibits to the original complaint, which contain all the statements in context and are sufficient on their own to deny Plaintiffs' motion for leave to amend.

But even if the exhibits were insufficient, Plaintiffs' efforts to erase key context from its complaint is gamesmanship that should be ignored. "[A] court may refuse to allow an amendment where, by omitting allegations from the previously filed complaint, the plaintiff seeks to 'erase' admissions that are contained in it." *In re Enron Corp.*, 370 B.R. 583, 597–98 (Bankr. S.D.N.Y. 2007) (citing *Austin v. Ford Models, Inc.,* 149 F.3d 148, 155 (2d Cir. 1998)). When such erasure occurs, "[t]he party seeking to amend a complaint to omit an allegation that defeats its claim for relief must present a legitimate explanation for its previous inclusion, such as it having been the result of mistake or inadvertence." *Id.*; *see also Phillips v. City of Middletown*, 2018 WL 4572971, at *4 (S.D.N.Y. Sept. 24, 2018) (same). Here, Plaintiffs have offered no legitimate explanation as to why they've eliminated key contexts from Rep. Boebert's statements in the proposed amended

complaint. Indeed, there is no such reason as the full context is legally necessary to resolution of the dispute. Even if, however, the Court is somehow required to ignore that context for purposes of a Rule 12(b)(6) motion to dismiss, it could consider it under Colorado's Anti-SLAPP statute. Specifically, the Court can consider evidence on a special motion to dismiss, C.R.S. § 13-20-1101(3)(b), including averments in previous complaints, *see Echostar Satellite, L.L.C. v. Splash Media Partners, L.P.*, 2010 WL 3873282, at *13 (D. Colo. Sept. 29, 2010)("EchoStar is correct that, as a general matter, a party is able to refer to its opponents' contradictory pleadings as evidence that the original factual recitation was correct.").

Indeed, federal courts regularly dismiss cases, like this one, that are premised on statements incapable of a defamatory meaning. *See, e.g.*, *Horsley v. Rivera*, 292 F.3d 695, 702 (11th Cir. 2002) (television host calling plaintiff an "accomplice to murder" was nonactionable rhetorical hyperbole "expressing his belief that [plaintiff] shared in the moral culpability for [an individual's] death, not as a literal assertion that [plaintiff] had, by his actions, committed a felony"); *Mattel, Inc. v. MCA Records, Inc.*, 296 F.3d 894, 908 (9th Cir. 2002) (terms "bank robber," "heist," "crime" and "theft" are nonactionable "rhetorical hyperbole."); *Montgomery v. Risen*, 875 F.3d 709, 71 (D.C. Cir. 2017) (characterization of software sold to the government as a "hoax" is too "loose, figurative or hyperbolic" to be considered defamatory); *Phantom Touring, Inc. v. Affiliated Publications*, 953 F.2d 724 (1st Cir.1992) (describing theatrical touring production as a "rip- off, a fraud" was not actionable defamation). And the protection for such speech is at its apex in the political arena, because when an individual inserts himself in a political dispute, he or she "must expect that the debate will sometimes be rough and personal." *Harte-Hanks*, 491 U.S. at 687 (quoting Judge Bork's concurrence from *Ollman*).

Notwithstanding Muckrakers's attempts to erase statements unhelpful to the viability of its suit, this Court must "must analyze a statement in its *broad* context to determine whether it implies the assertion of an objective fact." *Partington v. Bugliosi*, 56 F.3d 1147, 1153 (9th Cir. 1995) (emphasis added). The broad context here is a re-election campaign and thus Wheeler's defamation and related torts must be dismissed.[2]

1.2. The abuse-of-process claim is not viable.

A claim for abuse of process requires a plaintiff to plead and prove that the defendant had an ulterior purpose for the use of judicial process; willful action in the use of that process which is not proper in the regular course of the proceedings, that is, use of a legal proceeding in an improper manner; that the underlying claim was "devoid of factual support"; and resulting damage. *Henry v. Kemp*, 829 P.2d 505, 507 (Colo. App. 1992); *Palmer v. Diaz*, 214 P.3d 546, 550 (Colo. App. 2009). Plaintiffs' abuse-of-process claim falters on the first three elements at this stage of the case.

First, although the proposed first amended complaint says that Rep. Boebert sought a civil protective order against Mr. Wheeler to deter him from exercising his right to free speech, this argument is fatally undermined by Rep. Boebert's verified complaint in *Lauren Boebert v. David Wheeler*, 2022C30220 (Garfield County, Colorado County Court), which expressly excepted Mr. Wheeler's First Amendment-protected speech from the requested temporary civil protective order. There, Rep. Boebert stated that she "underst[ood] that, as a public official and a public figure, I am subject to public scrutiny and strongly support the First Amendment rights of the American people, but David Wheeler's actions have expanded to physical and verbal threats that has caused

[2] Plaintiffs do not dispute that, if their defamation claim fails under the First Amendment, their claims for torts premised on the allegedly defamatory statements do, too, under the law cited at pages 20-21 of Rep. Boebert's motion to dismiss.

me to fear for my safety and the safety of my family." Exhibit A at ¶ 3. She did not request an injunction prohibiting his speech, but rather physical contact and stalking. Exhibit A at p. 2; *see also People v. Baer*, 973 P.2d 1225, 1231 (Colo. 1999) ("It is well-settled that a true threat (i.e., one which a reasonable person would foresee would be interpreted by the recipient as a serious threat to inflict death or bodily injury) is not protected by the First Amendment.").

Second, although Plaintiffs' proposed first amended complaint says that Rep. Boebert "delayed the proceeding intentionally to obtain the needed deterrence of Plaintiffs from reporting on her," that allegation, too, is fatally undermined by the judicial record, of which the Court can take judicial notice. The only reason the proceeding was delayed and ultimately dismissed was that the Garfield County Sheriff's Office could not effectuate service. Exh. C. And in any event, the verified complaint for temporary civil protection order was filed on June 23, 2023 and the Court vacated the injunction less than one month later. Exh. D. In the interim, Rep. Boebert filed no motions for extension of time and did not otherwise prompt the Court to "intentionally delay" the proceedings. *Id.* "If the action is confined to its regular and legitimate function in relation to the cause of action stated in the complaint there is no abuse, even if the plaintiff had an ulterior motive in bringing the action or if he knowingly brought suit upon an unfounded claim." *Sterenbuch v. Goss*, 266 P.3d 428, 439 (Colo. App. 2011). That is exactly what happened here. Rep. Boebert filed a factually supported complaint and the Garfield County Sherriff attempted to effectuate service. When Mr. Wheeler evaded service, the Court dismissed the case, a dismissal which Rep. Boebert did not oppose. Plaintiffs have no evidence of improper conduct.

Third, Plaintiffs have not alleged that Rep. Boebert's verified complaint was "devoid of factual support." *Kemp*, 829 P.2d at 507. It was not. To the contrary, Mr. Wheeler: *had* physically grabbed

Rep. Boebert's hand at a campaign event in May 2022; *had* posted online seeking information about the physical whereabouts of Rep. Boebert; *had* posted a picture of himself close to Rep. Boebert's home in Silt, Colorado; and *had* posted pictures of Rep. Boebert's family online.

2. Plaintiffs' proposed amendments are not offered for a proper purpose.

Plaintiffs propose to amend the complaint so they can resuscitate their suit, and continue their fundraising efforts and campaign against Rep. Boebert. As explained above, Plaintiffs' proposals to erase key contextual statements reveal the true intent here, to maintain this suit as long as they can to harm Rep. Boebert through strategic litigation to silence political debate. Further, Plaintiffs have known about Rep. Boebert's alleged abuse of process since June 2022, and have sat on those allegations until this point. "Where the party seeking amendment knows or should have known of the facts upon which the proposed amendment is based but fails to include them in the original complaint, the motion to amend is subject to denial." *Frank v. U.S. W., Inc.*, 3 F.3d 1357, 1366 (10th Cir. 1993). The additional fact that Plaintiffs have provided none of the docket information from the Garfield County case, *all* of which is contrary to their "allegations," suggests that the instant motion instead falls into the category of "multipl[y]i[ng] the proceedings . . . unreasonably and vexatiously" under 28 U.S.C. § 1927.

CONCLUSION

For the foregoing reasons, Rep. Boebert respectfully requests that motion for leave to amend be denied and the case be dismissed with prejudice.

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Respectfully submitted,

s/ Andrew Nussbaum

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