

# Exhibit B

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UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA  
BEFORE THE HONORABLE ROGER L. HUNT, U.S. DISTRICT JUDGE

RIGHTHAVEN, LLC, a  
Nevada limited-liability  
company,

Plaintiff,

vs.

DEMOCRATIC UNDERGROUND,  
LLC, a District of  
Columbia limited-  
liability company; and  
DAVID ALLEN, an  
individual,

Defendants.

No. 2:10-cv-01356-RLH-GWF

July 14, 2011

Las Vegas, Nevada

DEMOCRATIC UNDERGROUND,  
LLC, a District of  
Columbia limited-  
liability company,

Counterclaimant,

vs.

RIGHTHAVEN, LLC, a  
Nevada limited-liability  
company; and STEPHENS  
MEDIA, LLC, a Nevada  
limited-liability  
company,

Counterdefendants.

TRANSCRIPT OF ORDER TO SHOW CAUSE [116]

1 APPEARANCES:

2 For the Plaintiffs: SHAWN MANGANO  
3 COLBY WILLIAMS  
4 DONALD CAMPBELL  
Attorneys at Law

5 For the Defendants: LAURENCE F. PULGRAM  
6 KURT OPSAHL  
Attorneys at Law

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FTR No. RLH/20110714

(Transcript produced from digital voice recording;  
transcriber not present at proceedings)

Transcribed by: Donna Davidson, RDR, CRR, CCR 318  
Certified Realtime Reporter  
400 South Virginia Street  
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1 LAS VEGAS, NEVADA, JULY 14, 2011, 9:04 A.M.

2 --o0o--

3 P R O C E E D I N G S

4

5 THE COURT: Be seated.

6 THE CLERK: Righthaven, LLC, versus Democratic  
7 Underground, LLC, et al, 2:10-cv-1356-RLH-GWF.

8 This is the time set on order for a show cause  
9 hearing and also for the motion to reconsider.

10 Counsel, please note your appearances for the  
11 record.

12 MR. MANGANO: Shawn Mangano on behalf of  
13 plaintiff Righthaven, LLC.

14 MR. WILLIAMS: Good morning, Your Honor, Colby  
15 Williams on behalf of Stephens Media.

16 MR. CAMPBELL: Donald Drew Campbell on behalf  
17 of Stephens Media.

18 MR. PULGRAM: Laurence Pulgram on behalf of  
19 Democratic Underground.

20 MR. OPSAHL: Kurt Opsahl, the Electronic  
21 Frontier Foundation, on behalf of Democratic  
22 Underground.

23 THE COURT: Thank you.

24 MR. WILLIAMS: Excuse me, Your Honor. I heard  
25 your clerk say this was also set for a motion for

1 reconsideration. I didn't know if I misheard that. I  
2 wasn't aware that that was also on calendar, or if it  
3 was just the order to show cause. Because the briefing  
4 isn't complete on the motion for reconsideration.

5 THE COURT: If that was said, and I didn't  
6 catch if that was said; but, no, we're not hearing the  
7 motion for reconsideration here.

8 This is the time for Righthaven to respond to the  
9 order to show cause why the Court should not issue  
10 sanctions.

11 Counsel, I'm going to give you 10 minutes to  
12 argue your position and your response. Between the  
13 response and your affidavit, obviously, the arguments  
14 were repeated, sometimes more than once. So you don't  
15 need to repeat them. But I will give you the 10  
16 minutes.

17 And you have liberty, if you wish, to respond to  
18 the Demographic Underground's reply. The Court will  
19 decide when you've finished whether or not it feels it  
20 necessary to give Democratic Underground an opportunity  
21 to reply to your comments with respect to their reply.

22 MR. MANGANO: Okay, Your Honor. So just so I  
23 understand your procedure, should I -- there's no need  
24 to reserve any time at this point to respond to  
25 Democratic Underground? I mean, because, you're

1 correct, I have set --

2 THE COURT: If I give them an opportunity to  
3 reply to your comments, I very likely will give you a  
4 short period of time, if you feel it's necessary, to  
5 respond to that without just repeating the arguments  
6 that you've made before.

7 MR. MANGANO: Yes, Your Honor. In view of  
8 that, we have set forth our position in our response to  
9 the order to show cause, while they've set forth in my  
10 declaration and they've set forth in the OSC response, I  
11 wish to highlight the fact that upon receiving this  
12 Court's order, I took all steps necessary to immediately  
13 take corrective action in view of what was set forth  
14 with regard to compliance with the Certificate of  
15 Interested Parties.

16 I had entered this case fairly late into the  
17 briefing on the motion to voluntarily withdraw the  
18 complaint. In fact, the strategic alliance agreement  
19 was not produced until late -- well, into early this  
20 year, which obviously you unsealed.

21 During that time period we were dealing with  
22 significant issues with regard to the confidentiality of  
23 that document, the confidentiality of other materials,  
24 responding to supplemental briefing which, admittedly,  
25 is -- the briefing in this case has been significant.

1 From a personal standpoint, I did not reflect on  
2 the Certificate of Interested Parties at that time as to  
3 what was contained in it and the impact of the strategic  
4 alliance agreement on it.

5 I'm not disagreeing with the Court's analysis,  
6 I'm just stating a simple fact that I didn't fully  
7 appreciate when that document came out its effect on the  
8 other -- on the earliest file in the case.

9 THE COURT: Well, if it gives you any comfort,  
10 counsel, the Court is not holding you responsible for  
11 the failure -- you, personally, responsible for the  
12 failure.

13 MR. MANGANO: Since it's more -- I will  
14 breathe a sigh of relief because I do honor my  
15 responsibilities before this Court. And that's why I  
16 have taken corrective action.

17 And despite any disagreement that may exist, Your  
18 Honor, you've issued a decision. I intend to comply  
19 with it. I intend to have my clients comply with it,  
20 not only in this case, but in all cases moving forward.

21 I also would like to point out that there has  
22 been an argument made, and I think it's somewhat  
23 misconstrued by Democratic Underground that somehow the  
24 OSC response, which I prepared, and which I submitted  
25 supporting declaration, sought to cast blame on two

1 in-house lawyers, Mr. Chu and Mr. Coons.

2           Upon joining Righthaven and working with Mr. Chu  
3 and Mr. Coons, I found them to be outstanding attorneys.  
4 They were very diligent. They had addressed  
5 significantly complex issues, personal jurisdiction  
6 issues.

7           There was a recent decision by I believe Judge  
8 Navarro, and there was another decision in Southcoast  
9 Partners case which dealt with personal jurisdiction in  
10 view of the tension between some existing Ninth Circuit  
11 case law, Brayton Purcell being one of them, and whether  
12 or not in -- personal jurisdiction is appropriate in the  
13 venue in which the copyrighted material emanated. Those  
14 are very, very difficult issues, Your Honor. And these  
15 were very skilled attorneys that addressed those issues.

16           That said, and in view of my own experience,  
17 which is quite significant compared to Mr. Chu and  
18 Mr. Coons, I honestly cannot believe that they fully  
19 appreciate their disclosure obligation.

20           It's not an aspersion upon them. I think it's  
21 more of a reflexion, a common-sense reflexion of that I  
22 don't think that -- I think they may have -- as a matter  
23 of fact, I know that it was -- it's been represented to  
24 me, that they performed some sort of analysis or case  
25 law or whatever, and that they came up with the



1 Certificate of Interested Parties, and they said okay,  
2 you know, that's what happened.

3 THE COURT: What's their status currently?

4 MR. MANGANO: Mr. Chu is not practicing law  
5 currently. It's my understanding that he suffered a  
6 fairly significant back injury.

7 THE COURT: I understand he's recovering from  
8 back injury.

9 MR. MANGANO: And I have spoken to him. He,  
10 in fact, contacted me because he was concerned over some  
11 of the representations that had been disseminated in the  
12 media based upon what were my perceived allegations  
13 against his misconduct.

14 I don't believe that he committed any misconduct,  
15 not sanctionable misconduct, given the standards that  
16 are applicable. I think that it was an honest mistake.  
17 I think that everyone, including Mr. Chu and Mr. Coons,  
18 who were responsible either for registering the  
19 copyrighted work or drafting the complaint --

20 THE COURT: So he's no longer with the  
21 company?

22 MR. MANGANO: No. And the same thing with  
23 Mr. Coons. He's out, and he's started his own firm, my  
24 understanding.

25 These two individuals who are on the Certificate

1 of Interested Parties knew it was the R-J. They  
2 reference the R-J work. They attached the R-J work.

3 In fact, this morning I pulled articles, because  
4 I know it's been widely reported in the media, and I did  
5 a search; and, I mean, there's an article by Mr. Green,  
6 who is in the -- Steve Green from the Sun is here in  
7 court today, you know, that I found that dated back to  
8 early May -- April, May of 2010, which aver to the  
9 relationship between Stephens Media's enforcement of its  
10 copyrights, the family of Warren Stephens, that the R-J  
11 is owned by Stephens Media.

12 So I understand that that might not be enough for  
13 the Court to perform a recusal analysis, because you're  
14 not expected -- and, for the most part, when you've got  
15 litigants, you're obviously not going to be out doing  
16 your independent research because --

17 THE COURT: Well, you're correct, sir, and  
18 that's because the Court's not obligated to do it, you  
19 are.

20 But, more important, the representations were  
21 that -- while these articles came from the R-J, was that  
22 Righthaven had now been assigned the exclusive right to  
23 pursue the violation of those.

24 So that does not put the Court -- even if it had  
25 done the research, doesn't put the Court on notice that

1 Stephens Media had an interest, a pecuniary interest.

2 MR. MANGANO: Your Honor, you're correct that  
3 when -- first of all, the allegations with regard to the  
4 assignment, I know that there's a lot -- and I'm hopeful  
5 that at some point we'll get an opportunity to have --  
6 we have rather esteemed counsel on both sides to address  
7 the pending motions that are before the Court. But  
8 you're correct. The assignment issue may not or does  
9 not provide the direct pecuniary interest. That's --  
10 that's -- I think that's fair.

11 That said, Stephens Media was brought into the  
12 case only 20 days after the Certificate of Interested  
13 Parties that's deemed defective was filed.

14 That should at least have triggered -- absent  
15 anything else, absent news articles, absent averments in  
16 the complaint, anything like that, that there may be an  
17 interest in Stephens Media's part. If Your Honor -- if  
18 Stephens Media was IBM and you had a more than 10  
19 percent holding in IBM, they were brought into the case,  
20 you would have to recuse yourself under Federal Civil  
21 Procedure 7.1.

22 So I -- I understand the Court's concern. I  
23 understand that given the manner in which you have  
24 interpreted the local rule requirement, we have done  
25 everything necessary to correct that mistake. And I've

1 affirmatively done that.

2 I don't want to stand here and point fingers at  
3 Mr. Chu or Mr. Coons. I really don't. These are two  
4 exceptional lawyers with -- should Mr. Chu, and I urge  
5 him to do so, come back and practice law, he is an  
6 exceptional writer. He's an exceptional attorney.

7 I would hate to have the results of their  
8 participation in this case at all reflect upon their  
9 ability or their future status as counsel in this state  
10 practicing before this court and in this jurisdiction as  
11 a whole.

12 I can say nothing more that -- I believe this was  
13 an honest mistake. This was not an intentional act to  
14 conceal Stephens Media. That's my honest belief, Your  
15 Honor. And I don't feel that it rises to the level of  
16 the standards of except for. You may feel otherwise.  
17 And reasonable minds can disagree. But I feel the  
18 circumstances demonstrate otherwise.

19 And unless you have any other questions, Your  
20 Honor, I'll yield to opposing counsel.

21 THE COURT: I don't have any questions.

22 MR. MANGANO: Thank you, Your Honor.

23 THE COURT: Given what he's said, you've  
24 responded to his written document and responded quite  
25 adequately, in the Court's view. I don't know that

1 there's anything about what Mr. Mangano just said that  
2 suggests to the Court that I need to hear from  
3 Democratic Underground.

4 MR. OPSAHL: Thank you, Your Honor.

5 THE COURT: Let me make it clear that the  
6 Court is also not here to find fault with Mr. Coons or  
7 Mr. Chu.

8 I do find it significant, however, that in all of  
9 this -- and I -- I've read and reread this sentence from  
10 the statement in the response, and I quote from the  
11 second page: It is certainly understandable how Local  
12 Rule 7-1.1 could have arguably been reasonably construed  
13 to not require the disclosure of Stephens Media's  
14 interest in any recovery.

15 I was impressed that you were able to get three  
16 hedge words or qualifiers within the space of four words  
17 in that sentence and wondered if maybe you ran out of  
18 them.

19 That significant, I guess, to me is is that we  
20 don't have any affidavit from Mr. Chu or Mr. Coons:  
21 One, that they made a mistake; two, that they didn't  
22 understand it; three, that they didn't understand Local  
23 Rule 7.1-1. But, more importantly, I don't have any  
24 evidence that they even knew about the relationship;  
25 that they were familiar with the terms and circumstances

1 of the strategic agreement.

2 An argument that they arguably could have  
3 reasonably construed to not require that, in the Court's  
4 opinion, is, frankly, ludicrous.

5 Rule 7.1-1, the purpose of it, the primary  
6 purpose of it, is to make sure that the Court becomes  
7 aware, as soon as possible, of any need to recuse itself  
8 because of any conflict of interest. But it's the  
9 violation of the rule, in addition to all of the other  
10 things that took place in this case and any other cases  
11 that the Court has in front of it -- and I think there  
12 are -- I think there are or were 34 cases that were  
13 assigned to me by Righthaven in this case. I do not  
14 understand the argument that an agreement whereby  
15 Stephens Media got half of any recovery or settlement  
16 could any -- in any way be construed as not having a  
17 direct pecuniary interest.

18 And, again, I'm not here to sanction Mr. Coons or  
19 Mr. Chu. And I will tell you now that I do not think  
20 that the Court's sanction power is limited to sanction  
21 Mr. Chu or Mr. Coons. The Court does have the right to  
22 sanction an attorney when he violates it.

23 I don't have any evidence that they intentionally  
24 kept this from the Court. But I have a lot of evidence  
25 that Righthaven intentionally kept it. This is not an

1 issue of negligence, in the Court's view. It goes to  
2 the evidence of an intentional avoidance of disclosing  
3 information and specific direct statements contrary to  
4 that.

5 I think I have sufficient inherent power to  
6 sanction. And I think Rule 11 gives me even additional  
7 power to sanction for violation of this rule under these  
8 circumstances.

9 Counsel that was representing Righthaven,  
10 Mr. Coons and Mr. Chu, were both in-house counsel, if  
11 you will.

12 Mr. Gibson, who took over and I think was counsel  
13 at the time that the SAA was disclosed is the CEO of  
14 Righthaven. So I think for purposes of the language of  
15 7.1-1, in this instance, Righthaven qualifies as a party  
16 acting pro se. Because it's their in-house people doing  
17 it, it's not outside counsel as they have now.

18 In the Court's view, the arrangement between  
19 Righthaven and Stephens Media is nothing more nor less  
20 than a law firm, which, incidentally, I don't think is  
21 licensed to practice law in this state, but a law firm  
22 with a contingent fee agreement masquerading as a  
23 company that's a party.

24 There was a clear pecuniary interest, in the  
25 Court's view, by Stephens Media. Mr. Gibson negotiated

1 the agreement. He signed the agreement. He certainly  
2 knew the agreement and its contents. He has a  
3 significant amount of experience. At least that is  
4 represented to me. I think this has been part of a  
5 concerted effort to hide Stephens Media's role in this  
6 litigation.

7 Plaintiff claimed that it had various exclusive  
8 rights when it knew that the ability to exercise those  
9 rights were retained exclusively by Stephens Media. It  
10 constantly and consistently refused to produce the  
11 agreement. And it wasn't until after the Court ordered  
12 that it be disclosed and then unsealed that they started  
13 admitting their reasons.

14 There was, in fact, in the -- in Stephens Media's  
15 reply to their motion -- in support of their motion to  
16 dismiss, that they state, and I quote, "Stephens Media  
17 has never been identified or disclosed as a party who  
18 has a direct pecuniary interest in the outcome of any  
19 Righthaven case, and for good reason," close quote.

20 The representations about the relationship and  
21 the rights of Righthaven were misrepresentations. They  
22 were misleading. And that -- the failure to disclose  
23 them -- and you can speak and argue that there's no case  
24 law or there are no -- there's no definition in the rule  
25 that lays out what a direct pecuniary interest is. I



1 don't know how more direct you can get. The fact that  
2 it has to go to Righthaven first and then go to Stephens  
3 Media, in the Court's view, does not remove it from  
4 being a direct pecuniary interest. It was there. They  
5 had the right to have -- they had the right, actually,  
6 to settle claims on their own.

7 And the Court finds it troubling, quite frankly,  
8 in all of the cases that I'm aware of filed in this  
9 district, and I've lost count as to how many there were,  
10 that not only were the terms of the agreement disclosed,  
11 but that there was a consistent, repeated failure to  
12 identify Stephens Media as having any interest in this  
13 lawsuit.

14 And it isn't enough to say, well, the Court  
15 should have been on notice of it. The Court has the  
16 right to accept the representations made by a party  
17 through counsel. And when it finds that those  
18 representations are not true and, having looked at all  
19 this evidence, finds that they are intentionally untrue,  
20 the Court feels that there is a necessity of and finds  
21 that there is an obligation on the Court to sanction  
22 Stephens Media.

23 I've given a lot of thought as to what kind of  
24 sanction is required. I appreciate the fact that  
25 counsel has attempted to rectify the problem that has

1 existed. It does not change or affect the Court's  
2 opinion as to whether or not it was an accident or a  
3 misunderstanding as opposed to being an intentional --  
4 I'll call it failure to disclose, for want of a stronger  
5 term, although I think a stronger term is justified.  
6 But as part of the sanction, the Court is going to order  
7 that every case Righthaven has in any jurisdiction in  
8 this country must be provided with a copy of this  
9 Court's decision about the agreement, the one on  
10 standing, and that the agreement be disclosed to parties  
11 that Righthaven has sued.

12 The Court is also going to order a monetary  
13 sanction against Righthaven, itself, in the amount of  
14 \$5,000 and order that Local Rule 7.1-1 will be properly  
15 complied with, either retrospectively or prospectively,  
16 in all cases that are filed by Righthaven with respect  
17 to this agreement.

18 Is there anything -- yes, counsel?

19 Incidentally, that monetary sanction will be paid  
20 within two weeks to the clerk of court.

21 MR. MANGANO: Your Honor, just a couple points  
22 of clarification. And I understand that you will be  
23 issuing a written opinion based upon what we -- based  
24 upon this hearing, I assume?

25 THE COURT: I'm not sure I will, counsel.

1 I'll give that some consideration.

2 MR. MANGANO: Okay. Well, in view of that  
3 uncertainty, I'd just --

4 THE COURT: If I do issue a written opinion,  
5 counsel, I'm also going to direct that it be provided,  
6 filed in every other case that Righthaven has against  
7 anybody on this --

8 MR. MANGANO: Okay.

9 THE COURT: Along these issues.

10 MR. MANGANO: Okay. Your Honor, just for  
11 point of clarification, you've mentioned a couple bases  
12 for your sanction power; and it's not to challenge your  
13 sanction powers, but to clarify the record.

14 You've mentioned Rule 11, you've mentioned the  
15 inherent power, and you've mentioned the local rule.  
16 These sanctions that you just enumerated, do those fall  
17 under, one, all or -- one specific sanction power or  
18 under all your inherent power --

19 THE COURT: I'm invoking all of them, counsel.

20 MR. MANGANO: Okay. Thank you, Your Honor.

21 And a second point of clarification is that you  
22 said that parties -- all parties who are sued to be  
23 provided with a copy of the agreement, the strategic  
24 alliance agreement.

25 THE COURT: That will not apply to those cases

1 that have been dismissed, unless there's going to be an  
2 appeal in those cases.

3 MR. MANGANO: Okay. So all -- essentially all  
4 pending matters, would that be --

5 THE COURT: Yes.

6 MR. MANGANO: Okay. And would your order  
7 include -- since as the Court, I'm sure, is aware, we  
8 have a clarification and we have what's now a restated  
9 version of the SAA, restated and amended version, would  
10 you like those provided as well?

11 THE COURT: No.

12 MR. MANGANO: Just the SAA?

13 THE COURT: And no -- any revisions,  
14 amendments after the fact, in the Court's view, is  
15 irrelevant to this issue.

16 MR. MANGANO: Okay. Thank you, Your Honor.

17 THE COURT: Thank you.

18 Any questions from other defendant?

19 MR. OPSAHL: It may also be useful for some of  
20 those cases to have a copy of Righthaven's operating  
21 agreement.

22 THE COURT: I beg your pardon?

23 MR. OPSAHL: It may also be useful to -- for  
24 the defendants in those cases to have a copy of  
25 Righthaven's operating agreement along with the

1 strategic alliance.

2 THE COURT: I think that was part of my order,  
3 counsel, is that the operating -- well, are you talking  
4 about the strategic alliance agreement?

5 MR. OPSAHL: There's a strategic alliance  
6 agreement as between Stephens Media and Righthaven; then  
7 there's also the Righthaven operating agreement, which  
8 is the organizational document for Righthaven.

9 MR. MANGANO: Your Honor, that's -- the issue  
10 here is the failure to disclose Stephens Media, which is  
11 a party to the --

12 THE COURT: Yes. I will not include that,  
13 counsel. I don't think it's relevant to this.

14 MR. OPSAHL: Okay. Thank you, Your Honor.

15 MR. MANGANO: And, Your Honor, there are cases  
16 pending, such as in the District of Colorado, which  
17 involve -- do not involve Stephens Media, but they  
18 involve MediaNews Group as the holder of the work that's  
19 been assigned.

20 Would your order require a production of the SAA  
21 or the production of the operative agreement, which I  
22 believe has been publicly filed already in the lead case  
23 that's resulted in a stay of some 34 actions?

24 THE COURT: In Colorado, you're talking about?

25 MR. MANGANO: Yes. All the Colorado

1 actions -- all the Colorado actions, to my knowledge, do  
2 not involve Stephens Media content.

3 I just want to make sure that when you say  
4 produced in all jurisdictions, it's not all -- not all  
5 jurisdictions involve Stephens Media content. So --

6 THE COURT: Are the agreements, the strategic  
7 agreements the same?

8 MR. MANGANO: No. They are in a different  
9 form. The content is significantly -- it looks  
10 different. It's very -- the document that controls  
11 those agreements has been produced and has not been  
12 sealed.

13 THE COURT: All right.

14 MR. MANGANO: So the only other jurisdiction  
15 would be there's a pending action in South Carolina, and  
16 there are the pending actions in this jurisdiction that  
17 involve Stephens Media.

18 THE COURT: You are obligated to the one in  
19 South Carolina, but you're also obligated to advise the  
20 Colorado court of this decision.

21 MR. MANGANO: Thank you, Your Honor.

22 MR. PULGRAM: And, finally, Your Honor,  
23 Laurence Pulgram. You stated that if you issued a  
24 ruling in writing on this matter today, on this OSC,  
25 that you would ask that it be provided to the other

1 courts.

2 In the absence of that written ruling, would it  
3 make sense for the transcript of your ruling, up to the  
4 colloquy here, to be provided to other courts in lieu of  
5 a written order, to save Your Honor from having to write  
6 the written order?

7 MR. MANGANO: I think that's the  
8 understanding. If there's no order, I'm to produce the  
9 transcript, correct?

10 THE COURT: Yes. I think that's a good  
11 suggestion. And that will be the order if it wasn't  
12 clear otherwise.

13 Anything else?

14 MR. MANGANO: No, Your Honor.

15 MR. OPSAHL: No, Your Honor.

16 THE COURT: We'll be in recess.

17 (The proceedings were concluded at  
18 9:35 a.m.)

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I certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter.

Donna Davidson

7/14/11

Donna Davidson, RDR, CRR, CCR #318  
Official Reporter

Date