

Attorney General to “investigate matters involving the public peace, safety and justice and to subpoena witnesses and evidence in connection therewith.” 29 *Del. C.* § 2504(4). Section 2508 does not expand the scope of the subpoena power.

4. The Attorney General has no independent power to enforce a subpoena once it is issued. Motions to quash are available, and if one is filed the Attorney General must ask the Court to “determine independently whether the subpoena is enforceable. *Johnson*, 983 A.2d at 920.

5. Since an Attorney General’s subpoena may only be issued to investigate matters involving the public peace, safety and justice, the subpoena must be quashed unless the Court determines that the subpoena (1) has reasonably been issued to investigate matters of public peace, safety or justice, and (2) does not violate Petitioner’s First and Fourth Amendment rights.

6. Nothing in the subpoena shows that the subpoena has been issued to investigate matters of public peace, safety or justice. If the Attorney General wishes to enforce the subpoena, he must provide information to the Court that carries this burden. Examination of the Facebook page shows that while the page contains statements people might not like, it does not threaten public peace, safety or justice. To the contrary, it contains statements of opinion and alleged fact with which people are entitled to disagree. Nothing more.

7. The American remedy for people who disagree with the contents of anonymous speech is not to seek to “out” the speaker, thereby subjecting him or her potential retaliation, but to offer contrary facts. Those who disagree with the contents of the website, have the right to post their views. As Justice Brandeis observed, “If there be time to expose through discussing the falsehood and fallacies, to avert the evil by the process of education, the remedy to be applied

is more speech, not enforced silence.” *Whitney v. California*, 274 U.S. 357, 377 (1927) (Brandeis, J. concurring).

8. The burden the Attorney General will have in showing that disclosure of Petitioner’s identity does not violate Petitioner’s First Amendment rights is high. Anonymous internet speech is entitled to First Amendment protection. *John Doe No. 1 v. Cahill*, 884 A.2d 451, 456 (Del. 2005). It may be viewed as “the modern equivalent of political pamphleteering,” and, as the Delaware Supreme Court has recognized, “anonymous pamphleteering is not a pernicious, fraudulent practice, but an honorable tradition of advocacy and dissent.” *Id.* (quoting *McIntyre v. Ohio Elections Comm’n*, 514 U.S. 334, 357 (1995)).

9. The right to remain anonymous may be abused at times. “But political speech by its nature will sometimes have unpalatable consequences, and, in general, our society accords greater weight to the value of free speech than to the dangers of its misuse.” *Id.* (quoting *McIntyre*, 514 U.S. at 357; internal quotation mark omitted).

10. Besides being required by the First Amendment, the high protection for anonymous internet speech serves an important societal purpose. “For better or worse ... the audience must evaluate [a] speaker's ideas based on her words alone. This unique feature of [the internet] promises to make public debate in cyberspace less hierarchical and discriminatory than in the real world because it disguises status indicators such as race, class, and age.” *John Doe No. 1, supra*, 884 A.2d at 456 (citations, footnotes and internal quotation marks omitted).

11. Our Supreme Court recognized that revealing the “identity of an anonymous speaker may subject [that speaker] to ostracism for expressing unpopular ideas, invite retaliation from those who oppose her ideas or from those whom she criticizes, or simply give unwanted exposure to her mental processes.” *Id.* at 457 (citation and internal quotation marks omitted).

Accordingly, in the case of a defamation suit, the Court ruled that a plaintiff seeking to pursue a civil suit for defamation against an anonymous speaker could not obtain the speaker's identity through discovery without first supporting the defamation claim with facts sufficient to defeat a summary judgment motion. *Id.* at 460. The Peaceful Rioters Facebook page is not materially different from the internet blog in *John Doe No. 1*. The Supreme Court protected the speaker's identity in that case, and there is no reason to believe that the result would be different here.

12. The subpoena must also comply with the Fourth Amendment. To do so, it must require only the production of material relevant to the investigation for which it was issued. This Court cannot make that judgment on the current record, so for that reason, as well, the subpoena must be quashed.

13. Moreover, the ability of a law enforcement official to use process to obtain information about a subscriber to an electronic communications provider is limited by the Stored Communications provisions Electronic Communications Privacy Act, 18 U.S.C. § 2703, to cases in which there has been a warrant or court order, obtained under extremely limited circumstances detailed by the statute, or by an administrative subpoena authorized by federal or state statute.

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