

**STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON**

**IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT**

ASSIGNMENT DESK WORKS,

CASE NO. 2025-CP-10-2671

Plaintiff,

vs.

**DEFENDANT'S REPLY IN SUPPORT
OF MOTION FOR JUDGMENT
ON THE PLEADINGS PURSUANT TO
RULE 12(c), SCRPC**

ALEXIS BERG,

Defendant.

Plaintiff Assignment Desk Works, LLC ("ADW") responds to Defendant Alexis Berg's Motion for Judgment on the Pleadings by arguing that the Speak Out Act, 42 U.S.C. § 19401 et seq. ("the Act"), does not apply here because (1) the underlying settlement arose from a wage-and-hour dispute rather than sexual assault, and (2) many of Berg's statements had nothing to do with sexual assault. Neither argument has merit. ADW's own pleadings establish every element of the Act's prohibition on facial inspection, and Congress did not limit the Act's protection to cases where every statement concerns sexual misconduct. Judgment on the pleadings is proper.

ARGUMENT

I. THE SPEAK OUT ACT IS TRIGGERED BY THE NATURE OF THE CURRENT DISPUTE, NOT THE LABEL PLACED ON THE UNDERLYING LITIGATION.

ADW argues that because the original lawsuit that led to the Settlement Agreement was about unpaid wages, the non-disparagement clause in that settlement is not covered by the Speak Out Act. However, the Act does not require that the matter that led to the contract containing the non-disparagement clause be a sexual assault or sexual harassment dispute. It requires only that the dispute before the court, the one in which enforcement is sought, involve a sexual assault or sexual harassment claim. ADW reads the statute as though it contains words that are not there. The Act does not say "*no nondisclosure clause or nondisparagement clause involving workplace*

sexual harassment agreed to before the dispute arises shall be judicially enforceable." That is not what Congress wrote. What Congress wrote is simple and broad: "*no nondisclosure clause or nondisparagement clause agreed to before the dispute arises shall be judicially enforceable.*" 42 U.S.C. § 19403(a). It applied to any clause agreed to before the sexual assault dispute arises. Congress did not limit the Act to clauses entered into in connection with a sexual harassment or sexual assault matter.

The only requirements are that the clause was agreed to before the dispute arose, that the dispute now before this Court (the one in which Ms. Berg seeks to have the clause declared unenforceable) involves sexual assault or sexual harassment, and that the conduct is alleged to have violated law. All three are satisfied here on the face of ADW's own Amended Complaint. ADW is asking this Court to add a limitation that Congress deliberately chose not to include. The Act says that any non-disparagement clause signed before a sexual assault dispute arises cannot be enforced in court. A "sexual assault dispute" means a dispute involving a nonconsensual sexual act or sexual contact. 42 U.S.C. § 19402(2).

The only question that matters is whether ADW is trying to enforce the clause against Berg because of statements she made involving a nonconsensual sexual act or sexual contact. ADW's own Amended Complaint makes clear that it does. Paragraph 8 of the Amended Complaint alleges that Berg "told [Gunther] she was sexually assaulted in the presence of Patrick Bryant." ADW seeks to enforce the non-disparagement clause specifically to suppress and obtain damages for those statements. The current action is therefore "with respect to a sexual assault dispute" within the plain meaning of the Act. The character of the 2019 wage litigation does not alter that conclusion.

Courts construing the Act have focused on the nature of the dispute giving rise to enforcement, not the caption of any prior case. The Southern District of New York in *Steward Partners Glob. Advisory, LLC v. Tucker*, 2025 U.S. Dist. LEXIS 166872 (S.D.N.Y. Aug. 27, 2025), emphasized that the relevant "dispute" under the Act is defined by when the underlying sexual harassment or sexual assault allegations arose relative to the predispute agreement not the subject matter of earlier unrelated contracts. The same logic applies here. The "dispute" from Berg's perspective is the sexual assault she described; ADW's effort to silence her by invoking a predispute non-disparagement clause is precisely the conduct Congress meant to prohibit.

II. ADW'S CATALOG OF DISPARAGING STATEMENTS IS IRRELEVANT THE ONLY QUESTION IS WHAT THE PLEADINGS SHOW

This motion is decided on the pleadings alone. The court does not weigh evidence, assess credibility, or evaluate the truth or falsity of any particular statement Berg made. The 73 statements ADW catalogues in its summary judgment motion, the recordings, the text messages, the characterizations of her former bosses, none of that is before the court on this motion. The only question is whether, on the face of ADW's own Amended Complaint, the Speak Out Act renders the non-disparagement clause unenforceable. ADW's Amended Complaint pleads that Berg made statements about a sexual assault. That allegation, taken as true as it must be at this stage, is sufficient to resolve this motion. The substance and volume of Berg's other communications are simply not relevant to the narrow legal question now before the court.

III. THE ACT RENDERS THE ENTIRE NON-DISPARAGEMENT CLAUSE UNENFORCEABLE; IT DOES NOT OPERATE STATEMENT-BY-STATEMENT.

ADW argues that because many of Berg's alleged statements, characterizing individuals as a "snake," "sociopath," "sleaziest," and similar epithets, bear no direct relationship to a sexual assault allegation, those statements remain subject to enforcement even if the Act applies. But a

closer look at what these statements actually are reveals how deeply flawed that argument is. These were not press releases. They were not public accusations. They were private text messages sent to her close friends and family in the aftermath of learning that she had been sexually assaulted while unconscious and that the assault had been filmed. They stem directly from the sexual assault dispute in her effort to process what happened to her, to make sense of who was responsible, and to confide in the people closest to her. When a woman who has just learned she was sexually assaulted and her boss filmed it without her knowledge sends a text message to her fiancée and close friend calling the person responsible a "snake" or a "sociopath," that is not separate from the sexual assault dispute. That is the sexual assault dispute. ADW seeks to use a predispute non-disparagement clause to reach into those private messages and impose liability for what she said to the people closest to her after learning she was sexually assaulted. That is precisely what the Speak Out Act was designed to stop.

ADW seeks to use a predispute non-disparagement clause to reach into those private communications and impose liability for what she said to the people closest to her in the aftermath of a sexual assault. This argument fundamentally misunderstands the Act's mechanism. The Act does not perform a sentence-by-sentence inquiry into whether each statement concerns sexual misconduct. It renders the non-disparagement clause itself judicially unenforceable when the conditions of § 19403(a) are satisfied. Once the clause is unenforceable, it cannot provide the contractual basis for any claim, regardless of the content of any particular communication.

IV. ADW'S AMENDED COMPLAINT ESTABLISHES THAT THIS IS A SEXUAL ASSAULT DISPUTE.

ADW argues the Act should not apply because Berg's account of being sexually assaulted is unsupported and no court has formally found that an assault occurred. That is not the standard. The Act does not require a conviction, a court finding, or even proof that the assault happened. It

requires only that sexual assault be alleged. The statute's own words make this plain: it applies "in instances in which conduct is alleged to have violated Federal, Tribal, or State law." 42 U.S.C. § 19403(a) (emphasis added). Alleged. Nothing more.

Here, the allegation is not in dispute. Berg alleged she was sexually assaulted in the presence of Patrick Bryant, who she further alleges filmed the assault. Sexual assault is a felony under South Carolina law. S.C. Code Ann. § 16-3-655. Bryant's alleged presence and filming implicates voyeurism, S.C. Code Ann. § 16-17-470, and accessory during the commission of a felony, S.C. Code Ann. § 16-1-40. Those are allegations of violations of South Carolina law. The statute requires no more.

ADW's argument is essentially this: yes, we pleaded that Berg made statements about a sexual assault, but you should not let that trigger the Speak Out Act because we do not believe the assault actually happened and Berg cannot prove it did. In other words, ADW wants the court to treat the sexual assault allegation as real enough to support a breach of contract claim, because it shows Berg made the statements, but not real enough to invoke the Act's protections. ADW is trying to have it both ways, using the same allegation as a sword when it helps and a shield when it does not. But that is not how pleading works. The court is required to accept the facts in the complaint as true, and ADW is bound by the facts it chose to allege. By ADW's own account, Berg made statements about a sexual assault. That is the beginning and the end of the inquiry under the Act.

V. ADW INVOKES GRETCHEN CARLSON'S NAME TO SUPPORT ITS ARGUMENT AND MS. CARLSON HERSELF SAYS ADW IS WRONG.

ADW cites the Gretchen Carlson/Fox News origin story to argue the Act was meant only for employees who signed NDAs in connection with their own harassment claims. But Ms. Carlson herself tells a different story. In July 2016, Ms. Carlson filed a sexual harassment lawsuit against

her employer, because she had signed a NDA and arbitration agreement she could not tell anyone what happened to her. (Exhibit 1, Carlson Decl. ¶ 5) Because of her experience, Ms. Carlson, advocated for and helped enact the Speak Out Act, Pub. L. 117-224, 42 U.S.C. § 19401 et seq., enacted December 7, 2022, which passed with bipartisan support and was approved unanimously by Congress. (Carlson Decl. ¶ 3) As Ms. Carlson states in her Declaration: "I started hearing from people all across the country who shared similar stories, survivors who had been silenced by the same kinds of clauses I had signed. I realized there was not only an epidemic of sexual misconduct in America, but an epidemic of silencing people. That is when I knew I had to do something about it." (Carlson Decl. ¶ 5.)

Ms. Carlson has met with Ms. Berg and her counsel to let her know Ms. Berg know she is not alone. As Ms. Carlson states in her Declaration: "I have met with Ms. Berg and her counsel, and it is because of cases like hers that I advocated for this Act. This is exactly the situation we fought to address." (Carlson Decl. ¶ 9.) The intent and purpose of the Speak Out Act could not be clearer from the words of the women who built it. The Act was not designed only for employees who signed NDAs in connection with their own harassment claims. It was designed to ensure that no predispute non-disparagement clause regardless of the context in which it was signed could ever again be used to silence someone from speaking out about a sexual harassment or a sexual assault dispute. As Ms. Carlson states: "When you sign an NDA, you cannot talk to a coworker, you cannot talk to your family, and in some cases you cannot even talk to your minister or your therapist. That is how you continue the cycle of bad behavior you cover it up, you pay people off, and you tell them they can never have their voice ever again. That is why I fought for this law." (Carlson Decl. ¶ 8.) That is precisely what ADW is attempting to do here to use a predispute non-disparagement clause to silence Ms. Berg from telling others what happened to her and to impose

liability for what she told to the people closest to her in the aftermath of learning that she was sexually assaulted while she was unconscious and that her employer filmed it.

ADW cannot cite Gretchen Carlson as the inspiration for a narrow reading of the law while Gretchen Carlson herself is before this Court saying that this case is exactly what the law was designed to address. The law is plain. Ms. Carlson, who fought to pass it, is before this Court confirming what it means and who it protects. Should the Court have any doubt about the intent and purpose of the Speak Out Act, Ms. Carlson is willing to testify and make herself available to this Court. This Court need only do what Congress asked, follow the law and find the non-disparagement clause Ms. Berg signed before the sexual assault dispute arose judicially unenforceable. That is not a close question. That is exactly what the Speak Out Act requires.

CONCLUSION

Defendant Alexis Berg respectfully requests that this Court grant judgment on the pleadings in her favor, dismiss ADW's Amended Complaint with prejudice, and award Ms. Berg her reasonable attorneys' fees, costs, and all expenses incurred in defending this action.

Respectfully submitted,

s/Marybeth Mullaney

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Attorney for Defendant

June 8, 2026

North Charleston, South Carolina

**STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON**

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ASSIGNMENT DESK WORKS,

CASE NO. 2025-CP-10-2671

Plaintiff,

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ALEXIS BERG,

Defendant.

DECLARATION OF GRETCHEN CARLSON

I, Gretchen Carlson, declare under penalty of perjury pursuant to 28 U.S.C. § 1746 that the following is true and correct:

1. I am over eighteen years of age and have personal knowledge of and am competent to testify as to the matters stated in this declaration.
2. I am a broadcast journalist and television news anchor and co-founder of Lift Our Voices, a nonprofit organization that advocates for the elimination of forced arbitration, non-disparagement and nondisclosure agreements that silence survivors of sexual misconduct and their witnesses.
3. I, along with my LOV co-founder Julie Roginsky, advocated for and helped enact the Speak Out Act, Pub. L. 117-224, 42 U.S.C. § 19401 et seq., enacted December 7, 2022, which passed with bipartisan support and was approved unanimously by Congress.
4. I make this declaration to assist the Court in understanding what this law was intended to do.
5. My connection to this issue is personal. I settled a sexual harassment lawsuit against my employer in 2016 and because I signed a nondisclosure agreement (“NDA”) I was prohibited from telling others what happened to me. I had no idea at the time that I would ignite a movement and become one of the central advocates in the country for

- eliminating silencing mechanisms like NDAs. But after my case, I started hearing from people all across the country who shared similar stories – survivors who had been silenced by the same kinds of clauses I had signed. I realized there was not only an epidemic of sexual misconduct in America, but an epidemic of silencing people. That is when I knew I had to do something about it.
6. In 2019, together with Julie Roginsky, I co-founded Lift Our Voices as the nonprofit vehicle for the advocacy work I was already doing. We spent years walking the halls of Congress explaining the problem and building the bipartisan support needed to change the law.
 7. The Speak Out Act grew directly out of the recognition that NDAs and non-disparagement clauses harm not only victims of sexual assault and sexual harassment but also witnesses and those with knowledge of misconduct. When an employer can invoke a broad predispute clause against any negative statement about the company or its personnel, the clause becomes a tool that silences not just the victim but anyone who might stand with her.
 8. I advocated to make predispute non-disparagement and NDA clauses unenforceable because I know what it feels like to be silenced by one. When you sign an NDA, you cannot talk to a coworker, you cannot talk to your family, and in some cases you cannot even talk to your minister or your therapist. That is how you continue the cycle of bad behavior, you cover it up, you pay people off, and you tell them they can never have their voice ever again. That is why I fought for this law.
 9. I have met with Ms. Berg and her counsel, and it is because of cases like hers that I advocated for this Act. This is exactly the situation we fought to address. I respectfully

ask the Court to find that the non-disparagement clause Ms. Berg signed before the sexual assault dispute arose is unenforceable, because protecting people like Ms. Berg is the reason this law exists. I can make myself available to the Court should it wish to hear from me directly.

I declare under penalty of perjury under the laws of the United States of America that the foregoing statements are true and correct to the best of my personal knowledge.

FURTHER DECLARANT SAYETH NOT.


ID vfxzYYthkHpGxPpJBv3X795Y

Gretchen Carlson

Date: 6/7/2026

eSignature Details

Signer ID:	vfxzYYthkHpGxPpJBv3X795Y
Signed by:	Gretchen Carlson
Sent to email:	gretchen.carlson@liftourvoices.org
IP Address:	174.224.184.192
Signed at:	Jun 7 2026, 3:18 pm EDT