

\$350

JTG

FILED

OCT 25 2007

By MICHAEL E. RUTZ, CLERK
Dep. Clerk

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

MILLIE MAX

Plaintiff,

v.

CIVIL ACTION No. 07 4488

**REPUBLICAN COMMITTEE OF
LANCASTER COUNTY, and;
DAVID M. DUMEYER, in his official
capacity as chairman of the
Republican Committee of
Lancaster County**

Defendants.

COMPLAINT

S 20085
Given
10/25

INTRODUCTION

1. This is a civil rights action brought under the Civil Rights Act of 1871, 42 U.S.C § 1983, for injunctive and declaratory relief alleging that the Republican Committee of Lancaster County and its chairman, David M. Dumeyer, has imposed content-based regulations on the political speech of Plaintiff during primary elections and has intentionally impaired and chilled, and continues to impair and chill, Plaintiff's right under the First and Fourteenth Amendments to the United States Constitution to engage in protected political speech in a primary election.

JURISDICTION

2. Jurisdiction lies in this court under 28 U.S.C. § 1331, providing that district courts shall have original jurisdiction of all civil actions arising under the Constitution of the United States.

3. Moreover, jurisdiction lies under 42 U.S.C. § 1983 and 28 U.S.C. §1343(a), the jurisdictional counterpart of 42 U.S.C. § 1983 as Plaintiff alleges violation of her rights of free speech under the First Amendment to the United States Constitution, as applied to the states by the Fourteenth Amendment to the United States Constitution.

VENUE

4. Venue is proper in the United States District Court for the Eastern District of Pennsylvania under 28 U.S.C. § 1391.

PARTIES

5. Plaintiff is Millie Max, an elected committeewoman for the Republican Committee of Lancaster County representing the Hershey Road voting district in Mount Joy Township, in the County of Lancaster, Pennsylvania.

6. Plaintiff Millie Max resides at 63 Koser Road, Elizabethtown, in the County of Lancaster, Pennsylvania.

7. Defendant Republican Committee of Lancaster County is a political organization registered under the laws of the Commonwealth of Pennsylvania the membership of which is composed of one (1) committeeman and one (1) committeewoman, elected in the primary elections of even numbered years by the qualified, registered Republicans from each election district within the boundaries of Lancaster County, Pennsylvania.

8. Defendant Republican Committee of Lancaster County is governed by the “Rules of the Republican Committee of Lancaster County” currently on file with the Lancaster County Board of Elections (hereinafter the “Rules”).

9. Defendant Republican Committee of Lancaster County's stated goal in Art. I, § 2 of the "Rules" is to "have full control of the Republican Party of and in the County of Lancaster and its various election districts."

10. Defendant Republican Committee of Lancaster County is a state actor, acting under color of state law, as that term is defined for purposes of the Civil Rights Act of 1871, in the context of its conduct and involvement in primary election contests mandated by the Commonwealth of Pennsylvania for the purpose of determining who shall appear on the general election ballot.

11. Defendant Republican Committee of Lancaster County is headquartered at 902 Columbia Avenue, in the City and County of Lancaster, Pennsylvania.

12. Defendant David M. Dumeyer is the current chairman of Defendant Republican Committee of Lancaster County, having been re-elected to that position in June of 2006.

13. Defendant David M. Dumeyer is made a party to this action solely in his official capacity as chairman of Defendant Republican Committee of Lancaster County.

14. Defendant David M. Dumeyer, as chairman of Defendant Republican Committee of Lancaster County, pursuant to Art. II, § 5(A) of the Rules is "the chief executive officer of the Republican Party of Lancaster County and its designated spokesman at all levels of Party affairs. He shall preside at all meetings

of the County Committee and the Advisory Committee, appoint all committees other than those required by these Rules to be otherwise designated and perform such services as shall be conducive to the welfare of the nation, state, county and party or shall be imposed upon him or her by the laws of Pennsylvania. He shall be responsible for organizing and executing finance, registration and campaign activities for National, State, County and Legislative candidates within the County.

15. Defendant David M. Dumeyer, as the chief executive officer of Defendant Republican Committee of Lancaster County, is a state actor, acting under color of state law, as that term is defined for purposes of the Civil Rights Act of 1871, in the context of his conduct and involvement in primary election contests mandated by the Commonwealth of Pennsylvania for the purpose of determining who shall appear on the general election ballot.

16. Defendant David M. Dumeyer resides at 1665 Silver Springs Road, Landisville, in the County of Lancaster, Pennsylvania.

FACTUAL ALLEGATIONS

17. Plaintiff Millie Max successfully campaigned for the position of Republican committeewoman for the Hershey Road voting district in Lancaster County, Pennsylvania promising the Republican voters of that district that she was committed to endorsing candidates who uphold traditional values.

18. Six “open” seats on the Lancaster County Court of Common Pleas were up for party nomination in the May 15, 2007 primary election.
19. On or about December 20, 2006, a “screening committee” appointed by Defendant David M. Dumeyer approved a list of ten (10) candidates “worthy of party endorsement” for the May 15, 2007 primary election.
20. In February, 2007, Defendant Republican Committee of Lancaster County endorsed a slate of six judicial candidates for nomination by the Republican Party at the May 15, 2007 primary election for the six seats on the Lancaster County Court of Common Pleas to be elected at the general election of 2007.
21. Two of those endorsed judicial candidates were Howard F. Knisely and Jeffery D. Wright.
22. Plaintiff received credible information that Howard F. Knisely had defended individuals accused of child molestation.
23. Plaintiff received credible information from multiple sources that Jeffery D. Wright had allegedly committed marital adultery.
24. Because of Plaintiff’s concern about the moral fitness of endorsed judicial candidates Howard F. Knisely or Jeffery D. Wright to sit as judges on the Court of Common Pleas, Plaintiff was not able, consistent with her pledge to the Republicans of her voting district to only endorse candidates who uphold

traditional values, to support or endorse judicial candidates Howard F. Knisely or Jeffery D. Wright in the 2007 primary election.

25. During the 2007 primary election campaign, Plaintiff approached a voter who had a “Jeffery Wright” campaign sign in her yard and encouraged her to switch her support to another Republican judicial candidate, such as, Lancaster County First Assistant District Attorney Heidi Eakin.

26. At 9:21 p.m. on May 14, 2007, the evening before the 2007 primary election, Plaintiff received a telephone call from Andrew Heath, an individual employed by Defendant Republican Committee of Lancaster County.

27. During that telephone call (partially recorded by Plaintiff’s telephone answering machine), Andrew Heath said to Plaintiff “I need some advice from you actually. I just got this very disturbing phone call from someone that there were people from Elizabethtown that were stopping by supporters of Jeffery Wright’s home and they were saying things about Jeffery Wright and making stuff up about his history and stuff like that. I know that you know a lot of people in Elizabethtown, and I wasn’t sure if you could maybe give me some advice as who I need to call about this. They wouldn’t give their names or anything, but they did get a license plate number so we are tracing a license plate right now.” (emphasis added).

28. In reply, Plaintiff said “I don’t know who that would have been, but I stopped by a home today and talked with a lady who was out and mentioned about one of the candidates.” At which point Andrew Heath snarled “was it like that he did have five extra-marital affairs or something like that?”

29. In further reply, Plaintiff Millie Max told Andrew Heath that she never said Jeff had “five extra-marital affairs” and as she attempted to explain why she could not support Jeffery Wright’s candidacy, Andrew kept interrupting, accusing her of being a liar and wouldn’t give Plaintiff Millie Max any additional opportunity to speak.

30. In the above referenced telephone call, Andrew Heath threatened that there would be a meeting after the election, at which Plaintiff Millie Max would probably be asked to resign her elected position as a Republican committeewoman.

31. On primary election day, Tuesday, May 15, 2007, Plaintiff worked at her voting district’s polling station and handed out “slate cards” – printed at her own expense – to certain Republican voters encouraging them not to vote for Howard F. Knisely or Jeffery D. Wright for Lancaster County Court of Common Pleas and to vote, instead, for Lancaster County First Assistant District Attorney Heidi Eakin.

32. In a June 18, 2007 letter addressed to Plaintiff (hereinafter the “Letter”) from Defendant David M. Dumeyer signed as chairman of Defendant Republican Committee of Lancaster County, Defendant Dumeyer demanded that “[i]t is

inappropriate for a committee member, for instance, to disparage an endorsed candidate, especially to voters who have chosen to support the endorsed ticket. Obviously, promoting the positive qualities of an unendorsed candidate whom one supports may not be inappropriate, as long as it does not accompany negative comments about any endorsed candidate. It is equally inappropriate for a committee member to use one's status as a committee member outside one's own voting district to disparage endorsed candidates. That can only confuse voters who expect a united message. As for a separate slate card to distribute at the polls, it simply confuses voters. A separate slate card contradicts the Party's decisions on endorsements, casts doubt about one's role as a 'team player,' and suggests that personal agendas trump the collective decision made by two-thirds of one's fellow committee members in convention. In these cases, if you have serious reservations about the choice of candidates endorsed by the Party, you should resign from the Committee. This frees one to support wholeheartedly their chosen candidate(s) and to speak against the endorsed candidate(s)...if you feel you simply cannot support the entire Republican ticket, then absenting yourself from the polls could be sufficient...You have some thinking and decision-making to do...if your conscience or personal convictions prevent you from doing so, I have laid out two alternative courses of action for your consideration..." (emphasis in the original).

33. Plaintiff was elected by and represents the Republican voters of the Hershey Road voting precinct of Mount Joy Township.

34. The Commonwealth of Pennsylvania requires major political parties, such as the Republican Party, in Pennsylvania to select their committeemen and committeewoman in primary elections.

35. The Commonwealth of Pennsylvania requires major political parties, such as the Republican Party, in Pennsylvania to select their nominees for the general election in primary elections.

36. The primary election(s) at which Plaintiff Millie Max and all other members of Defendant Republican Committee of Lancaster Court are elected are established and conducted under the laws of the Commonwealth of Pennsylvania.

37. Plaintiff wishes to continue to both: (1) represent the Republican voters of the Hershey Road voting precinct of Mount Joy Township as their Republican committeewoman; and, (2) remain an activist to persuade as many Republican voters as possible to support candidates that support her political and moral views in primary elections.

38. Defendants' Letter is designed to improperly and unconstitutionally force Plaintiff to make a choice between: (1) remaining as a Republican

committeewoman; or, (2) maintain her right to express any political viewpoint she desires to Republican voters in and during a primary election contest.

39. Solely as a result of Defendants' Letter, Plaintiff has not campaigned for, or otherwise supported Republican judicial candidates that Plaintiff would have otherwise campaigned for or otherwise supported in the 2007 general election.

40. Solely as a result of Defendants' Letter, Plaintiff did not send an election newsletter to the Republican voters of the Hershey Road voting precinct of Mount Joy Township as Plaintiff has customarily sent in previous elections.

41. Defendants' Letter is designed to eliminate political speech in primary elections which is deemed unwanted by Defendants.

42. Defendants' Letter is designed to advance their own political agenda at the expense of Plaintiff's right to exercise her First Amendment rights in a primary election and to do so as a Republican committeewoman.

43. Defendants' Letter is designed to alter the outcome of primary elections at which it is determined who will be placed by the Commonwealth of Pennsylvania on the general election ballot.

44. Defendants' Letter is designed to restrict and curtail Plaintiff's protected political speech under the First Amendment to the United States Constitution during primary elections.

45. Defendants' Letter has chilled Plaintiff's right as a Republican committeewoman to freely support any Republican candidate in a primary election that she so desires.
46. Defendants' Letter has chilled Plaintiff's right as a Republican committeewoman to freely oppose any Republican candidate in a primary election that she deems necessary.
47. The Republican voters of the Hershey Road voting precinct of Mount Joy Township are entitled to open and honest political speech from the Plaintiff as their elected Republican committeewoman.
48. Defendants' have no right to censor Plaintiff's political speech as threatened by the Letter.
49. Plaintiff has no obligation to censor her own political speech as demanded by Defendants' Letter.
50. Defendants' Letter impermissibly restricts Plaintiff from publishing certain campaign literature for distribution during a primary election.
51. Plaintiff has no legal or moral obligation to support the chosen candidates of Republican committeemen and women representing other voting districts.
52. Provisions of Defendants' Letter impose content-based restrictions on Plaintiff's speech in primary elections.

53. There is no compelling state interest in regulating, curtailing, censoring or chilling Plaintiff's speech in a primary election campaign.

54. Plaintiff has suffered and will continue to suffer immediate and irreparable injury, loss and damage to her First Amendment right to collect and disseminate information and to speak freely about candidates seeking the Republican Party's nomination in primary elections.

55. Plaintiff has no other adequate remedy at law.

COUNT I

56. Plaintiff incorporates by reference the preceding paragraphs of this Complaint as if fully set forth herein.

57. Defendants' Letter is a content-based regulation of speech.

58. Defendants' Letter places an impermissible chill on Plaintiff's right to exercise her rights under the First Amendment to the United States Constitution as a Republican committeewoman in primary elections.

59. Accordingly, Defendants' letter violates, on its face, Plaintiff's rights under the First and Fourteenth Amendments to the United States Constitution.

COUNT II

60. Plaintiff incorporates by reference the preceding paragraphs of this Complaint as if fully set forth herein.

61. Defendants' Letter is a content-based regulation of speech.

62. Defendants' Letter regulates and imposes restrictions on Plaintiff's ability to freely exercise her rights under the First Amendment to the United States Constitution as a Republican committeewoman in primary elections.

63. Accordingly, Defendants' letter violates, on its face, Plaintiff's rights under the First and Fourteenth Amendments to the United States Constitution.

COUNT III

64. Plaintiff incorporates by reference the preceding paragraphs of this Complaint as if fully set forth herein.

65. Defendants' Letter is a content-based regulation of speech.

66. Defendants' Letter places an impermissible chill on Plaintiff's right to exercise her rights under the First Amendment to the United States Constitution as a Republican committeewoman in primary elections.

67. Accordingly, Defendants' letter violates, as applied to the facts of this case, Plaintiff's rights under the First and Fourteenth Amendments to the United States Constitution.

COUNT IV

68. Plaintiff incorporates by reference the preceding paragraphs of this Complaint as if fully set forth herein.

69. Defendants' Letter is a content-based regulation of speech.

70. Defendants' Letter regulates and imposes restrictions on Plaintiff's ability to freely exercise her rights under the First Amendment to the United States Constitution as a Republican committeewoman in primary elections.

71. Accordingly, Defendants' letter violates, as applied to the facts of this case, Plaintiff's rights under the First and Fourteenth Amendments to the United States Constitution.

REQUESTED RELIEF

72. Plaintiff incorporates by reference the preceding paragraphs of this Complaint as if fully set forth herein.

WHEREFORE, Plaintiff requests this Honorable Court to:

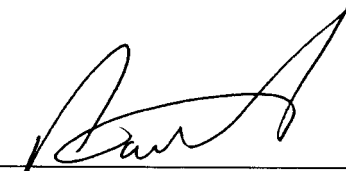
(1) Declare Defendants' Letter, on its face, unconstitutionally chilling of Plaintiff's right to gather, collect, and publish information and engage in and communicate political speech as a Republican committeewoman in violation of the First and Fourteenth Amendments to the United States Constitution;

(2) Declare Defendants' Letter, as applied to the facts of this case, unconstitutionally chilling of Plaintiff's right to gather, collect, and publish information and engage in and communicate political speech as a Republican committeewoman in violation of the First and Fourteenth Amendments to the United States Constitution;

- (3) Enjoin Defendants and Defendant David M. Dumeyer's successor-in-office from issuing or imposing rules, regulations or instructions which seek to restrict the rights of Republican committeemen and committeewomen to gather, collect, and publish information and engage in and communicate political speech in primary elections;
- (4) Grant Plaintiff's costs and reasonable attorney's fees pursuant to 42 U.S.C. § 1988 and any other applicable authority; and,
- (5) Grant Plaintiff such other relief as may be just and equitable.

Respectfully submitted,

Dated: October 25, 2007



Paul A. Rossi, Esq.
Counsel for Plaintiff
PA #84947
316 Hill Street
Mountville, PA 17554
717.330.8872
[pularossi@comcast.net](mailto:paularossi@comcast.net)