

must either: (1) support Defendants' endorsed slate of candidates; (2) shut-up; or (3) resign her elected position as a Republican committeewoman. Defendants' demands impair rights guaranteed to Plaintiff under the First Amendment to the United States Constitution.

Defendants' Memorandum of Law in support of their Motion to Dismiss is flatly off point, and fails to address the central issue in this action – that political parties are “state actors” in primary elections subject to provisions of the Civil Rights Act. As a “state actor” Defendants may not impair the federal constitutional rights of others when such conduct directly implicates the delegated sovereign authority of the Commonwealth to determine who shall appear on the Commonwealth's general election ballot through a statutorily imposed primary election process. Defendants are simply wrong that their own rights under the First Amendment are somehow superior to Plaintiff's right to free speech to the point that she must somehow suppress her speech for the benefit of a slate candidates Plaintiff opposed but which were supported and endorsed by a large majority of other committee members. Defendants are simply wrong that a party's endorsed slate of candidates has any legal status in the case law sufficient to permit them to suppress and chill the right of any committee member to openly oppose that endorsed slate. Defendants are flatly wrong that their own rights under the First Amendment secures for themselves an unopposed monopoly in the market place of

ideas during a primary election – a monopoly free from any dissenting political speech from other elected committee members. Defendants are confused if they believe primary election conduct and speech are matters purely internal to a political party such that they are amenable only to internal party regulation.

Defendants’ Memorandum of Law and arguments therein are lacking on several basic levels. First, Defendants’ Memorandum of Law ignores (perhaps intentionally, and in clear violation of Defendants’ counsel’s duty of candor to this Court) all case law which establish that political parties are “state actors” in primary elections subject to provisions of the Civil Rights Act. Second, none of the cases cited by Defendants support the right of a political party to suppress political speech in primary elections. Third, Defendants merely cite cases which establish their First Amendment rights in the context of internal, private party matters and simply assert that those cases apply to the facts at issue in the case at bar – namely Defendants’ attempt to suppress and chill Plaintiff’s political speech in a primary election – a tactic which is flatly wrong.¹ Lastly, the speech Defendants seek to suppress is the exact kind of speech which implicates the Commonwealth’s sovereign authority – namely political speech intended to

¹ The cases cited and misapplied by Defendants are too numerous to cut down on an individual case by case basis. Plaintiff believes that this Court will recognize that the bulk of the cases cited by Defendants merely stand for the proposition that internal party conduct is not subject to provisions of the Civil Rights Act. Plaintiff does not disagree. But those cases are inapplicable to the case at bar.

influence primary election voters who, in turn, exercise the Commonwealth's delegated authority to determine who shall appear on the general election ballot.

At bottom, the legal analysis of this case is simple. If a political party is not allowed to exclude African-Americans from meaningful participation in primary elections under the Equal Protection Clause – then on the same analysis, political parties may not similarly suppress and exclude unwanted political speech from primary elections under the First Amendment. Accordingly, Plaintiff's Complaint states a cognizable First Amendment claim against Defendants under the Civil Rights Act. Therefore, Defendants' Motion to Dismiss must be denied.

FACTS

Defendant Republican Committee of Lancaster County (hereinafter "RCLC") "endorsed" a slate of judicial candidates for the party's nomination for six open seats (hereinafter individually and collectively the "Endorsed Candidates") on the Lancaster County Court of Common Pleas in the May 15, 2007 primary election conducted by the Commonwealth of Pennsylvania and the Lancaster County Board of Elections (hereinafter the "Primary Election"). Republicans who did not "win" RCLC's endorsement continued to seek and actively campaigned for the party's nomination in the Primary Election. Plaintiff opposed two of Defendant RCLC's Endorsed Candidates and, in their place, supported other unendorsed Republican judicial candidates.

During the Primary Election campaign, Plaintiff communicated her opposition to several voters who indicated they were supporting Defendants' slate of "endorsed" judicial candidates and communicated factual information to those voters in an effort to convince them to support other "unendorsed" Republicans seeking the party's nomination for judge of the Lancaster County Court of Common Pleas in the Primary Election. On the day of the Primary Election while Plaintiff was monitoring her polling place, Plaintiff showed several voters a "palm card" indicating a list of candidates, including judicial candidates, that Plaintiff was supporting in the Primary Election – hoping to persuade those voters to vote for the Republican candidates that she supported. The "palm card" used by Plaintiff was printed at her own expense, and did not purport to be the "palm card" printed and distributed by Defendant RCLC. At no time did Plaintiff communicate to any voter or prospective voter that her own preferred slate of Republican candidates were "endorsed" by Defendant RCLC.

In response to Plaintiff's open opposition and unwanted political speech during the Primary Election against some of Defendant RCLC's endorsed candidates, Defendants sent an ultimatum letter to Plaintiff dated June 18, 2007 (hereinafter the "Letter") directing Plaintiff, in pertinent part, as follows:

"... it 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)...."

Plaintiff refused Defendants' demands with respect to her conduct during future primary elections but did not oppose any Republican nominees in the 2007 general election, nor indicated any intent to oppose the Party's nominees in any future general election contest.

On November 6, 2007, Defendant Dumeyer reconfirmed to Louella Cook (Defendant Dumeyer's elected Republican committeewoman) that Plaintiff is not permitted to oppose the party's endorsed slate of candidates during a primary election. Louella Cook initially questioned when Defendant Dumeyer was going to ask for the resignations of the East Hempfield committee members who were openly opposing the party's elected nominee for Township supervisor, by supporting an opposing write-in candidate. Defendant Dumeyer stated that he was not going to ask for their resignations because "they had not done anything

wrong.” Louella responded “and Millie Max has?” Defendant Dumeyer responded “yes of course, absolutely.”

STANDARD OF REVIEW

The notice pleading requirements of the Federal Rules of Civil Procedure and the liberal reading to which complaints are entitled require that a complaint set forth only a brief statement of the essential facts necessary to establish liability. *Conley v. Gibson*, 355 U.S. 41 (1975). Defendants are moving for dismissal without trial of the facts. All of the facts alleged by Plaintiff must be taken as true, along with all reasonable inferences that can be drawn therefrom, and the standard of review is whether Plaintiff can legally prevail under any conceivable argument based on such facts. The only relevant question is whether, if Defendants engaged in the kind of conduct alleged by Plaintiff, whether that violates the federal constitution and, if so, whether a federal court can hear the case. Plaintiff contends this Court must the answer both questions in the affirmative.

As the Supreme Court stated: “[i]n appraising the sufficiency of the complaint we follow, of course, the accepted rule that a complaint should not be dismissed for failure to state a claim unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief.” *Id.* at 44. Further, Rule 8, F.R.Civ.P., makes it clear that “a complaint need only set out a generalized statement of facts from which the defendant will be

able to frame a responsive pleading. Few complaints fail to meet this liberal standard and become subject to dismissal.” W. and Miller, *Federal Practice and Procedure*, § 1357.

The purpose of a motion to dismiss for failure to state a claim upon which relief can be granted is to test the legal sufficiency of the allegations contained in the complaint. *Kost v. Kozakiewicz*, 1 F.3d 176, 183 (3rd Cir. 1993). In *Kost*, the Third Circuit held that complaints need only set forth sufficient information to: 1) outline the elements of a claim; or 2) allow inferences to be drawn which support the existence of the elements of a claim. *Id.* Thus in reviewing a motion to dismiss, this Court must accept as true the facts alleged in the complaint and all reasonable inferences that can be drawn from them. *See Board of Trs. of Bricklayers & Allied Craftsmen Local 6 of N.J. Welfare Fund v. Wettlin Assocs., Inc.*, 237 F.3d 270, 272 (3rd Cir. 2001); *Unger v. National Residence Matching Program*, 928 F.2d 1392, 1394-95 (3rd Cir. 1991); *see also, Rocks v. Philadelphia*, 868 F.2d 644 (3rd Cir. 1989).

Under Rule 12(b)(6), the allegations contained in Plaintiff’s Complaint must be construed in the light most favorable to Plaintiff that permit Plaintiff to show a set of circumstances which, if true, would entitle her to the relief requested. Fed.R.Civ.P. 12(b)(6); *Gibbs v. Roman*, 116 F.3d 83, 86 (3rd Cir. 1997) (citing *Nami v. Fauver*, 82 F.3d 63, 65 (3rd Cir. 1996)). A motion to dismiss will only be

granted if it is clear that relief cannot be granted to Plaintiff under any set of facts that could be proven consistent with the complaint's allegations. *See Hishon v. King & Spalding*, 467 U.S. 69, 73 (1984) (citing *Conley v. Gibson*, 355 U.S. 41, 45-46 (1957)).

Further, the Supreme Court has explicitly rejected the argument that there is a heightened pleading standard in civil rights cases. *Leatherman v. Tarrant County*, 507 U.S. 163 (1993). “. . . [a] heightened pleading standard does not apply to civil rights actions against individual defendants.” *Bieros v. Nicola*, 860 F. Supp. 222 (E.D. Pa. 1994).

Plaintiff's Complaint satisfies in all respects the pleading and legal sufficiency requirements of Rule 8 and 12 of the Federal Rules of Civil Procedure, and the dictates of federal decisional law. Accordingly, Defendants' Motion to Dismiss should be denied.

ARGUMENT

Plaintiff's Complaint, pursuant to the Civil Rights Act, states cognizable federal claims that Defendants' violated and continues to violate rights afforded to Plaintiff under the First Amendment to the United States Constitution. Accordingly, Defendants' Motion to Dismiss must be denied.

I. Defendants’ Conduct is State Action Amenable to Federal Judicial Review Under the Civil Rights Act

A. Defendants’ Regulation and Suppression of Plaintiff’s Political Speech in a Primary Election is State Action under the Civil Rights Act

The First Amendment is a restraint on Government, not on private persons. *Public Utilities Commission v. Pollak*, 343 U.S. 451, 461 (1952). Although the rule is easily stated, the determination of what separates “private” action from “state” action is more difficult. In the context of the Fourteenth Amendment, the Supreme Court has generally stated that, “[c]onduct that is formally ‘private’ may become so entwined with governmental policies or so impregnated with a governmental character as to become subject to the constitutional limitations placed on state action,” and that “when private individuals or groups are endowed by the State with powers or functions governmental in nature, they become agencies or instrumentalities of the State and subject to its constitutional limitations.” *Evans v. Newton*, 382 U.S. 296, 299 (1966).

Defendants’ suppression of Plaintiff’s unwanted primary election speech is state action under the Civil Rights Act. In applying provisions of the Civil Rights Act to political parties, courts have established a clear division between

private internal party affairs which do not implicate state action,² and primary election conduct which is state action amenable to federal judicial review under the Civil Rights Act.

Primary elections in the Commonwealth of Pennsylvania are conducted under state statutory authority and are financed directly by the Commonwealth. 25 P.S. § 2601 *et seq.* It is because the primary election is state action that an otherwise private organization such as a political party, may not, by virtue of its conduct during a primary election, deny to others fundamental rights afforded to them under the federal constitution. *See Terry v. Adams*, 345 U.S. 461, 484 (1953); *see also California Democratic Party et al. v. Jones, Secretary of State of California, et al.*, 530 U.S. 567, 594 (Stevens, J., dissenting) (stating the uncontested proposition that “primary elections, unlike most ‘party affairs,’ are state action” in dissenting from the majority opinion that the First Amendment prohibits states from imposing “open primaries” on political parties).

In *Smith v. Allwright*, 321 U.S. 649 (1944) the United States Supreme Court articulated that where a state has delegated its authority to determine who shall appear on the general election ballot to a primary election there is a delegation of state authority. *Id.* at 660-61.

² If Defendants had refused to allow Plaintiff to speak during a party endorsement meeting, Plaintiff would not have filed this action, because endorsement meetings are purely private, internal party matters which do not implicate “state action” and, therefore, would not have given rise to a federal cause of action under the Civil Rights Act.

“We think that this statutory system for the selection of party nominees for inclusion on the general election ballot makes the party which is required to follow these legislative directions an agency of the state in so far as it determines the participants in a primary election. The party takes its character as a state agency from the duties imposed upon it by state statutes; the duties do not become matters of private law because they are performed by a political party.”

Id. at 663. When a state delegates to the voters the selection of a party’s nominees for a general election, the state makes the conduct of a political party in a primary election the action of the state. *Id.* at 664-65.

The Supreme Court has long and consistently held that private individuals engage in state action when performing a public function, even if such is not their exclusive intent. (citations omitted). No activity is more indelibly a public function than the holding of a political election: “While the Constitution protects private rights of association and advocacy with regard to the election of public officials, [Supreme Court] cases make it clear that the conduct of the elections themselves is an *exclusively* public function.” *Flagg Brothers, Inc. v. Brooks*, 436 U.S. 149, 158, 98 S.Ct. 1729, 1734, 56 L.Ed.2d 185 (1978). It matters not that the political party, its officials, and workers are acting in furtherance of private interests; if their conduct is made possible by state election law, and if one sequela of their conduct is to further the purity of an exclusive state concern, *i.e.*, elections, then their actions are for § 1983 purposes properly attributable to the state.

Tiryak v. Jordan, 472 F.Supp 822, 824 (E.D.Pa 1979). As an initial matter, it is obvious that if the Commonwealth had not delegated its sovereign authority to determine who shall appear on the Commonwealth’s general election ballot to the voters through a primary election, Defendants would not have been able to impair Plaintiff’s First Amendment speech. Defendants’ attempt to suppress Plaintiff’s

speech is made possible by the Commonwealth's delegation of its authority to primary election voters – and Defendants' conduct is amplified by virtue of the unique position a political party holds in the conduct of primary elections. The entire election process is made possible by the Commonwealth's decision to delegate its authority to the voters – a decision which relies upon and incorporates the full panoply of constitutional rights afforded to the voters, especially those rights guaranteed to all citizens under the First Amendment. Defendants' conduct in suppressing Plaintiff's primary election speech has fully entangled Defendants in opposition to the Commonwealth's policy that primary elections are to be conducted subject to the First Amendment rights of free speech for all citizens of the Commonwealth. Therefore, Defendants' attempt to suppress Plaintiff's primary election speech has so "entwined" Defendants in the policies of the Commonwealth as to constitute, on its face, "state action." *See e.g., Evans* at 299.

On the same analysis that a political party is a state actor forbidden to exclude African-Americans from primary elections under the Equal Protection Clause, a political party is a state actor forbidden to exclude political speech intended to directly alter the votes cast by primary election voters under the First Amendment. In *Valenti v. Pennsylvania Democratic State Comm.*, 844 F.Supp 1015, (M.D.Pa. 1994) a candidate for the Democratic nomination for governor of Pennsylvania contested a decision of the party that candidates for the Democratic

nomination may not distribute literature at the state party endorsement meeting that had been written and produced by a third party independently of the candidate's campaign. In rejecting the plaintiff's First Amendment claims, the Court properly drew a clear line between internal party conduct, such as an endorsement meeting (which does not implicate state action) and conduct which arises from state action, such as the state's delegation of authority in primary elections. The Court in *Valenti* clearly indicates that had the party's suppression of First Amendment speech occurred during the primary election rather than at a party endorsement meeting state action would have been implicated. *Id.* at 1019.

B. Defendants' Regulation and Suppression of Plaintiff's Political Speech in a Primary Election Directly Implicates the Commonwealth's Sovereign Authority to Determine Who Shall Appear on the Commonwealth's General Election Ballot

The exclusion and suppression of political speech available to primary election voters directly implicates the Commonwealth's sovereign authority to determine who shall appear on the general election ballot through the obvious mechanism that political speech changes votes and the outcome of primary election contests. A political party seeking to suppress the political speech of others for the intended purpose of altering and distorting the results of a primary election contest has directly implicated itself into the exercise of the Commonwealth's sovereign authority to determine who shall appear on the Commonwealth's general election ballot and has, therefore, directly implicated itself as a state actor subject

to the provisions of the Civil Rights Act. A clear nexus exists between Defendants' suppression of Plaintiff's political speech directed at primary election voters and the Commonwealth's delegation of its sovereign authority to primary election voters to determine who shall appear on the Commonwealth's general election ballot. The exclusion and suppression of First Amendment speech from a primary election is no less a constitutional evil, and no less state action, than the exclusion of blacks from primary elections in violation of the Equal Protection Clause – both molest and alter the results of primary elections and directly implicate the Commonwealth's delegated sovereign authority.

Defendants' Letter plainly seeks to regulate, suppress and chill Plaintiff's unwanted political speech specifically directed to voters to whom the Commonwealth of Pennsylvania has delegated its sovereign authority to determine who shall appear on the Commonwealth's general election ballot. Defendants are attempting to regulate and suppress Plaintiff's political speech which may change votes, which in turn, may alter and directly implicate who shall appear on the general election ballot which is the specific delegation of sovereign authority that the Commonwealth has delegated to primary election voters.³ The Letter is a clear

³ Defendants are not merely attempting to regulate and suppress speech which they merely find generally distasteful or noxious, such as criticism of the party chairman's stewardship and/or administration of the party's central committee or his allocation of party funds or resources. Plaintiff agrees that an attempt to suppress such speech would have no bearing on the outcome of the results of a primary election and would not directly implicate the Commonwealth's delegation of its sovereign authority to determine

attempt to regulate political speech in a primary election – specifically speech intended by Plaintiff to influence actual votes cast by voters who, in turn, are exercising the Commonwealth’s sovereign authority to determine who shall appear on the general election ballot.

In fact, the Letter makes plain that Defendants are agitated precisely because Plaintiff’s political speech is directed at primary election voters who would otherwise had voted for Defendant RCLC’s endorsed slate of candidates. It is the potential that Plaintiff’s speech changed votes cast in a primary election that triggered Defendants’ desire to regulate and suppress Plaintiff’s political speech. The Letter, therefore, clearly implicates the Defendants as state actors subject to provisions of the Civil Rights Act.

II. Defendants’ Conduct Violates Plaintiff’s Rights Under the First Amendment of the United States Constitution

Political speech warrants the highest constitutional protections. *Federal Election Commission v. Massachusetts Citizens for Life, Inc.*, 479 U.S. 238 (1986).

“Freedom of speech plays a fundamental role in a democracy; as this Court has said, freedom of thought and speech ‘is the matrix, the indispensable condition, of nearly every other form of freedom’ *Palko v. Connecticut*, 302 U.S. 319, 327 (1937). Our pursuit of other

who shall appear on the Commonwealth’s general election ballot, and the suppression and regulation of such speech would not implicate state action under the Civil Rights Act.

In this case, however, Defendants specifically target primary election speech that is directed at voters concerning candidates on the primary election ballot and intended to change the votes cast by voters in a primary election contest, which directly implicates the Commonwealth’s delegation of its sovereign authority to primary election voters and is, therefore, state action under the Civil Rights Act.

governmental ends, however, may tempt us to accept in small increments a loss that would be unthinkable if inflicted all at once. For this reason, we must be as vigilant against the modest diminution of speech as we are against its sweeping restriction.

Id. at 264-65.

“The First Amendment is intended to assure a privilege that in itself must be so actual and certain that fear and doubt are absent from the individual’s mind, or the freedom is but an abstraction. If the speaker must hesitate before uttering his thoughts, if he must weigh and nicely balance every word so as to determine whether what he is about to say is permitted or forbidden, the guaranty tendered by the Constitution is little more than theoretical.

National Labor Relations Board v. Montgomery Ward & Co., Inc., 157 F.2d 486, 500 (8th Cir, 1946). The First Amendment’s hostility to content-based regulation extends not only to restrictions on particular viewpoints, but also to the prohibition of public discussion of entire topics. *See Arkansas Writers’ Project, Inc. v. Ragland*, 481 U.S. 221 (1987); *Carey v. Brown*, 447 U.S. 455 (1980).

Plaintiff is an elected Republican committeewoman representing the Hershey Road voting district in Mount Joy Township in Lancaster County, Pennsylvania. Complaint at ¶ 5. Defendant RCLC’s stated goal is to “have full control of the Republican Party of and in the County of Lancaster and its various election districts. Complaint at ¶ 9. Defendant David M. Dumeyer, as chairman of Defendant RCLC is “the chief executive officer of the Republican Party of Lancaster County and its designated spokesman at all levels of Party affairs.” Complaint at ¶ 14.

Owing to Defendants' own statements of authority, the restriction imposed on Plaintiff's political speech by Defendants' Letter imposes upon Plaintiff a level of uncertainty so as to effect an impairment of Plaintiff's free exercise of speech guaranteed to her under the First Amendment. Plaintiff and Plaintiff's political speech in primary elections have been publicly⁴ segregated by Defendants as warranting special attention. Defendants have intentionally imposed upon Plaintiff an impermissible uncertainty as to the rectitude of her political speech in a primary election and, as a result, the continued validity of her own status as an elected Republican committeewoman in Plaintiff's own mind and in the minds of others as a direct result of Defendants' effort to suppress Plaintiff's primary election speech.

Defendants have imposed a stigma on Plaintiff and Plaintiff's primary election speech with the intent that Plaintiff accept Defendants' obvious goal of suppressing Plaintiff's unwanted political speech as a condition of lifting the stigma placed upon Plaintiff and Plaintiff's speech by Defendants. As a result of Defendants' Letter, Plaintiff "must weigh and nicely balance every word so as to

⁴Defendants first publicly targeted Plaintiff's political speech for public scorn when Andrew Heath, an office worker employed by Defendant RCLC, proclaimed in a telephone conversation - which was heard by other committee members at Defendants' headquarters, that Millie Max was a liar, threatening 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. Complaint at ¶ 30.

determine whether what [she] is about to say is permitted or forbidden” by Defendants.

Plaintiff is entitled to exercise her rights under the First Amendment in a primary election free from any threats, uncertainty or stigma imposed upon her by state actors, such as Defendants. Defendants’ Letter, therefore, impermissibly impairs rights guaranteed to Plaintiff under the First Amendment.

III. Plaintiff’s Claims Do Not Implicate Defendants’ First Amendment Right of Association

A. Defendant RCLC’s Bylaws Do Not Permit Defendants’ to Disassociate Plaintiff from the Republican Party

This case does not implicate Defendants’ First Amendment right to association. Defendant RCLC’s own bylaws do not permit the party to disassociate itself from Plaintiff based on any primary election conduct – speech or otherwise. This entire case is the personal construct of Defendant Dave Dumeyer, and his own misplaced and inflated worship of the party’s internal “endorsement” process. No provision of the party bylaws requires any committee member to support only those candidates who have been endorsed by the party’s general membership.

The endorsement does allow the central party apparatus to expend effort and funds on behalf of and in support of any candidate securing the party’s endorsement. But that is it. The bylaws do not require an oath of fealty or sworn

support by all committee members for the party's endorsed slate of candidates. The bylaws do not forbid committee members from supporting unendorsed candidates, or openly opposing endorsed candidates. And the bylaws simply do not permit the party to expel Plaintiff or any other committee member from the party for their failure to support the party's endorsement.

In fact, Defendants stand squarely on the thin ice of hypocrisy on this issue. Defendants actively *opposed* one of the *party's elected nominees* for East Hempfield Township supervisor (a Township in Lancaster County) in the 2007 general election. This Court, in considering the veracity of Defendants' arguments ought to consider a fundamental question – which is more important “for party discipline” or unity of message: (1) supporting an endorsed slate of candidates in a primary election (as Defendants demand of Plaintiff); or (2) supporting the party's elected nominee in the general election - the candidate whom your own Republican voters chose as their nominee to face off against the Democratic nominee (as Defendants refused to do in 2007)? Defendants' position seems to be that the vote of the people in a primary election is less important to the party than the vote of the party on endorsements before the primary election. WOW.

Defendants' Letter exhorts at Plaintiff that her actions “can only confuse voters who expect a united message.” Can Defendants stand behind such rhetoric

in the face of their own willingness to ignore the decision of the voters in a primary election and oppose their own nominee in the general election?

In light of these additional facts, and with all due respect, this Court should carefully weigh the credibility of Defendants' rhetoric about "party discipline" and "clarity or unity of message" in their Memorandum of Law – in light of Defendants' conduct in the 2007 general election, such rhetoric seems fairly hollow. Defendants stitched together such high minded words that, at the time, seemed to justify in their own minds, and in the minds of their allies, their deplorable treatment of Plaintiff. Now, they mean little more than blah, blah, blah.

Defendants have taken no action to discipline or suppress the political activities of those committee members who opposed the party's nominee for East Hempfield Township supervisor in the 2007 general election. It seems clear the actions taken against Plaintiff are motivated by the fact that Plaintiff's open opposition to some of the judicial candidates endorsed by Defendant RCLC in the 2007 primary election simply pricked the petty collective egos of a tiny intra-party cabal controlled by Defendant Dumeyer and in support of his own personal political ambition to eventually succeed Katie True as the state representative for the 41st Legislative District.

As such, Defendant RCLC's First Amendment right of association is not implicated by this case, because Defendant RCLC's own bylaws do not permit Defendants to expel or disassociate from Plaintiff.

B. Defendants' Letter Does Not Expressly Disassociate Plaintiff From Republican Party

Defendants' Letter suppresses Plaintiff's primary election speech through the mechanics of the force of Defendants' position of authority; imposing uncertainty upon Plaintiff concerning her right to both keep her elected position as a Republican committeewoman and her rights of free speech in a primary election; and, through Defendants' effort to segregate and impose a stigma upon Plaintiff and Plaintiff's primary speech unless and until Plaintiff agrees to forego rights guaranteed to her under the First Amendment of the federal constitution. The Letter, however, does not expressly remove or threaten to remove Plaintiff from her elected position as a Republican committeewoman for the Hershey Road voting district in Mount Joy Township in Lancaster County Pennsylvania. Any rights Defendants possess to associate or not to associate with any individual under the First Amendment is, therefore, not implicated in this case.

C. Defendants' First Amendment Associational Rights Are Not Absolute

As made clear by the decisions in *Smith* and *Terry* the associational rights of a political party are limited. No case has been cited by Defendants, nor can any

case be cited by Defendants that their First Amendment rights of association trump the fundamental constitutional rights of others in the context of and during a primary election.

The RCLC's First Amendment right of association is limited to their right to exclude non-Republicans from the party. Republican or not a Republican; supporting a Republican or not supporting a Republican (as applied to elected and appointed committee members) – these are the only questions implicated by the RCLC's First Amendment right of association.⁵ Plaintiff passes both tests – Plaintiff is a Republican and has always supported Republican candidates in every general election.

Defendants, however, seek to somehow expand their First Amendment right of association to impose upon elected committee members a loyalty to the party's endorsement process that Defendant RCLC's own bylaws do not impose upon Plaintiff or any other Republican committee member. No case decided by any court in the history of the Republic has imbued such an expansive reading of the First Amendment's Association Clause as applied to political parties. Accordingly, Defendants' First Amendment right of association is not implicated in the case at bar.

⁵ Plaintiff agrees and supports the associational rights of a political party to exclude non-Republicans from voting or having any participation in the affairs of the Republican party at the national, state and local level. Plaintiff's case, however, does not challenge nor implicate any of Defendant RCLC's valid and recognized associational rights under the First Amendment.

IV. Plaintiff's Primary Speech Does Not Impair Defendants' Primary Speech

A significant portion of “Defendants’ Memorandum of Law in Support of their Motion to Dismiss Pursuant to Fed.R.Civ.P 12(b)(6)” attempts to justify Defendants’ conduct, or raise, by implication, an affirmative defense, by somehow alleging that Plaintiff’s speech impairs Defendants’ own speech under the First Amendment. Defendants’ argument is bizarre.

A. Plaintiff is not a State Actor and, Therefore, Cannot Impair Defendants’ First Amendment Rights

The First Amendment is a restraint on Government, not on private persons. *Public Utilities Commission v. Pollak*, 343 U.S. 451, 461 (1952). No case can be cited that implicates Plaintiff’s speech as state action. Plaintiff is an individual. Plaintiff’s political speech is her own speech. Defendants can cite no fact that Plaintiff did anything to impair the speech of any other individual or organization – including Defendant RCLC’s political speech during the 2007 primary election. Even if, *assuming arguendo*, Plaintiff did take some affirmative act (which Plaintiff did not) to impair Defendants’ own First Amendment speech during the 2007 primary election, any such action would have been purely private lacking any imprint of state action necessary to support a counter-argument that Plaintiff impaired Defendants’ First Amendment rights. Plaintiff simply lacks the power to suppress Defendants’ speech in the same manner that Defendants seek to suppress Plaintiff’s speech. Plaintiff’s open disagreement with Defendant RCLC’s

endorsed slate of candidates, engaging in discourse with fellow voters to persuade them not to support the Endorsed Candidates does not suppress Defendants' First Amendment rights. It is, flatly stated, simply speech, wholly consistent with the Commonwealth's intended scheme of free and open primary elections when it delegated its sovereign authority to determine who shall appear on the general election ballot to the voters.

The fact that Defendants' do not even "get that" demonstrates the challenged nature of their arguments.

B. Defendants Are Not Entitled to a Monopoly in the Market Place of Ideas

Defendants' argument seems to rest on a specious theory that Defendants are entitled to a form of monopoly in the market place of ideas – a market place of ideas free from dissenting speech from any elected committee member. No case can be cited for that proposition.

Neither can Defendants argue that because Plaintiff is a member of the committee that her speech is subordinate to Defendants' speech in a primary election campaign. As noted in Section III(A) above, Plaintiff is not required under Defendant RCLC's bylaws to support Defendants' endorsed slate of candidates in a primary election. It therefore cannot be argued that Plaintiff must subordinate her speech to that of Defendant RCLC.

The First Amendment does not prohibit communication of ideas, but rather guarantees that right. Political speech which interferes or has the potential to interfere with the interests of others is protected under the First Amendment. No single point-of-view or agenda is entitled to preferential treatment under the First Amendment.

“Every expression of opinion on matters that are important has the potentiality of inducing action in the interests of one rather than another group in society. But the group in power at any moment may not impose penal sanctions on peaceful and truthful discussion of matters of public interest merely on the showing that others may thereby be persuaded to take action inconsistent with its interests.”

National Labor Relations Bd. v. Montgomery Ward & Co., 157 F.2d 486, 499 (8th Cir. 1946).

C. Plaintiff is Not an Organ of Defendants

To be blunt, Plaintiff’s lungs are not the property of Defendants. Defendants are not entitled, unless Plaintiff so desires, to benefit from Plaintiff’s good reputation and respect in the community. Plaintiff’s reservoir of goodwill built up within and without her voting district with the voters of Mount Joy Township and environs, is not the property of Defendants. Plaintiff is free to exercise and enjoy the benefits derived from the respect and trust others have in Plaintiff for any means she so desires, with or without Defendants’ permission.

Plaintiff’s status as an elected Republican committeewoman from her voting district does not subordinate her First Amendment rights to Defendants’

own First Amendment rights. Plaintiff is a representative from the Republican voters of her election district to the county Republican party; Plaintiff's status as a Republican committeewoman does not render her a propaganda robot from the party to the voters.

Both Plaintiff and Defendants are simply free to compete in the market place of ideas. And this Court must ensure that Plaintiff is free to exercise her rights to political speech within that unrestricted market place of ideas, free from the interference of state action in the form of Defendants' attempt to suppress Plaintiff's political speech in a primary election.

CONCLUSION

For all the foregoing stated reasons, Plaintiff's Complaint states cognizable federal constitutional claims against Defendants as authorized by the Civil Rights Act. Accordingly, "Defendants' Motion to Dismiss Pursuant to Fed.R.Civ.P. 12(b)(6)" must be denied.

Respectfully Submitted,

Dated: November 26, 2007

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CERTIFICATE OF SERVICE

I, Paul A. Rossi, counsel for Plaintiff, hereby certify that on November 26, 2007, I caused to be electronically filed the foregoing “Plaintiff’s Brief in Opposition to Defendants’ Motion to Dismiss Pursuant to Fed.R.Civ.P. 12(b)(6)” I certify that I have also caused a copy of the foregoing to be served upon the following by United States Postal Service first class mail:

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