

HARTMAN UNDERHILL & BRUBAKER LLP

Kevin M. French, Esquire

Attorney I.D. #47589

Robert M. Frankhouser, Jr., Esquire

Attorney I.D. #29998

221 East Chestnut Street

Lancaster, PA 17602

(717) 299-7254

Attorneys for Defendants, Republican Committee of Lancaster County, David M. Dumeyer, in his official capacity as Chairman of the Republican Committee of Lancaster County; Andrew Heath; and Lancaster County Republican Headquarters, a non-profit corporation

MILLIE MAX,

Plaintiff

v.

REPUBLICAN COMMITTEE OF LANCASTER COUNTY, DAVID M. DUMEYER, in his official capacity as Chairman of the Republican Committee of Lancaster County, ANDREW HEATH and LANCASTER COUNTY REPUBLICAN HEADQUARTERS, a nonprofit corporation, Defendants

: IN THE UNITED STATES DISTRICT COURT : EASTERN DISTRICT OF PENNSYLVANIA

: No. 2:07-cv-04488

: Jury Trial Demanded

: Assigned To: : Judge James T. Giles

DEFENDANTS' REPLY BRIEF IN SUPPORT OF DEFENDANTS' MOTION TO DISMISS PLAINTIFF'S AMENDED COMPLAINT

I. ARGUMENT

Plaintiff, Millie Max ("Max"), commenced this action on October 25, 2007, by filing a Complaint. Thereafter, original Defendants, the Republican Committee of Lancaster County ("RCLC") and David M. Dumeyer ("Dumeyer"), in his official capacity as Chairman of the RCLC, filed a Motion to Dismiss Pursuant to Federal Rule of Civil Procedure 12(b)(6) and Memorandum of Law in Support on November 9, 2007. After briefing by the parties, on January 25, 2008, the Court heard oral argument on Defendants' Motion to Dismiss. Before the Court issued a ruling on the Motion to Dismiss, ten days later, on February 5, 2008, Max filed an Amended Complaint,

presumably in response to questions posed to Max's counsel during the oral argument. In her Amended Complaint, Max added two new party-defendants, Andrew Heath ("Heath"), the Executive Director of the RCLC, and the Lancaster County Republican Headquarters ("Committee Headquarters"), a non-profit corporation that owns the real estate used by the RCLC for its headquarters.

On February 25, 2008, Defendants filed a Motion to Dismiss Plaintiff's Amended Complaint Pursuant to Fed.R.Civ.P. 12(b)(6) and Memorandum of Law in Support. On March 13, 2008, Plaintiff filed Plaintiff's Brief [sic] in Opposition to Defendants' Motion to Dismiss.

Plaintiff's Brief is almost without exception¹ a verbatim restatement of the Brief filed by Plaintiff's counsel on November 26, 2007, in opposition to the first Motion to Dismiss filed on behalf of Dumeyer and the RCLC. Notably, the Brief's caption does not reflect the addition of Heath and Committee Headquarters as parties to the action *by Plaintiff* as reflected in Plaintiff's Amended Complaint. In addition, the Certificate of Service attached to Plaintiff's Brief does not reflect the actual date of service; rather, it reflects the date of service of Plaintiff's first Brief in opposition to the Motion to Dismiss filed on behalf of Dumeyer and the RCLC. Moreover, in her Brief, Plaintiff fails to even note that she had filed an Amended Complaint.

¹Although a few minor changes were made to the Brief, Plaintiff did not make any textual changes to the Brief.

In the Memorandum of Law in Support of Defendants' Motion to Dismiss Plaintiff's Amended Complaint, Defendants raised new arguments which have not been addressed by Plaintiff in her Brief. Specifically, Defendants discussed the United States Supreme Court's recent decision, *New York State Bd. of Elections v. Torres*, 128 S. Ct. 791 (January 16, 2008), which provides further support for Defendants' argument that Plaintiff does not hold a First Amendment speech right as against Defendants, who are not state actors. Following up on two points raised by the Court during oral argument, Defendants also addressed whether there exists a case or controversy required under Article III of the Constitution in the absence of any adverse action taken against Max, and whether Plaintiff's request for injunctive relief would constitute an unconstitutional prior restraint on Defendants' rights under the First Amendment.

Instead of responding to the arguments in Defendants' Memorandum of Law, Plaintiff used Plaintiff's Response in Opposition to Defendants' Motion for Leave to File a Reply Brief to make substantive arguments that should have been included in Plaintiff's Brief in Opposition. Despite Plaintiff's misuse of her Response, Plaintiff still failed to address these additional points or the significance of the Supreme Court's *Torres* decision.

II. CONCLUSION

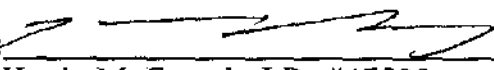
For all of the foregoing reasons and the reasons set forth in Defendants' Memorandum of Law, Defendants, Republican Committee of Lancaster County, David

M. Dumeyer, in his official capacity as Chairman of the Republican Committee of Lancaster County, Andrew Heath, and the Lancaster County Republican Headquarters, respectfully request that the Plaintiff's Amended Complaint be dismissed with prejudice, plus such other relief as is permitted under the facts and the law.

Respectfully submitted,

HARTMAN UNDERHILL & BRUBAKER LLP

Date: 3/24/08

By: 
Kevin M. French, I.D. #47589
Robert M. Frankhouser, Jr., I.D. #29998
Attorneys for Defendants

CERTIFICATE OF SERVICE

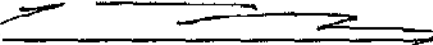
I HEREBY CERTIFY that I am this day serving the foregoing document upon the persons and in the manner indicated below.

Service by first class mail and addressed as follows:

Paul A. Rossi, Esquire
316 Hill Street
Mountville, PA 17554

HARTMAN UNDERHILL & BRUBAKER LLP

Date: 3/28/08

By: 
Kevin M. French, I.D. #47589
Robert M. Frankhouser, Jr., I.D. #29998
Attorneys for Defendants

221 East Chestnut Street
Lancaster, PA 17602
(717) 299-7254