In the United States District Court
for the Middle District of Pennsylvania

FRIENDS AND RESIDENTS OF SAINT THOMAS TOWNSHIP, INC. (FROST), a nonprofit corporation incorporated under the nonprofit laws of the Commonwealth of Pennsylvania; MICHAEL A. URBAN, WINFRED L. WALLS, and GLORIA S. SABERIN, as Representatives of the Class Composed of All Residents of Saint Thomas Township, Franklin County, Pennsylvania;	:	**No. 1:04-CV-0627**
	:	***Hon. Yvette Kane, J.***
v.	:	
ST. THOMAS DEVELOPMENT, INC., *et. al.*	:	

PLAINTIFFS' BRIEF IN OPPOSITION TO THE CORPORATE DEFENDANTS' MOTION FOR SANCTIONS

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I. Counter-Procedural History of the Case

This case was filed on behalf of three individual residents of St. Thomas Township, Franklin County, Pennsylvania, a nonprofit organization, and a Class consisting of all residents of the Township, to remedy violations of their constitutional rights committed by the corporate Defendants. The Plaintiffs also filed suit against the Commonwealth of Pennsylvania, Attorney General Jerry Pappert and Secretary of State Pedro Cortes for their role in enabling and sanctioning the actions of the corporate Defendants.[1]

Specifically, the lawsuit alleges that the corporate Defendants wielded the St. Thomas Development Corporation's "rights" to nullify the election of a municipal Supervisor who the corporate Defendants claim is "biased" towards their activities in St. Thomas Township. The lawsuit contends that the Commonwealth Defendants enabled and sanctioned the corporate Defendants' actions by illegitimately conferring the rights of persons onto the Corporation via 15 Pa.C.S. §1501, and by refusing to take action to enjoin the ongoing violations.

This action was filed on March 24, 2004. On April 12, 2004, the Plaintiffs filed an *Amended Complaint*, primarily to remove one of the claims in the Complaint that was premised solely on racial discrimination.[2]

[1] Neither the Defendant Commonwealth, nor Defendants Pappert and Cortes, have joined the corporate Defendants in their Motion seeking Rule 11 sanctions from the Plaintiffs' counsel.

[2] Although there are people of color who reside in St. Thomas Township, the Plaintiffs decided not to pursue a 42 U.S.C. §1981 action, primarily because the

On April 22, 2004, the corporate Defendants filed a *Motion to Dismiss the Amended Complaint.*

On May 11, 2004, the Plaintiffs filed their *Brief in Opposition to the Corporate Defendants' Motion to Dismiss*, accompanied by six Affidavits delineating injuries suffered by them as a result of the corporate Defendants' actions.

On May 12, 2004, the Commonwealth Defendants filed a *Motion to Dismiss the Amended Complaint*, primarily arguing that the suit was barred by the Eleventh Amendment.

On May 18, the corporate Defendants filed a *Motion for Rule 11 Sanctions* with this Court, seeking sanctions from the Plaintiffs' counsel for the filing of the *Amended Complaint.*

On June 1, the Plaintiffs filed a *Brief in Opposition* to the Commonwealth Defendants' *Motion to Dismiss*, contending that the Commonwealth is estopped from asserting immunity to shield its denial of the Plaintiffs' rights.

"class" of individuals affected by the actions of the corporate Defendants was much larger than the minority populations residing in the Township.

II. Counter-Statement of Questions Involved

1. Is the Filing of a Complaint, Supported by Plaintiffs' Cognizable Constitutional Injuries Suffered as a Result of the Actions of Corporate Defendants, Sanctionable Under Fed.R.Civ.Pro. 11(b)?

Proposed Answer: No.

2. Is the Plaintiffs' Challenge to the Corporation's Constitutional "Rights" Sanctionable Under Fed.R.Civ.Pro. 11(b) When Corporations are Not Mentioned in the Constitution, and Corporate Constitutional "Rights" Have Been Vigorously Challenged by Peoples' Struggles, Lawyers, and Jurists During the Past Century?

Proposed Answer: No.

3. Can Plaintiffs' Counsel be Sanctioned for Asserting that the Corporate Defendants Acted "Under Color of State Law" in Denying the Rights of the Plaintiffs, When the Corporate Defendants Used Those State-Conferred Powers to Commit Those Violations?

Proposed Answer: No.

III. Standard of Review

Rule 11 sanctions are prescribed "only in the 'exceptional circumstance' where a claim or motion is patently unmeritous or frivolous. . . [and] a claim has absolutely no chance of success." *Doering v. Union County Board of Chosen Freeholders*, 857 F.2d 191, 194 (3rd Cir. 1988); *See Bensalem Tp. v. International Surplus Lines Ins. Co.*, 38 F.3d 1303, 1315 (3rd Cir. 1994)(declaring that Rule 11 sanctions may be awarded only "in exceptional circumstances"); *Ford Motor Co. v. Summit Motor Products, Inc.*, 930 F.2d 277, 289 (3rd Cir. 1991). "Reasonable

efforts to change existing law" are not sanctionable. *Glaser v. Cincinnati Milacron, Inc.*, 808 F.2d 285 (3rd Cir. 1986).

IV. The Plaintiffs – and Plaintiffs' Counsel – Have Stated a Viable Claim That the Plaintiffs Suffered Invasions of Fundamental Constitutional Rights as a Direct Result of the Actions of the Corporate Defendants.

The corporate Defendants claim that Plaintiffs' counsel should be sanctioned because he filed a *Complaint* on behalf of Plaintiffs who lacked standing to bring their claims to this Court. *Corporate Defendants' Brief* at 9-10. They claim that the Plaintiffs have not suffered cognizable injuries, cannot trace those injuries to the corporate Defendants, and that it is beyond this Court's ability to redress the injuries suffered by them. *Id*.

Running throughout their claims is the corporate Defendants' underlying assertion that the Plaintiffs are barred from litigating a constitutional claim based on a "single letter." *Id*. at 10.

In characterizing the corporate Defendants' demands and threats to sue the Township as a mere "letter," the corporate Defendants seek to disguise and minimize their actions. The corporate Defendants' demands were transmitted to the Township following the swearing-in of a new Supervisor opposed to the proposed corporate siting of a quarry, asphalt plant, and concrete plant. Instead of respecting the democratic process that elected the Supervisor, the corporate Defendants used their "single letter" to threaten a lawsuit against the Board of Supervisors unless the

Board forced the newly elected Supervisor to recuse himself from discussions and decisions involving the activities of the corporate Defendants in the Township. As the basis for their demands, the corporate Defendants asserted the Corporation's State-conferred constitutional "rights."[3] The mere "single letter" thus became a threat enabled by, and backed by, the force of law.

The *Amended Complaint* contains a precise and detailed summary of the actions of the corporate Defendants. It specifically describes how those actions interfered with the Plaintiffs' rights to self-government, identified as an "inalienable and fundamental right" possessed by the Plaintiffs. *Amended Complaint* at ¶¶38-43, 53-54.

It is well-settled law that a threat to sue backed by the State confers standing on the recipients of that threat. *See Dombrowski v. Pfister*, 380 U.S. 479 (1965) (*quoting Ex parte Young*, 209 U.S. 123 (1908)). Indeed, the corporate Defendants' "letter" was a threat backed by the full power of the State and the wealth of the Corporation. As such, it was not simply a communication between two private individuals, but a threat directed by corporate managers - empowered by a panoply of rights conferred by the State - against the republican government of the Township.

[3] Even in their *Motion for Sanctions*, the corporate Defendants continue to contend that the Corporation was merely "exercising *its* constitutional rights." *Id.* at 17 (emphasis added).

The natural, foreseeable result of such a threat was the vindication of those corporate powers over the rights of the people of St. Thomas Township. The *Amended Complaint* describes the injuries suffered by the Plaintiffs caused by the actions of the corporate Defendants. The Plaintiffs declare that they have been "injured by the actions of the Defendants which have interfered with the fundamental and inalienable state and federal constitutional rights of the Plaintiffs and members of the Class." *Amended Complaint* at ¶¶5-6. Further in the *Amended Complaint*, the Plaintiffs assert that the Defendants "violated the rights of residents to self-government, free speech, due process, and equal protection." *Id*. at ¶25. Count One details how the Plaintiffs' rights to self-government have been injured by the corporate Defendants' assertion of "state-conferred corporate powers". *Id*. at ¶¶51-65. Count Two details how the Plaintiffs' First Amendment rights were denied by the corporate Defendants' efforts to "deter, intimidate, hinder, and prevent" them from exercising their free speech rights. *Id*. at ¶¶69-79. Count Three delineates how the corporate Defendants' construction of a quarry – through the use of state-conferred powers – would violate the constitutional rights of the Plaintiff and the Class to due process and equal protection guaranteed under the Pennsylvania and U.S. Constitutions. *Id*. at ¶¶86-92.

Affidavits filed by the Plaintiffs – prior to the filing by the corporate

Defendants' of their *Motion for Sanctions* with this Court[4] – reveal additional details about the Plaintiffs' constitutional injuries. An Affidavit provided by newly elected Supervisor Frank Stearn reveals how the foreseeable consequence of the assertion of state-backed corporate "rights" has come to pass. Supervisor Stearn shows that the threat of litigation by the corporate Defendants has resulted in an emasculation of Stearn's ability to participate in governing the Township. *See Affidavit of Stearn* at 2-4. (Attachment One to *Plaintiffs' Brief in Opposition to the Corporate Defendants' Motion to Dismiss*).

The Plaintiffs' Affidavits reveal a "chilling" of the exercise of their constitutional rights as a direct result of threats advanced by the corporate Defendants. Plaintiff Urban has declared that "I feel my constitutional right to vote and be represented does not count" and that "the demand letter has made me feel incapable of having any influence on the future of my community." *See Affidavit of Michael A. Urban* at 3 (*Id*. at Attachment Two). Plaintiff Walls asserts that "given those state-enforced powers, the demand letter of February 18, 2004 injured me. Intimidated, I now feel that community activism is pointless. . . if corporate

[4] The corporate Defendants chose to file their original *Motion for Sanctions* even after the Plaintiffs filed their *Brief in Opposition to the Corporate Defendants' Motion to Dismiss*, with accompanying affidavits from the Plaintiffs. Indeed, the *Motion for Sanctions* filed with this Court fails to acknowledge or incorporate any of those materials and therefore takes the form of a vehicle to threaten and intimidate the Plaintiffs, rather than a good faith assertion that sanctions are somehow warranted by counsel's filing of the *Amended Complaint*.

constitutional powers can be wielded to nullify that work." Walls stated that his "inalienable right to be part of the governance in my community" is violated when "a handful of corporate managers" can trump "decisions and laws adopted by municipal governments." *See Affidavit of Winfred L. Walls* at 4 (*Id*. at Attachment Three). Walls further declared that the actions of the corporate Defendants "has had a chilling effect on my willingness to exercise my freedom of expression" and a "chilling effect on my willingness. . . to participate in governance, to vote, to speak, and assemble with others." *Id*.

Plaintiff Saberin echoed the sentiments of the other Plaintiffs, declaring that

> [m]y right to vote is very precious to me. . . My ancestors fought in the American Revolution, the Civil War, and the first and second World Wars in order to preserve my right to be free under a republican government. . . I now feel threatened and intimidated [and that] work within the electoral arena to elect someone and vote for candidates – to represent my interests – is pointless, if corporate constitutional powers can be wielded to nullify that work. *See Affidavit of Gloria Saberin* at 4-5 (*Id*. at Attachment Four).

Plaintiff Saberin declared further that "the demand letter of February 18, 2004 has had a terrible effect on my willingness to exercise my freedom of expression. . . [because] it takes away all hope and incentive for citizens who wish to participate in government by exercising our free choices to elect representatives." *Id*. at 5.

Other members of the Plaintiff organization have also delineated their constitutional injuries. Fran Calverase declared that the actions of the corporate Defendants produced a "chilling effect on my willingness to exercise my

constitutional right to participate in governance, to vote, to speak, and to assemble with others." *See Affidavit of Francis J. Calverase* at 5. (*Id*. at Attachment Five). Judith A. Calverase explained that she is the "daughter of an officer in the United States Army who fought in WWII, serving in the Pacific and again in the Korean Conflict" and that, accordingly, her "right to vote and have that vote count is the most precious freedom" she has. *See Affidavit of Judith A. Calverase* at 3 (*Id*. at Attachment Five). She asserted that the corporate Defendants' demand letter made her "scared of the consequences" of working to influence the destiny of the community, and that the actions of the corporate Defendants has had a "chilling effect" on the exercise of her constitutional rights and freedoms. *Id*. at 5.

Clearly, the Plaintiffs – and the Class – have been injured by the actions of the corporate Defendants.[5] This Court certainly has the power to redress this ongoing violation of the Plaintiffs' constitutional rights, by taking the logical actions suggested by the Plaintiffs – and Plaintiffs' Counsel – in the *Amended Complaint*, namely,

> (d) That this Court permanently enjoin the corporate Defendants from asserting illegitimately claimed, State-conferred corporate constitutional powers and "rights" against the Saint Thomas Township Board of Supervisors, and the residents of the Township; [and]

[5] The corporate Defendants continue to assert that the injuries suffered by the Plaintiffs are somehow not "traceable" to their actions. Without the assertion of corporate constitutional "rights" against the Township – backed by law - the Plaintiffs' exercise of their rights would not have been "chilled" and their elected representative would not have been excluded from governing.

> (e) That this Court order Defendants Pappert and Cortes to take appropriate injunctive action to revoke or amend the corporate charter of the Defendant Corporation, to enjoin the Corporation from continuing to deny the rights of persons by wielding State-conferred powers and "rights."

See Amended Complaint at 18 ("Demand for Judgment of Relief").

This Court possesses the authority to eliminate the "chilling" effect imposed by the corporate Defendants, by barring them from continuing to assert the Corporation's claimed "rights" against the Board of Supervisors and the community. Such a ruling would also preclude the corporate Defendants from wielding the Constitution in an attempt to sue the Township for "discrimination" in response to the active involvement of Supervisor Stearn doing his duty by representing the people of the Township.[6]

The corporate Defendants' contention – that counsel for the Plaintiffs violated Rule 11 because the Plaintiffs have not suffered cognizable injuries, and that this Court lacks the authority to redress those injuries – is simply without basis in fact, law, or logic.[7]

[6] That threat, of course, was made in the February 18, 2004 demands of the corporate Defendants. Predictably, the corporate Defendants sent the letter to preserve their ability to sue the Township later for "discrimination" under 42 U.S.C. §1983, with the Board of Supervisors as the Defendant "state actor." The Corporation would then assert its constitutional "rights" to seek damages in the form of lost profits and attorneys' fees against the Township.

[7] The corporate Defendants assert two District Court cases in support of their argument that a judicial finding that the lack of standing must result in the award of sanctions. Neither of the cited cases stand for that proposition. The most glaring misuse of those cases is the Defendants' assertion of *Colorado Chiropractic Council v. Porter Memorial Hospital*, 650 F. Supp. 231 (D.Col. 1986), in which an attorney filed a lawsuit to reverse the hospital's denial of staff privileges to a group of physicians, *with the knowledge that the doctors had never applied to the*

V. Plaintiffs' – and Plaintiffs' Counsel's – Assertion that Corporations Do Not Legitimately Possess the Constitutional Rights of Persons is Not Sanctionable Because it Constitutes a Nonfrivolous Argument for the Reversal of Existing Law.

The Plaintiffs' assertion that corporations do not legitimately possess the constitutional rights of persons is certainly not a frivolous argument.[8] As noted in the Plaintiffs' *Brief in Opposition to the Corporate Defendants' Motion to Dismiss*:

> The Founders, of course, did not write corporations into the Constitution. Indeed, it took over one hundred years for corporations to acquire the "sword and the shield" of Bill of Rights' protections. *See Bell v. Maryland*, 378 U.S. 226, 263 (1964) (Douglas, J., concurring). That acquisition was, and continues to be, highly controversial. Even a cursory LEXIS search returns over one thousand (1,000) law review articles published over the past two decades that address the assertion that corporations are "persons". Many of those articles describe the rights-denying effects caused by the state's illegitimate bestowal of those rights. *See, e.g.*, Carl J. Mayer, *Personalizing the Impersonal: Corporations and the Bill of Rights*, 41 HASTINGS L.J. 577 (1990) (delineating the history of the conferral of various constitutional protections on corporations); Natasha N. Aljalian, *Note: Fourteenth Amendment Personhood, Fact or Fiction?*, 73 ST. JOHNS L.REV. 495 (1999) (stating that "the intent to empower or personify the corporation cannot be found anywhere in the original adoption of the Fourteenth Amendment. Corporations, notwithstanding that reality, have long

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hospital for those privileges in the first place. *Id.* at 235. Obviously, the struggle by the Defendants to find caselaw to support their proposition is clear evidence that this *Motion for Sanctions* simply lacks merit.

[8] Prior to filing the *Complaint*, Plaintiffs' Counsel consulted three practitioners working in the field of constitutional law about the issues raised by this case. All three agreed that "while some of the issues may be of first impression for the court, all issues and claims raised are grounded in facts, supported by law, or a good faith extension of existing law, and are not being submitted in bad faith." *March 22, 2004 Letter from Lewis Pitts, Esq.* at 1 (Attachment Three to this *Brief*). *See February 20, 2004 Letter from Daniel E. Brannen, Esq.* at 2 (Attachment One to this *Brief*); *March 9, 2004 Letter from Blair Bobier, Esq.* at 1 (Attachment Two to this *Brief*).

used the Fourteenth Amendment as a weapon. . ."); *Note: What We Talk About When We Talk About Persons: The Language of a Legal Fiction*, 114 HARV. L.REV. 1745 (2001) (stating that the "Court's corporate personhood doctrine has been described as 'schizophrenic'"); *See also* Howard J. Graham, *The 'Conspiracy Theory' of the Fourteenth Amendment*, 47 YALE L.J. 371 (1938).

Dissenting opinions authored by Supreme Court Justices have challenged the judicial conferral of constitutional rights upon corporations. *See Connecticut General Life Insurance Co. v. Johnson*, 303 U.S. 77, 85-90 (1938) (Black, J., dissenting) (declaring that "[n]either the history nor the language of the Fourteenth Amendment justifies the belief that corporations are included within its protection"); *Wheeling Steel Corp. v. Glander*, 337 U.S. 562, 576-581 (1949) (Douglas, J., and Black, J., dissenting) (declaring that "I can only conclude that the *Santa Clara* case was wrong and should be overruled"); *See also, Hale v. Henkel*, 201 U.S. 43, 78 (1906) (Harlan, J., concurring) (declaring that "in my opinion, a corporation – an artificial being, invisible, intangible, and existing only in contemplation of law – cannot claim the immunity given by the 4th Amendment; for it is not a part of the 'people' within the meaning of that Amendment. Nor is it embraced by the word 'persons' in the Amendment"); *Bell v. Maryland*, 378 U.S. 226 (1964) (Douglas, J., dissenting) (declaring that "[t]he revolutionary change effected by affirmance in these sit-in cases would be much more damaging to an open and free society than what the Court did when it gave the corporation the sword and shield of the Due Process and Equal Protection Clauses of the Fourteenth Amendment"); *First National Bank of Boston v. Bellotti*, 435 U.S. 765, 822 (1978) (Rehnquist, J., dissenting) (declaring that "[t]his Court decided at an early date, with neither argument nor discussion, that a business corporation is a 'person' entitled to the protection of the Equal Protection Clause of the Fourteenth Amendment").

Id. at 17-21.

Clearly, the Plaintiffs' – and Plaintiffs' Counsel's – assertion that the Commonwealth acted beyond its legislative authority in conferring the constitutional "rights" of persons upon corporations, is anchored in old and ongoing legal discussions, and in old and ongoing struggles by people seeking to defend their right to self-government. As such, the argument clearly surpasses any standard

applied under Fed.R.Civ.Pro. 11, and the corporate Defendants' *Motion for Sanctions* must be denied.

VI. Plaintiffs' – and Plaintiffs' Counsel's – Assertion that the Corporate Defendants Acted Under Color of State Law in Denying the Rights of the Plaintiffs Establishes a Viable Claim Under Both 42 U.S.C. §1983 and 42 U.S.C. §1985, and is Therefore Not Sanctionable.

The corporate Defendants assert that Plaintiffs' Counsel must be sanctioned because "corporations are not state actors" and therefore, they cannot be enjoined under 42 U.S.C. §1983 from violating the constitutional rights of the Plaintiffs. *Corporate Defendants' Brief* at 13-14. The corporate Defendants are simply mistaken, and both the Plaintiffs and their Counsel have asserted a viable claim that the corporate Defendants acted "under color of state law" and thus, can be found liable under 42 U.S.C. §1983 and 42 U.S.C. §1985.

Contrary to the corporate Defendants' assertions, the Plaintiffs – and Plaintiffs' Counsel – do not contend that *all* corporations *always* act "under color of state law" simply because of incorporation by the State. What Plaintiffs do contend is that a corporation chartered by the State and empowered with the constitutional "rights" of natural persons, which *then wields those rights to deny the rights of natural persons*, does so "under color of state law." *See Amended Complaint* at ¶¶59-62,76-78,87-91.

Even *without* the proactive wielding of the constitutional rights of persons to deny the rights of people, corporations and other ostensibly private actors have been

deemed by the Supreme Court to be state actors under the law. *See Burton v. Wilmington Parking Authority*, 365 U.S. 715 (1961); *See Plaintiffs' Brief in Opposition to the Corporate Defendants' Motion to Dismiss* at 10-14.

The corporate Defendants also claim that the Plaintiffs – and Plaintiffs' Counsel – have alleged a violation of 42 U.S.C. §1985 without a viable basis for doing so. *Corporate Defendants' Brief* at 14. The corporate Defendants are profoundly mistaken and have filed their *Motion for Sanctions* while ignoring the Plaintiffs' *Brief in Opposition* to their *Motion to Dismiss*, which clearly identifies both a legal[9] and factual basis for the Plaintiffs' claim that the corporate Defendants conspired to violate the rights of the residents of the Township. *Id*. at 14-16.

The Plaintiffs – and Plaintiffs' Counsel – have clearly asserted that the corporate Defendants acted "under color of state law" in denying the constitutional rights of the Plaintiffs. They have also alleged that the corporate Defendants conspired amongst themselves – with the express intention of denying the rights of

[9] The Plaintiffs' *Brief* clearly identifies a line of cases upholding §1985(3) claims which are based on "classes" of individuals asserting political and other rights. Plaintiffs' *Brief in Opposition to the Corporate Defendants' Motion to Dismiss* at 15, fn. 8, and 17, fn. 9. In addition, the Plaintiffs' *Brief* describes caselaw of this Circuit - and other Circuits - which have held that individuals in their corporate capacity can "conspire" for the purposes of §1985. *Id*. at 14-15. The corporate Defendants rest their entire argument here on one sentence of dicta in the District Court for the Eastern District of Pennsylvania's ruling in *Rose v. The Morning Call, Inc.*, 1997 U.S. Dist. LEXIS 3912. As such, the Defendants' argument cannot possibly serve as the foundation for the award of Rule 11 sanctions.

the residents of St. Thomas Township – to force the siting of their projects within the County. *Amended Complaint* at ¶¶65,82,83.

Clearly, the corporate Defendants have utterly failed to show how the actions of the Plaintiffs' Counsel – by signing and filing the Complaint – were improper, and not supported by nonfrivolous arguments.[10] Accordingly, the corporate Defendants' *Motion for Sanctions* must be dismissed.

VII. The Threshold for the Assessment of Rule 11 Sanctions in Cases Dealing With Complex Constitutional Issues and Fundamental Political Rights is High Because the Law Must Constantly Evolve to Meet New Threats to Those Rights.

In a case involving complex matters of constitutional interpretation and history, the bar for determining whether an attorney should be sanctioned under Rule 11 is extraordinarily high. This is because application of the Constitution to specific circumstances, from speculations at the Philadelphia Constitutional Convention, to the debates in state ratifying conventions, village squares, and

[10] As part of the "reasonable inquiry" required under Rule 11, Plaintiffs' Counsel obtained the opinions of several practitioners on the viability of the legal argument that the corporate Defendants acted "under color of state law" for the purposes of this suit. Daniel Brannen, Esq. declared that he believed that such an argument was a "good faith argument that as creations of the state, corporations should not be exercising constitutional rights against the people of our nation." *February 20, 2004 Letter from Daniel E. Brannen, Esq.* at 2 (Attachment One to this *Brief*). Blair Bobier, Esq. declared that he believed that the "premise" of the Complaint – that "a corporation's actions are state actions – is a sound and a reasonable interpretation and extension of existing law." *March 9, 2004 Letter from Blair Bobier, Esq.* at 1 (Attachment Two to this *Brief*).

courtrooms across the land, has always involved the clash of powerful perspectives and analyses; and of conflicting economic and political powers. Controversy among federal judges of the same eras - over the meaning of phrases and even words - has been the rule, not the exception. Instances of judges overruling prior decisions by their brethren, and in the process assigning divergent meanings to words previous justices had confidently defined with clarity, are so well known as to not require listing here.

For judges, and for "the People" - who are uniquely in this nation the source of all governing authority - the 14th Amendment has been like the stone in the "Stone Soup" fables: depending on the soupmaker's desires, the magic stone produces any kind of delicious and nutritious broth:

> Originally interpreted as a device by which the federal government could protect the rights of freed blacks against state interference, the Fourteenth Amendment gradually came to be used by the Court to bar state regulation of industrial enterprises. Implicit in this last development were two collateral themes: a disinclination on the part of the Court to protect the civil rights of blacks as it became more inclined to safeguard the property rights of entrepreneurs, and an increasingly active role for the Court, and the federal appellate judiciary, as the overseer of state legislation. By 1890, a majority of the Court stood on the threshold of interpreting the Fourteenth Amendment's due process clause as a mandate to evaluate the substantive worth of state statutes curtailing property rights.

E. Edward White, THE AMERICAN JUDICIAL TRADITION: PROFILES OF LEADING AMERICAN JUDGES 87 (1976).

In the 1960's, the Warren Court resurrected the original intent of the authors and ratifiers of the 14th Amendment, which compelled federal courts to protect people from constitutional violations previously regarded as "private."[11] In subsequent years, however, the Court dramatically changed its direction, with the "disintegration of the New Deal and the Great Society coalition" making it "impossible for the Court to stay on the path charted by the Warren Court." *See* Mark Tushnet, MAKING CONSTITUTIONAL LAW: THURGOOD MARSHALL AND THE SUPREME COURT 1961-1991 54 (1997). As described by Justice Marshall's dissent in *Payne v. Tennessee*, 501 U.S. 808,844 (1991), "[p]ower, not reason" became "the new currency of this Court's decisionmaking."

Plaintiffs in this case expect their counsel to conduct the necessary due diligence into this factual and legal history. Plaintiffs clearly believe that the corporate and Commonwealth Defendants have violated their constitutional rights in fundamental ways. Plaintiffs' counsel, therefore, is compelled by the duties imposed by, and the logic of, the 14th Amendment. Counsel must plunge into more than a century of struggle and jurisprudence involving slavery, segregation, people's movements, business corporations, and private and state violence. There are probably no more complex, intricate, and contradictory United States' histories

[11] *See* John E. Nowak, *The Scope of Congressional Power to Create Causes of Action Against State Governments and the History of the 11th and 14th Amendments*, 75 COLUM. L.REV. 1413, 1453-1469 (1975).

than those surrounding these intertwined subjects – histories which have given rise to almost endless interpretations, counter-interpretations, and evolutions, about which the lines from above-quoted University of Virginia Law Professor White barely scratch the surface.

A dominant thread throughout 14th Amendment jurisprudence has been people - seeking remedy for denial of rights - being required to make "obvious" what law and culture have regarded (and courts have adjudicated) as "non-obvious." That challenge winds through Reconstruction to the 1960's, and is why the Supreme Court in *Wilmington*, and again in *Reitman*[12] and *Evans*[13], insisted on the need for "sifting facts and weighing circumstances" of each case with care.

Half a century later, when this Court is called upon to determine the proper roles and relationships under this Constitution in a republican form of government - between human persons and business corporations - the need for sifting and weighing is no less imperative.

For in the end, Plaintiffs in this case simply ask this Court to determine who rightfully may wield the Constitution against whom.

To assist this Court in sifting and weighing, the Plaintiffs' counsel has a solemn responsibility to pull back the shrouds of history, shake the dust off relevant precedents, and present the evidence to the best of his ability. In the words of

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[12] 387 U.S. 369, 378 (1967).

[13] *Evans v. Newton*, 382 U.S. 296,299-300 (1966).

Professor John Norton Pomeroy, when there is a belief that courts have departed "from well settled and fundamental principles, it is not only the right but the duty of every lawyer and of every citizen to subject such decision to the closest examination and strictest criticism." John Norton Pomeroy, *The Supreme Court and State Repudiation: The Virginia and Louisiana Cases*, 17 AMER. L.REV. 685 (1883).

Finding the labors by Plaintiffs' counsel towards that end to be in violation of Rule 11 would be to deny over two hundred years of vigorous debate and litigation about the meaning of section after section, clause after clause, and phrase after phrase of the United States Constitution; of majority and dissenting opinions; of elected officials, scholars, and leaders of citizen movements. It would deny the manner in which people from all walks of life – under both merely unpleasant and unspeakably horrific circumstances – have organized and mobilized to meet "We the People's" needs of every era.

At a time when growing numbers of people - like the citizens of St. Thomas Township - are challenging the constitutional authority of corporate managers to bring unwanted projects into their communities, such a finding would cast its own chilling effect against people seeking justice, and against the Constitution's promise of republican self-government.

VIII. Conclusion

For the foregoing reasons, the Plaintiffs request that this Court DENY the corporate Defendants' *Motion for Sanctions.*

Submitted this 7th Day of June, 2004.

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Certificate of Compliance with Local Rule 7.8(b)(2)

The undersigned certifies that the accompanying Brief complies with Local Rule 7.8 in that this Brief exceeds a length of fifteen (15) pages, but does not exceed 5,000 words under 7.8(b)(2). The undersigned certifies that the accompanying Brief contains 4,997 words.

/s Thomas Alan Linzey
Thomas Alan Linzey, Esq.

Dated this *7th* Day of *June*, 2004.

CERTIFICATE OF SERVICE OF PROCESS

The undersigned hereby swears and affirms that this day I served the foregoing *BRIEF* in the matter of *FROST, et al. v. St. Thomas Development, Inc., et al*. on the following entities listed below, by electronic transmission and hardcopy mail.

The following parties were served on the *7th* Day of *June*, 2004:

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Counsel for Defendants St. Thomas Development, Inc., Peter DePaul, Anthony DePaul, and Donna DePaul-Bartynski

I hereby swear and affirm that the *BRIEF* was served on the above individuals on this *7th* Day of *June*, 2004.

Signed,

/s Thomas A. Linzey

_____

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