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 COMMONWEALTH DEFENDANTS' MOTION TO DISMISS AMENDED COMPLAINT

Thomas Alan Linzey, Esq.
PA I.D. #76069
675 Mower Road
Chambersburg, Pennsylvania 17201

Attorney for the Plaintiffs

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I. Counter-Statement of the Facts

On May 5, 2003, a corporation known as "St. Thomas Development, Inc." purchased over four hundred and fifty (450) acres of orchard land located within the Township of Saint Thomas, in Franklin County, Pennsylvania.[1] Shortly afterwards, the corporate Defendants submitted a Land Development Plan to the Board of Supervisors of the Township, outlining plans to construct a limestone quarry, an asphalt plant, and a concrete plant on the property.

On September 1, 2003, residents, land owners, and interested individuals formed "Friends and Residents of St. Thomas Township, Inc." to educate residents about the activities of the corporate Defendants in the Township, and assemble to participate in making Township rules and decisions. *See Amended Complaint* at ¶34.

On October 2, 2003, residents within the Township began supporting Frank Stearn as a write-in candidate for Township Supervisor to replace an incumbent Supervisor who had publicly declared that the Board of Supervisors was powerless

[1] As noted by the Plaintiffs in their *Amended Complaint*, on May 1, 2003, the original entity incorporated was "St. Thomas Quarry, Inc." The Deed for the property was transferred on May 5, 2003, however, to "St. Thomas Development, Inc." even though "St. Thomas Development, Inc." was not created until May 9, 2003, via the filing of Articles of Amendment with the Commonwealth. *Id.* at ¶¶ 28-32. Upon information and belief, the corporate Defendants used "St. Thomas *Development*, Inc." to mask their development plans for the quarry, submit a Land Development Plan without prior notice to the Township, and thus prevent the Township Supervisors from adopting land use Ordinances controlling the actions of the corporate Defendants within the Township. *See Id.* at ¶32.

- and lacked the authority - to stop the corporate Defendants' projects. Stearn declared his belief that the Board had governing authority, and that as an elected Supervisor, he would represent Township citizens and work to stop the siting and construction of the quarry development. *Id.* at ¶35.

On November 4, 2003, St. Thomas Township voters elected Stearn as Supervisor. On February 18, 2004, Stearn was sworn in as a Township Supervisor to represent the residents of the Township. *Id.* at ¶36-37.

On February 18, 2004, the corporate Defendants threatened to sue the St. Thomas Township Board of Supervisors unless the Board prevented Stearn from considering, discussing, debating, or voting on "any and all matters relating to or connected" with the quarry and related projects in the Township. [2]

The corporate Defendants based their threat on an alleged "denial" of the Corporation's due process "rights" that would occur if Stearn were allowed to participate in the Township's governing body. *Id.* at 2. The corporate Defendants also claimed that "fair and equal treatment" required of the local government in its

[2] In their *Motion to Dismiss*, the corporate Defendants have attempted to distance themselves from the demand letter sent by their legal counsel. Even a cursory review of the letter, however, reveals that it was written "on behalf of my client, the St. Thomas Development, Inc." *Id.* at Exhibit One.

consideration of the Corporation's requests mandated Stearn's recusal.[3] *Id*. at 4.

After asserting both "due process" and "equal protection" constitutional rights accorded to "persons" under the law, the corporate Defendants threatened that failure of the Board to force Stearn's recusal would result in their filing of a "case for discrimination" against the Township and litigation of "the matter later." *Id*. at 1,4. The corporate Defendants then distributed the demand letter to the local newspaper to inform people across the Township of their threat.

Upon learning of the corporate Defendants' actions, the Plaintiffs sent letters to Defendants Pappert and Cortes, requesting that those officials enjoin the corporate Defendants from interfering with the exercise of residents' fundamental constitutional rights to self-government.

As a result of the threats made by the corporate Defendants, the Board of Supervisors has prevented Stearn from participating in, and voting on, decisions made at several Supervisor meetings. *See Affidavit of Supervisors Frank Stearn* (Attachment One - *Plaintiffs' Brief in Opposition to Corporate Defendants' Motion to Dismiss*).

[3] The corporate constitutional "right" to equal protection of the laws, as a "person" under the law, echoes throughout the February 18, 2004 letter. In addition to claiming the right to "fair and equal treatment," the corporate Defendants asserted that "every*one* [sic] [must] be treated fairly and equally" by elected officials. *Id*. at 4. (emphasis added).

II. Counter-Statement of Questions Involved

A. Is the Commonwealth Estopped from Asserting Eleventh Amendment Immunity to Shield Its Denial of the Plaintiffs' Right to Self-Government Resulting From the Commonwealth's Conferral of Rights Upon - and the Assertion of Those Rights By - the Corporate Defendants?

Proposed Answer: Yes.

B. Have the Plaintiffs Stated a Claim that the Commonwealth's Adoption of 15 Pa.C.S. §1501 Violates the Fourteenth Amendment's Prohibition on the Making and Enforcing of a Law That Violates the Privileges or Immunities of Citizens?

Proposed Answer: Yes.

C. Have the Plaintiffs Stated a Claim that the Refusal by Defendants Cortes and Pappert to Enjoin the Violation of the Plaintiffs' Right to Self-Government Constitutes State Action Under 42 U.S.C. §1983?

Proposed Answer: Yes.

III. Standard of Review

In considering a motion to dismiss for failure to state a claim, this Court must "accept as true the plaintiffs' factual allegations and all reasonable inferences which can be drawn from them." *Roskos v. Sugarloaf Township*, 295 F. Supp. 2d 480 (M.D.PA 2003) (*citing Markowitz v. Northeast Land Co.*, 906 F.2d 100, 103 (3rd Cir. 1990)). A complaint should only be dismissed if it "appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." *Conley v. Gibson*, 355 U.S. 41,45-46 (1957).

IV . The Commonwealth is Estopped from Shielding Itself With Eleventh Amendment Immunity Because Federal Vindication of Peoples' Fundamental Right to Self-Government is Implicit in the Plan and Essential Character of the United States Constitution.

The Plaintiffs have asserted that adoption of 15 Pa.C.S. §1501 by the Commonwealth – which confers the rights of "persons" onto corporations operating within the State – empowered and enabled the corporate Defendants to assert those rights to violate the Plaintiffs' fundamental constitutional rights.[4] *Amended Complaint* at ¶59,76,89,99. Plaintiffs assert that the Commonwealth's conferral of rights upon the Corporation – and the assertion of those rights by the Corporation and its managers to deny the fundamental rights of the Class – violate the Fourteenth Amendment's proscription against making and enforcing laws that abridge the privileges or immunities of citizens of the United States. *Id.* at ¶¶58-66, 76-81, 87-94, 99-103.

In their *Motion to Dismiss*, the Commonwealth Defendants invoke the U.S. Constitution's Eleventh Amendment[5] in an effort to shield the Commonwealth

[4] The Plaintiffs assert that the actions of the corporate Defendants – wielding rights furnished by the Commonwealth and plausibly understood by the Plaintiffs to be enforced as the norm – violated Plaintiffs' inalienable right to self-government, a privilege and immunity of members of the Class. *Amended Complaint* at ¶¶52-55. As such, Plaintiffs rely on the guarantees of the Fourteenth Amendment, and are not suing to enforce the guarantees of the U.S. Constitution's Article IV, §4.

[5] Pennsylvania was, of course, one of two States that refused to ratify the Eleventh Amendment. Charles Warren, THE SUPREME COURT IN UNITED STATES HISTORY, Volume 1 101 (1922).

In the instant case, the Plaintiffs invoke the protections of the 14th Amendment, whose creation and ratification generated a "constitutional

from accountability for its role in the denial of the Plaintiffs' fundamental constitutional rights. *Commonwealth Defendants' Brief* at 5-6.

The constitutional design of the United States, codified within the "plan and character of the federal Constitutional Convention" - and reaffirmed by the adoption of the Fourteenth Amendment - prevent the Commonwealth from asserting immunity to shield itself from federal judicial review invoked by the Plaintiffs to protect their core political right to self-government.

A. Peoples' Right to Self-Government is the Foundational, Inalienable Privilege and Immunity That Secures Peoples' Rights to a Litany of Other Inalienable Civil and Political Rights.

There is no more essential, sacred, and fundamental principle of these United States than self-governance. Self-government – a fundamental and inalienable right – protects and preserves the myriad of inalienable civil and

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revolution." *See* Michael Kent Curtis, The Fourteenth Amendment and the Bill of Rights, 14 CT. L.REV. 237 (1982). Blind to Plaintiffs' constitutional injuries and right to remedy arising from that revolution, the Commonwealth now casually asserts 11th Amendment immunity, urging this Court to turn a blind eye as well. Plaintiffs ask this Court to examine history in order to see – and vindicate – the Plaintiffs' part in this nation's relentless struggles for human rights and republican government. History, unfortunately, shows the clear trend of the Supreme Court towards inhibiting those struggles by interpreting both the 11th and 14th Amendments contrary to their clear language and the framers' original intent (*See The Civil Rights Cases*, 109 U.S. 3 (1883); *Hans v. Louisiana*, 134 U.S. 1 (1890)), while compelling federal courts to remedy corporate claims to "rights" similarly denied. *See Santa Clara County v. Southern Pacific R. Co.*, 118 U.S. 394 (1886); *Ex Parte Young*, 209 U.S. 123 (1908).

political rights recognized by the U.S. Constitution as "privileges and immunities" possessed by all citizens of the United States.

The principle that people possess fundamental and inalienable civil and political rights – anchored by their right to self-government - echoes throughout the Resolves of the Continental Congress,[6] early state Constitutions[7] and the Articles of Confederation.[8] It is reflected throughout the writings of Locke, Hume,

[6] Continental Congress, *Declaration of Resolves*, 14 October 1774 (stating that colonial representatives "do claim, demand, and insist on, as their indubitable rights and liberties; which cannot be legally taken from them, altered or abridged by any power whatsoever. . .").

[7] *See, e.g.,* Virginia Declaration of Rights, June 21, 1776 (stating that "all men are by nature equally free and independent, and have certain inherent rights, of which, when they enter into a state of society, they cannot. . . deprive or divest their posterity; namely, the enjoyment of life and liberty. . . and pursuing and obtaining happiness and safety"); PENNSYLVANIA CONST., September 28, 1776 ("permanent and proper forms of government" are "derived from and founded on the authority of the people only. . . by common consent. . . to form for themselves such just rules they think best for governing their future society").

[8] Articles of Confederation, 1 March 1781 (declaring that the "said states hereby severally enter into a firm league of friendship with each other, for their common defence, the security of their Liberties, and their mutual and general welfare").

and Montesquieu[9] that early colonists used to define and deepen the American Revolution.

It is axiomatic that the people of the States strove to secure fundamental and inalienable rights by creating a federal union founded upon the peoples' right to republican forms of government. *See In re Duncan*, 139 U.S. 461 (1891) ("[b]y the Constitution, a republican form of government is guaranteed to every state in the Union, and the distinguishing feature of that form is the right of the people to choose their own officers for governmental administration, and pass their own laws in virtue of the legislative power reposed in representative bodies, whose legitimate acts may be said to be those of the people themselves."); *Eckerson v. Des Moines*, 115 N.W. 177 (Iowa 1908) (declaring that "the purpose of the Federal Constitution

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[9] That democratic philosophy – of the people's possession of fundamental and inalienable rights - was, in turn, fomented by widespread Tudor rebellions driven by popular movements in England against monarchy and nobility. In response to expropriation, enclosures of the commons, impressments, enslavement, industrial exploitation, and unprecedented military mobilizations, England experienced the Cornish Rising (1497), the Lavenham Rising (1525), the Lincolnshire Rebellion (1536), the Ludgate Prison Riot (1581), the Beggars' Christmas Riot (1582), the Whitsuntide Riots (1584), the Plaisterers' Insurrection (1586), the Felt-Makers Riot (1591), Bacon's Rebellion in the Virginia Colony (1675-1676) and other popular struggles for human rights and self-governance. *See* Peter Linebaugh and Marcus Rediker, THE MANY-HEADED HYDRA: SAILORS, SLAVES, COMMONERS, AND THE HIDDEN HISTORY OF THE REVOLUTIONARY ATLANTIC 19, 136 (2000). "Years of attendance at town meetings had attuned the majority to elementary concepts, if not to detailed systems; to the idea of a state of nature, of a social compact, and of consent of the governed." Oscar Handlin and Mary Flug Handlin, COMMONWEALTH: A STUDY OF THE ROLE OF GOVERNMENT IN THE AMERICAN ECONOMY, MASSACHUSETTS 1774-1861 6-7 (1969).

was to provide a form of government, republican in character, for the states as a unified whole.").

That inalienable right to a republican form of government guarantees that the powers of governance are vested in the majority, not in the hands of a privileged minority who might seek to use government to attain private goals.[10]

In the words of delegates writing the first Massachusetts Constitution, no group of people shall "have any other title to obtain advantages, or particular and exclusive privileges, distinct from those of the community" and that if governments are subverted for the "profit, honor, or private interest of any. . . class of men," then the fundamental principle underlying the institution of governments is usurped.[11]

[10] *See, e.g.*, James Otis, *The Rights of the British Colonies Asserted and Proved*, 1764 (declaring "let the origin of government be placed where it may – the end of it is manifestly the good of the whole. . ."); Montesquieu, SPIRIT OF LAWS, BK. 2, CH. 2, 1748 (stating that "[w]hen the body of the people is possessed of the supreme power, it is called a democracy. When the supreme power is lodged in the hands of a part of the people, it is then an aristocracy"); *See also*, *Statement of the Berkshire County, Massachusetts, Representatives*, November 17, 1778 (declaring the proposition "that the Majority should be governed by the Minority in the first Institution of Government is not only contrary to the common apprehensions of Mankind in general, but it contradicts the common Law of Justice and benevolence"); Fitzwilliam Byrdsall, THE HISTORY OF THE LOCO-FOCOS, OR EQUAL RIGHTS PARTY 169 (reprinted 1967) (quoting the New York Convention of the Equal Rights Party, which declared that "[t]he great object of a constitution is, to prevent the officers of government from assuming powers incompatible with the natural rights of man").

[11] MASSACHUSETTS CONST., Arts. VI and VII (March 2, 1780). *See also*, Virginia Declaration of Rights at 4 (June 12, 1776); Pennsylvania Constitution of 1776 at fifth provision (reprinted in Pennsylvania Legislative Reference Bureau, CONSTITUTIONS OF PENNSYLVANIA/ CONSTITUTION OF THE UNITED STATES 235

B. By Ratifying the Federal Constitutional Compact – Which Created a Union Wholly Dependent Upon the Existence of Constituent Republican Governments - This Commonwealth Consented to Federal Review of the Peoples' Right to Self-Government.

It is self-evident that the United States Constitution and its framework of governance can operate only through constituent governments of republican form.[12] *See Alden v. Maine*, 527 U.S. 706, 713 (1999) (declaring that the Constitution assumes the "active participation in the fundamental processes of governance" by the people of each State); *Kohler v. Tugwell*, 292 F. Supp. 978, 985 (E.D. LA 1968); *aff'd*, 393 U.S. 531 (Wisdom, J., concurring) (stating that the Founding Fathers considered republican governments "essential to formulation of a workable federalism."). If constituent republican governments cease to exist, the federal system of governance is automatically stripped of legitimacy.[13]

(1967)). Indeed, many previously non-obvious parallels can be detected between the denial of rights to slaves, free African-Americans, and abolitionists in antebellum America – by slaveowners and the resulting "slave state" - and the denial of the rights of whole communities enabled by the unconstitutional conferral of rights upon the corporate few. *See* Joel Tiffany, A TREATISE ON THE UNCONSTITUTIONALITY OF AMERICAN SLAVERY 99 (1849); Richard Grossman, DEFYING CORPORATIONS, DEFINING DEMOCRACY 141-148 (Dean Ritz, ed., 2001).

[12] *See* Tench Coxe, AN EXAMINATION OF THE CONSTITUTION OF THE UNITED STATES OF AMERICA, Fall, 1787 (declaring that the United States' guarantee of a republican form of government means "that any man or body of men, however rich or powerful, who shall make an alteration in the form of government of any state, whereby the powers thereof shall be attempted to be taken out of the hands of the people at large, will stand guilty of high treason.").

[13] Without constituent republican governments, the legitimacy of all branches of government is thrown into question. This Union faced that reality when confronted by what people eventually saw as a "slave State." *See* Michael Kent Curtis, The Fourteenth Amendment and the Bill of Rights, 14 CT. L.REV. 237, 243 (1982) ("The laws and enforcements of slavery once contradicted and nullified [a variety

Indeed, the touchstone nature of a republican form of government has been recognized as the very legitimacy of the law-making process. As stated by William Rawle, in his VIEW OF THE CONSTITUTION OF THE UNITED STATES (2d ed. 1829):

> The Union is an association of the people of republics; its preservation is calculated to depend on the preservation of those republics. The people of each pledge themselves to preserve that form of government in all. Thus each becomes responsible to the rest, that no other government shall prevail in it, and all are bound to preserve it in every one.
>
> To deny this right would be inconsistent with the principle on which all our political systems are founded, which is, that the people having in all cases, a right to determine how they will be governed.

Rawle at 295-302.

In *Texas v. White*, 7 Wall. 227 (1869), the Supreme Court reaffirmed that fundamental principle by addressing the authority of the state of Texas to seize U.S. indemnity bonds following secession. The Court began its rulings by defining a republican form of government as one in which a "community of free citizens" organize "under a government sanctioned and limited by a written constitution, and established by the consent of the governed." *Id*. at 236. Characterizing Texas' original admission into the Union as "more than a compact," constituting the "incorporation of a new member into the political body," the Court held that the

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of rights]. With these rights no State may interfere without breach of the bond which holds the Union together") (*quoting* the Chair of the House Judiciary Committee during debates over the Thirteenth Amendment); *See Pacific States Telephone & Telegraph Company v. Oregon*, 223 U.S. 118, 147 (1911) ("the authority of the government under which [Senators and Representatives] are appointed, as well as its republican character [must be] recognized."

state's renunciation of the Union – and thus, its renunciation of a republican form of government - rendered all laws passed by the state void *ab initio* and "utterly without operation in law." *Id*. at 237.

It is well-settled law that certain federal powers inherent in the "plan of the [Constitutional] convention" were carved from the powers of the States, and that the guarantee of a republican form of government was essential to the role of the federal government in protecting the inalienable rights of people. *See Edelman v. Jordan*, 415 U.S. 651, 662, fn. 9 (1974) (*quoting* THE FEDERALIST, No. 81 (Alexander Hamilton)); *Chisholm v. Georgia*, 2 Dall. 419, 435 (1793) (declaring that "the only principles of law, then, that can be regarded, are those common to all the states."); *Texas v. White*, 7 Wall. 227 (1869) ("the Union of the States never was a purely artificial and arbitrary relation. It began among the Colonies, and grew out of common origin, mutual sympathies, kindred principles, similar interests, and geographical relations."); *Cohens v. Virginia*, 6 Wheat. 257,285 (1821).

The Commonwealth of Pennsylvania was one of the original thirteen States to ratify the U.S. Constitution. The Commonwealth entered into the federal constitutional compact by affirming its "kindred principles" of self-government with other States. *See* Rawle at 302 ("[w]e have associated as republics. . . The principle on which alone the Union is rendered valuable, and which alone can

continue it, is the preservation of the republican form"); *Texas v. White* at 237 ("[a]ll the obligations of perpetual union, and all the guaranties of republican government in the Union, attach" to newly admitted States.).

The Commonwealth thus embraced federal review invoked to protect the peoples' right to a republican form of government – the form of government implicit "in the plan of the constitutional convention" - by ratifying the constitutional compact. *Alden v. Maine*, 527 U.S. 706, 717 (1999) (*quoting* Hamilton, The Federalist, No. 81); *See also Blatchford v. Native Village of Noatak*, 501 U.S. 775, 780 (1991); *Chisholm v. Georgia* at 453 (declaring that power of the people of each State is without limitation, except the one "imposed by the Constitution of the United States; that it must be of the republican form"); *See VanSickle v. Shanahan*, 511 P.2d 223 (Kan. 1973) (declaring that purpose of the guarantee of republican government is to "protect the people against aristocratic and monarchial innovations. . . and to prevent [the states] from abolishing a republican form of government"); *See Kelley v. Metropolitan County Board of Education of Nashville and Davidson County*, 836 F.2d 986, 997 (6th Cir. 1987) (stating that by "shifting the legislative power from a body the people can vote for to one they cannot vote for" violates the very "promise of self-governance.").

In its *Motion to Dismiss*, the Commonwealth now seeks to wield the Eleventh Amendment to unmake the Commonwealth's irreversible commitment to

securing the peoples' right to a republican form of government.

The people of the United States, acting through the federal government, certainly retain the authority to remedy the Commonwealth's usurpation when the Commonwealth denies to the individual Plaintiffs – and the residents of St. Thomas Township as a Class – the fundamental right to self-government that makes their exercise of other civil and political rights possible.[14] By virtue of the design of the constitutional compact, the people of the United States possess the explicit power to vindicate a republican form of government, either through the federal judiciary or through Congress. If the people of the United States are alleged not to have this authority – or some power denies that authority, then

> the mere compact, without the power to enforce it, would be of little value. Now this power can be no where so properly lodged, as in the Union itself. Hence the term guarantee, indicates that the United States are authorized to oppose, and if possible, prevent every state in the Union from relinquishing the republican form of government.

Rawle at 296; *See* Joseph Story, Commentaries on the Constitution, 3:§§1808 (1833) (declaring that if people lack the power, "[a] successful faction might erect

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[14]In *Marbury v. Madison*, 5 U.S. 137 (1803), Chief Justice Marshall declared that "[t]he very essence of civil liberty certainly consists in the right of every individual to claim the protection of the laws, whenever he receives an injury. One of the first duties of government is to afford that protection"; THE FEDERALIST No. 21 (James Madison) ("a right implies a remedy"); *See also* John V. Orth, THE JUDICIAL POWER OF THE UNITED STATES: THE ELEVENTH AMENDMENT IN AMERICAN HISTORY 134 (1908) (asserting that "a state acting in violation of the federal Constitution, if such a thing could be imagined, is not a 'state' within the meaning of the Constitution").

a tyranny on the ruins of order and law.").

This Court, possessing clear jurisdiction over the state officers named in the *Amended Complaint* under the authority of *Ex Parte Young*, 209 U.S. 123 (1908), can order those officers to enjoin prospective violations of the constitutional rights of the Class.

However, the very existence of 15 Pa.C.S. §1501 is repugnant and inimical to rights secured by the U.S. and Pennsylvania Constitutions, because the statute places the power of the State behind the continuing corporate violation of peoples' and communities' rights. *See Dombrowski v. Pfister*, 380 U.S. 479,486 (1965) (when the "hazard of loss or substantial impairment of [] precious rights" is caused by statutes that "lend themselves too readily to denial of those rights", the statutes must be voided); John Frank and Robert Munro, The Original Understanding of 'Equal Protection of the Laws', 50 COLUMBIA L.REV. 165 (1950) (declaring that the federal government must intervene when "evils have attained such a degree as amounts to the destruction, to the overthrow, to the denial to large classes of the people of the blessings of republican government altogether.").

Accordingly, the Eleventh Amendment does not – and cannot – shield the Commonwealth from accountability for making and enforcing "a law which . . . abridge[s] the privileges or immunities of citizens of the United States." *See* Const. Amend. XIV.

V. The Plaintiffs Have Stated a Claim That the Defendant Commonwealth Violated the Fourteenth Amendment's Prohibitions by Adopting a Law Enabling the Corporate Defendants to Deny the Privileges and Immunities of the Class.

It is well-settled law that if a State provides "significant encouragement, either overt or covert" to an otherwise private decision, the action is deemed to have been taken by the State. *Blum v. Yaretsky*, 457 U.S. 991, 1004 (1982). In the context of municipal liability for violation of constitutional rights, the Third Circuit Court of Appeals has ruled that §1983 liability attaches when the municipality's "policy or custom" inflicts a constitutional injury. *Andrews v. City of Philadelphia*, 895 F.2d 1469, 1480 (3rd Cir. 1990); *Bielevicz v. Dubinon*, 915 F.2d 845 (3rd Cir. 1990).

In their *Amended Complaint*, the Plaintiffs assert that the Defendant Commonwealth bestowed the rights of "persons" upon the St. Thomas Development Corporation via the State's adoption of 15 Pa.C.S. §1501.[15] *Id.* at ¶¶60,77,99. The Plaintiffs have delineated how those actions exceeded the State's legitimate authority because they enabled the corporate Defendants to wield those rights to deny the right of the Plaintiffs to republican government. *Id.* at ¶38-45,100. Plaintiffs assert that the actions of the Commonwealth violate the

[15] The Commonwealth Defendants erroneously declare that the Plaintiffs have claimed that 15 Pa.C.S. §1501 is the *sole* source of the corporate Defendants' governing authority. *Commonwealth Defendants' Brief* at 12. Plaintiffs have not advanced that claim; rather, Plaintiffs assert that the Statute is the sole *legislative* bestowal of the rights of persons onto corporations, and as such, implicates the Commonwealth in the denial of rights that has occurred.

Fourteenth Amendment's proscription that "[n]o State shall make or enforce any law which shall abridge the privileges or immunities of the United States." *Id*. at ¶101. Thus, the Plaintiffs have stated a claim against the Defendant Commonwealth.

VI. The Plaintiffs Have Stated a Claim That Defendants Cortes and Pappert are Liable Under 42 U.S.C. §1983 For Their Refusal to Enjoin the Corporate Defendants from Violating the Constitutional Rights of the Plaintiffs.

In their *Amended Complaint*, the Plaintiffs have stated a claim that the Commonwealth Defendants "enabled, authorized, sanctioned, and encouraged" the actions of the corporate Defendants violating the Plaintiffs' rights to self-government. *Id.* at ¶¶61,80-81,94,98-103. The Plaintiffs have asserted that Defendants Cortes and Papperts refused to enjoin the corporate Defendants from asserting those rights to violate the Plaintiffs' fundamental constitutional rights. *Id.* at ¶¶49-50,59-60,63-64,77-81,90-92,94-96,99.

Defendants Pappert and Cortes now ask that this Court dismiss them from this action because "they had no personal involvement" in violating the Plaintiffs' constitutional rights, and thus cannot – as a matter of law – be held liable under 42 U.S.C. §1983.[16] *See Commonwealth Defendants' Brief* at 10.

[16] Cases asserted by the Commonwealth Defendants actually undermine their argument for dismissal. *See, e.g. Chinchello v. Fenton*, 805 F.2d 126, 133 (3rd Cir. 1986) (declaring that "public officials may not in any way authorize, encourage, or approve constitutional torts"); *Rizzo v. Goode*, 423 U.S. 362 (1975) (declaring that the showing of a link between municipal officials - serving as named Defendants -

Immediately following the corporate Defendants' issuance of demands to the municipality, the Plaintiffs asked Defendants Pappert and Cortes to protect the people of the Township. Both letters asserted that violating the "fundamental rights of the residents of the Township to self-government" was not "lawful business" required for operation under Pennsylvania law and the corporate charter granted to the corporate Defendants. *Pappert Letter* at 1 (February 27, 2004); *Cortes Letter* at 1 (March 5, 2004). Once the duty of Defendants Pappert and Cortes was established, the Plaintiffs furnished several options for remedying those violations.[17] *Id.* Both letters clearly declared that the "continued chartering of the Corporation, with knowledge that it is being wielded to deny rights," made those State officers complicit in those violations. *Id*. at 2; *Id*. at 1.

The *Amended Complaint* asserts that Defendants Cortes and Pappert have "refus[ed] to enjoin the corporate Defendants from asserting State-conferred powers to deny the rights of the Plaintiffs" (¶¶63,80,94) and therefore, "have sanctioned and ratified the corporate Defendants' violation of the rights of the

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and police officers engaged in unconstitutional conduct, was required under §1983). In the instant case, that "link" is provided by the knowing refusal of the Commonwealth Defendants to remedy the effects of the Commonwealth's unconstitutional bestowal of rights upon the corporate Defendants.

[17] The Plaintiffs suggested that Defendant Pappert could satisfy his duty to enjoin continuing constitutional violations by taking action to revoke or amend the Corporation's charter. *Pappert Letter* at 2. The Plaintiffs suggested that Defendant Cortes could satisfy his duty by declaring the corporation's charter void *ab initio* to enjoin the *ultra vires* activities of the corporate Defendants. *Cortes Letter* at 1.

Plaintiffs." *Id*. at ¶¶64,81,95).

It is well-settled law that inaction by public officials satisfies the state action requirement of 42 U.S.C. §1983, if the failure to act has the "natural and foreseeable consequence of causing a deprivation of a constitutional right." *Archie v. City of Racine*, 826 F.2d 480,490 (7th Cir. 1987) (*citing Monroe v. Pape*, 365 U.S. 167, 187 (1964)); *City of Canton v. Harris*, 489 U.S. 378 (1988).

The Plaintiffs have clearly stated a claim against Defendants Pappert and Cortes and their request for dismissal must be denied.

VII. Conclusion

For the foregoing reasons, the Plaintiffs request that this Court DENY the Commonwealth Defendants' *Motion to Dismiss.*

Submitted this 1st Day of June, 2004

/s Thomas Alan Linzey

Thomas Alan Linzey, Esq.
Pa I.D. #76069
Richard L. Grossman, *Social and Legal Historian Consultant*
675 Mower Road
Chambersburg, Pennsylvania 17201
(717) 709-0457
(717) 709-0263 (f)

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 4,994 words.

/s Thomas Alan Linzey
Thomas Alan Linzey, Esq.

Dated this *1st* 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 *1st* Day of *June*, 2004:

Michael L. Harvey, Esq. (Electronic Service)
Senior Deputy Attorney General
Office of the Attorney General
15th Floor, Strawberry Square
Harrisburg, Pennsylvania 17120
Counsel for Defendants Commonwealth of Pennsylvania, Cortes, and Pappert

Thomas A. Sprague (Hardcopy)
Sprague & Sprague
135 South 19th Street, Suite 400
The Wellington Building
Philadelphia, Pennsylvania 19103
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 *1st* Day of *June*, 2004.

Signed,

/s Thomas A. Linzey

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Thomas A. Linzey, Esq.
2859 Scotland Road
Chambersburg, Pennsylvania 17201