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.***
	:	**(Electronically Filed)**
v.	:	
ST. THOMAS DEVELOPMENT, INC., *et. al.*	:	

PLAINTIFFS' REPLY TO THE COMMONWEALTH DEFENDANTS' BRIEF IN OPPOSITION TO PLAINTIFFS' MOTION TO CERTIFY THE CLASS ACTION

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I. The Defendant Commonwealth's Assertion – That the Commonwealth Did Not Cause the Plaintiffs' Injuries and Thus, that the Representative Plaintiffs Lack Standing to Represent the Class – Ignores the Relationship Between the Commonwealth and Corporate Defendants.

In their *Brief*, the Commonwealth Defendants claim that they are not responsible for the violations of the Plaintiffs' constitutional rights, because actions of "third parties" caused the Plaintiffs' injuries.[1] *See Commonwealth Defendants' Brief* at 5-6. The Commonwealth Defendants therefore claim that the Representative Plaintiffs lack standing to sue, and that they cannot represent the class. *Id*. at 4.

Glaringly absent from the Commonwealth's *Brief* are any attempts to disassociate the Commonwealth from the actions of the corporate Defendants. By focusing solely on the standing of the Representative Plaintiffs, the Commonwealth tries to steer this Court away from examining the Commonwealth's critical role in empowering the corporate Defendants to violate the rights of the Plaintiffs.

[1] The Commonwealth Defendants' *Brief* advances the proposition that the *Motion to Certify the Class* should be denied solely because the Representative Plaintiffs lack standing. The Commonwealth Defendants do not challenge the Plaintiffs' assertions that all other elements for certification of the class have been satisfied.

It is well-settled law that corporations are creations of the state.[2] The United States Supreme Court has reaffirmed the principle that corporations are "creatures of the state" in at least thirty-six different rulings.[3] It is also well-settled law that

[2] *See St. Louis, I.M. & S Ry. Co. v. Paul*, 173 U.S. 404 (1899) (declaring that corporations are "creations of state"); *The Bank of Augusta v. Earle*, 38 U.S. 519 (1839) (stating that "corporations are municipal creations of states"); *United States v. Morton Salt Co.*, 338 U.S. 632, 650 (1950) (explaining that corporations "are endowed with public attributes. They have a collective impact upon society, from which they derive the privilege as artificial entities"); *Hale v. Henkel*, 201 U.S. 43, 75 (1906) (declaring that "the corporation is a creature of the state. It is presumed to be incorporated for the benefit of the public. . . . Its rights to act as a corporation are only preserved to it so long as it obeys the laws of its creation"); *Chincleclamouche Lumber & Broom Co. v. Commonwealth*, 100 Pa. 438, 444 (Pa. 1881) (stating that "the objects for which a corporation is created are universally such as the government wishes to promote. They are deemed beneficial to the country"); *See also, People v. North River Sugar Refining Company*, 24 N.E. 834 (NY 1890) (declaring that "[t]he life of a corporation is, indeed, less than that of the humblest citizen. . ."); *F.E. Nugent Funeral Home v. Beamish*, 173 A. 177 (Pa. 1934) (declaring that "[c]orporations organized under a state's laws. . . depend on it alone for power and authority"); *People v. Curtice*, 117 P. 357 (Colo. 1911) (declaring that "[i]t is in no sense a sovereign corporation, because it rests on the will of the people of the entire state and continues only so long as the people of the entire state desire it to continue"); *State v. Walmsley*, 162 So. 826 (La. 1935) (stating that corporations are "mere creatures of the Legislature and are entirely subject to the legislative will").

[3] *See Virginia Bankshares v. Sandberg*, 501 U.S. 1083 (1991); *Kamen v. Kember Fin. Servs.*, 500 U.S. 90 (1991); *Braswell v. United States*, 487 U.S. 99 (1988); *Ball v. James*, 451 U.S. 355 (1981); *Burks v. Lasker*, 441 U.S. 471 (1979); *First Nat'l Bank of Boston v. Bellotti*, 435 U.S. 765 (1978); *Santa Fe Industries, Inc. v. Green*, 430 U.S. 462 (1977); *Cort v. Ash*, 422 U.S. 66 (1975); *United Steelworkers of America v. R.H. Bouligny, Inc.*, 382 U.S. 145 (1965); *Shapiro v. United States*, 335 U.S. 1 (1948); *Coleman v. Miller*, 307 U.S. 433 (1939); *Williams v. Baltimore*, 289 U.S. 36 (1933); *Ferry v. Ramsey*, 277 U.S. 88 (1928); *Essgee Co. of China v. United States*, 262 U.S. 151 (1923); *Yazoo & M.V.R.Co. v. Clarksdale*, 257 U.S. 10 (1921); *United States v. American Tobacco Co.*, 221 U.S. 106 (1911); *Wilson v. United States*, 221 U.S. 361 (1911); *Chicago, B&Q.R.Co. v. McGuire*, 219 U.S. 549 (1911); *Hale v. Henkel*, 201 U.S. 43 (1906); *Worcester v. Worcester C.S.R.Co.*, 196 U.S. 539 (1905); *Terre Haute & I.R.Co. v. Indiana*, 194 U.S. 579

the Constitution not only protects people against the "State itself," but also against "all of its creatures." *See West Virginia State Board of Education v. Barnette*, 319 U.S. 624, 637 (1943).

By ruling that a state's chartering of corporations is not, by itself, sufficient to enable the Court to "see" corporations – or their managers and agents – as "state actors," several courts have ignored this definitive history. Be that as it may, however, Plaintiffs here do not rely solely on the Commonwealth's act of incorporation to hold that the corporate Defendants acted "under color of state law."

Plaintiffs in this case advance a different proposition – that the Commonwealth's *conferral of the rights of persons* onto the St. Thomas Development Corporation enabled the corporate Defendants to then *wield those rights against* the residents of St. Thomas Township. *See Amended Complaint* at ¶¶49,50,59-65,76-82,87-95,99-101. When the Plaintiffs turned to the Commonwealth Defendants for protection, the Commonwealth Defendants

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(1904); *Carstairs v. Cochran*, 193 U.S. 10 (1904); *Atkin v. Kansas*, 191 U.S. 207 (1903); *Fidelity Mut. Life Asso. v. Mettler*, 185 U.S. 308 (1902); *Hancock Mut. Life Ins. Co. v. Warren*, 181 U.S. 73 (1901); *Jellenik v. Huron Copper Mining Co.*, 177 U.S. 1 (1900); *Woodruff v. Mississippi*, 162 U.S. 291 (1896); *Moran v. Sturges*, 154 U.S. 256 (1894); *New Orleans v. New Orleans Water Works Co.*, 142 U.S. 79 (1891); *Merrill v. Monticello*, 138 U.S. 673 (1891); *Philadelphia & Southern Mail S.S. Co. v. Pennsylvania*, 122 U.S. 326 (1887); *Sinking-Fund Cases*, 99 U.S. 700 (1878); *Railroad Co. v. Maryland*, 88 U.S. 456 (1874); *Dodge v. Woolsey*, 59 U.S. 331 (1855); *Bank of Augusta v. Earle*, 38 U.S. 519 (1839); *Briscoe v. President & Directors of Bank of Kentucky*, 36 U.S. 257 (1837).

sanctioned and vindicated the actions of the corporate Defendants by refusing to "see" the constitutional injury, by refusing to provide a remedy, and subsequently, by seeking the refuge of the 11th Amendment to bar this Court from even hearing the merits of the Plaintiffs' case. *See Commonwealth Defendants' Brief in Support of Motion to Dismiss* at 5-6. By now arguing that "third parties" can be blamed for the Plaintiffs' injuries, the Commonwealth Defendants again seek to steer the gaze of this Court away from the intimate relationship that exists between the Commonwealth and corporate Defendants.

Towards that end, the Commonwealth Defendants attempt to use *Simon v. Eastern Ky. Welfare Rights Organization*, 426 U.S. 26 (1976) to argue that the "independent action of some third party" can be blamed in this case for violating the Plaintiffs' constitutional rights. *Commonwealth Defendants' Brief* at 5. In *Simon*, indigents and indigent organizations filed suit against the Secretary of the U.S. Treasury, contending that the Internal Revenue Service's favorable tax treatment of nonprofit hospitals offering only emergency room service to indigents violated the Plaintiffs' rights to commensurate and necessary healthcare. *Id*. at 33-34. The Secretary argued that the Plaintiffs lacked standing to bring the suit, contending that it was the hospitals' actions that caused the Plaintiffs' injuries, not the government's tax treatment of the hospitals. *Id*. at 34.

In dismissing the case, the Supreme Court held that the Plaintiffs lacked standing because they had not identified injuries that could be traced "fairly. . . to the challenged action of the defendant." *Id*. at 41. The Court noted that the Plaintiffs had failed to allege that the denial of hospital access "result[ed] from" the government's favorable tax treatment. *Id*. at 42.

Even a cursory application of the *Simon* analysis to the instant case reveals that the Plaintiffs here have established the causal link noticeably absent in *Simon*. The Plaintiff's *Amended Complaint* clearly declares that the Plaintiffs have standing to file this suit because "they have been injured by the corporate Defendants' assertion of *State-conferred* powers." *Amended Complaint* at ¶14. The Plaintiffs declare that the Commonwealth has "enabled the corporate Defendants to invoke express constitutional authority," thus violating guiding principles that federal courts have developed to safeguard freedoms guaranteed by the First and Fourteenth Amendments to the Constitution. *Id*. at ¶50.

In each of the four Counts, the Plaintiffs assert that the Commonwealth has "bestowed constitutional rights and protections possessed by natural persons onto corporations through the adoption of 15 Pa.C.S. §1501." *Id*. at ¶¶59,76,89,99. The Plaintiffs distinctly assert that the corporate Defendants acted "under the color of state law in asserting constitutional powers" because the Corporation was "chartered by the Commonwealth of Pennsylvania *and subsequently endowed by*

the State with constitutional powers and 'rights.'" Id. at ¶¶60,77,90,100 (emphasis added). The Plaintiffs assert that the Commonwealth Defendants *"sanctioned and ratified* the corporate Defendants' violations of the rights of the Plaintiffs." *Id.* at ¶¶64,81,95,100 (emphasis added).

The Plaintiffs plainly assert that the Commonwealth's conferral of constitutional powers onto the corporate Defendants – enabling the corporate Defendants to call upon 15 Pa.C.S. §1501 to enforce their denial of the Plaintiffs' rights – was unlawful because that bestowal violated the plain language of the Fourteenth Amendment. *Id.* at ¶¶62,79,92,101.

Finally, the Plaintiffs unequivocally assert that the injuries caused by the Commonwealth Defendants are redressable by this Court's removal of unlawfully-bestowed constitutional authority from the corporate Defendants. *Id.* at ¶¶V(c)-(d).

Unlike *Simon*, the Plaintiffs have clearly shown, as a matter of law, that their injuries resulted from the actions of the Commonwealth. In *Americans United for Separation of Church and State v. U.S. Dept. of H.E.W.*, 619 F.2d 252 (3rd Cir. 1980), however, the Third Circuit Court of Appeals has even declared that allegations of generalized constitutional injury are sufficient for standing purposes. In that case, an organization dedicated to the separation of church and state brought suit against the U.S. Department of Health, Education, and Welfare and a Bible College, contending that the transfer of government property from the Department

to the College violated the Establishment Clause of the First Amendment to the Constitution. *Id*. at 254. In their Complaint, the Plaintiffs alleged injuries solely to their "individual rights protected by the Establishment Clause." *Id*.

Finding that the Plaintiffs had been injured by the actions of the Department, the Third Circuit Court of Appeals declared that standing "requires no more than an allegation that the challenged official action has caused the plaintiff injury" to an interest or constitutional guarantee. *Id*. at 256. Having "seen" the Plaintiffs' injury, the Court explained that the Plaintiffs advanced "neither an abstract nor a generalized complaint but set forth instead a particular and concrete injury to a right that is allegedly protected by the constitutional guarantee raised." *Id*. at 265. The Court also ruled that an "allegation of injury in fact to an interest protected by [the Clause] is all that is required for standing" and that the alleged injury gives Plaintiffs "a sufficient personal stake in the outcome to assure a complete perspective of the issues involved." *Id*. at 266. The Court concluded with Chief Justice Marshall's declaration, in *Marbury v. Madison*, that "the 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." *Id.*

It is clear that under any of the judicial tests applied to determine standing, the Representative Plaintiffs possess standing to sue, and thus, can represent the class. Accordingly, the Plaintiffs' *Motion to Certify the Class* must be granted.

II. The Representative Plaintiffs Suffer Continuing Injuries as a Result of the Inaction of Commonwealth Officials, and Thus Have Standing to Sue Them on Behalf of the Class.

The Commonwealth Defendants claim that the Representative Plaintiffs lack standing to challenge the failure of governmental officials to act, and thus, that they cannot represent the class. *Commonwealth Defendants' Brief* at 6.

As recounted in the Plaintiffs' *Amended Complaint*, following the wielding by the corporate Defendants of State-conferred powers, the Plaintiffs requested that two Commonwealth officials, the Attorney General and Secretary of State, take actions to enjoin the continuing violations of the Plaintiffs' rights. *Amended Complaint* at ¶¶46-47. Although certainly possessing the power, authority, and responsibility to enjoin the violation of Plaintiffs' rights by amending or revoking St. Thomas Development Corporation's corporate charter, the officials refused to take such action. *Id.*

Thus, following the Commonwealth's conferral of "rights" upon the Corporation and its managers, Commonwealth officials continue to sanction and ratify that bestowal by failing to keep the State's creation from continuing to violate the Plaintiffs' rights. In their *Amended Complaint*, the Plaintiffs declare that those officials "violated the rights of the Plaintiffs. . . by refusing to enjoin the corporate Defendants from asserting State-conferred powers to deny the rights of the Plaintiffs." *Amended Complaint* at ¶¶63,80,94.

Public officials in Pennsylvania have enabled a corporate creation of the State to call upon the law of the land – and therefore, the federal courts - to quash the constitutional rights of people within St. Thomas Township. The Commonwealth Defendants, throughout their Briefs, claim that the Plaintiffs lack standing to seek *any* remedy because they have suffered no constitutional injury. In the words of Judge Wisdom, to accept that proposition would mean that "a citizen has no cause or right of action against the State, to defend federally guaranteed rights and freedoms, when admittedly the State is using its . . . law against him." *Dombrowski v. Pfister*, 227 F. Supp. 556, 569 (E.D.La. 1964) (Wisdom, J., dissenting); *rev'd* 380 U.S. 479 (1965).

If what the Commonwealth Defendants assert is true, then Plaintiffs seeking to be "seen" in order to be heard by this Court – along with the entire class of St. Thomas Township residents – are turned into an "inert people." That, in the words of Justice Louis D. Brandeis, would be the "greatest menace to freedom." *Whitney v. California*, 274 U.S. 357, 375 (1927) (Brandeis, J., concurring).

This nation's extension of rights has always been driven by the struggles of plain men and women - in commonplace communities like St. Thomas Township - who have sought to stop public officials from granting special privileges to the few. Courts have consistently asserted federal power to restrain the enforcement of state statutes that enable a few to wield the law to deny the rights of others. As

Chief Justice Warren once declared, "denial of constitutionally protected rights demands judicial protection; our oath and our office require no less of us." *Reynolds v. Sims*, 377 U.S. 533, 566 (1964). To do anything less would abdicate the federal courts' "primary responsibility for protecting the individual" and eliminate "the protection the United States Constitution gives to the private citizen against all wrongful governmental invasions of fundamental rights and freedoms." *Dombrowski v. Pfister*, 227 F. Supp. 556, 569 (E.D. La. 1964) (Wisdom, J., dissenting), *rev'd* 380 U.S. 479 (1965).

The claims asserted by the Representative Plaintiffs – and by the class – are not unique to this case. Those claims can be heard in communities throughout this Commonwealth – and across the nation – where people are resisting state-sanctioned corporate might. *See, e.g.*, Dean Ritz, ed., DEFYING CORPORATIONS, DEFINING DEMOCRACY (2001). The issues presented here, therefore, are intimately tied to a central source of injustice – that a republican form of government constitutionally guaranteed to the people cannot exist when states enable a corporate few to displace and override citizen governance of their communities; that a design of republican government cannot function when "the corporation comes to share some of the sovereign power of the state," and the state does nothing to prevent corporate directors and their agents from doing what the State may not do – from doing what the Constitution forbids the State to do. *See*

Professor Earl Latham, *The Commonwealth and the Corporation*, 55 NW. U.L.REV. 25, 27 (1960).

Indeed, a republican form of government has always been defined as one in which the "welfare and rights of the entire mass of people are the main consideration, rather than the privileges of a class. . ." BLACK'S LAW DICTIONARY page (4th ed. 1951).

Unquestionably, the Representative Plaintiffs have been injured by the refusal of Commonwealth officials to enjoin the violation of the Plaintiffs rights. As such, the Plaintiffs possess standing, and the *Motion to Certify the Class* must be granted.

III. Conclusion

For the foregoing reasons, the Plaintiffs respectfully request that this Court certify this class action, and declare that the class action is maintainable under Local Rule 23.3 and Fed.R.Civ.Pro. 23(a) and 23(b).

Submitted this 16th Day of August, 2004

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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 *16th* Day of *August*, 2004:

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I hereby swear and affirm that the *BRIEF* was served on the above individuals on this *16th* Day of *August*, 2004.

Signed,

/s Thomas A. Linzey

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