

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA
CIVIL DIVISION

CAROLYN SMITH, GEORGE M. SMITH)	No. GD 03-9054
JR., and KIMBERLIE A. COLLINS,)	
)	
Plaintiffs,)	
)	
v.)	
)	
TOWNSHIP OF ALEPPO, OLIVER L.)	
POPPENBERG, RICHARD STARR,)	
GLORIA L. VISH, LINDA D. TALMON,)	
and BERNARD RUBB,)	
)	
Defendants.)	

COMPLAINT - CIVIL ACTION

AND NOW, come Plaintiffs, Carolyn Smith, George M. Smith, Jr., and Frank Bialek, by their undersigned counsel, and file the within Complaint - Civil Action: (a) to validate Plaintiff Carolyn Smith's right to hold and exercise the powers of the elected office of Commissioner of Aleppo Township; and (b) to redress Defendants' violation of the civil rights of all Plaintiffs. In support of their Complaint, Plaintiffs allege as follows:

1. Plaintiffs, Carolyn Smith ("Plaintiff Smith") and George M. Smith, Jr. ("Plaintiff George Smith"), her husband, are adult individuals, who reside at 775 Redgate Road, Aleppo Township, Sewickley, Allegheny County, Pennsylvania 15143.
2. Plaintiff, Kimberlie A. Collins ("Collins"), is an adult individual, who resides at 708 Tega Cay Drive, Aleppo Township, Sewickley, Allegheny County, Pennsylvania 15143.

3. Defendants, Township of Aleppo ("Aleppo") is a municipality, specifically a Township of the First Class, organized and operating under the laws of the Commonwealth of Pennsylvania, with a mailing address located at 100 North Drive, Sewickley, Allegheny County, Pennsylvania 15143.

4. Defendant, Oliver Poppenberg ("Poppenberg") is an adult individual, who resides at 102 Sewickley Ridge Circle, Aleppo Township, Sewickley, Allegheny County, Pennsylvania.

5. Defendant, Richard Starr ("Starr") is an adult individual, who resides at 20 Rhodes Avenue, Aleppo Township, Sewickley, Allegheny County, Pennsylvania 15143.

6. Defendant, Gloria L. Vish ("Vish") is an adult individual, who resides at 1140 Merriman Road, Aleppo Township, Sewickley, Allegheny County, Pennsylvania 15143.

7. Defendant, Linda D. Talmon ("Talmon") formerly known as Linda D. Campbell), is an adult individual, who resides at 507 Timber Lane, Aleppo Township, Sewickley, Allegheny County, Pennsylvania 15143.

8. Defendant, Bernard Rubb ("Rubb") is an attorney who is licensed to practice law in Pennsylvania, who at all times material hereto has been the Solicitor of Aleppo. Rubb has a business address located at 434 Oliver Road, Sewickley, Allegheny County, Pennsylvania 15143.

9. Plaintiff Smith is one of five Commissioners of Aleppo, having been elected in the general election of November, 2001 and having taken office in January, 2002. Her elected term is four years and expires at the end of December, 2005.

10. Defendants Poppenberg, Starr, Vish and Campbell ("Commissioner Defendants") are and at all times relevant hereto have been the other four elected Commissioners of Aleppo.

11. At all times material hereto, the Commissioner Defendants and Defendant Rubb have acted as the agents of Aleppo, under color of state law, and in conspiracy with one another.

12. Pursuant to the First Class Township Code, the corporate power of Aleppo is vested in the Board of Township Commissioners. 53 P.S. § 56502.

13. Since in or about January of 2004, Defendants have acted unlawfully and intentionally in conspiracy with one another, to deprive Plaintiff Smith of the office of Commissioner to which she was elected by the citizens of Aleppo. In furtherance of the unlawful conspiracy, Defendants have:

(a) Created a Litigation Committee, consisting of all of the Township Commissioners, with the exception of Plaintiff Smith, which unlawfully transfers the corporate power of the Township from the Board of Commissioners to a majority of the Commissioners acting as a committee;

(b) Violated the Open Meeting Law (Sunshine Act), 65 PA.C.S.A. §701 et seq., by deliberating in private during Litigation Committee meetings and failing to take public votes following both executive sessions of the Board as well as meetings of the Litigation Committee. For example: (i) In May 2004, the decision to authorize Defendant Rubb to attend a deposition was made in executive session but

never voted on in public; and (ii) the decision in the summer of 2004 for Defendant Rubb to participate in a suit by Aleppo's former police chief against the Township was not voted on in public.

(c) Imposed a requirement on Plaintiff Smith, not applicable to other Commissioners, that she had to comply with Aleppo's Right-to-Know Act procedures, including submitting a written request form, having it approved by the Township Manager, and paying for copies.

(d) Passed a resolution on June 21, 2004, once again aimed at Plaintiff Smith, requiring that "Any Commissioner who wishes to speak to the media or represent any position must indicate that they are merely stating their personal views and not the view of the Board or the Township."

(e) Regularly excluded Plaintiff Smith from communications and information pertaining to Township business.

14. Further reflecting Defendants' goals, they have: (a) prevented Plaintiff Smith from performing her appointed duties as Commissioner responsible for the Township's public works; and (b) removed Plaintiff Smith as Township representative to the Aleppo-Sewickley-Osborne planning committee and substituted all of the other commissioners as representatives in her place.

15. All of the foregoing actions have been motivated by Defendants' desire to silence Plaintiff Smith who has been an outspoken vocal, minority critic of Defendants' policies as majority Commissioners of the Township, including but not limited to the exorbitant fees the Township is paying to Defendant Rubb. Defendant Rubb essentially

confirmed this motivation when he wrote to Plaintiff Smith's attorney on October 8, 2004 as follows:

"[W]hen your client realizes that the official business of the Township is conducted by the **Board of Commissioners as a group** rather than one Commissioner always calling attention to herself, and making statements and allegations that have absolutely no basis either in fact or in law, she will then find her service as Commissioner to be more fulfilling."

16. All of the foregoing unlawful actions are continuing.

COUNT ONE
Carolyn Smith v. All Defendants
Quo Warranto

17. The averments set forth in Paragraphs 1 through 16 are incorporated herein by reference as if set forth at length.

18. By their actions as aforesaid, Defendants have excluded Plaintiff Smith from her elected office as Commissioners of the Township and violated Section 1502 of the First Class Township Code (53 P.S. § 56502), which mandates that the corporate power of the Township is vested in the Board of Township commissioners and not in a committee of that Board consisting of fewer than the full complement of Commissioners.

WHEREFORE, Plaintiff Smith respectfully requests pursuant to Count One that this Honorable Court declare that she is entitled to all of the rights and privileges pertaining to the office of elected Commissioner of Aleppo Township and enjoin the illegal actions of Defendants, as set forth in paragraph 13 which have and are depriving Plaintiff Smith of her public office.

COUNT TWO
Carolyn Smith v. All Defendants
Violation of Due Process

19. The averments set forth in Paragraphs 1 through 18 are incorporated herein by reference.

20. This Count involves violations of federal law under the Fourteenth Amendment to the United States Constitution and pursuant to 42 U.S.C. § 1983.

21. As an elected Commissioner of the Township, Plaintiff Smith has a property right in her office.

22. As a direct and proximate result of their actions set forth in Paragraph 13 above, Defendants have deprived and are continuing to deprive Plaintiff Smith of her property without due process of law as guaranteed by the Fourteenth Amendment to the United States Constitution.

WHEREFORE, Plaintiff respectfully prays pursuant to Count Two that this Honorable Court:

(1) enjoin and restrain Defendants from: (a) continuing the illegal Litigation Committee; (b) violating the Sunshine Act; and (c) requiring Plaintiff Smith to utilize Right-To-Know procedures to obtain Township information;

- and -

(2) award Plaintiff Smith her costs in this proceeding, including the payment of reasonable attorney's fees;

- and -

(3) grant such other and further relief as is deemed appropriate.

COUNT THREE
Carolyn Smith v. All Defendants
Violation of Equal Protection

23. The averments set forth in Paragraphs 1 through 22 are incorporated herein by reference.

24. As a direct proximate result of their actions set forth in Paragraph 13 above, Defendants without legitimate reason, have treated Plaintiff Smith differently from the similarly situated other four Township Commissioners and therefore have unlawfully discriminated against Plaintiff Smith in violation of the Fourteenth Amendment to the United States Constitution.

WHEREFORE, Plaintiff respectfully prays pursuant to Count Three that this Honorable Court:

(1) enjoin and restrain Defendants from: (a) continuing the illegal Litigation Committee; (b) violating the Sunshine Act; (c) requiring Plaintiff Smith to utilize Right-To-Know procedures to obtain Township information; and (d) otherwise discriminating against Plaintiff Smith;

- and -

(2) award Plaintiff Smith her costs in this proceeding, including the payment of reasonable attorney's fees;

- and -

(3) grant such other and further relief as is deemed appropriate.

COUNT FOUR
Carolyn Smith v. All Defendants
Violation of Free Speech

25. The averments set forth in Paragraphs 1 through 24 are incorporated herein by reference.

26. This Count involves violations of federal law under the First Amendment to the United States Constitution and pursuant to 42 U.S.C. § 1983.

27. As a direct and proximate result of their actions set forth in Paragraph 13 above, Defendants have unlawfully: (a) mandated Plaintiff Smith's speech in violation of the First Amendment to the United States Constitution; and (b) violated Plaintiff Smith's First Amendment rights by retaliating against her for exercising her rights to Free Speech, political activity and political dissent.

WHEREFORE, Plaintiff respectfully prays pursuant to Count Four that this Honorable Court:

(1) enjoin and restrain Defendants from (a) mandating speech from Plaintiff Smith; and (b) retaliating against Plaintiff Smith for exercising her First Amendment rights;

- and -

(2) award Plaintiff Smith her costs in this proceeding, including the payment of reasonable attorney's fees;

- and -

(3) grant such other and further relief as is deemed appropriate.

COUNT FIVE
All Plaintiffs v. All Defendants
Violation of Due Process and Equal Protection

28. The averments set forth in Paragraph 1 through 27 are incorporated herein by reference.

29. This Count involves a violation of Plaintiffs' right to due process and equal protection as guaranteed by the Fourteenth Amendment to the United States Constitution.

30. Each of the Plaintiffs has a property and liberty interest in his/her vote and pursuant thereto, voted in the November, 2001 general election for Plaintiff Smith to serve as a Commissioner of Aleppo.

31. As a direct and proximate result of their actions set forth in Paragraph 13 above, Defendants have excluded Plaintiff Smith from her elected office, have effectively denied Plaintiffs of their vote and, therefore, have violated Plaintiffs' rights to Due Process and Equal Protection as guaranteed by the Fourteenth Amendment to the United States Constitution.

WHEREFORE, Plaintiff respectfully prays pursuant to Count Five that this Honorable Court

(1) enjoin and restrain Defendants from: (a) continuing the illegal Litigation Committees; (b) violating the Sunshine Act; (c) requiring Plaintiff Smith to utilize Right-To-Know procedures to obtain Township information; (d) mandating speech from Plaintiff Smith; (c) retaliating against Plaintiff Smith for exercising her First Amendment rights; and (f) otherwise discriminating against Plaintiff Smith and thereby violating all

Plaintiffs rights to Due Process and Equal Protection as guaranteed by the Fourteenth Amendment to the United States Constitution;

- and -

(2) award Plaintiffs their costs in this proceeding, including the payment of reasonable attorney's fees;

- and -

(3) grant such other and further relief as is deemed appropriate.

STRASSBURGER McKENNA
GUTNICK & POTTER

By: _____
E. J. Strassburger, Esquire

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444 Liberty Avenue
Pittsburgh, PA 15222

Witold Walczak, Esquire
American Civil Liberties Union of Greater
Pittsburgh
313 Atwood Street
Pittsburgh, PA 15213

Attorneys for Plaintiffs

VERIFICATION

I, Carolyn Smith, verify that the statements in the Complaint are true and correct to the best of my personal knowledge, information and/or belief.

This statement and verification is made subject to the penalties of 18 Pa. C.S. § 4904 relating to unsworn falsification to authorities, which provides that if I make knowingly false statements, I may be subject to criminal penalties.

Carolyn Smith

Dated: _____

143811

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Defendants.

No.

COMPLAINT - CIVIL ACTION

Code No.

JURY TRIAL

Filed on behalf of Plaintiffs

Counsel of Record for these Parties:

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NOTICE TO DEFEND

You have been sued in Court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this Complaint and Notice are served, by entering a written appearance personally or by attorney, and filing in writing with the Court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so, the case may proceed without you and a judgment may be entered against you by the Court without further notice for any money claimed in the Complaint or for any claim or relief requested by the plaintiff. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE OR KNOW A LAWYER, THEN YOU SHOULD GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP:

LAWYER REFERRAL SERVICE
The Allegheny County Bar Association
920 City-County Building, 414 Grant Street
Pittsburgh, PA 15219
TELEPHONE: (412) 261-0518