

Community Challenges Corporate Claims to Constitutional "Rights"
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Since the American Revolution, people across this country have engaged in passionate debate and sustained struggle to define the proper nature of corporations. Over the past half-century, those debates and struggles have often taken the form of community resistance to corporate and government imposition of projects on unwilling communities.

The claims asserted by FROST members can be heard today in many communities where people are resisting state-sanctioned corporate might. That is because the issues presented here are intimately tied to a central source of injustice – that a republican form of government constitutionally guaranteed to the people cannot exist when the State does nothing to prevent corporate directors and their agents from doing what the Constitution forbids the State to do.

– Friends and Residents of St. Thomas Township (FROST)

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Last year, Friends and Residents of St. Thomas Township (FROST) saw a giant quarry-asphalt-cement corporation poised to invade their community.

In South-Central Pennsylvania, where St. Thomas Township is located, factory farms and sludge spreading, toxic dumps, quarries and other unwelcome corporate projects have been a reality in many communities. Logically, people have been working to nip these assaults in the bud. Vigorous explorations have been under way about corporations and the law, about people's persistent struggles for rights in these United States. Such efforts have been driving innovative citizen campaigns into village squares, voting booths, local legislatures, courts, and assorted political and cultural arenas.

To date, 78 Pennsylvania townships have passed laws banning corporate involvement in agriculture. Several townships have passed laws stripping corporations of constitutional protections and powers.

Because these campaigns have been energizing and effective, growing numbers of people in this part of Pennsylvania have lost interest in waging endless, defensive battles with regulatory agencies like the state's Department of Environmental Protection or township zoning and planning boards. People are learning that they can stop corporate directors and managers from rigging the law and choreographing public officials and public policy.

Integral to its new organizing, FROST filed an unusual legal challenge to corporate and state officials. Here is a short summary of what's been going on in St. Thomas Township, followed by a glimpse at how FROST members see their struggle.

Agents of the St. Thomas Development Corporation handed the township a proposal to build a quarry, asphalt plant and concrete factory on 450 acres of apple orchard. Neighbors came together as FROST to educate themselves and the township about this corporate invasion.

FROST members turned to their elected township supervisors for help, only to be told neither the people of the township nor the people's elected supervisors had legal authority to stop this corporate project. So last November, having decided to elect one of its own as supervisor, FROST ran a write-in candidate, Frank Stearn. Stearn won.

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Despotism's Long Grip on the Law

One main pillar of domestic slavery, as it now exists in the United States, is the idea that it rests upon law. Law is regarded with veneration, and no where more so than in the United States, as the great foundation and support of the right of property, of personal rights, in a word – of social organization.

...opinions respecting law and government involve, indeed, the inconsistency and absurdity of supposing that men have power, by arrangement and convention, to make that artificially right which is naturally wrong, an inconsistency and absurdity which there have not been wanting able writers to expose.

...law, so far as it has any binding moral force, is and must be conformable to natural principles of right; ...and that so far as this conformity is wanting, what is called law is mere violence and tyranny... which man... has a moral right to resist passively at all times, and forcibly when he has any fair prospect of success. Such, indeed, was the principle upon which the American Revolution was justified.

...Men cannot bargain away either their own rights, or the rights of others.

...It is the glory of the tribunals of the common law, that, even when trampled in the mud by the feet of power, they have never consented to lie there quiet. They have struggled always... to cleanse the ermine robes of justice from the mire of ignorant, weak, cruel, self-seeking legislation, ...to weigh out again equal justice to all.

...The sort of men who occupy the judicial bench are seldom much inclined to outrun popular opinion; yet however it may be fashionable among them to affect to despise such opinion, ... it is none the less true that their own views are greatly influenced, if not indeed mainly determined, by the prevailing sentiment of the community about them.

—from An Inquiry into the Nature, Results and Legal Basis of the Slave-Holding System by Richard Hildreth, 1854

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A few days after Frank Stearn was sworn in as township supervisor, the St. Thomas Development Corporation sent a letter to the chair of the board of supervisors. This letter demanded that the board prevent 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. Claiming constitutional "rights" of due process and equal protection – and wrapping their bullying letter in the First Amendment – the corporate directors warned that if the board did not enforce Stearn's silence and non-participation, the corporation would bring a discrimination lawsuit against the township.

Such a lawsuit would rely upon a Reconstruction-era U. S. civil rights statute written to establish the constitutional rights of freed slaves and punish recalcitrant public officials. It was intended to aid the enforcement of the Fourteenth Amendment – one of many human rights laws now resting ominously in corporate arsenals.

Bowing to these corporate threats, the board of supervisors prevented Stearn from participating in, and voting on, decisions made at several supervisor meetings.

FROST folks saw that because this letter was sent by a corporation which the Pennsylvania legislature – through state corporate laws – had granted the constitutional powers and protections of natural persons, it amounted to more than "just a letter." Its purpose was to intimidate and shut people up...to deny people's rights. FROST members saw that like railroad conductors during those hellish decades in which segregation was the law of the land, today's corporate rule-makers are also backed by the long arm of the law.

Historian C. Vann Woodward describes the process: "The Jim Crow laws put the authority of the state or city in the voice of the streetcar conductor, the railway brakeman, the bus driver, the theater usher...They gave free rein and the majesty of the law to mass aggressions that might otherwise have been curbed, blunted and deflected."1

Thomas Linzey, founder of the Community Environmental Legal Defense Fund (CELDF) in Chambersburg PA, had been working closely with neighboring townships experimenting with new strategies and tactics. FROST hooked up with Linzey and laid out its offensive.

FROST's plans included investigation into legal, social movement and constitutional histories; participation in CELDF-POCLAD "Democracy Schools"; public education and local organizing; gaining majority control of the board of supervisors by running candidates in the 2003 and 2006 elections; designing appropriate township ordinances asserting people's authority to make the rules for corporate involvement in the township; crafting lawsuits giving corporate directors, state officials and judges this choice: either

grant FROST its desired remedy, or declare for all to hear that in St. Thomas Township, corporate directors run the show.

To remedy the corporation's "letter," FROST turned to the Commonwealth's attorney general and secretary of state. These public officials refused to act, thus failing in their duty to stop the state's corporate creation from continuing to violate people's rights.

So last March, in the U.S. District Court for the Middle District of Pennsylvania, FROST lodged complaints – on behalf of themselves and a class consisting of all the residents of the township – against the Commonwealth of Pennsylvania, against its secretary of state and attorney general, against the corporation and its directors.

FROST charged that the state illegitimately had "bestowed constitutional rights and protections possessed by natural persons onto corporations." FROST asserted that "Public officials in Pennsylvania had 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." Such actions, claimed FROST, violate the plain language of the 14th Amendment.

FROST called upon the Court:

- * to remove constitutional authority from the corporation and its directors;
- * to declare that the corporation's claim of constitutional "rights" had no basis in law;
- * to rule as unconstitutional the state law (15 Pa. C. S. Section 1501) which wraps the "rights" of natural persons around corporations;
- * to instruct Pennsylvania officials to revoke or amend the St. Thomas Development Corporation's charter;
- * to order corporate directors to pay each member of the class \$8,000 in damages.

The secretary of state, the attorney general and the quarry corporation's directors responded by asking Judge Yvette Kane to dismiss the lawsuits. They do not want parties to this case having the chance to argue it all out in court.

The corporate directors went further: they called upon the judge to punish Attorney Linzey for filing an "outlandish," "pernicious," "nonsensical," "specious," and "frivolous" case. They wrote Judge Kane that FROST, through Attorney Linzey, has asserted "legal claims which are so far outside the boundaries of any reasonable interpretation or possible extension of the law... If attorneys filing frivolous attacks on settled law are not sanctioned, then they will be encouraged to mount frivolous attacks on every area of established law as they may."

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Unsettling "Settled Law"

The attorney general and secretary of state of Pennsylvania now admit:

- Yes, the Commonwealth of Pennsylvania chartered St. Thomas Development Corporation. Yes, the Pennsylvania Constitution defines people as the source of all governing authority. Yes, state law gives corporations the rights of natural persons. But the state and its officers are not responsible when corporations violate people's rights. This is called settled law.
- Yes, the Bill of Rights, the 14th Amendment and civil rights laws require the United States government to step in when people's fundamental rights are violated – especially when government is the violator. But the United States has no authority to stop corporate denials of people's rights. This is called settled law.
- The corporate constitutional maxim says: since no remedy is available for FROST members in Federal Court, no harm has been perpetrated by corporate directors and their agents, or by the state and its agents. FROST, therefore, has no legitimate cause of action. FROST members must not be seen or heard in Federal Court. This is called settled law.

The corporate constitution's "settled law" pours from corporate and public officials like water over Niagara.

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So the St. Thomas Development Corporation's first assaults upon this community did not take the form of excavations, dynamite explosions, massive truck traffic and great dust storms. Instead, FROST members ran smack into the corporation's directors and lawyers brandishing the laws of Pennsylvania and the United States Constitution backed by the might of the nation.

That is why FROST chose NOT to mobilize in regulatory agencies, or in zoning and planning board hearings. They understood that in such arenas, no remedies would be available except a slightly less destructive corporate invasion.

And they knew that decade after decade after decade, citizen groups seeking justice in such realms have not even been allowed to talk about rights trampled, rights usurped, rights denied. Much less have they sought remedies their communities actually wanted and needed.

During last spring and summer, FROST members (called "plaintiffs" in this case), along with the corporation and the Commonwealth (called "defendants"), submitted lengthy written arguments – and replies to arguments – to the court. (These submissions are called "briefs.") If after studying these briefs Judge Kane throws out the lawsuit, she will

validate the corporate claim that people suffer no injury when corporate directors use the laws of the land to deny people's fundamental rights.

If, on the other hand, Judge Kane allows the case to be argued, she will affirm that the court takes seriously FROST's allegations of constitutional injury and the need for proper judicial remedy. She will declare both to this court and to the community that FROST members are not silent and invisible before the law (as was true of millions of slaves within the jurisdiction of the Constitution). She will say that to this court, FROST members are not like the indentured servants, women, free African Americans, Native Peoples, working people, white men without property, family farmers, immigrants, union organizers, war protesters, imperialism opponents and so many other classes of people whom the rule of law in this country has denied...and still, alas, denies.

As FROST members intensify their educational) and organizing work over the next few months, Judge Kane will decide whether or not to schedule these cases for trial, and to punish Tom Linzey for heresy.

If a trial does take place, FROST members are prepared to make the most of their opportunity. They will assert the people's interpretations of the Constitution, assert people's histories, and stake their rightful claims before a United States court, and before the nation.

ENDNOTE

1. The Strange Career of Jim Crow, NY: Oxford University Press (2002), p. 107-8. (originally published 1955).

Edited Selections from FROST Briefs submitted to the U.S. District Court for the Middle District of Pennsylvania, Honorable Yvette Kane, Presiding

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I. 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.¹

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.

In its Amended Complaint, FROST claims 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. Section 1501. FROST has shown how those actions exceeded the State's legitimate authority because they enabled the corporation and its directors to wield those rights to deny the right of the Plaintiffs to republican government. FROST asserts that the actions of the Commonwealth violate the Fourteenth Amendment's proscription that "[n]o State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States." Thus, the Plaintiffs have stated a claim against the Defendant Commonwealth.

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.²

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.

As recounted in the Plaintiffs' Amended Complaint, following the wielding by the corporate Defendants of State-conferred powers, the Plaintiffs requested two Commonwealth officials, the Attorney General and Secretary of State, to stop the corporation's continuing violations of FROST's rights. Although certainly possessing the power, authority, and responsibility to do so by amending or revoking St. Thomas Development Corporation's corporate charter, the officials refused to take action.

The Commonwealth conferred "rights" upon the Corporation and its managers. Commonwealth officials perpetuate that illegitimate gift by not stopping the State's creation from continuing to violate the Plaintiffs' rights. Public officials in Pennsylvania are thereby enabling 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. Yet 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 validated subsequently by the Supreme Court – 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* (1964) (Judge Wisdom, dissenting); reversed by the United States Supreme Court (1965).

If what the Commonwealth Defendants assert is true, then Plaintiffs asking to be "seen" and "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* (1927) (Justice Brandeis, 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. In response to such struggles, courts have asserted federal power to nullify state statutes that enable a few to "legally" deny rights of the many. As Chief Justice Warren declared, "denial of constitutionally protected rights demands judicial protection; our oath and our office require no less of us." *Reynolds v. Sims* (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*, (1964) (Judge Wisdom, dissenting), reversed by the United States Supreme Court (1965).

The claims asserted by the FROST members – 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, for example, Dean Ritz, ed., *Defying Corporations, Defining Democracy* (POCLAD-Apex Press, 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*.³

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 (4th ed., 1951).

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

III. The Corporate Defendants' Assertion – That the Exercise of the Corporation's Constitutional "Rights" Could Not Injure the Plaintiffs – Has Historically Been Used to Shield the Denial of Rights.⁴

Arguing to this Court that Plaintiffs could not have suffered cognizable injuries as a result of the exercise of the Corporation's "rights" is not a new tactic for those seeking judicial sanction to violate the rights of others. As a result of that argument in the past, in other settings, judges have been diverted from seeing – and addressing – people's claims to fundamental constitutional rights. In his book on the slave system, federal Judge Leon Higginbotham, Jr. explored that proposition, quoting an 1829 case in which a North Carolina court emphasized that, for the slave,

there is no remedy... The slave, to remain a slave, must be made sensible that there is no appeal from his master; that his power is in no instance usurped; but is conferred by the laws of man at least, if not by the law of God.⁵

Many other courts, in cases creating what later generations regarded as "settled law," similarly dismissed people's claims to basic rights – claims whose vindication courts today regard as commonplace. Decisions relying on "settled law" as a substitute for weighing specific facts and circumstances that inflicted injuries are now regarded as grave injustices. See, for example, *Dred Scott v. Sandford* (1857) (affirming that slaves had no rights which courts must respect); *Plessy v. Ferguson* (1896) (affirming that state laws segregating railroad travelers by race were constitutional); *U.S. v. Cruikshank* (1876) and *The Civil Rights Cases* (1883) (gutting key rights-protecting language of the 14th Amendment); *Lochner v. New York* (1905) (nullifying a state law prohibiting bakers from working more than sixty hours per week or ten hours per day on the grounds that the law violated the employer's "liberty of contract" – a concept the Court read into the 14th Amendment); *Buck v. Bell* (1927) (affirming the forced sterilization of a woman because "three generations of imbeciles are enough..."); *Bradwell v. Illinois* (1873) (affirming the refusal of the State of Illinois to accept women into the State's Bar, declaring that "the paramount destiny and mission of women are to fulfill the noble and benign offices of wife and mother. This is the law of the Creator.") (Justice Bradley, concurring); *Minor v. Happersett* (1875) (denying a claim that women's right to vote was constitutionally protected, declaring that "no argument as to woman's need of suffrage can be considered").

Great people's struggles to define rights, to define injuries to those rights, and to secure commensurate remedies, have been necessary because some of the founding documents and laws of this country denied whole classes of people – women, African-Americans, indentured servants, native peoples, and whites without property or education – basic constitutional rights. People with rights, often backed by their large institutions, historically wielded the law to impose their will on those whose rights the law denied. They also battled people claiming their rights in legislatures, courts, jails, voting booths, workplaces and village squares.

A society dominated by a rights-wielding minority trained lawyers, editors, law professors, judges, historians, and others not to "see" injuries which the law inflicted on the Ms. Minors, the Ms. Bradwells, the Ms. Bucks...on the Mr. Scotts, the Mr. Plessys and generations of working people. To make themselves visible to the law, people – speaking out and assembling – built great campaigns for the abolition of slavery, women's suffrage, workers' rights, and civil rights. Those social movements taught much of society – including members of the Bar – to see what universities, newspapers, legislatures, and other institutions reflecting the dominant "rights" culture had trained them not to see.

But it wasn't enough for people's movements to drive the Bill of Rights, the 13th Amendment, the 14th Amendment, the 15th Amendment, and the 19th Amendment into the Constitution. They then had to help legislatures and courts – in bill after bill and case after case – to "see," so that legislatures and courts would secure and vindicate their rights. Such campaigns were often characterized by violence inflicted upon the "invisible and mute" people initiating lawsuits that eventually made their way to the United States Supreme Court. For example, it took massive – and what "settled law" regarded as illegal sit-ins against "legal" segregation – to provoke the Warren Court to make the effort to sift "facts" and weigh "circumstances." See *Burton v. Wilmington Parking Authority* (1961).

During these struggles, there was another, a parallel, campaign. This was directed by men secure in their individual constitutional rights from the moment of the nation's founding. Their goal was plain: to find the corporation in the Constitution.

The Constitution made no mention of corporations. But as corporate advocates and lawyers did their work, the Supreme Court began to "see" corporations in a new light. See, for example, *Dartmouth College v. Woodward* (1819) (declaring that the Constitution's Contract Clause prohibited people of a state from revoking or amending corporate charters); *Santa Clara County v. Southern Pacific R. Co.* (1886) (declaring that corporations were "persons" protected by the 14th Amendment's Equal Protection Clause); *Minneapolis & St. Louis Railroad Co. v. Beckwith* (1889) (declaring that corporations were "persons" protected by the 14th Amendment's Due Process Clause); *Noble v. Union River Logging R. Co.* (1893) (declaring that corporations were protected by the Fifth Amendment's Due Process Clause); *Hale v. Henkel* (1906) (declaring that corporations were protected by the Fourth Amendment); *Fong Foo v. United States* (1962) (holding corporations entitled to Fifth Amendment protections against double

jeopardy); First National Bank of Boston v. Bellotti (1978) (extending to the corporation constitutional guarantees of First Amendment protected political speech); Pacific Gas & Electric Co. v. Public Utility Commission (1986) (holding that corporations were entitled to "negative" free speech rights under the First Amendment, and therefore, could not be compelled to speak).

To create new constitutional "rights" for corporations, advocates and lawyers quite logically built upon the great judicial legal victories for human rights won by people's movements over several generations. The extraordinary accomplishments of denied and invisible people were thus turned against them. This is the history and reality Plaintiffs confront today.

In this case, the corporate Defendants claim that the Plaintiffs have not been injured because the corporation merely exercised its "First Amendment rights," and therefore, that the Plaintiffs cannot possibly receive a remedy from this Court. Their assertion clearly contradicts the hidden history that the corporate Defendants have discouraged this Court from seeing.

The Defendants argue that their interpretation of the facts of this case render the Plaintiffs' injuries invisible, and thus, render the Plaintiffs invisible to this court.

A contemporary Court, like all institutions in today's society, facing conflicting claims to fundamental rights involving plain people and corporate actors, must scrutinize exceedingly complex – and often inconsistent – decisions arising from generations of struggle for human rights. Those decisions are often obscured by the commandeering of people's rights by institutions of property. As with society in general, which has been trained not to "see," such a Court must proceed with the greatest of care. To determine the true shape and form of the Defendants' invasion of the Plaintiffs' basic human and political rights, it must not shirk from "sifting facts and weighing circumstances."

Such an examination will reveal that the Representative Plaintiffs have been grievously injured as a result of the actions of the corporate Defendants, and that they therefore have standing to bring this action on behalf of the class.

IV. 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.⁶

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, workplaces and 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 their brethren's prior decisions, 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.⁷

FROST members expect their counsel to conduct with due diligence an investigation of this factual and legal history. Plaintiffs clearly believe that the corporate and Commonwealth Defendants have violated their constitutional rights in fundamental ways. FROST's lawyer, therefore, is compelled by the duties imposed by, and the logic of, the 14th Amendment. He 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 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, organizing and demonstrating to make "obvious" what law and culture regarded (and what courts adjudicated) as "non-obvious." That challenge winds through Reconstruction to the 1960's, and is why the Warren Supreme Court, in prominent Civil Rights lawsuits, insisted on "sifting facts and weighing circumstances" of each case with care.

Half a century later, 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, FROST asks this Court to determine who rightfully may wield the Constitution against whom.

To assist this Court in sifting and weighing, FROST's lawyer 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 Professor John Norton Pomeroy, when there is a belief that courts have departed from "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."⁸

Finding the labors by FROST's 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.

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ENDNOTES

1. From "PLAINTIFFS' BRIEF IN OPPOSITION TO THE COMMONWEALTH DEFENDANTS' MOTION TO DISMISS AMENDED COMPLAINT," 1 June 2004, by Linzey & Grossman, p. 16.
2. From "PLAINTIFFS' REPLY TO THE COMMONWEALTH DEFENDANTS' BRIEF IN OPPOSITION TO PLAINTIFF'S MOTION TO CERTIFY THE CLASS ACTION," 16 August 2004, by Linzey & Grossman, pp. 8-11.
3. 55 NW. U.L.Rev. 25, 27 (1960).
4. From "PLAINTIFF'S REPLY TO THE CORPORATE DEFENDANTS' BRIEF IN OPPOSITION TO PLAINTIFFS' MOTION TO CERTIFY THE CLASS ACTION," 2 August 2004, by Linzey & Grossman, pp. 9-15.
5. Leon Higginbotham, Jr., In the Matter of Color - Race & the American Legal Process: The Colonial Period 8-9 (1978) (citing State v. Mann, 13 N.C. (1 Dev.) 263, 266-267 (1829)).
6. From "PLAINTIFFS' BRIEF IN OPPOSITION TO THE CORPORATE DEFENDANTS' MOTION FOR SANCTIONS," 7 June 2004, by Linzey & Grossman, pp. 15-19.
7. E. Edward White, The American Judicial Tradition: Profiles of Leading American Judges (1976), p. 87.
8. John Norton Pomeroy, "The Supreme Court and State Repudiation: The Virginia and Louisiana Cases," 17 Amer. L. Rev. p. 685 (1883).