IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

GEOFF GALLAS	:	CIVIL ACTION
	:	
v.	:	
	:	
THE SUPREME COURT OF PENNSYLVANIA, et al.	:	NO. 96-6450

ORDER AND MEMORANDUM

Yohn, J. January 21, 1998

This is a civil rights action stemming from the termination of the plaintiff, Geoff Gallas, from the position of Executive Court Administrator of the First Judicial District of Pennsylvania ("FJD") by the elimination of that position. In his complaint, the plaintiff named a host of prominent local politicians and judges as defendants, including the Supreme Court of Pennsylvania, many of whom have been dismissed as parties in this court's May 15, 1997 Order. Proffering the defense of qualified immunity, the defendants, the Honorable Stephen A. Zappala ("Justice Zappala"), the Honorable Ralph A. Cappy ("Justice Cappy"), the Honorable Russell M. Nigro ("Justice Nigro"), and Pennsylvania Court Administrator Nancy Sobolevitch ("Sobolevitch"), now move for summary judgment as to the remaining counts against them. On the heels of these motions, the Honorable Vincent J. Fumo ("Senator Fumo") filed a motion to dismiss the state law claim against him and the remaining defendants, Robert Brady ("Brady") and the Democratic City Committee, joined this motion. For the reasons that follow, I will GRANT the defendants' motions in part, DENY them in part and DEFER judgment in part.

BACKGROUND

These are the facts which are either undisputed or, if disputed, taken in the light most

favorable to the plaintiff.[1]

On December 19, 1990, attempting to remedy problems plaguing the Philadelphia local court system, the Supreme Court of Pennsylvania assumed control of the FJD, (Nigro's App. Exs. Mot. Summ. J., Ex.1) [hereinafter Nigro's App.], the judicial district for the City and County of Philadelphia. 42 PA. CONS. STAT. ANN. § 901 (West Supp. 1997). Pursuant to that takeover, the plaintiff was hired to serve as the first Executive Court Administrator of the FJD. (Gallas Dep., 8/28/97, at 245-46.) The Executive Court Administrator was responsible for overseeing the day-to-day operations of the FJD, including developing and instituting the district's personnel practices and policies. (Gallas Dep., 9/26/97, at 404-407, 418-420, 972-973). The plaintiff's assumption of and dismissal from this position led to considerable fallout.

Concerned about the political climate surrounding the FJD, particularly the penchant local politicians had shown for rewarding supporters with jobs in the judicial system, Gallas engaged in extensive negotiations with both Justice Zappala and Sobolevitch regarding his employment as the administrative head of the district. (Gallas Dep., 8/27/97, at 104-06, 127-28; Gallas Dep., 8/28/97, at 259-61, 273-74.) Anticipating a possibly tumultuous relationship with the area's judges and politicians, Gallas testified that he secured a generous severance package, accessible regardless of whether he quit or was terminated at any time during his employment. (Gallas Dep., 8/28/97, at 243-44, 273-74.) According to Gallas, this severance agreement

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[1] In his reply brief, Justice Nigro argues that because the plaintiff failed to file a statement of undisputed facts as required by the scheduling order, all factual issues set forth in Justice Nigro's statement of facts should be deemed admitted. Recognizing that litigation-ending sanctions, as granting Nigro's request in this instance would be, should only be employed in the face of "flagrant bad faith" on the part of the sanctioned party, National Hockey League, et al. v. Metropolitan Hockey League, et al., 427 U.S. 639, 643 (1976), the court declines to deem all of the facts in Nigro's statement as admitted.

supplemented the other employment terms outlined in an August 28, 1991 letter to Gallas that was signed by Justice Zappala. (Gallas Dep., 8/28/97, at 273-74.)

As Gallas anticipated, his tenure as the Executive Court Administrator was rocky. He attempted to walk a fine line between accommodating the personnel requests of local politicians and instituting objective, process-oriented standards for making personnel decisions. (Gallas Dep., 9/26/97 at 402-408, 435-438, 396-397.) He also claims that he was not silent about his dedication to integrating these standards into the FJD and publicly spoke out against patronage appointments, both to the press and to local political figures. (Gallas Decl., ¶10.) Gallas' attempts to resuscitate the district were cut short when the Supreme Court of Pennsylvania, for reasons that are disputed, issued an Order, effective April 1, 1996, entitled "Administrative Reorganization of the First Judicial District" (the "Reorganization Order"). (Nigro App., Ex. 17.) This Order abolished Gallas' position as Executive Court Administrator and replaced the post with an Administrative Governing Board. (Id.)[2]

In his complaint, Gallas alleged that the defendants violated his constitutional rights when they terminated him from his former post.[3] (Counts I-IV.) He also brought state law claims for breach of contract, tortious interference with a contract and libel. (Counts V-VII.) The defendants responded by filing motions to dismiss, resulting in this court's May 15, 1997 Order

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[2] Gallas currently serves as the Budget Administrator for the FJD, although he disputes that he formally accepted the position. (Gallas Dep., 8/28/97, at 330-31.)

[3] Plaintiff filed his first complaint on September 23, 1996. This court then directed him to file an amended complaint stating whether each defendant was being sued in his or her individual or official capacity. The plaintiff filed this amended complaint on November 7, 1996, which is the complaint upon which the instant motions are based.

which dismissed all counts against the individual defendants in their official capacities and dismissed certain defendants as parties to the action.

On November 10, 1997, after the remaining defendants completed Gallas' deposition and before the plaintiff was able to depose the defendants, Justice Zappala, Justice Cappy, Justice Nigro and Sobolevitch, filed motions for summary judgment, asking the court to dismiss all claims against them on the grounds of qualified immunity. Heeding the directives of the Supreme Court to decide issues of qualified immunity as soon as possible so as to avoid needless discovery, Harlow v. Fitzgerald, 457 U.S. 800, 818 (1985), the court granted the defendants' motion for a protective order staying discovery on December 11, 1997, pending the disposition of these motions.

Senator Fumo, Brady, and the Democratic City Committee, have asked the court to dismiss the remaining claims against them as well. The plaintiff opposes both sets of motions and requests further discovery pursuant to Rule 56(f) Federal Rules of Civil Procedure.

SUMMARY JUDGMENT STANDARD

Rule 56 of the Federal Rules of Civil Procedure states that summary judgment "shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits . . . show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." FED. R. CIV. P. 56(c). In reviewing the record, the court must presume that the non-moving party's version of any disputed fact is correct. Eastman Kodak Co. v. Image Technical Services, Inc., 504 U.S. 451, 456 (1992). Additionally, the court must draw all reasonable inferences in favor of the non-moving party. Sempier v. Johnson & Higgins, 45 F.3d 724, 727 (3d Cir. 1995) cert. denied, 115 S. Ct. 2611

(1995). Although the moving party carries the burden of demonstrating the absence of a genuine issue of material fact, the non-moving party cannot merely rely upon the allegations contained in the complaint, but must offer specific facts contradicting the movant's assertion that no genuine issue is in dispute. See Coolspring Stone Supply, Inc. v. Amer. States Life Ins. Co., 10 F.3d 144, 147 (3d Cir.1993). An issue is genuine only if there is sufficient evidence from which a reasonable jury could find for the non-moving party. See Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 249 (1986).

The instant summary judgment motions are framed as requests for qualified immunity. Qualified immunity insulates eligible defendants from suit if the plaintiff cannot establish that the defendants have violated clearly established law. Harlow v. Fitzgerald, 457 U.S. 800, 819 (1982). This immunity from suit not only provides defendants with a defense to liability but also protects eligible defendants from the other burdens accompanying a law suit, such as undergoing trial or burdensome discovery. Mitchell v. Forsyth, 472 U.S. 511, 526 (1985). Thus, summary judgment should be granted as early as is possible in the law suit if the plaintiff cannot meet the doctrine's requirements. Harlow, 457 U.S. at 818.

DISCUSSION

I. Motions for Summary Judgment

As their first line of defense to liability for wrongfully terminating the plaintiff, the defendants argue that only the Supreme Court of Pennsylvania as an entity had the power to terminate Gallas' employment, not the individual justices and Sobolevitch. Thus, they claim that they cannot be held liable in their individual capacities for Gallas' wrongful termination. The court disagrees.

Personal-capacity, or individual liability, suits seek to impose individual liability upon a government officer for actions taken under the color of state law. Hafer v. Melo, 502 U.S. 21, 25 (1991). Attempting to eliminate lingering confusion about the distinction between individual capacity and official capacity suits, the Court rejected a defendant's attempt to extend the doctrine of absolute immunity to all acts taken within the defendant's official authority and necessary to the performance of governmental functions. Id. at 28. In this case, the state auditor general argued that she could not be held individually liable for firing a subordinate when she effectuated that termination pursuant to her state-granted authority. Id. at 25. The court disagreed and held that individual capacity suits seek to hold individuals liable for the abuse of authority impressed upon them by virtue of their state office. Id. at 31;see , e.g., Meding v. Hurd, 607 F. Supp. 1088, 1109-10 (D. Del. 1985) (members of Town Council can be held liable in individual capacities for voting to eliminate plaintiff as Township Police Chief).

Here, the justices of the Supreme Court of Pennsylvania and Sobolevitch put forth the same claim as that rejected in Hafer. In other words, they attempt to absolve themselves of liability for the disputed termination by positing that it was the office of the Supreme Court, or the entity, that carried it out rather than the individuals comprising the court. They do not dispute, however, that Gallas was terminated by an order of that court, (Nigro's Statement Undisputed Facts, ¶11; Zappala's Statement Undisputed Facts, ¶¶ 22-23), an order voted on by the individual justices. (Zappala's Mot. Summ. J. at 15; Nigro's Mem. Supp. Mot. Summ. J. at 12-13.) As shown in Hafer, accepting the defendants' overly broad interpretation of the doctrine of absolute immunity, would impermissibly insulate government officials "from personal liability for acts within their authority . . . ." Hafer, 502 U.S. at 28.

Moreover, exercising this authority in conjunction with that of other individuals, as on a board or government body, does not automatically immunize a government officer from individual liability for the abuse of that authority. See, Carver v. Foerster, 102 F.3d 96, 101 (3d Cir. 1996). In Carver, for example, the Third Circuit rejected a defendant's argument that the defendant, a member of a county salary board that eliminated the plaintiffs' employment, "is entitled to immunity because he could not have caused plaintiffs to lose their positions without the support

of " the other members making up the governing board. Id. This issue essentially is one of causation, a fact-driven inquiry which requires findings about the roles of the defendants in eliminating the plaintiff's position. Id.; see also Bartholomew v. Fischl, 782 F.2d 1148, 1153 (3d Cir. 1986) (holding Mayor liable for his informal role in persuading the city council to eliminate the plaintiff's position, even though the Mayor "was powerless to discharge [the plaintiff] himself.") On the current record, without the depositions of the defendants, and perhaps others, the court cannot determine whether there is a genuine issue of material fact. Thus, the defendants' argument that the remaining justices do not amount to a majority of the Supreme Court is not fatal to the plaintiff's wrongful discrimination claim. What is relevant, rather, is their role and Sobolevitch's role in the termination. See id.

Finally, the defendants point out that the plaintiff has not presented any evidence regarding any individual justice's role in his termination. The court has previously issued a protective order staying discovery prior to any of the defendants undergoing depositions.[4] As

[4] The plaintiff's attorney, Glenn Brown, provided a declaration that due to a series of scheduling conflicts and the defendants' insistence that they would not be deposed prior to the completion of the plaintiff's depositions the plaintiff's attorneys have not yet had a chance to

such, I will defer judgment on this issue and, as the plaintiff requests, vacate my previous order staying discovery. See FED. R. CIV. P. 56(f) (court may refuse application for summary judgment and allow for discovery if party opposing the motion shows it to be necessary). Put simply, this issue cannot be determined on the status of the current record.

A. At-Will Employment

In Count IV of the Amended Complaint, Gallas alleges that he had a "reasonable expectation of continued employment as a contractual, property and liberty interest."[5] Gallas, however, has failed to meet his burden to sustain this claim.

Due process entitlements, although protected by the Fourteenth Amendment, are not created by the Constitution. Board of Regents v. Roth, 408 U.S. 564, 577 (1972). "Rather they are created and their dimensions are defined by existing rules or understandings that stem from an independent source, such as state law - rules or understandings that secure benefits and that support claims of entitlement to those benefits." Id.; see also Kelly v. Borough of Sayerville, 107 F.3d 1073, 1077 (3d Cir. 1997).

An employee has no due process property interest in continued employment if, under state law, he is employed at the will of the employer. Board of Regents v. Roth, 408 U.S. at 578. In Pennsylvania, an employment agreement that fails to specify a definite time or prescribe conditions which shall determine the duration of the relationship may be terminated by either party at will. Geary v. United States Steel Corp., 319 A.2d 174 (Pa. 1974); Cummings v.

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depose the defendants. (See Brown Decl., 11/19/97.)

[5] The court dismissed Gallas' claim that the defendants' denied him a constitutionally protected liberty interest in violation of the Fourteenth Amendment. (Order, 5/15/97, at 45.)

Kelling Nut Co., 84 A.2d 323, 325 (Pa. 1951). The courts, moreover, have repeatedly refused to recognize any such modification of the at-will presumption absent a clear expression of the parties' intent. Clay v. Advanced Computer Applications, Inc., 536 A.2d 1375, 1383 (Pa. Super. 1988), rev'd in part on other grounds, 559 A.2d 917 (Pa. 1989).

To overcome the at-will presumption a clear and definite intention to do so must be expressed in the contract. Scott v. Extracorporeal, Inc., 545 A.2d 334 (Pa. Super. 1988); Veno v. Meredith, 515 A.2d 571 (Pa. Super. 1986), appeal den., 616 A.2d 986 (Pa. 1992). Following this guideline, courts have repeatedly held that merely promising employment until retirement is insufficient. See Schoch v. First Fidelity, 912 F.2d 654, 660 (3d Cir. 1990); see also, Darlington v. General Electric, 504 A.2d 306 (Pa. Super. 1986), overruled on other grounds, Clay v. Advanced Computer Applications, Inc., 559 A.2d 917 (Pa. 1989). Vague "just cause" provisions have likewise failed to alter the at-will nature of employment relationships. Thus, "an intention to offer a specific tenure of employment is not inferable from an employer's statement, verbal or written, that employees would not be terminated so long as they performed their work in a satisfactory manner." Betts v. Stroehman Bros., 512 A.2d 1280, 1281 (Pa. Super. 1986) (emphasis added); Banas v. Matthews International Corp., 502 A.2d 637, 648 n.11 (Pa. Super. 1985). In a similar vein, a statement that the employer "won't just terminate someone without good reason for doing so" cannot overcome the stringent requirement. DiBonaventura v. Consolidated Rail Corp., 539 A.2d 865, 867 (Pa. Super. 1988). These cases bear out that, in light of the long-standing history of the at-will presumption, courts will only be satisfied that the employer intended to alter the employment relationship into a legally enforceable contract by clear and definitive evidence of this intention. See Schoch, 912 F.2d 654.

Gallas has not surmounted this hurdle by his bare allegations that Justice Zappala and Justice Cappy, in addition to assuring him that they "would protect [his] position against the political repercussions of [his] charge to eliminate patronage", also "made explicit promises of continued employment provided [his] performance was satisfactory." (Gallas Dec. at ¶2) (emphasis added). These statements not only fail to designate a specific time period to the agreement but they also fail to define what constitutes satisfactory performance. These vague representations lack the requisite specificity to show a clear intention to alter the at-will nature of the relationship as required under Pennsylvania law. Id. at 659-60.

Indeed, the remaining evidence directly contradicts the plaintiff's assertions that he could be terminated only for objective just cause, for Gallas concedes that the terms of his contract explicitly vested the discretion to evaluate his performance solely with his employer. Gallas notes in his brief that his contract supplied that (1) his "employment would be continued upon acceptable performance," and (2) a dispute existed only over whether Justice Cappy or Sobolevitch would be the evaluator of that performance. (Gallas' Answer Mot. Protective Order, at 4). Thus, Gallas freely admits that his employers were to be the ultimate evaluators of his performance. Subjective just cause provisions do not modify the at-will relationship. Id.

Furthermore, in his deposition testimony, Gallas both explicitly and by inference asserted that there was no temporal term within his employment contract. Rather, he understood that he was free to leave his job at any time. (Gallas Dep., 8/27/97, at 117, 122, 126-28). In fact, he anticipated just that possibility by attempting to negotiate for a severance plan effective if he left

the job or was terminated at any time after being hired. (Id. at 125-32.)[6]

Although the plaintiff requests further discovery on all claims, further discovery on this claim would be inapposite. The plaintiff has not shown the court how further discovery from the defendants would reveal evidence sufficient to overcome the at-will presumption, especially when he bases his legal arguments that an employment contract existed on the evidence already introduced, evidence which fails to meet the stringent Pennsylvania standard. (See Pl.'s Resp. at 2-3.) Accordingly, I conclude that the defendants are entitled to summary judgment as to the plaintiff's claim that the defendants terminated him in violation of his right to due process of law under the Fourteenth Amendment.

B. First Amendment

In Count IV of the complaint, Gallas has also claimed that the defendants violated his First Amendment right to speak on matters of public concern when they terminated him from his

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[6] At one point in his testimony, Gallas seemed to state that the parties agreed upon a five year term of employment, but then explained that this five year term applied to the severance agreement.

> Q. I'm only asking was there an agreement reached prior to August 28, 1991 as to how long you would be employed?
> A. My understanding at the time and what I thought we agreed on was it was five years, that we had a five year understanding. That was my understanding . . . .
> Q. Are you telling me you reached a specific agreement that you were hired for a period of five years with Nancy Sobolevitch?
> A. I didn't say five years, that the severance portion of this was tied to five years.
> Q. My question is was there any agreement that you arrived at prior to August 28th as to the length of term that they are contracting that you have this position?
> A. My recollection is we did not have a specific agreement on that issue.

(Gallas Dep. 8/28/97, at 242-44.) Given that there is no other evidence in the record recognizing an agreement for a specific term, either before or after August 28, 1991, coupled with the fact that Gallas does not allege that he meant to say that there is a five year term of employment, this court concludes that it is undisputed that the five year term applied to the severance agreement and was not a five year contract for employment.

job. Unlike the due process claim, this count does not hinge on Gallas' establishing tenure. See, e.g., Fogarty v. Boles, 121 F.3d 886 (3d Cir. 1997). Although Gallas alleges that he outspokenly opposed political patronage requests as well as patronage generally on several occasions, he does not provide specific details of the contents of most of his statements.

The First Amendment protects public employees from retaliation from their employer. Fogarty, 121 F.3d at 888 (3d Cir. 1997). Under 42 U.S.C. §1983, public employees may sue to enforce this protection if (1) they spoke on a matter of public concern; (2) their interest in that field outweighs the government's responsibility to serve the public; (3) the speech caused the retaliation; and (4) the adverse employment decision would not have occurred but for the speech. Green v. Philadelphia Housing Auth., 105 F.3d 882, 885 (3d Cir. 1997).

Whether an employee's speech touches upon a matter of public concern, the first prong of the aforementioned test, depends upon "the content, form, and context of a given statement, as revealed by the whole record." Connick v. Myers, 461 U.S. 138, 148 (1983). The Third Circuit expanded upon this proposition by stating that "the court must examine each activity which the employee claims provided the actual motivation for his termination to see whether it 'touch[es] . . . upon a matter of public concern.'" Johnson v. Lincoln University, 776 F.2d 443, 451 (3d Cir. 1985) (quoting Connick v. Meyers, 461 U.S. at 149). Thus, courts examining whether a statement constitutes protected speech must consider the actual statements along with the circumstances in which they were made.

If the plaintiff surmounts the first prong, the court must then engage in a balancing test, weighing the plaintiff's interest in making the statement against the government's interest, as an employer, in promoting efficient and effective service through its employees. Rankin v.

McPherson, 483 U.S. 378, 388 (1987). In performing this evaluation, the statements will not be considered in a vacuum; rather the time, place, and manner in which the comments were made are relevant as well as the extent to which the statements impair discipline or harmony among co-workers, impact working relationships and confidences, or impede the performance of the speaker's duties. Id.

After reviewing the parties' motions and supporting evidence, the court does not believe that either party has provided enough information or cited appropriate case law which would allow the court to rule definitively that a genuine issue of material fact does or does not exist on the First Amendment issue. The plaintiff does not provide the court with the substantive content or specific circumstances surrounding most of the statements he alleges constitute protected speech.[7] (Gallas Dec. ¶ 10.) Moreover, outside of a footnote, (Zappala's Mem. Supp. Mot. Summ. J. at 18), the parties have not briefed, nor have they addressed in discovery, whether Gallas' comments meet all of the elements of this test. As such, the court will defer ruling on this issue.

Instead, the defendants have argued only that the plaintiff cannot establish the third and fourth prongs of the test, that the protected speech was a substantial motivating factor behind his dismissal. See Czurlanis v. Albanese, 721 F.2d 98, 103 (3d Cir. 1983); Mt. Healthy City School

[7] One of the defendants has introduced a memorandum written by the plaintiff, while still employed as the Executive Court Administrator, to the Mayor of Philadelphia and the Mayor's Chief of Staff. (Nigro's App., Ex. 1.) In the memo, written July 28, 1994, the plaintiff voices his opinion that measures in addition to party affiliation should be used to select judicial candidates for the six judicial vacancies in the City of Philadelphia. (Id.) While this memo may have the requisite specificity to warrant a ruling on whether it addresses a matter of public concern, the parties have failed to provide sufficient evidence as to the other factors comprising the inquiry. As such, the court will defer ruling on this matter until it has more facts in evidence.

District Board of Education v. Doyle, 429 U.S. 274 (1977). Recently, the Third Circuit held that in evaluating a First Amendment retaliation claim, the "motives of government officials are indeed relevant, if not dispositive, when an individual's exercise of speech preceded government action affecting that individual." Anderson v. Davila, 125 F.3d 148, 161 (3d Cir. 1997). Because the plaintiff argues that the actions of the defendants were undertaken in retaliation for his exercise of First Amendment speech, thereby putting in issue the motives of the decisionmakers, this court must defer ruling on this issue until the plaintiff has had a fair opportunity to conduct discovery. FED. R. CIV. P. 56(f).

In sum, the plaintiff must designate at some point, in proper form, those statements he contends constitute protected speech in accordance with the standard of detail required by Connick and its progeny. Further, the court will vacate its order staying discovery and defer ruling on the motion for summary judgment as to the plaintiff's First Amendment claim so that the plaintiff can place on the record evidence that his speech caused the retaliation and that his termination would not have occurred but for his speech.

II. Motion to Dismiss

Senator Fumo, Brady, and the Democratic City Committee have moved the court, contingent upon the court's disposition of the summary judgment motions, to dismiss Gallas' remaining state law claim, alleging that the defendants interfered with the plaintiff's employment contract, against them pursuant to 28 U.S.C. § 1367(c)(1) and (c)(3).

28 U.S.C. § 1367(c) provides, in relevant part:

> The district court may decline to exercise supplemental jurisdiction under subsection (a) if -

(1) the claim raises a novel or complex issue of State law,

(3) the district court has dismissed all claims over which it had original jurisdiction.

Because this court has not granted summary judgment as to all federal claims, the motion to dismiss the state law claims pursuant to § 1367(c)(3) will be deemed as moot.

Furthermore, this court finds that the state law issue is not a novel or complex one and chooses to exercise its discretion to maintain supplemental jurisdiction over this claim. Contrary to the defendants' assertion that no Pennsylvania state court has ever found that a cause of action exists in this context, Pennsylvania courts have, on numerous occasions, adopted § 766 of the Restatement, RESTATEMENT (SECOND) OF TORTS § 766 (1979), and recognized a claim for intentional interference with an at-will employment contract. See Curran v. Children's Service Center of Wyoming County, Inc., 578 A.2d 8 (Pa. Super.); appeal den., 585 A.2d 468 (Pa. 1991); Yaindl v. Ingersoll-Rand, 422 A.2d 611, 618 n.6 (Pa. Super. 1980). Furthermore, federal district courts have exercised supplemental jurisdiction over these claims, especially when the court maintains original jurisdiction over related claims. See, e.g., McCloud v. AGS Information Services, Inc., No. CIV.A. 93-5401, 1993 WL 460800 (E.D. Pa. Nov. 5, 1993) (exercising supplemental jurisdiction over plaintiff's state law interference with contract claim where plaintiff also alleging that defendants violated federal law). It is patent that there is nothing inherently novel or complex about a state law claim for interference with an existing contract.

Further, retaining supplemental jurisdiction over this state law claim comports with the directive issued in United Mine Workers v. Gibbs, 383 U.S. 715 (1966), which instructed district courts to consider factors of efficiency, judicial economy, convenience and fairness to the

litigants when determining whether to exercise supplemental jurisdiction. First, like the plaintiff's remaining federal claim, the state law claim for interference with a contract focuses, in large part, on the facts surrounding the plaintiff's termination. By retaining jurisdiction, the court will ensure that the matters are resolved in one trial, not one in federal court and a separate one in state court. Moreover, having filed several motions and undergone substantial discovery, the parties have expended considerable resources developing their claims in this court. Dismissing the claim at this point would be both wasteful and unfair to the litigants. In light of these considerations, the court will exercise its discretion and retain supplemental jurisdiction over the plaintiff's state law claim.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

GEOFF GALLAS	:	CIVIL ACTION
	:	
v.	:	
	:	
THE SUPREME COURT OF PENNSYLVANIA, et al.	:	NO. 96-6450

ORDER

AND NOW, this 21st day of January, 1998, upon consideration of the motions for summary judgment of defendants the Honorable Stephen A. Zappala, the Honorable Ralph J. Cappy, the Honorable Russell M. Nigro, and Nancy Sobolevitch and the motion to dismiss of defendants the Honorable Vincent J. Fumo, Robert Brady and the Democratic City Committee, the plaintiff's answer thereto, and the defendants' replies, it is hereby ORDERED that:

(1) Because plaintiff was an at-will employee, the motion for summary judgment of defendants Justice Zappala, Justice Cappy, Justice Nigro, and Sobolevitch is GRANTED as to the plaintiff's claim that the defendants terminated him in violation of his right to due process of law under the Fourteenth Amendment;

(2) Judgment on the motion for summary judgment of defendants Justice Zappala, Justice Cappy, Justice Nigro, and Sobolevitch as to the plaintiff's claim that the defendants violated his

First Amendment right to speak on matters of public concern is DEFERRED as premature pending the completion of discovery;

(3) The motion of defendants Senator Fumo, Brady and the Democratic City Committee to dismiss is DENIED;

(4) This court's December 11, 1997 Order staying discovery is VACATED;

(5) The parties are directed to submit to the court, in letter form, within ten days of the date of this Order their recommendations for a new discovery deadline and, if necessary, a new trial date.

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William H. Yohn, Jr., J.