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

PENNSYLVANIA DEMOCRATIC PARTY, Plaintiff, -versus- REPUBLICAN PARTY OF PENNSYLVANIA, DONALD J. TRUMP FOR PRESIDENT, INC., ROGER J. STONE, JR., and STOP THE STEAL, INC, Defendants.	Civil Action No. 2:16-cv-05664

DEFENDANT REPUBLICAN PARTY OF PENNSYLVANIA
MOTION TO DISMISS AND OBJECTION TO PROPOSED ORDER

Now comes Defendant Republican Party of Pennsylvania ("RPP"), by and through counsel, and pursuant to Fed. R. Civ. P. 12(b)(6), respectfully moves the Court for an order dismissing it from this action. This motion is supported by the attached memorandum in support.

Respectfully submitted,

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MEMORANDUM IN SUPPORT

I. INTRODUCTION

Now comes Defendant Republican Party of Pennsylvania ("RPP") and files its objections to an order by this Court as against the RPP and moves this Court, pursuant to Fed. R. Civ. P. 12(b)(6), to dismiss the RPP with prejudice from this litigation.

The Plaintiff's complaint ("Complaint"), despite its length and twenty four (24) exhibits (two hundred plus pages), fails to state a claim against the RPP. Pennsylvania law regulates all of the procedures and processes that Plaintiff raises

as alleged concerns, and prohibits the activity Plaintiff seeks to have regulated by this Court. There is simply no allegation, whatsoever, that the RPP has violated or plans to violate any of these laws. Furthermore, the RPP has not violated these laws, and it has no intention of violating these laws. For these reasons, an Order against the RPP is unwarranted, unnecessary, and a waste of this Court's resources.

II. STANDARD FOR 12(b)(6) MOTION TO DISMISS

Under Fed. R. Civ. P. 12(b)(6), the cause of action may be dismissed by the Court if the complaint fails to state a claim upon which relief can be granted. To survive a Rule 12(b) (6) motion to dismiss, the complaint must assert a plausible claim and set forth sufficient factual allegations to support the claim. *See Ashcroft v. Iqba*l, 556 U.S. 662 (2009) (citing *Bell Atl. Corp. v. Twombl*y, 550 U.S. 544 (2007)).

In *Iqbal*, the Supreme Court notes that the plausibility standard is not "akin to a probability requirement, but it asks for more than a sheer possibility that a defendant has acted unlawfully. *Ashcroft*, 556 U.S. 662, 129 S. Ct. 1937, at 1949 (2009). "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct. . . . Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice." *Id.* at 678.

Moreover, a plaintiff must provide sufficient factual allegations that "raise a right to relief above the speculative level." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007). A court does not accept "bare assertion of legal conclusions", *Columbia Nat. Res. Inc. v. Tatum*, 58 F.3d 1101, 1109 (6th Cir. 1995), "unwarranted factual inferences", *Morgan v. Church's Fried Chicken*, 829 F.2d 10, 12 (6th Cir. 1987), "unadorned the-defendant-unlawfully-harmed me accusation," *Ashcroft v. Iqbal*, 129 S. Ct. 1937, 1949 (citing *Bell Atl. Corp. v.* Twombly 550 U.S. 544, 555 (2007)), or "naked assertions [of fact] devoid of further factual enhancement." *Id.* (citing *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007)). As such, "[a] court considering a motion to dismiss can choose to begin by identifying pleadings that, because they are no more than conclusions, are not entitled to the assumption of truth." *Id*. at 679.

Plaintiff has completely failed to establish the required elements for each of its claims and establish necessary factual allegations against the RPP. Instead, the Complaint is filled with "bare assertion of legal conclusions," *Columbia Nat. Res. Inc.*, 58 F.3d at 1109 (6th Cir. 1995), "unwarranted factual inferences," *Morgan*, 829 F.2d at 12, "unadorned the-defendant-unlawfully-harmed me accusation," *Ashcroft*, 129 S. Ct. at 1949 (citing *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007)), or "naked assertions [of fact] devoid of further factual enhancement," *Id.*

at 678 (citing *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 557 (2007)), all of which utterly fail to meet the well-established pleading standards.

III. ARGUMENT

A. Plaintiff Fails to Allege Sufficient Facts That the RPP Violated 42 U.S.C. § 1985(3)

Count I of Plaintiff's Complaint fails to allege a sufficient factual basis to support its claim that the RPP has violated 42 U.S.C. § 1985(3). Plaintiff's complaint is entirely based on baseless factual inferences designed intentionally to harass and deny the RPP its constitutional rights to conduct its legitimate campaign activities. There is not a single factual allegation contained within the Complaint that alleges any violation of 42 U.S.C. § 1985(3) by the RPP.

To succeed under 42 U.S.C. § 1985(3), a plaintiff must prove four elements: (1) a conspiracy; (2) for purposes of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or for equal privileges and immunities under the laws; and (3) an act in furtherance of the conspiracy; (4) whereby a person is either injured in his person or property or deprived of any right or privilege of a citizen of the United States.

Plaintiffs allegations of a violation of 42 U.S.C. § 1985(3) are frivolous and meritless. Plaintiff has failed to provide any evidence, allegation, or factual support of a "conspiracy" arising under 42 U.S.C. § 1985(3). Plaintiff has failed to provide

any evidence, allegation, or factual support to establish that there is a "purpose" to "deprive any person." Plaintiff has failed to provide any evidence, allegation, or factual support to establish that the RPP has taken an "act in furtherance of the [alleged] conspiracy." Plaintiff has failed to provide any evidence, allegation, or factual support that any "person" has been "deprived of any right or privilege of a citizen of the United States."

As required under *Twombly*, the plaintiff must assert a plausible claim and set forth sufficient factual allegations to support the claim. See *Ashcroft v. Iqbal*, 556 U.S. 662 (2009) (citing *Bell Atl. Corp. v. Twombly*, 550 U.S. 544 (2007)). Plaintiff has simply failed to assert anything other than "bare assertion of legal conclusions", *Columbia Nat. Res. Inc. v Tatum*, 58 F.3d 1101, 1109 (6th Cir. 1995), "unwarranted factual inferences," *Morgan v Church's Fried Chicken*, 829 F.2d 10, 12 (6th Cir. 1987), "unadorned the-defendant-unlawfully-harmed me accusation," *Iqbal*, 129 S. Ct. at 1949 (citing *Twombly* 550 U.S. at 555), or "naked assertions [of fact] devoid of further factual enhancement." *Iqbal*, 129 S. Ct. at 1949 (citing *Twombly*, 550 U.S. at 555). For the aforementioned reasons, the Court should dismiss Count I of the Complaint.

B. Plaintiff Fails to Allege Sufficient Facts That the RPP Violated 52 U.S.C. § 10307(b) or That Plaintiff has Standing

The Plaintiff has failed to allege in its Complaint any facts in support of an actual violation of 52 U.S.C. § 10307(b) nor has it alleged any facts that support Plaintiff's standing to bring such a claim.

It is well established that a plaintiff alleging violations of 52 U.S.C. § 10307(b) must demonstrate standing under the Voting Rights Act, and a plaintiff must prove: "(1) he has personally suffered or will suffer some distinct injury-in-fact as a result of defendant's putatively illegal conduct; (2) the injury can be traced with some degree of causal certainty to defendant's conduct; (3) the injury is likely to be redressed by the requested relief; (4) the plaintiff must assert his own legal rights and interests, not those of a third party; (5) the injury must consist of more than a generalized grievance that is shared by many; and (6) the plaintiff's complaint must fall within the zone of interests to be regulated or protected by the rule of law in question." *Valley Forge Christian College v. Americans United for Separation of Church and State, Inc.*, 454 U.S. 464, 471-77, 102 S.Ct. 752, 757-61, 70 L.Ed.2d 700 (1982); *see also Allen v. Wright*, 468 U.S. 737, 751-52, 104 S.Ct. 3315, 3324-25, 82 L.Ed.2d 556 (1984).

Additionally, when a plaintiff is seeking injunctive relief "he must establish that he personally faces a realistic, immediate, and non-speculative threat of being

prospectively subjected to or harmed by the particular conduct at issue." *City of Los Angeles v. Lyons*, 461 U.S. 95, 102, 103 S.Ct. 1660, 1665, 75 L.Ed.2d 675 (1983).

Plaintiff has completely failed to demonstrate standing because it has alleged no evidence, allegations, or factual support to establish that it will personally "face[] a realistic, immediate, and non-speculative threat of being prospectively subjected to or harmed" by the RPP. *City of Los Angeles v. Lyons*, 461 U.S. 95, 102, 103 S.Ct. 1660, 1665, 75 L.Ed.2d 675 (1983). Additionally, Plaintiff has provided no factual allegation supporting any of the elements of standing outlined by the Court in *Valley Forge Christian College. See supra.*

Other than the "bare assertion of legal conclusions," *Columbia Nat. Res. Inc. v. Tatum*, 58 F.3d 1101, 1109 (6th Cir. 1995), "unwarranted factual inferences," *Morgan v Church's Fried Chicken*, 829 F.2d 10, 12 (6th Cir. 1987), "unadorned the-defendant-unlawfully-harmed me accusation," *Iqbal*, 129 S. Ct. at 1949 (citing *Twombly*, 550 U.S. at 555), or "naked assertions [of fact] devoid of further factual enhancement," *Iqbal*, 129 S. Ct. at 1949 (citing *Twombly*, 550 U.S. at 555), the Plaintiff has failed to plead any facts in support of its claim that the RPP has violated 52 U.S.C. § 10307(b). For the aforementioned reasons, the Court should dismiss Count II of the Complaint.

C. Plaintiff's Claims are Not ripe for Review and Should be Dismissed

The claims contained within the Complaint are not ripe for adjudication. Ripeness is designed to prevent courts from "entangling themselves in abstract disagreements." *Abbott Labs v. Gardner*, 387 U.S. 136, 148, 18 L. Ed. 2d 681 (1967). A determination of ripeness "evaluates both the fitness of the issues for judicial decision and the hardship to the parties of withholding court consideration." *Abbott Labs.*, 387 U.S. at 149. The case must involve "a real and substantial controversy admitting of specific relief through a decree of a conclusive character, as distinguished form an opinion advising what the law would be upon a hypothetical state of facts." *North Carolina v. Rice*, 404 U.S. 244, 246, 30 L. 2d. 413, 92 S. Ct. 402 (1971). "A federal court's jurisdiction therefore can be invoked only when the plaintiff himself has suffered some threatened or actual injury resulting from the putatively illegal action . . . ." *Warth v. Seldin*, 422 U.S. 490, 499, 45 L. Ed. 343. 95 S. Ct. 2197 (1975).

D. Plaintiff Fails to Allege Sufficient Facts That Injunctive Relief Should be Granted

Plaintiff filed this action ten (10) days before a national election to be held on November 8, 2016 (the "Election"), and it has failed to allege specific allegations for each and every count, and has based its entire action on baseless allegations of speculative conclusory hypotheticals.

Preliminary injunctive relief is "an extraordinary remedy" and "should be granted only in limited circumstances." *Am. Tel. & Tel. Co. v Winback & Conserve Program, Inc.*, 42 F.3d 1421, 1426-72 (3rd. Cir. 1994) (internal quotation marks omitted). "A party seeking a preliminary injunction must show: (1) a likelihood of success on the merits; (2) that it will suffer irreparable harm if the injunction is denied; (3) that granting preliminary relief will not result in even greater harm to the nonmoving party; and (4) that the public interest favors such relief." *Arrowpoint Capital Corp. v Arrowpoint Asset Mgmt.*, LLC, 793 F.3d, 318-19 (3d. Cir. 2015). "The failure to establish any element of that test renders a preliminary injunction inappropriate." *Id*. (internal quotations and alterations removed).

Plaintiff alleges absent injunctive relief "voters will be subjected to intimidation, threats, and perhaps even force at the hands of vigilante "poll watcher" and "ballot integrity" volunteers on election day." (Comp. ¶ 80.) Yet the Complaint fails to allege any facts that support actual intimidation, threats, harassment or a single fact pertaining to the RPP's violation of either 42 U.S.C. § § 1985(3) or 52 U.S.C. § 10307(b).

While Plaintiff's allegations are from multiple sources spanning multiple months, they decided to file this action ten (10) days before the Election. "An unreasonable delay in seeking an injunction negates the presumption of irreparable harm." *FMC Corp. v Control Solutions Inc.*, 369 F.Supp 2d. 539, 582 (E.D.Pa.

2005). Moreover, "any claim against a state elector procedure must be expressed expeditiously." *Bowes v. Indiana Secretary of State*, 2014 WL 6474097, *3 (S.D. Ind., Nov. 19, 2014) (*citing Fulani v. Hogsett*, 917 F.2d 1028, 1031 (7th Cir. 1990)(*citing, in turn, Williams v. Rhodes*, 393 U.S. 23 (1968)). Again, the Plaintiff has failed to assert a plausible claim and set forth sufficient factual allegations to support the claim.

For the aforementioned reasons, the Court should dismiss Count III of the Complaint.

IV. CONCLUSION

Defendant Republican Party of Pennsylvania respectfully requests that the Court dismiss the Plaintiff's claims against it in their entirety, deny the Plaintiff's request for a temporary restraining order and injunctive relief, and enter judgement in the Republican Party of Pennsylvania's favor.

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November 6, 2016

CERTIFICATE OF SERVICE

I certify that on this date I electronically filed the foregoing Motion to Dismiss and Objection to Proposed Order and Memorandum of Support using the Court's electronic filing system, making it available for download to counsel of record as indicated below:

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I certify that on this date I sent the foregoing Motion to Dismiss and Objection to Proposed Order and Memorandum of Support to all parties without counsel of record via overnight mail and to the listed email address on the Stop the Steal, Inc. website.

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