

Daniel E. Brannen Jr.

COUNSELOR AT LAW

Member—Pennsylvania Bar

2500 Sawmill Road, Apt. #1323  
Santa Fe, NM 87505

Telephone (505) 954-0019  
Facsimile (505) 820-2158

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**Privileged and Confidential Communication**

Thomas A. Linzey, Esq.  
2859 Scotland Road  
Chambersburg PA 17201

VIA First-Class Mail

Re: *Rule 11 opinion*

**ATTACHMENT ONE**  
*To Plaintiffs' Brief in Opposition to the  
Corporate Defendants'  
Motion for Sanctions*

Dear Mr. Linzey:

Today you wrote me in confidence for my opinion on the Rule 11 implications of a lawsuit you may be asked to file on behalf of a citizen group called FROST in Saint Thomas Township, Franklin County, Pennsylvania.

As I understand the situation, FROST is an organization that formed to protect Saint Thomas Township from the harms posed by a quarry corporation that seeks to operate there. This past November, a resident ran for the position of township supervisor on the sole campaign issue of stopping the quarry. In exercise of their fundamental and constitutional right to republican democracy, the people of Saint Thomas Township elected this Supervisor.

In response to the democratic results of the election, on February 18, 2004, the quarry corporation sent Saint Thomas Township a letter threatening litigation against the Township unless the newly elected Supervisor recuses himself from participating in decisions that concern the quarry corporation. The corporation reasoned that the Supervisor's prior participation in FROST activities give him a bias that violates the corporation's alleged rights to Due Process and Equal Protection under the Constitution.

The people of Saint Thomas Township, through FROST, are considering litigation against the quarry corporation for its violation of their constitutional rights, including (without limitation) their rights to a participatory republican democracy, to petition the government for redress of grievances, to due process protection of their own property and other rights, and to be free from takings without just compensation.

To succeed with these claims, you have explained to me that FROST will have to convince the courts that the quarry corporation is a state actor, and therefore that it may not violate the constitutional rights of the people of Saint Thomas Township. In my opinion, you have crafted a good faith argument for extending the state actor doctrine to cover corporations.

As you well know, corporations are literally creations of the state. In the early days of our nation, states chartered corporations almost solely for public works projects, such as building and maintaining canals and roads. As such, early corporations served many roles that state Departments of Transportation and local road crews serve today.

A corporation is born when the state issues a charter that gives the corporation life to operate with many privileges and immunities that human beings do not enjoy. Using those privileges and immunities and their alleged constitutional rights, commercial corporations today wield governmental powers by dictating to governments what they can and cannot do. Your situation in Saint Thomas Township is only one such example.

In 1998, Omnipoint Communications sought to erect a cell phone tower in Chadds Ford Township in eastern Pennsylvania. Responding to the citizens' health concerns, the local government there denied Omnipoint Communications the zoning variance it needed to erect the tower. Omnipoint Communications filed a lawsuit in federal court, successfully arguing that the government had violated its rights under the Civil Rights Act, which derive from the constitutional rights in the Fourteenth Amendment.

Omnipoint Communications took that decision up to the town of Wellfleet on Cape Code in Massachusetts, where the people wanted to enact a law to require 1,500 foot setbacks for cell towers. Waving the decision from its victory in Chadds Ford Township, Omnipoint Communications scared the local government in Wellfleet away from taking any action at all.

In this way, corporations are using their supposed constitutional rights to prevent the people of our nation from governing for their health, safety, economy, environment, and welfare. In my opinion, you have crafted a good faith argument that as creations of the state, corporations should not be exercising constitutional rights against the people of our nation, but should be complying with the rights of the people by whose permission they get to operate commercially in the first place.

I wish you well with your case.

Sincerely,

A handwritten signature in black ink, appearing to read 'DEB', with a long horizontal flourish extending to the right.

Daniel E. Brannen Jr.