

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

James Foster,	:	CIVIL ACTION NO:	16	3598
Plaintiff	:			
	:			
v.	:			
	:			
The Committee of Seventy; WHYY; National	:			
Public Radio; Temple University;	:			
Philadelphia Newspapers; Pennsylvania	:			
Inter-Governmental Cooperation Authority;	:			
Philadelphia Democratic Party; Philadelphia	:			
Republican Party; William J. Marazzo; David	:			
Thornburgh; Suzanne Biemiller; Sam Katz;	:			
and John/Jane Does 1-25,	:			
Defendants	:	JURY TRIAL DEMANDED		

COMPLAINT

AND NOW, comes the Plaintiff, James Foster, and, in support of his Complaint against the Defendants, aver as follows:

INTRODUCTORY STATEMENT

This is a civil rights complaint, under 42 U.S.C. § 1983 raising claims under the First Amendment of the United States Constitution for interference with the Plaintiff's candidacy for Mayor of Philadelphia, and for violations of his right to free speech, and for retaliation for his long history of speaking out on matters of grave public concern, to wit, political corruption in the City of Philadelphia. The Plaintiff alleges that these Defendants, which include persons and/or entities who were acting under color of law, and acted through a conspiracy with certain private entities in order to limit the access of the Plaintiff to the debate stage in the 2015 mayoral race for the City of Philadelphia.

*12 pages
Sum to
Pro Se*

The Plaintiff is a life-long resident of the City of Philadelphia, and the publisher of the Philadelphia Independent Voice Newspaper, formerly the Germantown Chronicle, who was also a life-long registered voter with no political affiliation, and a two-time past candidate for public office, preceding the 2015 race for Mayor of Philadelphia. He ran for Philadelphia City Council in 2007, and was the 2012 opponent of the incumbent Congressman for the Second Congressional District, Chaka Fattah, who has recently been convicted of public corruption charges in federal court in Philadelphia. Plaintiff spoke and reported openly about the unlawful conduct of Fattah, both through his media activities, and politically, and believes that his open, frank, and true speech about Fattah provided part of the motive to silence him, and deny his debate stage access.

This Complaint is filed at a time of challenges across the country to stringent independent and third party ballot access laws, including Pennsylvania, in which the federal courts have struck down certain provisions of the Pennsylvania Election Code, see Constitution Party of Pennsylvania, et al. v. Cortes, No. 15-3046 (3d Cir. June 2, 2016), as well as access to the Presidential debate stage in Libertarian National Committee, Inc., et al. v. Federal Election Commission, No. 15-cv-1397 (United States District Court for the District of Columbia). This case raises issues addressing unwritten political customs, policies, and practices developed as a result of the entrenched two-party control of the political process, specifically in the City of Philadelphia, through which that control has been maintained.

Plaintiff was successful in having his name placed on the ballot for Mayor of the City of Philadelphia for the 2015 election, gaining more signatures than any of the other candidates for the election, and surviving a ballot access challenge in the

Commonwealth Court of Pennsylvania. Despite this demonstration of wide public support for his candidacy, the Defendants, who include sponsors of the debates, principals of their organizations, and elected or appointed officials of the City of Philadelphia, and agencies with financial supervisory responsibility, The Commonwealth of Pennsylvania, and/or the United States of America conspired to exclude him from the three televised debates preceding the Philadelphia mayoral election of 2015.

Much of the last 20 years of the Plaintiff's professional life has been devoted to his independent media efforts, and political efforts, directed at addressing the long-history of political corruption in the City of Philadelphia. Plaintiff believes and avers that the motive for these Defendants' conduct was to protect operatives in the City of Philadelphia, the Commonwealth of Pennsylvania, the United States of America, members of the Democratic and Republican parties, and other persons and entities who have been involved in a long history of public and political corruption that has left the City bankrupt, has deprived much of its populace of effective political representation, and has created a "pay-to-play" environment in the City of Philadelphia where misappropriation of public monies for political gain are the modus operandi.

Plaintiff more specifically sets forth his claims as follows:

1. The Plaintiff, James Foster, is an adult individual, and resident of the City of Philadelphia. Plaintiff was a candidate for the office of Mayor of the City of Philadelphia in 2015.
2. The Defendant, Committee of Seventy, is a recognized government watchdog group, and was a sponsor for the 2015 Philadelphia mayoral debates.

3. The Defendant, Temple University, is a public institution of higher learning, and was a sponsor for the 2015 Philadelphia mayoral debates.

4. The Defendant, WHYY, is a public broadcasting facility, with primary operations in the City of Philadelphia, and was a sponsor for the 2015 Philadelphia mayoral debates.

5. The Defendant, National Public Radio, is a public broadcasting facility, which covers the City of Philadelphia, and was a sponsor for the 2015 Philadelphia mayoral debates.

6. The Defendant, Philadelphia Media Network, is a corporation that owns and controls Philadelphia's two major newspapers, and was a sponsor for the 2015 Philadelphia mayoral debates.

7. The Defendant Pennsylvania Inter-Governmental Cooperation Authority is a duly organized agency of the Commonwealth of Pennsylvania, established in 1991, to provide oversight of the commitment of monies from the Pennsylvania treasury to assist distressed cities of the First Class in Pennsylvania, Philadelphia being the only one, and ensure sound fiscal practices.

8. The Defendant, Philadelphia Democratic Party is a political organization.

9. The Defendant, Philadelphia Republican Party is a political organization.

10. The Defendant, William J. Marazzo, is the President and CEO of Defendant WHYY.

11. The Defendant, David Thornburgh is the Executive Director of Defendant Committee of Seventy.

12. The Defendant, Suzanne Biemiller was, at times relevant hereto, the First Deputy Chief of Staff for the Office of Mayor of the City of Philadelphia under former Mayor, Michael Nutter, and later the Chairperson of the Pennsylvania Intergovernmental Cooperation Authority (PICA)

13 The Defendant Sam Katz was the Chairman of the PICA Board during key recent periods when the city budget and five-year plan were under critical review.

14. The Defendants John/Jane Does 1-25 are, upon information and belief various individuals, including elected or appointed public officials in the City of Philadelphia, the Commonwealth of Pennsylvania and/or the United States of America, and/or members of the Defendants Philadelphia Democratic and Republican Parties, who may include Chaka Fattah, Dwight Evans, and others from the staff of the Office of Mayor who had a direct and immediate interest in silencing the voice of the Plaintiff, and keeping him off of the debate stage so that he could not air his platform of exposing grave fiscal mismanagement and public corruption in the City of Philadelphia.

JURISDICTION AND VENUE

15. Jurisdiction is conferred on this court by 28 U.S.C. §1331 and 28 U.S.C. §1343 a (3) & (4) and the remedial statute 42 U.S.C. §1983.

16. Venue is properly in the Eastern District of Pennsylvania because all parties, witnesses, and facts are common to the City of Philadelphia, and southeast region of the Commonwealth of Pennsylvania.

OPERATIVE FACTS

17. The Plaintiff, James Foster, is a life-long resident of the City of Philadelphia, and, for 15 years, has been active as a journalist and editor of Germantown Newspapers, and now the Philadelphia Independent Voice. Plaintiff is also a host on the Philadelphia radio station WURD of a discussion program also known as The Independent Voice.

18. Plaintiff's media efforts have been primarily directed at exposing continuous political and public corruption that have caused the City of Philadelphia to suffer a progressive financial decline over the course of several decades, also exposing related loss of quality of life, industry, job opportunity and the flight of 650,000 residents out of the City, causing the City to be in severe financial distress, most recently amplified by cash shortfalls in current budget causing City Council to convene special hearings to make the situation public.

19. The Plaintiff's central contention is that all of the conditions that have led to the decline of the City of Philadelphia have resulted from political insider manipulation and practices, particularly with public funds and city-owned real estate, have caused the severe and steady economic decline of the City. Plaintiff has contended for several years that those individuals and agencies responsible by law for the proper presentation of the financial condition of Philadelphia and the oversight as directed by state law have been intentionally derelict in their duties and responsibilities.

20. In 1991, the Pennsylvania General Assembly passed legislation creating the Pennsylvania Inter-Governmental Cooperation Authority, (PICA) which was legislated into existence as Philadelphia was insolvent, near bankruptcy, and needed rescue funds to meet obligations and restore bond ratings. The State of Pennsylvania made the funds available but only with this stringent fiscal oversight for distressed Cities of the First Class in Pennsylvania, Philadelphia being the only one, as a proviso of their receipt of state monies through grants or loans. Plaintiff contends that Chairpersons and board members of this entity have not lived up to their mandate under the Act, resulting in critical shortfalls, unrealistic fiscal assumptions, and a dangerous overall fiscal condition largely kept from the citizens through political manipulation.

21. Beginning in or around 2007, the Plaintiff began to report on the unlawful appropriation of City, State, and Federal monies to certain unauthorized redevelopment entities in the City of Philadelphia, most often done with intent to skirt the requirements of law in order to politically fund entities which did not meet the varying requirements of the law for the receipt of such funds.

22. The sum and substance of the reporting done by the Plaintiff was that there were tens, if not hundreds, of millions of dollars that were going to these entities, significantly including the Germantown Settlement 27 corporation monopoly, as politically-arranged funding to insider recipients, and were not being used for the primary purpose of providing the sorely-needed redevelopment of the extensive blighted areas of the City, and the residents in need of improved opportunity zones.

23. The Plaintiff participated in official investigations by, inter alia, the United States Department of Housing and Urban Development, the Federal Bureau of Investigation, and the Philadelphia Office of Inspector General into allegations of unlawful conduct by public officials involved in these unlawful acts of misappropriation of public monies.

24. It is believed that the information provided by the Plaintiff, beginning several years ago, and investigations surrounding related matters, led to lead to the federal prosecution investigation of Chaka Fattah, the incumbent United States Congressman for the Second District of Pennsylvania. Fattah's Second District covers the Northwest section of Philadelphia, the locus of much of the Plaintiff's reporting.

25. Plaintiff Foster has claimed for many years that Fattah continuously misused his position and appropriated federal funds through nonprofits and CDCs outside of standing law. The trial of Chaka Fattah has concluded and the 11 term U.S. Congressman was found guilty on all counts by a jury that deliberated very quickly. Despite initial resistance, he has resigned from Congress and is awaiting sentencing in October of this year.

26. The Plaintiff has also alleged, and provided information, implicating the current Democratic candidate for that seat in the United States Congress, and current Pennsylvania House member, Dwight Evans, as involved and/or complicit in, that same scheme, operating as State Appropriations Chairman while at the same time controlling a major nonprofit entity known as OARC (Ogontz Avenue Revitalization Corporation).

27. Plaintiff submits that the scheme at issue emanates from the control of the Democratic Party in the City of Philadelphia, which has allowed the abuse of political power to go largely unchecked, and has permitted the political deception of the public and theft of public monies, intended for the benefit of the residents of the City, to be redistributed to members of and contributors to the Democratic party and their political friends.

28. In 2007, Plaintiff ran for City Council as an independent candidate, on a platform of exposing the corruption upon which he has reported for years.

29. Plaintiff was also the Plaintiff in Foster v. City of Philadelphia et al, a federal lawsuit raising claims of a politically-motivated violation of his First, Fourth, and Fourteenth Amendment rights.

30. In 2012, Plaintiff ran as an independent for the United States Congress in the Second Congressional district against the incumbent, Fattah. During that campaign, the Plaintiff focused specifically on the allegations of unbalanced distribution of federal funds and unlawful conduct in which Fattah had been involved, as reflected, in part, by the federal criminal prosecution of Fattah.

31. Subsequent to the 2012 election, the Plaintiff's aggressive reporting and broadcasting continued, unabated, and he continued to expose the same types of public mismanagement and corruption that he had since the 1990s.

32. In 2015, Plaintiff ran for Mayor of Philadelphia, as an independent, collecting more signatures than any of the other candidates for that office, and

surviving a ballot challenge brought by the Philadelphia Republican Party, securing his name on the ballot for the November, 2015 general election.

33. Plaintiff ran on a platform of exposing public corruption, addressing the fiscal mismanagement and crony practices that have led to distressed condition of the City, the highest rates of vacant, City-owned land in the City, and, inter alia, the highest levels of poverty in the nation. Attached hereto as Exhibit A is the 10-point platform that the Plaintiff distributed and broadcast as reflecting the basis of his candidacy, and his reform platform.

34. Three televised debates were scheduled preceding the November general election, which were sponsored variously by Defendants, The Committee of Seventy, Temple University, WHYY, PBS, The Philadelphia Newspapers, Broadcasters, and others.

35. Plaintiff was informed sometime in October that he would be excluded from the televised debates.

36. Plaintiff was informed that the initial decision was made by The Committee of Seventy ("Seventy"), through its Board of Directors, despite the prior statement by the Executive Director of Seventy, Defendant David Thornburgh that the organization would do all it could to make the electoral process in Philadelphia as transparent and inclusive that it could.

37. The Plaintiff believes and avers that the other organization Defendants followed the lead of The Seventy, and, in collaboration with the Seventy and others, as set forth herein, including WHYY, NPR, Temple University, PICA, Philadelphia Democratic Party, Philadelphia Republican Party,

Defendants Biemiller, Katz, and other John/Jane Doe state actor Defendants, made the decision to use their influence to exclude the Plaintiff from the debates in order to prevent critical issues facing Philadelphia, particularly those relative to budgets, finance, and pension issues from being subjects for discussion in the public arena.

38. Plaintiff, and other members of the voting public in the City of Philadelphia, lodged complaints with the Committee of Seventy, and specifically Director Thornburgh, WHYY, and its Executive Director, Defendant William Marrazzo, that it was against the public interest, and contrary to the federal guidelines pursuant to which WHYY and NPR were bound in this heavily-regulated industry, to exclude the Plaintiff from the debates.

39. It was contrary to law, and the principles of each of the Defendant organizations' public interest to engage in any efforts to exclude access to the debate stage for the Plaintiff, as a legitimate candidate on the ballot for the office of Mayor of the City of Philadelphia.

40. As a result of the decision to exclude the Plaintiff, who had already published his extensive ten-point platform, from participation in the debates, only the Republican and Democratic candidates were permitted to participate, and the Plaintiff's voice, and the critical city issues for which he stood, and which he exposed and discussed for years, were kept from evaluation and discussion by the electorate.

41. It is believed and averred that the decision to exclude the Plaintiff from the debates was made and/or influenced by high-level members of PICA,

including Defendants Biemiller and Katz, the Democratic and Republican parties, as well as some of the state actor Defendants, pursuant to the unwritten political power-sharing agreement between them, which marked the modus operandi for how the City had been run for decades, and that caused the culture of corruption and socio-economic decline of Philadelphia that has gone on for years.

42. It is believed and averred that Defendant Biemiller, who was a former Deputy Chief of Staff for Mayor Michael Nutter, and, in an apparent conflict of interest, was the Chairperson of PICA, (State Agency approving Nutter's budget) was directly involved in urging the decision to exclude Plaintiff from the debates, and that the motive to exclude Plaintiff from the debates was to keep his reform agenda, and exposure of public corruption and PICA malfeasance from the public.

43. Plaintiff further believes and avers that the concealment of the misconduct of Chaka Fattah and Dwight Evans, upon which he has reported, as set forth above, also provided part of the motive to keep him off the 2015 Mayoral debate stage.

44. All members of the boards of WHYI (NPR), Committee of Seventy, Philadelphia Newspapers, Temple University, Broadcast media who sponsored debates were complicit in this effort to minimize public discussion of critical issues and assure a machine controlled election of the Mayor of Philadelphia.

COUNT I

45. Paragraphs 1 through 44 above are incorporated herein by reference.

46. Plaintiff has an unqualified right to run for public office pursuant to the First and Fourteenth Amendments to the U.S. Constitution. This right to run for office is further protected by the Pennsylvania Constitution. Additionally, various statutes and court rulings forming a well-established collage of laws and regulations, both civil and criminal, at both the state and federal level protect him in his right to do so unimpeded by government interference.

47. Plaintiff also has an unequivocal right to speak out and to access the courts to petition for redress of his grievances without fear of retaliation.

48. The Defendants, pursuant to an illicit plan among and between them, combined and collaborated against the Plaintiff, in violation of his First Amendment rights to run for public office, to speak out and engage in free political speech, and in retaliation for his speaking out, and for his petitioning activities, by cutting off his access to the debate stage in the 2015 run for Mayor of the City of Philadelphia. These were additionally violations of the rights of all the residents of the City of Philadelphia who are entitled to honest government, and the political airing of views relevant to the operations of the City and the conduct of honest government.

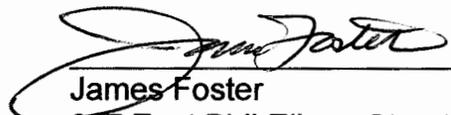
49. As a direct and proximate result of the unlawful actions and conduct of the Defendants, as alleged herein, the Plaintiff has been injured, personally, and politically, and has had his voice silenced, and lost opportunities to advance his career and reform agenda.

50. Defendants egregiously violated Plaintiff's rights, and indeed the rights of every citizen of the City of Philadelphia, Plaintiff's campaign committee, and interest of every volunteer and person who supports and supported Plaintiff in his campaign and political reform efforts.

51. The acts and conduct of Defendants were wanton and outrageous.

WHEREFORE Plaintiff demands judgment against the Defendants, and seeks damages, including punitive damages, in an unliquidated amount, together with appropriate declaratory and/or injunctive relief, and all such other relief as is deemed just.

Respectfully Submitted,



James Foster
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Philadelphia, PA 19119
215-438-5171

**Expanded version of
Jim Foster for Mayor Platform**

1. Accept resignation of all appointed officials making it clear that they will be filled by the qualified regardless of political party or background. When discussing this point will also be made clear that all standing ongoing contracts (particularly no-bid variety), will be subject to review and possible restructure.

2. Define that the city budget will be reviewed by qualified independent auditors and actuaries prior to submission to the Controller, City Council and the public. This will be initiated at a meeting with Council President that will place focus on the fact that presently there is no mandatory review under recognized independent standards by qualified experts using GASB, the standards by which all large municipalities are measured. The budget is internally prepared by the politically appointed Finance Director is and only overseen by City Council itself and the controller before the PICA Board reviews it and the five year forecast. The politics of getting this past PICA, regardless of shortcomings, are an outrage of significant proportions. The Controller's Office, using more generic GAAP

standards, has recommended it not be approved for two of the last three years.

2. Effect major reforms of all city revenue and taxing departments that today are recognized by many as silos of authoritarian incompetence. City taxing and revenue departments are often staffed (many say overstaffed) with patronage, rather than professionals. Replacements start at the top and weeding out is much less of a problem when the mayor is not part of a political party with a long list to feed . Communication between the departments and the elimination of “job punting” as a standard practice will be the focus. Fairness in billing and penalties are at the top of the list.

3. Meet with School Reform Commission and make public detailed summaries of the financial structure of the School District and naming all contracts presently in effect; with intent to add transparency and competition. This covers teachers contracts, suppliers, sub-contractors (again focus on no-bid arrangements and those who make large campaign contributions) I would take the position that separating all School District facilities into a separate real estate trust be a primary major step toward preparing an operating budget where the District pays rent to that entity for only for the square footage it uses for teaching and necessary operations currently. That would provide a realistic

operational budget. A separate and non-political board of real estate experts , who are not developers themselves, will evaluate and market unneeded property in a reasonable period of time. I believe featherbedding and bill padding in the supplier end is an ongoing problem.

- 4. Restructuring and funding the fractured school system has to be seen as a first line priority. Funding from those who directly benefit and are able to pay will be priority for this reform administration. The building trade unions should play an active part in this process. The neglect of the vocational school system in this city under the false premise that “computer techies” are the only wave of the future is short sighted. The building trade unions that directly benefit from guaranteed union contracts in this city and state should, using their funds, contribute to the rebuilding and restructuring of that system, integrating it with apprentice programs that are open to all regardless of race, gender and ethnicity.**

- 5. The long-standing concept that if you are a city employee, with its steady work and generous benefits, you should live within its borders has always made sense, and clearly at one time it was the strength of the city neighborhoods. Special deals with teachers, police and fire put them in a separate class and let them live off the city into perpetuity in**

a comfortable suburb is not in our best interest. The reform administration would make it public that it would initiate a process to roll back those give-aways and let the unions know it will be a first priority in any negotiations.

6. I want to see the Controller's Department return to the days when it reviewed anything it was suspicious of and had teeth to prosecute, working with the IG and DA. Alex Hemphill ran it that way from the late 1950s to the late 1960s (Frankford El Scandal) and cleaned up the long standing practices of payoffs and cash dealing that characterized everything from the Police Department, through L & I, to the Prothonotary during the Republican years, and then again in the 1960s. Sadly, it's a shadow of its former self today with every-other-year audits and political sidestepping to satisfy the machine. Quarterly reports and subpoena power will be the focus of the new mayor.

7. Create new mayor's committee on land and tax reform with intent to quickly alter the fact that this city holds title to more unproductive and non-taxed land than any other in the nation. This is in my view the greatest ongoing and most costly scam of all that the political machine operates; with questionable participation through City Council and all levels of Government. I will expand on this at town meetings, but suffice it to say that the huge block of property

owned by the RDA, PHA and other entities, some of which have been kept unproductive and non-taxpaying for 25 years as tools of insider dealing with the connected, has to end. No other city comes close to how much land the city took as it chased corporate and industrial entities out of town after years of overtaxing and shakedowns. Then we have the empty and neglected housing in the same category that followed as 600,000 voted with their feet. This will be the Number One priority of the new administration and it will get property on the market and paying taxes, with monthly reports of progress to the citizens. There is no excuse for all this wasted potential while at the same time the wage tax is the major revenue source chasing more productive businesses and citizens out of the city each year. I would suspect that any net increase in population that has been claimed in recent years are more likely in that 25% in deep poverty for which we are nationally known.

8. Demand that the PICA Board publish summaries of all scheduled meetings in the press and on the web with readable summaries of their focus, priorities and decisions. This Board, created in 1992 as an adjunct to the state's city rescue financing, has the right and the obligation to stop all state funding if they are not satisfied with the annual budget and the five year forecast of income and expenses. I contend

this board has intentionally allowed itself to sidestep its responsibility and board members, particularly the chairpersons, have assisted the politicians in the city and Harrisburg who want accurate financial data kept from the citizens. The appointed members of this board must be qualified to do in depth financial analysis and be held to the highest standards.

10. Put into effect an immediate study of the cost of operating City Council with all its subsidiary benefits and perks. We would be looking toward reducing its size in proportion to the greatly decreased population since its modified charter was done during the years we reached our highest population of 2.2 million. There is no need for a Council this large with the significant reduction in population and the labor-saving technology of the last 65 years.

Jim Foster

Independent Candidate for Mayor