

Joseph Pilchesky,
Plaintiff
Counterclaim Defendant

IN THE COURT OF COMMON PLEAS
OF LACKAWANNA COUNTY

Vs.

CIVIL ACTION – AT LAW

Judy Gatelli, as President of Scranton’s
City Council; as Councilwoman; and,
In her individual capacity,

Docket No. 07-CV-1838
Jury Trial Demanded

Defendant
Counterclaim Plaintiff

Vs.

Joanne Pilchesky, John Doe, Jane Doe, et al
Counterclaim Defendants

OBJECTIONS TO GATELLI’S AMENDED PETITION TO COMPEL
JOSEPH PILCHESKY TO DISCLOSE THE IDENTITIES OF THE
ADDITIONAL DEFENDANTS

NOW COMES, the Plaintiff/Counterclaim Defendant, Joseph Pilchesky, and Joanne Pilchesky, with their Objections to the Defendant’s/Counterclaim Plaintiff’s Amended Petition to Compel disclosure of the identities of the Additional Defendants as named in the Amended Petition, and in support thereof, submits as follows:

1. Pursuant to an Order of the Court dated October 10, 2007, the Defendant/Counterclaim Plaintiff (Gatelli) was directed to file an Amended Petition to Compel Joseph Pilchesky to identify the names of 102 Additional Defendants named in the Counterclaim filed by Gatelli.
2. On March 20, 2008 Gatelli finally filed an Amended Petition to Compel Joseph Pilchesky to identify the Additional Defendants, approximately five (5) months and ten (10) days after the court ordered such filing.

ADDITIONAL DEFENDANTS WHOSE IDENTITIES ARE SOUGHT

3. Gatelli initially sought the identities of approximately 102 anonymous posters on the Dohertydeceit.com Web site.
4. Gatelli's Amended Petition has narrowed the field of anonymous posters down to only (44), as evidenced by the list of anonymous posters found in the "Factual Background" portion of the Amended Petition on page (3), although a footnote cites that there are (46) such anonymous posters.
5. Gatelli was directed by the court to assign to each and every anonymous poster the content of allegedly defaming posts they put up on the Dohertydeceit.com Web site, which Gatelli has provided on pages (5) through (43).
6. The (44) anonymous poster names listed on page (3) in the Factual Background portion of the Amended Petition that Gatelli seeks the identity of are as follows: A Man Named Jed; Abbey; Adam, Antisystemicmovements; aquamg; bigdaddy; Booby McGoof; Bo peep; Brainwashed; City Haul; Clarks Summit Luv Nest; Commoner; Crazy Otto; Crony Watcher; Dice Rolling 101; Don't fear government; Freedom is not free; FRICKELLMOIE; Gatellis Blue Dress; Granma; History Writer; insider; Intelligent Thinker; jimbu15; Joe Pilchesky; JustTheFacts; Lipstick and Lashes; Lobby cyst; Milo Ferlicker; MistyMtTop; Money stalks; Nobody; NoRepresentation; NotADumbBlonde; Political Sex; Powertothepeople; The Mole; The next generation; Traditional apathy; TwistedBrother; Unionman; Watch and ward; Working Woman; and, We are so screwed.
7. Pages (5) through (43) of Gatelli's Amended Petition contains the alleged citations of 48 anonymous posters and the alleged post citations of Joe Pilchesky, a poster who is not anonymous.
8. However, of the (44) names listed by Gatelli under the "Factual Background" portion of the Amended Petition, the following anonymous posters have no posting content cited by Gatelli as to assign any allegation of defamation or

attendant injuries: A man named Jed, Abbey, Clarks Summit luv nest, Crazy Otto, Crony Watcher, Dont fear government and The next Generation, which leaves a total (37) anonymous posters that Gatelli seeks to have identified.

9. Furthermore, the following anonymous names are included in pages (5) through (43) as allegedly having postings on Dohertydeceit.com, but they are not named by Gatelli as being among the anonymous posters that she seeks the identity of: 1 Musketeer, Blond Ambition, 3 Blind rats, MilosGhost, Mayor Wingtips, News from the Shed and The Grinch, therefore, these seven (7) posters have not been named by Gatelli on page (3) as those identified as Additional Defendants and are therefore omitted from the list.

GATELLI HAS FAILED TO INCLUDE A DATE WITH ALL OF THE ALLEGED
POSTINGS CITED IN HER AMENDED PETITION TO BRING HER
DEFAMATION CLAIMS WITHIN THE STATUTE OF LIMITATIONS

10. Gatelli has listed on pages (5) through (43) the alleged postings of approximately 48 anonymous posters from the Dohertydeciat.com Web Site's message board, however, Gatelli has not included in any of the alleged postings what date the alleged postings appeared on Dohertydeciat.com, therefore, she has failed to establish that any of the alleged postings were posted within the one-year statute of limitations and therefore, her Amended Petition should be denied and her complaint dismissed.

WHEREFORE, Gatelli has failed to establish that any of the alleged postings in her Amended Petition were posted within the one year statute of limitations and therefore, her Amended Petition should be denied and her complaint dismissed.

GATELLI HAS FAILED TO ESTABLISH WITH MATERIAL PROOF THAT ANY
OF THE ALLEGED POSTINGS EVER EXISTED ON THE DOHERTYDECEIT.COM
MESSAGE BOARD

11. Although Gatelli has listed approximately (48) different postings alleging they defamed her and caused her emotional harm, Gatelli has failed to materially prove that any of the postings cited in the Amended Petition existed anywhere on the Dohertydeceit.com message board, therefore, Gatelli has failed to set forth material facts to support her claims of defamation and her Amended Petition should be denied and her complaint should be dismissed.

WHEREFORE, Gatelli has failed to materially prove that any of the postings cited in her Amended Petition existed anywhere on the Dohertydeceit.com message board, and therefore, her Amended Petition should be denied and her complaint dismissed.

GATELLI'S AMENDED PETITION IS DEFECTIVE AND CONTAINS FALSE
STATEMENTS

12. Gatelli's Affidavits, appended to her Amended Petition as Exhibits "A" and "B" contain the following in paragraph (1): "I am currently the President of Scranton City Council."
13. Both affidavits were sworn to under oath taken by Notary Public Amy M. Hassan and dated March 20, 2008.
14. However, at a duly organized meeting of Scranton City Council held on January 15, 2008 Gatelli was voted out of the position of Council President.
15. In paragraph (15) of Gatelli's sworn affidavit marked Exhibit "A", it states as follows: "To this end, I have sought medical attention and am currently taking medications for my distress and anxiety."

16. However, even though Gatelli stated that, “I have sought medical attention and am currently taking medications for my distress and anxiety” on March 20, 2008, it was only back on January 31, 2008 that Gatelli stated in the Plaintiff’s Interrogatories that, “she is not currently taking any medications.” (See Exhibit attached to Attorney Levy’s brief)
17. Gatelli’s Verification appended to her Amended Petition is not dated as required in violation of RCP 1024.
18. Gatelli’s character is reflected upon in the negative by her very own words sworn under oath where she clearly made numerous false statements under oath in both of her affidavits as illustrated above.

GATELLI HAS NOT DEMONSTRATED THAT ANY OF THE “ADDITIONAL DEFENDANT’S” STATEMENTS WHICH SHE RELIES UPON ARE BOTH DEFAMATORY AND FALSE

19. Counterclaim Defendants Pilcheskys, for themselves and on behalf of the additional Doe defendants, hereby incorporate by reference as if set forth in full, the brief in opposition filed by the six additional Doe defendants represented by Attorney Paul Levy, with his permission.
20. Under the Court’s Order, as well as the prevailing consensus about the standard to be applied before a would-be plaintiff may compel the identification of anonymous speakers whom she wishes to sue, Gatelli must show that the specific statements are actionable statements of fact, and not merely rhetorical statements of opinion such as name calling.
21. The raucous and free-wheeling atmosphere of the Doherty Deceit Message Board, full of exaggerations of venom and vulgarity, strongly counsels in favor of construing statements as opinion and not fact.
22. Many of the postings include misspellings, grammatical errors, and/or incomplete thoughts and sentences, and, messages on this board reflect

considerable venting, much tongue-in-cheek, little pretense as sophistication or thoughtfulness, and an ample and obvious sense of irreverence.

23. Gatelli herself has admitted that the Doherty Deceit message board is engaged in ‘incessant ranting’ about her. A ‘rant’ is inherently an opinionated statement, not a discourse on fact.
24. Second, the Plaintiff must make a specific and non-conclusory showing that any statements that are actionable are false – not just a vague affidavit asserting falsity or using negative pregnant, but a specific showing of the facts that make a given criticism false as well as defamatory.
25. Because the Plaintiff here is a public official attempting to sue her constituents, a particularly detailed showing of the elements of the prima facie case should be required.
26. Not a single one of the statements of the additional defendants or Joe Pilchesky meets that standard, and very few of the other statements on which Gatelli seeks identifying information meet that standard either. In the sections below, we discuss, defendant by defendant and statement by statement, Gatelli’s failure to show defamatory statements of fact and failure to show falsity.
27. A more general point that is applicable to all the defendants is that, as a public official, Gatelli must allege and prove actual malice – knowledge that the stated facts were false, or reckless disregard for the probable falsity of the statements.
28. In effect, this standard requires that the defendant had ‘subjective awareness of probable falsity, or a high degree of awareness of probable falsity.
29. The Amended Petition nowhere alleges that the statements identified in the Petition were published with actual malice.
30. Instead, Gatelli’s only allegation pertaining to ‘malicious’ or ‘reckless’ action is that defendants allegedly ‘acted with malicious intent and in reckless disregard of the fact that their statements and subsequent statements would produce severe emotional distress in Gatelli.’

31. Although this allegation was apparently advanced in support of Gatelli's claim of intentional infliction of emotional distress, as shown in the original opposition to the Petition for disclosure, the Pennsylvania courts have specifically held that public figures cannot sue for intentional infliction of emotional distress.
32. Similarly, courts have repeatedly held that a claim for 'civil conspiracy' to harm a public figure by publishing damaging statements about him or her must meet the full constitutional standards for a defamation claim.
33. Consequently, her Amended Petition for disclosure stands or falls on whether she has established the elements of her defamation claim against each additional defendant.

GATELLI HAS NOT STATED A CAUSE OF ACTION UPON WHICH RELIEF
CAN BE GRANTED AND SHE HAS NOT ESTABLISHED HER RIGHT TO THE
IDENTITY OF ANY OF THE ADDITIONAL DEFENDANTS

34. Gatelli alleges that the poster "Adam" defamed her with the following words: "*called her a Doherty blowjob*", however, these alleged words are on a political message board where the term blowjob has been used thousands of times to express an opinion as to the disloyalty of certain public officials to the taxpayers and/or loyalty by certain public officials to the current administration to the detriment of the taxpayers in terms of paying higher taxes that are unjustified for substantially poor government leadership being suffered by the taxpayers. It is not a sexual related opinion in that it's a political term widely used within the Dohertydeceit.com message board to refer to public officials who are supportive of the abusive administration perhaps to the benefit of the individual public official. It denotes selling one's soul, so to speak, or their influence, as well as providing a "rubberstamper" quality of taxpayer representation that causes injury to the stability of the government.

This type of political speech in the form of an opinion, is clearly protected under the First Amendment.

35. Gatelli alleges that the poster “Antisystemicmovements” defamed her with the following words: “*Butch thought she was going to clean up City Council the same way she has been cleansing South Side and the same way she ‘cleaned up’ Scranton when she was stealing and land grabbing for Connors*”; “*Judy has gone through coining the concept ‘belief to disbelief.’ Judy, no doubt, was always the ruthless and 2 faced bitch she has proven to be to the City of Scranton*”; “*being the mayor’s rubber stamper.*”; “*Butch is a ‘ringer’: she is a specialized thief charged with ‘cleaning up city council’ the same way she cleaned up South Side.*”; and, “*The ICN keep Gatelli around to steal for them. Nothing more.*” Here, the poster’s alleged comments are symbolic of expressing the political opinion about someone who has been a public figure involved in past controversies regarding property transactions or the movement of certain classifications of people, among other political duties. Gatelli was, in fact, for example, once the Deputy Director of OECD under the Connor’s Administration when it was audited by the Department of State and a report was released by the Department that revealed that several millions of dollars were either misplaced or misappropriated to the benefit of certain land owners. These expressions are clearly opinion-based in nature and protected by the First Amendment. In fact, the poster never made a specific statement that Gatelli “stole” any material or particular thing, but rather the statement is broad in scope to reflect upon how the poster viewed her handling, or mishandling, of her duties at a past public position.
36. Gatelli alleges that the poster “Bobby McGoof” defamed her with the following words: “*JUDY IS AN IGNORANT BIMBO*”; *she needs a good boot in the a\$\$.* *All she proved tonight is that she is stupid. I do not use that word (stupid) lightly. She shows no education. She certainly shows she has no class.*”; “*Anyone associated with fat a\$\$ Gatelli is now considered a leper to*

me.”; “How desperate can you get. They are that concerned because of the lies and corruption carried out by these three evil doers?”; and, “That bimbo owes you an answer.” In this case the alleged words are symbolic of expressing the opinion about a public official’s outrageous rudeness at city council meetings towards a citizen, and, the failure of that public official to act in a respectful way; specifically, that in a public meeting which was being broadcast to thousands of viewers, Gatelli refused to answer a citizen’s rightful questions about the prior removal of the television cameras from city council chambers, and in fact Gatelli repeatedly ignored that citizen as if she didn’t exist. These expressions are politically motivated and opinion-based, and are clearly protected by the First Amendment.

37. Gatelli alleges that the poster “Brainwashed” defamed her with the following words, *“Gatelli’s word isn’t worth the paper it’s written on. Watching last night’s council I just wish I could fast forward to the next election to get that ugly bimbo out of there. The exchange with Fay Franus was unbelievable, with Gatelli looking like a bigger horses ass than she already is.”*; and, *“She’s a horric (sic) councilperson and person, to boot. The very least she can do is resign to show a hint of respect to the people she screwed in this city, and that’s just about the entire population.”* The alleged words by this poster are symbolic of expressing an opinion about a public official’s personal conduct in public, regarding a citizen who appeared at a council meeting to question Gatelli about who made the decision to permanently remove television cameras from those meetings, thereby preventing thousands of viewers from watching live meetings every week, which meetings had been broadcast consistently for years. In fact, the Scranton newspaper reported on the issue several times quoting Gatelli as saying that Mayor Doherty had made that decision, and subsequent articles reported that the mayor stated that Gatelli had made the decision. When Fay Franus questioned Gatelli at a public meeting about this, Gatelli did not answer Franus, even after Franus’ repeated her

questions. This issue was of such concern with the public, that a week after the cameras were removed, hundreds of citizens attempted to show their protest by attending council, and were lined up outside of city hall to get in. This was also covered by the local media, drawing in television, radio and newspaper reporters. Clearly these alleged words are protected political free speech as opinion based, and protected under the First Amendment.

38. Gatelli alleges that the poster "City Haul" defamed her with the following words, *"This poor, pathetic, broken down, useless lump of flesh and bone needs a little break."* These alleged words are symbolic of expressing a political opinion about the ongoing conduct of a public official to the detriment of the citizens and the decorum of city council meetings. There are no material allegations contained in these words, as it would be similar to calling someone ugly. They are clearly a personal opinion of a political nature, which is protected by the First Amendment.
39. Gatelli alleges that the poster "Commoner" defamed her with the following words, *"Gatelli is not good for much more, unless it's true about the medication. She should not be let off the hook regarding many questions:"* These alleged words are opinion based and are symbolic of expressing the frustration of a citizen who has not received answers to questions it may have regarding city business and/or the conduct of a public official. In addition, these alleged words allegedly appear on the Dohertydeceit.com message board where clearly the content relates to extensive discussion about city business which discussion may lead to the repeating of questions week after week because Gatelli never answered them. This opinion based speech relates to the absence of expected conduct by a public official and is protected political speech under the First Amendment.
40. Gatelli alleges that the poster "Dice Rolling 101" has defamed her with the following words, *"I'd like to send Mrs. SS Gatelli a piece of my mind. Anyone have an address for this Nazi dyke?"* These alleged words are opinion based

and politically symbolic of expressing an opinion relating to the strict authoritarian type of conduct by a public official. The poster does not allege that Gatelli belongs to the Nazi party; this is not 1945 and the inference isn't the same as it was back then, and the poster makes no claim of material fact. As politically descriptive words, these words fall under protected speech under the First Amendment.

41. Gatelli alleges that the poster "Freedom is not free" has defamed her with the following words, "*This one woman is the worst thing for the city of Scranton right now. We need to find out where all this money went and she's smack dab in the way, and that's where she likes it, serving a corrupt mayor and doing his deeds. She's no damn good, and she ought to be removed from office immediately if only there was a way to do it. The name Gatelli will ring for betrayal forever, and I hope her husband finds out the hard way how much she is detested.*" The poster's alleged words clearly are opinion based, and make no claim of material fact. In this case, Gatelli's campaign platform was that she stood against the mayor's administration and that she would represent the people. After elected, Gatelli had voted to pass tax increases while at the same time she voted to pass the mayor's all time high budget, and voted for increasing delinquent property tax collection fees, all of which were introduced by the mayor and therefore gives the appearance of supporting the mayor. As such, these words are clearly opinions colored with emotional feelings and are protected by the First Amendment.
42. Gatelli alleges that the poster "FRICKELLMOIE" defamed her with the following words, "*Hear that noise? Its your political career dying. I hope you all go to jail you crooked backdoor spineless followers. Especially you Judy, you lying bitch. I believed you when you ran...I know "YOU LIED" same way you lied to Janet about being council president. **** YOU AND YOU TAX PAYER SIPHONING FAMILY.*"; "*Gatelli is now the Nazi villain,*"; "*Hey Judas tomorrow us a big day for you...wanna kiss my cheek? Lying pig.*";

*“Judy and Sherry down on their knees S-E-R-V-I-N-G the King First came the insults then came the lies then came the re-call and our good-byes...”; “Don’t take the bait this vile political pig is as self serving as they come.”; “The woman is a pig.”; and, “The lying pig is at it again...starting the controversy at Chicks...now lets guess our beloved council president who voted ‘for the smoking ban’ will now change her position? This is really hard to DO but Judy is making Doherty seem almost ethical...this woman knows no lie she will not tell or a situation that she will not manipulate for her own selfish needs...Judy from the bottom of my heart...You suck...Oh and by the way don’t expect a free verbal blast at Judy on Thursday...rumor has it she already has Fanucci and McGoff to cancel/reschedule this weeks meeting...they need to up her meds...If the good people of this site will DO anything make sure this lying pigs husband feels our wrath on election day...when you see a sign for him tell your neighbors what a pig they are supporting...boycott their businesses whatever it takes...At least you know Doherty is going to **** you over Judy is a kniving bitch who you don’t see coming until it too late and she got what she wanted... **** her.”* These alleged words are opinion based and fall under the umbrella of political free speech. They are symbolic of expressing frustration against the misconduct of a public official who would represent one agenda to get elected, and support an entirely different one after being elected. In addition, numerous immediate family members of the Gatelli family are, or have been, employed in positions where tax money is used to pay their salaries. These words are political free speech and are protected by the First Amendment.

43. Gatelli alleges that the poster “Gatellis Blue Dress” defamed her with the following words, *“Gatelli is the lowest of the lowest scum in this city,”*. The alleged words are, similarly to the above statement by other posters, symbolic of expressing the frustration about the conduct of a public official. These

words make no material statement of fact, and are merely a political opinion, and these words are protected under the First Amendment.

44. Gatelli alleges that the poster “Granma” defamed her with the following words, *“She is a mechanical manakin. With some computer chips. Of course {MISSING A FEW} Just enough for Doherty to program her to his thinking.”* These alleged words are opinion based and symbolic of expressing frustration at the conduct of a public official who historically voted on many of Mayor Doherty’s introduced legislations. It’s clear that Gatelli could not possibly be a manakin and as such these words do not make a statement of material fact, and they are protected as political free speech under the First Amendment.
45. Gatelli alleges that the poster “History Writer” defamed her with the following words, *“Gatelli is without question the most hated, despised and loathed person in politics today, even worse than Doherty. Doherty we knew was a thief, but that lying sack of cow dung Gatelli sold us out, every last one of us. And what for?”*; and, *“Rattlesnakes like Judy Gatelli have to be made a fool of publicly as often as possible, be shown to be a corrupt thief as often as possible and be exposed as being stupid as often as possible.”* These alleged words are opinion based symbolic of expressing displeasure at the conduct of a public official, and are political free speech and protected under the First Amendment. Clearly Gatelli cannot possibly be ‘cow dung’ nor a ‘rattlesnake’, and the term ‘corrupt thief’ is stated within a political discussion board where public officials’ conduct is examined, exposed for impropriety, challenged and held up to other opinions as to how Gatelli’s conduct propounded a disservice to the citizens.
46. Gatelli alleges that the poster “insider” defamed her with the following words, *“Yeah, let’s believe that like she promised that she would work for the people. The only people she has worked for is herself and her family members. The only way that we could believe that is that if she gave up her seat now. She’s nothing but a lying sack of horse ****!!! And she will always be that way. Do*

us all a favor Judy leave while you can, or wait and let the people make a fool out of you at election time, your choice.”; and, “Oh that’s right her and fanny have qualifications for council, thick knee pads.” These alleged words are opinion based and symbolic of expressing the opinion that a public official, a city council person, has supported an agenda that has financially burdened the citizens, after campaigning on a platform to fight that agenda. In addition, numerous immediate Gatelli family members are or have been employed in positions where tax dollars pay/paid their salaries, and, clearly the statement that Gatelli is a ‘lying sack of horse ****’ is not a statement of material fact. These words are political free speech and are protected under the First Amendment.

47. Gatelli alleges that the poster “Intelligent Thinker” has defamed her with the following words, *“I disagree. This is Gatelli, a power freak with no brain and no ability to process what she is doing, what the consequences are and what people will think.”* These alleged words are opinion based and are symbolic of expressing frustration at a public official’s conduct. Specifically, Gatelli has cancelled approximately 14 city council meetings without make up, in addition to the 11 weeks of recess during the month of August. Gatelli has the option of rescheduling any cancelled meetings and chose not to do so. The alleged words are a political opinion of this conduct and are protected under the First Amendment.
48. Gatelli alleges that the poster “Jimbu15” has defamed her with the following words, *“The only way “Nazi” Gatelli {Sieg Hiel} is giving up her Council seat is when her fat, Nazi A\$\$ doesn’t fit in it anymore!!! Hey, Ursula, why don’t you shove another Cannoli down your fat pie-hole and decide whose rights you’re gonna violate this week!!!”;* and, *“Ursula, is a Nazi plain and simple.”* These words are opinion based and are symbolic of expressing the frustration at a public official’s authoritarian conduct during council meetings wherein Gatelli repeatedly gaveled speakers out of order while under the protection of

the First Amendment; and, in addition, failed to gavel other council members out of order when they exercised their free speech. This is political speech and is protected under the First Amendment.

49. Gatelli alleges that the poster “Joe Pilchesky” has defamed her with the following words, “*She’s a betrayer like we’ve never seen before and should be confronted. She’s near the edge now, and I don’t think she’s good for a lot more.*”; “*...and the name Gatelli will be burned into the mind of every voter as the name that stands for greed, selfishness, corruption and lies. THAT’S A PROMISE...*”; “*She is considered a betrayer to the utmost degree, a political maggot like we’ve never experienced before, a political snake or even worse, a political devil that absolutely has to be exorcised.*”; “*By those definitions alone, Judy Gatelli is as corrupt as the day is long.*”; “*Watch, as the politically corrupt run for cover and the likes of Judy Gatelli gets branded for life as a notorious betrayer of the people.*”; “*The names Gatelli and Doherty are now identified only with deceit and corruption, and they will never survive the well deserved stigma attached by free speech.*”; “*The political Gods, as you refer to them, have stepped aside to allow a political devil to do what they didn’t have the backbone to do. These corrupt politicians think we’ve kicked down a door and entered their sacred and guarded sanctuary of corruption, but they are wrong. We’ve only surrounded their little sanctuary with eyes and ears, watching who has been coming and going. They are really sloppy and stupid people, and Judy Gatelli has been offered up as the first real sacrificial offering to try to distance the mayor from the justice due to him.*”; and, “*You’ve all exposed her for the fraud that she is...*” These alleged words are opinion based political speech, and are not statements of material fact upon which a defamation claim can be made. It is obvious by the construction of the statements that they are politically contextual and in that vein are protected words under the First Amendment.

50. Gatelli alleges that the poster “JustTheFacts” has defamed her with the following words, “*Way to go Adam!! This is what should happen to that parasite every time she decides to mingle amongst the citizens of our city. Shall we start a contest to see who can publicly humiliate Gatelli more and catch it on tape? Payback’s a bitch, Gat!*” These alleged words are opinion based and are responsive to “Adam’s” post. They are symbolically expressive of the frustration of the immunity of a public official’s conduct when that conduct is contrary to the expectations of a citizen. Attaching the term ‘parasite’ to describing a political figure is not a statement of material fact; and these words are political free speech and are protected under the First Amendment.
51. Gatelli alleges that the poster “Lipstick and Lashes” has defamed her with the following words, “*I have some words for those two whores, but they can’t be said on TV.*” These alleged words are opinion based, and not one of material fact. They are symbolic of expressing how one feels about a public official who the citizen feels has sold their soul, and they are political opinions which are protected under the First Amendment.
52. Gatelli alleges that the poster “Lobby cyst” has defamed her with the following words, “*She’s a rude, ignorant and ambitious person, all the ingredients needed for a political puppet. They got her into council and into the president’s seat. She did the rest as planned. She’s out of control now because they didn’t know she needed so much emotional maintenance. They’re just as shocked as the rest of us that she can’t handle the most unintimidating speakers like Lyman. That filthy mouth and pushy attitude hid the real Judy from the world – an ignorant slob.*” These alleged words are opinion based and symbolic expressions of frustration at the conduct of a public official who publicly humiliated a speaker who is well known to be mentally challenged (Lyman), by calling him a liar. These words are political expressions and protected speech under the First Amendment.

53. Gatelli alleges that the poster “Milo Ferlicker” has defamed her with the following words, “...*Judy the Doobie Hitler Butch.*”; “*The only Judy we saw last week was an overmedicated one (& don’t say she wasn’t, her head was bobbing more than Fanny’s)*”; and, “*Residents go there w/their concerns & she does NOTHING!!!!!! You can’t rob people blind, laugh in their faces & demand respect. It doesn’t work that way.*” These alleged words are opinion based in a political discussion on a political discussion message board where Doobie has come to mean a supporter of the mayor, Hitler refers to authoritarian conduct, and Butch refers to a type of hair style. None of these words are statements of material fact, and these words are political opinions relating to the poster’s personal perception of the physical appearance of Gatelli during council meetings, and therefore fall under the protection of the First Amendment.
54. Gatelli alleges that the poster “Money stalks” has defamed her with the following words, “...*crony clown took office, and the first thing she did when she got in was put the gravy on the fries for Doherty in the form of millions in loans with no explanation of where the money was going. Now, we’re 300 mil in debt. Heil Hitler to Judy Gatelli, the true anti-patriot and abuser of the people.*” These alleged words are opinion based and symbolic of expressing frustration at the conduct of a public official. Specifically, Gatelli, in her first year on council, voted in favor of millions of dollars of loans, which loans were introduced by Mayor Doherty, which resulted in a 25% tax increase in the subsequent year’s budget. As a result of that conduct, the political opinion expressed here is protected under the First Amendment.
55. Gatelli alleges that the poster “Nobody” has defamed her with the following words, “*This council, headed by Gatelli, has done nothing positive for the people.*”; and “*An unqualified, overmatched failure, Gatelli must live with the knowledge that she is not competent, a victim of her own thirst for power and piss-poor political skills. Gatelli. You asked for it. You got it. Used and*

owned.” These alleged words are opinion based and symbolic of expressing discontent at the conduct of a public official. Specifically, Gatelli unprofessionally engaged in arguments with citizens who came to speak at council, and she voted for increased budgets which were submitted by the mayor. These words are protected as political speech and protected under the First Amendment.

56. Gatelli alleges that the poster “NoRepresentation” defamed her with the following words, *“She has no class.”; “We all know she is far short of possessing any trace of honesty where the working class is concerned. She was for sale and she has been bought and paid for.”; and, “Judy is a liar. Judy is a cheat. Judy sold her soul to the dd. (devil do). Judy got corny (sic) jobs for members of her family. Judy did favors to get those crony jobs. Judy abuses her position as council president. Judy has no clue how to run a meeting. Judy is the chief reason there is disruption at council meetings. Judy would not hold this office if recall were allowed in Pa. Judy is amoral. Judy has no ethics. Judy has crushed her hubby’s chances of election. Judy has no respect for taxpayers. Judy has killed her political future...”* These alleged words are opinion based and made during a time when Gatelli’s conduct at council meetings was less than professional, more outrageous than not, where she would argue with speakers, call them out of order, call the police to remove speakers, so much so that her conduct became the focus of news reports in the local paper and on talk radio and television. The live broadcasting of council meetings had been stopped under her direction against protests from hundreds of citizens, she introduced every piece of legislation the mayor wanted, and numerous immediate family members benefited from employment by the city or the school district, including herself. These words are political free speech and are protected under the First Amendment.
57. Gatelli alleges that the poster “NotADumbBlonde” has defamed her with the following words, *“Maybe Fay represents to Judy what she once was, or hoped*

to be. To easy to sell her soul, and turn her back on all Scrantonians, for a few crumbs. How proud your family must be of you, especially your daughters, to kneel before so corrupt and unscrupulous a vulgar thing like Doherty. I wonder what they think of you. (Were they educated at da U?) And now hubby awaits his turn. What a family. And all recorded for posterity.”; “Gatelli is abusive, insensitive, shallow, condescending; and – let’s face it – never would have won an election if she had shown her ‘true colors’ during the campaign.”; “She deceptively pseudo-apologizes to the people out of one side of her mouth while spitting at them with the other. She’s a fraud. Gatelli should RESIGN to restore character, decency, and stateliness to the Council of the City of Scranton.”; “Gatelli has become very aware of the laughing stock and shame she has become to herself, her husband, her daughters, and her grandchildren. How pathetic. As a woman, I am so ashamed, but such is her legacy.”; “She’ll erupt sooner or later, meds or not.”; “...but she has NO SOUL, she is no philanthropist; and, as a Christian, will have atone for her many, many sins. Isn’t that right, Judas? Her daughters and grandchildren will be constantly reminded of the legacy she left Scranton FOR AS LONG AS THEY LIVE, and how she made the impoverished and older citizenry suffer. Her conscience will never be quiet, especially as she herself grows older.”; “...She is the epitome of greed...”; “Judas as the lying, disgraceful dodo mule she truly is,”; and “Judas, you are a hypocrite in practicing your Catholic faith. You are a snake. Why go to church when you have no intentions of practicing your religion outside of St. Francis’ doors?” Clearly these alleged words are opinion based about the conduct of a public official as relates to the poster’s perspective. Specifically, Gatelli is a mother and a grandmother who at one time held up pictures of her grandchildren at a council meeting and implied she would be fiscally responsible because of them, when subsequently Gatelli voted for a large tax increase, voted for multi million dollar loans on behalf of legislation introduced by her on the mayor’s behalf, voted for

increased tax delinquent collection fees, and at one time promoted her husband at a public meeting as a good choice for school director. Gatelli has a history of yelling at speakers and calling them names, like ‘liar’ and ‘pathetic’, and several times adjourned council meetings because they were out of control, while under her control. These words are a reflection of that, and are considered political speech and therefore are protected under the First Amendment.

58. Gatelli alleges that the poster “Political sex” defamed her with the following words, *“Gatelli is gone where no politician has gone before, political lunacy.”* These alleged words are clearly a politically framed opinion and are therefore protected under the First Amendment.
59. Gatelli alleges that the poster “The Mole” has defamed her with the following words, *“Gatelli spent the last 20 years screwing with people. Her reputation precedes her everywhere she goes. She threatened her way to a council position, and mixed in some promises she knew she’d never keep.”*; and *“How about ‘Caniving, two-faced, lying, manipulating, corrupt, thieving bitch’? That put some color into it for you?”* These alleged words are an opinion based expression of the poster’s perception of Gatelli’s conduct. Gatelli made campaign promises to represent the people against the mayor’s administration and after being elected proceeded to vote for increased taxes, increased budgets, multi million dollar loans. If it’s the poster’s opinion that Gatelli was two-faced or lied, it’s just that – an opinion, which is protected under the First Amendment.
60. Gatelli alleges that the poster “Traditional apathy” defamed her with the following words, *“Judy is calling in all her favors to try to pull this off, including, from what I’ve heard, that she’s barely able to continue on council and if hubby wins, she’s outta there. How’s that for a new twist? Vote one flee onto the dog and I’ll jump off. Nice if you can pull it off, except Judy forgets something, the name Gatelli is the name Hitler in Scranton. If Joe Gatelli ran*

against a dog for dogcatcher he'd be conceding to a dog by 8 O'Clock. She's done and he's done before he even gets started. There will be no riding coat tails on this one, Doherty is done too." These alleged words are opinion based relating to what the poster allegedly heard, as in a rumor, and by qualifying it, the statement remains just a rumor, which is not actionable for defamation. The term Hitler is used throughout the Dohertydeceit.com message board as a term used to refer to authoritarian rule, and not as a statement of material fact that Gatelli is actually Hitler. As such these words are political speech and are protected under the First Amendment.

61. Gatelli alleges that the poster "TwistedBrother" has defamed her with the following words, "*Judy Gatelli is a lying scumbag. She is a pig.*" These alleged words are a statement of opinion, generalized to describe the poster's opinion of Gatelli's conduct. Certainly, the words 'scumbag' and 'pig' in the context of an opinion oriented political message board are not used as statements of material fact, and therefore they fall under the protection of the First Amendment as political free speech.
62. Gatelli alleges that the poster "Unionman" has defamed her with the following words, "*NO UNION SUPPORT FOR JOE GATELLI, AND NEVER AGAIN FOR JUDY THE TWO FACED LIAR!*" As in the above paragraph, in the world of a political opinion oriented message board, these alleged words fall under opinion. If the political conduct of a public official would show that a certain promise or type of conduct was made and then not kept, a citizen might opine that the public official was 'two-faced' or a 'liar.' On the Dohertydeceit.com message board discussions of public officials' conduct are always comparing what they said as to what they actually did, and this poster's statement could easily stem from that type of comparison. Clearly, these words are political free speech in nature, and are protected under the First Amendment.

63. Gatelli alleges that the poster “Watch and Ward” defamed her with the following words, “*Her garbage mouth and lies have finally caught up with her. She lacks the necessary skills and training to handle the Council President’s chair.*” This alleged statement is opinion based, as relates to this poster’s expectations of a council president, and that Gatelli has not lived up to that expectation. In addition, Gatelli has admitted publicly that she does use obscene language. Gatelli, in her affidavit, has not stated what skills and training she does have to show that this statement is false. She merely states generally that all the posters’ statements in her Amended Petition are false which is not enough to show entitlement to proceed against this poster. These alleged words are political opinion and are protected under the First Amendment.
64. Gatelli alleges that the poster “We are so screwed” has defamed her with the following words, “*Wasn’t it good enough that the daughter got that cushy job at NEIU right after Doherty’s loans went through? It’s classic Gatelli – push and scream – use and abuse. For those who know her, this is her thumbprint.*” These words are clearly opinion and nothing more. Asking a question is not enough to meet the elements of defamation, and Gatelli has failed to show any individual harm or injury from this particular statement, and therefore has not shown entitlement to proceed against this poster. These words are political opinion and are protected under the First Amendment.
65. Gatelli alleges that the poster “Working Woman” has defamed her with the following words, “*He knows that Gatelli is a cancer to our government and has to go.*” These alleged words clearly do not meet the elements of defamation in that it is not a statement of material fact. This statement is a political opinion. Gatelli has not shown any individual harm or injury from this particular statement and therefore has not shown entitlement to proceed against this poster. These words are a political opinion relating to a public figure and are protected under the First Amendment.

66. Gatelli alleges that the poster “1 Musketeer” has defamed her with the following words, “*Just when you thought Judy Gatelli was the world’s biggest asshole, she shows up as the world’s dumbest, biggest asshole. And where was the whore of all whores tonight? She was a no show once again. Too afraid of questions? You can’t make this crap up, she goes down in history as the ugliest woman to ever take council and the most dysfunction moran to ever be president.*” These alleged words are opinion based and the word ‘whore’ is symbolic of an expression of the conduct of a public official as relates to conduct that gives the appearance of rubber stamping, or working in alignment with the mayor’s agenda. Specifically Gatelli has cancelled approximately 14 council meetings without any attempt to reschedule them; and has been absent from a significant number of meetings. To call her ugly, dumb or even an asshole is not enough to meet the elements of injury or harm for defamation. These words are political free speech and are protected under the First Amendment.
67. Gatelli alleges for the second time, in a second table (on page 34) that the poster “Antisystemicmovements” has defamed her with the following words, “*I kinda hope that BUTCH does win her lawsuit, that way she can give the money she wins to her family instead of stealing off the taxpayers as Councilwoman in order to get jobs for her politically INBRED family. Emotional distress? Judy is trying to sue for emotional distress that Joe P. et al caused her. How is it possible for a court to determine whether or not Judy suffered emotional distress from Joe? Butch was crazy long before Joe started to fight corrupt politicians. If anything, she is more stable now since the Dr. and hubby are paying ever closer attention to her med levels.*”; “*aaaaaa. Judy is a disgrace of a council woman who should resign TODAY. bbbbbb. Due to Judy’s mental incapacity, and her inability to make sound and rationale judgments, I feel that Judy should be forced to resign as Councilwoman. cccccc. I believe her mental incapacity should prevent her from working with*

children at a school. I feel that they are under grave danger while under the care of one crazy Judy Gatelli. dddddd. I'm not certain she is a woman. Her gender is ambiguous.”; “Judy is the biggest RACIST Nimby there is,”; “The nut has cracked. She is probably on the phone right now, giving the Mayor her resignation. All the graft she received isn't worth it to her.”; and, “Judy's behavior is beyond embarrassing, and her guilt is evident. Mr. Davis reminded all of us that Judy is, in fact, a thief.” The second alleged statement include recitations from Gatelli's Petition for Disclosure. All of the other words are opinion based political speech, as relates to commenting on the poster's discontent with the conduct of a public official. The statements do not express a material fact, only speculation, and do not meet the harm and injury elements of defamation. Gatelli's affidavit does not state where this poster's words are false, and she doesn't attempt to specifically state what the truth is. And, a reading of these statements clearly show how much of political opinion they are especially considering how opinion oriented the Dohertydeceit.com message board is. These statements are politically protected speech and fall under the protections of the First Amendment.

68. Gatelli alleges that the poster “Blond Ambition” has defamed her with the following words, “...*she's as real as they come in the corrupt politician department.*” Again, these words are opinion based as specifically relates to the definition of corruption in Black's Law Dictionary. Gatelli does not address the falsity of the statement in her affidavit, but merely states that all of these collective statements are ‘certainly false.’ They are political speech and fall under the protection of the First Amendment.
69. Gatelli alleges that the poster “City Council Watcher” has defamed her with the following words, “*Let's all print this out and take it to city council meeting. When Nazi Gatelli gavels anyone out of order, we can all start singing the chorus....*” The use of the term Nazi in and of itself is not defamatory, and in fact this alleged statement does not even identify Gatelli as

a Nazi. Gatelli has not shown any harm or injury from this particular statement to meet the elements of defamation and the entitlement to proceed to gain the disclosure of the identities. These words are political in nature, do not make a statement of material fact, and are under the protection of the First Amendment.

70. Gatelli alleges for a second time, in a second table (on page 37) that the poster “City Haul” has defamed her with the following words, “*Mr. Reihner, you made my day. I would have been very upset if you didn’t pick me. Was it something I said about Gatelli being a corrupt, lying, two-faced, thieving, law breaking, under-handed, lowlife, dirtbag, scumbag, lice infested, backstabbing, donkey-brained, Hitlerish, crony, foul mouthed, dyke-looking, pompous jackass, sell out, infidel, rude, ignorant, crass, mental midget, windbag, anti-constitutional, hypocritical betrayer? Just wondering.*” The alleged words are clearly opinion based, as shown by their stringing one word next to another especially considering the political opinion oriented format of the Dohertydeceit.com message board. Gatelli’s affidavit fails to directly address this individual statement or even show what the contrary truth is. Additionally, Gatelli fails to state directly how this particular statement has caused her injury and harm. This alleged statement is political speech and opinion, and protected under the First Amendment.
71. Gatelli alleges for the second time, in a second table (on page 37) that the poster “Gatelli’s Blue Dress” has defamed her with the following words, “*Yippee, I made the list. What happens now? Does this mean that my free speech was not privileged? My opinions were threats? Wow. Does this mean Fat ass Judy Gatelli determines for us what free speech is? I don’t think so, you fat-assed no good, Doherty blowjob, crony-ridden piece of ****. Come and get me. Hey, Joe, give them anything you want on me. I’D LOVE TO BE IN COURT WITH THAT POLITICAL WHORE. LOVE IT!*” The alleged words are clearly opinion based, as shown by their stringing one word next to another

especially considering the political opinion oriented format of the Dohertydeceit.com message board. Gatelli's affidavit fails to directly address this individual statement or even show what the contrary truth is. Additionally, Gatelli fails to state directly how this particular statement has caused her injury and harm. This alleged statement is political speech and opinion, and protected under the First Amendment.

72. Gatelli alleges that the poster "Mayor Wingtips" has defamed her with the following words, "*As Gatelli's world turns, it's just another chapter in the woman who has always been used and abused, probably by the highest bidder.*"; and, "*The Gatelli era was the most corrupt as council president eras go. Heil Hitler to the dethroned Gestapo. How'd you make out?*" These alleged statements are clearly political opinions, referring to the words like Hitler and Gestapo, which are commonly used on the Dohertydeceit.com message board to describe authoritarian conduct of public officials. Gatelli's affidavit fails to meet these words directly by a showing of the contrary truth, and she fails to show the harm and injury resulting from this individual statement. These words are political opinion, and are protected by the First Amendment.
73. Gatelli alleges that the poster "Milo's Ghost" defamed her with the following words, "*That's right having been shunned by the King. Judy moves on to the next trough like the fat pig she is...overheard yesterday after the meeting stating to one of the people she does not represent... 'I DON'T NEED DOHERTY ANYMORE, I OWN WASHO.'* So look for Judy to be getting family members county jobs...you go Judy...some day it will all come back to roost."; "*Corrupt-as defined by dictionary.com – guilty of dishonest practices, as bribery; lacking integrity; crooked: a corrupt judge. Does it apply? What exactly have extracted from the mayor? Jobs for family? Raises? Did you truly cave to Scopeletti's alleges threats against your son in law? Did you do nothing about it? Thieving-Stop and Go...sue me. Lying-Do I need to even*

*elaborate? If got a million from the U of S...you forgot to mention that Fred Belardi got them a grant...so tell Scotty thanks for giving us our own money back...Two faced – I love unions! Screw the unions! I am not a Doobie...I am a super Doobie...two cups of Go ***** Yourself for both of your mouths. Fat-assed (which that's true) obviously. Betraying-I am a taxpayer. I have been betrayed...by you. Back-stabbing – I am not a Doobie. Nazi-Protected Opinionated Free Speech deal with it. Whore. Snake-in-the-grass-Hsssssssss. Incompetent-what has you done besides demonstrate you cannot run a meeting and can't take criticism? Degenerate-Well? Crony-check. Butch-looking-Double Check-Grow the hair. Foul-mouthed (which I am at times, that's true) – yes. Bitch-LOL Well? And they also forgot drug-user-by-your own admission may I suggest a dose adjustment?"; and, "So come on: Judy be nimble, Judy be quick! Judy stop knobbing on the mayor's tine @@@@. Its said when he is Judys only friend." These alleged words are opinion based and seem to be responsive to Gatelli's filing of the Petition for Disclosure. This is political speech which makes no statement of material fact upon which Gatelli can claim injury and harm. The words are protected under the First Amendment. Even her affidavit does not address this specific poster's statement in order to provide the contrary truth. Gatelli generally avers that all the statements attached to her Amended Petition are 'certainly false' which is not enough to meet entitlement to proceed against this poster for disclosure of an anonymous identity.*

74. Gatelli alleges that the poster "News from the Shed" has defamed her with the following words, "*Plain and simple. Judy is nothing more but a mule for hire. You pay her freight costs in jobs for family and friends and she does your work. Pssst...Judy. "HONEY" I am just trying to get added to your lawsuit....HEEEE HAWWWWWWWW.*" These alleged words are opinion based and seem to be responsive to Gatelli's filing of the Petition for Disclosure. This is political speech which makes no statement of material fact

upon which Gatelli can claim injury and harm. The words are protected under the First Amendment. Even her affidavit does not address this specific poster's statement in order to provide the contrary truth. Gatelli generally avers that all the statements attached to her Amended Petition are 'certainly false' which is not enough to meet entitlement to proceed against this poster for disclosure of an anonymous identity.

The foregoing argument shows that the remaining Doe defendants are also entitled to remain anonymous. As argued above, Gatelli has not shown any entitlement to proceed against those who have used words similar to "Nazi"; or those who have used such words as "thief" or "crook" in a manner that shows they are stating generalized opinions; or those who have called her a "puppet" or similar references to her being too closely allied with the mayor; or words relating to prostitution or other slang sexual references that are simply derogatory as opposed to actual assertions that Gatelli had sex with Mayor Doherty. Except for the word "scumbag", we have not addressed specifically the string of epithets enumerated by Gatelli in paragraph 10 of her affidavit – "hypocrite in practicing my Catholic faith," "lying bitch," "pig," "scumbag," "historically repulsive figure," "lunatic," "cheat," "corrupt," "cancer," "betrayed," "political blowjob," and/or "political maggot." But the very placement of these words adjacent to each other in the Gatelli affidavit only serves to emphasize how clearly they state opinion rather than fact, and how obvious the opinion-oriented context of the Doherty Deceit message board is. Nor, indeed, does Gatelli's affidavit meet any of these statements directly or even attempt to explain what the contrary truth is, as she at least purported to do in the preceding paragraphs; instead, she contents herself with the bald averment that these epithets are "certainly false." For these reasons, all of the Doe defendants, including the six Does represented by Attorney Levy, should be protected against Gatelli's motion to identify them.

GATELLI'S SHOWING OF ACTUAL HARM IS INSUFFICIENT BOTH TO SATISFY HER PRIMA FACIE CASE AND TO OVERRIDE THE ADDITIONAL DEFENDANT'S INTEREST IN AVOIDING BEING IDENTIFIED TO PUBLIC OFFICIALS WHO CAN HARM THEM, AND ADDITIONAL DEFENDANTS ARE ENTITLED TO TAKE HER DEPOSITION AND FURTHER DISCOVERY TO PIERCE HER CONCLUSORY AVERMENTS ON THAT ISSUE, AS WELL AS ON THE ISSUE OF HER CREDIBILITY AND REPUTATION

75. Counterclaim Defendants Pilcheskys, for themselves and on behalf of the additional Doe defendants, hereby incorporate by reference as if set forth in full, the brief in opposition filed by the six additional Doe defendants represented by Attorney Paul Levy, pages (17) through (20) including the conclusion.

WHEREFORE, Gatelli has failed to meet the elements for defamation, civil conspiracy, and intentional infliction of emotional distress, and has failed to prove actual malice, has filed two false affidavits in support of her Amended Petition, has failed to materially prove that the statements complained of were made on any certain date, or appeared on the Dohertydeceit.com message board and therefore her Amended Petition should be denied outright, and her counterclaim dismissed.

Respectfully submitted,

Joseph Pilchesky

Joanne Pilchesky
As individuals, and on behalf of
Additional Doe defendants
819 Sunset St.
Scranton, PA 18509
570-341-8005

VERIFICATION

I verify that the statements made herein are true and correct to the best of my information, knowledge and belief. I understand the statements made herein are subject to 18 Pa. 4904 relating to unsworn falsifications to authorities.

Date: _____

Date: _____

CERTIFICATE OF SERVICE

This is to certify that I, Joanne Pilchesky, on this 12th day of May, 2008, did serve a true and correct copy of the foregoing Objections to Gatelli's Amended Petition for Disclosure upon the parties listed below by placing the same in the US Mail, First Class, postage prepaid.

George Reihner, Esq.
148 Adams Ave.
Scranton, PA 18503

Prothonotary
Spruce and N. Washington Ave.
Scranton, PA 18503

Honorable Judge O'Brien
c/o Court Administrator
Lackawanna County Courthouse
200 N. Washington Ave.
Scranton, PA 18503

Paul Levy, Esq.
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