

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

MICHIGAN WELFARE RIGHTS ORGANIZATION, <i>et al.</i>)	
)	
<i>Plaintiffs,</i>)	
)	No. 1:20-cv-3388-EGS
v.)	
)	
DONALD J. TRUMP, <i>et al.</i> ,)	
)	
<i>Defendants.</i>)	
)	

RNC’S RESPONSE TO PLAINTIFFS’
NOTICE OF SUPPLEMENTAL AUTHORITY

Plaintiffs draw this Court’s attention to Judge Mehta’s opinion in *Thompson v. Trump*, 2022 WL 503384 (D.D.C. Feb. 18), *appeal pending*, Nos. 22-7030, 22-7031 (D.C. Cir.). As a preliminary matter, *Thompson* deserves little weight, both because district courts do not bind each other and because the decision is currently on appeal. Moreover, *Thompson* does not address many of the flaws with Plaintiffs’ §1985(3) claim. As to the RNC, Plaintiffs failed to plead state action, an actual deprivation, or a conspiracy. *See* RNC MTD (Doc. 24) 16-22; RNC Reply (Doc. 37) 11-15. Far from rejecting these defenses, Judge Mehta’s opinion supports them. It dismissed all claims against two of the defendants, for example, because the plaintiffs insufficiently alleged a conspiracy as to them. *See Thompson*, 2022 WL 503384 at *36-37, *3. So too here.

In terms of persuasive authority, *Thompson*—which considered a different cause of action under highly different facts—has limited relevance to Plaintiffs’ claim against the RNC. To the extent it applies at all, *Thompson* supports the RNC’s motion to dismiss by reaffirming that statements made about the integrity of the 2020 election are protected First Amendment activities.

Plaintiffs cite *Thompson* for two points—neither of which helps them against the RNC. Plaintiffs first note that *Thompson* denied absolute immunity. *See* Notice (Doc. 46) 2. But that defense is raised by President Trump, but not the RNC. Plaintiffs next insist that *Thompson* rejected First Amendment defenses comparable to the RNC’s. *See* Notice 2. They are wrong.

Plaintiffs obfuscate *Thompson*’s First Amendment analysis, stating that “[a]lthough Judge Mehta focused ... on then-President Trump’s speech to the crowd on January 6, 2021, [his] reasoning should apply to the conduct at issue in this case.” Notice 3. But Judge Mehta focused on this speech *because the other, pre-January 6 activities were protected by the First Amendment*. Specifically, Judge Mehta began his analysis of the conspiracy claim by stating:

Before assessing the sufficiency of Plaintiffs’ pleadings, it is important to bear in mind what the alleged conspiracy is and what it is not. It is not that Defendants conspired to sow doubt and mistrust about the legitimacy of the electoral process and the results of the 2020 presidential election. *Nor is it that Defendants worked together to influence, pressure, or coerce local officials, members of Congress, and the Vice President to overturn a lawful election.* Though many Americans might view such conduct to be undemocratic or far worse, *neither example is an actionable conspiracy under § 1985(1).*

Thompson, 2022 WL 503384 at *30 (emphasis added). Setting aside the RNC Defendants’ strong disagreements with the Plaintiffs’ allegations about their 2020 conduct and statements, *Thompson* makes clear that—even assuming Plaintiffs’ claims are true—the RNC’s alleged conduct is legally insufficient. If *Thompson*’s §1985(1) analysis is relevant to the Plaintiffs’ §1985(3) claims, then Plaintiffs’ claims must fail.

This conclusion is reinforced by *Thompson*’s treatment of Defendants Giuliani and Trump Jr. *Thompson* admits that “Plaintiffs have adequately pleaded that Giuliani was involved in a conspiracy to ‘engage in a months-long information campaign to convince Trump’s supporters that the election had been illegally stolen.’” *Id.* at *36. But those allegations were irrelevant, the court explained, because “such a conspiracy does not violate § 1985(1).” *Id.* Giuliani’s statements

all were “constitutionally protected speech.” *Id.* at 37. As were Trump, Jr.’s statements about “election fraud and theft.” *Id.**

Plaintiffs allege far less than that against the RNC here. Recall that in their 29-page complaint, Plaintiffs’ only allegations against the RNC are that it:

- hosted and later retweeted portions of a press conference, Doc. 8 ¶¶38, 40, 72;
- wrote (through its chairwoman) the Michigan State Board of Canvassers urging them to delay certification to audit certain results, ¶49;
- “produced training videos for volunteers to watch” that “list[ed] and quot[ed] various election laws and regulations,” ¶63;
- engaged in joint fundraising with the Trump Campaign, ¶67; and
- retweeted or otherwise “endorsed” the Trump Campaign’s concerns about voter fraud and the need to ““fight hard”” to ““defend the integrity of this election,”” ¶71.

See RNC MTD 11-16; RNC Reply 20, 16. All of these activities are squarely protected by the First Amendment, and the incitement exception cannot possibly apply to them.

In short, *Thompson* does not mean what the Plaintiffs suggest it means, and its only relevance is to reiterate that the RNC’s conduct and statements are insufficient to state a claim. The RNC’s motion to dismiss should be granted in full.

* Even with respect to President Trump, Judge Mehta emphasized the narrowness of his decision: He called the case “one-of-a-kind,” stressed that the standard for incitement is “stringent,” and noted that political speech should be deemed unprotected “only in the rarest of circumstances.” *Id.* at *39, *40, *46. In fact, Judge Mehta refused to treat “President Trump’s words prior to the January 6 Rally” as unprotected speech. *Id.* at *42.

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CERTIFICATE OF SERVICE

I e-filed this response via ECF, which will email everyone requiring notice.

Dated: April 11, 2022

/s/ Tyler R. Green