**UNITED STATES DISTRICT COURT**
**DISTRICT OF CONNECTICUT**

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| LYDIA COLOMBO | : | CIVIL ACTION NO. |
| Plaintiff, | : | 3:00-CV-1559 (JCH) |
| | : | |
| | : | |
| v. | : | |
| | : | |
| RAYMOND O'CONNELL | : | |
| Defendant. | : | DECEMBER 27, 2001 |

**RULING ON DEFENDANT'S MOTION FOR SUMMARY JUDGMENT [DKT. NO. 18]**

In this case, plaintiff, Lydia Colombo ("Colombo"), claims that the defendant, Raymond O'Connell ("O'Connell"), threatened her with a lawsuit in violation of her First Amendment right to free speech after the plaintiff filed a petition for a recall vote of the Town of Stratford Board of Education. The plaintiff also alleges state pendent claims for intentional and negligent infliction of emotional distress.

In his motion for summary judgment, O'Connell argues that no genuine issue of material fact exists as to whether the defendant chilled the plaintiff's exercise of her First Amendment rights, whether the defendant acted under color of law, and whether the defendant is entitled to qualified immunity.

For the reasons stated below, the defendant's motion is granted.

## I. FACTS

On August 1, 2000, Colombo and two other individuals filed a petition with the Town of Stratford Clerk requesting a recall election for the members of the Stratford Board of Education. The body of the petition alleged the Board concealed "illegal and unethical behavior on the part[] of the Superintendent." Def.'s Mem. of Law in Supp. of Mot. for Summ. J., Ex. A. O'Connell, the Superintendent of Schools for the Town of Stratford, asked a private attorney to notify the petition's signatories that the allegations were libelous and threaten a legal action if the petition was not retracted. Id. at Ex. B. O'Connell also printed a demand for a retraction in the local newspaper. In her deposition, Colombo testified that, after receiving the letter she still felt free to speak up about whatever she wanted to say. Colombo Dep. at 11. She went on to testify that she never retracted what was said in the petition and, after being told that there was no right of recall for Board of Education members, she filed suit in federal court to defend her right to pursue the petition. Id. at 12-13.

## II. DISCUSSION

### A. Standard of Review

Summary judgment is only appropriate when no genuine issue of material fact exists and the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(c); Hermes Int'l v. Lederer de Paris Fifth Ave, Inc., 219 F.3d 104, 107 (2nd Cir. 2000). The burden of showing that no genuine factual dispute exists rests upon the moving party. Carlton v. Mystic Transp., Inc., 202 F.3d 129, 133 (2d Cir. 2000) (citing Gallo v. Prudential Residential Servs., Ltd. Partnership, 22 F.3d 1219, 1223 (2d Cir. 1994)). In assessing the record to determine if such issues do exist, all ambiguities must be resolved and all inferences drawn in favor of the party against whom summary judgment is sought. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 255 (1986); Heilweil v. Mount Sinai Hosp., 32 F.3d 718, 721 (2d Cir.1994). When reasonable persons, applying the proper legal standards, could differ in their responses to the questions raised on the basis of the evidence presented, the question is best left to the jury. Sologub v. City of New York, 202 F.3d 175, 178 (2d Cir. 2000).

**B. § 1983**

To sustain her cause of action under § 1983, Colombo must present facts that indicate a deprivation of constitutional rights. Spear v. Town of W. Hartford, 954 F.2d 63, 67 (2d Cir. 1992). The First Amendment protects individuals' right to free speech and extends so far as to prohibit state action that merely chills speech. But, at the very least, the plaintiff must present evidence that the defendant's actions had an actual, non-speculative chilling effect on plaintiff's speech. Id. at 67-68 (holding that a lawsuit initiated by West Hartford and corresponding injunction as a basis for a First Amendment violation under § 1983 were insufficient to survive a 12(b)(6) motion where plaintiff did not allege that he changed his behavior at all in response); cf. Mozzochi v. Borden, 959 F.2d 1174, 1178-80 (2d Cir. 1992) (holding, in qualified immunity context, that no constitutional deprivation occurred where it was undisputed that the plaintiff's speech was not inhibited by town's filing and prosecution of criminal charges). The Second Circuit has even concluded that unsubstantiated allegations of chilled speech do not satisfy the injury-in-fact prong for standing. Bordell v. Gen. Elec. Co., 922 F.2d 1057, 1060-61 (2d Cir. 1991) (holding insufficient for standing a subjective fear of prosecution and allegations of

conduct forgone as grounds to establish chilling effect, where allegations are unsubstantiated and factual record presents evidence to the contrary).

In this case, Colombo commented on the threatened litigation's effect on her behavior. Colombo did not stop speaking about the issue and went so far as to file a lawsuit in order to pursue her right to bring a petition regarding a reelection. While Colombo did testify that she felt threatened by the letter and went to see her lawyer, Colombo Dep. at 13, the court finds that this is not enough to establish a chilling effect. Colombo's actions subsequent to receiving the letter indicate that, however she may have felt about the possibility of a lawsuit, she went on to continue to speak about the matter and pursued federal litigation. Colombo's speech was clearly not inhibited by the letter.

These facts do not rise to the level of a deprivation of constitutional rights. Nothing in the complaint or evidence provided by the plaintiff suggests any actual chilling effect on her speech. Therefore, O'Connell's letter did not deprive Colombo of her First Amendment rights, and she cannot maintain an action under § 1983.[1]

[1]Proof of a deprivation of constitutional right is the first prong for analyzing qualified immunity for state officials. Conn v. Gabbert, 526 U.S. 286, 290 (1999). If the plaintiff cannot prove violation of a constitutional right, then the defendant official would be entitled to qualified immunity. Although qualified immunity

### C. State Law Claims

Finally, the plaintiff has alleged pendant state claims for intentional and negligent infliction of emotional distress. Under 28 U.S.C. § 1367(c)(3), "[t]he district courts may decline to exercise supplemental jurisdiction over a [state law] claim . . . if . . . the district court has dismissed all claims over which it has original jurisdiction." 28 U.S.C. § 1367(c)(3). While dismissal of the state claims is not absolutely mandatory, Rosado v. Wyman, 397 U.S. 397, 403-05 (1970); Carnegie-Mellon Univ. v. Cohill, 484 U.S. 343, 350 n.7 (1988), the basis for retaining jurisdiction is weak when the federal claims are dismissed before trial. United Mine Workers v. Gibbs, 38 U.S. 715, 726 (1966). Accordingly, the court declines to exercise jurisdiction over the state law claims, and those claims are dismissed without prejudice.

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would serve as alternative grounds for this ruling using the same analysis, the court does not reach the question because the plaintiff has not proven they have a cause of action.

## III. CONCLUSION

For the foregoing reasons, O'Connell's Motion for Summary Judgment [Dkt. No. 18] is GRANTED, and the pendant state claims are dismissed. The Clerk is directed to close the case.

**SO ORDERED.**

Dated at Bridgeport, Connecticut this 27th day of December, 2001.

_____/s/_____
Janet C. Hall
United States District Judge