

**UNITED STATES DISTRICT COURT**  
**DISTRICT OF MAINE**

<b>JOHN V. CHAMBERS and</b>	)	
<b>RHONDA E. CHAMBERS,</b>	)	
	)	
<b>Plaintiffs</b>	)	
	)	
<b>v.</b>	)	<b>CIVIL No. 00-261-B</b>
	)	
<b>CITY OF CALAIS et al.,</b>	)	
	)	
<b>Defendants</b>	)	

**RECOMMENDED DECISION**

Defendants John and Michael Sherrard have filed motions to dismiss Plaintiffs John and Rhonda Chambers’s claims against them for their alleged participation in a civil conspiracy to deprive the Plaintiffs of their rights to due process and equal protection.<sup>1</sup> (Docket Nos. 6 & 9; Complaint at ¶ 13.) I recommend that the Court GRANT the motions.

**12(b)(6) STANDARD**

When considering a Rule 12(b)(6) motion to dismiss, the Court must accept as true the well-pleaded factual allegations of the complaint, draw all reasonable inferences in the plaintiffs’ favor, and determine whether the complaint, when taken in the light most favorable to the non-movant, sets forth sufficient facts to support the claim for relief. *Clorox Co. v. Proctor & Gamble Commer. Co.*, 228 F.3d 24, 30 (1st Cir. 2000); *LaChapelle v. Berkshire Life Ins. Co.*, 142 F.3d 507, 508 (1<sup>st</sup> Cir. 1998).

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<sup>1</sup> Plaintiffs indicate that they are seeking, in addition to their constitutional claims, compensatory damages pursuant to “the laws of the State of Maine.” They do not indicate which state laws they are referring to. Their brief in opposition to the motions to dismiss does not indicate a legal claim other than those addressed in this Recommended Decision.

## BACKGROUND

The Plaintiffs' complaint sets forth the following material allegations concerning their claims against John and Michael Sherrard ("Movants"). In March 1999, Plaintiffs submitted a proposal to the Calais School Committee ("CSC") in which they offered to build a new middle school facility on Plaintiffs' property if the CSC would agree to lease the property for a five-year period. (Complaint at ¶¶ 14-16.) On March 29, 1999, the CSC approved the proposal with a unanimous vote. (Id. at ¶ 17.) On March 30, 1999, the City of Calais Planning Board approved the proposed project and Plaintiffs began excavating their property the following day. (Id. at ¶¶ 18-19.) On April 27, 1999, the State of Maine informed the CSC that it "would not subsidize the Plaintiffs' proposal."<sup>2</sup> (Id. at ¶ 20.)

Evidently concerned about whether it should proceed with the plan to lease Plaintiffs' property, the CSC decided to revote the matter. (Id.) At or about this time, Maria Tickle, Chairperson of the CSC, and the Movants allegedly "conspired to and did place intimidating and threatening phone calls to members of the . . . [CSC] in order to influence [them to vote] against Plaintiffs' project." (Id. at ¶ 44.) The conspirators threatened the CSC members with forced resignation or removal from their elected positions on the CSC. (Id.) The conspirators were allegedly "motivated by [a] bad faith malicious intent to financially injure the Plaintiffs." (Id. at ¶ 50.) Movants are not employed by the State of Maine, a municipal government, or a state agency.

Despite the threats, the CSC once again approved the proposal with a 3-2 vote. (Id. at ¶ 20.) On May 4, 1999, the CSC and the Plaintiffs entered into a lease agreement pertaining to Plaintiffs' property. (Id. at ¶ 21.) On June 25, 1999, Plaintiffs received a building permit from the City of Calais. (Id. at ¶ 22.) On July 20, a recall election was held concerning only the CSC

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<sup>2</sup> Presumably, the State indicated it would not subsidize the CSC's lease payments.

positions held by the three members who voted in favor of the Plaintiffs' proposal. (Id. at ¶ 23.) All three members lost their positions in the election. (Id. at ¶ 24.) Subsequently, the CSC stated that the Plaintiffs' lease was not valid and entered into a contract with a third-party for the provision of alternative school premises. (Id. at ¶¶ 26 & 29.) Plaintiffs seek compensatory damages for money expended on the project, loss of the benefit of their bargain, and opportunity costs associated with lost alternative employment. (Id. at ¶ 31.)

### **DISCUSSION**

Movants challenge the Plaintiffs' claims against them on several fronts. First, they argue that their alleged conduct did not cause injury to the Plaintiffs because the CSC voted in favor of Plaintiffs' proposal despite their threatening calls. (Docket No. 6 at 3; Docket No. 9 at 6.) Second, they argue that they are not subject to liability under § 1983 because they are not state actors. (Docket No. 6 at 4; Docket No. 9 at 5.) Third, they contend that their efforts to sway the CSC were protected by the First Amendment because the school project was a matter of public concern. (Docket No. 6 at n.2; Docket No. 9 at 4-5.) Plaintiffs respond that Movants' participation in a civil conspiracy with Chairperson Tickle establishes causation. (Docket No. 11 at 2, 5.) They argue that the sole purpose of the conspiracy was to prevent Plaintiffs from realizing the benefit of the contract they entered into with the CSC. (Id.) Plaintiffs also contend that because Movants were working as agents for Chairperson Tickle, they are subject to liability as state actors. (Id. at 5.) Plaintiffs state that the injury inflicted by Movants' consisted of interference with their "right to a fair vote." (Id. at 3.) Plaintiffs argue that Movants do not enjoy protection under the First Amendment because threats are not protected speech. (Id. at 4.)

Finally, Plaintiffs contend that the underlying criminal conduct of “obstructing government administration” also supports the conclusion that Movants were participants in a civil conspiracy. (Id. at 3.)

Federal courts have incorporated “conspiracy” concepts into § 1983 claims in order to, among other things, provide plaintiffs with a remedy against private persons who conspire with state employees to work deprivations of federally guaranteed rights. “[P]rivate persons may be held liable under § 1983 where, *inter alia*, [they] conspire with or are otherwise willful participants in joint activity with the state or its agents.” Tauvar v. Bar Harbor Congregation of Jehovah’s Witnesses, Inc., 633 F. Supp. 741, 747 (D. Me. 1985) (citing Adickes v. S. H. Kress & Co., 398 U.S. 144, 152 (1970)). There are two essential elements to an action under § 1983: “First, that the defendants acted under color of state law; and second, that the defendants’ conduct worked a denial of rights secured by the Constitution or by federal law.” Rodriguez-Cirilo v. Garcia, 115 F.3d 50, 52 (1<sup>st</sup> Cir. 1997); see also Parratt v. Taylor, 451 U.S. 527, 535 (1981). In order to show that a private person has acted under color of state law, “the plaintiff must plead in some detail, through reference to material facts, the relationship or nature of the cooperation between the state actors and the private individuals.” Tauvar, 633 F. Supp. at 747 (citing McGillicuddy v. Clements, 746 F.2d 76, 77 (1st Cir. 1984)).

Plaintiffs attempt to establish the requisite connection between Movants and a state actor with the following allegation:

44. Defendants Tickle, John Sherrard Jr. and Michael Sherrard conspired to and did place intimidating and threatening phone calls to members of the pre-recall School Committee in order to influence the Committee into voting against Plaintiffs’ project or be forced to resign or [be] removed from their elected positions.

In my view, the only non-conclusory aspect of this allegation is that Chairperson Tickle and Movants all placed phone calls to members of the CSC and threatened adverse political consequences if their wishes were not followed. In any event, assuming that the bare allegation that they “conspired” to do so is sufficient to render them subject to a § 1983 claim, there is no constitutional deprivation. Even if the alleged “interference” with the CSC’s vote on the contract proposal implicated due process or equal protection rights,<sup>3</sup> Movants did not succeed in depriving Plaintiffs of these rights because the CSC voted in favor of Plaintiffs’ proposal. Furthermore, although some undisclosed actor commenced a recall vote on the three CSC members who voted in favor of Plaintiffs’ proposal, there are no allegations linking Movants, specifically, to these subsequent developments. Nor are there allegations linking Movants to the decision of the newly reconstituted CSC to rescind or otherwise frustrate Plaintiffs’ contract. Therefore, Plaintiffs have no § 1983 claim against Movants.

Under Maine law, a civil conspiracy claim requires proof of the commission of an underlying tort. Potter, Prescott, Jamieson & Nelson, P.A. v. Campbell, 1998 ME 70, ¶ 8, 708 A.2d 283, 286 (citing Cohen v. Bowdoin, 288 A.2d 106, 110 (Me. 1972)). “[C]onspiracy is not a separate tort but rather a rule of vicarious liability.” McNally v. Mokarzel, 386 A.2d 744, 748 (Me. 1978). The only alleged “tort” claim in this case is the allegation of “obstruction of government administration,” 17-A M.R.S.A. § 751(1), which is alluded to in Plaintiffs’ memorandum of law. In fact, obstruction of government administration is a crime, not a civil tort. Thus, it cannot support Plaintiffs’ state law conspiracy theory. Cf. FDIC v. S. Praver &

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<sup>3</sup> Although it is not addressed by Movants, this is far from clear. Linan-Faye Constr. Co. v. Housing Auth., 49 F.3d 915, 931-32 (3rd Cir. 1995) (holding that breach of a municipal contract lacking a for cause termination provision will not implicate due process concerns); S & D Maintenance Co. v. Goldin, 844 F.2d 962, 966, 970 (2d Cir. 1988) (“An interest in enforcement of an ordinary commercial contract with a state is qualitatively different from the interests the Supreme Court has thus far viewed as ‘property’ entitled to procedural due process protection.”). See also Baker v. Coxe, 230 F.3d 470, 474 (1st Cir. 2000) (describing burden of showing substantive due process and equal protection violations in the context of local permitting procedures).

Co., 829 F. Supp. 453, 455 (D. Me. 1993) (dismissing conspiracy claim because “violation of either Maine’s Uniform Fraudulent Transfers Act or the Uniform Commercial Code’s Bulk Sales Act is not a tort”).

### CONCLUSION

Because the Movants’ alleged conspiracy did not succeed and the “pre-recall” CSC approved Plaintiffs’ proposal, there is no basis for finding either a due process or equal protection deprivation. Nor is there any basis for a state claim based on the alleged conspiracy to violate a criminal statute. For these reasons, I recommend that the Court GRANT Movants’ motions to dismiss.

### NOTICE

A party may file objections to those specified portions of a magistrate judge’s report or proposed findings or recommended decisions entered pursuant to 28 U.S.C. § 636(b)(1)(B) (1993) for which de novo review by the district court is sought, together with a supporting memorandum, within ten (10) days of being served with a copy thereof. A responsive memorandum shall be filed within ten (10) days after the filing of the objection.

Failure to file a timely objection shall constitute a waiver of the right to de novo review by the district court and to appeal the district court’s order.

March 12, 2001

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Margaret J. Kravchuk  
U.S. Magistrate Judge

U.S. District Court

District of Maine (Bangor)

CIVIL DOCKET FOR CASE #: 00-CV-261

CHAMBERS, et al v. CALAIS, CITY OF, et al Filed: 12/18/00

Assigned to: JUDGE D. BROCK HORNBY Jury demand: Plaintiff

Demand: \$0,000 Nature of Suit: 440

Lead Docket: None Jurisdiction: Federal Question

Dkt# in other court: None

Cause: 42:1983 Civil Rights Act

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