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JUDICIAL CENTER
YORK, PA

IN THE COURT OF COMMON PLEAS OF YORK COUNTY, PENNSYLVANIA

In re: Petition to Set Aside Nomination : No. 2017-MI-000066
Petitions of Scott J. Gross, :
 : Civil Action, Law
Petition of Nathan Volpi, Esquire : Election Code
 :

**ORDER AND OPINION GRANTING IN PART
AND DENYING IN PART PETITION TO SET ASIDE**

Before the Court is the Petition of Nathan Volpi, Esq. requesting us to set aside the Democratic and Republican nomination petitions of Scott J. Gross, an incumbent candidate for magisterial district judge. We will GRANT the Petition to strike the DEMOCRATIC PETITIONS of candidate GROSS, but we DENY the Petition challenging the REPUBLICAN PETITIONS of candidate Gross.

The underlying facts are not seriously in dispute. Mr. Volpi is a candidate for the same magisterial district judge seat as Judge Gross. Both candidates have cross-filed. Both candidates timely filed their respective nomination petitions. The Petition challenging the nomination petitions of Judge Gross was timely filed by Mr. Volpi, and seeks to set aside or strike both the democratic and republication nomination petitions of candidate Gross.

DISCUSSION:

General Observations:

To a casual observer, it might appear that the Pennsylvania legislature has made running for local or state political office as difficult as possible. A cynical observer might conclude that the legislature had purposely done so in order to discourage "amateur" politicians from seeking public office.

The Pennsylvania Election Code (Act of June 3, 1937, P.L. 1333, Sec. 1 *et seq.*), some sections of which date back to 1937, is not codified into the official Pennsylvania Consolidated Statutes, making the actual election law difficult even for lawyers to find.¹ It is comprised of over 327 sections, of which nearly 30 (not including subsections) directly pertain to prospective candidates for office.

In addition to the Election Code, a candidate must be familiar with the Public Official and Employees Ethics Act, (even though a candidate may not yet be either a public official or a public employee) which is consolidated into the official Pennsylvania Consolidated Statutes scheme, but is located in a separate title within

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The Pennsylvania Election Code can be found in the Purdon's unofficial collection of statutes at 25 P.S. Sec. 2600.

the Purdon's set of statutory publications.² Additionally, and as it pertains to issues raised in this case, a candidate has to have more than a passing familiarity with the Revised Uniform Law on Notarial Acts, which is also codified into the Pennsylvania Consolidated Statutes, but is located in yet a different title, which deals with notaries public. (57 Pa.C.S. Sec. 301, *et seq.*)

To be fair, the Pennsylvania Department of State does publish an election calendar each year to help those seeking office steer through some of the maze of dates and filings which are required, but conspicuously absent on its list of publications on its web site is anything pertaining to instructions on how to run for office. While York County also publishes various forms candidates may have to use or file, there are precious few helpful tips for prospective candidates who want to run for local office.³

This statutory scheme does serve several practical purposes. The requirement of having petitions signed by a notary is to insure some accountability of the candidates that they will not simply file a list of purported electors who may or

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It is located in Title 65, Public Officers, and specifically at 65 Pa.C.S. Sec. 1101 *et seq.*

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See, for instance, the directions published by Montgomery County at <http://www.montcopa.org/762/Running-for-Office>

may not be registered or who may or may not even be alive.⁴ The requirement of having financial disclosure statements is to allow the public to assess a candidate's financial ties, or lack thereof, to business interests, special interests, or obligations to others which may bear on a candidate's ability to carry out the duties of the office.

These observations aside, we will turn to an analysis of the claims raised in Mr. Volpi's petition.

Democratic Petitions:

Mr. Volpi challenges the democratic petitions because of the failure to append a statement of financial interests to those petitions. It was acknowledged by Judge Gross that he only filed one statement of financial interests, which was appended to the republican petitions which he filed. Candidate Volpi relies on 65 Pa.C.S. Sec. 1104 of the Public Official and Employee Ethics Act. That Act requires:

(2) Any candidate for county-level or local office shall file a statement of financial interests for the preceding calendar year with the governing authority of the political subdivision in which he is a candidate on or before the last day for filing a petition to appear on the ballot for election. A copy of the statement of financial interests shall also be appended to

⁴ The assertions by some that such "ghost" electors have shown up at the polls in "huge" numbers to cast actual ballots during elections have not been substantiated.

such petition.

65 Pa.C.S.A. §1104(b)(2). The analysis gets somewhat complicated because the subsection does not appear to acknowledge the situation in which a candidate cross-files to appear on both the democratic ballot and the republican ballot. If the purpose of the requirement is to disclose a candidate's financial interests to the prospective electorate, the purpose is served when there is a single filing of a statement of financial disclosure in the office. A second statement is superfluous. Mr. Volpi urges us to strictly construe the requirements of this statute, which, he argues, requires attachment of a statement of financial interests to both the democratic and republican petitions.

The Statutory Construction Act sets forth the purpose of statutory interpretation and the considerations to be utilized by a court when reviewing a statute. The court's objective in construing or interpreting a statute is to "ascertain and effectuate the intention of the General Assembly." 1 Pa.C.S. 1921(a). Initially, a court looks to the words of the statute itself to glean the intent of the Legislature regarding the piece of legislation. When the words of a statute are clear and free from all ambiguity, the letter of it is not to be disregarded under the pretext of pursuing its spirit. 1 Pa.C.S. § 1921(b). In doing so, a statute's words and phrases are to be construed

according to their common meaning and approved usage. 1 Pa.C.S. § 1903(a).

Only after the words of the statute are found to be unclear or ambiguous should a reviewing court further engage in an attempt to ascertain the intent of the Legislature through use of the various tools provided in the Statutory Construction Act. 1 Pa.C.S. § 1921(c)9; *Coretsky v. Board of Commissioners of Butler Township*, 520 Pa. 513, 555 A.2d 72, 74 (1989) (“Only if a statute is unclear may a court embark upon the task of ascertaining the intent of the legislature by reviewing the necessity of the act, the object to be attained, circumstances under which it was enacted and the mischief to be remedied.”). *Zane v. Friends Hosp.*, 575 Pa. 236, 245–246, 836 A.2d 25, 30–31 (2003)

Thus, we will initially determine whether the words used in the statute are clear and unambiguous. If they are not, then we will employ the other analytical considerations furnished in the Statutory Construction Act to attempt to ascertain the General Assembly's intent. The words of the statute are clear enough. “A copy of the statement of financial interests shall also be appended to such petition.” A candidate who is cross-filing is seeking to appear on two ballots – a republican ballot and a democratic ballot. To that end, a candidate has to file two sets of petitions - one set

for the democratic ballot and one set for the republican ballot.⁵ The statute clearly requires a “petition” to have a statement of financial interests appended to the end. The consequences for failing to do so are also clearly spelled out. “Failure to file the statement in accordance with the provisions of this chapter shall, in addition to any other penalties provided, be a fatal defect to a petition to appear on the ballot.” 65 Pa.C.S.A. §1104(d). See *In re Nominating Petition of Guzzardi*, 627 Pa.1, 99 A.3d 381 (2014).

Even though such an interpretation yields an absurd result when applied in this situation with a cross-filed candidate and considering the purposes for which the disclosure laws were enacted, and even though we are directed to presume that the legislature did not intend an absurd result (1 Pa.C.S. Sec. 1922(1)), the words are clear and unambiguous. The democratic petition must be stricken.

In view of the decision on this issue, we need not address the other challenges to the democratic petition.

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See 25 P.S. Sec. 2937 which allows a “petition” to consist of one or more sheets of names.

Challenges to Republican Petition:

Mr. Volpi challenges the republican petition for a number of reasons having to do with alleged deficiencies in the form of the various affidavits on those petitions. He relies on interpretations of various sections of the Revised Uniform Law on Notarial Acts. (57 Pa.C.S. Sec. 301 *et seq.*) There is no dispute that the various affidavits of circulators and candidate's affidavits were signed by a lawfully commissioned notary, and no dispute that the individuals signing the affidavits of circulators did, in fact, appear before and were properly identified by the notaries public.

Unlike some of the election statutes, the notary laws are somewhat more forgiving. For instance, Mr. Volpi relies upon Section 316 to argue various deficiencies with the execution of the affidavits by the notary. However, Section 316 states that “[t]he following short form certificates of notarial acts are *sufficient* for the purposes indicated if *completed with the information required* by Section 315(a) and (b) (relating to certificate of notarial act)...” (emphasis supplied.) Further, Section 315 provides that:

“(c) Sufficiency.--A certificate of a notarial act is sufficient if it meets the requirements of subsections (a) and (b) and: ...

(4) sets forth the actions of the notarial officer and the actions are sufficient to meet the requirements of the notarial act as provided in:

(i) sections 305 (relating to requirements for certain notarial acts), 306 (relating to personal appearance required) and 307 (relating to identification of individual);

57 Pa.C.S.A. §315(c).

Thus, a reading of the unambiguous words of the statutes makes it clear that a particular format to the information is not necessarily *required*. It is the *substance* of the information that is important more so than the *form* of the information. An examination of Sections 305, 306 and 315 leads one to the conclusion that all of the required information is present in the affidavits. The affidavits are, therefore, not deficient.

Judge Gross proffered evidence to “cure” any defects with the form of the affidavits. In view of our holding that the affidavits are sufficient, there is no need to do so.

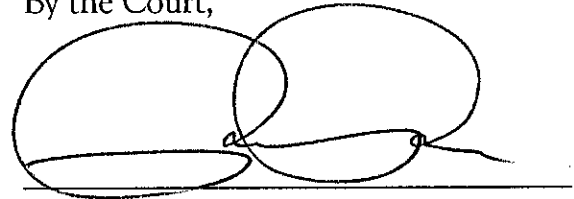
Mr. Volpi’s other objections have either been withdrawn or are otherwise denied.

Conclusion:

For the foregoing reasons, we have stricken the democratic petitions but we will deny the challenge to the republican petitions.

A copy of this Order and Opinion shall be sent to counsel for the parties.

By the Court,

A handwritten signature in black ink, consisting of several large, overlapping loops and a horizontal line at the bottom, resting on a horizontal line.

Richard K. Renn, J.

3/23/17