

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Docket No. 1392 C. D. 2013

**IN RE NOMINATION PAPERS OF
NEVIN MINDLIN FOR THE OFFICE OF
MAYOR OF HARRISBURG**

**APPEAL OF NEVIN MINDLIN
FROM THE AUGUST 15, 2013 ORDER OF
DAUPHIN COUNTY COURT OF COMMON PLEAS
GRANTING OBJECTOR'S PETITION TO REMOVE
CANDIDATE FROM THE NOVEMBER BALLOT**

ELECTION MATTER

APPELLANT'S BRIEF

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IN THE COMMONWEALTH COURT OF PENNSYLVANIA

DOCKET: 1392 C.D. 2013

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I. JURISDICTION OF THE COMMONWEALTH COURT

The Commonwealth Court shall have exclusive jurisdiction of appeals from final orders of the Court of Common Pleas entered in election matters commenced in the Court of Common Pleas. **42 Pa. C.S.A. § 762(a) (1) (i).**

II. ORDER IN QUESTION

“AND NOW, this 15th day of August, 2013, upon consideration of the Petition Objecting to the Nomination Papers of Nevin Mindlin for the Office of Mayor of Harrisburg, and upon consideration of the election hearing held on August 12, 2013 at 8:15 a.m., and upon consideration of the memorandum of Law in Support of Donald Lee Coles, Sr.’s Petition, filed August 13, 2013, IT IS HEREBY ORDERED AND DECREED that the Petition is GRANTED and Nomination Petitions and Papers of Nevin Mindlin are SET ASIDE and the name of Nevin Mindlin, as a candidate for the Office of Mayor of Harrisburg is STRICKEN from the ballot for the November 5, 2013 election. BY THE COURT. /s/ Bernard L. Coates Jr., Judge”.

III. STATEMENT OF SCOPE OF REVIEW AND STANDARD OF REVIEW

In **In re Nomination Petition of Flaherty, 564 Pa. 671, 770 A.2d 327, (2001)** the Supreme Court summarized the applicable standard of review as follows: In reviewing the order of the trial court concerning the validity of challenges to a nomination petition, [the] standard of review is whether the findings of fact are supported by substantial evidence, whether there was an abuse of discretion, or whether errors of law were committed. A party alleging the defects in a nominating petition has the burden of providing such. **In re Nomination Petition of Flaherty, supra at 678-79, at 331 (2001) (citations omitted).**

IV. STATEMENT OF THE QUESTIONS INVOLVED

- A. Whether or not the objectors established the jurisdiction of the Court to hear their petition? See: **25 P.S. § 2937; In Re: Nominating Petition of Angela Gerena, 972 A.2d 86 (Pa. Cmmwlth. Ct., 2009); Trial transcript pp. 1-8.**
- B. Whether the Court below erred by ignoring the well established rule of our Supreme Court that the Election Code should be construed liberally “**so as to not deprive an individual of his right to run for office**, or voters of their right to elect a candidate of their choice.”? (Emphasis added). See: **Ross Nomination Petition, 411 Pa. 45, 190 A.2d 719 (1963); In re Nader, 858 A. 2d 1167, 580 Pa. 22, Sup 2004; In re 2003 General Election for the Office of Prothonotary, 849 A. 2d 230, 578 Pa. 3, Sup 2004.**
- C. Whether the Court below erred by failing to understand that “**political party and the independent candidate approaches to political activity are entirely different and neither is a satisfactory substitute for the other**”? **Storer v. Brown, Secretary of State of California, et al. 415 U.S. 724, 745 (1974).**
- D. Whether the Court below erred in exulting form over substance in the case of an “independent” candidate who is not part of a minor party or political body? See: **McCarthy v. Briscoe, 429 U.S. 1317, 97 S.Ct. 10, 50 L.Ed.2d 49 (1976). Trial transcript pp. 8-33.**
- E. Whether the definition of “**independent nomination**”, **25 P.S. §2602 (i)**, is applicable to the case at bar based upon the facts of this case? See: **McCarthy v. Briscoe, 429 U.S. 1317, 97 S.Ct. 10, 50 L.Ed.2d 49 (1976); Trial transcript pp. 8-33.**
- F. Whether **25 P.S. § 2602(i)**, as applied to the facts of this case violates the **First Amendment** rights of candidate Nevin Mindlin to run as an independent person not as a part of a political body? See: **Storer v. Brown, Secretary of State of California, et al. 415 U.S. 724, 745 (1974); McCarthy v. Briscoe, 429 U.S. 1317, 97 S.Ct. 10, 50 L.Ed.2d 49 (1976); Trial transcript pp. 8-33; Ross Nomination Petition, 411 Pa. 45, 190 A.2d 719 (1963); In re Nader, 858 A. 2d 1167, 580 Pa. 22, Sup 2004; In re 2003 General Election for the Office of Prothonotary, 849 A. 2d 230, 578 Pa. 3, Sup 2004.**
- G. Whether **25 P.S. § 2602(i)**, as applied to the facts of this case denies equal protection of the law under the **Fourteenth Amendment** to the rights of candidate Nevin Mindlin to run as an independent person not as a part of a political body? See: **Storer v. Brown, Secretary of State of California, et al. 415 U.S. 724, 745 (1974); McCarthy v. Briscoe, 429 U.S. 1317, 97 S.Ct. 10, 50 L.Ed.2d 49 (1976); Trial transcript pp. 8-33.**

- H. Whether **25 P.S. § 2602(i)**, as applied to the facts of this case violates the **Article One of the Pennsylvania Constitution** rights of candidate Nevin Mindlin to run as an independent person not as a part of a political body? **See: Trial transcript pp. 8-33.**
- I. Whether **25 P.S. § 2912**, as applied to the facts of this case violates the **First Amendment** rights of candidate Nevin Mindlin to run as an independent person not as a part of a political body? **See: Storer v. Brown, Secretary of State of California, et al. 415 U.S. 724, 745 (1974); McCarthy v. Briscoe, 429 U.S. 1317, 97 S.Ct. 10, 50 L.Ed.2d 49 (1976); Trial transcript pp. 8-33; Ross Nomination Petition, 411 Pa. 45, 190 A.2d 719 (1963); In re Nader, 858 A. 2d 1167, 580 Pa. 22, Sup 2004; In re 2003 General Election for the Office of Prothonotary, 849 A. 2d 230, 578 Pa. 3, Sup 2004.**
- J. Whether **25 P.S. § 2912**, as applied to the facts of this case denies equal protection of the law under the **Fourteenth Amendment** to the right of candidate Nevin Mindlin to run as an independent person not as a part of a political body? **See: Storer v. Brown, Secretary of State of California, et al. 415 U.S. 724, 745 (1974); McCarthy v. Briscoe, 429 U.S. 1317, 97 S.Ct. 10, 50 L.Ed.2d 49 (1976); Trial transcript pp. 8-33.**
- K. Whether **25 P.S. § 2912**, as applied to the facts of this case denies the **Article One of the Pennsylvania Constitution** right of candidate Nevin Mindlin to run as an independent person not as a part of a political body? **Trial transcript pp. 8-33.**
- L. Where a precious freedom, such as voting for the candidate of your choice or an individual's right to run for public office, **a compelling state interest must be demonstrated in support of constitutionality of ballot access restrictions. (Emphasis added). In re Nader, supra.**
- M. Whether the Court below erred as a matter of law or abused its discretion in misinterpreting the testimony of numerous citizens who understood that Nevin Mindlin was running for Mayor of Harrisburg as an individual, not as a member of a political body and should he chose not to continue his independent campaign for mayor there would be no one to take his place?
- N. Whether the Court below legally erred in its determination that there was a material defect on the face of Mindlin's nomination papers when on four separate occasions the Dauphin County Board of Elections, an agency charged with administering elections under the Pennsylvania Election Code, **25 P.S. §2600 et seq.**, did not find the lack of names and address of a committee to find a replacement for an "independent" candidate for Mayor of Harrisburg to be a material defect? **See: 25 P.S. § 2936 Examination of nomination petitions, certificates and papers.**

O. Whether the Court below erred in failing to give due deference to the determination of the Dauphin County Board of Elections, an agency charged with administering elections under the Pennsylvania Election Code, **25 P.S. §2600 et seq.**, to accept for filing the nomination papers of Nevin Mindlin for the office of Mayor of Harrisburg?

P. In the alternative, whether the alleged defect in the petition is amendable?

V. STATEMENT OF THE CASE

Nevin Mindlin filed Nomination Papers as an “Independent” candidate for the office of Mayor of the City of Harrisburg with the Dauphin County Board of Elections (BOE) on April 11, 2013. The papers were accepted by the BOE.

Nevin Mindlin filed additional Nomination Papers as an “Independent” candidate for the office of Mayor of the City of Harrisburg with the Dauphin County Board of Elections (BOE) on April 26, 2013. The papers were accepted by the BOE.

Nevin Mindlin filed additional Nomination Papers as an “Independent” candidate for the office of Mayor of the City of Harrisburg with the Dauphin County Board of Elections (BOE) on May 10, 2013. The papers were accepted by the BOE.

Nevin Mindlin filed additional Nomination Papers as an “Independent” candidate for the office of Mayor of the City of Harrisburg with the Dauphin County Board of Elections (BOE) on August 1, 2013. The papers were accepted by the BOE.

The minimum signature requirement for this office under the 2% rule, 25 P.S. § 2911, was 100 signatures of registered voters residing in Harrisburg. Mindlin submitted a total of 540 signatures or in excess of 400% over the minimum requirement.

The Dauphin County Board of Elections never rejected the nomination papers.

On August 8, Objections were filed to the Nomination papers solely alleging that Mindlin failed to identify a “Committee to Fill Vacancies”. None of the 540 signatures were challenged and are deemed valid at this point.

A hearing on the petition was held on August 12, 2013. **See Trial Transcript.**

At no time did the Objector establish the jurisdiction of the court below to hear the matter. **25 P.S. §. 2937**

On August 15, the court issued an Order removing Mindlin from the November ballot.

On August 19, the Notice of Appeal was timely filed and served.

VI. SUMMARY OF ARGUMENT

Primarily, The Objector failed to establish jurisdiction. **25 P.S. §. 2937**

The Election Code should be construed liberally “**so as to not deprive an individual of his right to run for office**, or voters of their right to elect a candidate of their choice”.

The candidate choose to run as an individual “Independent” candidate not affiliated with a political party or political body. His individual “Independent” campaign would cease if he choose to withdraw or if he met an untimely illness or demise. The Pennsylvania Election Code unconstitutionally denies this form of campaign to an individual “Independent” candidate. There is no compelling state interest to deny ballot access to an individual Independent candidate such as Nevin Mindlin. **25 P.S. § 2602(i) and 2912** cannot withstand constitutional scrutiny under either the Federal or Commonwealth Constitutions under the facts of this case.

In the alternative, if there was a defect in the petition it is amendable.

VII. ARGUMENT

- a. **The Court lacks jurisdiction over this election matter as objector never proved timely service of the objection on the Dauphin County Board of Elections.**

25 P.S. §. 2937 states, inter alia, “All nomination petitions and papers received and filed within the periods limited by this act shall be deemed to be valid, unless, within seven days after the last day for filing said nomination petition or paper, a petition is presented to the court specifically setting forth the objections thereto, and praying that the said petition or paper be set aside. **A copy of said petition shall, within the said period, be served on the officer or board with whom said nomination petition or paper was filed.**” (Emphasis added). The deadlines set by this provision of the election code are mandatory. **In re James, 596 Pa. 442 Sup 2008, 944 A.2d 69 (2008).**

The record in this matter is bereft of proof of timely or any form of service of the objections to the Mindlin Nomination Papers on the Dauphin County Board of Elections which is necessary to establish the jurisdiction of the Court to hear this matter. **See: Trial transcript pp. 1-8; 25 P.S. §. 2937; In re James, 596 Pa. 442 Sup 2008, 944 A.2d 69 (2008).**

Subject-matter jurisdiction requires an initial inquiry directed to "the competency of the court to hear and determine controversies of the general class to which the case presented for consideration belongs". **Cooper-Bessemer Co. v. Ambrosia Coal & Construction Company, 447 Pa. 521, 524, 291 A. 2d 99, 100 (1972); Jones Memorial Baptist Church v. Brackeen, 416 Pa. 599, 602, 207 A. 2d 861 (1965).** Furthermore, failure to raise the question of jurisdiction over the

subject matter does not result in its waiver because **jurisdiction over the subject matter may never be waived. (Emphasis added) Fineman v. Cutler, 273 Pa. 189, 116 A. 819 (1922); Jacobs v. Fetzner, 381 Pa. 262, 112 A. 2d 356 (1955); McGinley v. Scott, 401 Pa. 310, 164 A. 2d 424 (1960); Stahl, Atty. Gen. v. Insurance Co. of North America, 408 Pa. 483, 184 A. 2d 568 (1962).**

The failure to timely serve the Dauphin County board of elections and show proof of service to the Court is fatal to the objector's challenge. **In Re: Nominating Petition of Angela Gerena, 972 A.2d 86 (Pa. Cmmwlth. Ct., 2009)**

- b. **25 P.S. § 2912 and 2601 (i), as applied to the facts of this case violates an individual "Independent" candidate's rights to ballot access under the First and Fourteenth Amendments to the United States Constitution.**

It is the well established rule of our Supreme Court that the Election Code should be construed liberally "so as to not deprive an individual of his right to run for office, or voters of their right to elect a candidate of their choice."

(Emphasis added). See: **Ross Nomination Petition, 411 Pa. 45, 190 A.2d 719 (1963); In re Nader, 858 A. 2d 1167, 580 Pa. 22, Sup 2004; In re 2003 General Election for the Office of Prothonotary, 849 A. 2d 230, 578 Pa. 3, Sup 2004.**

Further, the Pennsylvania Election Code recognizes the difference between ballot access for a party primary and an independent and/or minor party candidacy.

Compare **25 P.S. §§ 2861 through 2872.1** for the major political party process with **25 P.S. §§ 2872.2 and 2911 through 2913** for minor political parties and political bodies. The United States Supreme Court recognizes that "**political party and the independent candidate approaches to political activity are**

entirely different and neither is a satisfactory substitute for the other”.
(Emphasis added). Storer v. Brown, Secretary of State of California, et al.
415 U.S. 724, 745 (1974).

Mindlin in his unrefuted testimony clearly established that he is running as an individual not connected to any political organization or political body. **See: Trial Transcript p. 10 l.15-23; p. 11 l. 12-25; p. 12 l.1-21; p. 15 l. 25-p.16 . 1;p. 22 l.5-25; p.27 l.7-20 and p. 27 lines 12-13.** The most clear annunciation of his candidacy is found at page 27 lines 12-13 where in Mindlin states: **“I am running as an independent single American citizen.” (Emphasis added).** The portion of the nomination papers which states Committee to fill vacancy is not filled in for the simple reason that Mindlin is **“running as an independent single American citizen.”** If he falls ill or untimely passes there is no further campaign as he is not part of a political body or a minor political party which could possibly carry on. The Pennsylvania election code does not appear to address this factual situation. The definition of **“independent nomination”**, **25 P.S. §2602 (i)**, comes close but it requires a “political body”, **25 P.S. §2602 (p)**, which is defined as **“an independent body of electors”** without further elaboration or definition. Kristen Brown’s magnum opus on the judicial role in election matters does shed more light on this question. She notes:

Political body – this is an independent body of electors, a political group, smaller than a “political party”, that did not receive sufficient votes in prior elections to qualify to use the nomination/primary process; its candidates file nomination papers, which have higher minimum signature requirements. *See* Section 102 and 801 of the Election Code, 25 P.S. §§ 2602, 2831. **See: Kristen Brown, Election Code Proceedings - Judicial Review of Nomination Petitions and Papers and Related Matters, p. 3, Published by PBI (2011).**

(Mindlin did run in the 2009 Harrisburg Mayor's race as the Republican Party nominee. The Republican Party is neither a "political body" nor minor political party.) This explanation still begs the question of what to do with a true independent running as an individual who has shown a modicum of support by meeting or exceeding the 2% rule for signatures on his/her nomination papers.

The trial court below appears to applied the statutory definitions in its thought process without comprehending Mindlin's testimony that "**I am running as an independent single American citizen**" or the well established rule of our Supreme Court that the Election Code should be construed liberally "**so as to not deprive an individual of his right to run for office**, or voters of their right to elect a candidate of their choice." (Emphasis added). See: **Ross Nomination Petition, 411 Pa. 45, 190 A.2d 719 (1963); In re Nader, 858 A. 2d 1167, 580 Pa. 22, Sup 2004; In re 2003 General Election for the Office of Prothonotary, 849 A. 2d 230, 578 Pa. 3, Sup 2004** or the United States Supreme Court's recognition that "**political party and the independent candidate approaches to political activity are entirely different and neither is a satisfactory substitute for the other**". (Emphasis added). **Storer v. Brown, Secretary of State of California, et al. supra, at 745 (1974)**. The election code requirement of an independent running with the sanction of a "political body" runs afoul of the equal protection clause of the 14th Amendment as applied to an individual independent. Even our Supreme Court recognizes the right of an "**individual**" of **to run for office. In re Nader, supra; In re 2003 General Election for the**

Office of Prothonotary, supra. Such right of the individual to run for office is ingrained in the American political psyche.

In 1966, Senator Robert F. Kennedy succinctly stated this American principle in a speech in apartheid South Africa:

Each time a man stands up for an ideal, or acts to improve the lot of others, or strikes out against injustice, he sends forth a tiny ripple of hope, and crossing each other from a million different centers of energy and daring those ripples build a current which can sweep down the mightiest walls of oppression and resistance.

There are countless examples of individual action in American history which have changed the course of the American experience. One only has to look at Rosa Parks in 1956 Montgomery, Alabama as one that changed the course of 20th Century America. Or look at Norman Rockwell's Freedom of Speech poster done during World War II for the power of the individual voice in politics. Nevin Mindlin is an independent ripple of hope in the race for Mayor of Harrisburg. Where a precious freedom, such as voting for the candidate of your choice or an individual's right to run for public office, **a compelling state interest must be demonstrated in support of constitutionality of ballot access restrictions.** **(Emphasis added).** **In re Nader, supra.** Neither the opinion of Court below nor the objectors offer a compelling reason to have removed Mindlin from the ballot. Removing **"an independent single American citizen"** from the ballot in this race for the reasons stated in the opinion of the Court below was unconstitutional and fundamentally wrong.

Furthermore, the court below ignored the unchallenged fact the Mindlin's nomination papers included the presumptively valid signatures of 540 registered

Harrisburg electors which was more than 400% over the minimum required under 25 P.S. § 2911 (the so called 2% rule) which establishes the bona fides of his campaign and the support of a significant portion of the municipal electorate for his “Independent” candidacy.

- c. **The Court below legally erred in its determination that there was a material defect on the face of Mindlin’s nomination papers when on four separate occasions the Dauphin County Board of Elections, an agency charged with administering elections under the Pennsylvania Election Code, 25 P.S. §2600 et seq., did not find the lack of names and address of a committee to find a replacement for an “independent” candidate for Mayor of Harrisburg to be a material defect?**

Nevin Mindlin filed Nomination Papers as an “Independent” candidate for the office of Mayor of the City of Harrisburg with the Dauphin County Board of Elections (BOE) on April 11, 2013 containing more than 100 signatures . The papers were accepted by the BOE. **See: 25 P.S. § 2936 Examination of nomination petitions, certificates and papers.**

Nevin Mindlin filed additional Nomination Papers as an “Independent” candidate for the office of Mayor of the City of Harrisburg with the Dauphin County Board of Elections (BOE) on April 26, 2013 containing more than 100 signatures. The papers were accepted by the BOE. **See: 25 P.S. § 2936 Examination of nomination petitions, certificates and papers.**

Nevin Mindlin filed additional Nomination Papers as an “Independent” candidate for the office of Mayor of the City of Harrisburg with the Dauphin County Board of Elections (BOE) on May 10, 2013 containing more than 100 signatures. The papers were accepted by the BOE. **See: 25 P.S. § 2936 Examination of nomination petitions, certificates and papers.**

Nevin Mindlin filed additional Nomination Papers as an “Independent” candidate for the office of Mayor of the City of Harrisburg with the Dauphin County Board of Elections (BOE) on August 1, 2013 containing more than 100 signatures. The papers were accepted by the BOE. **See: 25 P.S. § 2936 Examination of nomination petitions, certificates and papers.**

The minimum signature requirement for this office under the 2% rule, 25 P.S. § 2911, was 100 signatures of registered voters residing in Harrisburg. Mindlin submitted a total of 540 signatures or in excess of 400% over the minimum requirement. The Dauphin County Board of Elections never rejected the nomination papers.

The Dauphin County Board of Elections, an agency charged with administering elections under the Pennsylvania Election Code, **25 P.S. §2600 et seq.**, did not find the lack of names and address of a committee to find a replacement for an “independent” candidate for Mayor of Harrisburg to be a material defect. The Board is statutorily required to not permit the filing of any paper or petition with a material defect on its face. **25 P.S. § 2936(a), Examination of nomination petitions, certificates and papers.** More importantly, should the BOE reject a nomination paper or petition it must be returned to the prospective candidate “together with a statement of the reasons for such rejection.” **25 P.S. § 2936.** None of this occurred in the case at bar.

The record in this case is clear that Mindlin was not a part of minor party or political body. **See: Trial Transcript page 27 lines 12-13.** The court did recognize that there was testimony from individual signers that Mindlin was running as an

“independent” and “would have no successor, should Mr. Mindlin be incapable of continuing his campaign.” (Slip Opinion, p. 2). The court disregarded these facts and instead relied upon **Gazze v. Cortes, 960 A.2d 176, (Pa. Cmmwlth Ct.2008)**, a single judge opinion which is not precedential and came in the form of a mandamus action which is not the case here. Closer to the facts in this case is **In the Matter of Nomination Petition of William D. Hall, 26 Pa.Cmwlt. 54, 362 A.2d 475 (1976)**, which allowed a petition to stand where there was a mistake by the State Department in returning the candidate’s petition in error. Assuming the Dauphin BOE committed an error which could have easily been corrected after the first filing on April 11, 2013, that error should not prevent ballot access to Mr. Mindlin. If the BOE did not make a mistake in accepting the petition on 2 occasions in April, one in May and the final on August 1, then they understood there to be no material defect. The Court below just took the easy way out in finding there was a material defect on the face of the petition and disregarding the actions of the Dauphin BOE, the testimony of the signers of the nomination paper and the well established rule of our Supreme Court that the Election Code should be construed liberally “**so as to not deprive an individual of his right to run for office**, or voters of their right to elect a candidate of their choice.” (**Emphasis added**). See: **Ross Nomination Petition, 411 Pa. 45, 190 A.2d 719 (1963)**; **In re Nader, 858 A. 2d 1167, 580 Pa. 22, Sup 2004**; **In re 2003 General Election for the Office of Prothonotary, 849 A. 2d 230, 578 Pa. 3, Sup 2004**.

VIII. CONCLUSION

Certain sections of the Election Code, specifically **25 P.S. § 2602(i) and 2912**, unconstitutionally restrain the right of an individual to run for office. **Ross Nomination Petition, 411 Pa. 45, 190 A.2d 719 (1963); In re Nader, 858 A. 2d 1167, 580 Pa. 22, Sup 2004; In re 2003 General Election for the Office of Prothonotary, 849 A. 2d 230, 578 Pa. 3, Sup 2004, Storer v. Brown, Secretary of State of California, et al. 415 U.S. 724, 745 (1974); McCarthy v. Briscoe, 429 U.S. 1317, 97 S. Ct. 10, 50 L.Ed.2d 49 (1976); Trial transcript pp. 8-33.**

The Objectors failed to prove timely service on the Dauphin County Board of Elections which is mandatory. **25 P.S. §. 2937. Trial transcript, p. 1-8.** The objection must therefore be dismissed.

Nevin Mindlin's nomination papers must be allowed to stand and his name be placed upon the November ballot for Mayor of Harrisburg. **McCarthy v. Briscoe, 429 U.S. 1317, 97 S. Ct. 10, 50 L.Ed.2d 49 (1976)**

Respectfully submitted,

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IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Docket No. 1392 C. D. 2013

**IN RE NOMINATION PAPERS OF
NEVIN MINDLIN FOR THE OFFICE OF
MAYOR OF HARRISBURG**

PROOF OF SERVICE

Lawrence M. Otter, Esquire , hereby certifies that a true and correct copy of the within **APPELLANT'S BRIEF** was duly served by first class USPS Mail, postage prepaid, as otherwise noted on September 5, 2013 upon the following:

Judge Bernard L. Coates, Jr.
Dauphin County Courthouse
Harrisburg, PA

Dauphin County Board of Elections
Dauphin County Courthouse
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Ronald M. Katzman, Esquire
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LAWRENCE M. OTTER

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IN RE: NOMINATION PAPERS OF NEVIN
MINDLIN FOR THE OFFICE OF MAYOR
OF THE CITY OF HARRISBURG

: IN THE COURT OF COMMON PLEAS
: DAUPHIN COUNTY, PENNSYLVANIA

:
:
: NO. 2013-CV-6974-EL

:
:
: CIVIL ACTION

2013 AUG 15 PM 1:50
DAUPHIN COUNTY
PENNA
OFFICE OF
PROthonary

MEMORANDUM OPINION

Before this Court is the Petition Objecting to the Nomination Papers of Nevin Mindlin for the Office of Mayor of the City of Harrisburg, filed on August 8, 2013 by Donald Lee Coles, Sr.

Factual and Procedural Background

Nevin Mindlin (“Mr. Mindlin”) filed Nomination Papers as a candidate for the office of Mayor of the City of Harrisburg with the Dauphin County Board of Elections on April 11, 2013, April 26, 2013, May 10, 2013, and August 1, 2013. Mr. Mindlin filed his Nomination Papers as an Independent. On August 8, 2013, Donald Lee Coles, Sr. filed Objections to Mr. Mindlin’s Nomination Papers, claiming that Mr. Mindlin failed to identify a Committee to Fill Vacancies in his Nomination Papers, constituting a fatal defect and requiring Mr. Mindlin’s Nomination Papers be rejected and Mr. Mindlin’s name to be stricken from the ballot. A hearing on the petition was held on August 12, 2013 and a Memorandum of Law in Support of Donald Lee Coles, Sr.’s Petition was filed on August 13, 2013.

Discussion

Under the Election Code, “All nomination papers shall specify . . . the names and addresses of the committee, not to be less than three (3) nor more than five (5) persons, authorized to fill vacancies, if any shall occur.” 25 P.S. §2912. In the instant case, Mr. Mindlin

failed to specify a Committee to Fill Vacancies in his Nomination Papers. The requirement that nomination papers specify a committee to fill vacancies “is not a mere technicality but is required by our Legislature as one indication that a candidate is backed by a political body and is mounting a serious candidacy, with the aim of representing a constituency’s views in the Congress.” *In re Nomination Papers of Gerald R. Carlson*, 430 A.2d 1210 (Pa. Cmwlth. 1981) (single-judge opinion by Crumlish, P.J.), affirmed without opinion, 494 Pa. 139, 430 A. 2d 1155 (1981). Mr. Mindlin did not comply with the *legislative requirement* that candidates specify the names and addresses of a committee authorized to fill his vacancy, should one occur, which constitutes an apparent defect in his Nomination Papers.

When objections to nomination papers relate to defects apparent on the face of the nomination paper, the court, after a hearing, *may, in its discretion*, permit amendments to the nomination paper. 25 P.S. §2937. Such a defect would be “subject to amendment if competent and credible evidence is offered to show that the signers were aware of what they were signing.” *In re Nomination Papers of Dunmire*, 940 A.2d 538, 540 (Pa. Cmwlth. 2007) (single-judge opinion by Quigley, S.J.), *citing* *In re Castellani*, 516 A.2d 786 (Pa. Cmwlth.1986) (Original jurisdiction, single-judge opinion by Craig, J.) and *In re Petition of Snyder*, 516 A.2d 788 (Pa. Cmwlth. 1986) (Original jurisdiction, single-judge opinion by Craig, J.).

When an objection is filed challenging nomination papers for failing to specify a Committee to Fill Vacancies, the candidates specifically must prove that the “signers were aware of any information regarding the membership of the Committee to Fill Vacancies” at the time they signed the petition. *Gazze v. Cortes*, 960 A.2d 176, 178 (Pa. Cmwlth. 2008) (single-judge opinion by Quigley, S.J.). In *Gazze*, the Commonwealth Court of Pennsylvania concluded that the candidate’s nomination papers were properly rejected because the candidate was unable to

offer any competent and credible evidence to show the signers were aware of information regarding the membership of the Committee to Fill Vacancies; the candidate admitted no such committee existed when he gathered the signatures, and the candidate only learned of the requirement when his nomination papers were rejected. Similar to *Gazze*, Mr. Mindlin testified that he was not aware of the requirement that he specify a Committee to Fill Vacancies. Mr. Mindlin produced witnesses at the August 12, 2013 hearing who indicated that they assumed that Mr. Mindlin ran as an individual, and would have no successor, should Mr. Mindlin be incapable of continuing his campaign. Mr. Mindlin's witnesses did not testify that they were informed of the requirement that he specify a Committee to Fill Vacancies nor were they informed that he had not chosen a committee because he believed the requirement did not apply to him. Therefore, Mr. Mindlin's signers were not aware of any information regarding the membership of the Committee to Fill Vacancies and an amendment is not proper to cure the defect in Mr. Mindlin's Nomination Papers.

Mr. Mindlin argued that he relied on the information provided by the Dauphin County Bureau of Elections in determining that he was not required to specify a Committee to Fill Vacancies and should be permitted to amend the defect contained in his Nomination Papers. In support of his position, Mr. Mindlin cited Appeal of Fairview Associates, Inc., 433 A.2d 929 (Pa. Cmwlth. 1981) and Petition of Hall, 362 A.2d 475 (Pa. Cmwlth. 1976). The requirement that candidates specify a Committee to Fill Vacancies is contained in Section 2912 of the Election Code. The Fairview Associates Court stated, "[i]t is well settled, moreover, that when a party presents an election petition containing a fatal defect, amendment *may not* then be permitted on allegation that the defect was caused by a misunderstanding or misreading *of the Election Code.*" 433 A.2d at 406-407 (emphasis added). In the Fairview Associates case, amendment was

permitted because the candidate had to refer to sources outside of the Election Code and were compelled to rely on the Board of Elections for material outside of the statute. Id. at 407. Therefore, Mr. Mindlin's case is distinguishable, as the requirement that he specify a Committee to Fill Vacancies is contained in the Election Code itself. Likewise, Petition of Hall is distinguishable, as it deals with a petition that was timely presented for filing, but, due to the Bureau of Election's error, was not timely filed; Petition of Hall speaks to administrative errors and not the error made by a candidate himself in interpreting the Election Code.

As Mr. Cole's Memorandum of Law optimistically points out, "Mr. Mindlin is free to continue running as an individual American citizen by virtue of a write-in campaign." *See* 25 P.S. §§3063 and 3031.12. Nevertheless, due to the fatal defect in Mr. Mindlin's Nomination Papers due to his failure to specify, as statutorily mandated, a Committee to Fill Vacancies, his Nomination Papers must be set aside.

Accordingly, the following Order is ENTERED:

IN RE: NOMINATION PAPERS OF NEVIN
MINDLIN FOR THE OFFICE OF MAYOR
OF THE CITY OF HARRISBURG

: IN THE COURT OF COMMON PLEAS
: DAUPHIN COUNTY, PENNSYLVANIA

: NO. 2013-CV-6974-EL


: CIVIL ACTION

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ORDER

AND NOW this 15 day of August, 2013, upon consideration of the Petition Objecting to the Nomination Papers of Nevin Mindlin for the Office of Mayor of the City of Harrisburg, and upon consideration of the election hearing held on August 12, 2013 at 8:15 a.m., and upon consideration of the Memorandum of Law in Support of Donald Lee Coles, Sr.'s Petition, filed August 13, 2013, IT IS HEREBY ORDERED AND DECREED that the petition is GRANTED and the Nomination Petition and Papers of Nevin Mindlin are SET ASIDE and the name of Nevin Mindlin, as a candidate for the office of Mayor of the City of Harrisburg is STRICKEN from the ballot for the November 5, 2013 election.

BY THE COURT:


Bernard L. Coates, Jr., Judge

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Dauphin County Elections and Voter Registration
Chambers of the Honorable Bernard L. Coates, Jr.