IN THE COURT OF COMMON PLEAS OF CARBON COUNTY, PENNSYLVANIA
CIVIL DIVISION

IN RE: PETITION OF KIMBERLY NOTHSTEIN TO STRIKE THE NOMINATION PETITION OF WILLIAM G. SCHWAB FOR THE NOMINATION OF THE REPUBLICAN PARTY FOR OFFICE OF SUPERVISOR FOR EAST PENN TOWNSHIP, CARBON COUNTY PENNSYLVANIA	:	NO. 15-0602
IN RE: PETITION OF JACOB NOTHSTEIN TO STRIKE THE NOMINATION PETITION OF GUY BARRY FOR THE NOMINATION OF THE DEMOCRATIC PARTY FOR OFFICE OF SUPERVISOR FOR EAST PENN TOWNSHIP, CARBON COUNTY PENNSYLVANIA	:	NO. 15-0603
IN RE: PETITION OF JACOB NOTHSTEIN TO STRIKE THE NOMINATION PETITION OF RANDY PFEIFFER FOR THE NOMINATION OF THE DEMOCRATIC PARTY FOR OFFICE OF SUPERVISOR FOR EAST PENN TOWNSHIP, CARBON COUNTY PENNSYLVANIA	:	NO. 15-0604
IN RE: PETITION OF KIMBERLY NOTHSTEIN TO STRIKE THE NOMINATION PETITION OF ALICE BERGER FOR THE NOMINATION OF THE REPUBLICAN PARTY FOR OFFICE OF SUPERVISOR FOR EAST PENN TOWNSHIP, CARBON COUNTY PENNSYLVANIA	:	NO. 15-0606

Douglas J. Taglieri, Esquire	Counsel for Jacob Nothstein and Kimberly Nothstein
Robert S. Frycklund, Esquire	Counsel for William G. Schwab and Alice Berger
Guy Barry	Pro Se
Randy Pfeiffer	Pro Se

MEMORANDUM OPINION

Matika, J. - April 10 , 2015

Having independently learned of these Appeals being filed[1], this Memorandum Opinion is prepared and filed in support of this Court's decision to deny four (4) separate yet related petitions challenging four (4) candidates' attempts to procure a spot on the 2015 primary election ballot for two (2) open East Penn Township Supervisor positions. These four (4) petitions were consolidated for hearing by this Court and a single opinion was issued with five (5) separate orders addressing each separate petition.[2] This opinion is also being written and filed without the necessity of requiring Appellants to file a Rule 1925(b) Statement[3] as this Court is cognizant of the limited issue which is believed to be the subject of the appeal and to also allow the Commonwealth Court to maximize time to decide this appeal prior to the scheduled May 19, 2015 primary.

This Court will dispense with re-addressing the underlying issue believed to be the subject of these Appeals and simply appends hereto the opinion rendered after hearing in support of

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[1] This Court was not served with nor has it received notice of these appeals as required by Pa. R.A.P. 906(a)(2), despite Appellants filing proofs of service claiming that a copy of each notice of appeal was mailed by first class mail to the undersigned on April 2, 2015.

[2] Appellants originally filed five (5) separate challenges, one of which this Court granted which is not the subject of this appeal.

[3] Pa. R.A.P. 1925(b)

its decision to deny these four (4) petitions and respectfully request that the Appellate Court deny these Appeals and affirm the Trial Court Orders issued in these matters.

BY THE COURT:

Joseph J. Matika, J.

IN THE COURT OF COMMON PLEAS OF CARBON COUNTY, PENNSYLVANIA
CIVIL DIVISION

IN RE: PETITION OF KIMBERLY NOTHSTEIN TO STRIKE THE NOMINATION PETITION OF WILLIAM G. SCHWAB FOR THE NOMINATION OF THE REPUBLICAN PARTY FOR OFFICE OF SUPERVISOR FOR EAST PENN TOWNSHIP, CARBON COUNTY PENNSYLVANIA	:	NO. 15-0602
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IN RE: PETITION OF JACOB NOTHSTEIN TO STRIKE THE NOMINATION PETITION OF DAVID BRYFOGLE FOR THE NOMINATION OF THE DEMOCRATIC PARTY FOR OFFICE OF SUPERVISOR FOR EAST PENN TOWNSHIP, CARBON COUNTY PENNSYLVANIA	:	NO. 15-0605
IN RE: PETITION OF KIMBERLY NOTHSTEIN TO STRIKE THE NOMINATION PETITION OF ALICE BERGER FOR THE NOMINATION OF THE REPUBLICAN PARTY FOR OFFICE OF SUPERVISOR FOR EAST PENN TOWNSHIP, CARBON COUNTY PENNSYLVANIA	:	NO. 15-0606

Douglas J. Taglieri, Esquire	Counsel for Jacob Nothstein and Kimberly Nothstein
Robert S. Frycklund, Esquire	Counsel for William G. Schwab and Alice Berger
Guy Barry	Pro Se
Randy Pfeiffer	Pro Se
David Bryfogle	Pro Se

MEMORANDUM OPINION

Matika, J. - March 25, 2015

This Opinion[1] addresses the issue of whether or not five (5) candidates seeking positions on the Board of Supervisors of East Penn Township should be stricken from the ballot of their respective parties for the May 19, 2015 Primary Election. For the reasons stated herein, this Court **GRANTS** the petition relative to David Bryfogle, but **DENIES** the petitions as to William G. Schwab, Guy Barry, Randy Pfeiffer, and Alice Berger.

On May 19, 2015, qualified electors of both the Democratic and Republican parties will go to the polls in East Penn Township, Carbon County, for, *inter alia*, the purposes of nominating candidates for the position of Township Supervisor.[2] Seven (7) individuals, including the two incumbents, have filed nominating petitions with the Carbon County Bureau of Elections. Of those

[1] While five (5) separate Petitions to Strike were filed challenging each of these candidates and separate orders are being issued on each one, this Court is rendering a single opinion outlining and explaining the reasons for these decisions, taking into consideration the general principles of law applicable to all five (5) cases.

[2] The testimony from the hearing indicated that two (2) of the supervisors' terms were expiring at the end of 2015 and therefore, those seats are the ones being sought here. Currently, the seats are held by Dean Kercsmar and Jacob Nothstein. Mr. Nothstein is one of the petitioners in this case.

candidates, five (5) of them are the subjects of these Petitions to Strike. They are: William G. Schwab and Alice Berger, both Republicans, and Guy Barry, Randy Pfeiffer, and David Bryfogle, all Democrats. Each have filed timely Nominating Petitions as well as a copy of their respective Statement of Financial Interests form with the Carbon County Bureau of Elections. It is the filing of the Statement of Financial Interests forms with the Township of East Penn and their timeliness that is at issue.

Kimberly Nothstein (hereinafter "Mrs. Nothstein"), a Republican[3], has sought to strike the nominating petitions of fellow Republicans William G. Schwab (hereinafter "Schwab") and Alice Berger (hereinafter "Berger"). Jacob Nothstein (hereinafter "Mr. Nothstein"), a Democrat, and one of the incumbents whose seat is up for election, is challenging the nomination petitions of fellow Democrats Guy Barry (hereinafter "Barry"), Randy Pfeiffer

[3]At the hearing held to address all five (5) petitions, but before any testimony was presented, Attorney Robert Frycklund, counsel for Schwab and Berger, made a motion to dismiss the petitions filed by Mrs. Nothstein against Schwab and Berger on the basis that these two (2) petitions identified Mrs. Nothstein as a member of the Democratic Party and therefore, she did not have standing to challenge the nominating petitions of his two (2) clients, both Republicans. *See In re Williams*, 625 A.2d 1279 (Pa. Commw. Ct. 1993). Counsel for Mrs. Nothstein, Attorney Douglas Taglieri, argued that Mrs. Nothstein being identified on the Petition as a Democrat was a clerical error and that the testimony presented would show that she is a Republican. While amendments to a Petition to Strike such as this are not authorized beyond the initial seven (7) day period to file the objections (see *In re Wagner*, 511 A.2d 754 (Pa. Commw. Ct. 1986)), this Court ruled that it would allow testimony from Mrs. Nothstein to establish that she was in fact a member of the Republican Party. *See Matter of Warren*, 692 A.2d 1178 (Pa. Commw. Ct. 1997). This Court's preliminary denial of the Schwab/Berger motion was subject to any testimony from Mrs. Nothstein that she, in fact, was a member of the Republican Party. Since Mrs. Nothstein did testify that she was a member of the Republican Party, we maintain this denial. Therefore, this Court finds that Mrs. Nothstein does have standing to challenge those two (2) nominating petitions.

(hereinafter "Pfeiffer"), and David Bryfogle (hereinafter "Bryfogle").

Initially, we note that "challenges to the nominating petitions must overcome their presumption of validity." *Williams*, 625 A.2d at 1281. Thus, the burden is on the Petitioner to show that the Respondents' petitions are invalid. Pursuant to § 1104(b)(2)[4] of the Public Official and Employee Ethics Act, "any candidate for county-level or local office shall file a statement of financial interests for the preceding 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 such petition." Pursuant to § 1104(b)(3) of that same act, in pertinent part, "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(b)(3). This rule of fatality "serve[s] the purpose of promoting public confidence by assuming that the rules applicable to all would not be waived in favor of the few." *In re Nominating Petition of McMonagle*, 793 A.2d 174, 177 (Pa. Commw. Ct. 2002).

[4] 65 Pa. C.S.A. § 1104(b)(2).

"Requiring that candidates be stricken from the ballot for any deviation from filing in the proper time and place presupposes that assuring strict compliance is within the candidates' control." *Id.* at 180. However, the Ethics Act should be construed liberally and broadly rather than narrowly determined, while exceptions or exclusions should be narrowly and not broadly determined. *See In re Olshefski*, 692 A.2d 1168, 1173 (Pa. Commw. Ct. 1997). It is also important to note that the Ethics Act and the Election Code[5] both deal with requirements for the filing of nominating petitions and financial interest statements, and therefore must be considered together. *Commonwealth v. Cresson*, 597 A.2d 1146, 1148 (Pa. 1991). "The public policy of the Election Code can be summarized quite fairly in the fact that the purpose of the Ethics Act may be to strengthen faith and confidence in the people of their state and their state government, *65 P.S. § 401*, however, it is also the public policy of the Election Code to encourage individuals to run for office and to give to the electorate the broadest possible spectrum of selection in casting their ballot." *Olshefski*, 692 A.2d at 1173. "Thus, while we acknowledge our obligation to enforce the Fatality Rule, our interpretation of these rules must, to some extent, be tempered by the well-established policy that favors the preservation, where

[5] 65 P.S. §§ 401-413.

possible, of a candidate's right to run for office and does not limit unnecessarily our citizens' electoral choices." *McMonagle*, 793 A.2d at 177, *citing Petition of Cioppa*, 626 A.2d 146 (Pa. 1993), & *Olshefski, supra*.

Petitioners argued that no such exceptions exist to the fatality rule and cite to the case of *In re Matter of: Nomination Petitions of David J. Prosperino*, 972 A.2d 92 (Pa. Commw. Ct. 2009). In that case, as accurately quoted by Petitioners, "[i]f the General Assembly had wished to carve out an exception for certain or specific county level offices, such as the Office of Magisterial District Judge, it would have done so and this Court does not have the authority to insert such an exception." *Id.* at 96.

However, that case dealt with the requirement that a candidate for the office of Magisterial District Judge must file his Statement of Financial Interests in *two* different places and the trial court could not create an exception for a certain office (MDJ) as opposed to any other office. Further, that case did not concern itself with the timeliness of the filing of the Statement, but rather the number of locations of such filing. Therefore, the "No Exception Rule" of *Prosperino* is inapplicable here. With these

legal principles and precedents in mind, this Court turns to each of the five (5) petitions.[6]

Mrs. Nothstein testified that in accordance with the Pennsylvania Right-To-Know Law (65 P.S. § 67.101, *et seq.*), she made a request for "copies of all ethics forms filed to the township for persons seeking candidate [sic] for Supervisor for 2015 Primary Election." This request was submitted on 3/12/15 to the township's "Right-To-Know" officer, Deanna L. Confer.[7] In response, on 3/13/15, Ms. Confer authored a letter to Mrs. Nothstein indicating that her request was approved for copies of the Statements of Financial Interests and the cost would be $.75, $.25 per page copied.[8] This evidence, without more, would be sufficient to strike each Respondent's name from appearing on their respective parties' ballot for the 2015 primary election for Supervisor of East Penn Township. However, since each Respondent testified regarding the circumstances surrounding the "filing" of their respective statements, we must look at and consider that

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[6] Based upon the testimony elicited at the hearing, it is evident that this opinion can address the Schwab and Berger petitions together and the Barry and Pfeiffer petitions together as well. The Bryfogle matter must be addressed separately.

[7] In addition to this duty, Ms. Confer also serves as Township Secretary and is a Township Supervisor along with Mr. Kercsmar and Mr. Nothstein.

[8] Based upon the attachment to all petitions, Ms. Confer eventually provided copies of three (3) statements to Mrs. Nothstein; those of Mr. Kercsmar (received by the township on 3/10/15), Mr. Nothstein (received on 3/6/15), and Mr. Bryfogle (received on 3/13/15). Curiously and unexplained, however, copies of the Schwab and Berger statements were not provided despite Ms. Confer testifying that she also received them on 3/13/15, the same date she provided copies of the other statements.

testimony before concluding whether or not to grant these Petitions.

Mr. Nothstein filed a petition to strike Bryfogle's name from the Democrat ballot on the basis that, while he did file his Statement of Financial Interests, he filed it ten (10) days late. Bryfogle readily conceded and admitted this fact, however, he testified he believed that as a first time candidate for supervisor, he had thirty (30) days from the date of the filing of his nominating petition to file a copy of his Statement of Financial Interests with the governing authority (East Penn Township). He referenced the face sheet of the four (4) page Statement of Financial Interests form[9] where it reads "persons seeking elected state, county, or local public offices, including *first time candidates*, incumbents seeking re-election, and write-in candidates who do not decline nomination/election within 30 days of official certification of same." (*Emphasis added.*) Bryfogle also testified and argued that this instruction conflicts with page 4 of this form which requires township candidates to file the statement "on or before the last day for filing a petition." Unfortunately for Bryfogle, his interpretation of this instruction is erroneous and his claim of a conflict is incorrect.

[9] Respondent Bryfogle Exhibit 1.

The instructions of the first page of this form read in the disjunctive, and the reference to the thirty (30) day period applies *only* to write-in candidates who do not decline nomination/election. Those candidates have thirty (30) days from the results of that election being properly certified to file their statements. The reason for this is clear: their names do not appear on the ballot in the first instance, having not filed petitions, and therefore, the opportunity or responsibility to file it did not arise before the election. Conversely, those who do seek to be placed on the ballot in the primary, and in furtherance of the general principle and purpose of the Ethics Act for "people (to) have a right to be assured that the financial interests of . . . candidates for public offices do not conflict with the public trust"[10], must file those statements in advance of the election, and no later than the date of the filing of the petition, to allow for these statements to be viewed by the electorate.

While Bryfogle argues that the instructions on the front of the form are not clear, the "chart" on the back page removes all doubt as to when his statement, as a first time candidate, must be filed and who is required to file their statement "within 30 days of official certification." Under the heading "Who Must File",

[10] 65 P.S. § 401.

and subheading "Status Block A-Candidates" is a listing for "Township." Directly to the right of this listing and under the heading "When to File" is the language "On or before the last day for filing a petition to appear on the ballot for election." Also under the same heading "Who Must File", and subheading "Status Block A-Candidates" are: Announced write-in, unannounced write-in winners of nominations, and unannounced write-in winners of elections. Directly across from these categories of candidates under the heading "When to File" is the explanatory note: "Within 30 days of official certification of having been *nominated or elected* unless such person declines the nomination of office within that time frame." *(Emphasis added.)* A person seeking nomination of his party in a primary is obviously not yet nominated or elected, nor is he a "write-in." Therefore, Bryfogle clearly did not have thirty (30) days from the filing of his petition to file his Statement of Financial Interests with the governing authority, East Penn Township. Accordingly, he was required to comply with 65 Pa. C.S.A. § 1104(b)(2) and file it on or before the last day for filing a petition to appear on the ballot for election. This date was March 10, 2015. Bryfogle's filing of his Statement of Financial Interests, hand-delivered to the offices of the Township of East Penn on March 13, 2015 is clearly late and in violation of the statute. Even though this may have been a sincere mistaken belief on his part, it is a fatal defect, one which must result in

removing his name from the May 19, 2015 ballot as a Democratic candidate for Supervisor of East Penn Township.[11]

Turning to the petitions filed by Mrs. Nothstein to the Nominating Petitions of Schwab and Berger to appear as Republican Candidates on the primary election ballot of 5/19/15 for the position of East Penn Township Supervisor, this Court notes that an identical factual scenario is applicable relative to both Respondents. In support of her petitions, Mrs. Nothstein called upon Ms. Confer to testify that as Township Secretary, she received the Statements of Financial Interests of Schwab and Berger on March 13, 2015, three (3) days after they were due. This, in and of itself, is sufficient to strike both Schwab and Berger from the ballot, as Mrs. Nothstein has overcome their presumption of validity. However, as these two Respondents' cases evolved through the testimony they presented, Mrs. Nothstein's position began to deteriorate, factually and legally.

At the outset of the Schwab and Berger case, Amanda Kincaid was called to testify. Ms. Kincaid testified that she is a paralegal at William G. Schwab and Associates, a law firm located on Blakeslee Boulevard Drive East, Lehighton, owned by Respondent Schwab. Ms. Kincaid testified that, at the direction of Schwab,

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[11] *See Petition of Cioppa*, 626 A.2d 146 (Pa. 1993), where the Court held that where a candidate failed to file his Statement of Financial Interest in the proper manner and in the prescribed time with the governing authority involved, his name must be stricken from the ballot.

she prepared three (3) separate cover letters to be sent to East Penn Township along with three separate Statements of Financial Interests, one for Schwab in his capacity as both a member of the East Penn Township Parks Commission and Solicitor to the East Penn Township Zoning Hearing Board[12], one for Schwab as a candidate for the Board of Supervisors of East Penn Township[13], and one for Berger as a candidate for the Board of Supervisors of East Penn Township.[14] Kincaid also testified that while she used a template previously prepared on 1/29/15, she finalized these cover letters and printed them for mailing on March 10, 2015.[15] She then placed Schwab's non-candidate Statement of Financial Interests form consisting of two (2) pages inside an envelope which read "William G. Schwab, Statement of Financial Interests-2014." She placed this envelope, along with the corresponding cover letter, inside another envelope addressed to "Deanna L. Confer, Secretary, East Penn Township, 167 Municipal Road, Lehighton, PA 18735." She also testified that she placed Schwab's candidate Statement of Financial Interests form[16] into a separate envelope labelled "William G. Schwab Statement of

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[12] See Page 1 of Schwab Exhibit 2.
[13] See Page 1 of Schwab Exhibit 1.
[14] See Page 1 of Berger Exhibit 1.
[15] Kincaid also testified that office policy requires that all dated correspondence be mailed the same date they are dated, and in fact, these cover letters were actually printed and dated March 9, 2015. However, since Berger did not bring her Statement of Financial Interests into Schwab's office until late on 3/9/15, it did not get out in that day's mail and was therefore re-dated and reprinted March 10, 2015, the date Kincaid would testify they were in fact delivered to the post office.
[16] See Pages 2-3 of Schwab Exhibit 1.

Financial Interest-2015".[17] She further testified that she placed Berger's Statement of Financial Interests[18] for her candidacy into yet another separate envelope. Lastly, Kincaid testified that she then took a single cover letter, dated 3/10/15 and addressed to Ms. Confer, which identified the enclosure of two (2) sealed envelopes containing the candidates' Statements of Financial Interests forms, and along with these two (2) sealed envelopes, placed all of this into a third regular sized (4.5" x 9.5") envelope, addressed to Ms. Confer in the same manner as Schwab's other envelope. Ms. Kincaid then testified that in accordance with office protocol, she left the office at 4:10 p.m., taking with her all of that day's mail. She then testified that she got to the Lehighton post office and handed these envelopes, along with all the other mail from that day, to the postal clerk.

On cross-examination, Ms. Confer testified that in response to a subpoena for all records related to the Schwab and Berger mailings, she supplied copies of all these documents, later identified as Schwab Exhibit 1, consisting of eight (8) pages. Each page was stamped "Received Mar. 13 2015".[19] Confer also

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[17] See Page 4 of Schwab Exhibit 1.

[18] See Page 4 of Berger Exhibit 1.

[19] Conspicuously absent from these documents is the second envelope which contain the candidates' Statements of Financial Interests envelopes and cover letter. This Court presumes that the envelope provided by Ms. Cunfer contained the Non-Candidate Statement of Schwab in light of the fact that this envelope was stamped with postage of only $.48. This Court is hard pressed to believe that three (3) envelopes and four (4) pieces of paper could be properly delivered by the U.S. Postal Service for only $.48. This Court can further presume that since these envelopes were meter stamped they had the correct postage. One

testified that there is an unlocked mailbox at the end of the driveway leading up to the Township building from which any Township Administrative Official can retrieve the mail. She further testified that once retrieved, any mail is supposed to be placed on her desk in an open area of the Township offices, which is also accessible by others. Ms. Confer also testified that she is not in the office on Wednesdays.[20]

Schwab himself testified that he personally directed Ms. Kincaid to mail the Statements of Financial Interests on March 10, 2015. He did acknowledge, however, that the postmark on the envelope provided by Ms. Confer, in response to the subpoena, indicated March 11, 2015.

In *McMonagle*, the Commonwealth Court addressed the issues of: 1) when a statement is timely filed; and 2) under what circumstances may a candidate be excused from strict compliance with the time and place requirements for filing. The *McMonagle* case involved numerous appeals pertaining to the filings of Statements of Financial Interests by various candidates. One of the cases addressed in the *McMonagle* decision was one in which a candidate had someone else place his statement in an envelope addressed to the township office, who then handed it to a U.S.

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could only wonder then, whether it was inadvertently not delivered by the post office or for some unknown and/or unexplained reason, Ms. Confer failed to turn it over.

[20] March 11, 2015, the day after the deadline for filing petitions, was a Wednesday.

Mail Carrier at her office. This was done on the last date for filing of nominating petitions for that election and therefore, the last day for filing the statements with the governing authority. For some unknown reason, it was postmarked the following day. A second candidate placed an envelope containing his statement in a U.S. Postal Service mailbox at approximately 5:00 p.m. on the last day as well. This envelope, also addressed to the township building, was also postmarked the following day.[21]

In yet a third fact scenario[22] presented in *McMonagle*, an envelope containing four (4) Statements of Financial Interests from four (4) separate candidates was placed into the U.S. Mail and postmarked March 4, two days before the deadline. This envelope was marked received on March 8, two days after the deadline for filing.

The *McMonagle* court ultimately concluded that those candidates involved in the *Roselli* cases and *Poltonowicz* cases would be allowed to appear on the ballot. We find that *McMonagle* is controlling as it relates to Schwab and Berger, but are somewhat perplexed by its ultimate holding and believe further interpretation is necessary. The *McMonagle* court held that mailing is permissible for purposes of fixing a date for the filing of

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[21] These two fact scenarios will be further identified as the *Roselli* cases, named for the objector involved in those two cases.

[22] This will be referred to as the *Poltonowicz* cases, named after the objector collectively of four (4) candidates' petitions, the statements of which were all contained in the same envelope.

Statements of Financial Interests with the governing authority. In so holding, it concluded that ". . . official documentation of the date of mailing such as a postmark or *postal receipt* . . ." will be satisfactory evidence sufficient to fix the filing.[23]

This rationale is easily applicable and understood in the context of the *Poltonowicz* cases where the postmark predated the deadline date, despite the fact that it was actually received by the governing authority two days late. Applying this same rationale to the *Roselli* cases should then render a different result than the court ultimately reached since that postmark was the day after the deadline. While the court in addressing the *Roselli* cases made reference to the fact that "[t]heir efforts were impeded by a local procedure which might most favorably be described as whimsical. . ."[24], such that this may have resulted in allowing the candidates' names to remain on the ballot, this Court is hard-pressed to overlook the fact that the "official documentation", i.e. the postmark, postdated the deadline. Clearly, the postmark itself was neither a common denominator nor the determining factor in all three of these cases.

It is difficult to analyze and reconcile these results, unless we further delve into and find that common ground upon which the *McMonagle* court could rationally have based its holdings. Both

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[23] 793 A.2d 174, 181 (Pa. Commw. Ct. 2002) (emphasis added).
[24] *Id.* at 180.

Mr. and Mrs. Nothstein argued that the impediments to the candidates' filings *in* the governing authority offices were the reasons the court carved out the exception. However, this argument is without merit, as nowhere in the court's ultimate holding does it render the impediments as the reason why mailings would be permitted. The McMonagle court did not go that far in explaining its holding. The only plausible explanation lies in the fact that in all three (3) of these fact scenarios, the envelope containing the Statements of Financial Interests departed the hands of the candidates or their agents and thereafter, on or before the deadline, were "delivered" to the U.S. Post Office, who then actually "received" them; i.e. "postal receipt." This makes sense in light of what was stated earlier that "requiring that candidates be stricken from the ballot for any deviation from filing in the proper time and place presupposes that assuring strict compliance is within the candidates' control."[25] Here, not unlike *Roselli* and *Poltonowicz*, once the envelope is given to the postal authorities, what happens with it, including postmarking and actual delivery, is beyond the control of the candidate.

This Court believes that this is the common ground found by the *McMonagle* court with regard to the *Roselli* and *Poltonowicz* cases. ". . . mailing may be the only mechanism whereby a candidate

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[25] *Id.*

can assume that due diligence on his part will actually result in timely filing."[26] While this carves out a narrow exception to the "actually *in* the governing authority's office" requirement, it is not so narrowly defined to suggest it only results when impediments are created along the way as Petitioners would argue. This Court, therefore, holds that, consistent with *McMonagle*, where the evidence uncontrovertibly shows that the Statement of Financial Interests was placed in the mail on or before the deadline for filing and the Post Office, therefore, "receives" it, it serves to fix the date for filing for purposes of compliance with 65 Pa. C.S.A. § 1104(b)(2). Accordingly, the petitions of Mrs. Nothstein to strike the Nominating Petitions of Schwab and Berger will be denied.

We now turn to the challenges of Mr. Nothstein to the Nominating Petitions of Democrats Barry and Pfeiffer. In regards to those statements, Confer testified that those statements also were not in the Township offices as of March 10, 2015. Respondent Barry testified that in the morning of March 9, 2015, he and Pfeiffer personally delivered their Nominating Petitions to the Carbon County Bureau of Elections. Thereafter, Barry returned home, made photocopies of both of their Statements of Financial Interests, and then placed them in the mail, addressed to the

[26] *Id.* at 181.

Township. Pfeiffer testified and corroborated what Barry said and in addition indicated that he authorized Barry to mail his as well. Ms. Confer testified that with regards to the Statements of Financial Interests for Barry and Pfeiffer, the only ones she received were the ones hand delivered by Barry on 3/19/15.[27]

The Barry and Pfeiffer challenges also center around "date of mailing." Unlike Schwab and Berger, there is no evidence that their Statements of Financial Interests, placed in the mail by Barry on 3/9/15 were ever received in the mail at the Township building. Additionally, there was no evidence that the U.S. Post Office ever returned this mailing to Barry. The issue then becomes: Did Barry actually mail them or did something happen to these Statements of Financial Interests?[28]

At this point, this Court concludes that the uncontroverted and undisputed testimony of Barry and Pfeiffer[29] with regard to the

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[27] Barry testified that he learned of these challenges when he received a call from Pfeiffer late on 3/18/15 after Pfeiffer had been provided a copy of the Petition challenging his nomination. The next day, Barry copied both statements and, along with a cover letter, appeared at the Township Building with them. See Barry Exhibit 1.

[28] Throughout their testimony, Barry and Pfeiffer both alluded to the fact that it seemed ironic that four (4) of the challengers to the seats held by current Supervisors, Kercsmar and Nothstein, are alleged to have not timely filed their Statements of Financial Interest or even that they were received by the Township. They also alleged that they believed that those two supervisors (and possibly one other) had an axe to grind with some of the candidates opposing them and that they (Kercsmar and Nothstein) had the opportunity to remove their mailed statements from the mail received at the Township building. While this may have in fact occurred and may be a plausible explanation for the fact that Ms. Confer claimed she never received them, there was no evidence to support this notion.

[29] Both of these individuals are former Township Supervisors who would possess knowledge of election protocol from past experience.

mailing on 3/9/15 of these Statements of Financial Interests present a more plausible scenario as to whether or not these documents were filed timely, based upon them being placed in the mail the day before they were due at the Township. Accordingly, and consistent with this Court's decision with regard to Schwab and Berger and in following *McMonagle*, the petitions of Mr. Nothstein challenging the Nominating Petitions of Barry and Pfeiffer will also be denied.

As a result, we enter the following orders:

IN THE COURT OF COMMON PLEAS OF CARBON COUNTY, PENNSYLVANIA
CIVIL DIVISION

IN RE:	:	
PETITION OF KIMBERLY NOTHSTEIN TO	:	
STRIKE THE NOMINATION PETITION OF	:	
WILLIAM G. SCHWAB FOR THE	:	**NO. 15-0602**
NOMINATION OF THE REPUBLICAN PARTY	:	
FOR OFFICE OF SUPERVISOR FOR EAST	:	
PENN TOWNSHIP, CARBON COUNTY	:	
PENNSYLVANIA	:	

FILED
2015 MAR 25 AM 10:14
CARBON COUNTY PROTHONOTARY

Douglas J. Taglieri, Esquire — Counsel for Kimberly Nothstein

Robert S. Frycklund, Esquire — Counsel for William G. Schwab

ORDER OF COURT

And now, this 25th day of March, 2015, upon consideration of the "PETITION OF KIMBERLY NOTHSTEIN TO STRIKE THE NOMINATION PETITION OF WILLIAM G. SCHWAB FOR THE NOMINATION OF THE REPUBLICAN PARTY FOR OFFICE OF SUPERVISOR FOR EAST PENN TOWNSHIP, CARBON COUNTY PENNSYLVANIA" and after hearing and argument thereon, it is hereby **ORDERED** and **DECREED** that the Petition is **DENIED**.

BY THE COURT:

Joseph J. Matika, Judge

IN THE COURT OF COMMON PLEAS OF CARBON COUNTY, PENNSYLVANIA
CIVIL DIVISION

IN RE:	:	
PETITION OF JACOB NOTHSTEIN TO	:	
STRIKE THE NOMINATION PETITION OF	:	
GUY BARRY FOR THE	:	**NO. 15-0603**
NOMINATION OF THE DEMOCRATIC PARTY	:	
FOR OFFICE OF SUPERVISOR FOR EAST	:	
PENN TOWNSHIP, CARBON COUNTY	:	
PENNSYLVANIA	:	

FILED
2015 MAR 25 AM 10:14
CARBON COUNTY
PROTHONOTARY
BY

Douglas J. Taglieri, Esquire — Counsel for Jacob Nothstein

Guy Barry — Pro Se

ORDER OF COURT

And now, this 25th day of March, 2015, upon consideration of the "PETITION OF JACOB NOTHSTEIN TO STRIKE THE NOMINATION PETITION OF GUY BARRY FOR THE NOMINATION OF THE DEMOCRATIC PARTY FOR OFFICE OF SUPERVISOR FOR EAST PENN TOWNSHIP, CARBON COUNTY PENNSYLVANIA" and after hearing and argument thereon, it is hereby **ORDERED** and **DECREED** that the Petition is **DENIED**.

BY THE COURT:

Joseph J. Matika, Judge

IN THE COURT OF COMMON PLEAS OF CARBON COUNTY, PENNSYLVANIA
CIVIL DIVISION

IN RE:	:	
PETITION OF JACOB NOTHSTEIN TO	:	
STRIKE THE NOMINATION PETITION OF	:	
RANDY PFEIFFER FOR THE	:	**NO. 15-0604**
NOMINATION OF THE DEMOCRATIC PARTY	:	
FOR OFFICE OF SUPERVISOR FOR EAST	:	
PENN TOWNSHIP, CARBON COUNTY	:	
PENNSYLVANIA	:	

FILED
2015 MAR 25 AM 10: 14
CARBON COUNTY PROTHONOTARY
BY:

Douglas J. Taglieri, Esquire — Counsel for Jacob Nothstein

Randy Pfeiffer — Pro Se

ORDER OF COURT

And now, this 25TH day of March, 2015, upon consideration of the "PETITION OF JACOB NOTHSTEIN TO STRIKE THE NOMINATION PETITION OF RANDY PFEIFFER FOR THE NOMINATION OF THE DEMOCRATIC PARTY FOR OFFICE OF SUPERVISOR FOR EAST PENN TOWNSHIP, CARBON COUNTY PENNSYLVANIA" and after hearing and argument thereon, it is hereby **ORDERED** and **DECREED** that the Petition is **DENIED**.

BY THE COURT:

Joseph J. Matika, Judge

IN THE COURT OF COMMON PLEAS OF CARBON COUNTY, PENNSYLVANIA
CIVIL DIVISION

IN RE:	:	
PETITION OF JACOB NOTHSTEIN TO	:	
STRIKE THE NOMINATION PETITION OF	:	
DAVID BRYFOGLE FOR THE	:	**NO. 15-0605**
NOMINATION OF THE DEMOCRATIC PARTY	:	
FOR OFFICE OF SUPERVISOR FOR EAST	:	
PENN TOWNSHIP, CARBON COUNTY	:	
PENNSYLVANIA	:	

FILED
2015 MAR 25 AM 10:14
CARBON COUNTY PROTHONOTARY

Douglas J. Taglieri, Esquire — Counsel for Jacob Nothstein

David Bryfogle — Pro Se

ORDER OF COURT

And now, this 25th day of March, 2015, upon consideration of the "PETITION OF JACOB NOTHSTEIN TO STRIKE THE NOMINATION PETITION OF DAVID BRYFOGLE FOR THE NOMINATION OF THE DEMOCRATIC PARTY FOR OFFICE OF SUPERVISOR FOR EAST PENN TOWNSHIP, CARBON COUNTY PENNSYLVANIA" and after hearing and argument thereon, it is hereby **ORDERED** and **DECREED** that the Petition is **GRANTED**. The Nominating Petition of David Bryfogle to be a Democratic Candidate for Supervisor of East Penn Township shall be set aside. Further, The Carbon County Bureau of Elections is directed to remove from the May 19, 2015 Primary ballot the name of David Bryfogle as a Democratic Candidate for Supervisor in East Penn Township.

BY THE COURT:

Joseph J. Matika, Judge

IN THE COURT OF COMMON PLEAS OF CARBON COUNTY, PENNSYLVANIA
CIVIL DIVISION

IN RE:	:	
PETITION OF KIMBERLY NOTHSTEIN TO	:	
STRIKE THE NOMINATION PETITION OF	:	
ALICE BERGER FOR THE	:	**NO. 15-0606**
NOMINATION OF THE REPUBLICAN PARTY	:	
FOR OFFICE OF SUPERVISOR FOR EAST	:	
PENN TOWNSHIP, CARBON COUNTY	:	
PENNSYLVANIA	:	

FILED
2015 MAR 25 AM 10:14
CARBON COUNTY
PROTHONOTARY
BY

Douglas J. Taglieri, Esquire — Counsel for Kimberly Nothstein

Robert S. Frycklund, Esquire — Counsel for Alice Berger

ORDER OF COURT

And now, this 25TH day of March, 2015, upon consideration of the "PETITION OF KIMBERLY NOTHSTEIN TO STRIKE THE NOMINATION PETITION OF ALICE BERGER FOR THE NOMINATION OF THE REPUBLICAN PARTY FOR OFFICE OF SUPERVISOR FOR EAST PENN TOWNSHIP, CARBON COUNTY PENNSYLVANIA" and after hearing and argument thereon, it is hereby **ORDERED** and **DECREED** that the Petition is **DENIED**.

BY THE COURT:

Joseph J. Matika, Judge