

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

MATTHEW C. SCHUTTER, DEMOCRAT :
and TED A. YORK, REPUBLICAN, :
Petitioners :

Vs. :

No. 17-0424

JOHN P. CIAVARELLA, JR., :
Respondent :

In Re: Objections of Matthew :
C. Schutter and Ted A. York to :
the Nomination Petitions of :
John P. Ciavarella, Jr. for :
Both a 4 Year Term and a 2 :
Year Term for Jim Thorpe Area :
School Board on Both the :
Democrat and Republican :
Ballots for the May 16, 2017 :
Primary :

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MEMORANDUM OPINION

Matika, J. - March 23, 2017

Before this Court are a myriad of objections filed to the nomination petitions and related documents of Jim Thorpe Area School Director Candidate, John P. Ciavarella, Jr. (hereinafter "Ciavarella"). These Objections, of which there are four (4) sets, were filed by Matthew C. Schutter (hereinafter "Schutter"), a registered Democrat, and Ted A. York (hereinafter "York"), a registered Republican. Both Schutter and York challenge Ciavarella's placement on the ballots in their respective parties for both the two (2) year and four (4) year term. This Opinion addresses those Objections.

FACTUAL AND PROCEDURAL BACKGROUND

On March 2, 2017,¹ Ciavarella filed with the Carbon County Election Bureau four (4) separate packets of documents, consisting of Nomination Petitions, Waiver of Expense Account Report Affidavits, Affidavits of Circulators, and Candidate's Affidavits. Ciavarella also filed with the Election Bureau a single Statement of Financial Interest covering both offices. Ciavarella has filed these documents seeking to be placed on both the Democrat and Republican ballots for both the two (2) year and the four (4) year term on the Jim Thorpe School Board as a Director.

On March 9, 2017, Schutter and York each filed Objections to Ciavarella's placement on the ballots. This single filing² was accepted for filing and scheduled for a hearing on March 16, 2017, but *sua sponte* rescheduled for March 17, 2017. These Objections for the most part are identical to each other however, York's Objections, as filed, in addition to attacking perceived errors and/or omissions on these papers (similar to those of Schutter), also attack the signers and the Circulator

¹ This date appears within the "received" stamp placed upon each of four (4) Candidate's Affidavits filed in the Carbon County Elections Office. Since no issue of a late filing was raised by either objector, this Court will presume this to be the filing date.

² While not properly drawn up nor procedurally correct (there should have been four separate filings), no objection was raised by Ciavarella. Accordingly, this Court addresses these four (4) sets of objections embodied in the one filing and combined the hearing.

as well. As such, this Opinion will address each set of Objections filed by the two Objectors separately.

LEGAL DISCUSSION

A. SCHUTTER'S OBJECTIONS TO CIAVARELLA'S REQUEST TO BE PLACED ON THE DEMOCRATIC PRIMARY BALLOT FOR BOTH A TWO (2) AND FOUR (4) YEAR TERM

In each set of Schutter's Objections, he claims that the papers filed by Ciavarella are replete with spelling errors, omissions, and erroneous or missing information. Specifically, he claims in both sets that:

- 1) Ciavarella's address is incorrect on the Petitions, the Waiver of Expense Account Report Affidavits, his Affidavit of Circulator, and his Statement of Financial Interests;
- 2) The placement of the notary stamp on his Affidavit of Circulator obscures his house number;
- 3) Ciavarella did not include the Election District of Candidate on any of his Waiver of Expense Account Report Affidavits, nor on his Candidate Affidavits;
- 4) Ciavarella, on both his Candidate Affidavit and Statement of Financial Interests, misspelled Thorpe as "Thorp" and Director as "Dirctor," and included the word "Board" in describing the position he was seeking election to;

5) Ciavarella incorrectly numbered the pages of his nomination petitions; and

6) On his Statement of Financial Interests Form, Ciavarella neglected to check the box adjacent to the word "seeking," denoting that he was seeking the four (4) year position which he presently held.

In passing upon Objections to nomination petitions and related documents, "[w]e must be mindful of the established public policy in this Commonwealth to protect the elective franchise, and thus, the Pennsylvania Election Code [] must be liberally construed to protect a candidate's right to run for office and the voters' right to elect the candidate of their choice." *In Re Vodvarka*, 140 A.3d 639, 641 (Pa. 2016) (quoting *Weiskerger Appeal*, 290 A.2d 108, 109 (Pa. 1972)). Thus, nomination petitions and related documents are presumed valid and the burden of proof that such are not is placed on the objector. *In Re Nomination Petition of Driscoll*, 847 A.2d 44, 49 (Pa. 2004). Pursuant to 25 P.S. § 2937, in pertinent part, "[i]f the objections relate to material errors or defects apparent on the face of the nomination petition or paper, the court, after hearing, may, in its discretion, permit amendments." Small typographical errors are *de minimis* defects, "and where defects are *de minimis*, technical in nature or otherwise curable, the court in its discretion may allow

amendments." *In Re Freeman*, 540 A.2d 606, 615 (Pa. Commw. Ct. 1988). Further, "nomination petitions with improperly completed affidavits are amendable at the discretion of the [c]ourt." *Petition of Kloiber*, 362 A.2d 484, 484 (Pa. Commw. Ct. 1976). Similarly, where a candidate's nomination petitions have filed with them a Statement of Financial Interests that substantially complies with the request of the Public Official and Employee Ethics Act, 65 Pa. C.S.A. § 1101 et seq., any technical defects appearing on that statement are subject to a candidate's amendment. *In Re Benninghoff*, 852 A.2d 1182, 1189 (Pa. 2004). With these general principles of law in mind, this Court will address each specific objection(s) seriatim.

1. INCORRECT ADDRESS

Schutter argues that Ciavarella's petitions are invalid because he wrote "211 Bishop Cr. Albrightsville P.O. Box 93 Lake Harmony 18624" for his place of residence. The defects claimed by Schutter are that "Cr." was used as an abbreviation for "circle" and should not have been used and that Ciavarella's use of his P.O. Box should not have been used either. Schutter makes multiple objections to this "multiple address" issue numerous times throughout both sets of documents. It was not clear from Schutter's testimony whether or not he was making an argument that Ciavarella was acting in bad faith by including both his residence and mailing addresses on his filing

documents. Assuming arguendo that was the point Schutter was trying to make, he failed to show any bad faith by the inclusion of both addresses, "211 Bishop Cr, Albrightsville" and "P.O. Box 93, Lake Harmony." "[A]n objector has the burden of proving that a candidate's affidavit is false with regard to statements about residency." *In Re Shimkus*, 946 A.2d 139, 141 (Pa. Commw. Ct. 2008). This Court finds that this applies equally to petitions and Statements of Financial Interests. This Court finds no bad faith in providing surplus information.

Nor does this Court find any bad faith in Ciavarella's use of a common abbreviation for "circle." Ciavarella uses both Cr. and circle interchangeably and that clearly cannot be bad faith.

2. OBSTRUCTED HOUSE NUMBER

Schutter next seeks to invalidate these petitions on the basis that the notary stamps on both Affidavits of Circulator signed by Ciavarella obstruct that house number. This argument is fabricated from whole cloth in that there are plenty of other clear references to Ciavarella's house number. But more importantly, even with the naked eye of this aging jurist, it is clearly ascertainable as "211" despite the superimposition of the notary stamps over part of Ciavarella's address.

3. FAILURE TO INCLUDE ELECTION DISTRICT OF CANDIDATE

Schutter argues that Ciavarella's Democratic Nomination Petitions are invalid because he failed to identify his election

district on his Waiver of Expense Account Report Affidavits and the Candidate Affidavits. 25 P.S. § 2870 requires, among other things, that "[e]ach candidate . . . shall file with his nomination petition his affidavit stating . . . (b) his election district, giving city, borough, town or township." Schutter's argument here fails for two reasons:

- i.) Ciavarella is a candidate for two school district-wide seats, not impacted by electoral districts nor voting precincts within that district (thus the reason the words, "if applicable" are noted on the affidavit); and
- ii.) There is sufficient other identifying information for Ciavarella including his residence (211 Bishop Circle, Albrightsville, PA 18210), his municipality (Penn Forest), and the fact that he is seeking nominations to the Jim Thorpe School Board. This Court does not find Ciavarella's omission of his Election District to be fatal nor a material error. "In our opinion, a material error would consist of an omission of some matter of vital importance which might mislead either electors or the officials who have duties to perform with reference to nominating petitions, but where there are other facts on the face of a nomination petition from which it is plain that no one having to do with it could be misled, such an omission could hardly be considered either vital or material."

Fitzpatrick v. Lawrence, 32 Pa. D. & C. 486, 487-88 (Dauphin County, 1938). Thus, this Court finds Schutter's Objections on the omission of Ciavarella's Election District meritless.

4. SPELLING ERRORS AND INCLUSION OF AN EXTRA WORD

Schutter next argues that Ciavarella's petitions should be invalidated because he misspelled "Thorpe" as "Thorp" and "Director" as "Dirctor," and also included the word "Board" in between the words "School" and "Dirctor" (sic) on his Candidate Affidavit. He also made the same spelling mistake relative to the word "Director" on the Statement of Financial Interest. This Court, once again, disagrees with Schutter's assessment that this invalidates these two (2) Democratic Nomination Petitions. These *de minimis* spelling mistakes have no impact on where and for what position Ciavarella is seeking.³ Further, use of a surplus word such as "board" does not detract from nor confuse the electorate insofar as what Ciavarella is seeking election to. Additionally, throughout other documents contained in each nomination packet the spelling of "Thorpe" and "Director" is correct, and the word "board" is not included, thus clarifying for the same electorate exactly what office Ciavarella is seeking election to: Jim Thorpe School Director.

³ See *In Re Freeman*, supra, which held that small typographical errors are *de minimis* defects and curable within the discretion of the court.

5. LACK OF PAGE NUMBERING

Schutter next argues that the petitions should be invalidated because they were not properly numbered. 25 P.S. § 2869 requires that "each sheet shall be numbered consecutively beginning with number one, at the foot of each page." It is clear that there is a deficiency in the page numbering of each of the two (2) sets of Democratic Nomination Petitions. Schutter, throughout his testimony, on many occasions referred to a number of different documents which accompanied the Nomination Petitions. Those other documents included the Waiver, the Candidate Affidavit, the Circulator Affidavit and the Statement of Financial Interests. Since Schutter referred to these documents in a way that suggested they were all pages of the same "packets," this Court will presume they were submitted to the Election Bureau in that fashion. As such, this Court finds that the failure of Ciavarella to not number the pages of each set of documents filed (e.g. 1 of 4, 2 of 4, 3 of 4, etc.) is not a fatal defect, but one curable by amending them accordingly and as required.

6. BOX NOT CHECKED

Lastly, Schutter objects to the Democratic Nomination Petition for the four (4) year term filed by Ciavarella on the basis that he, on the "joint" Statement of Financial Interests Form, Section 04, neglected to check the box adjacent to

"seeking" to denote that this Statement of Financial Interest applied to Ciavarella's intent to seek re-election to the seat he currently holds. While this Statement does seek information from Ciavarella for the year 2016 and Ciavarella was a school director in 2016, the form is being used in conjunction with his re-election efforts. Accordingly, this statement is defective. That, however, does not serve to invalidate Ciavarella's petition for the four (4) year term. "Section 1104⁴ does not bar any candidate from the ballot if he or she files in a timely manner,⁵ even if there are defects on the face of the form, so long as that candidate subsequently amends the form to correct the defect and come into compliance with the Act in a timely manner." *In re: Paulmier*, 937 A.2d 364, 371 (Pa. 2007). Thus, this Court will allow Ciavarella to amend this Statement accordingly.

B. YORK'S OBJECTIONS TO CIAVARELLA'S REQUESTS TO BE PLACED
ON THE REPUBLICAN PRIMARY BALLOT FOR BOTH A TWO (2) AND A
FOUR (4) YEAR TERM

York filed Objections to Ciavarella's Republican Nomination Petitions similar to those filed by Schutter. In addition, however, he also sought invalidation of these petitions for four (4) other reasons:

⁴ 65 Pa.C.S.A. § 1104

⁵ No one claims that the Statement was not timely filed.

- 1) The Circulator of the Republican Petitions was not a Republican, but rather Ciavarella himself, a Democrat;
- 2) Several Signators' addresses were not registered addresses;
- 3) Several Signators were not registered Republican voters; and
- 4) Several Signators used "ditto marks."

It is this Court's intent to address these later referenced objections first.

1.) PARTY OF CIRCULATOR OF PETITIONS

York's first argument is that Ciavarella, a Democrat signed Affidavits of Circulator forms indicating that he circulated Republican petitions for and on behalf of himself for both the two (2) year and four (4) year term on the Jim Thorpe School Board. This, York claims, is improper, and subsequently those Republican petitions, cross-filed by Ciavarella, a Democrat, should be invalidated and he should not be on the Republican ballot for either term.

25 P.S. § 2870 permits cross-filing nomination petitions in a select few races, including the Office of School Director. Thus, Ciavarella's attempt to get on the Republican primary ballot despite being a Democrat is permissible. However, even though Ciavarella is permitted to cross-file, it appears that

the law does not permit him to seek signatures on petitions for the party of which he is not a party, in this case, the Republican party. 25 P.S. § 2869 speaks to the filing of nomination petitions and the fact that there must be appended thereto an Affidavit of the Circulator. This Affidavit of Circulator must have set forth thereon certain information, which, in pertinent part shall include:

[T]hat he or she is a qualified elector duly registered and enrolled as a member of the designated party of the State, or of the political district, as the case may be, referred to in said petition, unless said petition relates to the nomination of a candidate for a court of common pleas, for the Philadelphia Municipal Court or for the Traffic Court of Philadelphia or for justice of the peace, in which event the circulator need not be a duly registered and enrolled member of the designated party. (Emphasis added).

This language is paraphrased in the "Affidavit of Circulator" section executed by Ciavarella. To signify the importance that the circulator must be a member of the same party as identified in the petition, the words "and enrolled as a member of the political party" are underlined. Although Ciavarella is a Democrat permitted to cross-file as a Republican pursuant to 25 P.S. § 2870 he cannot cross-circulate, as that is not permitted pursuant to 25 P.S. § 2869. Had the legislature intended to include the ability of School Director Candidates to cross-circulate, it would have included that position as an exception to the same party rule much the same way as it did for

candidates for a Court of Common Pleas, Philadelphia Municipal Courts, Philadelphia Traffic Court, or for Justice of the Peace.⁶

Thus, and in conclusion, this Court finds this to be a fatal defect as to Ciavarella's Republican nomination petitions for both the two (2) year and four (4) year term as Director on the Jim Thorpe School Board, a defect which cannot be cured. Since these were the only nomination petitions filed for placement on the Republican ballot for both the two (2) year and four (4) year terms they must be invalidated, and upon doing so, Ciavarella lacks the requisite number of signatures to be placed on the Republican ballots. Therefore, Ciavarella's name must be removed from consideration from the Republican ballot accordingly.⁷

CONCLUSION

For the reasons stated in this Opinion, the Court enters the following:

⁶ Changed to Magisterial District Judge in 2004.

⁷ Since York prevailed on this issue, there is no need to address his other Objections.

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ORDER OF COURT

AND NOW, this 23rd day of March, 2017, upon consideration of the Objections to both the Democratic and Republican Nomination Petitions of John P. Ciavarella, Jr. to be placed on the respective primary ballots for the two (2) year and four (4) year term on the Jim Thorpe School Board as a Director and after hearing and legal briefs lodged by the parties, it is hereby **ORDERED and DECREED** as follows:

1. As to Schutter's Objections to the Democratic Nomination Petitions, this Court directs that Ciavarella shall, within seven (7) days hereafter, amend both sets of

Nomination Petitions and/or accompanying documents to provide for appropriate page numbering as required by statute. This Court also directs that Ciavarella shall, within seven (7) days hereafter, amend his Statement of Financial Interests Form to reflect that he is "seeking" versus "holding" the Office of a Director of the Jim Thorpe School Board for a four (4) year term. All other objections presented by Schutter are overruled as immaterial or *de minimis* infractions, if infractions at all; and

2. As to York's Objections to the Republican Nominations Petitions, said Objections are **SUSTAINED** and the name of John P. Ciavarella, Jr. shall not be listed on the Republican primary ballot for the position of Director on the Jim Thorpe School Board for either the two (2) year term or the four (4) year term for the May 16, 2017 Primary Election.

BY THE COURT:



Joseph J. Matika, J.