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IN THE MATTER OF THE NOMINATION PAPERS OF JENNIFER L. SMALLWOOD (FOR THE OFFICE OF HARRISBURG CITY CONTROLLER)

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

: NO. 2013-CV-6883-EL

: (ELECTION LAW)

2013 AUG 15 PM 1:49
DAUPHIN COUNTY PENNSYLVANIA
OFFICE OF PROthonary

MEMORANDUM OPINION

Before this Court is the Petition to Set Aside the Nomination Paper of Jennifer Smallwood as the nominee of the political body identified as the "Independent Party" for the office of City Controller for the City of Harrisburg, filed on August 7, 2013 by Paul N. Thompson.

Factual and Procedural Background

Jennifer Smallwood ("Ms. Smallwood") filed her Nomination Paper as a candidate for the office of Harrisburg City Controller with the Dauphin County Board of Elections on July 26, 2013. Ms. Smallwood filed her Nomination Paper in connection with the political body identified as the "Independent Party." On August 7, 2013, Paul N. Thompson ("Mr. Thompson") filed a Petition to Set Aside to Ms. Smallwood's Nomination Paper, claiming that Ms. Smallwood failed to identify a Committee to Fill Vacancies in her Nomination Papers. This constitutes a failure to satisfy the requirements of the Election Code and requires Ms. Smallwood's Nomination Paper to be set aside and her name to be removed from the ballot for the office of City Controller for the City of Harrisburg in the November 5, 2013 Municipal Election.



A hearing on the petition was held on August 13, 2013 and the Objector's Trial Memorandum 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 matter, Ms. Smallwood failed to enumerate the names and addresses of a committee authorized to fill her vacancy, should one occur. 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). As such, Ms. Smallwood's failure to identify a Committee to Fill Vacancies in her Nomination Paper is a material defect.

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.). Specifically, when an objection is filed challenging nomination papers for failing to specify a Committee to Fill

Vacancies, the candidates 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. Ms. Smallwood did not call any witnesses to testify that they were aware of any information regarding the membership of the Committee to Fill Vacancies at the time they signed her Nomination Papers. Similar to *Gazze*, Ms. Smallwood testified that she was not aware of the requirement that she specify a Committee to Fill Vacancies was applicable to her. As such, Ms. Smallwood’s Nomination Papers are defective, not amendable, and must be set aside under the Election Code. 25 P.S. §2937.

Mr. Thompson’s petition additionally requested this Court to issue an Order directing Ms. Smallwood to pay the costs of the proceedings, including witness fees. In the event that a candidate’s nomination paper is dismissed, the court “shall make such order as to the payment of the costs of the proceedings, including witness fees, as it shall deem just.” In re Nomination Paper of Rogers, 942 A.2d 915, 926 (Pa. Cmwlth. 2006) (single-judge opinion by Kelley, S.J.). This Court deems it just that Ms. Smallwood shall not have to pay the costs of the proceedings, nor shall she pay witness fees.

Accordingly, the following Order is ENTERED:

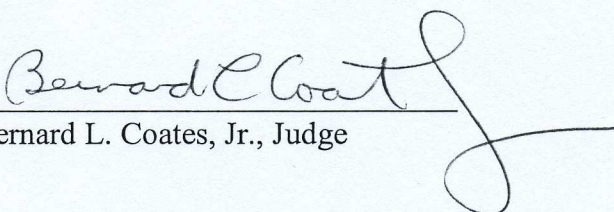
IN THE MATTER OF THE NOMINATION
PAPERS OF JENNIFER L. SMALLWOOD
(FOR THE OFFICE OF HARRISBURG CITY
CONTROLLER)

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ORDER

AND NOW this 15 day of August, 2013, upon consideration of the Petition to Set Aside Nomination Paper, and upon consideration of the election hearing held on August 13, 2013 at 9:00 a.m., and upon consideration of the Objector's Trial Memorandum, filed August 13, 2013, IT IS HEREBY ORDERED AND DECREED that the petition is GRANTED and the Nomination Paper of Jennifer Smallwood is SET ASIDE and the name of Jennifer Smallwood, as the nominee of the political body identified as the "Independent Party" for the office of City Controller for the City of Harrisburg, is STRICKEN from the ballot for the November 5, 2013 election.

BY THE COURT:


Bernard L. Coates, Jr., Judge

Distribution:

Karen M. Balaban, Esq., P.O. Box 821, Harrisburg, PA 17108-0821
Jennifer L. Smallwood, 1300 Bigelow Drive, #1, Harrisburg, PA 17104
Dauphin County Elections and Voter Registration
Chambers of the Honorable Bernard L. Coates, Jr.