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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

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:  
: NO. 2013-CV-6974-EL

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: CIVIL ACTION  
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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:





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OF THE CITY OF HARRISBURG

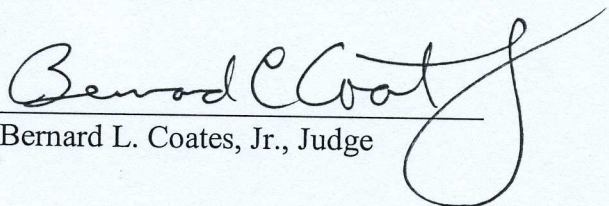
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ORDER

AND NOW this 15<sup>th</sup> 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

Distribution:

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