

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
CANIDATE FROM THE NOVEMBER BALLOT**

ELECTION MATTER

APPELLANT'S STATEMENT OF ISSUES

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APPELLANT'S STATEMENT OF ISSUES

1. 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.**
2. 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.**
3. 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).**
4. Whether the Court below erred in exulting form over substance in the case of an individual “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.**
5. 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.**
6. 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.**
7. 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.**
8. 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.**
9. 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.

10. 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.
11. 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.
12. 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.*
13. 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?
14. 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.**
15. 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?

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

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Lawrence M. Otter", with a large, stylized initial "L" and a horizontal flourish extending to the right.

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PROOF OF SERVICE

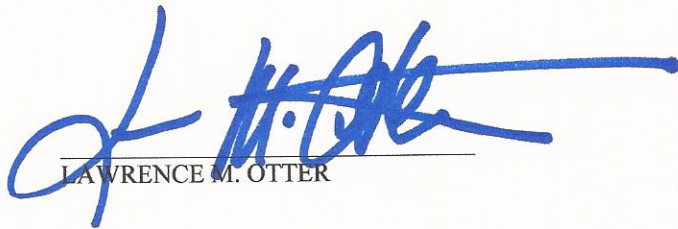
Lawrence M. Otter, Esquire, hereby certifies that a true and correct copy of the within **APPELLANT'S STATEMENT OF ISSUES** was duly served by first class USPS Mail, postage prepaid, as otherwise noted on August 28, 2013 upon the following:

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

Dauphin County Board of Elections
Dauphin County Courthouse
Harrisburg, PA

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LAWRENCE M. OTTER