IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PA

IN RE: PETITION AND COMPLAINT FOR INVESTIGATION OF CAMPAIGN EXPENSE REPORT OF REBECCA BURKE	:	No. 00-00,637

OPINION and ORDER

In this case the court must decide whether to dismiss a petition alleging that Lycoming County Commissioner Rebecca Burke filed a primary election expense report containing false or incomplete information. Ms. Burke has asked this court to dismiss the petition for two reasons: (1) One of the signers wants to withdraw his name from the petition, and (2) The petition was filed well after the deadline set by law. Petitioner Kevin Reitz has asked us to deny Ms. Burke's motion, arguing that we should overlook these technical defects and go forward with the audit.[1]

The statute permitting individuals to request an audit of a candidate's expense report is one of those important public interest laws so essential to our democratic system of government. It provides a simple and easy way for ordinary citizens to hold candidates for public office accountable, and helps keep the candidates honest. Therefore, it is generally preferable for such matters to be decided on their merits rather than dismissed on technicalities. Nonetheless, our legislature has established certain basic rules to be

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[1] The court has appointed an auditor to hold a hearing on the matter and issue a report, pursuant to 25 P.S. § 3256. See this court's order of 20 April 2000. Mr. Reitz also contends that the auditor should decide the legal issues raised in Ms. Burke's Motion to Dismiss. But while the auditor has authority to decide legal issues which arise during his investigation into the merits of the allegations, it is this court's responsibility to determine preliminary matters such as these, which question whether the auditor's investigation should proceed.

followed by citizens challenging an expense report, and those rules must be followed. When they are not, it is unfair to the accused candidate, who has a right to expect that if his or her expense account report is challenged it will be done in a precise manner, within a limited period of time. Allowing citizens to call for an audit at the drop of a hat could deter even the most honest candidates from throwing their hat into the ring.

DISCUSSION

The petition asking for an investigation of Commissioner Burke's 9 June 1999 expense account has two problems which doom it to dismissal: it was filed too late and has an inadequate number of signatures. We find that either defect by itself is fatal; both together are doubly deadly. In short, the petition is too little, too late.

A. Too Little

The statute governing the challenging of expense account reports, 25 P.S. §3256, states that a petition requesting an audit must be signed by five electors. Ms. Burke maintains that the petition does not meet this requirement for two reasons. First, she argues that the court should grant Earl Williamson's request to withdraw his name from the petition. That would leave the petition with only four signatures, which would require a dismissal. Secondly, she argues that Mr. Williamson was not a registered voter at the time the petition was filed.

At the hearing held on Mr. Williamson's motion to withdraw his signature, Mr. Williamson's testimony was muddled and sometimes contradictory. His memory certainly

failed him as to many details surrounding the signing of the petition, and he had particular difficulty pinpointing dates and sorting out the order of events. We firmly believe, however, that Mr. Williamson told the truth to the best of his ability, and we find him credible on the following important issues: (1) he did not read the petition before he signed it, (2) when he signed the petition he did not understand that by doing so, he was challenging Ms. Burke's expense report, (3) he was told that the purpose of the petition was to reinstate Russell Reitz as commissioner,[2] and (4) he never intended to challenge Ms. Burke's expense report and does not wish to be involved in the present proceedings.

Counsel for Ms. Burke has argued that Mr. Williamson should be allowed to freely withdraw his name, just as any plaintiff is permitted to withdraw a complaint. We do not agree. Mr. Williamson is not a plaintiff. He has not filed suit for his own personal purposes. He has come into court under the wings of a public interest statute designed to preserve the integrity of the election process. He has joined with four others to initiate a campaign report investigation, and his withdrawal would sabotage their petition. For these reasons, signers of statutory petitions such as this must be viewed differently from litigating plaintiffs. They should not be permitted to play free and loose with the court system and the democratic political process by revoking their signature at any time, for any reason.

In determining whether to permit Mr. Williamson to withdraw, we look for guidance to caselaw involving other types of statutory petitions. The Superior Court has previously stated that individuals who sign a petition for annexation of a school district do not have an automatic right to withdraw their names once the petition has been submitted

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[2] Mr. Reitz was an incumbent commissioner defeated in the 1999 primary.

and jurisdiction has attached. See Lerten Appeal, 168 Pa. Super. 516, 524-25, 79 A.2d 670 (1951). They must appear in court and ask for leave to withdraw, must show they are acting in good faith, and must establish that they wish to revoke their signature for a proper reason. Signers may not recant simply because they have changed their minds. They must show that they signed the petition because of some type of misrepresentation or misapprehension of the facts. Id. at 527.

Under this caselaw, we are compelled to grant Mr. Williamson leave to withdraw because his testimony clearly established that he did not understand the contents of the petition when he signed it. However, Mr. Williamson deserves the ire of this court and of his fellow citizens for abusing the privilege of initiating an investigation into the finance report of a candidate for public office. His refusal to even *read* the petition he was signing is a slap in the face to all Americans who cherish this country's incredibly open system of elections, unparalled elsewhere in the world. This system requires full and complete disclosure of all contributions and expenditures involved in a campaign for political office, and makes it relatively easy for ordinary citizens to challenge those disclosures. Because challenges are so easily made, it is vitally important that they are made in complete good faith–not flippantly, as Mr. Williamson has done.

Also deserving of scorn are the individuals who roped Mr. Williamson into signing the petition–Mrs. Reitz and Brian Williamson.[3] Mr. Williamson was clearly not interested

[3] Mrs. Reitz admitted she brought the petition to Mr. Williamson to sign, knowing full well that he had not read it and did not wish to read it. The testimony also revealed that Mr. Williamson's son Brian wished to sign the petition but could not do so because he lived outside the county. Brian then suggested that his father sign the petition in his place. While there may have been others involved in pushing the petition, no further testimony was received on the matter.

in making allegations against Ms. Burke, and inducing him to do so was unconscionable. If the instigators behind this petition could not scrounge up five people in the entire county who believed the allegations against Ms. Burke and wanted an investigation, they should have abandoned the effort.

In addition to showing contempt for the court system and the candidate disclosure requirements, Mr. Williamson and the people pulling his strings have caused this county and many individuals to waste considerable time, effort, and money. The petition challenging Mrs. Burke's finance report set the wheels in motion for an audit of the report, and those wheels have been turning for the last three months. County resources have been squandered as the court system handled a petition that should never have been filed. The court has appointed an auditor to conduct the investigation, who has begun work on the case at the county's expense, has scheduled a hearing to be held in the very near future, and has issued subpoenas. Preparations for the hearing have presumably been made by everyone involved. Ms. Burke has retained counsel to defend her report, and her attorney has filed motions and briefs.

The petition also sparked a publicity fire that has burned hot ever since, raising in the public's mind the possibility of wrongdoing by Ms. Burke. And now, after all this, Mr. Williamson comes before this court asking to revoke his signature because he did not know or care what he was signing.

Despite his irresponsible conduct, we will permit Mr. Williamson to withdraw his signature, as we must. The statute governing challenges to campaign finance reports envisions petitions filed by five individuals who are sincerely making allegations of

wrongdoing by a candidate. Mr. Williamson never wished to raise such allegations against Ms. Burke. Therefore, he should be permitted to withdraw his signature, and the petition must be dismissed for an insufficient number of petitioners.

Regarding the question of whether Mr. Williamson was a registered voter when the petition was filed, we must hold that he was not. Although there was contradictory testimony on exactly when he signed the application to register, there is no doubt that under the Pennsylvania Voter Registration Act Mr. Williamson was not registered when the petition was filed. See 25 P.S. § 961.528(d)(3) (A voter registration application is not deemed to be accepted until ten days after the applicant's voter identification card has been mailed.) This defect constitutes an additional basis upon which the petition must be dismissed.

B. Too Late

The petition challenging Commissioner Burke's expense account report was filed seven months late.[4] Mr. Reitz argues that the court should overlook his tardiness for the following reasons.

First, he points out that the petition was originally filed under a different section of the Election Code: § 2642(i), which grants the Board of Elections the power to "investigate election frauds, irregularities and violations of this act, and to report all

[4] The statute specifies that the petition must be filed within ninety (90) days after the last day for filing the expense report. 25 P.S. § 3256(a). The primary election was held on 18 May 1999, making 17 June 1999 the deadline for filing the report and 15 September 1999 the deadline for filing the petition challenging the report. The petition was filed on 14 April 2000.

suspicious circumstances to the district attorney." That section imposes no deadline for petitions asking the Board to conduct such investigations. Mr. Reitz now seems to be suggesting that the court should apply § 2642(i) when ruling on the tardiness issue. We must certainly decline to do that for the simple reason that there is another section of the Election Code that deals specifically with challenging campaign expense reports: § 3256.

It is true that when read in a vacuum, § 2642(i) seems to permit the Board of Elections to investigate such a challenge. But although justice is blind, we decline to read the Election Code with blinders on. We must view the Code as a whole and when we do so it is obvious that § 3256 is the correct section to apply in this instance because it specifically addresses campaign expense reports. Section 2642(i), by contrast, contains only a general statement regarding irregularities and violations of the Code. Surely the legislature intended campaign expense reports to be handled under the § 3256 procedure, or the it would not have bothered to create that section. We are also reminded of 1 Pa.C.S.A. § 1933, a rule of statutory construction stating that when a general statutory provision conflicts with a special provision, the special provision prevails and should be construed as an exception to the general provision. For these reasons, we decline Mr. Reitz's invitation to apply the wrong statute rather than the right one.

Next Mr. Reitz attempts to use the court's own words against us. He points out that in our 20 April 2000 order referring the matter to an auditor we stated that although the petition was filed under § 2642, "the court elects to treat it as having been appropriately filed under 25 P.S. § 3256." He then asserts that the phrase "appropriately filed" means the petition was appropriate *in all respects.* Therefore, he argues, the court

has already determined that the petition was filed correctly, and cannot now find that it was untimely.

We must, of course, reject Mr. Reitz's attempt to tell this court what we meant by the phrase "appropriately filed" and to bind us to that meaning. A simple examination of the context in which the phrase appears[5] makes it clear that "appropriately filed" does not mean that the *filing* of the petition is deemed appropriate, but rather that it is deemed to be filed under the appropriate *section* of the statute. Certainly it would have been entirely inappropriate for this court to have conducted its own sua sponte examination of the appropriateness of the petition in all respects.

Mr. Reitz has, however, presented one cogent argument on the timeliness issue: that the court should overlook the tardiness because the Election Code should be interpreted liberally, to carry out the evident intent of the legislature that expense accounts of candidates for public office be subject to closest scrutiny.

Certainly, there are appellate cases reciting that general rule; unfortunately for Mr. Reitz, they are not on point. The case that *is* on point, however, holds that the courts must enforce the deadline set forth by the legislature. In In Re Shapp, 476 Pa. 480, 383 A.2d 201 (1978), the Pennsylvania Supreme Court explained that when a remedy is set forth by statute, the directions of the legislation must be strictly construed and the remedy provided is exclusive. For the statute governing campaign report, the exclusive remedy is an audit

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[5] The full sentence reads, "And now, this 20th day of April, 2000, the court notes that although the petition in this matter was filed with reference to 25 P.S. § 2642, the court elects to treat it as having been appropriately filed under 25 P.S. § 3256, the statute that specifically addresses challenges to campaign expense reports."

which must be made within a certain time period.[6]

Moreover, the time limit is mandatory, rather than directory, meaning that courts ought not to alter or overlook the deadline. As the Commonwealth Court expressed it,

> the interpretation of any section of the Election Code must be based on, and necessarily limited by, the words used to express that intent. We believe that the sections of the Election Code under which the petitioners have here sought relief are clear, and we are not free to disregard their letter under the pretext of pursuing their spirit.

In Re: General Election Expenses, 368 A.2d 858, 28 Pa. Commw. 163, 169 (1977) (Same case as Shapp, supra.) Therefore, petitioners who fail to act within the time period specified in the law are barred from doing so. Id. at 485-86.[7]

The explanation for this conclusion is no doubt based on the separation of powers doctrine that has served our country so well since its birth. Each branch of government is given certain powers, which should not be usurped by another branch. The legislature has the power to grant rights to file for an audit, and also to limit those rights by specifying time limits. When such laws are mandatory, rather than directory, courts must strictly follow

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[6] Shapp addressed an earlier version of § 3256, which was substantially the same, but with a shorter time period in which to file a petition challenging an expense report. The court notes that the legislature's extension of the deadline shows that it deliberately considered the issue and further evidences the legislature's intent that the deadline be followed.

[7] We recognize that in Friends of McErlean, 431 Pa. 334, 246 A.2d 341 (1968), the Pennsylvania Supreme Court refused to dismiss a petition that was filed after the statutory deadline. However, in that case the campaign expense report itself had been filed late. Since the public has a right to expect such reports to be filed on time and should not be charged with continually having to check to see if untimely reports have been filed, the court held that the deadline should start to run from the time the petitioners knew about the late report. Even so, in that case the court did not extend the number of days in which to file a report–it merely changed the date on which the clock starts to run. In our case, however, Ms. Burke's report was filed on time; therefore the petitioners should have filed their challenge on time, as well.

them unless they are held to be unconstitutional, which is certainly not the case here.

Moreover, we note that even if this court had the authority to extend the deadline we would refuse to do so in this case because of the extreme tardiness of the filing. A few days or weeks are easily overlooked, but nine months are much harder to ignore. Furthermore, the petitioners have offered no explanation for their tardiness. These petitioners are not like the ones in In re Shapp, supra or Friends of McErlean, supra, who were tipped off about possible expense report violations by a newspaper article published after the deadline for filing had expired. The testimony revealed that Mrs. Reitz, one of the instigators of the petition, had seen a draft of the document back in October 1999. No reason for the delay until April 2000 was offered.

Candidates must follow a bevy of rules when running for office. They are swamped with reporting duties. They must file many detailed documents in precise ways, under specific deadlines, and they must bear the time and expense of defending those documents when challenged. That is part of the price they pay for exercising their right to run for office in America, where the public is permitted and even encouraged to take an active role in politics and hold candidates accountable for any violations in the election process. At the very least, however, candidates should be able to rest assured that anyone challenging their reports will follow the basic rules provided by law, and that the courts will enforce those rules.

O R D E R

AND NOW, this _____ day of July, 2000, for the reasons stated in the foregoing opinion, Rebecca Burke's Motion to Dismiss is granted and the Petition and Complaint for Investigation of Campaign Expense Report of Rebecca Burke is dismissed. The five petitioners, Kevin R. Reitz, James G. Young, Earl M. Williamson, George W. Teufel, and Mary E. Teufel, shall be jointly and severally liable for all of the auditor's costs and fees.

BY THE COURT,

Clinton W. Smith, P.J.

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