

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PA

IN RE: : No. 05-00,500
:
NOMINATION PETITION OF :
JAMES E. TEMPLE :
AS A REPUBLICAN NOMINEE :
FOR SCHOOL DIRECTOR FOR :
WILLIAMSPORT AREA SCHOOL :
DISTRICT :

OBJECTION OF PAUL J. BUTTERS, :
A REGISTERED REPUBLICAN, :
residing in Williamsport Area School :
District, in Lycoming County. :

IN RE: : No. 05-00,499
:
NOMINATION PETITION OF :
JAMES E. TEMPLE :
AS A REPUBLICAN NOMINEE :
FOR SCHOOL DIRECTOR FOR :
WILLIAMSPORT AREA SCHOOL :
DISTRICT :

OBJECTION OF JUDEE A. ROBINHOLT, :
A REGISTERED DEMOCRAT, :
residing in Williamsport Area School :
District, in Lycoming County. :

OPINION and ORDER

Before the court are two petitions to set aside the nomination petitions of James E. Temple for School Director in the Williamsport Area School District. One was filed by Paul J. Butters, a member of the Republican Party, and the other was filed by Judee A. Robinholt, a member of the Democratic Party. The petitions allege that Mr. Temple

filed a defective Statement of Financial Interests along with his nomination petition.¹ Before addressing that issue, however, the court must dispose of the oral motion made by the candidate to dismiss the petitions because they were served on the Director of Elections and Registration for Lycoming County after the deadline.

The Election Code sets forth specific requirements for objections to nomination petitions, including deadlines:

All nomination petitions and papers received and filed within the periods limited by this act shall be deemed to be valid, unless, *within seven days after the last day for filing said nomination petition or paper*, a petition is presented to the court specifically setting forth the objections thereto, and praying that the petition or paper be set aside. *A copy of said petition shall, within said period, be served on the officer or board with whom said nomination petition or paper was filed.*

25 P.S. §2937. Emphasis added. The deadline for filing nomination petitions for the May 2005 primary was March 8, 2005, at 5:00 p.m. The deadline for filing objections, therefore, was March 15, 2005 at 5:00 p.m. The objectors filed their petitions with the court on March 15, 2005. However, they did not serve the Director of Elections and Registration for Lycoming County with the petitions until March 17, 2005. The objectors have argued that their petitions should not be dismissed because they timely filed their petitions. They contend that late service upon the Director of Elections and Registration for Lycoming County is not a fatal defect.

This same issue was already decided by the Pennsylvania Supreme Court in In re Lee, 578 A.2d 1277 (Pa. 1990), as well as in In re Acosta, 578 A.2d 407 (Pa. 1990). In Lee, the objector timely filed his petition raising objections to the candidate's nomination petition, but he served the Secretary of the Commonwealth at the Bureau of Elections three days late. The Commonwealth Court held that it could not dismiss the objecting petition for failure to timely serve the Secretary of the Commonwealth.

¹ Mr. Temple's Statement of Financial Interests correctly lists his current occupation as "Teacher" on line six. However, on line ten, where the candidate must list "direct or indirect sources of income," Mr. Temple incorrectly checked the box indicating "none."

However, the Supreme Court reversed. The Supreme Court relied on American Labor Party Case, 44 A.2d 48 (Pa. 1945), which held that timely service to the officer or board with whom the nomination petition was filed was mandatory, and that no relief could be granted where the challenger failed to effect timely service on that officer or board. The Supreme Court declined to overrule American Labor Party Case, stating that the Legislature has determined the appropriate time limit and it is not for the courts to undermine that determination. The Supreme Court further pointed out that in 1974, the General Assembly amended §2937 to include the final sentence prescribing the office hours for the Secretary of the Commonwealth and of various prothonotaries on the last day to file objections to nomination petitions. The Supreme Court opined,

It is clear that the Legislature did so to ensure that service could be effected within the time limits set forth in that section. Had the Legislature disagreed with our interpretation of section 977 [currently codified at 25 P.S. §2937] in the *American Labor Party Case*, it would have amended the section to overrule that interpretation.

In re Lee, supra, at 1278. The court reached the same conclusion in Acosta, supra.

As this court is bound by the decisions in In re Lee and In re Acosta, we must dismiss the petitions to set aside the nomination petitions of James E. Temple.²

² The rationale contained in this opinion shall also apply to the cases at Lycoming County Docket Numbers 05-00,501, 05-00,502, 05-00,503, 05-00,504, 05-00,505, 05-00,506, 05-00,507, and 05-00,508.

ORDER

AND NOW, this _____ day of March, 2005, for the reasons stated in the foregoing opinion, the Objection filed by Paul J. Butters on March 15, 2004, to set aside the nomination petition of James E. Temple for the office of School Director on the Republican Ballot in the Williamsport Area School District is dismissed, and the Objection filed by Judee A. Robinholt on March 15, 2005 to set aside the nomination petition of James E. Temple for the office of School Director on the Democratic Ballot in the Williamsport Area School District is also dismissed.

BY THE COURT,

Richard A. Gray, J.

cc: Dana Jacques, Esq., Law Clerk.
Hon. Richard A. Gray, J.
Howard Langdon, Esq.
Richard Gahr, Esq.
Director of Elections and Voter Registration
Gary Weber, Esq.