

IN THE SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT

GREEN PARTY OF PENNSYLVANIA and	:	SUPREME COURT DOCKET
CHERI HONKALA,	:	NO. 11 MAP 2017
APPELLANTS	:	
	:	ELECTION CASE
V.	:	
	:	
DEPARTMENT OF STATE BUREAU OF	:	
COMMISSIONS, ELECTIONS AND	:	
LEGISLATION and COMMONWEALTH	:	
OF PENNSYLVANIA,	:	
APPELLEES	:	

BRIEF OF THE APPELLANTS, GREEN PARTY OF PENNSYLVANIA
AND CHERI HONKALA

(The Appellants have appealed the Order and unreported Opinion dated February 15, 2017 of the Honorable J. Wesley Oler, Jr., Senior Judge, of the Commonwealth Court of Pennsylvania. Judge Oler denied the Appellants' Complaint in Mandamus seeking to place Cheri Honkala on the ballot for the March 21, 2017 special election in the 197th Legislative District. The Commonwealth Court docket number is 43 MD 2017).

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Exhibit "A" - Unreported Order and Opinion dated
February 15, 2017 of the Honorable J.
Wesley Oler, Jr.

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Exhibit "C" - Certificate of Word Count

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III. STATEMENT OF JURISDICTION

The Supreme Court of Pennsylvania has jurisdiction over this appeal pursuant to 42 Pa.C.S.A. 723, which grants the Supreme Court of Pennsylvania exclusive jurisdiction over appeals from final Orders of the Commonwealth Court of Pennsylvania entered in any case, which has been originally commenced in the Commonwealth Court. The Commonwealth Court had original jurisdiction over this election matter pursuant to 42 Pa.C.S.A. 761 and 42 Pa.C.S.A. 764.

IV. STATEMENT OF SCOPE AND STANDARD OF REVIEW

The statement of scope and standard of review for the denial of the Complaint in Mandamus is as follows:

"(1.) Mandamus is an extraordinary writ...it will only be granted to compel performance of a ministerial duty where the petitioner establishes a clear legal right to relief and a corresponding duty to act by the respondent...Mandamus is not proper to establish legal rights, but is only appropriately used to enforce these rights, which have already been established. The burden of proof is clearly upon the party seeking this extraordinary remedy to establish his legal right to such relief." In re Bedow, 848 A.2d 1034 (Pa. Comm., 2004).

"(2.) The Election Code must be liberally construed so as not to deprive an individual of his right to run for office, or the voters of their right to elect a candidate of their choice. Nomination Petition of Ross, 190 A.2d 719, 720 (Pa., 1963). Where the objections relate to material errors or defects apparent on the face of the Nomination Petition or appended affidavits, the Pennsylvania Election Code authorizes the Commonwealth Court, after hearing, in its discretion to permit amendment (25 P.S. 2937). In re Certificate of Nomination For 143rd Legislative District, 634 A.2d 155 (Pa., 1993).

In reviewing the Order of the trial Court concerning the validity of challenges to a Nomination Petition our standard of review is whether the findings are supported by substantial evidence, whether there was abuse of discretion or whether errors of law were committed." In re Nomination of Flaherty, 770 A.2d 327, 330 (Pa., 2001).

V. ORDER OR OTHER DETERMINATION

The Appellants, Green Party of Pennsylvania, and Cheri Honkala, have appealed from the Order and unreported Opinion of the Honorable J. Wesley Oler, Jr., a Senior Judge on the Commonwealth Court of Pennsylvania dated February 15, 2017. Judge Oler denied the Appellants' Complaint in Mandamus, which sought to place Cheri Honkala on the ballot for the March 21, 2017 special election in the 197th Legislative District as the Green Party nominated candidate. The case was docketed in the Commonwealth Court at 43 M.D. 2017. Attached and marked as Exhibit "A" and incorporated by reference is the Order and unreported Opinion of Judge J. Wesley Oler, Jr. dated February 15, 2017. Attached and marked as Exhibit "B" and incorporated by reference is the January 31, 2016 Nomination Certification Rejection Notice from the Department of State.

VI. STATEMENT OF THE QUESTIONS PRESENTED

1. Did the Honorable J. Wesley Oler, Jr. err in denying the Complaint for Writ of Mandamus requesting the Nomination Certificate of Cheri Honkala, the nominated candidate for the Green Party of Pennsylvania to be on the election ballot for the special election scheduled on March 21, 2017 for the vacant State legislative seat in the 197th Legislative District in Philadelphia, when her Nomination Certificate was filed on January 31, 2017 and rejected by the Department of State for being one day late under 25 P.S. 2779?

a.) Did Judge Oler err since there was no showing of prejudice and a liberal interpretation of the Election Code and the First Amendment right under the United States Constitution of Mr. Honkala and the Green Party should allow her Nomination Certificate to be accepted?

b.) Did Judge Oler err in not applying equitable estoppel in that the Green Party relied on a conversation from a representative of the

State Department that all required documents had been timely and properly filed, and therefore, there was reasonable reliance by the Appellants causing the filing to be one day late, particularly in view of the limited and very short notification of the filing deadlines for the special election?

c.) Was the 50 day period (25 P.S. 2779) properly calculated? Is the 50 day time period not a mandatory time because of the difference of special elections where there is no primary or signatures required, but only the nomination by the Green Party and where no prejudice was demonstrated?

d.) Did the Election Code not give the Department of State the right to deny the Nomination Petition on timeliness for a special election, and therefore, a Mandamus would be the appropriate remedy for relief? - - - Judge Oler denied the Petition for Writ of Mandamus.

VII. STATEMENT OF THE CASE

The Appellants, Green Party of Pennsylvania and Cheri Honkala, have appealed from the decision of the Honorable J. Wesley Oler, Jr., Senior Judge of the Commonwealth Court, denying their Mandamus request (see Exhibits "A" and "B" to this Brief). The Green Party and Cheri Honkala, the Green Party's nominated candidate, filed a Petition for Mandamus once the Department of State, Bureau of Elections, rejected the nominating petition filed by the Green Party of Pennsylvania and Cheri Honkala for the special election for the 197th Legislative District in Philadelphia to be held on March 21, 2017 (see Exhibit "B" to this Brief).

In essence, a special election was called for the 197th Legislative District in Philadelphia County and was scheduled for March 21, 2017 (A-66). The special election was called for by the Pennsylvania Speaker of the House of Representatives on January 13, 2017 (A-66) because the incumbent State Representative had a felony criminal conviction and had resigned her position after

being reelected. It should be noted the incumbent before her also had to vacate the legislative office due to a criminal conviction.

The Green Party of Pennsylvania had earned a minor political party status in Pennsylvania for the first time in ten years. The Green Party held a nominating convention on January 29, 2017 and nominated longtime Philadelphia activist, Cheri Honkala, to be their candidate for the special election in the 197th Legislative District. The Green Party presented the Nomination Certificate, the candidate's affidavit and Statement of Financial Interest to the Department of State, Bureau of Elections, on January 31, 2017 (A-26 through A-43). The Department of State rejected the Nominating Petitions as being one day late pursuant to 25 P.S. 2779 (see Exhibit "B" to the Brief and A-46).

The Green Party and Cheri Honkala then retained present counsel, Samuel C. Stretton, Esquire, who immediately filed a Complaint in Mandamus on February 2, 2017 (A-25, A-26 through A-40).

Timely service was made on the Commonwealth of Pennsylvania and the Department of State, Bureau of Elections. Attorney Kenneth Joel, Chief Deputy Attorney General, entered his appearance and litigated the case before the Commonwealth Court. Mr. Joel filed an answer opposing the Complaint in Mandamus (A-47 through A-59).

A hearing was held before the Honorable J. Wesley Oler, Jr., Senior Judge on the Commonwealth Court of Pennsylvania. The hearing was held on Thursday, February 9, 2017 in the Commonwealth Court in Harrisburg. At the conclusion of the hearing, Judge Oler took the case under advisement.

By Order and unreported Opinion dated February 15, 2017, Judge Oler denied the Mandamus request (see Exhibits "A" to this Brief).

A timely appeal was then filed with the Supreme Court of Pennsylvania on February 16, 2017 (see Exhibit "A-1"). The Supreme Court of Pennsylvania issued an Order on February 17, 2017 ordering the Appellants'

Brief to be filed by 12:00 noon on Tuesday, February 21, 2017. Since the notes of testimony were not transcribed and would not be available, according to the Court Reporter, until Monday, February 20, 2017, Mr. Stretton orally called the Prothonotary of the Supreme Court to see if an additional day could be given so the testimony could be summarized with specificity. That request was orally denied.

Mr. Stretton prepared the summary of the testimony presented during the hearing held before Judge Oler on February 9, 2017 from recollection. Once the notes were received on Monday, February 20, 2017, Mr. Stretton added page citation.

During the February 9, 2017 hearing, Mr. Stretton called Hillary Kane, the Green Party official and the Campaign Treasurer for Cheri Honkala, to the witness stand (A-78). She was the former Secretary to the Green Party (A-78). Ms. Kane confirmed that the Green Party was the minor party and this was the first time in ten years the Green Party had the status of a minor

political party (A-84). She indicated the Green Party nominated a candidate for the special election to be held on March 21, 2017 (A-79). Therefore, on January 29, 2017, the Green Party held their nominating convention and nominated Cheri Honkala as their candidate to run for the vacant seat for the 197th Legislative District in lower northeast Philadelphia for the special election scheduled for March 21, 2017 (A-79, A-80). Ms. Honkala was present in the Courtroom during the hearing (A-79). Ms. Kane was Secretary of the Green Party of Pennsylvania at the time of the nomination convention (A-102). Ms. Kane confirmed she was the Treasurer for the Honkala Campaign (A-94).

The special election had been scheduled by Writ of Election dated January 13, 2017 by the Speaker of the Pennsylvania House, Mike Turzai (A-66). An election calendar for the special election was then established and apparently placed online and emailed to the various political parties on or about January 17, 2017 (see A-60).

Ms. Kane testified the email was sent to another person in the Green Party and was not opened on a timely basis. Also, she noted the email cover did not reference any deadline. A letter was also sent to the Green Party (A-44, A-85). The letter was dated January 17, 2017 (A-44). This was sent to a post office box (A-44). The envelope that was attached had a postmark (A-45). Ms. Kane testified the postmark on the envelope was January 24, 2017 (A-45, A-87). Ms. Kane said she had gone to the post office on January 25, 2017 and the letter was not there (A-88).

Ms. Kane indicated that no one went to the post office box again until the morning of January 31, 2017, a Tuesday (A-89).

January 31, 2017 was the first time Ms. Kane saw the January 17, 2017 letter with the attachments and the January 30, 2017 filing deadline (A-89). She then telephoned Kristin Combs, the Chairman of the Green Party (A-89). Ms. Kane then drove to Harrisburg to

attempt to file the papers for the nomination of Cheri Honkala.

Ms. Kane had opened the letter dated January 17, 2017 on January 31, 2017, which had been received only a few days before, and saw the January 30, 2017 deadline to file nominating papers (A-89).

Ms. Kane indicated she presented the appropriate documents to the Bureau of Elections, Department of State Office with the nominating petition, the candidate's affidavit and the Statement of Financial Interest on Tuesday, January 31, 2017 (A-80 through A-82). She testified that the nominating petitions were rejected as being one day too late (see Exhibit "B", A-46, A-83).

Ms. Kane testified she had telephoned the Department of State, Bureau of Elections, before January 30, 2017 (A-93, A-94). Ms. Kane testified she had previously filed the Campaign Committee Reports and spoke to an employee named Sandy at the Department of State, Bureau of Elections (A-93, A-94). She stated

Sandy then called her back (A-94). After reviewing those papers that Sandy had with her, Ms. Kane asked Sandy if anything else was needed to perfect the nominating documents and the nomination of Ms. Honkala. Sandy told her to make corrections to the Campaign Finance documents. These corrections were done and the documents delivered to the Bureau of Elections on January 30, 2017 (A-95, A-96). After the papers were delivered on January 30, 2017, Ms. Kane on January 30, 2017 spoke to Sandy again (A-97). Ms. Kane asked Sandy if everything was in place and if anything else was needed for the nomination paperwork (A-97, A-98). Sandy told her everything was okay and nothing else was needed (A-97, A-98). Ms. Kane testified based on this conversation, the Green Party and she believed they had filed all of the pertinent documents and were unaware more documents were due until she opened the aforementioned letter (A-97, A-98). She indicated reliance on what Sandy told her (A-97, A-98).

Ms. Kane testified that the Green Party definitely wanted to have a candidate in the special election and their nominated candidate was Ms. Honkala. Ms. Kane also indicated she did not file a Statement of Financial Interest with the Board of Ethics because once the papers were rejected at the Department of State, she thought she could not go anywhere else (A-115, A-116). She testified she had all the paperwork to file when she was turned away on January 31, 2017 (115, A-116).

Ms. Kane testified she then met with and retained Samuel C. Stretton, Esquire on the evening of January 31, 2017 after the nomination papers had been rejected (A-83, A-84). The Mandamus Complaint was then filed on February 2, 2017 by Mr. Stretton (A-26).

Ms. Kane testified Cheri Honkala was the unanimous choice of the Green Party at the nomination convention as their candidate for the special election and there were no other Green Party candidates seeking the office (A-98). She indicated that the Green Party would not

have a candidate if Ms. Honkala's nominating petitions were not allowed (A-98).

She noted that the email dated January 17, 2017 that was sent had been sent by Adam Yake from the Department of State to an email address of the Green Party. The email did not set forth its purpose on the cover (A-60).

The Appellants rested their case after Ms. Kane testified (A-117).

The Department of State presented Jessica Mathis, the Chief of Elections and Voters Registration at the Bureau of Elections (A-117, A-118). She has held that position since 2008 (A-118). She testified since the Green Party had minor party status, they had to file the Certificate of Nomination (A-120).

Ms. Mathis testified that the aforementioned email was sent on or about January 17, 2017 by Mr. Yake from the Department of State to a Green Party email address (A-60, A-123). She also testified the letter, which was dated January 17, 2017, was sent out (A-123). As

noted previously, the envelope was postmarked one week later on January 24, 2-17(A-44). Ms. Mathis testified that the election calendar for the special election had been posted on or about January 17, 2017 or January 18, 2017, which listed the dates and times (A-63, A-122, A-128). She confirmed that the special election had been established by the writ and order of the Speaker of the House on January 13, 2017 (A-66, A-121, A-122).

Ms. Mathis indicated that Sandy was in the campaign finance section of the Department of State (A-129). Ms. Mathis was asked if during her tenure there of eight or nine years, if there had ever been a challenge to a rejection of nominating papers for a special election on the issue of timeliness and she could not recall any (A-126, A-127).

On cross-examination, Ms. Mathis agreed there was nothing posted about special elections before January 17 and 18 of 2017 (A-131).

Adam Yake then testified (A-135). He worked for the Department of State and is one of the main people

at the front desk when one comes in to file nominating papers (A-135 through A-137). He has been there for seventeen or eighteen years (A-137). He confirmed the email he sent to the Green Party on January 17, 2017 (A-137). He confirmed he rejected the nominating papers brought by Ms. Kane because they were one day late (A-139). He also stated he spoke to Kristin Combs, the Chairman of the Green Party on January 17, 2017 (A-138). He confirmed her mailing and email address (A-138). He confirmed the rejection notice that was given because of the untimeliness (see Exhibit "B" to the Brief, A-46). Mr. Yake stated he did not have the authority to waive a deadline (A-139).

After his testimony, oral argument was made by both parties (A-142). Mr. Stretton argued a liberal interpretation, he argued a First Amendment right, he argued this was different than primary nominating petitions, he argued equitable estoppel and reliance based on the conversation, and he argued that perhaps the 50 day period would have run on January 31, 2017

(A-145 through A-152). Mr. Stretton noted that the Commonwealth presented no evidence of any prejudice. Mr. Joel argued for the Commonwealth. After the conclusion of the arguments, Judge Oler took the matter under advisement. As noted above, on February 15, 2017, Judge Oler issued his Order and unreported Opinion denying the Mandamus and dismissing the claim of the Green Party and Cheri Honkala from being on the ballot (see Exhibit "A" to the Brief).

The Appellants, Green Party of Pennsylvania and Cheri Honkala, respectfully ask this Honorable Court to reverse Judge Oler and place Cheri Honkala on the special election ballot as the Green Party candidate for the March 21, 2017 special election.

VIII. SUMMARY OF ARGUMENT

1. The Appellants, Green Party of Pennsylvania and Cheri Honkala, respectfully contend that Judge Oler erred in not granting their Complaint in Mandamus so she could be on the special election ballot scheduled for March 21, 2017 for the vacant seat in the 197th Legislative District in Philadelphia, Pennsylvania. She was the nominated candidate by the Pennsylvania Green Party, which is a certified political party, at their January 29, 2017 convention. The nomination paperwork, which the Green Party attempted to file on January 31, 2017, was rejected by the Department of State and Commonwealth of Pennsylvania as being filed one day too late pursuant to 25 P.S. 2779. The Appellants respectfully contend there was no prejudice shown and that the nominating papers should have been accepted on January 31, 2017 for the March 21, 2017 special election. Second, they contend the Nomination Certificate is different from the nominating petitions for a primary election in that there was no dispute

that Cheri Honkala was the duly nominated candidate for the Green Party, a minor political party. She and the Green Party contend they have a First Amendment right to be on the special election ballot since she was duly nominated. A liberal interpretation of the Election Code in conjunction with a First Amendment right of association and right to vote should allow her Nominating Certificate to be accepted on January 31, 2017.

Further, Judge Oler erred in not applying the Doctrine of Equitable Estoppel since an officer from the Green Party spoke to an election official at the Department of State and was led to believe that all documents had been filed that were necessary to perfect the nomination. As a result, there was reasonable reliance by the Green Party in believing nothing further was needed. The time period from the establishment of the special election and filing time was very short. The Appellants contend this 12 day window contributed to the confusion.

Further, the Appellants contend the 50 day period is not mandatory, particularly when no prejudice was shown. Further, the Appellants contend that the count was incorrect and the final deadline should have been January 31, 2017. Further, the Appellants contend that there is not a mandatory time period but a direction time period. Finally, the Appellants contend that the Department of State, under the appropriate statutes, had no authority to deny and not accept the Nominating Petitions if they were untimely. The statute does not provide that particular authority.

IX. ARGUMENT

A.) Judge Oler erred in not granting the mandamus and allowing Cheri Honkala and the Green Party of Pennsylvania to be on the ballot for the special election to be held on March 21, 2017 for the 197th Legislative District. The First Amendment and liberal interpretation would require Ms. Honkala to be on the ballot. Fifty days was not mandatory, but was a direction, particularly when there is no showing or prejudice. There was reasonable reliance and equitable estoppel should apply.

The Green Party of Pennsylvania, after ten years, was finally granted a minor party status again in Pennsylvania. As a result, as a minor party they chose to nominate a candidate in the 197th Legislative District for the March 21, 2017 special election. The Green Party of Pennsylvania, during their January 29, 2017 convention, nominated Cheri Honkala. That seat was vacant because the incumbent misled everyone about her felony conviction and finally resigned after

running for election. It should be noted, the incumbent before her had also been removed for a felony conviction.

The Green Party of Pennsylvania wanted to nominate Cheri Honkala, a community activist in the 197th Legislative District. The Green Party had a nominating convention on January 29, 2017 and Cheri Honkala was nominated unanimously. On January 31, 2017, Hillary Kane, the Campaign Treasurer for Cheri Honkala, and also an official for the Pennsylvania Green Party, went to Harrisburg to file the Nominating Certificate, the candidate's affidavit and Statement of Financial Interest. The Bureau of Elections in Harrisburg would not allow her to file these documents because the filing was untimely. The Department of State's position was the documents should have been filed on January 30, 2017 (see Exhibit "B" to the Brief).

As a result, the Green Party of Pennsylvania sought the services of present counsel, Samuel C. Stretton, Esquire, who filed a Complaint in Mandamus seeking the

Green Party's nominee to be placed on the special election ballot (A-26). The documents presented were the Nominating Certificate, a candidate's affidavit and Statement of Financial Interest (A-41 through A-43). Hillary Kane, the Campaign Manager for Cheri Honkala and an Official for the Green Party of Pennsylvania, noted she had a conversation with "Sandy" from the Department of State before the filing deadline and Sandy told her that all documents for the nomination were filed. Unfortunately, that was a miscommunication since it turned out that Sandy worked in the campaign finance section and was talking about the Campaign Finance Reports and not about perfection of the nomination. But, that was not made clear to Ms. Kane, who relied on what Sandy told her.

The very short time period for the nominating papers has to be considered. The special election was not ordered until January 13, 2017 by the Speaker of the House (A-66). The website with the information on the special election was not put up until January 17th

or 18th of 2017 (A-63). An email was sent to the Chairman of the Green Party by Adam Yake from the Department of State on January 17, 2017 (A-60). Unless one opened the email, they would not know the urgency. There was testimony that the special election website was set up after January 17, 2017 setting forth the important dates. January 30, 2017 was the date to file the Nomination Certificate. A letter dated January 17, 2017 was also sent to a Green Party post office box, but apparently not mailed until January 24, 2017, as reflected by the postmark. This January 17, 2017 letter was not seen by the Green Party of Pennsylvania until the late morning of January 31, 2017 when Ms. Kane went to the post office. Ms. Kane then immediately took the paperwork to Harrisburg but was rejected for being a day too late (A-45).

The statute at issue is found at 25 P.S. 2779.

That statute reads as follows:

"Candidates to fill vacancies in the offices of Representative in Congress, Senator and Representative in the General Assembly and member of the council or legislative body of any city,

borough, town or township shall be nominated by political parties, in accordance with the party rules relating to the filling of vacancies, by means of nomination certificates, in the form prescribed in section 630 of this act; and by political bodies, by means of nomination papers, in accordance with the provisions of sections 951, 952 and 954 of this ac. Said nomination certificates and nomination papers for the office of Representative in Congress, Senator and Representative in the General Assembly shall be filed in the office of the Secretary of the Commonwealth not later than fifty (50) days prior to the date of the special election, and for the office of member of the council or legislative body of a city, borough, town or township, in the office of the country board of elections wherein such city, borough, town or township, in the office of the county board of elections wherein such city, borough, town or township is situate, not later than fifteen (15) days after the issuance of the writ of election." (25 P.S. 2779).

It is important to understand the difference between candidates running in primary elections for a seat and candidates running in a special election. For a vacant seat where there is a special election, the parties in Pennsylvania, such as Republican or Democratic Party or any certified minor political party, as is the Green Party of Pennsylvania, do not have a primary election, but nominate their candidate

at a convention for the special election. This is as noted in 25 P.S. 2779 and 25 P.S. 2780.

This is different from nominating petitions in primary elections run by political parties. In those situations, there is a 21 day period to circulate nominating petitions to get the required number of signatures. Those signatures are then presented on the 21st day to the Department of State. Anyone who is a registered member of a particular party has the right to run in a primary election if they get the required number of signatures and comply with the other aspects of the Election Code. The person then runs for election in a primary election. This is different from the special election where the political parties, such as the Green Party of Pennsylvania, can nominate a candidate who then is the nominated candidate for that party in the special election.

Pursuant to 25 P.S. 2780, political parties are entitled to nominate and file Nomination Certificates for as many candidates as will be voted for at the

special election. In this case, there would be one position, so the Green Party of Pennsylvania nominated one candidate, Cheri Honkala.

It should be noted under 25 P.S. 2936, the Secretary of the State, Bureau of Elections, has to examine nominating petitions. The Bureau can reject nominating petitions (25 P.S. 2936) if there are material errors or defects on their face, if there are material alterations made or if they do not contain sufficient signatures. The Secretary of the Commonwealth, Bureau of Elections, also may reject nominating petitions if they do not contain the name or proper office. They may reject the nominating petitions if the person has already been nominated by other papers. They may reject the nominating petitions if there is not a filing fee. They may reject the petitions if the name of the party is not proper. Under the same statute (25 P.S. 2936), the action of the Officer for the Secretary of the Commonwealth, Bureau of Elections, can be reviewed by the

Commonwealth Court upon application to compel its reception. The documents to be returned by the Bureau of Elections if it is not accepted and not state the reasons for rejecting the document (see 25 P.S. 2936).

What is interesting in reviewing the language of 25 P.S. 2936, is that nowhere does the statute state that the Bureau of Elections can reject the Petition if it is not timely filed (see 25 P.S. 2936). Nor does the actual special election statute itself (25 P.S. 2779) provide authority to the Bureau of Elections to reject documents not timely filed.

In this case, the rejection of the Green Party nomination was solely for the basis that it was not timely filed (see Exhibit "B" to this Brief). It should also be noted in Exhibit "B", the rejection document from the Department of State also states the candidate could file a Mandamus in the Commonwealth Court (see Exhibit "B" to this Brief).

Further, Pennsylvania Statutes 25 P.S. 2953 and 25 P.S. 2955 set forth again the duty of the Secretary of

the Commonwealth to examine petitions. These statutes again set forth the reasons for rejections. Neither of these statutes specifically state a petition can be rejected if it was not timely filed (see 25 P.S. 2953 and 25 P.S. 2955). Perhaps it can be implied, but there is no specific language.

The time period in the 25 P.S. 2779 states the Nomination Certificate has to be filed "not later than 50 days prior to the date of the special election." (See 25 P.S. 2779). The statutory construction for dates in the Election Code is set forth in 25 P.S. 2603. Under subsection (e) of 25 P.S. 2603 in terms of calculating time, it states as follows:

"In determining or reckoning any period of time mentioned in this act, the day upon which the act is done, paper filed, or notice given shall be excluded from, and the date of the primary, election, hearing or other subsequent event as the case may be, shall be included in the calculation or reckoning..." (25 P.S. 2603).

This statute appears to contradict the time calculation in 25 P.S. 2779.

There are 21 days in March to the election and 28 days in February. If the primary election is included as stated by 25 P.S. 2603, then January 31, 2017 would be the 50th day. This appears to contradict 25 P.S. 2779, which talks about 50 days prior to the date of the special election making the calculation January 30, 2017. Clearly there is confusion between 25 P.S. 2779 and 25 P.S. 2603 on date calculations. One says prior to the election and one says the date of the election, in terms of calculation.

The above is a summary of pertinent rules and statutes necessary to evaluate this case. But, the bottom line is that it would be a great tragedy if the Green Party of Pennsylvania, after having waited ten years to become recognized as a minor political party again in Pennsylvania, cannot have its own candidate in this special election. This is the candidate the Green Party of Pennsylvania chose as at their January 29, 2017 convention. This was a unanimous pick. There are

no other candidates for the Green Party who are seeking this office in the March 21, 2017 special election.

Because the Green Party was inexperienced having not had minor political party status for ten years, an email that did not identify the topic, a letter that arrived late and was not picked up from the post office box until too late, and a conversation with an employee of the Department of State suggesting everything was fine, the Green Party of Pennsylvania now will not have a candidate in the special election because their filing was one day late. At the hearing held before Judge Oler, the Department of State did not present one iota of evidence that there would be any prejudice or harm to the Appellees, Department of State and Commonwealth of Pennsylvania or to the election itself if the nominating papers were accepted on January 31, 2017.

This is really a case of first impression under this particular statute (25 P.S. 2779). There does not appear to be any case, at least that Mr. Stretton could

find, where a candidate filed their Nomination Certificate late for a special election when they had previously been nominated by their political party.

The question becomes, should this Mandamus be granted? In the case of In re Bedow, 848 A.2d 1034 (Pa. Comm., 2004), the standard for a Mandamus was discussed. The Bedow case involved a Mandamus action after the Department of State rejected a nominating petition that contained 108 signatures. The Secretary of State did not believe some of the signatures were legible and the nominating petition was not done on the form prescribed by the Secretary of State. The question for the Court was whether or not the nominating petition was amendable since it did not use the form developed by the Secretary of State. Id 1037.

The Court noted in all election cases there is a liberal construction to keep a candidate on the ballot.

"We begin our analysis by recognizing that the Election Code is to be liberally construed so as to protect a candidate's right to run for office and the voters' right to elect the candidate they want...Technical and harmless defects should not be used to deny citizens access to the electoral

process...However, provisions of Election Code relating to the form of nominating petitions and the accompanying affidavits are not mere technicalities, but are necessary measures to prevent fraud and to preserve the integrity of the election process." Id 1037.

The Court, in Bedow, denied the Mandamus since the Court found the signatures were not legible and the wrong nomination form was utilized. The standard for a Mandamus was then set forth by the Court:

"Mandamus is an extraordinary writ...It will only be granted to compel performance of a ministerial duty where the petitioner establishes a clear and legal right to relief and a corresponding duty to act by the respondent...Mandamus is not proper to establish legal rights, but it is only appropriately used to enforce those rights, which have already been established. The burden of proof is clearly upon the party seeking the extraordinary remedy to establish his legal right to such relief." Id 1037

In this case, unlike the Bedow case, there is no dispute that Cheri Honkala was nominated at the Green Party convention. There is absolutely no dispute that she was the candidate for the Green Party of Pennsylvania in this special election. Accepting her Nominating Certificate would not in any way raise

issues of fraud or raise questions about the integrity of the election.

In essence, for special elections where there is no primary, each party gets to have their own nominating process to nominate their candidate under 25 P.S. 2779 and 25 P.S. 2780. Once the nominating petitions are presented to the Secretary of the Commonwealth, those petitions have to be accepted. This is not a question of looking at signatures and determining that they are not valid. This is the duly nominated candidate. Obviously, other issues would apply, such as Statement of Financial Interest has to be attached, etc. But that is not the issue presented in this case.

Further, as noted above, under 25 P.S. 2936, there is a number of reasons set forth where the Secretary of the Commonwealth can refuse to accept the petition. Timeliness is not specifically stated as a reason for the Secretary to reject a petition. Perhaps someone could then file Objections, but the statutes do not specify state timelines.

Further, as argued to Judge Oler, besides this liberal interpretation, there is a serious First Amendment issue by this denial of the duly nominated candidate for the Green Party of Pennsylvania. The Green Party of Pennsylvania will, therefore, not have a candidate in this special election, although Ms. Honkala could have the right to at least run a write-in campaign, which is extremely difficult. A liberal interpretation, which is the essence of all of these election cases, leans toward keeping the candidate on the ballot. This liberal interpretation has its genesis in the First Amendment of the United States Constitution through the Fourteenth Amendment. The right to associate and the right of voters to vote for someone.

In Rogers v. Corbett, 468 F.3d 188 (3rd Cir., 2006), the First Amendment right of ballot access was clearly recognized.

"Ballot access is recognized as an important aspect of voting right." Id 194.

In Rogers, the Court noted there are limitations to First Amendment rights and these limitations are as follows:

"The state's important regulatory interests are generally sufficient to justify reasonable, non-discriminatory restrictions." Id 194.

In Rogers, the Commonwealth wanted to avoid ballot clutter and to ensure viable candidates. Id 194, 195. Rogers dealt with a large number of signatures that were needed for an independent candidate.

In the present case, there is no issue of ballot clutter or viable candidate. The Green Party of Pennsylvania is entitled to have a candidate. There is no issue of viable candidates because the Green Party has nominated Cheri Honkala. She is already recognized as a viable candidate if nominated by the Green Party, which is a minor political party.

There is a recognized need for minor political parties and their candidates to be on Pennsylvania ballots. In the last number of years, it has been few and far between that there is a minor political party

or an independent candidate running in a general or special election. This is a great loss to the political system, which depends on new ideas and candidates.

In this case and in interpreting the 50 day deadline set forth in 25 P.S. 2779, there does not appear to be any reason why the Secretary of the Commonwealth should not have accepted these nominating petitions since there was no prejudice to the Commonwealth and the one day delay would not have affected the March 21, 2017 election. The First Amendment was clearly implicated by this rejection of a duly nominated candidate of the Green Party convention. The Green Party unanimously at their convention selected Cheri Honkala. No other candidate will run for the Green Party of Pennsylvania in this election. The strong First Amendment right of association and vote, as noted above, which has been grafted into the liberal interpretation this Court has recognized in all

election cases, should require the Secretary of the Commonwealth to accept these Nominating Certificates.

Not every time period in the Election Code has been held to be a mandatory time period. Some were held to be only directives. For instance, the time period for hearings set forth in 25 P.S. 2937 have been ruled to be only a directive and not mandatory. Of course, part of that ruling is because it interferes with the Courts' power to set hearings and there is a separation of powers issue. In the case of In re Moore, 291 A.2d 531 (Pa., 1972), the Court found that the ten day requirement for holding hearings set forth in the Pennsylvania Election Statutes, was directory and not mandatory. The Pennsylvania Supreme Court found that if the dates imposed mandatory duties upon the Court in terms of exercising their judicial functions, that would not be allowed. Id 533, 534.

In evaluating this matter, the Pennsylvania Supreme Court in the past has found that if a political party performs a statutorily imposed public function, it

constitutes a form of state action. Bentman v. Seventh Ward Democratic Executive Committee, 218 A.2d 261 (Pa., 1966). That case involved two committeemen who were seated and then removed. In this case, pursuant to 25 P.S. 2779, the Green Party, as a minor party, was given a state related function of nominating a candidate, which in fact the Green Party did. If the Green Party's action was a state action (and there is no challenge to their nominating process), then the presentation of the Nominating Certificate should have been accepted, particularly since there was no prejudice demonstrated or any delay of the election. This would be consistent with the liberal interpretation and a First Amendment analysis. The Green Party convention, as required by 25 P.S. 2779 and 2780 was a state action that should have been accepted by the Appellees. There is absolutely no good reason why Cheri Honkala should not be the Green Party candidate in this special election. If she missed the deadline by one day and there is no prejudice shown,

this nomination should have been accepted. The only role the Secretary has is to accept the candidate the parties have nominated. The Secretary has no involvement in disagreeing with that nominating process.

As noted above, the analysis does not end here. There is a question as to how to count the 50 days. There appears to be a conflict in the two statutes (25 P.S. 2779 and 25 P.S. 2603). 25 P.S. 2603, under subsection (e), in determining the time, notes as follows:

"...and the date of the primary, election hearing or other subsequent event, as the case may be shall be included in the calculation or reckoning." (25 P.S. 2603).

This directly contradicts the language in 25 P.S. 2779 that states 50 days *prior* to the date of the special election. One statute says not to include the day of the special election while the other statute says to include it. Obviously, if one statute includes the day of the special election, then counting backwards, the 50th day would be January 31, 2017.

But there is more to this matter. There was the reliance on what Hillary Kane, the Green Party of Pennsylvania official, was told by "Sandy" from the Bureau of Elections. Judge Oler characterizes this as a misunderstanding or miscommunication, but Hillary Kane relied on the fact that Sandy said everything was in order. As noted above, Sandy was apparently talking about the Campaign Committee Finance Reports and Campaign Committee. But Hillary Kane was asking about whether the candidacy was perfected, and she believed she had been told yes.

Equitable estoppel would appear to apply since there was a form of reasonable reliance. In the old case of Carroll v. City of Philadelphia Board of Pensions and Retirement, 735 A.2d 141 (Pa. Comm., 1999), the fact that the City had continued to make deductions from Mr. Carroll's payroll did not equitably estop them from denying Mr. Carroll admission into a certain pension plan. Mr. Carroll contends that the Board was equitably estopped and should be precluded

from denying his participation. The Court noted the following for equitable estoppel:

"Equitable estoppel prevents a party from acting differently than the matter in which it induced another party to expect...the doctrine may be applied to a Commonwealth agency when the party asserting estoppel establishes by clear, precise, unequivocal evidence that (1) the agency intentionally or negligently misrepresented a material fact; (2) the agency knew or had reason to know that the party would justifiably rely on the misrepresentation; and (3) the party acted to his or her detriment by justifiably relying on the misrepresentation..." Id 144.

The Court then held that a party cannot generally assert equitable estoppel to prevent the application of a statutory provision. Id 144, 145.

Although the Court did not apply equitable estoppel to Mr. Carroll because the statute said differently, the Court noted that equitable estoppel has been applied against the Commonwealth despite the fact that the acts of its agents are in violation of positive law to protect against a fundamental injustice. Id 146.

Clearly, in a democratic society, denying a minor party the right to have their nominated candidate appear on the ballot could well be considered a

fundamental injustice. There is nothing more important in a democratic society than to have political parties have their nominated candidates on the ballot.

In this case, Hillary Kane testified that she relied on what she was told by Sandy at the Department of State. Although apparently there was a misunderstanding, Hillary Kane clearly indicated that she asked if she needed anything else to perfect the nomination and she was told everything was fine.

This issue of equitable estoppel arose again in the case of In re Guzzardi, 99 A.3d 381 (Pa., 2014). In that case, Mr. Guzzardi, who was running for governor, failed to file his Statement of Financial Interest on a timely basis with the Ethics Commission. In footnote 3 of the Opinion, it is noted that Mr. Guzzardi testified he was misled by an unidentified young woman with dark hair in the Office of Department of State into believing that the filing of the Statement of Financial Interest with the Ethics Commission was unnecessary. Id 383, footnote 3. The Pennsylvania Supreme Court

noted, at least with a statute that has set forth specific consequences, the Pennsylvania Courts may not mitigate legislatively prescribed outcomes through recourse to equity. Id 386, 387.

But, mandatory filing of a Statement of Financial Interest is governed by 65 Pa.C.S.A. 1104. The language of 65 Pa.C.S.A. 1104 is very clear that failure to file the Statement of Financial Interest with the Board of Ethics is a fatal defect. Under 65 Pa.C.S.A. 1104(d), the following is noted:

"No public official shall be allowed to take the oath of office or enter or continue upon his duties, nor shall he receive compensation from public funds, unless he has filed a Statement of Financial Interest as required by this chapter." [65 P.S. 1104(d)].

Similarly, under 65 Pa.C.S.A. 1104(b)(3), the following is stated:

"No petition to appear on the ballot for election shall be accepted by the respective state or local officials unless the petition has appended thereto a Statement of Financial Interest as set forth in paragraphs 1 and 2. Failure to file the statement in accordance with the provisions of this chapter shall, in addition to any other penalties provided, be a fatal defect to a petition to appear on the ballot" [65 Pa.C.S.A. 1104(b)(3)].

Therefore, there is very strong language that this would preclude and prevent someone from being on the ballot. That strong language is not found in 25 P.S. 2779, which just sets forth the 50 day requirement.

Therefore, the reasonable reliance on Sandy by Hillary Kane and the Green Party of Pennsylvania should invoke the Doctrine of Equitable Estoppel. This also has to be put into context of this very short time period for filing papers for nomination for the March 21, 2017 special election. January 13, 2017 is the day the special election was decided by the Speaker of the House. It was not until January 17th or 18th of 2017 the material was posted on the website. An email was sent to the Chairman of the Green Party of Pennsylvania, but the subject or cover of the email did not reflect the urgency. A letter dated January 17, 2017, which was not postmarked until January 24, 2017 and not received at the post office of the Green Party until sometime after January 24, 2017, was not actually seen by the Green Party until it was too late to file the papers on

January 30, 2017. There was no effort by anyone to make sure the Green Party knew exactly what it had to do, particularly since the Green Party had just requalified after a ten year absence from being a minor political party. The time period from January 18, 2017 to January 30, 2017 was only 12 days.

Perhaps this Brief would be written differently if there was any prejudice shown by the Secretary of the Commonwealth or Bureau of Elections. None was shown or even suggested. The reason was because there was no prejudice.

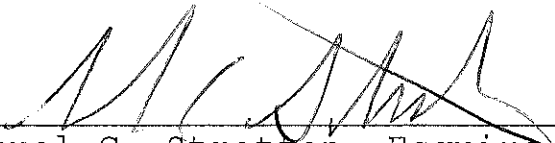
In conclusion, therefore, the Green Party of Pennsylvania and Cheri Honkala, respectfully request this Honorable Court grant this Mandamus action for all the reasons discussed in this Brief. The Secretary of the Commonwealth, through the Bureau of Elections, should have accepted this Nominating Certificate, which was the direct result of the nomination by the Green Party. The Green Party was actively acting as an agent of the state in having this nominating convention held

pursuant to specific statutes (25 P.S. 2779 and 25 P.S. 2780). A liberal interpretation of the Election Code combined with the First Amendment would require this acceptance since otherwise the Green Party will not have a candidate on the ballot. There is on contrary government issues or prejudices present. Further, equitable estoppel should apply since the Green Party did check with someone they thought had the pertinent knowledge in the Office of Secretary of the Commonwealth, Bureau of Elections, and they relied on that conversation. Finally, there was a question as to when the 50 days run since apparently the definition section under 25 P.S. 2603 has a different calculating time than 25 P.S. 2779. The Mandamus, therefore, should have been granted and this Honorable Court is asked to reverse the decision of the Commonwealth Court and allow Cheri Honkala to be the Green Party candidate in the March 21, 2017 special election.

X. CONCLUSION

The Appellants, Green Party of Pennsylvania and Cheri Honkala, respectfully request this Honorable Court reverse the decision of Judge Oler and allow Cheri Honkala to be the Green Party candidate for the special election to be held on March 21, 2017 in the 197th Legislative District for all the reasons set forth in this Brief.

Respectfully submitted,



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IN THE SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT

GREEN PARTY OF PENNSYLVANIA and	:	SUPREME COURT DOCKET
CHERI HONKALA,	:	NO. 11 MAP 2017
APPELLANTS	:	
V.	:	ELECTION CASE
DEPARTMENT OF STATE BUREAU OF	:	
COMMISSIONS, ELECTIONS AND	:	
LEGISLATION and COMMONWEALTH	:	
OF PENNSYLVANIA,	:	
APPELLEES	:	

CERTIFICATE OF SERVICE

I hereby certify I am this date serving a copy of the foregoing Brief and Reproduced Record of the Appellants in the captioned matter upon the following persons in the manner indicated below, which service complies with the Pennsylvania Rules of Appellate Procedure.

Service by First Class Mail and email addressed as follows:

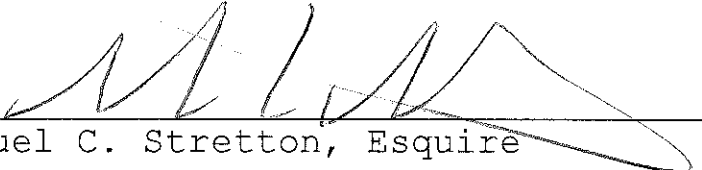
1. Howard G. Hopkirk, Esquire
Senior Deputy Attorney General
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Attorney for Appellees

2. Kristin Combs, Chair
Green Party of Pennsylvania
P.O. Box 59524
Philadelphia, PA 19102
3. Cheri Honkala
2114 North Hancock Street
Philadelphia, PA 19122

Respectfully submitted,

2/21/17

Date



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IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Green Party of Pennsylvania
and Cheri Honkala,
Petitioners

v.

Department of State
Bureau of Commissions, Elections
and Legislation and Commonwealth
of Pennsylvania,
Respondents

No. 43 M.D. 2017

BEFORE: HONORABLE J. WESLEY OLER, JR. Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY SENIOR JUDGE OLER

FILED: February 15, 2017

In this mandamus action, an organization that has achieved minor political party status¹ and its proposed candidate for a vacant seat in the Pennsylvania House of Representatives seek an order directing the Department of State's Bureau of Commissions, Elections and Legislation (Bureau) to accept the candidate's special-election nomination certificate, notwithstanding its purportedly untimely submission to the Bureau. The relief is requested on the basis of (1) the alleged tardiness of a letter from the Bureau to the party advising of the filing deadline for the certificate, (2) an erroneous confirmation allegedly conveyed by an employee of the Bureau to a representative of the party prior to the filing

¹ See Section 801 of the Pennsylvania Election Code (Code), Act of June 3, 1937, P.L. 1333, as amended, 25 P.S. §2831.

Exhibit A

deadline that the candidate's filing paperwork was complete, (3) the Bureau's purported misinterpretation of the statutory language respecting the filing deadline as mandatory rather than directory in nature and the absence of any prejudice that would ensue from the relief requested, and (4) a possible miscalculation of the filing deadline date by the Bureau.

A hearing on the petition for writ of mandamus was held on February 9, 2017. Based upon the evidence presented at the hearing, and for the reasons stated in this opinion, the petition can not be granted.

STATEMENT OF FACTS

Due to a vacancy in the 197th Legislative District in lower Northeast Philadelphia, a Writ of Election was issued by the Speaker of the Pennsylvania House of Representatives on January 13, 2017, scheduling a special election for the seat on March 21, 2017. Pursuant to Section 629 of the Pennsylvania Election Code (Code),² the Bureau declared the deadline for filing nomination certificates to be January 30, 2017. In addition to the information contained in the statute itself as to the filing time constraint, notice of this deadline, in conjunction with other information and materials pertinent to the special election on March 21, 2017, was

² 25 P.S. §2779. This Section provides:

Candidates to fill vacancies in the offices of ... Senator and Representative in the General Assembly ... shall be nominated by political parties, in accordance with the party rules relating to the filling of vacancies, by means of nomination certificates, in the form prescribed in section 630 of this act; Said nomination certificates ... for the office of ... Senator and Representative in the General Assembly shall be filed in the office of the Secretary of the Commonwealth not later than fifty (50) days prior to the date of the special election,

(a) e-mailed by the Bureau to Petitioner Green Party of Pennsylvania on January 17, 2017, (b) posted on the Department's website by January 18, 2017, and (c) mailed to the party by the Bureau by a communication dated January 17, 2017, and received in its post office box at some point after Wednesday, January 25, 2017, and on or before Tuesday, January 31, 2017. The e-mail was apparently not viewed by the party before January 31, 2017, nor was the communication by mail picked up from the post office box prior to that date.

On Sunday, January 29, 2017, the state committee of the party unanimously nominated Petitioner Cheri Honkala as its candidate for the vacant seat in the House of Representatives. On Monday, January 30, 2017, a representative of the party telephoned the Bureau and, in response to a telephone prompt menu, opted to speak with a campaign finance division employee as opposed to an employee of the Bureau's elections and voter registration division. This choice was apparently influenced by the representative's familiarity with a certain employee in the former division to whom she had sent campaign finance materials³ and whom she had found to be particularly authoritative.

Unfortunately, in the ensuing conversation between the party's representative and the campaign finance division employee, as a result of cross purposes in their respective capacities, a miscommunication occurred, whereby the representative felt she had been told that no additional filing on behalf of the candidate was required for inclusion on the ballot and the employee felt that the subject under discussion was campaign finance materials. The representative's understanding would not, as discussed hereafter, have been compatible with the Code.

³ See Petition for Writ of Mandamus, ¶7(g).

Upon the Green Party's examination on January 31, 2017, of the communications from the Bureau, the nomination certificate was completed, along with other paperwork, and submitted to the Department. However, it was declined for acceptance as untimely.

DISCUSSION

Alleged tardiness of mailing of notice of filing prerequisites. Although an event amounting to a breakdown in an administrative system will in some circumstances result in permission to present a filing *nunc pro tunc*,⁴ several factors militate against a finding of such a breakdown in the present case. First, no statute, regulation or case has been cited to the court prescribing a duty on the part of the Bureau to provide individual notice to a political party of prerequisites to a candidate's inclusion on a certain ballot. Second, it has not been shown that notice mailed to the Green Party of such prerequisites was not in fact received in its post office box several days prior to the filing deadline. Third, individual notice was also provided by the Bureau to the party by e-mail almost two weeks prior to the filing deadline. Fourth, public notice was also timely available to the party by way of the Bureau's website. And, fifth, the prerequisites were discernible and accessible to the public by way of the election law.

Alleged misinformation by Bureau employee. It has been observed that "[a]llowing a party to prevent the application of a statute based on an error of a government employee is tantamount to giving the employee's error the effect of amending the statute." *Carroll v. City of Philadelphia, Board of Pensions and Retirement Municipal Pension Fund*, 735 A.2d 141, 144 (Pa. Cmwlth. 1999). Thus, "[g]enerally, a party may not assert equitable estoppel to prevent the

⁴ See generally *Williamson v. Department of Transportation, Bureau of Driver Licensing*, 129 A.3d 597 (Pa. Cmwlth. 2015).

application of a statutory provision.” *Id.* In any event, “because equitable estoppel is a doctrine of equity and fundamental fairness, its applicability depends on the specific facts of each case.” *Id.* (citations omitted).

In the present case, where (a) the filing prerequisites for inclusion on a ballot, including the means of calculating the filing deadline, were available in the statute, (b) the governmental entity published this information on its website, timely notified the party of the same by e-mail, and undertook to further notify the party by regular mail, (c) the party evidently did not consult the statute or website, did not open the e-mail in the 13-day period prior to the deadline, and did not check its post office box for several days prior to the expiration of the filing period, and (d) the basis for estoppel can, at best, be described as a misunderstanding arising out of a miscommunication, the equities do not sufficiently weigh in Petitioners’ favor to warrant “amending the statute” through an application of the estoppel doctrine to add an additional day to the filing schedule.

Statutory construction. In cases involving statutory construction, a legislature’s use of the word “shall” is generally, although not invariably,⁵ considered to have a mandatory as opposed to directory connotation. *See, e.g., Oberneder v. Link Computer Corp.*, 696 A.2d 148, 150 (Pa. 1997) (“By definition, ‘shall’ is mandatory.”). With particular reference to statutory construction in the area of election laws, the Pennsylvania Supreme Court has quoted with approval the following passages from appellate decisions in sister states:

We note that it long has been settled in other jurisdictions that statutes employing [mandatory] language in filing deadlines for ballot access are deemed mandatory, and that, with limited exceptions not implicated in the present case, strict compliance is

⁵ *See Francis v. Carleto*, 211 A.2d 503 (Pa. 1965).

required such that neither the election official nor the court can excuse a candidate's inadvertent noncompliance.^[6]

* * * *

Equity only applies in the absence of a specific statutory mandate. . . . [I]t is not [a court's] place to create an equitable remedy for a hardship created by an unambiguous, validly enacted, legislative decree. . . . This should be particularly true of election law. If this [c]ourt were to erode the statutory requirements of election law through the use of equity, we would create ambiguity and inconsistency in what needs to be a uniform and stable area of law.^[7]

In re Guzzardi, 99 A.3d 381, 385-86 (Pa. 2014).

Thus, in Pennsylvania the rule is “that the judiciary should act with restraint, in the election arena, subordinate to express statutory directives. Subject to constitutional limitations, the Pennsylvania General Assembly may require such practices and procedures as it may deem necessary to the orderly, fair and efficient administration of public elections in Pennsylvania.” *Guzzardi*, 99 A.3d at 386. Given this rule, a construction of the legislative provision herein at issue that “nomination certificates . . . shall be filed . . . not later than fifty (50) days prior to the date of the special election”⁸ as merely directory with respect to the filing deadline would not be warranted.

Computation of time. Section 103(e) of the Code, 25 P.S. §2603(e), provides as follows:

In determining or reckoning any period of time mentioned in this act, the day upon which the act is done, paper filed, or notice

⁶ *Butts v. Bysiewicz*, 298 Conn. 665, 676, 5 A.3d 932, 940 (2010).

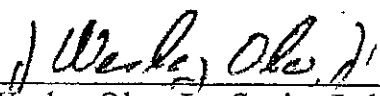
⁷ *Martin v. Sec'y of State*, 280 Mich. App. 417, 438, 760 N.W. 2d 726, 737 (2008) (O'Connell, J., dissenting).

⁸ See note 2 *supra*.

given, shall be excluded from, and the date of the primary, election, hearing or other subsequent event, as the case may be, shall be included in the calculation or reckoning: Provided, however, That if the last day upon which any act may be done, paper filed, or notice given, shall fall on a Sunday or legal holiday, the next following ordinary business day shall be considered as the last day for said purpose.

In the present case, if the date of the special election (March 21, 2017) is included in the computation, the 50-day exclusionary period prior to the election during which a nominating certificate would be deemed untimely would include January 31, 2017. Consequently, the Bureau's determination that Monday, January 30, 2017, was the final date upon which such a certificate could be filed was correct.

Mandamus. Mandamus is an extraordinary remedy. *Otter v. Cortes*, 969 A.2d 1276 (Pa. Cmwlth. 2009). A writ of mandamus will issue to compel performance of a public official's mandatory and non-discretionary duty. *Id.* "There must be a clear legal right in the plaintiff, a corresponding duty in the defendant and a lack of any other adequate and appropriate remedy at law for a writ of mandamus to issue." *Otter*, 969 A.2d at 1281 (citing *Luke v. Cataldi*, 883 A.2d 1114, 1116-17 (Pa. Cmwlth. 2005)). Based upon the foregoing, the court is of the view that the extraordinary remedy of mandamus can not be justified in the present case.



J. Wesley Oler, Jr., Senior Judge

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Green Party of Pennsylvania
and Cheri Honkala,
Petitioners

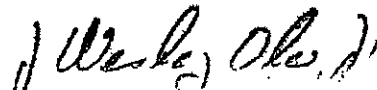
v.

Department of State
Bureau of Commissions, Elections
and Legislation and Commonwealth
of Pennsylvania,
Respondents

No. 43 M.D. 2017

ORDER

AND NOW, this 15th day of February, 2017, upon consideration of Petitioners' Petition for Writ of Mandamus, following a hearing held on February 9, 2017, and for the reasons stated in the accompanying opinion, the Petition is denied.



J. Wesley Oler, Jr., Senior Judge

Certified from the Record

FEB 15 2017

and Order Exit



COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF STATE
HARRISBURG, PENNSYLVANIA
17120

OFFICE OF THE
SECRETARY OF THE COMMONWEALTH
717-787-7630

BUREAU OF COMMISSIONS,
ELECTIONS & LEGISLATION
717-787-5280

NOMINATION CERTIFICATE REJECTION NOTICE

Name of Candidate: Honkala, Cheri

Date: 1/31/2016

Prepared By: Jessica Mathis

Office:

- ☐ President of the United States
- ☐ United States Senator
- ☐ Attorney General
- ☐ Auditor General
- ☐ State Treasurer

- ☐ Representative in Congress District: _____
- ☐ Senator in the General Assembly District: _____
- ☒ Representative in the General Assembly District 197

Minor Political Party: Green Party

The Nomination Certificate for the above listed candidate and office, which were submitted in this office on the date listed above, cannot be accepted for the following reason(s):

- ☐ Insufficient Number of Valid Signatures
- ☒ Untimely Filing
- ☐ Incomplete Preamble
- ☐ Filing Fee not submitted by Cashier's Check or Money Order
- ☒ Other: The Department rejected the candidate's affidavit and nomination certificate based on the late filing and was therefore not able to conduct a full review of the paperwork for compliance. The Department reserves the right to raise any other deficiencies in the filings should the matter be litigated.
- ☐ Invalid Candidate's Affidavit
- ☐ Invalid Affidavit of Qualified Elector

Comments:

This letter shall serve as the official notice of the rejection. If you have any questions regarding this notice, please feel free to call the Bureau of Commissions, Elections and Legislation at (717) 787-5280. If the candidate is unable to correct the defects noted above on or before the statutory deadline, the candidate may file a mandamus action in Commonwealth Court asking the court to order the Secretary of the Commonwealth to accept the nomination paper.

Sincerely,

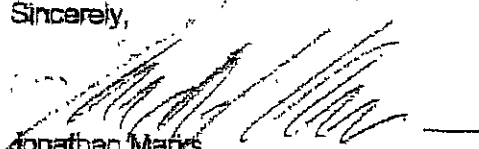

Jonathan Marks
Commissioner

Exhibit "B"

IN THE SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT

GREEN PARTY OF PENNSYLVANIA and : SUPREME COURT DOCKET
CHERI HONKALA, : NO. 11 MAP 2017
APPELLANTS :
V. : ELECTION CASE
DEPARTMENT OF STATE BUREAU OF :
COMMISSIONS, ELECTIONS AND :
LEGISLATION and COMMONWEALTH :
OF PENNSYLVANIA, :
APPELLEES :

CERTIFICATION OF WORD COUNT

This Brief complies with the type volume limitation
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8,160 words.

Respectfully submitted,

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EXHIBIT "C"