

**IN THE SUPREME COURT OF PENNSYLVANIA
EASTERN DISTRICT**

IN RE: PETITION TO CONTEST	: No. 485 EAL 2006
NOMINATION OF ANTHONY PAYTON AS	:
DEMOCRATIC CANDIDATE FOR STATE	: Petition for Allowance of Appeal from
REPRESENTATIVE IN THE 179 th	: the Order of the Commonwealth Court
LEGISLATIVE DISTRICT	:
	:
PETITION OF: DEMOCRATIC VOTERS OF	:
THE 23 rd WARD, 19 th DIVISION OF	:
PHILADELPHIA	:
	:

DISSENTING STATEMENT

MR. JUSTICE SAYLOR

FILED: October 25, 2006

In reversing the order of the Court of Common Pleas of Philadelphia County, the Commonwealth Court concluded that Petitioners had not set forth specific allegations of fraud or error to warrant a re-canvass of the votes in the subject election districts. See In re Petition to Contest Nomination of Anthony Payton, No. 1781 C.D. 2006, slip op. at 9 (October 4, 2006). I disagree with this determination, as the contest petition specifically alleged that, on two machines, all write-in votes for Candidate Vasquez were tabulated for the position of ward committee person, see generally Petition to Contest at ¶¶ 10, 11, a position for which Vasquez was not seeking nomination and, according to the common pleas court, that he was not eligible to hold. See In re Petition to Contest Nomination of Anthony Payton, No. 0049 of 2006, slip op. at 9 (September 14, 2006).¹

¹ Given Petitioners' specific allegations of error, I would refrain from presently deciding whether their petition to contest was governed by the pleading requirements of Section 1404(e)(1)(iii) of the Election Code, 25 P.S. §3154(e)(1)(iii) (requiring an allegation of specific fraud or error), as the Commonwealth Court held, or Section 1702(a) of the (continued...)

As I find that the basis for the Commonwealth Court's resolution of the appeal is unsustainable, I would vacate its order and remand for consideration of remaining issues, including Respondents' position that the relief awarded by the common pleas court will inappropriately result in the certification of a tabulation reflecting more votes than the number of eligible, Democratic electors who appeared at the relevant polling stations.

(...continued)

Election Code, 25 P.S. §3262(a) (indicating that no particular act of fraud or error and no evidence to substantiate the allegations must be offered in the petition), as Petitioners argue.