

**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	: Petition for Allowance of Appeal from
STATE 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 BAER

FILED: October 25, 2006

Today this Court denies allocatur and concomitantly any grant of relief in the above-captioned election contest. For the reasons that follow, I dissent.

Emelio Vazquez (Vazquez) and Anthony Payton (Payton) were both candidates for the Democratic Primary for state representative in the 179th Legislative District. Vazquez failed to properly file his financial statements, and was removed from the ballot. He proceeded to mount a vigorous write-in campaign, but when the votes were tallied, apparently fell 19 votes short of Payton.

It was then determined that on two voting machines in a particular ward and division, 52 write-in votes were cast for Vazquez for the position of ward committee person rather than state representative. Vazquez filed the a petition to contest Payton's nomination asserting that these 52 votes were clearly meant for him as state representative, and not credited to him because of error in the voting and/or counting process.

The distinguished President Judge of Philadelphia County, C. Darnell Jones, II, took evidence in this case, and specifically found credible testimony that at least 20 voters cast their ballots for Vazquez as state representative, but somehow had them recorded for Vazquez as committee person. Accordingly, Judge Jones found that there was error in the voting process, and declared Vazquez the winner of the election.

The Commonwealth Court reversed in a single-judge decision citing the wrong section of the Election Code and thereby necessarily engaging in a legally incorrect analysis. Moreover, that Court failed to articulate any standard of review or appropriately defer to the trial court findings.

Notwithstanding the closeness of the election date, under these circumstances, substantial justice and fairness cries out for this Court to reverse the palpably erroneous Commonwealth Court decision and reinstate the trial court's order declaring Vazquez the victor in this election. Alternatively, and at the very least, this Court should vacate the flawed determination of the Commonwealth Court and remand this case to that court with instructions providing for a proper legal analysis employing the appropriate standard of review.