

[J-12A & B-2006]
IN THE SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT

CAPPY, C.J., CASTILLE, NEWMAN, SAYLOR, EAKIN, BAER, BALDWIN, JJ.

IN RE: NOMINATION PAPER OF RALPH : No. 198 MAP 2004
NADER AND PETER MIGUEL CAMEJO :
AS CANDIDATES OF AN INDEPENDENT : Appeal from the Order of the
POLITICAL BODY FOR PRESIDENT : Commonwealth Court entered October 14,
AND VICE PRESIDENT IN THE : 2004 at No. 568 MD 2004.
GENERAL ELECTION OF NOVEMBER 2, :
2004. :

LINDA S. SERODY, RODERICK J. : ARGUED: March 1, 2006
SWEETS, RONALD BERGMAN, :
RICHARD TRINCLISTI, TERRY :
TRINCLISTI, BERNIE COHEN-SCOTT, :
DONALD G. BROWN AND JULIA A. :
O'CONNELL :

APPEAL OF: RALPH NADER AND :
PETER MIGUEL CAMEJO, AND THEIR :
INDEPENDENT ELECTORS :

IN RE: NOMINATION PAPER OF RALPH : No. 17 MAP 2005
NADER AND PETER MIGUEL CAMEJO :
AS CANDIDATES OF AN INDEPENDENT : Appeal from the Order of the
POLITICAL BODY FOR PRESIDENT : Commonwealth Court entered January 14,
AND VICE PRESIDENT IN THE : 2005 at No. 568 MD 2004.
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DISSENTING OPINION

MR. JUSTICE SAYLOR

DECIDED: August 22, 2006

I respectfully dissent, as I believe that Section 977 of the Election Code, by its terms, authorizes an assessment of costs against objectors upon the dismissal of petitions challenging nomination petitions and papers, but not against candidates upon the setting aside of nomination petitions and papers.

As the majority notes Section 977 provides, in relevant part, as follows:

Objections to nomination petitions and papers:

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 objection thereto, and praying that the said petition or paper be set aside. A copy of said petition shall, within the said period, be served on the officer of board with whom said nomination petition or paper was filed. Upon the presentation of such a petition, the court shall make an order fixing a time for hearing . . . If the court shall find that said nomination petition or paper is defective . . . it shall be set aside. . . . In case any such petition is dismissed, the court shall make such order as to the payment of the costs of the proceedings, including witness fees, as it shall deem just. . . .

25 P.S. §2937 (emphasis added). It seems apparent, at least to me, that each of the three highlighted references to “said petition,” “such a petition,” and “any such petition” is an abbreviated reference back to the petition to set aside nomination petitions and papers that is delineated at the outset of the statutory provision.

The majority's holding, however, is apparently that the last of these encompasses not only objection petitions, but additionally serves as a generic reference also subsuming both nomination petitions and papers filed by candidates. See Majority Opinion, slip op. at 11-12. I find such reading to be implausible for several reasons.

First, the two prior references back in the statute clearly could not serve such an enlarged function, since their context (discussing the service of objections and the requirement of a hearing triggered by the filing of objections) makes plain that they refer exclusively to objectors' petitions to set aside. I therefore have difficulty with the conclusion that a third and parallel reference was intended by the Legislature to serve a much more expansive purpose. Second, nowhere else in the statute (and, at least to my knowledge, in the Election Code) did the General Assembly use the word "petition" to generically include both nomination petitions and papers, let alone nomination petitions, nomination papers, and objections to nomination petitions and papers. Indeed, the General Assembly was otherwise very careful in Section 977 to specify both nomination "petitions and papers" in every proviso in which the candidates' filings are addressed. Further, a broad, generic use of the word "petition" to address three discrete forms of documents under the Election Code spanning both candidate and objector submissions is not only uncharacteristic, but also seems to me to be unnatural. Moreover, the more natural construction of the statute is consistent with the precept that the Election Code should be construed liberally, in favor of candidates' ballot access. See In re Nomination Petition of Driscoll, 577 Pa. 501, 507, 847 A.2d 44, 48 (2004). Fourth, in delineating the consequences of the filing of defective nomination petitions and papers, Section 977 indicates that these documents should be "set aside" upon appropriate and meritorious challenge, 25 P.S. §2937, whereas the assessment of costs is authorized by the statute only when a petition is "dismissed." Id. The

phraseology of “setting aside” attaching to the treatment of nomination petitions and papers comports with their filing with the Secretary of the Commonwealth or county boards of elections as opposed to in courts of law, see 25 P.S. §§2873, 2913, whereas, the use of the term “dismissal” in the cost-assessment provision more properly aligns with the disposition of documents submitted to the courts, here, objection petitions.

Finally, I do not find the Court’s brief, footnoted expression to the contrary in In re Nominating Petition of Lee, 525 Pa. 155, 578 A.2d 1277 (1990), to be controlling. See id. at 160 n.3, 578 A.2d at 1279 n.3 (indicating that “the court can impose costs, as justice requires, when either the nominating petition is set aside or the petition to set aside the nominating petition is dismissed”). Significantly, such statement is manifestly dictum, since the Court had otherwise found no basis to support an award of costs against the candidate, who was successful in having his nomination petition reinstated. See id. at 160, 578 A.2d at 1279. Therefore, the statement is not binding in this case, see Commonwealth v. Singley, 582 Pa. 5, 15, 868 A.2d 403, 409 (2005) (expressing the axiom that “a statement in [a] prior opinion, which clearly was not decisional but merely dicta, ‘is not binding upon us’” (citation omitted)), in which the majority finds the relevant issue to be adequately preserved and squarely before the Court.

In summary, I believe that cost award against Appellants lacks a statutory basis, and therefore, I would reverse the orders of the Commonwealth Court.