

[J-168-2006]
IN THE SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT

IN RE: NOMINATION PAPER OF	:	No. 108 MAP 2006
MARAKAY ROGERS, CHRISTINA	:	
VALENTE AND CARL J. ROMANELLI AS	:	
CANDIDATES OF AN INDEPENDENT	:	Appeal from the Order of the
POLITICAL BODY FOR GOVERNOR,	:	Commonwealth Court entered on 9/26/06
LIEUTENANT GOVERNOR AND U.S.	:	at No. 426 MD 2006
SENATOR IN THE GENERAL ELECTION	:	
OF NOVEMBER 7, 2006	:	
	:	SUBMITTED: October 2, 2006
v.	:	
	:	
WILLIAM R. CAROSELLI, FRED R.	:	
LEVIN, DANIEL J. ANDERS AND PETER	:	
D. WINEBRAKE	:	
	:	
	:	
APPEAL OF: CARL ROMANELLI	:	

DISSENTING STATEMENT

MR. JUSTICE SAYLOR

FILED: October 4, 2006

Presently, the majority affirms the Commonwealth Court's decision setting aside Appellant's nomination papers, thus removing him as an independent political body candidate for United States Senator in the general election of November 2006. Appellant, however, collected nearly 100,000 signatures in support of his nomination papers, far more than the number required for ballot access under the Election Code. Further, he has maintained throughout the proceedings that signatories to his nomination papers did not need to be registered voters, but he has been excluded from the ballot

on the basis of an assessment process that recognized only signatures of registered voters. See In re Nomination Papers of Rogers, 426 M.D. 2006, slip op. at 7-10, ___ A.2d ___, ___ (Pa. Cmwlth. Sept. 1, 2006).

For the reasons set forth in my dissenting statement in In re Nomination of Nader, 860 A.2d 1, 1-10 (Pa. 2004) (Saylor, J., dissenting), I maintain my belief that, under the material provisions of the Election Code, citizens need not be registered voters to validly sign nomination papers on behalf of an independent political body candidate. Further, I do not believe that this Court's per curiam affirmance of the Commonwealth Court's decision in Nader, see Nader, 860 A.2d at 1 (per curiam), should be deemed controlling with respect to this issue. In this regard, a per curiam order that offers no rationale does not establish a basis for an appellate court's decision or constitute binding precedent with regard to any specific legal issues raised in the appeal. See Commonwealth v. Tilghman, 673 A.2d 898, 904 (Pa. 1996); accord Bell v. Slezak, 812 A.2d 566, 572 n.7 (Pa. 2002). Indeed, there was a substantial issue of potential waiver involved in Nader that could have formed the basis of this Court's decision not to grant relief. See Nader, 860 A.2d at 9 (Saylor, J., dissenting).¹

¹ I do note that, in the Nader litigation, this Court had issued a prior opinion reversing the Commonwealth Court's setting aside of the candidate's nomination papers, see In re Nader, 858 A.2d 1167 (Pa. 2004), and had made a statement to the effect that registration was a prerequisite to qualified elector status. I considered -- and still consider -- that brief statement to be dicta, however, as the issue was not squarely before the Court at that juncture, and there was no consideration of the statutory or constitutional text, or relevant case law. See Nader, 860 A.2d at 9 (Saylor, J., dissenting). Thus, in my view, the present question concerning the meaning of the term "qualified elector" under the Election Code has not been fully and definitively addressed and decided by this Court.

Further, with reference to the decision that the Commonwealth Court regarded as precedent, Aukamp v. Diehm, 8 A.2d 400 (Pa. 1939), I have observed that the case of In re Sullivan, 160 A. 853 (Pa. 1932), is more nearly on point. In that matter, this Court (continued...)

Additionally, while this Court denied Appellant's petition for permission to appeal with reference to the voter registration issue at an interlocutory stage, such ruling does not represent an adjudication on the merits, and therefore, does not in any way impede our present review. Accord Commonwealth v. Ograd, 839 A.2d 294, 316 (Pa. 2003). Thus, I regard the issue as squarely before the Court at this juncture, as the Commonwealth Court has now entered its final order.

Since I do not believe that Appellant should be denied ballot access based on the Commonwealth Court's existing assessment, I respectfully dissent from the majority's present per curiam ruling.

(...continued)

explained at some length that, while registration may constitute a prerequisite to actual voting, it does not constitute a necessary condition of qualified elector status, which is the relevant criterion specified in the Election Code. See id. at 854. See generally Nader, 860 A.2d at 2-8 (Saylor, J., dissenting).