[J-71-2008]
IN THE SUPREME COURT OF PENNSYLVANIA
EASTERN DISTRICT

IN RE: NOMINATION PETITION OF LAWRENCE M. FARNESE, JR. FOR THE DEMOCRATIC NOMINATION FOR SENATOR IN THE GENERAL ASSEMBLY FROM THE 1ST SENATORIAL DISTRICT IN THE PRIMARY OF APRIL 22, 2008	:	No. 6 EAP 2008
	:	Appeal from the Order entered on 3/10/08 in the Commonwealth Court at No. 121 MD 2008
APPEAL OF: KEITH OLKOWSKI AND THERESA A. PAYLOR	:	SUBMITTED: March 19, 2008

CONCURRING OPINION

MR. JUSTICE SAYLOR **FILED: March 29, 2011**

I agree with the central propositions advanced by the Opinion in Support of Per Curiam Order ("OIS"), that evidence of widespread fraud in the collection of signatures may be relevant in an election challenge, see In re Payton, 596 Pa. 469, 470-72, 945 A.2d 162, 163-64 (2008) (Saylor, J., concurring), but that, as a general matter, an objector cannot prevail in a "global" challenge on the basis of such evidence without pleading and proving that the candidate, or possibly his campaign, was aware of or condoned the fraud. I also agree with Mr. Chief Justice Castille, that Appellants' novel false-in-one-false-in-all theory, as presented to the Commonwealth Court, was appropriately rejected by that court, and further, that any present expression by this Court beyond an affirmance of that ruling represents dicta. See, e.g., In re Farnese, No.

121 M.D. 2008, slip op. at 3, 5-6 (Pa. Cmwlth. Mar. 14, 2008) (single-judge opinion by Friedman, J.) (reciting Appellants' concession that their challenge depends upon acceptance of their false-in-one-false-in-all theory). I write separately, moreover, because I believe the OIS's reliance on the Commonwealth Court's decision in In re Nomination Paper of Nader, 865 A.2d 8 (Pa. Cmwlth.), aff'd, 580 Pa. 134, 860 A.2d 1 (2004) (per curiam), is misplaced, for several reasons.

First, it should be noted that, in the Nader matter, after the Commonwealth Court completed its review, it determined that the candidate lacked sufficient signatures to obtain ballot access. See Nader, 865 A.2d at 18. It was on that basis that the Commonwealth Court adjudicated the case, and this Court elected not to express any opinion concerning the court's reasoning. Accordingly, no legal issue was presented, either before the Commonwealth Court, or before this Court, concerning whether evidence of fraud imputable to the candidate was germane to a challenge of circulator petitions that might otherwise be deemed valid.

Additionally, there is no indication in Nader that the candidate agreed that a substantial percentage of signatures were not obtained in accordance with law. Accordingly, I cannot agree that Nader supports the principle that, where a candidate agrees that a large percentage of the signatures are invalid, evidence of fraud in the signature-gathering process is relevant beyond the actual signatures being challenged as fraudulent. See OIS, slip op. at 6 ("Where, as here, a candidate for office has agreed that 60.5% of the signatures contained in his nomination petition are invalid, and the objectors to the petition have asserted fraud in the signature procurement process and are prepared to support those allegations with evidence, we cannot say, in light of Nader, . . . that the evidence would be immaterial to the disposition of the petition."). In short, I believe that Nader has little relevance to the present case.

To me, the primary issue in Nader pertained to whether the term "qualified elector" subsumed a voter registration requirement, because if no such requirement existed, then the candidate would have had enough signatures for ballot access. See Nader, 580 Pa. at 146, 860 A.2d at 8 (Saylor, J., dissenting). As noted, since the Commonwealth Court's order was affirmed without an opinion, this Court did not issue a holding on that question. Moreover, review of the tabulated information provided by the Commonwealth Court demonstrates that only a little over one percent of the more than 50,000 signatures obtained were forged. As I stated then:

> In the consolidated findings, opinion and order, the Commonwealth Court also indicated that the signatures under review were primarily the result of widespread, systemic fraudulent conduct on the part the individuals gathering them. See [Nader, 865 A.2d at 18] (stating that "this signature gathering process was the most deceitful and fraudulent exercise ever perpetrated upon this Court"). A review of the tables and exhibits attached to the order, however, suggest that the problem was of a more limited scale (for example, 687 signatures out of 51,273 reviewed -- or approximately 1.3% of the signatures -- were rejected on the basis of having been forged). Moreover, the Commonwealth Court cited no evidence that the candidates were specifically aware of fraud or misrepresentation at the time of their submissions, and the candidates note -- and the objectors do not dispute -- that when they became aware of any fraudulent conduct connected with specific signatures, they voluntarily withdrew those signatures from consideration.

Id. at 146-47 n.13, 860 A.2d at 8 n.13. In summary, I do not support the continued collateral commentary on the Nader case, particularly where, as here, it is immaterial.