

**[J-76-2007]**  
**IN THE SUPREME COURT OF PENNSYLVANIA**  
**MIDDLE DISTRICT**

IN RE: OBJECTION TO NOMINATION : No. 335 MAL 2007  
PETITION OF DR. KIMMIKA WILLIAMS- :  
WITHERSPOON FOR THE OFFICE OF :  
BOROUGH COUNCIL IN THE THIRD : Petition for Allowance of Appeal from the  
WARD OF THE BOROUGH OF DARBY : Order of the Commonwealth Court  
:  
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:  
PETITION OF: DONALD DEIGH :

**CONCURRING OPINION**

**MR. JUSTICE BAER**

**FILED: May 2, 2008**

I join in the Court's *per curiam* Opinion affirming, on the basis of our decision in In re Paulmier, 937 A.2d 364 (Pa. 2007), the Commonwealth Court's order placing candidate, Dr. Kimmka Williams-Witherspoon's name on the 2007 primary ballot. As noted in the Court's Opinion, in Paulmier we overruled our prior *per curiam* order affirming In Re Anastasio, 827 A.2d 373 (Pa. 2003) and its progeny, holding that material omissions from a timely-filed statement of financial interest form constituted a fatal defect. Paulmier, 937 A.2d at 371.<sup>1</sup> Instead, as noted in the Court's *per curiam* Opinion, we held that "all defects related to the content of the disclosures on a timely filed statement of financial interest are subject to timely amendment." Id.

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<sup>1</sup> Although, as noted, we affirmed the Commonwealth Court's decision in Anastasio in a non-precedential *per curiam* order, we subsequently ratified the court's decision as precedent in our decision in In re Littlepage, 909 A.2d 1235 (Pa. 2006). In Paulmier, we overruled that decision in conjunction with our rejection of the rule set forth in Anastasio. See In re Paulmier, 937 A.2d 364, 371 (Pa. 2003).

I write to emphasize a point that I believe was made by our Court in Paulmier, but is not reiterated in the Court's Opinion deciding the case before us. Specifically, in addition to holding that a timely filed statement of financial interest form is subject to timely amendment, we also noted that under the Ethics Act, "candidates must still file in good faith, even though they do have an opportunity to amend." Id. at 371 n.3. Thus, "a good faith timely filer" is permitted to amend a non-compliant statement of financial interest in order to come into full compliance. See, Id. at 375 (Baer, J. concurring). I find the good faith component prerequisite to amendment crucial.

The policy behind Anastasio and its progeny was to compel those filing nominating petitions to disclose their financial affairs to better inform the public of its voting choices. See 65 Pa.C.S. § 1101.1(a) of the Ethics Act (declaring that the people have a right to be assured that the financial interests of holders of or nominees or candidates for public office do not conflict with the public trust and indicating that this provision shall be liberally construed to promote complete financial disclosure).

As the case law developed, this laudatory purpose was subverted by candidates, armed with our caselaw, seeking to disqualify their opposition on hyper-technicalities. See Paulmier, 937 A.2d at 375 (Baer, J., concurring) ("Strict interpretation of the fatality rule has resulted in the child's game of "gotcha" through far too many challenges based upon technical omission"). This unanticipated use of the Ethics Act and our interpretive decisions, while arguably furthering that Act, is inconsistent with the Election Code's explicit policy of permitting all desirous of seeking public office the opportunity to do so. See Petition of Ross, 190 A.2d 719 (Pa. 1963)(requiring liberal construction of the Election Code to protect a candidate's right to run for office and voters' rights to elect the candidate of their choice).

A basic rule of statutory construction requires that competing statutory provisions be read, if possible, to give both effect, see 1 Pa.C.S. § 1933, and in Paulmier we undertook

the task of reconciling the Ethics Act and the Election Code. As explained above, we could not maintain our strict adherence to the fatal defect language of the Ethics Act<sup>2</sup> and still accommodate the Election Code, 25 P.S. § 2600 *et seq.* Concomitantly, to permit carte blanche amendment of financial statements in deference to the Election Code, would have granted license to unscrupulous candidates to omit intentionally material data from their financial statements, and, if caught, to supply such data without consequence. Such a result would be inconsistent with the language and purpose of the Ethics Act.

To accommodate the compelling but competing interests of both the Ethics Act and the Election Code, I believe we held in Paulmier that good-faith omissions in timely filed financial statements could be timely amended, but bad faith attempts to avoid the requirements of the Ethics Act unless and until caught, would, as before, result in a candidate's removal from the ballot. I recognize that if a challenger alleges bad faith, an original jurisdiction court will have to hear evidence and decide the issue. In most election dispute cases there is a hearing in any event, and assessing credibility and determining issue of good and bad faith is among the most basic fact-finding functions carried on daily by our justice system. Hence, I see no pragmatic basis to shy from this interpretation of Paulmier, and believe it will accommodate the language and purpose of both the Ethics Act and Election Code.

Here, because Petitioner Deigh made no averment that Williams-Witherspoon was in bad faith when she omitted data from her timely filed statement of financial interest, I join in the affirmance of the Commonwealth Court's order.

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<sup>2</sup> 65 Pa.C.S. §1104(b)(3)(Failure to file the statement in accordance with the provisions of this chapter shall, in addition to any other penalties provided, be a fatal defect to a petition to appear on the ballot).