[J-77-2007]
IN THE SUPREME COURT OF PENNSYLVANIA
EASTERN DISTRICT

IN RE: NOMINATION PETITION OF GREG PAULMIER FOR THE OFFICE OF CITY COUNCIL OF THE CITY OF PHILADELPHIA DEMOCRATIC PRIMARY MAY, 2007	:	No. 172 EAL 2007
	:	Appeal from the Order of the Commonwealth Court entered April 9, 2007 at No. 570 CD 2007, which affirmed the Order of the Court of Common Pleas, Philadelphia County, Civil Division entered on March 22, 2007 at No. 1172 March Term, 2007.
PETITION OF: GREG PAULMIER	:	
		SUBMITTED: APRIL 12,2007

CONCURRING OPINION

MR. JUSTICE SAYLOR **FILED: December 28, 2007**

Respectfully, I do not regard the plain-meaning approach to the statutory fatal-defect rule, which has been in place for the past several years, as being amenable to abandonment under the exception to stare decisis pertaining to erroneous rulings of law.

As the majority recognizes, there are sound reasons supporting the longstanding requirement of adherence to precedent. See generally Payne v. Tennessee, 501 U.S. 808, 827, 111 S. Ct. 2597, 2609 (1991) (emphasizing the role of precedent in furthering "the evenhanded, predictable, and consistent development of legal principles, . . . reliance on judicial decisions, and . . . the actual and perceived integrity of the judicial process."). Moreover, on issues of statutory construction, legislative bodies are free to address judicial holdings with which they disagree, and accordingly, stare decisis should be afforded "special force" in such matters. See Patterson v. McLean Credit Union, 491

U.S. 164, 172-73, 109 S. Ct. 2363, 2370 (1989); cf. In re Burtt's Estate, 353 Pa. 217, 231, 44 A.2d 670, 677 (1945) ("A statutory construction, once made and followed, should never be altered upon the changed views of new personnel of the court.").

Here, the majority recognizes the doctrine of stare decisis, but chooses to invoke the exception for erroneous legal rulings. It is true that, in matters of statutory construction, departure from stare decisis is warranted where the Court has "distorted the clear intention of the legislative enactment and by that erroneous interpretation permitted the policy of that legislation to be effectively frustrated." Mayhugh v. Coon, 460 Pa. 128, 135, 331 A.2d 452, 456 (1975). From my perspective, however, this Court's plain-meaning approach to the statutory fatal-defect rule was, and remains, an entirely reasonable application of settled principles of statutory interpretation. The relevant statutory provision prescribes that, "failure to file the statement [of financial interests] 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." 65 Pa.C.S. §1104(b)(3). In case after case over the past four years, this Court has recognized that "the provisions of this chapter," i.e., the Public Official and Employee Ethics Act (the "Act"), include Section 1105, which sets forth the required content of a statement of financial interests. See 65 Pa.C.S. §1105(b).

Today, however, the majority effectively deems such approach irrational and concludes that it was always the Legislature's intent to apply the fatal defect rule only in a single circumstance -- when a statement of financial interests is not filed in accordance with one provision of the Act, i.e., the section governing the timing of the statement's filing, 65 Pa.C.S. §1104(b). See Majority Opinion, slip op. at 8-9. However, such interpretation is facially inconsistent with the plain meaning of the fatal defect rule, which, again, applies when a statement is not filed "in accordance with the provisions of

this chapter." 65 Pa.C.S. §1104(b)(3) (emphasis added). Had the Legislature meant to confine its application to timing issues, it would have been a simple matter to say so directly, or to merely require filing "in accordance with the provisions of this section" (as the timing requirements are self-contained within the same section of the Act as the fatal defect provision), rather than "in accordance with the provisions of this chapter," as is actually prescribed. 65 Pa.C.S. §1104(b)(3) (emphasis added).[1]

I do not dispute that the majority's present construction, as ably developed by Mr. Justice Castille in his previous responsive opinions in this arena, represents a legitimately restrained approach to the fatal defect provision. Further, such construction carried substantial force from the standpoint of writing on a clean slate, in the same way as did the interpretation that prevailed. Indeed, my personal perspective is that the approach maintained by Justice Castille and presently adopted by the majority represents the better policy by some large measure.[2] Because, however, the

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[1] Indeed, in the sentence immediately preceding the fatal defect provision, the Legislature demonstrated its ready ability to make direct reference to the paragraphs of Section 1104 governing timing. See 65 Pa.C.S. §1104(b)(3) ("No petition to appear on the ballot for election shall be accepted by the respective State or local election officials unless the petition has appended thereto a statement of financial interests as set forth in paragraphs (1) and (2)." (emphasis added)).

To the degree that the majority is focusing on the word "filed" within the fatal defect rule, it is common to use the term to ensure compliance with a broad range of requirements. For example, when Pennsylvania courts indicate that a pleading is to be "filed in accordance with the Rules of Civil Procedure," they are not merely indicating that the pleading must be filed on time.

[2] Parenthetically, nonetheless, I do believe it is necessary to bear in mind this Court's admonition that "the policy of the liberal reading of the Election Code cannot be distorted to emasculate those requirements necessary to assure the probity of the process." Petition of Cianfrani, 467 Pa. 491, 494, 359 A.2d 383, 384 (1976). Under the majority's in pari materia construction of the Act, such admonition is equally relevant here.

interpretation upon which this Court settled years ago follows the plain language of the governing statute, I fail to see how it is in any sense unreasoned. Thus, I believe that any remaining policy choice to be made at this point in time is best left to the Legislature. Certainly the Assembly is aware of our decisions in this line, and, ordinarily, its continuing inaction would give rise to an inference that it has been, and remains, satisfied.

Finally, I note that I joined the per curiam order in this case solely because I would have supported an incrementally broader reading of the substantial compliance approach to the fatal defect provision arising under In re Benninghoff, 578 Pa. 402, 852 A.2d 1182 (2004).