

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Viviette Applewhite; Wilola
Shinholster Lee; Grover
Freeland; Gloria Cuttino;
Nadine Marsh; Dorothy
Barksdale; Bea Bookler;
Joyce Block; Henrietta Kay
Dickerson; Devra Mirel ("Asher")
Schor; the League of Women Voters
of Pennsylvania; National Association
for the Advancement of Colored People,
Pennsylvania State Conference;
Homeless Advocacy Project,
Petitioners

v.

No. 330 M.D. 2012

The Commonwealth of Pennsylvania;
Thomas W. Corbett, in his capacity
as Governor; Carole Aichele, in her
capacity as Secretary of the
Commonwealth,
Respondents

ORDER re INTERVENTION

AND NOW, this 29th day of May, 2012, upon consideration of the Verified Petition for Leave to Intervene Pursuant to Pa. R.A.P. 1531, and responses thereto, and after status conference on May 24, 2012, at which the offer of an evidentiary hearing was made, and after oral and written argument, it is **ORDERED** and **DECREED** as follows:

The Petition for Leave to Intervene is **DENIED**, because putative Intervenors failed to demonstrate that the determination of this action may affect any legally enforceable interest within the meaning of Pa. R.C.P. No. 2327(4).

Statement of Reasons

Putative Intervenors are qualified electors who intend to vote in this year's general election and a candidate for office to be filled in this year's general election. They claim standing by virtue of their status. Pet. at ¶¶14, 15. The qualified electors also assert that their fundamental right to vote may be diluted if this Court grants the relief requested by Petitioners. Pet. at ¶¶12, 13.

Putative Intervenors initially relied on out-of-state legal authority. At the status conference, however, they called the Court's attention to Pennsylvania cases. Nevertheless, despite the opportunity, they offered no proof to support their claims of "vote dilution" or potential loss of an equal opportunity to participate in the political process.

The cases upon which putative Intervenors rely are distinguishable.¹ More relevant authority persuades the Court that neither status as a voter or candidate nor possible "vote dilution" supports intervention.

Similar to the current case, in Mixon v. Commonwealth, 759 A.2d 442 (Pa. Cmwlth. 2000) (*en banc*), this Court addressed a constitutional challenge involving voter qualification. Resolving a standing issue for a voter, the Court stated the general rule that a person whose interest is common to that of the public

¹ Banfield v. Cortes, 922 A.2d 36 (Pa. Cmwlth. 2007) (*en banc*) (voters alleging they would be required to use improper voting machines had standing to initiate challenge). Moreover, cases involving challenges to nominating petitions and other pre-primary election procedures are not persuasive here. They involve expedited hearings and decisions which sometimes result in non-uniform holdings.

generally, in contradistinction to an interest that is peculiar to herself, lacks standing. Id. at 452. Moreover, the Court declined to apply the “vote dilution” basis for standing beyond its traditional application to minority voters in redistricting litigation, where the issue involved the potential loss of an equal opportunity to participate in the political process. Id. at 453. Also, the Court rejected a standing argument based on the Supreme Court’s decision in Bergdoll v. Kane, 557 Pa. 72, 731 A.2d 1261 (1999), which is parallel to an argument raised here. As a result, this Court determined the voter lacked standing. The same conclusion must be reached here.

In short, because any interest the putative Intervenors have in preventing fraudulent voters from casting votes in the general election is the same interest shared by all Pennsylvanians, they did not establish a legally enforceable interest within the meaning of Pa. R.C.P. No. 2327(4).



ROBERT SIMPSON, Judge

Certified from the Record

MAY 30 2012

And Order Exit