

IN THE COURT OF COMMON PLEAS OF DELAWARE COUNTY, PENNSYLVANIA

CIVIL ACTION AT LAW

FRANK AGOVINO, *et al.*

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No.: CV-2023-005232

v.

COUNTY OF DELAWARE, *et al.*

ORDER

AND NOW, this

13th

day of December, 2023, upon consideration of Plaintiffs'

Petition for a Preliminary Injunction, Defendants' opposition thereto, a November 1, 2023 hearing thereon, and the parties' post-hearing submissions, it is hereby ORDERED and DECREED that said Petition is GRANTED and Defendants, County of Delaware, Delaware County Council, and their respective agents, officers, employers, successors, are hereby ENJOINED from enforcing any provision of Ordinance No. 2023.1 which permits the Delaware County Council to reject nominees for the minority member of the Board of Elections or to select any member of the minority party that they so choose if certain deadlines are not met by the minority party county chairman. It is further ORDERED that Ordinance No 2023.1 is declared void and invalid. In support of the foregoing, the Court hereby sets forth the following:

1. 25 P.S. § 2641, County boards of elections; membership, provides in relevant part:

(b) In each county of the Commonwealth, the county board of elections shall consist of the county commissioners of such county ex officio, or any officials or board who are performing or may perform the duties of the county commissioners, who shall serve without additional compensation as such. Except in counties of the first class, in counties which have adopted home rule charters or optional plans the board of elections shall consist of the members of the county body which performs legislative functions unless the county charter or optional plan provides for the appointment of the board of elections. **In either case, there shall be minority representation on the board. The county body which performs legislative functions shall in the case where the board does not contain minority representation appoint such representation from a list submitted by the county chairman of the minority party.**

25 P.S. § 2641(emphasis added).

2. On or about January 18, 2023, Defendant, Delaware County Council passed Ordinance No. 2023-1. (hereinafter “the Ordinance”).

3. The Ordinance, states:

“1. The representative of the minority party (as described in Section 421 of the Charter) shall be selected by Council from a list of three nominees submitted by that minority party’s County Chair **or Council may reject such list and request a new list of nominees.**

2. If no list is provided to Council within (i) thirty days of a vacancy on the Board of Elections or (ii) ten days after Council rejects a list as described above, **Council may appoint any member of the minority party.”**

Ordinance No. 2023-1. (emphasis added).

4. On June 21, 2023, Plaintiff, Frank Agovino, in his capacity as Chairman of the Delaware County Republican Party, and the Delaware County Republican Party (herein after “Agovino”) filed a Complaint for Declaratory and Injunctive Relief. Therein, Agovino sought a declaration that Ordinance No. 2023-1 and any other provision which permits the Delaware County Council to reject nominees for the minority member of the Board of Elections or to select any member of the minority party that they so choose if certain deadlines are not met by the minority party county chairman be held invalid and in violation of the Pennsylvania Election Code.

5. Defendants County of Delaware and Delaware County Council (hereinafter “the County”) filed an Answer on August 16, 2023.

6. On September 27, 2023, Agovino filed a Petition for Preliminary Injunction and the County filed a response thereto on October 25, 2023.

7. On November 1, 2023, this Court held a hearing on the Preliminary Injunction and permitted the parties to submit post-hearing memoranda of law. Agovino’s memorandum was filed on November 9, 2023 and the County’s was filed on November 6, 2023.

8. On November 7, 2023, a municipal election occurred in Delaware County, Pennsylvania and based on the election results the Republican Party will remain the minority party.

9. Therefore, Agovino must nominate a member of the Republican Party, the minority party, to the Board of Elections to fill a vacancy that will occur in January 2024.

10. As such, the County's objections based on standing and ripeness because of the uncertainty of the results of the November 2023 election are now moot.

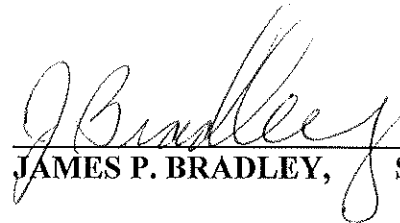
11. Delaware County is a county of the second class and may enact a home rule charter to govern itself; however, those governing powers are limited by the Second-Class County Charter Law. 18 P.S. § 6107-C.

12. Under the Election Code, Council shall appoint a minority member to the Board of Elections from a list supplied by Agovino as the minority party chair. 25 P.S. § 2641.

13. The purpose of the Election Code is to guarantee minority representation on the County Board of Election; however, the current Ordinance impermissibly affords Delaware County Council a veto power over the minority party chair's nomination to the Board of Elections which unduly expands the powers conferred upon Council by the Election Code.

14. For these reasons, Ordinance No 2023.1 is declared void and invalid and the Delaware County Council is ENJOINED from enforcing any provision of Ordinance No. 2023.1 which permits the Council to reject nominees for the minority member of the Board of Elections or to select any member of the minority party that they so choose if certain deadlines are not met by the minority party county chairman.

BY THE COURT:


JAMES P. BRADLEY, S.J.