

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

BILL O'NEILL, : CIVIL ACTION
Plaintiff, :
 :
v. :
 :
TOWNSHIP OF NORTHAMPTON :
TOWNSHIP OF LOWER SOUTHAMPTON :
TOWNSHIP OF UPPER SOUTHAMPTON :
TOWNSHIP OF WARMINSTER :
Defendants. : NO. 00-CV-1559

FINDINGS OF FACT & CONCLUSIONS OF LAW

J.M. KELLY, J.

MARCH 30, 2000

Presently before the Court is a document entitled Precipe [sic] for Emergency Hearing for a Writ of Mandamus & Injunctive Relief, filed by the Plaintiff, Bill O'Neill ("O'Neill"). A hearing was held in this matter today upon which the Court makes the following Findings of Fact, Conclusions of Law and decision.

FINDINGS OF FACT

1. O'Neill is a candidate for the nomination of the Republican Party for the Pennsylvania State Assembly in the 178th District. The nomination will be decided in a primary election to be held April 4, 2000.

2. Defendants Township of Northampton ("Northampton"), Township of Lower Southampton ("Lower Southampton"), Township of Upper Southampton ("Upper Southampton") and Township of Warminster ("Warminster") are municipalities located within the 178th Assembly District.

3. Each Defendant requires that candidates for political office post a bond prior to placing signs advertising a candidate in the municipality. These bonds range from \$50.00 to \$135.00. The purpose of the bond is to ensure that signs will be removed from view and cleaned up following the election. It is also undisputed that the Defendants do not cash checks prior to the time of clean-up.

4. O'Neill has paid the required bond in Northampton, Upper Southampton and Lower Southampton.

5. O'Neill has not paid the bond in Warminster. The decision not to pay the bond in Warminster was made completely by O'Neill.

6. O'Neill is currently displaying signs in Warminster. There is no evidence that any of his signs have been removed by Warminster.

7. The bond requirement applies to all signs, whether or not political, in each of the Defendant municipalities.

8. In some instances, several candidates are pooled into a single bond. O'Neill has, in fact, availed himself of this process in Northampton. No Defendant has denied this process to O'Neill.

9. While O'Neill alleges that Defendants deny political candidates access to particular appropriate public places, he has failed to prove any particular appropriate public place where he

has not been allowed to place a sign.

CONCLUSIONS OF LAW

1. In order to succeed on his application for a preliminary injunction, the burden is upon O'Neill to show: (1) a likelihood of success on the merits of his claim; (2) irreparable harm to Plaintiff absent an injunction; (3) harm to the Defendants and other parties would not be substantial if an injunction were granted; and (4) the public interest favors the injunction.

Premier Dental Prods. Co. v. Darby Dental Supply Co., 794 F.2d 850, 851-52 (3d Cir. 1986).

2. If O'Neill fails to meet any of the four factors, the injunction must be denied. Merchant & Evans v. Roosevelt Bldg. Prods., 963 F.2d 628, 632-33 (3d Cir. 1992).

3. The grant of an injunction, prior to a full hearing on the merits, is an extraordinary remedy and requires Plaintiff to meet a high burden of proof. Chez Sez III Corp. v. Township of Union, 945 F.2d 628, 634 (3d Cir. 1991).

4. There is no evidence that the Defendants have attempted to suppress a particular viewpoint. See Bolger v. Youngs Drug Prods. Corp., 463 U.S. 60, 65, 72 (1983).

5. O'Neill has not shown that by requiring a bond, the Defendants have acted outside of their constitutional power, are not furthering a substantial or important governmental interest, that the governmental interest is related to free expression or

that any restriction on First Amendment freedom is no greater than essential to the furtherance of that interest. See United States v. O'Brien, 391 U.S. 367, 377 (1968).

6. Accordingly, O'Neill has not demonstrated a likelihood of success on the merits of his claim.

7. Because O'Neill has complied with the bond requirement in three municipalities and stands to recoup his checks upon removing his signs, he has not demonstrated that he will suffer irreparable harm absent an injunction.

8. Because O'Neill has placed signs in Warminster and they have not been removed, he has not demonstrated that he will suffer irreparable harm absent an injunction.

9. Accordingly, at least two factors prevent granting the requested injunction.

10. There is no evidence to support O'Neill's contention that party-endorsed candidates are given favorable treatment by the Defendants.

11. There were objections to service of process. The hearing was held, despite the objections, the hearing was held in view of O'Neill's pro se status and all Defendants having received notice of and appearing at the hearing.

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O R D E R

AND NOW, this 30th day of March, 2000, upon consideration of the Precipe [sic] for Emergency Hearing for a Writ of Mandamus & Injunctive Relief, filed by Plaintiff, Bill O'Neill ("O'Neill"), and a hearing held in this matter, it is ORDERED the Motion for a Preliminary Injunction is DENIED.

BY THE COURT:

JAMES MCGIRR KELLY, J.