

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

MEMORANDUM & ORDER

J.M. KELLY, J.

MAY , 2001

Presently before the Court are the following Motions: (1) the Motion to Dismiss of Defendant Warminster Township ("Warminster"); (2) the Motion of Plaintiff, Bill O'Neill ("O'Neill") for Summary Judgment against Lower Southampton Township ("Lower Southampton"); (3) the Motion of O'Neill for Summary Judgment against Warminster; and (4) a document entitled a "Motion in Objection," filed by O'Neill.

This action was initially commenced by O'Neill as a petition for a writ of mandamus and a motion for a preliminary injunction. O'Neill was a candidate for the Republican Party nomination for the Pennsylvania State Assembly in the 178th District. The nomination was decided in a primary election on April 4, 2000.¹

¹ O'Neill, with 857 votes, was defeated in the primary election by Roy Reinard, with 4,005 votes. Department of State, Official 2000 General Primary Results for Representative in the General Assembly for District 178, at <http://web.dos.state.pa.us/elections/elec-results/cgi-bin/district2.cgi?choice=STH&district=178&eyear=2000&etype=P>.

Defendants Township of Northampton ("Northampton"), Lower Southampton, Township of Upper Southampton ("Upper Southampton") and Warminster are municipalities located within the 178th Assembly District. Each Defendant requires that candidates for political office post a bond prior to placing signs advertising their candidacy in the municipality. These bonds range from \$50.00 to \$135.00. Non-political entities must post the same bond before posting signs. O'Neill paid the required bond in Northampton, Upper Southampton and Lower Southampton, but not in Warminster. O'Neill sought injunctive relief because he believed Defendants' bond requirements were interfering with his free speech rights under the First Amendment. The injunction was denied because O'Neill failed to demonstrate a likelihood of success on the merits and that he would suffer irreparable harm absent an injunction. O'Neill subsequently filed a Complaint.

WARMINSTER'S MOTION TO DISMISS

Warminster seeks to dismiss O'Neill's claim as moot because he did not post the bond and he was able to post his campaign signs in Warminster. It appears, however, that Warminster still requires political candidates to post a bond before they post signs in Warminster and Warminster is capable of enforcing its ordinance in the future. An action is moot when "(1) there is no reasonable expectation that the events will recur . . . and (2) interim relief or events have completely

eradicating the effects of the violation." Zellous v. Broadhead Assoc., 906 F.2d 94, 100 (3d Cir. 1990). O'Neill or another candidate will run for office in Warminster again. While O'Neill was able to take part in the 2000 primary election, there remains a very real possibility that a subsequent candidate will be faced with the choice of posting a bond, campaigning illegally in Warminster or not campaigning in Warminster at all. See Patriot Party of Allegheny Co. v. Allegheny Co. Dep't of Elections, 95 F.3d 253, 257 (3d Cir. 1996). Because the Ordinance requiring a bond still exists, the possibility remains that this controversy will rise again. See Id. If, as alleged by O'Neill, the Warminster statute does violate the First Amendment, this case is capable of repetition while evading review. Accordingly, the case is not moot and Warminster's Motion to Dismiss is denied.

**MOTIONS FOR SUMMARY JUDGMENT AGAINST
WARMINSTER & LOWER SOUTHAMPTON**

By this Court's Order, Defendants were to answer O'Neill's Complaint by January 2, 2001. Warminster filed its Motion to Dismiss on January 2, 2001. Lower Southampton answered the Complaint on January 9, 2001. O'Neill filed a Motion for Default Judgment against Lower Southampton which the Court denied on February 1, 2001. O'Neill's Motion for Reconsideration of the Court's Order denying the Motion for Default Judgment was Denied on March 14, 2001. O'Neill now seeks Summary Judgment against

Warminster and Lower Southampton solely because they did not file Answers to his Complaint by January 2, 2001.

A motion to dismiss for failure to state a claim is to be presented prior to filing an answer to a complaint. Fed. R. Civ. P. 12(b). Accordingly, once Warminster's Motion to Dismiss was filed, the time to file its Answer was tolled. Warminster's Motion to Dismiss was filed fully in compliance with Rule 12(b), therefore, O'Neil's Motion for Summary Judgment against Warminster is denied.

O'Neill's Motion for Summary Judgment against Lower Southampton addresses only Lower Southampton's seven day delay in filing its Answer. O'Neill has already asserted this position in his Motion for Default Judgment and Motion for Reconsideration. As stated in denying O'Neill's previous Motions, the Court favors reaching a decision upon the merits of a case, particularly where the potential outcome of this case is so important. (Order March 14, 2001). Accordingly, O'Neill's Motions for Summary Judgment against Lower Southampton is denied.

O'NEILL'S MOTION IN OBJECTION

O'Neill's Motion in Objection consists solely of a brief filed in another case and an order in that case. It is not clear what relief, if any, O'Neill seeks. While it is possible that O'Neill may have intended this document to serve as a Motion for Summary Judgment, he has previously proven that he is aware of

the summary judgment procedure. The Court will consider this filing as merely a supplement to the record in this matter. The Motion in Objection is dismissed without prejudice to allowing O'Neill to refile the Motion with an appropriate request for relief.

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O R D E R

AND NOW, this day of May, 2001, in consideration of:
(1) the Motion to Dismiss (Doc. No. 19) of Defendant, Warminster Township ("Warminster"); (2) the Motion of Plaintiff, Bill O'Neill ("O'Neill") for Summary Judgment (Doc. No. 27) against Defendant, Lower Southampton Township (Lower Southampton"); (3) the Motion of O'Neill for Summary Judgment (Doc. No. 25) against Warminster; and (4) a document entitled a "Motion in Objection" (Doc. No. 36), filed by O'Neill, as well as the various Responses filed by the parties in this matter, it is ORDERED:

1. The Motion to Dismiss of Warminster is DENIED.
2. O'Neill's Motion for Summary Judgment against Lower Southampton is DENIED.
3. O'Neill's Motion for Summary Judgment against Warminster is DENIED.

4. O'Neill's Motion in Objection is DISMISSED without prejudice.

BY THE COURT:

JAMES MCGIRR KELLY, J.