STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

BOARD OF ELECTIONS
2000 Plainfield Pike Suite A
Cranston, RI 02921
(401) 222-2345
www.elections.ri.gov

STATE OF RHODE ISLAND
BOARD OF ELECTIONS

IN THE MATTER OF: BRIAN DUNCKLEY and STEVEN B. MEROLLA

DECISION and ORDER

This matter was heard on July 2, 2020 before the Board of Elections ("Board") on the complaint filed by Brian Dunckley ("Dunkley") objecting to the endorsement by the Senate District 31 Democratic Party Committee (the "Committee") of Steven B. Merolla ("Merolla"). The matter was heard on an expedited basis, bypassing the standard procedure of having the matter first heard and decided by the local canvassing authority. The Board voted to expedite the hearing since any delay could adversely affect a candidate's ability to procure 100 valid signatures by the deadline of July 10, 2020, pursuant to R.I. Gen. Laws § 17-14-7(d).

I. SUMMARY OF COMPLAINT AND RELEVANT FACTS

R.I. Gen. Laws § 17-12-9 requires local party committees to meet during the month of January on odd-numbered years in order to "organize" themselves, including electing up to three officers. Under R.I. Gen. Laws § 17-12-9(c), "Each city committee, town committee, and district committee, within ten (10) days after its organization, shall file with the secretary of state and with the local board a list of its officers and members." Pursuant to R.I. Gen. Laws § 17-12-9, the Committee met to organize on Thursday, January 31, 2019. The tenth day, on which the filing was ordinarily due, was Sunday, February 10, 2019. Thus, the filing was due on February 11, 2019. The Committee filed its list of officers the following day, on February 12, 2019.

On June 24, 2020, the Committee met to consider which of the Democratic candidates for Senate District 31 it would endorse, and it decided to endorse Merolla. Dunckley, an opponent of Merolla, filed this challenge on June 29, 2020. Dunckley challenges the legal authority of the Committee to endorse Merolla, arguing that because the Committee filed its list of officers late, it was never properly constituted and its endorsement is void.

While the relevant facts, recited above, are not in dispute between the parties, Merolla has raised several legal challenges to the complaint, which are now discussed.

II. ANALYSIS

A. Standing

Merolla alleges that Dunckley lacks standing to bring this challenge to the Committee's operations. The key requirement for standing is that the plaintiff must have an "injury in fact, economic or otherwise" resulting from the action or proposed action of another which one seeks to enjoin, or from a statute or ordinance one seeks to overturn. *See R.I. Ophthalmological Soc'y v. Cannon*, 317 A.2d 124, 129 (R.I. 1974). This injury must be "(a) concrete and particularized . . . and (b) actual or imminent, not conjectural or hypothetical." *See Warfel v. Town of New Shoreham*, 178 A.3d 988, 991 (R.I. 2018) (internal citation omitted); *see also Harrop v. R.I. Div. of Lotteries*, No. PC-2019-5273, 2019 WL 6768536 at *1, *2-5 (R.I. Super. Ct. Dec. 5, 2019) (discussing separate elements of injury in fact in detail). A plaintiff must allege "his personal stake—his own injury in fact—before he will have standing to assert the broader claims of the public at large." *Cannon*, 317 A.2d at 130. Additionally, the Rhode Island Supreme Court has acknowledged an exception to the requirement of standing, holding that standing is conferred "liberally when matters of substantial public interest are involved," including candidate eligibility. *See Gelch v. State Bd. of Elections*, 482 A.2d 1204, 1207 (R.I. 1984).

Dunckley is not merely a member of the public, but a candidate. As a candidate who is eligible for endorsement by the Committee, Dunckley has an interest in the functioning of the Committee, separate from the interest held by members of the public. Its action, if ultra vires, leaves Dunckley with a concrete and particularized, actual injury. *See Cannon*, 317 A.2d at 129. Additionally, the functioning of a local party committee such as the Committee is a matter of substantial public interest. *See Gelch*, 482 A.2d at 1207.

Finally, our governing authority, Title 17 of the General Laws, includes a number of statutes that allow for a number of challenges in the elections process, including, amongst others, challenges to nomination papers, candidate eligibility, and even the results of an election. In each instance, the General Assembly has afforded candidates with the right to bring such challenges, thereby recognizing that candidates have standing above that of the general public.

For each of these reasons, Dunkley has the legal standing to pursue this challenge.

B. Laches

Merolla alleges that Dunckley unduly delayed in bringing his challenge, by waiting until the endorsement. Though Merolla does not refer to this as a laches argument, it appears to be an argument of laches.

Laches is "an equitable defense that precludes a lawsuit by a plaintiff who has negligently sat on his or her rights to the detriment of a defendant." *O'Reilly v. Town of Glocester*, 621 A.2d 697, 702 (R.I. 1993) (citing *Fitzgerald v. O'Connell*, 386 A.2d 1384, 1387 (R.I. 1978)). Courts may, in their discretion, apply this defense to cases that meet a two-pronged test: "[f]irst, there must be negligence on the part of the plaintiff that leads to a delay in the prosecution of the case. . . . Second, this delay must prejudice the defendant." *See Hazard v. East Hills, Inc.*, 45 A.3d 1262, 1270 (R.I. 2012) (quoting *Sch. Comm. of Cranston v. Bergin–Andrews*, 984 A.2d 629, 644 (R.I.2009)). In this case, Dunckley did not unduly delay. Even accounting for the fact that his challenge is to the authority of the Committee, he obtained standing to bring this complaint by virtue of his position as a candidate—a position which he could not have obtained until, at the earliest, June 22, 2020. *See* R.I. Gen. Laws § 17-14-1 (limiting declarations period to "the last consecutive Monday, Tuesday, and Wednesday in June in the even years"). Dunckley brought his complaint within days of becoming eligible to do so. The notion that Dunckley unduly delayed is rejected.

C. Section 17-12-9(c)

The focus of the Board's attention is on the language of R.I. Gen. Laws § 17-12-9(c) and the question of whether the Committee's delay in filing nullifies its legal authority to act and endorse candidates.

"The general rule is that statutory requirements comprising the essence of a statute are mandatory." *Town of Tiverton v. Fraternal Order of Police, Lodge No. 23*, 372 A.2d 1273, 1275 (R.I. 1977). Statutes directing private parties are generally considered mandatory. *Id.* at 1275-76 ("where a statute not only directs a private person to do things within a specified time but also conditions rights on the proper performance thereof, the statute is mandatory in nature and failure to comply is judged fatal.") However, "statutes imposing apparently mandatory time restrictions on public officials are often directory in nature." *New England Dev., LLC v. Berg*, 913 A.2d 363, 371 (R.I. 2007). Our courts have often looked to whether a given statute explicitly provides a remedy for the government's failure to meet that condition—"absent the provision of an explicit remedy accompanying the statutory directives, we cannot conclude that the General Assembly intended [for a provision directing public actors to be considered mandatory]." *See Whittemore v. Thompson*, 139 A.3d 530, 548-49 (R.I. 2016).

In this case, the filing deadline for the Committee is directory. It is imposed on a public body and is presumed to be directory. *See Berg*, 913 A.2d at 371. Moreover, nothing in § 17-12-9 dictates a consequence or penalty to a local party committee which will take place if a local party committee fails to file its list of candidates. It is true that

R.I. Gen. Laws § 17-12-12 imposes a consequence if a local party committee fails to *organize*, but notably the organization takes place at the meeting—the filing is performed "within ten (10) days *after its organization*." *See* R.I. Gen. Laws § 17-12-9(c). Thus, the Committee did not fail to organize, but rather failed to file. *See Berg*, 913 A.2d at 372 (holding that statute imposing consequence on planning board for failure to act within 120 days, at R.I. Gen. Laws § 45-23-40(e), did not apply where planning board acted but failed to issue a written decision, as required by R.I. Gen. Laws § 45-23-63). Finally, the essence of the governing statutes is to ensure that local party committees meet within the month of January in odd-numbered years so they are properly organized and constituted shortly after their elections. The time limitation of ten days is not essential to the overall statute, but rather is intended "to secure order, system and dispatch." *See Town of Tiverton*, 372 A.2d at 1275 (quoting *Providence Teachers Union, Local 958 v. McGovern*, 319 A.2d, 358, 364 (R.I. 1974)). Provisions such as this are typically directory in nature.

Dunckley concedes that this Committee was legally organized. He nonetheless seeks to nullify the endorsement of this Committee given that it one-day delay in filing its organization form. Such a severe consequence is neither contemplated by the language of R.I. Gen. Laws § 17-12-9 nor appropriate under the circumstances presented in this case.

III. CONCLUSION

For each of the reasons set forth above, and in accordance with the unanimous vote taken by the Board on July 2, 2020, the Complaint is hereby DENIED and DISMISSED.

So ORDERED, this 7th day of July, 2020:

(RR)

Diane C. Mederos

Diane C. Mederos, Chairwoman