

BOE dismisses Smith's protest

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MARVIN -- The Union County Board of Elections (BOE) dismissed Christopher Smith's election protest on Tuesday afternoon (Dec. 3) following a hearing on the protest that happened the day before.

Smith, who was a candidate for Mayor in Marvin, filed a protest on Nov. 15 alleging election laws were violated in the race for Mayor of Marvin. Smith was the sole candidate in the mayoral race until Election Day (Nov. 5), when incumbent Mayor Joe Pollino won as a write-in candidate by 18 votes; however, Pollino did not file as a write-in candidate with the Union County Board of Elections.

Smith was present at the meeting and Pollino was not.

Overview

All five members of the BOE voted to dismiss Smith's protest, citing two reasons.

First: Kenneth Helms, the attorney representing Pollino, Jamie Lein, Bob Marcolese and Kim Vandenberg presented at least eight affidavits to the board instead of having witnesses. Plus, the defendants were not present at the hearing; therefore, their testimonies were not heard.

Second: Members of BOE decided that there was insufficient evidence to prove that what Pollino, Lein, Marcolese allegedly did to intimidate Smith would have affected the outcome of the race.

Though Smith requested a new election, the board determined that the results of a new election would not be dissimilar from the election that happened in November.

Smith filed an election protest with the BOE and the North Carolina State Board of Elections on Nov. 15 claiming that Pollino, Lein, Marcolese and Mike Lavelle intimidated him into dropping out of the

mayoral race. Smith did not drop out of the race.

BOE comments

Shirley C. Bossbach (Vice-Chair): Bossbach said she felt like there were "plenty of wrongs on both sides." She did not appreciate the defendants not appearing at the hearing yesterday to testify. She said she believed that intimidation happened, but she said, "that's politics and it happens all the time." Adding that anyone who doesn't want to face intimidation, should reconsider getting into politics.

Bossbach said she believed the witnesses' testimonies, but wondered why they didn't call the police and report an encounter between Smith, Pollino, Lein, Marcolese and Lavelle after the planning board meeting on the eve of election day. She also wondered why Smith didn't report the encounter to the police the night it occurred.

The four men, according to Smith, encircled him at the end of a ramp leading to the town hall entrance. The four men reportedly yelled in Smith's face, expressing their disapproval of Smith's support for Mary Shkut, and that he no longer supported Lein and Marcolese.

Bossbach said calling for a new election would set a bad precedent. She said if the state board of elections were handling this case, they would not call for a new election.

Blanca A. Gonzalez said: "Even though it is unfortunate everything that happened and it is very sad. If we want to teach our children about bullies, we should start with us adults..." However, when looking at the information presented, Gonzalez said, that a new election would not produce different results and Smith's protest should be dismissed.

Sanford L. Steelman Jr. said it is the board's responsibility to assess the credibility of the evidence and witnesses presented.

"I would say it is difficult if not impossible to evaluate evidence in this case given by affidavit," Steelman said.

The defendants did not appear at the hearing, but their claims of what happened during the days leading to the Nov. 5 election were outlined in affidavits and given to BOE members at the hearing. The board's deliberation was delayed by one day to give them time to read the affidavits.

"I've got a problem assigning greater credibility to a piece of paper than to live testimony," Steelman said. "There has to be a nexus

between the irregularity or misconduct and the result of the election. An irregularity or misconduct alone is not sufficient."

He said the board was presented with "speculation" and speculation does not cast a level of doubt in the result of an election.

Tiffany Wilson said she did not "give a lot of weight to the affidavits."

"I kind of wanted to hear from some of these actual affidavits to address some of the issues and concerns that were brought up," Wilson said. She said it was clear to her that there was misconduct "possibly" from both sides, but she said she doubted if the misconduct changed the outcome of the election. She said she would have liked to have heard from someone who was not able to vote because of the misconduct.

Chairman Harry B. Crow Jr. said the bar, or standard with which Smith's counsel had to reach to prove that misconduct possibly changed the outcome of the election was "extremely high." He, like Steelman, said that "maybe" is not enough.

Crow said there was "simply not enough evidence to cast doubt on the results of the election."

Smith's lawsuit

Smith also filed a civil lawsuit on Nov. 22 against Pollino, Marcolese, Lein, Lavelle and Jon Jones (chair of the Village of Marvin Planning Board).

The Enquirer-Journal spoke with Smith after the BOE's decision on Tuesday afternoon. He said their dismissal of his protest would not affect the lawsuit. The information in the lawsuit is the same as the info in his protest and testimony.

"This was a tough election especially there at the very end and I think there was opportunity for the board to consider the level of misconduct that occurred and what happened to me, but also whether they thought it affected the outcome of the election," Smith said. "Obviously, I do. I was there.. But the board found what they thought was right. It was a close election and there will always be another."

"The lawsuit to me is about vindication," Smith said, "I want to see this through. What happened to me was wrong. That's not how Americans should behave in our electoral process."

Smith said he isn't bitter toward the community. "Marvin is a good place," he said. "It's full of wonderful people. It's a diverse community. I want to see this through, because I want to make Marvin better."

Former councilwoman Mary Shkut also filed an election protest on Nov. 18. Her protest stated that she was told by an employee of the Board of Election that for her votes to count as a write-in candidate, she had to file as a write-in candidate. However, incumbent Mayor Joe Pollino did not file as a write-in candidate, yet his votes counted and he won the mayoral race.

Shkut's protest, like Smith's, was dismissed. Hers was dismissed because of a stipulation in North Carolina's General Statutes that say certain rules about write-in candidates do not apply to municipalities.

In her protest, Shkut explained that she told Marvin residents that votes for Pollino would not count because he did not file with the BOE as a write-in candidate which she says caused some residents to not vote. Shkut said her information came from an employee of the BOE.

The BOE met on Nov. 25 to review Shkut's protest in a preliminary consideration hearing. After the hearing, the Enquirer-Journal caught up with Shkut.

"I'm just glad that the board read through [her] protest," she said. Adding that she knew there was a "slim chance" that the board would "take it up on a formal appeal."

"But I did feel somewhat responsible for conveying information and that disappointed people and hearing back from people that it altered their actions that day made me feel responsible and I felt like the only thing I could really do was as least put it down on paper for the board's consideration," Shkut said.

She said she has known Smith for a year and feels that he has been "objective" in getting to know all members of village council.

She said when Smith approached her about her becoming a write-in candidate that he had done an "independent assessment" without being frivolous. She said she was "flattered" by his suggestion. However, she is "disheartened" that the state of politics in Marvin has risen to "thunderdome politics." She said these days, the politics in Marvin rarely allow for civility and free thought.

When asked if there could ever be a time when the Village of Marvin can have peace and breathe for a little while sans contention from local politics, Shkut said she wished she knew the answer.

"I don't know that it will happen unless people decide that that's what they want and they vote accordingly and they step forward and run even more than vote....," Shkut said.

Shkut mentioned a conversation she had with Smith where he allegedly said, "all I did was run for mayor. That's all I did."

Shkut was present for both preliminary consideration hearings for her protest and Smith's. She was also at the hearing on Monday and at the meeting on Tuesday.

Attempts by The Enquirer-Journal to contact Pollino, and his attorney, for comment were unsuccessful.

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