

**COZEN O'CONNOR**

By: James Gardner Colins, Esquire  
Attorney I.D. No. 10089  
1900 Market Street, 4th Floor  
Philadelphia, Pennsylvania 19103  
Telephone: (215) 665-4733  
Facsimile: (215) 701-2035

**In Re: Nomination Papers Of James  
D. Schneller as Candidate for the  
United States Congress in the Seventh  
District**

**Attorney for Objectors**

**IN THE COMMONWEALTH COURT OF PENNSYLVANIA**

In Re: Nomination Papers Of James D.  
Schneller as Candidate for the United States  
Congress in the Seventh District

NO.

Patricia A Wechsler and Ernest S. Angelos,  
  
Objectors.

**PETITION TO SET ASIDE THE NOMINATION PAPERS  
OF JAMES D. SCHNELLER**

RECEIVED AND FILED  
COMMONWEALTH COURT  
OF PA (PHILA)  
2010 AUG -9 P 2:24

Objectors, having thoroughly reviewed the nomination petitions filed by James D. Schneller regarding his candidacy for The United States Congress in the Seventh Congressional District of the Pennsylvania General Assembly, and finding such papers to have throughout them signatures and other necessary information written in identical handwriting, signed by voters who are not registered to vote in the Seventh Congressional District, and/or collected by circulators who are not qualified to circulate such nominating papers, among other inadequacies and deficiencies, hereby petitions this Court to strike those invalid signatures and remove James D. Schneller from the November 2 general election ballot, for having failed to gather 4,200 valid signatures in support of his nomination papers, and in support thereof aver as follows:

## **PARTIES, JURISDICTION AND VENUE**

1. Objectors Patricia A. Wechsler and Ernest S. Angelos are qualified electors residing in the Seventh Congressional District. Wechsler resides at 19 S. Rolling Road in Springfield, PA and is a registered voter in the Seventh Congressional District not affiliated with any political party; and Angelos resides at 3 Pickering Trail in Thornton, PA and is a registered Republican voter.

2. James D. Schneller has filed nominating papers seeking the a ballot position for himself as a member of the "American Congress Party" to vie for election to the United States Congress from the Seventh Congressional District.

3. Challenges to such nominating papers may be filed by any qualified elector under 25 P.S. § 2937, which governs the procedures for such challenges.

4. Pursuant to 42 P.S. § 764, the Commonwealth Court of Pennsylvania is the proper venue for a challenge to the nominating papers of a candidate for the United States Congress.

## **FACTUAL BACKGROUND**

5. James D. Schneller filed nominating papers on August 2, 2010, seeking the nomination of the American Congress Party to the office of Representative in the General Assembly for the Seventh Congressional District.

6. To appear as a candidate on the 2010 general election ballot, Schneller must present at least 4,200 valid signatures from registered voters in the Seventh Congressional District. 25 P.S. § 2911(b) requires that "the number of qualified electors of the electoral district signing such nomination papers shall be at least equal to two per centum of the largest entire vote cast for any officer, except a judge of a court of record, elected at the last preceding election in

said electoral district for which said nomination papers are to be filed, and shall be not less than the number of signers required for nomination petitions for party candidates for the same office.” Based on conversations with the Department of State and our review of the vote totals in 2008, that number is exactly 4,200.

7. Upon information and belief, more than 4800 signatures were gathered by Democratic Party Leaders, Democratic activists and Bryan Lentz campaign workers in a conspiracy to undermine the electoral process by propping up the sham candidacy of third party candidate James D. Schneller.

8. Schneller’s nominating papers contain 263 pages, presenting 8,130 signatures. The nominating papers are attached as Exhibit “A” to this Petition.

#### **INVALIDITY OF THE NOMINATING PAPERS AS A WHOLE**

9. Section 952 of the Election Code, 25 P.S. §2912, requires that “All nomination papers shall specify ... (d) the names and addresses of the committee, not to be less than three (3) nor more than five (5) persons, authorized to fill vacancies, if any shall occur.”

10. The Schneller nominating papers list four names, including Deborah A. Hughes, of 201 Rushley Way in Middletown Township.

11. As verified by her affidavit attached in Exhibit “B”, Hughes is one of four board members who lead the Delaware County Patriots, the major local Tea Party organization in the Seventh Congressional District.

12. Because of her credibility and leadership in the Tea Party movement, Hughes’ placement on the nominating papers served to establish Schneller’s credibility as a candidate and induce fellow activists to sign the nominating papers.

13. Based upon a news report from the Delaware County Daily Times published August 5, 2010, at the latest Schneller had knowledge of Democrats gathering nominating petitions on his behalf when his campaign had a set of such nominating papers notarized on Sunday, August 1, 2010.

14. Immediately upon learning of this pervasive support, Hughes asked Schneller to remove her from his Committee to Fill Vacancies, as she would have never agreed to serve on the committee had she known of his support from the Democratic Party and Lentz.

15. Similarly, signers of the nominating papers were deceived by not having knowledge of the pervasive support Schneller received from Lentz and the Democratic Party were therefore defrauded and fraudulently induced into signing Schneller's nominating papers..

16. Because of this misrepresentation visited upon his signers, Schneller's nominating papers must be rejected as a whole.

#### **BASIS FOR OBJECTIONS**

17. Section 951(c) of the Election Code, 25 P.S. §2911(c), lists the requirements for each signer of a Nominating Paper. Each signer must:

- a) declare therein that he is a qualified elector of the State or district, as the case may be,
- b) add to his signature his legibly printed name and residence, giving city, borough or township, with street and number, if any, and shall also add the date of signing, expressed in words or numbers: Provided, however, That if said political district named in the papers lies wholly within any city, borough or township, or is coextensive with same, it shall not be necessary for any signer of a paper to state therein the city, borough or township of his residence.
- c) sign no more than one nomination paper for each office to be filled, unless there are two or more persons to be elected to the same office, in which case he may sign nomination papers for as many candidates for such office as, and no more than, he could vote for at the succeeding election.

18. Section 951(d) of the Election Code, 25 P.S. §2911(d), lists the requirements for each circulator of a Nominating Paper. Each circulator must provide his or her residence, including city, with street and number, and affirm via affidavit as follows:

- a) that the circulator is a qualified elector;
- b) that the circulator is duly registered and enrolled as a member of the designated party of the State, or of the political district, as the case may be, referred to in said petition;
- c) that the signers thereto signed with full knowledge of the contents of the petition;
- d) that each signer's respective residence is correctly stated therein;
- e) that each signer resides in the county named in the affidavit;
- f) that each signer signed on the date set opposite his or her name; and
- g) to the best of the circulator's knowledge and belief, each signer is a qualified elector, duly registered and enrolled in the designated party and district.

#### **NOTARIAL OBJECTIONS**

19. Upon information and belief, Objectors assert that 92 pages of the Schneller nominating papers were not properly notarized because the signers did not present themselves before a notary.

20. On August 5, 2010, the Delaware County Daily Times, in reporting on the controversy regarding Democratic assistance in Schneller's petition gathering, noted as follows: "Schneller said he didn't know Democrats were collecting signatures for him until Sunday, when his campaign had the petitions notarized."

21. Schneller's assertion strongly implies that nominating papers notarized on Sunday, August 1, 2010, were not signed by their circulators in the presence of a notary, but merely notarized in bulk.

22. Section 951(d) of the Election Code, 25 P.S. §2911(d), and the explicit text on a nominating paper's circulator affidavit require that the circulator sign the affidavit in the notary's presence.

23. Objectors have determined that 92 pages of nominating papers circulated by Democratic operatives Richard Cairns, Arthur Manos, Joseph Gallagher and Rocco Polidoro were notarized along with Schneller's own by Kristen Marie Kepics of Philadelphia, PA, on August 1, 2010. These pages are: 1; 51; 53-55; 61-62; 65-73; 77-80; 83-90; 93-97; 101-103; 105-111; 117-129; 131-151; 157-161; 171; 173-174; 184; 252-253; 254-255; and 259.

24. All ninety-two pages, containing 3,481 signatures, must be stricken as invalid for failure to be notarized properly.

#### **FURTHER SPECIFIC LINE OBJECTIONS TO THE SCHNELLER PETITIONS**

25. Having thoroughly reviewed the Petitions attached as Exhibit "A", Objectors assert that Schneller has failed to meet the requirement of presenting 4,200 valid signatures of qualified electors resident in the Seventh Congressional District, collected by circulators who themselves are qualified electors resident in the Seventh Congressional District.

26. **In sum, needing to present only 4,200 valid signatures while submitting 8,130, James Schneller has filed only 1205 legally valid signatures.** Fully 6,926 are defective in at least one way, and often in multiple ways.

27. This petition now reviews the inadequacies and deficiencies in the Schneller petitions, as categorized by the type of error. Exhibit "C" to this Petition contains the same information, listing the objection(s) applicable as to each line.

#### **Indisputably Defective Signatures**

28. Many of the signatures gathered are defective on grounds that are easily assessed by the Court, being either facially defective or which can be confirmed by a glance at the data on the Commonwealth's SURE system. These signatures fall into one or more of the following categories:

29. **Signer Not Registered To Vote in the Seventh Congressional District:** Upon information and belief, the 1,561 signatures in Exhibit "C" with code NR represent signers who are not registered to vote in the Seventh Congressional District, and who thus are not qualified to sign nominating papers pursuant to 25 P.S. § 2911(c).

30. **Signer Is A Duplicate Schneller Signer:** Upon information and belief, the 16 signatures in Exhibit "C" with code DUPE represent signers who have signed Schneller's nominating papers twice, and whose second signature must be struck as invalid pursuant to 25 P.S. § 2911(c).

31. **Signer Has Signed Multiple Nominating Petitions/Papers:** Upon information and belief, the 197 signatures in Exhibit "C" with codes PET-L, PET-T and PET-C represent signers who have signed Schneller's nominating papers after having already signed a nominating petition for Bryan Lentz, Theresa Touey, and Gail Connor, respectively, in the Seventh Congressional District in 2010, and whose subsequent signature here must be struck as invalid pursuant to 25 P.S. § 2911(c) and 25 P.S. § 2937.

32. **Circulator Has Circulated Multiple Nominating Petitions/Papers:** Upon information and belief, the 1,144 signatures in Exhibit "C" with code CIR-L represent signatures on pages circulated by individuals who previously circulated nominating petitions on behalf of Bryan Lentz in the Seventh Congressional District in 2010, and whose subsequent circulation (and the signatures contained therein) must be struck as invalid.

33. **Signature Crossed Out:** Upon information and belief, the 422 signatures in Exhibit "C" with code STK represent signers whose signature line has been crossed out after signing, and whose signatures must therefore be stricken as invalid under 25 P.S. § 2911(c).

34. **Signature Line Is Missing Data:** Upon information and belief, the 266 signatures in Exhibit "C" with code DATA represent signers whose signature line is missing some data required by 25 P.S. § 2911(c), and whose signatures must therefore be stricken as invalid.

35. **Signature Line Includes Ditto Marks:** Upon information and belief, the 19 signatures in Exhibit "C" with code DTO represent signers whose signature line contains ditto marks, and is thus is missing some data required by 25 P.S. § 2911(c) and whose signatures must therefore be stricken as invalid.

36. **Signature Itself Is Not Signed:** Upon information and belief, the 185 signatures in Exhibit "C" with code SIG-PR represent signers who failed to provide a signature in the column where required but instead printed their names, and whose signature must be struck as invalid pursuant to 25 P.S. § 2911(c).

37. **Signature Post-Dates Notarization:** Upon information and belief, the 3 signatures in Exhibit "C" with code ID represent signers who signed after the nomination paper in question was notarized, and whose invalid date therefore requires that the signature must be struck as invalid pursuant to 25 P.S. § 2911(c).

38. **Circulator Not Notarized:** Upon information and belief, the 40 signatures in Exhibit "C" with code NOT, all on page 263 of the nominating papers, must be struck as invalid because the circulator's affidavit was not notarized; therefore, the signatures on that page must be struck as invalid pursuant to 25 P.S. § 2911(d).

39. **Signer From Wrong County:** Upon information and belief, the 1,628 signatures in Exhibit “C” with code CTY represent signers who have signed Schneller’s nominating papers while resident in a county other than that presented by the front page of the nominating petition, or have signed on pages containing signatures from other counties, and whose signature must be struck as invalid pursuant to 25 P.S. § 2911(d).

40. In total, 4,271 signature lines must be stricken on these facially obvious bases, and will not require detailed proof.

#### **Additionally Defective Signatures**

41. A further number of signatures gathered by Schneller and Democratic operatives reflect additional errors based on Objectors’ review but which will require further testimony or the judgment of the Court in order to confirm the invalidity of these lines.

42. **Wrong Address:** Upon information and belief, the 475 signatures in Exhibit “C” with code ADD represent signers whose given street address does not reflect the address at which he or she is registered to vote, which therefore requires that the signature must be struck as invalid pursuant to 25 P.S. § 2911(c).

43. **Wrong Municipality:** Upon information and belief, the 2,156 signatures in Exhibit “C” with code MUN represent signers whose given city, borough or township does not reflect the city, borough or township at which he or she is registered to vote, which therefore requires that the signature must be struck as invalid pursuant to 25 P.S. § 2911(c).

44. **Wrong Name/Nickname:** Upon information and belief, the 613 signatures in Exhibit “C” with code NICK represent signers whose given name does not reflect the name under which he or she is registered to vote, which therefore requires that the signature must be struck as invalid pursuant to 25 P.S. § 2911(c).

45. **Information in the Hand of Another:** Upon information and belief, the 240 signatures in Exhibit "C" with code HAND represent signers for whom certain information provided appears to be in the hand of another, which requires that the signature must be struck as invalid pursuant to 25 P.S. § 2911(c).

46. **Signature in the Hand of Another:** Upon information and belief, the 44 signatures in Exhibit "C" with code FORG represent signers for whom the handwriting in the signature line itself appears to be in the same handwriting as an adjacent signer, suggesting that one or both such signatures must be struck as invalid pursuant to 25 P.S. § 2911(c).

47. **Signature Illegible:** Upon information and belief, the 549 signatures in Exhibit "C" with code SIG-ILL represent signers whose signatures appeared to be illegible or indecipherable and therefore unverifiable, which requires that the signature must be struck as invalid pursuant to 25 P.S. § 2911(c).

48. **Other Information Illegible.** Upon information and belief, the 126 signatures in Exhibit "C" with code IL-OTH represent signers who presented other information on their signature lines in an illegible or indecipherable form and therefore unverifiable, which requires that the signature must be struck as invalid pursuant to 25 P.S. § 2911(c).

49. In all, 6,926 signatures must be stricken as invalid.

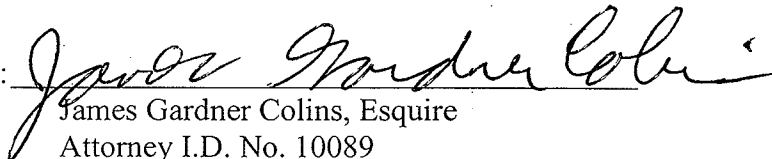
50. Having presented only 1,204 valid signatures, James D. Schneller has not qualified under the terms of the Election Code to appear on the November 2 ballot.

### **RELIEF**

51. Pursuant to 25 P.S. § 2937, Objectors hereby object to the nomination papers of James D. Schneller, are prepared to substantiate these objections via testimony and evidence presented at a prompt hearing as mandated by 25 P.S. § 2937, and seek to have the Schneller

nomination papers set aside in accordance with the governing law and Schneller removed from the November 2 ballot as a candidate for the United States Congress for the Seventh Congressional District, in addition to all other relief in law and equity which may be deemed just, including costs.

COZEN O'CONNOR

By: 

James Gardner Colins, Esquire  
Attorney I.D. No. 10089  
1900 Market Street, 4th Floor  
Philadelphia, Pennsylvania 19103  
Telephone: (215) 665-4733  
Facsimile: (215) 701-2035

Attorney for Objectors

Dated: August 9, 2010