

## What is Democracy?

Restraint is the father of wisdom. It has been very tempting to weigh in on the Montoursville Area High School dispute, given my role in representing the Option 6 candidates for a time. There is another component of the dispute which seems to have received less attention than it should, and that is the lesson in democracy.

When the Option 6 candidates first arrived in my office, I saw a group of highly motivated voters, taxpayers, and distressed citizens. Calls from citizen groups throughout the state is something I am very used to. Many of those calls involved school building projects, school closures, and transportation issues. I have handled those cases in both federal and state court. Over a course of years, many of these disputes boil down to simple democratic principles.

In Pennsylvania, there is a state law requiring school districts that are broken down into regions to reapportion after the 10-year census. What this simply means is what the courts refer to as “one person, one vote.” In the famous case of *Colegrove v. Green*, the Supreme Court of the United States counseled against courts entering the “political thicket” of reapportionment. Then came along the famous Earl Warren court and its decision in *Baker v. Carr*. *Baker v. Carr* said that constitutional principles are invoked when regions or districts with the same number of elected officials are disproportionate as to population.

The issue of reapportionment has not gone away. The United States Supreme Court, in *Evenwel v. Abbott*, will soon decide whether the quality between districts or regions is measured by people eligible to vote or the number of citizens. In handling reapportionment cases, our office always looked at both statistics. The repercussion of a decision as to whether districts are based upon the number of those registered to vote as opposed to the number of citizens can make a very big deal in the major metropolitan areas where there are lots of citizens who do not register to vote.

In Central Pennsylvania, we have many school districts that either were not aware of the Pennsylvania law requiring reapportionment or simply ignored it. In one case, I even had an election suspended until reapportionment took place, so reluctant was the school district to comply with the law.

We looked at the Montoursville Area School District, which is comprised of three regions, and found that there was some disparity between population. The Option 6 folks were seeking an injunction of the school building project pending reapportionment, once they learned of the disparity between population and the regions.

Quoting Judge Raup in a written opinion, I pointed out that frequently the best strategy is to “throw the bums out.” I said, “you can spend money on me, or you can spend money getting elected.” I suggested the latter.

The Option 6 candidates determined not to test reapportionment through an injunction, but rather to take my advice and get themselves elected. The primary was a truly remarkable experience and perhaps unprecedented in Pennsylvania. The Option 6 candidates won on both sides of the aisle, Republican and Democrat, and extremely overwhelmingly. It would seem that those who respect democracy would have immediately halted the school building project to let the new school board make a decision acceptable to the voters. However, that was not to be the case. The local judge denied an injunction to stop the building project, and a single judge of the Commonwealth Court followed suit.

Typically the Commonwealth Court sits as a three-judge panel, and had litigation continued, the three judges in the Commonwealth Court would have heard the matter and eventually the Pennsylvania Supreme Court would have sat in judgment.

The Option 6 candidates decided to save their money and make sure to get elected in November. This they did with acumen equal to the primary. The first thing the Option 6 candidates did when seated was to stop the school building project.

One of the judges who heard this matter said to me, "Cliff, what is this really all about? Why are you involved?" My response, perhaps somewhat naively, was "I am doing this at a very cut rate cost because I believe in democracy." I added, "I am for education, proper school facilities, but also for reasonable and affordable taxes." For me, the bottom line is complying with the will of the people. People do not always make the best decisions, but when they do, they should not be frustrated by those for whom sour grapes is the tastiest fruit.

Realizing that there is plenty of dissension with respect to what the Montoursville Area School District should do concerning its school buildings, the people have spoken and the civics lesson for our students is important. Interestingly, there are those who now worry that suspension of the project could jeopardize funding, impact student instruction, and result in a loss of construction jobs. There are those who worry about the legality of starting a construction project and then stopping it. What are the legal implications of the new board following the will of the people?

In opposition to these concerns, the question may be raised as to why the prior school board and those in a position to make important decisions did not have those concerns when it became obvious after the primary that the voters had a different idea as to how their money should be spent. Who should suffer, now that the people have spoken? Should the views of the voters be disregarded because the prior school board did its level best to tie the hands of the new school board? This will have to be decided by the new board based upon the will of the people.

The United States has spent a lot of time and money in Southeast Asia and the Middle East trying to create democracies and nations which have no hope of embracing democratic principles. When the Arabs on the West Bank of the Jordan River and in Gaza were given the right to elect their leaders, they chose terrorists and despots and no further elections have taken place. Now, no one in the administration is seriously talking about elections in any of the Muslim countries whom we have attempted to gentrify and sidle up to.

Given the experience of the United States since the end of World War II, we should be more respectful of democracy when in our own midst it yields results that the losers may not be thrilled about. It is hard medicine to swallow, but there can be no better instruction for our students and their parents.

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