

separate machine be placed at each polling place for each major political party is limited to situations where it is impossible or impracticable to place the names of all candidates seeking nomination in all parties on one machine. *Miller v. Reider*, 75 D. & C.2d 446, 98 Dauph. 179, 1976.

3. Party levers

Electors were not entitled to injunction to restrain city from utilizing voting machines employing state party voting levers on ground that voting instructions favored straight party voting to prejudice of independent candidates, where new instructions made clear to voter that he need not first pull a party lever before "splitting" his vote among other candidates. *Gilhool v. Chairman and Com'rs, Philadelphia County Bd. of Elections*, 306 F.Supp. 1202, D.C.1969.

In view of showing that voter wishing to vote for independent candidate for city council had just as many ways of voting for that candidate as he had for voting for candidate of one of regular political parties, electors seeking to enjoin use of party levers failed to sustain their burden of proving that use of party levers attained dimension of an "invidious discrimination" proscribed by the Federal Constitution. *Gilhool v. Chairman and Com'rs, Philadelphia County Bd. of Elections*, 306 F.Supp. 1202, D.C.1969.

A mandamus by nominee for councilman-at-large demanding that the election machines be so arranged that he might be voted for by means of a separate lever on a separate line, apart from and independent of all other offices being voted upon in the election, was dismissed, since the Election Code directs that the voting machines and ballot labels thereon be so arranged as to permit each voter to vote a straight political party ticket in one operation "for all the candidates of one political party for every office to be voted for". *Leon v. Philadelphia*, 9 D. & C.2d 706, 1958.

§ 3011. Preparation of voting machines by county election boards

(a) The county election board of each county shall cause the proper ballot labels to be placed on each voting machine which is to be used in any election district within such county; and shall cause

4. Political appellations

Provision of Act of 1893, June 10, P.L. 419, § 14, as amended, repealed, requiring listing of party appellations on ballot is mandatory, and must be complied with when voting machine is used by listing party appellations on lefthand column or top of machine. *Davidowitz v. Philadelphia County*, 187 A. 585, 324 Pa. 17, 1936.

Provision in Act of 1929, April 18, P.L. 549, as amended, repealed, authorizing Secretary of Commonwealth to determine form and arrangement of ballot labels on voting machines, "as nearly as may be in accordance with law and regulations of paper ballot, does not permit secretary to disregard mandatory provisions of Act of 1893, June 10, P.L. 419, § 14, as amended, repealed, relating to listing of party appellations. *Davidowitz v. Philadelphia County*, 187 A. 585, 324 Pa. 17, 1936.

Where number of political organizations participating in election was so large that not all parties could be provided with full row on voting machines, names of organizations without presidential candidates could be printed in type large enough to be clearly and quickly seen and placed one under the other in remaining rows for party names, followed by specific number and letter of ballot label where their candidates could be found unless number of parties was greater than remaining rows, in which event paper ballots would have to be used. *Davidowitz v. Philadelphia County*, 187 A. 585, 324 Pa. 17, 1936.

5. Laches

The fact that a violation of the form of the ballot was not attacked prior to the election will not defeat an action to declare the election invalid where a sample ballot had not been available for inspection prior to the election. In re Republican Election for Sup'rs of Derry Tp., 51 D. & C.2d 454, 94 Dauph. 73, 1971.

each machine to be placed in proper order for voting; shall examine each machine before it is sent out to a polling place; shall see that each registering counter, except the protective counter, on each machine is set at zero (000); shall lock each machine so that the counting machinery cannot be operated, and shall seal each machine with a numbered seal. The county election board or their duly authorized agent shall adjust each machine to be used at a primary election, so that the election officers may lock it on primary election day, in such a way that each voter can vote only for the candidates for nonpartisan nomination, if any, and for the candidates seeking nomination by the political party in which he is enrolled, if he is enrolled as a member of a political party, and so that no voter can vote for the candidates seeking nomination by any political party in which he is not enrolled.

(b) The county election board shall appoint one custodian of voting machines, and such deputy custodians as may be necessary, whose duty it shall be to prepare the machines to be used in the county at the elections to be held therein. Each custodian and deputy custodian shall receive from the county, for each day he is actually employed under the provisions of this act, such compensation as shall be fixed by the county election board, but not less than five dollars (\$5.00) per day. Such custodian shall, under the direction of the county election board, have charge of and represent the county election board during the preparation of the voting machines as required by this act, and he and the deputy custodians, whose duty it shall be to assist him in the discharge of his duties, shall serve at the pleasure of the county election board. Each custodian shall take the constitutional oath of office, which shall be filed with the county election board.

(c) On or before the fortieth day preceding an election, the county election board shall mail to the chairman of the county committee of each political party, which shall be entitled under existing laws to participate in primary elections within the county, and to the chairman or presiding officer of any organization of citizens within the county having as its purpose or among its purposes the investigation or prosecution of election frauds, which has registered its name and address, and the names of its principal officers with the county election board at least fifty (50) days before such election, a written notice stating the times when and the place or places where preparation of the machines for use in the several election districts in the county will be started. One representative of each of such political parties, certified by the respective chairmen of the county committees of such parties, and one representative of each such organization of citizens, certified by the respective chairmen or presiding officers of such organizations, shall be entitled to be present, during the prepa-

ration of the machines, and to see that the machines are properly prepared and are placed in proper condition and order for use. Provided, however, That such representatives shall not interfere with preparation of the machines, and the county board may make such reasonable rules and regulations governing the conduct of such representatives.

(d) The custodian and deputy custodians of voting machines shall make a certificate, in writing, which each shall sign, and request each representative of a party or a citizens organization as aforesaid, present at the preparation of the machine to attest, and which shall be filed with the county election board, stating—(1) the identifying number or other designation of the voting machine; (2) that each registering counter of the machine was set at zero (000); (3) the number registered on the protective counter or other device of the machine; and (4) the number on the seal with which the machine is sealed.

(e) No member of the county election board, nor custodian, nor other employe of the county election board, shall, in any way, prevent free access to and examination of all voting machines, which are to be used at the election, by any of the duly appointed representatives aforesaid; and the county election board and their employes shall afford to each such representative every facility for the examination of all registering counters, protective counters, and public counters of each and every voting machine.

(f) The county election board shall furnish, at the expense of the county, all ballot labels, forms of certificates, returns, and other papers and supplies, required under the provisions of this act, all of which shall be in the form, and according to the specifications, prescribed, from time to time, by the Secretary of the Commonwealth.

1937, June 3, P.L. 1333, art. XI, § 1111.

Library References

Elections § 222.

WESTLAW Topic No. 144.

C.J.S. Elections § 203.

P.L.E. Elections § 65.

§ 3012. Delivery of voting machines and supplies by county election boards to election officers

(a) The county election board shall deliver the proper voting machine or voting machines, properly furnished with ballot labels, to the polling places of the respective election districts, at least one hour before the time set for opening the polls at each election, and shall cause each machine to be set up in the proper manner for use in

voting. Each machine shall then remain sealed until the examination immediately preceding the opening of the polls prescribed by this act.

(b) The county election board shall provide ample protection against molestation of and injury to the voting machine, and, for that purpose, shall and may call upon any police or elected peace officer of this Commonwealth to furnish such assistance as may be necessary, and it shall be the duty of police and elected peace officers to furnish such assistance when so requested by the county election board.

(c) The county election board shall furnish, at the expense of the county, and deliver with each voting machine:

1. A lantern, or a proper substitute for one, which shall give sufficient light to enable voters, while in the voting machine booth, to read the ballot labels, and suitable for the use of election officers in examining the counters. The lantern, or proper substitute therefor, shall be prepared and in good order for use before the opening of the polls.

2. Two diagrams or sample ballots, of suitable size, representing such part of the face of such voting machine as will be in use in the election, and accompanied by directions for voting on the machine. Such diagrams shall be posted prominently outside the enclosed space within the polling place.

3. A mechanically operated model of a portion of the face of a voting machine, for the instruction of electors. Such model shall be placed in the polling place and at or outside of the guard-rail or barrier.

4. A seal, for sealing the machine after the polls are closed; an envelope for the return of the keys, if the construction of the voting machine shall permit their separate return; and such other election materials and supplies as may be necessary, or as may be required by law.

1937, June 3, P.L. 1333, art. XI, § 1112.

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Elections § 222.

WESTLAW Topic No. 144.

C.J.S. Elections § 203.

P.L.E. Elections § 65.

§ 3013. Election officers; polling places

(a) The election board in each election district in which a voting machine is used shall consist of a judge of election, two inspectors of election, and one clerk of election chosen by the minority inspector, as is provided by this act.