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On June 14, 2021 I was appointed substitute prosecutor in an investigation involving Mark L. Earley, Jr., who is a candidate for the Virginia House of Delegates in the 68th District. The matter being investigated was whether Mr. Earley violated Virginia law as it relates to the filling out of certain forms required of candidates for election. The investigation specifically focused on Code Section 24.2-1016, which makes it a Class 5 felony to willfully make a materially false statement on such forms.

A Special Agent with the Virginia State Police (VSP) Bureau of Criminal Investigation handled this matter. His extensive investigation did not reveal any willful, material, false statements made by Mr. Earley.

In order to qualify as a candidate for certain political office, a candidate must fill out certain forms. At issue in this case are two forms, the first is called a "Certificate of Candidate Qualification." This form requires the candidate to list the address at which he resides. The other form at issue in this inquiry is a "Statement of Economic Interests" wherein a potential candidate lists certain assets and creditors, among other things.

The first allegation made against Mr. Earley was that he was living outside of the 68th house district, specifically in a house he owned in the 69th district, located at 403 W. 24th St. In order to investigate this, the VSP agent performed surveillance of Mr. Earley, conducted numerous interviews with witnesses and Mr. Earley himself, and combed through a great number of documents. His investigation revealed that at no point after Mr. Earley filled out the Certificate of Candidate Qualification did he live at 403 W. 24th St. At the time he filled out the form, he lived at 10121 Uppingham Terrace, which is the address he listed on the form and is in the 68th District. Interviews with neighbors and others firmly established this fact. Mr. Earley indicated his specific reason for moving from the address at 403 W. 24th St. was to relocate into the district in which he intended to run for office. A relatively short time after he moved to the Uppingham Terrace address, Mr. Earley sold his house at 403 W. 24th St.

After living at the Uppingham Terrace address for just under two months, Mr. Earley and his family moved to 2517 Colton Drive in Chesterfield County. In order to verify he was actually living there, the VSP special agent conducted surveillance of Mr. Earley. He would follow him home from work and stay until nighttime when all the lights were out. He watched him do yard work, play in the yard with his family, and would watch his wife and children come and go. He interviewed neighbors, all of whom corroborated what the agent himself had witnessed, which is that Mr. Earley and his family live at that

address, not at 403 W. 24th St. as was alleged. In fact, the agent interviewed the new owner and resident of 403 W. 24th, whose only knowledge of Mr. Earley is that she bought his old house. Finally, Mr. Earley himself provided a statement to the investigator indicating that, when he decided to run for office in the 68th district, he and his wife and children moved in with his parents while he looked for a house. Once he found a house to buy in the 68th, he and his wife and kids moved there. All of this is consistent with the agent's observations, the interviews he conducted, and the documentary evidence he found. The bottom line is that the allegation that Mr. Earley lived at the 24th Street address in the 69th District while running for office in the 68th is unfounded.

The second allegation is that Mr. Earley violated Code Section 24.2-1016 by willfully making a false statement when he filled out his Statement of Economic Interests, specifically Schedule E of that document, which pertains to real estate. The form asks whether the candidate, or a member of his or her immediate family, separately or together, hold an interest valued at more than \$5,000 in real property. It reads "DO NOT INCLUDE your principal residence..." Mr. Earley checked the box marked "no."

The elements of Section 24.2-1016, each of which have to be proven beyond a reasonable doubt in order to result in a conviction, are (1) that the person made a false statement, (2) that it was material, and (3) that it was willful. On the day he filled out the form, Mr. Earley and his wife still owned their house at 403 W. 24th St. Certainly, this qualifies as an "interest" in the real estate at that address. Furthermore, at the time he filled out the form, he was living at 10121 Uppingham Terrace. Therefore, the first element can be established. His statement, by way of that check mark, is false.

The next element I will address is the willfulness requirement. This can be somewhat difficult to establish as it requires an analysis of the mental state of the actor. However, this analysis is not unique to this particular code section. When the VSP agent asked to speak to Mr. Earley, he agreed to waive his right to remain silent and spoke to the agent without representation. He indicated to the agent that he had personally filled out the forms and then had them checked by his campaign manager. He further indicated that he had made a mistake in checking the box he did. Even though he had moved from that address recently, it did not dawn on him when he filled out the form that it was no longer his primary residence.

There is no indication in the agent's extensive investigation that Mr. Earley's mistake claim is false. Furthermore, Mr. Earley had nothing to gain by intentionally being deceptive as to the status of his prior residence. As I previously addressed, he did not, in fact, live there any longer. So it is not as if he was using this inaccuracy to hide his actual residence. There is nothing in the investigative file that would lead a reasonable reader to believe there is anything nefarious about Mr. Earley's ownership of his prior residence. There are no apparent relationships he was trying to conceal, nothing unusual or suspicious about his and his wife's ownership of that home. Rather, all of the available evidence leads to the conclusion that his checking the wrong box was unintentional. The statute only seeks to punish willful deception. Therefore, the facts revealed in the investigation do not support a criminal charge against Mr. Earley. An analysis of the materiality element is unnecessary as each statutory element must be proven beyond a reasonable doubt, and there is no indication his false statement was willful.

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