

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

In Re: Nomination Petition of Joseph :
Maurizi as Candidate for Member of :
the Democratic State Committee for :
the 45th Senatorial District of :
Allegheny County (District 245) : No. 184 M.D. 2022
: Heard: April 7, 2022
Objections of: Darlene McCreary :
Schrello and Colleen McCreary :
Seiler :

BEFORE: HONORABLE MICHAEL H. WOJCIK, Judge

MEMORANDUM and ORDER

Presently before the Court is the Petition to Set Aside the Nomination Petition of Joseph Maurizi (Candidate) as a candidate for nomination to the office of Member of the Democratic State Committee for the 45th Senatorial District of Allegheny County (District 245) in the General Primary Election (Primary Election) to be held on May 17, 2022. On April 4, 2022,¹ Darlene McCreary Schrello and Colleen McCreary Seiler (Objectors) filed the Petition to Set Aside Candidate’s Nomination Petition in this Court.

Pursuant to Section 912.1(30) of the Pennsylvania Election Code (Election Code),² a candidate for the office of Member of the State Democratic

¹ Pursuant to the Pennsylvania Supreme Court’s order in *In re: Petition for Review Challenging the Final 2021 Legislative Reapportionment Plan* (Pa., No. 569 Judicial Administrative Docket, filed March 16, 2022), Candidate was required to circulate and file his Nomination Petition with the Secretary of the Pennsylvania Department of State (Secretary of the Commonwealth, or Secretary) on or before March 28, 2022. Pursuant to that same order, Objectors were required to file their Petition to Set Aside in this Court on or before April 4, 2022. *See id.*

² Act of June 3, 1937, P.L. 1333, added by the Act of December 12, 1984, P.L. 968, *as amended*, 25 P.S. §2872.1(14). Section 912.1(14) of the Election Code states: “Candidates for **(Footnote continued on next page...)**”

Committee must present at least 100 valid signatures of registered and enrolled electors of the candidate’s political party. On or before March 28, 2022, Candidate filed a Nomination Petition with the Secretary of the Commonwealth to appear on the Primary Election ballot for that office consisting of 7 pages containing 106 signatures of presumably qualified electors.

On April 4, 2022, Objectors filed the Petition to Set Aside Candidate’s Nomination Petition in this Court alleging, *inter alia*, that the Nomination Petition contains fewer than the required 100 signatures, contesting the validity of 17 signatures appearing therein. Specifically, in relevant part, Objectors contend that 6 of the signatures on the Nomination Petition are those of electors who are either not registered members of the Democratic Party,³ or are not registered members of the Democratic party at the addresses provided on the Nomination Petition by those electors.⁴ In addition, Objectors contest 10 signatures on pages of the Nomination

nomination of offices as listed below shall present a nominating petition containing at least as many valid signatures of registered and enrolled members of the proper party as listed below: . . . Member of State committee: One hundred.”

³ Section 907 of the Election Code states, in relevant part, that a candidate’s nomination petition “shall be . . . signed by duly registered and enrolled members of such party who are qualified electors . . . of the political district . . . within which the nomination is to be made . . .” 25 P.S. §2867. In addition, Section 908 of the Election Code states, in pertinent part: “Each signer of a nomination petition . . . shall declare therein that he is a registered and enrolled member of the party designated in such petition . . .” 25 P.S. §2868. As a result, the signatures of electors who are not registered and enrolled members of the Democratic Party appearing on Candidate’s Nomination Petition are invalid and will be stricken. *In re Morrison-Wesley*, 946 A.2d 789, 795-96 (Pa. Cmwlth.), *aff’d*, 944 A.2d 78 (Pa. 2008); *Petition of Thompson*, 516 A.2d 1278, 1280 (Pa. Cmwlth. 1984).

⁴ Section 908 of the Election Code also states, in relevant part: “Each signer of a nomination petition . . . shall add his address where he is duly registered and enrolled, giving city, borough or township with street and number, if any . . .” 25 P.S. §2868. The Supreme Court has recently stated: “We now hold the [Election Code] as amended plainly and unambiguously **(Footnote continued on next page...)**”

Petition in which the electors added a date that is out of sequence with the date of the surrounding signatures on that page,⁵ and 1 signature that bears a date outside of the period in which the Nomination Petition could have been circulated in accordance with the Supreme Court’s order.⁶

requires the signer to use the address where he or she is duly registered and enrolled, on pain of disqualification of the signature.” *In re Major*, 248 A.3d 445, 454 (Pa. 2021).

⁵ Section 908 of the Election Code further states, in pertinent part: “Each signer of a nomination petition shall . . . add the date of signing, expressed in words or numbers.” 25 P.S. §2868. In *In re Nomination Petition of Silcox*, 674 A.2d 224, 225 (Pa. 1996), our Supreme Court explained that we are constrained by the clear, unambiguous words of the Election Code to strike a signature line as invalid where the elector fails to add the date of signing. *See also Morrison-Wesley*, 946 A.2d at 795 (“The failure to provide the date of one’s signing violates Section 908 of the Election Code and thus invalidates the signature. The date is essential to determine the validity of the signature.”) (citation and footnotes omitted). However, the signatures appearing on Candidate’s Nomination Petition do not need to be in chronological order so long as they are dated between March 18, 2022, and March 28, 2022, the dates during which the Nomination Petition could be circulated pursuant to the Supreme Court’s order in *In re: Petition for Review Challenging the Final 2021 Legislative Reapportionment Plan* (Pa., No. 569 Judicial Administrative Docket, filed March 16, 2022), *See, e.g., In re Robertson*, 55 A.3d 1044, 1045 (Pa. 2012) (“[T]he interspersal of the challenged signatures among other dated in 2012 supports a common sense deduction that the challenged signatures also occurred in that year and negates any concern that the omission ‘calls into question the identity of the signatory or compromise the integrity of the election process.’”) (citation omitted); *In re Nomination Petition of Brown*, 846 A.2d 783, 789-90 (Pa. Cmwlth. 2004) (“[T]he [o]bjectors set forth 63 additional challenges, contending that the signatures are invalid because the dates recorded by the signers are out of sequence.[] However, this court has upheld signatures that appear out of sequence. *See [In re] Delle Donne*, 779 A.2d 1 (Pa. Cmwlth.), *aff’d*, 777 A.2d 412 (Pa. 2001)]; *In re Freeman*, [540 A.2d 606 (Pa. Cmwlth. 1988)] (stating that it is not necessary for signatures to appear in chronological order). Thus, the challenged signatures are valid.”) (footnote omitted).

⁶ Finally, Section 908 of the Election Code states, in relevant part, that “[n]o nomination petition shall be circulated prior to the thirteenth Tuesday before the primary, and no signature shall be counted unless it bears a date affixed not earlier than the thirteenth Tuesday nor later than the tenth Tuesday prior to the primary.” 25 P.S. §2868. As noted above, the Primary Election is to be held on May 17, 2022. As a result, in a normal election year, no signature should be considered to be valid unless it bore a date between February 15, 2022, and March 8, 2022. *See, e.g., In re Referendum for Sunday Motion Picture Exhibitions*, 117 A.2d 699, 701 (Pa. 1955) **(Footnote continued on next page...)**

On April 4, 2022, this Court entered a Scheduling and Case Management Order scheduling a hearing on the Petition to Set Aside for April 7, 2022, at 9:30 a.m.,⁷ and imposing certain duties and obligations upon Objectors and

(“[T]he first day upon which signatures could be taken to a petition for a motion picture referendum at the 1955 municipal election was August 20th. But the signatures to the petition in the instant case were . . . obtained between June 2 and August 15, 1955. Consequently, none of the signatures to the petition was entitled to be counted. The express prohibition in Section 908 of the Election Code so dictated.”).

Nevertheless, as outlined above, pursuant to the Supreme Court’s order in *In re: Petition for Review Challenging the Final 2021 Legislative Reapportionment Plan* (Pa., No. 569 Judicial Administrative Docket, filed March 16, 2022), Candidate could not circulate his Nomination Petition before March 18, 2022, and was required to file his Nomination Petition with the Secretary of the Commonwealth on or before March 28, 2022. As an intermediate appellate court, we are compelled to enforce the Supreme Court’s order, and to determine as invalid any signature that was not obtained during that period of time. *See* Pa. Const. art. V, §1 (“The judicial power of the Commonwealth shall be vested in a unified judicial system consisting of the Supreme Court, the Superior Court, the Commonwealth Court, courts of common pleas, community courts, municipal courts in the City of Philadelphia, such other courts as may be provided by law and justices of the peace.”); Pa. Const. art. V, §2 (“The Supreme Court [] shall be the highest court of the Commonwealth and in this court shall be reposed the supreme judicial power of the Commonwealth.”); Pa. Const. art. V, §10(a) (“The Supreme Court shall exercise general supervisory and administrative authority over all the courts and justices of the peace”); Section 501 of the Judicial Code, 42 Pa. C.S. §501 (“The [Supreme C]ourt shall be the highest court of this Commonwealth and in it shall be reposed the supreme judicial power of the Commonwealth.”); Section 502 of the Judicial Code, 42 Pa. C.S. §502 (“The Supreme Court shall have and exercise the powers vested in it by the Constitution of Pennsylvania, including the power generally to minister justice to all persons and to exercise the powers of the [C]ourt, as fully and amply, to all intents and purposes, as the justices of the Court of King’s Bench, Common Pleas and Exchequer, at Westminster, or any of them, could or might do on May 22, 1722. The Supreme Court shall also have and exercise . . . [a]ll powers necessary or appropriate in aid of its original and appellate jurisdiction which are agreeable to the usages and principles of law[, and t] he powers vested in it by statute, including the provisions of this title.”).

⁷ The Supreme Court’s April 4, 2022 order in *In re: Petition for Review Challenging the Final 2021 Legislative Reapportionment Plan* (Pa., No. 569 Judicial Administrative Docket, filed April 4, 2022), directed this Court to hold all hearings on objections that have been filed to nomination petitions, and to render decisions in cases involving objections to nomination petitions, on or before April 13, 2022. Nevertheless, as that Court has previously explained:

(Footnote continued on next page...)

Candidate.⁸ Specifically, therein: (1) Objectors were ordered to secure the services of a court stenographer and a Statewide Uniform Registry of Electors (SURE)

Our adjustment of the primary election calendar does not alter the discretion vested in the Commonwealth Court, which will be tasked in its original jurisdiction with hearing any objections to nominating petitions. [Section 977 of t]he Election Code provides a very restrictive time schedule, specifically including a ten[-]day cut-off for hearings and a fifteen[-]day deadline for decisions. 25 P.S. §2937. However, this Court recognized that appeals of this nature entail the “exercise of purely judicial functions.” *In re Nomination Petition of Moore*, []291 A.2d 531, 534 (Pa. 1972). Thus, as it respects the judicial function, the Election Code’s deadlines are understood in this context as “directory,” although the deadlines and requirements of the [Election] Code will remain mandatory as to petitioners. *See also Mellow v. Mitchell*, []607 A.2d 204, 224 (Pa. 1992) (same); *In re Shapp*, []383 A.2d 201, 204 (Pa. 1978) (same).

Holt 2011 Legislative Reapportionment Commission, 38 A.3d 711, 721 n.10 (Pa. 2012). *See also In re Ross*, 109 A.3d 781, 785 (Pa. Cmwlth.), *aff’d*, 101 A.3d 1150 (Pa. 2014) (“[T]his Court, as an intermediate appellate court is bound to follow the majority opinions of our Supreme Court, not the dissents, unless and until the Supreme Court overrules those majority opinions or it is clear that they are no longer good law.”) (citations omitted).

⁸ As this Court has observed:

The purpose of scheduling and case management orders in election cases is to facilitate the proceedings in an expeditious and timely manner due to the extreme time limitations placed on election matters. That is why objectors are ordered to immediately arrange to meet with the candidate or his/her representative to reach a stipulation as to the number of signatures that are challenged and/or valid. In short, time is of the essence in election matters. As such, the Court expects compliance.

In re Ford, 994 A.2d 9, 12 n.3 (Pa. Cmwlth. 2010) *overruled in part on other grounds by In re Nomination Petition of Gales*, 54 A.3d 855, 860-61 (Pa. 2012).

System⁹ operator for the hearing; (2) Objectors were ordered to immediately arrange to meet with Candidate or his representative and, if appropriate, with a SURE System operator, to review before the hearing each and every challenged signature; (3) Objectors and Candidate were ordered to file a Stipulation of the Parties identifying the total number of signature lines, the total number of uncontested signature lines, the total number of signature lines challenged, each and every signature line challenged by page number and line number, and each and every signature to be stricken off as invalid or for which an objection is to be withdrawn; (4) Objectors and Candidate were permitted to file a memorandum of law in support of their respective positions; (5) the parties shall make a good faith effort to file all of the foregoing items no later than 24 hours in advance of the April 7, 2022 hearing; and (6) the failure to comply with any provision of the order may preclude the noncompliant party from entering any evidence and may result in the imposition of monetary sanctions.¹⁰

On April 6, 2022, the parties filed a Stipulation and Status Report in this matter in which: (1) Objectors withdrew their objections to 10 of the signature lines; (2) Candidate stipulated that 6 of the signature lines are invalid; and (3) Candidate reserved for rehabilitation, and the parties reserved for argument, the

⁹ As this Court has previously explained, “[t]he SURE system is the Statewide Uniform Registry of Electors, the statewide database of voter registration maintained by the Department of State and administered by each county.” *In re Morrison-Wesley*, 946 A.2d at 792-93 n. 4.

¹⁰ Specifically, Section 977 of the Election Code states, in relevant part: “In case any such petition is dismissed, the court shall make such order as to the payment of the costs of the proceedings, including witness fees, as it shall deem just.” 25 P.S. §2937. However, Section 977 of the Election Code does not authorize the award of attorney fees. *In re Nomination Paper of Rogers*, 942 A.2d 915, 927-28 (Pa. Cmwlth.), *aff’d*, 959 A.2d 903 (Pa. 2008). Rather, “[p]ursuant to Section 2503(7) of the Judicial Code, a party may be awarded counsel fees as a sanction against another party for dilatory, obdurate or vexatious conduct during the pendency of a[n election] matter. 42 Pa. C.S. §2503(7).” *Id.* at 928.

signature on Page 1, Line 17 of the Nomination Petition that bears a date of “3-2-22.” The parties also stipulated that this Court’s determination as to the validity of the signature on Page 1, Line 17 will be determinative of the resolution of this matter.

At the April 7, 2022 hearing, Candidate appeared and testified as the circulator of Page 1 of his Nomination Petition. Candidate credibly testified that he obtained the elector’s signature on Page 1, Line 17 at the Southeastern Allegheny Democratic (SEAD) Committee event, which took place on March 26, 2022. He credibly stated that he met the elector at that event and spoke with her there for 40 to 45 minutes. Candidate also credibly testified that he called the elector regarding the mistake that she made in recording the proper date on his Nomination Petition and obtained an affidavit from her regarding her mistake in this regard. We admitted the affidavit into the record over Objectors’ objection as the statements contained therein are corroborated by Candidate’s credible sworn testimony at the hearing. *See, e.g., Uptown Partners v. City of Pittsburgh Zoning Board of Adjustment* (Pa. Cmwlth., No. 528 C.D. 2017, filed December 27, 2017), slip op. at 11 (“Since Daniel’s testimony corroborated the Daugherty’s affidavits, the [Pittsburgh Zoning Board of Adjustment] did not err by affording the affidavits weight in concluding that the [subject p]roperty has been a continuous nonconforming use as a two-unit dwelling since before 1958.”).¹¹

In the affidavit, the elector credibly corroborated Candidate’s sworn testimony that she spoke with Candidate on March 26, 2022, for “over 45 minutes,” and that she “incorrectly put the wrong date, by accident.” Specifically, she stated: “I signed it on Saturday the 26th day of March at a S[EAD] event.” Based on the

¹¹ *See also* Pa.R.A.P. 126(b) (“As used in this rule, ‘non-precedential decision’ refers to . . . an unreported memorandum opinion of the Commonwealth Court filed after January 15, 2008. [] Non-precedential decisions . . . may be cited for their persuasive value.”).

foregoing evidence, we permitted the amendment of Page 1, Line 17 to reflect the date of March 26, 2022. *See, e.g., Petition of Hall*, 362 A.2d 475, 476 (Pa. Cmwlth. 1976) (“By the Court’s examination, the following signatures do not conform with the signatures and information on the original voter registration cards, but, upon allowance by the Court, corrective amendments were submitted and, after our review thereof, the following signatures are held valid as amended. . . .”).

We initially note that “in reviewing election issues, ‘we must consider the longstanding and overriding policy in our Commonwealth to protect the elective franchise,’ and that the Election Code must ‘be liberally construed to protect a candidate’s right to run for office and the voters’ right to elect the candidate of their choice.’” *In re James*, 944 A.2d 69, 72 (Pa. 2008) (citation omitted). The purpose of the Election Code is to protect, not defeat, a citizen’s vote. *Dayhoff v. Weaver*, 808 A.2d 1002, 1006 (Pa. Cmwlth. 2002). However, “the policy of the liberal reading of the Election Code cannot be distorted to emasculate those requirements necessary to assure the probity of the process.” *In re Cianfrani*, 359 A.2d 383, 384 (Pa. 1976). “It is not for us to legislate or by interpretation to add to legislation matters which the legislature saw fit not to include.” *Commonwealth ex rel. Fox v. Swing*, 186 A.2d 24, 27 (Pa. 1962).

Furthermore, “[a] party alleging defects in a nominating petition has the burden of proving such defects, as nomination petitions are presumed to be valid.” *In re Beyer*, 115 A.3d 835, 838 (Pa. 2015). This Court is “[e]ntrusted with the responsibility of protecting the Commonwealth’s compelling interest in preserving the integrity of the election process.” *In re Nomination Papers of Carlson*, 430 A.2d 1210, 1212 (Pa. Cmwlth.), *aff’d*, 430 A.2d 1155 (Pa. 1981). The Supreme Court may reverse our order concerning the validity of challenges to nomination petitions

only if our findings of fact are not supported by substantial evidence, if we abused our discretion, or if we committed an error of law. *In re Beyer*, 115 A.3d at 838.

Where this Court is not convinced that challenged signatures are other than genuine, the challenge is to be resolved in favor of the candidate. *In re Nomination of Flaherty*, 770 A.2d 327, 331 (Pa. 2001). However, we are mindful that we must strike a balance between the liberal purposes of the Election Code and the provisions of the Election Code relating to nominating petitions that are necessary to prevent fraud and to preserve the integrity of the election process. *In re Nomination Petition of Shimkus*, 946 A.2d 139, 141 (Pa. Cmwlth. 2008).

As outlined above, the sole legal issue presented in this matter is the validity of the challenged signature on Page 1, Line 17 bearing a date of “3-2-22.” Because we permitted amendment of that line to state a date of March 26, 2022, and because Objector does not dispute the validity of the remaining signature lines on Candidate’s Nomination Petition, Candidate has met the threshold number of 100 signatures as required by Section 912.1(30) of the Election Code.

Accordingly, based on the foregoing, and in compliance with the Supreme Court’s April 4, 2022 order in *In re: Petition for Review Challenging the Final 2021 Legislative Reapportionment Plan*, we issue the following:

ORDER

AND NOW, this 8th day of April, 2022, it is hereby ORDERED:

1. Based upon the credible evidence presented during the April 7, 2022 hearing before this Court, Page 1, Line 17 of the Nomination Petition of Joseph Maurizi as a candidate for nomination to the office of Member of the Democratic

State Committee for the 45th Senatorial District of Allegheny County (District 245) in the General Primary Election to be held on May 17, 2022, is AMENDED to state a date of March 26, 2022.

2. Based upon the credible evidence presented at the April 7, 2022 hearing and the April 6, 2022 Stipulation and Status Report of the parties, the Nomination Petition of Joseph Maurizi as a candidate for nomination to the office of Member of the Democratic State Committee for the 45th Senatorial District of Allegheny County (District 245) in the General Primary Election to be held on May 17, 2022, contains 100 valid signatures of qualified and enrolled electors as required by Section 912.1(30) of the Election Code, 25 P.S. §2872.1(30), and the Petition to Set Aside the said Nomination Petition of Joseph Maurizi is DISMISSED.

3. The Secretary of the Commonwealth of Pennsylvania is directed to PLACE on the ballot the name of Joseph Maurizi as a candidate for nomination to the office of Member of the Democratic State Committee for the 45th Senatorial District of Allegheny County (District 245) in the General Primary Election to be held on May 17, 2022.

4. Each party shall bear his or her own costs.

5. The Prothonotary shall notify the parties hereto and their counsel of this order and shall also certify a copy hereof to the Secretary of the Commonwealth of Pennsylvania forthwith.



MICHAEL H. WOJCIK, Judge

IN THE SUPREME COURT OF PENNSYLVANIA

IN RE: TEMPORARY MODIFICATION : No. 571 Judicial Administration Docket
OF THE RULES OF APPELLATE :
PROCEDURE ARISING UNDER THE :
PENNSYLVANIA ELECTION CODE :

ORDER

PER CURIAM

AND NOW, this 5th day of April, 2022, in order to expedite the appellate process regarding appeals from challenges to nomination petitions for **any and all** candidates running for office in the May 17, 2022 General Primary Election, Pa.R.A.P. 903(c)(1)(ii), providing for a ten-day appeal period from an order in any matter arising under the Pennsylvania Election Code, is **TEMPORARILY MODIFIED** to provide for a five-day appeal period.

Additionally, Pa.R.A.P. 107 is **TEMPORARILY SUSPENDED** to the extent it specifies that weekends and holidays are to be excluded from calculating the five-day appeal period.

In appeals arising under the Election Code that fall within this order, appellants shall file briefs within twenty-four hours after filing their notice of appeal and jurisdictional statement. Appellees' briefs are due within twenty-four hours of the filing of appellants' briefs. Further, Pa.R.A.P. 2113 (regarding reply briefs) is **TEMPORARILY SUSPENDED** in these matters; no reply briefs will be permitted.

Notices of appeal, jurisdictional statements, and briefs shall be filed electronically when counsel or the litigants have a PACFile account. Otherwise, counsel or the litigants shall contact the relevant filing office during normal business hours to make alternative arrangements to ensure that the filing office actually receives the submissions by the applicable deadline.

Pa.R.A.P. 1931(a) and (c) (regarding the deadline for transmittal of the record when complete) are **TEMPORARILY SUSPENDED** in these matters, and the record shall be transferred as soon as practicable. The lower court may transmit partially completed records in the interest of facilitating prompt resolution of any appeal in these matters.

Applications for reconsideration or reargument will not be entertained by this Court on election matters falling under this order.

Any court deciding a matter that arises under the Pennsylvania Election Code in relation to the May 17, 2022 General Primary Election shall append a copy of this order to its decision.

A True Copy Nicole Traini
As Of 04/05/2022

Attest: 
Chief Clerk
Supreme Court of Pennsylvania