

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

In Re: Nomination Petitions of :
Kimberley DiGaetano Candidate of :
the Republican Party for Senator in :
the General Assembly in the May : No. 193 M.D. 2022
17th, 2022 Primary Election : Heard: April 7, 2022
:
Objections of: John A. Casella and :
Frank C. Revitt :

MEMORANDUM AND ORDER

AND NOW, April 7, 2022, upon consideration of the Petition to Set Aside the Nomination Petitions of Kimberley DiGaetano (Candidate) as a Candidate of Republican Party for Senator in the General Assembly in the May 17th, 2022 Primary Election (Petition) filed by John A. Casella and Frank C. Revitt (Objectors), and after a hearing held on April 7, 2022, and the evidence received at the hearing on the Petition, Objectors' Petition is **GRANTED**, and Candidate's name is **STRICKEN** from the primary ballot for the Republican nomination for candidate for Senator in the General Assembly for the 40th Senatorial District.

Section 912.1(13) of the Pennsylvania Election Code¹ (Election Code) provides that a nomination petition for the office of Senator in the General Assembly must contain a total of 500 signatures of registered and enrolled members of the proper party. Candidate's Nomination Petition contained 538 signatures of purported qualified, registered Republican electors. After examination of Candidate's Nomination Petitions and the challenged signatures, evidence concerning the registration records provided by a Statewide Uniform Registry of

¹ Act of June 3, 1937, P.L. 1333, added by Section 2 of the Act of December 12, 1984, P.L. 968, *as amended*, 25 P.S. § 2872.1(13).

Electors (SURE) system operator, and exhibits submitted by Objectors, the Court concludes, and Candidate conceded at the hearing, that Candidate does not have the 500 signatures needed to remain on the ballot.

Of the 538 signatures, 36 signatures were of electors who were not registered, not registered and enrolled members of the Republican Party, or who used an address on the Nomination Petitions that was different than the one at which they are registered and enrolled as required by Section 908 of the Election Code, 25 P.S. § 2868, as amended by Section 3 of the Act of October 31, 2019, P.L. 552, No. 77 (Act 77).² The failure to meet the registration requirements mandates that the signature be stricken as invalid. *In re Petition of Thompson*, 516 A.2d 1278, 1280-81 (Pa. Cmwlth. 1984). Thus, those 36 signatures must be struck. Further, 3 of the signatures were by electors who previously signed a nomination petition of another person running for this position. Section 908 of the Election Code provides that a signer “shall **sign but one** such petition for each office to be filled.” 25 P.S. § 2868 (emphasis added). Thus, those signatures must be struck. Having struck 39 signatures from the Nomination Petitions’ 538 signatures, Candidate, who conceded as much at the hearing, does not have sufficient signatures to remain on the ballot.

Objectors’ request for costs is **DENIED**, and each party shall bear his or her own costs.

The Acting Secretary of the Commonwealth shall remove the name Kimberley DiGaetano from the 2022 Primary Election Ballot as a Republican

² While certain provisions of Act 77 were recently found by an *en banc* panel of this Court to violate article VII, section 1 of the Pennsylvania Constitution, PA. CONST. art. VII, § 1 (qualification of electors), *McLinko v. Department of State*, __ A.3d __ (Pa. Cmwlth., No. 244 M.D. 2021, filed Jan. 28, 2022); *Bonner v. Degraffenreid*, __ A.3d __ (Pa. Cmwlth., No. 293 M.D. 2021, filed Jan. 28, 2022), those challenges did not involve Section 908, and this Court’s orders were stayed pursuant to a Supreme Court Order dated March 1, 2022.

Candidate for the office of Senator in the General Assembly for the 40th Senatorial District to be held on May 17, 2022.



RENÉE COHN JUBELIRER, President Judge