

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

In re: The Nomination Petition of :
Laurice MacDonald as a Candidate :
for the Democratic Nomination for :
Representative in the Congress for :
the 12th Congressional District in the :
Primary Election of April 23, 2024 : No. 88 M.D. 2024
: Heard: March 4, 2024
Objection of: Greg Katz, Judith Frankle :
Bardack, Jonathon Nadle, and :
Cheryl S. Weisberg :

BEFORE: HONORABLE MICHAEL H. WOJCIK, Judge

MEMORANDUM and ORDER

Presently before the Court is the Petition to Set Aside the Nomination Petition of Laurice MacDonald (Objection Petition and Candidate, respectively), as a Democratic candidate for nomination to the office of Representative in the United States Congress for the 12th Congressional District in the General Primary Election to be held on April 23, 2024 (Primary Election). On February 20, 2024, Greg Katz, Judith Frankle Bardack, Jonathon Nadle, and Cheryl S. Weisberg (Objectors) filed the Objection Petition in this Court.

Pursuant to Section 912.1(12) of the Pennsylvania Election Code (Election Code),¹ a candidate for the office of Representative in the United States

¹ Act of June 3, 1937, P.L. 1333, *as amended*, added by the Act of December 12, 1984, P.L. 968, 25 P.S. §2872.1(12). Section 912.1(12) of the Election Code states: “Candidates for 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: . . . Representative in Congress: One thousand.”

Congress must present at least 1,000 valid signatures of registered and enrolled electors of the candidate’s political party in the relevant district. On or about February 12, 2024, Candidate filed a Nomination Petition with the Secretary of the Commonwealth to appear on the Primary Election ballot for that office consisting of 132 pages containing a total of 2,327 signature lines of presumably qualified electors.

As indicated, on February 20, 2024, Objectors filed the Objection Petition in this Court alleging, *inter alia*, that the Nomination Petition contains fewer than the required 1,000 signatures, contesting the validity of all 2,327 signatures appearing therein. Specifically, Objectors assert that none of the circulators of the Nomination Petition were registered and enrolled members of the Democratic Party at the time of circulation as required by Section 909(a) of the Election Code.² As a result, Objectors seek to exclude: (1) Pages 1 through 7, 53, 54, 55, 57, and 99, which were circulated by Owen Cauley (Circulator Cauley); (2) Pages 8 through 52, 56, 58 through 77, 79 through 98, and 100 through 132, which were circulated by

² 25 P.S. §2869(a). In relevant part, Section 909(a) states:

Each sheet shall have appended thereto the statement of the circulator of each sheet, setting forth, subject to the penalties of [Section 4904 of the Crimes Code,] 18 Pa. C.S. §4904 (relating to unsworn falsification to authorities)[,] . . . that he or she is a qualified elector of the Commonwealth, who is duly registered and enrolled as a member of the party designated in said petition, unless said petition relates to the nomination of a candidate for a court of common pleas, for the Philadelphia Municipal Court or for justice of the peace

Thus, “[i]n short, the circulator must be a member of the party designated in the [nomination] petition, unless the petition concerns the nomination of a candidate for common pleas judge, Philadelphia Municipal Court, or justice of the peace.” *In re Nomination Petition of Wheeler*, 293 A.3d 744, 748 (Pa. Cmwlt. 2023).

India Washington (Circulator Washington); and (3) Page 78, which was circulated by David Moscov (Circulator Moscov). Objectors also raise a number of challenges to the individual signature lines in the Nomination Petition. In sum, the validity of all of the signature lines is at issue.

On February 21, 2024, this Court entered a Scheduling and Case Management Order (CMO)³ scheduling a hearing on the Objection Petition for March 4, 2024, at 9:30 a.m., and imposing certain duties and obligations upon Objectors and Candidate.⁴ Specifically, therein: (1) Objectors were ordered to

³ It is appropriate for this Court to take judicial notice of documents that are filed and entered in our docket. *See, e.g.*, Pa.R.E. 201(b)(2) (permitting courts to take judicial notice of facts that may be “determined from sources whose accuracy cannot reasonably be questioned”); *Moss v. Pennsylvania Board of Probation and Parole*, 194 A.3d 1130, 1137 n.11 (Pa. Cmwlth. 2018) (taking judicial notice of docket entries that were not part of the original record); *Miller v. Unemployment Compensation Board of Review*, 131 A.3d 110, 115 (Pa. Cmwlth. 2015) (taking judicial notice of the entries on a claimant’s criminal docket and the records contained therein); *Germantown Cab Co. v. Philadelphia Parking Authority*, 27 A.3d 280, 283 n.8 (Pa. Cmwlth. 2011) (taking judicial notice of the docket in a Supreme Court case involving a similar point of law).

⁴ Section 977 of the Election Code provides a very restrictive time schedule stating, in relevant part:

All nomination petitions . . . received and filed within the periods limited by this act shall be deemed to be valid, unless, within seven days after the last day for filing said nomination petition . . . , a petition is presented to the court specifically setting forth the objections thereto, and praying that the said petition . . . be set aside. A copy of said petition shall, within said period, be served on the officer or board with whom said nomination petition . . . was filed. Upon the presentation of such a petition, the court shall make an order fixing a time for hearing which shall not be later than ten days after the last day for filing said nomination petition . . . and specifying the time and manner of notice that shall be given to the candidate or candidates named in the nomination petition . . . sought to be set aside. On the day fixed for said hearing, the court shall proceed without delay to hear said objections, and shall give such

(Footnote continued on next page...)

hearing precedence over other business before it, and shall finally determine said matter not later than fifteen (15) days after the last day for filing said nomination petitions

25 P.S. §2937. Accordingly, we have observed:

The purpose of [CMOs] 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).

To this end, Paragraph 1(C) of our February 21, 2024 CMO in this matter provides:

C. Service of the Objection Petition on Candidate and this [CMO] on all parties is complete upon the posting of the Objection Petition and this [CMO] on the Court’s website in accordance with this Court’s Notice and Order in *In re: Objections to Nomination Petitions/Papers of Candidates for Statewide and State-Level Office* (Pa. Cmwlth., No. 126 Misc. Dkt. No. 3, [filed] July 19, 2023) [(Posting Order)].

In turn, our July 19, 2023 Posting Order at 2-3, states:

THE POSTING OF AN OBJECTION PETITION ON THE WEBPAGE SHALL CONSTITUTE SERVICE ON THE CANDIDATE WHOSE NOMINATION PETITIONS[] HAVE BEEN CHALLENGED.[] ALL CANDIDATES ARE UNDER A CONTINUING OBLIGATION TO CHECK THE WEBPAGE TO DETERMINE IF AN OBJECTION PETITION HAS BEEN FILED TO THEIR NOMINATION PETITIONS[].

Furthermore, upon the filing of an objection petition, the Court will issue a [CMO]. The Court will post the [CMO] on the same webpage as the objection petition.

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secure the services of a court stenographer and a Statewide Uniform Registry of Electors (SURE) System⁵ 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 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 were directed that they shall make a good faith effort to file all of the foregoing items no later than 48 hours in advance of the March 4, 2024 hearing; and (6) the failure to comply with the order may preclude

THE POSTING OF A [CMO] ON THE WEBPAGE SHALL CONSTITUTE SERVICE OF THE ORDER ON THE OBJECTOR AND THE CANDIDATE. ALL PARTIES ARE UNDER A CONTINUING OBLIGATION TO CHECK THE WEBPAGE TO DETERMINE IF A [CMO] HAS BEEN ISSUED WITH RESPECT TO ANY OBJECTION PETITION....

(Emphasis in original and footnote omitted.) The authority of this Court to issue the foregoing orders is not questioned. Indeed, as we have recognized: “Under Section 977 of the [Election Code], th[is C]ourt ‘has complete control to regulate the time and manner of giving notice and the fixing of hearings.’” *In re Blount*, 898 A.2d 1181, 1184 (Pa. Cmwlth.), *aff’d*, 895 A.2d 545 (Pa. 2006) (quoting *In re Morgan*, 428 A.2d 1055, 1058 (Pa. Cmwlth. 1981)).

⁵ 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 Nomination Petition of Morrison-Wesley*, 946 A.2d 789, 792-93 n.4 (Pa. Cmwlth.), *aff’d*, 944 A.2d 78 (Pa. 2008).

the noncompliant party from entering evidence at the hearing and may result in monetary sanctions.⁶

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).

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

⁶ Specifically, Section 977 of the Election Code also 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 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.

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.

As noted above, the sole legal issue presented in this matter is the validity of the challenged signatures to meet the threshold number of 1,000 signatures required by Section 912.1(12) of the Election Code. Per the CMO, a hearing on the Objection Petition was conducted on March 4, 2024. During the course of the hearing, Candidate conceded that she does not have enough valid signature lines in the Nomination Petition as required by Section 912.1(12) of the Election Code.

Accordingly, based on the foregoing, we issue the following:

ORDER

AND NOW, this 4th day of March, 2024, it is hereby ORDERED:

1. Based upon Laurice MacDonald's concession at the March 4, 2024 hearing before this Court, the Nomination Petition of Laurice MacDonald as a Democratic candidate for nomination to the office of Representative in the United States Congress for the 12th Congressional District in the General Primary Election to be held on April 23, 2024, does not contain 1,000 valid signatures of qualified and enrolled electors as required by Section 912.1(12) of the Election Code, 25 P.S. §2872.1(12); the Petition to Set Aside the Nomination Petition of Laurice MacDonald is GRANTED; and the Nomination Petition of Laurice MacDonald is hereby SET ASIDE.

2. The Secretary of the Commonwealth of Pennsylvania is directed to REMOVE from the ballot the name of Laurice MacDonald as a Candidate for the Democratic Nomination to the office of Representative in the United States Congress for the 12th Congressional District in the General Primary Election of April 23, 2024.

3. Each party shall bear his, her, or their own costs.

4. 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

MICHAEL H. WOJCIK, Judge