

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

In re: Nomination Petition of Dasha :  
Pruett as Republican Candidate for :  
Congress for the 5th Congressional :  
District in Pennsylvania : No. 72 M.D. 2024  
:  
Objection of: Robert Jordan, Linda :  
Giannini, and Theresa Flanagan :  
Murtagh : Heard: February 29, 2024

BEFORE: HONORABLE MATTHEW S. WOLF, Judge

OPINION NOT REPORTED

MEMORANDUM OPINION  
BY JUDGE WOLF

FILED: March 6, 2024

Before the Court is the Petition of Robert Jordan, Linda Giannini, and Theresa Flanagan Murtagh (Objectors) to Set Aside the Nomination Petition (Petition to Set Aside) of Dasha Pruett (Candidate) as a candidate for the Republican Nomination for Congress for the 5th Congressional District in the April 23, 2024 General Primary Election. Also before the Court is the Petition for Contempt (Contempt Petition) filed by Candidate against Objectors for alleged noncompliance with the Court's Scheduling and Case Management Order dated February 21, 2024 (Scheduling Order) and subsequent Order dated February 26, 2024 (Supplemental Order). The Court held an evidentiary hearing on the Petition to Set Aside on February 29, 2024, at which time it reserved ruling on the Contempt Petition pending evidence and argument on the Petition to Set Aside. For the reasons that follow, the Petition to Set Aside is granted and the Contempt Petition is denied.

In Pennsylvania, to qualify for the Republican Party nomination for representative in the United States Congress, a candidate must file a nomination petition containing 1,000 valid signatures of registered and enrolled members of the Republican Party who are registered to vote in the district in which the candidate is running.<sup>1</sup> Candidate timely filed a Nomination Petition with the Secretary of the commonwealth with 1,159 signatures. On February 20, 2024, Objectors filed the Petition to Set Aside challenging the validity of 204 of the collected signatures. In accordance with this Court's Scheduling and Supplemental Orders, Candidate met with counsel for Objectors and others on February 26, 2024, and the parties arrived at a stipulation (the Stipulation).<sup>2</sup> Based on the Stipulation the parties agreed that 115 of the 204 challenged signatures are invalid.<sup>3</sup> They further agreed that 4 of the 204 challenged signatures are valid, and Objectors withdrew objections to those lines.

After the Stipulation, there were only 1,044 signatures left on the Nomination

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<sup>1</sup> Section 912.1(12) of the Pennsylvania Election Code (Election Code) provides:

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:

.....

(12) Representative in Congress: One thousand.

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).

<sup>2</sup> The Stipulation filed with the Court in advance of the hearing was not signed by Candidate. At the hearing, as a preliminary matter, on the record, Candidate agreed that the Stipulation was valid and agreed upon. Accordingly, Candidate executed a copy of the Stipulation during the hearing, and Objectors' counsel thereafter filed this duly executed version with the Court.

<sup>3</sup> The parties agreed that two signature lines that were not challenged in the Petition to Set Aside were invalid. *See* Stipulation (striking Page 2, Line 7 and Page 46, Line 26).

Petition. This left 87 challenged signature lines for the Court’s consideration. Candidate could only afford to lose 45 signatures before her candidacy would be set aside.

Considering the documentary and testimonial evidence presented at the February 29, 2024 hearing, the Court concludes Candidate has, on two separate bases, failed to collect the requisite 1,000 valid signatures and grants the Petition to Set Aside, for the following reasons.

**Defective Circulator Statement (66 Signatures Stricken)**

The first substantive issue considered by the Court was the allegation that Nomination Petition pages 21, 30, 31, and 37 contain defective Circulator Statements.<sup>4</sup> These four Nomination Petition pages indicate on the first page that the “County of Signers” of the Electors (Petition Signers) is either “Philadelphia” or “Montgomery” County, but the Circulator Statement on the second page of those Nomination Petition pages, at line 1, indicates that the County of Petition-Signers’ Residence is “Delaware” County. Statutorily, the preprinted “County of Signers”<sup>5</sup> from the first page and the handwritten “County of Petition-Signers’ Residence” on the second page must match.<sup>6</sup> On each Nomination Petition page, the Circulator Statement requires the circulator to attest under the penalty of perjury “that the signers to the foregoing petition . . . are residents of the County specified in number

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<sup>4</sup> As an aside, the same issue appears on the Nomination Petition at page 36, but this was not challenged by Objectors on this basis and so it has not been considered by the Court.

<sup>5</sup> This is the “county named in the statement” referred to in note 6, *infra*.

<sup>6</sup> Section 909 of the Election Code, 25 P.S. § 2869, provides: “Each sheet shall have appended thereto the statement of the circulator of each sheet, setting forth, subject to the penalties of 18 Pa.C.S. §4904 . . . (e) that they all reside in the county named in the statement[.]”

one below.” Thus, both the statute and the Circulator Statement require the counties to match. It is obvious from the face of these four Nomination Petition pages that the counties do not match. The signers of the four Nomination Petition pages are not residents of the handwritten county specified on line 1 of the Circulator Statement.

In response to Objectors’ argument that Nomination Petition pages 21, 30, 31, and 37 are defective, Candidate argued that the law on this issue has changed and is confusing. As Candidate filled out and executed the Circulator Statement for each of these challenged pages, she advised the Court that she thought it was correct to list her own county of residence when filling out the Circulator Statement.

The Court agrees with Objectors and strikes Nomination Petition pages 21, 30, 31, and 37 in full, rendering 66 signature lines invalid. The Court specifically rejects Candidate’s defense that the law is confusing. The law is clear. While a circulator may intuitively believe the Circulator Statement asks for his or her county of residence, the plain language of the form specifically asks for the circulator to attest to the “County of Petition-Signers’ Residence.”

At the hearing, Objectors’ counsel conceded that misidentifying the county of signers in a Circulator Statement is an amendable defect. Pursuant to Section 977 of the Election Code, “material errors or defects apparent on the face of the nomination petition or paper” are amendable, after hearing, at the discretion of the court. 25 P.S. § 2937. This Court has previously held that an inconsistency between the county of signers listed on the front page of a nomination petition and on the corresponding circulator statement is apparent on its face and, thus, amendable. For example, in *In re Ford*, 994 A.2d 9 (Pa. Cmwlth. 2010), this Court refused to strike a nomination petition that misidentified the county of signers as Schuylkill on the front page of the petition where credible and stipulated testimony established that the electors’

identified county was Dauphin, as noted in the circulator statement. Likewise, in *Dissinger v. Boockvar* (Pa. Cmwlth., No. 119 M.D. 2020, filed March 2, 2020), this Court granted a petition for mandamus ordering the Secretary to accept a nomination petition containing an inconsistency between the county of signers listed on the first and second pages of the nomination petition, subject to those pages being submitted with sworn supplemental affidavits from the circulators of those pages in the form prescribed by the Secretary. In sum, this Court's precedent allows a Circulator Statement to be rehabilitated or another affidavit substituted, where credible testimony or stipulation establishes that the inconsistency between the counties was a mistake, and that the petitions were indeed circulated in the correct county.

This Court declines to exercise its discretion to permit amendment or rehabilitation of the Nomination Petition in this case. The reason is that there is no evidence to justify the amendment or a substituted affidavit.<sup>7</sup> Here, Candidate testified candidly and credibly that she was not the circulator on these disputed Nomination Petition pages. Although she signed them as the circulator, she testified that she relied on unnamed, unidentified supporters and individuals to collect the signatures and then, in essence, for convenience or simplicity, executed the subject Nomination Petition pages as the circulator. There is nothing in the record that would allow Candidate to rehabilitate the Circulator Statement because she conceded to having no personal knowledge as to how the signatures thereon were collected. Our

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<sup>7</sup> Even if the Court were inclined to allow rehabilitation of Nomination Petition, it would not permit this in light of the second basis for removing Candidate from the ballot, the 51 individual defective signatures as described below. The effort to rehabilitate would be futile since Candidate will be removed from the ballot on an alternative basis.

Supreme Court has held that “in order to verify this information, the circulator needs to be present when each signer agrees to sign the petition.” *In re Farnese*, 17 A.3d 375, 377 (Pa. 2011). Further, “[t]he policy of liberally reading the Election Code cannot be distorted to emasculate the requirements of providing legitimate [] affidavits.” *Id.* at 380. Any false statement in an affidavit casts “doubt on the accuracy of the entire affidavit, and, thus, the authenticity of the petition.” *Id.* Accordingly, the four Nomination Petition pages are statutorily defective and not subject to rehabilitation.<sup>8</sup> Because 66 of Candidate’s Nomination Petition signatures bear facial defects that are material and incurable, Objectors have met their burden of disproving the presumptive validity of Candidate’s Nomination Petition. Since Candidate then falls short of the 1,000 signatures required, this issue is dispositive of Objectors’ Petition to Set Aside Candidate’s Nomination Petition. However, for the sake of completeness, the Court addresses Objectors’ remaining objections.

### **Alternative Challenges (51 Individual Defective Signatures)**

As an alternate basis, Objectors also objected to 51 individual signature lines and presented the testimony of a SURE system operator (SURE operator) in support. Candidate did not cross-examine the SURE operator or otherwise substantively

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<sup>8</sup> Even if Objectors’ counsel would not oppose amendment and Candidate attempted to correct line 1 from the Circulator Statement and list the correct county and file this with the Secretary, the Court would know, based on the evidence, that Candidate/circulator actually has no personal knowledge regarding these facts because she did not collect those signatures. The circulator is required to have personal knowledge of the signers. Candidate does not have such knowledge. The Court will not condone a false statement to be filed under such circumstances. *See In re Nom. Pet. for Frank E. Elliott*, 362 A.2d 438, 445-446 (Pa. Cmwlth.), *aff’d*, 353 A.2d 446 (Pa. 1976) (where circulator did not sign his name to circulator’s affidavit but allegedly gave his father permission to sign his name to affidavit and circulator had little knowledge of the manner in which signatures were obtained on nomination petition for primary election, circulator’s affidavit was invalid).

challenge the objections to these signature lines, but instead argued the issues raised in her Contempt Petition, as well as maintaining that an amendment to the original bases for challenges should not be allowed.

The Court credits the testimony of the SURE operator and strikes 51 invalid signatures as follows. On Nomination Petition page 30, based on the SURE operator's testimony, 28 signers were found to either be registered Democrats and thus not eligible to sign for a Republican candidate<sup>9</sup> or they were not found to have been registered at the address they listed on the Nomination Petition.<sup>10</sup> On page 31 of the Nomination Petition, 10 signers were found to have been either registered Democrats, not registered, or not found to have been registered at the address listed on the Nomination Petition page. This resulted in evidence of 38 invalid signatures. No evidence was presented by Candidate in opposition to this evidence. The Court hereby strikes those 38 signatures.

The Nomination Petition pages in evidence showed that two names and associated addresses appeared twice throughout the Nomination Petition pages so they could only be counted as two and not four signatures. No evidence was presented by Candidate on this issue. This results in the Court striking those 2 duplicate signatures for a total of 40 stricken signatures.

Evidence at the hearing through testimony and documentation showed that

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<sup>9</sup> In a primary election, only those persons registered to vote, enrolled in the political party of the candidate, and residing in the candidate's district may lawfully sign his petition. Sections 907 and 908 of the Election Code, 25 P.S. §§ 2867 and 2868; *see also In re Nom. Pet. of Flaherty*, 770 A.2d 327 (Pa. 2001).

<sup>10</sup> The signer of a nomination petition must list the address where they are duly registered and enrolled. Section 908 of the Election Code, 25 P.S. § 2868; *see also In re Major*, 248 A.3d 445, 454 (Pa. 2021).

there were no registered voters for Pennsylvania's 5th Congressional District in Chester County. Only a small patch of land for the 5th Congressional District lies in Chester County, but that Chester County patch is land without registered Republican voters. This evidence was not challenged at the hearing and the Court accepts it as true. Candidate had in her Nomination Petition pages, at page 50, a list of 11 signers who represented they were from Chester as the "County of Signers." Those 11 signatures will be stricken for 2 reasons.

First, these 11 signatures are stricken because the unchallenged evidence at the hearing established that there were no registered Republican voters in that portion of the 5th Congressional District, which is in Chester County, and this Nomination Petition page represented the County of Signers to be Chester County. If there are no registered Republicans in the 5th Congressional District in Chester County, then all of the signatures on that Nomination Petition page are invalid.

Second, the signers at lines 8, 9, 10, and 11 attested that they were registered and enrolled in Philadelphia, Upper Darby, Drexel Hill, and Newtown Square, respectively. None of those towns are in Chester County, so they do not match the County of Signers on this Nomination Petition page. For this reason, these signatures are stricken.

Based on the foregoing, the Court strikes the 11 signatures on page 50 of the Nomination Petition yielding a total of 51 invalid and stricken signatures, which, independent of the defective Circulator Statement issue above, provides an independent, separate, and alternative basis to find that an insufficient number of signatures exist to support Candidate's candidacy in this primary. As stated above, Candidate could only afford to lose 45 signatures for her candidacy to be set aside. Since the Court is striking 51 signatures, candidate falls short with only 993 valid



signatures on this basis.

### **Contempt Petition Denied**

The Court denies the Contempt Petition. In essence, Candidate complains that Objectors did not comply with the Court’s Scheduling and Supplemental Orders, which directed the parties, *inter alia*, to meet to review each and every challenged signature line. Candidate and Objectors’ counsel met on the evening of February 26, 2024, without a SURE operator, and reviewed the challenged signature lines. As a result of this meeting, the parties entered into the Stipulation.

Candidate advances two major arguments in support of her Contempt Petition. First, she argues that some or all of Objectors were not present when the parties met and conferred pursuant to the Court’s Scheduling and Supplemental Orders. However, the Orders permit counsel to appear instead of or on behalf of a party. Counsel for Objectors met with Candidate, along with other people. This complied with the Court’s Orders. Second, Candidate complains that the SURE operator was not present at that “meet and confer” event. Instead, at the meeting, the parties relied upon other sources to arrive at the Stipulation, which was agreed upon at that time. This was not a violation of the Court’s Scheduling or Supplemental Orders.<sup>11</sup> In fact, the “meet and confer” event was productive and even resulted in agreement on issues that would otherwise have required substantial court resources to address. Moreover, Candidate agreed, on the record at the hearing, that the Stipulation was valid. The Court appreciates both parties meeting, conferring, and arriving at the Stipulation. The Court expressed this appreciation at the conclusion of the hearing of this matter and reiterates the fact that it has facilitated an expeditious and just

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<sup>11</sup> The Scheduling Order directed the parties to meet with a SURE operator, “if appropriate.” Scheduling Order ¶ 3(a).

resolution of the issues. Because the Court finds that the neither the Scheduling Order nor the Supplemental Order was violated, the Contempt Petition is denied.

**Amendment of Challenge Bases Allowed**

The final issue left to resolve is Candidate’s objection to Objectors raising additional bases for challenging signature lines that were not included on the original spreadsheet attached to Objectors’ Petition to Set Aside. *See* Objectors’ Supplemental Challenges, filed February 27, 2024. The Court overrules Candidate’s objection on the grounds that none of the supplemental challenges objected to a new signature, but rather added only an additional basis to challenge a previously challenged signature. *See Stuski v. Lauer*, 697 A.2d 235, 238 n.7 (Pa. 1997) (“as long as an objection has been made to signatures on the nomination petition, the challenging party can make other challenges to those signatures based on the Election Code during the hearing on the petition to set aside”).

In sum, Objectors have met their burden on alternative bases, Candidate’s objections notwithstanding. The Petition to Set Aside will be granted based on the foregoing.

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/s/ Matthew S. Wolf  
MATTHEW S. WOLF, Judge

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**ORDER**

AND NOW, this 6<sup>th</sup> day of March, 2024, following a full hearing in which evidence was presented, the Petition of Robert Jordan, Linda Giannini, and Theresa Flanagan Murtagh (Objectors) to Set Aside the Nomination Petition of Candidate Dasha Pruett as a candidate for the Republican Nomination for Congress for the 5th Congressional District in Pennsylvania is hereby GRANTED. The Secretary of the Commonwealth is directed to remove Candidate's name from the April 23, 2024 General Primary Election ballot as a Republican candidate for Congress for the 5th Congressional District in Pennsylvania.

Candidate's Petition for Contempt against Objectors is DENIED.

Each party shall bear his or her own costs.

The Prothonotary is directed to send a copy of this order to the Secretary of the Commonwealth.

/s/ Matthew S. Wolf  
MATTHEW S. WOLF, Judge

Order Exit  
03/06/2024