

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

In Re: The Nomination Petitions of :
Pearlina S. Story as a Democratic :
Candidate for the State Representative :
in the 24th Legislative District : No. 160 M.D. 2022
: Heard: April 7, 2022
Objections of: Nicole M. Sylvester, :
Loreal RJ Snell, and Christopher :
Paul Sandvig :

BEFORE: HONORABLE MICHAEL H. WOJCIK, Judge

MEMORANDUM and ORDER

Presently before the Court is the Petition to Set Aside the Nomination Petition of Pearlina S. Story (Candidate) as a Democratic candidate for nomination to the office of Representative in the Pennsylvania General Assembly for the 24th Legislative District in the General Primary Election (Primary Election) to be held on May 17, 2022. On April 3, 2022,¹ Nicole M. Sylvester, Loreal RJ Snell, and Christopher Paul Sandvig (Objectors) filed the Petition to Set Aside Candidate's Nomination Petition in this Court.

Pursuant to Section 912.1(14) of the Pennsylvania Election Code (Election Code),² a candidate for the office of Representative in the General

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 her 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...)**"

Assembly must present at least 300 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 12 pages containing 316 signatures of presumably qualified electors.

On April 3, 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 300 signatures, contesting the validity of 227 signatures appearing therein. Specifically, in relevant part, Objectors contend that 41 of the signatures on the Nomination Petition are those of individuals who are not registered to vote at the address provided on the Nomination Petition by those individuals.³

On April 4, 2022,⁴ this Court entered a Scheduling and Case Management Order scheduling a hearing on the Petition to Set Aside for April 7,

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 the General Assembly: Three hundred.”

³ Section 908 of the Election Code 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 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).

⁴ 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...)

2022, at 9:30 a.m., and imposing certain duties and obligations upon Objectors and Candidate.⁵ 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).

⁵ 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).

System⁶ 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.⁷

With regard to the signature challenges, Objectors secured the services of an operator of the SURE System who is employed by the Allegheny County Bureau of Elections. At the April 7, 2022 hearing, the SURE System operator

⁶ 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).

⁷ 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.

accessed the SURE System and retrieved voter information, when possible, corresponding to the signature lines of the Nomination Petition.⁸

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).

⁸ Candidate did not appear for the hearing on the objections. An employee of the Allegheny County Court of Common Pleas searched for Candidate or counsel outside of the courtroom. We note that our order in *In re: Objections to Nomination Petitions for Pennsylvania General Assembly and State Party Committees - General Primary Election 2022* (Pa. Cmwlth., No. 126 Misc. Dkt. No. 3, filed March 25, 2022), states, in relevant part:

THE POSTING OF A SCHEDULING AND CASE MANAGEMENT ORDER SHALL CONSTITUTE SERVICE OF THE ORDER ON THE OBJECTOR AND CANDIDATE. ALL PARTIES ARE UNDER A CONTINUING OBLIGATION TO CHECK THE COURT’S WEBSITE TO CONFIRM WHETHER A SCHEDULING AND CASE MANAGEMENT ORDER HAS BEEN ISSUED WITH RESPECT TO ANY OBJECTION PETITION.

Moreover, Objectors’ counsel outlined on the record his attempts to communicate with Candidate via the email address that she provided to the Secretary of the Commonwealth and this Court, that the emails were not “bounced back” as undeliverable, and that he received no response from Candidate to those emails.

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.

As outlined above, the sole legal issue presented in this matter is the validity of 17 of the challenged signatures to meet the threshold number of 300 signatures required by Section 912.1(14) of the Election Code. Based on the credible evidence adduced at the April 7, 2022 hearing, we struck the following signature lines on the basis that the individual was not registered to vote at the address provided on the Nomination Petition:

- Page 1, Line 15
- Page 2, Line 2
- Page 2, Line 5
- Page 3, Line 6
- Page 3, Line 9
- Page 3, Line 12
- Page 3, Line 14
- Page 3, Line 22

Subtracting the aforementioned 8 signature lines, Candidate’s Nomination Petition contains a total number of 308 signatures that are presumed to be valid.

Based upon the credible evidence adduced at the April 7, 2022 hearing, we struck the following signature lines on the basis that the individual was not registered to vote in the 24th Legislative District:

- Page 3, Line 15
- Page 3, Line 16
- Page 3, Line 18
- Page 3, Line 24
- Page 3, Line 25

Subtracting the aforementioned 5 signature lines, Candidate's Nomination Petition contains a total number of 303 signatures that are presumed to be valid.

Based upon the credible evidence adduced at the April 7, 2022 hearing, we struck the following signature lines on the basis that the individual was not registered to vote as a Democratic elector in the General Primary Election to be held on May 17, 2022:

- Page 3, Line 17
- Page 3, Line 23
- Page 3, Line 28
- Page 3, Line 29

Subtracting the aforementioned 4 signature lines, Candidate's Nomination Petition contains a total number of 299 signatures that are presumed to be valid.

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 admitted at the April 7, 2022 hearing before this Court, the Nomination Petition of Pearlina S. Story as a Democratic candidate for nomination to the office of Representative in the

Pennsylvania General Assembly for the 24th Legislative District in the General Primary Election to be held on May 17, 2022, does not contain 300 valid signatures of qualified and enrolled electors as required by Section 912.1(14) of the Election Code, 25 P.S. §2872.1(14); the Petition to Set Aside the said Nomination Petition of Pearlina S. Story is GRANTED; and the said Nomination Petition of Pearlina S. Story is hereby SET ASIDE.

2. The Secretary of the Commonwealth of Pennsylvania is directed to REMOVE from the ballot the name of Pearlina S. Story as a Candidate for the Democratic Nomination to the office of Representative in the Pennsylvania General Assembly for the 24th Legislative District in the General Primary Election of May 17, 2022.

3. Each party shall bear his or her 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, 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