

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

In Re: Nomination Petition of :
Nichole Missino as a Republican :
Candidate for Representative in the : No. 203 M.D. 2022
General Assembly for the 165th :
Pennsylvania House Legislative :
District :
:
Objection of: Theresa Flanagan Murtagh: Heard: April 7, 2022

BEFORE: HONORABLE ELLEN CEISLER, Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY JUDGE CEISLER

FILED: April 8, 2022

Before this Court is the Petition to Set Aside the Nomination Petition of Nichole Missino (Candidate) as Republican Candidate for Representative in the General Assembly for the 165th Pennsylvania House Legislative District. Theresa Flanagan Murtagh (Objector) submitted the Petition to Set Aside on April 4, 2022.

Pursuant to Section 912.1(14) of the Pennsylvania Election Code (Code),¹ a candidate for Representative in the General Assembly must present at least 300 valid signatures of registered and enrolled electors of the candidate's political party in his or her nomination petition. Objector seeks to invalidate some of the 358 signatures contained in Candidate's nomination petition.²

On April 4, 2022, this Court issued a Scheduling and Case Management Order (Case Management Order), through which this Court scheduled a hearing regarding

¹ 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).

² The Petition to Set Aside alleged that the Nomination Petition bore only 328 signatures. At the April 7, 2022, hearing, Objector's counsel clarified that this was due to a typographical error.

the Petition to Set Aside for April 7, 2022, and imposed certain duties upon both Candidate and Objectors. Pursuant to an Order of this Court, *In Re: Objections to Nomination Petitions for Pennsylvania General Assembly and State Party Committees—General Primary Election 2022* (Pa. Cmwlth., No. 126 Miscellaneous Docket Number 3, filed March 25, 2022), this Case Management Order constituted proper service upon the candidate.

Pursuant to the Case Management Order, the parties met in person on April 6, 2022. During the course of their meeting, Candidate agreed to stipulate that 53 of the signatures in support of her Nominating Petition were invalid. The objector did not specifically challenge the validity of the other 216 signatures. In light of the presumption of validity per the Election Code, we assume these signatures are valid and treat them accordingly. This agreement left the Nominating Petition with a maximum of 305 valid signatures, the validity of 89 of which Objector continued to challenge.

This Court convened the aforementioned hearing at 9:30 a.m. on April 7, 2022. By querying the SURE database with the assistance of a qualified operator, Objectors submitted challenges on various grounds to 21 signatures on the Nomination Petition.³

Section 907 and 908 of the Code, 25 P.S. §§ 2867, 2868, provide that 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. *In re Flaherty*, 770 A.2d 327 (Pa. 2001); *In re Payton*, 945 A.2d 279 (Pa. Cmwlth.), *aff'd*, 945 A.2d 162 (Pa. 2008); *In re Morrison-Wesley*, 946 A.2d 789 (Pa. Cmwlth.), *aff'd*, 944 A.2d 78 (Pa. 2008); *In re Thompson*, 516 A.2d 1278 (Pa.

³ Two additional objections, to the signatures on Page 1, lines 1 and 21 were withdrawn by Objectors after queries to the SURE database refuted the grounds for objection.

Cmwlth. 1984). Each signature line contain spaces where information must be provided in the hand of the signing elector. *In re Vodvarka*, 994 A.2d 25, 26 (Pa. Cmwlth. 2010). Additionally, Section 977 of the Election Code provides that if a person signs more petitions than permitted, “and if they bear different dates, they shall be counted in the order of their priority of date.” 25 P.S. § 2937.

The failure to meet any of the foregoing requirements may cause the signatures to be stricken as invalid. *See In re Petition of Thompson*, 516 A.2d 1278, 1280-81 (Pa. Cmwlth. 1984) (striking challenged signatures where signatories were not registered at all, were not enrolled members of the appropriate party, or were not registered at the given address); *see also In re Flaherty*, 779 A.2d at 331 (striking lines where printed names were improperly provided instead of signatures); *In re Silcox*, 674 A.2d 224, 225 (Pa. Cmwlth. 1996) (striking lines where required information had been added by someone other than the elector); *In re Nader*, 865 A.2d 8, 137 (Pa. Cmwlth. 2004) (striking lines where names did not match).

Upon examination of the original Nomination Petition and information obtained from the SURE database, this Court finds as fact that 17 signature lines are invalid for the following reasons:

1. The signatory printed their names where signatures are required (PRI):⁴
 - Page 1: lines 15 and 22
 - Page 4: lines 10 and 13
 - Page 8: line 7
 - Page 22: line 2

⁴ At the April 7, 2022 hearing, Candidate offered the observation that a person’s signature may sometimes resemble the person’s name as printed in his or her own hand. However, in none of the above instances did the printed names on the Nomination Petition bear a resemblance to the signatures provided on the voters’ registration cards. They are therefore fatally defective for that reason. *See In re Flaherty*, 779 A.2d at 331 (striking lines where signatures on a nominating petition did not match those on registration cards).

2. The signatures and other information bore writing that was clearly completed in the hand of another person (IHA):
Page 2: lines 4, 5, 6, 9, and 10
Page 3: lines 26 and 26
3. The petitions had signatures of voters who had previously signed the nomination petition of Robert Jordan, Candidate's primary opponent prior to signing this Candidate's petition:⁵
Page 3: lines 29 and 30
Page 18: line 13
4. The name given is different from the one registered at the address:
Page 4: line 2⁶

When these 17 invalidated signature lines are subtracted from the total included in the Nomination Petition, there are no more than 288 valid signatures remaining, 12 fewer than the 300 required by Section 912.1(14) of the Election Code, 25 P.S. § 2872.1(14).

In light of the foregoing, this Court grants Objectors' Petition to Set Aside and dismisses Candidate's Nomination Petition.



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⁵ The signatories of page 3, lines 29 and 30 had signed Mr. Jordan's petition on March 23, 2022, and Candidate's on March 26, 2022. The signatory of page 18, line 13 had signed Mr. Jordan's petition on March 19, 2022, and Candidate's on March 26, 2022.

⁶ Candidate argued that the signatory in question had recently changed her name following her marriage, and requested a 24-hour continuance so that Candidate could offer testimony to rehabilitate the signature. Citing the time constraints imposed by the Case Management Order, of which both parties had been provided notice, the Court denied the request. *See In re Nomination Petition of Delle Donne*, 779 A.2d 1, 5 n.5 (Pa. Cmwlth. 2001) (rejecting affidavit of a circulator regarding the change of marital status and name of a signing elector, in the absence of the testimony or affidavit of the elector reflecting the change in marital status and name).

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ORDER

AND NOW, this 8th day of April, 2022, it is hereby ORDERED that the Petition to Set Aside the Nomination Petition of Nichole Missino as Republican Candidate for Representative in the General Assembly for the 165th Pennsylvania House Legislative District in the above-captioned matter is GRANTED, and the Nomination Petition of Nichole Missino is hereby SET ASIDE.

The Secretary of the Commonwealth is directed to REMOVE the name of Nichole Missino as Republican Candidate for Representative in the General Assembly for the 165th Pennsylvania House Legislative District from the May 17, 2022 primary ballot, and to transmit this order promptly to the Board of Elections of Delaware County. The Chief Clerk is directed to send a copy of this Order to the Secretary of the Commonwealth.



ELLEN CEISLER, Judge