

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

In Re: Nomination Petition of :
Elvira N. Berry for the Democratic :
Party Nomination for Senator in the :
General Assembly from the :
Seventeenth Senatorial District in :
the April 28, 2020 Primary Election :
:
Objection of: June Coleman, :
Joseph Alexander Brophy, and : No. 150 M.D. 2020
Rachael Aria Chou :

BEFORE: HONORABLE CHRISTINE FIZZANO CANNON, Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY JUDGE FIZZANO CANNON

FILED: March 10, 2020

Before the Court is the Petition to Set Aside Nominating Petition (Petition) of June Coleman, Joseph Alexander Brophy, and Rachel Aria Chou (Objectors) seeking to set aside the nominating petitions of Elvira N. Berry (Candidate) for the Democratic nomination for Senator in the General Assembly from the Seventeenth Senatorial District, which Objectors allege contain numerous invalid voter signatures. After a hearing held on March 4, 2020, and in consideration of the record herein, we grant the Petition for the reasons that follow.

Objectors filed the Petition with this Court on February 25, 2020. On February 26, 2020, this Court issued a Scheduling and Case Management Order (Scheduling Order) that scheduled the hearing on the Petition for Wednesday, March 4, 2020. *See* Scheduling Order, p. 1, ¶ (1)(A). On February 27, 2020, Objectors filed an Application for Alternative Service alleging multiple instances where

Candidate attempted to dodge service of the Petition and seeking to serve Candidate by posting on the front door of Candidate's residence. *See generally* Application for Alternative Service. On February 28, 2020, this Court filed a per curiam order granting Objectors' Application for Alternative Service and allowing service of Candidate by posting on the front door of her residence by no later than 5:00 p.m. on Saturday, February 29, 2020. *See* Per Curiam Order dated February 28, 2020. On March 1, 2020, Objectors filed a Proof of Service in compliance with the requirements of the Court's February 28, 2020 order.¹ The Court conducted a hearing on the matter on March 4, 2020. *See* Notes of Testimony of March 4, 2020 hearing (N.T.). The matter is now ripe for disposition.

Initially, to qualify for a major party ballot for Senator in the General Assembly, a prospective candidate must present a nominating petition containing at least 500 valid signatures of registered and enrolled members of the proper party. *See* 25 P.S. § 2872.1(13). Section 908 of the Election Code,² 25 P.S. § 2868, as amended by Act of October 31, 2019, P.L. 552, No. 77 (Act 77), controls the requirements for nomination petition signature lines and provides as follows:

Each signer of a nomination petition shall sign but one such petition for each office to be filled, and shall declare therein that he is a registered and enrolled member of the party designated in such petition: Provided, however, [t]hat where there are to be elected two or more persons to the same office, each signer may sign petitions for as many candidates for such office as, and no more than, he could vote for at the succeeding election. He shall also declare therein that he is a qualified elector of the county therein named, and in case the nomination is not to be made or

¹ Candidate did not challenge service of the Petition at the hearing of this matter.

² Act of June 3, 1937, P.L. 1333, *as amended*, 25 P.S. §§ 2600–3591.

candidates are not to be elected by the electors of the State at large, of the political district therein named, in which the nomination is to be made or the election is to be held. He shall add his address where he is duly registered and enrolled, giving city, borough or township, with street and number, if any, and shall legibly print his name and add the date of signing, expressed in words or numbers[.]

25 P.S. § 2868. Generally, a failure to comply with the requirements of Section 908 of the Election Code renders a signature line invalid. *See id.*; *see also In re Morrison-Wesley*, 946 A.2d 789 (Pa. Cmwlth. 2008); *In re Sunday Movie Petition*, 44 A.2d 46 (Pa. 1945).

Prior to the hearing on the matter, the parties conferenced and, thereafter, submitted a joint Case Management Stipulation detailing the outstanding signature challenges at issue for the hearing of this matter.³ The Case Management Stipulation explained that Candidate's nominating petition contained a total of 566 signature lines, of which 438 were uncontested, leaving a total of 128 challenged signatures. *See* Case Management Stipulation at 1; *see also* Candidate's Nominating Petition (Nominating Petition). The Case Management Stipulation further explained that parties stipulated that 58 of the challenged signatures were to be stricken as invalid and that Objectors would withdraw challenges to 19 signature lines, leaving a total of 51 remaining objections grouped in various categories⁴ for review by this

³ The parties also filed their individual witness lists and memoranda of law on March 3, 2020.

⁴ The parties grouped the remaining 51 signature line objections into the following categories, some of which overlapped for specific signature line challenges:

1. Eight (8) signature lines where the signor was allegedly not registered at the address stated in the Petition;

Court. *Id.* at 1-3. Therefore, as a result of the pre-hearing stipulated signature line strikes, at the hearing Objectors needed only to demonstrate the invalidity of nine (9) additional signature lines to move Candidate below the 500 valid signatures required to appear on the ballot as a candidate for Senator in the General Assembly. *See* 25 P.S. § 2872.1(13). Additionally, during the March 4, 2020 hearing, the parties agreed that, in addition to those signatures stipulated in the Case Management Stipulation as invalid, a further five (5) signatures were also invalid,⁵ bringing the

2. Sixteen (16) signature lines where the signor printed the signature instead of signing;

3. Seven (7) signature lines where the signatures did not exactly match the names and/or signatures reflected in voter registration records, but where Candidate disputed whether those signatures constituted an impermissible use of nicknames or initials;

4. Three (3) signature lines where the elector improperly used a married or maiden name;

5. Three (3) signature lines obtained through the use of an out-of-county petition sheet;

6. Three (3) signature lines that omitted the elector's first or last name;

7. One (1) signature line that contained ditto marks;

8. Nine (9) signature lines with a portion written in the hand of another; and

9. Three (3) signature lines where the parties were unable to locate the elector in the SURE system.

Case Management Stipulation at 3-5.

⁵ The parties stipulated that the signature line at page 38, line 2 was invalid. *See* N.T. at 22-23. Later in the hearing, the parties stipulated that the following four signature lines were also invalid: page 8, line 21; page 33, line 1; and page 38 lines 19 & 20. *See* N.T. at 43-50. Objectors had challenged these later four signature lines, among others, for containing printed signatures instead of signed signatures. While Candidate had affidavits from 12 others who had printed their

number of signature lines required to be invalidated to remove Candidate from the ballot down to only four (4).

Before discussing the merits of Objectors' individual signature challenges, we recognize the following. It is well established that "[t]he Election Code must be liberally construed so as not to deprive an individual of his right to run for office, or the voters of their right to elect a candidate of their choice." *In re Ross*, 190 A.2d 719, 720 (Pa. 1963). "[T]he 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). Thus, "[n]omination petitions are presumed to be valid, and objectors bear the heavy burden of demonstrating that a candidate's nomination petition is invalid." *In re Shimkus*, 946 A.2d 139, 141 (Pa. Cmwlth. 2008). "Where the court is not convinced that challenged signatures are other than genuine, the challenge is to be resolved in favor of the candidate." *In re Nomination of Flaherty*, 770 A.2d 327, 331 (Pa. 2001).

At the March 4, 2020, hearing, to illustrate that the challenged signatures were invalid, Objectors presented the testimony of Sharon Proietto, from the Montgomery County Voter Registration Office, and Crystal Winterbottom, from the Delaware County Voter Registration Office, both of whom are familiar with and proficient in the operation and capabilities of Pennsylvania's Statewide Uniform Registry of Electors (SURE) system. *See* N.T. at 57-133. With the help of these

name in lieu of signing, Candidate did not have affidavits for these five. Accordingly, with no way to otherwise rehabilitate these signatures, Candidate stipulated they too were invalid. We note that Objectors did not challenge the admissibility of the affidavits, but did challenge the weight this Court should attribute to the affidavits. N.T. at 17-18. We need not rule on the validity or weight of the proffered affidavits, however, because Objectors proved that enough other signature lines were invalid, as discussed *infra*, so as to render moot the question of the evidentiary value of the affidavits intended to rehabilitate those 12 signatures.

witnesses, Objectors walked the Court through the remaining challenged signature lines from the Nominating Petition for the purpose of determining whether each was valid. *Id.* A review of a select number of these challenges follows.

The signature line at page 34, line 9 of the Nominating Petition is “Deborah Fossett,” claimed to be registered and enrolled at 402 Woodside Road in Narberth. *See* Nominating Petition at page 34, line 9. This name does not appear in the SURE voter registration system. N.T. at 111. A “Deborah Fossil” appears in the SURE system, but not at the stated address, and instead at an address located within the 24th Senatorial District. N.T. at 111-12. A “Deborah Marino” does appear at the listed address, but there is no name change on file for that name in the SURE system. N.T. at 113. The Court must strike as invalid signature lines containing names that do not appear as registered and enrolled electors in the SURE voter registration system. *See* 25 P.S. § 2868. The Court strikes this signature as invalid.

The signature line at page 3, line 9 of the Nominating Petition is “Alice Garrett,” claimed to be registered and enrolled at 220 Glen Arbor Road in Haverford. *See* Nominating Petition at page 3, line 9. An examination of the SURE system voter registration roll revealed no “Alice Garrett,” but instead an “Alicia Garrett” at a different address located in the 9th Senatorial District. N.T. at 78-79. Further, the SURE system showed three other women registered at that address named Garrett, but none named “Alice.”⁶ N.T. at 84. The Court also strikes this signature as invalid. 25 P.S. § 2868.

The signature line at page 3, line 25 of the Nominating Petition is “Cassie Lyons” claimed to be registered and enrolled at 715 Humphreys Road in

⁶ The SURE system had other registered “Garrett” voters named “Jennifer,” “Ruth,” and “Rosalie.” N.T. at 84.

Haverford. *See* Nominating Petition at page 3, line 25. No “Cassie Lyons” is registered in the SURE system at this address. N.T. at 85. Instead, there is a “Catherine Lyons,” registered at the address. N.T. at 85-86. While Section 908 of the Election Code, 25 P.S. § 2868, does not prohibit an elector from signing a nomination petition using an obvious diminutive form of the elector’s first name where no difficulty determining the identity of the signatory exists after an examination of the challenged signature to the elector’s voter registration card, “where it is not obvious that the signature on the nomination petition reflects the same name that appears on the elector’s voter registration card, absent other evidence, the signature should be stricken.” *In re Nomination Petition of Gales*, 54 A.3d 855, 859–60 (Pa. 2012). “Cassie” is a non-obvious diminutive of “Catherine.” Additionally, the signature recorded in the SURE system for the “Catherine Lyons” at the address in question includes the name “Catherine” in its entirety and does not match the signature for “Cassie Lyons” appearing on the Nominating Petition. N.T. at 86. Also, of the many others individuals named “Lyons” remaining in the SURE system, no “Cassie Lyons” is listed in the county. *Id.* For these reasons, the Court also strikes this signature line as invalid.

The signature line at page 30, line 14 of the Nominating Petition is “Katie Springer,” claimed to be registered and enrolled at 127 Merion Avenue in Narberth. *See* Nominating Petition at page 30, line 14. A cursory review of this signature reveals without question that the house number, street, city, and date information were written in the same hand as the previous line, line 13, that of “James Springer.” *See* Nominating Petition at page 30, lines 13 & 14. Section 908 of the Election Code requires that the elector personally fill out each required item on the nominating petition. *See In re Silcox*, 674 A.2d 224, 225 (Pa. 1996); *see also*

In re Morrison-Wesley, 946 A.2d at 794 (“Each item must be personally written by the elector.”). Additionally, no “Katie Springer” is registered at the address listed.⁷ N.T. at 127. Signature line 14 at page 30 of the nominating petition is accordingly struck as invalid.

Additionally, the non-signature information written in signature line 3 at page 13 of the Nominating Petition⁸ has clearly been written in the same hand as the non-signature information in signature line 4 on the same page.⁹ Thus, one of these signature lines must be struck. *Silcox*. Likewise, the house number, and street, city, and date information¹⁰ at signature lines 3, 4 & 5 at page 30 of the Nominating Petition has also clearly been written in the same hand, requiring two of the three to be struck. *Id.*

As a result of the above signature line strikes, Candidate’s nomination petition fails to meet the threshold of 500 valid elector signatures required of a prospective candidate to appear on the ballot as a candidate for Senator in the General Assembly and we need not further review in detail Objectors’ remaining signature line challenges. *See* 25 P.S. § 2872.1(13). Accordingly, Objectors’ Petition is granted.


CHRISTINE FIZZANO CANNON, Judge

⁷ We also note that no “Katie Springer” exists in the Montgomery County SURE system. N.T. at 127-28.

⁸ “Michael DeNaro” at 212 Fourth Street, Bridgeport. *See* Nominating Petition at page 13, line 3.

⁹ “Sandra DeNaro” at 212 Fourth Street, Bridgeport. *See* Nominating Petition at page 13, line 4.

¹⁰ 24 Woodside Ave., Narberth. *See* Nominating Petition at page 30, lines 3, 4 & 5.

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

In Re: Nomination Petition of :
Elvira N. Berry for the Democratic :
Party Nomination for Senator in the :
General Assembly from the :
Seventeenth Senatorial District in :
the April 28, 2020 Primary Election :
:
Objection of: June Coleman, :
Joseph Alexander Brophy, and : No. 150 M.D. 2020
Rachael Aria Chou :

ORDER

AND NOW, this 10th day of March, 2020, the Petition to Set Aside Nominating Petition of Elvira N. Berry (Candidate) filed by June Coleman, Joseph Alexander Brophy, and Rachel Aria Chou is GRANTED. Candidate's name is STRICKEN from the primary ballot for the Democratic nomination for Senator in the General Assembly from the Seventeenth Senatorial District.

If the Candidate's name cannot be removed from the ballot, the County Boards of Elections are directed to post notice within each voting station that Candidate has been removed from the ballot by court order and that casting a vote for Candidate, other than a write-in vote, will not be counted.


CHRISTINE FIZZANO CANNON, Judge

Certified from the Record

MAR 10 2020

And Order Exit