

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

In Re: Nomination Certificate of James :  
Dillon for Senator in the General :  
Assembly in the 5th Senatorial District : No. 214 M.D. 2022  
in the Special Election :  
:  
:  
Objections of: Kevin Pasquay, Charles :  
E. O'Connor, Jr., and Helen Banushi : Heard: April 11, 2022

BEFORE: HONORABLE ELLEN CEISLER, Judge

OPINION NOT REPORTED

MEMORANDUM OPINION  
BY JUDGE CEISLER

FILED: April 11, 2022

Currently before this Court is Objectors Kevin Pasquay, Charles E. O'Connor, Jr., and Helen Banushi's (Objectors) Petition to Set Aside the Substitute Nomination Certificate of James Dillon (Petition to Set Aside). Through their Petition to Set Aside, Objectors seek to have Candidate James Dillon (Candidate) removed from the ballot for the upcoming May 17, 2022 special election as the Democratic Party of Pennsylvania's (Democratic Party) candidate for the position of state senator in Pennsylvania's 5th senatorial district (5th District).

**I. Background**

The relevant facts are as follows:<sup>1</sup> John Sabatina, Jr., resigned from his elected position as the 5th District's state senator on January 1, 2022, prompting the

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<sup>1</sup> This Court has taken some of the facts discussed below from the filings made in a related case, *In Re the Nomination Petition of Shawn Dillon as Candidate for Senator in the Special Election for the 5th State Senate District of the Commonwealth of Pennsylvania* (Pa. Cmwlth., No. 143 M.D. 2022). This is in keeping with the maxim that "[i]t is well settled that [a c]ourt may take judicial notice of pleadings and judgments in other proceedings where appropriate." *Lycoming Cnty. v. Pennsylvania Lab. Rels. Bd.*, 943 A.2d 333, 335 n.8 (Pa. Cmwlth. 2007); *see* Pa. R.E. 201(a)-(c).

Commonwealth of Pennsylvania to schedule a special election for May 17, 2022, in order to fill this now-vacant position. In response, the Democratic Party nominated Shawn Dillon as its candidate for this special election.<sup>2</sup> On March 31, 2022, Objectors petitioned this Court to set aside Shawn Dillon’s nomination certificate. Objectors claimed that they were entitled to such relief because Shawn Dillon had failed to file a statement of financial interest by the deadline set forth by law.<sup>3</sup> This Court scheduled a hearing regarding Objectors’ challenge, but Shawn Dillon opted to formally withdraw his candidacy on April 4, 2022, just prior to the time at which

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<sup>2</sup> The Democratic Party was allowed by Section 629 of the Pennsylvania Election Code (Election Code), Act of June 3, 1937, P.L. 1333, *as amended*, 25 P.S. § 2779, to nominate Shawn Dillon to fill this position. Under this provision of the Election Code, the Democratic Party was required to file a nomination certificate for Shawn Dillon with the Secretary of the Commonwealth. *Id.* The parties do not dispute that the Secretary accepted Shawn Dillon’s nomination certificate and related paperwork, or that he was consequently given a candidate number.

<sup>3</sup> Per Section 1104(b) of the Public Official and Employee Ethics Act, in relevant part,

(1) Any candidate for a State-level public office shall file a statement of financial interests for the preceding calendar year with the [State Ethics Commission] on or before the last day for filing a petition to appear on the ballot for election. A copy of the statement of financial interests shall also be appended to such petition.

....

(3) No petition to appear on the ballot for election shall be accepted by the respective State or local election officials unless the petition has appended thereto a statement of financial interests . . . . Failure to file the statement in accordance with the provisions of this chapter shall, in addition to any other penalties provided, be a fatal defect to a petition to appear on the ballot.

65 Pa. C.S. § 1104(b)(1), (b)(3). Section 629 of the Election Code mandates that all of the required nomination paperwork “shall be filed in the office of the Secretary of the Commonwealth not later than fifty (50) days prior to the date of the special election.” 25 P.S. § 2779. Consequently, given the date of the special election, Shawn Dillon needed to submit all of the necessary materials, including his statement of financial interest, no later than March 28, 2022.

the hearing was supposed to begin. In response, Objectors filed a praecipe for discontinuance, prompting this Court to cancel the hearing and dismiss Objectors' challenge to Shawn Dillon's candidacy without an adjudication on the merits.

That same day, and shortly after Shawn Dillon's withdrawal from the race, the Democratic Party submitted a nomination certificate substituting Candidate for Shawn Dillon as the Democratic Party's candidate for the May 17, 2022 special election in the 5th District.<sup>4</sup> Objectors then filed their Petition to Set Aside on April 7, 2022. Both Candidate and Objectors have briefed the issues in this matter and oral argument occurred on April 11, 2022. As such, this matter is now ready for disposition by this Court.

## **II. Discussion**

Objectors' argument in support of their Petition to Set Aside is fairly straightforward: They claim that, by law, a substitution of this nature can happen only when the previous candidate has either died or withdrawn their candidacy. According to Objectors, Shawn Dillon was never a proper candidate for the 5th District's special election, in a legal sense, due to his failure to file the aforementioned statement of financial interests with the State Ethics Commission. Since, in their view, Shawn Dillon's candidacy was legally invalid, Objectors' position is that Candidate could not be substituted for him on the ballot for the

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<sup>4</sup> Pursuant to Section 634(c) of the Election Code, a substitute nomination certificate must be filed with the Secretary no later than 7 days after the deadline for filing the original candidate's nomination paperwork. 25 P.S. § 2784(c). As the deadline for filing Shawn Dillon's nomination certificate was March 28, 2022, Candidate had to submit his materials to the Secretary no later than April 4, 2022. There is thus no doubt that Candidate satisfied this requirement, and Objectors do not argue to the contrary.

upcoming special election. Therefore, Objectors maintain that Candidate's nomination certificate must be set aside on that basis.<sup>5</sup>

Objectors' line of reasoning, however, is unpersuasive. Shawn Dillon's submission to the *Department* was proper. It included the nomination certificate, the candidate affidavit, a copy of the Statement of Financial Interest, the Democratic Party's by-laws, and documentation from the Democratic Party's Executive Committee for the nomination vote. The Department accepted his filing papers and provided him with a candidate Number 2022C0134. Objectors here do not question that Shawn Dillon fully complied with the requirements of the *Election Code*, but rather whether he satisfied the dictates of the *Public Official and Employee Ethics Act*.

As this Court has stated before,

[t]he vote may be the central act in our democratic form of government. To advance the goal of free and fair elections, the legislature enacted the Election Code, and it is often said that in the interest of preventing fraud, the terms of the Election Code must be strictly enforced. . . . At the same time, 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) (internal citation omitted). In keeping with these guideposts, and

[b]ecause elections "constitute the very warp and woof of democracy," election laws[, including the Election Code,] must be liberally construed to protect a candidate's right to run for office and the voters' right to elect a candidate of their choice. *In re James*, . . . 105 A.2d 64, 65-66 ([Pa.]

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<sup>5</sup> On appeal, a lower court's decision regarding challenges to a candidate's nomination petition may be reversed only in the event the lower court abused its discretion, committed an error of law, or made factual findings that are not supported by substantial evidence. *In re Petition to Set Aside Nomination of Fitzpatrick*, 822 A.2d 867, 869 n.1 (Pa. Cmwlth. 2003). "Substantial evidence is such relevant evidence as a reasonable person would consider adequate to support a finding." *Bouch v. State Ethics Comm'n*, 848 A.2d 1078, 1080 (Pa. Cmwlth. 2004).

1954); *see also In re Paulmier*, . . . 937 A.2d 364, 371 ([Pa.] 2007); *In re Cioppa*, . . . 626 A.2d 146, 148-49 ([Pa.] 1993). The power to strike a candidate's name from the ballot must be wielded with humility and restraint, and only in circumstances compelled by the Constitution or statutes.

*Reuther v. Delaware Cnty. Bureau of Elections*, 205 A.3d 302, 308-09 (Pa. 2019). Consequently, “[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). This presumption and burden also apply in the context of special elections, where, pursuant to Section 632 of the Election Code, “[a]ll certificates of nomination and nomination papers to fill a vacancy as herein provided, which have been accepted and filed shall be deemed to be valid, unless objections thereto are duly made in writing and filed in the court and with the officer or board with whom said nomination certificates or papers were filed[.]” 25 P.S. § 2782. Additionally, and independent of the judiciary’s role in enforcing the strictures imposed by the Election Code, “the Secretary of the Commonwealth or the proper county board of elections, as the case may be,” are tasked with

the duty . . . to examine, as to legal sufficiency, in the manner and under the provisions of [S]ection 976 of [the Election Code, 25 P.S. § 2936], all nomination certificates and nomination papers brought to his or its office for the purpose of filing, for the nomination of candidates for a special election, as herein provided, and if manifestly defective, they shall not be filed. The action of the Secretary of the Commonwealth or the county board of election, in refusing to accept and file any such certificate or paper may be reviewed by the court upon an application to compel its reception and filing as of the date when it was brought to said office. No such certificate of nomination or nomination paper shall be refused by the Secretary of the Commonwealth or the county board of

elections, except for any of the reasons provided for in [S]ection 976 [the Election Code].

Section 631 of the Election Code, 25 P.S. § 2781.

At its core, Objectors' Petition to Set Aside presents this Court with questions of pure statutory interpretation.

The primary objective of statutory interpretation is to determine the intent of the enacting legislation. Section 1921 of the Statutory Construction Act of 1972 (Act), 1 Pa. C.S. § 1921. In pursuing that end, [this Court remains] mindful that a statute's plain language generally provides the best indication of legislative intent and, thus, statutory construction begins with examination of the text itself. *Malt Beverages [Distribs. Ass'n] v. [Pa.] Liquor Control [Bd.]*, 918 A.2d 171, 176 (Pa. Cmwlth. 2007) (en banc), *aff'd*, . . . 974 A.2d 1144 ([Pa.] 2009). In reading the plain language of a statute, "[w]ords and phrases shall be construed according to rules of grammar and according to their common and approved usage." Section 1903(a) of the Act, 1 Pa. C.S. § 1903(a).

*Kohl v. New Sewickley Twp. Zoning Hearing Bd.*, 108 A.3d 961, 968 (Pa. Cmwlth. 2015).

Generally speaking, Objectors are correct that, in the context of a special election, a new candidate can be substituted for the original candidate in only two types of situations: where the original candidate has either died or has voluntarily withdrawn their candidacy. Section 634 of the Election Code sets forth, in pertinent part,

(a) Any vacancy happening or existing in any party nomination for a special election by reason of the death or withdrawal of any candidate, may be filled by a substituted nomination made by such committee as is authorized by the rules of the party to make nominations in the event of vacancies on the party ticket in the form prescribed by [S]ection 630 of [the Election Code, 25 P.S. § 2780].

(b) In case of the death or withdrawal of any candidate nominated by a political body for a special election, the

committee named in the original nomination papers may nominate a substitute in his place by filing a substituted nomination certificate in the form and manner prescribed by [S]ection 980 of [the Election Code, 25 P.S. § 2940]. In the case of a vacancy caused by the death of any candidate, said nomination certificate shall be accompanied by a death certificate properly certified: Provided, however, That no substitute nomination certificate shall nominate any person who has already been nominated by any political party or by any other political body for any office to be filled at the same special election.

(c) Substituted nomination certificates to fill vacancies caused by the withdrawal of candidates nominated for a special election shall be filed with the officer or board with whom the original nomination certificates or papers were filed not later than seven (7) days after the last day for filing the original nomination certificates or papers.

25 P.S. § 2784. With regard to withdrawing one's candidacy for a special election, Section 633 of the Election Code states:

Any person who has been nominated by any political party or political body for a special election as herein provided, may withdraw his name from nomination by a request in writing signed by him and acknowledged before an officer qualified and empowered to administer oaths, and filed in the office of the officer or board with whom the nomination certificate or nomination paper was filed within seven (7) days next succeeding the last day for filing nomination certificates or papers. Such withdrawals to be effective must be received at the office of the Secretary of the Commonwealth or county board of elections, as the case may be, not later than five (5) o'clock P.M. on the last day for filing same. No name, so withdrawn, shall be printed on the ballot or ballot labels. No candidate may withdraw any withdrawal notice already received and filed, and thereby reinstate his nomination.

25 P.S. § 2783.

Reading the plain language of Sections 631, 632, 633, and 634 of the Election Code *in pari materia*, such paperwork is presumed to be valid and complete, unless

and until the Secretary of the Commonwealth or a relevant county board of elections has rejected it on the basis of noncompliance with Section 976 of the Election Code, or *objections thereto are sustained in a court of law*. In the absence of sustained objections, a candidate whose special election nomination materials were not rejected by the Secretary or a county elections board is free to withdraw from a race and may be replaced by a new candidate, regardless of whether any unadjudicated objections to those papers had merit.<sup>6</sup> In line with this, the substitution of a new candidate pursuant to Section 634 of the Election Code is prohibited where an objection to the original candidate’s nomination certificate has been *adjudicated and sustained* and that paperwork has consequently been set aside, but not, to reiterate, in situations where the original candidate has died or has voluntarily withdrawn their

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<sup>6</sup> This is the key distinction that separates this matter from *In re Scroggin*, 237 A.3d 1006 (Pa. 2020). In *Scroggin*, the Supreme Court ruled that the Election Code’s requirement that a candidate attach an original, valid, and sworn affidavit to their nomination petition was mandatory and, consequently, that Scroggin’s failure to do so constituted a fatal defect that rendered her candidacy a nullity and prevented the Green Party from substituting a different candidate in her place. 237 A.3d at 1017-23. However, unlike in this matter, Scroggin did not preemptively withdraw her candidacy and the challenge to her nomination paperwork was adjudicated as a result.

Furthermore, it is debatable whether the so-called “fatal defect” that Objectors claim was present in Shawn Dillon’s nomination paperwork, *i.e.*, his failure to file a statement of financial interests with the State Ethics Commission in connection with his nomination certificate for the 5th District special election, was actually a defect in the first place. As already noted above, Section 1104(b)(3) of the Public Official and Employee Ethics Act states that “[n]o *petition* to appear on the ballot for election shall be accepted by the respective State or local election officials unless the petition has appended thereto a statement of financial interests . . . . Failure to file the statement in accordance with the provisions of this chapter shall, in addition to any other penalties provided, be a fatal defect to a petition to appear on the ballot.” 65 Pa. C.S. § 1104(b)(3) (emphasis added). This statute makes no mention, however, of whether a candidate’s failure to file such a statement in connection with a nomination *certificate* would also constitute a fatal defect.



candidacy. *See Pa. Democratic Party v. Pa. Dep't of State*, 159 A.3d 72, 76-78 (Pa. Cmwlth. 2017).<sup>7</sup>

In this instance, Shawn Dillon's nomination certificate was accepted by the Secretary and, consequently, he was presumed at that point to be a valid candidate for the upcoming 5th District special election. As such, the only way he could have been involuntarily removed from the ballot would have been if this Court had sustained Objectors' challenge to his nomination papers. Rather than move forward with the hearing in that matter, however, Shawn Dillon instead elected to voluntarily withdraw his candidacy, as was still his legal right at the point when he chose to do so. This, coupled with Objectors' voluntary discontinuance of their challenge, ended the matter and obviated the need for additional judicial consideration regarding whether Shawn Dillon had complied with the dictates of the Election Code. Therefore, as Shawn Dillon properly withdrew his candidacy for the upcoming special election in the 5th District, Candidate's substitution as a replacement candidate did not contravene the Election Code.

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<sup>7</sup> Per Section 414(d) of this Court's Internal Operating Procedures, "[a] reported opinion of a single [j]udge filed after October 1, 2013, in an election law matter may be cited as binding precedent in an election law matter only. For purposes of [Section] 414[(d)], 'an election law matter' is one that involves the content of a ballot for the next ensuing election." 210 Pa. Code § 69.414(d).

### III. Conclusion

In accordance with the foregoing analysis, this Court denies Objectors' Petition to Set Aside.<sup>8</sup>



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ELLEN CEISLER, Judge

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<sup>8</sup> Whether or not Shawn Dillon made a fatal defect by not filing his statement of financial interest with the State Ethics *Commission* are questions of law and fact that were never adjudicated. As cogently stated in Respondent's brief "With his withdrawal, Shawn Dillon avoided the need to resolve that issue in this particular special election and avoided any risk that the Democratic Party could be without a special election candidate for this State Senate seat. Further, the Objectors, with their withdrawal of the Shawn Dillon Challenge, removed this issue from consideration by this Court. Objectors cannot now use this proceeding to challenge the validity of the nomination certificate of a former candidate, who is not a respondent here. No adjudication was conducted regarding Shawn Dillon's candidacy. Instead, the candidate proceeded with an appropriate withdrawal and the Democratic Party followed that action with the substitution of a qualified candidate under the Election Code. Any questions as to whether Shawn Dillon might have erred are not before this Court. Candidates Shawn Dillon and James Dillon, and the Democratic Party clearly and appropriately followed the clear directive this Court issued in *Pennsylvania Democratic Party*, 159 A.3d at 78, and did so to ensure that the voters of the 5th Senate District will have a choice of candidates in the upcoming Special Election." Respondent's brief at pages 20 and 21.

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Objections of: Kevin Pasquay, Charles :  
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**ORDER**

AND NOW, this 11<sup>th</sup> day of April, 2022, it is hereby ORDERED that Objectors Kevin Pasquay, Charles E. O'Connor, Jr., and Helen Banushi's Petition to Set Aside the Substitute Nomination Certificate of James Dillon is **DENIED**.



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ELLEN CEISLER, Judge