

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

SYDNEY HOVIS,

Petitioner,

v.

LEIGH M. CHAPMAN, in her official
capacity as Acting Secretary of the
Commonwealth, and THE
PENNSYLVANIA DEPARTMENT OF
STATE,

Respondents.

No. _____ M.D. 2022

ELECTION MATTER

PETITION FOR REVIEW IN THE NATURE OF *NUNC PRO TUNC* DECLARATORY AND INJUNCTIVE RELIEF

Introduction

1. Sydney Hovis brings this petition seeking *nunc pro tunc* relief from this Honorable Court to permit her, a successful write-in candidate, the opportunity to submit her filing fee to the Department’s Bureau of Elections past the statutory deadline. Due to litigation the Acting Secretary brought against, *inter alia*, Fayette County regarding undated absentee and mail-in ballots in the 2022 General Primary Election, certification of the 2022 General Primary Election by the Acting Secretary was delayed until subsequent to the Fayette County Board of Elections providing final certified results on August 24, 2022, following the Commonwealth Court’s

August 19, 2022 Order in *Chapman v. Berks County, et.al.*, No. 355 M.D. 2022 (Pa. Cmwlth., filed July 11, 2022).

2. In reporting the 2022 General Primary Election results, the Fayette County Board of Elections did not specify in its initial certification report to the Department that Sydney Hovis (“Candidate Hovis”), a write-in candidate for the Democratic Party nomination for the 32nd Senatorial District, had garnered 585 votes in the county. This total was sufficient per the Pennsylvania Election Code to secure the Democratic nomination in the 32nd Senatorial District. The fact that Candidate Hovis’ total votes were not specified, as well as the delayed certification, have caused a situation where Candidate Hovis is now past the statutory deadline to pay the filing fee required for her name to appear on the ballot for the 2022 General Election. Therefore, the Petitioner seeks an Order allowing her the opportunity to pay the filing fee *nunc pro tunc* and undertake any other steps necessary for placement on the November ballot as the Democratic Party candidate for the office of Senator in the General Assembly for the 32nd Senatorial District.

Jurisdiction

3. This Court has original jurisdiction in cases related to election matters for candidates for the office of Senator in the General Assembly. *See* 42 Pa.C.S. § 764(2).

Parties

4. Petitioner is Sydney Hovis, a registered voter in Westmoreland County and the 32nd Senatorial District, and resides at 917 Pittsburgh Street, Scottsdale, Pennsylvania, 15683. Candidate Hovis is seeking to be designated, through write-in votes, as the Democratic nominee for the office of Senator in the General Assembly for the 32nd Senatorial District.

5. Respondents are the Acting Secretary of the Commonwealth Leigh M. Chapman and the Pennsylvania Department of State. Among other duties, the Acting Secretary must “certify to county boards of elections for primaries and elections the names of candidates,” 25 P.S. § 2621(c), “receive from county boards of elections the returns of primaries and elections,” “canvass and compute the votes cast for candidates and upon questions as required by the provisions of this act;” “proclaim the results of such primaries and elections,” and “issue certificates of election to the successful candidates at such elections.” 25 P.S. § 2621(f).

6. The 32nd Senatorial District includes all of Bedford County, all of Fayette County, all of Somerset County, and the Borough of Scottsdale in Westmoreland County.

Statement of Facts

7. For every general or primary election, each county board of elections has a mandatory obligation to canvass and compute the election returns. 25 P.S.

§§ 2642(k), 3154(f). Boards do so based on a “computation and canvassing of the [election] returns from various districts of the county.” 25 P.S. § 3154(a).

8. Once a county board’s computation of its returns is finalized, it “shall certify the returns so computed in said county.” 25 P.S. § 3154(f); *see also* 25 P.S. § 2642(k).

9. A county board keeps one copy of the certified returns. 25 P.S. § 3158.

10. In a general or primary election that includes an election for statewide office, for a seat in the General Assembly, or for federal office (among some other positions), “a separate certificate, showing totals of the returns cast for each of such offices respectively, shall also be forwarded by the county board to the Secretary of the Commonwealth on forms furnished by the Secretary of the Commonwealth.” 25 P.S. § 3158; *see also* 25 P.S. § 2642(k).

11. After receiving certified results from the county boards, the Secretary must then “proceed to tabulate, compute and canvass the votes cast for all candidates” and “shall thereupon certify and file in his office the tabulation thereof.” 25 P.S. § 3159; *see also* 25 P.S. § 2621(f).

12. A county board of elections, in computing the votes cast at any primary, certifies the votes cast for an irregular or “write-in” candidate when the total number of votes cast for a person “is equal to or greater than the number of signatures required on a nomination petition for a particular office.” 25 P.S. § 3155.

13. The number of signatures required on a nomination petition for the office of Senator in the General Assembly is five hundred (500). 25 P.S. § 2872.1(13).

14. While final certification of the results of the 2022 General Primary Election was delayed because of litigation, *see Chapman v. Berks County*, No. 355 M.D. 2022 (Pa. Cmwlth., filed July 11, 2022), certification reports were received from all counties on all races and all lawfully cast ballots, except for the undated absentee and mail-in ballots, including any write-in votes on those ballots, in Fayette, Bucks and Lancaster counties.

15. Per the Pennsylvania Election Code, the Fayette County Board of Elections had a duty to certify to the Acting Secretary the results of any race where a write-in candidate secured the nomination for a legislative office pursuant to 25 P.S. § 2642(k).

16. The initial primary ballot certification submitted to the Department by the Fayette County Board of Elections on June 6, 2022, which did not include undated ballots, merely listed “1,000 scattered write-in votes” for the office of Senator in the General Assembly in the Democratic Primary. The relevant pages (1, 2, 16, 17, and 18) of the Fayette County Board of Elections’ Certification of Election Returns are attached as Exhibit A. No names were listed under any of the write-in candidates, *see Exhibit A* (pp. 16-18).

17. Because Fayette County did not list names on this initial primary ballot certification with corresponding write-in vote totals, the Department was not on notice of the 585 write-in votes for Candidate Hovis from Fayette County, which, along with the 126 write-in votes credited for Candidate Hovis from Somerset County, would have provided Candidate Hovis with a qualifying total of 711 votes for the Democratic party nomination in the 32nd Senatorial District.

18. Candidate Hovis had indeed received a qualifying total of 585 write-in votes in Fayette County, votes that alone would have qualified Candidate Hovis for the Democratic party nomination for the office of Senator in the General Assembly for the 32nd Senatorial District. The relevant pages (1, 16, 17, 18, 19, and 20) of Fayette County Board of Elections' Election Summary Report dated May 31, 2022 showing these totals are attached hereto as Exhibit B.

19. Due to the dispute regarding the counting of undated ballots at issue in the *Chapman* litigation, *supra*, final certification of Fayette County's primary election results was delayed.

20. Pursuant to President Judge Renée Cohn Jubelirer's August 19, 2022 Order in *Chapman*, Fayette County provided final certified results of the primary on August 24, 2022, which included votes cast on undated absentee and mail-in ballots.

21. The final primary ballot certification received by the Department from the Fayette County Board of Elections on August 24, 2022, lists 587 write-in votes

for Candidate Hovis for the office of Senator in the General Assembly in the 32nd Senatorial District in the Democratic Primary. The relevant pages (1, 15, 16, 17, 18, and 19) of Fayette County Board of Elections' certification showing these totals are attached hereto as Exhibit C.

22. Candidate Hovis received two additional write-in votes once the Fayette County Board of Elections canvassed and counted the undated absentee and mail-in ballots.

23. With 587 write-in votes from Fayette County, and 126 write-in votes from Somerset County, Candidate Hovis has a qualifying total of 713 votes in the Democratic Primary for the office of Senator in the General Assembly in the 32nd Senatorial District. Moreover, when considering cumulated totals for various spellings of Candidate Hovis' name, it appears Candidate Hovis received even more than 587 write-in votes in Fayette County. *See* Exhibit C (pp. 15-19).

24. All candidates nominated for office must pay the filing fee for their office required under Section 913 of the Election Code, 25 P.S. § 2873, not later than eighty-five (85) days before the date of the general election. 25 P.S. § 2938.1. Given the November 8, 2022 date of the 2022 General Election, that statutory deadline was August 15, 2022.

25. The filing fee for the office of Senator in the General Assembly is \$100.00. 25 P.S. § 2873(b.1).

26. There is no provision in the Election Code that would allow the Acting Secretary to accept Candidate Hovis' filing fee beyond the statutory deadline.

COUNT I – DECLARATORY AND INJUNCTIVE RELIEF
ALLOWING CANDIDATE HOVIS TO PAY HER FILING FEE AND
FILE HER STATEMENT OF FINANCIAL INTERESTS
NUNC PRO TUNC

27. Petitioner realleges and incorporates by reference the preceding allegations in this Petition as if fully set forth herein.

28. Pennsylvania law requires county boards of elections to compute the returns for any general or primary election. 25 P.S. §§ 2642(k), 3154(f). Once the computation of returns is finalized, counties “shall certify the returns so computed in said county.” 25 P.S. § 3154(f); *see also* 25 P.S. § 2642(k). Certified returns are then sent to the Secretary, who performs her own computation and certification. 25 P.S. §§ 2621(f), 3159.

29. A board's computation of election results must include every lawfully cast and canvassed ballot, and every lawfully nominated candidate.

30. Pennsylvania case law recognizes the appropriateness of a *nunc pro tunc* remedy where a right has been lost due to an extraordinary circumstance. *Commonwealth v. Stock*, 679 A.2d 760, 764 (Pa. 1996). Such circumstances exist in election matters where after the expiration of a deadline the Court has found an opportunity denied, and where an otherwise untimely remedy is authorized in order

to correct a palpable fraud or mistake. *In re Twenty-Sixth Election Dist., Second Ward, Borough of Lehighton*, 41 A.2d 657 (Pa. 1945); *see also In re Petition to Contest the General Election for Dist. Justice in Judicial Dist. 36-3-03 Nunc Pro Tunc*, 670 A.2d 629 (Pa. 1996).

31. The delay of Fayette's certification as well as issues related to notice to the Department regarding Candidate Hovis' successful nomination, and the delay of certification beyond the statutory deadline contained in 25 P.S. § 2938.1 caused extraordinary circumstances here, making it impossible for Candidate Hovis to timely pay the filing fee to perfect her nomination. As the Pennsylvania Supreme Court has stated, "*nunc pro tunc* relief is appropriate where a breakdown in the administrative operations of the Election Board occurs." *In re Petition to Contest the General Election for Dist. Justice in Judicial Dist. 36-3-03 Nunc Pro Tunc*, 670 A.2d 629, 635 (Pa. 1996).

32. The issuance of an order allowing Candidate Hovis to pay her filing fee *nunc pro tunc* will not harm any other candidates for this race, will not prevent the Department from issuing its timely list of candidates, as known to exist at the time, to the counties, and will not cause any administrative burdens. What it will do is correct a wrong that was not caused by any action or inaction of Candidate Hovis.

33. For these reasons, it is respectfully requested that this Honorable Court issue an Order authorizing Candidate Hovis the opportunity to pay her filing fee

nunc pro tunc to satisfy the statutory requirements contained at Section 978.1 of the Election Code, 25 P.S. § 2938.1 and to file an accompanying Statement of Financial Interest with the State Ethics Commission pursuant to 65 Pa.C.S. § 1104 and 51 Pa. Code § 15.3.

34. The Acting Secretary and the Department do not oppose the relief requested in this Petition.

PRAYER FOR RELIEF

WHEREFORE, Petitioners respectfully request that the Court order the following relief:

a. Issue an Order that the Department of State shall accept Candidate Hovis' filing fee required under Section 978.1 of the Election Code, 25 P.S. § 2938.1, provided such fee is paid within two days of the Court's Order, along with an accompanying Statement of Financial Interest filed with the State Ethics Commission, also within two days of the Court's Order, to have her name appear on the ballot for the 2022 General Election as the Democratic Party candidate for the 32nd Senatorial District.

b. Grant such further relief as may be necessary.

Respectfully submitted,

Date: August 28, 2022

By: /s/ Charles A. Pascal, Jr. _____
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CERTIFICATE OF COMPLIANCE

I certify that this filing complies with the provisions of the *Case Records Public Access Policy of the Unified Judicial System of Pennsylvania* that require filing confidential information and documents differently than non-confidential information and documents.

Date: August 28, 2022

By: /s/ Charles A. Pascal, Jr.
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VERIFICATION

I hereby verify that I am a Petitioner in the within matter, and that the facts contained in the within pleading are true and correct to the best of my knowledge, information and belief. I understand that false statements herein are made subject to the penalties of 18 Pa. C.S. §4904 relating to unsworn falsification to authorities.

A handwritten signature in black ink, consisting of a circular scribble with a horizontal line extending to the right, positioned above a horizontal line.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the attached Petition for Review, and exhibits thereto, was served on the following by electronic mail, as agreed to by the listed attorneys; such service complies with the Rules of Appellate Procedure:

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