

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

In Re: Nomination Petition of :
Amen Brown, Candidate for :
Representative in the General :
Assembly- 10th Legislative District : No. 84 M.D. 2024
:
Objection of: Rikeyah Lindsay :
:
:
: Heard: March 4, 2024

BEFORE: HONORABLE MATTHEW S. WOLF, Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY JUDGE WOLF

FILED: March 7, 2024

Before the Court is Rikeyah Lindsay’s (Objector) Petition to Set Aside the Nomination Petition/Paper of Amen Brown (Candidate), who is seeking to appear as a candidate for reelection on the April 23, 2024 general primary election ballot as State Representative in the Pennsylvania General Assembly for the 10th Legislative District. Concluding that Objector failed to meet her burden, the Court denies the Petition to Set Aside.

BACKGROUND

Candidate currently serves as State Representative in the Pennsylvania General Assembly for the 10th Legislative District. He timely filed a Nomination Petition seeking to have his name placed on the ballot for reelection in the April 23, 2024 general primary election ballot. Objector filed the Petition to Set Aside, asking this Court to set aside Candidate’s Nomination Petition alleging Candidate filed his

candidate's affidavit in bad faith, knowingly and materially misrepresenting information with the intent to deceive the electorate.

Specifically, the Objection Petition alleges that on February 8, 2024, Candidate executed a candidate's affidavit as required by Section 910(e) of the Pennsylvania Election Code (Election Code)¹ in support of his candidacy for reelection. Objection Petition ¶9. Section 910 of the Election Code states, in part:

Each candidate for any [s]tate . . . office . . . shall file with his nomination petition his affidavit stating . . . (e) that he will not knowingly violate any provision of this act, or of any law regulating and limiting nomination and election expenses and prohibiting corrupt practices in connection therewith; . . . [and] (i) that he is aware of the provisions of section 1626 of this act [, 25 P.S. § 3246,] requiring pre-election and post-election reporting of campaign contributions and expenditures[.]

25 P.S. § 2870(e) and (i).²

Objector asserts that by signing the affidavit, Candidate swore not to violate any election law and further swore that he was aware of the requirements found in Section 1626 of the Election Code, 25 P.S. §3246, which requires pre-

¹ Act of June 3, 1937, P.L. 1333, *as amended*, 25 P.S. §§2600-3591.

² The language of the affidavit mirrors the language in Section 910 of the Election Code. It states in part:

I do swear (or affirm) that my residence, my election district and the title of the office for which I desire to be a candidate are specified above, that I am eligible for office, that **I will not knowingly violate any election law or any law regulating and limiting nomination and election expenses**, and prohibiting corrupt practices in connection therewith; **[and] that I am aware of provisions of Section 1626 of the [] Election Code requiring pre-election and post-election reporting of campaign contributions and expenditures. . . .**

Objection Petition, Exhibit A (emphasis added).

election and post-election reporting of campaign expenditures. Objection Petition ¶10.

Objector avers that despite swearing (or affirming) that he was aware of the requirements of Section 1626 of the Election Code, Candidate has failed, and continues to fail, to file mandatory financial disclosures. Objection Petition ¶11. Objector asserts that Candidate was aware of his failure to comply and swore to the contrary in bad faith with an intent to deceive the electorate. *Id.* Objector notes that as a current Representative and recent candidate for Mayor of Philadelphia, Candidate is aware of the Election Code’s mandate to file, in a timely manner, campaign finance reports. *Id.* ¶13. Indeed, Candidate has filed (or has had filed on his behalf) 19 such reports between 2018 and 2022. *Id.* ¶18.³ Objector notes that the most recent report was filed on behalf of Candidate on January 30, 2022. *Id.* ¶20.

Objector contends that on the date Candidate signed his affidavit (February 8, 2024), Candidate had not filed his 2023 “Cycle 7-Annual Report” (Cycle 7 Report) with the Commonwealth. Objection Petition ¶21. The Cycle 7 Report was to be filed by January 31, 2024. *Id.* ¶22. Furthermore, as of the date of the filing of the Objection Petition, Candidate had not filed the Cycle 7 Report or any other report for 2023. *Id.* ¶21. Finally, Objector asserts that the reports should have been filed because Candidate made contributions to multiple campaigns and received election contributions in 2023. *Id.* ¶23.

Objector argues that Candidate’s willful failure to comply with the Election Code’s reporting requirements prevents verification of campaign receipts

³ Of further note, Objector observes that the Commonwealth has put Candidate on notice of the requirement to file campaign finance reports by repeatedly fining him for failing to file timely reports in 2020, 2021, and 2022. Objection Petition ¶19.

and expenses, thereby denying the public crucial information about who is funding his campaign. Objection Petition ¶24. Objector infers that Candidate’s affidavit contains a false statement because “[Candidate] swore that he is eligible for the office of Representative in the General Assembly for the 10th Legislative District, when in fact, he has not filed his Cycle 7 [Report] or any other campaign finance reports for 2023.” *Id.* ¶25. Thus, Objector asks this Court to set aside Candidate’s Nomination Petition and award attorney’s fees. *Id.* Wherefore Clause.

On February 21, 2024, this Court entered a Scheduling and Case Management Order (Scheduling Order) setting a hearing on the Petition to Set Aside for March 4, 2024. The hearing convened on that date and both parties were represented by counsel. In support of her case, Objector elicited the testimony of Candidate and entered documentary evidence. The Petition to Set Aside is now ripe for disposition.

RELEVANT LAW

We begin with a review of the relevant law. Initially, we recognize:

[C]ourts have long held that the Election Code must be construed liberally “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.” *Nom[.] Pet[.] of Ross*, [] 190 A.2d 719, 720 ([Pa.] 1963). Furthermore, “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). Thus, nomination petitions are presumed to be valid, and **it is the objector’s heavy burden to prove that a candidate’s nomination petition is invalid.** *In re Nom[.] Pet[.] of Shimkus*, 946 A.2d 139, 141 (Pa. Cmwlth. 2008) (Cohn Jubelirer, J.) (single-judge op.).

In re Nom. Pet. of Masino, 293 A.3d 752, 760 (Pa. Cmwlth. 2023) (emphasis added). In terms of the importance of affidavits, this Court has explained that

the provisions of the [] Election Code relating to the form of nominat[ion] petitions and the accompanying affidavits are not mere technicalities, but are necessary measures to prevent fraud and to preserve the integrity of the election process. . . . The requirements of sworn affidavits in the [] Election Code are to insure the legitimacy of information crucial to this process. . . . Thus, the policy of liberal reading of this statute cannot be distorted to emasculate those requirements necessary to assure the probity of the election process.

In re Nom. Pet. of McIntyre, 778 A.2d 746, 751 (Pa. Cmwlth.) (citations omitted), *aff'd*, 770 A.2d 326 (Pa. 2001). “[B]efore an affidavit may be declared void and invalid because it contains false information, there must be evidence that the candidate **knowingly falsified the affidavit with an intent to deceive the electorate.**” *In re Nom. Pet. of Driscoll*, 847 A.2d 44, 51 (Pa. 2004) (emphasis added).

As to campaign finance reports, this Court has discussed the consequences for failure to timely meet filing requirements. In *In re Objection to Nom. Pet. of Jared Solomon*,⁴ the objector raised a number of global challenges to the candidate’s nomination petition including, *inter alia*, that the nomination petitions should be stricken because the candidate failed to timely file certain campaign finance reports.

⁴ *Solomon* (Pa. Cmwlth., No. 116 M.D. 2016, filed Mar. 18, 2016) (Colins, J.) (single-Judge Op.), *aff'd in part, vacated in part*, (Pa., No. 11 EAP 2016, filed Apr. 5, 2016) (vacating and remanding that portion of the Commonwealth Court order imposing costs). *Solomon* is a single-judge unreported opinion in an election matter, which, pursuant to Section 414(b) of this Court’s Internal Operating Procedures, 210 Pa. Code §69.414(b), may only be cited for its persuasive value and not as binding precedent.

The Court refused to strike the petitions on those grounds, noting that nothing in Article XVI of the Election Code (Campaign Finance Law)⁵ provides that a nomination petition must be stricken for violation of campaign finance reporting requirements or prevents a recalcitrant candidate from appearing on the ballot. The Solomon Court noted:

[T]he Campaign Finance Law imposes late filing fees for each business day that a required campaign finance report is late up to a total of \$250 and prohibits the candidate from taking office until all campaign finance reports have been filed. Section 1632 of the Election Code, 25 P.S. § 3252. Because the Campaign Finance Law specifically prescribes late filing fee fines and requires compliance before the candidate takes office, but not before the candidate is permitted to appear on the ballot, it does not permit striking a nomination petition as a penalty for late filing of campaign finance reports. *See In re Dawkins*, 98 A.3d 755, 766 (Pa. Cmwlth. 2014) (because “the law clearly anticipates and contains a vehicle for delayed filings in Section 1632(a) of the Election Code, 25 P.S. § 3252(a), [a] late-filed candidate campaign finance report does not constitute a substantial Election Code violation” that could support prosecution and disqualification from office).

Solomon, slip op. at 9.⁶ Accordingly, this Court has explained that late-filed campaign finance reports do not, in and of themselves, disqualify an individual from appearing on a ballot.

⁵ Sections 1621-1642 of the Election Code, added by the Act of October 4, 1978, P.L. 893, 25 P.S. §§ 3241-3260b.

⁶ Notably, the objector in *Solomon* did not raise the issue of a false candidate’s affidavit.

With that said, this Court has also enunciated the significance of campaign reporting requirements. In *Commonwealth v. Beck*, 810 A.2d 736 (Pa. Cmwlth. 2002), this Court recognized:

The importance of campaign reporting requirements is obvious: by preserving public access to the manner in which campaign money is received and spent, public confidence in the election process is maintained. [Candidate's] willful refusal to comply with the registration and reporting requirements prevents verification of campaign receipts and expenses, thereby imperiling confidence in the election. This is the mischief the Legislature sought to avoid. . . .

Id. at 746.

Also relevant to our discussion is another matter involving Candidate. In *In Re: Nom. Pet. of Amen Brown* (Pa. Cmwlth., No. 152 M.D. 2022, filed April 11, 2022) (Wallace, J.) (single-Judge Op.) (*Brown I*), Candidate failed to properly fill out his 2021 Statement of Financial Interests (SOFI) when running for the Democratic Nomination for Representative in the Pennsylvania General Assembly for the 10th Legislative District. In that case, the Court found that Candidate's 2021 SOFI was defective because it failed to list several business entities on the form. In determining whether Candidate could cure the defect, this Court specifically discussed whether Candidate's omission was made in bad faith. Judge Wallace explained:

The failure to disclose information on a timely-filed SOFI is generally a defect subject to amendment. *In re Nom[.] of Paulmier*, 937 A.2d 364, 371 (Pa. 2007). This Court will not permit amendment, however, if it finds a candidate acted in bad faith to deceive the electorate. *Shimkus*, 946 A.2d at 155-56. A candidate does not display bad faith if he or she makes an honest mistake or

an unintentional one. *Id.* at 157. Bad faith occurs when a candidate acts “with care and thought” and commits “purposeful misrepresentation.” *Id.*

Brown I, slip op. at 11-12. After summarizing Candidate’s testimony and making findings of fact, the Court concluded in *Brown I* that Candidate did not act in bad faith with intent to deceive the electorate and that his 2021 SOFI was subject to amendment. *Id.*, slip op. at 12-13. With this background in mind, we now address the merits of the instant case.

DISCUSSION

Here, we are tasked with determining whether Candidate knowingly falsified his candidate’s affidavit in bad faith with an intent to deceive the electorate when he swore and affirmed that he would not knowingly violate any election law or any law regulating and limiting nomination and election expenses, and that he was aware of the provisions of Section 1626 of the Election Code requiring pre-election and post-election reporting of campaign contributions and expenditures.

The facts are disputed in the sense that the critical issue is Candidate’s intent upon signing the candidate’s affidavit. The events that occurred surrounding the execution of the affidavit are not disputed, and Objector relied solely on Candidate as a witness at the hearing. No other witnesses were called. Through Candidate’s testimony, Objector offered documentary evidence of numerous late filing notices issued against Candidate’s campaign committee for failure to timely comply with campaign finance reporting deadlines. *See* Hearing Exhibits P1-11. The late filing notices addressed to the treasurer of Candidate’s campaign committee showed that the committee frequently missed deadlines for filing various campaign finance reports in years 2021, 2022, and 2023, and was fined as a result. *Id.* Objector also elicited the testimony of Candidate, who explained that the late filing notices

are not sent directly to him, but rather to his campaign treasurer.⁷ He testified that once he was made aware of the fines by his team, he paid them personally through a money order. He further testified that he believed all the reports that were the subject of the late filing notices had been paid because he was aware that the law requires an individual to be up to date on campaign finance reports to take the oath of office, and that he previously assumed office. The essence of his thought process expressed through this testimony was that he must be in compliance or he would not have been permitted to be take office.

Candidate admitted he has come before this Court and courts of common pleas in prior cases relating to delinquent campaign reporting requirements. Through the evidence, it appears those cases related solely to the SOFIs filed in connection with those other elections. As to the affidavit at issue here, Candidate testified that he read the affidavit and executed it on February 8, 2024. At the time he executed the document, he testified that he was not aware that he had outstanding campaign finance reporting obligations, and only learned of this when his attorney notified him of the instant litigation.

The Court finds Candidate's testimony credible. The parties agreed there is no direct evidence to support Objector's claims. Objector asserts that the circumstantial evidence based on Candidate's history of filing, experience as a legislator, history as a candidate, and history in election eligibility challenges all serve to show that Candidate was seeking to deceive the electorate when he signed

⁷ Exhibits P1-P11 indicate that the late filing notices were sent to "Citizens for Amen Brown, c/o Jasmine Barnes, 4528 N Oamac Street, Philadelphia, Pennsylvania." Candidate testified Ms. Barnes was his campaign committee's treasurer. While not addressed at the hearing, the Court cannot help but to notice the apparent misspelling of the street name listed in the late filing notices as "Oamac Street," which presumably should be "Camac Street." The Court wonders whether this misspelling played a role in Candidate's campaign committee's repeated failure to timely file, but the issue was never raised by the parties, and therefore won't be discussed further in this opinion.

his affidavit. The Court finds that all of the same evidence can support the opposite conclusion, that Candidate was not seeking to deceive the electorate. In fact, Candidate had repeatedly filed his own personal campaign finance reports without issue according to his testimony. It was only ever his campaign committee or committees that have had issues over the years. Objector failed to show any notice ever went to Candidate either through email, mail, or otherwise that would put him on notice of his committee's noncompliance.

During closing statements, Objector argued that the testimony and documentary evidence showed that Candidate has so insulated himself from what was going on with his campaign committee that this turns from a "plausible deniability" to an "implausible deniability" situation. In other words, it is unbelievable that Candidate is so disengaged from his committee, which shows his candidate's affidavit was false and filed with an intent to deceive. The Court is not convinced of this argument. Candidate testified candidly and credibly regarding the fact that he had delegated the responsibility for filing his committee's 2023 Cycle 7 Report to a person who had ended up disappointing him by not filing it on time. The Court accepts this as the only version of the events presented at the hearing, which was presented through a credible witness, Candidate. The Court finds as a matter of fact that it was not Candidate's intent to deceive the electorate, and it appears from the evidence that Candidate's compliance or lack of compliance with his campaign committee's reporting requirements was essentially the furthest thing from his mind because he had delegated that responsibility, and, as he stated, he trusted someone who he should not have trusted.

While Objector attempted to make a case, consisting solely of circumstantial evidence, that Candidate falsified the affidavit in bad faith with the

intent to deceive the electorate, the evidence falls short.⁸ While Objector attempted to use the numerous late filing notices to create the inference that Candidate *must have known*, or at the very least *should have known*, that he was delinquent in campaign reporting requirements at the time he executed the affidavit on February 8, 2024, the Court does not reach such a factual conclusion. Based on Candidate’s testimony and credible demeanor, the Court finds as a matter of fact that Candidate misplaced trust in the person he delegated the responsibility to handle an important matter. Notably, as to his own individual campaign finance reporting filing requirements, separate from his committee, there was testimony that Candidate met those requirements without issue.

Objector also briefly touched on an allegation that a bad faith intent to deceive the electorate could be gleaned from the portion of the candidate’s affidavit that states “I am aware of the provisions of Section 1626 of the [] Election Code requiring pre-election and post-election reporting of campaign contributions and expenditures.” Objector implied that if Candidate was not intimately familiar with that section of the Election Code, he must be disqualified. The Court does not believe that requiring a candidate to be aware of the Election Code could be conflated to requiring a granular knowledge of it. The Court finds as a matter of fact that Candidate may not be an expert on Section 1626 of the Election Code, but that he has a sufficient level of awareness of Section 1626 to convince the Court that he had no intent to deceive the electorate on this issue when he signed the candidate’s affidavit.

⁸ Other cases before this Court have consisted of objective and direct evidence of false statements, such as the candidates stating that they live at one address but were found to live at another. *E.g.*, *In re Nom. Pet. of Driscoll*, 847 A.2d 44 (Pa. 2004).

Bad faith requires a showing of “care and thought” when committing a purposeful misrepresentation. *See Shimkus*, 946 A.2d at 157. Here, the Court concludes the precise opposite, *i.e.*, that Candidate did not have in his mind at the time he executed the document in question that he was making false representations. There was no intent to deceive shown by the evidence.

Weighing further against Objector’s argument is the important principle of the franchise. It is a longstanding and overriding policy in our Commonwealth to protect the elective franchise and that the Court should interpret the Election Code liberally to protect a candidate’s right to run for office and the voters’ right to elect the candidate of their choice. *In re Beyer*, 115 A.3d 835, 838 (Pa. 2015). Even without a liberal reading of the Election Code, Objector has fallen short, and the Court is confident that rejecting the allegations of Objector as unsupported, does not “emasculate the requirements necessary to assure legitimate nomination papers.” *Id.*

Accordingly, Objector failed to prove the state of mind required for this Court to hold that Candidate executed the affidavit with the intent to deceive the electorate.

OTHER ISSUES

At the conclusion of Objector’s evidence at the March 4, 2024 hearing, Candidate’s counsel moved for a “directed verdict” on the basis that Objector failed to (1) provide evidence of service on the Secretary of the Commonwealth as required by Paragraph 1(D) of this Court’s Scheduling Order; and (2) establish that she was a qualified elector. No reference, or at least insufficient, *de minimis*, reference was made to statutory authority for this motion. As such, the nature of this argument was

based solely on the allegation of Objector's noncompliance with the Court's Scheduling Order.

The Court reserved ruling on Candidate's motion, and hereby denies it. In *In Re Nomination Petition of Pippy*, 711 A.2d 1048 (Pa. Cmwlth. 1998), this Court addressed a constitutional challenge to an amendment to the Election Code, wherein the objectors failed to notify the Attorney General. This Court held, unequivocally, that "because the [o]bjectors failed to serve the Pennsylvania Attorney General with a copy of the instant petition, this claim has been waived and will not be addressed on the merits." *Id.* at 1050 n.6. Further, where service of the petition upon the Secretary is late, the petition to set aside the nomination petition is void and cannot be considered by the courts. *In re Nom. Pet. of Boyd*, 41 A.3d 920, 923-24 (Pa. Cmwlth.), *aff'd without op.*, 42 A.3d 374 (Pa. 2012).

In the current case, the Court was in the midst of considering the matter on the merits during the evidentiary hearing, and Candidate only raised the argument that Objector had not entered into evidence proof of service on the Secretary after Objector concluded her case-in-chief. Then, at the conclusion of the hearing of this matter, the Court asked both parties on the record if there was anything further either party wished to argue or submit. The hearing only ended after both parties clearly stated that they had nothing further.

Despite claiming they had nothing further, subsequent to the hearing, both parties have engaged in a flurry of filings after the close of evidence with Objector filing Proof of Service on the Secretary, Candidate filing a "Motion to Strike Pleading," and Candidate filing a rebuttal to the Motion to Strike.⁹

⁹ The Court takes exception to the statement in paragraph four of Objector's response wherein it states: "The Court did not object to counsel's proposal to file the proof of service later in the day." See Objector's Reply to Candidate's Motion to Strike ¶4.

Objector is arguing that she accomplished service. Candidate is arguing that the failure to offer proof of service on the Secretary during the hearing was a violation of the Court's Scheduling Order, which merited striking the recent filing of Objector's Proof of Service. Objector denies this and, in the alternative, requests to reopen the hearing, which request is hereby denied because it should have been made, if at all, at the hearing.

To be clear: If an essentially jurisdictional defense such as this is going to be raised by a candidate as a defense, it should be raised before the hearing, not during or after the hearing. Stated differently, a defense that a claim should not be heard on the merits should be raised before the Court hears the matter on the merits. Further, dismissal of the objections based on noncompliance with the Court's own order is purely discretionary. While dismissal of the objections might be stronger if made on a statutory basis, those arguments were not sufficiently developed, both for Objector to respond and for the Court to rule. The qualified elector issue is being treated similarly by the Court. Because the Court is disposing of this matter on the merits after an evidentiary hearing in favor of Candidate, the Court declines to grant Candidate's oral directed verdict motion and dismisses the Motion to Strike as moot.

CONCLUSION

For these reasons, Objector's Petition to Set Aside is denied, and Candidate shall remain on the April 23, 2024 primary election ballot.

s/ Matthew S. Wolf

MATTHEW S. WOLF, Judge

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

In re: Nomination Petition of :
Amen Brown, Candidate for :
Representative in the General :
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Objection of: Rikeyah Lindsay :
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:

ORDER

AND NOW, this 7th day of March, 2024, Rikeyah Lindsay’s Petition to Set Aside the Nomination Petition/Paper of Amen Brown (Candidate) is DENIED in accordance with the foregoing opinion. Candidate shall remain on the ballot.

Candidate’s Motion to Strike Untimely Pleading is DISMISSED as MOOT.

Each party shall bear his or her own costs/attorneys’ fees.

The Prothonotary is directed to send a copy of this order to the Secretary of the Commonwealth.

s/ Matthew S. Wolf

MATTHEW S. WOLF, Judge