

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

In re: Nomination Petition of :  
Joseph J. Vodvarka for :  
United States Senator :  
 :  
Objection of: Andrew Ritter, Jr., : No. 85 M.D. 2024  
Ashley Boop, and Richard Tems : Heard: March 5, 2024

BEFORE: HONORABLE MARY HANNAH LEAVITT, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION  
BY SENIOR JUDGE LEAVITT

FILED: March 8, 2024

Before the Court is the Petition to Set Aside Nomination Petition of Joseph J. Vodvarka (Candidate) as a Republican Candidate for the Office of United States Senate in the General Primary Election to be held on April 23, 2024, that was filed by Andrew Ritter, Jr., Ashley Boop, and Richard Tems (Objectors) on February 20, 2024. Section 912.1(2) of the Pennsylvania Election Code<sup>1</sup> requires a candidate for the Office of United States Senate to present at least 2,000 valid signatures of electors registered in the candidate’s political party in order to have his or her name appear on the primary election ballot. Candidate’s Nomination Petition has 2,439 signatures. Objectors challenge 577 signatures as invalid, which reduces the total number of signatures below the statutory minimum of 2,000.

On February 21, 2024, this Court entered an Order scheduling the hearing on Objectors’ petition for March 5, 2024, at 9:30 a.m., and imposing pre-hearing responsibilities upon both Objectors and Candidate. Specifically, (1) Objectors were ordered to secure the services of a court stenographer for the hearing

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<sup>1</sup> Act of June 3, 1937, P.L. 1333, *as amended*, added by the Act of December 12, 1984, P.L. 968, 25 P.S. §2872.1(2).

and, if signatures were challenged, to secure the presence of a SURE system<sup>2</sup> operator for the hearing; (2) Objectors and Candidate were ordered to file a list of all witnesses intended to testify at the hearing; (3) Objectors were ordered to arrange to meet with Candidate or his representative and a SURE system operator, if necessary, to review each challenged signature before the hearing; (4) Objectors and Candidate were ordered to file a stipulation that listed the total number of completed signatures submitted, the total number of uncontested signatures, the total number of contested signatures by petition page and line number and the basis for the objection, and each signature for which an objection can be withdrawn, by page and line number; and (5) Candidate was ordered to identify each signature, by page and line number, to be rehabilitated at the hearing and the manner of rehabilitation. Objectors and Candidate were ordered to file all of the foregoing items with this Court no later than 48 hours in advance of the hearing. The Order further stated that a party's failure to comply with any of its provisions could preclude the noncompliant party from presenting evidence at the hearing and could result in the imposition of monetary sanctions by the Court.

On March 1, 2024, the parties filed a stipulation to strike 357 of the challenged signature lines in the Nomination Petition, and Objectors withdrew 100 of their signature line challenges. The parties agreed that the number of uncontested signature lines was 1,962 and the number of remaining signature line challenges was 122.

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<sup>2</sup> “The SURE system is the Statewide Uniform Registry of Electors, the statewide database of voter registration maintained by the Department of State and administered by each county.” *In re Nomination Petition of Morrison-Wesley*, 946 A.2d 789, 792 n.4 (Pa. Cmwlth.), *aff'd*, 944 A.2d 78 (Pa. 2008).

Objectors filed a witness list indicating their intention to call Christa Miller, Chief Clerk, from the Lancaster County Bureau of Elections. Candidate did not file a list of witnesses or identify the signatures that he intended to rehabilitate, as directed by this Court’s Order of February 21, 2024. Candidate’s status report, however, stated that he challenged the Election Code on constitutional grounds and intended to rehabilitate the circulator issues raised by Objectors to pages 107 and 110.

The scheduled hearing was conducted on March 5, 2024. At the hearing, Objectors presented the testimony of the Chief Clerk for the Lancaster County Bureau of Elections, Christa Miller, who administers the voter registration rolls on the SURE system. The voter registration record of each elector’s signature line challenged by Objectors was brought up on the SURE screen and examined by all parties and the Court. Candidate had the opportunity to cross-examine Objectors’ witness and to testify on his own behalf. During the hearing, the parties agreed to strike the following 10 signature lines:

<u>Page</u>	<u>Line</u>
2	22
23	29
36	11
38	14
45	21
53	7
62	6
65	20
66	10
79	3

Additionally, Objectors withdrew their objections to the following 6 signature lines:<sup>3</sup>

<u>Page</u>	<u>Line</u>
72	11
75	12
83	10
110	1, 3, 4

Adding these 6 signature lines to the 1,963 uncontested signature lines, resulted in 1,969 uncontested signature lines. Following the parties' resolution of 16 challenged signature lines, there remained 104 contested signature lines.

Both parties filed post-hearing memoranda.<sup>4</sup>

This matter is ready for disposition.

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<sup>3</sup> At the hearing, Objectors advised the Court that the challenge to the signature line on page 18, line 19 was erroneously listed on the election spreadsheet attached to the parties' stipulation as Exhibit A. Adding this signature line to the 1,962 uncontested lines results in 1,963 uncontested signature lines.

Additionally, upon further review of the 122 challenged signatures, it appeared that the objection to page 53, line 9 was a duplicate, and Candidate already agreed to strike line 2 on page 110. *See* Parties' Stipulation, Exhibit A. Subtracting these 3 lines from the remaining 122 contested lines left 119 lines in dispute.

<sup>4</sup> Candidate also filed a post-trial motion to strike all testimony by Objectors for failure to comply with paragraph 1.D of the Court's Scheduling and Case Management Order, which requires Objectors, "[a]t the hearing," to "offer proof of timely service of the Objection Petition on the Secretary of the Commonwealth." Scheduling and Case Management Order, 2/21/2024, at 1.D. Candidate did not raise any objections at the hearing regarding service of the Objection Petition or to Objectors failure to comply with this Court's Order. A review of the docket shows that Objectors filed an affidavit showing service of the Objection Petition on Secretary of the Commonwealth, located at the Pennsylvania Department of State, State Capitol, North Office Building, 401 N. St., Room 302 in Harrisburg, Pennsylvania. Candidate's reliance on *In re Boyd*, 41 A.3d 920 (Pa. Cmwlth. 2012), is misplaced. There, the candidate filed preliminary objections alleging that the objectors had failed to serve the objection petition on the Secretary of the Commonwealth. For these reasons, the Candidate's post-trial motion is denied.

## Analysis

The Court initially notes that “in reviewing election issues, ‘we must consider the longstanding and overriding policy in our Commonwealth to protect the elective franchise,’ and that the Election Code must be ‘liberally construed to protect a candidate’s right to run for office and the voters’ right to elect the candidate of their choice.’” *In re Nomination Papers of James*, 944 A.2d 69, 72 (Pa. 2008) (citation omitted). 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). However, “the policy of the liberal reading of the Election Code cannot be distorted to emasculate those requirements necessary to assure the probity of the process.” *In re Nomination Petition of Cianfrani*, 359 A.2d 383, 384 (Pa. 1976). “It is not for us to legislate or by interpretation to add to legislation matters which the legislature saw fit not to include.” *Commonwealth ex rel. Fox v. Swing*, 186 A.2d 24, 27 (Pa. 1962).

Furthermore, “[a] party alleging defects in a nominating petition has the burden of proving such defects, as nomination petitions are presumed to be valid.” *In re Nomination Petition of Beyer*, 115 A.3d 835, 838 (Pa. 2015). This Court is “[e]ntrusted with the responsibility of protecting the Commonwealth’s compelling interest in preserving the integrity of the election process.” *In re Nomination Papers of Carlson*, 430 A.2d 1210, 1212 (Pa. Cmwlth. 1981). The Supreme Court may reverse our order concerning the validity of challenges to nomination petitions only if our findings of fact are not supported by substantial evidence, if we abused our discretion, or if we committed an error of law. *In re Beyer*, 115 A.3d at 838.

With this background, we address the remaining objections to the Nomination Petition.

## **I. Defective Circulator Statement**

Objectors challenge 3<sup>5</sup> signatures on page 107 of Candidate's Nomination Petition because the circulator's statement is incomplete. Specifically, the required affidavit was omitted from the circulator's statement.

To rehabilitate this page, Candidate's son, Jesse James Vodvarka, testified that the circulator, Joan S. Lyons, attempted to print the entirety of the circulator statement, but her computer failed. He went to the circulator's house, and in his presence, she completed and signed a circulator statement, which Vodvarka offered at the hearing. A signed circulator statement was marked as Exhibit C-1, which consists of a blank second page of a nomination petition signed by Lyons.

Objectors lodged an objection to the admission of Exhibit C-1. They asserted that the document had not been authenticated, and, further, Vodvarka's testimony about why the affidavit was missing was hearsay. The circulator needed to be present to verify her signature and explain the absence of information from the circulator's statement.

Section 909 of the Election Code states, in pertinent part:

Each sheet shall have appended thereto the statement of the circulator of each sheet, setting forth, subject to the penalties of 18 Pa. C.S. §4904 (relating to unsworn falsification to authorities)--(a) that he or she is a qualified elector of the Commonwealth, who is duly registered and enrolled as a member of the party designated in said petition . . . ; (b) his residence, giving city, borough or township, with street and number, if any; (c) that the signers thereto signed with full knowledge of the contents of the petition; (d) that their respective residences are correctly stated therein; (e) that they all reside in the county named in the statement; (f) that each signed on the date set

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<sup>5</sup> Objectors argue that 4 signatures on page 107 should be stricken because the circulator's statement was defective. However, Objectors withdrew their challenge to line 2. *See Parties' Stipulation, Exhibit A.* Objectors are bound by their stipulation.

opposite his name; and (g) that, to the best of the circulator's knowledge and belief, the signers are qualified electors and duly registered and enrolled members of the designated party of the State, or of the political district, as the case may be.

25 P.S. §2869. Section 977 of the Election Code provides, in relevant part, that “material errors or defects apparent on the face of the nomination petition” are amendable, after a hearing, at the discretion of the Court. 25 P.S. §2937. Our Court has explained that “nomination petitions with improperly completed [circulator] affidavits are amendable at the discretion of the Court, . . . while nomination petitions with no affidavits at all leave nothing to be amended and are, therefore, fatally defective.” *Petition of Kloiber*, 362 A.2d 484, 485 (Pa. Cmwlth. 1976) (citations omitted).

Here, the evidence established that the circulator's statement was incomplete because the required circulator attestation was absent. Candidate's exhibit did not amend the defective statement because the circulator did not testify under oath at the hearing, either in person or by sworn affidavit, that the blank page she signed even applied to page 107 of the nomination petition. *See generally In re Nomination Petitions of Smith*, 182 A.3d 12, 24 (Pa. Cmwlth. 2018) (Court accepted rehabilitation evidence in the form of affidavits to overcome facial challenges to signatures). The incomplete circulator statement for page 107 was not rehabilitated.

We hold that the proffered new circulator's statement is inadmissible and does not rehabilitate the defective circulator's statement. As such, the Court grants Objectors' request to strike lines 1, 4, and 5 on page 107.

## **II. Individual Signature Line Challenges**

Objectors challenged a number of signatures for a variety of reasons. The hearing addressed these challenges by category.

**A. Electors Not Registered**

Objectors argue that signatures by persons not registered to vote must be stricken. Section 908 of the Election Code provides, in part, that “[e]ach signer of a nomination petition . . . shall declare therein that he is a registered and enrolled member of the party designated in such petition[.]” 25 P.S. §2868. “Signatures of person who are not registered voters should be stricken” from a nomination petition. *Matter of Cooper*, 516 A.2d 1285, 1288 (Pa. Cmwlth. 1984). *See also Petition of McLaughlin*, 362 A.2d 469, 470 (Pa. Cmwlth. 1976) (Nineteen signatories to nomination petition were not registered voters; therefore, the names must be stricken.).

Here, the SURE Operator attempted to locate each signer’s voter registration card but was unsuccessful. The SURE Operator also searched for those voter registration cards using the addresses listed on the Nomination Petition, but the results showed that, in each instance, the signer did not reside at the stated address. Candidate offered no other evidence to rehabilitate the signatures. Therefore, the Court sustains Objectors’ challenge and finds the following 6 signature lines invalid:

<u>Page</u>	<u>Line</u>
1	5
7	17
44	9
53	9
79	11
93	4



## **B. Electors Not at Registered Address**

Objectors argue that a number of individuals who signed Candidate’s Nomination Petition are not registered at the address listed on the Nomination Petition. Section 908 of the Election Code requires all signers of nomination petitions to “add his address where he is duly registered and enrolled, giving city, borough or township, with street and number, if any . . . .” 25 P.S. §2868. The Supreme Court recently held that this “requires the signer to use the address where he or she is duly registered and enrolled, on pain of disqualification of the signature.” *In re Major*, 248 A.3d 445, 454 (Pa. 2021).

At the hearing, counsel for Candidate argued that Section 908 of the Election Code violates the Supremacy Clause<sup>6</sup> because it conflicts with the National Voter Registration Act, 52 U.S.C. §§20501-20511. Counsel, however, was not able to point to a specific provision of the National Voter Registration Act that preempts Section 908 of the Election Code. Counsel directed this Court to the Pennsylvania Supreme Court’s decision in *In re Nomination Petition of Vodvarka*, 140 A.3d 639 (Pa. 2016),<sup>7</sup> for a discussion of the National Voter Registration Act. In his post-trial memorandum, Candidate does not advance this argument or cite any authority in support of his argument.

Where a party attacks the constitutionality of a statute on its face, notice must be given to the Attorney General or the challenge is waived. *Kepple v. Fairman*

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<sup>6</sup> U.S. CONST. art. VI, cl. 2. It provides that the laws of the United States “shall be the supreme Law of the Land[.]” *Id.* The United States Supreme Court has explained that “state laws that conflict with federal law are ‘without effect.’” *Altria Group, Inc. v. Good*, 555 U.S. 70, 76 (2008) (quotation omitted).

<sup>7</sup> In *Vodvarka*, our Supreme Court held that an elector’s signature may not be stricken from a nomination petition solely because the signer did not use the address at which he is registered to vote. In *Major*, 248 A.3d at 454, the Supreme Court held that the subsequent amendment to Section 908 of the Election Code legislatively overruled its holding in *Vodvarka*.

*Drilling Company*, 615 A.2d 1298, 1303 (Pa. 1992) (appellant waived constitutional argument by failing to notify the Attorney General); *see also* PA. R.A.P. 521. Candidate’s counsel acknowledged that Candidate did not provide notice to the Attorney General of the constitutional challenge; therefore, Candidate has waived this challenge.

The Supreme Court has held that Section 908 of the Election Code “unambiguously requires the signer to use the address where he or she is duly registered and enrolled[.]” *Major*, 248 A.3d at 454. Our Court is bound by the decisions of the Pennsylvania Supreme Court. *Zauflik v. Pennsbury School District*, 72 A.3d 773, 783 (Pa. Cmwlth. 2013).

Accordingly, the Court finds that the following 54 signature lines must be stricken because the signer did not use the address where he or she is registered:

<u>Page</u>	<u>Line</u>	<u>Page</u>	<u>Line</u>
1	3	34	5
2	21	36	21
4	17	36	22
5	3	37	30
5	10	42	2
8	1	43	18
12	9	43	22
12	29	44	2
13	12	45	23
13	22	47	9
14	2	53	30
14	8	57	7
14	10	59	2
16	5	60	18

16	24	61	13
18	26	61	23
18	27	63	6
21	6	68	3
22	16	69	4
22	18	69	8
23	16	71	3
25	3	71	4
27	29	76	15
28	29	77	13
29	11	85	9
31	4	108	3
31	28	121	3

**C. Illegible Information**

Objectors assert that a number of signature lines are not valid because the signer’s printed name is illegible. Section 908 of the Election Code requires, in part, that “[e]ach signer of a nomination petition . . . shall legibly print his name[.]” 25 P.S. §2868. “Signatures that are not sufficiently legible as to be capable of identification and hence cannot be associated with the signatures and/or addresses of a registered voter are invalid.” *In re Treichel*, 898 A.2d 650, 652 (Pa. Cmwlth. 2006).

Candidate attempted to rehabilitate a number of these signature lines by asking the SURE Operator to search for the elector using permutations of the information provided on the signature lines. For example, on page 83, line 9, the SURE Operator testified that she was unable to read the printed name or street name of the signer. When asked if she could read the first letter of the first name and the first letter of the last name, the SURE Operator responded, “E, E.” The SURE

Operator also stated that she could read the street number as “1,” and the street name as beginning with a letter “L.” Candidate asked her to perform a search using that limited information to locate an elector in the SURE system. On page 66, line 19, the SURE Operator testified that she was unable to read the printed name of the signer. She agreed that his first name started with the letter “D,” and his last name started with the letter “N.” The street number was 542. Candidate asked her to perform a search with that limited information to locate an elector. On page 82, line 4, the name of the printed voter was “Daniel J. Savilisky.” When the SURE Operator put “Daniel Savilisky” in the SURE System, it returned two names, “Daniel J. Savilisky” and “Daniel Savilisky.” Both individuals were registered Democrat at the registered address appearing on the nomination petition. Candidate’s counsel then requested the SURE Operator search “Dan Savilisky.” This returned the registration information for “Dan J. Savilisky,” a registered Republican at the registered address appearing on the nomination petition.<sup>8</sup>

The Election Code requires an elector to legibly print his or her name where he or she is registered so that the voter can be identified. It is not sufficient that only the first initial of the first name or the first initial of the last name be legible, so that when used with a street number and part of a street name, an elector can be located in the SURE system. It should not require guesswork to determine the identity of the elector.

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<sup>8</sup> Candidate also claims that he rehabilitated the signatures appearing at page 8, line 14 and page 42, line 14. Those signature lines were not among the lines challenged by Objectors. Additionally, Candidate claims that he rehabilitated the signature on page 7, line 17, which this Court determined was a unregistered voter. The SURE Operator testified that based on the information provided, she could not locate an elector registered at 1 Valley View in Upper Providence Township. Candidate’s counsel provided the last name of Crescitelli for the elector. Candidate’s counsel cannot testify as to elector information.

The Court finds the following 14 signature lines legible because the elector's printed name is sufficiently discernable:

<u>Page</u>	<u>Line</u>	<u>Page</u>	<u>Line</u>
8	4	66	5
12	25	66	18
30	16	69	7
45	30	84	4
52	22	102	3
54	29	105	3
60	5	106	4

Adding these 14 signature lines to the 1,969 uncontested signature lines, gives Candidate a total of 1,983 signatures.

However, 21 signature lines were so illegible that neither the SURE Operator nor the Court were able to ascertain the elector's printed name. Accordingly, the following lines are stricken:

<u>Page</u>	<u>Line</u>	<u>Page</u>	<u>Line</u>
2	4	31	1
5	5	48	2
5	29	52	19
9	21	59	15
11	15	66	19
12	4	70	3
18	13	74	3
19	6	82	4
21	13	83	9
23	17	124	3
		165	1

#### **D. Remaining Signature Line Challenges**

Objectors challenge one signature for the stated reason that the elector was not registered as Republican at time of signing. Section 907 of the Election Code, 25 P.S. §2867, states that nomination petitions must be signed by “duly registered and enrolled members of such party who are qualified electors of the State, or of the political district, as the case may be[.]” With respect to this signature, the testimony of the SURE operator established that signer on page 53, line 12 was registered as a Democrat. Accordingly, this line must be stricken.

Objectors challenge four signatures as being duplicates. Section 908 of the Election Code provides, in part, that “[e]ach signer of a nomination petition shall sign but one such petition for each office to be filled[.]” 25 P.S. §2868. Jill Moeller signed the nomination petition on page 38, line 8 and on page 40, line 1. Accordingly, the Court will strike line 1 on page 40 because Moeller signed more than one page of the nomination petition. Page 38, line 8 is a valid signature. Roberta Corpoz signed the nomination petition on page 53, line 7 and on page 73, line 4. Candidate agreed to strike page 53, line 7. Therefore, page 73, line 4 is a valid signature. Adding the 2 valid signature lines to the 1,983 uncontested signature lines gives Candidate a total of 1,985 signatures.

Objectors alleged that the signature at page 53, line 10 was invalid because the signature and other line information was written in the hand of another. After review, the Court found that the signature and address on page 53, line 10 is written by the hand of the elector that appears in the prior signature line. This signature is invalid, and we strike this signature line.

In sum, the signature line review demonstrated that Candidate did not secure the required number of valid signatures under the law or rehabilitate a

sufficient number of signatures to reach the required 2,000 valid signatures required by law.

### **Conclusion**

Based on the Court's resolution of the objections raised by Objectors to Candidate's Nomination Petition, Candidate's Nomination Petition contains less than 2,000 valid signatures, the requisite number required to place his name on the ballot as a Republican Candidate for the Office of United States Senate. Therefore, said Nomination Petition will be set aside.

s/Mary Hannah Leavitt

MARY HANNAH LEAVITT, President Judge Emerita

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**ORDER**

AND NOW, this 8th day of March, 2024, Joseph J. Vodvarka's Post Trial Motion to Strike All Testimony By Objectors For Failure to Comply with Paragraph 1.D of the Scheduling and Case Management Order of February 21, 2024, is DENIED.

Further, the Petition to Set Aside the Nomination Petition of Joseph J. Vodvarka for United States Senator is GRANTED.

The Secretary of the Commonwealth is directed to REMOVE the name of Joseph J. Vodvarka as a Republican Candidate for United States Senator from the April 23, 2024, General Primary Election ballot.

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

Each party shall bear its own costs.

s/Mary Hannah Leavitt

MARY HANNAH LEAVITT, President Judge Emerita