

COMMONWEALTH COURT OF PENNSYLVANIA

IN RE: NOMINATION CERTIFICATE	:	ELECTION MATTER
OF JAMES DILLON FOR	:	
SENATOR IN THE GENERAL	:	APRIL TERM, 2022
ASSEMBLY IN THE 5TH	:	
SENATORIAL DISTRICT IN THE	:	
SPECIAL ELECTION	:	
	:	
OBJECTIONS OF KEVIN PASQUAY,	:	NO. MD 2022
CHARLES E. OCONNOR, JR. and	:	
HELEN BANUSHI	:	

PETITION TO SET ASIDE THE SUBSTITUTE
NOMINATION CERTIFICATE OF JAMES DILLON

The Petitioners, by and through their attorneys, respectfully aver as follows:

JURISDICTION OF THE COURT

1. Jurisdiction in this matter is with the Commonwealth Court’s original jurisdiction pursuant to the Pennsylvania Election Code, 25 P.S. § 2782 and the Judicial Code, 42 Pa.C.S. § 764.

PARTIES

2. The Petitioner, Kevin Pasquay, a duly qualified elector, is registered to vote at 3454 Livingston Street, Philadelphia, Pennsylvania, which is in the 5th Senatorial District and he is enrolled eligible to vote in the May 17, 2022 special election.

3. The Petitioner, Charles E. O’Connor, Jr., a duly qualified elector, is registered to vote at 3628 East Thompson Street, Philadelphia, Pennsylvania, which is in the 5th Senatorial District and he is enrolled eligible to vote in the May 17, 2022 special election.

4. The Petitioner, Helen Banushi, a duly qualified elector, is registered to vote at 730 Byberry Road, Apt. 504, Philadelphia, Pennsylvania, which is in the 5th Senatorial District and he is enrolled eligible to vote in the May 17, 2022 special election.

5. Respondent Leigh M. Chapman is the Acting Secretary of the Commonwealth and heads the Pennsylvania Department of State, a state agency having offices at 401 North Street, Harrisburg, Pennsylvania, 17130.

6. Respondent Pennsylvania State Ethics Commission is a state agency with offices at 309 Finance Building, Harrisburg, Pennsylvania 17120.

7. The Respondent, James Dillon (hereinafter “Substitute Candidate”), was named in a nomination certificate filed by the Democratic Party to be the Democratic candidate for Senator in the General Assembly for the 5th Senatorial District in the special election on May 17, 2022.

8. The Respondent, Pennsylvania Democratic Party, is a political party with a registered address of 229 State Street, Harrisburg, Pennsylvania 17101 and submitted a nomination certificate designating Substitute Candidate as the Democratic candidate for Senator in the General Assembly for the 5th Senatorial District in the special election on May 17, 2022.

FACTUAL BACKGROUND

9. The Pennsylvania Democratic Party filed a nomination certificate nominating Shawn Dillon (hereinafter “Original Candidate”) as the Democratic candidate for Senator in the General Assembly for the 5th Senatorial District in the special election with the Pennsylvania Department of State on or prior to March 28, 2022.

10. The Public Official and Employee Ethics Act requires a candidate for the State Senate to file a Statement of Financial Interest with the State Ethics Commission on or before the last day for filing the nomination certificate to appear on the ballot for election and said statutory direction is on the instructions printed on the standard form that is used. 65 P.S. § 1104(b)(1). (A copy of said form is attached hereto and incorporated herein by reference, marked as Exhibit A)

11. The Original Candidate failed to file a Statement of Financial Interest with the State Ethics Commission before March 28, 2022, the last day for filing the nomination certificate.

12. The Public Official and Employee Ethics Act further states that no nomination certificate to appear on the ballot shall be accepted unless the petition has appended to it a Statement of Financial Interest filed with the State Ethics Commission and further states that the failure to file the statement is a *fatal defect*.

13. By operation of law, the Original Candidate's nomination certificate was not permitted to be accepted by the Department of State and he could not have been certified as the Democratic nominee for State Senate in the 5th Senatorial District in the special election to take place on May 17, 2022.

14. On March 31, 2022, these same Petitioners filed objections to the nomination certificate of the Original Candidate. 143 M.D. 2022.

15. The Original Candidate acknowledged that his nomination certificate was fatally defective and in order to avoid the fee shifting provisions of the Election Code, he purported to "withdraw" his candidacy.

16. By operation of law, however, the Original Candidate could not have withdrawn because, since he never filed the required Statement of Financial Interest with the State Ethics Commission, he was never the nominee for the seat.

17. On or about April 4, 2022 the Pennsylvania Democratic Party purported to file a substitute nomination certificate for the Substitute Candidate as a substitute candidate for the Original Candidate.

18. These same Petitioners now challenge the nomination certificate of the Substitute Candidate, as the Substitute Candidate and the Pennsylvania Democratic Party impermissibly attempts to use the procedure found in 25 P.S. § 2784 which permits the substitution of candidates under very strict terms and conditions.

19. A substitute nomination certificate can only be filed where a candidate has died or withdrawn. 25 P.S. § 2784; *Pennsylvania Democratic Party v. Pennsylvania Department of State*, 159 A.3d 73 (Pa.Cmwlth.Ct. 2017).

20. A substitute nomination certificate cannot be accepted because Original Candidate did not withdraw as he was never certified as a nominee by operation of law.

21. The Original Candidate was in effect a placeholder candidate, and although the use of a placeholder candidate is a permissible feature of the nomination process, the Election Code draws no distinction between temporary candidates and permanent ones. *In re Scroggin*, 237 A.3d 1006, 1019 (Pa. 2020)

22. In order to substitute the name of a bona fide nominee onto the ballot through the procedure in 25 P.S. § 2784, a placeholder first must be duly nominated in accordance with the provisions of the Election Code. *Id.*

23. The failure of the placeholder candidate, as the Original Candidate in this case, to strictly comply with the requirement of filing a Statement of Financial Interest with the State Ethics Commission was fatal to his nomination and therefore fatal to the Substitute Candidate's nomination.

24. "It is well-settled that the 'so-called technicalities of the Election Code' must be strictly enforced, 'particularly where . . . they are designed to reduce fraud.'" *In re Canvass of Absentee Ballots of November 4, 2003 General Election*, 577 Pa. 231, 843 A.2d 1223, 1234 (2004) (*Appeal of Pierce*).

25. In this case, the requirement is in force to permit the public to examine whether a candidate's personal financial interests create a conflict of interest with his potential public duties and the legislature placed the language that the failure to file such a document was a "fatal defect" in 1989 specifically to override earlier court rulings to make explicit that it did, in fact, envision a strict filing requirement on pain of disqualification. *In re Guzzardi*, 627 Pa. 1, 6-7, 99 A.3d 381, 384 (2014).

26. This Court should set aside the substitute nomination petition of the Substitute Candidate and his name should not be placed on the ballot.

RELIEF REQUESTED

WHEREFORE, the Petitioners prays request that this Honorable Court:

(a) to issue a Rule upon the Respondents to show cause why the substitute nomination certificate of James Dillon should not be set aside and the candidate's name should be placed on the ballot;

(b) to set aside the substitute nomination certificate of James Dillon and order that his name not be placed on the ballot as the Democratic nominee for member of the Senate in the General Assembly in the 5th Senatorial District;

(c) to order the costs including witness fees as directed in 25 Pa.C.S. 2937;

(d) to order payment of attorneys fees as appropriate.

Respectfully submitted,

Goldstein Law Partners, LLC

Jonathan S. Goldstein, Esq.
Pa. ID# 201627
JGoldstein@GoldsteinLP.com

Britain R. Henry, Esq.
Pa. ID# 314279
BHenry@GoldsteinLP.com

11 Church Road
Hatfield, PA 18966
(610) 949-0444
Counsel for the Petitioners



J. Matthew Wolfe, Esquire
The Law Offices of J. Matthew Wolfe
4256 Regent Square
Philadelphia, PA 19104
(215) 387-7300
Matthew@Wolfe.org
Counsel for the Petitioners

Exhibit A



COMMONWEALTH OF PENNSYLVANIA
STATE ETHICS COMMISSION

Finance Building
613 North Street, Room 309
Harrisburg, PA 17120-0400
(717) 783-1610 or Toll Free 1-800-932-0936
www.ethics.pa.gov



STATE ETHICS COMMISSION

STATEMENT OF FINANCIAL INTERESTS

THE FORM IS CONSIDERED DEFICIENT IF ANY BLOCK IS NOT COMPLETED OR IF SIGNATURE OR DATE IS MISSING.

SIGN THE FORM USING THE CURRENT DATE. DO NOT BACK DATE SIGNATURE.

THOSE INDIVIDUALS WHO HOLD MORE THAN ONE OFFICE AND/OR POSITION MUST FILE A COPY OF THEIR FORM AT EACH FILING LOCATION.

FILERS MAY USE THE ONLINE FILING SYSTEM AT THE STATE ETHICS COMMISSION'S WEBSITE: WWW.ETHICS.PA.GOV. A PAPER COPY MAY STILL BE REQUIRED TO BE SUBMITTED TO YOUR FILING LOCATION. FILERS SHOULD CHECK WITH THEIR FILING LOCATION FOR REQUIREMENTS.

THE FORM MUST BE COMPLETED AND FILED BY:

- A Candidates** - Persons seeking elected state, county and local public offices, including first-time candidates, incumbents seeking re-election, and write-in candidates who do not decline nomination/election within 30 days of official certification of same.
 - B Nominees** - Persons nominated for public office subject to confirmation.
 - C Public Officials** - Persons serving as current state/county/local public officials (elected or appointed). The term includes persons serving as alternates/designees. The term excludes members of purely advisory boards.
 - D Public Employees** - Individuals employed by the Commonwealth or a political subdivision who are responsible for taking or recommending official action of a non-ministerial nature with regard to: contracting or procurement; administering or monitoring grants or subsidies; planning or zoning; inspecting, licensing, regulating or auditing any person; or any other activity where the official action has an economic impact of greater than a de minimis nature on the interests of any person. The term does not include individuals whose activities are limited to teaching.
- A former public official or former public employee must file the year after termination of service with the governmental body.**
- E Solicitors** - Persons elected or appointed to the office of solicitor for political subdivision(s).

IMPORTANT: Please read all instructions carefully prior to completion of form. Also, **review the filing chart for proper filing location.** Any questions may be directed to the State Ethics Commission at (717) 783-1610 or Toll Free at 1-800-932-0936.

This Form is required to be filed pursuant to the provisions of the Public Official and Employee Ethics Act "Ethics Act," 65 Pa C.S. § 1101 *et. seq.*

STATEMENT OF FINANCIAL INTERESTS INSTRUCTIONS

Please print neatly in capital letters. If you require more space than has been provided, please attach an 8 1/2" x 11" piece of paper to the form. Blocks 01 through 06 are for current information.

- Block 01** Please fill in your last name, first name, middle initial and suffix (if applicable) in the spaces provided. Public office candidates should use the exact name used on official nomination petition or papers.
- Block 02** List an office (business or governmental) or home address and daytime telephone number.
- Block 03** Please check the box or boxes to indicate your status. See definitions on page 1. If you are correcting a prior filing, please check the box designating an amended form.
- Block 04** Please check the appropriate box (seeking, hold, held) for each position you list in the blocks below. List all public position(s) which you are seeking, currently hold, or have held in the prior calendar year. Please be sure to include job titles and official titles such as "member" or "commissioner" (even if serving as an alternate/designee).
- Block 05** Please list all political subdivision(s) agency(ies) as to which you: (1) are presently seeking a public position or public office as a candidate (incumbent or non-incumbent) or nominee; (2) presently hold a public position or public office; and/or (3) previously held a public position or public office during all or any portion of the calendar year listed in block 07. (The term "political subdivision" includes a county, city, borough, incorporated town, township, school district, vocational school, county institution, district, and any authority, entity or body organized by the aforementioned).
- Block 06** Please list your current occupation or profession. This information may be the same as stated in block 04.
- Block 07** List the calendar year for which you are filing this form. Like tax returns, these forms disclose financial information for a prior calendar year. For example, for the form due May 1, 2022, block 07 would read "2021." The information in blocks 08 through 15 should represent financial interests for the calendar year listed.
- Block 08** **REAL ESTATE INTERESTS:** This block contains the address of any property which was involved in transactions (leasing, purchasing, or condemnation proceedings of real estate interests) with the Commonwealth or any other governmental body within the Commonwealth. If you have no direct or indirect interests in such a property, then check "NONE."
- Block 09** **CREDITORS:** This block contains the name and address of any creditor and the interest rate of any debt over \$6,500 regardless of whether such debt is held solely by you or jointly by you and any other individual, including your spouse, where each obligor is fully responsible for the obligation. A joint obligation with other persons for which the filer is responsible only for a proportional share that is less than the reporting threshold, is not required to be reported. **Do not report** a mortgage or equity loan on your home (or secondary home), or loans or credit between you and your spouse, child, parent or sibling. Car loans, credit cards, personal loans and lines of credit must be listed on the form if the balance owed was in excess of \$6,500 at any time during the calendar year. If you do not have any reportable creditor, then check "NONE."
- Block 10** **DIRECT OR INDIRECT SOURCES OF INCOME:** List the name and address of each source of \$1,300 or more of gross income - - including but not limited to gross income from the public position - - regardless of whether such income is received solely by you or jointly by you and another individual, such as a spouse. "Income" includes any money or thing of value received or to be received as a claim on future services or in recognition of services rendered in the past, whether in the form of a payment, fee, salary, expense, allowance, forbearance, forgiveness, interest, dividend, royalty, rent, capital gain, reward, severance payment, proceeds from the sale of a financial interest in a corporation, professional corporation, partnership or other entity resulting from termination/withdrawal therefrom upon assumption of public office or employment or any other form of recompense or combination thereof. The term refers to gross income and includes prize winnings and tax-exempt income but does not include gifts, governmentally-mandated payments or benefits, retirement, pension or annuity payments funded totally by contributions of the public official or employee, or miscellaneous incidental income of minor dependent children. If you do not have ANY reportable source of income, then check "NONE."
- Block 11** ***GIFTS:** For each source of gifts(s) valued at \$250 or more in the aggregate, list the following information: the name and address of the source; the circumstances, including a description of each gift; and the value of the gift(s). **Do not report** political contributions otherwise reportable as required by law, gift(s) from friends or family members (the term "friend" does not include a registered lobbyist or employee of a registered lobbyist), or any commercially-reasonable loan made in the ordinary course of business. The Commission has held that a person cannot be deemed a "friend" if that person and/or a business with which that person is associated is regulated by or has contracts with the public official's governmental body. If you did not receive any reportable gift, then check "NONE."
- Block 12** ***TRANSPORTATION, LODGING OR HOSPITALITY EXPENSES:** List the name and address of each source and the amount of each payment/reimbursement by the source for transportation, lodging or hospitality that you received in connection with your public position if the aggregate amount of such payments/reimbursements by the source exceeds \$650 for the calendar year for which you are reporting. Do not report reimbursements made by a governmental body or by an organization/association of public officials/employees of political subdivisions that you serve in an official capacity. If you do not have any reportable expense payments/reimbursements, then check "NONE."
- Block 13** **OFFICE, DIRECTORSHIP OR EMPLOYMENT IN ANY BUSINESS ENTITY:** List both the name and address of the business entity for any office that you hold (Example: President, Vice President, Secretary, Treasurer), any directorship that you hold (through service on a governing board such as a board of directors), and any employment that you have in any capacity whatsoever as to any business entity. This block focuses solely on your status as an officer, director or employee, regardless of income. If you do not have any office, directorship or employment in any business entity to report, then check "NONE."
- Block 14** **FINANCIAL INTERESTS:** List the name and address and interest held in any business for profit of which you own more than 5% of the equity or more than 5% of the assets of economic interest in indebtedness. If you do not have any such financial interest to report, then check "NONE."
- Block 15** **TRANSFERRED BUSINESS INTERESTS:** List the name and address of any business in which you transferred a financial interest (as defined in block 14 above) to a member of your immediate family (parent, spouse, child, brother or sister), as well as the interest held, relationship to the individual, and date of transfer. If you did not transfer any such business interest, then check "NONE."
- Signature** Please sign the form and enter the current date. **Back dating the form is a violation of law and could result in the initiation of civil, administrative and/or criminal penalties.**

*Please note the Commission has long held that the receipt of things of value, such as gifts, transportation, lodging and hospitality from vendors, those regulated, and others, may form the basis for a conflict of interest under Section 1103(a) of the Ethics Act.

STATEMENT OF FINANCIAL INTERESTS

PLEASE PRINT NEATLY

01	LAST NAME	FIRST NAME	MI	SUFFIX

02	ADDRESS office (business or governmental) or home	City	State	Zip Code	Area Code	Phone
					()	

NOTE: IF YOU ARE INCLUDING ATTACHMENTS, DO NOT INCLUDE ANYTHING THAT BEARS YOUR SOCIAL SECURITY NUMBER OR FINANCIAL ACCOUNT NUMBERS.

03 STATUS Check applicable box or boxes, more than one box may be marked. (See instruction page)

A <input type="checkbox"/>	Candidate (including write-in)	C <input type="checkbox"/>	Public Official (Current)	D <input type="checkbox"/>	Public Employee (Current)	E <input type="checkbox"/>	Check this box if you are filing as a solicitor	<input type="checkbox"/> Check this box if you are amending an original filing
B <input type="checkbox"/>	Nominee	C <input type="checkbox"/>	Public Official (Former)	D <input type="checkbox"/>	Public Employee (Former)			

04 PUBLIC POSITION OR PUBLIC OFFICE (administrator, member, Commissioner, job title, etc.) seeking hold held

A seeking hold held

B seeking hold held

05 POLITICAL SUBDIVISION in which you are/were an Official, Employee, Candidate or Nominee (e.g., dept, agency, authority, borough, board, commission, county, school district, twp, etc.)

A seeking hold held

B seeking hold held

06 OCCUPATION OR PROFESSION (This may be the same as block 4)	07 YEAR SEE INSTRUCTIONS. Information in blocks 8-15 represents disclosure for the calendar year listed here: <input type="text" value="2"/> <input type="text" value="0"/> <input type="text"/>
--	--

08 REAL ESTATE INTERESTS (See instruction page) **If NONE, check this box.**

09 CREDITORS (See instruction page) If NONE, check this box. <input type="checkbox"/>	Interest Rate
Name: _____ Address: _____	

10 DIRECT OR INDIRECT SOURCES OF INCOME including (but not limited to) all employment. (See instruction page) If NONE, check this box. <input type="checkbox"/>	(OFFICIAL USE ONLY)
Name: _____ Address: _____	

11 GIFTS (See instruction page) If NONE, check this box. <input type="checkbox"/>	Value of Gift
Source of Gift _____	<input type="text"/>
Address of Source of Gift _____	Circumstances (including description) of Gift _____

12 TRANSPORTATION, LODGING, HOSPITALITY (See instruction page) If NONE, check this box. <input type="checkbox"/>	Value
Source (Name and Address) _____	<input type="text"/>

13 OFFICE, DIRECTORSHIP, OR EMPLOYMENT IN ANY BUSINESS (See instruction page) If NONE, check this box. <input type="checkbox"/>	Position Held (i.e., officer, director, employee, etc.)
Business Entity (Name and Address) _____	
Name: _____ Address: _____	

14 FINANCIAL INTEREST IN ANY LEGAL ENTITY IN BUSINESS FOR PROFIT (See instruction page) If NONE, check this box. <input type="checkbox"/>	Interest Held (i.e., 5%, 10%, etc.)
Name and Address of Business _____	

15 BUSINESS INTERESTS TRANSFERRED TO IMMEDIATE FAMILY MEMBER (See instruction page) If NONE, check this box. <input type="checkbox"/>	Interest Held Relationship Date Transferred
Business (Name and Address) _____	
Transferee (Name and Address) _____	

The undersigned hereby affirms that the foregoing information is true and correct to the best of said person's knowledge, information and belief, said affirmation being made subject to the penalties prescribed by 18 Pa.C.S. §4904 (unsworn falsification to authorities) and the Public Official and Employee Ethics Act, 65 Pa.C.S. § 1109(b).

Signature _____ Enter Current Date _____

THIS FORM IS CONSIDERED DEFICIENT IF ANY BLOCK ABOVE IS NOT COMPLETED. MAKE A COPY FOR YOUR RECORDS.

WHO MUST FILE, WHERE TO FILE, AND WHEN TO FILE

WHO MUST FILE	ORIGINAL COPY	ADDITIONAL FILINGS*	WHEN TO FILE
A. STATUS BLOCK A - CANDIDATES Statewide State Senate State House Supreme Court Superior Court Common Pleas Court Traffic Court Municipal Court Commonwealth Court	State Ethics Commission	Append to nomination petition when filed with the State Bureau of Elections 210 North Office Building Harrisburg, PA 17120-0029	ON OR BEFORE THE LAST DAY FOR FILING A PETITION TO APPEAR ON THE BALLOT FOR ELECTION
Constables / Deputy Constables	State Ethics Commission	Append to nomination petition when filed with County Board of Elections	
Countywide City Borough Township Municipality (home rule charter)	File with the Clerk/ Secretary in the Municipality in which you are a candidate		
Magisterial District Judges	File with the County in which the Magisterial District is located		
School Director	File in the School District where you are a candidate		
Announced Write-in	For state office file with State Ethics Commission . For county or local office file with governing authority of political subdivision.	No additional copy required	Within 30 days of official certification of having been nominated or elected unless such person declines the nomination or office within that time frame.
Unannounced Write-in Winners of Nominations			
Unannounced Write-in Winners of Elections			
B. STATUS BLOCK B - NOMINEE State Level	State Ethics Commission	File with the Official or Body vested with the power of confirmation	10 days before official or body approves or rejects the nomination.
County/Local Level	Governing authority of political subdivision		
C. STATUS BLOCK C - PUBLIC OFFICIAL Commonwealth Public Officials such as: Members of Boards and Commissions (including alternates/designees); Heads of executive, legislative and independent agencies, boards and commissions; and persons appointed to positions designated as offices.	State Ethics Commission	File with each Agency, Board, Commission, Department, or Government Body in which employed or to which appointed. (make additional copies if needed)	FILE NO LATER THAN MAY 1 OF EACH YEAR A POSITION IS HELD AND OF THE YEAR AFTER LEAVING SUCH A POSITION.
State House Member State Senate Member	State Ethics Commission	File with the House Chief Clerk or Senate Secretary (whichever applies)	
Local Public Officials serving in/as: Counties; Boroughs; Townships; Home Rule Municipalities; Municipal Authorities; School Districts Incumbent Judges and Magisterial District Judges who are not candidates file a Statement of Financial Interests for Judicial Officers with the Administrative Office of Pennsylvania Courts (AOPC).	File only with the governing authority of the respective local political subdivision	Additional copy is not required to be filed (unless serving in multiple capacities, then file with each entity as required)	
Constables / Deputy Constables	State Ethics Commission		
D. STATUS BLOCK D - PUBLIC EMPLOYEE Commonwealth PUBLIC EMPLOYEE (Executive, Leg. & Independent Agencies)	File only with your Employer	No additional copy required	
County City Borough Township Municipal (home rule) Municipal Authority School District	} EMPLOYEE File only with your political subdivision		
E. STATUS BLOCK E - SOLICITOR	File with the governing authority of each political subdivision for which you are Solicitor	Additional copy is not required to be filed (unless serving in multiple capacities, then file with each entity as required)	

* FILER IS RESPONSIBLE FOR MAKING ANY ADDITIONAL COPIES.

VERIFICATION

I, Kevin Pasquay, hereby states and verifies that I am a petitioner in this matter and that the allegations made in the foregoing are true and correct to the best of his knowledge, information and belief. The undersigned understands that the statements therein are made subject to the penalties of 18 Pa. C.S. §4904 relating to unsworn falsification to authorities.

Kevin Pasquay

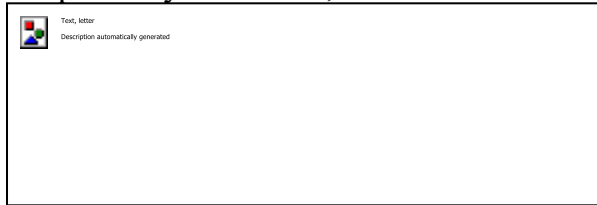
Dated:

4/7/22

CERTIFICATE OF COMPLIANCE

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

Respectfully submitted,



J. Matthew Wolfe, Esquire
Counsel for the Petitioners