

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

In Re: Nomination Petition of :
Paul Prescod for the Office of State : No. 177 M.D. 2022
Senator for the 8th Legislative District : Heard: April 7, 2022
:
Objection of: Tony Dphax King :

MEMORANDUM AND ORDER

AND NOW, this 7th day of April, 2022, upon consideration of the application of Candidate Paul Prescod (Candidate) to quash Objector's petition to set aside Candidate's nomination petition and Objector's response thereto at the hearing before this Court on this date, it is hereby ORDERED that Candidate's application to quash is GRANTED and that Objector's petition to set aside Candidate's nomination petition (Petition to Set Aside) is DISMISSED.

Section 977 of the Election Code provides, in pertinent part:

All nomination petitions and papers received and filed within the periods limited by this act shall be deemed to be valid, unless, within seven days after the last day for filing said nomination petition or paper, a petition is presented to the court specifically setting forth the objections thereto, and praying that the said petition or paper be set aside. A copy of said petition shall, within said period, be served on the officer or board with whom said nomination petition or paper was filed. . . . The office of the Prothonotary of the Commonwealth Court and the office of the Secretary of the Commonwealth and the various offices of prothonotary of the court of common pleas shall be open between the hours of eight-thirty o'clock A.M. and five o'clock P.M. . . . on the last day to file objections to nomination petitions.


25 P.S. § 2937 (emphasis added). This seven-day deadline is mandatory; if an objector does not serve his petition to set aside on the Secretary of the Commonwealth within seven days after the last day for filing nomination petitions, the petition to set aside the nomination petition is void and cannot be considered by the courts. *In re Lee*, 578 A.2d 1277, 1278-79 (Pa. 1990); *In re Boyd*, 41 A.3d 920, 923-24 (Pa. Cmwlth. 2012), *aff'd without op.*, 42 A.3d 374 (Pa. 2012); *In re Emenheiser*, 896 A.2d 1288, 1289 (Pa. Cmwlth. 2006).

The last day for filing nomination petitions to be placed on the May 17, 2022 primary election ballot for the office of state senator was March 28, 2022, and the deadline for filing objections to such nomination petitions was April 4, 2022. *In re: Petitions for Review Challenging the Final 2021 Legislative Reapportionment Plan*, (Pa., No. 569 Judicial Administration Docket, filed March 16, 2022). Candidate timely filed a nomination petition for the office of state senator. Objector timely filed the Petition to Set Aside in Commonwealth Court on April 4, 2022. Objector, however, did not serve the Petition to Set Aside on the Secretary of the Commonwealth until April 5, 2022.

On April 4, 2022, the Court issued an order that scheduled a hearing on the Petition to Set Aside for this date and required Objector to offer proof at the hearing that he timely served the Petition to Set Aside on the Secretary of the Commonwealth. Scheduling and Case Management Order ¶1(A), (D). At the

hearing before this Court, Objector admitted that he did not serve the Secretary of the Commonwealth until April 5, 2022. Because Objector did not serve the Petition to Set Aside on the Secretary of the Commonwealth within seven days after the last day for filing nomination petitions, under Section 977 of the Election Code Candidate's nomination petition must be deemed valid and Objector's Petition to Set Aside must be dismissed. *Lee*, 578 A.2d at 1278-79; *Boyd*, 41 A.3d at 923-24; *Emenheiser*, 896 A.2d at 1289.

The name of Paul Prescod shall be permitted to appear on the ballot as a candidate for the office of state senator in the primary election of May 17, 2022. The Chief Clerk of the Commonwealth Court is directed to send a copy of this Order to the Secretary of the Commonwealth.


JAMES GARDNER COLINS, Senior Judge*

* Retired Senior Judge temporarily assigned to the Commonwealth Court.