IN THE COMMONWEALTH COURT OF PENNSYLVANIA

In Re: Nomination Petition of Robert Jordan as Republican Candidate for State Representative from the 165th Legislative District	:	
	:	No. 187 M.D. 2022
Objection of: Fred Runge	:	Heard: April 7, 2022

BEFORE: HONORABLE CHRISTINE FIZZANO CANNON, Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY JUDGE FIZZANO CANNON FILED: April 11, 2022

Before the Court is the petition of Fred Runge (Objector) seeking to set aside the nomination petition of Robert Jordan (Candidate) as a Republican candidate for State Representative from the 165th Legislative District. After careful review, this Court concludes that Objector's petition is not justiciable.

I. Background

On February 4, 2022, the Legislative Reapportionment Commission completed the legislative redistricting plan for Pennsylvania following the decennial census. *See* Joint Stipulation of the Parties (Stip.), ¶ 6. The redistricting plan became effective upon its approval by the Pennsylvania Supreme Court on March 16, 2022. *Id.*, ¶ 7; *see In re 1991 Pa. Legis. Reapportionment Comm'n*, 609 A.2d 132, 139 (Pa. 1992) (citing Pa. Const. art. II, § 5 and explaining that the effective date of a reapportionment is the date of Supreme Court decision or the date the appeal period

expires without an appeal of the redistricting plan),[1] *abrogated in part on other grounds by Holt v. 2011 Legis. Reapportionment Comm'n*, 38 A.3d 711, 750 (Pa. 2012).

Beginning in April 2020, Candidate resided and was registered to vote in Broomall, in what was then designated as the 165th Legislative District. Stip., ¶¶ 9-10 & 13. Because of redistricting, Broomall is not in what is now designated as the 165th Legislative District. *Id.*, ¶ 14.

At some point in time before November 8, 2021, Candidate signed an agreement for the purchase and construction of a new home in Swarthmore.[2] The new home was certified for occupancy on February 7, 2022, and Candidate moved in on or after that date. Stip., ¶¶ 11-12. Swarthmore was not located in the 165th Legislative District until March 16, 2022, the effective date of the redistricting, but it is now in what is presently designated as the 165th Legislative District. *Id.*, ¶ 15.

Candidate timely filed a nomination petition as a 2022 candidate for the Pennsylvania House of Representatives from the 165th Legislative District. Stip., ¶ 1. In completing the form affidavit to accompany his nomination petition, Candidate placed an asterisk after his confirmation of eligibility and added a handwritten citation, without explanation, to *1991 Pennsylvania Reapportionment*, 609 A.2d at 139 n.7, which states:

> Appellant [candidate] raises a residency issue as well in his appeal from the final plan, and alleges that it will be impossible for an incumbent senator to have resided in his

[1] At oral argument, the parties also stipulated to the effective date of the redistricting plan.

[2] The parties stipulated to that date at oral argument because it is one year before the election at issue. Objector, however, disputes the relevance of the date the agreement of sale was signed.

> district for a year before the election, and for all four years of his tenure (as mandated by the Constitution) if the Senatorial Districts are altered by the Reapportionment Commission. This issue is not yet ripe for review because no senator has suffered adverse consequences in the form of losing a seat for failure to satisfy the residency requirement. However, we would note that the constitutional residency requirements may conflict with the constitutional mandate of reapportioning the Commonwealth every ten years. In light of that conflict, it may be necessary that residency requirements be waived when the Commission reapportions the Commonwealth less than one year before an election. These issues and possible resolutions are for the Senate to decide. *See In re Jones*, . . . 476 A.2d 1287 ([Pa.] 1984). This Court will reserve ruling on this issue until such time that a particular party suffers injury at which point we will address the apparent conflict between the constitutional provisions.

1991 Pa. Reapportionment, 609 A.2d at 139 n.7.

II. Issues

Objector challenges the nomination petition on two bases. First, Objector asserts that Candidate is ineligible because he will not have resided in the district for at least one year by the date of the November 2022 election as required by Article II, Section 5 of the Pennsylvania Constitution. Second, Objector argues that adding a footnote to the affidavit accompanying Candidate's nomination petition improperly rendered Candidate's statement of eligibility conditional in nature.

In response, although Candidate acknowledges that he moved to Swarthmore less than one year before the scheduled date of the November 2022 election, he observes that his previous residence in Broomall was in the former 165th Legislative District, and his current residence in Swarthmore is in the current 165th

Legislative District. Candidate asserts that because the redistricting occurred less than one year before the scheduled 2022 election, it was impossible for him, or anyone, to reside in the 165th Legislative District, as it is presently configured, for one year in advance of the election. Regarding the footnote added to his candidate's affidavit, Candidate asserted at oral argument that the footnote did not render his affirmation of eligibility conditional; rather, it simply cited authority that elucidated the basis of Candidate's eligibility, in that his situation is one justifying a waiver of the residency requirement because reapportionment of the legislative districts occurred less than one year before the election date.

II. Discussion

A. Jurisdiction over Objector's Constitutional Challenge

Article II, Section 5 of the Pennsylvania Constitution, "Qualifications of members," provides:

> Senators shall be at least 25 years of age and Representatives 21 years of age. They shall have been citizens and inhabitants of the State four years, and *inhabitants of their respective districts one year next before their election* (unless absent on the public business of the United States or of this State), and shall reside in their respective districts during their terms of service.

Pa. Const. art. II, § 5 (emphasis added). Here, Objector contends that Candidate does not satisfy the eligibility requirement of Article II, Section 5 because he will not have been a resident of his district for one year immediately preceding the election in which he seeks to become a candidate. Thus, this case is distinct from those in which objectors have challenged candidates' affidavits as stating false addresses. *See Jones*, 476 A.2d at 1290 (distinguishing the situation where a candidate's affidavit contains a false statement because the candidate does not reside

at the address within the district appearing on the nomination petition). Stating one's current address in a candidate's affidavit is a statutory requirement under section 910 of the Pennsylvania Election Code (Election Code),[3] 25 P.S. § 2870(a), not a constitutional mandate. Where objectors challenge as false the statutorily required assertions in candidates' affidavits, courts have jurisdiction under the Election Code to consider such challenges. *See Jones*, 476 A.2d at 1290 n.5 (citing *In re Petition of Cianfrani*, 359 A.2d 383 (Pa. 1976), and stating that "a false candidate's affidavit is a fatal defect which cannot be amended and would require the setting aside of the nomination petition"). However, because Objector here challenges qualifications mandated under the Pennsylvania Constitution rather than requirements for nomination petitions imposed by the Election Code, this Court must determine, as a threshold matter, whether we have jurisdiction to consider Objector's constitutional challenge to Candidate's nomination petition.

In *Jones*, a plurality of our Supreme Court vacated an order of this Court that had set aside a nomination petition based on the candidate's failure to satisfy the constitutional one-year district residency requirement. *See* 476 A.2d at 1289 n.3 (explaining that the objectors asserted that the candidate was not qualified because she would have resided in the district for less than one year before the election). In so doing, the Supreme Court explained:

> The argument presented relies upon the unstated premise that Article 2, [S]ection 5 is self-executing and authorizes court involvement. An analysis forces the conclusion that neither Article 2 in its entirety, nor [S]ection 5 specifically, confers authority in the court to act in this area.

[3] Act of June 3, 1937, P.L. 1333, *as amended*, 25 P.S. §§ 2600 – 3591.

> Article 2 is concerned with the composition, powers and duties of the [L]egislature. Nothing in this article even remotely suggests the conferr[al] of jurisdiction upon the courts to test the qualifications of the members of the General Assembly. Indeed, [S]ection 9 of Article 2 expressly states that each body of the General Assembly shall be the judge of the qualifications of its members. Moreover, Article 2, [S]ection 5 by its express terms refers only to the qualifications of the *members* of the body. There is no reference to persons who file to run for the office.

Id. at 1290-91 (footnotes omitted). The Supreme Court observed that its determination of nonjusticiability was rooted in "the concept of the separation of powers" and that the Legislature's authority to decide the qualifications of elected members is "an essential concomitant of our tripartite form of government affording to the legislative branch an independence requisite to its successful functioning." *Id.* at 1292 (quoting *Harrington v. Carroll*, 239 A.2d 437, 443 (Pa. 1968) (Jones, former C.J., then Jones, J., concurring)) (additional quotation marks omitted). Thus, our Supreme Court concluded that "Article II, [S]ection 5 does not by its terms grant jurisdiction to the courts to inquire into the qualifications of one seeking to run for [legislative] office." *Jones*, 476 A.2d at 1293.

Moreover, the Supreme Court observed that "the [L]egislature has not expressly attempted to confer such power. The courts have been granted limited (not plenary) authority by the [L]egislature over the election process"; nonetheless, "authority to regulate the election process is vested in the Legislature. . . . Because our jurisdiction in the area flows from statute rather than common law, it cannot be extended by implication beyond the prescription of the act from which it originates." *Jones*, 476 A.2d at 1293 (additional citations omitted).

Subsequently, in a single-judge decision, *In re Nomination of Pippy*, 711 A.2d 1048 (Pa. Cmwlth. 1998) (*Pippy I*), *aff'd per curiam*, 709 A.2d 905 (Pa.

1998) (*Pippy II*), this Court distinguished and refused to apply *Jones* in a similar case. This Court found the analysis in *Jones* inapplicable because the objectors' challenge in *Pippy I* arose not from a constitutional basis, but from a provision of the Election Code. The Court explained that since the Supreme Court's decision in *Jones*, the Legislature had amended Section 910 of the Election Code, 25 P.S. § 2870, by adding an express requirement that the candidate's affidavit include a statement "that the candidate shall have been a citizen and inhabitant of Pennsylvania four (4) years and an inhabitant of the respective district one (1) year next before the election . . . ." *Pippy I*, 711 A.2d at 1054 (quoting Section 3 of the Act of April 18, 1995, P.L. 5, No. 4). Thus, that enactment conferred authority on the courts to review, *inter alia*, challenges to candidates' affidavits regarding their averments concerning the constitutional residency requirement. *Pippy I*, 711 A.2d at 1054.

However, shortly before this Court's April 1998 decision in *Pippy I*, the Legislature in February 1998 again amended Section 910 of the Election Code; the 1998 amendment removed the language quoted above, such that the statute no longer required a candidate to swear or affirm his residence in the district for one year preceding the election.[4] *See* Act of February 13, 1998, P.L. 18. The candidate in

[4] The language added to Section 910 in 1985 but later removed in 1998 read as follows:

> In cases of petitions for candidates for the General Assembly, the candidate's affidavit shall state (1) that the candidate will satisfy the eligibility requirements contained in [S]ections 5 and 7 of Article II of the Constitution of Pennsylvania; (2)(i) that in the case of a candidate for the office of Senator in the General Assembly that the candidate will be twenty-five (25) years of age on or before the first day of the term for which the candidate seeks election or (ii) that in the case of a candidate for the office of Representative in the General Assembly that the candidate will be twenty-one (21) years of age on or before the first day of the term for which the candidate seeks

Pippy I argued that under the analysis of *Jones*, the removal of the statutory language at issue eliminated this Court's jurisdiction to consider objectors' challenge to the candidate's affidavit. *Pippy I*, 711 A.2d at 1054.

This Court rejected the candidate's argument. The single-judge opinion essentially rejected the Supreme Court plurality's reasoning in *Jones* and held that because the Election Code still requires candidates to attest to their eligibility,[5] courts have jurisdiction to entertain challenges based on any eligibility issue, including the residency requirement of Article II, Section 5 of the Pennsylvania Constitution. *See Pippy I*, 711 A.2d at 1054-55. As additional support for that conclusion, this Court cited Section 1802.1 of the Election Code, 25 P.S. § 3502.1, which imposes liability for costs and counsel fees upon a candidate whose name is removed from the ballot based on litigation concerning a false statement regarding the candidate's eligibility or qualifications. *Id.* at 1055. The Court reasoned that if we lacked jurisdiction to consider a residency challenge, this cost-shifting provision would be meaningless.

> election; (3) that the candidate shall have been a citizen and inhabitant of Pennsylvania four (4) years and *an inhabitant of the respective district one (1) year next before the election* (unless absent on the public business of the United States or of this State); and (4) that the candidate has not been convicted of embezzlement of public moneys, bribery, perjury or other infamous crime.

Act of April 18, 1995, P.L. 5, No. 4, Section 3, *former* Section 910 of the Election Code, 25 P.S. § 2870 (emphasis added).

[5] Despite the removal of the language added in 1985, which is quoted in the preceding footnote, Section 910 still includes that portion of its original language which requires, in pertinent part, that each candidate for office "shall file with his nomination petition his affidavit stating--(a) his residence, with street and number, if any, and his post-office address; . . . (c) the name of the office for which he consents to be a candidate; (d) that he is eligible for such office . . . ." 25 P.S. § 2870(a)-(d).

Id. Our Supreme Court issued a *per curiam* affirmance in *Pippy II*. *See* 709 A.2d 905.[6]

In short, this Court's single-judge opinion in *Pippy I*, which was affirmed *per curiam* by our Supreme Court in *Pippy II*, irreconcilably conflicts with our Supreme Court's plurality opinion in *Jones*. Therefore, we must next determine which, if any, of these decisions constitutes binding precedent.

First, "[w]hile the ultimate order of a plurality opinion, *i.e.* an affirmance or reversal, is binding on the parties in that particular case, legal conclusions and/or reasoning employed by a plurality certainly do not constitute binding authority." *Commonwealth v. Pelzer*, 222 A.3d 368, 369 (Pa. 2019) (quoting *Commonwealth v. Bomar*, 826 A.2d 831, 843 n.13 (Pa. 2003) (additional quotation marks omitted)). Accordingly, our Supreme Court's plurality opinion in *Jones* is not binding in this case.

Regarding this Court's single-judge opinion in *Pippy I*, Section 414(b) of this Court's Internal Operating Procedures provides generally that single-judge opinions, even if reported, may be cited only for their persuasive value, not as binding precedent. 210 Pa. Code § 69.414(b). An exception exists regarding reported single-judge opinions filed after October 1, 2013 in election law matters, which may be cited as binding precedent in other election law matters. 210 Pa. Code § 69.414(d). Here, however, that exception is inapplicable because although *Pippy I* is a published one-judge decision in an election law matter, it was filed long before 2013.

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[6] Our Supreme Court's *per curiam* affirmance predates the issuance of the one-judge decision of this Court because that decision was originally unreported and was later reissued as a published opinion.

Finally, we consider the precedential effect of our Supreme Court's *per curiam* affirmance of *Pippy I* in *Pippy II*. Our Supreme Court provided a detailed explanation of the effects of *per curiam* affirmances in *Commonwealth v. Tilghman*, 673 A.2d 898 (Pa. 1996), stating:

> In any appeal before us, this Court's entry of a *per curiam* order affirming or reversing the final order of a lower tribunal, after review and consideration of the issues on appeal to this Court, signifies this Court's agreement or disagreement with the lower tribunal's final disposition of the matter on appeal to us. An order of *per curiam* affirmance or reversal becomes the law of the case.
>
> In the instance where this Court intends to not only affirm the result of the lower court decision but also the rationale used by the lower court in reaching that decision, we would enter the appropriate order affirming on the basis of the opinion of the lower court, elucidating the lower court's rationale where necessary or desirable. Our entry of an order of *per curiam* affirmance on the basis of the lower court's opinion, thus, means that we agree with the lower court's rationale employed in reaching its final disposition.
>
> Unless we indicate that the opinion of the lower tribunal is affirmed *per curiam*, our order is not to be interpreted as adopting the rationale employed by the lower tribunal in reaching its final disposition. Furthermore, even where this Court should affirm on the opinion of the lower Court, the *per curiam* order is never to be interpreted as reflecting this Court's endorsement of the lower court's reasoning in discussing additional matters, in *dicta*, in reaching its final disposition.

Id. at 904 (emphasis omitted). In *Pippy II*, our Supreme Court affirmed this Court's *order* in *Pippy I*, *not* this Court's *opinion*. *See Pippy II*, 709 A.2d 905. As explained in *Tilghman*, this disposition means that the Supreme Court affirmed this Court's

disposition of *Pippy I*, but not its reasoning. Thus, the *per curiam* affirmance in *Pippy II*, while it constitutes the law of that case, is not binding precedent here.

Accordingly, as the foregoing analysis demonstrates, this Court is not bound by the outcome of *Jones*, *Pippy I*, or *Pippy II*.

On balance, this Court finds persuasive the separation of powers analysis by the Supreme Court plurality in *Jones*. The *Pippy I* court reasoned that its construction of the Election Code "furthers the laudable goal of preserving the integrity and probity of the election process." 711 A.2d at 1055 (additional citations omitted). Although the integrity and probity of the election process are of critical importance, our constitution imparts to the Legislature, not the courts, the authority and responsibility for safeguarding that process. This Court has only such authority and jurisdiction in that regard as the Legislature has delegated in the Election Code. As the *Jones* plurality explained, "[t]his view of the proper relationship between the various branches of our government was obviously embraced by the people of this Commonwealth and set forth in [Article II, S]ection 9 [of the Pennsylvania Constitution] in clear and unequivocal terms." 476 A.2d at 1292.

The *Pippy I* court relied in part on the principle that although the Election Code is liberally construed to avoid depriving an individual of the right to run for office or the voters their right to elect their chosen candidate, "the provisions of the Election Code relating to the form of nominating 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." *Pippy I*, 711 A.2d at 1050 (citing *Cianfrani*, 359 A.2d 383; then *In re Carlson*, 430 A.2d 1210 (Pa. Cmwlth., *aff'd per curiam*, 430 A.2d 1155 (Pa. 1981)). The *Pippy I* court observed further that "[t]he 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." *Pippy I*, 711 A.2d at 1051 (citing *Cianfrani*, 359 A.2d 383). These statements are certainly accurate as general principles. However, they do not undermine the fundamental requirement of separation of powers, under which the Legislature, not the judiciary, is charged with the responsibility and authority to safeguard the election process, *including* "the integrity of the election process," the "legitimacy of information crucial to this process" and "the probity of the election process." *Pippy I*, 711 at 1050-51. It bears repeating that in this regard, the courts have only the authority specifically conferred and delegated by the Legislature. *See Jones*, 476 A.2d at 1290-91.

This Court also disagrees with *Pippy I*'s conclusion that the cost-shifting provision of Section 1802.1 of the Election Code would be meaningless if courts cannot consider challenges to nomination petitions pursuant to the residency qualifications set forth in Article II, Section 5. That argument is not persuasive because here, contrary to Objector's assertion, the real issue is not a false statement of fact in Candidate's affidavit but, rather, the legal construction of the eligibility requirement and its application to Candidate under the stipulated facts. This Court agrees with Candidate's argument that his addition of a footnote to his affidavit containing a citation of legal authority that he believed supported his eligibility did not constitute a statement of fact that could be characterized as true or false. Rather,

the footnote raised a purely legal issue concerning Candidate's qualification in light of the effects of redistricting.[7]

Moreover, the reasoning of *Pippy I* interpreting Section 910 of the Election Code failed to consider a critical principle of statutory construction. As both our Supreme Court and this Court have held, "[a] change in the language of a statute ordinarily indicates a change in legislative intent." *Meier v. Maleski*, 670 A.2d 755, 759 (Pa. Cmwlth. 1996) (citing *Masland v. Bachman*, 374 A.2d 517, 521 & n.20 (Pa. 1977) (same; collecting cases); *Hock v. Unemployment Comp. Bd. of Rev.*, 413 A.2d 444, 446 (Pa. Cmwlth. 1980) (explaining that deletion of statutory language "is strong indication" of legislative intent to change the meaning of the statute); *Deremer v. Workmen's Comp. Appeal Bd.*, 433 A.2d 926, 928 (Pa. Cmwlth. 1981) (stating that "the [L]egislature's deletion of statutory language renders the language inoperative and indicates that the [L]egislature has admitted a different intent")), *aff'd per curiam*, 700 A.2d 1262 (Pa. 1997), *superseded in part on other grounds by statute as stated in Hosp. & Healthsystem Ass'n of Pa. v. Ins. Comm'r*, 74 A.3d 1108, 1117 (Pa. Cmwlth. 2013).

Here, following the plurality decision in *Jones*, the Legislature added language to Section 910 of the Election Code requiring candidates' affidavits to attest their compliance with the requirements for legislative membership contained in Article II, Section 5 of the Pennsylvania Constitution. As the *Jones* decision

[7] Even if the issue were not purely legal, our Supreme Court has observed that a false statement in a candidate's affidavit is not alone sufficient to support setting aside the nomination petition; rather, "before 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 Nomination Petition of Driscoll*, 847 A.2d 44, 51 (Pa. 2004). Here, Objector has offered no such evidence. Indeed, the parties stipulated to the pertinent facts concerning Candidate's residency. *See generally* Stip.

opined that the Legislature had not previously conferred authority on courts to decide nomination petition objections based on failure to comply with the constitutional residency requirements, the Legislature's amendment to Section 910 indicated an intent to confer such authority on courts. Likewise, the Legislature's subsequent amendment to Section 910 to remove the added language can only be construed as an intent to withdraw that previously conferred authority.

For these reasons, this Court is constrained to conclude that we lack subject matter jurisdiction to consider Objector's challenge to Candidate's nomination petition based on Candidate's alleged failure to satisfy the constitutional residency requirement of Article II, Section 5.

B. Purportedly False Candidate's Affidavit

Although Objector bases his challenge to Candidate's eligibility on the residency requirement of Article II, Section 5, Objector also tries to recast that challenge as a factual one by asserting that Candidate made a false statement in his affidavit by attesting to his eligibility when, in fact, he did not meet the residency requirement of Article II, Section 5. Contrary to Objector's argument, this is not a case where an allegedly false statement of eligibility brings a candidate's affidavit within the purview of this Court's jurisdiction.

It is true that this Court has decided many objection petitions alleging false statements of eligibility in candidates' affidavits, including cases ostensibly brought under Article II, Section 5. However, our other decisions are distinguishable in that whatever their purported basis, they relate to false statements of fact, not assertions of law, in candidates' affidavits. This factual issue concerning a candidate's actual current residence is one that courts frequently address, and it is

distinct from the legal issue regarding the effect of reapportionment that is raised in this case.

For example, in *In re Nomination Petition of Shimkus*, 946 A.2d 139 (Pa. Cmwlth. 2008), this court concluded, based on factual testimony, that the candidate had intentionally given a false address in his nomination petition, statement of financial interest, and candidate's affidavit. *Shimkus*, however, was decided under the Election Code, *see id.* at 155-56, and was a fact-based determination hinging on credibility findings – the candidate stated as a fact that he resided at one address, when in fact he resided at another. *See id.* at 156 (observing that cases alleging false statements in nomination petitions "are very fact-specific").

The same was true in *In re Lesker*, 105 A.2d 376 (Pa. 1954). In *Lesker*, as in *Shimkus*, the issue was whether a candidate had misstated his address, and the decision rested on extensive testimony and determinations of fact. *See id.* at 377-78. Although our Supreme Court considered the meaning of "reside" in Article II, Section 5, *id.* at 378, the issue in the case was the factual determination of the candidate's real domicile. *See generally id.*

Notably, the *Jones* plurality expressly distinguished *Lesker* and other similar cases in which courts considered residency objections to nomination petitions. The *Jones* Court explained that these decisions "fail to establish the statutory source of jurisdiction." *Jones*, 476 A.2d at 1293-94. The Supreme Court plurality reasoned that "any argument seeking to justify jurisdiction in [a residency challenge to a nomination petition] based on prior judicial decision is fatally defective" because "[a]bsent an identification of the specific statutory authority from which jurisdiction arises, the courts are powerless to intervene." *Id.*; *but see Harrington*, 239 A.2d at 443 (Jones, former C.J., then Jones, J., concurring)

(distinguishing *Lesker* on a different basis, *i.e.*, that jurisdiction there arose from the Election Code).

Other cases in which courts have exercised jurisdiction over residency challenges under Article II, Section 5 have done so under the statutory authority of the 1985 amendment to the Election Code, which is inapplicable here because of its removal in 1998. For example, our Supreme Court distinguished *Jones* in *In re Prendergast*, 673 A.2d 324 (Pa. 1996), explaining that beginning in 1985, after the *Jones* decision, the Election Code contained express language requiring candidates' affidavits to attest their residency in terms of the qualifications set forth in Article II, Section 5 of the constitution. *See Prendergast*, 673 A.2d at 325. The same was true in *In re Nomination Petition of Street*, 516 A.2d 791 (Pa. Cmwlth. 1986), as our Supreme Court observed in *Prendergast*. *See* 673 A.2d at 325. Thus, both this Court and the Supreme Court have acknowledged that after the Election Code amendment in 1985, statutory authority conferring jurisdiction was present and applicable in *Prendergast* and *Street*. However, as explained above, such statutory authority was absent in *Jones* and, because of the 1998 amendment removing the authorizing language from the Election Code, that statutory authority is likewise absent here.

In *In re Nomination Petition of Makhija*, 136 A.3d 539 (Pa. Cmwlth. 2016), the inquiry was, again, a fact-specific determination of a candidate's true residence. The candidate attested to a Pennsylvania domicile after having lived, obtained a driver's license, paid taxes, and voted in Massachusetts. *See id.* at 540-41. Although acknowledging the residency requirement set forth in Article II, Section 5, this Court cited, *inter alia*, *Lesker*, *Prendergast*, and *Pippy I*, in relation to its extensive consideration of the factual evidence concerning the candidate's various indicia of residency. *See generally id*. Thus, although the objector's

challenge, like Objector's petition here, was ostensibly brought under Article II, Section 5, this Court's analysis focused on the candidate's attestation of his current residence, a requirement of the Election Code which falls within the statutorily conferred jurisdiction of the courts to determine.

This Court's recent decision in *In re Nomination Petition of Bolus*, 251 A.3d 848 (Pa. Cmwlth. 2021) is also inapplicable here. In *Bolus*, this Court affirmed a trial court's decision setting aside a nomination petition where the candidate had been convicted of various criminal offenses that rendered him ineligible to hold public office. *Id.* at 857. However, the constitutional provision at issue in *Bolus* was Article II, Section 7, "*Ineligibility* by criminal convictions," which provides that persons committed of certain crimes shall not be "eligible to the General Assembly, or capable of holding any office of trust or profit in this Commonwealth." Pa. Const. art. II, § 7 (emphasis added). Thus, a statement in a mayoral candidate's affidavit that he was "eligible" for the office he sought was plainly both false and contrary to the proscription of Article II, Section 7. *Bolus*, 251 A.3d at 854-55. By contrast, the language of Article V, Section 2 relates not to "ineligibility," but to "[q]ualifications of members," *i.e.*, those who have been elected to serve. The Election Code requires candidates to attest to their eligibility, not their qualifications. If those terms were interchangeable, Article II of our Constitution presumably would not have used different terms in different sections. *See, e.g.*, *Bd. of Comm'rs v. Coler*, 113 F. 705, 708-09 (4th Cir. 1902) (explaining that where two provisions in the state constitution used different language, "it was to be presumed that the difference in language was significant of a corresponding difference in meaning, intention, and policy").

Moreover, in *Bolus*, the putative candidate for office had previously been judicially determined, in a separate declaratory judgment action initiated by the

candidate himself, to be "incapable of holding any office in this Commonwealth" because of his multiple criminal convictions. 251 A.3d at 851 (quoting *Bolus v. Fisher*, 785 A.2d 174, 178 (Pa. Cmwlth.), *aff'd per curiam*, 798 A.2d 1277 (Pa. 2002) (additional quotation marks omitted). In addition, this Court in *Bolus* observed that the candidate had already failed to withstand challenges to his nomination petitions on the same basis in multiple previous elections. 251 A.3d at 855. For those reasons, we agreed with the trial court that it was "inconceivable that [the c]andidate made an honest mistake when he executed candidate's affidavits [] swearing that he is eligible for [public office]." *Id.* (quotation marks omitted).

Here, by contrast to the decisions discussed above, no false statement of fact concerning Candidate's current residence is at issue. Objector does not allege that Candidate has attempted to establish residency at a false address; nor does Objector contend that Candidate has attempted to falsify the date when his residence changed. Ultimately, Objector's argument is solely that Candidate's attestation of eligibility, a legal conclusion, is false because he does not meet the residency qualification requirement of Article V, Section 2. Thus, as explained above and in the preceding section, despite Objector's attempts to cast his argument in terms of a false affidavit, the issue raised by Objector in this case falls squarely within the ambit of the Legislature, not the courts.

C. Footnote in Candidate's Affidavit

In his second challenge to Candidate's nomination petition, Objector posits that by adding a footnote to his attestation of eligibility, Candidate improperly rendered his attestation conditional. As explained previously, however, the footnote was not added in order to render Candidate's statement of eligibility equivocal, but

rather, to explain the basis for Candidate's legal argument concerning his eligibility. Accordingly, Objector's argument inevitably leads back to the question of whether Candidate meets the residency requirement of Article II, Section 5 – a question which, as discussed at length above, this Court lacks jurisdiction to consider.

IV. Conclusion

Based on the foregoing analysis, this Court lacks subject matter jurisdiction over Objector's petition to set aside Candidate's nomination petition. Therefore, Objector's petition is dismissed.[8]

s/Christine Fizzano Cannon

CHRISTINE FIZZANO CANNON, Judge

[8] This Court, accordingly, does not address whether Candidate will be qualified to be seated as a member of the Pennsylvania House of Representatives if he is elected to that position in November 2022. That determination is reserved to the House of Representatives by Article II, Section 9 of the Pennsylvania Constitution.

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

In Re: Nomination Petition of Robert Jordan as Republican Candidate for State Representative from the 165th Legislative District	:	
	:	No. 187 M.D. 2022
Objection of: Fred Runge	:	

O R D E R

AND NOW, this 11th day of April, 2022, the objection of Fred Runge to the nomination petition of Robert Jordan as Republican candidate for State Representative from the 165th Legislative District is DISMISSED for lack of subject matter jurisdiction.

s/Christine Fizzano Cannon

CHRISTINE FIZZANO CANNON, Judge

Order Exit
04/11/2022