

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

In Re: Nomination Petition of Shay :
Micco, Candidate for the Democratic :
Nomination for Representative in the :
General Assembly, 9th Legislative : No. 101 M.D. 2026
District, Primary Election to be held : Heard: March 19, 2026
May 19, 2026 :
:
Objection of: Jordan Byers and Justin :
Byers :

BEFORE: HONORABLE MICHAEL H. WOJCIK, Judge

MEMORANDUM and ORDER

Presently before the Court is the Petition to Set Aside the Nomination Petition of Shay Micco (Petition to Set Aside and Candidate, respectively) as a Democratic candidate for nomination to the office of Representative in the Pennsylvania General Assembly for the 9th Legislative District in the General Primary Election (Primary Election) to be held on May 19, 2026. The *pro se* Petition to Set Aside was filed by Jordan Byers and Justin Byers (Objectors).¹

Pursuant to Section 912.1(14) of the Pennsylvania Election Code (Election Code),² a candidate for the office of Representative in the General Assembly must present at least 300 valid signatures of registered and enrolled

¹ The initial Petition to Set Aside was filed by Jordan Byers; however, by March 18, 2026 order, we granted an application to permit Justin Byers to participate in the matter as well.

² Act of June 3, 1937, P.L. 1333, added by the Act of December 12, 1984, P.L. 968, *as amended*, 25 P.S. §2872.1(14). Section 912.1(14) of the Election Code states: “Candidates for nomination of offices as listed below shall present a nominating petition containing at least as many valid signatures of registered and enrolled members of the proper party as listed below: . . . Representative in the General Assembly: Three hundred.”

electors of the candidate’s political party. On or before March 10, 2026, Candidate filed a Nomination Petition with the Secretary of the Commonwealth to appear on the Primary Election ballot for that office. On March 12, 2026, Objectors filed the instant Petition to Set Aside alleging that the Nomination Petition is invalid because Candidate omitted required information in the candidate’s affidavit that was filed with the petitions. Specifically, Objectors contend that the affidavit is defective because Candidate failed to state her “election district” as required by Section 910 of the Election Code.³

On March 13, 2026, this Court entered a Scheduling and Case Management Order (CMO)⁴ scheduling a hearing on the Petition to Set Aside for March 17, 2026, at 10:00 a.m.,⁵ and imposing certain duties and obligations upon

³ Section 910 of the Election Code states, in pertinent part: “Each candidate for any State . . . office, . . . shall file with his nomination petition his affidavit stating . . . his election district, giving city, borough, town or township” 25 P.S. §2870. In turn, Section 102(g) of the Election Code defines “election district,” in relevant part, as “a district, division or precinct, established in accordance with this act, within which all qualified electors vote at one polling place.” 25 P.S. §2602(g).

⁴ As this Court has observed:

The purpose of scheduling and case management orders in election cases is to facilitate the proceedings in an expeditious and timely manner due to the extreme time limitations placed on election matters. That is why objectors are ordered to immediately arrange to meet with the candidate or his/her representative to reach a stipulation as to the number of signatures that are challenged and/or valid. In short, time is of the essence in election matters. As such, the Court expects compliance.

In re Nomination Petition of Ford, 994 A.2d 9, 12 n.3 (Pa. Cmwlth. 2010) *overruled in part on other grounds by In re Nomination Petition of Gales*, 54 A.3d 855, 860-61 (Pa. 2012).

⁵ By subsequent March 14, 2026 order, we moved the hearing on the Petition to Set Aside to March 19, 2026, at 10:00 a.m.

Objector and Candidate. Specifically, the CMO “directed Objector[s] to secure the services of a court stenographer for the hearing,” and that the “[f]ailure of Objector[s] to secure the services of a court stenographer may result in the dismissal of this matter.” CMO at 1.A.⁶

On March 18, 2026, the day before the scheduled hearing, Objectors filed an Application for Emergency Relief in which they asserted that they were unable to timely find a court stenographer as ordered by the CMO and sought relief from this requirement. That same day, this Court issued an order denying the Application for Emergency Relief, and scheduled a status conference before the hearing to be conducted the following day.

On March 19, 2026, a status conference was held by the Court with Objectors, the Candidate, and her counsel (Counsel), at which Objectors outlined the difficulties that they encountered in trying to secure the services of a court stenographer. Nevertheless, due to the exigencies of this election matter, the Court fashioned a remedy to cure Objectors’ abject violation of the CMO. The parties agreed that the only issue involved in this case is a matter of law, and they agreed to file a stipulation of the undisputed relevant and material facts by the end of the day to create a record to aid the Court in its disposition of the Petition to Set Aside. Counsel also informed the Court of his intention to file leave to amend the

⁶ It is appropriate for this Court to take judicial notice of documents that are filed and entered in our docket and that of the Supreme Court. *See, e.g.*, Pa.R.E. 201(b)(2) (permitting courts to take judicial notice of facts that may be “determined from sources whose accuracy cannot reasonably be questioned”); *Moss v. Pennsylvania Board of Probation and Parole*, 194 A.3d 1130, 1137 n.11 (Pa. Cmwlth. 2018) (taking judicial notice of docket entries that were not part of the original record); *Miller v. Unemployment Compensation Board of Review*, 131 A.3d 110, 115 (Pa. Cmwlth. 2015) (taking judicial notice of the entries on a claimant’s criminal docket and the records contained therein); *Germantown Cab Co. v. Philadelphia Parking Authority*, 27 A.3d 280, 283 n.8 (Pa. Cmwlth. 2011) (taking judicial notice of the docket in a Supreme Court case involving a similar point of law).

purportedly defective Candidate's Affidavit to supply the omitted information. The Stipulation and motion for leave to amend were filed as we directed, and the matter is now ripe for our disposition.

We initially note 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 Cianfrani*, 359 A.2d 383, 384 (Pa. 1976). 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. *In re Nomination Petition of Farnese*, 17 A.3d 357, 372 (Pa. 2011). “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.), *aff’d*, 430 A.2d 1155 (Pa. 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 Nomination Petition of Beyer*, 115 A.3d at 838.

As a preliminary matter, it must be noted that Section 977 of the Election Code states, in relevant part: “A copy of said [objection] petition shall, within said [seven-day] period, be *served* on the officer or board with whom said nomination petition or paper was filed.” 25 P.S. §2937 (emphasis added).⁷ In addition, as this Court has observed:

The Court recognizes that Objector bears the burden of proving proper service on the Secretary, and such evidence is to be presented at the beginning of the hearing on an objection petition.^{FN9}

^{FN9} Acceptable evidence includes sworn affidavits or certificates affirming service on the Secretary or a copy of the front or cover page of an objection petition that bears a time stamp from the Secretary. *In re Jabbour*, [944 A.2d 78, 79 (Pa.) 2008] (per curiam).

In re Broadhurst, 312 A.3d 410, 417-18 (Pa. Cmwlth. 2024).⁸

Herein, in the Petition to Set Aside, Objectors appended a Proof of Service dated March 12, 2026, in which it is stated that service on the Secretary of the Commonwealth was accomplished via First-class mail. When the Court asked Objectors to produce evidence of service on the Secretary at the hearing on the

⁷ See also *id.* (“The office of the Prothonotary of the Commonwealth Court and the office of the Secretary of the Commonwealth . . . **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.”) (emphasis added).

⁸ See Pa.R.A.P. 126(c)(1) (“A reported single-judge opinion in an election law matter filed after October 1, 2013, may be cited as binding precedent only in an election law matter.”).

Petition to Set Aside, Objectors produced a receipt from the United States Postal Service indicating that the Petition to Set Aside was, in fact, mailed to the Secretary on that date.

However, as the Pennsylvania Supreme Court has explained:

The requirement that the official with whom the nomination petition was filed receive timely notice that a petition to set aside has been filed is not just excess statutory verbiage. Service of a petition to set aside a nomination petition upon the officer or board with whom a nomination petition has been filed within the time limit prescribed by [S]ection 977 of the Election Code is mandatory. Clearly, when the Legislature amended [S]ection 977 of the Election Code in 1974, to include the final sentence which prescribes the office hours for the Secretary of the Commonwealth on “the last day to file objections to nomination petitions,” 25 P.S. §2937, it did so to ensure that the Secretary would *receive* a copy of the petition to set aside *within* the time limits set forth in that section.^{FN4}

^{FN4} “Service” is defined as the *exhibition or delivery* of a legal document “to a person who is thereby officially notified of some action or proceeding in which he is concerned, and is thereby advised or warned of some action or step which he is commanded to take or to forbear.” BLACK’S LAW DICTIONARY (5th Ed.) (emphasis added). It is *when* the document is delivered that it is said to have been served. *Id.*

Petition of Acosta, 578 A.2d 407, 409 (Pa. 1990) (emphasis in original).

We recently examined the application of this binding precedent, stating:

In *Petition of Acosta*, the objector served the Secretary by U.S. Mail. This Court determined that “service by mail is not precluded by the Election Code,” and, based on Pennsylvania Rule of Civil Procedure 440(b), Pa.R.Civ.P. 440(b), found proper service when the objection petition was placed in the mail on the last day to file objection petitions. *While the Supreme Court agreed*

that service by mail was not precluded by the Election Code, it disagreed that service was complete when the objection petition was put in the mail, but stated it was complete only upon receipt. *Petition of Acosta*, 578 A.2d at 409. This was because the Supreme Court “held that the Pennsylvania Rules of Civil Procedure do not apply to a challenge to a nomination petition or paper in light of the **overriding consideration** embodied in [S]ection 977 of the Election Code, *i.e.*[,] the **expeditious consideration and resolution** of challenges to nomination petitions.” *Id.* at 409 (emphasis added). Because service on the Secretary is mandatory, and the objections were not received within the time limits, this Court’s decision in *Petition of Acosta* was reversed.

In re Broadhurst, 312 A.3d at 417-18 (emphasis added); *see also Walsh v. Tucker*, 312 A.2d 11, 12 (Pa. 1973) (“Filing requires more than proper mailing.”); *In re Henigan* (Pa. Cmwlth., Nos. 280 C.D. 2023, 281 C.D. 2023, filed April 7, 2023), *appeal denied*, 297 A.3d 397 (Pa. 2023), slip op. at 15⁹ (“[I]t is clear that the trial court erred in applying the “mailbox rule” to the filing requirements of Section 1104(b)(2) of the Ethics Act[, 65 Pa. C.S. §1104(b)(2)]. Rather, that mandatory provision, . . . requires the direct submission of the [Statement of Financial Interest] to the designated county official within the prescribed time period.”). Thus, where, as here, the only evidence presented is of the Petition to Set Aside’s *mailing*, and absolutely no record evidence of the Secretary’s *receipt* of the Petition to Set Aside within the mandatory period, we are unable to consider or dispose of the instant Petition to Set Aside.¹⁰

⁹ *See* Pa.R.A.P. 126(b)(1)-(2) (“As used in this rule, ‘non-precedential decision’ refers to . . . an unreported memorandum opinion of the Commonwealth Court filed after January 15, 2008. Non-precedential decisions . . . may be cited for their persuasive value.”).

¹⁰ *See, e.g., In re Boyd*, 41 A.3d 920, 924 (Pa. Cmwlth. 2012) (“[O]ur Supreme Court’s holding in *In re Lee*[, 578 A.2d 1277 (Pa. 1990),] controls and we cannot consider the Objection Petition. Further, because the Election Code provides that ‘[a]ll nomination petitions and papers
(Footnote continued on next page...)

Nevertheless, for the sake of judicial economy should Objectors seek further appellate review, we will address the objection raised in the Petition to Set Aside. As outlined above, Section 910 of the Election Code required Candidate to provide, *inter alia*, that “[e]ach candidate for any State . . . office, . . . shall file with his nomination petition his affidavit stating . . . his election district, giving city, borough, town or township” 25 P.S. §2870. In this case, Objectors contend that Candidate’s failure to list the relevant election district in the Candidate’s Affidavit compels this Court to remove her name from the ballot.

However, not all mistakes or omissions in a Candidate’s Affidavit are fatal and require removal from the ballot. Indeed, as the Pennsylvania Supreme Court explained long ago:

In all the troubles and controversies which entangle citizens in legal complications, there is one golden thread running through the entire intricate skein, no matter how knotted, meshed and intertwined the strands may be—and that is intent. Whether it be in criminal law, contractual law and occasionally even in torts, the intent of the actor is the touchstone of evaluation of his act. And in the sphere of popular elections which, after all, constitute the very warp and woof of democracy, nothing can be more vital in the accomplishment of an honest and just election than the ascertainment of the intention of the voter.

“Election laws will be strictly enforced to prevent fraud, but ordinarily will be construed liberally in favor of the right to vote. All statutes tending to limit the citizen in his exercise of the right of suffrage should be liberally construed in his favor. Where the elective franchise is regulated by statute, the

received and filed within the periods limited by this act shall be deemed to be valid,’ 25 P.S. §2937, we find that the [c]andidate has submitted a sufficient number of valid signatures required for certification and that [he] may appear on the ballot as a candidate for State Representative. . . .”).

regulation should, when and where possible, be so construed as to insure rather than defeat the exercise of the right of suffrage. Technicalities should not be used to make the right of the voter insecure. No construction of a statute should be indulged that would disfranchise any voter if the law is reasonably susceptible of any other meaning.”

Appeal of James, 105 A.2d 64, 65-66 (Pa. 1954) (citation omitted and emphasis added); *see also In re Nomination Petition of Driscoll*, 847 A.2d 44, (Pa. 2004) (“[W]e held in [*State Ethics Commission v. Baldwin*, 445 A.2d 1208, 1211 (Pa. 1982),] that although three candidates had stated that they had filed financial interest statements in their affidavits when in fact the statements had not been filed, such an error was amendable because the candidates did not intend to deceive the electorate when they completed their affidavits. Accordingly, pursuant to *Baldwin*, 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.”) (citation and footnotes omitted); *Petition of Ciappa*, 626 A.2d 146, 149 (Pa. 1993) (“The power to vitiate a ballot for minor irregularities should be used sparingly. It should be done only for very compelling reasons. *Norwood Election Contest Case*, [116 A.2d 552 (Pa.) 1955].”).

Quite importantly, in this case, Candidate’s failure to provide this information on the Candidate’s Affidavit did not deprive the signatory electors on the Nomination Petition of the opportunity to independently assess her qualifications to hold the office of Representative in the Pennsylvania General Assembly for the 9th Legislative District¹¹ by verifying that she does indeed reside in that Legislative

¹¹ *See* Pa. Const. art. II, §5 (“[Representatives] shall have been citizens and inhabitants of the State four years, and inhabitants of their respective districts one year next before their election **(Footnote continued on next page...)**”)

District. Stated simply, Candidate’s omission on her Affidavit does not implicate her ability to run for that office, or relate in any manner to fraud, and does not compel this Court to remove her as a candidate for that office from the ballot. As a result, the instant Petition to Set Aside will be dismissed.

Accordingly, based on the foregoing, we issue the following:

ORDER

AND NOW, this 23rd day of March, 2026, it is hereby ORDERED:

1. The request to amend the Nomination Petition of Shay Micco as a Democratic candidate for nomination to the office of Representative in the Pennsylvania General Assembly for the 9th Legislative District in the General Primary Election to be held on May 19, 2026, is GRANTED; The Secretary of the Commonwealth of Pennsylvania is directed to ACCEPT and FILE Candidate’s Amended Nomination Petition.

2. Based on the stipulated facts, and the presumption of validity, the Nomination Petition of Shay Micco as a Democratic candidate for nomination to the office of Representative in the Pennsylvania General Assembly for the 9th Legislative District in the General Primary Election to be held on May 19, 2026,

(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.”); *In re Lesker*, 105 A.2d 376, 379 (Pa. 1954) (“There can be no doubt, therefore, that in order to qualify under Article 2, Section 5 of our present Constitution a candidate for assemblyman must be an inhabitant (a permanent resident) within his claimed legislative district; and he must have resided there, that is, maintained a permanent home establishment there, for at least a year.”).

contains 300 valid signatures of qualified and enrolled electors as required by Section 912.1(14) of the Election Code, 25 P.S. §2872.1(14); and the said Petition to Set Aside the said Nomination Petition of Shay Micco is DISMISSED.

3. The Secretary of the Commonwealth of Pennsylvania is directed to PLACE the name of Shay Micco as a Candidate for the Democratic Nomination to the office of Representative in the Pennsylvania General Assembly for the 9th Legislative District on the ballot in the General Primary Election of May 19, 2026.

4. Each party shall bear his, her, or their own costs.

5. The Prothonotary shall notify the parties hereto and their counsel of this order and shall also certify a copy hereof to the Secretary of the Commonwealth of Pennsylvania forthwith.

Michael H. Wojcik

MICHAEL H. WOJCIK, Judge