

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

In re: Nomination Petition of Ehab :
Akkary as Republican Candidate for :
the 30th State House District : No. 105 M.D. 2026
: Heard: March 19, 2026
Objection of: Janis Kapadia :

BEFORE: HONORABLE MICHAEL H. WOJCIK, Judge

MEMORANDUM and ORDER

Presently before the Court is the Petition to Set Aside the Nomination Petition of Ehab Akkary (Petition to Set Aside and Candidate, respectively) as a Republican candidate for nomination to the office of Representative in the Pennsylvania General Assembly for the 30th Legislative District in the General Primary Election (Primary Election) to be held on May 19, 2026. The counseled Petition to Set Aside was filed by Janis Kapadia (Objector).

Pursuant to Section 912.1(14) of the Pennsylvania Election Code (Election Code),¹ a candidate for the office of Representative in the General Assembly must present at least 300 valid signatures of registered and enrolled 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, Objector filed the

¹ 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."

instant Petition to Set Aside alleging that the Nomination Petition is invalid because Candidate does not meet the four-year residency requirement to run for that office pursuant to article II, section 5 of the Pennsylvania Constitution.² Specifically, Objector contends that the Candidate’s affidavit that was filed with the Nomination Petition is defective because Candidate stated therein that he is eligible to serve in that office 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 19, 2026, at 1:00 p.m., and imposing certain duties and obligations upon Objector and Candidate.

² 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 (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 [a]rticle 2, [s]ection 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.”).

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 . . . that he is eligible for such office” 25 P.S. §2870.

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).

On March 19, 2026, the scheduled hearing on Objectors’ Petition to Set Aside Candidate’s Nomination Petition was conducted with counsel for Objector and Candidate present for the proceeding. Objectors secured the services of David Voye, the Manager of the Allegheny County Elections Division, as operator of the Statewide Uniform Registry of Electors (SURE) System.⁵ During the course of that hearing, Mr. Voye accessed the SURE System and retrieved information regarding Candidate’s voter registration information. Mr. Voye’s credible testimony⁶ established that Candidate was not a registered and enrolled elector in the Commonwealth until September 26, 2024. In addition, Candidate testified, and the parties stipulated that Candidate’s ex-wife, Brionna Lise Akkary, would corroborate his testimony regarding his domicile in a number of material respects had she been called to testify. Both parties also presented exhibits in support of their respective positions which have been made part of the certified record in this case. The relevant credible evidence adduced at the hearing is addressed below.

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

⁵ As this Court has previously explained, “[t]he 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, 792-93 n.4 (Pa. Cmwlth.), *aff’d*, 944 A.2d 78 (Pa. 2008).

⁶ “[T]he trier of fact, while passing upon the credibility of witnesses and the weight to be afforded the evidence produced, is free to believe all, part or none of the evidence.” *Commonwealth v. Harper*, 403 A.2d 536, 539 (Pa. 1979). “It is within the purview of the fact finder to draw all reasonable inferences from the evidence presented[.]” *Ellis v. City of Pittsburgh*, 703 A.2d 593, 594 (Pa. Cmwlth. 1997).

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.

Regarding the objections 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 . . . that he is eligible for such office” 25 P.S.

§2870. In turn, Section 977 of the Election Code requires a reviewing court to set aside a nomination petition “[i]f the court shall find that said nomination petition or paper is defective under the provisions of [S]ection 976 [of the Election Code].” 25 P.S. §2937. Finally, pursuant to Section 976, “[n]o nomination petition . . . shall be permitted to be filed if . . . it contains material errors or defects apparent on the face thereof, or on the face of the appended or accompanying affidavits.” 25 P.S. §2936.

Moreover, “in interpreting [a]rticle 2, [s]ection 5, as requiring a four year state residency immediately preceding the election is consistent with the clear intent of the Constitutional provision” *In re Prendergast*, 673 A.2d 324, 327 (Pa. 1996). In the Petition to Set Aside, it is alleged that Candidate is not qualified to serve as a Representative in the General Assembly from the 30th Legislative District because he has not resided in the Commonwealth for the four years immediately preceding the November 6, 2026 General Election.

Regarding Candidate’s ability to meet this requirement, the Pennsylvania Supreme Court has recently explained that it

has throughout the last century consistently equated residency for purposes of constitutional eligibility to run for office with the traditional concept of domicile⁷ and

⁷ In this regard, the Supreme Court has also observed:

A domicile is the place at which an individual has fixed his family home and principal establishment for an indefinite period of time. [*In re*] *Dorrance’s Estate*, [163 A. 303 (Pa.) 1932). A domicile once acquired is presumed to continue until it is shown to have been changed and where a change is alleged, the burden of proving it rests upon whoever makes the allegation. *Id.* A new domicile can be acquired only by physical presence at a new residence plus intent to make that new residence the principal home. *Id.* Intent is the actual state of facts, not what one declares them to be. An established domicile, however, can be retained without

(Footnote continued on next page...)

has applied a totality of the circumstances test that examines a variety of factors to discern a candidate's physical presence and intent. *See [In re Lesker, 105 A.2d 376 (Pa. 1954)]; Prendergast.* We have not adopted nor created a *per se* rule applicable to married candidates; moreover, neither has the General Assembly [C]ourts most assuredly may consider marital status and a couple's living arrangements when determining a candidate's domicile for residency purposes, but those marital circumstances cannot be the only factor considered nor can the circumstances of a married couple living separate and apart, alone, function as a bar to constitutional eligibility.

Additionally, the totality of the circumstances test must include an assessment of the candidate's credibility as to his physical circumstances and his intent to remain. As to the latter, "intent" is a foundation of the domicile inquiry. That intent, as voiced by the candidate, however, is not dispositive or controlling. Rather, a candidate's intent must further be tested against the totality of other discernable facts from the record to support the candidate's claim of residency, or domicile. *See [In re Nomination Petition of Driscoll, 847 A.2d 44, 50 (Pa.) 2004].* As we explained in *Lesker*, a court must not "confuse[] intent with [a] declaration of intent. In the law of domicile, intent is the actual state of facts, not what one declares them to be." *Lesker*, 105 A.2d at 379 (emphasis omitted). An expression of intent, alone, therefore, is insufficient. The factors in support of and against domicile must be considered-*e.g.*, a candidate's presence or absence at an address, where the members of his household reside, whether he rents or leases the property, where he sleeps, what belongings and personal effects he keeps at the address, whether he owns another home to which he is more permanently attached, etc.-to determine whether they evidence the required physical presence and intent to remain. *See Prendergast; Lesker; [In re Stabile,*

physical presence or residence until it be proven that a new domicile has been acquired.

Prendergast, 673 A. 2d at 327-28.

36 A.2d 451 (Pa. 1944)]; [*In re Nomination Petition of Shimkus*, 946 A.2d 139 (Pa. Cmwlth. 2008)]. As we opined in *Lesker*:

To accomplish a change of domicile there must be not only the *animus* to change but the *factum* as well. There must be an actual transfer of bodily presence from one place to the other. The *animus* and the *factum* do not need to be simultaneous, but until they coincide the change of domicile is not effected

One almost conclusive criterion of domicile is the *animus manendi*. There must be the intention to *remain*.

Lesker, 105 A.2d at 380 (emphasis in original). Additionally, it must be noted that “intent” is not the same as “motive.” A candidate may be motivated by any number of reasons to make a certain location his domicile, including the desire to run for public office; the relevant inquiry, however, focuses on the candidate’s actual domicile, meaning the candidate’s physical presence and intent to remain.

In re Huff, 334 A.3d 232, 248-49 (Pa. 2025).⁸

At the hearing herein, the credible evidence demonstrates that Candidate is a cosmetic surgeon certified to practice in Pennsylvania and West

⁸ See also *Commonwealth ex rel. Esenwein v. Esenwein*, 35 A.2d 335, 336-37 (Pa. 1944) (citations omitted), wherein the Supreme Court noted:

‘The essential fact that raises a change of abode to a change of domicil[e] is the absence of any intention to live elsewhere’ . . . or . . . ‘the absence of any present intention of not residing permanently or indefinitely in the new abode.’ ‘The intention required for the acquisition of domicil[e] of choice is an intention to make a home in fact, * * *’ *In re Dorrance’s Estate*[.] The essentials of a change of domicil[e] from Pennsylvania or elsewhere to Nevada are not satisfied by the short sojourn in a Nevada hotel [required to obtain a divorce there].

Virginia. He and his wife were married in 2017, and his daughter was born in 2018. He formerly lived with his ex-wife and daughter in their marital home in Morgantown, West Virginia, but the couple filed for divorce in September 2021. Prior to the breakup, in July of 2021, he and his ex-wife discussed a joint plan in which he would move and expand his practice to Pennsylvania while still working in West Virginia.

Candidate stated that he believes that he became a Pennsylvania domiciliary in January of 2022, because that is when he moved out of the marital home and started working in a practice in Cranberry Township, Butler County. He continued to practice in West Virginia, and moved between the two locations for work at that time. As of January of 2022, during the course of his separation and divorce, his ex-wife had exclusive possession of the marital home. As a result, he stayed in the spare bedroom of the townhome that he bought for his parents in 2019, along with his daughter, when he was practicing in West Virginia. He stayed at a Marriott property near the practice with her when working in Pennsylvania. The Pennsylvania practice made the hotel reservations and paid for his stays, with the length of stay varying based on his work requirements, but lasting no longer than a week. During this period, his clothes were kept at his parents' home or the office, and his belongings were kept either at the marital residence or his parents' home. He did not receive mail at the hotel; rather, he received his personal mail at his parents' home or the marital home, and his work mail at the two practices.

Ultimately, in March of 2023, Candidate started looking for a permanent residence in Pennsylvania. In May of 2023, he purchased a house and its furniture on Grubbs Road in Wexford, Allegheny County, and his parents moved in with him. By January of 2024, after the divorce was finalized, he was granted

possession of the marital home and would stay there with his daughter while working in West Virginia. After a few months, he sold the marital home in September of 2024, and less than two months ago, he purchased a townhome in Morgantown that he plans to convert into a recovery home for his patients. Candidate stopped working at the Pennsylvania practice in December of 2023, and a non-compete clause prevented him from working here for a year. Candidate's only continuing income is from the West Virginia practice, which is listed on his Pennsylvania medical license. He sought to expand his regional footprint when he was unable to sell that practice. He has paid income taxes in both West Virginia and Pennsylvania.

Candidate stated that he voted in the 2016 and 2020 elections in West Virginia, but he did not vote in 2022 or 2023. In 2024, Candidate asked the West Virginia Secretary of State to cancel his registration, and he registered as an elector in Pennsylvania on September 26, 2024. On October 4, 2024, he obtained his first and only Pennsylvania driver's license.

Candidate explained that he intended to be domiciled in Pennsylvania as of January 2022. He initially stayed at hotels here because of the economic uncertainty relating to the divorce, and the Pennsylvania practice was making the reservations and paying for the room. He stated that he did not rent a house or an apartment because his employer was paying for his accommodations and he never considered his parents' townhome as his residence. On a personal level, he wanted to live here, and on a professional level he wanted to build and expand his practice here. He stated that he sleeps in Morgantown at most once or twice a week, and he stays there for convenience when his daughter is in school.

When the foregoing totality of the facts are viewed in light of the requirements of *In re Huff*, it is clear that Candidate did not effectuate a change in

his domicile from West Virginia to Pennsylvania before November 6, 2022. As outlined above, to effectuate such a change, Candidate must have intended for the *hotel* to be his *in praesenti* permanent Pennsylvania residence, as opposed to a mere abode where he stayed for a short sojourn while he worked here for the Pennsylvania practice. Candidate credibly testified that he did not keep his clothes or belongings at the hotel, or that he received or sent any personal or professional mail there, or that it was a place at which he intended to permanently remain. That is, until Candidate obtained a fixed Pennsylvania address where he intended to remain indefinitely, he was more permanently attached to the properties in West Virginia. Thus, the requisite *factum* did not coincide with the requisite *animus manendi* to effectuate a change of his domicile from West Virginia to Pennsylvania under *In re Huff*. As a result, the Candidate's Affidavit filed herein with the Nomination Petition contains a material defect because Candidate is not constitutionally qualified to serve in the General Assembly; the Petition to Set Aside will be granted; and Candidate's name will be removed from the ballot for the upcoming Primary Election.

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

ORDER

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

1. Based upon the credible evidence adduced at the March 19, 2026 hearing before this Court, the Nomination Petition of Ehab Akkary as a Republican candidate for nomination to the office of Representative in the Pennsylvania General Assembly for the 30th Legislative District in the General Primary Election to be held

on May 19, 2026, is invalid; the Petition to Set Aside the said Nomination Petition of Ehab Akkary is GRANTED; and the said Nomination Petition of Ehab Akkary is hereby SET ASIDE.

2. The Secretary of the Commonwealth of Pennsylvania is directed to REMOVE the name of Ehab Akkary as a Candidate for the Republican Nomination to the office of Representative in the Pennsylvania General Assembly for the 30th Legislative District in the General Primary Election of May 19, 2026.

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

4. 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