

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

In Re: Nomination Papers of	:
Margaret K. Robertson for President	:
of the United States, Erik Viker for	:
Vice President of the United States,	:
Rayburn Douglas Smith for United	:
States Senator of the Commonwealth	:
of Pennsylvania, Marakay Rogers for	:
Attorney General of the Commonwealth	:
of Pennsylvania, Betsy Summers for	: No. 507 M.D. 2012
Auditor General of the Commonwealth	: Argued: September 12, 2012
of Pennsylvania and Roy Minet for	:
Treasurer of the Commonwealth of	:
Pennsylvania, as candidates of the	:
Libertarian Party in the General	:
Election of November 6, 2012	:
Objections of: Damon Kegerise,	:
Anne Layng and Judith Guise	:

BEFORE: HONORABLE DAN R. PELLEGRINI, President Judge
HONORABLE ANNE E. COVEY, Judge
HONORABLE JAMES GARDNER COLINS, Senior Judge

OPINION NOT REPORTED

**MEMORANDUM OPINION
PER CURIAM**

FILED: September 20, 2012

Between February 15, 2012 and August 1, 2012, the Libertarian Party filed nomination papers (the Nomination Papers) with the Secretary of the Commonwealth seeking to put candidates for the offices of President of the United States, Vice President of the United States, United States Senator, Attorney General, Auditor General and Treasurer (Candidates) on the ballot for the

November 6, 2012 General Election. Under Section 951(b) of the Pennsylvania Election Code (the Election Code),¹ the Nomination Papers must contain valid signatures equal to two percent of the largest number of votes cast for an elected statewide candidate in 2011. It is undisputed that the largest number of votes cast for any elected candidate in 2011 was 1,030,004 and that the minimum number of valid signatures required to place Candidates on the ballot is therefore 20,601. The Nomination Papers contain over 1,600 separate pages of signatures with a total of 49,164 submitted signatures.

On August 8, 2012, Damon Kegerise, Anne Layng and Judith Guise (Objectors) timely filed a petition to set aside the Nomination Papers (the Petition to Set Aside). In the Petition to Set Aside, Objectors challenged the validity of over 38,000² of the 49,164 signature lines of the Nomination Papers. (Petition to Set Aside ¶¶27-35 & Exhibits 1 & 2 thereto.) Objectors also asserted global challenges to 121 pages of the Nomination Papers seeking to strike those pages of signatures in their entirety on the grounds that the affidavits of the circulators of those pages or the notarization of those circulator affidavits were allegedly improper. In addition, Objectors pleaded as a separate global challenge that even if the Nomination Papers are found to contain 20,601 valid signatures, the

¹ Act of June 3, 1937, P.L. 1333, § 951(b), *as amended*, 25 P.S. § 2911(b).

² Previous opinions of the Court in this matter have stated different and higher numbers of challenged signatures, based on the information provided by the parties at the time. These numbers were in error, apparently due to confusion between the parties over whether 2,593 signature lines of the total of 51,757 signature lines on the Nomination Papers, which were crossed out by Candidates' representatives before filing, were submitted and challenged signatures or were not submitted signatures. The parties have now resolved this issue and the numbers herein are the correct numbers to which the parties have stipulated.

Nomination Papers must be set aside for alleged “pervasive fraud” in the signature gathering process.

On August 16, 2012, the Court held a status conference at which the parties were directed to commence line-by-line review at the Philadelphia Board of Elections of the challenged Philadelphia County signatures, which constitute over 37,000 of the challenged individual signatures, and a hearing was scheduled on Objectors’ global challenges. The line-by-line review of the challenged Philadelphia County signatures was completed on August 30, 2012 and the parties on September 5 and 6, 2012 conducted line-by-line review of the challenged signatures from the other counties.

On August 23, 2012, the Court held an evidentiary hearing on all of Objectors’ global challenges to entire pages of the Nomination Papers and to the Nomination Papers as a whole, at which Objectors submitted all of their evidence supporting those challenges. On September 4, 2012, this Court issued an Opinion and Order on those global challenges, overruling Objectors’ challenges to 101 pages of the Nomination Papers, sustaining Objectors’ challenges to 20 pages of the Nomination Papers, and denying Objectors’ request to set aside the Nomination Papers for alleged pervasive fraud.

The parties have stipulated that 10,402 signatures on the Nomination Papers were not challenged and that 7,971 of the challenged signatures are valid. The parties have also stipulated that 17,462 of the individually challenged signatures are invalid and that the 20 pages of the Nomination Papers that have been stricken contain 643 signatures.³ The parties further advised the Court that

³ In its opinion on the global challenges, the Court reported that the parties had stipulated that 654 signatures were on the 20 stricken pages. This difference is apparently due to the parties’
(Footnote continued on next page...)

they were unable to agree on the validity or invalidity of 12,686 signatures. Under Section 977 of the Election Code, 25 P.S. § 2937, signatures not challenged are deemed valid. *In re Nomination Petition of Johnson*, 509 Pa. 347, 353, 502 A.2d 142, 145-46 (1985). Accordingly, it is undisputed that Candidates have at least 18,373 valid signatures of the 20,601 required to place Candidates on the ballot before resolution of the disputed signature challenges and that for Candidates to have sufficient signatures, 2,228 of the 12,686 disputed signatures must be found valid.

During the course of the signature review process, it became clear that certain legal issues would be dispositive of large numbers of the contested challenges. Those issues included whether signatures are valid where the SURE system shows that an elector with that name and signature is registered to vote, but is registered at a different address than the elector wrote on the Nomination Papers ("Not Registered at Address" challenges) and whether signatures of electors on pages of the Nomination Papers for a county other than their own county are valid ("Out of County" challenges). Accordingly on August 29, 2012, the parties were directed to move for summary judgment on these issues and were directed to brief the following questions:

A. Whether the National Voter Registration Act of 1993, 42 U.S.C. §1973gg-6, and cases decided thereunder require that registered voters may sign federal nomination papers for candidates for federal office using

(continued...)

confusion noted in footnote 2, *supra*, over whether certain crossed out signature lines were submitted signatures. As discussed above, the parties have now resolved this issue, corrected their prior stipulations and confirmed that 643, not 654, is the correct number of signatures stricken on global challenges.

an address that does not match the voters' addresses in the registration records?

B. Whether signatures of registered electors from counties other than Philadelphia are valid on a nomination paper circulated in Philadelphia County?

C. Whether arguments related to the National Voter Registration Act of 1993, 42 U.S.C. §1973gg-6, apply to address the validity of signatures in support of non-federal state candidates?

D. What is the effect of the Pennsylvania Voter Rights Act, 25 Pa. C.S. §1501 and 25 Pa. C.S. §1901, on the instant matter?

(Order of August 29, 2012 at 3-4.) At the parties' request, this Order was amended to permit the parties to include a request for summary judgment on "any other category or categories of signatures ... that may be disposed of strictly upon an application of law." (Order of August 30, 2012.)

On September 10, 2012, the parties filed cross-motions for partial summary judgment and supporting memoranda of law addressing the issues that the Court set forth and seeking rulings on three types of challenges: 1) the Out of County challenges, 2) challenges to signatures where the signer wrote the day and month that he or she signed but omitted the year ("Missing Year" challenges) and 3) the Not Registered at Address challenges. On September 12, 2012, oral argument of these issues was held before a three-judge panel. On September 13, 2012, this Court issued an Order ruling on these legal issues, 1) holding that the Out of County signatures are invalid and ordering those signatures stricken; 2) holding that the Missing Year signatures are invalid and ordering those signatures stricken unless the defect was cured by submission of a sworn affidavit of the signing elector on or before September 21, 2012; and 3) denying the Not

Registered at Address challenges as to both federal and state candidates. This Opinion is filed in support of that Order and sets forth the bases and reasoning for the Court's Order.

I. The Applicable Legal Principles That Govern These Challenges

Before this Court for consideration are cross-motions for partial summary judgment. Pennsylvania Rule of Appellate Procedure 1532 states: "At any time after the filing of a petition for review in an . . . original jurisdiction matter the court may on application enter judgment if the right of the applicant thereto is clear." This Court has held:

Summary judgment is properly granted where 'the pleadings . . . show that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law.' 'The record must be viewed in the light most favorable to the nonmoving party, and all doubts as to the existence of a genuine issue of material fact must be resolved against the moving party.' Summary judgment may be entered only in those cases where the right is clear and free from doubt.

Com. ex rel. Fisher v. Jash Intern., Inc., 847 A.2d 125, 130 n.13 (Pa. Cmwlth. 2004) (citations omitted). As the issues currently before the Court are purely issues of law, partial summary judgment is appropriate.

It is well established that the Election Code must be liberally construed so as to not deny candidates the right to run for office or deny voters the right to vote for the candidates of their choice. *In re Nomination Petition of Gales*, ___ Pa. ___, ___, __ A.3d ___, ___, No. 7 WAP 2012, 2012 WL 2989179 at *2 (July 18, 2012); *In re Nomination Petition of Silcox*, 543 Pa. 647, 650, 674 A.2d 224,

225 (1996); *Johnson*, 509 Pa. at 353, 502 A.2d at 146. Where the language of the Election Code is clear, however, this Court cannot disregard those requirements. *Silcox*, 543 Pa. at 650, 674 A.2d at 225. It is Objectors' burden to prove that the signatures they have challenged are invalid. *In re Nomination Papers of Nader*, 580 Pa. 22, 39, 858 A.2d 1167, 1177 (2004); *In re Nomination Petition of Flaherty*, 564 Pa. 671, 679, 770 A.2d 327, 331 (2001); *Johnson*, 509 Pa. at 354, 502 A.2d at 146.

II. Objectors' Out Of County Challenges

The parties have stipulated that 183 of the signatures in dispute are on pages of the Nomination Papers for residents of a county different from the county where the signer resides and is registered to vote (*e.g.*, a Lancaster County resident signed a page for Philadelphia County residents). The parties have presented this Court the issue of whether signers of a nomination paper may only sign a page for the county in which they reside.

The Court finds that these signatures are invalid because Section 951(d) of the Election Code unambiguously requires that signers of nomination papers may validly sign only a page for the county in which they reside. Section 951 of the Election Code, which prescribes the requirements for these Nomination Papers, states:

Nomination papers may be on one or more sheets and different sheets must be used for signers resident in different counties. If more than one sheet is used, they shall be bound together when offered for filing if they are intended to constitute one nomination paper, and each sheet shall be numbered consecutively, beginning with number one (1) at the foot of each page. Each sheet shall have appended thereto the affidavit of some person, not

necessarily a signer, and not necessarily the same person on each sheet, setting forth ... (3) that the signers signed with full knowledge of the contents of the nomination paper; (4) that their respective residences are correctly stated therein; (5) that they all reside in the county named in the affidavit; (6) that each signed on the date set opposite his name; and (7) that, to the best of affiant's knowledge and belief, the signers are qualified electors of the State, or of the electoral district, as the case may be.

25 P.S. § 2911(d) (emphasis added).

Candidates do not dispute that the Election Code requires that electors sign on a page for their own county and that the Out of County signatures fail to meet the requirements of the Election Code. Candidates' only argument in favor of the validity of these signatures is the contention that the requirement of separate county signature pages unconstitutionally burdens their First Amendment rights. The Court does not find this constitutional argument meritorious.

The United States Supreme Court has made clear that "as a practical matter, there must be a substantial regulation of elections if they are to be fair and honest and if some sort of order, rather than chaos, is to accompany the democratic processes." *Burdick v. Takushi*, 504 U.S. 428, 433 (1992) (quoting *Storer v. Brown*, 415 U.S. 724 (1974)). The level of scrutiny that the Court is to apply to a constitutional challenge to an election law depends upon the burden that the law imposes on voters and candidates. *Timmons v. Twin Cities Area New Party*, 520 U.S. 351, 358 (1997); *Burdick*, 504 U.S. at 434. "Regulations imposing severe burdens on [First Amendment] rights must be narrowly tailored and advance a compelling state interest. Lesser burdens, however, trigger less exacting review, and a State's 'important regulatory interests will usually be enough to justify

reasonable, nondiscriminatory restrictions.” *Timmons*, 520 U.S. at 358 (quoting *Burdick*) (internal quotations omitted).

Here, the burden on First Amendment rights is minimal. The separate county requirement does not restrict voters’ rights to sign nomination papers for candidates of their choice nor does it limit candidates’ rights to circulate nomination papers for signature. It merely requires that the voters and candidates use forms organized by county in doing so. Pennsylvania has a legitimate and reasonable purpose for requiring that different signature pages be used for different counties, as voter registration is by county. *See* 25 Pa. C.S. § 1203. Because the “restriction” imposed by this legitimate administrative requirement is *de minimis*, the separate county requirement is plainly constitutional.

III. Objectors’ Missing Year Challenges

The parties have stipulated that on 1,459 of the signature lines in dispute the electors wrote the day and month that they signed the Nomination Papers but failed to write the year.

The parties have presented this Court the issue of whether “date” as contained in the Election Code requires inclusion of the year of signing. Objectors maintain that the term “date” mandates the signer to write the year of signing because the notation of the month and day without the year does not constitute a valid date. Candidates assert that signatures on a Nomination Paper where the signer failed to write the year of signing should be deemed valid because the signatures were written on Commonwealth-created forms that were not available until 2012.

Section 951 of the Election Code governs nominations of candidates.

Subpart (c) of that section states in relevant part:

Each person signing a nomination paper shall declare therein that he is a qualified elector of the State or district, as the case may be, and shall add to his signature his legibly printed name and residence, giving city, borough or township, with street and number, if any, and shall also add the date of signing, expressed in words or numbers. . . .

25 P.S. § 2911(c) (emphasis added). The statute clearly states that the signer *shall* include the date of signing on a Nomination Paper. The Statutory Construction Act⁴ (Act) provides that:

[w]ords and phrases shall be construed according to rules of grammar and according to their common and approved usage; but technical words and phrases and such others as have acquired a peculiar and appropriate meaning or are defined in this part, shall be construed according to such peculiar and appropriate meaning or definition.

1 Pa. C.S. § 1903(a). Our Supreme Court has held that, “[i]n its common usage as well as legal parlance, the phrase ‘shall’ is mandatory.” *Riddle v. Workers’ Comp. Appeal Bd. (Allegheny City Elec., Inc.)*, 603 Pa. 74, 80, 981 A.2d 1288, 1291 (2009). Thus, the Election Code *mandates* that each qualified elector “add the date of signing” to the Nomination Paper, and a signature without an accompanying date is invalid. *See Flaherty, see also Silcox*.

It is also clear that the General Assembly’s use of the word “date” in Section 951 of the Election Code requires a signer to include the day, month and year of signing. The word “date” as used in a statute has been interpreted by

⁴ Statutory Construction Act of 1972, 1 Pa. C.S. §§ 1501-1991.

Pennsylvania Courts to mean *day, month and year*. See *Pendrak v. Keystone Shipping Co.*, 446 A.2d 912 (Pa. Super. 1982). That interpretation is consistent with the common and approved usage of the word. For example, Ballentine's Law Dictionary (2010) defines the word "date" as, "[t]he time of an occurrence or happening; an indication of time, as upon a coin or an instrument. The date of a written instrument means the year, month, and day of its execution." *Id.* (emphasis added).

The Act states: "[w]hen the words of a statute are clear and free from all ambiguity, the letter of it is not to be disregarded under the pretext of pursuing its spirit." 1 Pa. C.S. § 1921(b). Thus, we hold that the General Assembly's use of the words "shall" and "date" requires the signer of a Nomination Paper to indicate on the paper, the month, day and year of his or her signing.

This Court has considered Candidates' argument that the signatures were recorded on a form created by the Commonwealth in 2012. However, the General Assembly is presumed to act reasonably and statutes are to be given reasonable effect. 1 Pa. C.S. § 1922; see also *Pedrick v. Gordin*, 382 Pa. 26, 114 A.2d 124 (1955). Although the forms in issue just so happen to have been printed in 2012, it does not follow logically to presume that the General Assembly in its mandate of a qualified elector to include the date of his or her signing believed that date only meant month and day because of the use of preprinted forms. In addition, no evidence or argument was presented that the Commonwealth preprints new Nomination Papers each year. Accordingly, because we conclude, as we must, that the Election Code sets forth a stringent date requirement and that the General Assembly acted reasonably, we reject Candidates' argument.

Section 977 of the Election Code, 25 P.S. § 2937, states in relevant part, “[i]f the objections relate to material errors or defects apparent on the face of the nomination petition or paper, the court, after hearing, may, in its discretion, permit amendments. . . .” *See, e.g., In re Nomination Petition of Freeman*, 540 A.2d 606 (Pa. Cmwlth. 1988); *See also In re Nomination Petition of Snyder*, 516 A.2d 788 (Pa. Cmwlth. 1986). In the instant case we recognize that the absence of the year is “apparent on the face of the nomination paper” and is a material defect; therefore, it is amendable. *See Petition to Set Aside Nomination of Fitzpatrick*, 822 A.2d 859 (Pa. Cmwlth. 2003), *overruled in part by Gales*; 25 P.S. §2937. Thus, Candidates may cure those signatures that do not contain a year by way of the signing elector providing in court testimony under oath or a sworn affidavit.

Accordingly, we hold that those signatures where the signer failed to include the year of signing are invalid and are stricken, unless cured by the signing elector offering in court testimony under oath or a sworn affidavit.

IV. Objectors’ Not Registered at Address Challenges

The parties stipulated at the time of argument that 9,361 of the signatures in dispute have been challenged on the grounds that the address on the Nomination Papers does not match the address of the elector’s voter registration in the SURE system. The parties did not agree in that stipulation to the facts concerning these Not Registered at Address challenges. They did not agree that all 9,361 of these signers are in fact not registered at the address that they placed on the Nomination Papers nor did they agree that this was the sole challenge to all of these signatures and all of these challenged signers were in fact registered voters.

Absent resolution by the Court of the legal issue, however, the parties were unable to resolve these challenges.

Following the Court's September 13, 2012 Order and a day of hearing on the signatures in question, the parties have been conducting further review toward stipulating how many of the signatures do not have a matching address in the SURE system and how many signatures are challenged solely on the ground that the address of the voter's registration in the same county does not match the address in the SURE system. This review, resulting in further stipulations, is ongoing, and the figure of 9,361 signatures challenged on this ground will be adjusted downward.

The issue before us is whether a signature of a registered voter whose name appears as an eligible voter in the SURE system's registration records is invalid solely because the address at which the voter is registered is different from the address within the same county that the voter wrote on the Nomination Papers. We conclude that because such voters are, under the laws applicable to these Nomination Papers, registered voters eligible to vote in the November 2012 election, the mere fact that the address does not match does not invalidate the signature.

Section 951 of the Election Code requires that signers of nomination papers be "qualified electors" and that they write their residence address on the nomination paper. 25 P.S. § 2911(b),(c). Section 951(b) specifies "the number of qualified electors" that must sign nomination papers. 25 P.S. § 2911(b) (emphasis added). Section 951(c) requires that "[e]ach person signing a nomination paper shall declare therein that he is a qualified elector of the State or district, as the case may be, and shall add to his signature his legibly printed name and residence,

giving city, borough or township, with street and number, if any.” 25 P.S. § 2911(c) (emphasis added).

Whether a signer of a nomination paper is a “qualified elector” under Section 951 of the Election Code is determined by whether he or she is a registered voter. *Nader*, 580 Pa. at 47-48, 50, 858 A.2d at 1182, 1184; *In re Nomination Paper of Rogers*, 908 A.2d 942, 946-47 (Pa. Cmwlth. 2006), *abrogated in part on other issue by In re Stevenson*, ___ Pa. ___, 40 A.3d 1212 (2012); *see also Aukamp v. Diehm*, 336 Pa. 118, 120-21, 8 A.2d 400, 401 (1939) (holding that the term “elector” in Liquor Control Act requirements for referendum petitions means “one qualified to vote at the election and therefore one who, at the time of signing the petition for the referendum, was a registered voter”). A signer whose name is on the voter registration rolls at the time of signing nomination papers is a qualified elector whose signature is to be counted as valid, even if future events could later remove him from the voter rolls. *Johnson*, 509 Pa. at 354-57, 502 A.2d at 146-48 (signatures of voters who had failed to respond to a purge notice and were in the process of being removed from the rolls were valid where they were still on the voter registration rolls on the date of signing). A signer whose name was illegally purged from the voter registration rolls is also a qualified elector whose signature is to be counted as valid. *In re Petition Objecting to Nomination Petition of Williams*, 625 A.2d 1279, 1281-82 (Pa. Cmwlth. 1993).

In *Flaherty*, a case involving an election for state office in 2001, our Supreme Court held that absent extraordinary circumstances, a non-matching address invalidated petition signatures because, absent extraordinary circumstances, under Pennsylvania’s voter registration laws, a person who moved from the address where he was registered to vote was no longer a valid registered

voter and was not eligible to vote unless he changed his voter registration address at least 30 days before the next election. 564 Pa. at 682-83, 770 A.2d at 333-34.

The Court in *Flaherty* did not hold that the Election Code requires that the signer write the address at which he is registered to vote on the petition. Rather, the Court made clear that the sole basis for the invalidity of the signatures was that the address discrepancy, absent a showing of extraordinary circumstances, prevented the signer from being a registered voter eligible to vote in the election at issue. The Court in *Flaherty* explained that, under the voter registration laws applicable to that election, "when electors move either within the same county or to another county within the Commonwealth, they must notify the registration commission of their new address by filing a removal notice generally no later than 30 days preceding an election." 564 Pa. at 682, 770 A.2d at 333. Accordingly, because of this requirement, the Court concluded that the non-matching address made such signatures invalid because "[w]here electors fail to properly notify authorities of a change in address, those electors' voter registrations are terminated and thus, they are clearly disqualified from signing a nomination petition as a registered and enrolled elector." 564 Pa. at 683, 770 A.2d at 334 (emphasis added).

Flaherty

The voter registration laws applicable to this election are substantially different from the voter registration law provisions on which *Flaherty* was based. Unlike the state election at issue in *Flaherty*, elections for federal office are subject to the requirements of the National Voter Registration Act of 1973 (NVRA), 42 U.S.C. § 1973gg-6. The NVRA expressly prohibits states from disqualifying voters merely because they moved within the county without updating their address with the board of elections, and requires that such voters be permitted to

vote at their prior polling place without changing their registration address in advance of the election. 42 U.S.C. § 1973gg-6(e);⁵ *Welker v. Clarke*, 239 F.3d 596, 598-99 (3d Cir. 2001). The NVRA also expressly prohibits states from terminating voters' registrations and removing voters from the rolls for federal elections simply because the voter has moved within the county without changing his or her address. 42 U.S.C. § 1973gg-6(d), (f);⁶ *Welker*, 239 F.3d at 598-99. Voters can be removed from the rolls based on a change of address within the same county only if the voter is first given notice and both fails to respond to the notice and fails to vote in at least two federal general elections. 42 U.S.C. § 1973gg-6(d).

⁵ Section 1973gg-6(e) provides that:

(2)(A) A registrant who has moved from an address in the area covered by one polling place to an address in an area covered by a second polling place within the same registrar's jurisdiction and the same congressional district and who has failed to notify the registrar of the change of address prior to the date of an election, at the option of the registrant--

(i) shall be permitted to correct the voting records and vote at the registrant's former polling place, upon oral or written affirmation by the registrant of the new address before an election official at that polling place.

42 U.S.C. § 1973gg-6(e) (emphasis added).

⁶ Section 1973gg-6(d) provides that:

(1) A State shall not remove the name of a registrant from the official list of eligible voters in elections for Federal office on the ground that the registrant has changed residence unless the registrant--

(A) confirms in writing that the registrant has changed residence to a place outside the registrar's jurisdiction [the county] in which the registrant is registered; or

(B)(i) has failed to respond to a notice described in paragraph (2); and
(ii) has not voted or appeared to vote (and, if necessary, correct the registrar's record of the registrant's address) in an election during the period beginning on the date of the notice and ending on the day after the date of the second general election for Federal office that occurs after the date of the notice.

42 U.S.C. § 1973gg-6(d) (emphasis added).

One of the NVRA's central purposes was ... to ensure that, once registered, voters could not be removed from the registration rolls ... because they had changed addresses. To achieve this purpose, the NVRA strictly limited removal of voters based on change of address The NVRA went even further by also requiring the implementation of "fail-safe" voting procedures to ensure voters would not be removed from registration rolls due to ... the voter's own failure to re-register at a new address.

Purpose

Welker, 239 F.3d at 598-99 (citations omitted). A registered voter who has moved within the same county without changing his address is therefore legally eligible to vote in federal elections under the NVRA.

Under the Supremacy Clause and the Elections Clause of the United States Constitution, it is the provisions of the NVRA that govern who is an eligible, registered voter with respect to candidates seeking federal office, such as the Libertarian Party candidates for President, Vice-President, and United States Senator. U.S. Const. art. VI, cl. 2; U.S. Const. art. I, § 4, cl. 1;⁷ *Kuznik v. Westmoreland County Board of Commissioners*, 588 Pa. 95, 128-43, 902 A.2d 476, 495-504 (2006) (federal election law preempts state election laws, including state constitutional provisions); *Gonzalez v. Arizona*, 677 F.3d 383, 390-94 (9th Cir. 2012), *cert. filed*, 81 U.S.L.W. 3048 (July 16, 2012). Indeed, the very restriction on which our Supreme Court based its ruling in *Flaherty*, that "[g]enerally, voters who move within a county are not allowed to vote on the day of election unless they have re-registered or filed a removal notice with the registrar regarding the

⁷ The Elections Clause provides: "The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations, except as to the Places of chusing Senators." U.S. Const. art. I, § 4, cl. 1 (emphasis added).

change thirty days before the election,” was declared in violation of the NVRA and invalid for federal elections. *ACORN v. Ridge*, Nos. 94-CV-7671, 95-CV-382, 1995 WL 136913 at *5, *9 (E.D. Pa. Mar. 30, 1995); *see also Welker*, 239 F.3d at 599. Where, as here, a federal court has entered a judgment that a specific provision of our election laws is illegal under federal law, our Court, as a matter of comity, must follow that federal ruling. *In re Stevenson*, Pa. , , 40 A.3d 1212, 1222-26 (2012). Because signers of the Nomination Papers who are registered to vote at a different address from their current residence within the same county are therefore registered, enrolled voters legally entitled to vote in the November federal elections, they are “qualified electors” with respect to the federal Candidates and the non-matching address does not invalidate their signatures.

While the NVRA applies only to federal elections, the result is the same with respect to state candidates. In 2002, after *Flaherty* was decided, the General Assembly repealed the statute on which *Flaherty* was based and enacted a new Voter Registration Act (the 2002 Act), 25 Pa. C.S. §§ 1101-3302. Under the 2002 Act, a voter who has moved within the same county is entitled to vote in one election at his old polling place, regardless of when he moved. 25 Pa. C.S. § 1501(b)(2).⁸ In addition, the 2002 Act provides that a voter’s registration cannot

⁸ Section 1501(b)(2) provides:

(2) A registered elector who removes residence from one place to another within the same county and who has not yet filed a removal notice with the commission shall be permitted to vote once at the elector’s former polling place following removal if, at the time of signing the voter’s certificate, the elector files with the judge of election a signed removal notice properly filled out. Removal notices under this paragraph shall be returned to the commission with the voting check list, and the commission shall proceed to transfer the registration of the elector under section 1502 (relating to transfer of registration) and shall promptly update information contained in its registration records. A registered elector may vote in the election district of the elector’s former residence not more than one time following the elector’s removal.

(Footnote continued on next page...)

be canceled simply because the voter moved without changing his registration address, and a voter cannot be removed from the rolls based on a move within the same county unless the specific requirements of the NVRA are met (failure to respond notice and failure to vote in two federal elections). 25 Pa. C.S. § 1901(a), (d).⁹ Thus, Pennsylvania's current voter registration laws are substantially different from the automatic termination of registration and termination of

(continued...)

25 Pa. C.S. § 1501(b)(2).

⁹ Section 1901 provides:

(a) Removal of elector's registration record.--Commissions shall institute a program to protect the integrity of the electoral process and to ensure the maintenance of accurate and current registration records. The program shall be uniform, nondiscriminatory and in compliance with the Voting Rights Act of 1965 (Public Law 89-110, 42 U.S.C. § 1973 et seq.). An elector's registration shall not be canceled except as follows:

(1) At the request of the elector.

(2) Upon the death of the elector under section 1505 (relating to death of registrant).

(3) Upon confirmation that the elector has moved to a residence outside the county.

(4) Under a voter removal program as provided for under subsection (b), and in compliance with the National Voter Registration Act of 1993 (Public Law 103-31, 42 U.S.C. § 1973gg et seq.).

* * *

(d) Cancellation of registration.--

(1) A commission shall not cancel the registration of a registered elector on the ground that the registered elector has changed residence unless any of the following apply:

(i) The registered elector confirms in writing that the elector has changed residence to a location outside the county in which the elector is registered.

(ii) The registered elector:

(A) has failed to respond to a notice described in paragraph (2); and

(B) has not voted nor appeared to vote and, if necessary, corrected the commission's record of the elector's address in an election during the period beginning on the date of the notice and ending on the day after the date of the second general election for Federal office that occurs after the date of the notice.

25 Pa. C.S. § 1901 (emphasis added).

eligibility on which *Flaherty* was based. The current laws, like the NVRA, treat changes of address within the same county as not impairing the voter's eligibility. Moreover, to the extent that there are differences between the 2002 Act and the NVRA, our Supreme Court made clear in 2006 that Pennsylvania's Election Code provides a unitary election system for federal and state offices and that procedures for voting in state elections are to conform to federal requirements in order to prevent separate federal and state voting systems. *Kuznik*, 588 Pa. at 118-23, 902 A.2d at 490-92.

Accordingly, under the present Pennsylvania voter registration laws, enacted after *Flaherty*, and under our Supreme Court's more recent admonition to interpret state voting systems to conform to federal law, differences in address within the same county "do not prevent the signers from voting at their former polling places" and "have no legal effect on the signers' status as a qualified and registered elector" in state elections. *In re Nomination Petition of Brown*, 846 A.2d 783, 787 (Pa. Cmwlth. 2004). Because such address differences do not alter the signers' status as "qualified electors," these non-matching addresses do not invalidate their signatures on the Nomination Papers for the state Candidates, the Libertarian Party candidates for Attorney General, Auditor General and Treasurer. *In re Nomination Petition of Payton*, 945 A.2d 279, 286 n.3 (Pa. Cmwlth. 2008), *aff'd per curiam*, 596 Pa. 469, 945 A.2d 162 (2008) (abrogated in part on other issue by *Stevenson*); *Brown*, 846 A.2d at 787.

Objectors do not in fact contend that non-matching addresses are sufficient to disqualify the signers from voting in the November 2012 election. Indeed, Objectors concede in their memorandum of law "the fact that, under both federal and Pennsylvania law, an individual may register to vote at a given

residential address, move to another residential address, and then vote in a Pennsylvania election without amending his or her voter registration record before election day, so long as the individual submits updated voter registration information at the time of the election,” and that “moving to a new residential address without re-registering to vote does not necessarily prevent an individual from voting in the next election.” (Objectors’ Memorandum of Law in Support of Partial Summary Adjudication at 9.) Instead, Objectors argue that non-matching addresses are sufficient to invalidate signatures, even if the signers are eligible voters, 1) because our Supreme Court’s decisions in *Flaherty* and *Nader* require that we disregard the federal NVRA and the 2002 change in Pennsylvania’s voter registration statutes; 2) because eligibility to vote is different from qualification to sign a nomination paper; and 3) because allowing signatures with non-matching addresses would prevent the ballot challenge system from working and would lead to fraud.

Contrary to Objectors’ contentions, the *Flaherty* and *Nader* decisions neither address nor dispose of the issues before us. While the NVRA was in effect when *Flaherty* was decided, as noted above, *Flaherty* involved a state election as to which the Court was not required to apply the NVRA and the Court did not consider the NVRA at all. Our Supreme Court in *Nader* and this Court in *Rogers* did apply *Flaherty* to invalidate signatures on nomination papers for federal elections after the 2002 change in Pennsylvania’s voter registration statutes. *Nader*, 580 Pa. at 49-51, 858 A.2d at 1183-84; *In re Nomination Paper of Rogers*, 914 A2d 457, 465-66 & n.13 (Pa. Cmwlth. 2006), *aff’d per curiam*, 589 Pa. 86, 907 A.2d 503 (2006); *Rogers*, 908 A.2d at 945. However, in those decisions neither the Supreme Court nor this Court considered the fact that voters who

moved within the county without changing their address were eligible to vote under the NVRA and the 2002 Act and whether the basis on which *Flaherty* struck those signatures was permissible under federal law.

The only federal voter registration law before the Supreme Court in *Nader* was a different statute, 42 U.S.C. § 1971(a)(2)(B), which does not involve the effect of a move within the county on a voter's registration. 580 Pa. at 50, 858 A.2d at 1183. Nowhere in its opinion in *Nader* did the Court discuss the section of the NVRA at issue here, 42 U.S.C. § 1973gg-6, the 2002 Act or the effect of those laws on *Flaherty*. 580 Pa. at 49-51, 858 A.2d at 1183-84. Indeed, the argument before the Court in *Nader* was not whether *Flaherty*'s non-matching address rule was valid given the effect of the NVRA and the 2002 Act, but whether "the impact" of *Flaherty* and other decisions "on collecting signatures for Nomination Papers for a national election is onerous," given the large number of signatures required by Section 951 of the Election Code. 580 Pa. at 50, 858 A.2d at 1183. Moreover, *Nader* is not the last word from our Supreme Court on the effect of federal law on the interpretation and enforcement of Pennsylvania's election laws. Subsequent to *Nader*, our Supreme Court held in *Kuznik* that federal election law must be followed, even where it conflicts with express state constitutional provisions. 588 Pa. at 128-43, 902 A.2d at 495-504. In addition, just this year, our Supreme Court held in *Stevenson* that where a federal court has struck down a provision of our Election Code, that decision is to be followed, rather than our prior rulings. ___ Pa. at ___, 40 A.3d at 1222-26.

Neither of this Court's single-judge decisions in *Rogers* considered the NVRA at all or the fact that under the 2002 Act, a move without changing registration address does not disqualify a registered voter from voting or terminate

his registration. Rather, these decisions simply assumed that the voter registration laws were the same as the law on which *Flaherty* was based and that *Flaherty* was still good law applicable to that election. *Rogers*, 914 A.2d at 465-66 & n.13; *Rogers*, 908 A.2d at 945.

One single-judge opinion of this Court, *In re Nomination Petition of Vodvarka*, 994 A.2d 25 (Pa. Cmwlth. 2010), has considered the effect of the 2002 Act on *Flaherty* and has held, in disagreement with the single-judge opinions in *Brown* and *Payton*, that *Flaherty* remains good law. In *Vodvarka*, the court held that a non-matching address invalidates an otherwise valid registered voter's signature, despite the provisions of the 2002 Act, unless the candidate demonstrates "extraordinary circumstances" by an affidavit of the signer that he recently moved and will correct the address before the election or at the polls on election day. 994 A.2d at 31-32.

While the *Vodvarka* court gave thoughtful consideration to the effect of the 2002 Act, we do not find the reasoning and conclusion of that decision persuasive for several reasons. First, we believe that placement of the burden on the candidate to show when the signer moved contravenes the fundamental and longstanding requirement under the Election Code that it is the objector's burden to prove that signatures are invalid, not the candidate's burden to show validity.

Nader, 580 Pa. at 39, 858 A.2d at 1177 ("nomination petitions are presumed to be valid and an objector has the burden of proving that a nomination petition is invalid"); *Flaherty*, 564 Pa. at 679, 770 A.2d at 331 ("A party alleging the defects in a nominating petition has the burden of proving such"); *Johnson*, 509 Pa. at 354, 502 A.2d at 146.

Second, we disagree with the *Vodvarka* court's conclusion that finding a signer with a non-matching address to be an eligible voter would require "speculation that the elector ... (1) had just moved when he signed the nomination petition; (2) intends to vote in the next election at his former polling place; and (3) will execute the removal notice at that time and place." 994 A.2d at 31. None of these speculative facts need exist for the signer with a non-matching address to be an eligible, registered voter entitled to vote in the next election; under both the NVRA and the 2002 Act, there is no requirement that the voter have moved recently or that the voter execute a change of address at the polls in the next election after moving. Moreover, invalidating a signature based on the possibility that a voter could be removed from the rolls in the future, if the voter does not change his or her address when voting in the November election, is inconsistent with the Supreme Court's holding in *Johnson* that it is the signer's status on the voter registration rolls when a nomination petition is signed and filed that determines the validity of the signature, even if the signer could subsequently be properly removed from the voter registration rolls. 509 Pa. at 354-57, 502 A.2d at 146-48.

Furthermore, the *Vodvarka* court based its conclusion on the rejection of the federal court *Welker* decision, which interpreted Pennsylvania's voter registration law to conform to the requirements of the NVRA. *Vodvarka*, 994 A.2d at 30-31. While the court correctly noted that federal court decisions are ordinarily not binding precedent, we believe that our Supreme Court's decisions in *Kuznik* and *Stevenson* mandate that this Court follow *Welker* and the federal district court ruling in *ACORN v. Ridge* declaring illegal the termination of voter registration for failure to file a change of address. Finally, for the reasons discussed below, we do

not agree with the conclusion in *Vodvarka*, 994 A.2d at 31, that striking signatures of eligible registered voters, solely because their current residence does not match the address on their voter registration form, prevents or reduces election fraud.

With respect to their second argument (Objectors' Memorandum of Law in Support of Summary Adjudication at 16-17), Objectors are correct that this case involves the signing of nomination papers, rather than the right to vote. However, our Supreme Court has made clear that status as a registered voter eligible to vote in the election is determinative of whether a signer is a "qualified elector" who may validly sign nomination papers. *Nader*, 580 Pa. at 47-48, 50, 858 A.2d at 1182, 1184. The Supreme Court did not hold in *Flaherty* or *Nader* that only a subset of registered and eligible voters can validly sign nomination petitions or papers. To the contrary, the Supreme Court specifically held in *Nader* that candidates filing nomination papers under Section 951 of the Election Code "can request signature support from every registered voter of the Commonwealth while trying to gain the necessary signatures." *Nader*, 580 Pa. at 50, 858 A.2d at 1184 (emphasis added). Because no decision of the Supreme Court or this Court holds or suggests that qualification to sign ballot access papers is different and narrower than qualification to vote, signers' status as eligible registered voters under the NVRA and 2002 Act is dispositive of their status as "qualified electors" eligible to validly sign nomination papers.

Moreover, the reason that some requirements for signatures on nomination papers are stricter than the requirements for eligibility to vote is because the Election Code specifies that the signer write particular information on the petition. *Silcox*, 543 Pa. at 650, 674 A.2d at 225. No such requirement is present here; the Election Code requires only that the signer write his current

residence address and does not state that he must write the address at which he is registered or that his present residence must match his registered address. Where the Election Code does not affirmatively require that information on a nomination petition or paper match the voter registration record and the difference does not compromise the integrity of the election process, signatures cannot be stricken based on a difference from the voter registration records. *Gales*, ___ Pa. at ___, ___ A.3d at ___, 2012 WL 2989179 at *4. Accordingly, the fact that the information that a signer puts on a nomination paper is not identical to his voter registration form generally is not grounds for invalidating a signature. *Gales*, ___ Pa. at ___, ___ A.3d at ___, 2012 WL 2989179 at *4 (fact that signer uses diminutive on nomination petition rather than full name in voter registration record does not invalidate signature); *In re Nomination Petition of Cooper*, 643 A.2d 717, 726 (Pa. Cmwlth. 1994) (fact that signer wrote an occupation different from the occupation listed in voter registration record does not invalidate signature) (abrogated by *Flaherty* on non-matching address issue on different grounds, abrogated on different issue by *Gales*).

Finally, contrary to Objectors' assertions, requiring that signers' addresses on nomination papers match their voter registration record does not protect the integrity of the election process or prevent fraud, nor is it necessary to the proper functioning of the ballot challenge system. The key and critical protection against fraudulent nomination papers is the requirement that the voter's signature match the registration record. *Nader*, 580 Pa. at 49, 858 A.2d at 1183; *Flaherty*, 564 Pa. at 679, 681, 770 A.2d at 332-33. As our Supreme Court has explained and reaffirmed,

[e]lectors are required to sign their name to a candidate's nomination petition as a means of preventing forgery and assuring that each elector personally signs the petition with an understanding of what he is signing. ... A person's name as signed is perceived to be an insignia used by that person to represent herself and generally is made in a manner that is not easily traceable, as in the case of the person's printed name. Given this difference, as well as the importance of insuring the integrity of the election process, we find that in stating that a person must "sign" the nomination petition, the General Assembly intended that a person make that insignia that the person uses to represent herself, rather than print her name.



Nader, 580 Pa. at 49, 858 A.2d at 1183 (quoting *Flaherty*) (emphasis added). A matching address does not show that the signature was not forged nor does it obviate the need to check signatures. It is the match between the signatures, not the matching of addresses, that shows whether the voter signed or the signature is a forgery. A significant source of ballot petition or nomination paper fraud, the forging of signatures off street lists of registered voters, would show no discrepancy whatsoever between the voter registration address and the petition or nomination paper. Such fraud can be detected only by examination of signatures. While signatures forged on a petition or nomination paper could also be made-up names of non-existent electors, see *In re Nomination Paper of Nader*, 865 A.2d 8, 18 (Pa. Cmwlth. 2004), *aff'd per curiam*, 580 Pa. 134, 860 A.2d 1 (2004), these would be no more likely to have a matching signature than to have a matching address.

Objectors raise the specter of difficulty in checking common names for signature matches. If a name is so common that it is not possible to check, no signature match will be found and the signature will properly be stricken as not

being the signature of a registered voter. The issue here is not whether a candidate has a right to force examination of unlimited registration records. Rather, it is whether, when a matching signature can reasonably be found and has been found, and the Nomination Paper was in fact signed by an eligible, registered voter, that otherwise valid signature must be disregarded simply because the address does not match. Because the signature, not the address, is the clearest and only reliable protection against fraud, allowing such signatures that match the voter registration records in no way increases the potential for fraud.

Furthermore, while voter registration records were once searched by address in hard copy volumes, address is no longer essential for searching whether signers are registered voters. The electronic SURE system was created by statute in 2002, after *Flaherty*. 25 Pa. C.S. § 1222. The SURE system permits electronic searching by name and permits signatures to be pulled up for comparison from a name search without inputting address information. Thus, objectors to a nomination paper are able to check validity of signatures and assert and show that a signer is not a “qualified elector” independent of the address information on the nomination paper. Indeed, Objectors here were able to determine whether signature matches could be found independent of whether there was an address match. In the spreadsheets of line challenges in their petition to set aside, Objectors asserted with respect to many signatures that the signers were not only “not registered at address,” but were not registered to vote at all, while challenging other signatures solely on the grounds that the signer’s address did not match.

In sum, the striking of otherwise valid signatures of registered voters based solely on a non-matching address is contrary to the applicable voter registration statutes, unsupported by the language of the Election Code and

unnecessary to prevent fraud. Our Supreme Court has made clear that valid signatures of registered voters should not be stricken for the mere administrative convenience of a clear line test for evaluating validity. *Gales*, ___ Pa. at ___, ___ A.3d at ___, 2012 WL 2989179 at *4 n.6 (reversing striking of signatures which did not completely match the voter registration form name and “question[ing] the need for a ‘clear line’ in this regard as the Commonwealth Court will be examining each challenged signature independently”).

V. Conclusion

For the reasons set forth above, we hold the signatures of electors on pages of the Nomination Papers for a county other than their own county and where the signer failed to write the year of signing are invalid and are stricken, and we reject Objectors’ challenges that signatures of registered voters are invalid simply because the address at which the voter is registered is different from the address within the same county that the voter wrote on the Nomination Papers.

Colins, S.J. dissents from Part III of this opinion. Covey, J. dissents from Part IV of this opinion.

Certified from the Record

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

In Re: Nomination Papers of	:	
Margaret K. Robertson for President	:	
of the United States, Erik Viker for	:	
Vice President of the United States,	:	
Rayburn Douglas Smith for United	:	
States Senator of the Commonwealth	:	
of Pennsylvania, Marakay Rogers for	:	
Attorney General of the Commonwealth	:	
of Pennsylvania, Betsy Summers for	:	No. 507 M.D. 2012
Auditor General of the Commonwealth	:	Argued: September 12, 2012
of Pennsylvania and Roy Minet for	:	
Treasurer of the Commonwealth of	:	
Pennsylvania, as candidates of the	:	
Libertarian Party in the General	:	
Election of November 6, 2012	:	
	:	
Objections of: Damon Kegerise,	:	
Anne Layng and Judith Guise	:	

BEFORE: HONORABLE DAN R. PELLEGRINI, President Judge
HONORABLE ANNE E. COVEY, Judge
HONORABLE JAMES GARDNER COLINS, Senior Judge

OPINION NOT REPORTED

**DISSENTING OPINION BY
SENIOR JUDGE COLINS**

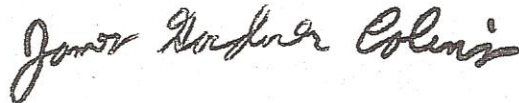
FILED: September 20, 2012

I respectfully dissent solely from Section III of the well-crafted opinion of the majority for reasons solely unique to this controversy. The Nomination Papers in question were printed for and in the year 2012. Affixed at

the bottom of each page, on both sides 1 and 2, of the form is the following legend:
“DSBE PB (rev).1/12.”

Since these forms were not and could not have been in use prior to January 2012; and since all of the Nomination Papers were submitted prior to August 1, 2012 and all of the papers bear a notary seal indicating that the affidavit of qualified electors was executed in 2012, it is impossible for these papers to have been signed in any year other than 2012. Therefore, the lack of the digits “12,” is a totally immaterial defect.

These Nomination Papers could only have been signed in the year 2012. Any other year is a physical impossibility. By not allowing the signatures, wherein the correct day and month have been entered but not the “12,” is an exaltation of form-over-function, having nothing to do with reliability of the signatures. Surely, such a defect is totally immaterial. I therefore dissent from the majority’s conclusion that signatures of electors where signers failed to write the year of the signing are held to be invalid and are stricken.



JAMES GARDNER COLINS, Senior Judge

[J-131-2012]
IN THE SUPREME COURT OF PENNSYLVANIA
EASTERN DISTRICT

IN RE: NOMINATION PAPERS OF	:	No. 43 EAP 2012
MARGARET K. ROBERTSON FOR	:	
PRESIDENT OF THE UNITED STATES,	:	Appeal from the Order entered on 9/13/12
ERIK VIKER FOR VICE PRESIDENT OF	:	in the Commonwealth Court at No. 507
THE UNITED STATES, RAYBURN	:	MD 2012
DOUGLAS SMITH FOR UNITED STATES:	:	
SENATOR OF THE COMMONWEALTH	:	
OF PENNSYLVANIA, MARAKAY	:	
ROGERS FOR ATTORNEY GENERAL	:	
OF THE COMMONWEALTH OF	:	
PENNSYLVANIA, BETSY SUMMERS	:	
FOR AUDITOR GENERAL OF THE	:	
COMMONWEALTH OF PENNSYLVANIA,	:	
BETSY SUMMERS FOR AUDITOR	:	
GENERAL OF PENNSYLVANIA, AS	:	
CANDIDATES OF THE LIBERTARIAN	:	
PARTY IN THE GENERAL ELECTION OF:	:	
NOVEMBER 6, 2012	:	
APPEAL OF: JUDITH GUISE, DAMON	:	
KEGERISE, ANNE LAYNG,	:	
LIBERTARIAN PARTY, ROY MINET,	:	
MARGARET K. ROBERTSON,	:	
MARAKAY ROGERS, RAYBURN	:	
DOUGLAS SMITH, BETSY SUMMERS,	:	
ERIK VIKER	:	

ORDER

PER CURIAM

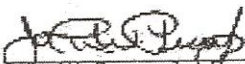
AND NOW, this 10th day of October, 2012, the Order of the Commonwealth Court is REVERSED, to the extent that it ordered that the signatures unaccompanied by a designation of the year of signing must be stricken from the nomination papers. For

the reasons set forth in the dissenting opinion of Senior Judge Colins, such omissions in the context of this particular case do not constitute material defects warranting the removal of the signatures. Moreover, the interspersal of the challenged signatures among others dated in 2012 supports a common sense deduction that the challenged signatures also occurred in that year and negates any concern that the omissions "call into question the identity of the signatory or compromise the integrity of the election process." In re Nomination Petition of Gales, ___ A.3d ___, 2012 WL 2989179 at *4 (Pa. July 18, 2012).

Further, consistent with the Commonwealth Court's explanation in its Supplemental Opinion of September 28, 2012, the reversal of its order pertaining to these 1,424 signatures will result in the dismissal of the objections to the nomination papers. Accordingly, we need not address the merits of the additional issue raised on appeal to resolve the matter in a timely fashion.

The case is remanded for further proceedings. Jurisdiction is relinquished.

Judgment Entered 10/11/2012


John W. Person Jr., Esquire
Deputy Prothonotary
Supreme Court of Pennsylvania