

PETITION HEARING

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- - -
IN THE COMMONWEALTH COURT OF PENNSYLVANIA
- - -

IN RE: NOMINATION)
PETITION OF GREGORY)
HAYES)

BEFORE: HONORABLE ANNE E. COVEY

TRANSCRIPT OF HEARING, taken by and before
ERICA HEARN, Professional Court Reporter and
Notary Public, at COMMONWEALTH COURT OF
PENNSYLVANIA, The Widener Building, 9th Floor,
1339 Chestnut Street, Philadelphia, Pennsylvania,
on Tuesday, March 10, 2020, commencing at
10:35 a.m.

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ALSO PRESENT:

22

23

CLERK: BILL LEDERER

24

SURE OPERATOR: ROXANNE HUFF-GROSS

1 CLERK: Special Session

2 Commonwealth Court of Pennsylvania will
3 come to order.

4 The Honorable Anne E. Covey
5 presiding.

6 Good morning, Your Honor.

7 THE COURT: Good morning. Please
8 be seated.

9 All right. I'm not really sure
10 what we have agreed upon here, what you
11 haven't agreed upon, a lot of last minute
12 filings, so let's start at the beginning.

13 My understanding, I know there is
14 legal issues, factual issues, 300 valid
15 signatures are needed, correct?

16 MR. OTTER: Yes.

17 MR. GREENBERG: Yes, Your Honor.

18 THE COURT: You both agree?

19 There are 252 valid or
20 unchallenged signatures. Is that agreed?

21 MR. GREENBERG: Yes, Your Honor.

22 MR. OTTER: Agreed.

23 THE COURT: So why don't we start
24 with each entering your appearance on the

1 record.

2 MR. GREENBERG: Your Honor, Kevin
3 Greenberg for the Objectors, Greenberg
4 Traurig, Attorney ID 82311.

5 MR. OTTER: Lawrence Otter for
6 the Candidate.

7 THE COURT: Thank you.

8 So you both agree there are 252
9 either valid or unchallenged signatures?

10 MR. GREENBERG: Correct, Your
11 Honor.

12 MR. OTTER: Correct.

13 THE COURT: My understanding is
14 that you were both working this morning in
15 seeing the original petitions.

16 Have you agreed upon any more
17 valid or invalid signatures that you can
18 stipulate to?

19 MR. GREENBERG: No, Your Honor.

20 There are likely to be some that
21 we will stipulate to based on evidence
22 that Mr. Otter has proffered for the first
23 time this morning. If that evidence comes
24 in and if it is accepted by The Court,

1 then there may be some of those lines of
2 the remaining 74 that are in dispute.

3 So, if I may, the Candidate filed
4 429 lines needing 300. We went through
5 them and challenged 202 of those lines.
6 So 227 were unchallenged. Following a
7 meet-and-confer process, 103 lines have
8 been stipulated to be invalid, although
9 they're now talking about taking back two
10 of those 103. And 25 were stipulated as
11 being additionally valid, which is how we
12 got to 252, with 74 still remaining.

13 Now they are potentially talking
14 -- I am going to argue that they can't,
15 but that's a different discussion --
16 whether 74 or 76 to be reviewed by The
17 Court that remain in play, I would just be
18 blunt they've refused to concede any of
19 the IHA, or any of the nickname initials,
20 or any of the printing, so they've only
21 basically conceded registrations or some
22 of the alterations. So the other ones we
23 are going to have to go on.

24 And I don't want to malign

1 Mr. Otter. I have worked with him before,
2 while sometimes he is difficult, sometimes
3 I'm difficult, this is clearly the
4 candidate's direction. So I think we are
5 going to have to go through the evidence
6 and put it on.

7 They did not file a pretrial
8 memorandum by noon yesterday. They did
9 file one last night, about 9:30 at night.
10 We finally got it processed this morning.
11 That did not identify the 40 lines they
12 allege that they are going to redeem and
13 the evidence they are going to do so,
14 despite The Court's order they do so.
15 That was handed over once I got to court
16 this morning about 9:30.

17 So just so we are clear, we have
18 not had a chance to prepare to rebut this.
19 We are going to go through this. Our
20 primary evidence to rebut this is the
21 circulator, Mr. Hayes, who received a
22 Notice to Attend and isn't here.

23 Now, they've got a Motion to
24 Quash pending, but despite a Motion to

1 Quash being pending, it has not been
2 granted, and Mr. Hayes, who owns his own
3 flight school and his own airline -- his
4 own airplane, so he could get here, is not
5 here.

6 THE COURT: All right.

7 Mr. Otter, I was a little amiss as to
8 why -- I mean, you know the rules better
9 than anybody. You have been before this
10 court on a regular basis for election
11 court and nothing was filed until last
12 night when the court order expressly
13 stated that everything had to be filed by
14 noon yesterday so that you keep proceeding
15 moving forward.

16 MR. OTTER: Your Honor, I
17 apologize. I was tied up most of the day
18 in a hearing in another matter in
19 Commonwealth Court. I didn't get out of
20 that until about 5:00 until I got home and
21 processed all the stuff.

22 THE COURT: Well, that doesn't
23 answer the question because now we are
24 here and now we all have to move forward,

1 and the whole purpose of having the
2 information ahead of time was that we
3 could expeditiously move this case.

4 MR. OTTER: Well, I still think
5 you have two reasonable experienced
6 election counsel, this will move quickly,
7 Your Honor. I apologize for this.

8 THE COURT: Well, I am also
9 concerned that you -- are you now saying
10 that the stipulated, you know, ones that
11 you -- lines that you weren't going to
12 challenge you now want to take two back
13 when there was a stipulation that was
14 filed -- wasn't that filed with the court?

15 MR. OTTER: Yes, I didn't know
16 until yesterday sometime that we had
17 affidavits from two of the people. I
18 would leave those until the end. We may
19 not even reach that question. I think
20 that we have 300 without that, but we'll
21 see.

22 MR. GREENBERG: And, Your Honor,
23 my position is that we agreed on a
24 stipulation that was a very difficult

1 process. We don't need to go through the
2 courts with the cancellations and the
3 process of getting to that stipulation,
4 but we had a stipulation on Saturday, it
5 was agreed to, I reduced it to writing, I
6 transmitted it to Mr. Otter, they sat on
7 it for two days, but on Monday morning
8 they did authorize it to be filed. He
9 authorized me to affix his electronic
10 signature and file it and we did that.
11 Only after that was done did they back
12 pedal off those two lines. There are
13 other ones we would have challenged if we
14 had more time, there are other lines that
15 we might investigate further if we had an
16 unlimited amount of time. The Court gave
17 us a deadline of noon yesterday. We filed
18 those at 10:00 in the morning,
19 9:00-something in the morning yesterday
20 because I had an 11:00. I had to be
21 someplace. So I made sure it was in in
22 time to be there instead of coming back at
23 9:00 or 5:00 last evening to begin work on
24 this.

1 It was in. It was filed with The
2 Court by both counsel by agreement. It is
3 a record in this case. I think if we
4 start opening lines, election court is
5 going to be a very long process into the
6 future. Once something is stipulated,
7 that's why you have to go through this
8 process, and, frankly, The Court gave us
9 until the day before noon to file this.
10 So it's not like this was a premature
11 deadline given the nature of this.

12 THE COURT: I understand. And
13 that's why I said that I'm very concerned
14 that you agreed there was stipulation, The
15 Court relies on that stipulation, and now
16 you want The Court not -- to ignore the
17 stipulation. You know, basically once
18 counsel makes a representation to The
19 Court, counsel needs to stand by that
20 stipulation.

21 MR. OTTER: That's fine.

22 Those two are stricken. So the
23 numbers are now?

24 MR. GREENBERG: It is now 74 in

1 play. If we prevail on 27 of those lines,
2 Mr. Hayes is off. If they prevail on 48
3 of those lines, Mr. Hayes is on.

4 And, as I said, this is not
5 Mr. Otter being unreasonable. It is a
6 client who's insisting on his due process
7 rights, which are his rights, so I think
8 we should just try to move as
9 expeditiously as possible through those
10 lines.

11 THE COURT: And I also want to
12 clarify. I went back and looked at the
13 original letter sent to The Court where,
14 again, both parties jointly requested that
15 the hearing be held in Philadelphia. And,
16 so, I didn't appreciate in your
17 representation to The Court that it was
18 the Objector's request. Because that's
19 not the information before The Court. The
20 information before The Court, and you were
21 copied on that letter, was that it was a
22 joint request that this hearing be held in
23 Philadelphia, and The Court obliged to the
24 request and moved the hearing from

1 Pittsburgh to Philadelphia. So we are
2 here because both counsel requested this
3 Court to take certain action which The
4 Court granted.

5 So you have to be forthright with
6 The Court in your representations. It
7 wasn't that the Objectors requested it, it
8 was a joint request.

9 MR. OTTER: We jointly requested,
10 you are correct, Your Honor, my apologies
11 to The Court.

12 THE COURT: There has to be
13 complete candor with The Court.

14 All right. It is the Objector's
15 case. I would like to start with the
16 signatures.

17 MR. GREENBERG: Before we get to
18 the signatures, Your Honor, there is the
19 issue of Mr. Hayes' lack of presence here.

20 We have noticed him. He is the
21 circulator on a number of key pages,
22 including ones that have a number of
23 alterations. We would like to put him on.
24 We only found out on Saturday afternoon

1 they would not stipulate to all of those
2 lines being stricken, at which point on
3 Monday morning when I got into the office
4 I sent a Notice to Attend.

5 He is the Candidate. As I said,
6 he has his own airplane. He could have
7 gotten here from yesterday to today.

8 I understand that it is
9 inconvenient for him, but he could be
10 here. If he is not here -- I mean, there
11 is a Motion to Quash, I think you should
12 overrule it, but if we are going to allow
13 him to not be here, I believe every
14 inference should be drawn against his
15 assertion as to those lines that would
16 challenge or alter on those pages where he
17 was the circulator.

18 THE COURT: Any response?

19 MR. OTTER: Yes, Your Honor.

20 My client was never subpoenaed.
21 If they wanted him here that badly, they
22 knew that Saturday, they waited until less
23 than 24 hours before the judge would
24 request his presence. And the rule

1 requires that a subpoena shall be served
2 reasonably in advance of the date upon
3 which attendance is required. Less than
4 24 hours begs the question. And from Erie
5 to Philadelphia is quite a distance, as
6 you're well aware.

7 THE COURT: I have driven it a
8 number of times.

9 MR. OTTER: It takes a while to
10 get there.

11 MR. GREENBERG: If I may, Your
12 Honor?

13 THE COURT: I have also -- I'll
14 let you respond.

15 MR. GREENBERG: I just want to be
16 clear, this was not a subpoena, this was
17 a Notice to Attend to a party. So that
18 may be served by counsel on counsel, not
19 by subpoena. We would like to have gotten
20 Ms. Pezzino here as well. She's equally
21 culpable on different pages. We could not
22 get a subpoena from The Court on Monday
23 morning, get it to Erie, serve it upon her
24 and get her there at a reasonable time, so

1 we did not pursue that with her. As much
2 as I wanted to, we just were not able to
3 execute that.

4 However, with respect to
5 Mr. Hayes, he is a party, it is a
6 different rule on a Notice to Attend. And
7 particularly since Mr. Hayes was culpable
8 for why the first review was cancelled on
9 Thursday, and then finally got to it
10 Saturday afternoon, for us to serve that
11 at 9:0-something, I believe it was 9:15 on
12 Monday morning, does not seem like an
13 unreasonable delay. And even so, that's
14 not the right standard for Notice to
15 Attend. A party is subject to a Notice to
16 Attend to appear and don't need to be
17 subpoenaed.

18 THE COURT: I think the fact that
19 we are dealing with election court, we all
20 know how election court operates, which is
21 everything moves very quickly. I am
22 dismayed that he is a party. My
23 understanding is that you probably talked
24 with your client before you moved this

1 case to Philadelphia so he was aware that
2 it was going to be on the other side of
3 the state. It wasn't something that The
4 Court imposed.

5 I am going to reserve ruling on
6 the Motion to Quash, and I would like you
7 to proceed.

8 MR. GREENBERG: Thank you, Your
9 Honor.

10 We are going to start with -- if
11 I may, Your Honor, just sort of very
12 quickly.

13 THE COURT: And, again, I'll just
14 ask, is there any way to stipulate to any
15 more signatures, Mr. Otter?

16 MR. OTTER: Not at this point,
17 Your Honor.

18 MR. GREENBERG: I am going to
19 stipulate to some as we go through because
20 his evidence is admitted. At that point,
21 I think there are some that we will
22 stipulate to, but not more than a handful
23 to be fair.

24 So, if I may, just real quickly,

1 we are going to end up going through this.
2 There are a couple of places I am going to
3 spend a little bit of time before we get
4 to a line by line.

5 The second one is going to be at
6 page eight, the first one is right now,
7 because this is a line that Mr. Hayes
8 circulated.

9 THE COURT: What page?

10 MR. GREENBERG: Page 1, line 21.

11 THE COURT: You're on page 1?

12 MR. GREENBERG: Yes.

13 So we are going to start to go
14 through this, if that's okay, Your Honor.
15 And the only line on this page that we
16 were unable to agree upon, the validity of
17 it, is line 21.

18 THE COURT: Let me just get
19 organized so I can stay up with you.

20 You're on page 1 line 21?

21 MR. GREENBERG: Yes.

22 And to this one, Your Honor,
23 there are a number of objections, but they
24 really come down to two issues. And I

1 want to spend some time on the cleanup
2 work that was done on this by the petition
3 circulator for a second before we go too
4 far because this is important here. There
5 are two issues here. It's up to The
6 Court. If the Court is going to grant the
7 first one, we'll move on and we'll get to
8 the cleanup stuff in a second.

9 So the first challenge is the
10 nickname initial. Mr. Blount signed this
11 petition, I believe he did, but he only
12 signed his first initial, not his whole
13 name. And under Gales that's not
14 sufficient. He signed it R. Blount and on
15 the screen here, Your Honor, is the voter
16 SURE System record of Mr. Blount where he
17 knows how to sign his full name as Robert
18 L., and this is Mr. Robert L. Blount who
19 lives at [REDACTED].

20 MR. OTTER: Your Honor, I'll
21 concede to that to move it along.

22 THE COURT: Thank you, Mr. Otter.
23 I agree.

24 MR. GREENBERG: That's it for

1 page one, Your Honor. Everything else was
2 stipulated to by the parties beforehand.

3 The next one, Your Honor, is page
4 2 line 4, Gregory Lucas. We have a
5 signature dispute. We said he did not
6 sign his full name, Mr. Otter has some
7 evidence. I would suggest that in the
8 interest of proceeding this along, we
9 allow him to introduce this evidence and
10 mark it as such before I make my case
11 here.

12 THE COURT: Yes, you may.

13 MR. OTTER: Your Honor, I have 40
14 affidavits. I guess the best thing is to
15 just mark them serially.

16 THE COURT: I would like to hear
17 Objector's counsel's response to seeking
18 to admit the affidavits.

19 MR. GREENBERG: So, Your Honor,
20 there are two issues here. We have agreed
21 on the hearsay issue. That as much as we
22 would like to have better evidence, we
23 both have affidavits, that is the nature
24 of election court. It is up to The Court

1 as to the weight you would give a specific
2 affidavit. However, with that agreement
3 aside, I think --

4 THE COURT: You can't agree that
5 it is hearsay, it's a matter of law.
6 Affidavits are hearsay, they're
7 out-of-court statements.

8 MR. GREENBERG: Correct. We
9 think that there is probative value in
10 election courts. Some courts have done
11 so. I have some to offer as well. I am
12 happy to proceed without them, I'm happy
13 to proceed with them, Your Honor. It's up
14 to The Court, but in this case there is a
15 difference.

16 He was ordered to identify the
17 lines, he was intended to rehabilitate
18 from the evidence he would offer to do so
19 by noon yesterday. He did not do so. At
20 9-something last night I was informed
21 there were 40-some affidavits, or 40
22 affidavits I believe is what he said. Of
23 those lines, I didn't know what they were
24 until I got to Court this morning, let

1 alone the specifics.

2 This is a case where, frankly, I
3 think that based on the evidence that it
4 probably is Mr. Lucas, but that requires
5 him to submit this affidavit. I think
6 that there is a question of whether The
7 Court should allow him to do this at all
8 or to rule all of his evidence out of
9 order because he disobeyed The Court's
10 order to file by noon yesterday.

11 THE COURT: So you don't object
12 to him seeking to generally offer it in,
13 whether or not it's admitted.

14 MR. GREENBERG: And it's up to
15 the Court to decide how much weight to
16 give it.

17 As much as I would like -- I
18 object to him because he did not provide
19 notice of Mr. Lucas's affidavit. I am not
20 objecting to it on the hearsay grounds.
21 We have stipulated earlier in this process
22 between us that it's up to The Court to
23 decide how much weight to give this
24 written evidence.

1 Is that correct, Mr. Otter?

2 MR. OTTER: Yes.

3 THE COURT: All right. So,
 4 therefore, it's probably easier since
 5 you're not objecting to go ahead and
 6 number each affidavit and do it all now.

7 MR. GREENBERG: I do object to
 8 him offering any evidence of a line he did
 9 not identify. He did not identify this
 10 line as one he intended to rehabilitate.

11 THE COURT: I'm unclear about
 12 what you're saying.

13 Are you objecting to him seeking
 14 to admit -- wait, we are going to go each
 15 affidavit individually. You're objecting
 16 to this affidavit in particular because
 17 you were not given any advanced notice of
 18 what he was objecting to in accordance as
 19 directed by The Court?

20 MR. GREENBERG: Correct, Your
 21 Honor.

22 As much as I would like to make
 23 the hearsay evidence, too, we did
 24 stipulate to that.

1 As to the second ground, though,
2 we never agreed to waive The Court's
3 deadline of noon yesterday. And so on
4 that second ground, we do object, but only
5 on that second ground.

6 THE COURT: Okay. Is there any
7 way to move through the other lines that
8 don't have affidavits?

9 MR. GREENBERG: I believe
10 something on the order of 50-some of the
11 74 lines have affidavits one way or the
12 other. In fact, one line has two dueling
13 affidavits, but -- actually, they're all
14 sworn statements. We are using the term
15 affidavits, but I think both sides did
16 sworn statements pursuant to the criminal
17 code, but we are going through that
18 process with respect to almost every line,
19 and so we can do it without reference to
20 them and just look at the record on the
21 screen, that is if Your Honor rules that
22 our stipulation is improper and all the
23 hearsay is out, we'll just look at the
24 signatures and move on from that. That is

1 The Court -- we agreed to it, but that's
2 not binding on The Court obviously, but,
3 no, I don't think -- we wouldn't reach a
4 resolution without addressing the
5 affidavits or the pseudo affidavits one
6 way or the other.

7 THE COURT: You can offer the
8 affidavit into evidence. I don't know
9 that I am going to accept it into
10 evidence. I would like you to still
11 present as if there was no affidavit to
12 see if you can challenge it, see if you
13 can -- I guess you don't have any other
14 witnesses here, Mr. Otter, so you can't
15 rehabilitate it in any other format.

16 MR. OTTER: Correct.

17 THE COURT: And I would like to
18 do -- I don't want to do all the
19 affidavits at one time. I would like to
20 go with each line per affidavit.

21 MR. GREENBERG: So can I suggest
22 that we number this as Candidates 2-4, so
23 we do it by line that it relates to and
24 that way we'll have a nice record as to

1 what it is.

2 THE COURT: That's a good idea,
3 yes. So you're going to do it 2 dash 4?

4 MR. OTTER: Yes.

5 May I hand this up?

6 THE COURT: Yes.

7 You can provide it to the court
8 reporter and she can mark it or did you
9 already?

10 MR. OTTER: I marked it.

11 THE COURT: Okay.

12 MR. OTTER: So, Your Honor, if I
13 may as to this, the affidavit and the
14 signature on the petition appear to be a
15 dead match, however, looking at the
16 signature on the card, there might be a
17 problem.

18 MR. GREENBERG: Your Honor, I
19 concur with Mr. Otter who is making my
20 case for me.

21 The signature on the petition
22 does not match the signature on the card.
23 The signature on the petition does match
24 the evidence such as it is that Mr. Otter

1 has handed up. And so this is one that I
2 think --

3 MR. OTTER: I'll concede to make
4 it easier.

5 MR. GREENBERG: Okay. So the
6 line is stricken?

7 MR. OTTER: Yes.

8 THE COURT: I guess before we go
9 any further, and I thank the SURE
10 operator for being here this morning and
11 working with us.

12 We'll have you sworn in, in case
13 we need you to start bringing everything
14 up and testifying, that you're under oath.

15 So Mr. Lederer will swear you in.

16 - - -

17 ROXANNE HUFF-GROSS, having been
18 duly sworn, was examined and testified as
19 follows:

20 - - -

21 CLERK: Please state your name
22 spelling your last for the record.

23 MS. HUFF-GROSS: My name is
24 Roxanne Huff, H-U-F-F, hyphen, Gross,

1 G-R-O-S-S.

2 CLERK: Thank you.

3 MR. GREENBERG: So, Your Honor,
4 if I may?

5 THE COURT: Yes.

6 MR. GREENBERG: The next line is
7 on page two as well as line ten. And I
8 would direct The Court to look at lines 10
9 and 11, both of them were challenged and
10 suggest we might want to consider these
11 together.

12 We believe that while it may be
13 that Mr. and Mrs. Wells each signed the
14 signature portion, a single person
15 completed the two lines. In fact, it's my
16 belief that James is the one who completed
17 both lines, but I would propose that we
18 would accept James and dismiss Betty or we
19 can go through the process of submitting
20 the affidavits arguing about those issues.

21 MR. OTTER: Your Honor, I have
22 affidavits for Candidate 2-10 and
23 Candidate 2-11 accompanied by their
24 driver's licenses.

1 THE COURT: Mr. Otter, what is
2 the rule on, you know, being in the same
3 hand? Can one individual fill out the
4 lines for the other individual in any
5 capacity?

6 MR. OTTER: No, not unless there
7 is some disability noted, I would think,
8 but obviously this is a husband and wife
9 at the same address.

10 THE COURT: Is there any case law
11 saying because they're husband and wife at
12 the same address that one can complete the
13 line for the other?

14 MR. OTTER: No.

15 THE COURT: Do you agree that
16 looking at these two lines they look like
17 they're in the same hand?

18 MR. OTTER: As far as the printed
19 part, yes. I'll take one and concede the
20 other.

21 MR. GREENBERG: So by that
22 standard, we would accept as valid
23 Mr. James Wells' line at 2-10 and have the
24 court order stricken on 2-11 Betty Wells.

1 And for the court reporter, just
2 for the record, the relevant law with
3 respect to the line completion is the
4 Statute, which is 25 P.S. Section 2868,
5 and the key case is In Re: Nomination
6 Petition of Morrison-Wesley, 946 A.2nd 789
7 at 795, and which says each item must be
8 personally written by the elector, amongst
9 other things in that location.

10 Thank you, Your Honor.

11 MR. GREENBERG: Line 20 is the
12 next one that we are challenging.

13 This is Scott R., apparently
14 Rastetter. Mr. Rastetter did not, in
15 fact, print his last name. He only signed
16 his last name both times. And that is
17 insufficient under the applicable case law
18 that requires the name to be printed and
19 signed.

20 Again, let me quote from 2868,
21 "Each signer of a Nomination Petition
22 shall sign but one such petition for each
23 office to be filed and shall declare
24 therein that he is a registered and

1 enrolled member of the party designated in
2 such petition. He shall declare therein
3 that he is a qualified elector of the
4 county therein named...He shall add his
5 residence, giving city, borough, and
6 township with street and number, if any,
7 and shall legibly print his name and add
8 the date of signing, expressed in words
9 and numbers."

10 Again, legibly print his name.
11 He did not legibly print his last name.
12 He signed his last name. As technical as
13 it is, it is an invalidity under the
14 statute. And I would only point out the
15 affidavit that Mr. Otter is about to
16 present, if he does, shows that
17 Mr. Rastetter does, in fact, print his
18 name very, very differently than how it is
19 signed.

20 If this affidavit comes in, it
21 shows a signature that is exactly like his
22 signature on file in the voter card and
23 his signature on the petition and the
24 printed line name on the petition and not

1 the way it is printed on this affidavit.

2 THE COURT: That is a big
3 difference of what is on the registration
4 card and what's on this petition and how
5 he signed it.

6 MR. GREENBERG: That, too.

7 MR. OTTER: Well, I do have his
8 affidavit. I've marked that as Candidate
9 2-20. He signed an affidavit saying he
10 did sign this. I think that counsel's
11 argument about the printing of his name in
12 the box is form over substance because we
13 found the voter, we found him at this
14 address, we supplied an affidavit. I
15 think it is a good signature.

16 MR. GREENBERG: Again, presuming
17 the evidence were to come in, line
18 information omitted is a valid challenge,
19 including he illegibly printed his name.
20 It's not form over substance as much as
21 Mr. Otter wishes to say it.

22 But I also point out that even if
23 this evidence comes in, so if you're going
24 to credit the affidavit at all to back up

1 the signature that we do challenge, so we
2 do now challenge that, but even if you're
3 going to back that up, on the affidavit
4 itself, he, in fact, prints his name and
5 the printed name on the affidavit looks
6 fundamentally different than the signed
7 name. So if this affidavit had him
8 printing the name the same way, I might
9 concede that if the affidavit came in, it
10 was valid, but I don't believe that he
11 completed the line as he was required to
12 do so. And that is why I believe Your
13 Honor was involved in the case where the
14 Supreme Court said it is normal to file
15 significantly more signatures than are
16 needed because there is a formulaic
17 requirement in this law as difficult as
18 that may be.

19 THE COURT: Thank you.

20 Mr. Otter, you may hand to the
21 court reporter the affidavit. And you
22 marked it?

23 MR. OTTER: Yes.

24 THE COURT: You can hand it to

1 me.

2 COURT REPORTER: Sure.

3 THE COURT: Mr. Otter, what is
4 your response to the statutory requirement
5 that an individual print his or her name
6 on the nomination petition?

7 MR. OTTER: It has been my
8 experience that The Court has used its
9 discretion.

10 We were able to find the voter.
11 That's usually the problem when you have
12 issues with handling, but we found him.

13 THE COURT: How do you respond to
14 the fact that his affidavit printed name
15 is substantially different than his
16 printed name on the nomination petition?

17 MR. OTTER: Well, Your Honor,
18 you're familiar with how they're
19 circulated, usually outside on a clipboard
20 in February in Pennsylvania when not most
21 conducive to doing everything nicely. His
22 affidavit says I signed it. His
23 signatures substantially match.

24 MR. GREENBERG: Your Honor, we

1 don't dispute the signatures -- well, we
2 do dispute the signature. We think
3 they're not the same, but we don't dispute
4 that the person who signed this affidavit
5 is the one who completed the line. The
6 question is not whether he completed the
7 line, but whether he did it sufficiently.
8 If he had left the data off and put a ZIP
9 code down, I had Mr. Otter argue that
10 that's restricted correctly, that a
11 printed name is an element of this. If he
12 prints them -- if he swaps the box in
13 which they're printed and signed, that's
14 sufficient because it's on the line. We
15 conceded that multiple times on Saturday,
16 by the way, but that would be sufficient,
17 but he did not print the name. If he had
18 printed the name and it was less legible,
19 I understand that argument, but he signed
20 it and it's exactly a match for the
21 signature box on the same line.

22 THE COURT: I will take this one
23 under advisement.

24 MR. GREENBERG: The next two,

1 Your Honor, are lines 25 and 26.

2 There are two challenges here as
3 to 26. We had evidence that Ms. Wood is
4 dead. We do not, in fact, maintain that
5 evidence anymore. We have done some
6 further work and we withdraw that
7 challenge. We do believe much like lines
8 10 and 11 that the printed part of these
9 lines were completed by the husband and
10 wife, by one member of the husband and
11 wife pair. We don't know which one did
12 that, but we believe that one member of
13 the husband and wife pair completed both
14 lines. We can look at the signatures and
15 see if we can do that or The Court could
16 rule that they are substantially similar
17 and we'll do the take one, leave one like
18 we did up above with the Wells'.

19 THE COURT: Mr. Otter?

20 MR. OTTER: The signatures are
21 different. Your contention is that the
22 printed information was done by one or the
23 other.

24 Your honor, there are certainly

1 some differences here that you can see.
2 The one says, "South Skytop," Edinboro,
3 the other one "S Skytop." There is some
4 differentiation. And the fact that the
5 one person is alive rather than dead begs
6 the question as to the quality of their
7 challenge.

8 MR. GREENBERG: Excuse me. That
9 makes the quality of the challenge that
10 she is deceased, and we acknowledge that
11 that was erroneous information done under
12 the pressures of this challenge. That's
13 why we withdrew it immediately -- or not
14 immediately, promptly after discovery that
15 it was --

16 THE COURT: I think the only
17 issue that they're contending is the fact
18 that it looks like the written part is in
19 the same hand.

20 What is your response to that?

21 MR. OTTER: You mean the printed
22 part?

23 THE COURT: The printed part.

24 MR. GREENBERG: Yes.

1 MR. OTTER: I see differences,
2 but, Your Honor, it's your call.

3 THE COURT: The Court will take
4 it under advisement.

5 MR. GREENBERG: The next one,
6 Your Honor, is on page 3 line 6.

7 We do not believe we could
8 correctly identify this person through the
9 process. We don't understand who this is
10 and we believe that we could not find
11 anybody registered with this information.

12 THE COURT: Because it's
13 illegible?

14 MR. GREENBERG: Well, we
15 challenged that it was not registered at
16 the address and that it is illegible.

17 And so with illegible, obviously
18 as Your Honor knows, if they find that
19 person other challenges come into play,
20 but we could not find such a person.

21 Mr. Otter, I tender to you to
22 suggest to the operator.

23 MR. OTTER: Let's find the
24 address [REDACTED] Street.

1 MS. HUFF-GROSS: No results.

2 MR. GREENBERG: For the record,
3 she also checked [REDACTED], no
4 results.

5 MR. OTTER: She had [REDACTED], it's [REDACTED].

6 MR. GREENBERG: No, she did that.

7 MR. OTTER: I concede that.

8 THE COURT: Very good.

9 So page 3 line 6 is stricken.

10 MR. GREENBERG: The next one,
11 Your Honor, is on line 29 of that same
12 page. This is a gentleman, or a woman,
13 I'm not sure which, who both printed and
14 signed.

15 THE COURT: I'm sorry. I was
16 writing. Go back. What page and line?

17 MR. GREENBERG: Page 3 line 29.
18 The person both printed and signed, first
19 name initial "P." last name Fleck,
20 F-L-E-C-K. We challenge it as a nickname
21 initial. That is black letter law under
22 Gales again, that you cannot -- we
23 reaffirm the principal that cases, unlike
24 that case, where it is not obvious --

1 MR. OTTER: Your Honor, I'll
2 concede that one.

3 MR. GREENBERG: Okay.

4 All right. The next one, Your
5 Honor, is page 4 line 4.

6 THE COURT: One moment, please.

7 MR. GREENBERG: Sure.

8 (Pause in proceedings.)

9 THE COURT: Page 4 line 4?

10 MR. GREENBERG: Yes, Your Honor.

11 This one is one that we are going
12 to withdraw based upon our review of the
13 originals today.

14 The date was challenged as being
15 February 28th. When I looked at the
16 original, it appears to be a very poorly
17 written 1/28 not 2/28. So we withdraw the
18 challenge on that.

19 MR. OTTER: Thank you.

20 THE COURT: Thank you.

21 MR. GREENBERG: The next one that
22 is challenged is page 4 -- page 4 line 18
23 was stipulated to. I apologize.

24 The next one that is unresolved

1 is page 5 line 5.

2 This one, when we reviewed the
3 original it is clear that we are going to
4 withdraw the challenge as well. Just for
5 the record, Your Honor, it looks like
6 Mr. Kovech, who actually signed on line 6
7 started to write on line 5. It's
8 different colored ink. So when we looked
9 at the original, it is clear that
10 Ms. Lovett signed over somebody else's
11 space essentially, but the other person
12 could have altered it, and it was not her
13 signature that was altered. So based on
14 our review this morning, we are
15 withdrawing that. We concede that it's
16 eligible.

17 THE COURT: Thank you.

18 MR. GREENBERG: The next ones are
19 page -- line 11 and 12.

20 THE COURT: On the same page?

21 MR. GREENBERG: On the same page,
22 yes, Your Honor.

23 And Mr. Otter has evidence as to
24 these two that I think it makes sense for

1 him to submit. And then if The Court
 2 accepts it, it resolves -- it could
 3 resolve the issue. If not, we may have a
 4 signature challenge.

5 THE COURT: Okay.

6 Mr. Otter.

7 MR. OTTER: Your Honor, I have
 8 affidavits from Dorothy and Douglas.

9 THE COURT: Let me just back up
 10 one minute.

11 What is this challenge expressly?

12 MR. GREENBERG: It was an IHA, in
 13 the hand of another. So it was a
 14 signature and line similarity challenge,
 15 if he submits this affidavit and if The
 16 Court accepts it.

17 THE COURT: The signature is in
 18 the hand of another or the printed part?

19 MR. GREENBERG: It doesn't
 20 differentiate between the two. My belief
 21 is that the printed part is in the same
 22 hand, or at least part of it is, the
 23 numbering and the date, but, honestly,
 24 Your Honor, if -- you know, let me put it

1 this way. I think it is a weak challenge
2 without the evidence coming in. So let's
3 withdraw those two.

4 THE COURT: So you're withdrawing
5 those?

6 MR. GREENBERG: Well, yes, I
7 conceded the validity, yes.

8 THE COURT: Okay.

9 MR. GREENBERG: However, line 26,
10 we have a signature challenge on the same
11 page, page 5 line 26. We have a signature
12 challenge, if we can pull that one up.

13 Line 26 was originally challenged
14 as not registered at all. We couldn't
15 find that person. They proposed somebody
16 to review that we do not think matches
17 this person, but the address is [REDACTED]
18 Drive. So they have -- the name is
19 Kathryn Benz at that address. There is a
20 Kathryn Benz registered to that address,
21 but the petition is signed Kathryn
22 Wisniewski. And they said that was the
23 same person, but there is no evidence to
24 that effect, and Mr. Otter has not

1 presented any evidence, including even an
2 affidavit.

3 THE COURT: Do you concede that,
4 Mr. Otter?

5 MR. OTTER: Yes. That is 5-26.

6 THE COURT: I'm sorry. Can you
7 speak up for the court reporter?

8 MR. OTTER: I am sorry. 5-26.

9 THE COURT: Right.

10 MR. GREENBERG: Correct.

11 That is it for page 5, Your

12 Honor.

13 Now we are on to page 6.

14 THE COURT: One moment, please.

15 (Pause in proceedings.)

16 THE COURT: You may proceed.

17 MR. GREENBERG: This is page 6
18 line 26, Your Honor. And -- I'm sorry. I
19 apologize, page 6 line 22 first. I'm
20 going out of order. Page 6 line 22, Josh
21 Singleton, or Singleton, or Sindlinger.

22 MR. OTTER: Sindlinger.

23 MR. GREENBERG: Sindlinger.

24 Printed in both boxes, not a signed name,

1 both the affidavit Mr. Otter has presented
 2 and when you look at his card, it is not
 3 his signature.

4 The address is [REDACTED],
 5 [REDACTED]. Mr. Sindlinger's registration,
 6 when you look in the SURE System, Your
 7 Honor, which has been pulled up, you can
 8 see that that is, in fact, a signature,
 9 not a printing, and he did not sign. You
 10 must sign. I can quote case law unless
 11 Mr. Otter is willing to stipulate to that.

12 THE COURT: Mr. Otter?

13 MR. OTTER: Yes, he printed both.
 14 I have an affidavit where he indicates he
 15 did sign.

16 THE COURT: But how does the
 17 affidavit cure the fatal defect?

18 MR. OTTER: Concede.

19 THE COURT: Thank you.

20 MR. GREENBERG: I may have
 21 skipped two lines, I apologize. Did we
 22 forget the 6-10 and 6-13, Larry?

23 If we can go off the record for a
 24 second, I want to make sure.

1 THE COURT: Yes. Off the record.

2 (At this time, a discussion was
3 held off the record.)

4 THE COURT: Back on the record.

5 MR. GREENBERG: Line 6-10 was
6 challenged as being printed as well.

7 Can we pull up the address [REDACTED]
8 [REDACTED] again, Richard -- Rich Widdowson.
9 Will you pull up that record? That is his
10 signature and that does not appear on the
11 form. He has, in fact, printed his
12 diminutive, and appropriate diminutive
13 nickname Rich Widdowson twice, but he has
14 not signed it. And the SURE System does
15 show that he has a very different
16 signature.

17 MR. OTTER: It appears to me that
18 he did sign in the first line where it
19 says signature of elector. He did use the
20 diminutive for Richard. All the other
21 information matches. I think it is a good
22 signature.

23 THE COURT: You think under the
24 printed name is the signature?

1 MR. OTTER: No, under the
2 signature of elector it appears to be
3 cursive to me.

4 THE COURT: The Rich, R-I-C-H,
5 you think that's the signature?

6 MR. OTTER: Well, Widdowson.

7 THE COURT: I'm asking about the
8 first name. Do you think that's a
9 signature, "Rich," or do you think that's
10 printed? It looks very similar to what is
11 printed under the printed column.

12 MR. OTTER: I would agree, Your
13 Honor, that the "Rich" part does look
14 similar, but the last name appears to be
15 cursive in the signature of elector. We
16 found him. He is a registered Republican
17 in the district.

18 MR. GREENBERG: Again, there is
19 no objection to him being a registered
20 Republican. The issue is that he printed
21 his name, didn't sign it.

22 THE COURT: So are you conceding
23 that he printed his first name, Mr. Otter?

24 MR. OTTER: Yes.

1 THE COURT: Are you conceding to
2 strike this?

3 MR. OTTER: Yes.

4 THE COURT: Thank you.

5 MR. GREENBERG: 6-13 is one that
6 we are going to stipulate as valid.

7 THE COURT: Page 6 line 13?

8 MR. GREENBERG: Yes, it's a new
9 concession on our part, Your Honor. After
10 further review, we decided it was valid.

11 THE COURT: Thank you.

12 MR. GREENBERG: So we already
13 struck 6-22. The next one is 6-26 and
14 6-27. These were clearly completed by the
15 same person. In fact, we believe both
16 were completed by somebody other than the
17 voter. We can pull them up. The address
18 is [REDACTED] Drive.

19 MR. OTTER: Excuse me. May I
20 confer with counsel?

21 MR. GREENBERG: Sure.

22 THE COURT: One moment. Off the
23 record.

24 (At this time, a discussion was

1 held off the record.)

2 MR. GREENBERG: If we can pull up
3 Robert first.

4 THE COURT: So go back and tell
5 me the nature of your objection.

6 MR. GREENBERG: We said IHA, it
7 was in the hand of another, the whole
8 line, signature and line were completed by
9 somebody. Both lines were completed by
10 the same person, neither of whom is either
11 voter I believe.

12 So this is Robert McCarthy's
13 signature. And as you can see, it looks
14 nothing like the signature that appears on
15 this sheet. And it is very clearly
16 printed out in the -- the two lines are
17 very clearly printed by the same person,
18 but the second question is, was either one
19 completed by the voter. We don't believe
20 this is his signature. We would also like
21 to look at the actual documents if there
22 are any to show it is not his printing.

23 THE COURT: Thank you for making
24 that larger.

1 MR. GREENBERG: So as you can
2 see, that's not how Mr. McCarthy signs
3 his -- prints his name either. It's a
4 very distinctive writing that's done on
5 these pages, on these two lines, and I
6 don't believe this is Mr. McCarthy's
7 printing. If you go up above to see the
8 address, I believe the same thing is also
9 true.

10 MR. OTTER: Your Honor, the only
11 distinction I can see is the "R" in his
12 signature looks different, but the rest of
13 it, certainly McCarthy, certainly matches
14 the way he signs his name with that M-C
15 underscore.

16 MR. GREENBERG: So, Your Honor,
17 we are going to -- we'll get to this more
18 on page 8, but we'll see this multiple
19 times where somebody was working off an
20 old set of petitions where they wrote
21 this. And we'll make that evidence
22 elsewhere. But I don't think that an
23 isolated similarity when the rest of it is
24 different, you don't see the "H" there the

1 way you do in the line 26 completion, you
 2 look at the [REDACTED], it's very different. If
 3 you look at the [REDACTED] Drive, it's very
 4 different. If you look at the city name,
 5 it's very different, if we can go back up
 6 there.

7 THE COURT: Mr. Otter, do you
 8 concede that the printed section is in the
 9 same hand in both lines?

10 MR. OTTER: That would appear to
 11 be correct.

12 THE COURT: Then we can move on
 13 to see whether they both go or just one
 14 goes. You can see at least one line goes,
 15 correct?

16 MR. OTTER: Yes.

17 MR. GREENBERG: So we've looked
 18 at Robert McCarthy.

19 Your Honor, do you want us to
 20 pull up Kathy McCarthy or do we want to
 21 stay here for a second?

22 THE COURT: No, I would like to
 23 go see Kathy McCarthy, please.

24 MR. GREENBERG: [REDACTED]

1 Drive.

2 MR. OTTER: I concede that.

3 THE COURT: You concede?

4 MR. OTTER: Yeah.

5 THE COURT: So both of them are
6 stricken, lines 26 and 27 on page 6?

7 MR. OTTER: Yes.

8 MR. GREENBERG: The next one is
9 line 28, Your Honor. This is a cleanup
10 one.

11 MR. OTTER: I'm sorry, which?

12 MR. GREENBERG: Page 6 line 28.
13 If we can get the original petition.

14 May I approach, Your Honor?

15 THE COURT: Here is the letter.
16 Thank you.

17 MR. GREENBERG: So, Your Honor,
18 if I may, the original petition the person
19 wrote the word Erie down for the township,
20 that would have been sufficient. It is a
21 mailing address. As we all know, that is
22 the way the law works here. But instead
23 of leaving that alone, the circulator
24 decided to correct it by striking that

1 with -- you can see the pen is even
2 different -- striking that and adding
3 Millcreek Township in there in a different
4 hand.

5 And I would only point out that
6 while these other lines were also
7 stricken, if you look up the page at lines
8 19, 20, 21, the same thing was done by the
9 same person. So the same -- and down on
10 line 26 it was done by the same person.

11 So the circulator went back and
12 cleaned up these five lines where the
13 person had written Erie rather than their
14 technical township. And so while they
15 concede the other four, they didn't
16 concede this one, but the same circulator
17 or the same person associated with the
18 campaign who was not the individual who
19 voted in all five cases corrected all five
20 lines.

21 THE COURT: So the ones that were
22 corrected that --

23 MR. GREENBERG: 19, 20, 21, 25,
24 and 28. They conceded the other four.

1 MR. OTTER: May I see the
2 original?

3 THE COURT: One moment. Let me
4 just ask a couple of questions.

5 So, Mr. Otter, you conceded 19,
6 20, 21, and 25?

7 MR. OTTER: Yes, they were part
8 of the stipulation.

9 MR. GREENBERG: Actually, I think
10 25 wasn't challenged. I apologize for
11 saying that. We should have, but we
12 didn't, but 19, 20 and 21 were.

13 And if I may just interject one
14 more thing, it looks like the same thing
15 may have happened to 26 which is already
16 stricken as well where somebody wrote
17 Millcreek in as well, but that's a
18 different issue.

19 MR. OTTER: So the only challenge
20 is to the city, borough, township
21 notation, right?

22 MR. GREENBERG: It's an IHA and
23 then a specific check for altered. We
24 specifically challenge this for being

1 altered.

2 MR. OTTER: In looking at that
3 last to next box with the township written
4 in, Your Honor, it's your call. I can't
5 figure out who wrote that. It does look
6 different to me, other changes up above,
7 but it conceivably could be in the hand of
8 that signer, Mr. Sculillo [phonetic]. I
9 don't understand what the little box above
10 Erie, whether that's his initials or -- if
11 it's his initials, then he made the
12 change.

13 MR. GREENBERG: Again, Your
14 Honor, if there's even impermissible or
15 questionably permissible evidence, they
16 haven't presented it. It's clearly
17 altered. The burden would be on them to
18 show the correction was done, and they
19 would have evidence to show that.

20 THE COURT: Mr. Otter, do you
21 agree that the city, borough and township
22 line has been altered?

23 MR. OTTER: Yes, there was a
24 correction made taking out Erie and it

1 appears to look like Millcreek Township.

2 THE COURT: And do you have any
3 evidence to rehabilitate the alteration?

4 MR. OTTER: The only suggestion I
5 have is that above Erie is the signer's
6 initials indicating he made the change.

7 THE COURT: I don't even see what
8 you're referring to as the initials
9 because --

10 MR. OTTER: Right above Erie.

11 THE COURT: I don't know if it is
12 an "M" or a "W". And then it looks like a
13 "P." Well, that's really -- that's part
14 of the Erie, PA. I don't see -- I don't
15 see an "S" for his last name.

16 MR. OTTER: Okay. I'll concede
17 that, Your Honor.

18 THE COURT: Thank you.

19 MR. GREENBERG: That's it for
20 page 6, Your Honor.

21 The next challenge line is page 7
22 line 4. The signed name is Trudy Mueller.
23 The printed name is Trudy Mueller. In
24 both cases Ms. Mueller printed her name.

1 During the notice-and-confer
2 process, they presumed and have argued
3 that it is Gertrude Mueller, which very
4 well could be true, but Ms. Mueller does
5 know how to sign her name and did not do
6 so. Her address is [REDACTED] Road,
7 last name is Mueller like the relatively
8 famous recent. So Gertrude is a
9 registered Republican. And as you can see
10 on the voter registration card, she can
11 sign her name. Mr. Otter has, in fact,
12 brought an affidavit in which she can sign
13 her name. He has brought a driver's
14 license where she can sign her name, and
15 she clearly printed **Trudy Mueller** in both
16 boxes. **By the way, she did this multiple**
17 **times when she signed the petition in**
18 **multiple places, but those other lines**
19 **have been stricken as well.** This is the
20 one that is not.

21 THE COURT: Mr. Otter, do you
22 agree that both lines look like they are
23 printed with the signature as well as the
24 printed name?

1 MR. OTTER: Yes.

2 THE COURT: You concede this line
3 be stricken?

4 MR. OTTER: Yes.

5 THE COURT: Just keep your voice
6 up.

7 So you do agree? So the court
8 reporter can hear you.

9 MR. OTTER: Yes.

10 THE COURT: Thank you.

11 MR. GREENBERG: The next one,
12 Your Honor, is line 16.

13 And this woman, her -- registered
14 as Stephanie Chefoni, C-H-E-F-O-N-I,
15 signed it as apparently Stephanie Webb,
16 W-E-B-B. The address is [REDACTED] -- okay, so
17 it's up on the screen. And it shows her
18 signature is Stephanie Chefoni, and her
19 name is Stephanie Chefoni, and while that
20 is the name that is printed on this form,
21 it is not the name that is signed.

22 MR. OTTER: Your Honor, I have
23 her affidavit which she indicates she was
24 married on 4/13/19 and Chefoni was her

1 maiden name.

2 THE COURT: Is that in accordance
3 with the election code?

4 MR. OTTER: I believe it is the
5 discretion of The Court.

6 MR. GREENBERG: And, Your Honor,
7 had she printed and signed Chefoni on both
8 lines or Webb on both lines, that might
9 have been an interesting argument, instead
10 she signed one name and printed another.

11 MR. OTTER: But we found her.

12 MR. GREENBERG: Just because you
13 can find somebody doesn't mean they
14 complied with the law correctly. Again,
15 that's how Pennsylvania law is written up,
16 Mr. Otter.

17 MR. OTTER: I would just offer
18 her affidavit, Candidate 7-16.

19 MR. GREENBERG: With those same
20 objections as before, obviously.

21 THE COURT: I will look at your
22 affidavit. I mean, to me, if I'm looking
23 at this on the face it appears that these
24 are two different people.

1 MR. OTTER: And her affidavit
2 suggests Stephanie Webb and Stephanie
3 Chefoni are one and the same.

4 THE COURT: I know, but I don't
5 even understand her signature. It doesn't
6 appear to be the same as what's up here.
7 It looks like she didn't sign her full
8 first name.

9 MR. OTTER: Your Honor, I would
10 just offer her affidavit.

11 THE COURT: Can you respond to my
12 question?

13 MR. OTTER: Can you repeat that?

14 THE COURT: My question is,
15 looking at her signature it doesn't appear
16 that she signed her full first name. She
17 signed it as -- printed it Stephanie,
18 S-T-E-P-H-A-N-I-E, but it doesn't seem to
19 be a complete signature. It looks like
20 S-T-E-P-L.

21 MR. OTTER: Or P-H, and squiggle
22 after that. Obviously, it's not the
23 world's greatest signature.

24 THE COURT: Do you agree that

1 it's not a complete first name?

2 MR. OTTER: I agree it's poor
3 penmanship on her part.

4 THE COURT: Is there an A-N-I-E?

5 MR. OTTER: No.

6 MR. GREENBERG: But, Your Honor,
7 as much as I would like to win on that
8 challenge, that is probably not sufficient
9 under Gales. Steph is a diminutive of
10 Stephanie. The question is whether the
11 signing of the last name is sufficient. I
12 just don't want to have any issues with
13 this. And I don't believe it is, but it's
14 a legal question.

15 If Mr. Otter's evidence is
16 accepted, then there is the legal question
17 that follows.

18 THE COURT: I'll look at your
19 affidavit and I'll take it under
20 advisement.

21 MR. OTTER: Thank you.

22 MR. GREENBERG: The next one,
23 Your Honor, is 7-20.

24 THE COURT: Give me one minute,

1 please.

2 MR. GREENBERG: Sure.

3 (Pause in proceedings.)

4 THE COURT: What is the next one?

5 MR. GREENBERG: Your Honor, page
 6 7 line 20. There are multiple challenges
 7 to this starting with illegibility and in
 8 the hand of another, but also alteration.
 9 The easiest one to look at is the cleanup
 10 of Millcreek at the back of the township
 11 where Erie was crossed out and Millcreek
 12 was written in again. And I will point
 13 out that the same thing has occurred on
 14 line 6, on line 12, on line 13, and
 15 happens on line 26 later on on this page.
 16 Those other ones are not subject to
 17 ongoing challenges, but the cleanup on
 18 Millcreek does happen. And if you find on
 19 that, we don't even have to go looking for
 20 John whatever, which I think they believe
 21 is number -- is John Smith.

22 THE COURT: Mr. Otter?

23 MR. OTTER: It appears to be in
 24 the same hand as the rest of the printing

1 on that line, the Millcreek.

2 MR. GREENBERG: If I may look at
3 the original, Your Honor?

4 THE COURT: You may approach.

5 MR. OTTER: Can I see it, too,
6 please?

7 MR. GREENBERG: Sure.

8 So other than the I's, which are
9 obviously straight lines so they're hard
10 to differentiate, none of the letters in
11 John C. Smith and Millcreek are the same
12 except for the Ms, and the Ms are very
13 different. So I'm not even sure how that
14 would be an argument that it is the same
15 hand. It is also a very different
16 penmanship.

17 MR. OTTER: I concede.

18 THE COURT: Thank you.

19 MR. GREENBERG: Line 7-21, Your
20 Honor. We cannot read this. And we say
21 that it is not printed at all, but we
22 cannot read this. It's certainly two
23 different squiggles, but we cannot read
24 that.

1 Mr. Otter does have evidence, if
2 The Court admits, I believe I'm not able
3 to overcome, but The Court has to admit
4 it.

5 THE COURT: Thank you.

6 Mr. Otter?

7 MR. OTTER: We do have his
8 affidavit identified as Candidate 7-21.
9 The signature does appear to be --

10 MR. GREENBERG: We don't know who
11 it is.

12 MR. OTTER: -- on 7-21.

13 THE COURT: The signature what?

14 MR. OTTER: The signature appears
15 to be the same.

16 MR. GREENBERG: We don't have any
17 records to put with this name.

18 MR. OTTER: Oh, Ralph Iannuzzi
19 [phonetic] at [REDACTED] Street in
20 Millcreek Township.

21 THE COURT: And what is your
22 statement to rehabilitate, Mr. Otter?

23 MR. OTTER: I have his affidavit
24 saying he signed it.

1 THE COURT: The Court will take
2 it under advisement.

3 MR. GREENBERG: Next one, Your
4 Honor, is line 23 of the same page and
5 line 24 of the same page. We withdraw
6 those challenges. Having further
7 reviewed, we believe those are both valid
8 signatures.

9 THE COURT: Lines 22 and 23?

10 MR. GREENBERG: 23 and 24.

11 Line 25 is challenged, and we
12 can't find this person. We challenge as
13 illegible. So we don't know what's going
14 on here.

15 Let him see that it's -- it's
16 illegibility.

17 MS. HUFF-GROSS: (Complies.)

18 MR. OTTER: The address appears
19 to be [REDACTED].

20 MR. GREENBERG: No matches found.

21 MR. OTTER: Can you change the
22 "U" to an "E", please, in [REDACTED]?

23 MS. HUFF-GROSS: (Complies.)

24 MR. GREENBERG: No matches found.

1 MR. OTTER: Concede.

2 THE COURT: Thank you.

3 MR. GREENBERG: So that is it for
4 page 7.

5 THE COURT: So why didn't you all
6 work on these beforehand to concede some
7 of these where you couldn't even find
8 them?

9 MR. OTTER: Your Honor, I was not
10 the person doing the initial review on
11 Saturday.

12 THE COURT: I think you ought to
13 talk to your person.

14 MR. OTTER: Probably a good idea.

15 MR. GREENBERG: So on page 8 we
16 are going to spend a little bit of time
17 here because there is a lot going on.

18 And we are going to --
19 essentially what seems to have gone on,
20 Your Honor, and, again, evidence will bear
21 this out, but it does appear on this page
22 and again on page 14 that a specific
23 circulator, a Linda Pezzino, got ahold of
24 an old petition page and copied a bunch of

1 names incorrectly. Some of these we have
2 signature disputes on, some we actually
3 have statements from the voters that they
4 did not sign them. Then, again, we'll
5 submit with the same evidentiary weight
6 that The Court chooses to put on them, but
7 we are going to go through this.

8 And while we can see -- while
9 there is a bunch of stuff going on in the
10 beginning of the page, it looks at least
11 less flamingly difficult, it begins to get
12 bad as we go on. So we are going to start
13 with page 8 line 9.

14 The woman's name is apparently
15 Marcia, M-A-R-C-I-A, at the address [REDACTED]
16 [REDACTED]. Maybe it's not
17 Street.

18 MR. OTTER: Drive.

19 MS. HUFF-GROSS: (Complies.)

20 MR. GREENBERG: So that signature
21 looks very little like -- the Marcia sort
22 of looks similar, but the last name looks
23 nothing at all the same. And it's clear
24 the copy is not as good. And if you look

1 at the affidavit that Mr. Otter has
2 brought in and the driver's license that
3 he has brought in, the signatures on those
4 two documents do not match the signature
5 on the petition or the signature in the
6 SURE System. And the printing does not
7 match the signature on the petition, let
8 alone I'm sure on the documents in the
9 SURE System, which I have not checked, but
10 we can pull that up if The Court feels it
11 necessary, but the person who --
12 Ms. Berarducci did not, in fact, sign this
13 petition.

14 MR. OTTER: Your honor, I have an
15 affidavit where she says she did.

16 THE COURT: I would like to look
17 at the affidavit because I'll tell you the
18 signature doesn't look anything the same,
19 not even close, even if she is signing on
20 a pad.

21 MR. OTTER: I think --

22 THE COURT: It's not a complete
23 last name. It looks like a little "B".

24 MR. GREENBERG: I also note that

1 she prints her last name incorrectly on
 2 the petition.

3 THE COURT: It is not even --
 4 yeah, it's not even a full last name under
 5 the printed section.

6 MR. OTTER: I'll concede, Your
 7 Honor.

8 THE COURT: Thank you.

9 MR. GREENBERG: Line 10. We have
 10 a very similar situation.

11 The first name is Glenn,
 12 G-L-E-N-N, last name is Soles, S-O-L-E-S.
 13 I think the signatures do not match.
 14 Mr. Otter does have alleged evidence to
 15 bring in, but I would note that the
 16 signature on Mr. Soles' driver's license
 17 also does not match the signature on the
 18 Petition. It does match, however, the
 19 signature on the voter registration card
 20 on file.

21 MR. OTTER: Your Honor, I have an
 22 affidavit where he says he signed it.

23 MR. GREENBERG: And, again,
 24 crediting Candidates 8-10, which again we

1 have a standing objection to, if it comes
 2 in, it doesn't help with the signature
 3 that is on the Petition.

4 THE COURT: I'm sorry. Say it
 5 again?

6 MR. GREENBERG: If the affidavit
 7 from 8-10 were to come in, the signature
 8 on the affidavit matches the signature on
 9 the voter file, it does not match the
 10 signature on the petition.

11 THE COURT: I would never guess
 12 that his first name was Glenn in looking
 13 at the Nomination Petition under his
 14 signature.

15 MR. OTTER: Well, the "G" and the
 16 "L" are difficult, but clearly he printed
 17 his name. And the "G" has the same sort
 18 of loop in the -- both on the signature
 19 card and on the petition.

20 There again, if it's done on a
 21 clipboard on a cold day in Erie in
 22 February, things are not perfect.

23 THE COURT: Things aren't
 24 perfect, but I don't even see this being

1 close.

2 I mean, he has got his "S" going
 3 all the way down. It kind of looks like
 4 an "A" for his last name. There is no
 5 beginning part of the "G." I am going to
 6 take it under advisement, but I'm leaning
 7 towards striking it.

8 MR. GREENBERG: Thank you.

9 We have a similar issue on line
 10 11, Your Honor, if we can pull up the
 11 petition for the registration for Stacia,
 12 first name, S-T-A-C-I-A, Brown, like the
 13 color.

14 THE COURT: Did you say line 11?

15 MR. GREENBERG: Yes, Your Honor.

16 Your Honor, I am going to say
 17 this one is closer. I will withdraw this
 18 challenge for now -- well, I will withdraw
 19 the challenge.

20 MR. OTTER: Thank you.

21 THE COURT: Thank you.

22 MR. GREENBERG: Now we get to
 23 line 12, Your Honor. William Buttz,
 24 B-U-T-T-Z. He printed his name both

1 times. And when you look at the voter
 2 file, he has got a very distinctive
 3 signature that is short and concise, but
 4 definitely stylized. And Mr. Buttz
 5 printed his name in both boxes and we
 6 would not concede this either.

7 By the way, the affidavit
 8 Mr. Otter brought in has, in fact, the
 9 same signature that does not appear on the
 10 petition.

11 THE COURT: Did you say line 12?

12 MR. OTTER: Mr. Greenberg is
 13 correct. They're both signed. His
 14 affidavit signature matches what is on
 15 there, but he printed his name both times.
 16 He did not sign.

17 THE COURT: All right. So the
 18 candidate concedes?

19 MR. OTTER: Yes.

20 THE COURT: Thank you.

21 So page 8 line 12, the line is
 22 stricken.

23 MR. GREENBERG: We are going to
 24 concede lines 13 and 14. Line 13 does not

1 look like the complete signature, but that
 2 does, in fact, match his voter file.

3 THE COURT: Thank you.

4 MR. GREENBERG: And Patsy is, in
 5 fact, her name on the voter file, so we
 6 concede that as well.

7 We get to line 15 now. And this
 8 is a cleanup line that I would like to ask
 9 The Court to look at the original, please.

10 MR. OTTER: I'm sorry. Which one
 11 are we on?

12 MR. GREENBERG: Line 15 of page
 13 8.

14 MR. OTTER: Your Honor, obviously
 15 there was -- somebody overwrote that, but
 16 there appears to be above that his initial
 17 "DC" indicating that he did it.

18 MR. GREENBERG: So if I just may
 19 put on, this was Millcreek that was
 20 cleaned up, it was altered, and it was
 21 done.

22 There is -- in fact, they brought
 23 an affidavit in for Mr. Cullen knowing
 24 this was the challenge for this, it was

1 written over, and they did not have him
2 address that issue that he is one that
3 cleaned it up. All the affidavit says is
4 that he signed the petition. We don't
5 dispute he signed the petition. He signed
6 the petition with the wrong address, the
7 same Erie, PA address and ZIP code that he
8 put on his affidavit that Mr. Otter
9 brought in today. The Millcreek that was
10 overwritten is not corrected on the
11 affidavit and that is the only challenge,
12 is that it was overwritten.

13 MR. OTTER: But it appears that
14 he initialed the overwrite.

15 THE COURT: But the affidavit
16 doesn't say that.

17 MR. OTTER: That is correct.

18 THE COURT: So it doesn't address
19 the specific challenge.

20 MR. OTTER: Correct.

21 But looking at the paperwork
22 here, it's clearly his initials "DC" above
23 Millcreek and I think that he made the
24 change and he initialed the changes.

1 THE COURT: But you're giving
2 testimony now. Does the affidavit
3 expressly address the challenge that was
4 made by objectors?

5 MR. OTTER: It does not address
6 that.

7 THE COURT: So you have no
8 evidence to rehabilitate the
9 authorization?

10 MR. OTTER: Other than his
11 initials on the --

12 THE COURT: No, no, no, no.
13 You're saying that, not the elector.

14 MR. OTTER: Correct. The
15 affidavit does not address that issue.

16 THE COURT: Isn't the issue in
17 front of The Court whether or not he made
18 the alteration?

19 MR. OTTER: Yes. And my response
20 to that is looking at the petition, he
21 appears to have initialed the change.

22 MR. GREENBERG: And I would only
23 say to that, Your Honor, that just because
24 the person who struck it wrote his

1 initials, those initials don't seem to
2 match the signature line earlier in the
3 line. And more to the point, when they
4 were out getting these affidavits after
5 they knew this was the challenge to the
6 line, they didn't address it. I think the
7 absence of that evidence is, in fact,
8 evidence.

9 THE COURT: Just to confirm,
10 Mr. Otter, the affidavit that you have
11 does not address this expressed challenge
12 made by objectors?

13 MR. OTTER: Yes, Your Honor, I'll
14 submit that for The Court's convenience
15 Candidate 8-15, it does not, it just says
16 that he signed it.

17 THE COURT: I am going to strike
18 this signature. Your affidavit doesn't
19 address the challenge that was made and
20 candidate knew the objection before the
21 affidavit was made.

22 MR. GREENBERG: Thank you, Your
23 Honor.

24 We are going to concede line 19,

1 but we do believe line 18 was -- actually,
2 no, let me correct this. We are going to
3 concede line 18 and 19, Your Honor.

4 THE COURT: Thank you.

5 MR. GREENBERG: But now we get to
6 some fun ones.

7 THE COURT: These haven't been
8 fun so far?

9 MR. GREENBERG: Now you get to
10 see my opulence.

11 Page 8 line 25, first name Mary,
12 last name, O'Camb.

13 THE COURT: Give me one minute,
14 please.

15 (Pause in proceedings.)

16 THE COURT: Page 8 line what?

17 MR. GREENBERG: 25.

18 THE COURT: Thank you.

19 MR. GREENBERG: I am going to
20 mark this as Objector 8-25 or O8-25.

21 And I am going to point out that,
22 again, this -- I understand we've already
23 waived the hearsay and this was --
24 Ms. O'Camb's information was on our

1 witness list. I'm going to point out that
 2 the person who signed the petition did not
 3 know that Ms. O'Camb uses an apostrophe
 4 between the "O" and the C-A-M-B. And
 5 that's why Ms. O'Camb was happy to sign an
 6 affidavit saying that she did not sign the
 7 line that is before The Court.

8 MR. OTTER: I'll concede that.
 9 The signatures don't match.

10 THE COURT: Thank you.

11 MR. GREENBERG: Onto 8-26. I'll
 12 mark this as Objector 8-26, an affidavit
 13 from Michael Mahaffey saying exactly the
 14 same thing, that he did not, in fact, sign
 15 line 826. First name is Michael. You may
 16 want to look -- it's easier by address,
 17 [REDACTED].

18 MS. HUFF-GROSS: (Complies.)

19 MR. GREENBERG: So as you can see
 20 the signature on line 26 looks nothing
 21 like the signature on the voter file or on
 22 the affidavit that has just been handed up
 23 to you. We've handed you up an affidavit
 24 that does match the voter file where

1 Mr. Mahaffey says he did not, in fact,
2 complete that line.

3 MR. OTTER: I'll concede. It
4 appears that the signature on the SURE
5 System does not match what is on the
6 petition.

7 THE COURT: Thank you, Mr. Otter.

8 MR. GREENBERG: Okay.

9 Let's go with Objector 8-27.

10 THE COURT: One moment.

11 (Pause in proceedings.)

12 MR. GREENBERG: Last name is
13 Carlino, C-A-R-L-I-N-O, address [REDACTED].

14 THE COURT: You said line 27?

15 MR. GREENBERG: Yes. We are
16 going to run through the rest of this
17 page, Your Honor, they all have the same
18 problem.

19 So before Your Honor is an
20 affidavit from Neil Carlino whose
21 signature on the affidavit does match the
22 signature on the voter file.

23 MR. OTTER: I'll concede. The
24 signatures don't match.

1 THE COURT: Thank you.

2 MR. GREENBERG: Let's go with
3 Objector 8-28.

4 First name Jack, last name Lee,
5 at [REDACTED].

6 The signature on the petition
7 does not match the signature on the voter
8 file. And we submitted an affidavit from
9 Mr. Lee stating that he lives at [REDACTED]
10 [REDACTED] Road and he is a registered member
11 of the Republican party. His name and
12 address apparently appears on a Nominating
13 Petition of Greg Hayes for State
14 Representative at page 8 line 28, however,
15 I did not sign the nominating petition for
16 Mr. Hayes. I reviewed that page line and
17 the signature is not his own and a
18 reference to 18Pa. P.S. 4904.

19 I'll again point to the signature
20 on the page. I will point out that on the
21 screen and on the petition he identifies
22 himself as Jack Lee, Jr. Look at the
23 signature on there, it's Jack Lee, Jr.
24 The Jack and Lee don't look at all alike,

1 but certainly he signs his name as junior
 2 and he's very proud of that fact and
 3 that's not what appears here.

4 MR. OTTER: I'll concede.

5 THE COURT: Thank you.

6 I would like you to work together
 7 more before The Court gets involved. Some
 8 of this absolutely could have been done
 9 this morning.

10 MR. GREENBERG: Objector 8-29,
 11 Your Honor, I am going to point out the
 12 first name is Jack, last name is
 13 H-E-V-E-R-L-E-Y, Jr. The name is
 14 misspelled in the printed portion of the
 15 petition. We'll pull up the signatures in
 16 a second, but the affidavit makes clear
 17 it's not his. The petition misspells
 18 Mr. Heverley's name.

19 H-E-V. H-E-V-E-R-L-E-Y.

20 MS. HUFF-GROSS: (Complies.)

21 MR. GREENBERG: We are looking at
 22 [REDACTED] Road.

23 MS. HUFF-GROSS: (Complies.)

24 MR. GREENBERG: So those

1 signatures do not look at all alike and
2 Mr. Heverley's name is misspelled on the
3 petition.

4 MR. OTTER: Concede.

5 THE COURT: Thank you.

6 MR. GREENBERG: And 8-30,
7 Stephanie Rice, P-H-A-N-I-E. Ms. Rice has
8 a similar affidavit saying she did not
9 sign this, the signatures do not match.

10 MR. OTTER: May I see the
11 original, Your Honor?

12 THE COURT: Do you have a copy of
13 the affidavit?

14 MR. OTTER: Yes, none of the
15 signatures seem to work together.

16 THE COURT: No, they don't. And
17 it's very disturbing of who went and
18 signed these -- this petition.

19 MR. OTTER: The signature on the
20 petition does not appear to match the
21 signature on the card. I concede.

22 THE COURT: Thank you.

23 How many more?

24 MR. OTTER: Your Honor, can I

1 suggest if we take a short break and
2 counsel will confer to see what the count
3 is?

4 THE COURT: That's exactly what I
5 was going to recommend. I was going to
6 ask how many more you all have.

7 Let me just get this one down so
8 we are on the same page.

9 I am going to leave the original
10 petitions with Mr. Lederer in case you all
11 need them, separate what we have already
12 gone through.

13 MR. GREENBERG: Thank you, Your
14 Honor.

15 THE COURT: I would encourage you
16 all to work towards the end amicably.

17 MR. GREENBERG: If Your Honor
18 does not mind, hopefully we'll get through
19 this, but if we come back maybe we'll skip
20 to page 14 and deal with the similar
21 issues there and that will get us well
22 over 28.

23 THE COURT: Thank you.

24 CLERK: All rise.

1 The Commonwealth Court of
 2 Pennsylvania will stand in recess until
 3 the call of the crier.

4 (At this time, a short recess was
 5 taken.)

6 CLERK: All rise. The
 7 Commonwealth Court of Pennsylvania is in
 8 session.

9 THE COURT: You may be seated.

10 MR. OTTER: Good afternoon.

11 THE COURT: Good afternoon.

12 MR. OTTER: Your Honor, upon
 13 further review, it appears that the
 14 Candidate will not be able to make the 300
 15 signatures, so I respectfully suggest you
 16 enter an order striking invalid.

17 MR. GREENBERG: If I may, Your
 18 Honor, I just want to be clear that the
 19 Candidate has actually stipulated there
 20 are not. So there are not 300 signatures.
 21 So it's not just his impression, but it is
 22 a concession by the Candidate that they do
 23 not have, so there is a factual record
 24 they can't appeal to overturn your

1 decision.

2 MR. OTTER: I think that's what I
3 said.

4 MR. GREENBERG: Okay.

5 THE COURT: I do agree that
6 that's what you said, that the Candidate
7 concedes that he does not have enough
8 valid signatures, therefore, his name
9 cannot appear on the ballot. And The
10 Court will issue an order accordingly.

11 I appreciate your candor,
12 Mr. Otter, in moving this case forward and
13 not having the time spent by The Court and
14 spend any more resources that were not
15 necessary.

16 I would like a message to go back
17 to the Candidate and whoever circulated
18 that, apparently, clearly there were
19 fraudulent entries and The Court is very
20 dismayed by that.

21 MR. OTTER: I already sent that
22 message rather strongly five minutes ago.
23 I was equally dismayed. That's not the
24 way I operate.

1 THE COURT: I know it is not the
2 way you operate, and it is nothing that
3 you did, but the word definitely needs to
4 get back, whoever was in charge of those
5 petitions, of what transpired.

6 And I appreciate you both working
7 together to come to this conclusion. And
8 I'll just ask next time you work a little
9 bit more upfront, but I know it is a very
10 busy election season.

11 MR. GREENBERG: Your Honor, I
12 appreciate that, but I just want to be
13 very clear it was not Mr. Otter's problem,
14 but his client's that caused that delay.
15 So, I mean, Mr. Otter was agreeable, the
16 client instructed him to cancel, he
17 communicated that at the time. We did do
18 our best to do so. As much as I'm annoyed
19 with some things Mr. Otter does sometimes,
20 and he is annoyed with me sometimes, this
21 was not that, this was the client.

22 THE COURT: Understood.

23 MR. OTTER: He is the most
24 reasonable lawyer. I'm the second most

1 reasonable lawyer in the room at the
2 moment.

3 MR. GREENBERG: Second and third.

4 Thank you, Your Honor.

5 THE COURT: I have to say it is
6 good to work with experienced election
7 counsel, and I thank you for your time and
8 your efforts.

9 I want to thank the SURE operator
10 for being here and for your time and
11 patience as well as the court reporter's.
12 Thank you for your time and your
13 diligence.

14 Everybody have a good afternoon.

15 MR. GREENBERG: Thank you, Your
16 Honor.

17 MR. OTTER: Thank you.

18 CLERK: All rise. Commonwealth
19 Court of Pennsylvania will stand
20 adjourned.

21 - - -

22 (Hearing concluded at 12:30 p.m.)

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C E R T I F I C A T I O N

I, ERICA HEARN, Professional Court
Reporter and Notary Public, do hereby certify that
the foregoing is a true and accurate transcript of
the stenographic notes taken by me in the
aforementioned matter.

- - -

DATE: MAY 13, 2020_____

ERICA HEARN