

***State of New Jersey***

OFFICE OF ADMINISTRATIVE LAW

 **INITIAL DECISION**

 OAL DKT. NO. STE 8207-13

 AGENCY DKT. NO. N/A

**F. Michael Daily, Jr.,**

 Petitioner,

 v.

**Alieta Eck,**

 Respondent.

 **F. Michael Daily, Jr.**,Esq., for petitioner

 **Thaddeus R. Maciag**, Esq., for Alieta Eck, respondent (Maciag Law, LLC)

Record Closed: June 18, 2013 Decided: June 18, 2013

BEFORE **EDWARD J. DELANOY, JR.**, ALJ

**STATEMENT OF THE CASE**

This is a challenge by petitioner, F. Michael Daily, Jr.,Esq.,to the validity of nominating petitions filed by respondent, Alieta Eck, M.D., to become a candidate under the Republican Party for United States Senator for the State of New Jersey in respect to the special primary election. N.J.S.A. 19:23-8 requires at least 1,000 valid signatures in order for a candidate's name to appear on a primary ballot for the United States Senate. Petitioner’s objections received by the Department of State, Division of Elections, alleged a variety of defects: 1) signatures of unregistered voters or registered Democrats; 2) numerous books containing signatures purportedly witnessed by Dr. Eck but that contrary to her affirmation, she did not witness such signatures; 3) numerous books containing signatures purportedly witnessed by others but that contrary to their affirmation, they did not witness such signatures; 4) signatures of Alieta Eck and other subscribing witnesses were not properly made before a notary and/or not properly notarized. At the close of the hearing, petitioner withdrew its challenge regarding signatures of unregistered voters or registered Democrats, and narrowly framed the issue as whether or not a failure to properly witness some signatures on a nominating petition should invalidate the entire petition.

**PROCEDURAL HISTORY**

On or before June 10, 2013, Alieta Eck filed nominating petitions containing a total of 2,285 signatures with the Department of State, Division of Elections in Trenton. By letter faxed on or about June 14, 2013, F. Michael Daily, Jr.,filed written objections to the validity of Dr. Eck’s petition.

Subsequently, the Division of Elections delivered the file to the Office of Administrative Law (hereinafter OAL) for hearing as a contested case. A hearing was held on June 17, 2013. Summation briefs were received from the parties on June 18, 2013, and on that day the record closed.

**FACTUAL DISCUSSION**

In the instant case, there were eighty petition booklets purported to contain a total of 2,285 signatures filed on behalf of respondent. The petitioner submitted a letter challenging in excess of 1,300 of the signatures. This challenge, if successful, would disqualify respondent as a candidate. However, at the close of the hearing, the final issue that remained was that which was raised in paragraph six of the objecting petition, namely, whether or not signatures allegedly improperly witnessed by Dr. Eck should invalidate the entire petition.

**FINDINGS OF FACT**

After carefully considering the testimonial and documentary evidence presented, and having had the opportunity to listen to testimony and observe the demeanor of the witnesses, I **FIND** the following to be the relevant and credible **FACTS** in this matter:

Dr. Alieta Eck obtained her nomination package and instructions after downloading them from a computer. She and her petition circulators then began collecting signatures on June 7, 2013. On June 9, 2013, Dr. Eck went to her church in Somerset with two other volunteer circulators, several of her children, and her husband. All were registered Republicans. Tables were positioned on both sides of the exit door of the church and Dr. Eck was present at all times. Approximately twelve of the petition books were lined up on two tables, with six books on each table. Two to three workers (consisting of the family members and several other volunteers) were behind each table. At the conclusion of the service, exiting churchgoers began to sign the petitions. Dr. Eck was supervising the signature process. She was temporarily distracted while some of the signatories were signing the petitions at the church. Although Dr. Eck did not physically see each signer put his or her pen to the paper, she was present at the petition tables for each signature, and out of 371[[1]](#footnote-1) signatures that Dr. Eck collected, her attention was distracted on approximately fifty of the signatures. Dr. Eck was unable to determine which of the signatures she did not personally see executed. Dr. Eck executed all of the circulator affidavits on each of the church petition books. She did not have her children or the other volunteers execute the circulator affidavits in the petition books.

Dr. Eck also received some signatures in a petition book at her office in Piscataway, and she received additional signatures in a petition book at her home. Dr. Eck signed the first petition book as a circulator. (P-1a.)

A volunteer circulator for Dr. Eck was Daniel Hedberg. Mr. Hedberg began collecting signatures in Chatham on Saturday, June 8, 2013. He was assisted by Daniel O’Neill. The two men each had one petition book, and they collected approximately 200 signatures between them. The two men next proceeded to the Belmar seafood festival. There the two men collected approximately 400 signatures. On Sunday, June 9, 2013, Hedberg was collecting signatures at the Cavalry Chapel in Old Bridge. At the church, Hedberg, O’Neill, and another volunteer set out numerous petitions. They stayed for three services. By the end of that day, they had collected approximately 647 signatures. Later that day, they proceeded to the Omega Diner for the gathering of the circulators. Hedberg personally witnessed all of the signatures in his petition books.

On the evening of June 9, 2013, Dr. Eck and her circulators met at the diner in order to coordinate the petitions. Each petition book was collected and separately notarized. On the morning of Monday, June 10, 2013, Dr. Eck picked up the petition books at her office and brought them to Trenton. After changes were made by the clerk, the total number of signatures on Dr. Eck’s petitions totaled 2,285. (P-1 at 1.)

**CONCLUSIONS OF LAW**

 In New Jersey, a candidate for the United States Senate to be voted for at the primary election for the general election shall be nominated by a petition signed by at least 1,000 qualified voters of the same political party as the candidate. N.J.S.A. 19:23-5; N.J.S.A. 19:23-8. A candidate need not obtain all of the necessary signatures on one petitioner, but instead may accomplish the same through any number of petitions. N.J.S.A. 19:23-10. However, under the rules governing nominating petitions,

[s]uch petitions shall be verified by the oath or affirmation of one or more of the signers thereof, including a candidate who signs or circulates, or both signs and circulates, such a petition, taken and subscribed before a person qualified under the laws of New Jersey to administer an oath, to the effect that the petition is signed by each of the singers thereof in his proper handwriting; that the signers are to the best knowledge and belief of the affiant legal voters of the State or political subdivision thereof, as the case may be, as stated in the petition, belong to the political party named in the petition, and that the petition is prepared and filed in absolute good faith for the sole purpose of indorsing the person or persons therein named, in order to secure his or their nomination or selection as stated in such petition.[[2]](#footnote-2)

[N.J.S.A. 19:23-11.]

 A candidate must file his or her petitions with the Secretary of State “before 4:00 p.m. of the 54th day next preceding the day of the holding of the primary election for the general election.” N.J.S.A. 19:23-14. However, a “candidate shall be permitted to amend the petition either in form or in substance, but not to add signatures, so as to remedy the defect within three days.” N.J.S.A. 19:23-20.

 A “petition of nomination in apparent conformity with the [relevant election law provisions] shall be deemed to be valid,” unless an objection is filed with the Secretary of State.” N.J.S.A. 19:13-10.[[3]](#footnote-3) The Secretary of State, or first by an Administrative Law Judge if the matter is transmitted to the Office of Administrative Law as a contested case, shall determine if the objection is valid. N.J.S.A. 19:13-11; N.J.S.A. 52:14B-10. As the Supreme Court has stressed, “[e]lection laws are to be liberally construed so as to effectuate their purpose. They should not be construed so as to deprive voters of their franchise or so as to render an election void for technical reasons.” [Kilmurray v. Gilfert, 10 N.J. 435, 440-41 (1952)](http://www.lexis.com/research/buttonTFLink?_m=c840417148befe515eae6dc69919b5b8&_xfercite=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b175%20N.J.%20178%5d%5d%3e%3c%2fcite%3e&_butType=3&_butStat=2&_butNum=33&_butInline=1&_butinfo=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b10%20N.J.%20435%2c%20440%5d%5d%3e%3c%2fcite%3e&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzB-zSkAl&_md5=9fc18f2053a63796b7177db2a2bd1db9) (citing [Carson v. Scully, 89 N.J.L. 458, 465](http://www.lexis.com/research/buttonTFLink?_m=a2cba652f41621ce32ed42aad80211da&_xfercite=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b10%20N.J.%20435%5d%5d%3e%3c%2fcite%3e&_butType=3&_butStat=2&_butNum=29&_butInline=1&_butinfo=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b89%20N.J.L.%20458%2c%20465%5d%5d%3e%3c%2fcite%3e&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzB-zSkAl&_md5=e4f8a0f45181ba24ac0bbf8e527a4bf3) (Sup. Ct. 1916), affirmed, [90 N.J.L. 295](http://www.lexis.com/research/buttonTFLink?_m=a2cba652f41621ce32ed42aad80211da&_xfercite=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b10%20N.J.%20435%5d%5d%3e%3c%2fcite%3e&_butType=3&_butStat=2&_butNum=30&_butInline=1&_butinfo=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b90%20N.J.L.%20295%5d%5d%3e%3c%2fcite%3e&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzB-zSkAl&_md5=a3bb8478b30a85ad8c1178bd98bf7518) (E. & A. 1917); [In re Stoebling, 16 N.J. Misc. 34](http://www.lexis.com/research/buttonTFLink?_m=a2cba652f41621ce32ed42aad80211da&_xfercite=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b10%20N.J.%20435%5d%5d%3e%3c%2fcite%3e&_butType=3&_butStat=2&_butNum=31&_butInline=1&_butinfo=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b16%20N.J.%20Misc.%2034%5d%5d%3e%3c%2fcite%3e&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzB-zSkAl&_md5=dbd78a30b6f99b8e50d0092d6a34d6b6) (Cir. Ct. 1938); [Sharrock v. Keansburg, 15 N.J. Super. 11](http://www.lexis.com/research/buttonTFLink?_m=a2cba652f41621ce32ed42aad80211da&_xfercite=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b10%20N.J.%20435%5d%5d%3e%3c%2fcite%3e&_butType=3&_butStat=2&_butNum=32&_butInline=1&_butinfo=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b15%20N.J.%20Super.%2011%5d%5d%3e%3c%2fcite%3e&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzB-zSkAl&_md5=aa4e3d50de24edf44fa0624212a2c37c) (App. Div. 1951)). In enacting the statutes governing elections, our Legislature intended “to promote participation in the candidate-selection process, and to give voters more choices in primary elections.” Lesniak v. Budzash, 133 N.J. 1, 17 (1993). See also, New Jersey Democratic Party, Inc. v. Samson, 175 N.J. 178, 190 (2002).

Few courts or administrative tribunals have addressed the parameters of N.J.S.A. 19:23-11. Nonetheless, in McCaskey v. Kirchoff, 56 N.J. Super. 178, 182 (App. Div. 1959), the Appellate Division noted that N.J.S.A. 19:23-11, which controls the verification of petitions for primary elections, is “less restrictive” than N.J.S.A. 19:13-7, which governs the certification of petitions for general elections and provides that “[b]efore any petition shall be filed . . . at least one of the voters signing the same shall make oath before a duly qualified officer that the petition is made in good faith, that the affiant saw all the signatures made thereto and verily believes that the signers are duly qualified voters.” See also, Steger v. Schellenger, 33 N.J. 293, 295 (noting “that the Legislature dealt differently with the subject of verification in the general election law itself, specifying another mode of verification for nomination in a primary election, [*R.S.* 19:23-11](http://www.lexis.com/research/buttonTFLink?_m=561101e73dfd340ee52147011c0f4952&_xfercite=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b33%20N.J.%20293%5d%5d%3e%3c%2fcite%3e&_butType=4&_butStat=0&_butNum=24&_butInline=1&_butinfo=N.J.%20STAT.%20ANN.%2019%3a23-11&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzB-zSkAW&_md5=23ddb11fe44ffcb7f9e77d567ba7c832).”) Thus, unlike N.J.S.A. 19:13-7, which requires that the “affiant saw all the signatures,” N.J.S.A. 19:23-11 merely provides that an affiant verify that “the petition is signed by each of the signers thereof in his proper handwriting.”

In Scudiery v. Falzone, STE 992-10, Initial Decision (April 21, 2010), which involved objections to the nominating petitions for Mark Falzone, a candidate for the primary election for the United States House of Representatives, Administrative Law Judge Martone found, in dicta, that N.J.S.A. 19:23-11 did not necessarily require an affiant to witness each signature affixed to a petition. As Judge Martone explained,

Mr. Falzone testified that he obtained most of the signatures, but candidly acknowledged that he was assisted in his efforts by three other individuals. He admitted when a number of the signatures were obtained he was not standing next to the petition signer, but was within conversational distance, and that he was supervising the process . . . Based on this testimony, attorney for petitioner moved to invalidate the petitions on the basis that Mr. Falzone did not witness each signature as required by  [N.J.S.A. 19:23-11.](http://lis.njleg.state.nj.us/cgi-bin/om_isapi.dll?clientID=446903&Depth=4&advquery=%2219%3a23-11%22&headingswithhits=on&infobase=statutes.nfo&rank=%20%20&record=%7b1372A%7d&softpage=Q_Frame_Pg42&wordsaroundhits=10&zz=)  However, this statute simply requires the affiant to verify that the petition is signed by each of the signers thereof in his proper handwriting, but does not specify how this information is to be obtained.[[4]](#footnote-4)

Even assuming that N.J.S.A. 19:23-11 requires an affiant to witness each signature affixed to a petition, defective verifications are curable. See, In re Chirico, 87 N.J. Super. 587 (App. Div. 1965) (holding that a “verification is an essential part of the petition and amendable under [N.J.S.A. 19:23-20]”). Under N.J.S.A. 19:23-20, a candidate shall have three days within which to cure such a defect. Importantly, the three-day period begins to run upon notice to the candidate of the defect. See In re Cowan, 265 N.J. Super. 176 (App. Div. 1993) (holding that candidates had three days to cure verification defect after first learning of the defect in the Secretary of State’s final decision rejecting their petitions).

However, here, there is no need for Dr. Eck to cure the verification defect. That is, even if Dr. Eck did not properly verify the 371 signatures on the petitions she circulated, petitioner has conceded that Dr. Eck otherwise obtained in excess of the 1,000 signatures required for her nomination. Thus, even if the signatures on the petitions verified by Dr. Eck are disqualified, Dr. Eck would have a sufficient amount of signatures for nomination to the primary election.

Alternatively, petitioner’s argument that Dr. Eck’s nomination should be declared void because she attested to witnessing each signature affixed to the petitions she circulated, when in fact she did not witness each signature, must fail. Under N.J.S.A. 19:3-7,

If any candidate for nomination for or election to any public office or party position, or his campaign manager, shall fail to file any statement or oath required by this Title to be filed, at the time, place and in the manner required by this Title, and duly verified as herein required, or shall file any false statement, the nomination or election of such candidate, if nominated or elected at the primary or other election concerning which such statement shall have been filed, shall be null and void.

However, if,

[a]ny act or omission of any candidate complained of arose from accidental miscalculation or from some other reasonable cause of like nature, and in any case did not arise from any want of good faith, and under the circumstances it seems to the court or judge to be unjust that the candidate shall forfeit his nomination, position or office, then the nomination or election of such candidate shall not by reason of such offense complained of be void.

[N.J.S.A. 19:3-9.]

Here, there is no evidence of “any want of good faith” on the part of Dr. Eck while she was collecting signatures at the church on June 9, 2013. Moreover, it is not entirely clear that Dr. Eck violated N.J.S.A. 19:23-11 by failing to see each and every petitioner sign the petitions she circulated. It would be unjust for Dr. Eck to forfeit her nomination by reason of failing to witness each signature affixed to the petitions she circulated, but attesting otherwise, and contrary to the liberal construction of the election laws, which “should not be construed so as to deprive voters of their franchise or so as to render an election void for technical reasons.”

Petitioner has failed to prove that Dr. Eck committed false statements of fact necessary to disqualify this petition. Petitioner did not produce any evidence of fraud or intentional wrongdoing on the part of Dr. Eck. There was not an intentional undermining of the election law or process.

 Petitioner has not proven that other circulators failed to witness signatures, or failed to properly circulate petitions. Hedberg circulated all of the petitions he signed, and his actions were consistent with circulator requirements under the law. No testimony or evidence was proffered from O’Neill to prove allegations that he failed to properly circulate petition books. While O’Neill was subpoenaed by petitioner, he failed to appear. This tribunal found, without objection from petitioner, that O’Neill was not properly subpoenaed, and therefore, his petition books could not be proven defective.

Petitioner has also failed to prove that the signatures of the circulators were not properly taken before a notary public. No allegations were made concerning any notary public.

 Finally, limited testimony was received from Patrick Parmelee of the New Jersey Division of Elections, utilizing the Statewide Voter Registration System. After that testimony, petitioner conceded on the record that Dr. Eck filed a sufficient number of valid signatures from active, registered Republicans, or unaffiliated voters. Therefore, petitioner has failed to prove that numerous signers of the petitions were either registered Democrats or unregistered voters.

 Applying the law to the facts of this case, and having reviewed petitioner’s challenge to Dr. Eck’s circulator affidavits, and based on the foregoing facts and applicable law, I **CONCLUDE** that petitioner has not met their burden of proving that respondent does not have the 1,000 or more valid signatures required to have her name placed on the ballot in the primary election pursuant to N.J.S.A. 19:23-8. The outcome is consistent with the purpose of the law. The process of being allowed to file a petition is to give voters choices in the primary. The Legislature determined that 1,000 signatures were necessary to show that the electorate desired the applied for candidacy. In this case, Dr. Eck did validly acquire the requisite number of signatures of registered voters.

**ORDER**

 It is **ORDERED** that Alieta Eck does qualify on the ballot for the 2013 Republican Party Special Election Primary for United States Senate in New Jersey.

 I hereby **FILE** my initial decision with the **SECRETARY OF STATE** for consideration.

 This recommended decision may be adopted, modified or rejected by the **SECRETARY OF STATE**, who by law is authorized to make a final decision in this matter. If the Secretary of State does not adopt, modify or reject this decision within forty-five days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

 Any party may file exceptions with the **DIRECTOR OF THE** **DIVISION OF ELECTIONS**, **DEPARTMENT OF STATE**, by facsimile transmission at (609) 777-1280 within two hours of receipt of the initial decision. A hard copy shall be mailed within twenty-four hours of the facsimile transmission to the **DIRECTOR OF THE DIVISION OF ELECTIONS, DEPARTMENT OF STATE, 225 West State Street, 5th Floor, PO Box 304, Trenton, New Jersey 08625-0304**, marked “Attention: Exceptions.” A copy of any exceptions must be sent to the judge and to the other parties.

June 18, 2013 

DATE **EDWARD J. DELANOY, JR.**, ALJ

Date Received at Agency: June 18, 2013

Date Mailed to Parties:

EJD/cb

**APPENDIX**

**LIST OF WITNESSES**

**For petitioner:**

 Alieta Eck

 Nicole Sanders

 Daniel Hedberg

 Michael Byrne

**For respondent:**

 Alieta Eck

 Daniel O’Neill (via telephone)

**For tribunal:**

Patrick Parmelee

**LIST OF EXHIBITS**

**For petitioner:**

 P-1 Petition Book 1

P-2 Petition Book 40

P-3 Petition Book 44

P-4 Petition Book 2

 P-5 Petition Book 15

 P-6 Petition Book 71

 P-7 Petition Book 72

 P-8 Petition Book 73

 P-9 Petition Book 78

**For respondent:**

 None

**For tribunal:**

C-1 Petition Book 70

 C-2 Petition Book 69

1. See petition books 1-3, 15, 29, 43 and 71-80. [↑](#footnote-ref-1)
2. An “unaffiliated voter may declare party membership by signing a nomination petition.” Lesniak v. Budzash, 133 N.J. 1, 14 (1993). [↑](#footnote-ref-2)
3. While this provision is found under N.J.S.A. 19:13, which governs general elections, N.J.S.A. 19:23-58 provides that “[a]ny provisions of [Title 19] which pertain particularly to any election or to the general election shall apply to the primary election for the general election in so far as they are not inconsistent with the special provisions of [Title 19] pertaining to the primary election for the general election.” Ibid. [↑](#footnote-ref-3)
4. Judge Martone disqualified Mr. Falzone as a candidate on other grounds. [↑](#footnote-ref-4)