



MATTHEW DUNLAP
SECRETARY OF STATE

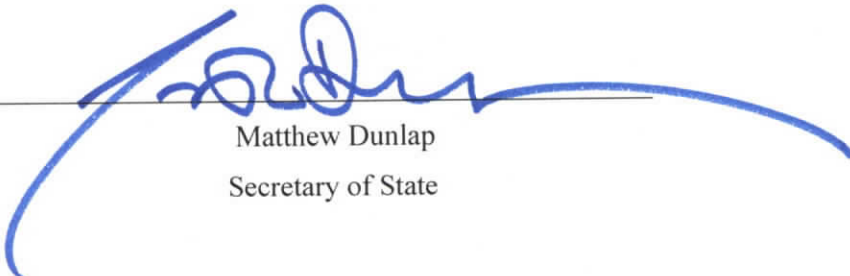
STATE OF MAINE
OFFICE
OF THE
SECRETARY OF STATE

RULING OF THE SECRETARY OF STATE:

ON THE CHALLENGE BROUGHT BY SUSAN THIBEDEAU OF BANGOR AGAINST THE PRIMARY PETITIONS FILED ON BEHALF OF CODY R. BLACKBURN, A LIBERTARIAN CANDIDATE FOR REPRESENTATIVE TO THE LEGISLATURE IN HOUSE DISTRICT 125.

1. On March 29, 2018, a public hearing was held for the purpose of hearing evidence relating to the allegations presented in the challenge made by Susan Thibedeau of Bangor against the petitions filed on behalf of Cody R. Blackburn, a Libertarian candidate for Representative to the Legislature in House District 125.
2. The challenge was filed in the Office of the Secretary of State, Division of Elections, on March 22, 2018. The original challenge included allegations that four of the voters who signed the petition were not enrolled in the Libertarian Party on the date that each one signed the petition. However, after reviewing voter registration applications provided by the City of Bangor, the challenger withdrew the challenge to three of the signers, leaving only one signer in dispute at the time of the hearing, namely:
 - a. Brian L. Stewart of 88 Cumberland Street signed the primary petition on February 15, 2018. The challenger contends this signature is not valid because Brian L. Stewart did not complete an application to change enrollment until after he had signed Mr. Blackburn's nomination petition.
3. I have reviewed the Report of the Hearing Officer dated April 2, 2018, the exhibits presented at the hearing, and other materials transmitted with the report.
4. For the reasons outlined in the Hearing Officer's report, attached hereto, I find that the challenger has not met the burden of providing sufficient evidence, pursuant to Title 21-A, section 337, subsection 2, paragraph B, to invalidate the petition and consent form. I have determined that the challenge to the petition is not valid, and that the petition and consent form of Cody R. Blackburn, as a candidate in the Libertarian Party Primary Election for Representative to the Legislature in House District 125, meets the requirements of Title 21-A section 335.
5. This decision may be appealed by commencing an action in the Superior Court within 5 days pursuant to 21-A MRSA section 337, subsection 2, paragraph D.

Dated: April 5, 2018


Matthew Dunlap
Secretary of State

REPORT OF THE HEARING OFFICER:

FOR THE PUBLIC HEARING HELD MARCH 29, 2018, PURSUANT TO 21-A MRSA §337, SUB-§2, PARAGRAPH B, ON THE CHALLENGE BROUGHT BY SUSAN THIBEDEAU OF BANGOR AGAINST THE PRIMARY PETITIONS FILED ON BEHALF OF CODY R. BLACKBURN, A LIBERTARIAN CANDIDATE FOR REPRESENTATIVE TO THE LEGISLATURE IN HOUSE DISTRICT 125.

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3. The challenger was not present at the hearing but was represented by Attorney Benjamin Grant. The candidate, Cody R. Blackburn, was present at the hearing and was represented by Attorney John Branson.

4. The hearing officer noted at the start of the hearing that the Agency Record includes the original challenge document; the two original petitions of the candidate (which were labeled as Exhibit 1); the original Primary Candidate's Consent form (which was labeled Exhibit 2); a copy of the initial hearing notice emailed to the challenger, the candidate and their representatives; a copy of the Entry of Appearance and Request for Continuance filed by Attorney John H. Branson on behalf of the candidate; and a copy of the amended hearing notice emailed to the challenger, the candidate and their representatives.

5. The following documentary evidence was presented for the challenger by Attorney Grant, and was entered without objection into the Agency Record, and labeled as follows:

Exhibit 3: A copy of Brian Stewart's voter registration application, which was accepted by the City Clerk of Bangor on February 21, 2018.

6. The following documentary evidence was presented for the candidate by Attorney Branson, and was entered without objection into the Agency Record, and labeled as follows:

Exhibit 4: A copy of Brian Stewart's voter registration application, which was accepted by the City Clerk of Bangor on February 21, 2018;

Exhibit 5: A photograph of Brian Stewart's voter registration application, which the candidate testified he had taken with his iPhone after Mr. Stewart had completed the application and given it to the candidate to submit to the City of Bangor on his behalf;

Exhibit 6: A document printed from Maine's Central Voter Registration system (CVR), indicating that Brian Lyle Stewart's enrollment in the Libertarian Party was effective on March 8, 2018, and that an application for change of enrollment had been filed with the Municipal Registrar on February 21, 2018.

7. The following facts are clear from the agency record and were not disputed at the hearing:
 - a. The challenger, Susan Thibedeau, is a resident and a registered voter in the electoral division of the candidate, pursuant to Title 21-A, section 337, subsection 2, paragraph A.
 - b. The challenger filed a timely challenge pursuant to Title 21-A, section 337, subsection 2, paragraph A.
 - c. On March 12, 2018, candidate Cody R. Blackburn submitted two nomination petitions to the Secretary of State, which contained 25 signatures certified as valid by a municipal official in Bangor, along with a properly completed Primary Candidate Consent form. Both petitions were circulated by the candidate.
 - d. The voter registration application for Brian Stewart (who signed on line 23 of one of the petition forms) was submitted to the City of Bangor on February 21, 2018. The Registrar's Certification of the petition was completed on March 12, 2018.
8. The following statutory requirements directly pertain to this challenge:
 - a. Title 21-A section 335, subsection 5, paragraph G provides that the number of valid signatures needed for a primary petition for State Representative is 25.
 - b. Title 21-A section 335, subsection 2 provides that a primary petition may be signed only by voters of the electoral division which is to make the nomination and who are enrolled in the party named in the petition, and that other signatures are void.
 - c. Title 21-A section 335, subsection 3 requires a voter to sign his or her name to the petition "in such a manner as to satisfy the registrar of the municipality that he is a registered voter and enrolled in the party named in the petition." This subsection also requires the voter or the circulator to print the voter's name on the petition.
 - d. Title 21-A section 335, subsection 7, paragraph B requires the municipal registrar or clerk to certify which names on a petition appear in CVR as registered and enrolled voters in that municipality and further provides that the official "may not certify any names that do not satisfy subsection 3."
 - e. Title 21-A section 335, subsection 9 provides that a primary petition which does not meet the requirements of this section is void.

f. Title 21-A section 144, subsection 2 provides that on receipt of an application to change enrollment, the registrar shall remove the party designation of the applicant from CVR, and shall indicate in the system that the applicant is ineligible to vote at a caucus or primary election for 15 days by designating the party enrollment field with the letter "X". The section further provides that 15 days after receiving the application, the registrar shall enroll the applicant in the party requested and enter the new party designation in the party enrollment field.

g. Title 21-A section 144, subsection 3 provides that a voter may not vote at a caucus, convention or primary election for 15 days after filing an application to change enrollment (except when the voter changes residence from one municipality to another). The section further states that a voter may sign a primary nomination petition during the 15-day period after filing an application to change enrollment, and the voter's signature must be counted as valid, as long as the 15-day period has elapsed by the time the petition is certified pursuant to Title 21-A section 335, subsection 7 and the voter otherwise is qualified to sign a petition for that office. The section further provides that a voter must file an application to change enrollment prior to January 1st to be eligible to file a petition as a candidate in that election year.

9. The following arguments were presented by the challenger's attorney regarding the validity of the signature of Brian Stewart, and thus the validity of Mr. Blackburn's petition.

a. Mr. Grant argued that while the statute provides, in section 144, subsection 3, that a voter may sign a nomination petition during the 15-day period after completing an application to change enrollment, the petition may only be signed after the voter has made a move to change enrollment by completing the application. Mr. Grant contends that there is no proof that Mr. Stewart signed the petition **after** completing the application required to change enrollment. While the date written beside his signature on the petition is February 15, 2018; the date on the application that Mr. Stewart completed to change his enrollment is February 19, 1949 – which is also Mr. Stewart's birthday. Mr. Grant contends it is likely that Mr. Stewart actually completed the application on February 19, 2018 – which is why he mistakenly wrote in his birthdate rather than the correct date.

b. Mr. Grant further argued that since the 15-day period does not begin until after the voter has completed the application to change enrollment, the voter was not enrolled in the party on the date he had signed the petition. Therefore, pursuant to section 335, subsection 2, the signature is not valid.

10. The candidate's attorney called candidate Cody R. Blackburn as a witness. After being sworn in by the Hearing Officer, Mr. Blackburn testified to the validity of Mr. Stewart's signature and the process followed to solicit that signature for the nomination petition.

a. Mr. Blackburn was the circulator of the petition. He personally circulated the petition and took the petition to Bangor City Hall in order to have it certified.

b. Mr. Blackburn reviewed the petition and identified Mr. Stewart's signature as being written on Line 23 of the petition. Mr. Stewart signed the petition on February 15, 2018.

c. Mr. Blackburn testified that he went to Mr. Stewart's residence at 88 Cumberland Street. He chose to approach Mr. Stewart to request his signature because Mr. Stewart appeared on a list of unenrolled voters that Mr. Blackburn was using to target voters who might sign his petition.

Although Mr. Stewart informed Mr. Blackburn he was actually enrolled as a Republican, Mr. Stewart was enthusiastic to sign the petition and was willing to complete a new voter registration application to change his enrollment.

d. Mr. Blackburn stated that he had Mr. Stewart complete a voter registration application first and then sign the petition. Mr. Blackburn indicated that there were a total of seven voters who changed enrollment in order to sign his nomination petition and it was always his practice to have the voter complete the voter application prior to signing the petition.

e. Mr. Blackburn testified that he did not notice the error in the date on which the application was signed until after he had left Mr. Stewart's residence. Despite the discrepancy in the date, Mr. Blackburn is positive that Mr. Stewart signed both the voter registration application and the primary petition on February 15, 2018. Mr. Blackburn also testified that Mr. Stewart and Mr. John Maki signed on the same date. (John Maki of 218 Broadway Street is listed on line 24 of the petition with February 15, 2018 as the date signed.)

f. Mr. Blackburn had also taken a photograph of Mr. Stewart's completed voter registration application using his cell phone. A copy of this photograph was submitted as Exhibit 5. During his testimony Mr. Blackburn displayed the time stamp showing when the photograph was taken as 4:23 p.m. on February 15, 2018. The challenger's attorney objected to the testimony regarding the time stamp, arguing that he did not have an ability to test the technology.

g. Mr. Blackburn stated that he could not remember the exact date he submitted Mr. Blackburn's application to the City of Bangor, but acknowledged it was not on February 15, 2018 as City Hall closed at 4:30 p.m. and he did not have enough time after collecting the signature to travel to City Hall. It was his practice to submit applications as soon as possible after collecting them. The record in Maine's CVR (Exhibit 6), reflects that the application was submitted on February 21, 2018.

h. Mr. Blackburn testified that he went to Bangor City Hall on March 12, 2018 to have his petition certified by the Municipal Registrar. On this same date, he took the Circulator's Oath before a notary public in the Clerk's Office. The Circulator's Oath, which is printed on the petition, requires the circulator to swear or affirm that the circulator personally witnessed all signatures on the petition and that each signature is that of the person whose name it purports to be, and that each person is enrolled in the party named on the petition and is a resident of the electoral division named in the petition.

i. Mr. Blackburn testified that staff of Bangor City Hall took nearly two hours to complete certification of his petition. Once he received the certified petitions back from officials at City Hall, he delivered the petitions to the Secretary of State on the same day. The Secretary of State accepted his petitions on March 12, 2018.

11. After reviewing the copies of the voter registration documents and other materials entered into evidence, hearing the testimony of Mr. Blackburn and seeing the time stamp on Mr. Blackburn's cell phone, and considering the oral arguments presented by the challenger and the candidate, I draw the following conclusions:

a. Mr. Blackburn testified that Mr. Stewart completed a voter registration application and signed the nomination petition on February 15, 2018. Although the challenger argues that the

voter registration application was not signed until February 19, 2018, Mr. Blackburn testified that it was signed on February 15, 2018. I found Mr. Blackburn to be a credible witness. He had a clear recollection of his interactions with Mr. Stewart on that day, including that he had Mr. Stewart sign the voter card to seek a change of enrollment before signing the petition – the same practice followed by Mr. Blackburn with several other voters. Despite the date discrepancy (where Mr. Stewart wrote his birth date adjacent to his signature where he was supposed to indicate the date of his signature), no evidence was presented to show that the two acts occurred on two different dates.

b. The Legislature has specified the restrictions that apply during the 15-day period after a voter submits a change of enrollment application -- i.e., that a voter may not vote at a caucus, convention or primary election. In 2013, the statute was amended to clarify that a voter may sign a primary nomination petition during the 15-day period as long the 15-day period has elapsed by the time the petition is certified by the Municipal Registrar. Mr. Stewart's enrollment change was effective on March 8, 2018. The Municipal Registrar certified the petition on March 12, 2018.

c. Title 21-A section 335, subsection 7, paragraph B requires the municipal registrar or clerk to certify which names on a petition appear in CVR as registered and enrolled voters in that municipality. It is clear that this voter was fully enrolled in the Libertarian Party by the time the Registrar certified the voter's status on this petition. The last clause of paragraph B, saying that the Registrar "may not certify any names that do not satisfy subsection 3," simply means that the Registrar cannot certify a name unless the Registrar is able to determine that the signer is the same person listed in CVR as registered to vote at that address and enrolled at the time of certification.

d. Reading all of these statutory provisions together supports the conclusion that Mr. Stewart's signature was valid when certified and should be counted.

12. The Hearing Officer recommends that the Secretary of State find that the challenger has not met the burden of providing sufficient evidence, pursuant to Title 21-A, section 337, subsection 2, paragraph B, to invalidate the entire petition identified as "Exhibit 1". Since there were 25 valid signatures on the nomination petition submitted to the Secretary of State's office for this candidate, the number of valid signatures meets the minimum required. The Hearing Officer further recommends that the Secretary of State determine that the challenge to the petition is not valid, and that there are sufficient signatures for the nomination of Cody R. Blackburn, to the Libertarian Primary Election, in House District 125, pursuant to Title 21-A, section 335, subsection 5, paragraph G, and section 337, subsection 2, paragraph C.

Dated: April 2, 2018


Melissa K. Packard, Hearing Officer