



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION ON
MOTION TO DISMISS

OAL DKT. NO. STE 06746-20

AGENCY DKT. NO. N/A

SCOTT SALMON,

Petitioner,

v.

KANYE WEST,

Respondent.

Scott Salmon, Esq., petitioner pro se

Kanye West, respondent not appearing.

Record Closed: August 4, 2020

Decided: August 4, 2020

BEFORE **GAIL M. COOKSON**, ALJ:

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

This matter is a challenge by petitioner Scott Salmon (Salmon) to the validity of the nominating petitions for the 2020 general election filed by respondent Kanye West (West or candidate) to become the candidate for the office of President of the United States of America. In order to have his name placed on the ballot in the general election to be held on November 3, 2020, respondent must submit 800 valid signatures.

On or about July 27, 2020, Kanye West filed with the Secretary of State Division of Elections, petitions containing the total signatures of 1,327 persons who supported his nomination as a candidate for President of the United States of America in the general election. On or before July 29, 2020, Salmon filed a formal objection to the nominating petitions of West pursuant to N.J.S.A. 19:13-10. On that same day, West was notified by electronic mail¹ of the formal challenge to his petitions. The Secretary of State Division of Elections transmitted the matter to the Office of Administrative Law on or about July 29, 2020, for determination as a contested case pursuant to N.J.S.A. 52:14B-1 to -15 and N.J.S.A. 52:14F-1 to -13. The transmittal was amended thereafter to include the requirement that the OAL determine as an initial matter whether the petition had been perfected by the candidate.

The hearing was scheduled to take place on August 4, 2020, under special Zoom virtual hearing procedures established because of the current State of Emergency in the State of New Jersey due to the coronavirus pandemic. Prior to the outset of the hearing, respondent's campaign sent an unsigned email requesting that the matter be cancelled and the petition considered withdrawn. Because we never received an executed Stipulation and Withdrawal of Candidacy, the matter was not considered properly withdrawn.

Accordingly, I determined to hear the petitioner's motion to dismiss made on the threshold issue of the candidate's failure to perfect his petition with the circulator verifications, which issue was specifically transmitted by the Division of Elections for my consideration.² The motion was heard on the papers without the need for oral argument pursuant to N.J.A.C. 1:1-12.2(d). Respondent filed no opposition and as stated, preferred to have the matter deemed withdrawn.

¹ Candidate Kanye West did not supply a phone number or the name of a legal representative, but only the general email address for his campaign. Accordingly, all communications have been through those provided means.

² As indicated by the Petition Check-Off Sheet – 2020 General Election completed within the Division upon receipt of respondent's petitions, it could be said that the matter should have only been tentatively transferred to the OAL for a contested hearing and then withdrawn when the petition was not perfected by the campaign. [S-1]

UNDISPUTED MATERIAL FINDINGS OF FACT

Based upon the papers submitted, I **FIND** the following undisputed **FACTS**:

1. Candidate West submitted a nominating petition³ which the Division determined contained a total of 1,327 signatures. There was no nomination for the Office of Vice President; nor were there any request by the candidate for Ballot Slogans in each of New Jersey's counties.

2. The Division of Elections immediately advised the candidate that his nominating petitions were incomplete and could not be certified because the circulator verifications were not filed. Pursuant to N.J.S.A. 19:13-7, the Division provided the candidate with three (3) days to cure that defect.

3. Fourteen (14) electors were named with addresses but without signatures on the Pledges of Allegiance and Certificate of Acceptance required of each elector.

4. Petitioner filed challenges, as amended, to 733 individual signatures from those petitions, for one or several reasons against each signature.

5. Petitioner also objected to the candidate's nomination as an initial matter because no circulator filed the required verification and no elector completed the Pledge of Allegiance. In addition, petitioner challenged the nomination petition because there were electors who were not qualified voters in the State of New Jersey.

6. On Friday, July 31, 2020, at 3:20 p.m., West's campaign acknowledged that he had not submitted the required circulator verifications and that the Division could not certify the nominating petitions. The campaign specifically wrote:

We were advised by the Secretary of State's Office that the petition for Mr. West to appear on the New Jersey ballot could not be certified as submitted, and that the hearing on

³ While there are numerous petition pages that start with the same numbering, it was unclear to the Division how many different booklets and circulators there were gathering signatures of eligible voters for the candidate.

Tuesday August 4, 2020, would not proceed unless curative steps were taken.

Because the petition was not cured before the deadline on Thursday July 30, 2020, we were informed that the hearing would be canceled. Therefore, at the direction of the Secretary of State's office, which has not certified Mr. West's petition, we will not be retaining local counsel for the August 4 hearing and request that any necessary action to cancel the hearing be initiated by your office.

7. On Monday, August 3, 2020, the Division of Elections amended the transmittal to the OAL in order to include the contested issue of whether the absence of circulator verifications voided the nominating petitions and made reaching the challenged signatures moot.

8. On Saturday, August 1, 2020, at 5:39 p.m., the West campaign asked if there had been an update on its assumption that the hearing would be cancelled. On Monday, August 3, 2020, at 10:13 a.m., the undersigned had the Clerk of the OAL advise the candidate that the hearing would need to proceed on the threshold issue of the missing circulator verifications unless respondent signed the Stipulation and Withdrawal of Candidacy, which was attached to the electronic mail sent to the campaign.

9. On Monday, August 3, 2020, at 11:41 p.m., the campaign emailed the Clerk and myself, but without including the petitioner: "At this time, Kanye 2020 has no further option than to regrettably withdraw from New Jersey and cease further efforts to place Mr. West's name on the New Jersey ballot." It requested that the matter be remanded to the Secretary of State for administrative resolution but did not complete and execute the Stipulation and Withdrawal of Candidacy.

LEGAL ANALYSIS AND CONCLUSION

Independent presidential candidates seeking a spot on the general election ballot may do so by direct petition under N.J.S.A. 19:13-1. The contents and requirements of such a petition is mandated under N.J.S.A. 19:13-3 to 13. New Jersey law required a

petition of direct nomination for the general election to be submitted to the Secretary of State by 4:00 p.m. on July 27, 2020, pursuant to N.J.S.A. 19:23-14. In this instance, West's petition was received on time. Pursuant to N.J.S.A. 19:13-5, a nominating petition for election of independent candidates for President and Vice President of the United States must be signed by at least 800 voters who have not signed other nominating petitions for those offices. Valid petitions require verification that those who circulated the petition witnessed these signatures. N.J.S.A. 19:13-7.

Generally, election laws should be construed liberally "to allow the greatest scope for public participation in the electoral process, to allow candidates to get on the ballot, to allow parties to put their candidates on the ballot, and, most importantly, to allow the voters a choice on Election Day," and voters should not be deprived of their franchise "for technical reasons." Catania v. Haberle, 123 N.J. 438, 448 (1991); see also Kilmurray v. Gilfert, 10 N.J. 435, 440-41 (1952); Wene v. Meyner, 13 N.J. 185, 197 (1953). They should not be construed so as to deprive voters of their franchise or to render an election void for technical reasons because it is in the public interest to submit to the electorate a ballot bearing the names of candidates of all qualifying groups and parties. Kilmurray, at 441. Statutes providing requirements for a candidate's name to appear on the ballot will not be construed so as to deprive the voters of the opportunity to make a choice. N.J. Democratic Party, Inc. v. Samson, 175 N.J. 178 (2002).

Several issues were raised by the petitioner as challenges to West's petitions: (1) that respondent's circulators did not submit the required verifications; (2) that respondent's electors did not execute and submit the required Pledges of Allegiance and Certificate of Acceptance; and (3) that individual signers of respondent's petitions were invalid for one or more reasons, and that, therefore, his petition fell short of the 800 required for certification on the ballot.

It is well established that if there is no genuine issue as to any material fact, a moving party is entitled to prevail as a matter of law. Brill v. The Guardian Life Insurance Co. of America, 142 N.J. 520, 540 (1995). The purpose of summary decision is to avoid unnecessary hearings and their concomitant burden on public resources.

Under the Brill standard, a fact-finding hearing should be avoided “when the evidence is so one-sided that one party must prevail as a matter of law.” Similarly in this context, a motion to dismiss also establishes an even more stringent standard for refusing to grant evidentiary hearing to an applicant. In evaluating a motion to dismiss a petition at the very earliest stage in the litigation, “courts are cautioned to search the complaint ‘in depth and with liberality to ascertain whether the fundament of a cause of action may be gleaned even from an obscure statement[.]’” Ibid. (quoting Printing Mart-Morristown v. Sharp Electronics Corp., 166 N.J. 739, 772 (1989)). “The test is whether a cause of action is suggested by the facts alleged in the complaint.” Russo v. Nagel, 358 N.J. Super. 254, 262 (App. Div. 2003). Phrased another way, if there is no relief upon which this forum or the Division can act or no relief to which petitioner is entitled as a matter of law, even viewing the pled allegations in a light most favorable to him, then dismissal of the petition is warranted.

Applying the statutory standard to the undisputed facts of this case, it is clear that West did not comply with the basic requirements of New Jersey’s election law framework because there was never a timely submittal of the circulator verifications. Although different laws govern the process of primary and general elections, both require petitions to be certified as follows:

Before any petition shall be filed as hereinafter provided, the person who circulates the petition, or a candidate who signs or circulates, or both signs and circulates, such a petition, shall make oath by affidavit before a duly qualified officer that the petition is made in good faith, that the affiant personally circulated the petition and saw all the signatures made thereto and verily believes that the signers are duly qualified voters. The person who circulates the petition shall not be required to be a registered voter, but shall be voter eligible, which means at least 18 years of age, a resident of this State, a citizen of the United States, and not otherwise disqualified under the New Jersey Constitution.

[N.J.S.A. 19:13-7 (emphasis added).]

In Smith v. Hayes, 59 N.J. 236, 237 (1971), our Supreme Court held that nominating petitions require the support of an affidavit to confirm verification of the

signatures. Nevertheless, the Court noted that the “legitimate statutory objective may be met by a single verification, and the statute will be construed to require such verification and no more.” Id. This conclusion is supported by Lawson v. Davis, 116 N.J. Super. 487 (App. Div. 1971), where despite false verifications attached to petitions, the Appellate Division found them to be valid due to the underlying purpose of the verification procedure, “assurance of the genuineness and qualifications of a sufficient number of signatures,” was satisfied. In the within matter, however, West failed to submit a single verification attached to the petition. In fact, we have no way of knowing who circulated the petitions. It cannot be said that the underlying purpose of the procedure has been met.

Yet, numerous cases have held that nominating petitions filed without proper, statutorily required, verifications may be amended. See Lawson, supra; In re Feldman, 116 N.J. Super 127 (App. Div. 1971), and In re Chirico, 87 N.J. Super 587 (App. Div. 1965). To that end, N.J.S.A. 19:13-13, expressly addresses the allowance for an amendment of a defective petition --

A candidate whose petition of nomination, or any affidavit or affidavits thereto, is defective may cause such petition, or the affidavit or affidavits thereto, to be amended in matters of substance or of form as may be necessary, but not to add signatures, or such amendment or amendments may be made by filing a new or substitute petition, or affidavit or affidavits, and the same when so amended shall be of the same effect as if originally filed in such amended form; but every amendment shall be made on or before the third day after the last day for the filing of petitions. This provision shall be liberally construed to protect the interest of candidates.

Notwithstanding the above provision, in the case of nomination petitions for electors for candidates for President and Vice President of the United States, which candidates have not been nominated at a convention of a political party as defined by this Title, every statutorily authorized amendment shall be made on or before the 93rd day before the general election.

[N.J.S.A. 19:13-13 (emphasis added).]

As of yesterday, August 3, 2020, there were only 92 days until the general election and West failed to submit an amendment to cure his petition's lack of a circulator verification. As stated above, his campaign acknowledged same and desired to have the matter deemed withdrawn and remanded to the agency. Therefore, his petition should be rejected because he has failed to timely submit any verifications as amendments within the required statutory period.

Furthermore, none of the electors listed by the candidate to be elected in the general election in order to vote for him during the Electoral College have executed the Pledge of Allegiance or Certification of Acceptance required by the Secretary of State Division of Elections and available on its website. N.J.S.A. 19:13-8.⁴

On the basis of the above-recited undisputed material facts viewed even in a light most favorable to the respondent, I **CONCLUDE** that respondent has failed to perfect his petition to have his electors placed on the general election ballot in the State of New Jersey to nominate him for the office of the President of the United States of America. Accordingly, I **CONCLUDE** that petitioner's motion to dismiss is granted.

ORDER

It is hereby **ORDERED** that the petition of Kanye West to have the names of electors loyal to him placed on the ballot as a candidate for the general election of President of the United States of America in the State of New Jersey is hereby dismissed for the reasons set forth above.

I hereby **FILE** this 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

⁴ See <https://www.state.nj.us/state/elections/candidate-information.shtml>; and <https://www.state.nj.us/state/elections/assets/pdf/candidate/2020-sect2-nj-general.pdf>

matter. If the Attorney General does not adopt, modify or reject this decision within forty-five (45) 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 **SECRETARY OF STATE, DIVISION OF ELECTIONS**, by facsimile transmission at (609) 777-1280 no later than 4:00 p.m. of the last day of the hearing or within two (2) hours of oral decision. A hard copy shall be mailed within twenty-four (24) hours of the facsimile transmission to the **DIVISION OF ELECTIONS, STATE OF NEW JERSEY, 225 West State Street, 3rd Floor, P.O. 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.

August 4, 2020

DATE
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GAIL M. COOKSON, ALJ

EXHIBITS

S-1 Petition Check-Off Sheet for 2020 General Election

