
In the Matter of Objection)	
)	
to the Nominating Petition of)	
)	FINDINGS OF FACT,
JOSEPH SENG, D.V.M.)	
)	CONCLUSIONS OF LAW,
Democratic Candidate for)	
)	DECISION and ORDER
United States Representative for)	
)	
the Second District of Iowa)	

On March 23, 2012, Paul McAndrew, Jr. filed an objection to the nomination petition of Joseph Seng, D.V.M., a Democratic candidate for the office of United States Representative in the Second District of Iowa. The objection raised specific challenges to petition signatures from petitions circulated in Scott, Wayne, and Wapello Counties. At the hearing to review these objections, Mr. McAndrew raised an additional objection to the petition from Monroe County. Mr. McAndrew alleged that this petition should be struck because the caption did not state the candidate's county of residence.

Pursuant to Iowa Code section 43.24, a hearing was conducted on March 27, 2012, before Secretary of State Matt Schultz, Chief Deputy Auditor of State Warren G. Jenkins,¹ and Attorney General Thomas J. Miller (collectively the "Panel"). Notice to the parties was provided as required by Code section 43.24(2). Paul McAndrew, Jr. appeared as objector, represented by counsel, Jeff Link. Joseph Seng appeared on his own behalf and was represented by counsel, Alexander Wonio. The panel reconvened for further deliberations on March 28, 2012. Mr. McAndrew and his counsel, Mr. Link, appeared by telephone for the objector and Mr. Wonio appeared by telephone for Dr. Seng.

¹ Sitting as designee for Auditor of State David Vaudt.

The record consists of official documents judicially noticed, including the nominating petition of Joseph Seng; the objection to the petition and exhibits filed by Paul McAndrew on March 23, 2012; supplemental exhibits² filed by Mr. McAndrew on March 27, 2012³; the notice of hearing; and the testimony of Paul McAndrew and Joseph Seng.

During the hearing conducted on March 27, 2012, Dr. Seng raised a counterclaim that the panel should reconsider the Secretary of State's determination to reject certain petition pages from Van Buren County and Davis County because one or more pages of those petitions failed to include the candidate's county of residence in the caption. In addition, Dr. Seng argued that specific signature lines that had been rejected initially by the Secretary of State because the lines listed a P.O. Box, rather than a street name and number, should be included in the total signatures received from Davis, Wayne, and Wapello Counties.

Findings of Fact

There are twenty-four counties in Iowa's Second Congressional District. Each candidate must collect a minimum number equal to one percent of the total vote his or her party's candidate received for governor in the previous general election and signatures equaling two percent of the total vote his or her party's candidate for governor in the previous general election from twelve of those counties.

Joseph Seng filed his nominating petition to be a Democratic candidate for Iowa's Second Congressional District on March 16, 2012. Upon review of the petition, the Secretary of State's office determined that Dr. Seng had submitted the minimum total number of signatures and the minimum number of signatures from each of Appanoose, Cedar, Clinton, Jasper,

² Dr. Seng objected to the introduction of certain exhibits, including exhibits 9 and 18, to the extent they purport to provide hearsay testimony.

³ The deadline to file a written challenge to a nominating petition was March 23, 2012. See Iowa Code § 43.24; *Candidate's Guide to the Primary Election*, Prepared by the Office of Iowa Secretary of State, p. 8, April 2011 Revision. However, the Panel heard all objections and accepted all supplemental information.

Keokuk, Louisa, Lucas, Mahaska, Monroe, Muscatine, Scott, Wapello, and Wayne Counties. However, the Secretary of State's office found that Dr. Seng did not meet the minimum requirements in Davis County and Van Buren County. In Davis County, all of the signatures submitted were disqualified because the caption on the two petition pages submitted did not include the congressional district number. Nineteen signatures from one of the two petition pages submitted for Van Buren County were struck because the petition caption did not include Dr. Seng's county of residence, which resulted in the total number of signatures from Van Buren County failing to meet the required two percent threshold.

Mr. McAndrew challenged specific signatures from Wayne, Scott, and Wapello Counties. In Wayne County, a Democratic candidate must collect sixteen signatures to meet the two percent threshold. Dr. Seng initially submitted eighteen signatures and two of those signatures were disallowed on review by the Secretary of State, leaving Dr. Seng with the minimum number of required signatures. Mr. McAndrew challenged six of the remaining sixteen signatures.

In Scott County, a Democratic candidate must collect 522 signatures to meet the two percent threshold. Dr. Seng initially submitted 542 signatures. Mr. McAndrew challenged twenty-eight of the Scott County signatures, including eight that contained an Illinois address and another six with addresses in Clinton, Cedar, or Johnson Counties.

In Wapello County, a Democratic candidate must submit 111 signatures to meet the two percent threshold. Dr. Seng initially submitted 121 signatures and five of those were disallowed on review by the Secretary of State, leaving Dr. Seng with 116 remaining signatures. Mr. McAndrew challenged twelve of the remaining signatures, including four with addresses in

Davis County or Keokuk County; and one from a convicted felon whose voting rights have not been restored.

Conclusions of Law

Nomination petitions for a primary election serve the purpose of establishing that a potential candidate has “sufficient support among the electorate to justify placing the candidate’s name upon the ballot.” *In the Matter of Objection to the Nominating Petition of Paul W. Johnson*, Findings of Fact, Conclusions of Law, Decision and Order, p. 9 (2004). Nomination petitions for the office of United States Representative from a district comprised of more than one county must be signed by eligible electors equaling “at least two percent of the voters of the candidate’s party, as shown by the last general election, in at each of at least one-half of the counties of the district, and in the aggregate not less than one percent of the total vote of the candidate’s party in such district, as shown by the last general election.” Iowa Code § 43.20(1)(c). Thus, a candidate for United States Representative in the Second District must obtain signatures equal to at least two percent of the voters of the candidate’s party in at least twelve counties.⁴

Iowa Code section 43.14(1) establishes the format for nominating petitions for a primary election providing, in relevant part, that all nominating petitions “shall be . . . in substantially the form prescribed by the state commissioner of elections.”

(1) . . . They shall include or provide spaces for the following information:

- a. A statement indentifying the signers of the petition as eligible electors of the appropriate county or legislative district and of the state.
- b. The name of the candidate nominated by the petition.
- c. . . . a statement of the name of the county where the candidate resides.

⁴ It is uncontested that Dr. Seng obtained more than enough signatures to meet the one percent threshold.

- d. The political party with which the candidate is a registered voter.
- e. The office sought by the candidate, including the district number, if any.
- f. The date of the primary election for which the candidate is nominated.

(2) Signatures on a petition page shall be counted only if the information required in subsection 1 is written or printed at the top of the page. . . . A signature line shall not be counted if the line lacks the signature of the eligible elector and the signer's address and city. A signature shall not be counted if the signer is obviously outside the boundaries of the city.

Iowa Code § 43.14.

Previously, panels of the Auditor of State, Attorney General, and Secretary of State have found that “statutes governing nomination procedures should be liberally construed to the benefit of the electors in order to provide every lawful opportunity for the electors to express their preference at the ballot box.” *Johnson*, p. 9. See also, *In the Matter of the Nominating Petition of Ralph Nader and Peter Camejo*, Findings of Fact, Conclusions of Law, Decision and Order, p. 12 (2004) (“It is our view that statutes governing nomination papers should be liberally construed.”). The controlling statute requires that nomination petitions be “substantially” in the form prescribed by the Secretary of State. “Substantial compliance” has been defined by the Iowa Supreme Court to mean “compliance in respect to essential matters necessary to assure the reasonable objectives of the statute.” *Gorman v. City Development Board*, 565 N.W.2d 607, 610 (Iowa 1997). In the election context, courts commonly apply the substantial compliance standard to assess the sufficiency of nominating petitions. *See Moreno v. Jones*, 139 P.3d 612 (Ariz. 2006); *State ex rel. Phillips v. Lorain City Bd. Of Elections*, 757 N.E.2d 319 (Ohio 2001).

Accordingly, if a petition page is in substantial compliance with the requirements of section 43.14, then the signatures on that page should be counted. Substantial compliance does

not mean a bare minimum of compliance, but nor does it rise to an exacting level of scrutiny or perfect compliance. Thus, in the *Johnson* matter, the panel determined that the omission of the county of residence of the candidate, standing alone, did not provide a sufficient basis to reject those pages. *See Johnson*, p. 12. The panel determined that since the county of residence did not control Mr. Johnson's eligibility for United States Representative, the omission of that information was not fatal to substantial compliance with the statute.

Similarly, although Dr. Seng submitted a petition page from Van Buren County that failed to state his county of residency, we do not believe that omission is sufficient to reject the signatures on that page. To be an eligible member of the United States House of Representatives, a candidate must be at least twenty-five years old, a citizen of the United States, and a resident of the state from which he or she is elected. *See United States Constitution Article 1, Sec. 2; Candidate's Guide to the Primary Election*, Prepared by the Office of Iowa Secretary of State, p. 2, April 2011 Revision. Dr. Seng's county of residency is not a requirement. The caption of the petition is intended to give eligible electors necessary information about the person for whom they are being asked to sign the petition. It appears on the record before the Panel that the remainder of the petition caption was completed, giving the potential signers substantially the information required by the statute. Accordingly, we conclude that the signature page with nineteen signatures from Van Buren County should be counted, and, with those signatures, Dr. Seng exceeds the two percent threshold.

In Davis County, two petition pages failed to state the district number for the Congressional seat Dr. Seng is seeking. Single omissions within the petition header have been allowed in previous challenges where the "discrepancy in the format . . . on petition pages occurred inadvertently, was not intended to deceive potential signers, and does not appear to

have caused voter confusion regarding the identity of the candidate.” *Johnson*, at 3. Minor discrepancies on petition pages “do not constitute a basis for rejection unless there is a showing of an intent on the part of the candidate to mislead or confuse potential signers or a showing that the discrepancy or variation actually misled or confused signatories as to the candidate’s identity.” *Johnson* at 9 (citing *Carson v. Lomenzo*, 18 N.Y.2d 263, 267 (N.Y. Ct. App. 1966)). While a candidate’s party affiliation is critical to his or her nomination for the primary election, *see Johnson* at 12, the omission of a signal piece of information such as the date of the primary does not invalidate the petition. *See Nader* at 12. Likewise, we find that, absent any showing of any intent to mislead by the candidate or confusion on the part of the signatories, the Davis County signature pages that lacked only the congressional district number substantially comply with the intent of section 43.14 and should be counted. However, we must address a second issue involving two signatures on the Davis County petition before we can determine whether Davis County meets the two percent threshold.

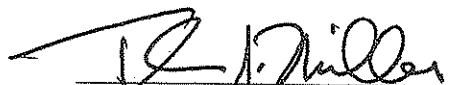
Dr. Seng raised a challenge to the decision by the Secretary of State to strike two signatures from Davis County that listed a P.O. Box rather than a street name and house number on the address line. A previous petition review panel addressed the acceptability of P.O. Box addresses. In that review, that panel found that the listing of a post office box “does not invalidate the signature, particularly when no issue of fact exists regarding whether the signer is an eligible elector in the county in which the signer claims to reside.” *In the Matter of the Objection to the Nominating Petition of Glen Winekauf*, Findings of Fact, Conclusions of Law, Decision and Order, p. 6, (March 29, 1994). This Panel agrees with the reasoning of this precedent. No other issue was raised regarding the signers’ status as residents of Davis County. Accordingly, the Panel finds that the two addresses previously struck from the Davis County

petition should be included in the total signatures Dr. Seng obtained in Davis County. With the inclusion of these two signatures, the Davis County petition contains a sufficient number of signatures to meet the two percent threshold.

Thus, the Panel concludes that Dr. Seng's petitions met the two percent threshold in the following twelve counties: Appanoose, Cedar, Clinton, Davis, Jasper, Keokuk, Louisa, Lucas, Mahaska, Monroe, Muscatine, and Van Buren. The Panel therefore finds it unnecessary to review Mr. McAndrew's specific objections to petition signatures from Scott, Wapello, and Wayne Counties. It is relevant to note that even if the Panel were to accept the Objector's complaints as sufficient to disqualify the petitions from Scott, Wapello, and Wayne Counties, Dr. Seng nevertheless reached the minimum two percent requirement in twelve counties independently of the challenged counties.

Decision and Order

The petition of Joseph Seng is valid and his name shall appear on the primary election ballot as a Democratic candidate for United States Representative from the second district of Iowa.



THOMAS J. MILLER
Attorney General



MATT SCHULTZ
Secretary of State



WARREN G. JENKINS
Chief Deputy Auditor of State

ISSUED this 6th day of April, 2012.