

**IN THE IOWA DISTRICT COURT FOR POLK COUNTY**

<b>JONATHAN NARCISSE,</b>  <b>Petitioner,</b>  <b>vs.</b>  <b>IOWA SECRETARY OF STATE,</b>  <b>Respondent.</b>	<b>CASE NO. CVCV 47338</b>  <b>RULING ON PETITION FOR JUDICIAL REVIEW</b>
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A contested hearing on the petitioner's petition for judicial review was held before the undersigned on an expedited basis on March 26, 2014 as previously scheduled and agreed to by the parties. Upon consideration of the arguments made at the hearing, as well as a review of the certified record previously transmitted and the filings previously made by the parties, the court makes the following ruling:

The petitioner challenges the decision of the respondent to reject his nomination petition submitted pursuant to chapter of the Iowa Code. The facts leading up to that rejection are essentially undisputed. The petitioner submitted his affidavit of candidacy for the office of governor, along with a number of nomination petitions bearing the signatures of a number of eligible electors in multiple counties throughout Iowa, to the respondent on March 15, 2014. The submission date was the deadline for the paperwork to be filed in order to be placed on the primary ballot in June. The petitioner was notified by letter dated March 15 that his petition had been rejected for failing to reach "the minimum signature threshold in 10 counties as required by Iowa [C]ode [§43.20(1)(a)]." A number of signatures were rejected because the pages on which they were located did not contain the name of the office being sought by the petitioner. The petitioner does not

contest the absence of the office being sought on the pages in question, or the calculations of the respondent in concluding that the signature threshold was not met (assuming the aforementioned signatures were correctly rejected); likewise, the respondent appears to concede that if the rejected signatures are counted the petitioner would qualify for placement on the primary ballot.

The requirements for a nomination petition are governed by Iowa Code §43.14.

That statute provides in pertinent part as follows:

1. ...All nomination petitions shall be eight and one-half by eleven inches in size and in substantially the form prescribed by the state commissioner of elections. They shall include or provide spaces for the following information:

....

e. The office sought by the candidate, including the district number, if any.

....

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....

Iowa Code §43.14 (2013). The petitioner argues that the rejected signatures should be counted as he was in substantial compliance with the requirements of the statute.

Ordinarily, statutory directions regarding elections are mandatory in nature and are strictly construed in proceedings that take place prior to the election; substantial compliance is sufficient only after the election has occurred and the sovereign will has been expressed. Neal v. Board of Supervisors, Clarke County, 243 Iowa 723, 729, 53 N.W.2d 147, 150 (1952). An exception to this rule is where the statute in question expressly provides for substantial compliance. See, e.g., State ex rel. Steele v. Morrissey, 103 Ohio St.3d 355, 360, 815 N.E.2d 1107, 1113 (2004). Section 43.14 expressly provides for substantial compliance (“in substantially the form...”); therefore, whether

the petitioner has successfully met the requirements of this statute should be measured by a substantial compliance standard. State ex rel. Phillips v. Lorain City Bd. of Elections, 93 Ohio St.3d 535, 539, 757 N.E.2d 319, 323 (2001).

Substantial compliance is said to be compliance in respect to essential matters necessary to assure the reasonable objectives of the statute. Sims v. NCI Holding Corp., 759 N.W.2d 333, 338 (Iowa 2009); Superior/Ideal, Inc. v. Bd. of Review of City of Oskaloosa, 419 N.W.2d 405, 407 (Iowa 1988) (citations omitted). As applied to statutes pertaining to nomination petitions, substantial compliance is determined by whether the omission of information could confuse or mislead electors signing the petition. Moreno v. Jones, 213 Ariz. 94, 102, 139 P.3d 612, 620 (2006); Toporek v. Beckwith, 32 A.D.3d 684, 685, 821 N.Y.S.2d 685, 687 (2006). The compliance with the statute must be apparent from the face of the petition; extrinsic evidence will not be allowed to cure a defect that is apparent from a reading of the petition in comparison to the statutory requirements:

Allowing candidates to compensate for petition defects with extrinsic evidence that such defects did not result in voter confusion would eviscerate the statutory requirement that all essential information be made available to the elector on the petition form. Furthermore, it would encourage an inquiry into whether each signer was actually confused or misled, a determination that could be made here only by ascertaining whether at least 525 qualified petition signers understood that Lodge was running for judge of Division Five when each signed Lodge's petition. This is precisely the type of inquiry that the statutory petition requirements are designed to avoid.

Kennedy v. Lodge, 230 Ariz. 134, 137, 281 P.3d 488, 491 (2012) (citation omitted). As a result, the court will not take into consideration any of the exhibits or testimony offered by the petitioner at the hearing in determining whether he was in substantial compliance.

In this case, the omission in question was the complete failure on the pages in question to specify the office sought by the petitioner. In order to pass muster, the remainder of the petition must convey information sufficient to allow this court to conclude that electors would automatically know that he or she was nominating a candidate for the office of governor. Id. at 136, 281 P.3d at 490; see also Liepshutz v. Palmateer, 112 A.D.2d 1101, 1101-2, 493 N.Y.S.2d 234, 236 (1985) (petition need only describe office being sought in a manner which is “sufficiently informative so as to preclude any reasonable probability” of confusion or deception). There is no such information found on the pages in question. Accordingly, this court concludes that the pages rejected by the respondent were not in substantial compliance with Iowa Code §43.14(1)(e).

A claim of substantial compliance is inconsistent with a complete lack of compliance, which is the case here. State ex rel. Allen v. Board of Elections of Lake County, 170 Ohio St.19, 20, 161 N.E.2d 896, 897 (1959) (“Substantial compliance does not contemplate complete omission”); see also Burnham v. City of West Des Moines, 568 N.W.2d 808, 811 (Iowa 1997) (complete failure does not constitute substantial compliance). The respondent imposed the appropriate sanction for a lack of compliance; namely, the exclusion of the signatures on the offending pages. Iowa Code §43.14(2) (2013). In doing so, the respondent properly applied the relevant facts to the applicable law, and correctly interpreted the statutory authority in question. Its decision will, therefore, be affirmed.

**IT IS THEREFORE ORDERED** that the decision of the respondent, Iowa Secretary of State, to reject the nomination petition of the petitioner, Jonathan Narcisse,

pursuant to Iowa Code §43.14 is affirmed. The costs of this proceeding are assessed to the petitioner.

Dated this 27<sup>th</sup> day of March, 2014.



State of Iowa Courts

**Type:** OTHER ORDER

**Case Number** CVCV047338  
**Case Title** JONATHAN NARCISSE V. MATT SCHULTZ

So Ordered

A handwritten signature in black ink, appearing to read "Michael D. Huppert", written over a horizontal line.

Michael D. Huppert, District Court Judge,  
Fifth Judicial District of Iowa