

IN THE SUPREME COURT OF THE STATE OF KANSAS

CHAD TAYLOR, )

Petitioner, )

vs. )

KRIS KOBACH, in his official capacity as )  
Secretary of State for the State of Kansas )

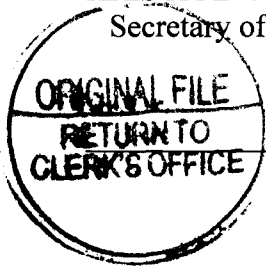
Respondent. )

Original Action No. 14-112431-S

FILED

SEP 10 2014

HEATHER L. SMITH  
CLERK OF APPELLATE COURTS



**RESPONDENT'S NOTICE REGARDING SCHEDULING**

Comes now the Respondent, by and through counsel Thomas E. Knutzen, and hereby provides notice to the Court regarding the following jurisdictional and scheduling matters:

1. The Respondent wishes to notify the Court that the Respondent does not believe that the Court has original jurisdiction over this matter for the following reasons:
  - a. K.S.A. 25-308(f) indicates that an injunction proceeding, not a mandamus proceeding, is appropriate in this case. The statute, which is found in the title dealing with the conduct of elections, states: "All mandamus proceedings to compel an officer to certify and place upon the ballot any name or names, and all injunction proceedings to restrain an officer from certifying and placing on the ballot any name or names, must be commenced not less than 45 days before the election." K.S.A. 25-308(f). This statute indicates that while a mandamus proceeding is appropriate to compel placing a name on the ballot, an injunction proceeding is appropriate to restrain an officer from placing a name on the ballot.

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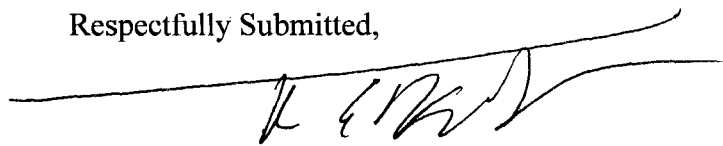
- b. A writ of mandamus is only appropriate to enforce purely ministerial acts. *State ex rel. Stephan v. O'Keefe*, 235 Kan. 1022, 1025 (1984). In enforcing K.S.A. 25-306b(b), Respondent must exercise judgment in every case and determine whether the requirements set by the legislature are satisfied. Thus, the decision contested by Petitioner is not purely ministerial.
  - c. The case may turn on disputed questions of fact. Specifically, the Petitioner alleges that an employee in the Office of the Secretary of State told the Petitioner that his letter would suffice to remove his name from the ballot. That employee disputes the Petitioner's allegation and will be filing an affidavit that describes a very different conversation. Therefore, fact-finding is required.
  - d. Relief is available in another court, specifically, a district court of the state of Kansas, and mandamus is only appropriately brought as an original action in this Court if no such relief is available, according to Rule 9.01(b).
2. In the event that this Court determines that it does have jurisdiction, such a determination would ideally need to be made within the next 24 hours, and the highly expedited schedule proposed below would need to followed.
  3. Due to the extraordinary circumstances and scheduling issues surrounding this case, the Respondent believes it prudent to inform the Court of the statutory deadline for sending ballots to members of the U.S. Armed Forces, found in federal law known as the Uniformed and Overseas Citizens Absentee Voting Act

(UOCAVA) at 52 U.S.C. § 20302(a)(8), and in Kansas law at K.S.A. 25-1220. Such ballots must be sent no later than 45 days before the election date. This year that deadline falls on September 20, 2014.

4. The Respondent further wishes to notify the Court that if the Court assumes mandamus jurisdiction, and if the Court rules in favor of Petitioner, then K.S.A. 25-3905 would *require* the Kansas Democratic Party State Committee to name a replacement nominee. Therefore, the Kansas Democratic Party State Committee would need to be joined in this action and enjoined to name a replacement by the date described in the below timeline.
5. In both his Petition for Writ of Mandamus and in his supporting Memorandum, Petitioner communicated to the Court the Respondent's public statements that the list of candidates for the general election to be held on November 4, 2014, must be finalized by September 18, 2014. Respondent hereby notifies the Court that is in fact his position.
6. In light of the following deadlines, Respondent proposes the following highly expedited schedule:
  - a. September 11 and 12, 2014: Fact-finding by a district court or commissioner designated by the Court pursuant to Rule 9.01(d).
  - b. September 15, 2014, at 5:00 p.m.: deadline for Respondent's Response to the Petition for Writ of Mandamus and supporting Memorandum.
  - c. September 16, 2014 in the afternoon: oral argument before the Court.
  - d. September 17, 2014: decision issued by the Court.

- e. September 18, 2014: if the Court rules in Petitioner's favor, Kansas Democratic Party State Committee to name a replacement nominee pursuant to order of this Court.
  - f. September 19, 2014: Preparation and printing of ballots to be transmitted pursuant to K.S.A. 25-1220, which requires county election officers in Kansas must transmit ballots to every person who is eligible to vote by federal services absentee ballot at least 45 days prior to the general election, which is September 20, 2014. This state law provision implements a federal statutory requirement found in UOCAVA.
  - g. September 20, 2014: UOCAVA ballots must be mailed by county election officials.
7. Counsel for Respondent has conferred with Counsel for Petitioner regarding this filing. Counsel for Petitioner indicated that Petitioner objected to this notice.

Respectfully Submitted,




Thomas E. Knutzen, #24471  
KANSAS SECRETARY OF STATE'S OFFICE  
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Topeka, KS 66612  
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Email: tom.knutzen@sos.ks.gov  
**Attorney for Respondent**

**CERTIFICATE OF SERVICE**

I, the undersigned, hereby certify that on the 10th day of September, 2014, a copy of the above and foregoing document was served on the Petitioner by electronic mail delivery and by depositing the same with the United States Postal Service, first class postage prepaid, addressed as follows:

Pedro L. Irigonegaray  
1535 SW 29th Street  
Topeka, KS 66611  
pli@plilaw.com  
*Attorney for Petitioner*

A handwritten signature in black ink, appearing to read 'T. E. Knutzen', written over a horizontal line.

Thomas E. Knutzen, #24471  
*Attorney for Respondent*