

FILED

SEP 09 2014

HEATHER L. SMITH
CLERK OF APPELLATE COURTS

IN THE SUPREME COURT 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. _____

MEMORANDUM IN SUPPORT OF PETITION FOR WRIT OF MANDAMUS AND EMERGENCY MOTION FOR TEMPORARY RESTRAINING ORDER

Petitioner Chad Taylor seeks to enforce his right to withdraw from the November 4, 2014 election for United States Senate. As set forth below, Petitioner submitted a timely and unequivocal letter of withdrawal that complied both with the governing statute and the instructions provided to him by the Director of Elections and Legislative Matters at the Kansas Secretary of State's Office. Nevertheless, Respondent, Kansas Secretary of State Kris Kobach, has refused to recognize and effectuate Petitioner's withdrawal from the race, in violation of both the governing statute and the Kansas Constitution.

Respondent has publicly announced that the names of the candidates for the November 2014 election must be finalized by September 18. Accordingly, this matter is of great urgency and Petitioner respectfully requests that the Court act on his request for a writ of mandamus at its earliest possible convenience. To protect the rights of Petitioner and the public while a final decision of this Court is pending, moreover, Petitioner respectfully requests that the Court issue a temporary restraining order barring Respondent from printing any ballots that identify Petitioner

as a candidate for United States Senate in the November 2014 election unless and until the Court orders otherwise.

STATEMENT OF FACTS

On September 3, 2014, Petitioner, who was then a candidate for United States Senate, called Brad Bryant, the Director of Elections and Legislative Matters at the Kansas Secretary of State's Office and the contact identified on the Secretary of State's website for elections and legislative matters, to inquire about the procedure and protocol for withdrawing from the Senate race. Affidavit of Petitioner ("Taylor Aff.") ¶¶ 3-4. Petitioner asked Bryant what the withdrawal had to say, and Petitioner, working with his campaign manager Brandon Naylor, followed Bryant's instructions to draft a letter of withdrawal. *Id.* ¶ 4; Affidavit of Brandon Naylor ("Naylor Aff.") ¶ 4.

Petitioner and Naylor took the unsigned letter of withdrawal (the "Taylor Letter") to the Secretary of State's Office and found Bryant in the hallway outside his office. Taylor Aff. ¶ 5; Naylor Aff. ¶ 6. Petitioner handed the Taylor Letter to Bryant and asked him if the letter contained all of the information necessary to remove Petitioner's name from the ballot. Bryant said "yes," confirming that the Taylor Letter was sufficient to withdraw Petitioner's name from the ballot. Taylor Aff. ¶ 6; *see also* Naylor Aff. ¶ 7.

Petitioner asked if he could sign and attest right there with Bryant. Bryant said he was not a notary but that there was one available. Petitioner and Naylor then followed Bryant to an office where Bryant introduced Petitioner and Naylor to a notary. After Petitioner presented the notary with photo identification and signed her notary book, Petitioner signed the Taylor Letter and the notary notarized it. Taylor Aff. ¶ 7; Naylor Aff. ¶ 8. Petitioner asked Bryant if that completed the withdrawal process, and Bryant confirmed that it did. Taylor Aff. ¶ 8. After

Bryant made copies of the Taylor Letter, Petitioner again held up the letter and showed it to Bryant and asked him if it removed Petitioner's name from the ballot. Bryant said, "Yes." Taylor Aff. ¶¶ 9-10; Naylor Aff. ¶ 10.

The Taylor Letter states, "I, Chadwick J. Taylor, Democratic nominee for the United States Senate race, do hereby withdraw my nomination for election effective immediately and request my name be withdrawn from the ballot, pursuant to KSA 25-306b(b)." Taylor Aff., Exh. A. This language was meant to incorporate and had the effect of incorporating the terms of the cited statutory provision. *Id.* ¶ 15. Indeed, it was Petitioner's clear intention to declare that he is incapable of fulfilling the duties of the office of United States Senator if elected; he will not serve if he is elected. *Id.* ¶ 16.

Petitioner and Naylor left the Secretary of State's Office on September 3 believing that there was no question that Petitioner's withdrawal had been effective. Taylor Aff. ¶ 11; Naylor Aff. ¶ 11. If Bryant or anyone else from the Secretary of State's Office had told Petitioner that other information was required to withdraw, Petitioner would have included that information in the Taylor Letter. Taylor Aff. ¶ 14. On the same day, Jason Perkey, Executive Director of the Kansas Democratic Party, confirmed with Bryan Caskey, an employee in the Election and Legislative Matters Division at the Kansas Secretary of State's Office, that Petitioner's withdrawal was effective. Affidavit of Jason Perkey ¶ 5. And, news articles indicate that Petitioner's name was removed that day from the Secretary of State's Office's online list of candidates. Taylor Aff., Exh. C; *see also* Dave Helling & Brad Cooper, *Kris Kobach: Chad Taylor Stays on Ballot for U.S. Senate in Kansas; Taylor to Challenge*, Kansas City Star, Sept. 4, 2014 ("Helling & Cooper"), available at <http://www.kansascity.com/news/government->

politics/article1512707.html (Secretary of State's Office "pulled Taylor's name from the list of candidates running in the state" but "[j]ust hours later, it was back").

The next day, September 4—after the deadline for withdrawal had passed—Petitioner and Naylor learned for the first time that the Secretary of State's Office had reversed its position and was refusing to remove Petitioner's name from the ballot. Taylor Aff. ¶ 12; Naylor Aff. ¶ 12. Later that day, a letter from Respondent (the "Kobach Letter") was faxed to counsel for Petitioner. Taylor Aff. ¶ 13. The Kobach Letter stated that Petitioner's name would appear on the ballot for United States Senate in the November 2014 general election. Taylor Aff., Exh. B. Respondent wrote that "after conferring with the office of the Kansas Attorney General, I have concluded that the written request filed by Mr. Taylor does not meet the requirements of K.S.A. 25-306b(b) because Mr. Taylor did not 'declare[] that [he is] incapable of fulfilling the duties of office if elected.'" *Id.*

Significantly, Respondent is a supporter of Senator Pat Roberts' candidacy for reelection to the United States Senate and a member of Roberts' honorary campaign committee. *See* Bryan Lowry, *Kobach: Democrat Chad Taylor's Name Will Remain on Ballot for U.S. Senate*, Wichita Eagle, Sept. 4, 2014 ("Lowry"), available at <http://www.kansas.com/news/politics-government/election/article1504835.html>. Indeed, Respondent previously recused himself from participating in the determination of whether Roberts should be disqualified from election in Kansas based on his residency. *See* John Montgomery, *Roberts Residency: Voters Need To Decide Whether Roberts' Residency Matters*, Hutchinson News, May 14, 2014 ("Montgomery"), available at http://www.hutchnews.com/opinion/editorials/roberts-residency/article_1c6ff474-a845-58f7-bd78-a644a8c59a07.html. But Respondent did not recuse himself from the decision whether to permit Petitioner to withdraw from the ballot in the same race. Instead, he appears personally to

have decided to overturn the conclusion of a nonpolitical member of his staff (discussed above) regarding the efficacy of Petitioner's withdrawal. *See, e.g.*, Taylor Aff., Exh. B (Kobach Letter) ("I have concluded . . ."). Moreover, while it appears that Republican officials submitted a "summary of argument" document to Respondent or his office, *see* Helling & Cooper, Respondent did not solicit from Petitioner any response or rebuttal as to why his withdrawal was effective under Kansas law.

Petitioner does not want to be a candidate for United States Senate in the 2014 election. He does not want the ballot for that election to associate him with the Senate race or with the Democratic Party for purposes of that race, because that association is likely to cause confusion among Kansas voters, who have a right to cast their votes free from misleading ballot information that would lead any reasonable person to believe that Petitioner is still in the race. Taylor Aff. ¶ 19.

ARGUMENT

I. MANDAMUS IS APPROPRIATE IN THIS CASE.

This is an appropriate case for a mandamus action. K.S.A. § 60-801 defines mandamus as "a proceeding to compel some inferior court, tribunal, board, or some corporation or person to perform a specified duty, which duty results from the office, trust, or official station of the party to whom the order is directed, or from operation of law." This Court has original jurisdiction for proceedings in mandamus, *see* Kan. Const. Art. 3, § 3, but relief in mandamus is discretionary. *State v. Becker*, 264 Kan. 804, 807 (1998).

This Court has explained that "[m]andamus is an appropriate proceeding for the purpose of compelling a public officer to perform a clearly defined duty, one imposed by law and not involving the exercise of discretion." *Becker*, 264 Kan. at 807. Mandamus "is not a common

means of obtaining redress, but is available only in rare cases, and as a last resort, for causes which are really extraordinary.” *Id.* “This [C]ourt will entertain a mandamus action if the issue is a matter of great public interest and concern.” *Id.*

In the case at hand, Petitioner seeks to compel Respondent, a public officer, to perform a clearly defined duty imposed by K.S.A. § 25-306b(b) and the Kansas Constitution: removal of Petitioner’s name from the ballot for the November 2014 United States Senate election. This case also presents a matter of great public interest and concern, as it will determine the content of the ballot in the upcoming election for United States Senate; it will affect Petitioner’s rights under the Kansas Constitution; and it implicates the public interest in avoiding voter confusion and accurately ascertaining the will of the people in the upcoming Senate election. Moreover, because Respondent has publicly stated, with respect to the November 2014 election, that “everything has to be set by September 18,” Alexandra Jaffe, *Upheaval in Kansas Senate as Election Official Rules Dem Can’t Withdraw*, The Hill, Sept. 4, 2014 (“Jaffe”), available at <http://thehill.com/blogs/ballot-box/senate-races/216699-kansas-secretary-of-state-rules-democrat-to-stay-on-ballot-in#ixzz3COxF4pZl>, this case must be decided on an emergency basis.

Given the necessity of a ruling in advance of September 18, and the near-certainty that it will ultimately fall to this Court to decide the issue even if this action were first filed with a lower court, an original mandamus action in this Court is both necessary and appropriate to ensure that this Court has adequate time to consider the issues before it, that this case is conclusively resolved prior to September 18, and that justice is not denied. In light of these reasons, adequate relief is not available in the district court. *See* Kan. Sup. Ct. Rule 9.01(b).

II. RESPONDENT IS REQUIRED TO EFFECTUATE PETITIONER'S WITHDRAWAL FROM THE BALLOT UNDER THE RELEVANT KANSAS STATUTE AND THE KANSAS CONSTITUTION.

A. Petitioner's Withdrawal Complied with the Relevant Statute.

Petitioner complied with the statute governing withdrawal from the ballot. State law provides that “[a]ny person who has been nominated . . . for any national . . . office who declares that they are incapable of fulfilling the duties of office if elected may cause such person’s name to be withdrawn from nomination by a request in writing, signed by the person and acknowledged before an officer qualified to take acknowledgments of deeds.” K.S.A. § 25-306b(b). In the case of national offices, this request “shall be filed with the secretary of state” and, subject to an exception not relevant here, “shall be filed within seven days . . . after the meeting of the state board of canvassers for the final canvass of primary election.” *Id.* The statute further provides that “[n]o name withdrawn as provided in this section shall be printed on the ballots for such office for the general election.” *Id.* Thus, the plain language of the statute does not require a candidate to submit to the Secretary of State a reason for withdrawal or anything other than a notarized request in writing that the candidate’s name be withdrawn.

Further, even if the Court were to read the statute to require that the writing include that the candidate is incapable of fulfilling the duties of office if elected, Petitioner plainly met that requirement when he submitted a notarized letter to the Secretary of State’s Office on September 3, 2014 (one week after the board of canvassers met to certify the 2014 primary results), that stated, “I . . . do hereby withdraw my nomination for election effective immediately and request my name be withdrawn from the ballot, *pursuant to* KSA 25-306b(b).” Taylor Aff., Exh. A (emphasis added). The meaning of the phrase “*pursuant to* KSA 25-306b(b)” could not be clearer: Petitioner was withdrawing his nomination for the reason set forth in (and thus was

incorporating by reference the language of) K.S.A. § 25-306b(b)—namely, that he is incapable of fulfilling the duties of office if elected. *See* Taylor Aff. ¶¶ 15-16. Thus, the Taylor Letter effectively withdrew Petitioner’s name from the ballot for the United States Senate election, and his name accordingly may not “be printed on the ballots for such office for the general election.” K.S.A. § 25-306b(b).

Under state law, moreover, “[a] substantial compliance with the law regulating the conduct of elections is sufficient.” *Lambeth v. Levens*, 237 Kan. 614, 617 (1985).¹ “[M]ere irregularities should not be permitted to frustrate the will of the voters, nor should the carelessness of election officials.” *Id.* Given that there can be no question that the Taylor Letter at the very least substantially complied with the statutory requirements for withdrawal, *Lambeth* confirms that Respondent is required to omit Petitioner’s name from the ballot for United States Senate in the upcoming election. Indeed, the *Lambeth* court wrote that “[a]n election irregularity will not invalidate an election *unless it is shown to have frustrated or to have tended to prevent the free expression of the electors’ intent, or to have otherwise misled them.*” *Id.* (emphasis added). And that is precisely what is likely to result here, unless Petitioner—who has withdrawn his candidacy and will not serve if elected, Taylor Aff. ¶ 16—is permitted to withdraw his name from the ballot for United States Senate. If Petitioner’s name remains on the ballot, despite his unequivocal and timely withdrawal, there will undoubtedly be voters who will be misled and cast their ballots for a candidate who is no longer in the race and will not serve if elected, preventing the free expression of electors’ intent.

¹ While *Lambeth* was addressing the situation “when the election has been held and the will of the electors has been manifested thereby,” 237 Kan. at 617, this Court subsequently wrote that “[i]n *Lambeth* and more recently in *Cure*, we discussed and explained the rules that apply to *all* election cases.” *Thomason v. Stout*, 267 Kan. 234, 238 (1999) (emphasis added).

The constitutional avoidance doctrine also requires the finding that Petitioner effectively withdrew his candidacy through the Taylor Letter. As set forth below, to the extent that K.S.A. § 25-306b(b) prevents an individual from refusing to be a candidate for office or refusing to associate himself with the election for which he is on the ballot and the party that he represents in that election, it burdens that individual's rights under Section 11 of the Kansas Bill of Rights and must be justified by a substantial interest. And given that ballots containing Petitioner's name as a candidate for United States Senate had not yet been printed at the time of Petitioner's withdrawal, it is not at all clear what interest the State had in rejecting Petitioner's withdrawal. Thus, to avoid the serious constitutional issue that Respondent's interpretation of K.S.A. § 25-306b(b) would present, this Court should interpret the statute in a manner that shows that Respondent was required to recognize and effectuate Petitioner's withdrawal from the ballot upon receipt of his withdrawal letter. *See Boyd v. Barton Transfer & Storage, Inc.*, 2 Kan. App. 2d 425, 426 (1978) ("In determining the constitutionality of a statute, the reviewing court should first ascertain whether a construction of the statute is fairly possible by which the constitutional question may be avoided."); *cf. Cline v. Meis*, 21 Kan. App. 2d 622, 905 P.2d 1072, 1075-76 (1995) ("When the power of recall is a fundamental right, statutes governing the exercise of the power are to be liberally construed in favor of the ability to exercise it, and any limitations on that power must be strictly construed.").

Notably, Respondent's finding that Petitioner should not be permitted to withdraw from the ballot is not entitled to any deference for a number of reasons.² *First*, for the reasons set forth above, the statute is not ambiguous as applied to the Taylor Letter. *Second*, Respondent's

² The act that generally applies to agencies and proceedings for review and enforcement of agency actions does not apply to decisions under the elections laws contained in chapter 25 of the Kansas Statutes Annotated. *See* K.S.A. § 77-603(c)(4).

explanation for his decision—that the undisputed contents of the Taylor Letter did not meet the statutory requirements of K.S.A. § 25-306b(b) and that this conclusion was reached “after conferring with the office of the Kansas Attorney General,” *see* Taylor Aff., Exh. B (Kobach Letter)—demonstrates that his decision did not involve the exercise of discretionary judgment by the agency but was instead a purely legal determination. *See Cline*, 905 P.2d at 1076-77 (“[I]f the court finds the administrative interpretation is erroneous as a matter of law, the court is not bound by the administrative interpretation and has a duty to take corrective steps. The final construction of a statute or the constitution rests with the courts.”) (internal citation omitted); *see, e.g., Bd. of Cnty. Comm’rs v. Smith*, 18 Kan. App. 2d 662, 668, (1993) (stating, in case in which agency had interpreted relevant language, that “[b]ecause the resolution of this issue is a question of law, this court’s scope of review is unlimited”). *Third*, the agency changed its position within a day, without even admitting that it had done so, much less explaining the basis for the change. *See W. Res., Inc. v. State Corp. Comm’n of State of Kan.*, 30 Kan. App. 2d 348, 360 (2002) (where agency “rules in a manner inconsistent with a previous decision, the law requires the commission to explain its change in position”). *Fourth*, the Kobach Letter was not a formal agency action, such as a rulemaking or formal advisory opinion, but instead was an informal interpretation that appears not to have followed the usual agency process. *Fifth*, Respondent is a member of the honorary campaign committee for Senator Pat Roberts’s reelection campaign (the race in which Petitioner had been also been a candidate). *See* Lowry. He plainly would have had to recuse himself from this matter if he were a judge—and, indeed, *did* recuse himself from participating in the decision whether to disqualify Roberts based on his residency. *See* Montgomery. For all of these reasons, Respondent’s finding that Petitioner should be on the

ballot should be reviewed *de novo*. And as set forth above and below, Respondent's decision cannot survive such review.

B. Respondent's Refusal to Effectuate Petitioner's Withdrawal from the Ballot Violates Section 18 of the Kansas Bill of Rights.

Even if Kansas law did in fact authorize the Secretary of State to reject a letter with the content of the Taylor Letter, application of the statute under the circumstances here would violate Section 18 of the Kansas Bill of Rights, which provides that "[a]ll persons, for injuries suffered in person, reputation or property, shall have remedy by due course of law, and justice administered without delay." Kansas courts "have traditionally construed the protections of Section 18 to be the same as those guaranteed by the Fourteenth Amendment to the United States Constitution," *Gannon v. State*, 298 Kan. 1107, 1134 (2014),³ and this Court has explained that "due process emphasizes fairness between the state and the individual dealing with the state," *Peterson v. Garvey Elevators, Inc.*, 252 Kan. 976, Syl. ¶ 1 (1993). Here, as explained above, Petitioner relied upon the direction and assurances of Respondent's agent that he had effectively withdrawn his candidacy for the United States Senate, only to be told otherwise by Respondent after the deadline for withdrawal had passed. This Court should find that such patent unfairness does not comport with Section 18 of the Kansas Constitution. See *Hunter v. Hamilton Cnty. Bd. of Elections*, 850 F. Supp. 2d 795, 847 (S.D. Ohio 2012) ("Ohio's . . . voting system that delegates to poll workers the duty to ensure that voters are directed to the correct precinct but which provides that provisional ballots cast in the wrong precinct shall not be counted under any circumstance, even where the ballot is miscast due to poll-worker error, is fundamentally unfair

³ To be clear, all of the constitutional claims that Petitioner is raising are claims under the Kansas Constitution. The cases cited in this memorandum that were decided under the Federal Constitution are being cited because they aid in interpreting the Kansas Constitution, the relevant provisions of which this Court has interpreted consistently with the Federal Constitution.

and abrogates the Fourteenth Amendment's guarantee of due process of law."); *see also Hunter v. Hamilton Cnty. Bd. of Elections*, 635 F.3d 219, 243-44 (6th Cir. 2011) (finding a due process violation under the Ohio regime likely, but remanding to the district court for consideration in the first instance).

C. Respondent's Refusal to Effectuate Petitioner's Withdrawal from the Ballot Violates Section 11 of the Kansas Bill of Rights.

Respondent's refusal to recognize and effectuate Petitioner's withdrawal from the ballot also violates Petitioner's rights under Section 11 of the Kansas Bill of Rights. That section provides that "all persons may freely speak, write or publish their sentiments on all subjects, being responsible for the abuse of such rights." Because Section 11 and the First Amendment to the United States Constitution "are generally considered coextensive," *State v. Russell*, 227 Kan. 897, 899 (1980); *Erickson v. City of Topeka*, 209 F. Supp. 2d 1131, 1137 (D. Kan. 2002), decisions under the latter provision are highly instructive in determining whether the former provision has been violated.

Courts have held that ballot-access restrictions burden First Amendment rights. *Am. Party of Tex. v. White*, 415 U.S. 767, 788 (1974) (finding "unexceptionable" the principle that unduly burdensome conditions on two individuals' opportunity to appear on the general election ballot is forbidden by the First and Fourteenth Amendments); *see also Hagelin for President Comm. of Kan. v. Graves*, 25 F.3d 956, 959 (10th Cir. 1994) (ballot-access restrictions burden "the right of individuals to associate to advance their political beliefs, and the right of qualified voters to cast effective votes"). Moreover, courts have made clear that "the choice to speak includes within it the choice of what not to say." *Pac. Gas & Elec. Co. v. Pub. Utilities Comm'n of Cal.*, 475 U.S. 1, 16 (1986); *Wooley v. Maynard*, 430 U.S. 705, 714 (1977) ("the right of freedom of thought protected by the First Amendment against state action includes both the right

to speak freely and the right to refrain from speaking at all”); *W. Va. State Bd. of Educ. v. Barnette*, 319 U.S. 624, 642 (1943) (“We think the action of the local authorities in compelling the flag salute and pledge transcends constitutional limitations on their power and invades the sphere of intellect and spirit which it is the purpose of the First Amendment to our Constitution to reserve from all official control.”). Thus, it follows, from the fact that there is a right under the First Amendment (and independently under Kansas Bill of Rights Section 11) to access to the ballot, that there is a right under those provisions not to be on the ballot. Of note, other courts have found, without reference to the First Amendment, that candidates for public office have a right to withdraw their candidacies. *Introcaso v. Burke*, 3 N.J. Super. 276, 278–79 (Law Div. 1949) (Brennan, J.) (“The right of a candidate for public office to resign is an inherent right of the individual.”), *quoted in Regalado v. Curling*, 430 N.J. Super. 342, 346 (App. Div. 2013); *Hanczar v. Tarpey*, No. 87 C 9421, 1987 WL 31422, at *1 (N.D. Ill. Dec. 30, 1987) (“[P]laintiff took the deliberate act of withdrawing his own candidacy because he supported another candidate. This he had a right to do. . . . A qualified person has a right to run for office and a right not to run and to support someone else.”).

Further, it is clear that the First Amendment (and Section 11) permit individuals to associate and to choose not to associate. *See Eu v. San Francisco Cnty. Democratic Cent. Comm.*, 489 U.S. 214, 224 (1989) (“Freedom of association means not only that an individual voter has the right to associate with the political party of her choice, but also that a political party has a right to identify the people who constitute the association.”) (internal quotation marks and citation omitted); *Cal. Democratic Party v. Jones*, 530 U.S. 567, 581-82 (2000) (forced association through opening up of candidate-selection process to persons wholly unaffiliated with parties has the likely outcome of changing parties’ message; “[w]e can think of no heavier

burden on a political party's associational freedom"); *NAACP v. State of Ala. ex rel. Patterson*, 357 U.S. 449, 460 (1958) ("It is beyond debate that freedom to engage in association for the advancement of beliefs and ideas is an inseparable aspect of the 'liberty' assured by the Due Process Clause of the Fourteenth Amendment, which embraces freedom of speech.").

Here, Petitioner explains in his affidavit that by keeping his name on the ballot, Respondent is conscripting him to run for office; that he does not want the ballot for the 2014 election to associate him with the United States Senate race; and that he does not want to be associated with the Democratic Party for purposes of that race, because he believes the association will cause confusion among voters. Taylor Aff. ¶ 19. Thus, Petitioner's rights under Section 11 of the Bill of rights are being burdened because he is being forced to speak (by remaining a candidate on the ballot) and to associate when he does not want to do so.

To be sure, Kansas has a legitimate interest in regulating access to and withdrawal from the ballot that is in tension with Petitioner's right under Section 11 of the Kansas Bill of Rights not to be a candidate for United States Senate. "When conflict occurs between the regulatory powers of government . . . and the individual liberty to speak and publish," this Court has explained, "a reconciliation must be effected requiring a careful weighing and balancing of the respective interests." *State v. Russell*, 227 Kan. 897, 901 (1980). "[M]easures of regulation are not prohibited where justified by a valid governmental interest within the administration of justice, and when the measures are not intended to control the content of speech but only incidentally limit its unfettered exercise." *Id.*

But the burden on Petitioner's rights is not justified by Kansas's interests in keeping him on the ballot. While Kansas has a legitimate interest in setting a deadline by which a candidate must withdraw, as it must send its ballots to the printer at a certain point in time, the State has no

interest in the content of a timely letter of withdrawal beyond its interest in ensuring that the candidate has in fact withdrawn. Indeed, including on the ballot the name of an individual who has withdrawn his candidacy and will not serve if elected undermines the State's interests in avoiding voter confusion and ensuring that voters cast meaningful votes. *See Regalado*, 430 N.J. Super. at 346 (“[T]he greater harm results from plaintiff’s name remaining on the ballot, potentially resulting in a voter casting a vote for a candidate who is no longer pursuing the office, thereby depriving that voter of the opportunity to cast a meaningful vote for another viable candidate. Such a result is inimical to the public interest, and inconsistent with the overriding public policy that election laws are to be liberally construed so as not to disenfranchise voters.”) (internal quotation marks, brackets, and citations omitted); *Bordwell v. Williams*, 173 Cal. 283, 287 (1916) (“This interpretation of the statute is in accord with the fundamental purpose of all election laws, i. e., to enable the voters to exercise a free, orderly, and intelligent choice. We can conceive of no good reason why a ballot should contain the name of a person who is not in fact a candidate for nomination, even though he may once have taken the steps which entitle him to become such candidate. The presence of his name (like that of a candidate who has died) could operate only to deprive uninformed electors of their votes, to the injury of one or more of the actual candidates, and to the possible perversion of the true popular will.”). Thus, Kansas’s requirement that a candidate declare himself incapable of fulfilling the duties of office in order to withdraw his candidacy cannot survive even mild scrutiny and must be struck down under Section 11 of the Kansas Bill of Rights. As a result, Petitioner’s purported failure to make such a declaration cannot provide a basis for refusing to recognize and effectuate his withdrawal from the ballot.

D. Respondent's Refusal to Effectuate Petitioner's Withdrawal from the Ballot Violates Section 2 of the Kansas Bill of Rights.

Respondent was required to recognize and effectuate Petitioner's withdrawal from the ballot pursuant to Section 2 of the Kansas Bill of Rights as well. Section 2 states, "All political power is inherent in the people, and all free governments are founded on their authority, and are instituted for their equal protection and benefit. No special privileges or immunities shall ever be granted by the legislature, which may not be altered, revoked or repealed by the same body; and this power shall be exercised by no other tribunal or agency." This Court has explained that "[w]here a constitutional equal protection argument is asserted, the Kansas Constitution's counterpart of the Fourteenth Amendment is Sections 1 and 2 of our Bill of Rights." *Stephens v. Snyder Clinic Ass'n*, 230 Kan. 115, 127 (1981).⁴ "These two provisions are given much the same effect as the clauses of the Fourteenth Amendment relating to due process and equal protection of the law." *State ex rel. Tomasic v. Kansas City*, 230 Kan. 404, 426 (1981). Because this case involves political rights, Section 2 is the relevant provision of the Kansas Bill of Rights. *See Stephens*, 230 Kan. at 128 (stating that "Section 2 of the Kansas Bill of Rights has been construed as referring solely to political privileges and not to those relating to property rights," and accordingly holding that Section 1 applied to "a claim of denial of equal protection . . . involving personal or property rights of an individual").

Two federal courts of appeals have held that "in regulating elections and in controlling ballot content and ballot access," states must exercise their "power in a reasonable, nondiscriminatory, *politically neutral* fashion." *Tex. Democratic Party v. Benkiser*, 459 F.3d 582, 590 (5th Cir. 2006) (emphasis added) (quoting *Miller v. Moore*, 169 F.3d 1119, 1125 (8th

⁴ Section 1 of the Bill of Rights provides that "[a]ll men are possessed of equal and inalienable natural rights, among which are life, liberty, and the pursuit of happiness."

Cir.1999)). Relying on these decisions, the Middle District of Tennessee recently held that the Petitioners in that case (the Green Party of Tennessee and the Constitution Party of Tennessee) were “entitled to all the rights and privileges enjoyed by ‘statewide political parties,’ and any denial of these rights and privileges violates Equal Protection principles.” *Green Party of Tenn. v. Hargett*, No. 3:13-CV-1128, 2014 WL 1007291, at *14 (M.D. Tenn. Mar. 14, 2014). It follows that Section 2 of the Kansas Bill of Rights requires the State to exercise its power with respect to ballot access in a politically neutral fashion.

Respondent has not done so here. As noted above, Respondent, a supporter of Pat Roberts’ candidacy for reelection to the United States Senate and member of Roberts’ honorary campaign committee, found it necessary (appropriately) to recuse himself from the decision whether Roberts was eligible for election in Kansas. *See* Lowry; Montgomery. Yet Respondent not only failed to recuse himself from the decision whether to keep Petitioner on the same ballot as Roberts and two other candidates, *see Tex. Democratic Party*, 459 F.3d at 590-91 (events “impl[ied], at the very least, a lack of neutrality” where decisionmaker had personally revised a previous draft of candidate’s letter), but appears personally to have decided to overturn the conclusion of a nonpolitical member of his staff with respect to the efficacy of Petitioner’s withdrawal, *see, e.g., Taylor Aff., Exh. B (Kobach Letter)* (“I have concluded . . .”)—a reversal that will clearly benefit Roberts’ campaign by causing at least some anti-Roberts votes to be cast for a candidate no longer in the race. Respondent also did not notify Petitioner of this revised position until after the deadline for withdrawal had passed. Moreover, while it appears that Republican officials submitted a “summary of argument” document to Respondent or his office, *see Helling & Cooper*, Respondent did not solicit from Petitioner any response or rebuttal as to why his withdrawal was effective under Kansas law. And, the Kobach Letter does not

address any of the arguments discussed above for finding the withdrawal effective, thus confirming that Respondent was not fairly assessing the question at hand but instead simply attempting with his letter to justify his predetermined decision. Taken together, these facts demonstrate that Respondent's refusal to recognize and effectuate Petitioner's withdrawal from the ballot was not made in a politically neutral fashion and thus violated Section 2 of the Kansas Bill of Rights. For this reason, as well as those set forth above, the Court should order Respondent to recognize and effectuate Petitioner's withdrawal, and prohibit Respondent from including Petitioner's name on the ballot for United States Senate for the November 2014 general election.

III. THIS COURT SHOULD ISSUE A TEMPORARY RESTRAINING ORDER TO PRESERVE THE STATUS QUO PENDING RESOLUTION OF THIS CASE.

In order to prevent any attempt to alter the equities in this case through the premature printing of the ballots for the 2014 general election, Petitioner also respectfully requests that the Court issue a temporary restraining order barring Respondent from printing, submitting to be printed, or authorizing the printing of any ballots that identify Petitioner as a candidate for United States Senate in the November 2014 election unless and until the Court orders otherwise. "An injunction is an equitable remedy and its grant or denial in each case is governed by principles of equity." *Wichita Wire, Inc. v. Lenox*, 11 Kan. App. 2d 459, 461 (1986); accord *Unified Sch. Dist. No. 503 v. McKinney*, 236 Kan. 224, 226 (1984). "The Code of Civil Procedure, Chapter 60, Article 9, provides for the issuance by a court of an injunction order to do or refrain from doing a particular act. The order may be a final judgment in an action, or it may be allowed as a provisional remedy." *McKinney*, 236 Kan. at 227; accord K.S.A. § 60-901.

This Court has explained that "K.S.A. 60-903 provides for the issuance of a restraining order as a provisional remedy to a party entitled to relief, restraining the commission or

continuance of some act.” *McKinney*, 236 Kan. at 227; *see also* K.S.A. § 60-903 (subject to certain exceptions, “the court may issue a temporary restraining order without notice or bond”). The purpose of a restraining order “is to restrain a defendant for a very brief period, pending a hearing on the application for a temporary injunction.” *McKinney*, 236 Kan. at 227. A restraining order can go no further than to preserve the status quo until the hearing is held for the temporary injunction, the status quo being the last actual, peaceable, noncontested position of the parties which preceded the pending controversy.” *Id.*

To obtain injunctive relief, “the movant must establish a prima facie case showing a reasonable probability that he will ultimately be entitled to the relief sought” and that “irreparable injury will result if the injunction is not granted. There must be a probable right and a probable danger.” *Wichita Wire*, 11 Kan. App. 2d at 462; *accord* K.S.A. § 60-902. The *Wichita Wire* court explained that “[t]his test has often been expanded into four prerequisites” that must be established by a “party seeking a temporary or preliminary injunction”: “(1) substantial likelihood that the movant will eventually prevail on the merits; (2) a showing that the movant will suffer irreparable injury unless the injunction issues; (3) proof that the threatened injury to the movant outweighs whatever damage the proposed injunction may cause the opposing parties; and (4) a showing that the injunction, if issued, would not be adverse to the public interest.” *Id.*; *see also Bonner Springs Unified Sch. Dist. No. 204 v. Blue Valley Unified Sch. Dist. No. 229*, 32 Kan. App. 2d 1104, 1113 (2004) (referring to “the four-factor test for temporary injunctive relief adopted by this court in” *Wichita Wire*).

In this case, each of these factors strongly favors the issuance of an order restraining Respondent from printing ballots for the 2014 general election that identify Petitioner as a candidate for United States Senate. For the reasons set forth in the preceding section, Petitioner

is highly likely to succeed on the merits. In addition, Petitioner will be irreparably harmed if ballots are printed that identify him as a candidate for United States Senate. Once such ballots are printed, Respondent is likely to argue that the equities in this case have changed, because an order requiring Respondent not to include Petitioner's name on the ballot would at that point require the State to expend money on the printing of a second set of ballots. This, in turn, could put Petitioner's rights at greater risk. *See generally Elrod v. Burns*, 427 U.S. 347, 373 (1976) (plurality opinion) ("The loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury.").

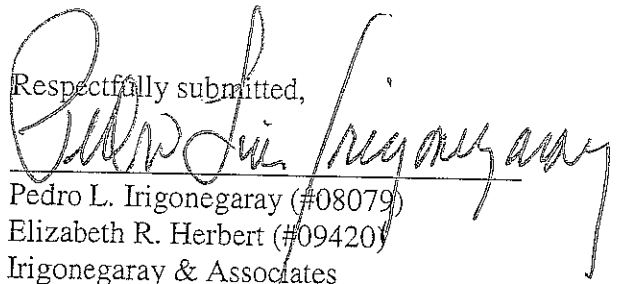
Further, the balance of the harms and the public interest weigh in favor of the issuance of a temporary restraining order. Respondent has publicly stated that because military ballots need to be sent out 45 days before the election, "everything has to be set by September 18." *See Jaffe*. Thus, so long as this case is resolved on a highly expedited basis, an order restraining the printing of the ballots pending resolution of this case will not harm Respondent or the public interest by delaying the upcoming election. Moreover, the requested temporary restraining order would not harm Respondent or the public interest because Respondent and the public have no legitimate interest in printing a ballot with Petitioner's name on it. In particular, neither Respondent nor the public has a legitimate interest in the unlawful or unconstitutional enforcement of a law. *See, e.g., Newsom ex rel. Newsom v. Albemarle Cnty. Sch. Bd.*, 354 F.3d 249, 260 (4th Cir. 2003) ("Jouett is in no way harmed by issuance of a preliminary injunction which prevents it from enforcing a regulation, which, on this record, is likely to be found unconstitutional."). Thus, to the extent that Petitioner is likely to succeed on the merits, Respondent has no interest in, and the public interest will not be served by, printing ballots that identify Petitioner as a candidate for United States Senate.

Given the lack of harm to Respondent, and the significant potential harm faced by Petitioner, the balance of the harms weighs in favor of the issuance of the temporary restraining order. Further, in contrast to the lack of public interest in printing the ballots, the public has a significant interest in not having the ballots printed sooner than necessary to ensure that unnecessary cost is not incurred through the printing of a second set of ballots. In addition, "it is always in the public interest to prevent the violation of a party's constitutional rights." *Awad v. Ziriox*, 670 F.3d 1111, 1132 (10th Cir. 2012). And, the public interest favors a ballot that does not include Petitioner as a candidate for United States Senate in order to avoid voter confusion and to ensure that voters have the opportunity to cast a meaningful ballot for a viable candidate. *See Regalado*, 430 N.J. Super. at 346; *Bordwell*, 173 Cal. at 287. All four factors therefore favor the issuance of a temporary restraining order, and, pending resolution of this case, the Court should bar Respondent from printing ballots for the November 2014 general election that identify Petitioner as a candidate for United States Senate.

CONCLUSION

For the reasons set forth above, Petitioner respectfully requests that the Court issue a writ of mandamus directing Respondent to recognize and effectuate Petitioner's withdrawal from, and prohibiting Respondent from including Petitioner's name on, the ballot for United States Senate for the November 2014 general election; pending resolution of that request, issue a temporary restraining order barring Respondent from printing, submitting to be printed, or authorizing the printing of any ballots that identify Petitioner as a candidate for United States Senate in the November 2014 general election unless and until the Court orders otherwise; and grant such further relief as the Court deems just and proper due to Respondent's failure to perform his specific duties of law.

Respectfully submitted,



Pedro L. Irigonegaray (#08079)

Elizabeth R. Herbert (#09420)

Irigonegaray & Associates

1535 S.W. 29th Street

Topeka, KS 66611

(785) 267-6115

ATTORNEYS FOR CHAD TAYLOR

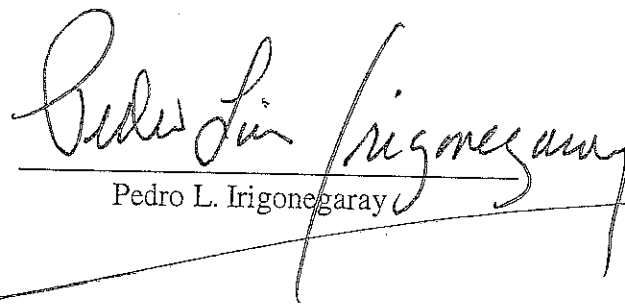
CERTIFICATE OF SERVICE

The undersigned person hereby certifies that a true and correct copy of the above and foregoing document was served by courier service on September 9, 2014, to:

Kris W. Kobach
Kansas Secretary of State
Memorial Hall, 1st Floor
120 SW 10th Avenue
Topeka, KS 66612-1594

and

Derek L. Schmidt
Kansas Attorney General
Memorial Hall, 2nd Floor
120 SW 10th Avenue
Topeka, KS 66612



Pedro L. Irigonegaray

that his office has previously accepted withdrawals written on notebook paper. I asked him what the withdrawal had to say, and I followed his instructions in working with my campaign manager, Brandon Naylor, to draft a letter of withdrawal.

5. At approximately 4:00 p.m., Mr. Naylor and I then took the unsigned letter to the Secretary of State's Office, where we found Mr. Bryant in the hallway outside of his office.

6. I handed Mr. Bryant the letter and told him that, per our earlier conversation, this was my letter to withdraw from the race for U.S. Senate. I asked him if it contained all of the information necessary to remove my name from the ballot. Mr. Bryant said "yes," confirming to me that the letter was sufficient to withdraw my name from the ballot.

7. I asked whether I could sign and attest right there with him and he told me he was not a notary, but he said there was a notary available. Mr. Naylor and I then followed Mr. Bryant to the south side of the office where Mr. Bryant introduced us to the notary, who agreed to notarize the letter. After I presented her with photo identification and signed her notary book, I signed the letter and she notarized it. A copy of that letter, as signed, notarized, and submitted to the Secretary of State's Office that day is attached hereto as Exhibit A.

8. I asked Mr. Bryant if that completed the withdrawal process and he confirmed that it did.

9. I told him that I needed three copies of the final letter and he told me he would waive the ordinary copying fees for me. Mr. Bryant then took the letter, and led Mr. Naylor and I to the north side of the office where he made copies.

10. When Mr. Bryant handed me the copies, once again I showed him my letter of withdrawal and asked him if at this time my name had been withdrawn from the ballot. He said, "Yes."

11. Mr. Naylor and I left the Secretary of State's Office believing that there was no question that my withdrawal had been effective. At no point did Mr. Bryant or anyone else at the Secretary of State's Office give any indication that the letter would be subject to further review, or that there was any possibility that the Secretary of State would ultimately refuse to take my name off of the ballot.
12. The first time I heard that the Secretary of State's Office had reversed its position and was now refusing to remove my name from the ballot was the following day, when I received a call from my campaign manager, who told me that there were rumors that the Secretary of State's Office had changed its position and was not going to allow me to withdraw from the election or remove my name from the ballot. At this point, the deadline for withdrawal had passed, so I was not able to submit a modified version of my withdrawal letter.
13. Later that day, Secretary of State Kris Kobach faxed my attorney a letter confirming that he would not be removing my name from the ballot for the November 4th election. A copy of that letter is attached hereto as Exhibit B.
14. As stated above, I followed Mr. Bryant's explicit instructions in preparing the letter for withdrawal. If Mr. Bryant or anyone else from the Secretary of State's Office had told me that other information was required to withdraw, I would have included that information in my letter of withdrawal.
15. Furthermore, the language that I used in the letter -- which stated that I withdrew from the election "effective immediately and request my name be withdrawn from the ballot, *pursuant to* KSA 25-306b(b)" (emphasis added) -- was meant to incorporate all of the terms of that statutory provision. As a lawyer, I know that the use of such language in fact incorporates all of the terms in the cited statutory provision.

16. Based on my reading of KSA 25-306b (b) and the assurances provided to me by Mr. Bryant, I was at that time and I continue to be convinced that my letter effectively withdrew my candidacy and legally requires removal of my name from the ballot. It was my clear intention to declare that I am incapable of fulfilling the duties of the office of U.S. States Senator if elected. Moreover, if elected, I will not serve.

17. I expressed to Mr. Bryant my unequivocal intention to withdraw, in my letter of September 3, 2014, citing the appropriate statutory authority in my letter and in my interactions with Mr. Bryant and in conversations we had while I was at the Secretary of State's Office. During our conversations, Mr. Bryant repeatedly stated his assurances that my letter had effectively withdrawn my name from the election ballot and I relied upon his representations.

18. It is my understanding, based on an article by John Hanna of the Associated Press, attached hereto as Exhibit C, that on Wednesday, September 3, subsequent to my delivery of my withdrawal letter to the Secretary of State's office, my name was removed from that office's online list of candidates. Without my authority, at some time on Thursday, September 4, my name was restored to the list.

19. By keeping my name on the ballot despite my explicit and timely withdrawal, the Secretary of State is conscripting me to run for office, in violation of my First Amendment rights. I do not want to be a candidate for U.S. Senate in the 2014 election and do not want the ballot for that election to associate me with the Senate race. I do not want to have my name associated with the Democratic Party for purposes of the 2014 U.S. Senate race, because I believe that such an association is likely to cause confusion among Kansas voters, who have a right to cast their votes free from misleading ballot information that would lead any reasonable person to believe that I was still in the race. I do not want voters to be confused by the presence

Chad
Taylor
★U.S. SENATE★

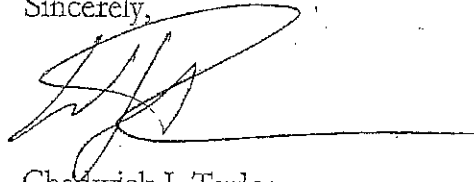
Kansas Secretary of State Kris W. Kobach
Kansas Secretary of State
Memorial Hall, 1st Floor
120 SW 10th Avenue
Topeka, KS 66612-1594

September 3, 2014

Dear Secretary of State Kobach,

I, Chadwick J. Taylor, Democratic nominee for the United States Senate race, do hereby withdraw my nomination for election effective immediately and request my name be withdrawn from the ballot, pursuant to KSA 25-306b(b).

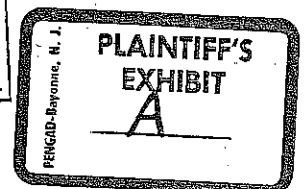
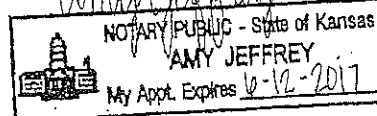
Sincerely,



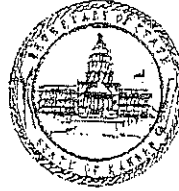
Chadwick J. Taylor

State of: Kansas
County of: Shawnee

Signed before me on: 9-3-2014
By: Chadwick J. Taylor



KRIS W. KOBACH
Secretary of State



Memorial Hall, 1st Floor
120 S.W. 10th Avenue
Topeka, KS 66612-1594
(785) 296-4575
www.sos.ks.gov

STATE OF KANSAS

September 4, 2014

Gary D. White, Jr.
PALMER, LEATHERMAN, WHITE & GIRARD, L. L. P.
2348 SW Topeka Blvd.
Topeka, KS 66611
Facsimile: 785-233-3703

re: Nomination of Chadwick J. Taylor for United States Senator

Dear Mr. White:

You have indicated that you represent Chadwick J. Taylor regarding the written request that Mr. Taylor filed with the Secretary of State's Office on September 3, 2014, requesting that his nomination for United States Senator be withdrawn and that he not appear on the ballot for the November 4, 2014, general election. The purpose of this letter is to inform you that, after conferring with the office of the Kansas Attorney General, I have concluded that the written request filed by Mr. Taylor does not meet the requirements of K.S.A. 25-306b(b) because Mr. Taylor did not "declare[] that [he is] incapable of fulfilling the duties of office if elected." Therefore, Mr. Taylor's name will appear on the ballot for the office of United States Senator for the November 4, 2014, general election.

Sincerely,

A handwritten signature in cursive script that reads "Kris W. Kobach".

Kris W. Kobach
Kansas Secretary of State

cc: Pat Roberts Campaign
Greg Orman Campaign
Randall Batson Campaign



This is Google's cache of <http://m.cisionline.com/news/2014-09-04/kansas-republicans-question-legality-chad-taylor's-withdrawal-democratic-nomination>. It is a snapshot of the page as it appeared on Sep 4, 2014 18:44:41 GMT. The current page could have changed in the meantime. [Learn more](#)
Tip: To quickly find your search term on this page, press Ctrl+F or ⌘-F (Mac) and use the find bar.

[Text-only version](#)



Thu, Sep. 4 1:44 pm

Home	Apps	Slideshows	Latest videos	Events	Obituaries
Classifieds	Real Estate	Jobs	Autos	Community blogs	Staff blogs
Subscribe	Services				Rewards

81° Clear sky

[More Weather](#)

Thursday, Sept. 4, 2014

Kansas Republicans question legality of Chad Taylor's withdrawal of Democratic nomination

By John Hanna
The Associated Press



The Kansas Republican Party is calling Shawnee County District Attorney Chad Taylor's withdrawal from the U.S. Senate race a "corrupt bargain."

SEPTEMBER 2013 FILE PHOTO/THE CAPITAL-JOURNAL

Like

10 comments »

Latest by Battlestache 35 min 50 sec ago

The Kansas Republican Party on Thursday questioned the legality of the Democratic U.S. Senate nominee's withdrawal from the race against conservative incumbent Pat Roberts, throwing a previously safe Republican seat into doubt and complicating national GOP efforts to win a majority in the chamber.

Democrat Chad Taylor, a northeast Kansas prosecutor, had been vying for support from some of the same moderate Republican and unaffiliated voters as independent candidate Greg Orman, a Kansas City-area businessman whose fundraising has been more successful than Taylor's.

Republicans immediately labeled the Democrat's decision a "corrupt bargain" designed to give one viable candidate a better shot at unseating Roberts, who looked vulnerable in the November general election after emerging from a difficult GOP primary in August.

Taylor's withdrawal has national implications because the GOP were counting on the 78-year-old Roberts winning a fourth term in a predominantly Republican state to help the party's quest for a net gain of six seats to win a Senate majority in Washington.

Republicans have a nearly 20-percentage point advantage over Democrats among Kansas registered voters and have won every U.S. Senate race in the state since 1932.

Taylor sent a letter to the Kansas secretary of state Wednesday saying he was withdrawing. He issued a separate statement saying he had "terminated" his campaign, without an explanation.

But state GOP Chairman Kelly Arnold issued a statement Thursday questioning whether Taylor complied with a state law allowing nominees to withdraw. The law says candidates may withdraw if they declare "they are incapable of fulfilling the duties of office if elected."

Orman's campaign declined comment. Spokesmen for Taylor and Roberts did not immediately return telephone messages Thursday.

Kansas Democratic Party Chair Joan Wagnon released a statement Thursday morning about Taylor's withdrawal, saying, "We thank Chad Taylor for his service as a candidate and his continued service as the elected District Attorney of Shawnee County. It is clear that Kansans are ready for new leadership. We will be monitoring this race closely."

The secretary of state's office briefly removed Taylor's name Wednesday from its online list of candidates but restored it as of Thursday. Secretary of State Kris Kobach, a conservative Republican, said he would be consulting with attorneys in his office and the attorney general's office.

Asked whether he viewed Taylor's withdrawal as legal, Kobach, a former law professor, told The Associated Press: "Let me defer the question because I want to have a full discussion with attorneys."

Kobach also said Wednesday night that his initial reading of state election laws is that the Democratic Party is legally obligated to pick a new nominee.

Taylor has been the district attorney since 2009 in Shawnee County, the home of the state capital of Topeka. Orman, from Olathe, is the co-founder of a business capital and management services firm.

A Libertarian, Randall Batson, of Wichita, is also on the Nov. 4 general election ballot.

Online:

Chad Taylor campaign: <http://taylorforussenate.com/>

Greg Orman campaign: <http://www.ormanforsenate.com/>

Pat Roberts campaign: <http://www.robertsforsenate.com>

Follow John Hanna on Twitter at <https://twitter.com/apjdharma>

4

8:11 0

Related Stories



IN THE SUPREME COURT OF KANSAS

CHAD TAYLOR,)
)
 Plaintiff,)
)
 v.)
) Case No. _____
 KRIS KOBACH, in his official capacity)
 as Secretary of State for the State of)
 Kansas,)
)
 Defendant.)
)

AFFIDAVIT OF BRANDON NAYLOR IN SUPPORT OF PETITION FOR MANDAMUS
AND EMERGENCY MOTION FOR TEMPORARY RESTRAINING ORDER TO PROHIBIT
THE SECRETARY OF STATE FROM INCLUDING PLAINTIFF'S NAME ON THE
BALLOT FOR THE NOVEMBER 4, 2014 ELECTION FOR U.S. SENATOR

I, Brandon Naylor, being first duly sworn on oath, do hereby depose and say:

1. I reside at 1235 SW MacVicar Avenue, in the City of Topeka, in the County of Shawnee, in the State of Kansas.
2. I served as the campaign manager for Chad Taylor who, until Wednesday, September 3, 2014, was a candidate for U.S. Senate.
3. On September 3, I was with Mr. Taylor when he called Brad Bryant, the Director of Elections and Legislative Matters at the Kansas Secretary of State, to ask about the procedure and protocol for withdrawing from the Senate race.
4. Mr. Taylor and I followed the instructions that he had received from Mr. Bryant to draft a letter of withdrawal.
5. Mr. Taylor and I printed out a copy of the letter on Chad Taylor for U.S. Senate letterhead and left it unsigned.

6. At approximately 4:00 p.m. we took the unsigned letter to the Secretary of State's Office, where we found Mr. Bryant in the hallway outside the Office of Elections and Legislative Matters.
7. Mr. Taylor and I showed the letter to Mr. Bryant, who read it and then verbally confirmed that it included everything that was necessary to remove Mr. Taylor from the ballot for the Senate race.
8. Mr. Taylor and I followed Mr. Bryant to the desk of a notary who notarized the letter after Mr. Taylor presented her with photo identification and signed her notary book.
9. Mr. Bryant made Mr. Taylor three copies of the letter, telling him that he would waive the typical copy fee. Mr. Taylor joked that Mr. Bryant already had his \$1700 filing fee, and Mr. Bryant told him that in the past candidates who had withdrawn had actually asked for that back.
10. Before we left, Mr. Taylor asked Mr. Bryant again if he had done everything he needed to do to have his name removed from the ballot, and Mr. Bryant confirmed that there was nothing further that Mr. Taylor had to do. Mr. Taylor's intent to have his name removed from the ballot and to follow the protocol necessary for doing so could not have been clearer.
11. When we left the Secretary of State's office that day, Mr. Taylor and I believed that Mr. Taylor's withdrawal had been effective, that he was no longer considered a candidate for U.S. Senate, and that his name would not appear on the ballot for the November 4 election. At no point did Mr. Bryant or anyone else at the Secretary of State's office give any indication that the letter would be subject to further review, or that there was any possibility that the Secretary of State would ultimately refuse to take Mr. Taylor's name off the ballot.
12. The first time I heard that the Secretary of State's Office had reversed its position and was refusing to remove Mr. Taylor's name from the ballot was the following day—after the

deadline for withdrawal had passed. Prior to that deadline, I had received no information indicating in any way that Mr. Taylor's withdrawal might not be effective.

Further affiant saith naught.

Brandon Naylor
Brandon Naylor

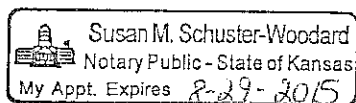
STATE OF Kansas)
COUNTY OF Shawnee) ss:
)

BE IT REMEMBERED, that on this 8 day of September, 2014, before the undersigned, a notary public in and for said county and state, personally appeared Brandon Naylor, personally known to me to be the same person described in and who executed the foregoing Affidavit.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal on the day and year last above written.

My appointment expires: 8-29-2015

Susan M. Schuster-Woodard
Notary Public



IN THE SUPREME COURT OF KANSAS

CHAD TAYLOR,)
)
 Plaintiff,)
)
 v.)
)
 KRIS KOBACH, in his official capacity)
 as Secretary of State for the State of)
 Kansas,)
)
 Defendant.)
)

Case No. _____

AFFIDAVIT OF CHARLES JASON PERKEY IN SUPPORT OF PETITION FOR
MANDAMUS AND EMERGENCY MOTION FOR TEMPORARY RESTRAINING ORDER
TO PROHIBIT THE SECRETARY OF STATE FROM INCLUDING PLAINTIFF'S NAME
ON THE BALLOT FOR THE NOVEMBER 4, 2014 ELECTION FOR U.S. SENATOR

I, Charles Jason Perkey, being first duly sworn on oath, do hereby depose and say:

1. I reside at 901 New Hampshire Street #503, in the City of Lawrence, in the County of Douglas, in the State of Kansas.
2. I am the Executive Director of the Kansas Democratic Party.
3. In the afternoon of September 3, 2014, Chad Taylor, who was until that day the Democratic nominee challenging incumbent U.S. Senator Pat Roberts to represent Kansas in the Senate in the present election cycle, called me to tell me that he was on his way to the Secretary of State's Office where he would submit a letter of withdrawal removing himself from the race.
4. At 4:38 p.m., I saw a tweet by the reporter John Celock, announcing that Chad Taylor had withdrawn from the race, and linking to a photograph of what appeared to be Mr. Taylor's notarized letter of withdrawal. (Ex. A).
5. I then called Bryan Caskey, an employee of the Kansas Secretary of State's Office, Elections and Legislative Matters Division, to confirm that Chad Taylor had submitted his letter

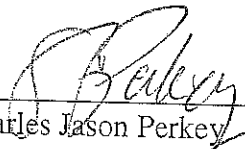
and his withdrawal was effective. I told Mr. Caskey that I saw the letter online and asked whether it could have been sent to a reporter. He said yes. I asked Mr. Caskey if the language in the letter was sufficient to effectuate Mr. Taylor's withdrawal from the race and the ballot and Mr. Caskey said that it did. He said that they have received longer letters in the past, but that the additional information in those letters was superfluous.

6. I also asked Mr. Caskey if the Kansas Democratic Party needs to hold a convention for the purposes of replacing Mr. Taylor. Mr. Caskey told me he would have to get back to me about that.

7. At no point in our conversation did Mr. Caskey give any indication that the letter would be subject to further review, or that there was any possibility that the Secretary of State would ultimately refuse to take Mr. Taylor's name off the ballot.

8. The first time I heard that the Secretary of State's Office had reversed its position and was refusing to remove Mr. Taylor's name from the ballot was the following day—after the deadline for withdrawal had passed. Prior to that deadline, I had received no information indicating in any way that Mr. Taylor's withdrawal might not be effective.

Further affiant saith naught.


Charles Jason Perkey

STATE OF Kansas)
) ss:
COUNTY OF Shawnee)

BE IT REMEMBERED, that on this 8 day of September, 2014, before the undersigned, a notary public in and for said county and state, personally appeared Charles Jason Perkey, personally known to me to be the same person described in and who executed the foregoing Affidavit.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal on the day and year last above written.

My appointment expires: 8-29-15

Susan M. Schuster-Woodard
Notary Public

