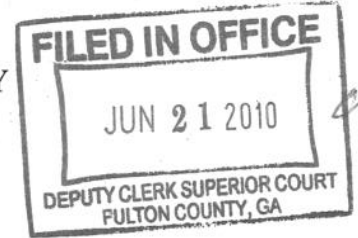


IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA



MARY NORWOOD,)
)
Plaintiff,)
)
v.)
)
FULTON COUNTY BOARD OF)
REGISTRATION AND ELECTIONS and)
COMMITTEE TO ELECT JOHN EAVES,)
INC.,)
)
Defendants.)

CIVIL ACTION FILE
NO.

2010 CV 18725

VERIFIED COMPLAINT FOR DECLARATORY JUDGMENT

Pursuant to O.C.G.A §§ 9-4-1 and 9-4-2(a) and/or (b), Plaintiff Mary Norwood (“Norwood”) files this Complaint for Declaratory Judgment seeking a judicial declaration that the pre-printed addition of “Fulton” in the address field of Norwood’s nomination petition form complies with Georgia law.

PARTIES, JURISDICTION AND VENUE

1.

Plaintiff Mary Norwood is a natural person and resident of the State of Georgia.

2.

Defendant Fulton County Board of Registration and Elections (the “Elections Board”) is a public body capable of being sued. The Elections Board may be served through its Director, Barry Garner, at 141 Pryor Street, S.W., Suite 4075, Atlanta, Fulton County, Georgia.

3.

Defendant Committee to Elect John Eaves, Inc. (“Eaves Campaign”) is a corporation formed and existing under the laws of the State of Georgia and is a proper party under O.C.G.A.

§ 9-4-7(a). The Eaves Campaign may be personally served through its registered agent, John Jordan, at 260 Peachtree Street, Suite 2302, Atlanta, Fulton County, Georgia.

4.

Venue and jurisdiction are proper in this Court.

FACTS COMMON TO ALL COUNTS

5.

Plaintiff Mary Norwood is seeking the office of Chairman of the Fulton County Board of Commissioners in the 2010 election cycle. Incumbent Chairman John Eaves is seeking re-election to that position as well.

6.

The general election will be held on November 2, 2010.

7.

Because Norwood is running as an independent candidate, O.C.G.A. § 21-2-170(b) requires her to file a nomination petition that is signed by five percent (approximately 23,000) of the registered voters of Fulton County.

8.

Norwood must file the nomination petition with the Fulton County Board of Elections on July 13, 2010. O.C.G.A. § 21-2-132(d). The Elections Board is charged with the responsibility of determining whether the petition complies with the law. O.C.G.A. § 21-2-171(a).

9.

Norwood obtained a nomination petition form from the Elections Board. On May 18, 2010, Norwood's campaign asked the Elections Board's designee if the campaign could type in the word "Fulton" in the space provided for each signer's county of residence. This requested

change would not only expedite the signature process but it would also ensure that only those electors who were residents of Fulton County executed the nomination form.

10.

The Elections Board's designee approved the requested change to the petition nomination form in writing. A true and correct copy of the email exchange reflecting this approval is attached as **Exhibit A.**

11.

In reliance upon that approval, the Norwood campaign has obtained thousands of signatures of qualified electors on nomination petition forms with "Fulton" typed in. A true and correct exemplar of the nomination petition form used is attached as **Exhibit B.**

12.

On June 11, 2010, the Eaves Campaign wrote to the Director of Registration and Elections to "correct what we believe is erroneous advice that the Fulton County Board of Registration and Elections provided to a representative of Mary Norwood Campaign 2010." A true and correct copy of this correspondence is attached as **Exhibit C.**

13.

In that letter, the Eaves Campaign asserts that the Norwood nomination petition approved by the Elections Board violates O.C.G.A. § 21-2-170(c), which requires that each person signing a nomination petition "shall declare therein that he or she is a duly qualified and registered elector of the state, county, or municipality entitled to vote in the next election for the filling of the office sought by the candidate supported by the petition and shall add to his or her signature his or her residence address, giving municipality, if any, and county, with street and number...." Upon information and belief, the Eaves Campaign has suggested that it will challenge Norwood's qualifications on this basis pursuant to O.C.G.A. § 21-2-6(b).

14.

Norwood, on the other hand, maintains that her nomination petition form complies with the law because it was approved by the Elections Board and because it provides sufficient space for the printing of the elector's name and his or her signature. O.C.G.A. § 21-2-170(a) ("Such petition shall be in the form prescribed by the officers with whom they are filed, and no forms other than the ones so prescribed shall be used for such purposes, but such petitions shall provide sufficient space for the printing of the elector's name as well as for his or her signature." O.C.G.A. § 21-2-170(a).

15.

Norwood further maintains that her nomination petition form complies with the law because each person signing provided their street address (next to their pre-printed county of residence) and declared they are a duly qualified and registered elector (and, therefore, a resident) of Fulton County. Thus, at a minimum, the form that the Elections Board approved substantially complies with the requirements of O.C.G.A. § 21-2-171(c). Substantial compliance with the requirements of the statute is all that is required from a public body especially where, as here, the alleged deviation from those requirements does not disserve the purpose of the law. O.C.G.A. § 1-3-1. See also Banker v. Cole, 278 Ga. 532, 533, 604 S.E.2d 165 (2004) ("[W]here the election is held in substantial compliance with the law, it should not be rendered void merely because of isolated failures to conform strictly with the law unless it appears that such failures changed the results of the election."); General Elec. Credit Corp. v. Brooks, 242 Ga. 109, 118-119, 249 S.E.2d 596 (1978) ("Substantial compliance does not require that the language should be exactly as prescribed by the statute but that all the essential requirements of the form be prescribed. When there is actual compliance as to all matters of substance then mere

technicalities of form or variations in the mode of expression should not be given the stature of noncompliance.”).

16.

The Elections Board’s designee has not yet taken a position on the matter, he seems to agree with the Eaves Campaign’s position, writing “[a]s indicated in your letter, the literal language of the statute, O.C.G.A. § 21-2-170(c) requires the person who signs the petition to personally write in their information.” A true and correct copy of the letter from Barry Garner, Director, Registration and Elections is attached as **Exhibit D.**

17.

Norwood is left in a grave position of uncertainty and insecurity. If she files the nomination petitions that were specifically approved by the Elections Board’s designee, there does not appear to be any law that would prevent the Elections Board from rejecting those forms once they are filed. Norwood is attempting to guard against that risk by obtaining new signatures on the original forms issued by the Elections Board, but at the rate that process is progressing, she will have significant difficulty in obtaining sufficient signatures before the July 13, 2010 deadline.

COUNT I - DECLARATORY JUDGMENT

18.

Plaintiff Norwood realleges and incorporates the preceding paragraphs as if fully set forth herein.

19.

An actual controversy exists as to the validity of Norwood’s nomination petition.

20.

Alternatively, the ends of justice require that a declaration be made immediately as to the validity of Norwood's nomination petition.

21.

Norwood will be left essentially remediless if the Elections Board rejects her nomination petition once it is filed on July 13, 2010. While Norwood could file a mandamus petition to compel the Elections Board to accept her petition, if she is unsuccessful, her window for obtaining new signatures will have long since closed.

22.

This is a matter of significant public interest in that it could result in the disenfranchisement of Fulton County voters.

23.

For the foregoing reasons, Norwood is entitled to a declaration and final judgment that the signatures nominating Norwood shall not be disqualified merely because the Norwood campaign, in reliance upon the Elections Board's designee, typed in the word "Fulton" in the space provided for each signer's county of residence.

WHEREFORE, Plaintiff Mary Norwood prays for the following relief:

(a) A declaration and final judgment that that the signatures nominating Norwood shall not be disqualified merely because the Norwood campaign, in reliance upon approval from the Elections Board's designee, typed in the word "Fulton" in the space provided for each signer's county of residence;

(b) An emergency hearing under O.C.G.A. § 9-4-5;

(c) An award of costs under O.C.G.A. § 9-4-9; and

(d) Such other and further relief as the Court deems just and proper.

Respectfully submitted this 21st day of June, 2010.



J. Matthew Maguire, Jr.
Georgia Bar No. 372670
Joshua M. Moore

Georgia Bar No. 520030

BALCH & BINGHAM LLP

30 Ivan Allen Jr. Blvd., NW

Suite 700

Atlanta, Georgia 30308

Telephone: (404) 261-6020

Facsimile: (404) 261-3656

Attorneys for Plaintiff Mary Norwood

IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

MARY NORWOOD,

Plaintiff,

v.

FULTON COUNTY BOARD OF
REGISTRATION AND ELECTIONS and
COMMITTEE TO ELECT JOHN EAVES,
INC.

Defendants.

Civil Action File No.

VERIFICATION

Before the undersigned officer, duly authorized by law to administer oaths, appeared Mary who, after first being duly sworn according to law on oath, deposes, and states that the *Complaint for Declaratory Judgment* is true and correct within my personal knowledge.

This 21 day of June, 2010.



Mary Norwood

Sworn to and subscribed before me
This 21st day of June, 2010.


NOTARY PUBLIC

My Commission Expires

MAY 17, 2013

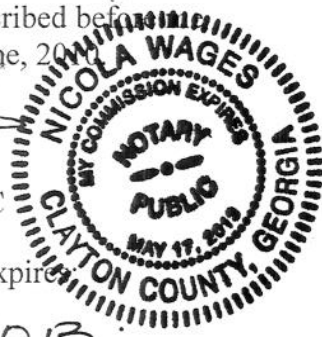


Exhibit A

Pye, April

From: Pye, April
Sent: Tuesday, May 18, 2010 1:53 PM
To: LOBEL1@aol.com
Cc: Garner, Barry
Subject: RE: FW: Legal Opinion Regarding Qualifying Questions

Lori,

This would not invalidate the petition.

April L. Pye

Administrative Chief
Fulton County Board of Registration and Elections
141 Pryor Street, SW, Suite 4075
Atlanta, GA 30303
404-612-7020
404-893-6688 (Fax)

april.pye@fultoncountyga.gov

From: LOBEL1@aol.com [mailto:LOBEL1@aol.com]
Sent: Tuesday, May 18, 2010 1:43 PM
To: Pye, April
Cc: Garner, Barry
Subject: Re: FW: Legal Opinion Regarding Qualifying Questions

Ms. Pye,

Thank you very much for getting back with us on all the questions. However, we have tried to make it easier for everyone by adding the county "FULTON" on the petition since everyone has to be in Fulton county. This saves a step for people signing the petition. Will this disqualify the petition. Attached is the copy of the petition. Please let us know ASAP and thank you again.

All my best,
Lori Lobel
(404) 949-9445

In a message dated 5/18/2010 12:49:07 P.M. Eastern Daylight Time, mary@marynorwood.com writes:

From: Pye, April [mailto:April.Pye@fultoncountyga.gov]
Sent: Tuesday, May 18, 2010 9:57 AM
To: LOBEL1@aol.com; mary@marynorwood.com
Cc: Garner, Barry; McCloud, Brenda
Subject: Legal Opinion Regarding Qualifying Questions

6/2/2010

Good morning,

During our meeting last Thursday, there were several questions regarding the format for the name and signature of the voter on the petition, and the entry of the address by husband and wife residing at the same residence. As discussed, we requested a legal opinion on the law regarding the validity of the information and signature as entered by the voter and/or circulator. The responses are provided in the attached document.

Please do not hesitate to contact us with any questions you may have.

April L. Pye

Administrative Chief

Fulton County Board of Registration and Elections

141 Pryor Street, SW, Suite 4075

Atlanta, GA 30303

404-612-7028

404-893-6688 (Fax)

april.pye@fultoncountyga.gov



Exhibit B

NOMINATION PETITION

FOR MARY NORWOOD
(CANDIDATE'S NAME)

AN INDEPENDENT

TO: Barry Garner, Director
Superintendent of Elections
of Fulton County
State of Georgia

Each of the undersigned persons does hereby PETITION FOR THE NOMINATION OF
MARY NORWOOD Business Owner
(Candidate's Name) (Profession, business or occupation, if any)
who resides at 3371 Habersham Road, N.W., Atlanta, GA
(Place of residence, with street and number, if any)
an INDEPENDENT candidate for the office of Fulton County Commissioner - District 1 at Large, to be
filled at the November 2, 2010 General Election.
(Date of Election)

Each of the undersigned petitioners hereby declares that he or she is a duly QUALIFIED AND REGISTERED ELECTOR of the State of Georgia entitled to vote in the next election for the filling of the office sought by the candidate supported by this petition.

No person shall sign the same petition more than once.

(Sign Only Your Own Name)

| | (Personal Signature) <small>(Print name under signature)</small> | Date of Birth | Residence Address <small>(Number, street (if any), city)</small> | County | Date |
|-----|--|------------------------------|--|---------------|---------------------|
| 1. | <u>Jane D. Doe</u> Jane D. Doe | <small>Date of Birth</small> | <u>123 Main Street NW</u> <u>Atlanta, GA 30328</u> | <u>Fulton</u> | <u>Today's Date</u> |
| 2. | | | | <u>Fulton</u> | |
| 3. | | | | <u>Fulton</u> | |
| 4. | | | | <u>Fulton</u> | |
| 5. | | | | <u>Fulton</u> | |
| 6. | | | | <u>Fulton</u> | |
| 7. | | | | <u>Fulton</u> | |
| 8. | | | | <u>Fulton</u> | |
| 9. | | | | <u>Fulton</u> | |
| 10. | | | | <u>Fulton</u> | |
| 11. | | | | <u>Fulton</u> | |
| 12. | | | | <u>Fulton</u> | |
| 13. | | | | <u>Fulton</u> | |
| 14. | | | | <u>Fulton</u> | |
| 15. | | | | <u>Fulton</u> | |

CIRCULATOR'S AFFIDAVIT

STATE OF GEORGIA

COUNTY OF Fulton

I, the undersigned, being first duly sworn on oath, do depose and say that I personally circulated the foregoing petition sheet; that I reside at the address appearing below my signature hereon; that each signer manually signed his or her own name on this sheet with full knowledge of the contents of such petition; that each such signature was signed on or after _____, 20 10, but not later than July 12, 20 10; and, to the best of my knowledge and belief, that such signers are registered electors of the State of Georgia qualified to sign such petition, that their respective residences are correctly stated in the petition, and that they all reside in the county named in the caption of this affidavit.

Signature of Circulator

(Print Name of Circulator)

Address of Circulator
(Number, Street [if any])

(City) (State) (Zip Code)

NOTE: No notary public may sign the petition as an elector or serve as a circulator of any petition which he or she notarized. Any and all sheets of a petition that have the circulator's affidavit notarized by a notary public who also served as a circulator of one or more sheets of the petition or who signed one of the sheets of the petition as an elector shall be disqualified and rejected. O.C.G.A. 21-2-170

Sworn to and subscribed
before me this _____ day
of _____, 20 ____.

NOTARY PUBLIC
My Commission Expires _____.

Mail Notarized & Signed form to:
PO Box 53408
Atlanta, GA 30355

Exhibit C

Albany
Atlanta
Brussels
Denver
Los Angeles

**McKenna Long
& Aldridge**
Attorneys at Law

303 Peachtree Street, NE • Suite 5300 • Atlanta, GA 30308
Tel: 404.527.4000 • Fax: 404.527.4198
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New York
Philadelphia
San Diego
San Francisco
Washington, D.C.

GEORGE W. (BUDDY) DARDEN
(404) 527-4130

JEREMY T. BERRY
(404) 527-8577

EMAIL ADDRESS
bdarden@mckennalong.com

jberry@mckennalong.com

June 11, 2010

BY U.S. MAIL AND E-MAIL
BARRY.GARNER@FULTONCOUNTYGA.GOV

Barry Garner
Director of Registration and Elections
Fulton County Department of Registrations and Elections
141 Pryor Street, SW, Suite 4075
Atlanta, GA 30303

Re: Requirement that Electors Complete all Written Information on Nomination
Petitions

Dear Mr. Garner:

This Firm represents the Committee to Elect John Eaves, Inc. We are writing to correct what we believe is erroneous advice that the Fulton County Board of Registration and Elections ("Elections Board") provided to a representative of Mary Norwood Campaign 2010 ("Norwood Campaign").

On May 18, 2010, Lori Lobel, on behalf of the Norwood Campaign, asked April Pye of the Elections Board, whether the Norwood Campaign pre-printing the word "Fulton" on each row of nomination petition pages would disqualify these signatures from counting towards the number of signatures the Norwood Campaign must obtain to qualify as an independent candidate for Fulton County Commissioner. (A copy of Ms. Lobel's May 18, 2010 email to Ms. Pye is attached hereto as Exhibit A). With this same email, Ms. Lobel provided Ms. Pye a sample of a nomination petition page on which the county name was pre-printed by the Norwood Campaign. (See Exhibit A, page 3). In response to Ms. Lobel's inquiry, Ms. Pye advised that the completion of the county portion of the nomination petition page by the Norwood Campaign for each elector "would not invalidate the petition." (A copy of Ms. Pye's May 18, 2010 email to Ms. Lobel is attached hereto as Exhibit B).

The information that Ms. Pye provided to the Norwood Campaign is incorrect and contrary to the law. In no uncertain terms, the State of Georgia Elections Code requires that each elector must complete all her own information on the nomination petition. The Elections Code requires that:

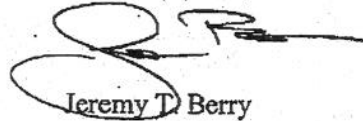
Barry Garner
June 11, 2010
Page 2

Each person signing a nomination petition shall declare therein that he or she is a duly qualified and registered elector of the state, county, or municipality entitled to vote in the next election for the filling of the office sought by the candidate supported by the petition and shall add to his or her signature his or her residence address, giving municipality, if any, and county, with street and number, if any, and be urged to add the person's date of birth which shall be used for verification purposes. O.C.G.A. § 21-2-170(c) (emphasis added).

Thus, the statute requires that the elector who signs the nomination petition – not the candidate, circulator, notary public, or any other person – write the elector's residence address and county on the petition. Indeed, the Elections Division has issued a legal opinion that supports the requirement that each elector write her county on the nomination petition. In answering whether a circulator could write the elector's name on a nomination petition, the Elections Board stated in the legal opinion that the "person signing the petition must also print their name. . . . All written information on the petition about a voter *must come from the voter.*" (A copy of the legal opinion is attached hereto as Exhibit C, p. 1) (emphasis added).

We believe that Ms. Pye provided information that is contrary to the Elections Code and the Elections Division's legal opinion, and therefore we believe it is incumbent upon us to bring this situation to your attention. Should you have any questions, or if we may provide any additional information, please do not hesitate to contact us.

Sincerely yours,



Jeremy D. Berry

Attachments

cc: A. Lee Parks, Jr., Esq.
John Baves

ATLANTA:5233026.1

Exhibit D



FULTON COUNTY
DEPARTMENT OF REGISTRATION AND ELECTIONS
ELECTIONS OFFICE

141 PRYOR STREET, S.W., SUITE 4075
ATLANTA, GA 30303-3460
404-730-7020

June 17, 2010

BY U.S. Mail and E-Mail
Jberry@mckennalong.com

Mr. Jeremy T. Berry
McKenna Long & Aldridge
303 Peachtree Street, NE, Suite 5300
Atlanta, Georgia 30308

Re: Advisory letter requiring that Electors complete all written information on Nomination
Petitions

Dear Mr. Berry:

I received and reviewed in detail, your letter regarding the requirement that electors complete all written information on the nomination petition. As legal representation for the Committee to Elect John Eaves, Inc, you assert that you believe the Fulton County Board of Registration and Elections provided erroneous advice to a representative of Mary Norwood's Campaign (Norwood Campaign). Specifically, you state that Ms. April Pye with our office, provided information contrary to the Georgia Election Code when she advised Ms. Lori Lobel with the Norwood Campaign that the completion of the county portion of the nomination petition page by the Norwood Campaign would not invalidate the petition. As indicated in your letter, the literal language of the statute, O.C.G.A. § 21-2-170(c) requires the person who signs the petition to personally write in their information.

Thank you for bringing this situation to my attention. I will forward your letter to the Norwood Campaign as part of our response to that campaign's recent Open Records Act request, and advise them to seek legal advice as to whether or not it is appropriate for the petition to have the word "Fulton" typed in the space provided for county.

In addition, I have informed all staff that our general practice is to refer campaigns and/or citizens to the appropriate statute or regulation that provides guidance on the issue in question, and refrain from providing legal advice.

Should you have any questions or require additional information, do not hesitate to contact me at 404-612-7020.

Sincerely,

Barry Garner,
Director, Registration and Elections

Cc: Fulton County Board of Registration and Elections
Mr. A. Lee Parks, Jr., Attorney, Fulton County Board of Registration & Elections
Mr. John Eaves