

March 27, 2012

Via US Certified Mail, Return Receipt Requested

Chris Thomas, Director
Bureau of Elections
Richard H. Austin Building, 1st Floor
430 West Allegan
Lansing, Michigan 48918

Re: Request for Interpretation of Application of MCL Section 168.695

Dear Director Thomas:

We represent the Libertarian Party of Michigan. I am writing this letter on its behalf.

As you know, the Libertarian Party of Michigan is a duly-qualified political party under Michigan law, pursuant to MCL Section 168.560a, and has been for many years. As a qualified political party, it is entitled to nominate candidates for all partisan offices in the State of Michigan, and place on the November election ballot its nominees for President and Vice President of the United States of America, pursuant to MCL Section 168.686.

Currently, several persons are running for the Libertarian Party presidential nomination, with the nominee to be chosen at the Libertarian National Convention on May 3 – 6, 2012. One of those persons is Gary Johnson, former Governor of New Mexico. Governor Johnson originally sought the Republican Party's presidential nomination, but on December 28, 2011, he announced his intention to seek the Libertarian Party's nomination instead.

Prior to that date, pursuant to MCL Section 168.615a, the Michigan Secretary of State decided to place Governor Johnson's name on the Michigan ballot for the Republican Party Presidential Primary to be held February 28, 2012. As you know, the relevant statute put the onus for populating the ballot on the Secretary of State, and neither required nor actually involved any action on Governor Johnson's part to place his name on the primary ballot. Shortly after the Michigan Secretary of State announced her decision, Governor Johnson's campaign contacted your office and requested that Governor Johnson's name be removed from the Republican Party Presidential Primary ballot. He was advised to file a sworn affidavit requesting such removal. Attached is a copy of that sworn affidavit, which as instructed, was faxed to your office prior to the close of business on Friday, December 9, 2011, with the original overnighted to your office. However, apparently your office nevertheless claims the affidavit was not timely received. Your office failed to remove Governor Johnson's name from the list of contenders,

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ballots were later printed, and Governor Johnson's name appeared on the primary ballot three months later. Governor Johnson never did campaign in the Michigan Republican Primary.

As discussed with your office, we have seen reports in the news media and elsewhere to the effect that your office may disqualify Governor Johnson from running as the Libertarian Party presidential nominee in Michigan, because his name appeared on the Republican Presidential Primary ballot. These reports point to MCL Section 168.695, Michigan's "sore loser" law, as the putative basis for doing so. The sore loser law provides:

No person whose name was printed or placed on the primary ballots or voting machines as a candidate for nomination on the primary ballots of 1 political party shall be eligible as a candidate of any other political party at the election following that primary.

At your request, I am writing this letter to you to set forth what the Libertarian Party of Michigan believes are compelling arguments for why the sore loser law does not apply in this case, or any case where the Libertarian Party of Michigan nominates a presidential candidate.

ARGUMENTS

1. MCL Section 168.695 was enacted in 1955. At that time, Michigan did not have presidential primaries, and thus the legislature could not have intended that it apply to a presidential primary. In fact, presidential primaries are fundamentally different from other party primaries. Unlike the winner of a typical primary, the winner of a presidential primary is not "nominated." A presidential nomination only occurs at the later national political party convention. The person who "wins" or "loses" a presidential primary may or may not become the eventual presidential nominee whose name appears on the November general election ballot. It is quite possible for a "loser" on the Michigan presidential primary ballot to be nominated at convention and appear on the November general election ballot.

2. Governor Johnson never requested or agreed to place his name on the Republican Party Presidential Primary ballot. Quite to the contrary, when the Michigan Secretary of State unilaterally placed his name on the Republican primary ballot, he attempted to remove his name from the ballot. And once on the ballot, he never campaigned for the Republican nomination. In fact, he quite publicly campaigned for the Libertarian Party nomination.

3. The United States Constitution provides for the indirect election of the President using the Electoral College. The true candidates in November are the candidates for presidential elector, who are required to be selected and certified by the Libertarian Party of Michigan. It is they who are running. In fact, MCL Section 168.45 provides:

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Marking a cross (X) or a check mark () in the circle under the party name of a political party, at the general November election in a presidential year, shall not be considered and taken as a direct vote for the candidates of that political party for president and vice-president or either of them, but, as to the presidential vote, as a vote for the entire list or set of presidential electors chosen by that political party and certified to the secretary of state pursuant to this chapter.

The presidential candidate's name on the November ballot is not there in his or her role as a candidate, but as a marker for that slate of presidential elector candidates. Hence, a presidential candidate such as Governor Johnson would not truly be a "candidate" on the November ballot, within the meaning of Michigan's sore loser law.

And beyond the plain language of MCL Section 168.45, Michigan election law does not treat presidential and vice presidential nominees like "candidates". All that is required for the Libertarian Party of Michigan to certify its presidential and vice presidential nominees for placement on the November general election ballot pursuant to MCL Section 168.686 is to deliver to you a letter setting forth their names. No Affidavit of Identity or Certificate of Acceptance is required, as for all other candidates. In fact, your office makes no inquiry at all regarding their eligibility for office, their address or any other matter.

4. Precedent in Michigan supports the argument that a candidate on the presidential primary ballot should be permitted to also run on the November general election ballot under a different partisan label. One prime example is that of John Anderson. John Anderson was the presidential nominee of the Anderson Coalition Party in November of 1980. He had run in the Michigan Republican presidential primary of May 20, 1980, and received 48,947 votes in that primary, placing third behind George Bush (who won the Michigan primary) and Ronald Reagan. The fact that he had run in the primary did not keep him off the November ballot as the presidential nominee of another party. Enclosed is a copy of the ballot on which his name appeared as the nominee of the Anderson Coalition Party. For some reason your office has been advising those who ask that Anderson ran as an independent, and thus the sore loser law did not apply to him.

5. A situation very similar to the present one arose in 1980 in the course of the John Anderson presidential campaign in North Carolina. John Anderson had been placed on the North Carolina Republican Presidential Primary ballot by the North Carolina State Board of Elections on February 6, 1980. In that case, Anderson actually notified the Board on February 12, 1980, as required by North Carolina law, that he accepted such ballot placement. More than two months later, on April 24, 1980, after doing very little campaigning in North Carolina, Anderson announced he would no longer seek the Republican nomination. He notified the Board he was revoking his acceptance of a place on the Republican Primary ballot in a letter received by the

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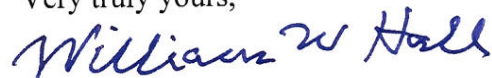
Board on April 30, 1980, only one week prior to the May 6, 1980, North Carolina Republican Presidential Primary. Unlike the situation when Governor Johnson contacted your office to withdraw, the ballots were already printed, and Anderson received more than 5% of the vote in the Republican primary. Also unlike the situation with Governor Johnson, the North Carolina sore loser statute was actually included in the presidential primary statute and thus was clearly intended to apply to candidates participating in presidential primaries.

John Anderson then proceeded to organize the Independents for John Anderson Party of North Carolina, which filed a successful petition for North Carolina political party status and requested that John Anderson's name be placed on the November general election ballot as its presidential candidate. The North Carolina State Board of Elections refused. Anderson sued under 42 U.S.C. § 1983 for violation of his rights under the First, Fifth and Fourteenth amendments to the Constitution. The United States District Court for the Eastern District of North Carolina ruled in his favor and issued an injunction requiring that Anderson's name be placed on the November general election ballot. The decision was appealed to the United States Court of Appeals for the Fourth Circuit, which unanimously upheld the decision of the District Court. See *Anderson v Babb*, 632 F.2d 300 (4th Cir. 1980).

6. The State of Michigan cannot impose additional qualifications for the office of President of the United States beyond those imposed by the Constitution. See, e.g., *U.S. Term Limits, Inc. v. Thornton*, 514 US 1779 (1995). Just as a state cannot prohibit the placing of the name of a candidate for federal office on the ballot just because he or she had already served in office for a particular period of time, Michigan cannot disqualify a candidate for President, such as Governor Johnson, because the candidate does not meet Michigan's peculiar additional requirement that he comply with Michigan's sore loser statute. As Justice Stevens noted in *U.S. Term Limits, Inc. v. Thornton*, permitting the states to add their own additional qualification for office would result in an unworkable "patchwork" of laws.

Based on these arguments, we believe that any suggestion that Governor Johnson cannot run as the Libertarian Party presidential nominee in Michigan, because his name was listed on the Republican Presidential Primary ballot, is without merit. We respectfully request that you confirm our interpretation of Michigan election law on this subject, so that any doubt will be removed prior to the Libertarian National Convention on May 3, 2012.

Very truly yours,



William W. Hall

WWH/jg

XFINITY Connect

forest.baker@comcast.net

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Please Notarize ASAP

From : granthuihui@nsoninfo.com

Fri, Dec 09, 2011 04:18 PM

Subject : Please Notarize ASAP

1 attachment

To : Gary Johnson <gejohn@hotmail.com>

Cc : Ron Nielson <rtnielson@nsoninfo.com>, forest baker <forest.baker@comcast.net>

Gary,

Below and attached is an affidavit I need you to sign and notarize today. I have briefed Forest on the matter and he knows exactly what to do. After it's been notarized, I need you to Fax it to (214) 291-3277 and (801) 355-6335. After you have faxed the affidavit to both numbers, please FedEx (ACCT # 481000068 and overnight it) to:

Michigan Bureau of Elections
Attn: Melissa Meierman
430 West Allegan St., 1st Floor
Lansing, MI 48918

State of Michigan
SECRETARY OF STATE

Gary Johnson 2012

Affidavit of (Full legal name)

1. My name is Gary E. Johnson. I am a candidate for President of the United States.
2. In a letter dated November 21, 2011 from Michigan Secretary of State Ruth Johnson, I was advised that my name is currently on the list of Republican candidates for President to appear on the ballot for Michigan's Presidential Primary election scheduled to occur on February 28, 2012.
3. I do not wish to have my name appear on the ballot as a candidate because my political party preference differs from the Republican Party specified in the November 21, 2011 letter.
4. Therefore, pursuant to MCL 168.615a(1), I respectfully request that you do not print my name on the ballot for Michigan's Presidential Primary.

Gary E. Johnson

Signed and sworn to before me this 9th day of December, 2011.

Grant K. Hulhui

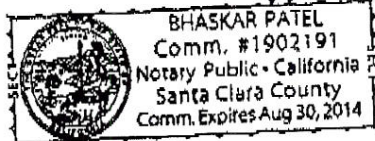
NSON Opinion Strategy

731 East South Temple

Salt Lake City, Utah 84102

801-303-7903

www.nsoninfo.com



Gary E Johnson
Bhaskar Patel
Notary Public
12/9/2011

Attached Jurat

Jurat

State of California

County of San Juan Capistrano

Subscribed and sworn to (or affirmed) before me on this 9 day of Dec

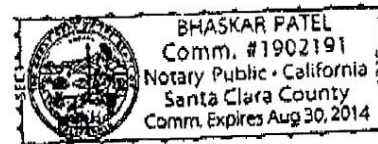
20 11 by Gary E Johnson

proved to me on the basis of satisfactory evidence to be the person(s) who appeared before me.

Bhaskar Patel

Signature

(Notary seal)



OPTIONAL INFORMATION

INSTRUCTIONS FOR COMPLETING THIS FORM

Any Jurat completed in California must contain verbiage that indicates the notary public either personally knew the document signer (affiant) or that the identity was satisfactorily proven to the notary with acceptable identification in accordance with California notary law. Any Jurat completed in California which does not have such verbiage must have add the wording either with a jurat stamp or with a jurat form which does include proper wording. There are no exceptions to this law for any jurat performed in California. In addition, the notary must require an oath or affirmation from the document signer regarding the truthfulness of the contents of the document. The document must be signed AFTER the oath or affirmation. If the document was previously signed, it must be re-signed in front of the notary public during the jurat process.

DESCRIPTION OF THE ATTACHED DOCUMENT

Affidavit
(Title or description of attached document)

Affidavit
(Title or description of attached document continued)

Number of Pages 2 Document Date 12/9/11

(Additional information)

- State and County information must be the State and County where the document signer(s) personally appeared before the notary public.
- Date of notarization must be the date that the signer(s) personally appeared which must also be the same date the jurat process is completed.
- Print the name(s) of document signer(s) who personally appear at the time of notarization.
- Signature of the notary public must match the signature on file with the office of the county clerk.
- The notary seal impression must be clear and photographically reproducible. Impression must not cover text or lines. If seal impression smudges, re-seal if a sufficient area permits, otherwise complete a different jurat form.
 - ♦ Additional information is not required but could help to ensure this jurat is not misused or attached to a different document.
 - ♦ Indicate title or type of attached document, number of pages and date.
- Securely attach this document to the signed document

LOT

NOVEMBER 4, 1980

COUNTY OF JACKSON, MICHIGAN

INSTRUCTIONS—To vote a straight party ticket make a cross (X) in the name of your party. Nothing further need be done. To vote not on your party ticket, make a cross (X) in the square ☐ before name.

NOTE: Candidates for president and vice president must be voted and the vote cannot be split.

If two or more candidates are to be elected to the same office, to vote for candidates not on your party ticket, make a cross (X) in the square ☐ before the names of the candidates for whom you desire to vote, and strike out an equal number of names on your party office.

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President and Vice President



RONALD REAGAN
GEORGE BUSH

Representative in Congress



JIM DUNN

Representative in State Legislature



CLIFFORD E. BROWN

Member of the State Board of Education



NORMAN STOCKMEYER

Member of the State Board of Education



EDMUND VANDETTE

Board of Regents, University of Michigan



DEANE BAKER

Board of Regents, University of Michigan



DAVID LARO

Trustee of Michigan State University



PAUL GADOLA

Trustee of Michigan State University



THOMAS REED

President and Vice President



Representative in Congress



Representative in State Legislature



Member of the State Board of Education



WALTER B. DYER

Member of the State Board of Education



DANIEL R. ELLER

Board of Regents, University of Michigan



RALPH W. HUGHEY

Board of Regents, University of Michigan



GERALDINE A. SANTUCI

Trustee of Michigan State University



WILBUR E. MILLER

Trustee of Michigan State University



THOMAS T. SHORE

President and V



ED CLARK
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CHRISTINE YOUN

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KURT A. O'KEEFE

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CHARLES SEVERA

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If you do not desire to vote any party ticket, do not make a cross (X) in the circle at the head of any ticket, but make a cross (X) in the square ☐ before the name of each candidate for whom you desire to vote.

If you desire to vote for a candidate not on any ticket, write or place the name of such candidate on your ticket opposite the name of the office.

Before leaving the booth, fold the ballot so that the face of the ballot is not exposed and so that the numbered corner is visible.



**INDEPENDENT
CANDIDATE**

dent	<input type="checkbox"/> President and Vice President BARRY COMMONER LaDONNA HARRIS	<input type="checkbox"/> President and Vice President JOHN B. ANDERSON PATRICK J. LUCEY	<input type="checkbox"/> President and Vice President GUS HALL ANGELA Y. DAVIS
ss	<input type="checkbox"/> Representative in Congress	<input type="checkbox"/> Representative in Congress	<input type="checkbox"/> Representative in Congress
ature	<input type="checkbox"/> Representative in State Legislature	<input type="checkbox"/> Representative in State Legislature	<input type="checkbox"/> Representative in State Legislature
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