
In the Matter of Objection)
)
to the Libertarian Party Nomination of)
)
GARY JOHNSON and JAMES B. GRAY))
)
for President and Vice President)
)
of the United States of America)
)

PANEL DECISION

On August 24, 2012, Gloria Mazza and Dean Montgomery (the “Objectors”) filed an objection to the Certificate of Nomination filed by the Libertarian Party of Iowa for Gary Johnson and James B. Gray to be placed on the ballots as candidates for the offices of President and Vice President of the United States. The objection alleged that Mr. Johnson and Mr. Gray were not nominated at a convention or caucus, and that the list of delegates submitted as attending the convention was nothing more than a petition.¹

Pursuant to Iowa Code section 43.24, a hearing was conducted on August 27, 2012, before Secretary of State Matt Schultz, Chief Deputy Auditor of State Warren Jenkins,² and Attorney General Tom Miller (collectively the “Panel”). Notice was provided to the parties as required by Iowa Code section 43.24(2). The Objectors were represented by Mark Schultheis and Ryan Koopmans of Nyemaster Goode, P.C., and Michael Morley of Washington, D.C. Alicia Dearn appeared on behalf of the Gary Johnson 2012 campaign and Ed Wright appeared on behalf of the Libertarian Party of Iowa. The Panel reconvened for deliberation on August 29, 2012.

¹ The Objectors also raised three technical objections to the paperwork filed by the Libertarian Party. The Panel finds that none of the three issues raised are sufficient to disqualify the Certificate of Nomination.

² Sitting as designee for Auditor of State David Vautt.

The information considered by the Panel consists of official documents judicially noticed including the Certificate of Nomination and list of delegates nominating Mr. Johnson and Mr. Gray, the Objections, Declarations, and Exhibits of the Objectors, the Notice of Hearing, the argument of Mr. Morley, the argument of Ms. Dearn, and the statements and argument of Mr. Wright. In addition, Ms. Dearn provided the Panel with supplemental authority and sworn declarations.

The facts are largely undisputed. On August 13, 2012, the Libertarian Party of Iowa³ attempted to file a nomination petition for its candidates for President and Vice President of the United States. The nomination petition was not filed after the Secretary of State's office noted that it was deficient because it lacked affidavits of candidacy for placeholder candidates⁴ named prior to the nomination of Mr. Johnson and Mr. Gray by the national Libertarian Party. When the Libertarian Party of Iowa was unable to locate the placeholder candidates to obtain the necessary affidavits, it called a nominating caucus pursuant to the Party constitution and bylaws to be held at 10:00 a.m., on August 15, 2012, at the Iowa State Fair. Under the Party constitution, a caucus of "all eligible electors" may be called to make a nomination for office. See Libertarian Party of Iowa Constitution, Article VI, Sec. 5. The Libertarian Party provided notice of the caucus through email, telephone calls, and posting on social media websites such as Facebook.

At the Iowa State Fair, a number of Libertarian Party supporters gathered. These supporters, at least some of whom were wearing Gary Johnson for President t-shirts, approached

³ The Libertarian Party of Iowa is considered a "nonparty political organization" under Iowa law because its gubernatorial candidate failed to receive at least 2% of the vote cast for all candidates for governor at the last general election. See Iowa Code § 43.2.

⁴ Nonparty political organizations may use placeholder candidate names when circulating nominating petitions prior to the nomination of a candidate by the national party organization. The Libertarian Party of Iowa's constitution requires it to substitute the national party presidential and vice presidential nominees. See Libertarian Party of Iowa, Constitution Article IX, Sec. 1.

fairgoers and attempted to obtain signatures on forms provided by the Iowa Secretary of State. The top of each form states “List of Delegates in Attendance at a Non-Party Political Organization Convention.” The header over the signature line states “Name of delegate.” Through this process, the Libertarian Party of Iowa obtained 449 signatures.

On August 17, 2012, the Libertarian Party of Iowa filed its Certificate of Nomination, Affidavits of Candidacy for Mr. Johnson and Mr. Gray, and attendance list with the Secretary of State. The filing was accepted.

The Objectors filed Declarations from eleven individuals who signed the “List of Delegates” at the Fairgrounds on August 15. These represent approximately 2% of the total number of signatures submitted. Each of the eleven state that he or she did not attend any convention or caucus of the Libertarian Party on that date.

A nonparty political organization may place a candidate for election on the ballot in Iowa in one of two ways. First, pursuant to Iowa Code chapter 45, the nonparty organization may submit a nominating petition with a sufficient number of signatures for the office sought and the appropriate affidavit of candidacy. Alternatively, the nonparty political organization may nominate a candidate through “[a]ny convention or caucus of eligible electors representing a political organization”. Iowa Code § 44.1. Once accepted, the Certificate of Nomination is presumed valid unless objected to in writing. Iowa Code § 44.15.

The Libertarian Party has attempted to qualify its presidential slate through the nominating convention or caucus process. In order to qualify for the ballot for a statewide office, including president and vice president of the United States, “there shall be in attendance at the convention or caucus where the nomination is made a minimum of two hundred fifty eligible electors including at least one eligible elector from each of twenty-five counties.” *Id.* The

attendance list filed by the Libertarian Party of Iowa contained 449 signatures from a sufficient number of counties.

Previously, panels of the Auditor of State, Attorney General, and Secretary of State have found that “statutes governing nomination procedures should be liberally construed to the benefit of the electors in order to provide every lawful opportunity for the electors to express their preference at the ballot box.” *In the Matter of Objection to the Nominating Petition of Paul W. Johnson*, Findings of Fact, Conclusions of Law, Decision and Order, p. 9 (2004); *see also In the Matter of the Nominating Petition of Ralph Nader and Peter Camejo*, Findings of Fact, Conclusions of Law, Decision and Order, p. 12 (2004) (“It is our view that statutes governing nomination papers should be liberally construed.”).

The objectors did not challenge the validity of any of the individual signatures other than the eleven affiants who disavow their attendance at any Libertarian caucus or convention. The Objectors argued that the eleven Declarants represented 2% of the total signatures and from there the Panel should infer that “most or all” of the remaining signatories were not delegates. The Panel is unwilling to make that extrapolation from such a small sample. The Libertarian Party affirmatively called supporters to attend their caucus at the Fairgrounds. It is reasonable to assume that a number of the signatures on the List of Delegates were at the Fairgrounds in response to the Party’s outreach. Even if the Panel were to strike the eleven signatures from the roll, there would remain well more than the necessary 250 delegates to qualify the Certificate of Nomination.

The Libertarian supporters communicated to the fairgoers that they were there as part of a process to certify or nominate Gary Johnson for the Libertarian Party candidate for president.

Even the eleven Declarations submitted by the Objectors concede that each was approached about a nominating convention for the Libertarian candidate to gain access to the ballot.

In addition, the Objectors filed four Declarations from persons who were present at the Fairgrounds but did not sign the Libertarian Party delegation papers. Each Declarant states that he did not observe a political caucus while at the Fairgrounds. One Declarant, Jay Kramer, states that he did not witness any Libertarian Party gathering at 10:00 a.m. at the Fairgrounds on August 15. He did witness one person with a clipboard talking to fairgoers that afternoon. The Panel is not persuaded. The Fairgrounds are a large space, and the fact that Mr. Kramer did not see what he would consider a Libertarian Party caucus does not mean that a caucus was not held. Nor is the Panel persuaded by the less detailed accounts of the other Declarants.

The remaining issue is whether the Libertarian Party of Iowa held a “convention” or “caucus” to nominate Mr. Johnson and Mr. Gray. The Objectors argue that the plain English reading of the terms, the Iowa Code, and the Libertarian Party’s own rules show that it did not hold a caucus or convention. Rather, the Objectors argue, the events at the Fairgrounds on August 15 were nothing more than a petition drive that required at least 1,500 signatures.

Neither “convention” nor “caucus” is defined in Iowa Code chapter 44. Conversely, the Code provides express guidance for the timing, procedures, and rules at political party precinct caucuses, county conventions, district conventions and state conventions. *See, e.g.*, Iowa Code §§ 43.4, 43.97, 43.102, and 43.107. However, candidates nominated at a convention or caucus held pursuant to Iowa Code chapter 44 are candidates from organizations that are not recognized political parties in Iowa. Nonparty organizations are not guaranteed a place on the ballot, unlike the political parties. Accordingly, it is not certain that the legislature intended to require the same formal procedures that are required of the recognized political parties when holding a

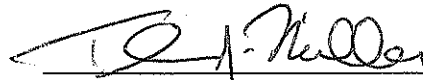
caucus or convention. Indeed, the only requirements for nonparty organizations are that there shall be in attendance 250 eligible electors including at least one from a minimum of 25 counties.

The Panel recognizes that the legislature provides nonparty organizations with two routes to the ballot – the petition drive or the nominating caucus or convention. At a minimum, a caucus or convention implies an affirmative gathering for a common purpose. However, the legislature has not provided any further guidance beyond the number of delegates that must be present.

In the present matter, the Libertarian Party of Iowa Executive Committee approved holding a caucus to certify the nomination of Mr. Johnson and Mr. Gray as the Party's presidential slate.⁵ There is no dispute in this matter that the Libertarian Party made an affirmative call to meet at a time and place for the purpose of certifying its presidential slate. The Party then submitted a Certificate of Nomination with the names of 449 delegates, at least one from twenty-five different counties. The Panel would welcome further clarity from the legislature regarding what process should be followed when holding a nonparty convention or caucus. Absent that guidance, the Panel is unwilling to create additional requirements that would result in denying the Libertarian Party access to the presidential ballot in this instance.

The Certificate of Nomination of the Libertarian Party of Iowa is valid and Gary Johnson and James P. Gray shall appear on the election ballot as the Libertarian Party candidates for President of the United States and Vice President of the United States, respectively.

⁵ Although it is not the Panel's duty to determine whether the Libertarian Party followed its internal rules, it appears from the record that the caucus was called in accordance with the Party Constitution and Bylaws which provide that "any eligible elector" may be a representative in the caucus.



THOMAS J. MILLER
Attorney General



MATT SCHULTZ
Secretary of State



WARREN G. JENKINS
Chief Deputy Auditor of State

ISSUED this 29th day of August, 2012.