



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. STE 03284-21

AGENCY DKT. NO. N/A

**NEW JERSEY DEMOCRATIC
STATE COMMITTEE,**

Petitioner,

v.

LISA MCCORMICK,

Respondent.

Rajiv D. Parikh, Esq., for petitioner (Genova Burns, LLC, attorneys)

No appearance by Lisa McCormick, respondent, pro se

Record Closed: April 12, 2021

Decided: April 13, 2021

BEFORE **JEFFREY N. RABIN**, ALJ:

STATEMENT OF THE CASE

This matter is a challenge by petitioner, the New Jersey Democratic State Committee, to the validity of the nominating petitions for the 2021 Primary Election filed by respondent Lisa McCormick to become the candidate of the Democratic Party for the Office of the Governor of the State of New Jersey. In order to participate in the primary election, respondent needed to submit 1,000 valid signatures from registered voters of the same party affiliation. Petitioner has challenged all 1,951 signatures submitted by the candidate,

asserting they were created by a computer “mail merge” program without signature or authorization by the named voter. Further, petitioner challenged signatures submitted by respondent of individuals who were deceased.

For the reasons set forth below and as supported by the appendices attached hereto, I **FIND** that Lisa McCormick garnered fewer than the requisite 1,000 signatures on her nominating petitions. Accordingly, I **CONCLUDE** that McCormick’s petition to be nominated as the Democratic candidate for Governor of the State of New Jersey during the primary election in New Jersey fails and her name may not be placed on the statewide Democratic primary election ballot.

PROCEDURAL HISTORY

On or about April 5, 2021, respondent filed nominating petitions containing a total of 1,951 signatures with the Department of State, Division of Elections, in Trenton, New Jersey. By letter dated April 9, 2021, petitioner filed written objections to the validity of the petitions.

Subsequently, on April 9, 2021, the Director of the Division of Elections delivered the file to the Office of Administrative Law (OAL) for hearing as a contested case. The parties were contacted by the Division of Elections on April 9, 2021, in anticipation of the filing, and advised that a hearing would be held on Monday, April 12, 2021, at 9:00 a.m., via Zoom due to the ongoing Covid-19 pandemic.

Because petitioner was claiming that respondent committed fraud by computer in submitting her petition, at the beginning of the Zoom hearing on April 12, 2021, petitioner moved for discovery to be permitted on an expedited basis. That motion was denied. Petitioner, who on April 11, 2021, had issued subpoenas for respondent and her purported boyfriend/campaign manager, James Devine, to appear at the within hearing, moved for this court to enforce said subpoenas. That motion was denied. Petitioner then moved for this court to issue subpoenas requiring the attendance at this hearing by respondent and her purported boyfriend/campaign manager. That motion was denied. Mr. Devine is not a party to the within hearing.

On April 12, 2021, respondent McCormick did not appear at the hearing. No requests for adjournment or delay were received by the court. After waiting for thirty minutes, the matter was heard ex parte. Respondent still had not appeared by the conclusion of the hearing, at approximately 1:30 p.m.¹ Respondent's nominating petition, referred to by petitioner and included in the file, has been marked as Exhibit P-1 and is listed in the appendix.

FACTUAL DISCUSSION AND FINDINGS

Proofs presented in support of the challenge to the nominating petition will be discussed under appropriate headings.

(1.) Signatures were the fraudulent product of a computer program.

George Losse, Principal Management Information System (MIS) technician for the New Jersey Department of State, was qualified as an expert in the creation of "single signature election petitions." He was a knowledgeable, credible witness, who designed the 2021 electronic signature system, put into place by Governor Murphy as a response to the Covid-19 pandemic. Whereas petitions for office typically involve a candidate meeting a voter in person and having them hand-write/hand-sign their names on a petition in ink, the new system would allow for electronic signatures on forms sent electronically to voters.

The candidate would fill out the top portion of the petition form with their information, and in the bottom of the page was a block for the voter's name and electronic signature, and lines for them to type in their address. Therefore, instead of there being a page with ten signatures on it, each one-page form would represent only one voter, thus the name "single signature election petitions." Instruction videos created by Losse on how the petition forms were to be completed by the candidate (Exhibit P-2) and the voter (Exhibits P-3 and P-4) were available on the State Division of Elections website.

¹ At approximately 11:30 a.m., an email was sent to the court and parties by Mr. Devine, in which he stated that he could not participate in this hearing due to personal issues. Mr. Devine did not explain why respondent McCormick failed to appear, and did not request any adjournment or delay on behalf of himself or respondent McCormick. Mr. Devine did not answer, address or dispute the claims made by petitioner against respondent McCormick, and his emailed letter was not admitted into evidence.

Mr. Losse understood computer templates, and fields and PDFs, was familiar with medidata (the “behind the scenes” data, i.e., who created a document) and was adept at identifying “mail merges,” when a person merges a form template with a mailing list. Losse reviewed respondent’s petition (Exhibit P-1), which was sent to the Division of Elections by Mr. James Devine on behalf of respondent McCormick on April 5, 2021.

Respondent’s petition consisted of 1,951 pages, each page being a single signature form endorsing McCormick to be placed on the ballot for the Democratic gubernatorial primary election. Losse identified a discrepancy on page 1,272, where instead of the voter inserting an electronic signature and their full name and address, the phrase “First Name Middle Name Last Name” appeared on all three lines. Losse testified that this was an indication that the form had been generated by a mail merge set up by the candidate; First Name Middle Name Last Name would be the fields to be filled in the template from a mailing list or data spreadsheet.

Based on this, Losse identified other indications that a computer mail merge program had been used to complete the single signature petition forms rather than voters themselves filling them in. Losse noted that in the line for the voter to type in his or her home address, the field “city” and the state of “NJ” were separated by three or four extra spaces. By itself this would not be of any concern; however, Losse noted that every one of the 1,951 pages had the extra spaces between the city name and NJ, which Losse concluded was another sign that the information had been inserted as part of a mail merge program. For clarification, the fields accidentally inserted into page 1,272 appeared as “City, NJ.” On page 421, for further example, the address line for that voter appeared as “North Plainfield, NJ” with the three or four extra spaces between the city name and “NJ.” It cannot be deemed mere coincidence when all 1,951 voters typing in their address all insert unnecessary extra spaces.

Losse testified that on page 1,079, for voter Jose Acevedo, there was an error in the electronic signature line: the voter’s signature appeared in a font reminiscent of script or Italics, and the voter’s first name was shown as “Jose8.” It raised a red flag that a person would create and insert an electronic signature with a typographical error, even though a person could theoretically create a digital signature using a nickname. But Losse then noticed that the voter’s name typed under the signature, in a standard font similar to Arial

font, also showed the voter's first name as "Jose8." Losse concluded that this was a sign that this petition page had been generated by a mail merge computer program. As with the other 1,950 pages, Jose's city name was separated from "NJ" by three or four unnecessary extra spaces.

Mr. Losse further testified that on every one of the 1,951 pages, not a single voter opted to insert a predesigned signature of theirs, such as a photograph of their signature created using a program like Adobe. Further, not a single voter used an electronic signature that differed from the typed name. In other words, not a single voter chose to use their initials as the electronic signature they created, but always typed out their full name as their signature. This is similar to how Jose "signed" his name as "Jose8" and also typed in "Jose8" as his legal first name. This evidenced a mail merge computer program because it did not correct errors but instead perpetrated them. Additionally, Losse testified that in every one of the 1,951 pages, the voter's digital signature used script/Italics font, but for their full name used standard/Arial font; not one of the 1,951 digital signatures used standard/Arial. Losse asserted that this was further evidence that these forms had been created by computer without any input from the actual named voter.

It was George Losse's conclusion that respondent McCormick had not obtained signatures from the actual voters, but rather submitted a petition created totally by a computer mail merge program.

Donna Barber testified and was a credible, knowledgeable witness. She was the Supervisor of Election Administration, whose responsibilities stemmed from the New Jersey Election Law (Title 19) and included administering the petition process. Barber pointed out that petitions are submitted under oath by potential candidates, swearing to the veracity of the information contained therein. Barber explained that Executive Order #216 from Governor Murphy allowed candidates to use either a single signature electronic petition or the traditional hand-signed petition. She explained the electronic signature process: a voter could use his or her already prepared photograph of their signature (such as one can create through Adobe); the other option for a person looking to sign a document electronically was to create a digital signature. If a person chose this option, they could create anything to be their signature, such as initials or an X or their full name or initial and last name. Once a voter

created a digital signature for purposes of signing a candidate petition, and then inserted that digital signature into the form, an Identification Configuration box would pop-up, which would confirm that the named voter had signed the document. For example, if a voter named Frank Smith was signing a petition, he could sign the petition with his own personal signature photograph (from Adobe or another computer system) or would have to create a unique signature for the petition. If he signed the petition using a newly created digital signature, after he inserted his signature the Identification Configuration box would appear and state, “Digitally signed by Frank Smith” and list the date and time. The voter would then type in their address.

Therefore, signatures on petitions done electronically would appear only two ways: as a previously created photograph of the voter’s signature, or as a newly created digital signature accompanied by an Identification Configuration confirmation.

None of the 1,951 single signature petition forms had either photographs of a voter signature or a digital signature accompanied by an Identification Configuration confirmation.

Petitioner introduced five witnesses—Paul Michael Alirangues, Robin Schlager, Shariq Ahmad, Melissa Brown Blauer and Adeel Ahmed—all of whom testified that while they had signed candidate petitions before, and respondent McCormick’s single signature forms correctly showed their names and current addresses, they had never completed or submitted those petition forms for candidate McCormick, had not entered an electronic signature on those pages, had not authorized anyone else to sign petitions for McCormick, and had never had any contact with the McCormick campaign regarding signing a petition for McCormick. Three of those witnesses testified that this year they had in fact signed a petition for a different Democratic gubernatorial candidate.

Accordingly, I **FIND** that none of the 1,951 single signature election petition forms submitted by respondent McCormick contained valid signatures.

(2.) Signatures of individuals who were deceased.

Although petitioner provided sufficient and undisputed evidence that all of the signatures submitted by respondent had been created and signed by a computer program without input from an actual voter, petitioner also provided proof that at least two of the single signature election petition forms submitted by respondent had been for voters who predeceased the signing of those forms. Petitioner received assistance from Sandra Lewis from the New Jersey Division of Elections, who utilized the State Voter Registration System (SVRS).²

Page 838 of respondent's petition purported to be a signature from an "L. Krawitz." Petitioner provided evidence from Krawitz's obituary and tax records that the L. Krawitz listed in the tax records as living at the address shown in respondent's petition had died on January 28, 2021, whereas the signature of respondent's petition was generated on April 5, 2021. Page 1,570 of respondent's petition showed a voter named "Ahmed and Bulbulia." The "and" clearly appeared to be an error perpetrated by respondent's mail merge computer program, and appeared in both the digital signature line as well as the line for the voter's typed name. The Ahmed Bulbulia listed as living at the address shown in respondent's petition had died on January 28, 2015, whereas the signature of respondent's petition was generated on April 5, 2021.

I **FIND** that the signatures on pages 838 and 1,570 of respondent's petition were not valid.

LEGAL ANALYSIS AND CONCLUSIONS

Election laws are to be liberally construed so as to effectuate their purpose. They should not be construed so as to deprive voters of their franchise or to render an election void for technical reasons. Kilmurray v. Gilfert, 10 N.J. 435, 440 (1952); In re Ross Petition,

² The SVRS was updated in real-time, and contained the most recently available information regarding the names and addresses of all voters registered in the State. The system had the capacity to display the names, addresses, and party affiliations of registered voters. In addition, signatures in the registration records were scanned into the system and could be readily compared to the signatures on the petitions.

116 N.J. Super 178, 184 (App. Div. 1971). Usually, it is in the public interest to submit to the electorate a ballot bearing the names of candidates of all qualifying groups and parties. Kilmurray, at 441. In enacting the mechanisms governing elections, our Legislature intended “to promote participation in the candidate-selection process, and to give voters more choices in primary elections.” Lesniak v. Budzash, 133 N.J. 1, 17 (1993). See also, New Jersey Democratic Party, Inc. v. Samson, 175 N.J. 178, 190 (2002).

In furtherance of that societal purpose, the Legislature has prescribed in N.J.S.A. 19:23-7 that a nominating petition for a primary election shall set forth:

. . . that the signers thereof are qualified voters of the . . . election district . . . in which they reside and for which they desire to nominate candidates; that they are members of a political party (naming the same), and that they intend to affiliate with that political party at the ensuing election; that they indorse the person or persons named in their petition as candidate or candidates for nomination for the office or offices therein named; and that they request the name of the persons or persons therein mentioned be printed upon the official primary ballots of their political party as the candidate or candidates for such nomination.

The within case was not a typical challenge to a candidate’s petition. As Lesniak acknowledged that “the only expeditious manner of determining who is eligible to sign the nomination petition is to consult the registration list,” and that a “[v]oter must be registered in order to sign a nominating petition,” the standard practice would be to go through each of the signatures in the petition to ensure that the voter met the above-referenced requirements.

However, this was not just a “technical” issue as per Kilmurray; the within petitioner provided expert election procedures testimony which evidenced that respondent’s entire petition was fraudulently created without any input from actual voters. Having seen petitioner’s accusations, respondent failed to file an answer disputing those charges, and failed to appear for a hearing in which she could have challenged those assertions. Even without expert testimony, it appeared to the layman’s eye as if respondent McCormick had, at the last minute, simply created a template for completing individual single signature petition forms, and merely inserted the names and addresses of miscellaneous registered Democrats into the forms. Not only did McCormick (and for that matter, Devine) fail to respond to petitioner’s accusations, she failed to offer any affirmative proof that she had

solicited and received valid signatures from registered voters who wished to support her candidacy.

While election laws should be liberally construed so as not to deprive voters of their political voice, the laws cannot be circumvented using fraudulent methods. While it might be ideal to give voters more choices in primary elections, there was no evidence in the within matter that any registered voters had displayed interest in having Lisa McCormick on their primary ballot. McCormick was given the opportunity to defend her petition but chose not to; conversely, petitioner provided evidence from experts in election procedures to show that respondent did not have any valid signatures.

In applying the statute to the facts of this case, the outcome depends on a straightforward mathematical computation: does the candidate have sufficient valid petition signatures to meet the statutory requirements. Having reviewed petitioner's challenges to the signatures and based on the foregoing facts and applicable law, I **CONCLUDE** that petitioner had met its burden of proving that respondent did not have the 1,000 or more valid signatures to have her name placed on the ballot in the primary election pursuant to N.J.S.A. 19:23-8. The outcome is consistent with the purpose of the law. The process of being allowed to file a petition is to give voters choices in the primary. The Legislature determined that 1,000 signatures were necessary to show that the electorate desired the applied for candidacy. In this case, respondent did not acquire the requisite number of signatures of registered voters.

ORDER

I **ORDER** that the respondent's petition be declared invalid, and I **ORDER** the respondent excluded from the ballot.

I hereby **FILE** my initial decision with the **SECRETARY OF STATE** for consideration.

This recommended decision may be adopted, modified or rejected by the **SECRETARY OF STATE**, who by law is authorized to make a final decision in this matter.

If the Secretary of State does not adopt, modify or reject this decision within forty-five days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

Any party may file exceptions with the **DIRECTOR OF THE DIVISION OF ELECTIONS, DEPARTMENT OF STATE**, by facsimile transmission at (609) 777-1280 within two hours of receipt of the initial decision. A hard copy shall be mailed within twenty-four hours of the facsimile transmission to the **DIRECTOR OF THE DIVISION OF ELECTIONS, DEPARTMENT OF STATE, 225 West State Street, 5th Floor, PO Box 304, Trenton, New Jersey 08625-0304**, marked "Attention: Exceptions." A copy of any exceptions must be sent to the judge and to the other parties.

April 13, 2021
DATE



JEFFREY N. RABIN, ALJ

Date Received at Agency: April 13, 2021

Date Mailed to Parties: April 13, 2021

JNR/dw

APPENDIX

LIST OF WITNESSES

For Petitioner:

George Losse
Paul Michael Alirangues
Robin Schlager
Shariq Ahmad
Donna Barber
Melissa Brown Blauer
Adeel Ahmed

For Respondent :

None

From Division of Elections:

Sandra Lewis
George Cohen, Esq.

LIST OF EXHIBITS IN EVIDENCE

For Petitioner:

P-1 Petition of Nomination for the Primary Election
P-2 Transcript of Video Instructions to Candidates
P-3 Petitioner letter with link to Video Instructions, dated April 9, 2021
P-4 Transcript of Video Instructions to Voters
P-5 Obituary of L. (Leonard) Krawitz

P-6 Livingston Township tax records

P-7 Obituary for Ahmed Bulbulia

P-8 Short Hills Tax Records

P-9 Subpoena of Lisa McCormick

P-10 Subpoena of James Devine

For Respondent:

None

