

IN THE CIRCUIT COURT OF COLE COUNTY
STATE OF MISSOURI

COURTNEY CURTIS,)	
)	
Petitioner,)	
v.)	
)	
THE MISSOURI DEMOCRATIC)	Cause No.
PARTY)	
)	
and)	Div.
)	
STEPHEN WEBBER, CHAIRMAN OF)	
THE MISSOURI DEMOCRATIC)	
PARTY)	
)	
and)	
)	
SECRETARY OF STATE JOHN)	
"JAY" ASHCROFT)	
)	
Respondents.)	

MEMORANDUM IN SUPPORT OF VERIFIED PETITION FOR MANDAMUS

COMES NOW, Courtney Curtis, pursuant to Mo. R. Civ. P. 94, and for his Memorandum in Support of his Petition in Mandamus, states as follows:

INTRODUCTION

On March 27, 2018, Rep. Curtis timely attempted to submit his declaration of candidacy and filing fee to file as a Democratic candidate for the August 2018 primary for the 14th Senate District; however, through the improper actions of the Respondents, he was denied the opportunity to file his declaration of candidacy and filing fee. A writ of mandamus should be entered requiring the Respondents to accept and process Rep. Curtis' declaration of candidacy and filing fee because he has met every qualification under Missouri law.

FACTS

1. Courtney Curtis, is an individual who resides in the City of Ferguson, Missouri. Representative Curtis is a duly elected member of the Missouri House of Representatives for the 73rd District, which includes parts of St. Louis County and Ferguson.

2. Respondent the Missouri Democratic Party is a mutual benefit corporation, organized under the laws of the State of Missouri, with its principal office located at 300 St. James Street, Suite 104, Columbia, MO 6520, and with its registered agent located at 23 North Gore, Suite 208, St. Louis, Missouri 63119. The Missouri Democratic Party is an affiliate of the national Democratic Party.

3. Respondent Stephen Webber is the Chairman of the Missouri Democratic Party.

4. Respondent Secretary John “Jay” Ashcroft is the Secretary of State for Missouri, with his office located at 600 West Main Street, Jefferson City, MO 65101. The Elections Division of the Office of the Secretary of State is responsible for administering all statewide elections, initiative petitions, and making known the rules governing elections and electronic voting systems.

5. Rep. Curtis is over thirty years of age, has been a qualified Missouri voter for more than three years, and has been a resident of the 14th Senate District for more than one year. Therefore, Rep. Curtis is qualified to be a candidate for Missouri Senator in the 14th District. Missouri Const. Art. III § 6; Rev. Mo. Stat. § 21.070

6. In addition, Rep. Curtis is a Citizen of the United States, and has been a resident of the State of Missouri for more than one year. Missouri Const. Art. III § 8.

7. Rep. Curtis is not delinquent in the payment of any state income taxes, personal property taxes, municipal taxes, or real property taxes on his place of residence; is not a past or

present corporate officer of any fee office that owes any taxes to the State of Missouri; has not been found guilty of or pled guilty to any felony under the federal laws of the United States; and has not been found guilty of or pled guilty to any felony under the laws of the State of Missouri or of an offense committed in another state that would be considered a felony in the State of Missouri. Rev. Mo. Stat. § 115.306.

8. On March 27, 2018, at approximately 4:00 p.m., Rep. Curtis appeared at the Secretary of State's office to file his declaration of candidacy. As is the custom, he presented the filing fee to an official of The Missouri Democratic Party, Liz Zerr, along with a form which the official would sign acknowledging payment of the filing fee. Upon receipt of the payment and form, Zerr informed Curtis that she had to make a phone call. Upon her return, Liz stated that she could not take the form or the filing fee because Rep. Curtis had outstanding fines with the Missouri Ethics Commission.

9. Rep. Curtis informed her that the matter was under appeal, and that it should not stop him from paying his filing fee and submitting his declaration of candidacy to the Secretary of State. Rep. Curtis requested that she sign the form so he could proceed to file his declaration of candidacy; however, she refused to do so.

10. Rep. Curtis requested that she contact the Chairman of The Missouri Democratic Party, Stephen Webber, but this request was not granted.

11. Following this request, Rep. Curtis left the area to make a telephone call. Upon his return, his form was missing. He inquired with Zerr, who informed him that she had taken the form. He then attempted to fill out another form, however, Zerr prevented him from doing so. Rep. Curtis explained that he was completing the form so that when she obtained the approval to sign it, he would not have to waste additional time completing the form. Zerr then

got up from the table and walked into the Secretary of State's office. Rep. Curtis did complete another form, a copy of which is attached hereto as Exhibit A.

12. Shortly thereafter, Stephen Webber called Rep. Curtis. Again, Curtis discussed the fines, the fact that they were under appeal, and that this should not prevent him from filing his declaration of candidacy. Webber reiterated what was previously stated and refused to give any representative of The Missouri Democratic Party authority to sign the form.

13. Rep. Curtis placed his filing fee on the table and walked away. Zerr picked up the money up and said that she would not accept it, and that she was simply going to leave it in a public place.

14. Rep. Curtis proceeded to the Secretary of State's office, presented his declaration under § 115.306, and had it date-stamped. A copy of the declaration is attached hereto as Exhibit B. The Secretary of State's office requested the filing fee payment form, which Rep. Curtis presented. The employee asked Rep. Curtis for a copy of the form signed by a representative of The Missouri Democratic Party, to which he responded that he was refused a signed copy of the form by the party's representative. The Secretary of State's office refused to process Rep. carter's declaration of candidacy. He then requested to speak with the Secretary of State to discuss any remedies that might be available. The Secretary of State did not come out to speak with Rep. Curtis.

15. Because the close of filing was nearing, Rep. Curtis went back to The Missouri Democratic Party table to make a final appeal to Liz Zerr. He again explained that the fines were under appeal and that she should sign the form acknowledging the payment of the filing fee. She stated she would not sign the form, and that Chapter 115 of the Revised Missouri Statutes did not say that she had to give him a receipt. When Rep. Curtis began to record the discussion, another

official from the Secretary of State's office came over to the table, said thank you for coming, and closed the office door as it was after the close of filing.

LEGAL DISCUSSION

A. The Law Regarding Mandamus.

Mandamus is the appropriate action when seeking to require the performance of an official of a ministerial act. Hunter v. County of Morgan, 12 S.W.3d 749, 764 (Mo. Ct. App. 2000). A writ of mandamus will lie to compel a public official to do that which he or she is obligated by law to do and undo that which he or she was prohibited by law from doing. *See State ex rel. Burns v. Gillis*, 102 S.W.3d 66, 68 (Mo. Ct. App. 2003). Therefore, a writ of mandamus cannot compel the performance of a discretionary act. Id.

A ministerial act is one that law directs the public official to perform upon a given set of facts, independent of how the official may regard the propriety or impropriety of performing the act in any particular case. Jones v. Carnahan, 965 S.W.2d 209, 213 (Mo. Ct. App. 1998). A discretionary act is one that requires the exercise of reason in determining how or whether the act should be performed. Id. A writ of mandamus will only issue when there is an unequivocal showing that the public office failed to perform a ministerial duty imposed by law. Id.

The party seeking a writ of mandamus, the relator, must show a clear and specific right to the relief sought. State ex rel. Selsor v. Grimshaw, 762 S.W.2d 868, 869 (Mo. Ct. App. 1989). The relator must prove that he has a clear, unequivocal, specific, and positive right to have the official perform the act demanded, and the remedy will not lie if the right is doubtful. Jones, 965 S.W.2d at 213. To determine whether the right to mandamus is clearly established and exists currently, the court examines the statute under which the relator claims the right. Id.

B. Missouri Election Law.

Under Rev. Mo. Stat. § 115.347.1, “[n]o candidate's name shall be printed on any official ballot unless his written, signed and sworn declaration of candidacy has been filed in the office of the appropriate election official as provided in this subchapter.”

Section 115.349 sets out the time for filing a declaration of candidacy and the form of that declaration. Section 115.349.1 states, “[N]o candidate's name shall be printed on any official primary ballot unless the candidate has filed a written declaration of candidacy in the office of the appropriate election official by 5:00 p.m. on the last Tuesday in March immediately preceding the primary election.” And, § 115.349.3 provides that the declaration should include the candidate's name, residence address, office for which he or she proposes to be a candidate, the party ticket on which he or she wishes to be a candidate, and that if nominated and elected, he or she will qualify.

There are only a very specific and express set of circumstances where a candidate's name will be withheld from placement on the ballot. One is § 115.306.1, which states: “No person shall qualify as a candidate for elective public office in the State of Missouri who has been found guilty of or pled guilty to a felony or misdemeanor under the federal laws of the United States of America or to a felony under the laws of this state or an offence committed in another state that would be considered a felony in this state.”

A second is § 115.306.1, which states: Any person who files as a candidate for election to public office shall be disqualified from participation in the election for which the candidate has filed if such person is delinquent in the payment of any state income taxes, personal property taxes, municipal taxes, real property taxes on the place of residence, as stated in the declaration

of candidacy, or if the person is a past or present officer of any fee office that owes taxes to the state.”

A statute passed in 2010, Rev. Mo. Stat. § 130.071, purported to place additional restrictions upon a candidate relating to the filing of campaign finance reports and the payment of Missouri Ethics Commission fines, but that statute was ruled unconstitutional by the Missouri Supreme Court in 2012. Legends Bank v. State, 361 S.W.3d 383 (Mo. banc). Therefore, § 130.071 has no application in the ability and right of a candidate for file for elective office.

C. The Missouri Democratic Party and the Secretary of State Were Obligated to Accept Rep. Curtis’ Declaration of Candidacy and Filing Fee.

There is no dispute that Rep. Curtis meets each and every qualification to file his application to run for State Senate. There is no dispute here that Rep. Curtis attempted to timely file his declaration of candidacy on March 27, 2018, with respect to the August 2018 primary election. A copy of the date-stamped declaration under §115.306 is attached hereto as Exhibit B. It was rejected by the Secretary of State because The Missouri Democratic Party refused to accept Rep. Curtis filing fee and to provide him with the signed receipt. But the Secretary of State had the full authority – and the obligation to accept the filling fee – directly from Rep. Curtis. Rev. Mo. Stat §115.357, provides as follows:

1. Except as provided in subsections 3 and 4 of this section, each candidate for federal, state or county office shall, before filing his declaration of candidacy, pay to the treasurer of the state or county committee of the political party upon whose ticket he seeks nomination a certain sum of money as follows:

(1) To the treasurer of the state central committee, two hundred dollars if he or she is a candidate for statewide office or for United States senator, one hundred dollars if he or she is a candidate for representative in Congress, circuit judge or state senator, and fifty dollars if he or she is a candidate for state representative;

(2) To the treasurer of the county central committee, fifty dollars if he or she is a candidate for county office.

2. *The required sum may be submitted by the candidate to the official accepting his declaration of candidacy.* All sums so submitted shall be forwarded promptly by the official to the treasurer of the appropriate party committee.

The Missouri Democratic Party and Stephen Webber refused to accept Rep. Curtis' filing fee and provide him with the necessary paperwork under the pretense that Rep. Curtis had outstanding ethics commission fines that were unpaid. As noted above, this is not a basis for disqualification for filing as a candidate. Moreover, the Secretary of State has no authority to judge the qualifications of a candidate beyond the statements made on the candidate's declaration of filing. In Vowell v. Kander, 451 S.W.3d 267, 274-75 (Mo. Ct. App. 2014), the Court explained:

Section 115.387 pertains to the ministerial task of certifying the names and addresses of candidates for the ballot. Section 115.387 does not purport to grant the Secretary of State any discretionary power. He or she must certify the name of "each person who has filed a declaration of candidacy in the secretary's office and is entitled to be voted for at the primary election."

§ 115.387.

Therefore, The Missouri Democratic Party and its Chairman, Stephen Weber, as well as the Secretary of State, had an obligation to accept Rep. Curtis' declaration of candidacy and filing fee so he could file as a candidate with the Secretary of State. The acceptance of the declaration of candidacy and the filing fee were ministerial acts for which mandamus will lie to compel.

WHEREFORE, Representative Courtney Curtis prays that this Court enter its writ of mandamus directed to Respondents, as the Secretary of State and the Chairman of The Missouri Democratic Party, and upon full hearing that the Court issue its peremptory writ of mandamus, commanding Respondents to accept Petitioner's declaration of candidacy and filing fee as timely filed, and for such other relief as the court may deem just and proper.

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