

District Court City and County of Denver, Colorado Court Address: 1437 Bannock Street, Denver, CO 80202	DATE FILED: April 29, 2016 10:21 AM CASE NUMBER: 2016CV31500
Petitioner: JON KEYSER, v. Respondent: WAYNE W. WILLIAMS, in his official capacity as the Colorado Secretary of State.	Case No. 2016CV31500 Courtroom 376
ORDER	

This matter comes before the Court on the “Verified Petition of Jon Keyser,” filed on April 26, 2016 at 2:03 p.m. The Court held a hearing on April 26, 2016 at approximately 4:00 p.m. Christopher Murray and Patrick Hall appeared for the Petitioner. LeeAnn Morrill and Matt Grove appeared for the Respondent. Tyler Gonzalez and Jeffrey Mustin testified under oath. Closing arguments were made by counsel. The Court, having listened closely to the witnesses and assessed credibility, considered arguments of counsel, reviewed applicable law, and being otherwise fully advised does now enter the following ruling.

Facts

Jon Keyser seeks the Republican Party’s nomination for United States Senator in the 2016 election. To have his name on the primary election ballot, Mr. Keyser was required by Colorado law to file a petition containing a certain number of valid signatures of registered Republican electors. Accordingly, Mr. Keyser set out to collect these signatures with the assistance of petition circulators. Tyler Gonzalez was one of the circulators of these petitions.

On March 31, 2016, Mr. Keyser submitted 16,067 petition signatures to the Colorado Secretary of State (“SOS”) for an official determination that the petition

signatures met Colorado law so that Mr. Keyser's name would be on the 2016 primary election ballot. On April 25, 2016, the SOS informed Mr. Keyser that the petition signatures he submitted were insufficient to place his name on the primary ballot.

Jon Keyser protests the SOS's statement of insufficiency and has timely filed a petition with the district court for review. § 1-4-909(1.5), C.R.S.

The evidence in this case is largely undisputed. Tyler Gonzalez was a circulator of petitions to nominate Jon Keyser for U.S. Senate and was a resident of the State of Colorado, a citizen of the United States, at least 18 years of age, registered to vote and affiliated with the same political party mentioned in the petition at the time it was circulated.

Mr. Gonzalez registered to vote in October 2012, listing 13535 Ashbrook Heights, #103, Colorado Springs, Colorado 80921 as his address. Thereafter, he affiliated with the Republican Party, still at the Ashbrook Heights address. On February 29, 2016,¹ Mr. Gonzalez moved to 6586 Many Moon Drive in Colorado Springs but did not update his voter registration to reflect this change. On that same date, Mr. Gonzalez was hired by Jon Keyser's campaign for U.S. Senate.

Mr. Gonzalez circulated petitions to nominate Jon Keyser as a candidate for U.S. Senate. Mr. Gonzalez's goal was to collect signatures of registered voters affiliated with the Republican Party from various congressional districts. As to each of these petitions, Mr. Gonzalez completed and signed affidavits as required by Section 1-4-905(2). All of Mr. Gonzalez's signatures on these petitions were notarized. On all but one of these affidavits Mr. Gonzalez put his Many Moon address as the place where he resided. On one petition (#00600), dated March 2, 2016, he listed his Ashbrook Heights address as the place where he resided.

From Mr. Gonzalez's perspective, he put his address on these affidavits to help someone find him if they needed to do so. During this time, Mr. Gonzalez used both the

¹ Although ¶6 of Mr. Gonzalez's affidavit, filed with the Petition, indicates that he moved to the Many Moon address in November 2015, Mr. Gonzalez testified in person that he moved on February 29, 2016. The Court finds Mr. Gonzalez's live testimony to be credible and accepts that over the written affidavit.

Many Moon and Ashbrook Heights addresses but his intention was to permanently reside at the Many Moon address.

Mr. Keyser submitted the signed petitions gathered by Mr. Gonzalez along with all other signed petitions to the SOS.

Jeff Mustin is the “petitions lead” for the Colorado Department of State. As such, he is in charge of all petitions, including candidate petitions, which come through the SOS’s office.

As to Mr. Keyser’s submissions, Mr. Mustin participated in the “preprocessing” of the petitions, which entailed entering the name of all the circulators into a computer database of statewide voter registrations to ensure each circulator met the statutory requirements. In other words, one of Mr. Mustin’s duties was to verify that, at the time the petitions were signed, the circulator was registered to vote and had the same party affiliation as the candidate. By being registered to vote, the circulator had to be a resident of Colorado and a citizen of the United States. Furthermore, Mr. Mustin testified that, for his purposes, a circulator’s registration to vote is not valid if his or her residence is not up to date.

In this case, Mr. Mustin typed in “Tyler Gonzalez” and searched the voter registration database. When he did so, no Many Moon address could be found. It was not until “a couple of sections in” that Mr. Mustin was able to correlate the address that was placed on Petition #00600 – the Ashbrook Heights address – with Tyler Gonzalez. Accordingly, the SOS accepted that petition (#00600) and rejected all other petitions with Tyler Gonzalez as circulator. Despite the rejection of all but one of Mr. Gonzalez’s petitions, it appears that Mr. Keyser had a sufficient number of valid signatures in every congressional district except the Third.

Discussion

The Petitioner claims that “but for the [Colorado Secretary of State’s] rejection of Mr. Gonzalez’s petitions, Mr. Keyser’s name would have been placed on the primary election ballot.” Petition, ¶ 24. The Respondent agrees but argues that because Mr. Gonzalez did not meet the statutory requirements for a valid circulator as to all but one of the petitions submitted, the SOS’s determination that “Mr. Keyser submitted an

insufficient number of valid signatures to qualify for placement on the 2016 primary election ballot” is appropriate and should be affirmed by this Court.

The Election Code, Articles 1 through 13 of Title I of the Colorado Revised Statutes, is to be liberally construed. See §§ 1-1-101 and 1-1-103. “Substantial compliance” with the Code is all that is necessary. § 1-1-103(3); see *Loonan v. Woodley*, 882 P.2d 1380, 1385-86 (Colo. 1994) (addressing the initiative and referendum process).

The Court finds that Mr. Keyser substantially complied with the Colorado Election Code. Mr. Gonzalez’s failure to update his voter registration data with his new address is *de minimus*, especially given the fact that his move occurred just days before he started gathering signatures for Mr. Keyser. In assessing Mr. Gonzalez’s credibility and the evidence in this case, the Court finds that Mr. Gonzalez did not have an improper motive in failing to update his voter registration address. The Colorado Election Laws are designed, in part, to eliminate fraud. No fraud was present here.

Conclusion

Based on the above, the Court orders the Colorado Secretary of State to accept all of the petitions submitted by Jon Keyser which were rejected on the basis that Tyler Gonzalez did not meet the statutory requirements for being a circulator. In doing so, if that increases the number of valid signatures to 1,500 or more from each of Colorado’s seven congressional districts, for a total of at least 10,500 valid signatures statewide, the Colorado Secretary of State is ordered to place Jon Keyser’s name on the 2016 Republican Party’s primary election ballot for United States Senator.

Dated this 29th day of April 2016.

SO ORDERED.



ELIZABETH A. STARRS
Denver District Court Judge