STATE OF MAINE

494

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To Markham L. Gartley, Sec. of State Dept. State

From Joseph E. Brennan, Attorney General Dept. Attorney General

Subject Proposed procedures for processing challenge to state-wide petition signatures

Following is an outline of the law and proposed procedures regarding the processing of a challenge to signatures on a state-wide petition. The particular challenge in question is that of Representative Louis Jalbert challenging the validity of signatures on the Communist Party petitions.

FACTS:

A petition containing 13,418 signatures was presented to the Secretary of State in a timely manner to place candidates of the Communist Party on the Maine Presidential Election Ballot. Both the candidate for President and the candidate for Vice President were from the same State.*

On June 10, 1976, Representative Louis Jalbert filed a timely challenge to these petitions, 21 M.R.S.A. § 494-2. In that challenge Representative Jalbert alleged: "That many of these signautres were obtained under false pretenses, for the people did not actually know what they were signing." Representative Jalbert also asked that each name be checked by the Registrar of Voters of the appropriate municipality "for proper registration, proper signature, correct address and also for forgery and duplication of names." The challenge itself made no allegations regarding lack of registration, duplication of names, or forgery of signatures.

Subsequently, the Secretary of State and the Attorney General have received communications from several individuals asking that their names be stricken from the petition. The grounds for this request are allegations that the individuals were misled in signing the petitions or did not know what they were signing. A few letters have also been received from individuals stating that they signed the petitions and were made fully aware of what they were signing at the time by the petitioners.

Disqualification of 2500 signatures would be required to disqualify the Communist Party candidacy.

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* This may present difficulty in that State, New York, as the Twelfth Amendment to the United States Constitution prohibits presidential electors from one State from voting for more than one of either the candidate for President or the candidate for Vice President from the same State. However that problem is not relevant in determining the validity of the petition for the Maine ballot, the limits for candidates from Maine being stated at 21 M.R.S.A. § 1184-1.

Legal Background:

Proper consideration of the approach to processing the challenge in this matter appropriately begins with a discussion of the general principles of law applicable to it. Reliance on such general principles of law is necessitated by the fact that, although the statute, 21 M.R.S.A. § 494, provides for challenges, it establishes no procedures by which those challenges are to be considered by either the Secretary of State or the Courts.

The first general principle which must be recognized is that challenges to petitions must generally be treated equally, regardless of whether the challenge effects a Democratic or Republican candidate or minor party or independent candidates. The laws authorizing such challenges for party and independent candidates are basically the same. 21 M.R.S.A. §§ 447 and 494.

Second, this is the first instance where the Secretary of State may be required to consider in detail a general challenge to a State-wide petition under these provisions of law, thus the procedures established here by the Secretary of State will set precedent for dealing with future challenges under these similar provisions of law.*

The third principle which must be recognized is that under the present laws, the burden of coming forward with evidence indicating the improper nature of certain signatures is upon the challenger of those signatures. Certainly the challenger would face this burden in any court matter, and there is no basis in the law for the challenger to face any different burden in seeking action of the Secretary of State. Thus, it is encumbent upon the challenger to identify the specific signatures challenged and the problem with those signatures (i.e., lack of proper signing, or lack of registration when compared with voter registration lists, forgery, obtaining by false pretenses). To interpret the law otherwise would require the Secretary of State to undertake an exhaustive investigation each time someone made a generalized challenge to a petition of another candidate. Generalized challenges to many candidates by opponents or supporters of opponents might be encouraged as fishing expeditions to discredit candidates and raise questions about their campaigns.

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* It is suggested that these provisions of law may be changed in the next Legislature, however, such cannot be assumed in a legal analysis and thus the possible establishment of precedents must be recognized.

Processing of such challenges would take an inordinate amount of time and clearly was not contemplated by the Legislature in light of the limited staff made available to the Secretary of State for processing of election petitions.

Thus, a challenge must cite specific signatures and the evidence as to why those signatures are invalid. This, incidentally, has been the general practice followed by challengers in most local referendum, State Representative and State Senator elections. There challengers have listed specific signatures and the defects they found with those signatures when comparing them with the voting lists. Otherwise, initiation of action by the Secretary of State on his own is only appropriate where defects appear on the face of the ballot of the petition, 21 M.R.S.A. §§ 447, 494 (e.g., duplicate, names, lack of proper address, or, as occurred in the instance of the Kyros petitions, many signatures of apparently similar handwriting which gave cause for appropriate investigation by the Attorney General's Office).

The fourth legal principle relates to proper treatment of persons requesting to withdraw their names. People requesting to withdraw their names from a petition after the filing deadline for that petition has passed, as in this case, may only be permitted to do so on a showing that their signatures were obtained by fraud in such a manner that, with reasonable care, they could not have discovered the fraud. See Roanoke v. County of Roanoke, 198 S.E.2d 780 (Va., 1973); Healy v. Rank, 140 N.W.2d 850 (S.D., 1966); State v. Montrose Rural High School Dist., 219 P.2d 1071 (Kan., 1950); State ex rel. Tegt v. Circuit Court, 39 N.W.2d 450 (Wisc., 1949); State ex rel. Griffith v. Walnut, 201 P.2d 135 (Kan., 1949); State ex rel. Harry v. Ice, 191 N.E. 155 (Ind., 1934); Rogers v. Pasadena, 22 P.2d 509 (Cal., 1933); Uhl v. Collins, 17 P.2d 99 (Cal., 1932). Compare cases which indicate that after filing, withdrawal may be allowed under certain circumstances. Jefferson Highway Transp. Co. v. St. Cloud, 193 N.W. 960 (Minn., 1923); Bagley v. McIndoe, 176 S.W. 243 (Mo., 1915).

The general principle of law relating to withdrawal of signatures from petitions for nomination is stated at 25 Am. Jur.2d Elections, § 173, as follows:

> "The rule seems to be that a signer of a petition for nomination may withdraw his name before the petition is filed, provided a reasonable time remains in which to secure other signers of the petition if necessary, but that where the petition for nomination has been filed and the time for filing has expired, a signer has then no right to withdraw his name."

To this general rule is added the qualification that signers may withdraw after the filing deadline if their signatures were obtained by fraud or misrepresentation, Little Black Drainage District v. Robb, 240 S.W.2d 167 (Mo., 1951); Hawkins v. Carroll, 1 S.E.2d 898 (S.C., 1939). However, in both of the above cases, the statements relating to fraud and misrepresentation were dictum. In both cases withdrawal was not allowed, as the parties requesting that signatures be withdrawn only alleged inadvertence or inattention or disagreement with the result sought to be obtained by the petitioners.

The rationale for the rule limiting withdrawal seems to be basically that to permit signers to withdraw petitions after the filing date has closed and the work of securing signatures has been abandoned would make the system wholly unworkable, and prejudice candidates and other petition signers, cf. Uhl v. Collins, 17 P.2d 99 (Cal., 1932). If withdrawal was allowed, candidates could be defeated simply by supporters of opponents signing petitions and then withdrawing signatures after the deadline. Also opponents of a candidate or a cause might pressure signers to withdraw names. The no withdrawal rule guards against such pressures.

In the instant case, some of the letters from people requesting that their names be withdrawn allege that signers did not know what they were signing and were told that they were signing something else. However, there is no allegation that a reading of the petition they signed would not have disclosed the nature of the petition. Assuming, arguendo, the truth of the allegations that people did not know what they were signing and that they were told that they were signing something else, such still would not appear sufficient to justify withdrawal of signatures.

The closest case factually to this instance, a case which directly addressed the question of misrepresentation in presenting petitions, as opposed to simply addressing it as dictum, is Poole v. Tiner, 38 S.E.2d 650 (S.C., 1946). In that case the Court found that there were false representations as to what the petition in question was about and that people were induced to sign petitions based on reliance on such false representations. Signers of the petition then filed affidavits requesting that their names be stricken. The Court noted that the facts showed no fraud, only misrepresentation, and misrepresentation which a reading of the petition's stated purpose would have revealed. However, those requesting that their names be withdrawn had not read the petition.

The Court held that signers of a petition could not claim fraud when they failed to avail themselves of the opportunity and the means at hand (reading the petition) to acquaint themselves with the contents of the petition. The Court further held that the initial negligence of the signers in not reading the petition should not subsequently be allowed to prejudice others who had signed the petition and acted in good faith and relied on their signatures for an election to go forward, 38 S.E.2d at 653-654.

Proposal for Dealing with the Challenge in this Case:

Based on the above-stated facts and general principles of applicable law, the following procedures are recommended for dealing with the challenges in this case.

1. The person challenging the signatures must do the following:

   a. Identify the specific signatures which are challenged.

   b. State the reason why each such signature is challenged, and

   c. Present sufficient evidence to raise the possibility that the challenge may be validly based. Such evidence might include a statement that the signature in question has been compared with the appropriate local voting list and found wanting for one or more certain specific reasons, or that someone other than the person whose name appears on the petition actually signed that person's name to the petition or that the signature on the petition was obtained by fraud.

2. Persons requesting that their names be withdrawn from the petition and other persons who wish to allege that certain specific signatures were obtained by fraud must show not only that they signed the petition without reading it and that they may have been told that they were signing something else, but also that their signature was obtained under duress or in some other manner that would have prevented their realizing what they were signing by the exercise of due care, such as reading the petition.

Should any evidence sufficient to meet this initial threshhold be presented, it will be appropriate for the Secretary of State to do the following:

A. If the evidence is such that there are not disputed facts (such as comparing a signature on the list with local voting lists), the Secretary of State should make such comparisons either directly or through contact with the local voter registrars and strike or approve signatures as appropriate.

B. Where facts are in dispute, such as over questions of alleged fraud in obtaining signatures, the Secretary of State should make an initial review of the written materials received which allege the fraud and then discuss further with the Attorney General the appropriate manner of processing such materials. Options for processing such materials would include a hearing by the Secretary of State to determine placement on the ballot, presentation of the materials to a Court through a suit to determine the propriety of striking the names, or further investigation and presentation of matters to a Grand Jury if criminal fraud appears to have occurred. None of these three options are mutually exclusive. All of them would depend on the nature of subsequent materials which may be provided by the challengers or by persons seeking to have their names withdrawn from the petitions.

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cc: Rep. Louis Jalbert