



J. Kenneth Blackwell
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Ohio Secretary of State

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Via U.S. Mail and Facsimile to (614) 462-3489

July 14, 2006

Matthew M. Damschroder, Director
Franklin County Board of Elections
280 E. Broad Street, Room 100
Columbus, OH 43215

Re: Tie vote of June 21, 2006 on whether to certify Charles Morrison's nominating petition seeking to become an independent candidate for the office of Representative to Congress for the 15th Congressional District.

Dear Director Damschroder:

You have submitted to Secretary Blackwell a tie vote that occurred at a meeting of the Franklin County Board of Elections on June 21, 2006. The tie vote concerned whether the board should certify the nominating petition filed by Charles Morrison, a qualified elector residing in Madison County, who filed said petition in an effort to become an independent candidate for the office of Representative to Congress for the 15th Congressional District.

I am in possession of documentation that explains that Board Chairman William A. Anthony, Jr. offered the motion that the board members certify the name Charles R. Morrison to the 2006 general election ballot for the above-referenced office. Board Member Kimberly E. Marinello seconded the motion. The subsequent vote on the motion yielded aye votes from Board Members Anthony and Marinello and no votes from Board Members Michael F. Colley and Carolyn C. Petree.

I break the tie by voting with Board Members Colley and Petree against the motion to certify Mr. Morrison's petition.

Factual Background

The record reflects that Mr. Morrison filed nominating petitions for Member of Madison County Republican Party Central Committee and for Member of the Republican State Central Committee on February 7, 2006. The Madison County Board of Elections certified both petitions and Mr. Morrison was placed on the May 2, 2006 Republican Party Primary ballot for both offices. Both of Mr. Morrison's bids for these elected offices were ultimately unsuccessful. The record also reflects that Mr. Morrison filed a candidate petition on or about May 1, 2006 in which he sought ballot placement as an independent candidate. Yet he appeared at his polling place, asked for, and cast a Republican ballot the very next day during the May 2, 2006 Republican Primary.

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Mr. Morrison personally circulated the aforementioned petitions and signed the respective circulator statements as required by law. In doing so, he attested that he is a member of the Republican Party. Each such attestation, as is the case with all nominating petitions, are made under penalty of election falsification.

Discussion

The position statements clearly set forth the board members' arguments for and against certification of Mr. Morrison's petition to be placed on the ballot as an independent candidate. The positions set out in favor of the proposition raise an otherwise convincing rationale for access to the ballot. Secretary Blackwell has always publicly advocated for more access to the ballot. Were this merely an issue of access, the proponents of Mr. Morrison's position on this matter would no doubt be more convincing. However, I am persuaded by the factual circumstances that demonstrate contradictions between fact and the law - contradictions which cannot be easily ignored. The weight of the record reflects that Mr. Morrison never made any affirmative declaration or representation of non-affiliation with the Republican Party at any point prior to, during, or immediately after circulating his two nominating petitions, attestation of affiliation to said party, or requesting and then casting a Republican ballot in the recent Primary Election. R.C. §3501.01(I) requires more. It requires that the candidate "claim" to not be affiliated with a political party.

Mr. Morrison actually circulated his nomination petitions after having signed the circulator's statement under penalty of election falsification. The electors who signed those petitions presumably did so in reliance upon the candidate/circulator's explicit written status as one of their own. On the petitions he clearly holds himself out to be a Republican knowing that fellow Republicans were going to be, and presumably did in fact, vote for him in the Republican Primary on May 2, 2006. For those Republican electors who did not vote for him for either of the offices for which he appeared on the ballot, even they were able to consider Mr. Morrison as one of their Republican choices since he made no affirmative effort at any point leading up to the election, or on the day of the election to withdraw from Republican consideration for either office. In fact he did the opposite. On Election Day, he appeared at his precinct, asked for and received a Republican ballot, and cast the same - all of which are tantamount to affirmative representations of being a Republican. The protestors rightly point out the Supreme Court's holding in support of the state's right to limit independent candidacy to those who are truly independent. *Storer v. Brown*, 415 U.S. 72 (1974). Again, the relevant law clearly requires a more definitive representation to demonstrate one's status as an independent candidate for elected office in Ohio. R.C. §3501.01 (I). Because the Supreme Court permits Ohio to determine and devise its own standard for saying when a member of a major political party has transitioned into the status of being an independent, and therefore no longer a member of that party, and because R.C. §3501.01 (I) provides that standard, the law and the facts show that Mr. Morrison was never *truly independent* at any point relevant to this matter.

Decision

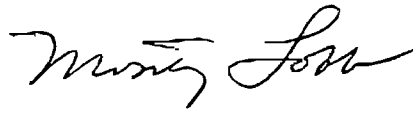
For the foregoing reasons, I vote with Board Members Colley and Petree against the motion to certify Mr. Morrison's petition. Therefore, because he does not qualify as an independent candidate in accordance with the laws of this state, Mr. Morrison shall not be placed on the ballot for the 2006 general election.

Please convey my decision to your board members.

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Sincerely,

A handwritten signature in black ink, appearing to read "Monty Lobb". The signature is written in a cursive, flowing style.

Monty Lobb
Assistant Secretary of State