

REPORT OF THE HEARING OFFICER:

FOR THE PUBLIC HEARING HELD MARCH 28, 2016, PURSUANT TO 21-A MRSA §337, SUB-§2, PARAGRAPH B, ON THE CHALLENGE BROUGHT BY DAVID FLOOD OF BIDDEFORD AGAINST THE PRIMARY PETITIONS FILED ON BEHALF OF JOANNE TWOMEY, A DEMOCRATIC CANDIDATE FOR STATE SENATOR IN DISTRICT 32.

1. On March 28, 2016, a public hearing was held for the purpose of hearing evidence relating to the allegations presented in the challenge made by David Flood of Biddeford against the primary petitions filed on behalf of Joanne Twomey, a Democratic candidate for State Senator in District 32.
2. The challenge was filed in the Office of the Secretary of State, Division of Elections, on March 22, 2016, and contained the following allegations:
 - a. The signatures of Estelle Morissette, Robert Thibodeau and Rachel Thibodeau on the candidate's petition forms have no dates;
 - b. Perry Aberle is a signatory and also the circulator of the same petition;
 - c. The signatures of Louis Hebert, Rita Roberge and Ronald Labonte on the candidate's petition forms do not list a city;
 - d. There is no complete Primary Candidate's Consent and Certification of Enrollment sheet for Ms. Twomey.
3. The challenger, David Flood, was present at the hearing. The candidate, Joanne Twomey, was present at the hearing and was represented by Attorney Eric Cote. Testimony was presented by challenger, David Flood; candidate, Joanne Twomey; Perry Aberle, petition circulator for Joanne Twomey; and Julie Flynn, Deputy Secretary of State.
4. The hearing officer noted at the start of the hearing that the Agency Record includes the original challenge document; copies of the original petition of the candidate, including eight individual "Primary Nomination Petition" sheets, labeled as Exhibit 1 (Deputy Secretary of State Flynn brought the originals to the hearing for inspection); copies of the original Primary Candidate's Consent form including two forms, each filled out in part and the Candidate Petition Receipt, labeled as Exhibit 1-A (Originals of these documents were brought to the hearing by Deputy Secretary Flynn); a copy of David Flood's voter registration record from the Central Voter Registration system, verifying that Mr. Flood is a registered voter in State Senate District 32 (which was labeled as Exhibit 2); and copies of the hearing notices emailed to the challenger and the candidate.
5. The following facts are clear from the agency record and were not in dispute at the hearing:
 - a. The challenger, David Flood, is a resident and a registered voter in the electoral division of the candidate, pursuant to Title 21-A, section 337, subsection 2, paragraph A.
 - b. The challenger filed a timely challenge pursuant to Title 21-A, section 337, subsection 2, paragraph A.

c. On March 15, 2016, candidate Joanne Twomey submitted eight nomination petitions to the Secretary of State, which contained 100 signatures certified as valid by municipal officials in Biddeford. This number represents the minimum number required for nomination of a candidate for State Senator for the Primary Election under Title 21-A, section 335, subsection 5, paragraph F. Four of the petitions were circulated by the candidate, while the remaining four petitions were circulated by Perry Aberle.

d. One of the petitions circulated by Mr. Aberle contains the signatures of Estelle Morissette, Robert Thibodeau and Rachel Thibodeau. These three signatures are the last three signatures on that petition sheet. They follow the signature of Almo Ouellette which bears the date "3/15/16." The last signature on the petition is Rachel Thibodeau on line #9 of the petition form. The remainder of the lines for signatures are crossed out (in red on the original) beginning with line #10. The Circulator's Oath on that petition was notarized by Carmen J. Morris, City Clerk for the City of Biddeford, on March 15, 2016. The Registrar's Certification on that petition was also completed by Carmen Morris on March 15, 2016.

e. Another of the petitions circulated by Mr. Aberle contains his signature on line #6. That same petition also contains the signatures of Louis Hebert on line #22 and Rita Roberge on line #23. Both Mr. Hebert's and Ms. Roberge's signatures are followed by the date "3/15" and the street address of "9 Graham." The space for municipality on lines #22 and #23 is blank. Line #21 of that petition contains the signature of Priscille Walton who lists a date of "3/15," a street address of "9 Graham St," and a municipality of "Bidd." The Circulator's Oath on that petition was notarized by Carmen J. Morris on March 15, 2016. The Registrar's Certification on that petition was also completed by Carmen Morris on March 15, 2016.

f. A third petition circulated by Perry Aberle contains the signature of Ronald Labonte on line #2. Mr. Labonte's signature is followed by the date "1/26" and the street address "19 Graham." The space for municipality on line #2 is blank. Line #1 of that petition contains the signature of Yolande Labonte followed by the date "1/26," the street address "19 Graham" and the municipality "Biddeford." The Circulator's Oath on that petition was notarized by Carmen J. Morris on March 15, 2016. The Registrar's Certification on that petition was also completed by Carmen Morris on March 15, 2016.

g. The candidate also submitted a Primary Candidate's Consent on the form provided by the Secretary of State in two parts. On one form, the first section containing the "Candidate's Consent" portion was completed by Ms. Twomey and notarized on March 15, 2016. The "Certification of Candidate Enrollment" portion on that form is blank. On a second form, the "Candidate Consent" portion is blank and the "Certification of Candidate Enrollment" section was completed by Carmen Morris on March 15, 2016.

6. The following statutory requirements directly pertain to this challenge:

a. Title 21-A section 334 requires "[a] candidate for nomination by primary election must file a primary petition and consent under sections 335 and 336. The candidate must be enrolled, on or before March 15th, in the party named in the petition and must be eligible to file a petition as a candidate for nomination by primary election under section 144, subsection 3. The registrar in the candidate's municipality of residence must certify to that fact on a form designed by the Secretary of State."

b. Title 21-A section 335, subsection 1 provides, in relevant part, “[a] primary petition may contain as many separate papers as necessary and may contain the candidate’s consent requires by section 336.

c. Title 21-A section 335, subsection 2, provides “[a] primary petition may be signed only by voters of the electoral division which is to make the nomination and who are enrolled in the party named in the petition. Other signatures are void.”

d. Title 21-A section 335, subsection 3, provides that “[t]he voter must personally sign his name in such a manner as to satisfy the registrar of his municipality that he is a registered voter and enrolled in the party named on the petition. Either the voter or the circulator of the petition must print the voter’s name.”

e. Title 21-A section 335, subsection 4, provides that “[t]he voter or the circulator of the petition must write or print the voter’s residence address and municipality of registration. Ditto marks are permitted for residence address and municipality of registration only.”

f. Title 21-A section 335, subsection 6 provides that a petition may not be signed prior to January 1st of the relevant election year.

g. Title 21-A section 335, subsection 7 outlines the procedure for certification of a petition. Paragraph A requires, in relevant part, that the circulator of a petition verify by oath or affirmation “that the circulator personally witnessed all of the signatures to the petition and that to the best of the circulator’s knowledge and belief each signature is the signature of the person whose name it purports to be.” Paragraph B requires that the registrar or clerk of the municipality “shall certify which names on a petition appear in the central voter registration system as registered and enrolled voters in that municipality and may not certify any names that do not satisfy subsection 3.”

h. Title 21-A section 335, subsection 9 provides, in part “[f]or a candidate to qualify for the ballot, a nomination petition must meet all of the requirements of this section.”

i. Title 21-A section 336, first paragraph, provides that the written consent of each candidate must be filed with the candidate’s petition.

j. Title 21-A section 336, subsection 1, provides that the consent statement “may be printed as a part of the primary petition. Subsection 2 further provides that “[a] candidate need only file one consent. This consent is valid even though even though it may be part of a primary petition which is void.”

7. The following evidence was presented at the public hearing:

a. With regard to the signatures of Estelle Morissette, Robert Thibodeau and Rachel Thibodeau, Mr. Flood does not allege that these are not the actual signatures of the people who they purport to be or that these three people are not registered voters in Biddeford eligible to sign such a petition. Mr. Aberle testified that City Clerk Carmen Morris placed the X on this petition, crossing out the empty lines beginning at line #10. Deputy Secretary Flynn testified that it is necessary to be sure that the signatures were collected no earlier than January 1st and that they

were present on the petition when the petition was notarized. The signatures in question appear on the last three lines on the petition following a signature dated 3/15/16. In this case, the petition was both notarized and certified by Carmen Morris on March 15, 2015. Deputy Flynn stated that her office would not have accepted the signatures if a different person had notarized the petition because it would not have been possible to verify that the signatures were present when the petition was notarized. However, since the same person both notarized and certified the petition, this concern was alleviated.

b. With regard to the appearance of Perry Aberle's signature on a petition that he circulated, Mr. Aberle testified that he has signed petitions that he circulated in other elections and has never been told there was any reason he could not do so. Deputy Secretary Flynn testified that, while one cannot notarize one's own signature, her office routinely accepts signatures where the signer is also the circulator of the petition.

c. With regard to the signatures of Louis Hebert, Rita Roberge and Ronald Labonte, Mr. Flood does not allege that these are not the actual signatures of the people who they purport to be or that these three people are not registered voters in Biddeford eligible to sign such a petition. Deputy Secretary Flynn verified that in order for a clerk or registrar in Biddeford to certify the signatures on the petition, the clerk or registrar must determine that the signatures were those of registered voters in Biddeford.

d. With regard to the Primary Candidate's Consent and Certification of Enrollment sheet in two parts, Ms. Twomey testified that she completed the Candidate's Consent section of one form, and when she realized that the Certification of Candidate Enrollment section also needed to be complete, Carmen Morris completed that section of another form for her and submitted it first by fax and then in the original.

8. The following arguments were presented orally and in writing by the challenger regarding the validity of Ms. Twomey's Candidate Consent and petition.

a. In support of his challenge to the signatures of Estelle Morissette, Robert Thibodeau and Rachel Thibodeau, Mr. Flood cites the State of Maine 2016 Candidate's Guide of Ballot Access for the proposition that the Secretary of State will review petitions to ensure that "all required elements have been properly completed." He further refers to a passage from the Candidate's Guide that provides "[t]he printed name of the voter, the date signed, the street address and the municipality may be completed by either the voter or the circulator." Mr. Flood's contention is that the lack of dates accompanying these three signatures means that they fail to meet the letter of the law and should therefore be invalidated.

b. In support of his challenge to Perry Aberle's signature appearing on a petition for which he was also the circulator, Mr. Flood cites Title 21-A section 354, subsection 7, the language of which mirrors 21-A section 335, subsection 7, and requires that the circulator personally witness the signatures of those signing the petition. Mr. Flood argues that this witnessing requirement is akin to the notarization requirement that precludes someone notarizing their own signature.

c. In support of his challenge to the signatures of Louis Hebert, Rita Roberge and Ronald Labonte, Mr. Flood argues that all information, including the municipality, must be completed on

the petition forms for each signer in order for the signatures to be valid. Because neither the signers nor the circulator filled in the municipality on the lines for these signatures, the signatures do not meet the letter of the law.

d. In support of his challenge to the Candidate's Consent and Certification of enrollment sheet, Mr. Flood asserts that a single sheet containing both the candidate's consent and the certification of enrollment must be completed to be valid, reasoning that although the two sheets submitted by Mr. Twomey taken in their entirety contain all the required information, there is nothing that says it can be submitted on two separate sheets.

9. The candidate's attorney made the following arguments regarding the validity of Ms. Twomey's Candidate Consent and petition.

a. With regard to the signatures of Estelle Morissette, Robert Thibodeau and Rachel Thibodeau, Mr. Cote first notes that Title 21-A section 335 does not contain a requirement that the voter's signature be accompanied by a date. He further argues that the position of the signatures, immediately following a signature dated 3/15/16, combined with the City Clerk's notarization of the circulator's oath and certification of the petition on March 15, 2016, makes it clear that these three people signed the petition on March 15, 2016.

b. In response to the challenge of Perry Aberle's signature, Mr. Cote asserts that neither Title 21-A section 335 nor any other law he could find precludes a voter from signing the petition that he or she is circulating.

c. In response to the challenge of the signatures of Louis Hebert, Rita Roberge and Ronald Labonte, Mr. Cote notes that Mr. Labonte's signature immediately follows the signature of Yolande Labonte who listed 19 Graham as a street address and Biddeford as the municipality. Mr. Labonte listed 19 Graham without listing anything as municipality. He further notes that the signatures of Louis Hebert and Rita Roberge listed a street address of 9 Graham without listing a municipality, but like the Labonte signature, these occur in order behind a signer who listed 9 Graham as the street address and Biddeford as the municipality. Mr. Cote argues that in both instances, it is clear from the context that the addresses are in Biddeford. Citing Title 21-A section 335, subsection 4, he further reasons that if the Biddeford City Clerk had a concern about the lack of municipality listed for these signers, she could merely have directed the circulator to complete that information.

d. In response to the challenge of Ms. Twomey's Primary Candidate's Consent and Certification of Candidate Enrollment, Mr. Cote argues that nothing in the law requires that the Candidate Consent and the Certification of Enrollment be on one form. Indeed, he notes that Title 21-A section 336, subsection 1 provides that the candidate consent "may be printed as a part of the primary petition."

10. After reviewing the testimony of Mr. Flood, Ms. Twomey, Mr. Aberle and Deputy Secretary Flynn, the documents entered into evidence, and the oral and written arguments presented by the challenger and the candidate, I draw the following conclusions:

a. Regarding the signatures of Estelle Morissette, Robert Thibodeau and Rachel Thibodeau which appear on the petition without dates: despite what the Candidate Guide may say, Title 21-A section 335 which governs petition requirements for primary candidates does not require that petition signatures bear dates. Subsection 6 of that section does provide that petitions may not be signed before January 1st of the election year, and subsection 8 sets a petition filing deadline of 5 p.m. on March 15th of the election year. In this instance, the three contested signatures appear on lines following a signature that bears the date 3/15/16. Additionally, the petition was both notarized and signed by City Clerk Carmen Morris on March 15, 2016. These circumstances reasonably assure that the signatures in question were on the petition when it was notarized and certified and that they were provided between the January 1st and March 15th at 5 p.m. limits. For these reasons the signatures were valid when certified and should be counted.

b. Regarding Perry Aberle's signature on a petition for which he was the circulator: Title 21-A section 335, subsection 7, paragraph A, requires that the circulator of a petition "verify by oath or affirmation before a notary public or other person authorized by law to administer oaths or affirmations that the circulator personally witnessed all of the signatures to the petition." Certainly a person "personally witnesses" whatever that person does, including signing a petition and can truthfully swear an oath to that effect. Moreover, Deputy Secretary Flynn confirmed that her office routinely certifies petitions that contain signatures by the same person who circulated the petition. Hence there is no support in statute or in practice for the proposition that a person may not sign a petition for which he or she is the circulator. For these reasons Mr. Aberle's signature was valid when certified and should be counted.

c. Regarding the signatures of Louis Hebert, Rita Roberge and Ronald Labonte: Title 21-A section 335 outlines the requirements for valid petition signatures. Subsection 2 provides "[a] primary petition may be signed only by voters of the electoral division which is to make the nomination and who are enrolled in the party named in the petition. Other signatures are void." Subsection 3 provides that "[t]he voter must personally sign his name in such a manner as to satisfy the registrar of his municipality that he is a registered voter and enrolled in the party named on the petition. Either the voter or the circulator of the petition must print the voter's name." Subsection 4 provides that "[t]he voter or the circulator of the petition must write or print the voter's residence address and municipality of registration. Ditto marks are permitted for residence address and municipality of registration only." Subsection 7, paragraph B, which governs how a petition is to be certified requires that the registrar or clerk of the municipality "shall certify which names on a petition appear in the central voter registration system as registered and enrolled voters in that municipality and may not certify any names that do not satisfy subsection 3."

These three signatures are not directly accompanied on the petition by the municipality as required by subsection 4, above. Nonetheless, there is no evidence or contention that they are not all three residents of Biddeford, properly registered voters enrolled in the Democratic Party and eligible to sign such a petition. Indeed, all the evidence on record points to the contrary conclusion. All three signatures follow a signature line completed including the municipality by someone living at the same address. The City Clerk of Biddeford certified all three signatures, thereby verifying that all three names appear in the central voter registration system as registered and enrolled voters in Biddeford and satisfying subsection 3.

In this case, to invalidate these three signatures would work to exclude these three properly registered voters from participation in the petition process and the question is whether

the Legislature intended to elevate form over substance in this way to the detriment of legitimate participation in the political process. A close reading of the statute suggests that this was not the intention. Section 335, subsection 4 provides that either the signer or the circulator can supply the street address and municipality information, and does not even require that this be done in the signer's presence. The safeguard against misinformation is provided by the registrar's certification under subsection 7, paragraph B. Additionally, subsection 7, paragraph B *only* directs the registrar or clerk not to certify those names on a petition that do not satisfy subsection 3, the requirement that the voter personally sign his or her name in such a way as to satisfy the registrar that he or she is a registered voter in the municipality and enrolled in the party, and that the name also be printed.

Where, as here, all of the evidence supports the validity of the signatures appearing on a petition, the signatures should be considered valid and counted.

d. Regarding Ms. Twomey's Primary Candidate's Consent and Certification of Enrollment: There is no dispute that when both sheets submitted by the candidate are taken together, all the necessary requirements of both the candidate consent and the certification of enrollment are met. While Mr. Flood contends that all the information must appear together on a single form, the statute contains no such requirement. Title 21-A section 335, subsection 1 provides "[a] primary petition may contain as many separate papers as necessary and may contain the candidate's consent required by section 336." Section 336, first paragraph, provides that the written consent of each candidate must be filed with the candidate's petition. Section 336, subsection 1 provides that the consent statement "may be printed as a part of the primary petition," and subsection 2 further provides that "[a] candidate need only file one consent. This consent is valid even though even though it may be part of a primary petition which is void." Considering these sections together, it is clear that the statute contemplates the possibility the candidate consent may not appear on the same sheet of paper as the certificate of enrollment. For that reason, Ms. Twomey's Candidate Consent and Certificate of Enrollment meet the statutory requirements and should not be deemed deficient.

11. The Hearing Officer recommends that the Secretary of State find that the challenger has not met his burden of providing sufficient evidence, pursuant to Title 21-A, section 337, subsection 2, paragraph B, to invalidate the petition or any names on the petition. The Hearing Officer further recommends that the Secretary of State determine that the challenge to the petition is not valid, and that the petition and consent for the nomination of Joanne Twomey, as a candidate in the Democratic Primary Election for Senate District 32, meets the requirements of Title 21-A, section 335.



Dated: March 30, 2016

Lynne A. Gardner, Hearing Officer