



STATE OF MAINE

OFFICE

OF THE

SECRETARY OF STATE

RULING OF THE SECRETARY OF STATE:

MATTHEW DUNLAP
SECRETARY OF STATE

**ON THE CHALLENGE BROUGHT BY DAVID BOYER OF PORTLAND AGAINST
THE PRIMARY PETITIONS FILED ON BEHALF OF MAX PATRICK LINN, A
REPUBLICAN PARTY CANDIDATE FOR UNITED STATES SENATE**

I. Procedural History

A. On March 29, 2018, a hearing was held for the purpose of receiving evidence and hearing argument relating to the allegations presented in the challenge made by David Boyer of Portland against the nomination petitions of Max Patrick Linn of Bar Harbor, candidate for the Republican Party nomination to the United States Senate. The hearing was conducted pursuant to the Maine Administrative Procedure Act, Title 5 M.R.S.A. §§ 8001 et seq. and Title 21-A M.R.S.A. § 337, sub-§2.

B. David Boyer filed the written challenge in the Office of the Secretary of State on March 22, 2018, pursuant to Title 21-A, section 337, subsection 2, alleging that:

- at least four signatures on petitions were those of deceased voters;
- over 200 signatures were duplicates;
- the dates on which circulators took the oath were written by someone other than the notary public who administered the oath to the circulators;
- at least one petition had been altered with white-out where the candidate's name should appear; and
- a number of signatures on the petitions were forged.

C. Challenger David Boyer was present at the hearing and was represented by Attorney Joshua Tardy, assisted by Attorney Colton Gross. Candidate Max Patrick Linn was also present at the hearing and was represented by Attorney Steven Juskewitch with assistance from Attorney Seth Carey. The Secretary of State presided at the hearing, assisted by Assistant Attorney General Phyllis Gardiner as legal counsel.

D. At the start of the hearing, the presiding officer listed the documents contained in the Agency Record to date on the challenge, which included:

- the original petition of the candidate, consisting of several hundred pages
- the candidate's signed consent form
- the original written challenge
- the notice of hearing emailed to the challenger, the candidate, and their representatives

E. The nominating petition that was timely filed by the candidate, Max Patrick Linn, on March 15, 2018, contains a total of 2,248 valid signatures, based on the certification by the municipal registrars and review by Elections Division staff.

II. Evidence Presented

A. The challenger presented the testimony of the following witnesses:

- Max Patrick Linn, candidate
- David Boyer, challenger
- Matthew Foster, voter whose name appeared on a petition
- Mark Foley, voter whose name appeared on a petition
- Tiffany Ford, forensic document examiner

B. The challenger presented written evidence in the form of sworn affidavits from the following individual voters whose names appeared on certain of the petitions. These affidavits were marked as exhibits and admitted into evidence without objection based on the affiants' availability to be questioned by telephone:

- Bonnie P. Allen (Exhibit 3)
- Shanon Card (Exhibit 5)
- Cale Roberts (Exhibit 8)
- Arthur Allen (Exhibit 31)

The challenger also submitted copies of obituaries published in various sources and marked as Exhibits for the following voters whose names appeared on certain petitions:

- Raymond Naugler (Exhibit 1)
- Jane Harriman (Exhibit 2)
- Sylvia Macy (Exhibit 4)
- Ruth Kidder (Exhibit 6)
- Robert Blair Shaffer (Exhibit 7)

C. The candidate presented the testimony of the following witnesses:

- Eric Doherty, circulator
- Susan MacKay, circulator
- Seth Carey, circulator
- Max Patrick Linn, candidate

D. The candidate submitted written evidence in the form of an affidavit from David Keep, a voter whose name appeared on one of the petitions. This was marked as Exhibit 10.

E. Original petitions were marked as Exhibits 9, 11-21, and 23-29. Other exhibits admitted into the record include:

- a letter from Phillip Foster, a voter whose name appeared on a petition, showing his office address (Exhibit 20)
- the resume of Tiffany Ford (Exhibit 22)

- a handwritten list prepared by Tiffany Ford during her testimony as a summary of her observations regarding signatures on certain petitions (Exhibit 30)

III. Legal Requirements

A. The number of valid signatures required for a party candidate for the United States Senate is 2,000, pursuant to Title 21-A section 335, subsection 5, paragraph B.

B. Title 21-A section 335, subsection 2, provides that 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, and that other signatures are void.

C. Title 21-A section 335, subsection 3, requires a voter to sign his or her name to the petition “in such a manner as to satisfy the registrar of the municipality that he is a registered voter and enrolled in the party named in the petition.” This subsection also requires the voter or the circulator to print the voter’s name on the petition.

D. Title 21-A section 335, subsection 7, paragraph B, requires the municipal registrar or clerk to certify which names on a petition appear in the central voter registration system as registered and enrolled voters in that municipality and further provides that the official “may not certify any names that do not satisfy subsection 3.” The statute does not expressly require the municipal official to compare the signature on the petition to the signature for that voter that is on a voter registration card on file, but that is the best practice.

E. Title 21-A section 335, subsection 7, paragraph A requires the circulator of a candidate petition to “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 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, ... and each person is enrolled in the party named in the petition and is a resident of the electoral division named in the petition.”

F. Title 21-A section 335, subsection 9 provides that “for a candidate to qualify for the ballot, the petition must meet all of the requirements of this section.” It further provides that:

If the circulator swears an oath or affirmation in accordance with subsection 7, paragraph A that the circulator reasonably believes to be true and accurate at the time the oath or affirmation is sworn and there is no proof of fraud or a knowingly false statement by the circulator, then the voters’ signatures that do not meet the requirements of subsection 7, paragraph A may not be counted, but the petition is otherwise valid.

G. Title 21-A, section 337, subsection 2, paragraph B provides that to prevail on a challenge to a candidate’s nomination petition, “the challenger has the burden of proving sufficient evidence to invalidate the petitions or any names upon the petitions.”

IV. Findings of Fact

A. Challenges withdrawn. Attorney Tardy, as counsel for the challenger, clarified at the hearing that Mr. Boyer was withdrawing his challenge to the validity of petitions based on the allegation that the dates on which circulators took their oath before notary public Dianne Lovejoy were written by persons other than the notary public. Although the petition form includes a written instruction below the line where the date of the oath is to be inserted that says “Date must be completed by Notary,” there is no express requirement in the law that the date may only be entered by the notary public. The challenger also withdrew his challenge to the petition on which the candidate’s name had been whited out. The petition marked as Exhibit 11 contains the signature of David Keep. The challenger originally challenged this signature on the grounds that David Keep was deceased, but he subsequently withdrew the challenge after the candidate produced an affidavit (Exhibit 10) from the David Keep who had signed the petition confirming that he personally signed it.

B. Duplicate signatures. The challenger presented evidence on petitions numbered 15-61 (marked together as Exhibit 9) that 29 voters had signed the candidate’s petitions twice. The candidate conceded that these are duplicates and that these voters’ names may only be counted once. Subtracting these 29 voters’ signatures reduces the total number of signatures deemed valid to 2,219.

C. Forgeries and evidence of fraud. Two voters provided credible testimony that they and their relatives did not personally sign their names on the candidate’s petitions. Matthew Foster, who currently serves as the District Attorney for District VII, did not sign his name on the petition marked as Exhibit 14 (at line 22), nor did his deceased father, Phillip Foster (Exhibit 12, line 10). Mark Foley did not sign his name on the petition marked as Exhibit 15 (line 4), nor did his son, Alex Foley, who was living in England during this time period, sign the petition marked as Exhibit 21 (line 12). The signatures of both Phillip and Matthew Foster were rejected by the municipal registrar because they were undated.

Based on sworn affidavits that were admitted into evidence without objection, I find that the following four voters also did not sign their names on the following petitions marked as exhibits: Arthur Allen (Exhibit 23, line 2); Bonnie Allen (Exhibit 18, line 13); Shanon Card (Exhibit 17, line 15); and Cale Roberts (Exhibit 19, line 16).

An additional five voters whose names appear on the following petitions appear to be deceased, based on obituaries entered into evidence: Raymond Naugler (Exhibit 13, line 26), Jane Harriman (Exhibit 18, line 2); Ruth Kidder (Exhibit 16, line 7), Robert Shaffer (Exhibit 16, line 21); and Sylvia Macy, signed as Silvia Macy on Exhibit 17, line 23. Two of these voters’ signatures (Naugler and Shaffer) were deemed invalid by the municipal registrars.

The challenger’s handwriting expert, Tiffany Ford, examined the petitions marked as Exhibits 12-19, 21, and 23-29 and identified a number of signatures on each petition (listed on her handwritten summary, marked as Exhibit 30) that she could determine were not written naturally, as a person would write their own name. She could detect starting and stopping pen strokes in the middle of the name, indicating that the writer was uncertain how to form the next letter. On some petitions, she detected that a number of signatures appear to have been written

by the same person. Her conclusions are annotated on Exhibit 30. Some of the voter signatures questioned by Ms. Ford were rejected by municipal registrars as “ANO” (meaning the registrar concluded that the signature was written by someone other than the voter), but others were not. Attorney Juskewitch challenged Ms. Ford on cross examination, suggesting that she was contradicting the judgment of registrars who had compared the voter’s name on the petition to the voter’s signature on a voter registration card. No direct evidence was presented, however, to show that the registrars had in fact performed such a comparison in reviewing the signatures on all of these petitions.

Three circulators testified that they had collected all of the signatures shown on their petitions. Eric Doherty testified that he collected all the signatures on the petition marked as Exhibit 16 on which Robert Shaffer and Ruth Kidder’s names appear. He was unable to describe any specifics about how or where he gathered those signatures, however. He thought it likely that he had circulated the Exhibit 16 petition at a shopping center but did not recall which one or where it was. I did not find his testimony credible. Another circulator, Susan MacKay, circulated three petitions in question – Exhibits 12, 25 and 31. The last five voter signatures appearing on Exhibit 25 were all undated (and invalidated for that reason), yet Ms. MacKay could not explain or recall how this had occurred. All five of these signatures were flagged by the forensic document examiner, Tiffany Ford, as being “unnaturally signed” suggesting the possibility of forgery. Susan MacKay was also the circulator of the petition marked as Exhibit 12, containing the signature of Raymond Naugler, who appears to be deceased. Seth Carey testified that he did not collect any of the ten (10) signatures on the petition marked as Exhibit 28 from voters in Camden, and that he did not sign this petition as circulator before the notary public, Stavros Mendros, as indicated.

My findings and conclusions with respect to each of these petitions are set forth below:

Exhibit 12: This petition, circulated by Susan MacKay in Ellsworth, contains 6 signatures that were certified by municipal registrars, but it also contains the signature of Phillip Foster who is deceased. The last 5 signatures on the petition were rejected for lack of a date. Ms. Ford testified that the signature of Bonnie Hersey on the line 12 was written unnaturally, indicating it was written by someone other than Ms. Hersey. I find sufficient evidence to support invalidating Ms. Hersey’s signature but not the entire petition.

Exhibit 13: This petition from Brewer, circulated by Lisa McRay in Brewer, contains 22 signatures certified by the municipal registrar. The registrar rejected 5 other signatures as having been signed by another person (marked “ANO”). One of those is the signature of Raymond Naugler, who is deceased. Tiffany Ford identified two of those 5 signatures as suspect. Wilda Naugler, Raymond Naugler’s widow, told the challenger that she did not recall signing the petition. I find this to be sufficient evidence of fraud to invalidate the entire petition containing 22 signatures that were originally counted as valid.

Exhibit 15: This petition from Brewer, circulated by James Andrew Thompson, contains a total of 28 signatures, of which 4 were rejected by the registrar as having been signed by another person. It also contains the signature of Mark Foley, which was clearly written by someone else, based on his testimony. Two other signatures accepted by the registrar appeared

to Ms. Ford to have been written by someone other than the voter. I find this constitutes sufficient evidence of fraud to invalidate the entire petition containing 18 signatures that were originally counted as valid.

Exhibit 16: Eric Doherty circulated this petition in Brewer. It contains the signatures of 2 deceased people (Ruth Kidder and Robert Shaffer); 8 additional signatures found by the registrar to have been written by another person; and 4 signatures that appeared to Ms. Ford to have been written by someone other than the voter. I find this to be sufficient evidence of fraud to invalidate the entire petition containing 14 signatures that were originally counted as valid.

Exhibit 17: Zina Johnson circulated this petition in Ellsworth. It contains 9 signatures that appear to have all been written by the same person, according to Ms. Ford and my own observations. It contains one signature of a deceased person (Sylvia Macy) and that of a voter who states in her affidavit that she did not sign (Shanon Card). Both of those voters' names were also misspelled on the petition. I find this to be sufficient evidence of fraud to invalidate the entire petition containing 25 signatures that were originally counted as valid.

Exhibit 18: This petition from Brewer, circulated by Bradford Littlefield, contains a total of 28 signatures, including the signature of one deceased person (Jane Harriman), one voter who testified by affidavit that she did not sign (Bonnie Allen); 3 other signatures that were rejected by the municipal registrar as having been signed by someone other than the voter; and 7 additional signatures whose validity was questioned by Ms. Ford. I find this to be sufficient evidence of fraud to invalidate the entire petition containing 19 signatures that were originally counted as valid.

Exhibit 19: Steven Pruitt circulated this petition in Ellsworth. It contains a total of 17 signatures, including that of Cale Roberts, a town official who testified by affidavit that he did not sign; 2 other signatures that were rejected by the municipal registrar as having been signed by someone other than the voter; and 7 additional signatures that appeared to Ms. Ford to have been written by someone other than the voter. I find this to be sufficient evidence of fraud to invalidate the entire petition containing 14 signatures that were originally counted as valid.

Exhibit 21: This petition, circulated in Brewer by James Andrew Thompson, contains the signature of Alex Foley, who was living in England at the time and did not sign. It also contains 6 signatures that Ms. Ford testified (and I also observe) appear to have been written by the same person. Three additional signatures were rejected by the municipal registrar as having been signed by someone other than the voter. I find this to be sufficient evidence of fraud to invalidate the entire petition containing 22 signatures that were originally counted as valid.

Exhibit 23: Mike Johnson circulated this petition in Brewer. It contains the signature of Arthur Allen, who swears by affidavit that he did not sign the petition; 3 signatures rejected by the municipal registrar as having been signed by someone other than the voter; and 5 signatures that appeared to Ms. Ford to have been signed by someone other than the voter. All of these signatures appear to me to have been written by the same hand. I find that there is sufficient evidence of fraud to invalidate this entire petition, including 33 signatures that were originally counted as valid.

Exhibit 24: James Andrew Thompson also circulated this petition in Trenton. It contains 7 signatures, 4 of which were rejected by the municipal registrar as having been signed by someone other than the voter and were also identified as such by Ms. Ford. I find there is sufficient evidence of fraud to invalidate the entire petition, which includes only one signature originally counted as valid.

Exhibit 25: This petition was circulated by Susan MacKay in Ellsworth. The last 5 signatures on the petition are undated and were invalidated for that reason. The same 5 signatures appeared to Ms. Ford to have been signed by someone other than the voter. As noted above, Ms. MacKay was unable to explain how this could have occurred. I find there is sufficient evidence of fraud to invalidate the entire petition, which includes 19 signatures originally counted as valid.

Exhibit 26: This petition was circulated by James Andrew Thompson in Bar Harbor. It contains 10 signatures, one of which appears to have been written by someone other than the voter, based on the testimony of Ms. Ford. I find her analysis persuasive and deem that signature invalid, leaving a total of 8 valid signatures on this petition.

Exhibit 27: Zina Johnson is the circulator of this petition from Bar Harbor. It contains a total of 3 signatures, 2 of which appear to have been written by someone other than the voter, based on the testimony of Ms. Ford. I find this evidence sufficient to invalidate 2 signatures on this petition originally counted as valid.

Exhibit 28: As noted above, Seth Carey testified that he neither circulated nor signed this petition from Camden, which contains the names of 10 voters that were originally counted as valid. The candidate concedes that this petition must be rejected in its entirety.

Exhibit 29: Seth Carey testified that he circulated this petition in Lewiston, and that he collected all 32 signatures counted as valid. Ms. Ford questioned only one signature as being unnatural, and the municipal registrar did not reject any signatures as “ANO.” I find that the challenger has not met his burden of proof with regard to invalidating any additional signatures on this petition.

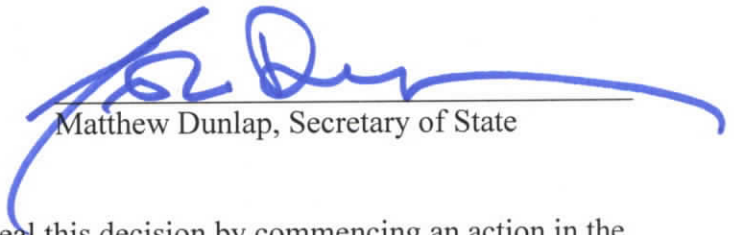
Based on the above findings, I find that a total of 201 signatures on these petitions are invalid pursuant to Title 21-A, section 335, subsection 9.

D. Candidate’s theory of sabotage. The candidate hypothesized that certain circulators identified in this challenge – presumably not those who testified at the hearing – may have been trying to sabotage his campaign by forging the names of voters on petitions and thus invalidating large numbers of signatures that the candidate would have been counting on to meet the minimum requirements for a primary petition. This is pure speculation, unsupported by any evidence.

V. Conclusion

After reviewing all of the evidence presented, I conclude that the challenger has presented sufficient evidence to invalidate the signatures of 230 voters previously counted as valid. When subtracted from the original total of 2,248 valid signatures, this leaves the candidate with a total of 2,018 valid signatures, which is 18 more than the minimum required to qualify for the primary election ballot pursuant to Title 21-A, section 335, subsection 5, paragraph B. Accordingly, I conclude 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 nomination petition of Max Patrick Linn. I therefore determine that the challenge to the petition is not valid, and that there are sufficient signatures for the nomination of Max Patrick Linn to the Republican Primary Election for the United States Senate, pursuant to Title 21-A, section 335, subsection 5, paragraph B.

Dated: April 5, 2018



Matthew Dunlap, Secretary of State

NOTICE: The challenger or candidate may appeal this decision by commencing an action in the Superior Court within 5 days of this date, pursuant to 21-A MRSA section 337, subsection 2, paragraph D.