

El Paso County, CO, District Court Court address: 270 South Tejon Colorado Springs, CO 80901-2980 Phone Number: (719) 452-5000	DATE FILED: September 20, 2023 1:47 PM CASE NUMBER: 2023CV31739
Petitioner: Ivy Liu v. Respondent: Lanette DePaul	Court Use Only Case Number: 23CV31739 Division 3, Courtroom S380
ORDER RE PETITION FOR INJUNCTION	

This case is before the Court as a Petition for Injunction and Emergency Hearing filed by the Petitioner, Ivy Liu.

The Petition alleges that Liu was not allowed on the ballot for potential election to the School Board District 49. The Respondent, Lanette DePaul, is the designated election official for District 49. The Respondent has filed a Motion to Dismiss on the basis that the Petition was not verified and that the El Paso County Clerk and Recorder is a necessary party for this Petition. Because of significant time constraints associated with the printing of ballots, the Court ordered a hearing on the merits while the Motion to Dismiss was pending. At the conclusion of the hearing on September 18th, 2023, the Court ordered the Petitioner to submit a written response to the motion within 24-hours. The Respondent filed a sur-reply within that timeframe.

The Court also ordered the parties to file proposed Orders within the 24-hour period.

The Court has considered the Court file, the evidence presented at the hearing on September 18th, 2023, and the applicable statutes and case authorities and here enters the following Order:

MOTION TO DISMISS

The Motion to Dismiss is denied. The Court finds that the El Paso County Clerk and Recorder is not a necessary party for this Petition, noting the procedural circumstances of the case. ***Hanlon v. Gessler***, 2014 Co. 24.

PETITION FOR INJUNCTION

The Court finds that it has subject matter jurisdiction over this controversy under C.R.S. § 1-1-113 and personal jurisdiction over the parties. Venue is proper in El Paso County, Colorado as this matter involves a dispute about an election to be held for School District 49 ("D49") on November 7, 2023, for director district five ("DD5"). D49 is situated in El Paso County, Colorado.

Respondent is the designated election official for D49 pursuant to C.R.S. §§ 1-1-104(8) and 22-31-103. Respondent is also an employee of D49 and serves as the senior executive assistant to the board of education. Respondent has been to training provided by the Colorado Association of School Boards ("CASB") and the Colorado Secretary of State to oversee the election in D49 this year. Respondent testified that she specifically received training in the ballot nomination process and in reviewing nomination petitions. Respondent testified that she followed the CASB election calendar for the 2023 election, which was admitted as Respondent's Exhibit A.

D49 has a school board constituted with five directors elected from five director districts, three of which are up for election in 2023. In 2015, D49 submitted a ballot initiative to the voters that effected a political reorganization of the school district. The ballot language, which was approved by the voters, included, school board director candidates will be required to reside in the director district that the candidate plans to represent.

D49 has contracted with the El Paso County Clerk & Recorder to conduct its 2023 election pursuant to C.R.S. § 22-31-103(2). Petitioner's counsel represented that the ballots are being printed and are scheduled to be mailed out on or about September 23, 2023.

The Court finds that Petitioner was not a resident of DD5 when she picked up her election packet on August 25, 2023, and was not an elector eligible and qualified to run for office or be a candidate for office in DD5. Neither party disputes that Petitioner resided at 5315 Arroyo Street, Colorado Springs, Colorado 80922 ("Petitioner's Arroyo Street Home") at least through the early afternoon of August 25, 2023. Petitioner does not contest that her Arroyo Street Home is not in DD5, although it is in D49.

On August 24, 2023, Petitioner filed her Candidate Affidavit with the Secretary of State pursuant to C.R.S. § 1-45-110. Respondent admitted Petitioner's Candidate Affidavit at hearing as Respondent's Exhibit C. Petitioner's Candidate Affidavit includes "an affirmation for the candidate to certify that the information provided in the disclosure statement is true, complete, and correct to the best of the candidate's knowledge and

belief.” C.R.S. § 1-45-110(2)(d). Petitioner’s Candidate Affidavit lists her residence and mailing address at Petitioner’s Arroyo Street Home.

Petitioner and Respondent had conversations on August 25, 2023, specifically about Petitioner’s residence address and whether Petitioner had to reside in DD5 prior to picking up her nomination packet from Respondent. Respondent admitted in text conversations, which were admitted into evidence as Respondent’s Exhibit D, and admitted under cross-examination that she did not want to move from her Arroyo Street Home because it would cause her to vacate her then-current board seat pursuant to C.R.S. § 22-31-129(1)(d). Petitioner’s messages to Respondent ask Respondent to adopt Petitioner’s interpretation of the law that she could run for office in DD5 without actually residing there until after the election.

In support of her position, Petitioner represented on August 25 that she was in the process of signing a lease to reside in DD5. Petitioner represented that the landlord was trying to sign the contract electronically on August 25, 2023. Later in the afternoon of August 25, 2023, Petitioner provided Respondent with the lease admitted as Respondent’s Exhibit F. That lease was purportedly signed by the landlord on August 24, 2023, and called for Petitioner to move to 3694 Reindeer Circle, Colorado Springs, Colorado 80922 (the “Reindeer Address”) on November 8, 2023.

Petitioner testified that she sent Resp.’s Ex. F by accident to Respondent and meant to send a different lease, with a move-in date of August 25, 2023, to Respondent. Respondent testified that she found as not credible Respondent’s claim that she had sent the wrong lease by accident. Respondent did not claim that she sent the wrong lease until ten days later, on September 4, 2023. See, Respondent’s Exhibit I. To the contrary, the messages Petitioner sent to Respondent on August 25, 2023, implore Respondent to allow her to seek election from DD5 while residing in her Arroyo Street Home.

The only apparent reason for Petitioner to move, which she implicitly admits in her texts and testimony, is to run for office in DD5. She claimed that she would rent a room from her daughter and that her daughter’s family would continue to reside at the Reindeer Address. She could only cite one change of address that she has completed to date, changing her Amazon account to the Reindeer Address. She has not changed her driver’s license address, mailing address with the post office, or any other address. She claimed her home was now rented out to other bona fide tenants, but admitted under cross-examination that she had been renting out rooms in her home for three years. She admitted she has not rented out her personal bedroom in Petitioner’s Arroyo Street Home. Petitioner originally testified that her landlord was a “friend,” but under cross examination admitted the landlord was her daughter.

There is circumstantial evidence that one or both of the leases provided to Respondent were backdated by the Petitioner. Petitioner admitted she wrote to Respondent in text messages that she was having the landlord sign the lease electronically on August 24, that a prior lease had her moving in on August 25, and that the revised lease had her moving in on November 8. Since both leases provided by Petitioner were dated August 24 and Petitioner testified there were only two leases between her and her daughter, at least one of them was backdated to August 24.

Respondent is charged by statute to determine whether Petitioner's nomination and application meet the qualifications and eligibility to be a candidate. When presented with conflicting accounts of residency, conflicting and possibly backdated leases, and a motive to game the system for cross purposes, Respondent reasonably concluded Petitioner was not credibly supporting her claim of residency in DD5.

The Court finds that Petitioner provided the signatures of only 47 electors, three short of the requisite 50 needed to support her nomination. Respondent properly excluded six of the seven signatories identified by Petitioner as electors that she argues should have been deemed electors by Respondent.

Petitioner identified the following signatures as improperly excluded from her nomination petition:

Petitioner's Exhibit E, Petition Line 1, Signed Roger L. Greenlaw; Petitioner's Exhibit F, line 7, Signed Dana DE Carroll, Sr.; Petitioner's Exhibit F, line Signed Jim Coker; Petitioner's Exhibit G, line 14 Signed Brown, Jame; Petitioner's Exhibit H, line 34, Signed Rebecca Lavrenz; Petitioner's Exhibit H, line 35, Signed Jennifer Lavrenz; Petitioner's Exhibit H, line 36, Signed Laura Lavrenz (hereafter the "Seven Signatories").

Respondent has confessed that Jim Coker should have been deemed a valid elector for Petitioner's petition. Petitioner alleges no signatories were wrongfully excluded as qualified electors other than the six remaining of the Seven Signatories.

The designated election official must inspect timely filed petitions to ensure compliance with statute. C.R.S. §§ 1-4-908(1) and 1-13.5-302(4). The review includes all petition information and verification of the information against the registration records. C.R.S. § 1-4-908(1). The Colorado Secretary of State is required to establish guidelines for verifying petition entries. C.R.S. § 1-4-908(1). Guidance on the review of candidate petitions is found in 8 Colo. Code Regs. § 1505-1:15.

Respondent verified the elector status of the signatories on Petitioner's nomination petition in the Secretary of State's designated database, which she

identified as "SCORE." Secretary of State guidance requires the Respondent to reject a signature when the name on the entry is not in SCORE. 8 Colo. Code Regs. § 1505-1:15.1.4(d)(1). For those she could not verify in SCORE, including the Seven Signatories, Respondent testified that she ran the names, addresses and zip codes in multiple different ways and combinations, even searching one name in reverse order when she suspected the first name and surname had been reversed. Respondent testified that she searched full names with different spellings and searched with the first two letters of names so that she would find a broader scope of spellings or misspellings. On cross-examination, Petitioner's counsel asked Respondent to look up the Seven Signatories in the SCORE database as he directed her to look them up with multiple different methodologies. She was unable to locate any of the Seven Signatories using the methodology she was trained to use.

The elector information for Dana DE Carroll, Sr. and Jim Coker populated in the SCORE database, i.e., showed a registered elector, when Petitioner's counsel asked Respondent to search "Dana Carroll" and "James Coker." Respondent testified her training from the Secretary of State did not allow her to deviate from the written names on the petition in the manner she was asked to do under cross-examination. None of the other Seven Signatories populated (were found) under counsel's direction in cross-examination.

Respondent did not search for "James" or "Ja" in addition to "Jim" and "Ji." Respondent now confesses that this was in error as Jim is a common nickname for James and Respondent cannot reject Jim's signature because it is "a common variant of the name" James. 8 Colo. Code Regs. § 1505-1:15.1.4(e)(1).

Respondent testified she searched for surname "De," "Decarroll," "De Carroll," and "Ca" in her hunt for a qualified elector matching the signature, "Dana DE Carroll, Sr." Respondent testified she did not find a match. Even if she had, Respondent would have been required to reject the match because the "middle initial or middle name on the entry does not match the middle initial or middle name in SCORE." 8 Colo. Code Regs. § 1505-1:15.1.4(d)(2). "Dana DE Carroll" does not match the middle initial in SCORE of "Dana E Carroll" and had to be rejected.

Petitioner testified she was present when Dana DE Carroll, Sr. abbreviated his name, first signing "DE Carroll, Sr.," knew him personally and knew his first name to be "Dana." She testified she recognized that the abbreviation would be insufficient to identify him as a qualified elector. Petitioner asked him to write in his first name in his signature after he had abbreviated it "DE," but did not ask him to strike through the "DE" or sign another signature line as the petition instructed. See, Respondent's Exhibit H, p.1, ¶ 2(H). It appears Petitioner had every opportunity to collect this elector's signature but did not do as instructed. The petition form and instructions are regulated and precise

documents that need to be completed correctly to be valid. While not dispositive, Petitioner testified that she started her candidacy at the last minute, turned in her third batch of signatures at the very last minute, and appears to have run out of time to get the cushion of 30 signatures Respondent recommended.

Petitioner seeks to add to the record at hearing with Plaintiff's [sic] Response [sic] to Respondent's Verified Response to Petition for Injunction filed after the hearing on September 18, 2023 (the "Reply"). Petitioner had an opportunity to present evidence from the El Paso County Clerk & Recorder at hearing and cannot present testimony that Respondent has now been denied the opportunity to confront and cross-examine. A signer may very well be an elector qualified to sign Petitioner's petition, but if that signer's information is not found in the SCORE database in the time that matters, Respondent cannot allow that signature to support Petitioner's petition. 8 Colo. Code Regs. § 1505-1:15.1.4(d)(1).

The Court rejects any allegation that Respondent acted purposefully to undermine Petitioner's petition. Respondent testified credibly as to her training and good faith efforts to match Petitioner's Seven Signatories with elector information. Her methods were largely corroborated under cross-examination. Other than James Coker, if the Seven Signatories are qualified electors, then fault for their exclusion from Petitioner's petition lies with the signer, the circulator, the database, or the training. Respondent has a responsibility, not only to her office, but to the other candidates to review the petition signatures consistently. An additional elector, Jim Coker, does not get Petitioner onto the ballot.

The Court, therefore, ORDERS that Petitioner's Petition for Injunctive Relief and Emergency Hearing filed September 12, 2023, is denied. This matter is ripe for appeal as of the date of this order and may be appealed pursuant to C.R.S. § 1-1-113.

Dated this 20th day of September, 2023.

BY THE COURT:

A handwritten signature in black ink, appearing to read "Thomas Kane", with a stylized flourish at the end.

THOMAS K. KANE
DISTRICT COURT JUDGE

