

STATE OF NEW JERSEY
DEPARTMENT OF STATE
OFFICE OF THE SECRETARY OF STATE

F. MICHAEL DAILY, JR.
PETITIONER,

v.

ALIETA ECK,
RESPONDENT.

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FINAL DECISION

OAL DOCKET NO.
STE 8207-13

This matter involves a challenge by petitioner F. Michael Daily Jr. to the nomination petition filed by respondent Alieta Eck for the Office of United States Senator for the August 13, 2013 special election Republican primary. Petitioner initially contended that the petition had the following defects: 1) signatures of unregistered voters or registered Democrats; 2) numerous petition books containing signatures purportedly witnessed by Dr. Eck but that contrary to her affirmation, she did not witness; 3) numerous petition books containing signatures purportedly witnessed by others but that contrary to their affirmation, they did not witness; and 4) signatures of Alieta Eck and other subscribing witnesses were not properly made before a notary and/or not properly notarized. At the close of the hearing, petitioner withdrew his challenge regarding signatures of unregistered voters or registered Democrats, and narrowly framed the issue as whether or not a failure to properly witness some signatures on a nominating petition should invalidate the entire petition.

On June 10, 2013, respondent filed with the Division of Elections a nomination petition for the United States Senate containing 2,285 signatures. Pursuant to N.J.S.A. 19:23-8, 1,000 signatures are required. By letter dated June 14, 2013, petitioner filed written objections to the validity of the petition. The Division of Elections notified respondent of the challenge by telephone and e-mail, and the matter was referred to the Office of Administrative Law as a contested case.

A hearing was held on June 17, 2013, before Administrative Law Judge Edward J. Delanoy, Jr. ("ALJ"), at which both petitioner and respondent appeared. Summation briefs were received on June 18, 2013. In the instant case, there were eighty petition booklets purported to contain a total of 2,285 signatures filed on behalf of respondent. The petitioner submitted a letter challenging in excess of 1,300 of the signatures. This challenge, if successful, would disqualify respondent as a candidate. However, at the close of the hearing, the final issue that remained was the issue raised in paragraph six of the objecting petition: whether or not signatures allegedly improperly witnessed by Dr. Eck should invalidate the entire petition.

After carefully considering the testimonial and documentary evidence presented, and having had the opportunity to listen to testimony and observe the demeanor of the witnesses, the ALJ found the following to be the relevant and credible facts in this matter: Dr. Alieta Eck obtained her nomination package and instructions after downloading them from a computer. She and her petition circulators began collecting signatures on June 7, 2013. On June 9, 2013, Dr. Eck went to her church in Somerset with two other volunteer circulators, several of her children, and her husband. All were registered Republicans. Tables were positioned on both sides of the exit door of the church and Dr. Eck was present at all times. Approximately twelve of the petition books were lined up on two tables, with six books on each table. Two to three workers (consisting of the family members and several other volunteers) were behind each table.

At the conclusion of the service, exiting churchgoers began to sign the petitions. Dr. Eck was supervising the signature process. She was temporarily distracted while some of the signatories were signing the petitions at the church. Although Dr. Eck did not physically see each signer put his or her pen to the paper, she was present at the petition tables for each signature, and out of 371 signatures that Dr. Eck collected, her attention was distracted on approximately fifty of the signatures. Dr. Eck was unable to determine which of the signatures she did not personally see executed. Dr. Eck executed all of the circulator affidavits on each of the church petition books. She did not have her children or the other volunteers execute the circulator affidavits in the petition books.

Dr. Eck also received some signatures in a petition book at her office in Piscataway, and she received additional signatures in a petition book at her home. Dr. Eck signed the first petition book as a circulator. (P-1a.) A volunteer circulator for Dr. Eck was Daniel Hedberg. Mr. Hedberg began collecting signatures in Chatham on Saturday, June 8, 2013. He was assisted by Daniel O'Neill. The two men each had one petition book, and they collected approximately 200 signatures between them. The two men next proceeded to the Belmar seafood festival. There the two men collected approximately 400 signatures. On Sunday, June 9, 2013, Hedberg was collecting signatures at the Cavalry Chapel in Old Bridge. At the church, Hedberg, O'Neill, and another volunteer set out numerous petitions. They stayed for three services. By the end of that day, they had collected approximately 647 signatures. Later that day, they proceeded to the Omega Diner for the gathering of the circulators. Hedberg personally witnessed all of the signatures in his petition books.

On the evening of June 9, 2013, Dr. Eck and her circulators met at Omega diner in order to coordinate the petitions. Each petition book was collected and separately notarized. On the morning of Monday, June 10, 2013, Dr. Eck picked up the petition books at her office and brought them to Trenton. After changes were made by the clerk, the number of signatures on Dr. Eck's petitions totaled 2,285. (P-1 at 1.)

Applying the law to the facts of this case, and having reviewed petitioner's challenge to Dr. Eck's circulator affidavits, and based on the foregoing facts and applicable law, the ALJ concluded that petitioner has not met his burden of proving that respondent failed to have 1,000 or more valid signatures required to have her name placed on the ballot in the primary election pursuant to N.J.S.A. 19:23-8. The ALJ held that the outcome is consistent with the purpose of the law; that the process of being allowed to file a petition is to give voters choices in the primary. The Legislature determined that 1,000 signatures were necessary to show that the electorate desired the applied for candidacy. In this case, Dr. Eck validly acquired the requisite number of signatures of registered voters.

Accordingly, the ALJ held Dr. Eck's nomination petition to be valid and that the name Alieta Eck should appear on the August 13, 2013 special election republican primary ballot.

After full consideration of the record and a review of the exceptions and response to exceptions filed, I hereby adopt the ALJ's Initial Decision in its entirety.

IT IS SO ORDERED.

DATED: 6/19/13


KIMBERLY M. GUADAGNO
SECRETARY OF STATE