

SUPREME COURT
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SUPREME COURT OF THE STATE OF RHODE ISLAND

STATE OF RHODE ISLAND REPUBLICAN
PARTY, on behalf of DAMIEN BALDINO, ELAINA
GOLDSTEIN, KOFUA KULAH, JOHN
CLARKE, LAMMIS VARGAS, AND THE
ELECTORATES OF REPRESENTATIVE
DISTRICT 13 AND SENATE DISTRICTS
3, 5, 9 AND 15

V.

C.A. No. _____

RALPH A. MOLLIS, in his capacity as RHODE ISLAND
SECRETARY OF STATE, AND THE RHODE
ISLAND BOARD OF ELECTIONS

PETITION FOR WRIT OF CERTIORI

Now comes the Plaintiff, who respectfully submits this petition, and hereby requests that the Honorable Court to issue a writ of certiorari in the above entitled matter and for further relief as hereinafter set forth for the following reasons:

1. The undersigned is the duly elected Chairman of the Rhode Island Republican Party.
2. On June 26, 2008, the undersigned did submit to the Rhode Island Secretary of State the names of five persons for inclusion as candidates for the office of State Senator and/or Representative by letter which was received and acknowledged by time stamp, a copy of such submitted letter being included herewith as Exhibit A.
3. On or about June 27, 2008, the Board of Canvassers of the City of Providence communicated to the Secretary of State their decision to reject the inclusion of Kofua Z Kulah Sr., Elaina K. Goldstein, and Damien J Baldino as candidates for their respective elective office.
4. On or about June 28, 2008, the Board of Canvassers of the Town of West Warwick indicated to candidate John Clarke that his candidacy was subject to challenge by the Board.

5. Upon knowledge and belief the Board of Canvassers of the City of Pawtucket is considering the status and validity of the nomination of candidate Lammis Vargas.

6. Upon knowledge and belief the rationale for these challenges and or rejections of candidacy relates to the fact that the letter of nomination was submitted through the Secretary of State rather than directly to the respective local board of canvassers.

7. That Section §17-12-2 of the General Laws for the State of Rhode Island provides, in relevant part, as follows:

§ 17-12-2 Composition and powers of state committees. – The state committee of a political party shall be composed as determined by the party. It shall have:

(3) Power to make a final nomination for any state office for which no primary nomination has been made and any local office for which no nomination has been made by any authorized city, town, ward, or district committee or any duly authorized subcommittee; provided, that the state committee shall not be permitted, more than twenty-four (24) hours after the deadline for the filing of declarations of candidacy, to make a nomination for any office upon the failure of a candidate of that party to file for that public office. Individuals nominated under this section must have been eligible for the nomination on the dates as required by and pursuant to the requirements of §§ 17-14-1.1, 17-14-2 and 17-14-2.1 of the general laws and must then meet the respective requirements for filing sufficient nomination papers set forth in chapter 14;

8. That §17-12-2 of the General Laws for the State of Rhode Island does not specify to whom the initial nomination should be directed when made pursuant to this section.

9. That Section §17-12-4 of the General Laws for the State of Rhode Island provides as follows:

§ 17-12-4 Endorsements by state committee. – The state committee or the executive committee or any duly selected subcommittee of the executive committee acting under delegated authority may, when the town or district committee has failed or neglected to do so, within twenty-four (24) weekday hours of the failure, endorse and notify the local board of endorsement, if any, of the local candidates to be voted on in the primary. It shall also notify the secretary of state of the endorsement, if any, of any candidate to be voted for by the state at large; provided, that the endorsement of any candidate for representative in congress shall be by the members of the state committee who shall be from that particular congressional district. It shall also notify the secretary of state of the endorsement, if any, of any candidate for state senator or state representative. The endorsement shall be filed with the secretary of state not later than four o'clock (4:00) p.m. on the second day after the final day for filing declarations of candidacy. In the event the state committee, or the executive committee or any duly selected subcommittee of the

executive committee acting under delegated authority, fails or neglects to endorse, then all party candidates shall be issued nomination papers without endorsement.

10. That, given no specific statutory language to the contrary, it is reasonable that the actions of the State party be directed to the Secretary State rather than to multiple local boards of canvassers, as such interpretation is both consistent with statutory language given other action by the state party in lieu of local committee action, is more reasonable than the alternative, and does not conflict with the statutory framework governing the responsibilities of the Secretary of State, the Board of Elections, or the various local boards of canvassers.

11. On June 30, 2008 the undersigned did submit to the Rhode Island Board of Elections an appeal of the decision and/or actions of the local boards of canvassers above referenced, a copy of which is included herewith as Exhibit B.

12. On June 30, 2008 the undersigned did make request to the Secretary of State to allow for provisional issuance of nomination papers to the candidates to allow for full access to the signature gathering period during the pendency of the challenges to their eligibility, such communications being summarized in correspondence to the Secretary of State attached hereto as Exhibit C.

13. On June 30, 2008 the undersigned did receive verbal direction from the Secretary of State and the Board of Elections that such papers would not be issued, either in the normal course or provisionally, at such time as such papers were to be issued for candidates not subject to challenge or dispute.

14. Upon knowledge and belief, on July 1, 2008 one or more of the candidates and/or their authorized agents did request nomination papers from the Secretary of State and were denied delivery of such papers.

15. That the Board of Election, being the statutory body of appeal of an action of a local board of canvassers, has indicated that a hearing will be held on July 3, 2008.

16. That the Board of Elections is required under law to provide no less than forty-eight hours notice of a hearing of the Board.

17. That a favorable hearing of the Board will still result in the denial of no less than three days of the ten day signature gathering period.

18. Upon opinion and belief, the ability of a candidate to collect sufficient signatures in a reasonable manner which serves the public policy purposes of the signature collection

requirement over a ten day period is already compromised as in this specific case it spans the Independence Day holiday weekend.

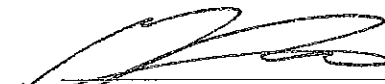
19. That the remedy of a Board of Elections hearing is inadequate under the law to the extent that any candidates not provided nominating papers by the Secretary of State on July 1, 2008 will be prejudiced and irreparably harmed and the electorate of their districts may be denied the option to vote for a candidate of their choice pursuant to the above referenced provisions.

WHEREFOR, the undersigned hereby prays that this Honorable Court grant the following relief:

- (A) That this Court issue a writ of certiorari in the above-entitled matter.
- (B) That this Court quash the decision of the Rhode Island Secretary of State denying these candidates access to nomination papers in a timely manner.
- (C) That this Court order the Rhode Island Secretary of State to immediately deliver nomination papers, for the purpose of collecting signatures pursuant to RI Gen. Laws §17-14-7 for ballot placement, to the following persons:
 - i. Damien Baldino, nominee for State Representative District 13;
 - ii. Elaina Goldstein, nominee for State Senator District 3;
 - iii. Kofua Kulah, Sr., nominee for State Senator District 5;
 - iv. John Clarke Jr., nominee for State Senator District 9;
 - v. Lammis Vargas, nominee for State Senator District 15;

and that such completed papers shall accepted by the Secretary of State prior to the expiration of the standard signature gathering period and shall then be held pending final resolution of any appeals of the decisions of the Boards of Canvassers of the Town of West Warwick and the Cities of Pawtucket and Providence relating to the eligibility of the above referenced persons to stand for election.

(D) That this Court grant Petitioner such other and further relief as it shall deem meet and just under the circumstances.


Giovanni D. Cicione, Esq.

Sworn and subscribed to this 1 day of July, 2008

Exhibit A

RI Republican Party

3351 Post Road, Warwick, RI 02886

June 26, 2008

Secretary Of State, Elections & Civics Division www.rirgap.org
148 West River St.
Providence RI 02904

Gentlemen:

As per R.I.G.L. 17-12-2 (3), which provides for the case where no candidate of a particular Party filed to run before the deadline, the R.I. Republican Party is hereby nominating the following candidates.

State Representative District 13

DAMIEN J. BALDINO
192 Ophelia St.
Providence RI 02909
Phone: 932-3774
DOB 6-14-76

State Senator District 3

ELAINA K. GOLDSTEIN
71 Savoy St.
Providence RI 02906
Phone: 453-9558
DOB 6-20-57

State Senator District 5

KOFUA Z. KULAH Sr.
125 Wallace St.
Providence RI 02909
Phone: 243-3926
DOB 9-18-58

State Senator District 9

JOHN J. CLARKE JR.
53 Crossland Rd.
West Warwick RI 02893
Phone: 821-8805 (h) 828-5100 (o)
DOB 7-23-36

State Senator District 15


LAMMIS J. VARGAS
37 Cato Ave.
Pawtucket RI 02860
Phone: 865-0509
DOB 8-5-81

Sincerely,



Giovanni D. Cicione
Chairman, R.I. Republican Party

Exhibit B

RI  Republican Party

Via Facsimile and Hand Delivery

June 30, 2008

Mr. Robert Kando
Executive Director
RI Board of Elections
50 Branch Avenue
Providence, RI 02904

RE: Notice of Appeal of Denials of Nominations of Candidates for RI General Assembly
Nominated Pursuant to RIGL Section 17-12-2 (3)

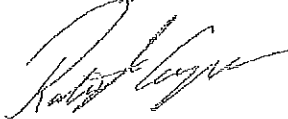
Dear Mr. Kando:

On behalf of the Rhode Island Republican Party, I hereby appeal the decision of the Providence Board of Canvassers (as well as the Pawtucket and/or West Warwick Board(s) of Canvassers making similar decisions) to reject the nomination by the RI Republican Party, pursuant to RIGL §17-12-2(3) of the candidates for RI General Assembly listed on the attached correspondence to the RI Secretary of State.

As you are aware, all candidates for public office in Rhode Island are under strict time constraints to secure the required signatures on nomination papers to qualify for placement of the ballot. Even a nominal delay in the issuance of nomination papers would cause undue prejudice against the affected candidates. Unless all nomination papers are issued tomorrow, we also request that the Board of Elections order that all candidates have a full, ten-day period to collect signatures commencing on whatever date their papers maybe issued.

Arguments and/or memoranda of law in support of this appeal will be presented at or before the hearing scheduled for July 3, 2008.

Sincerely,



Robert J. Coupe
Secretary
Rhode Island Republican Party

Exhibit C

RI Republican Party

via hand delivery

July 1, 2008

Ms. Jan Rugeirio
State of Rhode Island
Secretary of State's Office
Election Division
Providence, RI 02903

RE: Issuance of Nominating Papers

Dear Ms. Rugeirio,

I am writing to confirm the denial of our request to the Office of the Rhode Island Secretary of State to prepare and issue nomination papers, in accordance with RIGL §17-14-4, to the following candidates for the RI General Assembly who were nominated by the RI Republican Party pursuant to RI GL Section 17-12-2(3):

1. Damien J. Baldino
2. Elaina K. Goldstein
3. Kofua Z. Kulah Sr.
4. John J. Clarke Jr.
5. Lammis J. Vargas

The Rhode Island Board of Elections has scheduled a hearing to be held at 10:00 am on Thursday July 3, 2008 to consider the validity of the Republican Party's nomination of these candidates. As you know, however, Rhode Island law imposes a strict, ten-day deadline for candidates to secure the required signatures and, therefore, we had requested that the nomination papers be prepared and issued immediately to avoid the loss of any significant portion of the ten-day period for gathering signatures and the undue prejudice against these duly nominated candidates that would result from a decision by the Secretary of State's Office to delay preparation of nomination papers until after the July 3rd hearing. This is particularly pressing in light of the July 4th holiday which will make the signature collection process much more difficult and in light of the coordinated volunteer efforts that political parties undertake during this ten day period in each election cycle.

It is our understanding based on discussions with Joe Fleming, Chief of Staff to Secretary Mollis, Mike Narducci, in your office, and yourself, that our repeated requests to provide provisional issuance of nominating papers to these candidates would receive no response, thereby effectively denying that request.

As we have repeatedly noted both to your office, and, upon your rejection of our request, to the Board of Elections (specifically director Robert Kando), the failure to issue these papers will irreparably harm the candidates in question and the voting public by denying them equal access to the parties signature gathering efforts and leaves open the question of whether or not they would even be allowed a full ten day window to gather those signatures.

Further, waiting until the appeal of these local canvassing board decisions to reject the candidacies of these otherwise eligible individuals serves no legitimate public policy purpose as the only burden of any substance lies with the candidates themselves who would undertake the signature collection process without certain knowledge of their final candidate status. At the same time, allowing these signatures to be collected provisionally and resubmitted to your office pending resolution of these

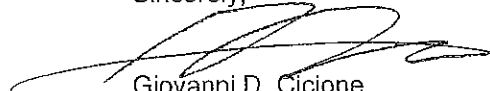
3351 Post Road, Warwick, RI 02886 T 401.732.8282 F 401.633.7362 www.rigop.org

disputes through the normal course of appeals is the least burdensome approach to addressing the question of timing, and does not impact or impair the rights of any potential opponents.

To restate our proposal, we had requested that the Secretary of State issue directly to the five candidates the signature papers you would typically prepare for a candidate. Those papers would be returned to your office prior to the deadline for submission, and held in provisional status until such time as their appeals have been resolved. If their candidacies are rejected by the appellate bodies, then the signature papers would be of no further import. If their candidacies were allowed, then the papers could be submitted to the appropriate local canvassing authorities for certification in accord with their standard statutory procedure.

Again, lacking any written or formal notice of action by the Secretary of State, we are hereby confirming that the Secretary of State's Office has declined to prepare nomination papers for issuance to these individuals. Please let us know immediately if this is not accurate or if we have misstated the facts laid out above in any way.

Sincerely,

A handwritten signature in black ink, appearing to read 'G. Cicione', with a long horizontal flourish extending to the right.

Giovanni D. Cicione
Chairman of the RI Republican Party

cc. Raymond Marcaccio, Esq.
Robert Kando, Executive Director, RIBOE

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ELECTORATES OF REPRESENTATIVE
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3, 5, 9 AND 15

V.

C.A. No. _____

RALPH A. MOLLIS, in his capacity as RHODE ISLAND
SECRETARY OF STATE, RHODE ISLAND
BOARD OF ELECTIONS

**MOTION FOR TEMPORARY RELIEF PENDING A
DECISION ON PETITION FOR WRIT OF CERTIORARI**

Now comes the Plaintiff, who respectfully submits this motion, and hereby requests that the Honorable Court to issue a temporary injunction in the above entitled matter and for further relief as hereinafter set forth for the following reasons:

1. The undersigned is the duly elected Chairman of the Rhode Island Republican Party.
2. On July 1, 2008, the undersigned did submit to the Honorable Court a Petition of Writ of Certiorari, a copy of such submitted letter being included herewith as Appendix A.
3. As noted in such petition the relief typically provided under Rhode Island law is inadequate, and any delay in granting the relief requested therein would irreparably harm certain parties thereto.
4. By reference we specifically incorporate paragraphs 13 through 19 thereof which address the irreparable harms stemming from any delay in action by the Honorable Court.

WHEREFOR, the undersigned hereby prays that this Honorable Court grant the following relief pending review by this Honorable Court of the Request for Writ of Certiorari above referenced:

(A) That this Court order the Rhode Island Secretary of State to immediately deliver nomination papers directly to the referenced candidates, for the purpose of collecting signatures pursuant to RI Gen. Laws §17-14-7 for ballot placement, to the following persons:

- i. Damien Baldino, nominee for State Representative District 13;
- ii. Elaina Goldstein, nominee for State Senator District 3;
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and that such completed papers shall accepted by the Secretary of State prior to the expiration of the standard signature gathering period and shall then be held pending final resolution of any appeals of the decisions of the Boards of Canvassers of the Town of West Warwick and the Cities of Pawtucket and Providence relating to the eligibility of the above referenced persons to stand for election.

(B) That this Court grant Petitioner such other and further relief as it shall deem meet and just under the circumstances.


Giovanni D. Cicione, Esq.

Sworn and subscribed to this 1 day of July, 2008