

Via Hand Delivery

August 16, 2010

Terri Lynn Land
Secretary of State
Michigan Department of State
Treasury Building - 1st Floor
430 West Allegan Street
Lansing, Michigan 48918

Christopher M. Thomas
Director, Bureau of Elections
Michigan Department of State
Treasury Building - 1st Floor
430 West Allegan Street
Lansing, Michigan 48918

In re: Request to Reject "Tea Party" Nominations

Dear Secretary Land and Director Thomas:

We write on behalf of certain candidates who have qualified for placement on the general election ballot in November 2010, including Patrick Colbeck, candidate for the 7th Senate District, Dave Robertson, candidate for the 26th Senate District, Frank Foster, candidate for the 107th House District and John Moolenaar, candidate for the 36th Senate District, along with Tea Party, a political party committee, individuals and leaders associated with the true tea party movement and those individuals who were misled into signing the petition under false pretenses, all who object to the invalid petition to form a new political party entitled "Tea Party" and its candidate nominations recently filed with the Bureau of Elections by an individual named Mark Steffek ("Steffek"). We respectfully request that the Secretary of State and/or the Bureau of Elections reject the candidates whose names were submitted to the department on July 26, 2010, by the group¹ that calls itself the "Tea Party," such that those names will not be printed on any November 2, 2010 general election ballot in Michigan. We further request that you, as the Chief Elections Officer, and the Director for the Bureau of Elections decline to place the name of Steffek's group and its proposed vignette on any general election ballot.

The bases for this request, as will be outlined below, are premised on Steffek's complete failure to abide by the statutory prerequisites to placement of the name of the group, its vignette and candidates on the November 2, 2010 general election ballot.

Background

On July 14, 2010, the bureau, pursuant to § 685, accepted for filing a certificate for a new political party, vignette, and a certain number of petitions purportedly bearing the signatures of

¹ As of this date, the group's petition has not been certified by the Board of State Canvassers.

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approximately 59,400 Michigan voters. The certificate for the new political party identified Steffek as its chairman and the name of the new party as "Tea Party."

On July 16, Steffek told the Detroit Free Press that no date had been set for any convention at which his group would nominate candidates for the November 2, 2010 general election ballot. Yet, only 10 days later, on July 26, the Steffek group submitted various documents to the bureau identifying candidates it purportedly nominated for the November 2, 2010 general election. These documents include a "Certification of the Tea Party Nomination," which lists all of the would-be candidates, their home addresses and offices sought; an affidavit of identity/receipt of filing for each such candidate and a certificate of acceptance for each candidate.

Failure to Follow Statutory Requirements

As you are aware, Michigan Election Law, MCL 168.1, *et seq.* ("MEL") requires that a newly formed political party² follow certain procedures in order to have the name of the party, its vignette, and the names of its candidates appear on a general election ballot. Specifically, § 685(7), provides:

A political party that complied with this section is subject to section 686a in order to have the name of that party, its vignette, and its candidates appear on the general election ballot.

MEL thus mandates that unless a newly formed party complies with § 686a, it will not have its name, vignette, or candidates appear on the general election ballot. Under § 686a(4), candidates nominated at the new party's state convention for the general election must submit an affidavit of identity "as provided in section 558" to the Secretary of State.

The "Certification of the Tea Party Nomination" submitted by Steffek's group indicates that the would-be candidates listed on the document were nominated at the group's state convention in Saginaw on July 24. Therefore, each would-be candidate was obligated to sign an affidavit of identity that complied with § 558. Significantly, all but one of the affidavits actually filed were pre-dated, meaning prior to the date of the alleged convention. The affiants could not have legally "attest(ed) to the truthfulness" of the affidavits of identity and prepared certificates of acceptance *prior* to the date on which they were supposedly nominated. Because the affidavits are thus per se invalid, Steffek's nominations do not comply with § 686a.

² The formation of a new political party is governed by MCL 168.685.

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Because the affidavits of identity could not lawfully have been prepared prior to the date of the nomination, given a person cannot accept nomination as a candidate before that nomination occurs, the affiants' affidavits are false and defective. The only possible alternative is that the convention occurred prior to July 24 or not at all, contrary to that which is represented in the Certification of Nomination. The time has now passed for Steffek's group to submit its candidate names for the November 2, 2010 general election, so new affidavits cannot be submitted to cure the error. As such, the bureau must reject those candidate names submitted with defective affidavits of identity that do not comply with § 558 as required by § 686a.

As a separate grounds upon which to reject Steffek's candidates, the bureau must reject the names submitted because there was no properly called or conducted convention at which the candidates were supposedly nominated. First, as discussed above, if the affidavits of identity are deemed valid, the convention must have occurred prior to July 24, contrary to the representation in the Certification of Nomination. Regardless, the call to the convention, if it actually occurred, could not possibly have been timely as prescribed by MEL. General election candidates of newly formed political parties are selected by caucus (as opposed to a primary, under § 532³).⁴Importantly, under § 686a(4), the new party's state convention "shall be held at the time and place indicated in the call."

County conventions of all political parties in even-numbered years are governed by MCL 168.592, which reads, in part:

(2) All county conventions of a political party shall be held on the same day throughout the state. *The date shall be designated by the state central committee of a political party in its call for the state convention. The place and hour of meeting of a county convention shall be designated in the call issued by the county committee of the political party in the county, which call shall be issued*

³ A political party whose principal candidate received less than 5% of the total vote cast for all candidates for the office of secretary of state in the last preceding state election, either in the state or in any political subdivision affected, shall not make its nominations by the direct primary method. The nomination of all candidates of such parties shall be made by means of caucuses or conventions which shall be held and the names of the party's nominations filed at the time and manner provided in section 686a of this act. The term "principal candidate" of any party shall be construed to mean the candidate whose name shall appear nearest the top of the party column.

⁴ Our Supreme Court, in 1982, determined that a prior provision requiring new political parties to garner 1/3 of 1 percent of the total primary vote in order to be on the general election ballot was unconstitutional under the state's equal protection and purity of elections provisions of the Michigan constitution. *Socialist Workers Party v Secretary of State*, 412 Mich 571.

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not less than 45 days before the August primaries. The number of delegates to the state convention to which the political party in the county is entitled shall be chosen at the county convention. [Emphasis added.]

Steffek stated as late as July 16 that no date for any convention had been set -- in other words, neither he nor anyone else in his group had issued a call to any convention, county or state.

Therefore, Steffek's group failed to properly call and conduct any county convention, which call had to be issued on or before June 19 as prescribed by MCL 168.592, i.e., not less than 45 days before the August 3 primary. Further, under § 686a(4), state conventions for new political parties must be held at the time and place indicated in the call to convention. Under § 591, state conventions of all political parties must be called no less than 60 days prior to the August primaries. Steffek stated on July 16 that no date for any convention had been set. Steffek's group failed to properly call and conduct a state convention, which call had to be issued on or before June 3 as prescribed by § 591, i.e., not less than 60 days before the August 3 primary.

The failure to follow the convention process prescribed by 686a, which mandates that new party candidates be nominated at a county or state convention, requires the bureau to reject all the candidate names submitted by Steffek.

Conclusion

The statutes cited herein are more than mere formalities, they are part of the process put in place by our Constitution and MEL to guard against tampering with the elective franchise of the people of Michigan. The need to call a convention gives notice -- the most basic of procedural due process requirements -- to all those interested in participating in the new party. More than 59,000 Michigan voters purportedly signed Steffek's petitions. Many, if not most, believed they were helping to form a party that would be a genuine alternative to the two "major" political parties. Unwittingly, though, they silenced themselves because as soon as they signed the petition, they were forbidden by law from signing any other petition to form a new political party; thus, upon learning that Steffek's group was a fraud, they were not able to repair the damage done to their hopes.

Conventions are also part of the bedrock of the political process, which is why the MEL precisely prescribes the manner in which they must be conducted. Michigan voters gather at conventions to exchange ideas, to associate with like-minded individuals, and to nominate candidates. When Steffek held what amounts to a broom closet convention, Michigan citizens were foreclosed from these vital, democratic activities.

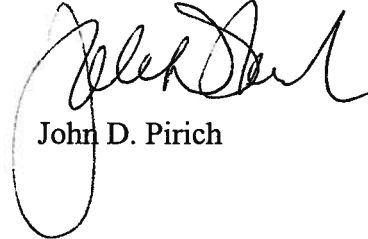
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Likewise, persons cannot properly accept nominations prior to being nominated. These "candidates" thus have submitted invalid and defective affidavits of identity, thereby precluding their placement on the ballot pursuant to MEL.

Accordingly, we respectfully request that you reject the Certification of the Tea Party Nominations and Affidavits of Identity/Certificates of Acceptance filed therewith.

Very truly yours,

HONIGMAN MILLER SCHWARTZ AND COHN LLP

A handwritten signature in black ink, appearing to read "John D. Pirich", is written over a large, faint, circular watermark or stamp.

John D. Pirich