

**BEFORE THE STATE ELECTION BOARD OF THE
STATE OF OKLAHOMA**

IN THE MATTER OF CONTEST OF THE)
CANDIDACY OF **BEN SCROGGS**)
FOR THE OFFICE OF STATE) CAUSE NO. 2016-06
SENATOR, DISTRICT 12)

FINDINGS AND ORDER

The above-styled cause was heard by the Election Board of the State of Oklahoma on April 25, 2016, meeting pursuant to lawful notice.

The following members of the State Election Board (“Board”) were present: Tom Montgomery, Vice-Chair; Dr. Tim Mauldin, Member; and Jerry Buchanan, Alternate Member. Also present were Paul Ziriaux, Secretary; and counsel for the State Election Board, Janis W. Preslar, Deputy Attorney General; and Jason T. Seay, Assistant Attorney General. Also present, but not participating was Debi Thompson, Alternate Member. Steve Curry, Chair, recused from this cause.

Petitioner James Leewright was present and represented by counsel, Glenn Coffee. Contestee Ben Scroggs was present *pro se*.

The Petition was filed and Notice of Hearing issued on April 18, 2016, at 2:14 p.m.

The Board received proof of personal service made on Mr. Scroggs by the Creek County Sheriff on April 18, 2016, at 6:15 p.m., within 24 hours of setting the Petition for hearing, as required by 26 O.S. 2011, § 5-124.

Mr. Scroggs answered the contest, and presented a cashier’s check in the amount of \$250.00, as prescribed in 26 O.S. 2011, § 5-129.

After considering all evidence and testimony offered and admitted, and after hearing arguments of counsel and Mr. Scroggs, the Board made the following findings of fact and conclusions of law:

1. Mr. Scroggs filed with the Board a Declaration of Candidacy for the office of State Senator, District 12, during the filing period April 13-15, 2016.
2. Mr. Leewright filed with the Board a Declaration of Candidacy for the office of State Senator, District 12, during the filing period April 13-15, 2016.
3. Mr. Leewright challenged Mr. Scroggs’ candidacy on the grounds that he does not meet the political affiliation requirements set forth in 26 O.S. 2011, § 5-105(B).

4. Section 5-105 in pertinent part states that, “[t]o file as an independent candidate for any state or county office, a person must have been registered to vote as an independent for the six-month period immediately preceding the first day of the filing period prescribed by law and, under oath, so state.” 26 O.S. 2011, § 5-105(B).
5. The following exhibits were introduced into evidence, without objection, at the hearing of this matter by Mr. Leewright:

Exhibit A: Mr. Scroggs’ Declaration of Candidacy;
Exhibit B: Certified copy of Mr. Scroggs’ voter registration application; and
Exhibit C: Certified copy of the Board’s voter activity record for Mr. Scroggs.
6. The following exhibits were introduced into evidence, without objection, at the hearing of this matter by Mr. Scroggs:

Exhibit 1: Mr. Scroggs’ birth certificate; and
Exhibit 2: Copy of Okla. Admin. Code § 230:20-3-37.
7. Exhibit A shows that Mr. Scroggs declared his candidacy for Senate District 12 on April 13, 2016, and that he sought to run for the office as an Independent, *i.e.* a person with no party affiliation.
8. Exhibit B shows that Mr. Scroggs registered to vote in September 2010 and declared his affiliation with the Republican Party.
9. Exhibit C shows that Mr. Scroggs was registered as an Independent until September 2010 and has since been affiliated with the Republican Party.
10. Mr. Scroggs did not dispute the fact that he has been continuously registered as a Republican since September 2010. Instead, Mr. Scroggs claimed that the Secretary of the Board should have checked his party affiliation when Mr. Scroggs was preparing his Declaration of Candidacy and advised Mr. Scroggs of the fact that he was registered as a Republican and not as an Independent. Mr. Scroggs testified that Board employees looked up his precinct numbers upon his request but never advised him that the political party affiliation on his Declaration of Candidacy was incorrect. Mr. Scroggs claims Board staff was required to do so under Okla. Admin. Code § 230:20-3-37. Importantly, Mr. Scroggs never testified that he *asked* Board staff to look up his political party affiliation.
11. Section 230:20-3-37 does not require Board staff to check the accuracy of the statement of party affiliation made in a Declaration of Candidacy. The regulation provides in pertinent part that, “[i]f there are errors on the Declaration [of Candidacy], the [Board] Secretary shall point out such errors to the candidate. *For example, common error is to indicate the current year in the date of birth instead of the actual year of birth.*” Okla. Admin. Code § 230:20-3-37(b) (emphasis added). The Board Secretary may

only determine if there are errors in a declaration “on its face.” *Id. See also*, 26 O.S. 2011, §5-117 (“[t]he secretary of any election board shall accept any Declaration of Candidacy which the secretary is authorized to accept, except such Declaration which on its face shows that the candidate does not meet the qualifications to become a candidate for the office set forth as contained in the Oklahoma Constitution, statutes or resolution calling the election”). The above-emphasized language of the regulation demonstrates that it does not impose an obligation upon the Secretary to independently verify any information in the declaration that is not shown to be incorrect on the face of the instrument alone. The party with which a candidate claims affiliation, if any, is not information that may be verified as incorrect on the face of the declaration alone.

12. Mr. Scroggs further claims that the proper remedy in this contest is for the Board to order his Declaration of Candidacy to be amended to show he is seeking office as a Republican. 26 O.S. 2011, § 5-128 states that, “[i]f a contestee’s Declaration of Candidacy may be amended or corrected to conform to law, the election board may order the same to be done, if the board determines such amendment or correction to be proper at the time of its order or decision.”
13. In *James v. Rogers*, 1987 OK 20, 734 P.2d 1298, the Oklahoma Supreme Court found it proper to amend a declaration of candidacy where the candidate wrote down the incorrect ward for which he sought a city council position. *Id.* at 1299, 1300. In *James*, the candidate was unsure of which ward he would be qualified to run for, and the County Board of Trustees’ Clerk was also unsure of the same. *Id.* The Clerk advised the petitioner to file a declaration of candidacy for one ward and would notify the petitioner if the Clerk determined that the petitioner was not qualified to run for office in that ward. *Id.* Importantly, ***the Clerk never called the petitioner, and the petitioner therefore presumed he filed for elective office in the ward for which he was qualified to run.*** *Id.* It turned out he was not. On the advice of counsel, the Board of Trustees ordered an amendment to the petitioner’s declaration of candidacy to show the proper ward for which he was qualified. *Id.*
14. Here, Mr. Scroggs relied upon no representations by Board staff, and Board staff were under no obligation to research Mr. Scroggs’ true political party affiliation and advise him of the same *sua sponte*. As such, the Board finds that this is not a proper case to order an amendment to Mr. Scroggs’ Declaration of Candidacy to change his stated political party affiliation from Independent – *i.e.* no party affiliation – to Republican.
15. The Board finds by the weight of the evidence, that Mr. Scroggs has not been a registered Independent for at least six months immediately preceding the first day of the filing period prescribed by law. 59 O.S. 2011, § 5-105(B).
16. Mr. Leewright’s petition is therefore granted and Mr. Scroggs’ name will not appear on the ballot as a candidate for the office of State Senate, District 12.
17. Costs are assessed against Mr. Scroggs, pursuant to 26 O.S. 2011, § 5-131.

Done this 25th day of April, 2016, by a unanimous vote of the Election Board of the State of Oklahoma.

OKLAHOMA STATE ELECTION BOARD


STEVE CURRY, Chairman

