

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

IN THE MATTER OF CONTEST OF THE)
CANDIDACY OF **JOSH MARTIN**)
FOR THE OFFICE OF STATE) CAUSE NO. 2018-01
REPRESENTATIVE, DISTRICT 70)

FINDINGS AND ORDER

The above-styled cause was heard by the Election Board of the State of Oklahoma on April 23, 2018, meeting pursuant to lawful notice.

The following members of the State Election Board ("Board") were present: Steve Curry, Chair; Tom Montgomery, Vice-Chair; and Dr. Tim Mauldin, Member. Also present were Paul Ziriaux, Secretary; and counsel for the State Election Board, Lyn Martin-Diehl, Assistant Attorney General; and Rachel Rogers, Assistant Attorney General. Also present, but not participating were Jerry Buchanan, Alternate Member; and Debi Thompson, Alternate Member.

Petitioner Carol Bush appeared personally with counsel, Geoffrey Long. Contestee Josh Martin appeared personally with counsel, Robert Goins.

The Petition was filed and Notice of Hearing issued on April 16, 2018, at 8:30 a.m. The Board received proof of personal service made on Contestee by the Tulsa County Sheriff on April 16, 2018, within 24 hours of setting the Petition for hearing, as required by 26 O.S. § 5-124.

Contestee answered the Petition and submitted a cashier's or certified check in the amount of \$250.00, as required by 26 O.S. § 5-129.

The Board conducted the hearing. After considering all evidence and testimony offered and admitted, and after bearing arguments of the parties, the Board makes the following findings of fact and conclusions of law:

1. Ms. Bush filed with the Board a Declaration of Candidacy for the office of State Representative, District 70, during the filing period of April 11-13, 2018.
2. Mr. Martin filed with the Board a Declaration of Candidacy for the office of State Representative, District 70, during the filing period of April 11-13, 2018.
3. The Board received proof of personal service made on Contestee within 24 hours of setting the Petition for hearing, as required by 26 O.S. § 5-124.
4. Mr. Martin answered the Petition and submitted the proper cashier's check or certified check in the amount of \$250.00, as required by 26 O.S. § 5-129.

5. 26 O.S. § 5-130 provides: "The burden of proof shall be upon the petitioner to sustain the allegations in his petition."
6. The allegations contained in the Petition filed by Ms. Bush are that:

Contestee had not been a registered voter in District 70 for at least six months immediately preceding the filing period as required by Title 14 O.S. Section 108.
7. 14 O.S. § 108 in pertinent part states, "[t]o file as a candidate for the House of Representatives in any representative district, a person must have been a registered voter in such district and a resident residing within such district for at least six (6) months immediately preceding the filing period prescribed by law."
8. The filing period began on April 11, 2018, pursuant to 26 O.S. § 5-110. Consequently, Mr. Martin was required to have been a registered voter in House District 70 on or before October 10, 2017.
9. Certified copies of documents from the Tulsa County Election Board showed the earliest transaction date for Mr. Martin's registration was February 9, 2018, and his voter registration was activated on February 15, 2018.
10. During the proceedings, Mr. Martin claimed he attempted to register in September of 2017 by mail, but did not have the supporting documents from the postal service to verify this claim.
11. Mr. Martin also claimed the six month requirement applies only to residency, not registration, and to hold otherwise is a violation of his constitutional rights. However, the Oklahoma Supreme Court has interpreted the six month durational requirement in 14 O.S. § 108 to apply to registration and not merely residence. *Hendrix v. State ex rel. Oklahoma State Election Bd.*, 1976 OK 111, 554 P.2d 770. Even further, 14 O.S. § 108 "is a valid statutory enactment of the Legislature of Oklahoma and complies fully with the Equal Protection of the Law clause of the Fourteenth Amendment of the Constitution of the United States." *Fleak v. Allman*, 420 F. Supp. 822, 825 (W.D. Okla. 1976).
12. Ms. Bush has sustained the burden of proof in showing Mr. Martin does not meet the six-month registration requirement set forth in 14 O.S. § 108.
13. Ms. Bush's Petition is therefore sustained, pursuant to 26 O.S. § 5-130, and Mr. Martin's name will not appear on the ballot as a candidate for the office of State Representative, District 70.
14. Costs are assessed against Mr. Martin pursuant to 26 O.S. 2011, §5-131.

Done this 23rd day of April, 2018, by a unanimous vote of the Election Board of the State of Oklahoma.

OKLAHOMA STATE ELECTION BOARD



A handwritten signature in cursive script, appearing to read "Steve Curry", is written over a horizontal line.

STEVE CURRY, Chairman

