

IN THE CIRCUIT OF THE CITY OF ST. LOUIS
STATE OF MISSOURI

STATE OF MISSOURI *EX REL.*)
KACEY CORDES,)

Relator,)

v.)

THE CITY OF ST. LOUIS,)

Serve: St. Louis City Counselor)
1200 Market)
City Hall, Room 314)
St. Louis, MO 63103)

and)

THE BOARD OF ELECTION)
COMMISSIONERS)
FOR THE CITY OF ST. LOUIS)

and)

PAUL M. MALONEY, in his official capacity,)

and)

LEO G. STOFF, Jr., in his official capacity,)

and)

BENJAMIN M. PHILLIPS, SR.,)
in his official capacity,)

and)

MARY WHEELER-JONES, in her official)
capacity)

Serve all at: 300 N. Tucker Blvd.)
St. Louis, MO 63101)

Case No.:

Division:

Respondents.

)

**PETITION FOR WRIT IN MANDAMUS AND
FOR OTHER EQUITABLE AND INJUNCTIVE RELIEF**

Relator Kacey Cordes (“Cordes”), by and through her undersigned counsel, and for her Petition for Writ of Mandamus and for other Equitable and Injunctive Relief, states as follows:

PRELIMINARY STATEMENT

1. On April 4, 2017, citizens of the City of St. Louis will cast their ballots to elect a new Mayor, following the 16-year tenure by Mayor Francis Slay. Relator Kacey Cordes has formally declared as an Independent candidate for Mayor to ensure a progressive choice on the April ballot and advocate for nonpartisan elections. However, the Board of Election Commissioners for the City of St. Louis rejected Cordes’ declaration papers based on its erroneous interpretation of election ordinances contained in the Revised Code of the City of St. Louis (“City Code”), and decided that it will not include Cordes as a candidate for Mayor on the April 4, 2017 General Election ballot.

2. Cordes seeks a writ in mandamus requiring the Board to include her name as an Independent candidate for Mayor on the April 4, 2017 General Election Ballot, as well as other equitable relief because she has fulfilled all requirements for an Independent candidate to obtain access to the ballot.

3. As alleged more fully below, the Board’s decision to exclude Cordes from the ballot is based on its belief that Cordes should have followed the nominating procedure found for “nonpartisan candidates” set forth in §2.08.330 of

the City Code, rather than the City Code provision which expressly refers to independent candidates. The Board's decision is contrary to the plain language of the City Code and the controlling definitions contained in the Missouri Revised Statutes. Section 115.013 RSMO., expressly defines an "independent candidate" as one not affiliated with a party, and as separate and distinct from a "nonpartisan candidate," which is defined as a candidate running for an office where party candidates cannot run.

4. In fact, in correspondence to Cordes, the Board conceded that §2.08.330 on which it relies refers only to nonpartisan candidates and "does not expressly refer to independent candidates." Nevertheless, it opted to treat the terms as interchangeable. In erroneously conflating these two terms, the Board ignored the governing definitions of these terms set forth in the Missouri Revised Statutes and the plain language of the City Code, which does not treat the terms interchangeably.

5. Because the Board's rejection of Cordes' declaration for candidacy is based on an erroneous interpretation of the City Code and contrary to the law, this Court should issue a writ requiring the Board and its commissioners to place her name on the April 4, 2017 General Election ballot as a candidate for the office of Mayor. If the writ of mandamus does not immediately issue, Cordes and the citizens of City will suffer an injustice and irreparable harm.

PARTIES AND VENUE

6. Kacey Cordes is a resident of the City of St. Louis and has declared as a qualified independent candidate for the office of Mayor for the City of St. Louis, Missouri.

7. Respondent the City of St. Louis, Missouri (the "City") is a charter city and municipal corporation.

8. Respondent The Board of Election Commissioners for the City of St. Louis (the "Board"), is a state mandated agency which conducts all public elections within the City.

9. Respondents Paul M. Maloney, Leo G. Stoff, Jr., Benjamin M. Phillips, Sr., and Mary Wheeler-Jones, each serve as commissioners or members on the Board and are named herein in their respective capacities as a commissioner.

10. Venue is proper pursuant to §508.010, in that Cordes resides in the City and each Respondent may be found in the City.

FACTS

11. On February 13, 2017, Cordes formally declared her candidacy as an independent candidate for Mayor of the City.

12. On that date, Cordes filed with the Board her Declaration of Mayoral Candidacy.¹ She attached to her Declaration a receipt from the City of St. Louis Treasurer of payment of a fee in the amount of \$1,318.20, equal to one (1) percent of the mayoral salary, in accordance with City Code §2.08.070. A true and accurate copy of the Declaration is attached hereto as Exhibit 1.

¹ The Declaration also included a pre-printed form titled "Declaration of Non-Partisan Candidate," which Cordes was required to sign because it was the only form available. Her actual Declaration did not adopt or concede that she was a "Non-partisan" candidate.

13. In her Declaration, Cordes' also affirmed that she has filed and paid all requisite City taxes and that she has paid the requisite fees determined by the Missouri Ethics Commission, as required under §2.08.430 of the City Code.

14. Because Cordes had declared as an Independent candidate, she did not submit with her Declaration a certificate signed by registered electors as is required for Nonpartisan candidates under §2.08.330 of the City Code.

15. Section 2.08.330, which is titled "Provisions for nomination— Nonpartisan candidate," does not include any reference to Independent candidates, and its express terms refer only to the nomination procedure for nonpartisan candidates.

16. A separate section of the City Code (§2.08.070) does specifically reference a process by which an Independent candidate must follow. That provision states:

Any person desiring to file declaration papers, or propose as a candidate on any independent or nonpartisan ticket, who does not announce by declaration papers as a candidate of any political party as defined by law, and is not a member of a political party having a state or city committee, or treasurer thereof, shall pay the sum of money required by this chapter to be paid by the candidate for the office for which he proposes to the treasurer of the city; take a receipt therefor, and file his receipt with his declaration papers. The sum of money so paid, shall go into the general revenue fund of the city.

§2.08.070.

17. The City Code does not define the terms "independent" or "nonpartisan." However, Missouri's Comprehensive Election Act, §§115.001 *et seq.*

(the "Election Act"), which generally governs all public elections in Missouri², expressly defines these two terms in §§115.013(13) and (18).

18. Section 115.013(13) provides that an "Independent" is "a candidate who is not a candidate of any political party and who is running for an office **for which party candidates may run.**" (emphasis added).

19. Section 115.013(18) defines "Nonpartisan" as "a candidate who is not a candidate of any political party and who is running for an office **for which party candidates may not run.**" (emphasis added).

20. In correspondence to the Board dated February 14, 2017, Cordes set forth the foregoing statutory provisions and other bases for her candidacy as an Independent candidate for mayor. A true and accurate copy of the February 14 Letter is attached hereto as Exhibit 2.

21. In that same correspondence, Cordes also noted that she had explored the process of obtaining signatures under §2.080.330 of the City Code, but learned that representatives of a major political party had been "warning" potential signatories that if they signed an Independent candidate's petition they would not be able to vote for another candidate in the March 7, 2017 primary election.

22. Cordes and her campaign began hearing from potential signers that they were worried and afraid that if they signed a nomination petition, they would not be able to vote in the March 7, 2017 primary election. As a result, many of those contacted refused to sign the petition.

² See §115.003 RSMo, which provides that the Election Act "shall apply to all public elections in the state."

23. In later statements, State and local election officials, opined that the statements regarding a petitioner's ineligibility to vote in the Primary were wrong.

24. In correspondence dated February 22, 2017, the Board informed Cordes that it had rejected her declaration papers. A true and accurate copy of the Board's February 22, 2017 letter is attached hereto as Exhibit 3.

25. The Board concluded that because Cordes' declaration of candidacy as an Independent candidate for Mayor did not include a certificate signed by the requisite number of registered electors of the City, her declaration failed "to comply with the requirements of the City Code for nomination of an independent or nonpartisan candidate for the office of Mayor. For this reason, the Board intends to not place your name on the ballot as a candidate for the office of Mayor for the April 4, 2017 General Municipal Election." Ex. 3 at p.1

26. In reaching this conclusion the Board rejected the application of the statutory definitions of "Independent" and "Nonpartisan" contained in §§115.013(13) and (18), stating that the "state definitions cannot apply when one interprets Section 2.08.330." It simply concluded that the City Code "appears to use 'nonpartisan' and 'independent' synonymously." Ex. 3 at p. 4.

COUNT I - PETITION FOR WRIT IN MANDAMUS

27. Cordes, for her Count for Petition for Writ in Mandamus, incorporates herein by reference, the allegations contained in paragraphs 1 through 26 above, as if fully restated herein.

Relief Sought

28. Based on the foregoing, Cordes respectfully requests that the Court enter a preliminary and permanent Writ of Mandamus ordering that Respondents reverse their determination to exclude Cordes from the ballot for the office of Mayor of the City of St. Louis at the April 4, 2017 General Municipal Election and further ordering that the Respondents affirmatively include or place her name on the ballot as a candidate for the office of Mayor at the April 4, 2017 General Municipal Election.

29. When a candidate for public office has been disqualified by an election authority, the disqualified candidate may appropriately seek mandamus relief to redress the election authority's refusal to place her on the ballot. *State ex rel. Brown v. Shaw*, 129 S.W.3d 372, 374 (Mo. banc 2004) (holding that the city clerk improperly refused to include the candidate's name on a mayoral ballot).

30. Here, the Board failed to apply the controlling definitions of "Independent" and "Nonpartisan" as set forth in Missouri's Comprehensive Election Act when it determined that Cordes was required to follow the procedure for nomination of a Nonpartisan candidate set forth in §2.08.330 of the City Code. Furthermore, it ignored the plain language of the City Code itself, which expressly excludes reference to Independent candidates in §2.08.330.

31. The starting point in construing any statute is the language of the statute itself. Courts follow the basic rule that they must "give effect to legislative intent as reflected in the plain language of the statute." *Jefferson ex rel. Jefferson v. Missouri Baptist Medical Center*, 447 S.W.3d 701, 707 (Mo.App. E.D. 2014).

32. At issue here are two statutes: The Comprehensive Election Act of 1978 and the Title 2 of the City Code.

33. The Comprehensive Election Act of 1978, expressly states that it shall govern all public elections in the State, save for one exception inapplicable here. See §115.005 RSMo.

34. The Act then sets forth specific definitions for uniform application to all elections in the State. See §115.013 RSMo.

35. Crucially, the Act distinguishes between two terms of art used in connection with elections held in Missouri.

36. It defines, an “Independent” as “a candidate who is not a candidate of any political party and who is running for an office **for which party candidates may run.**” §115.013(13) RSMo (emphasis added).

37. Section 115.013(18) defines “Nonpartisan” as “a candidate who is not a candidate of any political party and who is running for an office **for which party candidates may not run.**” (emphasis added).

38. The specific definitions in Chapter 115 RSMo are clear and unambiguous.

39. Applying them here to Cordes’ Declaration as candidate for the office of Mayor, it is clear that she is an Independent candidate.

40. This designation is consistent with the definition of an Independent candidate set forth in §115.013(13) because the office of Mayor is an office for which partisan candidates may run. On March 7, 2017, the City will conduct a primary

for partisan mayoral candidates. Moreover, the office has been held by a Democratic mayor for the last 16 years.

41. Title 2 of the City Code covers City Elections. However, it does not contain an express definition of the terms “Independent” and “Nonpartisan.”

42. Even so, the plain language of the City Code evidences an unambiguous distinction between “Independent” and “Nonpartisan” candidates.

43. Section 2.08.070 provides that any person desiring to file declaration papers, or propose as a candidate for any independent or nonpartisan ticket, who is not member of political party must pay a fee equal one percent of the annual salary of the office – in this case \$1,318.20, directly to the Treasurer of the City, which will be deposited in the general revenue fund of the City.

44. Section 2.08.330 of the City Code, imposes an additional requirement for Nonpartisan candidates, which requires them to obtain “a certificate signed by registered electors of the City to a number equal to two percent of the entire vote cast at the last preceding election of a mayor.”

45. Section 2.08.330 omits all reference to Independent candidates.

46. Thus, according to the plain language of its own terms, §2.08.330 does not and cannot apply to Independent candidates.

47. The Board concedes that none of the provisions of the City Code that it claims govern the nomination of candidates (§§2.08.010, 2.08.320, 2.08.330) “expressly provide for nomination of an independent candidate of a City elected office.” But, nonetheless, it summarily asserts that the Board of Alderman could

not have intended that an Independent candidate need only submit a declaration and pay the requisite fee to be placed on the general election ballot, as provided for in §2.08.070. Thus, it concludes, the requirements for Nonpartisan candidates §2.08.330 must also apply to Independent candidates.

48. But even if the terms of Independent and Nonpartisan as used in the City Code are ambiguous, as the Board appears to suggest, the Board's ad hoc interpretation must give way to other more established canons of statutory construction.

49. In Missouri, municipal ordinances, such as those set forth in Title 2 of the City Code, "must be [construed] in harmony with the general laws of the state" and will be void if they are in conflict. *Damon v. City of Kansas City*, 419 S.W.3d 162, 186 (Mo.App. W.D. 2013).³

50. As stated above, the Comprehensive Election Act sets forth mutually exclusive definitions for Independent and Nonpartisan Candidates. If the Board's assertion that the two terms are used synonymously in the City Code were correct, such an interpretation would place the ordinance directly in conflict with the Act, thereby invalidating the ordinance.

³ The Board references section 122.650 RSMo (1939), as providing full power an authority to the City to provide for and regulate all elections for offices of the City. There is a genuine question as to whether the Comprehensive Election Act, which was enacted 1977, clawed back some of that authority from cities, particularly those sections of the Act, which apply to all public elections in the state, such as the definitions found in §115.013. However, that issue need not be decided here. Article II, §9 of the Charter of the City of St. Louis establishes that the City Code must be read in harmony with the State constitution and laws. See Charter Art. II, §9 ("Whenever it may be done in harmony with the state constitution and laws, the board of aldermen shall by ordinance provide for and regulate municipal elections . . .").

51. Moreover, it is clear that the terms “Independent” and “Nonpartisan” have long been defined terms of art in Missouri election statutes. *See Preisler v. City of St. Louis*, 322 S.W.2d 748 (Mo.App. E.D. 1959) (analyzing Missouri elections statutes Chapters 120 and 122 and noting the statutory framework providing for different procedures for nominations of Independent and Nonpartisan candidates).

52. The City Code was amended and revised just one year after the decision in *Preisler*. Even though the appellate court recognized the express statutory difference between Independent and Nonpartisan candidates, the Board of Aldermen did not seek to amend or clarify the City Code or §2.08.330 to include Independent candidates.

53. Indeed, the likely reason for treating Independent candidates as distinct from Nonpartisan candidates is the long-standing reality that an Independent candidate must run for office against well-funded and organized party candidates, who do not need to obtain any signatures under the City Code. Nonpartisan candidates, on the other hand, do not face the same obstacle. By definition, they are running for an office for which a party candidate may not run. In such an election, all candidates are Nonpartisan and all are subject to the exact same requirements, including the signature requirement, of §2.08.330. Thus, it is reasonable to conclude that the Board of Aldermen for the City, having full knowledge of the long-held specialized meaning of “Independent” and “Nonpartisan” in Missouri’s election law, deliberately excluded Independent candidates from the requirements of §2.08.330.

54. Accordingly, because Cordes submitted her Declaration in conformity with the express provisions of the City Code, the Writ in Mandamus requested herein should be issued.

WHEREFORE, Relator Kacey Cordes respectfully request that the Court enter a preliminary writ in mandamus as requested herein, and enter a permanent writ in mandamus ordering Respondents to place her name on the ballot as a candidate for Mayor of the City of St. Louis at the April 4, 2017 General Municipal Election, and grant such other relief as the Court deems appropriate under the circumstances.

COUNT II - DECLARATORY JUDGMENT

55. Cordes, for her Count II, incorporates herein by reference the allegations contained in paragraphs 1 through 54 as if fully restated herein.

56. On February 13, 2017, Cordes submitted her formal Declaration as an Independent candidate for Mayor in accordance with provisions of the City Code governing Independent candidates for City office, specifically §2.08.070.

57. On February 22, 2017, the Board formally rejected Cordes' Declaration and informed her that it will not include her name as a candidate for Mayor on the ballot at the April 4, 2017 General Municipal Election.

58. The Board based its decision on the erroneous conclusion that Cordes was required to follow the provisions in the City Code that refer to Nonpartisan candidates, §2.08.330.

59. The Board's decision and interpretation of the City Code is contrary to the relevant definition provisions in Missouri's Comprehensive Election Act §§115.013(13) and (18) and the plain language of the City Code.

60. Having followed the relevant provisions under the City Code and the Comprehensive Election Act, Cordes has a right for her name to be placed as a candidate for Mayor on the April 4, 2017 General Municipal Election ballot.

61. There exists between the parties an actual controversy regarding whether the Board's decision to reject Cordes' Declaration is valid under Missouri law.

62. This controversy is ripe for judicial resolution by this Court.

WHEREFORE, Relator Kacey Cordes respectfully requests that the Court enter an order:

- a. Declaring that the Cordes Declaration as an Independent Candidate for Mayor is valid and complies with the provisions of the City Code relating to Independent candidates;
- b. Declaring that the requirements for nominations of Nonpartisan candidates set forth in §2.08.330 of the City Code do not govern Cordes' Declaration as an Independent candidate for Mayor;
- c. Declaring that Cordes has a right for her named to be placed as a candidate for Mayor on the ballot at the April 4, 2017 General Municipal Election;

- d. Declaring that the Board has an obligation to place Cordes' name as a candidate for Mayor on the ballot at the April 4, 2017 General Municipal Election;
- e. Granting such other relief as the Court deems just under the circumstances.

COUNT III - PRELIMINARY and PERMANENT INJUNCTION

63. Cordes, for her Count III, incorporates herein by reference the allegations contained in paragraphs 1 through 62 as if fully restated herein.

64. On February 13, 2017, Cordes submitted her formal Declaration as an Independent candidate for Mayor in accordance with provisions of the City Code governing Independent candidates for City office, specifically §2.08.070.

65. On February 22, 2017, the Board formally rejected Cordes' Declaration and informed her that it will not include her name as a candidate for Mayor on the ballot at the April 4, 2017 General Municipal Election.

66. The Board based its decision on the erroneous conclusion that Cordes was required to follow the provisions in the City Code that refer Nonpartisan candidates, §2.08.330.

67. The Board's decision and interpretation of the City Code is contrary to the relevant definition provisions in Missouri's Comprehensive Election Act §§115.013(13) and (18) and the plain language of the City Code.

68. Having followed the relevant provisions under the City Code and the Comprehensive Election Act, Cordes has a right for her name to be placed as a candidate for Mayor on the April 4, 2017 General Municipal Election ballot.

69. On March 7, 2017 the City will conduct Primary Election for partisan candidates who have declared their candidacy for the office of Mayor.

70. Upon information and belief, once the results of the Primary Election are certified under the City Code, the Respondents will print, or will cause to be printed, ballots, including absentee ballots, to be used at the April 4, 2017 General Municipal Election.

71. As a result of the Board's decision to reject Cordes' Declaration, such general election ballots will not include her name as a candidate for Mayor.

72. As set forth above, the Board's decision to exclude Cordes from the General Municipal Election ballot is contrary to Missouri law and wrongful.

73. Cordes will suffer immediate and irreparable injury if the Respondents are not enjoined and are permitted to print ballots excluding her from the April 4, 2017 General Municipal Election.

74. As set forth above, Cordes has likelihood of success on the merits of her claim.

75. Cordes has no other remedy at law to redress this harm.

WHEREFORE, Cordes respectfully requests that the Court enter a preliminary and permanent injunction enjoining Respondents from printing or taking any act to begin printing any ballots for the April 4, 2017 General Municipal

Election that exclude her name as a candidate for the office of Mayor until this Court has fully heard and determined her Petition for Writ in Mandamus and her claim for Declaratory relief as set forth above, and grant such other relief as the Court deems just under the circumstances.

Respectfully submitted,

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