

STATE OF MISSOURI)
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CITY OF ST. LOUIS)

FILED
MAR 13 2017

22ND JUDICIAL CIRCUIT
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MISSOURI CIRCUIT COURT
TWENTY-SECOND JUDICIAL CIRCUIT
(City of St. Louis)

STATE ex rel. KACEY CORDES,)
)
 Relator,) Cause No.1722-CC00689
)
 vs.)
) Division No. 31
 THE CITY OF ST. LOUIS, et)
 al.,)
)
 Respondents.)

ORDER AND JUDGMENT

The Court has before it Relator Kacey Cordes' Petition for Writ of Mandamus and for Other Equitable and Injunctive Relief. The Court has reviewed the submissions of the parties, the relevant authorities, and the arguments of counsel, and now rules as follows.

Relator Kacey Cordes ("Cordes") petitions this Court for a writ of mandamus, and other equitable and injunctive relief, requiring Respondent Board of Election Commissioners for the City of St. Louis ("the Board") to include her name on the ballot for the office of Mayor as an independent candidate for the April 4, 2017 General Municipal Election. On February 13, 2017, Cordes filed with the Board a Declaration of Mayoral Candidacy for the

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City of St. Louis ("Declaration"), paid the fee set forth in Section 2.08.070 of the Revised Code of the City of St. Louis ("City Code"), and affirmed that she filed and paid all requisite taxes and fees, as required by Section 2.08.430 of the City Code. Relator did not submit a certificate signed by registered electors as set forth in Section 2.08.330 of the City Code.

In correspondence dated February 22, 2017, the Board informed Relator that it rejected her Declaration, concluding that Relator's Declaration did not include a certificate signed by the requisite number of registered electors of the City as set forth in Section 2.08.330 of the City Code, and therefore failed to comply with requirements of the City Code for nomination of an independent or nonpartisan candidate for the office of Mayor. The Board informed Relator they would not be putting her name on the ballot for the office of Mayor for the April 4, 2017 General Municipal Election. Relator alleges the Board has erroneously interpreted Section 2.08.330 of the City Code, and that she has fulfilled all requirements of the City Code for an independent candidate to obtain access to the ballot.

A writ of mandamus is a drastic and extraordinary remedy. See State ex rel. Kelley v. Mitchell, 595 S.W.2d 261, 266 (Mo. banc 1980). There is no right to have a writ of mandamus issued as it is

a discretionary writ. State ex rel. Missouri Growth Ass'n v. State Tax Comm'n, 998 S.W.2d 786, 788. (Mo. banc 1999). A writ of mandamus is intended to compel or coerce the performance of a ministerial duty already defined by law that one charged with such duty has refused to perform. Beauchamp v. Monarch Fire Prot. Dist., 471 S.W.3d 805, 810 (Mo.App. E.D. 2015) (internal citations omitted). Therefore, a petitioner seeking mandamus must allege and prove that he or she has a clear, unequivocal, specific right to have the act performed as well as a corresponding present, imperative, and unconditional duty on the part of the respondent to perform the action sought. Id. The purpose of a writ of mandamus is to "execute and not to adjudicate." State ex rel. City of Crestwood v. Lohman, 895 S.W.2d 22, 27 (Mo.App. W.D.1994).

In this case, the core issue is whether Section 2.08.330 of the City Code applies to Cordes' proposed candidacy for Mayor. The Court concludes that it does, and, Relator does not have a clear, unequivocal, specific right to writ of mandamus.

In interpreting Section 2.08.330 of the City Code, the applicable rules of statutory construction are as follows:

The primary rule of statutory construction is to ascertain the legislature's intent from the language used and give effect to that intent if possible. The words

used should be considered in their plain and ordinary meaning. Statutes should be construed in such a way as to avoid unreasonable, oppressive or absurd results. The entire legislative act must be construed together, and if reasonably possible, all provisions must be harmonized. The legislature is not presumed to have intended a meaningless act.

Missouri ex rel. Bouchard v. Grady, 86 S.W.3d 121, 123 (Mo.App. E.D. 2002) (internal quotations and citations omitted). In light of the foregoing, the Court concludes Section 2.08.330 was intended to apply to both "independent" and "nonpartisan" candidates as they are used synonymously in Chapter 2.08 of the City Code.

It would be absurd to interpret Section 2.08.330 of the City Code as Relator argues. Section 2.08.330 of the City Code contains the nominating procedure for "nonpartisan" candidates, including a timing component and petition procedure. No other provision of Chapter 2.08 of the City Code contains a separate method by which an "independent" candidate shall be nominated for elective office.

Relator points to Section 2.08.070 of the City Code as the process an "independent" candidate must follow to access the ballot. However, it is clear Section 2.08.070 addresses a means of payment for declarations of candidates who are not members of

established parties, and does not set forth a nomination process. If Section 2.08.330 of the City Code does not apply to Relator as an "independent" candidate, as she suggests, then Relator, and any other "independent" candidate, could file a Declaration at any time leading up to the election without any nomination process being followed. In effect, if Relator's proposed interpretation of Chapter 2.08 of the City Code is accepted, the need for a primary election would be diminished as candidates would be incentivized to simply declare as an "independent" candidate, pay the fee in Section 2.08.070 of the City Code, and have their name placed on the ballot. Addressing the need for nomination procedures for independent and nonpartisan candidates, the Missouri Supreme Court has stated:

"[I]f everyone who wished to be a nonpartisan or independent candidate for a given office could simply, by filing his declaration, have his name placed on the general election ballot, it is apparent that the resulting ballot might well be and probably would be unduly long and confusing to the voters. Consequently, the need to provide nominating devices or methods which limit the size and complexity of the ballot by making reasonably sure the names thereon are of candidates who

are not only genuine aspirants for the office but who also will command some degree of measurable voter support in a general election, is apparent."

Preisler v. City of St. Louis, 322 S.W.2d 748, 752 (Mo. 1959).

In sum, Relator has not shown that the Board failed to perform a ministerial duty imposed by law. Mandamus is not appropriate because Relator has not shown a clear, unequivocal, specific right such that mandamus would lie in this matter.

THEREFORE, it is Ordered and Decreed that Relator's Petition for Writ of Mandamus, and Other Equitable and Injunctive Relief, is hereby DENIED in its entirety. Judgement is entered in favor of Respondents and against Relator.

SO ORDERED:



JOAN L. MORIARTY, Judge

Dated: 3/17, 2017