

STATE OF ARIZONA

OFFICE OF THE ATTORNEY GENERAL

ATTORNEY GENERAL OPINION	No. I07-010 (R07-019)
By	
TERRY GODDARD ATTORNEY GENERAL	Re: Validity of Nomination Petitions with Incorrect Primary Election Date after the Enactment of SB 1430
September 19, 2007	

To: The Honorable Janice K. Brewer
Arizona Secretary of State

Question Presented

You have asked whether nomination petitions circulated by candidates with a primary election date of September 9, 2008, listed on the top of their petitions will be considered valid given the recent enactment of SB 1430 (2007 Ariz. Sess. Laws, Ch. 168), which moves the primary election date from eight to nine weeks before the general election (that is, to September 2, 2008) for the primary election next year.

Summary Answer

Nomination petitions that list September 9 as the date for the 2008 primary election are valid, even though SB 1430 has changed the date of the primary election to September 2. Because SB 1430 has moved the date of the primary election only one week earlier, petitions with the September 9, 2008, date will not mislead voters as to which primary election is at issue; therefore, those petitions substantially comply with Arizona Revised Statute ("A.R.S.") § 16-314(C).

Background

On May 1, 2007, the Governor signed into law SB 1430, amending A.R.S. § 16-201 to provide as follows: “On the *ninth* Tuesday prior to a general or special election at which candidates for public office are to be elected, a primary election shall be held.” (Emphasis added.) Before the Legislature enacted SB 1430, A.R.S. § 16-201 scheduled primary elections for the *eighth* Tuesday prior to a general or special election. *See* 2007 Ariz. Sess. Laws, Ch. 168, § 1. Since the general election for the year 2008 falls on November 4, SB 1430 changes the date of the 2008 primary from September 9 to September 2.

The Department of Justice precleared SB 1430 on June 28, 2007, and the law becomes effective on September 19, 2007.¹ Before the law was enacted and precleared, however, several candidates for the 2008 elections had already circulated nominating petitions listing the primary election date as September 9, 2008.

Analysis

Section 16-314(A), A.R.S., requires that “[a]ny person desiring to become a candidate at any election and to have the person’s name printed on the official ballot shall . . . file a nomination petition.” Subsection C of that statute specifies the form of a nomination petition. Nomination petitions must include the following information: the elector’s county and party registration; the candidate’s name, address, and county; the office in question; and when the primary election is to be held.²

¹ Arizona is subject to the preclearance requirements in Section 5 of the federal Voting Rights Act. *See* 42 U.S.C. § 1973b(b).

² With regard to the date of the election, A.R.S. § 16-314(C) directs that the petition shall include language “substantially” stating the following: “[T]he primary election to be held _____.”

The Arizona Supreme Court has described nomination petitions as a mechanism “designed to ‘in some measure [weed] out the cranks, the publicity seekers, [and] the frivolous candidates who have no intention of going through with the campaign.’” *Clifton v. Decillis*, 187 Ariz. 112, 115, 927 P.2d 772, 775 (1996) (quoting *Adams v. Bolin*, 77 Ariz. 316, 320, 271 P.2d 472, 475 (1954) (second insertion added)). Its purpose is “to make the requirements [for candidacy] stringent enough to discourage those who do not for an instant merit the voter’s consideration, yet not to keep out those who are serious in their efforts and have a reasonable number of supporters.” *Clifton*, 187 Ariz. at 115, 927 P.2d at 775. In striking this balance, “the paramount right to propose a nominee is of such gravity as to outweigh purely technical departures from nominating form.” *Adams*, 77 Ariz. at 322, 271 P.2d at 475. Therefore, to be valid, a nomination petition need only “substantially comply” with the form that A.R.S. § 16-314(C) specifies. *See, e.g., Clifton*, 187 Ariz. at 116, 927 P.2d at 776; *Marsh v. Haws*, 111 Ariz. 139, 140, 526 P.2d 161, 162 (1974).

In *Moreno v. Jones*, the Arizona Supreme Court addressed the standard for determining whether a nomination petition substantially complies with A.R.S. § 16-314(C), stating that the focus of the analysis is on “whether the omission of information could confuse or mislead electors signing the petition.” 213 Ariz. 94, 102, 139 P.3d 612, 620 (2006). The Court held that a state senate candidate’s nomination petition substantially complied with A.R.S. § 16-314(C) even though it omitted the particular day and month of the 2006 primary. *Id.* The Court reasoned that “electors would ‘automatically know’ for which primary election they were signing because the petition specified the year and there [was] only one primary that year for state legislative office.”

Id.; see also *Hill v. Cuyahoga County Bd. of Elections*, 428 N.E.2d 402, 403 (Ohio 1981) (holding that a misstatement of the date of a primary election in a nominating petition as October 4, 1981, instead of as September 29, 1981, did not invalidate the petition, because the misstatement of the date did not frustrate the purpose of “inform[ing] the electors who sign the [petition] as to which election is at issue.”).

Because there is only one primary election in September 2008, a petition that specifies the date as September 9, 2008, instead of as September 2, 2008, would not mislead the electors signing the petition as to which primary election was at issue. Therefore, petitions that state the date as September 9, 2008, rather than as September 2, 2008, substantially comply with A.R.S. § 16-314(C).

Conclusion

Nomination petitions listing September 9, 2008, as the primary election date substantially comply with the requirements of A.R.S. § 16-314(C) and are therefore valid for the September 2, 2008, primary election.

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