

IN THE SUPREME COURT OF THE STATE OF KANSAS

No. 112,487

DAVID OREL,
Petitioner,

v.

KANSAS DEMOCRATIC PARTY,
JOAN WAGNON, IN HER OFFICIAL CAPACITY AS CHAIR OF THE
KANSAS DEMOCRATIC PARTY,
LEE KINCH, IN HIS OFFICIAL CAPACITY AS VICE CHAIR OF THE
KANSAS DEMOCRATIC PARTY, AND
JASON PERKEY, IN HIS OFFICIAL CAPACITY AS EXECUTIVE DIRECTOR OF THE
KANSAS DEMOCRATIC PARTY,
Respondents.

ORDER

On September 18, 2014, this court granted Chad Taylor's original petition for writ of mandamus seeking to compel Kris Kobach, Kansas Secretary of State, to not include Taylor's name on the ballots as the Democratic Party candidate for the office of United States Senator in the November 4, 2014, general election.

Later that day, David Orel filed an original petition for writ of mandamus and memorandum in support seeking to compel the Kansas Democratic Party; Joan Wagnon, in her official capacity as Chair of the Kansas Democratic Party; Lee Kinch, in his official capacity as Vice Chair of the Kansas Democratic Party; and Jason Perkey, in his official capacity as Executive Director of the Kansas Democratic Party (the Respondents), to name a Democratic Party candidate whose name and party affiliation would appear on the ballots for the office of United States Senator in the November 4, 2014, general election.

Orel contends relief in mandamus is appropriate because the Respondents have a clear duty under K.S.A. 25-3905(a) to name a candidate to replace Taylor. He urges this court to grant his petition and compel Respondents to immediately name a replacement because of a federal statutory deadline requiring ballots be mailed to members of the armed forces and civilians living overseas 45 days before the general election.

According to Orel, that deadline originally fell on September 20, 2014. But Orel filed a Supplemental Notice on September 22, alleging that Kobach had extended the deadline for mailing overseas ballots. Based on Orel's filings, the court hereby orders the following:

1. Per Supreme Court Rule 9.01(b) (2013 Kan. Ct. Rule Annot. 83), this case is hereby transferred to the district court of Shawnee County, Kansas, the county where, according to Orel's Proof of Service and Supplemental Personal Service filed on September 19, Perkey "accepted service for all defendants [sic], including himself."
2. Transfer is appropriate because Orel's pleadings do not contain sworn evidence necessary to enable this court to make any of a myriad of legal determinations, including, but not limited to, ripeness, the nature of the parties, the existence of standing, and the propriety or adequacy of the mandamus relief requested. By contrast, in *Taylor v. Kobach*, Case No. 112, 431, uncontroverted written communications were attached as exhibits to a sworn affidavit submitted with a pleading. Two exhibits enabled our statutory interpretation, a purely legal determination. See *Taylor v. Kobach*, Order of September 11, 2014:

"There is no need to refer this matter for fact finding by a judge of the district court or a commissioner as authorized by Supreme

Court Rule 9.01(d) (2013 Kan. Ct. Rule Annot. 83). The two pieces of evidence relevant to the controlling legal issue of the interpretation and application of K.S.A. 25-306b(b) are attached to Petitioner's sworn affidavit as Exhibits A and B."

BY ORDER OF THE COURT this 23rd day of September 2014.

A handwritten signature in black ink, appearing to read "Lawton R. Nuss", written in a cursive style.

Lawton R. Nuss
Chief Justice