

RENDERED: SEPTEMBER 10, 1996; 2:00 P.M.

ORDERED NOT TO BE PUBLISHED BY THE KENTUCKY SUPREME COURT:
NOVEMBER 13, 1996 (96-SC-890)

96-CA-2400-I

BILL STONE

MOVANT

V. ON MOTION FOR RELIEF UNDER KRS 118.176(4)
FROM JEFFERSON CIRCUIT COURT
HONORABLE GEOFFREY P. MORRIS, JUDGE
ACTION NO. 96-CI-4848

DONALD L. BARNARD;
TAXPAYERS PARTY OF KENTUCKY;
REBECCA JACKSON; JEFFERSON COUNTY
BOARD OF ELECTIONS; STATE BOARD OF
ELECTIONS; AND JOHN Y. BROWN, III

RESPONDENTS

OPINION AND ORDER

* * * * *

BEFORE: COMBS, DYCHE and JOHNSTONE, Judges.

JOHNSTONE, JUDGE. This matter is before the Court on the motion of Bill Stone, made pursuant to KRS 118.176(4) seeking to set aside the final order of the Jefferson Circuit Court permitting Donald L. Barnard on the November ballot as an independent candidate for Congress in the 3rd Congressional District. Both Donald L. Barnard and the State Board of

Elections have filed responses objecting to the motion.

Although movant raised several issues in the trial court, his motion before this Court is limited to the trial court's ruling that the signatures of four voters could be counted even though the voters themselves did not sign the petition. Rather, the signatures were written on the petitions by the voters' respective spouses with the permission of the voter and in the presence of the voter. Movant challenges the validity of those four signatures. Since the trial court found that the petition contained only 402 valid signatures, deducting the four voters whose spouses signed the petition would leave Mr. Barnard with only 398 signatures, less than the 400 required by KRS 118.315(2).

The Court is aware of the existence of case law upholding the use of "signatures" written by another in the presence of and by the parol authority of the named party. See, Widick v. Pursifull, 299 Ky. 733, 187 S.W.2d 447 (1945), and Boyd v. Alexander, Ky., 284 S.W.2d 85 (1955). However, we cannot agree that principles expressed in those cases can be applied to the requirements of KRS 118.315. The current version of KRS 118.315(2) as enacted in 1974 and most recently amended in 1992 states in pertinent part:

The form of the petition shall be prescribed by the State Board of Elections. It shall be signed by the candidate and by registered voters from the district or

jurisdiction from which the candidate seeks nomination.

(Emphasis added.)

The statutory requirement that a petition of nomination be signed by registered voters from the district or jurisdiction in question must be strictly construed. Substantial compliance with the numerical requirements of the statute has been specifically proscribed in Thomas v. Lyons, Ky., 586 S.W.2d 711 (1979). We must also strictly construe this statute to require that the voter who wishes to support the nomination of a candidate be required to sign the petition. To permit "signatures" by the hand of persons other than the named individuals is to invite abuse and to thwart the plain purpose of the statutory requirements. Allowing obviously interested parties to attempt an after-the-fact shoring up of deficiencies in the nominating petition can only serve to undermine the integrity of the process the statute is designed to protect.

We therefore hold that under KRS 118.315(2) the signature of the registered voter is required to be the voter's own signature, verifiable by reference to the voter registration roles.

Accordingly, the judgment of the circuit court permitting Donald L. Barnard to appear on the November 1996 ballot as an Independent candidate is hereby SET ASIDE.

Because of the need to immediately print the ballots

for the general election, the Court ORDERS that this opinion and order be rendered immediately upon receipt in the Clerk's Office.

ALL CONCUR.

ENTERED: September 10, 1996

/s/ Martin E. Johnstone
JUDGE, COURT OF APPEALS

MOTION FOR BILL STONE:

Donald H. Vish
H. Powell Starks
Louisville, KY

RESPONSE FOR SECRETARY OF
STATE AND THE STATE BOARD OF
ELECTIONS:

John E. Kuhn, Jr.
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Maryellen B. Allen
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RESPONSE FOR DONALD L.
BARNARD:

James D. Howes
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