

In Re: Stephen Green, No. 413-7-05 Wncv (Toor, J., July 27, 2006)

[The text of this Vermont trial court opinion is unofficial. It has been reformatted from the original. The accuracy of the text and the accompanying data included in the Vermont trial court opinion database is not guaranteed.]

STATE OF VERMONT
WASHINGTON COUNTY

In re STEPHEN GREEN

SUPERIOR COURT
Docket No. 413-7-06 Wncv

RULING ON PETITION FOR EXTRAORDINARY RELIEF

Petitioner, a would-be candidate for representative in the September 12, 2006 primary election from the District of Washington 3-3, missed the statutory deadline to file a “consent of candidate” form with the designated representative district clerk, the Berlin Town Clerk. *See* 17 V.S.A. § 2361. Consequently, the Office of the Secretary of State advised Petitioner that it could not place his name on the ballot without a court order. Petitioner seeks such an order. A hearing was held on July 27. Present at the hearing were Mr. Green, the Berlin Town Clerk, and representatives of the office of the Secretary of State.¹

Petitioner timely filed his petition to place his name on the ballot with the representative district clerk on July 12, but did not file a consent form. The representative district clerk called his home on the last day the form could be submitted to advise him of this requirement. He did not receive the message until after business hours. He filled out the form the next day, one day beyond the statutory filing deadline. He acknowledged at the hearing that he is not a first-time

¹ Mr. Green advised that there were no other candidates requiring service of the petition or hearing notice, and the Berlin Town Clerk confirmed this. Thus, all necessary parties were present.

candidate and was aware of the need to file a consent form, but “just forgot.” Characterizing his failure to comply with the filing deadline as “inadvertent,” he seeks extraordinary relief to ensure that his name is placed on the primary ballot by the Secretary of State. The Secretary of State has no objection to such an order.

According to the statute, “[u]nless a consent is filed, the candidate’s name shall not be printed on the primary ballot.” 17 V.S.A. § 2361. The consent form “shall be filed on or before the day primary petitions are due.” *Id.* This year, the deadline was July 17. 17 V.S.A. § 2356. This is a mandatory deadline set by the Legislature when it enacted the statute. Simpson v. Rood, 2003 VT 39 ¶ 9, 175 Vt. 546, 548 (use of the word “shall” means a requirement is mandatory). *See also*, Town of Victory v. State, 174 Vt. 539, 545 (2002)(“use of the word ‘shall’ in a statute generally means that the action is mandatory, as opposed to directory.”)² *Accord*, State ex rel. Kusler v. Sinner, 491 N.W.2d 382, 386 (N.D. 1992) (“It is universally held that statutes setting the time for filing a certificate of nomination are mandatory and not directory.”).

Courts may not just ignore deadlines that the Legislature has imposed. “The legal principle is well established . . . that election law filing deadlines are to be strictly enforced.” Falke v. State, 717 P.2d 369, 373 (Alaska 1986). *See also*, Vandross v. Ellisor, 347 F.Supp. 197, 207 (D.S.C. 1972) (“statutes . . . which regulate the time for filing a declaration of candidacy are almost universally held to be mandatory; and a declaration that is filed too late is a nullity.”); State ex rel. Stearns v. Zimmerman, 43 N.W.2d 681, 682 (Wis. 1950) (“the time limit set by the legislature for the filing of nomination papers must be strictly observed . . . [T]o enlarge the time which the legislature has designated for the filing of nomination papers would be to amend the

² While this general rule may be controverted by evidence of contrary legislative intent -- Town of Victory, 174 Vt. at 545 -- petitioner has presented nothing to suggest such a contrary intent. The fact that the statute expressly bars listing a candidate’s name on the ballot if the consent is not filed supports the mandatory nature of the deadline. State v. Singer, 170 Vt. 346, 348 (2000) (where statute has a “specified consequence for failure to comply,” time limit is mandatory).

statute, not to construe it.”).

Nevertheless, in extraordinary circumstances that are not the fault of the would-be candidates, courts have excused missed filing deadlines. *See, e.g., Ryshpan v. Cashman*, 132 Vt. 628, 630 (1974) (excusing missed deadline because candidate justifiably relied on Secretary of State’s repeated misrepresentations of deadline); *Application of Cucci*, 222 A.2d 662, 664 (N.J. Super. 1966)(filing twenty minutes late permitted because, “through no fault of the applicant,” candidate was caught in traffic jam resulting from a car accident); *State ex rel Englert v. Meier*, 115 N.W. 2d 574 (N.D. 1962) (candidate’s reliance on inaccurate representations of Secretary of State justified one-day-late filing).

However, mere inadvertence by a candidate does not excuse a missed deadline. *See, e.g., Republican Party of Garland County v. Johnson*, 193 S.W.3d 248, 254 (Ark. 2004); *Claveau v. Stark*, 244 A.2d 822, 823 (N.H. 1968); *Harris v. Donovan*, 129 N.W.2d 797, 798 (Minn. 1964). This is true even when the deadline has been missed by only a few minutes. *See, e.g., Zimmerman*, 43 N.W. 2d at 681-82 (two minutes late); *Vandross*, 347 F.Supp. at 207 (five minutes late); *Fintz v. Poveromo*, 602 N.Y.S. 2d 19, 20 (N.Y.A.D. 1993) (sixteen minutes late); *State v. Torgerson*, 220 N.W. 834, 836-37 (N.D. 1928) (twenty minutes late).

The circumstances of this case are not extraordinary. If Petitioner had been hospitalized due to an accident on his way to file the form, or was blocked from the clerk’s office by protesters, or there existed some other extraordinary circumstance beyond his control, the court might have grounds to grant his request. However, Petitioner simply missed a statutory filing deadline due to his own inadvertence. While we all make mistakes, some of those carry more significant consequences than others. The court has no authority under 17 V.S.A. § 2617 or its own equitable powers to order the representative district clerk or Secretary of State to act contrary to the mandatory statutory deadline in these circumstances. *Accord, Vandross*, 347

F.Supp. at 208 (“Because [Petitioner] . . . is responsible for the dilemma in which he finds himself, this court cannot help him.”).

ORDER

Mr. Green’s petition for extraordinary relief is denied.

Dated at Montpelier this 27th day of July, 2006.

Helen M. Toor
Superior Court Judge