

STATE OF INDIANA

IN THE VIGO CIRCUIT COURT

COUNTY OF VIGO

CAUSE NO: 84C01-1904-MI-002306

TESS BROOKS-STEPHENS,
Petitioner

VS.

VIGO COUNTY ELECTION BOARD,
Respondent

ORDER

This matter came on for hearing on a Petitioner's Complaint for Appeal from the Vigo County Election Board. The Court, having taken this matter under advisement pending submission of the parties respective proposed Findings of Fact and Conclusions of Law, does now find as follows:

1. The Petitioner resides at 2004 North 21st Street, Terre Haute, Indiana, 47804.
2. The Petitioner is registered to vote under the name of "Tess D. Brooks-Stephens."
3. On January 17, 2019, Petitioner filed her Declaration of Candidacy form referred to as a "CAN 42" to be a Democratic Party Candidate for the 3rd District City Council, Terre Haute, Indiana, for the Municipal Primary 2019.
4. At the top of the "CAN 42" form, under "General Information," the form elicits the first name of the candidate, the middle name of the candidate, and the last name of the candidate. The Petitioner responded by placing "Tess" as her first name, left the middle name blank, and placed "Brooks Stephens" as her last name.
5. At the bottom of the CAN 42 is a section entitled "CANDIDATE NAME INFORMATION." Under this section is a question which asks the candidate, "I request that my name appear on the primary election ballot in the

following manner." In response to this question, the Petitioner wrote "Tess Brooks Stephens." The form does not designate the first name, the middle name, or the last name of the candidate anywhere under the signature line in this section.

6. Immediately following the "CANDIDATE NAME INFORMATION" section is the following statement: "I also request that the name on my voter registration record be the same as the name on this Declaration of Candidacy, and that a copy of this form be forwarded to the County Voter Registration Office for any necessary change."
7. On the back of the CAN 42 form is a section entitled "CANDIDATE CERTIFICATION." At the bottom of this section, it requires a candidate to certify that the information provided is true and accurate. The Petitioner signed "Tess Brooks-Stephens" above the signature line. Nowhere on the original CAN 42 does the Petitioner indicate that "Brooks" is her middle name.
8. After filing her Declaration of Candidacy, the Petitioner received in the mail a document entitled "Candidate Filing Confirmation for 2019" also known as the CAN 5 form, as well as a copy of her Statement of Economic Interests.
9. Subsequently, the Petitioner received a document entitled "Candidacy Filing Confirmation for 2019" certifying that "Tess D. Brooks Stephens" has filed a Declaration of Candidacy for the office of Terre Haute City Council District 3.
10. At a later date, the Petitioner observed her name on the Vigo County Circuit Clerk's website was incorrect. The address listed the Petitioner's home address as 204 North 21st Street, Terre Haute, Indiana. The Petitioner returned to the Clerk's office and notified the Clerk that her correct address was 2004 North 21st Street, Terre Haute, Indiana. An employee of the Clerk's office agreed the Petitioner's address was 2004 North 21st Street, Terre Haute, Indiana and a correction was made to the online listing of her address. The Petitioner left the office after the correction was made.
11. On March 18, 2019, the Vigo County Clerk posted a copy of the "Sample Ballot" for the 2019 Terre Haute Democratic Primary on its website. The sample ballot listed the Petitioner's name as Tess Brooks Stephens and was listed after Cheryl A. Loudermilk, another candidate for Terre Haute City Council District 3 who had filed in February, 2019.

12. On March 18, 2019, the Petitioner's attorney wrote a letter to the Vigo County Election Board. The Petitioner's letter stated that Brooks Stephens should have appeared before the name "Loudermilk" because *I.C. 3-10-1-18* requires candidates on the ballot be arranged in alphabetical order by surname. The letter further stated that the name of Tess Brooks Stephens was different than the certification of Candidacy form received by the Petitioner and signed by Clerk Brad Newman.
13. Petitioner testified she received a call from Leanna Moore, Chief Deputy Clerk, on March 19, 2019, informing her that an error had been made on the ballot and that her name would be placed ahead of Cheryl A. Loudermilk.
14. The Tribune Star Reporter Dave Taylor submitted a Verified Declaration in which he testified that he was present in the Vigo County Clerk's Office when Clerk Brad Newman stated that the ballot was going to be changed to list Tess Brooks Stephens first. Mr. Taylor further stated that on the same day he received a phone call from Mr. Newman who advised him that he was still researching issues surrounding the ballot order.
15. No challenge or petition, pursuant to *I.C. 3-8-2-14*, questioning the validity of Petitioner's Declaration of Candidacy was filed in this matter.
16. On March 25, 2019, the Petitioner filed a Petition to Correct an Error in Ballot alleging that the ballot was in violation of *I.C. 3-10-1-18* because the candidates for Terre Haute City Council 3 were not listed alphabetically.
17. On April 1, 2019, the Vigo County Election Board denied the Petition to Correct an Error in Ballot and left the Democratic Candidates for Terre Haute City Council District 3 in the same order on the ballot. Cheryl A. Loudermilk is listed first and Tess Brooks Stephens is listed second.
18. On April 1, 2019, the Petitioner filed an Appeal from the Vigo County Election Board. The Court conducted hearings on April 15th and April 16th.
19. The Vigo County Clerk's Office has two versions of the CAN 42 form relating to the Petitioner. The original CAN 42 form lists the Petitioner's name to appear on the ballot as "Tess Brooks Stephens" and the second version of the CAN 42 form lists Petitioner's name to appear on the ballot as "Tess D. Brooks-Stephens." No party has acknowledged altering the Petitioner's CAN

42 form either before or after it was submitted to the Vigo County Clerk's Office.

20. Vigo County Clerk Brad Newman testified that the decision by the Clerk's office to place Cheryl A. Loudermilk's name first on the ballot was made prior to any consideration of the altered CAN 42 form.
21. In determining that no change would be made to the ballot order, Mr. Newman testified that the Vigo County Election Board tried to give effect to the original CAN 42 executed by Petitioner in which she requests her name appear on the ballot as "Tess Brooks Stephens." After reviewing the original CAN 42, Mr. Newman testified the Vigo County Election Board determined Petitioner's last name was "Stephens" and her middle name was "Brooks." In making its decision, Mr. Newman testified that Clerk's Office had in its possession a second CAN 42 form which appeared to be altered. Because it appeared to have been altered, Mr. Newman testified the Vigo County Election Board considered it void.
22. Mr. Newman further testified that the Vigo County Election Board determined there was reason to believe a violation of election law had occurred because white out had been used to add a middle initial "D" and a hyphen on Petitioner's CAN 42 form after it was submitted to the Clerk's Office.

CONCLUSIONS OF LAW

1. A Trial Court "may examine an election board's decision to determine if it was incorrect as a matter of Law." *Price v. Lake County Bd.*, 952 N.E 2nd 807 (Ind. Add. 2011) The Trial Court may not "conduct a trial de novo nor substitute its decision for the election board." *Id.* The Indiana Administrative Orders and Procedures Act does not apply to county election boards. *I.C. 4-21.5-1-3.*
2. The issue for the Court to determine is whether, as a matter of law, the Vigo County Election Board's decision to place Tess Brooks Stephens name on the ballot after the name of Cheryl Loudermilk is incorrect.
3. *I.C. 3-10-1-18* requires that the names of all candidates for each office be arranged on the ballot in alphabetical order by surnames under the designation of the office.

4. The Declaration of Candidacy filed on January 17, 2019 by Petitioner designated her name as Tess Brooks Stephens. The Petitioner was certified as a candidate by the Vigo County Clerk's Office under that name and no challenge to her Declaration of Candidacy was filed.
5. The Vigo County Clerk's Office decided to change Petitioner's name on the ballot and place her name after Cheryl Loudermilk without any challenge to the validity of her Declaration of Candidacy and prior to any consideration of the altered CAN 42 form. *I.C. 3-8-2-14* outlines a process to challenge the validity of a candidates' Declaration of Candidacy. None of those procedures were utilized in this matter.
6. The Court's examination of the original CAN 42 form demonstrates that under the "General Information" Petitioner clearly designated her last name to be "Brooks Stephens" under the section entitled "last name" and placed "Tess" as her first name under the section requesting "first name." The Petitioner left the section requiring a "middle name" blank. At the bottom of the original CAN 42 form, is the section entitled "CANDIDATE NAME INFORMATION". Under this section, there is a question which asks the candidate to designate the name to appear on the primary election ballot. The Petitioner wrote "Tess Brooks Stephens." The form does not designate the first name, the middle name, or the last name of the candidate under the signature line in this section. Finally, on the back of the original CAN 42 form, is a section entitled "CANDIDATE CERTIFICATION." This section requires candidates to certify that the information provided is true and accurate. The Petitioner wrote "Tess Brooks-Stephens."
7. In reviewing the totality of Petitioner's original CAN 42 form which the Vigo County Election Board reviewed in reaching its decision, the Court concludes that the CAN 42 form clearly demonstrates, as a matter of law, Petitioner's name is Tess Brooks Stephens with Brooks Stephens intended to be her last name.
8. The Court finds that the Vigo County Election Board's decision to place Tess Brooks Stephens after Cheryl A. Loudermilk was arbitrary and contrary to law.

IT IS THEREFORE, ORDERED, ADJUDGED AND DECREED AS FOLLOWS:

1. The Vigo County Election Board shall replace or correct all ballots to be used in the 2019 Democratic Primary Election by placing the name of Tess Brooks Stephens before the name of Cheryl A. Loudermilk for District 3 City Council.
2. All persons who have voted as Democrats in the Terre Haute City Council District 3 shall be sent notice of this Order and have an opportunity to request a new ballot in accordance with Indiana Law.

The Court certifies this order to be a final order as to the Vigo County Election Board finding that the ballots shall be replaced or corrected in the Terre Haute Democratic District 3 City Council Primary Election and that there is no just reason for delay and directs entry of judgment and that an appeal may be taken on this issue pursuant to Trial Rule 54 (B).

SO ORDERED on this the 18th day of April, 2019.



SARAH K. MULLICAN, Judge
Vigo Circuit Court

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