



Office of the Secretary of State
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State of West Virginia

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July 26, 2018

Donald Leon Blankenship
P.O. Box 2757
Williamson, WV 25661
TRANSMITTED VIA CERTIFIED
& ELECTRONIC MAIL
info@votedonblankenship.com

Dear Mr. Blankenship:

I am writing concerning your *Candidate's Certificate of Announcement for 2018 Elections* you filed with this Office on July 24, 2018. The document indicates you are desirous of pursuing the Office of United States Senate. In short, this office must deny your certification for the reasons stated below.

This Office has conducted a preliminary review of "the validity of the certificates and signatures thereon" pursuant to W.Va. Code § 3-5-23(e). Based on our cursory examination, you have submitted 11,468 total signatures, and we presume approximately 7,100 to be valid. As such, we believe you have met the threshold requisite number of qualified signatures required by the code.

In making this final determination, this Office looks to the procedural history leading up to the decision. On December 17, 2017, our office published *Running for Office in West Virginia*, a guidebook for candidates seeking office in this State. The document provides guidance on this issue accordingly:

THE "SORE LOSER" or "SOUR GRAPES" LAW (W. Va. Code §§ 3-5-7(d)(6) and 3-5-23)

Candidates affiliated with a recognized political party who run for election in a primary election and who lose the nomination **cannot** change her or his voter registration to a minor party organization/unaffiliated candidate to take advantage of the later filing deadlines and have their name on the subsequent general election ballot.

Id. at 4.

This interpretation of election law relates to then existing W.Va. Code 3-5-23(a) which provided:

Groups of citizens having no party organization may nominate candidates who are not already candidates in the primary election for public office otherwise than by conventions or primary elections. In that case, the candidate or candidates, jointly or severally, shall file

a nomination certificate in accordance with the provisions of this section and the provisions of section twenty-four of this article.

[Emphasis added]

On January 23, 2018, you filed a *Candidate's Certificate of Announcement for the 2018 Election* seeking the Office of U.S. Senator as a member of the Republican political party. The Republican Party is a recognized political party pursuant to W.Va. Code § 3-1-8.

During your campaign for office as a Republican, on March 10, 2018, the State Legislature passed H.B. 4434 which provides further clarity to the issue at hand. The legislation was approved by the Governor on March 22, 2018 with an effective date of June 5, 2018. The bill enumerates two new subsections as follows:

(f) For the purposes of this section, any person who, at the time of the filing of the nomination certificate or certificates, is registered and affiliated with a recognized political party as defined in §3-1-8 of this code may not become a candidate for political office by virtue of the nomination-certificate process as set forth in this section.

(g) For the purposes of this section, any person who was a candidate for nomination by a recognized political party as defined in §3-1-8 of this code may not, after failing to win the nomination of his or her political party, become a candidate for the same political office by virtue of the nomination-certificate process as set forth in this section.

On March 12, 2018, our Office certified you as a Republican candidate for U.S. Senator. On May 8, 2018, the Primary Election was held and you were unsuccessful in obtaining the nomination of the Republic Party obtaining 19.97% of the votes cast.

On or about May 19, 2018, the Constitution Party nominated you to serve as their nominee for U.S. Senate.¹ On May 21, 2018, you changed your political affiliation from the Republican Party to the Constitution Party. Thereafter, you filed to obtain authorization to solicit signatures for independent and minor party candidates pursuant to W.Va. Code § 3-5-23(b). Although you were refused credentials by Ohio County, you obtained authorization in the fifty-four remaining counties on the following dates: Cabell & Kanawha (Jun. 4, 2018); Boone, Clay, Jackson, Nicholas, Pocahontas, Putnam, Roane & Tyler (Jun. 5, 2018); Lewis, Logan, Marion, Raleigh, Randolph, Ritchie, Taylor, Tucker & Wetzel (Jun. 6, 2018); Berkeley, Hancock, Hardy & Mingo (Jun. 7, 2018); Braxton, Calhoun, Doddridge, Mineral, Monongalia, Summers & Wyoming (Jun. 8, 2018); Brooke, Fayette, Gilmer, Grant, Harrison, Jefferson,

¹ The Constitution Party is not a recognized political party in this State. W.Va. Code § 3-1-8 requires a political party to garner no less than one percent of the total votes cast in the preceding gubernatorial election. This State has four recognized political parties: Democrat; Republican; Mountain; and Libertarian. It should be noted that a review of the Constitution Party website (www.cpvwv.org) does not reference notice of any nomination convention or formal meeting held on May 19, 2018.

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Lincoln, Marshall, Mason, Mercer, Monroe, Morgan, Pleasants, Preston, Upshur, Webster, Wirt & Wood (Jun. 11, 2018); Barbour & Wayne (Jun. 12, 2018); Hampshire (Jun. 13, 2018); and McDowell (Jun. 21, 2018).

Periodically, representatives on your behalf delivered petition signatures to this Office. Certified and electronic copies of the petition signatures have been sent to the respective county clerks for investigation, review and entry into the Statewide Voter Registration System. A two-week deadline for action has been requested by this Office of the clerks for a final official aggregate of valid signatures.


In closing, our Office is denying your certification as a candidate for U.S. Senate under the process contained in W.Va. Code § 3-5-23 for independent and minor party candidates. The fee you remitted with your filing will be retained by this Office until the conclusion of any formal legal process initiated due to this decision.

I remain committed to open dialog with you and your campaign representatives throughout the ensuing process. In that we are represented by outside counsel, please direct any inquiries to Marc Williams, with the law firm of Nelson Mullins Riley & Scarborough, LLP.

Respectfully submitted,

MAC WARNER
SECRETARY OF STATE

By:



Stephen R. Connolly
Deputy Secretary of State
& Chief Legal Counsel

cc: Phillip Hudok
- Vice-Chairman -- Constitution Party of West Virginia