



ARKANSAS SECRETARY OF STATE

MARK MARTIN

March 7, 2012

VIA FAX AND MAIL

Fax no: 501-376-8409

Honorable Will Bond
Chairman
Democrat Party of Arkansas
1300 West Capitol Avenue
Little Rock, Arkansas 72201

RE: State Representative District 50 (Certification of Fred Smith)
2012 Preferential Primary Ballot (Crittenden County)

Dear Chairman Bond:

Thank you for your letter of March 6 asking this Office not to transmit the name of Fred Smith for inclusion on the Primary Ballot. This follows this Office's initial response with the same date, sent by fax, asking for additional information or legal support for your position, and Mr. T. Benton Smith's response today.

On March 1, 2012, you, personally, certified to this Office that Mr. Smith had completed all the necessary requirements to file as a candidate for the Office of State Representative in the Democrat Preferential Primary. In reliance upon your certification, Mr. Smith completed the filing process, twice signed a Political Practices Pledge, and received the Candidate Information Form and Receipt for the 2012 Election Year from this Office, as filed on March 1, 2012. Consequently, Mr. Smith has a constitutionally protected interest in his own filing for office. He – and this Office – detrimentally relied upon your March 1 certification when completing the filing process within the statutory deadline for filing.

This Office respectfully believes that Arkansas law does not permit a political party to unilaterally change its previous certification to this Office, with no notice to the candidate, or otherwise. In order to accord Mr. Smith Due Process and Equal Protection under the law, this Office must follow clearly established Arkansas case law. For more than seventy (70) years, with no change from the Legislature, the Arkansas Supreme Court has said: "Arkansas law is well settled that the party chairman and secretary do not have the judicial authority to determine that a candidate is ineligible to hold public office, nor can they refuse to place the candidate's name upon the ballot." Ivy v. Republican Party, 318 Ark. 50, 52 (1994); Ridgeway v. Catlett, Chairman, 238 Ark. 323 (1964); Irby v. Barrett, 204 Ark. 682 (1942); Fite v. Grulkey et al, 2011 Ark. 188 (2011) (citing, Ivy, *inter alia*); see, Hill v. Carter, 357 Ark. 597, 605 (2004).



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The Supreme Court was explicit, in a case directly on point: After a candidate has filed for office, and "after a political party has certified a candidate as meeting its filing requirements," a political party may not initiate and conduct an investigation on its own, on a matter like felony, and then order the Secretary of State to remove that candidate's name from the ballot. **"At this stage of the election process, it would appear to this court that the appropriate procedure to be followed by the political party, should the party wish to remove a certified candidate's name from the ballot pre-election, is to file a petition in circuit court for an eligibility determination and mandamus relief under the Craighead County procedures."** Hill v. Carter, 357 Ark. 597, 605 (2004) (citing, State v. Craighead County Bd. of Election Comm'rs, 300 Ark. 405, 779 S.W.2d 169 (1989)).

Moreover, case law suggests that, at this stage of the process, Party Rules do not govern. **"At this stage of the election process, we disagree that [the] remedy lay under the Democratic Party Rules, because [the candidate] had already been certified as completing the steps to file as a proper candidate by that political party. At this stage, we are of the opinion that [the] remedy to determine residency rested in circuit court and not under Party Rules. We hold that [] recourse, pre-election and after certification as completing the steps to file as a candidate by the Democratic Party, was to file suit for declaratory judgment and mandamus on his eligibility point. . . ."** Hill v. Carter, 357 Ark. 597, 604 (2004).

The change to Arkansas law set forth in Ark. Code Ann. §7-7-201(b)(4) (Act 901 of 1995) does permit a political party to investigate issues *prior to the party's certification* and to decline to certify any potential candidate. After certification *by the party*, however, the political party no longer has any power to proceed unilaterally, outside of Circuit Court. Case law on point, and general election law, were preserved in the same Act at Ark. Code Ann. §7-7-201(d). See, Hill v. Carter, 357 Ark. 597, 605.

The current record in this Office shows that Mr. Smith is entitled to have his name certified to the Crittenden County Election Commission and County Clerk as a candidate for Representative in District 50. The remedy for your political party – if it wishes to challenge Mr. Smith's certification - is to proceed in Circuit Court, present the evidence, provide Mr. Smith his constitutional rights to Due Process and Equal Protection to challenge such evidence, and have a court of competent jurisdiction determine the outcome. Your letters give insufficient legal basis to preclude certification now.



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The Secretary respectfully declines your request to withdraw your political party certification of Mr. Smith, implicit in your March 6 letter, and Benton Smith's letter to the Secretary, earlier today. The Office will certify candidates to the Crittenden County Clerk and Crittenden County Election Commissioners today. With best regards, I am,

Yours very truly,



Martha Adcock
Director of Elections
& Associate Counsel
Arkansas Secretary of State

MA/ma

Cc: Mr. Fred Smith (via e-mail and regular mail)
Mr. T. Benton Smith, attorney for D.P.A. (via fax and regular mail)

