

Mercer County Board of Elections

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Dominic J. Magnolo, Chairman
Kevin H. Main, Member

Margaret Caldwell-Wilson, Secretary
Joanne Palmucci, Member



October 10, 2008

Received Oct 21, 2008

Grayson Barber
Grayson Barber, LLC
68 Locust Lane
Princeton NJ 08540

Dear Ms. Barber:

This letter is in response to your October 9, 2008, and previous, request for the Appointment of Challengers for Public Questions. This will serve to clarify the position of the Mercer County Board of Elections and should be considered as superseding any information that you may have received from Erika McCoy of our office.

As you are aware, N.J.S.A. 19:7-2 provides, in pertinent part:

Whenever a public question shall appear on the ballot to be voted upon by the voters of an election district and application has been made by the proponents or opponents of such public question for the appointment of challengers, the county board **may in its discretion** appoint 2 challengers each to represent such proponents or opponents [emphasis supplied].

You have made it clear that the proposed challengers would be "proponents" and "opponents" of the questions in name only. While we would not necessarily characterize the applications as "fraudulent" as your letter indicates, they certainly were made under false pretenses. The purpose of your challenger application is to allow certain individuals access to a polling location that they would not otherwise have, for purposes other than challenging voters.

As you are also aware, N.J.S.A. 19:15-8a provides:

No person shall be allowed or permitted to be present in the polling place or polling room during the progress of the election except the officers connected with the election, persons connected with the operation of a simulated election for minors as described in subsection b. of this section,

Grayson Barber
October 20, 2008
Page 2

the several candidates, the duly authorized challengers, such voters as are present for the purpose of voting and their dependent children, minors present for the purpose of voting in a simulated election, and such officers as may be duly detailed to be present, pursuant to this title, for preserving the peace or enforcing the provisions hereof.

It appears that your challenger applications are an attempt to circumvent the provisions N.J.S.A. 19:15-8a.

As Ms. McCoy did advise you, if a chairman of the county committee of either political party or any candidate wishes to appoint you or any other of your proposed challengers as official challengers in accordance with Title 19, you are certainly welcome to challenge in that manner. But in any event, a challenger's role is limited. N.J.S.A. 19:7-5 provides that

...challengers shall be the authorized challengers for their respective political parties and candidates or for the proponents or opponents of a public question. They shall have the power to challenge the right to vote therein of any person claiming such right and shall have power to ask all necessary questions to determine this right. They may be present while the votes cast at any election are being counted, hear and see the ballots counted and shall have the right and power to challenge the counting or rejecting of any ballot or any part of a ballot.

The Board cannot, and will not, expand the challenger role to grant any more authority than the law allows.

The Board's primary objective is to fulfill its statutory duties designed to ensure a fair and orderly election process. The Board resents your accusation that we do not welcome public oversight. I suggest that if you believe that additional people should be allowed in the polling place during elections, then you should contact your legislators and seek to have the statute amended. We have no interest in preventing the public, yourself and your group included, from observing Mercer County's electronic voting machines as long as it is done within the parameters of the law. We will not allow your spurious accusations intimidate the Board into acquiescing in your request. After duly considering your application, the Board is exercising its discretion in declining to appoint you and the others as proponent and opponent challengers to the public questions. We do not believe that the applications were submitted in good faith with the intent to act as challengers in conformity with N.J.S.A. 19:7-5. If the Board were to grant your application, we believe that we would be aiding and abetting your circumvention of N.J.S.A. 19:15-8a. To do so would be contrary to our duties.

Grayson Barber
October 20, 2008
Page 3

Thank you for your attention to this matter. Should you have any additional comments that you would like us to contemplate, we will give them due consideration.

Sincerely yours,
Mercer County Board of Elections

A handwritten signature in black ink, appearing to be 'Kevin H. Main', written over a horizontal line.

by: Kevin H. Main, Member

KHM/k
cc: Board Members