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STATE OF ALABAMA
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Honorable John H. Merrill
Secretary of State
State Capitol Suite S-105
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Electors – Ballots – Independent
Candidates

A federal candidate whose name has been printed on a ballot for nomination to a particular federal office by a particular political party may withdraw his or her name from nomination, but if the candidate does so less than 76 days preceding the election, that candidate may not thereafter appear on a ballot in the same election cycle for a different federal or state office as an independent candidate or as a nominee of a different political party.

Dear Secretary Merrill:

This opinion of the Attorney General is issued in response to your request.

QUESTION

May a candidate whose name has been printed on a ballot for nomination to a particular federal office by a particular political party withdraw his or her name from nomination after absentee ballots have been issued, but prior to election day, and have his or her name printed on the ballot for a different federal or state office as an independent candidate or as a nominee of a different political party in the same election cycle?

FACTS AND ANALYSIS

Your inquiry is similar to the one addressed in a recent opinion issued by this Office to Honorable Jim Bennett, Secretary of State, dated May 28, 2014, A.G. No. 2014-061. In that opinion, this Office was asked whether a person who has qualified to run as a candidate with a political party, but then either withdraws his name as a candidate of that party or is disqualified by a political party, may subsequently run as an independent candidate or minor-party candidate in the same election year. Ultimately, this Office determined that pursuant to sections 17-9-3 and 17-6-21 of the Code of Alabama, when there are fewer than 76 days preceding an election and the names of candidates have been printed on ballots, a candidate may choose to withdraw, but that person's name may not appear thereafter on any subsequent ballot for that election year. ALA. CODE §§ 17-9-3 & 17-6-21 (Supp. 2015).

In a subsequent conversation, you expressed concerns regarding the applicability of this opinion to your particular matter because your inquiry concerns a federal candidate. Moreover, this candidate wishes to transition from seeking election for one federal position as a political party candidate to appearing on the ballot for a different political party, minor party, or as an independent candidate for a different public office. This inquiry comes less than 30 days before the March 1, 2016, primary. Further, this Office notes that the candidate's name has been printed on the ballot and may have already been voted on by absentee voters, including those protected by the Uniformed and Overseas Citizens Absentee Voting Act of 1986, 52 U.S.C. § 20301, *et seq.*

Under the Federal Election Campaign Act, federal election laws typically supersede and preempt state law with respect to election to federal office. In an opinion to Honorable Mike Rogers, this Office cited several Federal Election Commission advisory opinions interpreting the federal provision, 2 U.S.C. § 453, which has been transferred to 52 U.S.C.A. § 30143. Opinion to Honorable Mike Rogers, Member, House of Representatives, dated November 15, 2001, A.G. No. 2002-062. These opinions made clear that federal law does not preempt certain state election laws "that are 'interests of the state' . . . , i.e., laws governing the manner of qualifying as a candidate or political party organization, dates and places of elections, voter registration, voting fraud and similar offenses, or candidates' personal financial disclosure." See F.E.C. Advisory Opinion No. 1993-25 to State Representative Robert T. Welch, 1994 WL 59794 (Jan. 31, 1994); 11 C.F.R. § 108.7(c). Further, the United States Supreme Court has acknowledged a state's interest in maintaining stability in its political process outweighs the interest of a candidate in making a late decision to leave a party and seek an alternative course to the ballot. *Storer v. Brown*, 415 U.S. 724 (1974).

The Constitution of the United States leaves broad authority to the states to regulate the conduct of federal elections. *Duncan v. Poythress*, 657 F. 2d 691, 702 (5th Cir. 1981); *Riddell v. Nat'l Democratic Party*, 508 F.2d 770, 776 (5th Cir. 1975). As such, federal candidates are generally subject to state election laws with respect to candidacy. In discussing the regulation of elections by the states, the Court, in *Storer*, stated the following:

Moreover, as a practical matter, there must be a substantial regulation of elections if they are to be fair and honest and if some sort of order, rather than chaos, is to accompany the democratic process. In any event, the States have evolved comprehensive, and in many respects complex, election codes regulating in most substantial ways, with respect to both federal and state elections, the time, place, and manner of holding primary and general elections, the registration and qualifications of voter, and the selection and qualification of candidates.

Storer, 415 U.S. at 730. Alabama does, in fact, have election laws applicable to state and federal candidates. *See, e.g.*, ALA. CODE § 17-9-3 (Supp. 2015) (stating the process necessary for any candidate to appear on a ballot); ALA. CODE § 17-13-2 (2006) (stating that all primary elections held by any party for the nomination of a national candidate are conducted in compliance with the provisions stated therein); ALA. CODE § 17-14-2 (2006) (referencing the holding of general elections throughout the state for state and national candidates); ALA. CODE § 17-14-11 (2006) (noting the date of the general election for the office of U.S. Senators). Accordingly, the fact that the candidate in your inquiry is currently running for federal office does not change the analysis.

The fact that the candidate wants to switch offices for which he or she is running also does not change the analysis. Previously, this Office has interpreted section 17-9-3 of the Code of Alabama as authorizing a candidate one shot at running for an office in any given election year. Opinion to Honorable Billy Joe Camp, Secretary of State, dated August 12, 1992, A.G. No. 92-00382; opinion to Honorable L.W. Noonan, Judge of Probate, dated August 10, 1992, A.G. No. 92-00371. The opinion to Honorable Jim Bennett, discussed above, took the same view. Opinion to Honorable Jim Bennett, Secretary of State, dated May 28, 2014, A.G. No. 2014-061.

Based on the foregoing, it is the opinion of this Office that a federal candidate whose name has been printed on a ballot for nomination to a particular federal office by a particular political party may not seek a different federal or state office under the designation of another party or as an independent candidate in the same election cycle. A decision of a primary

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candidate to withdraw from one race and possibly advance a new candidacy for a different political office must be made more than 76 days prior to the primary election and the printing of that candidate's name on a ballot. *See, generally,* opinion to Honorable Jim Bennett, Secretary of State, dated May 28, 2014, A.G. No. 2014-061.

CONCLUSION

A federal candidate whose name has been printed on a ballot for nomination to a particular federal office by a particular political party may withdraw his or her name from nomination, but if the candidate does so less than 76 days preceding the election, that candidate may not thereafter appear on a ballot in the same election cycle for a different federal or state office as an independent candidate or as a nominee of a different political party.

I hope this opinion answers your question. If this Office can be of further assistance, please contact Monet Gaines of my staff.

Sincerely,

LUTHER STRANGE
Attorney General
By:



G. WARD BEESON, III
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