

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

**NATALIE A. VOWELL,
APPELLANT**

vs.

**JASON KANDER, IN HIS OFFICIAL CAPACITY AS MISSOURI SECRETARY OF
STATE,
RESPONDENT**

DOCKET NUMBER WD77591

DATE: JUNE 19, 2014

Appeal from:

The Circuit Court of Cole County, Missouri
The Honorable Jon E. Beetem, Judge

Appellate Judges:

Special Division: James E. Welsh, C.J., Joseph M. Ellis, J. and Karen King Mitchell, J.

Attorneys:

David Roland, for Appellant

James R. Layton, for Respondent

MISSOURI APPELLATE COURT OPINION SUMMARY

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v.

**JASON KANDER, IN HIS OFFICIAL CAPACITY AS MISSOURI SECRETARY OF
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Cole County, Missouri

Before Special Division Judges: James E. Welsh, P.J., Joseph M. Ellis, J. and Karen King Mitchell, J.

Natalie A. Vowell appeals from the Circuit Court of Cole County's dismissal of her Petition for Declaratory Judgment and Injunctive relief filed against Jason Kander, in his official capacity as Missouri Secretary of State. Appellant requested a declaration that Respondent did not have the authority to evaluate the qualifications of a candidate filing a declaration of candidacy and to exclude her name from the list of candidates certified to appear on the primary election ballot based upon such an evaluation. The trial court dismissed Appellant's petition, concluding that Appellant lacked standing to pursue a declaration regarding Respondent's authority to determine whether Appellant was a qualified candidate because Appellant was not, in fact, a qualified candidate.

REVERSED.

Special Division holds:

(1) A declaratory judgment action requires a justiciable controversy. Such controversy exists where (1) the plaintiff has a legally protectable interest at stake, (2) a substantial controversy exists between the parties with genuinely adverse interests, and (3) that controversy is ripe for judicial determination. The first two elements of justiciability are encompassed jointly by the concept of standing.

(2) Official candidacy for public office is a protectable, legal interest. Appellant's petition clearly alleged that Appellant had a protectable interest in appearing on the primary ballot by virtue of having filed the appropriate paperwork and that her interest was directly and adversely affected by the challenged action, namely Respondent's decision to pass judgment upon her qualifications as a candidate.

(3) The averments further reflect the existence of a substantial controversy between Appellant and Respondent with respect to Respondent's authority to

evaluate candidates' qualifications and to refuse to certify Appellant's name for the ballot.

(4) Because Appellant's petition reflects that she has a legally protectable interest at stake and that a substantial controversy exists between the parties, the trial court erred in dismissing her petition for lack of standing.

(5) While we ordinarily would not do so, when a trial court fails to make a declaration settling rights, as when it dismisses the petition without a declaration, a reviewing court may, in its discretion, make the declaration that should have been made. If there are no disputed facts and the issue is purely a legal one, as in the case at bar, this Court may undertake to declare the rights and duties of the parties. Because time is of the essence in resolving this case, we undertake to declare the rights and duties of the parties.

(6) This case does not involve a determination of whether Appellant is, in fact, qualified to be a candidate for the office she seeks. It is likewise not about whether Respondent was correct in his determination that she was unqualified.

(7) The Secretary of State derives his or her authority to act from statute. In claiming that he has the authority to unilaterally assess a candidate's qualifications before a primary election, Respondent relies solely on § 115.387's language requiring him to certify that a candidate "is entitled to be voted for" when providing a certified list of the names and addresses of candidates that have filed a declaration of candidacy with Respondent's office. Such reliance is misplaced.

(8) Section 115.387 pertains to the ministerial task of certifying the names and addresses of candidates for the ballot. It does not purport to grant the Secretary of State any discretionary power; he or she must certify the name of "each person who has filed a declaration of candidacy in the secretary's office and is entitled to be voted for at the primary election." The statutes prohibit the printing of the name of a candidate on the ballot unless his or her written, signed, and sworn declaration of candidacy has been filed. Those same statutes say nothing about investigating declarants and adjudicating whether they have all the constitutional or statutory qualifications for the office they seek. Consistent with the ministerial nature of the Secretary of State's election duties, in certifying that a person is "entitled to be voted for," § 115.387 simply requires Respondent to certify that filers have timely filed their declaration of candidacy with all the information required.

(9) Because the plain language of § 115.387 does not reflect that the legislature intended the Secretary of State to judge a candidate's qualifications and we have found no other statutory authority granting Respondent the power to unilaterally pass judgment on candidates' qualifications, this Court holds and declares that Respondent is without authority to refuse to certify Appellant's

name for the primary ballot on the basis of his investigation of and determinations regarding her voter registration history.

Opinion by Joseph M. Ellis, Judge

Date: June 19, 2014

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