

**BEFORE THE STATE ELECTION BOARD OF THE
STATE OF OKLAHOMA**

IN THE MATTER OF CONTEST OF THE)
CANDIDACY OF **SHELLY BRUMBAUGH**)
FOR THE OFFICE OF STATE) CAUSE NO. 2018-05
REPRESENTATIVE, DISTRICT 76)

FINDINGS AND ORDER

The above-styled cause was heard by the Election Board of the State of Oklahoma on April 23, 2018, meeting pursuant to lawful notice.

The following members of the State Election Board ("Board") were present: Steve Curry, Chair; Tom Montgomery, Vice-Chair; and Dr. Tim Mauldin, Member. Also present were Paul Zirix, Secretary; and counsel for the State Election Board, Lyn Martin-Diehl, Assistant Attorney General; and Rachel Rogers, Assistant Attorney General. Also present, but not participating were Jerry Buchanan, Alternate Member; and Debi Thompson, Alternate Member.

Petitioner Ross Ford appeared personally with counsel Geoffrey Long. Contestee Shelly Brumbaugh appeared personally with counsel Andy Hayes.

The Petition was filed and Notice of Hearing issued on April 17, 2018, at 9:20 a.m. The Board received proof of personal service made on Contestee by the Tulsa County Sheriff on April 17, 2018, within 24 hours of setting the Petition for hearing, as required by 26 O.S. § 5-124.

Contestee appeared and submitted a cashier's or certified check in the amount of \$250.00, as required by 26 O.S. § 5-129.

The Board conducted the hearing. After considering all evidence and testimony offered and admitted, and after bearing arguments of the parties, the Board makes the following findings of fact and conclusions of law:

1. Mr. Ford filed with the Board a Declaration of Candidacy for the office of State Representative, District 76, during the filing period of April 11-13, 2018.
2. Ms. Brumbaugh filed with the Board a Declaration of Candidacy for the office of State Representative, District 76, during the filing period of April 11-13, 2018.
3. The Board received proof of personal service made on Contestee within 24 hours of setting the Petition for hearing, as required by 26 O.S. § 5-124.
4. Ms. Brumbaugh submitted the proper cashier's check or certified check in the amount of \$250.00, as required by 26 O.S. § 5-129.

5. 26 O.S. § 5-130 provides: “The burden of proof shall be upon the petitioner to sustain the allegations in his petition.”

6. The allegations contained in the Petition filed by Mr. Ford are that:

Contestee changed her name by marriage license on April 2, 2018 to Shelley Renee Bailey. Contestee failed to truthfully state her legal name on her Declaration of Candidacy and instead adopted her deceased husband’s name, a former legislator in the Oklahoma House, with the intent to deceive and defraud the public. Further, that her use of the name Brumbaugh is patently false and in bad faith and is meant to confuse voters in violation of 26 O.S. §§ 5-107 and 5-108.

7. 26 O.S. §5-107 provides in pertinent part:

No person may become a candidate for any office enumerated in Section 26-5-102¹ of this title whose name is identical to the name of the incumbent or of any publicly announced candidate for such office, or similar thereto, where it appears that the identity or similarity of names is used for the purpose of confusing the voters. Any person desiring to become a candidate for one of said offices whose name is identical or similar to the name of the incumbent or of any publicly announced candidate for said office shall observe the following procedure... (Footnote added).

8. 26 O.S. §5-108 provides in pertinent part:

No person may become a candidate for any office who adopts or has adopted a name identical or similar to that of the incumbent of such office, or of any candidate who has previously made public announcement of his candidacy for such office.

9. Mr. Ford submitted the following evidence that was admitted into the record:

Exhibit 1 – Contestee’s Declaration of Candidacy filed April 13, 2018 listing:

Shelley Brumbaugh under “Candidate’s name as it will appear on ballot” and Shelley Renee Brumbaugh as “Candidate’s full legal name”

Exhibit 2 – Application for Marriage License Re: Marriage of Kevin Shane Bailey and Shelley Renee Brumbaugh dated March 22, 2018

Exhibit 3 – Marriage License filed on April 2, 2018 reflecting the “Full Name to be Known As” of Shelley Renee Bailey


10. Ms. Brumbaugh argued that she has had the name Shelley Brumbaugh for over 20 years, since her marriage to David Brumbaugh, and that she previously ran under the name Shelley Brumbaugh for the same office Mr. Ford now holds.

¹ 26 O.S. §5-102 provides, “Candidates for United States Senator, United States Representative, state officer, State Senator, State Representative, district judge, associate district judge and district attorney shall file Declarations of Candidacy with the Secretary of the State Election Board.”

11. Ms. Brumbaugh stipulated that she was recently remarried on March 24, 2018, and testified that she had not yet changed her name on her driver's license at the time of signing her Declaration of Candidacy before a notary. Ms. Brumbaugh requested alternative relief by the Board to amend her Declaration of Candidacy to reflect her new name, Shelley Renee Bailey.
12. Oklahoma Administrative Code 230:20-3-38 allows a candidate to place a name on the ballot that they are "generally known by or who does business using a nickname, birth name, **any name other than his or her legal name** may choose to appear on the ballot by providing that name on the designated line of the Candidate Information and Oath form." (Effective March 15, 2018 by emergency action). However, "[a] candidate is required to list his or her full legal name on the appropriate line of the Information and Oath form." *Id.*
13. 26 O.S. §5-128 provides, "[i]f said contestee's Declaration of Candidacy may be amended or corrected to conform to law, the election board may order the same to be done, if the board determines such amendment or correction to be proper at the time of its order or decision." This Board finds such an amendment to be proper in these circumstances.
14. The Board finds that Shelley Brumbaugh's name is neither similar to the incumbent's name nor of any publically announced candidate for such office, and therefore Contestee is not in violation of 26 O.S. § 5-107 or 26 O.S. § 5-108. Consequently, any inquiry into Ms. Brumbaugh's good faith or lack thereof is irrelevant.
15. Mr. Ford has therefore failed to sustain his burden of proof and his Petition is denied, pursuant to 26 O.S. § 5-130.
16. Ms. Brumbaugh is ordered to amend her Declaration of Candidacy to reflect her new married name of Shelley Renee Bailey on the line designated for her legal name pursuant to 26 O.S. § 5-128. The name Shelley Brumbaugh will still appear on the ballot pursuant to OAC 230:20-3-38.
17. Costs are assessed against Mr. Ford pursuant to 26 O.S. §5-131.

Done this 23rd day of April, 2018, by a unanimous vote of the Election Board of the State of Oklahoma.

OKLAHOMA STATE ELECTION BOARD



STEVE CURRY, Chairman