

MEMORANDUM

DATE: March 28, 2018

ISSUE PRESENTED: If a person successfully files but then withdraws nomination papers for an office because the petition contained fraudulent signatures, then submits a second set of nomination papers for the office that are rejected by the Iowa Secretary of State because they lacked a sufficient number of acceptable signatures, may that person then be designated pursuant to Iowa Code chapter 43.23 and included by the Secretary of State on the chapter 43.22 certificate as a candidate for that same office?

SHORT ANSWER: No. On these facts, the statutory framework set out in chapter 43 does not permit this person to be designated as an “additional primary election candidate” for the nomination she was originally seeking.

ANALYSIS: Iowa Code chapter 43.23 provides the starting point for this analysis. If a person who has filed nomination papers with the Secretary of State as a candidate for a primary election dies or “withdraws” up to the 76th day before the primary election, chapter 43.23 provides a mechanism for that person’s political party to “designate one additional primary election candidate for the nomination that person was seeking.” The code then requires the name of the “additional” candidate to be included on the appropriate chapter 43.23 certificate. On the facts presented here, there are two fundamental reasons why chapter 43.23 does not apply.

First, chapter 43.23 is, in essence, a substitution provision. It provides political parties a safety valve to fill candidate slots that unexpectedly become vacant due to the death or withdrawal of a primary candidate. Its purpose is to encourage and ensure contested primaries. It is not a do-over provision. Here, there is a significant question – raised by the candidate herself – about the legitimacy of the nomination papers initially submitted and accepted by the Secretary of State. Indeed, the candidate requested that the nomination petition be “withdrawn.” The second set of nomination papers were rejected as not meeting the statutory requirements for the office in question. Thus, here, even if chapter 43.23 applied, there is a real question about whether there is “candidate slot” that the party may fill.

Second, on its face it is difficult to read chapter 43.23 as permitting the designation of the person who “withdraws” as the “additional primary election candidate” for the same nomination. That difficulty becomes insurmountable when chapter 43.23 is read in the context of the balance of chapter 43. In particular, chapter 43.16 expressly provides “[t]he name of a candidate who has withdrawn ... shall be omitted from the certificate furnished by the state commissioner under section 43.22 and omitted from the primary ballot.” The only way to give both provisions effect is to interpret 43.23 to require the person designated by the political party to be a different person from the person who previously sought the nomination but “withdraws.” This interpretation of chapter 43.23 honors both the basic canons of statutory construction and common sense: to read it otherwise invites its use as a mechanism to subvert the thoughtful statutory framework of chapter 43 by allowing a candidate who failed to comply with the required nomination framework a backdoor to the primary ballot that was not intended.