

The State of South Carolina

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April 22, 1992

James B. Ellisor
Executive Director
State Election Commission
Post Office Box 5987
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Dear Jim,

Your Office has requested an opinion as to whether Mr. Perot would be able to substitute a candidate for Vice President in his petition candidacy for President. You have been informed that the present candidate for Vice President, James B. Stockdale, is only an interim Vice Presidential choice that will be replaced at some date in the future. You have, therefore, inquired in response to an inquiry on behalf of Mr. Perot if substitution of the Vice Presidential candidate would be allowed in South Carolina.

As you are aware, there is no specific statute dealing with this question. Petition candidates, however, have been the subject of several recent federal court decisions. In Cromer v. State of South Carolina, 917 F.2d 819 (4th Cir. 1990), the courts struck the provisions pertaining to petition candidates in the South Carolina statute that required all candidates, including petition candidates, to file at one date. The court struck the provision as to petition candidates finding that

[t]he primary concern in assessing this or any restriction on ballot access by candidates is not the interest of the candidates but of the voters who support the candidate and the views espoused by the candidate. Anderson, 460 U.S. at 786-88, 806, 103 S.Ct. at 1568-69, 1579.

Cromer, supra, 822.

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The case cited, Anderson v. Celebrezze, 103 S. Ct. 1564 (1983), concerned the Presidential petition candidacy of John B. Anderson and the filing deadlines for independent candidates. The court stated that

... in the context of a Presidential election, State-imposed restrictions implicate a uniquely important national interest. For the President and Vice President of the United States are the only elected officials who represent all of the voters in the Nation. Moreover, the impact of the votes cast in each State is affected by the votes cast for the various candidates in other States. Thus in a Presidential election a State's enforcement of more stringent ballot access requirements ... has an impact beyond its own borders. Similarly, the State has a less important interest in regulating Presidential elections than statewide or local elections, because the outcome of the forum will be largely determined by voters beyond the State's boundaries.

Anderson, supra, 1573.

In Anderson v. Firestone, 499 F. Supp. 1027 (N.D. Florida 1980) the court was faced with a similar situation as the one you have raised. John B. Anderson while running as a petition candidate for President listed an interim Vice President and at a later date requested that the interim candidate's name be withdrawn and that his official running mate for Vice President be placed on the ballot. Florida's decision to refuse to allow the substitution was reversed by the court. The court noted that political parties do not nominate Vice Presidential candidates until their conventions are held. See, Anderson, supra, page 1030. This fact is an important consideration along with the general open access principles in both Anderson cases when determining whether a named Vice Presidential petition candidate can be withdrawn and replaced by another candidate.

In South Carolina there is apparently no statutory prohibition to a political party substituting a Vice Presidential candidate after he has been announced as the nominee. Sections 7-11-50 and 7-11-55 of the South Carolina Code concern replacement of candidates. However, it would not appear that these sections would apply to replacing Presidential/Vice Presidential nominees as the statute concerns offices that the State or county party executive party may fill. A Vice Presidential candidate could not be replaced by the State or county executive committee.

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There is one last discernable obstacle to authorizing substitution. As a general rule the language of a petition or the candidate nominated by a petition cannot be changed once the petition is signed for the simple reason the person that is signing the petition may not have signed it if the wording or the candidates were different. See, January 28, 1988 letter to William W. Dreyfoos from Treva G. Ashworth. However, a major exception to this general rule exists in this situation in that persons signing the petition for Perot/Stockdale do know, or should know, given the publicity concerning this issue, that the Vice President named on the petition is an interim appointment only and will be replaced. Therefore, they are most probably knowingly signing a petition whose Vice Presidential nominee will be changed.

Only a court of competent jurisdiction could definitively rule on this question. However, it would appear that as political parties are not required to name a Vice Presidential running mate until much later in the political process, to require a petition candidate to name a Vice Presidential running mate much earlier in the process, and then deny that petition candidate the right to substitute a Vice Presidential candidate, would most probably be found to violate the open ballot access required for petition candidates. See, Anderson v. Celebrezze; Anderson v. Firestone; Cromer v. State of South Carolina.

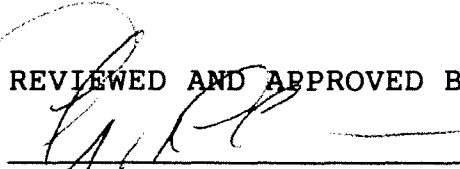
Very truly yours,



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