

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

IN THE MATTER OF THE CONTEST OF)
THE CANDIDACY OF **STEVAN ELVIS**)
CUNNINGHAM FOR THE OFFICE OF) CAUSE NO. 2020-04
STATE SENATOR, DISTRICT 45)

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND FINAL ORDER

The above-styled cause was heard by the State Election Board for the State of Oklahoma on Tuesday, April 21, 2020, meeting pursuant to lawful notice and posting of an agenda consistent with the Open Meeting Act and SB 661, 2020 O.S.L. 3, § 3, amending the Open Meeting Act.

The following members of the State Election Board (“Board” or “SEB”) were present: Mr. Tom Montgomery, Chair¹; Dr. Tim Mauldin, Vice Chair²; and Ms. Heather M. Cline³, Member (videoconference). Also present were Paul Zirriax, Secretary; and counsel for the State Election Board, Niki Batt, Vice-Deputy Attorney General; and Thomas R. Schneider, Assistant Attorney General. Also present, but not participating were Jerry Buchanan, Alternate Member⁴; and Debi Thompson, Alternate Member⁵.

Petitioner State Sen. Paul Rosino appears by counsel, Lance Cargill via videoconference. Contestee Stevan Cunningham appears in person and without counsel.

Petitioner State Sen. Paul Rosino’s Petition for Contest of Candidacy was filed and Notice of Hearing was issued on Monday, April 13, 2020. The Board received proof from the Petitioner that the Canadian County Sheriff’s Office successfully served Contestee Cunningham within 24 hours of setting the Petition for hearing, as required by 26 O.S. 2011, § 5-124. The Petitioner provided Return of Sheriff Service to the Secretary of the State Election Board before or on the date of the hearing.

Contestee did submit a cashier’s or certified check in the amount of \$250.00, as required by 26 O.S. 2011, § 5-129, as well as an Answer and Brief in Support.

During the hearing, the following exhibits were offered into the record and testimony was heard from the following persons:

Petitioner’s Exhibits	
Petitioner’s Exhibit A (Certified Voter Registration Records of Stevan Elvis Cunningham from Canadian County Election Board, dated April 13, 2020, and from State Election Board)	ADMITTED

¹ Chairman Montgomery appeared by videoconference.
² Vice Chair Dr. Mauldin appeared by teleconference.
³ Member Cline appeared by videoconference.
⁴ Alternate Member Buchanan appeared by videoconference.
⁵ Alternate Member Thompson appeared by videoconference.

Petitioner's Exhibit B (Certified Voter Registration Records of Rebekah and Stevan Michael Cunningham)	ADMITTED
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As Petitioner began his presentation of evidence, Contestee Cunningham stipulated to the evidence as presented. Thus, all of Petitioner's exhibits were admitted without objection.

Contestee's Exhibits	
Contestee's Exhibit 1 (Certified Voter Registration Record of Rebekah Anne Cunningham from Canadian County Election Board, dated April 17, 2020)	ADMITTED
Contestee's Exhibit 2 (Sworn, notarized statement of Rebekah Anne Cunningham)	ADMITTED

Witness for Contestee

Stevan Elvis Cunningham, Contestee, *for himself*

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

1. Contestee Stevan Elvis Cunningham filed with the State Election Board a Declaration of Candidacy for the office of State Senate, District 45, during the 2020 Candidate Filing Period occurring on April 8 through April 10, 2020.
2. Petitioner State Sen. Paul Rosino filed with the State Election Board a Declaration of Candidacy for the office of State Senator, District 45, during the 2020 Candidate Filing Period occurring on April 8 through April 10, 2020.
3. The SEB received proof of personal service made on Contestee within twenty-four (24) hours of setting the Petition for hearing, as required by 26 O.S. 2011, §§ 5-124 & 5-125.
4. Under 26 O.S. 2011, § 5-130, "[t]he burden of proof shall be upon the petitioner to sustain the allegations in his petition." In order to sustain his or her burden of proof, the petitioner must prove the allegations set forth in the Petition by the greater weight of the evidence.
5. The allegations contained in the Petition filed by Petitioner State Sen. Paul Rosino argue that Contestee Cunningham was not a registered voter in Senate District 45 for the required six-month period under 14 O.S. 2011, § 80.8. Instead, Petitioner alleged that Contestee was a registered voter in Canadian County Precinct # 090227, which falls outside Senate District 45.
6. Pursuant to 14 O.S. 2011, § 80.8, a candidate for State Senate "must have been a registered voter in such district and a resident residing within such district for at least six (6) months immediately preceding the filing period prescribed by law."

7. The filing period began on Wednesday, April 8, 2020, pursuant to 26 O.S. 2011, § 5-110. Consequently, Contestee Wilson was required to have been a registered voter of Senate District 45 on or before October 7, 2019.
8. Certified copies of Contestee Cunningham's voter registration records from the Canadian County Election Board shows that Contestee Cunningham filed his voter registration form in Canadian County, changing his address of residence from 2400 Renwick Ave. to 9600 SW 40th St., Oklahoma City, OK, on or about March 5, 2020, which is indicated as a transaction date. His voter registration in Canadian County for the address change was activated on March 10, 2020, which is indicated as the audit date. *See* **Petitioner's Exhibit A**.
9. A certified copy of Contestee Cunningham's initial voter registration form from the Canadian County Election board shows that the registration application was dated July 30, 2004 and activated on August 10, 2004, at 2400 Renwick Ave., Oklahoma City, OK. *See* **Petitioner's Exhibit A**.
10. A certified copy of a record generated by the State Election Board shows the 2400 Renwick Ave. address falls outside of Senate District 45, but Contestee Cunningham's current address at 9600 SW 40th St., Oklahoma City, OK 73179 does fall within Senate District 45. *See* **Petitioner's Exhibit A**.
11. Notwithstanding Finding of Fact 10, Contestee Cunningham has only been registered within Senate District 45 since March 10, 2020. Accordingly, the Board finds that the Contestee has not been a registered voter within Senate District 45 for six months immediately preceding the filing period as required by 14 O.S. 2011, § 80.8.
12. A certified copy of voter registration record of Contestee Cunningham's wife, Rebekah Cunningham, from the State Election Board shows that Ms. Cunningham was registered as an independent from June 1, 2017, through March 10, 2020, when she was re-registered as a Republican. Ms. Cunningham made this change on March 8, 2020. Her residence since June 1, 2017 has consistently been 9600 SW 40th St., Oklahoma City, OK. *See* **Petitioner's Exhibit B** and **Contestee's Exhibit 1**.
13. As of April 13, 2020, records from the Canadian County Election Board show that the voter registration record of Contestee Cunningham's son, Stevan Michael Cunningham, has been registered to vote at the 9600 SW 40th St. address since June 6, 2018. His political affiliation since his initial registration has remained unchanged. *See* **Petitioner's Ex. B**.
14. During the hearing, Contestee Cunningham testified that he and his wife filled out and mailed in their voter registration forms on the same date and time. In fact, he further advised the Board that this is part of his family's business habits to build in redundancy in order to prevent mistakes. In support of his claim, he offered his wife's sworn and notarized statement. *See* **Contestee's Ex. 2**. Consequently, he argues that he mailed a registration form on or about May, 23, 2017. *See* **Contestee's Ex. 1**.
15. Contestee Cunningham also stated that he and his family didn't receive mail regularly for about a year and a half when they moved to the 9600 SW 40th St. address in a new

subdivision. In fact, a family friend living in a different subdivision was receiving the Cunninghams' mail and would consistently deliver them their mail. Alternatively, Contestee Cunningham would pick it up when the family friend couldn't deliver it. Nevertheless, Mr. Cunningham could not explain why he did not ask questions about not receiving his voter identification card even though his wife did receive hers.

16. Petitioner Rosino has sustained his burden of proof by the greater weight of the evidence in showing that it was more likely true than not that Contestee Cunningham does not meet the six-month registration requirement set forth in 14 O.S. 2011, § 80.8.
17. Petitioner Rosino's Petition is therefore **SUSTAINED**, pursuant to 26 O.S. 2011, § 5-130, and Contestee Cunningham's name shall not appear on the ballot as a candidate for the office of State Senator, District 45.
18. Costs are assessed against Contestee Cunningham pursuant to 26 O.S. 2011, § 5-131.

On the 21st day of April, 2020, all members of the State Election, constituting a quorum, voted to **SUSTAIN** Petitioner Rosino's Petition for Contest of Candidacy and **STRIKE** the candidacy of Contestee Stevan Elvis Cunningham from the ballot.

5-27-20

Date

OKLAHOMA STATE ELECTION BOARD



TOM MONTGOMERY, *Chairman*

