

ALABAMA STATE DEMOCRATIC EXECUTIVE COMMITTEE

**BERTHA NETTLES AND KAREN
NICHOLS,**

CHALLENGERS,

V.

MONICA AGEE

CANDIDATE.

MARCH 2020 PRIMARY ELECTION

ORDER OF THE CHALLENGE HEARING SUBCOMMITTEE

Two Jefferson County electors, Bertha Nettles and Karen Nichols filed a timely challenge to the qualifications of Monica Agee, a candidate for the office of judge of the Jefferson County Circuit Judge (Place 10). Chair England convened a subcommittee to hear this challenge within the 10-day window. SDEC Bylaws Art. VII, Sec. 9(a). By consent of the parties and for their convenience, the hearing was continued to 3:00 p.m. on Tuesday, November 26, 2019.

Present at the hearing for the challenger were Ms. Nettles and Ms. Agee and their counsel, Hon. Ralph Cook, John Haley, and Chris Randolph of the law firm of Hare Wynn Newell & Newton. Present for the candidate were Ms. Agee and her counsel, Chris Davis. Members of the challenge hearing subcommittee were Jim Sturdivant (chair), Julia Juarez, Sue Thompson, Curtis Travis, and Terri Wiggins-Chapman, all of whom are members of the Alabama State Democratic Executive Committee. A court reporter was present to record the proceedings.

The challengers contend Ms. Agee is ineligible to run for the office for which she qualified because she is not a loyal Democrat. Under SDEC Bylaws, “[n]o person shall be permitted to qualify as a candidate for nomination or election to public or Party office as a Democrat in any elections who did not support the nominees of the Democratic Party in all

Special or General Elections during the past four years.” SDEC Bylaws Art. VII, Sec. 1(f).

Among other assertions of disloyalty to the Alabama Democratic Party, the challengers contend Ms. Agee staged a write-in campaign in favor of herself and against the nominee of the Alabama Democratic Party for the office of Jefferson County Circuit Judge (Place 17) during the November 2016 general election. Ms. Agee was a candidate for that office in the primary election and lost to the eventual Democratic nominee. The challengers further contend Ms. Agee attempted to run as a Democrat in 2018 for the office of Jefferson County Circuit Judge (Place 8) but was denied that opportunity after a successful challenge to her qualifications. They contend Ms. Agee then attempted to run for that office as a Republican and an independent candidate.

Ms. Agee responds that the challenge is not factually accurate regarding her previous candidacies. She further states she has acted consistent with the Statement of Principles of the Alabama Democratic Party. SDEC Bylaws, Art. I.

Both sides presented their positions, their relevant evidence, and were allowed an opportunity to call witnesses. After the hearing, the subcommittee convened in executive session to discuss this matter. The hearing subcommittee decided by a vote of 5-0 that the challenge is well taken and is due to be GRANTED.

The hearing subcommittee based its ruling on the substantial evidence before it. Substantial evidence is “evidence of such weight and quality that fair-minded persons in the exercise of impartial judgment can reasonably infer the existence of the fact sought to be proved.” *Ex parte Dial Kennels of Ala., Inc.*, 771 So. 2d 419, 421 (Ala. 1999); *West v. Founders Life Assurance Co.*, 547 So. 2d 870, 871 (Ala. 1989). Substantial evidence supports the decision of the challenge hearing subcommittee.

It is undisputed that on February 8, 2018, Ms. Agee was denied the privilege of running as a candidate in the 2018 Jefferson County Democratic Primary election. This decision was based upon a determination by the Executive Board of the State Democratic Executive Committee that Ms. Agee had not shown by clear and convincing evidence that she would be an asset to the Democratic Party.

It is undisputed that, after being denied the privilege of running as a Democratic candidate at that time, Ms. Agee then, some five days later, on February 13, 2018, sought to qualify as a judicial candidate in the Republican Party Primary and paid fees totaling some \$2,397.97 in two nearly identical amounts – to the Alabama Republican Executive Committee on February 13, 2018 – and to the Jefferson County Republican Party on February 28, 2018. *The evidence indicates nothing but that Ms. Agee, had she been allowed to run as a Republican candidate, by the Republican Party, would have done so.* Not only that, she then later – after being refused the ability to run as a Republican candidate - sought to run as an independent candidate for Circuit Judge, Place 17. See Document 465, pp. 10-11, Agee v. Williams, Jefferson County Circuit Court Civil Case. Accordingly, the earlier determination dated February 8, 2018 remains in place and Ms. Agee’s actions subsequent to that decision only serve to provide substantial validation for the actions taken at that time.

Ms. Agee may appeal this decision by 5:00 p.m. on Monday, December 2, 2019. Any appeal must be made directly to Chair England at the addresses listed on the statement of service. The only two grounds for appeal are that this decision “was not supported by any substantial evidence or was void as a matter of law.” SDEC Bylaws Art. VII, Sec. 9(b)(8). Any appealing party who states this decision was not supported by substantial evidence must produce a transcript of the hearing proceedings at their own cost. Any appeal would be heard by the SDEC

as a whole. Additional security may be required by Chair England if an appeal is filed. SDEC
Bylaws Art. VII, Sec. 9(b)(6).

Dated: November 26, 2019

Signed,

s/ Jim Sturdivant

Jim Sturdivant

**Chair, SDEC Challenge Hearing
Subcommittee**