

BEFORE THE STATE OBJECTIONS PANEL

In re: Nomination Petition for Primary Election of Kyle Kuehl, candidate for U.S. Representative for the First Congressional District of Iowa

OBJECTIONS TO NOMINATION PETITION:

We, the undersigned electors who reside in the First District of Iowa, object pursuant to Iowa Code § 43.24 to the Nomination Petition for Primary Election filed by Kyle Kuehl as a candidate for U.S. Representative for the First Congressional District of Iowa. Kuehl filed his petition, along with an Affidavit of Candidacy, in the office of the Secretary of State on March 10, 2022.

I. Requirements of a valid petition.

A candidate for U.S. Representative needs signatures from not less than 1,726 eligible electors on his nominating petition. Iowa Code § 45.1(3). In addition, the candidate must have signatures of at least 47 eligible electors from at least one-half of the counties in the district. *Id.* The First Congressional District has 20 counties for the 2022 election cycle. 2021 Iowa Acts (2d Ex. Sess.), Ch. 2, § 1 (listing counties in the First Congressional District). Therefore, a candidate must meet or exceed the 47-signature threshold in ten counties.

In addition to having the correct number of signatures, nominating petitions must include certain mandatory information in the header. The Secretary of State

provides an official form for the use of candidates. Iowa Code § 43.8. Although a candidate may substitute his own form, it must be “in form substantially as provided” by the requirements for official nominating papers. Iowa Code § 43.10. Whatever form the candidate uses, the nominating petition “shall include or provide spaces for the following information...(e) The office sought by the candidate, including the district number, if any.” Iowa Code § 43.14(1)(e). Thus, the Secretary of State’s official nominating petition form includes blanks for this information at the top right-hand corner of the form’s header:

State of Iowa
Nomination Petition for Primary Election

Candidate Information

Candidate's Name: _____	Office Sought: _____
Candidate's County of Residence: _____	Office District (if any) _____
Date of Election: ____/____/____	
Is the candidate running to fill a vacancy due to the death, resignation, removal, or temporary appointment of an office holder? <input type="checkbox"/> No <input type="checkbox"/> Yes	
Candidate's Affiliation (Candidate, please check one box.)	
<input type="checkbox"/> Democratic	<input type="checkbox"/> Republican
Required For Federal and Statewide Petitions: Petition pages shall contain signatures from only one county. The name of the county must appear on each petition page. This petition page contains the signatures of eligible electors from _____ county.	

Iowa law makes clear the information that is required in the nominating petition and gives candidates who submit deficient papers no ability to argue that the deficiency is immaterial. “Signatures on a petition page shall be counted *only* if the information required in subsection 1 is written or printed at the top of the page.” Iowa Code § 43.14(2)(a) (emphasis added). If objections are made to a nominating petition “relating to incorrect or incomplete information for information that is required under

sections 43.14 or 43.18” those objections “*shall be sustained*” (emphasis added). This sentence was added by the legislature last year. 2021 Iowa Acts, Ch. 147, § 9.

In other words, the board lacks the discretion to excuse a failure to provide sufficient information. The legislature has directed in two locations that the petition header information must be complete and accurate for the signatures on that page to be counted. Kuehl’s nomination petitions do not sufficiently meet this requirement.

II. A material number of the nomination petition sheets submitted by Kuehl are deficient because they fail to specify the office and district sought.

Many of the sheets in the nomination petitions submitted by Kuehl fail to properly identify the office and district sought as required by Iowa Code § 43.14(1)(e). Objectors have submitted with these objections Exhibit A, a copy of Kuehl’s nomination petition. Objectors have paginated the document and the counties appear in alphabetical order (except for Van Buren County as Kuehl submitted no signatures from that county). As will be detailed below, many of the nomination petition sheets contain incomplete information about the office and district sought by Kuehl. As an example, here is a representative header on a nomination petition page:

**State of Iowa
Nomination Petition for Primary Election**

Candidate Information	
Candidate's Name: <u>Kyle Kuehl</u>	Office Sought: <u>US - 1</u>
Candidate's County of Residence: <u>Scott</u>	Office District (if any) _____
Date of Election: <u>06 / 07 / 2022</u>	
Is the candidate running to fill a vacancy due to the death, resignation, removal, or temporary appointment of an office holder? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes	
Candidate's Affiliation (Candidate, please check one box.)	
<input type="checkbox"/> Democratic <input checked="" type="checkbox"/> Republican	
Required For Federal and Statewide Petitions: Petition pages shall contain signatures from only one county. The name of the county must appear on each petition page. This petition page contains the signatures of eligible electors from <u>Cedar</u> county.	

(Exhibit A – page 013.)

There is no office called “US-1.” The election in question is for the position of U.S. Representative. Although other common descriptions of the position are surely sufficient (such as U.S. House of Representatives or Member of Congress) the description of the office as “US-1” is unintelligible. And in any event, the forms fail to include information about the district sought. Objectors have submitted with these objections Exhibit B, a list of the pages in Exhibit A to which they object.

Although there are no Iowa cases that have addressed this exact question, cases from other jurisdictions strongly support the view that the description “US-1” is insufficient. For example, in *Kennedy v. Lodge*, 281 P.3d 488 (Ariz. 2012), the Arizona Supreme Court considered a challenge to a nominating petition where the candidate stated he was running for the office of “Superior Court” but did not specify that he was running for the position of “Judge” or that he sought election to “Division Five” of the court. *Id.* at 489.

The court rejected the candidate's effort to prove by extrinsic evidence that the signers of his petitions were not confused about the office he sought. "Allowing candidates to compensate for petition defects with extrinsic evidence that such defects did not result in voter confusion would eviscerate the statutory requirement that all essential information be made available to the elector on the petition form." *Id.* at 491. "The relevant inquiry thus is whether the nominating petition itself substantially complies with statutory requirements." *Id.*

The court found the petitions were inadequate. "The applicable statutes require superior court judicial nominating petitions to specifically designate the division number of the judicial office sought. Under our cases, the relevant inquiry is whether an elector would know just by reading his petitions for which division Lodge was running." *Id.* "The petitions here fail to adequately inform electors that Lodge sought election to Division Five because they do not specify any division and more than one division is up for election this cycle." *Id.* "Accordingly, the petitions failed to substantially comply with statutory requirements." *Id.*

Illinois courts consider the issue in the same way. "A description of the office sought by a candidate is generally sufficient where there is 'no basis for confusion as to the office for which the nominating papers were filed.'" *Heabler v. Municipal Officers Electoral Bd. of the Village of Lakemoor*, 789 N.E.2d 854, 856 (Ill. Ct. App., 2d Dist. 2003) (citing *Lewis v. Dunne*, 344 N.E.2d 443 (Ill. 1976)). "[I]t is not clear from the

nominating papers which trustee office petitioner intended to run for. This constitutes a basis for confusion as to the office for which the nominating papers were filed.” *Id.* at 858.

In contrast, a New York court rejected a challenge to a petition where the sheets referred to the office sought as “Member Common Council 1 Ward City of Albany,” “Member Common Council Ward 1 City of Albany,” “Member of Common Council 1 Ward City of Albany NY,” or “Member Common Council 1 Ward City of Albany, NY.” *Mannarino v. Goodbee*, 970 N.Y.S.2d 835, 836-37 (N.Y. App. Div. 2013). Although there were minor differences in the placement of the ward number (“1 Ward or Ward 1”) and some descriptions failed to include the postal abbreviation for New York, “each of the challenged descriptions is sufficiently informative so as to preclude any reasonable probability of confusing or deceiving the signers, voters or board of elections.” *Id.* at 837 (cleaned up).

But the same cannot be said of the description of the office sought as “US-1” and a blank for the district sought. As noted above, the Iowa legislature recently amended the statute providing for a hearing on objections to nomination petitions to provide that “[o]bjections relating to incorrect or incomplete information for information that is required under section 43.14 or 43.18 *shall be sustained.*” Iowa Code § 43.24(1)(a) (emphasis added).

The sole Iowa Supreme Court case on following nomination petition requirements supports the view that the pages with the “US-1” description cannot be counted. In *Wingert v. Urban*, 250 N.W.2d 731 (Iowa 1977) the Court considered a challenge to nomination petitions where the challenged candidate had been misinformed by the county auditor about the number of signatures needed to qualify for the primary ballot. The auditor, in telling the candidate the number of signatures necessary to qualify for the ballot, had not considered a recent legislative change that increased the threshold. *Id.* The Court refused to fault the candidate for relying on the auditor’s mistake. *Id.* at 735. But there is no mistake by an election official here.

Kuehl can point to nothing the Secretary of State has done to tell him that the description of the office and district sought was unimportant. To the contrary, the Secretary of State’s candidate guide for primary elections makes this requirement abundantly clear:

The information listed below must appear on each petition candidate header for all offices. Signatures cannot be counted on petition pages missing the following information:

- Candidate's Name

The candidate's name should be printed exactly as the candidate wishes the name to appear on the ballot. No parentheses, quotation marks, or titles (e.g. Dr., Mrs., etc.) may be included.

- Office Sought

- Candidate's County of Residence

The candidate's county of residence must be indicated for all offices except for state senator and state representative.

If a state senator or state representative candidate, petition candidate header must include a statement that the candidate will be a resident of the legislative district at least 60 days before the general election.

- Office District (if any) – For 2022 district boundary lines are subject to redistricting

The candidate must provide the district number (if any). Signatures on petition pages that do not provide the applicable district number (when required) cannot be counted.

(Secretary of State 2022 Primary Candidate Guide 6). Surely no candidate could be confused by the direction that “[s]ignatures on petition pages that do not provide the applicable district number (when required) *cannot be counted.*” (emphasis added). Nor could a candidate reasonably misunderstand the warning that “[s]ignatures cannot be counted on petition pages missing the following information.” Kuehl has not been led astray by an election official, he simply did not exercise the appropriate diligence to ensure his nomination petitions were adequate.

The following table shows the number of signatures submitted for each county, the number of those that are invalid because of the use of the “US-1” description for the office sought and no information for the district sought, and the net number of

valid signatures. The counties where the number of signatures meets or exceeds 47 are shaded in green:

County:	Signatures submitted:	Ex. B ("US-1" issue)	Net:
Cedar	125	-25	100
Clinton	269	-101	168
Des Moines	157	-10	147
Henry	37	-14	23
Iowa	54	-26	28
Jackson	117	-41	76
Jasper	62	-35	27
Jefferson	23	-11	12
Johnson	85	-38	47
Jones	113	-47	66
Keokuk	19	0	19
Lee	112	0	112
Louisa	3	0	3
Mahaska	8	0	8
Marion	3	-3	0
Muscatine	122	-53	69
Scott	621	-61	560
Van Buren	0	0	0
Warren	94	-74	20
Washington	19	0	19
Total:	2043	-539	1504

With the nomination petition pages with the “US-1” description removed, the total number of valid signatures drops to 1,504 and the number of counties where the 47-signature threshold was reached drops from 12 to nine (Iowa, Jasper, and Warren fall below the threshold). Kuehl has therefore failed to qualify for the Republican primary ballot, both by failing to meet the total number of signatures required and failing to have ten counties with at least 47 valid signatures.

III. Additional deficiencies.

The deficiencies described above are sufficient to disqualify Kuehl from the Republican primary. In addition, objectors have identified three other categories of deficiencies in Kuehl’s nomination petition. A chart summarizing these deficiencies appears below.

A. *Alteration of completed nomination papers*

Iowa Code § 43.15(3) requires petition signers to all reside in the same county.

The Secretary of State’s nomination petition form therefore includes this language:

Required For Federal and Statewide Petitions: Petition pages shall contain signatures from only one county. The name of the county must appear on each petition page. This petition page contains the signatures of eligible electors from _____ county.

The primary candidate guide also directs candidates that all information in the header of the nomination petition must be completely filled out *before the first eligible elector signs the page*:

Filing Checklist

Review affidavit and nomination petition headers.

Nothing can be added to a notarized affidavit or a petition header if there are signatures on the page. Nomination papers can be returned by the filing officer only if they have been rejected.

[§43.14(3), 43.16]

(Secretary of State 2022 Primary Candidate Guide 9)

Objectors are aware of at least 11 nomination petition pages submitted by Kuehl where the county information was filled out after people had signed the page. For nine of these pages, the nomination petition in question contained the “US-1” description

and have already been accounted for in the challenge as described above. But for two pages (62 and 75) the nomination petition header described the office sought as “US Representative” and the district sought as “US-1.” Objectors do not challenge these descriptions of the office and district sought. Because of this, the board must decide if the Kuehl campaign’s tampering with the sheets means the pages should not be counted. Page 62 had three signatures from Des Moines County. Page 75 had three signatures from Henry County.

If sustained, the objections to these pages would reduce Kuehl’s total to 1498 and he would remain with 9 counties above the 47-signature threshold. Included with these objections is Exhibit C, a summary of the pages with alterations and photographs of the unaltered nomination petitions. An affidavit establishing the authenticity of the photographs is also included in Exhibit C.

B. Signers who listed a P.O. Box, a partial or incorrect address or who left their signature undated.

Iowa Code § 43.14(2)(c) states that a signature line on a nomination petition “shall not be counted if an eligible elector supplies only a partial address or a post office box address, or if the signer’s address is obviously outside the boundaries of the district.” Again, the Secretary of State’s candidate guide helpfully explains this requirement:

All signers must include the following information:

- A signature (the signature may be printed)
- **The address of their residence**

This must include a house number, street name, and city. Providing only a post office box is not sufficient. A signer who is homeless should describe where the signer lives or write “homeless”.

[§43.14(2), 43.15(1)]

(Secretary of State 2022 Primary Candidate Guide 8). Iowa Code § 43.15(3) also requires signers of petitions to include the “date of signing.” Several signature lines omit this information.

Objectors have reviewed the Kuehl nomination petitions for these issues.

Objectors understand that when petitions are reviewed by staff at the Secretary of State’s office, those staff members will generally note the number of valid signatures at the bottom of each page. It appears in some circumstances, however, that staff credited Kuehl with signatures for lines where the address was a P.O. Box or an incomplete residential address. Included with these objections is Exhibit D, a list of pages and line numbers for signatures that should be rejected. For two pages, the exhibit notes where the Secretary of State’s office may have caught some, but not all, of the issues with the page. The list contained in Exhibit D does not include any pages that are otherwise objectionable for describing the office sought as “US-1.”

There are a total of 25 signatures subject to objection for the grounds described in Exhibit D. These objections reduce the total number of valid signatures for Kuehl to

1472. Also, Johnson County drops below 47 signatures, leaving only eight where Kuehl meets or exceeds the threshold.

C. Nomination petitions containing signatures from eligible electors living in more than one county.

As explained above, candidates must submit nomination petitions that satisfy both a total-signature requirement and a county threshold requirement. To facilitate this, Iowa Code § 43.15(3) requires that the signers of a particular nomination petition page must be from the same county. Again, the Secretary of State’s guide to primary candidates flags this requirement:

The following information must appear on each petition candidate header for U.S. Senate, U.S. Representative, and statewide candidates:

- Signers’ County of Residence

This is required on petitions for U.S. Senate, U.S. Representative, and statewide candidates. Each petition page should include signatures from only one county for these offices.

[§43.15(3)]

(Secretary of State 2022 Primary Candidate Guide 7).

The code contemplates that a candidate may need to check his nomination petitions for issues such as having eligible electors from more than one county on a sheet. Iowa Code § 43.14(2)(d) states “[a] signature line shall not be counted if any of the required information is crossed out or redacted at the time the nomination papers are filed with the state commissioner...” This possibility is noted by the Secretary of State’s guidance:

Count the signatures.

Best Practice: File more than the required number of signatures since it is possible for signatures to be challenged. **If there are signatures on a petition that should not be included, simply draw a line through the names. Those signatures will not be counted.**

(Secretary of State 2022 Primary Candidate Guide 9).

But Kuehl apparently did not check his nomination papers. He submitted four sheets that violate the single-county requirement. Exhibit E provides the details of these four sheets. The four sheets contain a total of 66 signatures. Their removal reduces Kuehl's total to 1406 and, with Muscatine County dropping below 47 signatures, leaves only seven counties exceeding the threshold.

The following table summarizes the additional deficiencies with Kuehl's nomination papers:

County:	Signatures submitted:	Ex. B ("US-1" issue)	Net:	Ex. C (altered)	Net:	Ex. D (PO Box, etc)	Net:	Ex. E (multi-county)	Net:
Cedar	125	-25	100		100	-3	97		97
Clinton	269	-101	168		168	-9	159		159
Des Moines	157	-10	147	-3	144		144		144
Henry	37	-14	23	-3	20		20		20
Iowa	54	-26	28		28	-1	27		27
Jackson	117	-41	76		76	-2	74	-6	68
Jasper	62	-35	27		27		27		27
Jefferson	23	-11	12		12		12		12
Johnson	85	-38	47		47	-1	46		46
Jones	113	-47	66		66	-2	64		64
Keokuk	19	0	19		19		19		19
Lee	112	0	112		112		112		112
Louisa	3	0	3		3		3		3
Mahaska	8	0	8		8		8		8
Marion	3	-3	0		0		0		0
Muscatine	122	-53	69		69	-3	66	-20	46
Scott	621	-61	560		560	-5	555	-40	515
Van Buren	0	0	0		0		0		0
Warren	94	-74	20		20		20		20
Washington	19	0	19		19		19		19
Total:	2043	-539	1504	-6	1498	-26	1472	-66	1406

IV. Conclusion

Kuehl has failed to qualify for the Republican primary for U.S. Representative for the First Congressional District of Iowa. The State Objection Panel should sustain the objections and direct that Kuehl's name not appear on the primary ballot.

Respectfully submitted:

Krey Keeney
Warren County

Marshan Roth
Jefferson County

Jim Parcel
Scott County

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EXHIBIT B

The following pages from Exhibit A show the office sought as “US-1” and have a blank for the description of the office district:

County:	Page:	Signatures:
Cedar	13	5
	14	20
Subtotal:		25
Clinton	25	4
	26	5
	27	3
	28	3
	29	6
	30	4
	31	4
	32	7
	33	5
	34	13
	35	6
	36	3
	37	5
	38	8
	40	7
	41	3
	42	2
	43	5
	44	8
Subtotal:		101
Des Moines	59	5
	60	3
	61	2
Subtotal:		10

County:	Page:	Signatures:
Henry	77	1
	78	4
	79	4
	80	4
	81	1
Subtotal:		14
Iowa	84	4
	85	1
	86	4
	87	5
	88	3
	89	4
	90	5
Subtotal:		26
Jackson	98	14
	99	11
	102	3
	103	4
	105	9
Subtotal:		41
Jasper	110	16
	114	4
	115	3
	116	5
	117	5
	118	2
Subtotal:		35
Jefferson	120	3
	121	2
	122	4
	123	2
Subtotal:		11

County:	Page:	Signatures:
Johnson	130	5
	131	3
	132	2
	133	1
	134	4
	135	1
	136	4
	137	1
	138	1
	140	5
	141	2
	142	1
	143	3
	144	1
	145	4
	Subtotal:	38
Jones	153	9
	154	3
	155	19
	156	3
	157	13
	Subtotal:	47
Marion	182	3
	Subtotal:	3
Muscatine	191	20
	192	20
	193	4
	195	9
	Subtotal:	53

County:	Page:	Signatures:
Scott	202	4
	203	1
	205	8
	206	2
	207	3
	213	4
	214	2
	215	4
	216	4
	217	7
	218	2
	222	4
	226	3
	229	1
	237	10
	238	2
Subtotal:		61
Warren	269	7
	270	6
	271	8
	272	3
	273	4
	274	5
	275	5
	276	5
	277	9
	278	2
	279	1
	280	7
	281	4
	282	8
Subtotal:		74
TOTAL:		539

EXHIBIT D

Objections to signatures because of P.O. Box or an incomplete residential address or failure of the signer to date his or her signature:

Page (Ex. A)	Line number:	County:	Basis for objection:
5	4	Cedar	Undated signature
6	1	Cedar	Undated signature (signer appears to have included date of birth instead).
8	2	Cedar	No house number and street listed
48	1	Clinton	Incomplete date of signature (no year listed)
48	2	Clinton	Incomplete date of signature (no year listed)
48	3	Clinton	Incomplete date of signature (no year listed)
48	4	Clinton	Incomplete date of signature (no year listed)
48	5	Clinton	Incomplete date of signature (no year listed)
48	6	Clinton	Incomplete date of signature (no year listed)
48	7	Clinton	Incomplete date of signature (no year listed)
48	8	Clinton	Incomplete date of signature (no year listed)
52	8	Clinton	Undated signature
91	10	Iowa	No house number and street listed
104	13	Jackson	P.O. Box
104	15	Jackson	P.O. Box
146	9	Johnson	P.O. Box
149	1	Jones	Undated signature
149	2	Jones	Undated signature
186	1	Muscatine	Incomplete/incorrect street. Lists "2012 Muscatine Iowa 52761."
188	1	Muscatine	Undated signature
188	2	Muscatine	Undated signature

230	9	Scott	Undated signature (ZIP code used instead)
230	10	Scott	Undated signature (ZIP code used instead)
243	17	Scott	No house number and street listed. Undated signature. See note #1 below.
250	18	Scott	P.O. Box. See note #2 below.
255	6	Scott	No house number and street listed (listed as RR#1 only).

Note #1: On page 243 there are three lines that are invalid, 2, 16, and 17. Lines 2 and 16 are invalid because the signer listed a P.O. Box. Line 17 is invalid because there is no house number and street listed and the signature is undated. The notation on page 243 shows that the Secretary of State's office credited a total of 18 signatures. It is unknown which lines were not counted (all 20 lines on the sheet were filled out) but only a total of 17 signatures are valid on this page.

Note #2: On page 250 there are two issues: line 9 is blank except for a crossed out partial signature. Line 18 is a P.O. Box. The Secretary of State's office credited 19 signatures for this sheet.

EXHIBIT E

Objections to sheets that violate the single-county rule:

Page (Ex. A)	Total signatures affected:	County:	Basis for objection:
107	6	Jackson	Contains three signatures of residents of Scott County (lines 4-6). Likely contains a fourth invalid signature on line 3 as the individual lists his or her city as "Scott."
187	20	Muscatine	On line 19 signer lists city of residence as Burlington, a city located in Des Moines County.
245	20	Scott	On lines 7 and 8 signers list city of residence as Muscatine, a city located in Muscatine County.
246	20	Scott	On line 4 signer lists city of residence as Clinton. On lines 10 and 17 signer lists city of residence as Wheatland. Both cities are in Clinton County.