

Cook v Haida
15 SOEB GP 108

Candidate: Robert Haida

Office: Circuit Judge, 20th Judicial Circuit (Baricevic vacancy)

Party: Democratic

Objector: Dallas Cook

Attorney For Objector: Aaron Weishaar/Julie Poplstein

Attorney For Candidate: Michael Kasper

Number of Signatures Required:

Number of Signatures Submitted:

Number of Signatures Objected to:

Basis of Objection: Objector alleges that the nominating petition is insufficient in law and fact, in that (1) Article VI, Section 12(d) of the State Constitution requires all Circuit Court Judges to seek retention and not reelection for office; (2) Article VI, Section 12(d) of the State Constitution requires all Circuit Court Judges to file for retention not less than six months before the general election preceding the expiration of his term of office; (3) Candidate failed to file nomination papers for retention as Circuit Court Judge; (4) The statement of candidacy failed to clarify whether the Candidate was running for nomination or election; and (5) Candidate's petition pages were not uniform or consistent and do not satisfy Election Code requirements.

Dispositive Motions: Candidate's Motion to Dismiss, Objector's Memorandum In Opposition to Motion to Dismiss, Candidate's Reply to Motion to Dismiss

Binder Check Necessary:

Hearing Officer: David Herman

Hearing Officer Findings and Recommendations: The Candidate's Motion to Dismiss argued (1) That the Objection failed to allege that the Candidate does not satisfy eligibility criteria for office, and therefore does not present a basis for invalidation of the nominating petition; (2) The Candidate is eligible to seek the office by running in the general election; and (3) Candidate's nomination petition substantially complied with the Election Code. The Hearing Officer recommends that the Candidate's Motion to Dismiss be denied, in order to allow the development of a full and complete record.

The parties submitted Joint Reports stipulating to certain facts, and filed supplemental briefs regarding the Board's authority to rule on the question of whether the Candidate's action runs afoul of the State Constitution. A hearing was held on January 4, 2016.

Regarding the question whether the Board has authority to rule on the Objector's assertion that the Candidate's method of seeking election is contrary to the State Constitution, the Hearing Officer finds support in both statute (Section 10-10 of the Election Code) and case law for the Board's authority to consider whether a sitting judge is a qualified candidate for nomination at the primary and election at the general election. Therefore, the Hearing Officer recommends that the Board find it has authority to consider Objector's constitutionally-based objection.

With regard to the question as to whether a sitting judge is prohibited from seeking his party's nomination to run for the position of circuit judge at the primary and general elections, the Hearing Officer examined and analyzed relevant portions of the Illinois Constitution, the Election Code and state and federal case law, and considered the fully-briefed arguments of both parties, in concluding that when Article VI, Sections 11, 12(a) and 12(d) are given their plain and ordinary meanings and read in conjunction with one another, sitting judges have the option of seeking retention through the process set forth in Section 12(d) OR submitting petitions to have their name placed on the ballot at the primary and general elections as provided in Section 12(a). Accordingly, the Hearing Officer recommends that the Board overrule the Objector's Constitutionally-based objections to the Candidate's nominating petition.

Regarding the Objector's argument that the Candidate's Statement of Candidacy is invalid, the Hearing Officer examined Section 7-10, which requires the Statement to contain 6 specified criteria, and provides a form for candidates to use, noting that the Statement must substantially follow the form provided. The Hearing Officer noted that Candidate's Statement contains the Section 7-10 required information, and that Objector's only objection is that the Candidate has "failed to clarify" whether he is seeking nomination or election or to office. Relying on case law, the Hearing Officer concluded that the Candidate's failure to circle the word "nomination" or "election" did not affect the substance of the information contained in the Statement of Candidacy. Accordingly, the Hearing Officer recommends that the Board find that the Statement is in substantially the form required by Section 7-10.

Based on the foregoing, the Hearing Officer recommends that the Candidate's Motion to Dismiss be denied, the Objector's Objection be overruled and the Candidate's name be certified to the ballot as a Democratic Party candidate for the office of Circuit Court Judge in the 20th Judicial Circuit, Baricevic vacancy.

Recommendation of the General Counsel: The General Counsel concurs in the Hearing Officer's recommendation.

**BEFORE THE DULY CONSTITUTED ELECTORAL BOARD FOR THE HEARING
AND PASSING UPON OBJECTIONS TO THE NOMINATION PAPERS FOR
CANDIDATES FOR THE OFFICE OF CIRCUIT COURT JUDGE IN THE 20TH
JUDICIAL CIRCUIT OF THE STATE OF ILLINOIS**

Dallas B. Cook)

)

Petitioner –Objector,)

Vs.

ORIGINAL ON FILE AT
STATE BD OF ELECTIONS
ORIGINAL TIME STAMPED
AT 9:23 p 12/7/15 ak

Robert B. Haida)

)

Respondent-Candidate)

Now comes Dallas B. Cook (hereinafter referred to as the “Objector”), and states as follows:

1. **Dallas B. Cook** resides at 601 Lucinda Ave. Belleville, IL 62221, St. Clair County in the 20th Judicial Circuit of the State of Illinois; that he is duly qualified, registered and a legal voter at such address; that his interest in filing the following objections is that of a citizen desirous of seeing to it that the laws governing the filing of nomination papers for a Candidate for Election to the Office of Circuit Court Judge in the 20th Judicial Circuit of the State of Illinois, are properly complied with and that only qualified candidates have their names upon the ballot as candidates for said office.

2. Your Objector makes the following objections to the nomination papers of **Robert B. Haida** as a candidate for nomination of the Democratic Party to the Office of Circuit Court Judge in the 20th Judicial Circuit of the State of Illinois, and files the same herewith, and states that the said nomination papers are insufficient in law and in fact for the following reasons:

3. Your Objector states that in the Constitution of the State of Illinois, Article 6 Section 12 (d), requires all Circuit Court Judges to seek retention for the Office of Circuit Court Judge, and not re-election.

4. Your Objector states that in the Constitution of the State of Illinois, Article 6 Section 12 (d), requires all Circuit Court Judges to file for retention not less than six months before the general election preceding the expiration of his term of office.

5. Your Objector states **Robert B. Haida** failed to file nomination papers for retention as Circuit Court Judge

6. Your Objector states the Statement of Candidacy for **Robert B. Haida** failed to clarify if the candidate was running for nomination or election.

7. Your Objector states the candidate's petition, as filed, are not uniform or consistent. That are confusing and thus do not comply with the Election Code, and as such all sheets should be stricken. The Illinois Election Code requires that for each petition sheet, "the heading of each sheet shall be the same." 10 ILCS 5/7-10.

WHEREFORE, your Objector prays that purported nomination papers of **Robert B. Haida** as Candidate of the Democratic Party for nomination to the office of the Circuit Court Judge of the 20th Judicial Circuit of the State of Illinois be declared by this Honorable Electoral Board be insufficient and not in compliance with the laws of the State of Illinois and that the Candidate's name be stricken and that this Honorable Electoral Board enter its decision declaring that the candidate of the Democratic Party for nomination to the office of Circuit Court Judge in the 20th Judicial Circuit of the State of Illinois **BE NOT PRINTED** on the OFFICIAL BALLOT at the primary election to be held on March 15, 2016


Dallas B. Cook

**Cook v Baricevic
15 SOEB GP 109**

Candidate: John Baricevic

Office: Circuit Judge, 20th Judicial Circuit (Haida vacancy)

Party: Democratic

Objector: Dallas Cook

Attorney For Objector: Aaron Weishaar/Julie Poplstein

Attorney For Candidate: Michael Kasper

Number of Signatures Required:

Number of Signatures Submitted:

Number of Signatures Objected to:

Basis of Objection: Objector alleges that the nominating petition is insufficient in law and fact, in that (1) Article VI, Section 12(d) of the State Constitution requires all Circuit Court Judges to seek retention and not reelection for office; (2) Article VI, Section 12(d) of the State Constitution requires all Circuit Court Judges to file for retention not less than six months before the general election preceding the expiration of his term of office; (3) Candidate failed to file nomination papers for retention as Circuit Court Judge; (4) The statement of candidacy failed to clarify whether the Candidate was running for nomination or election; and (5) Candidate's petition pages were not uniform or consistent and do not satisfy Election Code requirements.

Dispositive Motions: Candidate's Motion to Dismiss, Objector's Memorandum In Opposition to Motion to Dismiss, Candidate's Reply to Motion to Dismiss

Binder Check Necessary:

Hearing Officer: David Herman

Hearing Officer Findings and Recommendations: The Candidate's Motion to Dismiss argued (1) That the Objection failed to allege that the Candidate does not satisfy eligibility criteria for office, and therefore does not present a basis for invalidation of the nominating petition; (2) The Candidate is eligible to seek the office by running in the general election; and (3) Candidate's nomination petition substantially complied with the Election Code. The Hearing Officer recommends that the Candidate's Motion to Dismiss be denied, in order to allow the development of a full and complete record.

The parties submitted Joint Reports stipulating to certain facts, and filed supplemental briefs regarding the Board's authority to rule on the question of whether the Candidate's action runs afoul of the State Constitution. A hearing was held on January 4, 2016.

Regarding the question whether the Board has authority to rule on the Objector's assertion that the Candidate's method of seeking election is contrary to the State Constitution, the Hearing Officer finds support in both statute (Section 10-10 of the Election Code) and case law for the Board's authority to consider whether a sitting judge is a qualified candidate for nomination at the primary and election at the general election. Therefore, the Hearing Officer recommends that the Board find it has authority to consider Objector's constitutionally-based objection.

With regard to the question as to whether a sitting judge is prohibited from seeking his party's nomination to run for the position of circuit judge at the primary and general elections, the Hearing Officer examined and analyzed relevant portions of the Illinois Constitution, the Election Code and state and federal case law, and considered the fully-briefed arguments of both parties, in concluding that when Article VI, Sections 11, 12(a) and 12(d) are given their plain and ordinary meanings and read in conjunction with one another, sitting judges have the option of seeking retention through the process set forth in Section 12(d) OR submitting petitions to have their name placed on the ballot at the primary and general elections as provided in Section 12(a). Accordingly, the Hearing Officer recommends that the Board overrule the Objector's Constitutionally-based objections to the Candidate's nominating petition.

Regarding the Objector's argument that the Candidate's Statement of Candidacy is invalid, the Hearing Officer examined Section 7-10, which requires the Statement to contain 6 specified criteria, and provides a form for candidates to use, noting that the Statement must substantially follow the form provided. The Hearing Officer noted that Candidate's Statement contains the Section 7-10 required information, and that Objector's only objection is that the Candidate has "failed to clarify" whether he is seeking nomination or election or to office. Relying on case law, the Hearing Officer concluded that the Candidate's failure to circle the word "nomination" or "election" did not affect the substance of the information contained in the Statement of Candidacy. Accordingly, the Hearing Officer recommends that the Board find that the Statement is in substantially the form required by Section 7-10.

Based on the foregoing, the Hearing Officer recommends that the Candidate's Motion to Dismiss be denied, the Objector's Objection be overruled and the Candidate's name be certified to the ballot as a Democratic Party candidate for the office of Circuit Court Judge in the 20th Judicial Circuit, Haida vacancy.

Recommendation of the General Counsel: The General Counsel concurs in the Hearing Officer's recommendation.

**BEFORE THE DULY CONSTITUTED ELECTORAL BOARD FOR THE HEARING
AND PASSING UPON OBJECTIONS TO THE NOMINATION PAPERS FOR
CANDIDATES FOR THE OFFICE OF CIRCUIT COURT JUDGE IN THE 20TH
JUDICIAL CIRCUIT OF THE STATE OF ILLINOIS**

Dallas B. Cook)
)
Petitioner –Objector,)

ORIGINAL ON FILE AT
STATE BD OF ELECTIONS
ORIGINAL TIME STAMPED
AT 4:24 12/7/15 Ah

Vs.

John Baricevic)
)
Respondent-Candidate)

Now comes Dallas B. Cook (hereinafter referred to as the “Objector”), and states as follows:

1. **Dallas B. Cook** resides at 601 Lucinda Ave. Belleville, IL 62221, St. Clair County in the 20th Judicial Circuit of the State of Illinois; that he is duly qualified, registered and a legal voter at such address; that his interest in filing the following objections is that of a citizen desirous of seeing to it that the laws governing the filing of nomination papers for a Candidate for Election to the Office of Circuit Court Judge in the 20th Judicial Circuit of the State of Illinois, are properly complied with and that only qualified candidates have their names upon the ballot as candidates for said office.

2. Your Objector makes the following objections to the nomination papers of **John Baricevic** as a candidate for nomination of the Democratic Party to the Office of Circuit Court Judge in the 20th Judicial Circuit of the State of Illinois, and files the same herewith, and states that the said nomination papers are insufficient in law and in fact for the following reasons:

3. Your Objector states that in the Constitution of the State of Illinois, Article 6 Section 12 (d), requires all Circuit Court Judges to seek retention for the Office of Circuit Court Judge, and not re-election.

4. Your Objector states that in the Constitution of the State of Illinois, Article 6 Section 12 (d), requires all Circuit Court Judges to file for retention not less than six months before the general election preceding the expiration of his term of office.

5. Your Objector states **John Baricevic** failed to file nomination papers for retention as Circuit Court Judge

6. Your Objector states the Statement of Candidacy for **John Baricevic**, failed to clarify if the candidate was running for nomination or election.

7. Your Objector states the candidate's petition, as filed, are not uniform or consistent. That are confusing and thus do not comply with the Election Code, and as such all sheets should be stricken. The Illinois Election Code requires that for each petition sheet, "the heading of each sheet shall be the same." 10 ILCS 5/7-10.

WHEREFORE, your Objector prays that purported nomination papers of **John Baricevic** as Candidate of the Democratic Party for nomination to the office of the Circuit Court Judge of the 20th Judicial Circuit of the State of Illinois be declared by this Honorable Electoral Board be insufficient and not in compliance with the laws of the State of Illinois and that the Candidate's name be stricken and that this Honorable Electoral Board enter its decision declaring that the candidate of the Democratic Party for nomination to the office of Circuit Court Judge in the 20th Judicial Circuit of the State of Illinois **BE NOT PRINTED** on the **OFFICIAL BALLOT** at the primary election to be held on March 15, 2016


Dallas B. Cook

**Cook v LeChien
15 SOEB GP 110**

Candidate: Robert LeChien

Office: Circuit Judge, 20th Judicial Circuit (LeChien vacancy)

Party: Democratic

Objector: Dallas Cook

Attorney For Objector: Aaron Weishaar/Julie Poplstein

Attorney For Candidate: Michael Kasper

Number of Signatures Required:

Number of Signatures Submitted:

Number of Signatures Objected to:

Basis of Objection: Objector alleges that the nominating petition is insufficient in law and fact, in that (1) Article VI, Section 12(d) of the State Constitution requires all Circuit Court Judges to seek retention and not reelection for office; (2) Article VI, Section 12(d) of the State Constitution requires all Circuit Court Judges to file for retention not less than six months before the general election preceding the expiration of his term of office; (3) Candidate failed to file nomination papers for retention as Circuit Court Judge; (4) The statement of candidacy failed to clarify whether the Candidate was running for nomination or election; and (5) Candidate's petition pages were not uniform or consistent and do not satisfy Election Code requirements.

Dispositive Motions: Candidate's Motion to Dismiss, Objector's Memorandum In Opposition to Motion to Dismiss, Candidate's Reply to Motion to Dismiss

Binder Check Necessary:

Hearing Officer: David Herman

Hearing Officer Findings and Recommendations: The Candidate's Motion to Dismiss argued (1) That the Objection failed to allege that the Candidate does not satisfy eligibility criteria for office, and therefore does not present a basis for invalidation of the nominating petition; (2) The Candidate is eligible to seek the office by running in the general election; and (3) Candidate's nomination petition substantially complied with the Election Code. The Hearing Officer recommends that the Candidate's Motion to Dismiss be denied, in order to allow the development of a full and complete record.

The parties submitted Joint Reports stipulating to certain facts, and filed supplemental briefs regarding the Board's authority to rule on the question of whether the Candidate's action runs afoul of the State Constitution. A hearing was held on January 4, 2016.

Regarding the question whether the Board has authority to rule on the Objector's assertion that the Candidate's method of seeking election is contrary to the State Constitution, the Hearing Officer finds support in both statute (Section 10-10 of the Election Code) and case law for the Board's authority to consider whether a sitting judge is a qualified candidate for nomination at the primary and election at the general election. Therefore, the Hearing Officer recommends that the Board find it has authority to consider Objector's constitutionally-based objection.

With regard to the question as to whether a sitting judge is prohibited from seeking his party's nomination to run for the position of circuit judge at the primary and general elections, the Hearing Officer examined and analyzed relevant portions of the Illinois Constitution, the Election Code and state and federal case law, and considered the fully-briefed arguments of both parties, in concluding that when Article VI, Sections 11, 12(a) and 12(d) are given their plain and ordinary meanings and read in conjunction with one another, sitting judges have the option of seeking retention through the process set forth in Section 12(d) OR submitting petitions to have their name placed on the ballot at the primary and general elections as provided in Section 12(a). Accordingly, the Hearing Officer recommends that the Board overrule the Objector's Constitutionally-based objections to the Candidate's nominating petition.

Regarding the Objector's argument that the Candidate's Statement of Candidacy is invalid, the Hearing Officer examined Section 7-10, which requires the Statement to contain 6 specified criteria, and provides a form for candidates to use, noting that the Statement must substantially follow the form provided. The Hearing Officer noted that Candidate's Statement contains the Section 7-10 required information, and that Objector's only objection is that the Candidate has "failed to clarify" whether he is seeking nomination or election or to office. Relying on case law, the Hearing Officer concluded that the Candidate's failure to circle the word "nomination" or "election" did not affect the substance of the information contained in the Statement of Candidacy. Accordingly, the Hearing Officer recommends that the Board find that the Statement is in substantially the form required by Section 7-10.

Based on the foregoing, the Hearing Officer recommends that the Candidate's Motion to Dismiss be denied, the Objector's Objection be overruled and the Candidate's name be certified to the ballot as a Democratic Party candidate for the office of Circuit Court Judge in the 20th Judicial Circuit, LeChemin vacancy.

Recommendation of the General Counsel: The General Counsel concurs in the Hearing Officer's recommendation.

**BEFORE THE DULY CONSTITUTED ELECTORAL BOARD FOR THE HEARING
AND PASSING UPON OBJECTIONS TO THE NOMINATION PAPERS FOR
CANDIDATES FOR THE OFFICE OF CIRCUIT COURT JUDGE IN THE 20TH
JUDICIAL CIRCUIT OF THE STATE OF ILLINOIS**

Dallas B. Cook)
)
Petitioner –Objector,)

ORIGINAL ON FILE AT
STATE BD OF ELECTIONS
ORIGINAL TIME STAMPED
AT 4:25P 12/7/15 alc

Vs.

Robert P. LeChien)
)
Respondent-Candidate)

Now comes Dallas B. Cook (hereinafter referred to as the “Objector”), and states as follows:

1. **Dallas B. Cook** resides at 601 Lucinda Ave. Belleville, IL 62221, St. Clair County in the 20th Judicial Circuit of the State of Illinois; that he is duly qualified, registered and a legal voter at such address; that his interest in filing the following objections is that of a citizen desirous of seeing to it that the laws governing the filing of nomination papers for a Candidate for Election to the Office of Circuit Court Judge in the 20th Judicial Circuit of the State of Illinois, are properly complied with and that only qualified candidates have their names upon the ballot as candidates for said office.

2. Your Objector makes the following objections to the nomination papers of **Robert P. LeChien** as a candidate for nomination of the Democratic Party to the Office of Circuit Court Judge in the 20th Judicial Circuit of the State of Illinois, and files the same herewith, and states that the said nomination papers are insufficient in law and in fact for the following reasons:

3. Your Objector states that in the Constitution of the State of Illinois, Article 6 Section 12 (d), requires all Circuit Court Judges to seek retention for the Office of Circuit Court Judge, and not re-election.

4. Your Objector states that in the Constitution of the State of Illinois, Article 6 Section 12 (d), requires all Circuit Court Judges to file for retention not less than six months before the general election preceding the expiration of his term of office.

5. Your Objector states **Robert P. LeChien** failed to file nomination papers for retention as Circuit Court Judge

6. Your Objector states the Statement of Candidacy for **Robert P. LeChien**, failed to clarify if the candidate was running for nomination or election.

7. Your Objector states the candidate's petition, as filed, are not uniform or consistent. That are confusing and thus do not comply with the Election Code, and as such all sheets should be stricken. The Illinois Election Code requires that for each petition sheet, "the heading of each sheet shall be the same." 10 ILCS 5/7-10.

WHEREFORE, your Objector prays that purported nomination papers of **Robert P. LeChien** as Candidate of the Democratic Party for nomination to the office of the Circuit Court Judge of the 20th Judicial Circuit of the State of Illinois be declared by this Honorable Electoral Board be insufficient and not in compliance with the laws of the State of Illinois and that the Candidate's name be stricken and that this Honorable Electoral Board enter its decision declaring that the candidate of the Democratic Party for nomination to the office of Circuit Court Judge in the 20th Judicial Circuit of the State of Illinois **BE NOT PRINTED** on the **OFFICIAL BALLOT** at the primary election to be held on March 15, 2016


Dallas B. Cook

**BEFORE THE DULY CONSTITUTED ELECTORAL BOARD
FOR THE HEARING AND PASSING UPON OBJECTIONS TO NOMINATION
PAPERS OF CANDIDATES FOR ELECTION TO THE OFFICE OF CIRCUIT COURT
JUDGE IN THE 20TH JUDICIAL CIRCUIT OF THE STATE OF ILLINOIS TO BE
VOTED FOR AT THE PRIMARY ELECTION TO BE HELD ON MARCH 15, 2016**

DALLAS B. COOK,)	
)	
Petitioner-Objector,)	
)	
vs.)	Case No. 15-SOEB-GP-108
)	Case No. 15-SOEB-GP-109
ROBERT B. HAIDA, JOHN BARICEVIC, and ROBERT P. LECHEIN,)	Case No. 15-SOEB-GP-110
)	
)	
Respondents-Candidates.)	

RECOMMENDATION OF HEARING EXAMINER

TO: Dallas B. Cook c/o Aaron G. Weishaar 812 North Collins Street St. Louis, MO 63102-2112 gweishaar@rwalawfirm.com	John Baricevic, Robert B. Haida, and Robert P. LeChein c/o Michael J. Kasper 222 N. LaSalle Street, Suite 300 Chicago, IL 60601 mjkasper60@mac.com
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Ken Menzel
 Illinois State Board of Elections
 2329 S. MacArthur Blvd.
 Springfield, IL 62704
kmenzel@elections.il.gov

These matters commenced on December 7, 2015, when Dallas B. Cook (hereinafter “Objector”) filed three almost identical objections¹ with the Illinois State Board of Elections. Objector alleged that the nomination papers of Robert Haida, John Baricevic, and Robert LeChein (collectively, the “Candidates”) for the Office of Circuit Court Judge in the 20th Judicial Circuit of the State of Illinois, were “insufficient in law and in fact.” While the three objections

¹ The Exhibits attached to this Recommendation are the pleadings filed in Cook v. Baricevic, 15 SOEB GP 109, and are representative of the filings in each of the individual cases.

(collectively, the “Objections”) were given separate case numbers², they have been consolidated for disposition.³ Relevant to this Recommendation, the Objector alleged that:

3. That Article VI, Section 12(d) of the Constitution of the State of Illinois requires all Circuit Court Judges to seek retention for the Office of Circuit Court Judge, and not re-election;
4. That Article VI, Section 12(d) of the Constitution of the State of Illinois requires all Circuit Court Judges to file for retention not less than six months before the general election preceding the expiration of his term of office;
5. That the Candidates failed to file nomination papers for retention as Circuit Court Judge; and
6. That the Statement of Candidacy for the Candidates failed to clarify if the Candidates were running for nomination or election.

Additionally, Paragraph 7 of the respective Objections alleged the Candidates’ petitions were not uniform or consistent, that they are confusing and thus do not comply with the Election Code and, as such, all sheets should be stricken. Paragraph 7 of each Objection further alleged that the Election Code requires that the heading of each sheet shall be the same pursuant to 10 ILCS 5/7-10. The Objector has since withdrawn the objections in Paragraph 7 of the respective Objections.⁴ The Objection filed in Cook v. Baricevic is attached hereto as Exhibit A.⁵

A Case Management Conference was conducted on December 14, 2015. That same day, this Hearing Examiner entered Case Management Orders in each case which contained dates by which certain filings should be made by the parties in the respective cases. On December 16, 2015, the Case Management Orders were amended, at the request of Objector’s counsel and with no objection from the Candidates’ counsel, to extend the deadlines by twenty-four hours.

On December 16, 2015, the Candidates each filed a Motion to Dismiss in which they argued that the respective Objections should be dismissed because they failed to allege that the Candidates do not satisfy any of the eligibility criteria for the office they seek and, therefore, the Objections do not present a basis for invalidating the Candidates’ nomination papers. The Candidates’ Motions to Dismiss argued that the Candidates are eligible to seek the office of

² Robert Haida (Case No. 15-SOEB-GP 108), John Baricevic (Case No. 15-SOEB-GP-109), and Robert LeChen (15-SOEB-GP-110).

³ The Objections involve identical issues. There is a minor difference in the nomination papers of each Candidate in that Baricevic’s papers indicate he is running for the vacancy of Haida, Haida’s nomination papers indicate he is running for the vacancy of Baricevic, and LeChen’s nomination papers indicate he is running for his own vacancy.

⁴ The Objector withdrew the objections found in Paragraph 7 of each Objection at the January 4, 2016 hearing. See Transcript of January 4, 2016 Hearing, at pg. 5.

⁵ Because the Objections involve identical issues, the filings in each case were identical. In order to avoid having multiple identical exhibits, the exhibits cited by the Hearing Examiner will be those filed in Cook v. Baricevic.

Circuit Court Judge by running in the general election. Specifically, the Candidates contended the plain language contained in Article VI, Section 11, Section 12(a) and Section 12(d) of the Illinois Constitution establishes that the Candidates may seek election to the office of Circuit Court Judge. The Candidates' Motions to Dismiss further argued that the Candidates' nomination papers and Statements of Candidacy substantially complied with the provisions of the Election Code and the failure to circle the word "nomination" or "election" on a Candidates' nomination papers does not form a basis for rendering those papers invalid. See Exhibit B.

On December 17, 2015, the Objector submitted his Brief in Support of his Objection (Exhibit C). Generally, the Objector's Brief argued that allowing the Candidates to seek election, as opposed to retention, runs afoul of the Illinois Constitution. Additionally, on December 19, 2015, the Objector filed his Memorandums in Opposition to each Candidate's Motion to Dismiss (hereinafter "Memorandum in Opposition", Exhibit D). In his Memorandum in Opposition, the Objector argued that Article VI, Section 12(d) of the Illinois Constitution gives a sitting judge two alternatives: (1) run for retention, or (2) "just go away." The Objector further argued, among other things, that once elected, judges are prohibited from engaging in political activities and hence, they are to seek re-election through the non-partisan retention ballot if they wish to remain on the bench. The Objector maintained that Article VI, Section 12(d) of the Illinois Constitution was created to ensure the non-partisanship of the judiciary.

On December 22, 2015, each Candidate filed their respective Reply Regarding His Motion to Dismiss the Objector's Petition (hereinafter, collectively referred to as "Replies", Exhibit E). In their Replies, the Candidates argued that the language contained in Article VI, Section 12(a) of the Illinois Constitution allows for the Candidates to seek election to the Office of Circuit Court Judge because the Candidates meet the eligibility criteria for said office pursuant to the language in Article VI, Section 11. The Candidates further contend that the "political arguments" contained in the Objector's Memoranda in Opposition are not relevant to the validity of the Candidates' nomination papers and that whether the Candidates are running for retention or seeking election, the Candidates would still have to solicit campaign contributions in order to persuade voters to support their candidacy for retention or election.

The Objector and the Candidates have filed Joint Reports which stipulate to the following facts: (1) the Candidates are presently the Judges of the 20th Judicial Circuit for the State of Illinois; (2) the Candidates' terms are set to expire on December 4, 2016; (3) the Candidates submitted their resignations as Judges in the 20th Judicial Circuit with an effective date of December 4, 2016; (4) their resignations, with an effective date of December 4, 2016, create vacancies in the 20th Judicial Circuit for Circuit Judge effective at the end of their respective terms; (5) Supreme Court Chief Judge Garman has certified the vacancies; (6) the Candidates filed their statements of candidacy with the Illinois Board of Elections as candidates for the 20th Judicial Circuit specifying the vacancies they seek at the March 15, 2016 primary election; and (7) the Candidates are not seeking election at the November 2016 general election by retention. See Exhibit F.

The Parties, pursuant to this Hearing Examiner's request, submitted supplemental briefs regarding the State Board of Election's authority to rule on the question of whether the Candidates' actions run afoul of the Illinois Constitution. See Exhibits G and H.

A hearing was conducted on January 4, 2016 at which counsel for both the Objector and the Candidates presented arguments. The transcript of that hearing is attached hereto as Exhibit I.

ANALYSIS

As set forth above, the Objector's objections to the Candidates' nomination papers are two-fold. First, the Objector maintains that the Illinois Constitution prohibits a sitting circuit court judge from seeking election to that position through any method other than the retention process set forth in Article VI, Section 12(d) of the Illinois Constitution. In other words, the Candidates are not qualified to seek election through the method they have chosen because they are sitting judges. Second, the Objector contends that Candidates' respective Statements of Candidacy are invalid because they fail to clarify if the Candidates are running for nomination or election. These objections will be addressed in turn.

A. Candidates' Motion to Dismiss

The Hearing Examiner recommends that Candidates' Motion to Dismiss be denied to allow a full and complete record to be developed.

B. The State Board of Elections Has the Authority to Rule on a Constitutionally-Based Objection to Nomination Papers

As an initial matter, during the pendency of these proceedings, the issue of the State Board of Elections' authority to rule on the Objector's assertion that the Candidates' method of seeking election is contrary to the Illinois Constitution was discussed and briefed by the Parties.

"Section 10-10 of the Election Code (10 ILCS 5/10-10), which is applicable to judicial elections pursuant to [S]ection 7-12.1 of the Election Code (10 ILCS 5/7-12.1), limits the scope of an election board's inquiry with respect to nominating papers to ascertaining whether those papers comply with the governing provisions of the Election Code." Goodman v. Ward, 241 Ill. 2d 398, 411 (2011). In relevant part, Section 10-10 provides that the electoral board shall take up the question as to whether or not the certificate of nomination or nomination papers or petitions: (1) are in proper form; (2) were filed within the time and under the conditions required by law; (3) are the genuine certificate of nomination or nomination papers or petitions which they purport to be; and (4) in the case of the certificate of nomination in question, whether it represents accurately the decision of the caucus or convention issuing it. 10 ILCS 5/10-10. Moreover, the electoral board shall decide whether or not the certificate of nomination or nominating papers or petitions on file are valid or whether the objections thereto should be sustained. 10 ILCS 5/10-10.

"As a creature of statute, the Board may exercise only the powers conferred upon it by the legislature." Nader v. Ill. State Bd. of Elections, 354 Ill. App. 3d 335, 340 (1st Dist. 2004), citing Kozel v. State Board of Elections, 126 Ill. 2d 58, 68 (1988). "Administrative agencies such as the electoral board have no authority to declare statutes unconstitutional or even to

question their validity. When they do so, their actions are a nullity and cannot be upheld.” Goodman, 241 Ill. 2d at 411 (citations omitted); see also Bryant v. Bd. of Election Comm’rs, 224 Ill. 2d 473, 476 (2007). However, the fact an electoral board does not have the authority to declare a statute unconstitutional does not mean the electoral board does not have authority to consider constitutionally based challenges. In fact, an electoral board’s authority to do so is provided in Section 10-10 of the Election Code. See Zurek v. Petersen, 2015 IL App (1st) 150456, ¶¶ 33-34 (1st Dist. 2015).

In finding that Section 10-10 of the Election Code provides authority to consider constitutionally based challenges to referenda, the Zurek court cited the Illinois Supreme Court’s decision in Lipinski v. Chicago Bd. of Election Comm’rs, 114 Ill. 2d 95 (1986), and relied on that court’s “implicit” recognition of the authority of election boards to consider constitutionally-based objections to a proposed referendum. Zurek, 2015 IL App (1st) 150456, ¶ 36. While Zurek and Lipinski involved challenges to referenda, it is notable that the Zurek court cited Section 10-10 as the authority for the electoral board to consider constitutionally-based objections to referenda. This is notable because Section 10-10 is also applicable in this case since, as discussed above, Section 10-10 is applicable to judicial elections. Goodman, 241 Ill. 2d at 411. The Hearing Examiner recognizes that Zurek is a Rule 23 Order. However, the Hearing Examiner finds that court’s reasoning and reliance on Lipinski to be persuasive. The Hearing Examiner finds further support for the State Board of Election’s authority to rule on constitutionally-based challenges in the Illinois Supreme Court’s decision in Johnson v. State Board of Elections, 57 Ill. 2d 205 (1974). In the very first sentence of that decision the court stated that “[i]n this action the circuit court of Sangamon County held that the State Board of Elections had erroneously construed the Constitution and the applicable statutes in ruling that candidates for judicial vacancies must run on a ‘head-on-head’ rather than a ‘field’ basis.” Johnson, 57 Ill. 2d at 206. In its ruling, the Johnson court never indicated that the State Board of Elections did not have the authority to construe the Illinois Constitution.

In this case, the Objector does not seek a declaration that any statute or law is unconstitutional. Instead, the Objector states that he is asking the State Board of Elections to determine whether the State’s election laws allow the Candidate “to announce his resignation effective the end of his term and at the same time be permitted to run for re-election to his own job.” Objector’s Supplemental Authority, at pg. 3. The Candidates reply that the Objector is not seeking a determination of whether the Candidate’s nominating papers comply with the Election Code, but instead are seeking to determine whether the Candidate has complied with the Illinois Constitution. Candidates’ Supplemental Authority, at pg. 1. No matter how the issue is framed, the Hearing Examiner finds support in Section 10-10, Johnson, Lipinski, and Zurek for the State Board of Elections’ authority to consider whether these three sitting judges are qualified candidates for nomination at the primary and election at the general election. Therefore, the Hearing Examiner recommends that the State Board of Elections find it has the authority to consider Objector’s constitutionally-based objection to the Candidates’ respective candidacies.

C. The Illinois Constitution Does Not Prohibit These Candidates from Seeking Their Party's Nomination to Run for the Position of Circuit Judge at the Primary and General Elections

Article VI, Section 12(a) of the Illinois Constitution states, in part, that “[a] person eligible for the office of Judge may cause his name to appear on the ballot as a candidate for Judge at the primary and at the general or judicial elections by submitting petitions. The General Assembly shall prescribe by law the requirements for petitions.” Illinois Const., Art. VI, § 12(a). A person is eligible to be a judge if they are a United States citizen, a licensed attorney of Illinois, and a resident of the unit which selects him. Illinois Const., Art. VI, § 11. The Objector does not assert that any of the Candidates do not meet the requirements set forth in Article VI, Section 11. See Transcript, at pg. 24.

Instead, the Objections are rooted in the Objector's interpretation of Article VI, Section 12(d) of the Illinois Constitution, which states as follows in pertinent part: “Not less than six months before the general election preceding the expiration of his term of office, a Supreme, Appellate or Circuit Judge who has been elected to that office may file in the office of the Secretary of State a declaration of candidacy to succeed himself.” Illinois Const., Art. VI, § 12(d). The Objector alleges, in Paragraphs 3 through 5 of the Objections respectively, that: (1) Article VI, Section 12(d) of the Illinois Constitution requires all circuit judges to seek retention rather than re-election; (2) Article VI, Section 12(d) of the Illinois Constitution requires all circuit judges to file for retention not less than six months preceding the expiration of his term of office; and (3) that the Candidate failed to file nomination papers for retention as circuit court judge. In short, the Objector argues that because the Candidates are sitting judges, they must seek retention if they want to serve another term.

The Objector supported those specific objections with argument in his Responses to the Candidates' Motions to Dismiss, Briefs in Support of His Objections to the Nomination Papers, Supplemental Briefs, and at the January 4, 2016 hearing. In sum, the Objector argues that Article VI, Section 12(d) should be interpreted to mean that a sitting judge may either seek retention to stay on the bench or he or she can walk away at the end of the term. See Objector's Response to the Motions to Dismiss, at pg. 4; see also Briefs in Support of His Objections to the Nomination Papers, at pg. 2. The Objector states that it is clear “that we must look beyond the plain language of the section to ascertain the proper intent of the framers of the [sic] when setting up the retention process for sitting judges.” Objector's Response to the Motions to Dismiss, at pg. 4. The Objector supports his interpretation by reference to sources other than the plain language of the Illinois Constitution including the Historical Notes to Article VI of the Constitution, the 2016 Candidates' Guide, and public policy.

In his Supplemental Briefs and at the January 4, 2016 hearing, the Objector argued that 10 ILCS 5/7A-1 supports his interpretation of Article VI, Section 12(d). Objector's Supplemental Briefs, at pg. 4; Transcript at pgs. 7-8.⁶ That statute states that any “Circuit Judge who has been elected to that office and who seeks to be retained in that office under subsection

⁶ The Hearing Examiner notes the Objections did not reference Section 7A-1. “The [Election] Code does not authorize amendments to the objection.” *Reyes v. Bloomington Twp. Electoral Bd.*, 265 Ill. App. 3d 69, 72 (2d Dist. 1994). Notwithstanding, the Hearing Examiner addresses this argument to develop a full and complete record.

(d) of Section 12 of Article VI of the Constitution [Ill. Const. (1970) Art. VII, § 12] shall file a declaration of candidacy to succeed himself in the office of the Secretary of State not less than 6 months before the general election preceding the expiration of his term of office.” 10 ILCS 5/7A-1.

“The court must ascertain the plain and ordinary meaning of the relevant constitutional and statutory provisions in the constitutional and legislative contexts in which they appear. The constitution must be read and understood according to the most natural and obvious meaning of the language in order to avoid eliminating or extending its operation. Where the words of the constitution are clear, explicit, and unambiguous, there is no need for a court to engage in construction.” Maddux v. Blagojevich, 233 Ill. 2d 508, 523 (2009) (citations omitted.). Moreover, “a basic rule of statutory construction forbids a court to canvass legislative history for evidence of legislative intent if the meaning of a provision can be determined from its text. That principle applies equally to constitutional interpretation.” Nevitt v. Langfelder, 157 Ill. 2d 116, 134 (1993) (citations omitted). In Nevitt, after determining the plain language of the constitutional provisions at issue did not support the defendants’ interpretation, the Illinois Supreme Court stated that it “should have no occasion to consult the convention debates of those provisions.” 157 Ill. 2d at 134. Finally, “it is never proper for a court to depart from plain language by reading into a statute exceptions, limitations, or conditions which conflict with the clearly expressed legislative intent.” County of Knox ex rel. Masterson v. Highlands, 188 Ill. 2d 546, 556 (1999).

The Objector reads Article VI, Section 12(d) as if it states that “a Judge who has been elected to that office and seeks to serve another term must file in the office of the Secretary of State a declaration of candidacy to succeed himself.” The plain language of Article VI, Section 12(d) does not support such an interpretation. As stated, that section states that a sitting judge who has been elected to that office “may” file a declaration of candidacy to succeed himself. The use of the term “may” indicates permissiveness. See Jackson-Hicks v. East St. Louis Bd. of Election Comm’rs, 2015 IL 118929, ¶ 27 (stating “It is true that use of the word ‘may’ is generally regarded as indicating a permissive or directory reading”). Given a permissive reading of the term “may”, Section 12(d) is interpreted to mean that although a sitting judge may file a declaration of candidacy to succeed himself, he is not required to. The Hearing Examiner notes that the Objector has cited City of Chicago v. Groffman, 354 N.E.2d 572 (1st Dist. 1976) and Lampe v. Ascher, 376 N.E. 2d 74 (4th Dist. 1978) as support for his argument that the term “may” can be interpreted as mandatory.⁷ The Hearing Examiner does not read these cases as requiring the interpretation asserted by the Objector.

Additionally, it has long been held that “[a] constitution is adopted as a whole, for the purpose of establishing fixed principles and policies of government, and it is the established rule that in arriving at the intention of its framers the whole instrument is to be looked at and every section relating to the subject is to be examined. The meaning of one clause or section is frequently determined by comparison with other sections, and the constitution is to be interpreted not alone from words used in a particular clause, but upon a consideration of the whole, with a

⁷ The Hearing Examiner notes that the Objector does not assert the term “may” as used in Article VI, Section 12(d) should be simply interpreted as “shall.” See Memorandum in Opposition to Candidates’ Motions to Dismiss, at pg. 3.

view to ascertain the sense in which the words are employed.” Foreman v. People, 209 Ill. 567, 572 (1904). Accordingly, it is appropriate to consider Article VI, Section 12(a) and Section 11 in conjunction with Section 12(d). As stated, Article VI, Section 12(a) of the Illinois Constitution states a person who is eligible to be a judge can cause their name to be on the ballot in primary, general, and judicial elections by submitting petitions. There is no exclusion for sitting judges. In other words, Section 12(a) does not say that “a person who is eligible to be a judge, except sitting judges, can cause their name to be on the ballot by submitting petitions.” Nor does Section 11, which contains the eligibility requirements for the office of judge, contain any exclusion for sitting judges. If Section 12(d) was interpreted as Objector proposes, such an interpretation would be in conflict with both Section 12(a) and Section 11.

Moreover, the Hearing Examiner finds the Objector’s citation to 10 ILCS 5/7A-1 as support for his interpretation of Article VI, Section 12(d) to be unavailing. That statute merely states that a sitting circuit judge who was elected to that office and “who seeks to be retained in that office under subsection (d) of Section 12 of Article VI of the Constitution shall file a declaration of candidacy to succeed himself in the office of the Secretary of State not less than 6 months before the general election preceding the expiration of his term of office.” 10 ILCS 5/7A-1. This statute does not apply in this case because the Candidates are not seeking to be retained in their respective offices under Article VI, Section 12(d) of the Illinois Constitution. They are seeking election under Article VI, Section 12(a).

The Parties have not provided any authority where the court directly addressed the ability of a sitting judge to seek election rather than retention in light of the language of Article VI, Section 12(d) of the Illinois Constitution. However, the United States District Court for the Northern District of Illinois touched on the issue in Lefkovits v. State Board of Elections, 400 F. Supp. 1005 (N.D. Ill. 1975). See Exhibit J. Lefkovits involved a challenge to the three-fifths majority requirement in Article VI, Section 12(d) based upon the allegation that such a requirement for retention violated the Illinois and United States Constitutions. Lefkovits, 400 F. Supp. at 1006. Judge Marshall discussed the Illinois court system, how judges are elected, and the system of retention. Lefkovits, 400 F. Supp. 1007-08. In his discussion, Judge Marshall discussed Article VI, Section 12(d) of the Illinois Constitution. Lefkovits, 400 F. Supp. 1008. Shortly thereafter, Judge Marshall stated as follows:

If a judge is eligible to seek retention, he apparently need not do so. He could run for reelection, which requires only a plurality of the vote, but he would also have to gain renomination through a primary or petition. As a consequence, no judge eligible for retention has sought reelection.

Lefkovits, 400 F. Supp. at 1008. While this statement was not central to the decision in Lefkovits, the Hearing Examiner finds Judge Marshall’s analysis of the relevant law and the above statement, which addresses the issue involved in this case, as supportive of the Hearing Examiner’s interpretation.

In sum, when Article VI, Sections 11, 12(a), and 12(d) are given their plain and ordinary meanings and read in conjunction with one another, sitting judges have the option of seeking retention through the process set forth in Section 12(d) or submitting petitions to have their name

to be put on the ballot at the primary and general elections as provided in Section 12(a). The plain and ordinary meaning of the language in Article VI, Section 12(d) of the Illinois Constitution does not require a sitting judge who desires to serve another term to seek retention. Rather, that section states that a sitting judge “may” seek retention. Article VI, Section 12(a) states that a person “eligible” for the office of judge may cause his or name to appear on the ballot as candidate for judge at the primary and at the general or judicial elections by submitting petitions. Article VI, Section 12(a) does not exclude sitting judges. Moreover, Article VI, Section 11 of the Illinois Constitution says that to be eligible to be a judge, a person must be a United States citizen, a licensed attorney of Illinois, and a resident of the unit which selects him. The Objector does not contend the Candidates do not fulfill the requirements for eligibility under Article VI, Section 11. Finally, 10 ILCS 5/7A-1 does not apply as the Candidates are not seeking to be retained under Article VI, Section 12(d) of the Illinois Constitution. The Objector has offered no controlling authority supporting his interpretation of the Illinois Constitution which would restrict ballot access.⁸ For these reasons, Hearing Examiner recommends that the State Board of Elections overrule the Objector’s constitutionally based objections found in Paragraphs 3-5 of his respective Objections.

D. The Candidates’ Statements of Candidacy Are Not Invalid

In Paragraph 6 of his Objections, the Objector “states the Statement of Candidacy for [the Candidate] failed to clarify if the candidate was running for nomination or election.” This argument is based upon the Candidates’ failure to circle “nomination” or “election” on the statement of candidacy. The Candidate argues that his statement of candidacy substantially complies with the Election Code. For the reasons that follow, the Hearing Examiner concludes the Candidate’s statement of candidacy substantially complies with the requirements of the Election Code and, therefore, recommends that this objection be overruled.

The procedures by which the Candidates have sought to have their names appear on the ballot for the March 15, 2016, primary election are set forth in Article 7 of the Election Code (10 ILCS 5/7-1 *et seq.*). Section 7-10 of the Election Code states that a candidate’s name shall not be printed upon the primary ballot unless a petition for nomination has been filed in his behalf as provided in Article 7 of the Election Code. 10 ILCS 5/7-10. To meet the requirements of Section 7-10, a petition for nomination must include a statement of candidacy. 10 ILCS 5/7-10; see also Goodman, 241 Ill. 2d at 406. Section 7-10 requires a statement of candidacy to (1) contain the address of the candidate, (2) identify the office for which he or she is a candidate, (3) state that the candidate is a qualified primary voter of the party to which the petition relates and is qualified⁹ for the office specified, (4) state that he has filed (or will file before the close of the petition filing period) a statement of economic interests as required by the Illinois Governmental Ethics Act, (5) request that the candidate’s name be placed upon the official ballot, and (6) be subscribed and sworn to by such candidate before some officer authorized to take

⁸ Notably, at the January 4, 2016 hearing, counsel for the Objector acknowledged that when a judge loses in a retention election a vacancy is created that is filled by the Supreme Court until the next election at which the judge could seek election to that position. Transcript, at pg. 32.

⁹ The Illinois Supreme Court has stated that “[t]o be ‘qualified’ for judicial office within the meaning of [section 7-10], a person must meet the eligibility requirements set forth in section 11 of [A]rticle VI of the Illinois Constitution of 1970.” Goodman, 241 Ill. 2d at 407. These eligibility requirements are set forth in Section C, *supra*.

acknowledgment of deeds in the State. 10 ILCS 5/7-10. Section 7-10 also provides a form for candidates to use and states that the statement of candidacy must “substantially” follow that form. 10 ILCS 5/7-10.

The Parties have stipulated to the admissibility of each Candidates’ nomination papers, which include the Candidates’ statements of candidacy. A review of the statements of candidacy reveals that the statements of candidacy contain the required information set forth in Section 7-10. The Objector’s only objection with respect to the statements of candidacy is that the Candidates “failed to clarify” whether they were seeking “nomination” or “election.” The Objector has not addressed this issue in any of his filings subsequent to filing his objections.

“[B]allot access is a substantial right and not lightly to be denied.” Nolan v. Cook County Officers Electoral Board, 329 Ill. App. 3d 52, 55 (1st Dist. 2002) (quoting Reyes, 265 Ill. App. 3d at 71). “The Illinois Supreme Court has held that the statement of candidacy only need be sufficient to determine the office the person is running for and whether the candidate is qualified; substantial compliance is sufficient.” Towns v. Cowen, 786 F. Supp. 699, 701 (N.D. Ill. 1992) (citations omitted), citing Lewis v. Dunne, 63 Ill. 2d 48 (1978). “A minor error in a candidate’s nominating papers should not result in a candidate’s removal from the ballot. Moreover, substantial compliance with the Election Code is acceptable when the invalidating charge concerns a technical violation that does not affect the legislative intent to guarantee a fair and honest election.” Siegel v. Lake County Officers Electoral Bd., 385 Ill. App. 3d 452, 461 (2d Dist. 2008) (citations omitted); see also Sullivan v. County Officers Electoral Bd., 225 Ill. App. 3d 691, 693 (2d Dist. 1992) (stating that a minor error in a nominating petition should not result in a candidate’s removal from the ballot).

To the extent the Objector argues the failure to circle the word “nomination” or “election” requires a finding that the statement of candidacy is not “substantially” in the form required by Section 7-10, such an argument is unavailing. In Crossman v. Bd. of Election Comm’rs, 2012 IL App (1st) 120291, ¶¶ 16-18, the court rejected the argument that a statement of candidacy was invalid because changes were made to the statement of candidacy, including circling the word “nomination”, after the statement of candidacy had been signed and notarized. The court stated that the information in the statement of candidacy was sufficient to relate that the candidate was seeking to run for the office of State Senator of the 12th District in the Democratic primary. Crossman, 2012 IL App (1st) 120291, ¶ 18. Therefore, the court concluded the statement of candidacy substantially complied with the Section 8-8 of the Election Code’s (10 ILCS 5/8-8) requirements prior to the changes and that those changes were merely cosmetic and did not affect the substance of the information set forth therein. Crossman, 2012 IL App (1st) 120291, ¶ 18.¹⁰

In the case *sub judice*, the Candidates’ respective statements of candidacy contain the information required by Section 7-10. The Objector’s Objections go to the requirement of Section 7-10 that the statements of candidacy be substantially in the form provided in the statute.

¹⁰ Section 8-8 of the Election Code governs the form of petitions for nomination for members of the General Assembly and requires candidates for the General Assembly to file a statement of candidacy setting forth the same information that is required by the statement of candidacy required by Section 7-10. Compare 10 ILCS 5/8-8 and 10 ILCS 5/7-10.

The only deficiency identified by the Objector is that the statements of candidacy fail to clarify whether the candidates were seeking nomination or election. Essentially, the Objector is complaining that the Candidates did not circle the word "election" or "nomination." Like in Crossman, the Candidates' failure to circle the word "nomination" or "election" did not affect the substance of the information set forth in their statements of candidacy. The Candidates' statements of candidacy are substantially in the form required by Section 7-10.

To the extent the Objector contends the statement of candidacy must be in the exact form set forth by Section 7-10, that argument must fail. "If the legislature had intended to require that the nominating petition be in the exact form as set out in [S]ection 7-10, it would not have used the word 'substantially.'" O'Connor v. Cook County Officers Electoral Bd., 281 Ill. App. 3d 1108, 1113 (1st Dist. 1996).

Based upon the language of Section 7-10, and the reasoning in Crossman and O'Connor, the Hearing Examiner recommends that the Objection to the Candidates' statements of candidacy be overruled.

CONCLUSION

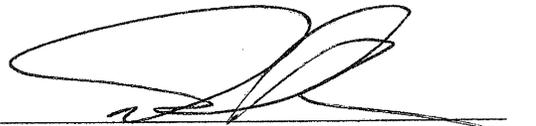
In summary, the Hearing Examiner recommends that the State Board of Elections overrule the Objections in Case Numbers 15-SOEB-GP-108, 15-SOEB-GP-109, and 15-SOEB-GP-110.

When Article VI, Sections 11, 12(a), and 12(d) are given their plain and ordinary meanings and read in conjunction with one another, sitting judges have the option of either seeking retention through the process set forth in Section 12(d) or seeking election by submitting petitions to have their name to be put on the ballot at the primary and general elections as provided in Section 12(a). Accordingly, the Objector's constitutionally-based challenge to the Candidates' names being on the ballot should be overruled.

Because the Candidates' statements of candidacy meet the requirements of 10 ILCS 5/7-10 and are in substantially the form required by that section, the Hearing Examiner recommends that the Objections to the statements of candidacy be overruled.

DATED: _____

1/15/14



David A. Herman, Hearing Examiner

CERTIFICATE OF SERVICE

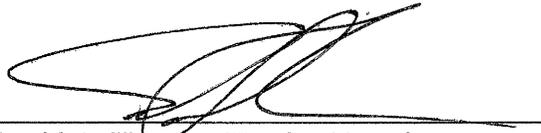
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from the office of the undersigned this 15th day of January, 2016.



David A. Herman, Hearing Examiner