

STATE BOARD OF ELECTIONS
STATE OF ILLINOIS

1020 South Spring Street, P.O. Box 4187
Springfield, Illinois 62708
217/782-4141 TTY: 217/782-1518
Fax: 217/782-5959

James R. Thompson Center
100 West Randolph, Suite 14-100
Chicago, Illinois 60601
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EXECUTIVE DIRECTOR
Daniel W. White

BOARD MEMBERS
Bryan A. Schneider, Chairman
Wanda L. Rednour, Vice Chairman
Patrick A. Brady
John R. Keith
William M. McGuffage
Albert S. Porter
Jesse R. Smart
Robert J. Walters

AGENDA
STATE BOARD OF ELECTIONS
SPECIAL BOARD MEETING
Sitting as the Duly Authorized
State Officers Electoral Board
Thursday, December 17, 2009
9:30 a.m.

via videoconference at the following locations:

1020 South Spring Street
Springfield, Illinois

James R. Thompson Center
Suite 14-100
Chicago, Illinois

Lewis & Clark College
Room Haskell 106
5800 Godfrey Road
Godfrey, Illinois

1. Call State Board of Elections to order.
2. Recess as the State Board of Elections and convene as the State Officers Electoral Board.
3. Consideration of objections to candidates' nominating petitions for the General Primary Election;
 - a. *Hamos v. Mayers*, 09SOEBGP501;
 - b. *Bartholomae v. Castillo*, 09SOEBGP506;
 - c. ~~*True v. Zadek*, 09SOEBGP511;~~ (candidate withdrew)
 - d. *Reeves v. McQuillan*, 09SOEBGP513;
 - e. *Pituc v. Mayers*, 09SOEBGP515;
 - f. ~~*Dortch v. Walls, III*, 09SOEBGP516;~~ (candidate withdrew)
 - g. *Dunaway v. Scanlan*, 09SOEBGP518;
 - h. *Rosenzweig v. Hebda*, 09SOEBGP521;
 - i. *Cattron v. Kairis*, 09SOEBGP523;
 - j. *Wagner v. Barnes*, 09SOEBGP524;
 - k. *Reidy v. Pilmer*, 09SOEBGP528;
 - l. *Else v. Moy*, 09SOEBGP529;
 - m. *Barnes, Hendon v. Turner*, 09SOEBGP531.
4. Other business.
5. Recess as the State Officers Electoral Board until the call of the Chairman.
6. Reconvene as the State Board of Elections.
7. Consideration of pending candidate withdrawals.

- 8. Other business.**
- 9. Executive session (if necessary).**
- 10. Adjourn until Tuesday, January 19, 2010 at 10:30 a.m. or until call of the Chairman, whichever occurs first.**

Hamos v. Mayers
09 SOEB GP 501

Candidate: Richard B. Mayers

Office: Congressman, 10th Congressional District

Party: Green

Objector: Julie Hamos

Attorney For Objector: Mike Kreloff

Attorney For Candidate: Pro Se

Number of Signatures Required: No less than 23

Number of Signatures Submitted: 31

Number of Signatures Objected to: 9

Basis of Objection: The Candidate's petition signature sheets contain (1) the names of persons who are not duly qualified, registered, and legal voters at the addresses shown, (2) the names of persons who did not sign the petition signature sheets in their own proper persons, and the signatures are not genuine, and (3) the names of persons who are not duly qualified, registered, and legal voters at addresses which are located within the boundaries of the 10th Congressional District of the State of Illinois.

Dispositive Motions: None filed.

Binder Check Necessary: Yes

Hearing Officer: Chris Cohen

Hearing Officer Findings and Recommendation: In light of the results of the records examination conducted by staff of the SBE, it was found that the candidate had a total of 26 valid signatures (5 objections were sustained and 4 were overruled. Based on the petition containing a sufficient number of signatures to qualify for the ballot, the recommendation is that the objection be overruled and that the name of the candidate be printed on the 2010 General Primary Election ballot.

Recommendation of the General Counsel: I concur with the recommendation of the Hearing Officer. I do note that in the last paragraph of his Recommendation, he cites Section 10-2 as the basis for the signature requirement of a candidate of the Green Party for the office of Congressman, 10th District. Since the Green Party is established in Illinois, the correct citation is Section 7-10(b).

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

STATE BOARD OF ELECTIONS SITTING AS THE DULY CONSTITUTED STATE OFFICERS
ELECTORAL BOARD
STATE OF ILLINOIS

IN THE MATTER OF:
JULIE HAMOS

Objector,

vs.

RICHARD B. MAYERS

Candidate.

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09 SOEB GP 501

HEARING EXAMINER'S REPORT AND RECOMMENDATION

This matter having come before the State Board of Elections as the duly qualified Electoral Board and before the undersigned Hearing Examiner pursuant to Appointment and Notice issued previously, the Hearing Examiner makes the following Report and Recommendation:

On, November 2, 2009, at 5 pm, a certain set of nomination papers (the "Petition") was filed by Richard B. Mayers (the "Candidate") to nominate him as the candidate of the Green Party for the office of Representative in Congress for the 10th District in the February 2, 2010 General Primary. The Petition included various sheets containing a total of 31 signatures. The 2008 Candidate's Guide lists the minimum signature requirement for a Green Party candidate for this office as 23.

On November 9, 2009, a Verified Objectors Petition was timely filed by Julie Hamos (the "Objector"). The Objection alleged that the Petition contained an insufficient number of valid signatures to qualify the Candidate for the ballot. No other issue or point of objection was raised by the Objection. Attached to the Objection was an Appendix consisting of four pages -- one for each page of the Candidate's Petition Sheets. Each of the Objector's pages contained lines corresponding to the line for signatures on the Candidate's Petition Sheets. Each also contained three columns for the three categories of the Objector's objections to signatures on the Candidate's Petition Sheets and one column for the respective petition line numbers. The columns were denominated as follows:

LINE	A Signer Not Registered at Address Shown	B Signer's Signature Not Genuine/Not in Proper Person	C Signer Not In District
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On November 17, 2009 the State Board of Elections (the "Board") met in its offices on the 14th floor of the James R. Thompson Building, 100 W. Randolph, Chicago, IL 60601 (the "JRT Building") as the duly constituted State Officers Election Board of the State of Illinois. Following this meeting, this hearing examiner held a case management conference in the above entitled case. The Objector was represented by counsel. Neither the Candidate nor any one else appeared for the Candidate. The hearing examiner continued the matter and attempted to reach the Candidate. The Candidate appeared later in the afternoon as did Objector's counsel. A case management conference was held with both parties and the hearing examiner. The Candidate provided a telephone number to contact him. He stated that he did not have access to email or fax services. No subpoenas were requested by either party pursuant to Rule 8 of the Board's Rules of Procedure on this date or at any other time during these proceedings.

During the case management meeting, a hearing was scheduled for November 25, 2009. Briefing deadlines were set for filing motions to strike objections, for filing responses to motions and for filing replies to responses, memoranda of law and other pleadings:

The Candidate timely submitted a hand written document requesting a "Recount of Signatures (binder check)." No other pleadings were filed by either party.

On November 25, 2009, the hearing examiner held a hearing to consider the motions and other pleadings. Counsel for the Objector appeared. Neither the Candidate nor any representative for him appeared.

THE PARTIES ARGUMENTS AND ANALYSIS

The Objector asserted that the Candidate did not have the minimum number of valid signatures on his petitions, because some signers were not registered at address shown, because some signer's signatures were not genuine or not in proper person and because some signers were not in the district. The Objector alleged that due to the defects and invalidities of numerous signatures, the Candidate had fewer than the minimum number needed pursuant to Section 10-2 of the Illinois Election Code (10 ILCS 5/10-2) to qualify for placement on the ballot, and thus should not be placed on the ballot.

The Candidate's pleadings alleged that he had at least 23 valid signatures, that the signers are registered to vote and that the signers are in the 10th Congressional District. The Candidate's pleadings requested a "Recount of Signatures (binder check)" and requested to be placed on the ballot.

At the November 25, 2009 hearing, a court reporter took stenographic notes. When the

Candidate did not appear, Objector's counsel requested that the Candidate be defaulted and that the Candidate's name not be placed on the ballot. The hearing examiner was mindful that in addition to this Case #09 SOEB GP 501 Hamos v Mayers, a records examination (binder check) was ordered in Case #09 SOEB GP 515 Pituc v Mayers regarding an objection to the same candidate based on an insufficient number of signatures. [The undersigned is also the Board's duly appointed hearing examiner in 09 SOEB GP 515 Pituc v Mayers.]

After considering all arguments at the November 25, 2009 hearing, the hearing examiner declined to recommend that the Candidate's name not be placed on the ballot and instead ordered a records examination as requested in the Objector's Petition and in the Candidate's pleadings. At no time on November 25, 2009 or subsequently did the Candidate file a motion for reconsideration, for rehearing or any other motion or pleadings.

Board staff scheduled a records examination for 2 pm, December 3, 2009 in the Board's JRT Building offices. The hearing examiner unsuccessfully attempted to contact the Candidate at the cell phone number he put on an appearance form but was able to speak with his mother and to explain the status of objection proceedings and to provide notice that a records examination would be held at 2 pm, December 3, 2009 in the Board's JRT Building offices. The Candidate is said to live at an address other than that of his parents. He was not available at the time of this phone conversation, but the mother promised to pass the message to him.

The hearing examiner was not present for this examination; however, he was informed by Board staff that the Candidate did appear. At some time after the records examination was completed, the Candidate was taken into custody by the Illinois State Police for allegedly directing profanities against a member of the Board's staff not involved in the records check and against the attorney for the Objector in 09 SOEB GP 515 Pituc v Mayers. Mr. Mayers is alleged to have used the f word and the n word. The hearing examiner was later informed that the Candidate was escorted from the premises, arrested for disorderly conduct and resisting arrest and released after posting \$100 bond.

Staff reported results of the records examinations regarding the Candidate's petitions to be as follows:

In 09 SOEB GP 501 Hamos v Mayers, Board staff sustained challenges to five signatures and overruled challenges as to four signatures reducing the Candidate's 31 total signatures to 26.

In 09 SOEB GP 515 Pituc v Mayers, Board staff sustained challenges to 10 signatures and overruled challenges as to seven signatures reducing the Candidate's 31 total signatures to 21.

The hearing examiner unsuccessfully attempted to contact the Candidate at the cell phone number he put on an appearance form but was able to speak with his father and to explain the status of objection proceedings and to provide notice that a hearing would be held at Noon, December 9, 2009 in the Board's JRT Building offices. The father said the Candidate lives at an address other than that of his parents and that the son was not available at the time of this phone conversation. The father promised to pass the message to his son including about the date and time of the upcoming hearing.

At the time for the December 9, 2009 hearing, the Candidate did not appear and the hearing commenced. A court reporter took stenographic notes. One attorney for each Objector in Cases #09 SOEB GP 501 Hamos v Mayers and #09 SOEB GP 515 Pituc v Mayers appeared. Results from the Board's staff were reviewed. The hearing examiner took official notice of the 2010 Candidate's Guide listing the minimum requirement for the Green Party in the 10th Congressional District as 23 signatures. The hearing examiner took notice of the result by Board staff of 26 valid signatures in the Objection filed in Case #09 SOEB GP 501. This Report and Recommendation does not take into account the result by Board staff in 09 SOEB GP 515.

Based upon the foregoing, the Hearing Examiner recommends that the Objection to the Candidate's Petition be denied.

Respectfully submitted,

Christopher B. Cohen
Hearing Examiner

Dated: December 14, 2009

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

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STATE BD OF ELECTIONS
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AT 2009 NOV 9 AM 8:31
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BEFORE THE DULY CONSTITUTED ELECTORAL BOARD
FOR THE HEARING OF AND PASSING UPON OBJECTIONS
TO THE NOMINATION PAPERS FOR CANDIDATES FOR THE OFFICE OF
REPRESENTATIVE IN CONGRESS, 10th CONGRESSIONAL DISTRICT
OF THE STATE OF ILLINOIS.

IN THE MATTER OF THE OBJECTIONS OF)
JULIE HAMOS TO THE NOMINATION PAPERS)
OF RICHARD B. MAYERS AS A CANDIDATE FOR)
NOMINATION TO THE OFFICE OF)
REPRESENTATIVE IN CONGRESS FOR THE 10TH)
CONGRESSIONAL DISTRICT OF THE STATE OF)
ILLINOIS TO BE VOTED UPON AT THE FEBRUARY)
2, 2010 PRIMARY ELECTION.)

VERIFIED OBJECTOR'S PETITION

NOW COMES JULIE HAMOS ("Objector"), and respectfully represents that Objector resides at 1008 Central Avenue, Wilmette, IL 60091, in the 10th Congressional District of the State of Illinois; that Objector is a duly qualified, registered, and legal voter at such address; that Objector's 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 nomination of the Green Party to the office of Representative in Congress in the 10th Congressional District of the State of Illinois are properly complied with and that only qualified candidates have their names appear upon the ballot as candidates for said office; and therefore Objector makes the following objections to the nomination papers of Richard B. Mayers ("Candidate") as a candidate for nomination of the Green Party to the office of Representative in Congress in the 10th Congressional District of the State of Illinois and states that said nomination papers are insufficient in law and fact for the following reasons:

1. Illinois law requires that nomination papers for nomination of the Green Party to the office of Representative in Congress in the 10th Congressional District of the State of Illinois contain the signatures of not less than 31 duly qualified, registered and legal voters of said district.

2. The Candidate has filed 4 petition signature sheets as a part of his nomination papers containing a total of 31 lines of alleged signatures of duly qualified, legal, and registered voters of the 10th Congressional District of the State of Illinois.

3. The petition signature sheets contain the names of numerous persons who are not in fact duly qualified, registered, and legal voters at the addresses shown opposite their names and their signatures are therefore invalid, as more fully set forth in the Appendix (attached hereto and made a part hereof) under the column designated "A – Signer Not Registered at Address Shown".

4. The petition signature sheets contain the names of numerous persons who did not sign the petition signature sheets in their own proper persons, and the signatures are not genuine, as more fully set forth in the Appendix (attached hereto and made a part hereof) under the column designated "B- Signer's Signature Not Genuine/Not In Proper Person".

5. The petition signature sheets contain the names of numerous persons who have signed the petition signature sheets but who are not, in fact, duly qualified, registered, and legal voters at addresses which are located within the boundaries of the 10th Congressional District of the State of Illinois, as shown by the addresses they indicated on the signature sheet, as more fully set forth in the Appendix (attached hereto and made a part hereof) under the column designated "C-Signer Not in District".

6. Due to the foregoing defects and invalidities of numerous signatures, the Candidate has remaining less than the statutorily required minimum of 31 signatures, rendering the Candidate's Nomination Papers insufficient and void.

WHEREFORE, Objector prays that the Nomination Papers of Richard B. Mayers ("Candidate") as a candidate for nomination of the Green Party to the office of Representative in Congress for the 10th Congressional District of the State of Illinois be declared by this Electoral Board to be insufficient and not in compliance with the laws of the State of Illinois and that the Candidate's name be stricken and that the Electoral Board enter its decision that the name of Richard B. Mayers as a candidate of the Green Party for nomination of the Green Party to the office of Representative in Congress for the 10th Congressional District of the State of Illinois be not printed on the official ballot for the Green Party at the Primary Election to be held on February 2, 2010.



JULIE HAMOS, OBJECTOR

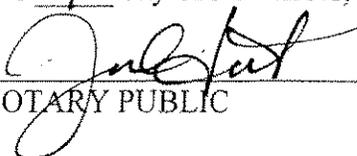
VERIFICATION

I, Julie Hamos, being first duly sworn on oath, state that I have read the foregoing Verified Objector's Petition and that the statements therein are true and correct to the best of my knowledge and belief.



JULIE HAMOS, OBJECTOR

Signed and sworn to before me, by Julie Hamos,
this 1 day of November, 2009.



NOTARY PUBLIC



Michael Kreloff
Attorney at Law
1926 Waukegan, Suite 310
Glenview, IL 60025
847.657.1020

ATTORNEY FOR OBJECTOR

**BEFORE THE STATE BOARD OF ELECTIONS
SITTING AS THE DULY AUTHORIZED
STATE OFFICERS ELECTORAL BOARD**

In the Matter of:)
WALER PITUC,)
Petitioner-Objector,)
)
v.)
)
RICHARD B. MAYERS,)
Respondent-Candidate)

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STATE BD OF ELECTIONS
ORIGINAL TIME STAMPED
AT 2:09 PM 9/14/10 *[Signature]*

No. 09 SOEB GP _____

VERIFIED OBJECTOR'S PETITION

Walter Pituc, hereinafter referred to as "Objector" states as follows:

1. The Objector, Walter Pituc, resides at 12 Arbor Court, Buffalo Grove, IL, and is a duly qualified, legal and registered voter at that address.
2. The Objector's interest in filing this Petition is that of a member of the Green Party in protecting the integrity of that organization and of its right of voluntary association and equal protection of the laws, and as a member of the voting public in ensuring that the laws of the State of Illinois governing the filing of nominating papers for Congressional office are properly complied with, and that only qualified candidates appear on the ballot for said office.
3. The Objector makes the following objections to the purported nominating papers of Respondent, Richard B. Mayers ("Nominating Papers"), who has filed said papers seeking to be placed on the February 2, 2010 General Primary as a Green Party candidate for Representative to the U.S. Congress of the 10th Congressional District:
 - A. The Illinois Green Party is a membership based voluntary association that requires all candidates to be actual members of the Party, subject to its guiding principles and By-laws. Respondent is not now, and has never been, a member of the Green Party, and does not subscribe to its guiding principles, and is therefore ineligible to serve as a Green Party candidate

for public office.

B. In order to be qualified to appear on the February 2, 2010 General Primary as the Green Party candidate for Representative to Congress of the 10th Congressional District, Respondent must submit petitions containing signatures from duly qualified, registered and legal voters of the State of Illinois, residing within the 10th Congressional District, in a number at least equal to 0.5% of the qualified primary electors of the Green Party in the 10th Congressional District. (10 ILCS 5/7-10(b)) The number of qualified primary electors is determined “by taking the total vote cast, in the applicable district, for the candidate for that political party who received the highest number of votes, statewide, at the last general election in the State at which electors for President of the United States were elected.” (10 ILCS 5/7-10) The applicable candidate, Kathy Cummings, received 4,611 votes for U.S. Senate in 2008 in the precincts within Cook and Lake Counties which are also within the 10th Congressional District. Therefore, the required minimum number of signatures is 24 ($4,611 * .005 = 23.055$).

C. The Nominating Papers contain petition sheets with the names of persons who are not registered voters at the addresses shown opposite their respective names, as is set forth in the Appendix attached hereto and incorporated herein, under the heading, Column A, “Signer Not Registered at Address Shown,” in violation of the Illinois Election Code.

D. The Nominating Papers contain petition sheets with the names of persons for whom the addresses shown are not located within the jurisdiction of the 10th Congressional District, as is set forth in the Appendix attached hereto and incorporated herein, under the heading, Column B, “Address Not Located Within the Relevant Jurisdiction,” in violation of the Illinois Election Code.

E. In addition, Respondent may not be a registered or eligible voter in Illinois,

nor meet the requirements of the Constitution, specifically, age, citizenship of the United States and residency in Illinois, as set forth in Article I, Section 2: "No person shall be a Representative who shall not have attained to the age of twenty five years, and been seven years a citizen of the United States, and who shall not, when elected, be an inhabitant of that state in which he shall be chosen."

4. As a consequence of the foregoing, the Nominating Papers contain less than the required number of signatures of duly qualified, registered and legal voters of the State of Illinois, residing within the 10th Congressional District and other defects. As a result, Richard B. Mayers is not eligible to run as a Green Party candidate for Representative to the U.S. Congress of the 10th Congressional District.

CONCLUSION

WHEREFORE, the Objector requests a hearing on the objections set forth herein, an examination by the aforesaid Electoral Board of the official records relating to voters in the applicable jurisdiction, to the extent that such examination is pertinent to any of the matters alleged herein, a ruling that the Nominating Papers are insufficient in law and fact, and a ruling that the name of Respondent, Richard B. Mayers, shall not appear and not be printed on the ballot of the Green Party for the February 2, 2010 General Primary as a candidate for Representative to the U.S. Congress of the 10th Congressional District.

State of Illinois)
) ss
County of Cook)

**BEFORE THE STATE BOARD OF ELECTIONS
SITTING AS THE DULY AUTHORIZED
STATE OFFICERS ELECTORAL BOARD**

In the Matter of:)
WALTER PITUC,)
Petitioner-Objectors,)
)
v.)
)
RICHARD B. MAYERS,)
Respondent-Candidate)

No. 09 SOEB GP _____

VERIFICATION

The undersigned being first duly sworn, deposes and states that he is the Objector in the above Verified Objector's Petition, that he has read the contents thereof, and that the allegations therein are true to the best of the undersigned's knowledge and belief.

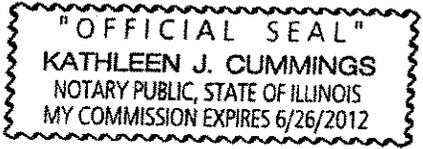
DATED: 11/08/09

Walter Pituc
Objector

Subscribed and sworn to before me, by Walter Pituc, on
11-8-09

(SEAL)

Kathleen Cummings
Notary Public



Bartholomae v. Castillo
09 SOEB GP 506

Candidate: Thomas Michael Castillo

Office: Lieutenant Governor

Party: Democratic

Objector: Kevin A. Bartholomae

Attorney For Objector: James P. Nally

Attorney For Candidate: Pro Se

Number of Signatures Required: No less than 5,000 and no more than 10,000

Number of Signatures Submitted: 8,006

Number of Signatures Objected to: 4,297

Basis of Objection: The nomination papers contain the names of persons (1) who did not sign the papers in their own proper persons, and therefore the signatures not genuine, (2) who are not registered at the addresses shown, (3) who do not reside in the State of Illinois, (4) who have set forth missing or incomplete addresses, (5) who have signed the petition sheets more than once, (6) who have not signed but have printed their signatures, and therefore the signatures are not genuine, and/or (7) whose signatures are insufficient and improper.

The nominations papers contain petition sheets which bear circulators' affidavits that (1) are not signed by the circulator, (2) are not signed by the circulator in his/her own proper person, and therefore the circulator signature is not genuine, (3) do not contain a complete circulator's address, (4) notary did not personally witness circulator sign, (5) are not properly sworn before a notary in that the notarial jurat is not in proper form, (6) are not notarized, (7) do not fully set forth the date, dates or range of dates on which the sheet was circulated, (8) bear a notarial jurat bearing the name of one notary but the signature of a different notary, (9) were signed by a circulator not of the legal age to circulate a petition, (10) the purported circulator did not actually obtain, solicit or witness the affixing of voters' signatures, and (11) contain a circulator address which is false. The nomination papers demonstrate a pattern of fraud.

Dispositive Motion Filed: Candidate filed a Motion to Strike contesting the pagination issue, citing King v. Justice Party to support his view that the gap in pagination was insignificant and not fatal to his petition. This issue is addressed in the recommendation below.

Binder Check Necessary: Yes

Hearing Officer: Barb Goodman

Hearing Officer Findings and Recommendation: Pursuant to the records examination, the candidate submitted a total of 5,351 valid signatures; 351 above the statutory minimum necessary to qualify for the office sought. Evidence was submitted in regards to the address of two circulators. After consideration of such evidence (witness testimony and an affidavit), the Hearing Officer declined to invalidate any pages circulated by these two circulators. Regarding the pagination issue, the hearing officer found the

gap in pagination to be insignificant and agreed with the candidate's reliance on King v. Justice Party, 672 N.E.2d 900 (1st Dist. 1996) that this "defect" is not fatal to the petition as a whole. In consideration of the results of the records exam, and finding in favor of the candidate on the pagination issue, the Hearing Officer recommends that the objection be overruled and that the candidate should be certified to appear on the General Primary Election Ballot.

Recommendation of the General Counsel: I concur with the recommendation of the Hearing Officer for the reasons stated in her Report.

BEFORE THE ILLINOIS STATE OFFICERS ELECTORAL BOARD

KEVIN BARTHOLOMAE)
)
 Objector)
)
-v-)
) 09 SOEB GP 506
THOMAS MICHAEL CASTILLO)
)
 Candidate)

HEARING EXAMINER’S REPORT AND RECOMMENDED DECISION

This matter was first heard on November 17, 2009. Objector appeared through counsel James Nally and candidate appeared pro se. Candidate filed a Motion to Strike and Dismiss and Objector filed a Response to Candidate’s Motion to Strike and Dismiss. The matter was sent to a records examination and consideration of the Motion to Strike was continued until the completion of the records examination.

At the completion of the records examination, the results were as follows:

Signatures filed:	8,006
Objections sustained:	2,655
Objections overruled:	1,642
Valid signatures:	5,351
Signatures required:	5,000
Signatures over the statutory minimum	351

Objector and Candidate filed Motions pursuant to paragraph 9 of the Board’s Rules of Procedure (Rule 9 Motion). The matter was set for further hearing on December 7, 2009. At the further hearing in the matter, Objector called John Castillo as a witness in support of his contention that Mr. Castillo did not reside at the address

on the nominating papers as alleged at paragraph 19 of the Objector's Petition. The sheets circulated by Mr. Castillo indicated that his residence address was 1628 Carriage Lane, Bourbonnais, Illinois. When called to testify, John Castillo indicated that he was the father of the candidate, that he was one of the circulators of the petition and that he circulated approximately forty (40) sheets of the candidate's petition. Mr. Castillo testified that he resided at 1628 Carriage Lane, Bourbonnais, Illinois and that he had resided there for approximately one year. Previous to that time, he resided on 55th Street in Chicago. (He could not recall the specific house number). Mr. Castillo produced an Illinois ID card issued on January 20, 2009 containing the Bourbonnais address. He also produced a receipt for a voter's registration card completed on August 25, 2009 containing the Bourbonnais address and indicating that his old registration on 55th Street in Chicago was being cancelled. He further produced correspondence from the Social Security Administration which was mailed to his Bourbonnais address. No further testimony or evidence was presented as to Circulator John Castillo.

Candidate produced an affidavit of Caesar Diaz, who the Objector had sought to subpoena but who was out of town at the time of the hearing. The affidavit indicated that Mr. Diaz was the circulator of sheets 653-680 and that he resided at 5633 W. 64th St., Chicago, the same address reflected on the petition sheets. Appended to the Affidavit was Mr. Diaz' Illinois ID card reflecting the residence address of 5633 W. 64th St., Chicago which was issued on July 7, 2009. The Affidavit was marked by the parties as Joint Exhibit 1. No further testimony or evidence was presented as to Circulator Caesar Diaz.

The issue of the purported deficiency in the page numbering of the petition sheets as alleged in Objector's Petition at paragraph 23 was also addressed. In his Objector's Petition, Objector contended that because the petition contain sheets 572a and 572b with the next numbered sheet being 573, the petitions were not consecutively numbered in violation of Section 10 ILCS 5/7-10. Objector argued that no cases permit the use of letters along with the use of numbers and because there was more than one page 572, the petitions could not be considered consecutively numbered.

This argument is without merit. All pages flowed in consecutive order and the use of the letters only served to keep the pages consecutive. This Hearing Officer takes judicial notice of the fact that the use of letters as a “numbering” system is common. Sheet numbers containing the letters “a” and “b” after the number are in consecutive order as “a” comes before “b” in the alphabet and there is no prohibition in the election Code against the use of letters along with numbers. Therefore, Objector raises no cognizable basis upon which any of the petition sheets could be invalidated.

However, even if for the sake of argument, the use of letters was a technical violation of Section 7-10, the case of *King v Justice Party*, 672 N.E.2d 900 (1st Dist. 1996) is controlling. In the *King* case, the candidate filed nominating papers in which there were no sheets numbered 1791 and 1792. Additionally, sixteen other sheets without any page numbers were interspersed in different places throughout the petition. The *King* court found that while the Election Code’s page numbering requirement (10 ILCS 5/7-10) is mandatory, the candidate in *King* had substantially complied with the requirement. Thus, the *King* court refused to invalidate the candidate’s nominating papers.

Here, any purported defect in page numbering is far less egregious. While there is more than one sheet 572, each sheet is separately and distinctly identified by the addition of the letters. Therefore, in accordance with the decision in *King*, the nominating papers in the instant case must be deemed, at a minimum, to be in substantial compliance with the page numbering requirement in Section 7-10 of the Election Code. Accordingly, paragraph 23 of the Objector’s Petition was overruled.

No further evidence was presented by the Objector as to the remaining objections in his Objector’s Petition and, therefore, it was not necessary to address the issues set forth in the Candidate’s Motion to Strike or the issues presented in Candidate’s Rule 9 Motion.

In light of the foregoing, it is my recommendation that the objections of Kevin Bartholomae be overruled in conformity with the results of the records examination and the further rulings in the Rule 9 Motion. It is my further recommendation that the nominating papers of candidate Thomas Michael Castillo be deemed valid and that the name of candidate Thomas Michael Castillo appear on the ballot at the February 2, 2010 General Primary Election.

Respectfully submitted,

Barbara Goodman /s/
Barbara Goodman
Hearing Examiner
12/10/09

**BEFORE THE DULY CONSTITUTED ELECTORAL BOARD FOR THE HEARING
AND PASSING UPON OF OBJECTIONS TO NOMINATION PAPERS OF
CANDIDATES FOR NOMINATION TO THE OFFICE OF LIEUTENANT GOVERNOR
OF THE STATE OF ILLINOIS TO BE VOTED UPON AT THE FEBRUARY 2,2010
GENERAL PRIMARY ELECTION**

Kevin A. Bartholomae ,

Petitioner-Objector

ORIGINAL ON FILE AT
STATE BD OF ELECTIONS
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AT 2009 NOV 9 AM 12:01

v.

Thomas Michael Castillo ,

Respondent-Candidate

OBJECTOR'S PETITION

The objector, Kevin A. Bartholomae, states that he resides at 28223 Gray Barn Lane, Lake Barrington, Illinois 60010 that he is a duly qualified and registered legal voter in State of Illinois, the district in which the candidate is to be voted upon, and that his interest in filing the following objections is that of a citizen desirous of seeing that the election laws governing the filing of nomination papers for the office of Lieutenant Governor of the State of Illinois , are properly complied with, and that only qualified candidates appear on the ballot for said office as candidates for the general primary election.

Therefore, he makes the following objections to the Nomination Papers of Thomas Michael Castillo as a candidate for the Democratic Party nomination for the office of Lieutenant Governor of the State of Illinois, to be voted upon at the February 2, 2010 General Primary Election.

1. Pursuant to state law, nomination papers for nomination for the office of Lieutenant Governor of the State of Illinois, to be voted for at the February 2, 2010 General Primary Election, must contain the signatures of not fewer than 5000 nor more than 10,000 duly qualified, registered and legal voters of said District collected in the manner prescribed by law. In addition, said Nomination Papers must truthfully allege the qualifications of the candidate, be gathered and presented in the manner provided for in the Illinois Election Code, and otherwise executed in the form provided by law. The Nomination Papers purport to contain the signatures of in excess of 5000 such voters, and further purport to have been gathered, presented and executed in the manner provided by the Illinois Election Code.
2. The Nomination Papers contain the names of persons who did not sign said papers in their own proper persons, and said signatures are not genuine and are forgeries, as is set

forth specifically in the Appendix-Recapitulation attached hereto and incorporated herein, under the heading, Column a, "Signer's Signature Not Genuine", in violation of the Illinois Election Code.

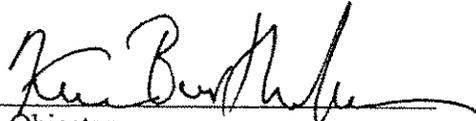
3. The Nomination Papers contain petition sheets with the names of persons who are not registered voters at the addresses shown opposite their respective names, as is set forth specifically in the Appendix-Recapitulation attached hereto and incorporated herein, under the heading, Column b, "Signer Not Registered at Address Shown", in violation of the Illinois Election Code.
4. The Nomination Papers contain petition sheets with the names of persons who for whom addresses are stated which are not in the State of Illinois and such signatures are not valid, as is set forth specifically in the Appendix-Recapitulation attached hereto and incorporated herein, under the heading Column c, "Signer Resides Outside District", in violation of the Illinois Election Code.
5. The Nomination Papers contain the names of persons for whom the signer's address is missing or incomplete as is set forth specifically in the Appendix-Recapitulation attached hereto and incorporated herein, under the heading, Column d, "Signer's Address Missing or Incomplete", in violation of the Illinois Election Code.
6. The Nomination Papers contain the names of persons who have signed the Nomination Papers more than one time as is set forth specifically in the Appendix-Recapitulation attached hereto and incorporated herein, under the heading, Column e, "Signer Signed Petition More Than Once at Sheet/Line Indicated", in violation of the Illinois Election Code.
7. The Nomination Papers contain petition sheets with the "signatures" of persons which are not signed but are rather printed, and said signatures are not genuine signatures, as is set forth specifically in the Appendix-Recapitulation attached hereto and incorporated herein, under the heading, Column f, "Signer's Signature Printed and Not Written, Not Genuine", in violation of the Illinois Election Code.
8. The Nomination Papers contain petition sheets with signatures which are otherwise insufficient and improper, as set forth specifically in the Appendix-Recapitulation attached hereto and incorporated herein under the heading Column g "Other" in violation of the Illinois Election Code.
9. The Nomination Papers contain petition sheets which bear a circulator's affidavit which is not signed by the circulator, and every signature on such sheets is invalid, as is set forth in the Appendix-Recapitulation attached hereto and incorporated herein, under the heading "Circulator Did Not Sign Petition Sheet".
10. The Nomination Papers contain petition sheets which bear a circulator's affidavit which is not signed by the circulator in his/her own proper person, and such signatures are not genuine and are forgeries, and every signature on such sheets is invalid, as is set forth in

the Appendix-Recapitulation attached hereto and incorporated herein, under the heading, "Circulator's Signature Not Genuine".

11. The Nomination Papers contain petition sheets which bear a circulator's affidavit on which the circulator's address is incomplete, and every signature on such sheets is invalid, as is set forth in the Appendix-Recapitulation attached hereto and incorporated herein, under the heading, "Circulator's Address is Incomplete".
12. The Nomination Papers contain petition sheets which bear a circulator's affidavit which is not properly sworn to before a Notary Public or other appropriate officer, in that the notarial jurat lacks proper form, and every signature on such sheets is invalid, as is set forth in the Appendix-Recapitulation attached hereto and incorporated herein, under the heading, "Circulator's Affidavit Not Properly Notarized".
13. The Nomination Papers contain petition sheets which bear a circulator's affidavit on which the circulator did not personally appear before the Notary Public to subscribe or acknowledge his/her signature as circulator in the presence of said Notary Public, and every signature on such sheets is invalid, as is set forth in the Appendix-Recapitulation attached hereto and incorporated herein, under the heading, "Circulator Did Not Appear Before Notary".
14. The Nomination Papers contain petition sheets which bear a circulator's affidavit which is not sworn to before a Notary Public or other appropriate officer, and every signature on such sheets is invalid, as is set forth in the appendix-Recapitulation attached hereto and incorporated herein, under the heading, "Sheet Not Notarized".
15. The Nomination Papers contain petition sheets which bear a circulator's affidavit which does not fully set forth the date, dates or range of dates on which the sheet was circulated in that the year is not set forth, and which also does not state that no signatures were obtained more than 90 days before the last day for filing the petition, and every signature on such sheets is invalid, as is set forth in the Appendix-Recapitulation attached hereto and incorporated herein, under the heading, "Dates of Circulation Incomplete", and "Dates of Circulation not given".
16. The Nomination Papers contain petition sheets which bear a circulator's affidavit with a notarial jurat bearing the name of a person who purported notarized said sheets, but for which in fact the circulator's affidavit was sworn to before another person who purported to be the Notary Public whose seal and signature appears on said sheet, and every signature on such sheets is invalid, as is set forth in the Appendix-Recapitulation attached hereto and incorporated herein, under the heading, "Purported Notary Did Not Notarize Sheet".
17. The Nomination Papers contain petition sheets which bear a circulator's affidavit with a Circulator was not of legal age to circulate petition and every signature on such sheets is invalid, as is set forth in the Appendix-Recapitulation attached hereto and incorporated herein, under the heading, "Circulator is under 18 years old".

18. The Nomination Papers contain petition sheets for which the circulator's affidavit is false because the purported circulator did not actually obtain, solicit or witness the affixing of voters' signatures to those sheets, and every signature on those sheets is invalid, as is set forth specifically in the appendix-Recapitulation attached hereto and incorporated herein, under the heading, "Purported Circulator Did Not Circulate Sheet", in violation of the Illinois Election Code.
19. The Nomination Papers contain Petition Sheets which bear a circulator's affidavit which is false, signed by a Circulator who does not reside at the address given, and every signature on such sheet is invalid, as is set forth in the Appendix-Recapitulation attached hereto and incorporated herein under the heading "Circulator does not reside at address shown".
20. The Nomination Papers contain numerous sheets circulated by individuals whose sheets demonstrate a pattern of fraud and disregard of the Election Code to such a degree that every sheet circulated by said individuals is invalid, and should be invalidated in order to protect the integrity of the electoral process. Such circulators are those who circulated the sheets in which objections are made in Columns a, f and Column g of the Appendix-Recapitulation. Specifically, but without limitation, the disregard of the Election Code evidenced by the actions of those circulators includes the submission of voters' signatures which were not signed by the voters in their own proper persons, but rather by one or a few individuals who forged the voters' signatures in a "roundtable" or seriatim fashion. These actions also include, without limitation, these circulators did not see the voter sign the petition in their presence. Further, circulator John Castillo circulated petition sheets giving him two different residence addresses and the failure to subscribe a single true residence address invalidates all sheets circulated by this circulator.
21. The Nomination Papers contain less than 5000 validly collected signatures of qualified and duly registered legal voters of the State of Illinois, signed by such voters in their own proper person with proper addresses, far below the number required under Illinois law, as is set forth by the objections recorded in the Appendix-Recapitulation attached hereto and incorporated herein.
22. The Appendix-Recapitulation is incorporated herein and the objections made therein are a part of this Objector's Petition.
23. Pursuant to 10 ILCS 5/7-10, petition sheets contained in the nomination papers must be numbered consecutively. The nomination papers contain petition sheets which are not consecutively numbered. The nomination papers contain petition sheets numbered 572a and 572b, with the next numbered sheets then beginning with page numbered 573. The failure to consecutively number the petition pages invalidates all the nomination papers, see Wollan v Jacoby, and the nomination papers are invalid in their entirety. Alternatively, pursuant to 10 ILCS 5/7-10, the only consecutively numbered petition sheets bear the numbers 1-571. All sheets following the last consecutively numbered page number 571 must be stricken and invalidated for failure to comply with the mandatory consecutive numbering requirements.

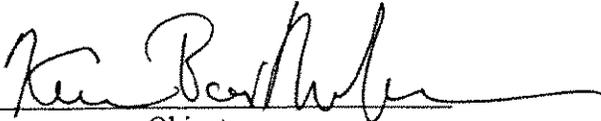
WHEREFORE, your objector prays that the nomination papers of Thomas Michael Castillo as a candidate for the Democratic Party nomination for the office of Lieutenant Governor of the State of Illinois, at the February 2, 2010 General Primary Election be declared to be insufficient and not in compliance with the laws of the State of Illinois, and that this name be stricken and that this Board enter its decision declaring that the name of Thomas Michael Castillo as a candidate for the Democratic Party Nomination to the office of Lieutenant Governor of the State of Illinois, be not printed upon the official ballot for the General Primary Election to be conducted February 2, 2010.


Objector

James P. Nally, P.C.
8 South Michigan Avenue
Suite 3500
Chicago, IL 60603
312/422-5560

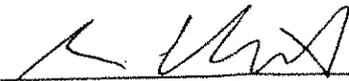
VERIFICATION

The undersigned, being first duly sworn upon oath, states that (s)he has read the foregoing Objector's Petition and to the best of his/her knowledge and belief the facts set forth therein are true and correct.

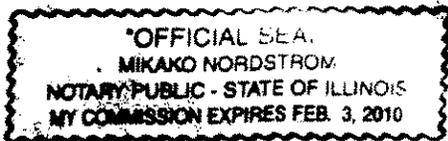


Objector

SUBSCRIBED and SWORN to
before me this 9th day of
November, 2009.



NOTARY PUBLIC



Reeves v. McQuillan
09 SOEB GP 513

Candidate: Bob McQuillan

Office: State Representative, 50th District

Party: Republican

Objector: T. John Reeves

Attorney For Objector: Shawn P. Flaherty and Donald L. Potts

Attorney For Candidate: Pro Se

Number of Signatures Required: No less than 500

Number of Signatures Submitted: 609

Number of Signatures Objected to: 169

Basis of Objection: The nomination papers contain an insufficient number of signatures because petition sheets contain signatures of persons who do not reside in the 50th District, who are not registered voters, who have signed the petition more than once, signatures that do not match the signatures contained on the official voter's registration and contain signatures that are printed rather than signed.

Dispositive Motion: Candidate filed a Motion to Dismiss all Objections, alleging that the SBE failed to comply with its notice deadline contained in Section 10-8 of the Election Code (The office receiving an objection must, by noon on the second business day following receipt thereof, transmit a copy of same to the Chairman of the electoral board and to the candidate whose petitions have been objected to.) and thereby denied the candidate due process. A supplement to this Motion was filed challenging the standing of the objector, specifically alleging that the objector's voting status was currently inactive. Such supplement was filed beyond the deadline set by the Board for candidates to file their responsive pleadings.

Binder Check Necessary: Yes

Hearing Officer: Dave Herman

Hearing Officer Findings and Recommendation: The Hearing Officer recommends that the Motion to Dismiss be denied on the grounds that there was no evidence presented to show that the Board failed to timely transmit the objector's petition to the candidate and in fact a transmittal log from the SBE shows that such transmittal occurred at 10:45AM on November 12th, the 2nd business day following the filing of the objection. He further recommends that the supplement not be considered due to its untimely filing. In any event, he is of the opinion that even if the objector's voter status is inactive, he is still considered a "legal voter" in the absence of his voter registration being cancelled.

A records exam was conducted by SBE staff that resulted in 126 line objections sustained and 43 being overruled, bringing the candidate's total valid signature count to 483. 16 affidavits were submitted by the candidate in an attempt to rehabilitate certain signatures that were found to be invalid. The objector did not challenge 8 of them. Of the remaining 8 that objector did take issue with, 6 were found to have

successfully rehabilitated the challenged signatures. This resulted in the candidate having a total of 497 valid signatures; 3 below the necessary 500 to qualify for the ballot. The candidate then attempted to submit 7 additional affidavits beyond the 48 hour deadline as set forth in the SOEB Rules of Procedure. The Hearing Officer recommended not considering such affidavits based on the untimeliness of their submission. Had they been timely submitted however, the Hearing Officer would have ruled in favor of 6 of them resulting in the candidate having a total of 503 valid signatures; 3 over the necessary 500. Therefore, his recommendation is to sustain the objection based on a lack of valid signatures.

Recommendation of the General Counsel: I concur with the Hearing Officer in his recommendation that the Motion to Dismiss all Objections be denied for the reasons stated above, and concur with his recommendation regarding the challenged signatures. Though the strict application of the “48 hour rule” is a harsh result for the candidate, this Rule has been consistently applied and adhered to in the other cases before the Board. In the absence of extraordinary circumstances (such as the SBE having to re-issue its results from a records examination), this rule must be enforced to insure uniformity in the process and to provide a timely resolution to the matters before the Board.

**BEFORE THE DULY CONSTITUTED ELECTORAL BOARD
FOR THE HEARING AND PASSING UPON OF NOMINATION OBJECTIONS TO
NOMINATION PAPERS OF THE STATE OF ILLINOIS**

In Re the Objections of)	
)	
T. John Reeves)	
)	
Petitioner-Objector,)	
)	
v.)	File No. 09 SOEB GP 513
)	
Bob McQuillan)	
)	
Respondent-Candidate.)	

RECOMMENDATION OF HEARING EXAMINER

TO: Robert (Bob) McQuillan	Shawn P. Flaherty
2677 Berkshire Drive	Ottosen Britz Kelly Cooper & Gilbert, Ltd.
Geneva, IL 60134	1804 N. Naper Blvd., Suite 350
Fax: (630) 634-1701	Naperville, IL 60563
electmcquillan@sbcglobal.net	Fax: (630) 682-0788
	sflaherty@obkcg.com

This matter coming on for hearing at 10:30 a.m. on December 11, 2009, at the State Board of Elections Office in Springfield, Illinois with T. John Reeves (hereinafter "Objector"), present through his attorney, Shawn P. Flaherty, and Bob McQuillan, present individually, the Hearing Examiner recommends as follows:

I. PROCEDURAL HISTORY

This matter commenced on November 9, 2009, when Objector filed a "Verified Objector's Petition" (attached hereto as Exhibit A) with the State Board of Elections (hereinafter "Board"). The Objector alleged that the nomination papers of Bob McQuillan, a candidate for nomination to the office of State Representative in the 50th Representative District (hereinafter "Candidate"), were insufficient in that they were not in conformance with certain provisions of the Illinois Election Code. Objector alleged that the Candidate's nomination papers did not contain the statutorily required minimum five hundred (500) valid signatures to be placed on the ballot. Specifically, objector stated:

- the nomination papers contained petition sheets with names of persons 1) who were not residents of the 50th Representative District, 2) who were not registered voters, 3) who signed the petitions more than one time, and 4) whose signatures were not genuine.

On November 18, 2009, Candidate filed a "Motion to Dismiss All Objections" (attached hereto as Exhibit B) in response to the Verified Objector's Petition. Specifically, Candidate alleged that the Board failed to comply with its mandated mailing deadlines in Section 10-8 and denied him his due process.

On November 20, 2009, Candidate submitted a supplement to his Motion to Dismiss (attached hereto as Exhibit C) challenging the Objector's status as a registered voter because the Objector's voting status was listed in the Kendall County records as "inactive". This filing was past the December 18, 2009, deadline established by the Board for the filing of motions to dismiss. No extension of time was requested to file this pleading.

On November 20, 2009, Objector submitted his Response to Candidate's Motion to Dismiss (attached hereto as Exhibit D). He asserted 1) that Candidate has failed a) to present evidence of a late mailing by the Board; and b) to distinguish between the mailing periods of Sections 10-8 and 10-10. He also asserted under Illinois law that the mailing required under Section 10-8 is directory, not mandatory and that Candidate was not prejudiced in any way if there was a late mailing by the Board. Objector argued that allowing a dismissal because of a failure of the Board would deny him his due process. Objector contended that Candidate's November 20, 2009, filing was not timely and should not be considered. If the late filing is considered, Objector claimed that a voter that is placed on "inactive" voter status is still a registered voter that has standing to file an election objection.

On November 23, 2009, Candidate filed a Response (attached hereto as Exhibit E) asserting that the Board cannot provide direct evidence that the Verified Objection was mailed prior to noon on the second business day after it was received by the Board. Candidate also asserted that his late submission was timely under the Board's rules. Candidate argued that the Objector's status as inactive means he is not a "duly qualified, legal and registered voter" as alleged in his Verified Objection.

On December 1, 2009, a records examination was conducted by Board staff that revealed there were six hundred and ten (610) signatures submitted with one hundred and twenty-six (126) line objections being sustained and forty-three (43) line objections being overruled (attached hereto as Exhibit F).

On December 3, 2009, (within the required 48 hours), Candidate submitted a Motion¹(attached hereto as Exhibit G) seeking to overrule some of the records examination findings. In support of his motion, he submitted 1) fifteen (15) individual affidavits, 2) one (1) individual document that was entitled affidavit that was not notarized, 3) an affidavit executed by him as circulator, 4) an affidavit executed by his wife as circulator, and 5) a precinct list alleging to show that the street "Longmeadow" was in the 50th district. He also asserted that the post office mailing address of Mary Denny on her petition sheet was sufficient and the objection relating to her should be overruled. Finally, he requested an extension of time to supplement his motion because there were ten people he could not get in contact with or otherwise could not obtain affidavits from within the time period set by the Rules adopted by the Board.

¹ Objector did not submit any challenges to the Board staff overruling any of the objections at the records examination.

Objector responded to the December 3, 2009, filing of Candidate alleging that one (1) alleged affidavit was not notarized and one (1) affidavit went to the validity of the signature of the voter when that was not the basis of the objection to that voter. (attached hereto as Exhibit H). He argued that the affidavits of two of the circulator's do nothing to rehabilitate the signatures that were sustained at the records examination. He also contended that the submitted precinct sheet does nothing to prove if the street "Longmeadow" is in the 50th district. Objector also asserted that the Mary Denny ruling at the records examination was proper. He finally argued there is no just reason to grant the requested extension of time.

Objector on December 6, 2009, filed an additional seven affidavits in an attempt to rehabilitate the objections sustained at the December 1, 2009, records examination (attached hereto as Exhibit I).

A hearing on Objector's petition was held at the Board's office in Springfield, Illinois on Friday, December 11, 2009.

II. Candidate's Motion to Dismiss Objector's Petition

A. Candidate's Motion to Dismiss Filed within the Time Constraints as Established by the Board

1. Candidate's Argument

Candidate asserted that the Board violated a mailing provision in 10 ILCS 5/10-8. This provision requires the chairman of the proper electoral board to transmit a copy of the objector's petition, by registered mail or receipted personal delivery, to the Candidate no later than 12 noon on the second business day after receipt of the Objector's petition. Candidate alleged that he did not receive notice of the objection until November 16, 2009. Candidate further argued that this violation deprived him of due process guaranteed under the statute.

2. Objector's Argument

Objector asserted that Candidate cannot prove that the Board did not send timely notice. He also argued that the mailing requirement provided in 10 ILCS 5/10-8 is directory, not mandatory, and exact compliance of the provision is not required. Objector further argued that Candidate was not prejudiced by any "real or perceived delay in obtaining copies of the Objector's Petition". Objector also submitted that he would be "severely prejudiced" if his objection was dismissed because Candidate's basis for his Motion to Dismiss is "aimed solely" at the Board, and not Objector, and therefore, granting the motion would be a violation of the Objector's constitutional rights to due process.

3. Analysis

No evidence supporting Candidate's assertion relating to the late mailing was submitted into the record. Moreover, the Board has a log that is attached hereto as Exhibit J that reveals the Verified Objector's Petition was mailed on November 12, 2009 at 10:45 within the statutorily mandated time frame.

Candidate alleged he was “denied due process guaranteed under the State Statute” and requests the Board dismiss the objection petition based on this denial. Objector asserted granting Candidate’s motion for dismissal based upon actions of the Board would be a violation of his due process.

Due process is a constitutional right, and Candidate is asserting that the Board’s actions violated that right.² As a creature of statute, the Board possesses only those powers conferred upon it by law. Any power or authority it exercises must find its source within the law pursuant to which it was created.” Bryant v. Board of Election Commissioners of the City of Chicago, 224 Ill. 2d 473, 476 (2007). “The Electoral Board’s authority to do anything must either ‘arise from the express language of the statute’ or ‘devolve by fair implication and intendment from the express provisions of the [statute] as an incident to achieving the objectives for which the [agency] was created.’” Nader v. Illinois State Board of Elections, 2004 Ill. App. LEXIS 1277, *19 (1st Dist. 2004), *citing* Vuagniaux v. Department of Professional Regulation, 208 Ill. 2d 173, 188 (2003).

The Illinois Supreme Court has noted “an election board’s scope of inquiry with respect to objections to nomination papers is limited to ascertaining whether those papers comply with the provisions of the Election Code governing such papers.” Bryant, at 476. The First District Court of Appeals has stated that “our legislature did not intend the Electoral Board to entertain constitutional challenges to procedures employed in obtaining signatures for primary nominating petitions.” Wiseman v. Elward, 5 Ill. App. 3d 249, 258 (1st Dist. 1972). Accordingly, the Hearing Examiner submits to the Board that the constitutional issues cannot be ruled on in this proceeding and the motion to dismiss be denied.

B. Candidate’s Additional Arguments for Dismissal Filed Outside of the Time Constraints Established by the Board

1. Candidate’s Argument

On November 20, 2009, Candidate submitted additional information after submitting his Motion to Dismiss. The information included a certification dated November 19, 2009, from the Kendall County Clerk noting that Objector’s voter status was “inactive”. The information also included a copy of Objector’s voter registration card with a handwritten notation below the card stating “Vote Status Inactive as of 10/28/09 - 2 pieces of mail returned undeliverable.” Candidate submitted this information as support for his assertion that Objector was not a duly qualified, legal and registered voter at the address listed on the Verified Objector’s Petition.³ Candidate asserted that based on this information regarding the Objector’s voter status, the

² The Illinois Supreme Court has recently reaffirmed its support for raising constitutional issues before an administrative agency in Board of Education, Joliet Township High School District No. 204 v. Board of Education, Lincoln Way Community High School District No. 210, where it noted: “Ordinarily, any issue that is not raised before the administrative agency, even constitutional issues that the agency lacks the authority to decide, will be forfeited by the party failing to raise the issue.” 231 Ill. 2d 184, 205 (2008).

³ Candidate cites to no legal authority to support his contention regarding “inactive” status. Instead, he relies solely on statements of the Kendall County Clerk contained in a letter to the editor.

Objector's petition be declared void and that the challenge to Candidate's nomination petitions be withdrawn.

2. Objector's Argument

Objector argued that the Board should not allow the new evidence and argument asking for the objection to be withdrawn. He asserted it was submitted in an untimely fashion. If the evidence and argument are allowed, Objector asserted that he may have been listed as an "inactive" voter on the rolls by the Clerk of Kendall County, but that he is currently classified as an "active" voter by the Clerk of Kendall County⁴. Objector argued that even if he is an inactive voter that inactive voters remain registered voters and have standing to file objections.

3. Analysis

a. The Late Submission Should Be Barred

In the instant case, Candidate's Motion to Dismiss was filed on November 18, 2009, within the time frame as set forth by the Board. He alleged he received additional information from the Kendall County Clerk on November 19, 2009, and submitted it on November 20, 2009. No extension of time was requested and no good cause was shown to allow such an extension. Accordingly, the Hearing Examiner recommends that the Board not consider the additional issues raised by Candidate in his supplement to his timely filed Motion to Dismiss.

b. Inactive Voters Are Registered Voters

If the Board disagrees with the Hearing Examiner relating to the extension of the deadline and allows consideration of the late filing, then the Motion to Dismiss based upon the supplemental argument should be denied. Standing of an objector "is an affirmative defense and the burden of proof is on petitioner to raise and prove lack of it." Morton v. State Officers Electoral Board, 311 Ill. App. 3d 982, 985 (4th District, 2000). Candidate in this case raised the issue of Objector's standing to file the objection, arguing that Objector is an inactive voter and cannot file an objection.

An "inactive voter" is defined as "a person who, having once submitted a Voter Registration Application subsequently acknowledged by the election authority having jurisdiction over the voter's place of residence, or a registration card, has not responded to a notice to confirm his or her address, but whose authority to vote has not yet been canceled." 26 Ill. Admin. Code 216.20. The Illinois Administrative Code further states that a record of a voter is a voter registration application "which has been accepted and acknowledged by an election authority. Record includes Voter Registration Applications which have been placed in a file of inactive voters, but does not include rejected or unacknowledged Voter Registration Applications." 26 Ill. Admin. Code 216.20. Taking these two administrative rules together, there is a difference under Illinois law between "inactive" voters and those voters who are "rejected or unacknowledged."

⁴ No evidence was presented to substantiate Objector's assertion that his status has changed from "inactive" to "active".

Additionally, the administrative rules provide a separate designation for cancelling voter registration, stating that the voter registration “of an inactive voter who has not voted in two consecutive general federal elections shall be cancelled at the completion of procedures set forth in Section 8 (d) of the National Voter Registration Act of 1993, provided that while such procedures are pending, the voter has taken no action specified in the National Voter Registration Act of 1993 to restore his or her name to active voter status.” 26 Ill. Admin. Code 216.50, referencing 42 USCS Sec. 1973gg-6 (requirements with respect to administration of voter registration) and 42 USCS Sec. 1973gg-5 (voter registration agencies). The state rules further provide that a voter’s registration can be cancelled at the voter’s request, and that it shall be cancelled when the election authority receives certain information about the voter’s incarceration in a correctional facility. 26 Ill. Admin. Code 216.50. The federal statute outlines when and how to remove voters from the list of eligible voters and how to correct voter registration information. 42 USCS Sec. 1973gg-6.

While the administrative rules indicate there are clearly separate distinctions between inactive, rejected and unacknowledged, and cancelled voter registrations, Section 10-8 provides that “Any legal voter of the political subdivision or district in which the candidate or public question is to be voted on, ... having objections to any certificate of nomination or nomination papers or petitions filed, shall file an objector’s petition together with a copy thereof in the principal office or the permanent branch office of the State Board of Elections, ...”. 10 ILCS 5/10-8. Therefore, the statute requires that the objector be a legal voter of the district. In this case, while there is evidence that shows the Objector was considered an “inactive” voter at the time he filed his objection, it does not appear that he was not a “legal” voter. His voter registration card was still on file with the local election authority, and was not cancelled.

In further support of this analysis, the Electoral Board of Chicago Board of Elections Commissioners has previously ruled “that the fact that one’s voter registration is listed as ‘inactive’ does not make such person ineligible to either sign petitions or to circulate petitions so long as such person has not moved, has not died, has not been incarcerated by reason of conviction of a crime or otherwise lacks the requisite qualifications to be a registered voter in the political subdivision or district in which the candidate is seeking nomination or election. Davis v. Reed, 04-EB-WC-81, pg. 2. Specifically, that board found “the fact that Ms. White’s voter registration was ‘inactive’ does not render her ineligible to file objections pursuant to Section 10-8 of the election Code.” Id.

In applying the above reasoning to the current case, there was no evidence provided that the Objector lacks the requisite qualifications to be a registered voter in the 50th district. Accordingly, Objector is a legal voter and has standing to file objections to Candidate’s nominating petitions.

III. Records Examination and Rehabilitation Attempts

On December 1, 2009, a records examination was conducted pursuant to the Election Code at the Board’s office. Six hundred and ten (610) signatures were alleged to have been reviewed during the process, but the parties stipulated that there were only six hundred and nine

(609)⁵ signatures submitted by Candidate. As stipulated by the parties, five hundred (500) signatures are required for Candidate to remain on the ballot and after the records review, one hundred twenty- six (126) line objections were sustained, resulting in four hundred eighty-three (483) valid signatures. This signature total is seventeen (17) signatures less than the five hundred (500) required for Candidate to remain on the ballot.

A. Motion to Overrule Signature Challenges and Various Other Objections Based on Records Examination

1. Candidate's Argument

On December 3, 2009, Candidate submitted sixteen (16) voter affidavits asserting that he sufficiently rehabilitated the objections to those signatures. Candidate also included affidavits from himself and his wife, as circulators of his nomination petitions. Also submitted was a document to support the inclusion of the street "Longmeadow" within the boundaries of the 50th district. Candidate further asserted that Mary Denny's voter registration included a house street address and a post office mailing address, and argued since the nominating petition lists her post office box, the objection to her signature should be overruled. Finally, Candidate requested that the Board allow him additional time to submit affidavits for ten (10) other voters, asking that he be allowed until December 7, 2009, at 9:00 a.m. to submit the affidavits.

2. Objector's Argument

Objector asserted that one (1) of the sixteen (16) voter affidavits, allegedly signed by Robert A. Swideski's, was not notarized and thus is invalid. Objector further argued that the affidavit of voter Daniel Deutsch did not overrule the objection that he is not registered at the address shown on the nominating petition. Objector also submitted that the Candidate's and his wife's affidavits do not establish the genuineness of any voter signature. Objector asserted that the document Candidate submitted to show that the street "Longmeadow" was within the 50th district did not support that claim. Objector further argued that because Mary Denny listed her post office box on the nominating petition while her voter registration card includes both a street address and a post office box, the addresses on the two documents did not match in pertinent part and therefore the objection to her signature should be sustained. Objector also objected to Candidate's request for additional time to file further affidavits with the Board.

3. Analysis

a. Candidate's Attempt to Rehabilitate sixteen (16) Signatures by submitting individual affidavits

Objector did not object to eight (8) of the sixteen (16) affidavits submitted by Candidate. Those eight (8) affidavits were the affidavits of: Janet Blasko (line 11 page 24), Michael T. Kluber (line 3 page 25), Joyce Currie (Line 13, page 28), Shery Navigato (line 2, page 36), Jennifer Tonn (line 9, page 39), Paul Shumway (line 2, page 6), D'ette Shumway (line 3, page

⁵ The records examination asserted that there were 15 signatures on petition page 8. However, a review of petition page 8 reveals that there are only 14 signatures as one signature starts on line 11 and angles down into line 12.

6), and Tamara Osborne (line 1, page 6). Accordingly, these eight (8) signatures are rehabilitated.

Objector did object to the other eight (8) affidavits submitted by Candidate to rehabilitate signatures. The voter affidavits here declare that the voter personally signed the petition, that the voter reviewed the nominating petition for his or her signature, the voter confirms and verifies that he or she signed and wrote his or her name, and that his or her voter address is correct.

During the hearing on December 11, 2009, Objector objected to the affidavit of Mara Scharlow (line 5 page 28) based upon an alleged difference in address (510 versus 540 or 590) and a printed name on the affidavit signature line (she signed the petition sheet in the same manner). He asserted that the signature on the affidavit was printed and not signed, and therefore even though the affidavit was submitted by the signer of the petition, the objection to her signature should be sustained.

The objection to Ms. Scharlow's signature based upon her affidavit containing a different address is overruled. After reviewing the affidavit and petition sheet, it appears that there is a pen mark at the top of the number 1, rather than a 4 or 9.

Likewise, the objection as to Ms Scharlow's signature being printed on the affidavit signature line is overruled. The affidavit was properly notarized and the printed signature appears to be the same on the affidavit and on the petition sheet. The Rules of Procedure state "There is no requirement that a signature be in cursive rather than printed form. Any objection solely on the ground that the signature is printed and not in cursive form will be denied as failing to state grounds for an objection." Rules of Procedure, Appendix I.A., pg. A-10. The First District Court of Appeals addressed a similar issue involving voters who printed their names on the nomination petition, instead of signing their names in cursive. Bergman v. Vachata, 347 Ill. App. 3d 339, 346 (1st Dist. 2004). That court found that "although it is true that several individuals printed their names, we conclude that there was substantial compliance where, despite some voters not signing in the cursive, there was no evidence that they did not sign "in their own proper person only," and the form nonetheless contains the notary jurat." Id. at 347. Accordingly, this one (1) signature is rehabilitated.

Objector has objected to the following five (5) affidavits based upon the signature being printed on the affidavit signature line (they did the same thing on the petition sheets)⁶: Beth Schroeder (line 14, page 28), Peter Capone (line 6, page 28), Patricia Slone (line 8, page 44), Marcy Lorenzo (line 9, page 49), Mike Pappas (line 11 page 50). For the same reasons expressed in the preceding paragraph, these five (5) signatures are rehabilitated.

Objector argued that the alleged affidavit submitted in an attempt to rehabilitate Robert Swiderski (line 7, page 36) lacked a properly executed notary jurat. Candidate indicates Mr. Swiderski did not have a notary available to execute his affidavit. Accordingly, because the purported affidavit was not sworn before a notary, this one (1) signature is not rehabilitated.

⁶ The notarized printed signatures on each of the affidavits were compared to each of the printed signatures on the petition sheets and were found to be the same.

Objector indicated that the objection that was sustained as to Daniel Deutsch (line 2, page 32) was not based upon his signature, but based upon him not being a registered voter at the address provided on the petition sheet. The evidence supports the objection. Mr. Deutsch submitted an affidavit that states he is a registered voter at a different address than the address listed on the petition page he signed. A person who signs a nomination petition must be registered to vote at the residence address set forth on the nominating petition. Greene v. Board of Election Commissioners of the City of Chicago, 112 Ill. App. 3d 862, 869 (1st District 1983). Accordingly, this one (1) signature is not rehabilitated.

b. Candidate's Attempt to Establish "Longmeadow" As Being Within The 50th district

Candidate's attempt to rehabilitate a signature by establishing that the street "Longmeadow" is within the 50th district was abandoned by the Candidate at the hearing. (See transcript pages 59-62). Accordingly, there will be no discussion of this issue.

c. Candidate's Attempt to Rehabilitate Mary Denny's Signature

Mary Denny had listed as her address on Candidate's petition sheet (line 10, page 12) a post office box. Her voter registration included both her post office box and her street address. This objection was sustained at the records examination. Objector and Candidate both cited to section D on page A-11 of the Rules of Procedure.⁷ However, there are no examples provided in section D of the Rules similar to the issues presented here. Some of the examples in section D deal with rural route boxes (which may be the only reference to physical location) and do not deal with post office boxes. The last example that does deal with post office boxes has the physical location contained on the petition sheet signed by the voter and not just the postal box, while the registration has both the physical location and a postal box. So in the last example in section D, the physical residential location of the voter can be determined from the petition sheet and is confirmed by the registration materials.

The petition sheet in this case listed a mailing post office box and not a physical residential location. There is no way to determine where Mary Denny resided when she executed Candidate's petition sheet. Ms. Denny could continue to receive mail at her mailing address and may not still be living at her street address. No affidavit or evidence was submitted at the hearing to overrule this objection that established that Ms. Denny was currently residing at the same physical address as listed on her registration at the time she executed Candidate's petition sheet. Accordingly, this one (1) signature is not rehabilitated.

⁷ The Rules of Procedure state:

Where the petition and the registration card show a rural route and box number the objection will be sustained. If however, the voter's place of residence has in fact not changed, but only the designation of it has changed, it is the burden of the candidate to show that only the designation of the residence has changed. If the address listed next to the voter's signature matches the registration record in pertinent part (eg. the petition lists "John Doe, 1020 South Spring, Springfield" and the registration record lists "John Doe, 1020 South Spring, P.O. Box 4187, Springfield), the objection will be overruled.

d. Circulator's Affidavits

Courts have viewed "circulators' oath as an important way to safeguard fair and honest elections." Fortas v. Dixon, 122 Ill. App. 3d 697, 700 (1st Dist. 1984). Affidavits by the circulators of nominating petitions are not the individuals who are signing the nominating petitions. The circulator's oath in the instant case at the bottom of each petition identified the circulator's name and address, and further stated:

I _____ do hereby certify that I reside at . . . that I am 18 years of age or older, that I am a citizen of the United States, and that the signatures on this sheet were signed in my presence, not more than 90 days preceding the last day for filing of the petitions and are genuine and that to the best of my knowledge and belief the persons so signing were at the time of signing the petition qualified voters of the Republican Party in the political division in which the candidate is seeking nomination/elective office, and that their respective residences are correctly stated, as above set forth."

The affidavits of the circulators submitted in an attempt to rehabilitate signatures in this matter, contained almost the same recitals that are already contained on the affidavits in the petition sheets. Candidate's and his wife's rehabilitation affidavits stated:

I am a registered voter in the State of Illinois at the following address. . . . that I did obtain and witness the following signatures, during the ninety days preceding the last day for filing nomination petitions for the February 2, 2010 Primary Election, the petitions of Bob McQuillan, who is seeking to be placed upon the General Primary Election ballot for the office of State Representative in the 50th district, Illinois, Republican Party, for the Primary Election on February 2, 2010 ("Nominating Papers") On the date that the above mentioned persons signed their names on these nominating papers, they each did so voluntarily as a duly registered voter in the 50th district and each and every signature is genuine. That we have listed the names according to the best of our ability in deciphering the writing for correct spelling.

These circulator second set of affidavits submitted in response to the records examination findings do nothing to rehabilitate the signatures. Here, the affidavits of Karen and Bob McQuillan both state that they "have listed the names according to the best of our ability in deciphering the writing for correct spelling." This sworn statement indicates that the petition circulators did not know the voters well enough to have seen their handwriting before, nor is it likely that they knew the voters well enough for the voters to have subsequently acknowledged that the signature on the petition was theirs. Had the McQuillans known these voters that well, then they would not have had to include the sworn statement about having to decipher the signatures to the best of their ability to determine the spelling of the voter names. Accordingly, the affidavits of petition circulators Bob and Karen McQuillan that are otherwise essentially a recitation of the affidavit contained on the original petition sheets should bear no weight in rehabilitating any signatures.

e. Candidate's Request For Additional Time⁸

The Board's Rules of Procedure states "The Board itself or through its duly appointed hearing examiner if applicable ... shall conduct all hearings and take all necessary action to avoid delay, to maintain order, to ensure compliance with all notice requirements, and to ensure the development of a clear and complete record." Rules of Procedure, Section 4, pg. 2. In light of this directive, "Motions for continuance are discouraged and will be granted only in extreme circumstances." Rules of Procedure, Section 7, pg. 4. The Board has to "adjudicate scores of objections in a short period of time" and is "in no position to grant a continuance absent some clear indication that the continuance was warranted." Wiseman, at 260.

In this case, Candidate had 48 hours to file his evidence following the records examination. All evidence was to be submitted by December 3, 2009 at 5:10 p.m. Candidate was aware of this deadline, but alleged he did not have all the evidence he needed to remain on the ballot at that time. Candidate was aware that the objections to the genuineness of signatures existed on November 16, 2009, when he received the Verified Objection via registered mail, and could have started compiling the evidence as early as that date. However, Candidate chose not to and instead waited and submitted the additional evidence on the evening of December 6, 2009 at 7:52 p.m.

Candidate does not cite any authority to support his request for an extension. Moreover, Candidate does not submit any facts or evidence that this is an extreme circumstance or an extenuating circumstance to support his request. The only basis provided was that the additional individuals could not be contacted or affidavits could not be timely provided. Because motions for extensions of time are generally not granted in these proceedings, and there does not appear to be an extreme circumstance that compels such an extension, the Hearing Examiner recommends the Board not allow the additional evidence into the record as it was not submitted until December 6, 2009 at 7:52 p.m.

f. Untimely Filed Affidavits In An Attempt To Rehabilitate

If the Board does not agree with the Hearing Examiner to deny Candidate's request for an extension of time and allows consideration of the late filing, then Candidate has submitted enough signatures to be placed on the ballot. Candidate submitted seven (7) affidavits in an attempt to rehabilitate signatures overruled at the records examination. Objector asserted an objection to all seven (7) affidavits as being submitted untimely. Other than his timeliness objection, the following six (6) affidavits were not otherwise objected to by the Objector: Timothy Conover (line 1, page 20), Matt Heidger (line 5, page 25), John Blancheri (line 7, page 9), Ellyn Romoser (line 11, page 28), Mark Rokos (line 10, page 49), and Douglas Whitley (line 11, page 26). Accordingly, these six (6) signatures would be rehabilitated.

⁸ For completeness of the record only, the motion for extension of time was not ruled upon until after the hearing in this matter. This delay in ruling allowed the Candidate to submit his additional evidence and to preserve the record in this matter if the Board did not accept the Hearing Examiners' recommendation to deny the motion for extension of time and to bar the untimely submitted evidence.

An affidavit from RA Swiderski was submitted alleging that he signed on line 7, petition page 36. The previous affidavit that lacked the proper notary that was submitted by Candidate to rehabilitate the voter who signed on line 7, petition page 36 was for a voter named Robert Swiderski. Objector asserted that RA Swiderski was not a signature on any of Candidate's petitions sheet. This argument is correct and this attempt to rehabilitate fails because an "RA Swiderski" never signed line 7 of petition page 36.⁹ Therefore, this one (1) signature was not rehabilitated.

If the Board determines to disregard its own rules and procedures and allows the late filing, then the Candidate would have a total of 503¹⁰ signatures that will allow him to be placed on the ballot.

IV. Conclusion

In summary, Candidate has only four hundred ninety seven (497) valid signatures. Candidate is required to have five hundred (500) valid signatures to be placed on the ballot. Because Candidate has **not** met the minimum signature requirement set forth in the Election Code, the Hearing Examiner recommends that Candidate's name **not** be placed on the ballot as a Republican candidate for the office of State Representative in the 50th district at the primary election to be held February 2, 2010.

Hearing Examiner further recommends that:

1. Candidate's and Objector's constitutional arguments contained in their respective filing and arguments contained in the records should not be considered as this Hearing Examiner and the Electoral Board are without authority to consider such challenges.
2. Candidate's supplemental arguments seeking dismissal of the Verified Objection be denied for not being filed timely. If the Board considers the supplemental argument, it should be denied as a voter designated as "inactive" is still a legal voter with standing to bring an objection
4. Candidate's request for extension of time should be denied as there is no good cause shown for any such extension of time.

DATED: December 14, 2009



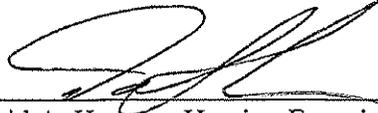
David A. Herman, Hearing Examiner

⁹ More concerning is that a comparison between the alleged signatures on the affidavit of "Robert Swiderski" that is not notarized and the notarized "RA Swiderski" affidavit are markedly different. (See exhibits G & I)

¹⁰ (497 + 6 = 503)

CERTIFICATE OF SERVICE

Service of the foregoing document was made by sending a copy via e-mail and by mailing a copy thereof, in a sealed envelope, postage fully prepaid, addressed to all parties listed on the previous page and by depositing same in the United States Mail from the office of the undersigned this 14th day of December, 2009.



David A. Herman, Hearing Examiner

**BEFORE THE STATE BOARD OF ELECTIONS
STATE OF ILLINOIS**

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STATE BD OF ELECTIONS
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AT 2009 Nov 9 PM 1:49
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T. JOHN REEVES,)
)
Petitioner-Objector,)
)
vs.)
)
BOB MCQUILLAN and the)
Proponents of Petitions for Nomination)
for the office of State Representative)
in the 50th Representative District,)
Republican Party,)
)
Respondents.)

No. _____

VERIFIED OBJECTOR'S PETITION

T. John Reeves, hereinafter referred to as "Petitioner-Objector," states on oath, as follows:

1. The Petitioner-Objector resides at 7630B Route 34, Oswego, Illinois 60543 in 50th Representative District (hereinafter "50th District"), and is a duly qualified, legal and registered voter at that address, and is a member of the Republican Party.
2. The Petitioner-Objector's interest in filing this Petition is to ensure that the Illinois Election Code requirements for the filing of nomination papers are properly complied with, and that only qualified candidates who have complied with these requirements appear on the Republican Party ballot at the February 2, 2010 General Primary Election, for the office of State Representative in the 50th District.
3. The Petitioner-Objector makes a number of objections to the purported nomination papers of Bob McQuillan as a Republican Party candidate for the office of State Representative in the 50th District, to be voted at the General Primary Election to be held on February 2, 2010. The Petitioner-Objector states that the McQuillan nomination papers are insufficient in fact and law for the reasons listed in paragraphs 4 through 8 of this Verified Petition.
4. The McQuillan nomination papers consist of the following: (i) a one-page Statement of Candidacy; (ii) a one-page Loyalty Oath; (iii) 52

pages of Petitions for Nomination, combined containing a total of 626 signatures; (iv) a one page Certification of Deletions by which McQuillan deleted 17 signatures, thereby reducing the number of possible valid signatures to 609, and (v) a one-page receipt of acknowledgement of the filing of the Statement of Economic Interests with the State Board of Elections.

5. McQuillan's Certification of Deletions incorrectly states that the signature on Page 49, Line 5 was stricken from the petition. Further, the Certification of Deletion fails to list the signature on Page 20, Line 2 as having been struck. However, the net result is still 17 deleted signatures. As set forth below the signature on Page 49, Line 5 should have been stricken as well.
6. McQuillan's nomination papers contain an insufficient number of signatures. Section 8-8 of the Illinois Election Code (hereinafter "Code") recites the law concerning the requisite number of qualified voter signatures to be obtained for nominations of members of the Illinois House of Representatives. According to § 8-8, a petition for nomination shall be signed by at least 1% or 500, whichever is greater, of the qualified primary electors of the candidate's party residing within the representative district.
7. The McQuillan nomination papers contain less than 500 validly collected signatures of qualified and duly registered primary electors of the 50th District, signed by voters in their own proper person with proper addresses. For the reasons set forth in this Petition, the McQuillan nomination papers are invalid because they do not contain the minimally required number of voter signatures. 10 ILCS 5/8-8.
8. The McQuillan nomination papers do not contain the statutorily required number of signatures because, as more particularly set forth in the Appendix to this Verified Objector's Petition, incorporated herein and made a part hereof:
 - a. 98 signatures are of individuals who are not residents of the 50th District;
 - b. 18 signatures are of individuals who are not registered voters;
 - c. 1 signature is a duplicate (Pg. 31, Line 2 and Pg. 33, Line 4); and
 - d. 53 signatures do not match the signatures contained on the official voter's registration and are printed names rather than the required signatures.

These signatures must be declared invalid for the reasons as set forth on the Appendix with each objection noted with an "X" in the appropriate column(s).

WHEREFORE, T. John Reeves, the Petitioner-Objector, requests the following relief from the State Board of Elections:

- A. A hearing on the objections set forth in this Objector's Petition;
- B. An examination by the State Board of Elections of the official records for this voting district, as well as the petitions for nomination itself;
- C. Entry of an order ruling that the McQuillan nomination papers are not sufficient in law and fact, and
- D. Entry of an order ruling that the name "Bob McQuillan" shall not appear and shall not be printed on the Republican Party ballot for election to the office of State Representative in the 50th Representative District at the General Primary Election to be held February 2, 2010.



Petitioner-Objector
T. John Reeves

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Fax: (630) 682-0788

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VERIFICATION BY CERTIFICATION

Under the penalties provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned states that he has read the above Verified Objector's Petition and that the statements set forth in said Petition are true and correct, except as to matters which are stated to be upon information and belief and, as to such matters, the undersigned certifies that he verily believes the same to be true.



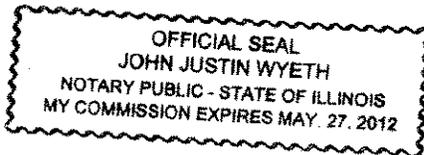
Petitioner-Objector
T. John Reeves

State of Illinois)
) SS
County of Kendall)

SUBSCRIBED and SWORN TO before me
this 9th day of November, 2009.



Notary Public



Pituc v. Mayers
09 SOEB GP 515

Candidate: Richard B. Mayers

Office: U.S. Representative, 10th Congressional District

Party: Green

Objector: Walter Pituc

Attorney For Objector: Andrew Finko

Attorney For Candidate: Pro Se

Number of Signatures Required: No less than 23

Number of Signatures Submitted: 31

Number of Signatures Objected to: 17

Basis of Objection: Candidate is not a member of the Green Party and therefore is ineligible to be a candidate of the Green Party. The nomination papers contain an insufficient number of signatures in that petition sheets contain signatures of persons who are not duly qualified, registered and legal voters at the addresses shown and/or who do not reside within the 10th Congressional District. Candidate may not be a registered or eligible voter in Illinois nor meet the Constitutional requirements for U.S. Representative.

Dispositive Motions: None filed

Binder Check Necessary: Yes

Hearing Officer: Chris Cohen

Hearing Officer Findings and Recommendation: The Hearing Officer recommends that the Board overrule that part the objection that alleges the candidate might not be qualified for the office of Congressman and that he is not a member of the Green Party. He further recommends that on the basis of the records examination, where it was determined that the candidate's petition only contains 21 valid signatures (10 objections were sustained and 7 were overruled), that the objection be sustained and that the name of the candidate should not be printed on the 2010 General Primary Election ballot.

Recommendation of the General Counsel: I concur with the recommendation of the Hearing Officer. I note that to be a candidate of an established political party, one does not actually have to be a "member" per se, nor does one have to subscribe to the principals and by-laws of such party. A candidate need only comply with the provisions of the Election Code in order to be a candidate thereof. I further note that in the last paragraph of his Recommendation, he cites Section 10-2 as the basis for the signature requirement of a candidate of the Green Party for the office of Congressman, 10th District. Since the Green Party is established in Illinois, the correct citation is Section 7-10(b).

Appendix also contained four columns – two for the sheet and line numbers and two columns for the two categories of Objector’s objections to signatures on the Candidate’s Petition Sheets. The columns were denominated as follows:

Sheet	Line	A	B
-------	------	---	---

Column A referred to “Signer Not Registered at Address Shown.” Column B referred to “Address Not Located Within the Relevant Jurisdiction.”

CASE MANAGEMENT CONFERENCE

On November 17, 2009 the State Board of Elections (the “Board”) met in its offices on the 14th floor of the James R. Thompson Building, 100 W. Randolph, Chicago, IL 60601 (the “JRT Building”) as the duly constituted State Officers Election Board of the State of Illinois. Following this meeting, this hearing examiner held a case management conference in the above entitled case. The Objector did not personally appear but was represented by counsel. Neither the Candidate nor any representative appeared for the Candidate. The hearing examiner continued the case management conference for several hours during which time he attempted to contact the Candidate. The Candidate apparently had been denied entrance to the JRT Building for failure to possess acceptable identification. He returned with identification and appeared later in the afternoon in the Board’s offices as did Objector’s counsel.

The continued case management conference was held on the afternoon of November 17, 2009. Present were the Candidate, the Objector’s attorney and the hearing examiner. The Candidate filled out and filed an appearance form and provided a telephone number to contact him. He stated that he did not have access to email or fax services. No subpoenas were requested by either party pursuant to Rule 8 of the Board’s Rules of Procedure on this date or at any other time during these proceedings.

During the case management meeting, a hearing was scheduled for November 25, 2009. Briefing deadlines were set for filing motions to strike objections, for filing responses to motions and for filing replies to responses, memoranda of law and other pleadings:

The Candidate timely submitted a hand written document requesting a “Recount.” The hearing examiner construed the request for a “Recount” to be a request for a binder check/records examination. Objector’s attorney timely filed a Response to the Candidate’s handwritten pleadings. No further pleadings were filed by either party. Objector’s Response alleged that the Candidate’s handwritten documents were insufficient and that the Candidate is neither a member of the Green Party nor supports its platform.

THE PARTIES ARGUMENTS AND ANALYSIS

The Objector asserted that the Candidate did not have the minimum number of valid signatures on his petitions, 1) because some signers were not registered at the address shown and 2) because some signers were not in the district. The Objector's position as stated by his attorney was that due to the defects and invalidities of 17 signatures, the Candidate had fewer than the minimum number needed pursuant to Section 10-2 of the Illinois Election Code (10 ILCS 5/10-2) to qualify for placement on the ballot, and thus should not be placed on the ballot of the Green party.

In his Verified Petition, the Objector calculated that the minimum number of signatures necessary was 24. The Board's 2010 Candidate's Guide listed the minimum signature requirement for the Green Party in the 10th Congressional District as 23. The Objector challenged 17 of the Candidate's 31 signatures. If all challenges were upheld, the Candidate would have been left with 14 signatures – a number below either the 24 or 23 minimum needed.

The Candidate's pleadings responded that he met the required minimum of 24 signatures, that the signers were registered to vote and that the signers resided in the 10th Congressional District. The Candidate asserted that the Constitution does not require candidates to register and vote for federal office. The Candidate's pleadings requested a "recount" of signatures and requested that his name be placed on the ballot.

INITIAL HEARING

On November 25, 2009, the hearing examiner held a hearing to consider the pleadings. Counsel for the Objector appeared. Neither the Candidate nor any representative for him appeared. When the Candidate did not appear, the hearing examiner considered arguments that the Candidate be defaulted and that his name not be placed on the ballot. After considering all arguments, the hearing examiner declined to recommend that the Candidate's name not be placed on the ballot and instead sought a records examination as requested in the Objector's Petition and in the Candidate's pleadings. At no time on November 25, 2009 or subsequently did the Candidate file a motion for reconsideration, a request for rehearing or any other motion or pleadings. Other issues were left to the hearing to be held after the return of results from the records examination.

RECORDS EXAMINATION

Board staff scheduled a records examination for 2 pm, December 3, 2009 in the Board's JRT Building offices. The hearing examiner unsuccessfully attempted to contact the Candidate at the cell phone number he put on an appearance form but was able on another number to speak with a woman identifying herself as his mother and to explain the status of objection proceedings and to provide notice that a records examination would be held at 2 pm, December 3, 2009 in the Board's JRT Building offices. The Candidate is said to live at an address other than that of his parents. He was not

available at the time of this phone conversation, but the mother promised to pass the message to him.

The hearing examiner was not present for this records examination; however, he was informed by Board staff that both the Candidate and Objector's attorney did appear. At some time after the records examination was completed, the Candidate was taken into custody by the Illinois State Police for allegedly directing profanities against a member of the Board's staff not involved in the records check and against Objector's attorney. Mr. Mayers is alleged to have used the f word and the n word. The hearing examiner was later informed that the Candidate was escorted out of the building, arrested for disorderly conduct and resisting arrest and released after posting \$100 bond.

Board staff reported the following results of the records examination regarding the Candidate's petitions. Staff sustained the Objector's challenges to 10 signatures and overruled challenges to seven signatures thus reducing the Candidate's 31 total signatures to 21.

The hearing examiner unsuccessfully attempted to contact the Candidate at the cell phone number he put on an appearance form but was able to speak with his father and to explain the status of objection proceedings and to provide notice that a hearing would be held at Noon, December 9, 2009 in the Board's JRT Building offices. The father said the Candidate lives at an address other than that of his parents and that the son was not at the parent's home at the time of this phone conversation. The father said he would pass the message to his son including about the date and time of the upcoming hearing.

HEARING ON THE OBJECTION

At the time for the December 9, 2009 hearing, Objector's attorney appeared. Neither the Candidate nor a representative of the Candidate appeared. The hearing commenced with a court reporter taking stenographic notes. Results from the Board's staff were reviewed. The hearing examiner considered Objector's allegation and calculations that the Candidate needed a minimum of 24 signatures. The hearing examiner took official notice of the 2010 Candidate's Guide listing the minimum requirement for the Green Party in the 10th Congressional District as 23 signatures. The hearing examiner took notice of the unchallenged records check report by Board staff of 21 valid signatures in this matter. No objection was heard from any party. No further evidence was tendered to the hearing examiner by either party.

No evidence was presented to support Objector's allegations that the Candidate may not be a registered or eligible voter in Illinois and may not meet the requirements of Article 1, Section 2 of the United States Constitution specifically age, U.S. citizenship and Illinois residency.

CONCLUSIONS AND RECOMMENDATIONS

Based on the foregoing, the hearing examiner recommends that the Board dismiss those portions of the Objection alleging that the Candidate 1) may not be a registered or eligible voter in Illinois, 2) may not meet the requirements of Article 1, Section 2 of the United States Constitution specifically age, U.S. citizenship and Illinois residency and 3) is not a member or qualified elector of the Green Party. As to these issues, the Objector did not meet his burden of proof. In any case, based on the recommendation below, the Board need not reach these issues.

The hearing examiner further recommends that the Board sustain the remainder of Objector's petition against the Candidate's pleadings, determine the minimum number of signatures needed to be 23 and find that the Candidate's Petition contained only 21 valid signatures when he needed at least 23. The hearing examiner recommends that the Board find that this number of 21 is fewer than the minimum number of signatures required under Section 10-2 of the Illinois Election Code to qualify for access to the ballot as a Green Party candidate for Representative in Congress for the 10th Congressional District of the State of Illinois.

The Hearing Examiner recommends that the Objection to the Candidate's Petition be denied in part and sustained in part and that the name of Candidate Richard B. Mayers not be printed on the ballot as a candidate in the 2010 Green Party General Primary for Representative in Congress for the 10th Congressional District.

Respectfully submitted,

Christopher B. Cohen
Hearing Examiner

Dated: December 12, 2009

**BEFORE THE STATE BOARD OF ELECTIONS
SITTING AS THE DULY AUTHORIZED
STATE OFFICERS ELECTORAL BOARD**

In the Matter of:)
WALER PITUC,)
Petitioner-Objector,)
)
v.)
)
RICHARD B. MAYERS,)
Respondent-Candidate)

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STATE BD OF ELECTIONS
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No. 09 SOEB GP _____

VERIFIED OBJECTOR'S PETITION

Walter Pituc, hereinafter referred to as "Objector" states as follows:

1. The Objector, Walter Pituc, resides at 12 Arbor Court, Buffalo Grove, IL, and is a duly qualified, legal and registered voter at that address.
2. The Objector's interest in filing this Petition is that of a member of the Green Party in protecting the integrity of that organization and of its right of voluntary association and equal protection of the laws, and as a member of the voting public in ensuring that the laws of the State of Illinois governing the filing of nominating papers for Congressional office are properly complied with, and that only qualified candidates appear on the ballot for said office.
3. The Objector makes the following objections to the purported nominating papers of Respondent, Richard B. Mayers ("Nominating Papers"), who has filed said papers seeking to be placed on the February 2, 2010 General Primary as a Green Party candidate for Representative to the U.S. Congress of the 10th Congressional District:
 - A. The Illinois Green Party is a membership based voluntary association that requires all candidates to be actual members of the Party, subject to its guiding principles and By-laws. Respondent is not now, and has never been, a member of the Green Party, and does not subscribe to its guiding principles, and is therefore ineligible to serve as a Green Party candidate

for public office.

B. In order to be qualified to appear on the February 2, 2010 General Primary as the Green Party candidate for Representative to Congress of the 10th Congressional District, Respondent must submit petitions containing signatures from duly qualified, registered and legal voters of the State of Illinois, residing within the 10th Congressional District, in a number at least equal to 0.5% of the qualified primary electors of the Green Party in the 10th Congressional District. (10 ILCS 5/7-10(b)) The number of qualified primary electors is determined “by taking the total vote cast, in the applicable district, for the candidate for that political party who received the highest number of votes, statewide, at the last general election in the State at which electors for President of the United States were elected.” (10 ILCS 5/7-10) The applicable candidate, Kathy Cummings, received 4,611 votes for U.S. Senate in 2008 in the precincts within Cook and Lake Counties which are also within the 10th Congressional District. Therefore, the required minimum number of signatures is 24 ($4,611 * .005 = 23.055$).

C. The Nominating Papers contain petition sheets with the names of persons who are not registered voters at the addresses shown opposite their respective names, as is set forth in the Appendix attached hereto and incorporated herein, under the heading, Column A, “Signer Not Registered at Address Shown,” in violation of the Illinois Election Code.

D. The Nominating Papers contain petition sheets with the names of persons for whom the addresses shown are not located within the jurisdiction of the 10th Congressional District, as is set forth in the Appendix attached hereto and incorporated herein, under the heading, Column B, “Address Not Located Within the Relevant Jurisdiction,” in violation of the Illinois Election Code.

E. In addition, Respondent may not be a registered or eligible voter in Illinois,

nor meet the requirements of the Constitution, specifically, age, citizenship of the United States and residency in Illinois, as set forth in Article I, Section 2: "No person shall be a Representative who shall not have attained to the age of twenty five years, and been seven years a citizen of the United States, and who shall not, when elected, be an inhabitant of that state in which he shall be chosen."

4. As a consequence of the foregoing, the Nominating Papers contain less than the required number of signatures of duly qualified, registered and legal voters of the State of Illinois, residing within the 10th Congressional District and other defects. As a result, Richard B. Mayers is not eligible to run as a Green Party candidate for Representative to the U.S. Congress of the 10th Congressional District.

CONCLUSION

WHEREFORE, the Objector requests a hearing on the objections set forth herein, an examination by the aforesaid Electoral Board of the official records relating to voters in the applicable jurisdiction, to the extent that such examination is pertinent to any of the matters alleged herein, a ruling that the Nominating Papers are insufficient in law and fact, and a ruling that the name of Respondent, Richard B. Mayers, shall not appear and not be printed on the ballot of the Green Party for the February 2, 2010 General Primary as a candidate for Representative to the U.S. Congress of the 10th Congressional District.

APPENDIX

Column A: Signer Not Registered at Address Shown
 Column B: Address Not Located Within the Relevant Jurisdiction

Sheet	Line	A	B
1	1	X	X
1	2	X	X
1	3	X	
1	4		
1	5		
1	6		
1	7		
1	8		
1	9		
1	10	X	
2	1	X	
2	2	X	
2	3	X	
2	4	X	
2	5	X	X
2	6		
2	7		
2	8	X	
2	9	X	
2	10	X	
3	1		
3	2	X	
3	3	X	
3	4	X	
3	5		
3	6	X	
3	7	X	
3	8		
3	9		
3	10	X	
4	1	X	X

**Dunaway v. Scanlan
09 SOEB GP 518**

Candidate: Ed Scanlan

Office: Governor

Party: Democratic

Objector: Thomas P. Dunaway

Attorney For Objector: James P. Nally

Attorney For Candidate: Adam W. Lasker

Number of Signatures Required: No less than 5,000 and no more than 10,000

Number of Signatures Submitted: 10,446 (only the first 10,000 signatures were considered)

Number of Signatures Objected to: 6,566

Basis of Objection: The nomination papers contain the names of persons (1) who did not sign the papers in their own proper persons, and therefore the signatures not genuine, (2) who are not registered at the addresses shown, (3) who do not reside in the State of Illinois, (4) who have set forth missing or incomplete addresses, (5) who have signed the petition sheets more than once, (6) who have not signed but have printed their signatures, and therefore the signatures are not genuine, and (7) whose signatures are insufficient and improper.

The nominations papers contain petition sheets which bear circulators' affidavits that (1) are not signed by the circulator, (2) are not signed by the circulator in his/her own proper person, and therefore the circulator signature is not genuine, (3) do not contain a complete circulator's address, (4) notary did not personally witness circulator sign, (5) are not properly sworn before a notary in that the notarial jurat is not in proper form, (6) are not notarized, (7) do not fully set forth the date, dates or range of dates on which the sheet was circulated, (8) bear a notarial jurat bearing the name of one notary but the signature of a different notary, (9) were signed by a circulator not of the legal age to circulate a petition, (10) the purported circulator did not actually obtain, solicit or witness the affixing of voters' signatures, and (11) contain a circulator address which is false. The nomination papers demonstrate a pattern of fraud.

Dispositive Motions: None filed

Binder Check Necessary: Yes

Hearing Officer: Barb Goodman

Hearing Officer Findings and Recommendation: A records examination was conducted and upon completion 5,083 objections were sustained and 1,483 objections were overruled, resulting in 4,917 valid signatures. The candidate and objector each filed Rule 9 Motions. Objector made a verbal motion to strike candidate's Rule 9 motion, arguing that candidate's Motion was not timely filed. In addition, the candidate challenged the Constitutionality of the records examination process. After a hearing on the Rule 9 motions, the hearing officer found the candidate's Motion to have been timely filed. The candidate then presented affidavits from various petition signers and a copy of a voter registration record.

This evidence did not result in any SBE staff ruling to be overturned. The hearing officer then considered a challenge to staff findings on 12 sustained objections to petition signers. After conducting a review of the voter records of these 12 individuals, she overturned the staff rulings resulting in the rehabilitation of 7 signatures which raised his valid signature count to 4,924, 76 below the statutory minimum. Neither the objector nor the candidate presented any additional evidence. The hearing officer recommends that the objection be sustained in conformity with the results of the records examination and the results of the Rule 9 hearing.

Recommendation of the General Counsel: Though I concur with the recommendation of the Hearing Officer, I question whether a hearing officer, without being presented any evidence by a party, has the authority to overrule staff findings following a records examination. Since this issue is not directly addressed in the Rules of Procedure, I am reluctant to challenge this particular Hearing Officer's decision to overturn the rulings on the 7 individuals mentioned above. I do feel this question should be addressed in future versions of the Rules.

BEFORE THE ILLINOIS STATE OFFICERS ELECTORAL BOARD

Thomas P. Dunaway)
)
 Objector)
)
 -v-) 09 SOEB GP 518
)
 Ed Scanlan)
)
 Candidate)

HEARING EXAMINER'S REPORT AND RECOMMENDED DECISION

This matter was first heard on November 17, 2009. Objector appeared through counsel James Nally and candidate appeared through counsel Adam Lasker. The matter was sent to a records examination and at the completion of the records examination, the results were as follows:

Signatures filed (only first 10,000 considered):	10,000
Objections sustained:	5,083
Objections overruled:	1,483
Valid signatures:	4,917
Signatures required:	5,000
Signatures <i>under</i> the statutory minimum	83

The Candidate and Objector filed Motions pursuant to paragraph 9 of the Board's Rules of Procedure (Rule 9 Motion). The Objector's Motion was filed on November 30, 2009 prior to 4:00 p.m. and the Candidate's Motion was filed on December 2, 2009 prior to 4:00 p.m. The matter was continued for further hearing on December 7, 2009. At the hearing, Objector verbally moved to strike the Candidate's Rule 9 Motion as not timely. Objector argued that Rule 9 required that motions be filed within 48 hours after the

completion of the records examination and that the completion of the records examination is defined as the actual time of completion. Accordingly, Objector contended that because the records examination was actually completed on November 28, 2009 at approximately 4:00 p.m., the Candidate's Rule 9 Motion was due no later than November 30, 2009 at said time.

Candidate contended that the 48 hours begins upon receipt of the tallies from the Board. The tallies were received at approximately 4:13 p.m. on November 30, 2009 and, according to the Candidate, the Rule 9 Motion was due on December 2, 2009 by said time. Candidate's Rule 9 Motion was, in fact, filed on December 2, 2009 prior to 4:13 p.m.

In support of Candidate's position on the time for filing the Rule 9 Motion, Candidate called Mark Greben, assistant legal counsel for the State Board of Elections was called as a witness. Mr. Greben testified that he recalled discussing with an assistant to the candidate's campaign identified as Brian Babinski that the time for the filing of the Rule 9 Motion would begin upon the parties' receipt of the tallies. Mr. Greben further testified that he believed that his interpretation was consistent with the interpretation of the Board's General Counsel and to the best of his knowledge, his interpretation was also consistent with how the rule was being implemented. In light of Mr. Greben's testimony, Objector's verbal motion to strike Candidate's Rule 9 was overruled.

Candidate, while acknowledging that the Electoral Board was without authority to entertain constitutional challenges, then raised constitutional challenges to the records examination process. He alleged that the Objector did not meet his burden of proof as required by the Board's rules in that the records examination was conducted by untrained persons who are not experts in the field of handwriting analysis. As such, reliance on these experts, according to the Candidate, violated his constitutionally protected right to access to the ballot as well as his due process rights. Inasmuch as the Electoral Board is without jurisdiction to entertain constitutional challenges, the challenge could not be used as a basis to invalidate the objections, validate the

nominating papers or terminate the proceedings.

Moreover, as the Objector contended, the Candidate had the opportunity to object to the Board's Rules of Procedure at the beginning of the process and raised no objections at that time. Therefore, the Candidate, if not explicitly, then at a minimum, implicitly, acquiesced to the process.

Candidate next proceeded to present evidence pursuant to his Rule 9 Motion. As part of his presentation, a copy of the petitions and the computer terminal containing the registration records were made available. Objector objected to using these records as they were not previously requested in Candidate's Rule 9 Motion. Inasmuch as both parties had previous access to these records and these records were used to complete the records examination, neither party could be prejudiced by their use at the Rule 9 hearing. Accordingly, Objector's objection to the use of the records was overruled.

Candidate offered evidence for two signers whose signatures were sustained on the basis of "not registered at address shown." Candidate first presented evidence to rehabilitate the signature of Danielle Brosch whose signature appeared at sheet 1016/4. Candidate offered the registration record of a Danielle Newburg (Exhibit 1). Candidate attempted to offer an Affidavit establishing that Danielle Newburg was the maiden name of Danielle Brosch. However, because the Affidavit was not previously provided to the Objector, as required by the Board's Rule 9, it was not considered. Rule 9 provides in pertinent part "*...(s)uch evidence offered to refute the staff finding must be submitted to the Board or the hearing officer within forty-eight (48) hours after the completion of the records examination*" Therefore, without an affidavit, there was insufficient evidence to establish that Danielle Brosch was a registered voter at the address shown and no change to the sustained ruling at the records examination was warranted.

Candidate next attempted to rehabilitate the signature of Kenneth Brown whose signature appeared at Sheet 1011, Line 8 by offering the purported registration record for Kenneth Brown (Exhibit 2). However, the registration record offered by Candidate indicated that the address of the Kenneth Brown was 9035 S. Jeffery, Chicago and the petition indicated that the address of signer Kenneth Brown was 9034 S. Jeffery,

Chicago. Therefore, there was insufficient evidence to warrant a change from the sustained ruling at the records examination.

Candidate then addressed the signatures of certain signers for whom objections to the genuineness of their signatures were sustained. Affidavits were submitted and the signatures and information on the affidavits as well as the petition sheet and the signature clip were considered. As to the following signers, there was insufficient evidence to warrant a change in the findings from the records examination in that the signatures on the documents presented did not bear sufficient similarity to warrant a change in the sustained rulings at the records examination.

<u>Exhibit #</u>	<u>Sheet/Line</u>	<u>Name of Signer</u>
3	1014/6	Tamara Williams
7	318/10	Alejandro Barraza
8	319/2	Nancy Martin
9	324/9	Patricia Strabley
12	428/5	Barb Smith
14	468/1	David Phillipaitis
15	470/9	Kelly Baskin
17	508/5	Vickie Weller
18	536/1	Michelle Futch
19	568/10	Michael Hashbarger

Candidate then attempted to rehabilitate the signatures of certain additional signers. No affidavits were submitted for these signers. However, the signatures on the petition sheet were compared with the signatures on the signature clip.

As to the following signers, there was insufficient similarity in the signatures to warrant a change in the sustained rulings from the records examination.

<u>Sheet/Line</u>	<u>Name of Signer</u>
65/2	Tania Orozco
65/4	Donald Krischak
77/9	Walter Adamczsk
507/6	Frances Jacobs
507/8	Nora Marks

As to the following signers, there was sufficient evidence to warrant a change in the findings from the records examination from sustained to overruled. Sufficient similarity existed in the signatures contained in the affidavit, petition sheet and signature clip to conclude that the following signers of the petition signed in their own proper person.

<u>Exhibit #</u>	<u>Sheet/Line</u>	<u>Name of Signer</u>
4	55/5	Joanna Skubish
5	60/7	Thomas McBride
6	73/3	John Gancer
10	325/10	Richard Ramos
11	428/3	Simon Morris
13	433/9	Adam Kokot
16	479/3	Dan Laskiewicz

After the rulings on all of the foregoing signatures, Candidate indicated that there were insufficient remaining signatures in his Rule 9 Motion to bring him above the minimum signature requirement and presented no further evidence. At the conclusion of the Candidate's case, the candidate had 4,924 valid signatures, 76 below the statutory minimum. Objector presented no further evidence as the Candidate was already below the minimum signature requirement.

In light of the foregoing, it is my recommendation that the objections of Thomas P. Dunaway be sustained in conformity with the results of the records examination and the results of the Rule 9 hearing. It is my further recommendation that the nominating papers of candidate Ed Scanlan be deemed invalid and that the name of candidate Ed Scanlan not appear on the ballot at the February 2, 2010 General Primary Election.

Respectfully submitted,

Barbara Goodman /s/
Barbara Goodman
Hearing Examiner
12/10/09

BEFORE THE DULY CONSTITUTED ELECTORAL BOARD FOR THE HEARING AND PASSING UPON OF OBJECTIONS TO NOMINATION PAPERS OF CANDIDATES FOR NOMINATION TO THE OFFICE OF GOVERNOR OF THE STATE OF ILLINOIS TO BE VOTED UPON AT THE FEBRUARY 2,2010 GENERAL PRIMARY ELECTION

Thomas P. Dunaway,

Petitioner-Objector

v.

Ed Scanlan,

Respondent-Candidate

OBJECTOR'S PETITION

The objector, Thomas P. Dunaway , states that he resides at 3823 N. Ashland Ave. #201, Chicago, Illinois 60613 that he is a duly qualified and registered legal voter in State of Illinois, the district in which the candidate is to be voted upon, and that his interest in filing the following objections is that of a citizen desirous of seeing that the election laws governing the filing of nomination papers for the office of Governor of the State of Illinois , are properly complied with, and that only qualified candidates appear on the ballot for said office as candidates for the general primary election.

Therefore, he makes the following objections to the Nomination Papers of Ed Scanlan as a candidate for the Democratic Party nomination for the office of Governor of the State of Illinois, to be voted upon at the February 2, 2010 General Primary Election.

1. Pursuant to state law, nomination papers for nomination for the office of Governor of the State of Illinois, to be voted for at the February 2, 2010 General Primary Election, must contain the signatures of not fewer than 5000 nor more than 10,000 duly qualified, registered and legal voters of said District collected in the manner prescribed by law. In addition, said Nomination Papers must truthfully allege the qualifications of the candidate, be gathered and presented in the manner provided for in the Illinois Election Code, and otherwise executed in the form provided by law. The Nomination Papers purport to contain the signatures of in excess of 5000 such voters, and further purport to have been gathered, presented and executed in the manner provided by the Illinois Election Code.
2. The Nomination Papers contain the names of persons who did not sign said papers in their own proper persons, and said signatures are not genuine and are forgeries, as is set forth specifically in the Appendix-Recapitulation attached hereto and incorporated herein,

STATE BOARD OF ELECTIONS

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CHICAGO

under the heading, Column a, "Signer's Signature Not Genuine", in violation of the Illinois Election Code.

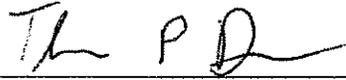
3. The Nomination Papers contain petition sheets with the names of persons who are not registered voters at the addresses shown opposite their respective names, as is set forth specifically in the Appendix-Recapitulation attached hereto and incorporated herein, under the heading, Column b, "Signer Not Registered at Address Shown", in violation of the Illinois Election Code.
4. The Nomination Papers contain petition sheets with the names of persons for whom addresses are stated which are not in the State of Illinois and such signatures are not valid, as is set forth specifically in the Appendix-Recapitulation attached hereto and incorporated herein, under the heading Column c, "Signer Resides Outside District", in violation of the Illinois Election Code.
5. The Nomination Papers contain the names of persons for whom the signer's address is missing or incomplete as is set forth specifically in the Appendix-Recapitulation attached hereto and incorporated herein, under the heading, Column d, "Signer's Address Missing or Incomplete", in violation of the Illinois Election Code.
6. The Nomination Papers contain the names of persons who have signed the Nomination Papers more than one time as is set forth specifically in the Appendix-Recapitulation attached hereto and incorporated herein, under the heading, Column e, "Signer Signed Petition More Than Once at Sheet/Line Indicated", in violation of the Illinois Election Code.
7. The Nomination Papers contain petition sheets with the "signatures" of persons which are not signed but are rather printed, and said signatures are not genuine signatures, as is set forth specifically in the Appendix-Recapitulation attached hereto and incorporated herein, under the heading, Column f, "Signer's Signature Printed and Not Written, Not Genuine", in violation of the Illinois Election Code.
8. The Nomination Papers contain petition sheets with signatures which are otherwise insufficient and improper, as set forth specifically in the Appendix-Recapitulation attached hereto and incorporated herein under the heading Column g "Other" in violation of the Illinois Election Code.
9. The Nomination Papers contain petition sheets which bear a circulator's affidavit which is not signed by the circulator, and every signature on such sheets is invalid, as is set forth in the Appendix-Recapitulation attached hereto and incorporated herein, under the heading "Circulator Did Not Sign Petition Sheet".
10. The Nomination Papers contain petition sheets which bear a circulator's affidavit which is not signed by the circulator in his/her own proper person, and such signatures are not genuine and are forgeries, and every signature on such sheets is invalid, as is set forth in the Appendix-Recapitulation attached hereto and incorporated herein, under the heading,

“Circulator’s Signature Not Genuine”.

11. The Nomination Papers contain petition sheets which bear a circulator’s affidavit on which the circulator’s address is incomplete, and every signature on such sheets is invalid, as is set forth in the Appendix-Recapitulation attached hereto and incorporated herein, under the heading, “Circulator’s Address is Incomplete”.
12. The Nomination Papers contain petition sheets which bear a circulator’s affidavit which is not properly sworn to before a Notary Public or other appropriate officer, in that the notarial jurat lacks proper form, and every signature on such sheets is invalid, as is set forth in the Appendix-Recapitulation attached hereto and incorporated herein, under the heading, “Circulator’s Affidavit Not Properly Notarized”.
13. The Nomination Papers contain petition sheets which bear a circulator’s affidavit on which the circulator did not personally appear before the Notary Public to subscribe or acknowledge his/her signature as circulator in the presence of said Notary Public, and every signature on such sheets is invalid, as is set forth in the Appendix-Recapitulation attached hereto and incorporated herein, under the heading, “Circulator Did Not Appear Before Notary”.
14. The Nomination Papers contain petition sheets which bear a circulator’s affidavit which is not sworn to before a Notary Public or other appropriate officer, and every signature on such sheets is invalid, as is set forth in the appendix-Recapitulation attached hereto and incorporated herein, under the heading, “Sheet Not Notarized”.
15. The Nomination Papers contain petition sheets which bear a circulator’s affidavit which does not fully set forth the date, dates or range of dates on which the sheet was circulated in that the year is not set forth, and which also does not state that no signatures were obtained more than 90 days before the last day for filing the petition, and every signature on such sheets is invalid, as is set forth in the Appendix-Recapitulation attached hereto and incorporated herein, under the heading, “Dates of Circulation Incomplete”, and “Dates of Circulation not given”.
16. The Nomination Papers contain petition sheets which bear a circulator’s affidavit with a notarial jurat bearing the name of a person who purported notarized said sheets, but for which in fact the circulator’s affidavit was sworn to before another person who purported to be the Notary Public whose seal and signature appears on said sheet, and every signature on such sheets is invalid, as is set forth in the Appendix-Recapitulation attached hereto and incorporated herein, under the heading, “Purported Notary Did Not Notarize Sheet”.
17. The Nomination Papers contain petition sheets which bear a circulator’s affidavit with a Circulator was not of legal age to circulate petition and every signature on such sheets is invalid, as is set forth in the Appendix-Recapitulation attached hereto and incorporated herein, under the heading, “Circulator is under 18 years old”.

18. The Nomination Papers contain petition sheets for which the circulator's affidavit is false because the purported circulator did not actually obtain, solicit or witness the affixing of voters' signatures to those sheets, and every signature on those sheets is invalid, as is set forth specifically in the appendix-Recapitulation attached hereto and incorporated herein, under the heading, "Purported Circulator Did Not Circulate Sheet", in violation of the Illinois Election Code.
19. The Nomination Papers contain Petition Sheets which bear a circulator's affidavit which is false, signed by a Circulator who does not reside at the address given, and every signature on such sheet is invalid, as is set forth in the Appendix-Recapitulation attached hereto and incorporated herein under the heading "Circulator does not reside at address shown".
20. The Nomination Papers contain numerous sheets circulated by individuals whose sheets demonstrate a pattern of fraud and disregard of the Election Code to such a degree that every sheet circulated by said individuals is invalid, and should be invalidated in order to protect the integrity of the electoral process. Such circulators are those who circulated the sheets in which objections are made in Columns a, f and Column g of the Appendix-Recapitulation. Specifically, but without limitation, the disregard of the Election Code evidenced by the actions of those circulators includes the submission of voters' signatures which were not signed by the voters in their own proper persons, but rather by one or a few individuals who forged the voters' signatures in a "roundtable" or seriatim fashion. These actions also include, without limitation, these circulators did not see the voter sign the petition in their presence.
21. The Nomination Papers contain less than 5000 validly collected signatures of qualified and duly registered legal voters of the State of Illinois, signed by such voters in their own proper person with proper addresses, far below the number required under Illinois law, as is set forth by the objections recorded in the Appendix-Recapitulation attached hereto and incorporated herein.
22. The Appendix-Recapitulation is incorporated herein and the objections made therein are a part of this Objector's Petition.

WHEREFORE, your objector prays that the nomination papers of Ed Scanlan as a candidate for the Democratic Party nomination for the office of Governor of the State of Illinois, at the February 2, 2010 General Primary Election be declared to be insufficient and not in compliance with the laws of the State of Illinois, and that this name be stricken and that this Board enter its decision declaring that the name of Ed Scanlan as a candidate for the Democratic Party Nomination to the office of Governor of the State of Illinois, be not printed upon the official ballot for the General Primary Election to be conducted February 2, 2010.

A handwritten signature in black ink, appearing to read "Th P D", written over a horizontal line.

Objector

James P. Nally, P.C.
8 South Michigan Avenue
Suite 3500
Chicago, IL 60603
312/422-5560

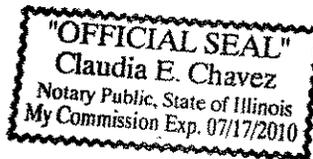
VERIFICATION

The undersigned, being first duly sworn upon oath, states that (s)he has read the foregoing Objector's Petition and to the best of his/her knowledge and belief the facts set forth therein are true and correct.

TL PD
Objector

SUBSCRIBED and SWORN to
before me this 9th day of
November, 2009.

Claudia E. Chavez
NOTARY PUBLIC



Rosenzweig v. Hebda
09 SOEB GP 521

Candidate: Cynthia R. Hebda

Office: State Representative, 59th District

Party: Republican

Objector: Steven M. Rosenzweig

Attorney For Objector: Mike Kreloff

Attorney For Candidate: John Countryman and John Fogarty

Number of Signatures Required: No less than 5,000 and no more than 10,000

Number of Signatures Submitted:

Number of Signatures Objected to:

Basis of Objection: Candidate's Statement of Candidacy is invalid because Candidate has previously established herself as a primary voter of the Democratic Party by signing the nomination petition of a Democratic candidate for State Representative of the 59th District and therefore the Candidate is not a qualified primary voter of the Republican Party. Objector cites *Cullerton v. DuPage County Officers Electoral Board*, 384 Ill.App.3d 989.

Dispositive Motions: Candidate filed a Motion to Strike and Dismiss Objection in which she stated that despite her signing a petition for a Democratic candidate, this did not invalidate her candidacy as a Republican. She claims that the Election Code does not mandate the removal of a candidate of one party simply by signing the petition of a different party, it simply states that a person may not sign a petition or be a candidate of more than one party. She then argues that a "qualified primary elector" is determined by ones ballot choice, not the party of a candidate whose petition is signed.

The then argues that Illinois case law protects her freedom of association and prohibits the restrictions on party switching advocated by the objector. Lastly, the candidate argues that the Cullerton decision is not applicable to this case, as that case held that a person's party affiliation is determined by the ballot choice at the most recent primary election. The candidate maintains that she voted as a Republican at the 2008 General Primary election and was therefore a Republican at the time she signed the Democratic candidate's petition and such signing did not change that fact.

Binder Check Necessary: No.

Hearing Officer: Chris Cohen

Hearing Officer Findings and Recommendation: The Hearing Officer recommends that the objection be sustained on the grounds that by signing a petition for a Democratic Party candidate, this precluded Ms. Hebda from being a candidate of the Republican Party for the current General Primary Election. He further concluded that simply executing a Statement of Candidacy attesting to being a qualified primary elector of the Republican Party did not effectuate a valid change in party affiliation.

Recommendation of the General Counsel: I do not concur with the recommendation of the Hearing Officer. I believe one of the central holdings in the decision in Cullerton v. DuPage County Officers Electoral Board is that when a person votes at a primary election, they are “locked-in” to that party choice until the next succeeding primary election. By voting in the Republican Primary in 2008, the candidate was at all times locked in to the Republican Party in terms of party affiliation until the 2010 General Primary Election; her signing a Democratic candidate’s petition notwithstanding. I believe the only consequence of applying the Cullerton decision would be to invalidate her “attempt” at party switching and would result in nothing more than rendering her signature on such petition null and void. It does not, in my view, disqualify her candidacy.

In support of this position is the fact that the legislature repealed the provision (Section 7-43(d) of the Election Code) that once precluded a person from voting in one party’s primary if they signed a petition for a candidate of another party within the previous 23 months. By repealing Section 7-43(d), the legislature now allows one to sign a petition for one party, and then turn around and vote a different party’s ballot at that same primary. Though in this case the candidate seeks the nomination of the Republican Party as opposed to voting in said party, the elimination of the previous restriction shows that the legislature was taking a more permissive stance in terms of party switching. The only significant remaining obstacle to such party switching is the Cullerton decision. The holding in that case however is narrow in that it applies only to candidates, and furthermore, the restriction is based only on their political party voting preference at the previous primary election. As noted above, the candidate satisfies Cullerton in that she voted in the most recent Republican Primary (2008) and seeks nomination as a Republican candidate at the next Primary (2010).

Finally, the candidate’s point that Section 7-10, which states that a qualified primary elector may not sign a petition for or be a candidate in the primary of more than one political party, does not prevent such an elector from signing a Democratic petition and then being a Republican candidate at the primary, is well taken. The legislature by using the word “or” instead of “and”, seems to indicate their intent that such party switching is permissible.

It is for these reasons that I recommend that the Candidate’s Motion to Strike be granted, and the objection be overruled.

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

STATE BOARD OF ELECTIONS SITTING AS THE DULY CONSTITUTED STATE OFFICERS
ELECTORAL BOARD
STATE OF ILLINOIS

IN THE MATTER OF:
STEVEN M. ROSENZWEIG

Objector,

vs.

CYNTHIA R. HEBDA

Candidate.

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09 SOEB GP 521

HEARING EXAMINER'S REPORT AND RECOMMENDATION

This matter having come before the State Board of Elections as the duly qualified Electoral Board and before the undersigned Hearing Examiner pursuant to Appointment and Notice issued previously, the Hearing Examiner makes the following Report and Recommendation:

BACKGROUND

On, November 2, 2009, a certain set of nomination papers (the "Petition") was filed by Cynthia R. Hebda (the "Candidate") to place her name on the ballot as a Republican Party candidate for the office of Representative in the General Assembly for the 59th Representative District in the February 2, 2010 General Primary.

This Petition included a Statement of Candidacy in which the Candidate swore on November 1, 2009 that she was a qualified Primary voter of the Republican Party.

On November 9, 2009, a document entitled "Objector's Petition" to which was attached a verification by the Objector (the "Objection") was timely filed by Steven M. Rosenzweig (the "Objector").

The Objection alleged that the nominating papers of the Candidate were insufficient in fact and law because she was not a qualified primary of the Republican Party.

Attached to the Objection as Exhibit A was the above mentioned Statement of Candidacy in which Candidate Hebda swore she was a qualified Primary voter of the Republican Party.

Attached to the Objection as Exhibit B was a nominating petition for Carol Sente to be placed on the ballot as a Democratic nominee for the same office. One of the signatories was Candidate Hebda. Nomination papers including this nominating petition were filed by Carol Sente with this Board on October 26, 2009 to place Sente's name on the ballot as a Democratic Party candidate for the office of Representative in the General Assembly for the 59th Representative District in the February 2, 2010 General Primary.

CASE MANAGEMENT CONFERENCE

On November 17, 2009 the State Board of Elections (the "Board") met in its offices on the 14th floor of the James R. Thompson Building, 100 W. Randolph, Chicago, IL 60601 (the "JRT Building") as the duly constituted State Officers Election Board of the State of Illinois. Following this meeting, this hearing examiner held a case management conference in the above entitled case. The Objector was not personally present but appeared via his attorney. The Candidate was not personally present but appeared via her attorney. Each filed a written appearance.

No subpoenas were requested by either party pursuant to Rule 8 of the Board's Rules of Procedure on this date or at any other time during these proceedings and none were issued.

During the November 17 case management meeting, a hearing was scheduled for November 25, 2009. Briefing deadlines were set for filing motions to strike objections, for filing responses to motions and for filing replies to responses, memoranda of law and other pleadings:

Subsequently, the Candidate timely submitted to the other party and to the hearing examiner a Motion to Strike and Dismiss Objection. It included as an exhibit the Candidate's past voting record as certified by the Lake County Clerk.

The Objector timely filed with the other party and the hearing examiner a Response to the Motion to Strike and Dismiss Objection. The Objector's Response attached as Exhibit A the above mentioned nominating petition for Carol Sente. Attached as Exhibit B was the above mentioned Statement of Candidacy for Candidate Hebda.

The Candidate timely submitted to the other party and to the hearing examiner a Reply of Candidate to Objectors Response to Motion to Strike and Dismiss. All three of these pleadings cited facts and law. No further pleadings were filed by either party prior to the November 25, 2009 hearing.

THE PARTIES ARGUMENTS AND ANALYSIS

1. The Objector asserted that the Candidate's nominating papers were insufficient in fact and law because at the time they were filed with the Board, she was not a qualified primary voter of the Republican Party as required by 10 ILCS 5/8-8.

2. The Objector based these assertions on five factual allegations – a) that Candidate Hebda signed a nominating petition for Democratic candidate Carol Sente stating that Candidate Hebda was a qualified Primary voter of the Democratic Party, b) that included among candidate Sente’s nominating papers was the nominating petition for Sente on which Hebda’s signature appeared, c) that after Sente filed her nominating papers with this Board, Hebda filed her nominating papers for the same office, and d) that in those nominating papers Hebda included her Statement of Candidacy in which Hebda swore she was a qualified Primary voter of the Republican Party, and 5) that at no time did Hebda withdraw or cause to be withdrawn her signature on Sente’s nominating petition.

3. Objector alleged that the Illinois Election Code provides that a qualified primary elector of a party may not sign a petition for or be a candidate in the primary of more than one party and that a candidate must be a qualified primary voter of the political party for which s/he sees nomination. In support of this position, the Objector cited 10 ILCS 5/8-8 and *Cullerton v DuPage County Officers Electoral Board*, 384 Ill.App.3d 989, 894 N.E.2d 774, 780 (2nd Dist, 2008)

4. The Objector pointed to the language on Sente’s nominating petition that Hebda signed. -- “We, the undersigned, members of and affiliated with the DEMOCRATIC PARTY and qualified primary electors of the DEMOCRATIC PARTY....” This language indicated that by signing, Hebda affiliated herself with the Democratic Party. In the Statement of Candidacy Candidate Hebda signed on November 1, 2009, she says she is a “qualified primary voter of the Republican Party.” The Objector argued that because Candidate Hebda chose to be affiliated with the Democratic Party, she is not a qualified primary voter of the Republican Party. Consequently, her nomination papers are invalid in their entirety.

5. In support of his contention that the Candidate had the opportunity to become eligible as a qualified primary voter of the Republican by revoking her signature on Sente’s nomination petition with the State Board of Elections, the Objector cited 10 ILCS 5/7-10.

6. The Objector stated that his interest in filing was that of a voter desirous that the law governing the filing of nomination papers for this office be properly complied with and that only qualified candidates appear on the ballot for this office.

A. The Candidate disputed the Objection’s allegation that prior to executing her Statement of Candidacy, Hebda had established herself as a primary elector of the Democratic Party by signing Democrat Sente’s nominating petition.

B. The Candidate contended that neither the Election Code nor Illinois case law mandate excluding her from the ballot merely for signing Sente’s nomination petition. Candidate asserts that her position is supported by Illinois case law favoring ballot access,

requiring the least drastic means to achieve legitimate goals and the constitutional right to freedom of association.

C. The Candidate states that there is no major dispute as to the facts. She signed a petition for a Democratic candidate then decided to run for the same office as a Republican. The Candidate signed her own Statement of Candidacy. In support of her assertion that she was and is a Republican, the Candidate alleges that she has never declared herself to be a Democrat. She points to the exhibit attached to her pleadings which is a certified copy of her voting record in Lake County covering the period March 17, 1998 through April 7, 2009. It indicates that in 100% of those primary elections in which she voted, she took a Non-Partisan or a Republican ballot – never a Democratic ballot. She is a Republican because for more than ten years she has voted in Republican primaries. Consequently, she concludes that this proves she has never been a Democrat and has always been a Republican including at the time of signing Sente's nominating petition and at the time of filing to run herself in the February 2, 2009 Republican Primary for State Representative.

D. The Candidate agrees that the relevant statute is 10 ILCS 5/8-8 and that it does restrict an individual from signing petitions for candidates of more than one party. The Candidate, however, asserts that the sanction for doing this is not banning the signer's name from being printed on the ballot as a candidate. Instead, the penalty for violating Election Code section 8-8 is that if the signature is objected to, that signature will merely not count towards the number of signatures needed to put the candidate on the ballot.

E. Candidate Hebda agrees that this same statute also prevents a person from being a candidate for more than one party in the same primary and points to the following portion of the section's language –

A "qualified primary elector" of a party may not sign petitions for or be a candidate in the primary of more than one party.

F. The Candidate concludes that the legislature's use of the word "or" in section 8-8 rather than the word "and" shows that the General Assembly did not intend to prohibit a person who signed a nominating petition for a candidate of one party from running as a candidate from another party

G. The Candidate argues that the term "qualified primary elector" means a person who voted in the last primary as a member of that party. That is, the party of an individual is determined by what party ballot the person took in the previous primary.

H. The Candidate's position is that the party name on the top of a nominating petition signed by an individual has no effect on the party of that individual who signed the petition. As support for this position, the Candidate argues that the decision in *Dooley v. McGillicuddy*, 63 Ill.2d 54, 345 N.E.2d 102 (1976) stands for the proposition that the

phrase "qualified primary elector" is not a mandatory requirement of a petition for nomination.

I. As support for the contention in her Motion to Strike and Dismiss that an Illinois voter is allowed to sign two or more nominating petitions for candidates of different parties in the same primary, the Candidate cites the U.S. Constitution's guarantee of the right to freedom of association, the right to change one's mind and *Kusper v. Pontikes*, 414 US 51, 94 S.Ct 303, 38 L.Ed.2d 260 (1973).

J. The Candidate argues that her act of signing someone else's petition to assist that person in gaining access to the ballot, was merely an exercise of her constitutionally protected political freedom, not a declaration of her loyalty to another political party,

K. The Candidate suggests that she signed Sente's nominating petition because someone asked her to do so, not because Hebda was a Democrat and that therefore her candidacy should not be penalized. In support of her assertions that circulation of petitions is a difficult task and that the average person should not be penalized for an unconsidered decision to sign a petition when asked to do so, the Candidate cites *Sperling v. County Officers electoral Board*, 57 Ill.2d 81, 309 N.E. 2d 589 (1974).

L. The Candidate argues that facts in *Cullerton v DuPage County Officers Electoral Board*, *supra* are distinguishable from the instant case and that *Cullerton* does not support the allegations in the Objection. The Candidate notes that in *Cullerton*, the candidate had voted in the primary of the same year and then sought to file a petition to fill a vacancy in another party. According to the Candidate, *Cullerton* supports the proposition that no ballot prohibition would result from signing the petition of a candidate from another party. According to the Candidate, the only act that locks a person out as a candidate is voting in the other party's primary.

The Objector disagrees with the concept that it is permissible for the Candidate to sign a nominating petition stating she is affiliated with one political party and within the same primary election cycle to sign a statement of candidacy stating she is affiliated with another political party. By signing Sente's petition, Hebda declared herself to be a "member of and affiliated with the Democratic Party" and a "qualified primary elector of the Democratic Party." The Objector claims that the Candidate's theory would make party-raiding common place, which is why the General assembly put requirements on the face of nomination petitions directed at potential signatories.

The Objector responded that *Dooley v. McGillicuddy*, *supra* cited by the Candidate is not relevant here, because it did not involve party affiliation of a candidate or a petition signer. The Objector finds no discussion in *Dooley* as to whether the petition signers were Democrats or Republicans, only whether they were qualified to vote in Illinois.

In support of his contention that Hebda's voting in the 2008 Republican primary is not relevant to her declaring a new party affiliation by signing Sente's petition during the

2009 petition signing period, the Objector cited *Kusper v. Pontikes, supra*. The Objector agrees that it is permissible for a voter or petition signer to change party affiliation but not after just declaring it in the same petition signing period.

In response to the Candidate's attempt to distinguish *Cullerton*, the Objector responded that just like the candidate in *Cullerton*, Candidate Hebda's signing a statement of candidacy indicating that she is of one particular party status does not make it so. According to the Objector, the logical extension of *Cullerton* and *Watkins v. Burke*, 122 Ill.App.3d 499, 461 N.E.2d 625 (1st Dist. 1984), suggests that Hebda's signing the Sente petition for the February 2, 2010 Primary changed her status to that of a Democrat. The Objector pointed to the holding in *Watkins* that, "where an otherwise qualified voter has signed the nominating petitions of more than one party, the signature appearing on the petition first signed is valid and all subsequent signatures on the nominating petitions of other parties are invalid." *Id.* at 627.

In support of his position that decisions emanating from any of the judicial districts of the Illinois Appellate Court are binding precedent on all circuit courts across the state regardless of locale, the Objector cited *People v Harris*, 123 Ill.2d 113, 526 N.E.2d 335, 340 (1988) and *Garcia v Hynes and Howes real Estate, Inc.*, 29 Ill.App.3d 479, 331 N.E.2d 634, 635-36 (3rd Dist. 1975).

Neither party disputed that the *Cullerton* case was applicable in the First District.

HEARING ON THE OBJECTION AND ON THE MOTION TO STRIKE AND DISMISS

On November 25, 2009, the hearing examiner held a hearing at the Board's office in the JRT Building. The Objector was not personally present but appeared via his attorney. The Candidate appeared and testified and was represented by her attorney.

Evidence considered at the hearing included 1) the Statement of Candidacy in which Candidate Hebda swore she was a qualified Primary voter of the Republican Party, 2) a nominating petition for Carol Sente to be placed on the ballot as a Democrat for the same office on which the signature of Cynthia R. Hebda appeared, 3) Candidate Hebda's past voting record as certified by the Lake County Clerk and 4) oral testimony from Candidate Hebda beginning at Transcript page 70.

During direct examination, Ms. Hebda testified she signed the nominating petition for Democratic candidate Carol Sente the last week in September 2009 [Transcript page 70, line 22]. A Mr. Dek asked if she would sign the petition. She told him she was "a registered Republican voter." She related that he said she could sign the petition as long as she is registered to vote. [Transcript page 71, line six]. During the last week in October [actually November 1, 2009], she signed a nominating petition for her own candidacy and signed that same petition as the circulator which petition was admitted as an exhibit stating that she was a member of the Republican Party. [Transcript page 71, lines 10 - 14]. She does not consider herself affiliated with the Democratic Party but does

consider herself affiliated with the Republican Party. [Transcript page 71, lines 16 - 21]. She voted in the 2008 primary and took a Republican ballot [Transcript page 72, line 4].

After the parties completed their presentations, the Objector's attorney requested time to contact the circulator, Mr. Dek, and to consider proposing a stipulation as to what Mr. Dek would say if called to testify about what he said to Ms. Hebda when offering her candidate Sente's nominating petition to sign. The hearing officer granted the Objector's attorney until the close of business November 30 [Transcript page 75, lines 9 - 13] to file any pleadings, evidence or stipulations.

The Objector's attorney filed comments including statutory authority for a voter to remove his or her own signature from a petition. There was no evidence adduced at the hearing that Ms. Hebda tried to remove or strike her signature from the Sente nomination petition or that she did remove or strike her signature. During the hearing, the hearing examiner indicated that his decision would not turn on that particular issue. [Transcript page 47, line 12]. The Objector's attorney also filed comments objecting to the hearsay of what Mr. Dek said to Ms. Hebda when he asked her to sign the Sente petition.

The hearing examiner finds that these comments are irrelevant to the issues he will consider in making a recommendation. The Candidate's attorney filed an objection to this additional argument by the Objector.

As to the Objector's first comment, Ms. Hebda did not attempt to remove or strike her name. As to the Objector's second comment, the reasons or arguments made by the circulator prior to her signing are not relevant. The hearing examiner finds that what is relevant is whether she did or did not sign. As indicated above, in her testimony Ms. Hebda testified that she did sign the nominating petition for Democratic candidate Carol Sente. The hearing officer will develop his recommendations based on the pleadings and evidence adduced prior to November 26 and will exclude communications after that date from consideration.

No further filings were made by either party. This left the hearing officer to make findings and recommendations based on the record developed via the pleadings and the evidence and arguments adduced at the November 25 hearing.

FINDINGS

Based on the pleadings and the evidence on the record, the hearing examiner finds that Cynthia Hebda signed a nominating petition for Democratic State Representative candidate Carol Sente which was filed as part of Sente's nomination papers with this Board on October 26, 2009. On November 1, Cynthia Hebda signed a statement of candidacy for that same office as a Republican, which statement was filed as part of her nominating papers with this Board on November 2, 2009.

The nominating petition for Sente that Hebda signed contained the language "We, the

undersigned, members of and affiliated with the DEMOCRATIC PARTY and qualified primary electors of the DEMOCRATIC PARTY....” The statement of candidacy which Candidate Hebda swore to before a notary public contained the words “...I am ... a qualified Primary voter of the Republican Party...”

By signing Sente’s petition, Hebda affiliated herself with the Democratic Party. Even though she subsequently signed her own the Statement of Candidacy, she did not by that act become a qualified primary voter of the Republican Party. Consequently, her nomination papers are invalid and her name may not be printed on the Primary ballot.

An individual may have a maximum of one party affiliation for each election cycle. See *Cullerton v DuPage County Officers Electoral Board*, 384 Ill.App.3d 989, 894 N.E.2d 774, 780 (2nd Dist, 2008).

During this primary cycle, the first signature is valid and subsequent conflicting signatures are invalid. See *Watkins v. Burke*, 122 Ill.App.3d 499, 461 N.E.2d 625 (1st Dist. 1984),

CONCLUSIONS AND RECOMMENDATIONS

After reviewing all the arguments and submissions of the parties, the hearing examiner recommends that the Board deny the Candidate’s Motion to Strike and Dismiss He recommends that the Board sustain the Objection and find that the Candidate’s nominating papers to be insufficient in law and fact because at the time they were filed with the Board, the Candidate was not a qualified primary voter of the Republican Party as required by 10 ILCS 5/8-8.

Neither party requested a records examination (binder check) and the hearing officer recommends none be undertaken.

Based on the foregoing, the hearing examiner recommends that the Board sustain the Objector’s petition against the Candidate’s Motion to Strike and Dismiss and other pleadings.

The hearing examiner further recommends that the name of Candidate Cynthia R. Hebda not be printed on the ballot as a Republican Party candidate for the office of Representative in the General Assembly for the 59th Representative District in the February 2, 2010 General Primary of the State of Illinois.

Respectfully submitted,

Christopher B. Cohen
Hearing Examiner

Dated: December 13, 2009

**BEFORE THE STATE BOARD OF ELECTIONS SITTING AS THE
DULY CONSTITUTED STATE OFFICERS ELECTORAL BOARD**

Steven M. Rosenzweig,)
)
Petitioner-Objector,)
)
vs.) 09 SOEB GP 521
)
Cynthia R. Hebda,)
)
Respondent-Candidate.)

**Exceptions to the Hearing Officers Recommendations
by Candidate-Respondent**

Now Comes Cynthia R. Hebda by her attorney, John W. Countryman of The Foster & Buick Law Group, LLC and files exceptions to the recommendations of the hearing officer.

Facts

The Candidate has never voted in primary election as a Democrat. A certified copy of her voting record since 1998 was introduced that showed that **she has always chosen a Republican ballot** in partisan primary elections including the 2008 primary. The Candidate testified that someone knocked at her door in September and asked her to sign a petition for a Democratic candidate. She further testified that she told the circulator that she was a “Republican voter” and that he responded “as long as you are a registered voter, you can sign the petition” (transcript of hearing Nov. 25, 2009 p. 71). Mrs. Hebda then testified that she signed her own petition in late October as a Republican.

This Candidate Voted in the 2008 Republican Primary

The *Cullerton* case stated that the election cycle was primary to primary. In this matter the hearing officer found that the “election cycle” began when the Candidate voted in the Republican primary in 2008 and ended when she sign the petition in 2009. This finding is absolutely contrary to the language in the *Cullerton* case upon which the Objector relies as the sole basis of his objection. *Cullerton* said that the election cycle is primary to primary. *Cullerton v. DuPage County Officers Electoral Board*, 384 Ill.App.3d 989, 894 N.E.2d 774 (2008). That is the theory this Objector’s attorney argued to you in 09 SOEBGP 504 on December 10, 2009. He can’t have it both ways: primary to primary in one case, and primary to petition signing in another case. The signing of a petition invokes a freedom of association, and a person can switch as they desire.

It Is the Act of Voting in a Primary Election that Controls

Only the act of voting in a primary locks a person into that party. Petition signing is permissible even if one signs the petition of a candidate affiliated with another party. The only consequence of signing another's party candidate's petition is that the signature on that candidate's petition might be ruled invalid. Mrs. Hebda has never declared herself a member of another party by electing to take a primary ballot of another party. This fact distinguishes this situation from the other cases that the SOEB has heard this year.

Petition Signing Is Decoupled from Qualifications of a Candidate

Sperling held that petition signing was an act that a voter had a right to exercise freely under the U. S. Constitution and could not be intertwined to candidate qualifications. *Sperling v. County Officers Electoral Board*, 57 Ill. 2d 81, 309 N.E. 2d 589 (1974). The freedom to change as a petition signor is secured by that ruling of the Illinois Supreme Court.

Under Case Law There is No Requirement That the Term "*qualified primary elector*" Be Contained in a Petition Heading

The term "*qualified primary elector*" references someone who has voted in the last primary election as a member of that party. The statement at the top of a petition does not change that status. In fact the Illinois Supreme Court has ruled that the absence of the language "*qualified primary elector*" of a party does not invalidate the petition. See *Dooley v. Mc Gillicuddy*, 63 Ill.2d 54, 345 N.E.2d 102 (1976). The clear import of that ruling is that the phrase "*qualified primary elector*" is not a mandatory requirement of a petition for nomination and one's signing such a petition is no legal significance.

The Objector's Argument "*Locks Out*" the Candidate from All Parties

Objector admits that Mrs. Hebda could be challenged if she attempted to run as a Democratic based upon the Cullerton case. (Transcript p.56 lines 20 to 24).

The *Cullerton* case clearly indicates that, under the facts of this objection case, no ballot prohibition would result from the mere act of signing another party's petition. Under the law as it now stands, the only act that "*locks out*" a person as a candidate is **voting** in another party's last primary election. That did not occur in this case.

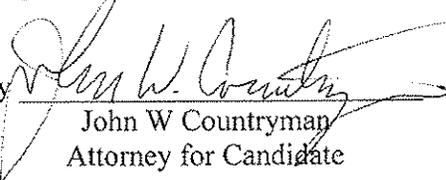
Put another way Cindy Hebda was "*locked in*" as Republican primary voter until the next primary election under the *Cullerton* case, *supra* and by the argument that Mr. Kreeloff made last week in his other case. Thus, she must have the right to seek the Republican nomination with the petitions filed here. The freedom of association guaranteed under *Kusper and Sperling* grants voters the right to sign anyone's petition without imposing such drastic punishment as deprivation of ballot access as a candidate.

As stated in *Kusper*, the State “may not choose means that unnecessarily restrict constitutionally protected liberty.” *Kusper v Pontikes*, 414 U.S. 51, 38 L.Ed. 2d 260, 94 S.Ct. 303, 308 (1973).

Voting in the 2008 Republican Primary Assures this Candidate Access to the 2010 Republican Primary Ballot

The Objector cannot have it both ways. He admits that the Candidate is “*locked out*” of the Democratic Party candidacy or any other party by her 2008 Republican primary vote. Under the hearing officer’s recommendation she will also be “*locked out*” of the Republican Party nomination by a mere signature on a petition. That cannot be. Her right to ballot access must be assured in one of the parties, and in this case that is only in the Republican Party. A clear reading the *Sterling* case, *supra*, and the *Cullerton* case, *supra*, shows that the signing of another party’s candidate’s petition cannot constitute an act that bars ballot access to a candidate who for over ten years has always been a primary voter of the party whose nomination she now seeks for office. **The least drastic means to ballot access requires that the Objection be denied as a matter of law.**

Respectfully Submitted,

By 
John W Countryman
Attorney for Candidate

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BEFORE THE DULY CONSTITUTED ELECTORAL BOARD
 FOR THE HEARING AND PASSING UPON OF NOMINATION OBJECTIONS TO
 NOMINATION PAPERS OF CANDIDATES FOR NOMINATION TO THE
 OFFICE OF REPRESENTATIVE IN THE GENERAL ASSEMBLY FOR THE 59th
 REPRESENTATIVE DISTRICT OF THE STATE OF ILLINOIS

Steven M. Rosenzweig,)
)
Petitioner-Objector,)
)
v.)
)
Cynthia R. Hebda,)
)
Respondent-Candidate.)

CHICAGO
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 STATE
 BOARD OF ELECTIONS

OBJECTOR'S PETITION

INTRODUCTION

Steven M. Rosenzweig, hereinafter sometimes referred to as the Objector, states as follows:

1. The Objector resides at 449 Caren Drive, Buffalo Grove, Illinois, Zip Code 60089, in the 59th Representative District of the State of Illinois, and is a duly qualified, legal and registered voter at that address.
2. The Objector's interest in filing this Petition is that of a voter desirous that the laws governing the filing of nomination papers for the office of Representative in the General Assembly for the 59th Representative District of the State of Illinois are properly complied with, and that only qualified candidates appear on the ballot for said office.

OBJECTIONS

3. The Objector makes the following objections to the purported nomination papers ("Nomination Papers") of Cynthia R. Hebda as a candidate for the office of Representative in the General Assembly for the 59th Representative District of the State of Illinois ("Office") to be voted for at the Primary Election on February 2, 2010 ("Election"). The Objector states that the Nomination Papers are insufficient in fact and law for the following reasons:

4. Pursuant to State law, a candidate for the Office must be a "qualified primary elector" of a political party in order to seek that party's nomination at a primary election. 10 ILCS 5/8-8. In

fact, the Candidate signed and swore to a Statement of Candidacy (attached as Exhibit A) on November 1, 2009 in which she swore that she was “a qualified Primary voter of the Republican Party.”

5. The Candidate’s Statement of Candidacy is invalid because it is false and perjurious. The Statement of Candidacy is false because the Candidate is not a qualified primary voter of the Republican Party.

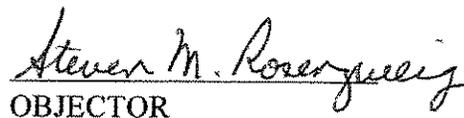
6. Prior to executing her Statement of Candidacy she had previously established herself as a primary voter of the Democratic Party by signing the nominating petition of Carol Sente as a Democratic nominee for the same office (attached as Exhibit B).

7. The Election Code provides that “a qualified primary elector of a party may not sign petitions for or be a candidate in the primary of more than one party.” 10 ILCS 5/8-8. The Election Code “provides that a candidate must be a qualified primary voter of the political party for which he seeks nomination.” *Cullerton v. DuPage County Officers Electoral Board*, 384 Ill.App.3d 989, 894 N.E.2d 774, 780 (2nd Dist. 2008).

8. Because the Candidate has affiliated herself with the Democratic Party by signing a Democratic nominating petition, she is not a “qualified primary voter” of the Republican Party. As a result, her Nomination Papers are invalid in their entirety.

9. The Candidate had the opportunity to become eligible as a qualified primary voter of the Republican Party by revoking her signature with the State Board of Elections (10 ILCS 5/7-10), but she did not do so. As a result, she is not a qualified primary voter of the Republican Party.

WHEREFORE, the Objector requests: a) a hearing on the objections set forth herein; b) an examination by the aforesaid Electoral Board of the official records relating to voters in the 59th Representative District, to the extent that such examination is pertinent to any of the matters alleged herein; c) a ruling that the Nomination Papers are insufficient in law and fact, and d) a ruling that the name of Cynthia R. Hebda shall not appear and not be printed on the ballot for nomination to the office of Representative in the General Assembly of the 59th Representative District of the State of Illinois, to be voted for at the Primary Election to be held February 2, 2010.


OBJECTOR

Address:
Steven M. Rosenzweig
449 Caren Drive
Buffalo Grove, IL 60089

VERIFICATION

STATE OF ILLINOIS)
) SS.
COUNTY OF Cook)

I, Steven M. Rosenzweig, being first duly sworn upon oath, depose and state that I have read the above and foregoing OBJECTOR'S PETITION, and that the matters and facts contained therein are true and correct to the best of my knowledge and belief.

Steven M. Rosenzweig

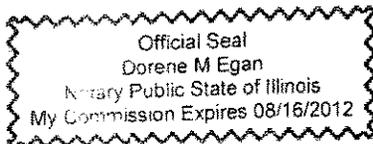
Subscribed and sworn to before me

by Steven M. Rosenzweig

this 2nd day of November, 2009.

Dorene M. Egan

Notary Public



Cattron v. Kairis
09 SOEB GP 523

Candidate: Daniel J. Kairis

Office: Congressman, 14th Congressional District

Party: Green

Objector: Jean Cattron

Attorney For Objector: Michael Kasper

Attorney For Candidate: Andrew Finko

Number of Signatures Required: No less than 38

Number of Signatures Submitted: 62

Number of Signatures Objected to: 39

Basis of Objection: The nomination papers contain petition sheets with the names of persons who are not registered voters, who are not registered voters at the addresses shown, who did not sign in their own proper persons and therefore such signatures are not genuine and whose addresses are missing or incomplete.

Binder Check Necessary: Yes.

Hearing Officer: Dave Herman

Hearing Officer Findings and Recommendation: In light of the results of the records examination showing that the candidate submitted a number of valid signatures 5 above the minimum number required to appear on the ballot, the objection should be overruled and the candidate should be certified for the General Primary Election Ballot. A Rule 9 Motion submitted by the candidate to rehabilitate signatures was not considered or ruled upon because Objector did not contest the results of the records examination.

Recommendation of the General Counsel: I concur with the recommendation of the Hearing Officer.

BEFORE THE DULY CONSTITUTED ELECTORAL BOARD
FOR THE HEARING AND PASSING UPON OF NOMINATION OBJECTIONS TO
NOMINATION PAPERS OF CANDIDATES FOR NOMINATION TO THE
OFFICE OF REPRESENTATIVE IN CONGRESS FOR THE 14TH
CONGRESSIONAL DISTRICT OF THE STATE OF ILLINOIS

Jean Cattron,)	
)	
Petitioner-Objector,)	
)	
v.)	No. 09 SOEB - 523
)	
Daniel J. Kairis,)	
)	
Respondent-Candidate.)	

RECOMMENDATION OF HEARING EXAMINER

This matter coming on for recommendation on the Verified Objection in this matter and the Hearing Examiner states as follows:

PROCEDURAL HISTORY

This matter commenced on November 9, 2009, when Jean Cattron filed a "Verified Objectors' Petition" with the State Board of Elections. Cattron (hereinafter "Objector") alleged that the nomination papers of Daniel J. Kairis for the office of Representative in Congress of the State of Illinois, for the 14th Congressional District (hereinafter "Candidate"), were insufficient in that they were not in conformance with certain provisions of the Illinois Election Code. Specifically, the Objector alleged that

- the nomination papers contained petition sheets with names of persons 1) who were not registered voters or who are not registered voters at the address shown, 2) whose signatures were not genuine, and 3) whose addresses were missing or incomplete.

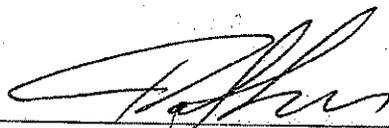
On December 2, 2009, a records examination was conducted by staff of the State Board of Elections. The records review revealed that Candidate had collected a total of 62 signatures. There were 39 line objections reviewed at the records examination. At the conclusion of the records examination there were 43 signatures considered valid (19 line objections were sustained, while 20 line objections were overruled). After the records review, Candidate had the required statutory minimum of not fewer than 38 to be placed on the primary election ballot.

On December 4, 2009, Candidate submitted a Rule 9 Motion with evidence to rehabilitate signatures. Objector represented through her counsel on December 7, 2009, that she does not contest the results of the binder check. As a result the Rule 9 Motion and the evidence need not be considered or ruled upon.

Conclusion

Because Candidate has met the minimum signature requirement set forth in the Election Code, the Hearing Examiner recommends that Candidate's name should be placed on the ballot for the Primary Election to be held February 2, 2010.

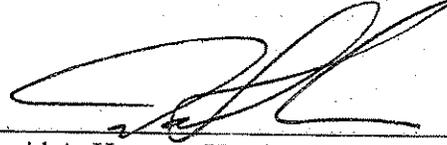
DATED: December 8, 2009



David A. Herman, Hearing Examiner

CERTIFICATE OF SERVICE

Service of the foregoing document was made by sending a copy via e-mail and by mailing a copy thereof, in a sealed envelope, postage fully prepaid, addressed to all parties listed on the previous page and by depositing same in the United States Mail from the office of the undersigned this 8th day of December, 2009.



David A. Herman, Hearing Examiner

BEFORE THE DULY CONSTITUTED ELECTORAL BOARD
FOR THE HEARING AND PASSING UPON OF NOMINATION OBJECTIONS TO
NOMINATION PAPERS OF CANDIDATES FOR NOMINATION TO THE
OFFICE OF REPRESENTATIVE IN CONGRESS FOR THE 14th
CONGRESSIONAL DISTRICT OF THE STATE OF ILLINOIS

Jean Cattron,)
)
Petitioner-Objector,)
)
v.)
)
Daniel J. Kairis,)
)
Respondent-Candidate.)

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STATE BD OF ELECTIONS
ORIGINAL TIME STAMPED
AT 2009 NOV 9 PM 3:40 PM

OBJECTOR'S PETITION

INTRODUCTION

Jean Cattron, hereinafter sometimes referred to as the Objector, states as follows:

1. The Objector resides at 164 S. Porter Street, Elgin, IL, 60120, in the 14th Congressional District of the State of Illinois, and is a duly qualified, legal and registered voter at that address.
2. The Objector's interest in filing this Petition is that of a voter desirous that the laws governing the filing of nomination papers for the office of Representative in Congress for the 14th Congressional District of the State of Illinois are properly complied with, and that only qualified candidates appear on the ballot for said office.

OBJECTIONS

3. The Objector makes the following objections to the purported nomination papers ("Nomination Papers") of Daniel J, Kairis as a candidate for the office of Representative in Congress for the 14th Congressional District of the State of Illinois ("Office") to be voted for at the Primary Election on February 2, 2010 ("Election"). The Objector states that the Nomination Papers are insufficient in fact and law for the following reasons:
4. Pursuant to State law, nomination papers for the Office to be voted for at the Election must contain the signatures of not fewer than 38 duly qualified, registered and legal voters of the 14th Congressional District of the State of Illinois collected in the manner prescribed by law. In addition, nomination papers must truthfully allege the qualifications of the candidate, be gathered and presented in the manner provided for in the Illinois Election Code, and otherwise executed in the form provided by law.

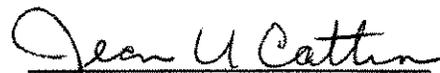
5. The Nomination Papers contain petition sheets with the names of persons who are not registered voters, or who are not registered voters at the addresses shown opposite their respective names, as is set forth specifically in the Appendix-Recapitulation attached hereto and incorporated herein, under the heading Column a., "Signer Not Registered at Address Shown," in violation of the Illinois Election Code.

6. The Nomination Papers contain petition sheets with the names of persons who did not sign the papers in their own proper persons, and such signatures are not genuine and are forgeries, as is set forth specifically in the Appendix-Recapitulation attached hereto and incorporated herein under the heading, Column b., "Signer's Signature Not Genuine," in violation of the Illinois Election Code.

7. The Nomination Papers contain petition sheets with the names of persons for whom the addresses given are either missing entirely or are incomplete, as is set forth specifically in the Appendix-Recapitulation attached hereto and incorporated herein, under the heading, Column d., "Signer's Address Missing or Incomplete," in violation of the Illinois Election Code.

8. The Nomination Papers contain less than 38 validly collected signatures of qualified and duly registered legal voters of the 14th Congressional District, signed by such voters in their own proper person with proper addresses, below the number required under Illinois law, as is set forth by the objections recorded in the Appendix-Recapitulation attached hereto and incorporated herein.

WHEREFORE, the Objector requests: a) a hearing on the objections set forth herein; b) an examination by the aforesaid Electoral Board of the official records relating to voters in the 14th Congressional District, to the extent that such examination is pertinent to any of the matters alleged herein; c) a ruling that the Nomination Papers are insufficient in law and fact, and d) a ruling that the name of Daniel J. Kairis shall not appear and not be printed on the ballot for nomination to the office of Representative in Congress of the 14th Congressional District of the State of Illinois, to be voted for at the Primary Election to be held February 2, 2010.


OBJECTOR

Address:
Jean Catron
164 Porter Street
Elgin, IL 60120

VERIFICATION

STATE OF ILLINOIS

)

) SS.

COUNTY OF KANE

)

I, Jean Cattron, being first duly sworn upon oath, depose and state that I have read the above and foregoing OBJECTOR'S PETITION, and that the matters and facts contained therein are true and correct to the best of my knowledge and belief.

Jean U Cattron

Subscribed and sworn to before me

by Jean Cattron

this 6 day of November, 2009.

Catherine A. Hamilton

Notary Public



09 SOEB GP 524

Candidate: Terrell Barnes

Office: 6th District State Central Committeeman

Party: Democratic

Objector: Maureen Wagner

Attorney For Objector: Jay Rowell/Mike Kasper

Attorney For Candidate: Pro Se

Number of Signatures Required: No less than 100

Number of Signatures Submitted: 253

Number of Signatures Objected to: 152

Basis of Objection: The nomination papers contain petition sheets with the names of persons who are not registered voters, who are not registered voters at the addresses shown, who did not sign in their own proper persons and therefore the signatures are not genuine, who are not registered in the 6th Congressional District and whose addresses are missing or incomplete. The nomination papers contain sheets circulated by individuals whose sheets demonstrate a pattern of fraud; specifically, sheets 9-17 were all signed by the candidate/circulator.

Dispositive Motions: None were filed.

Binder Check Necessary: Yes.

Hearing Officer: Jim Tenuto

Hearing Officer Findings and Recommendation: After the completion of a records examination, candidate was found to have submitted 145 valid signatures. A Rule 9 Hearing was requested by the objector and testimony on the pattern of fraud issue was given by both a qualified forensic document examiner and the candidate. Based on the testimony and a visual observation of the sheets that were circulated by the candidate, the hearing officer found that the signatures on sheets 9-17, with the exception of the signature on Sheet 15, line 1, were signed by the candidate. The hearing officer also found that the pattern of fraud exhibited in sheets 9-17 requires that the remaining sheets circulated by the candidate (sheets 2-8) be disregarded. On the basis of the finding of a pattern of fraud, the hearing officer recommends that the objection be sustained and the candidate not be certified to the ballot.

Recommendation of the General Counsel: I concur with the recommendation of the Hearing Officer for the reasons stated in his Report.

BEFORE THE STATE BOARD OF ELECTIONS
SITTING AS THE STATE OFFICERS
ELECTORAL BOARD

In the Matter of the)
Objection of Maureen Wagner)
to the nominating petition of)
Terrell Barnes) No. 09 SOEB GP 524
Candidate for)
Democratic State Central)
Committeeman for the 6th)
Congressional District)

RECOMMENDATION OF HEARING EXAMINER
TO GENERAL COUNSEL

TO: See Attached Service List

The initial call of the above-referenced Objection was held on November 17, 2009. The Candidate appeared Pro Se. Michael J. Kasper filed an Appearance on behalf of the Objector.

At the subsequent case management conference after the initial call the parties were informed a record examination would be scheduled. The record examination commenced on December 2, 2009 in the Springfield office of the State Board of Elections.

RECORDS EXAMINATION

The results of the record examination were as follows:

Signatures Filed	253
Objections Sustained	108
Objections Overruled	145
Valid Signatures	<u>145</u>

The figures are the results of decisions to individual line objections and do not include any objections made to circulators or notaries.

The Objector requested a Rule 9 Hearing which was held on December 7, 2009, at 3:00 p.m. at the Chicago Office of the State Board of Elections. Present for the Objector were Mike Kasper and Jay Rowell, Attorneys, Diane March, a handwriting expert, with Mr. DeCreamer from Mr. Kasper's office. The Candidate, Terrell Barnes, appeared Pro Se.

Diane Marsh was qualified as a forensic document examiner. Objector's Exhibit # 1, Curriculum Vitae, was entered into evidence. Ms. Marsh testified she examined Sheets 9 through 17 of the nomination petition and concluded that the top portion (heading) lower portion (acknowledgement) and signatures on each sheet were all signed by the Candidate/Circulator, Terrell Barnes. The only exception was Sheet 15, line 1.

The nominating petitions consisted of 17 Sheets each containing a maximum of 15 signatures. Sheet 1 was circulated by Michael Childress. Sheets 2 – 17 were

circulated by the Candidate. A copy of the petitions was admitted as Objectors Group Exhibit No. 2.

A copy of the results of the record examination is also attached. It shows that on Sheets 9 – 17 there are a total of 135 signatures to which 98 objections were sustained. Sheets 1 – 8 have 118 signatures to which 10 objections were sustained. The Candidate obtained 239 signatures.

The Candidate contended that Diane Marsh's opinion must be viewed against the staff that compared the signatures against the elections records.

The Objector called Mr. Barnes who read the bottom portion of Sheet 16 into the record and stated he understood its significance and meaning. The Candidate also testified that each signer completed the street address, city or village and county. Furthermore, the signatures were gathered in the order the sheets were numbered.

The Candidate stated he does not believe the signatures and addresses look similar.

Based on the testimony of Diane March and a visual observation of Sheets 9 -17, the Objector requests that Sheets 2 – 8, which were circulated by the Candidate, also be

disqualified because the actions amount to a pattern of fraud that taint Sheets 9 – 17. Thus, all signatures on sheets circulated by the Candidate should not be counted.

The Objector submitted a Memorandum in Support of Paragraph 11 of the Objector's Petition to support the pattern of fraud argument.

ANALYSIS

The sole issue that needs to be addressed is whether the signature gathered on sheets 9 - 17 are genuine. A cursory examination of the Sheets leads to the conclusion that all the signatures on those sheets were signed by the same person. This is supported by the fact that the addresses, villages and county are remarkably similar. It does not require a handwriting expert to reach this conclusion. The candidate testified each individual signer also wrote the address, village and county.

It is impossible to believe that all the signers have identical handwriting.

I have no doubt that all the signatures, addresses, villages and county were written by the same person, to wit, the Candidate/Circulator.

The next step is to determine the effect that the Circulator falsifying his affidavit has on the remaining Sheets circulated by that individual. In this instance, Sheets 9 – 17

must be disregarded because the signatures appear to be forged and the circulators affidavit is also false.

Having reached the conclusion that Sheets 9 -17 should be disqualified because they demonstrate a pattern of fraud and false swearing, all sheets circulated by Terrell Barnes should be stricken. This is consistent with the holdings in Fortas v. Dixon, 122 Ill. App 3d 697, 462N.E.2d 615 (1st Dist., 1984).

Accordingly, it is the recommendation of the Hearing Examiner that Sheets 2 – 8 also be stricken.

FINDINGS

1. The Candidate filed nominating petitions seeking the office of Democratic State Central Committeeman in the Sixth Congressional District.
2. The Candidate submitted 253 signatures on the 17 Sheets he filed.
3. The Candidate circulated Sheets 2 – 17.
4. An Objection was timely filed by Maureen Wagner.

5. A record examination sustained 108 objections and overruled 44, leaving the Candidate with 145 valid signatures. The minimum number required is 100.
6. The Objector requested a Rule 9 Hearing which was held on December 7, 2009.
7. The Hearing Examiner finds that the signatures on Sheets 9 – 17, with the exception of the signature on Sheet 15, line 1, were signed by the Candidate.
8. This pattern of fraud exhibited in Sheets 9 -17 requires that the remaining sheets circulated by the Candidate, to wit, Sheets 2 – 8, be disregarded.
9. Sheets 2 – 17 are hereby stricken for the reasons set forth above.
10. The Objection filed by Maureen Wagner should be granted as the Candidate has 13 valid signatures after Sheets 2 – 17 are stricken.
11. The name of Terrell Barnes should not be certified as a Candidate for Democratic State Central Committeemen for the 6th Congressional District to be voted February 2, 2010.

CONCLUSION

I recommend that the Objection be granted for the reasons set forth above and the name of Terrell Barnes, as a Candidate for the Office of Democratic State Central Committeeman for the 6th Congressional District not be printed on the Democratic ballot for the General Primary Election to be held on February 2, 2010.

Respectively Submitted,


James Tenuto
Hearing Examiner

James Tenuto & Associates, P.C.
1060 East Lake Street; # 103
Hanover Park, IL 60133
(630) 736-7870
(630) 372-0989 (fax)

09 SOEB GP 524

SERVICE LIST

Steve Sandvoss, General Counsel
State Board of Elections
(217) 782-5959
SSandvoss@elections.il.gov

Terrell Barnes – Candidate (Pro Se)
Terrell33@gmail.com

Michael Kasper – Attorney for Objector
MJKasper60@Mac.Com

CERTIFICATE OF SERVICE

The undersigned certifies that he served the RECOMMENDATION OF HEARING EXAMINER TO GENERAL COUNSEL to the parties set forth in the Service List on December 10, 2009, by the method set forth in the Service List.


James Tenuto
Hearing Examiner

BEFORE THE DULY CONSTITUTED ELECTORAL BOARD
FOR THE HEARING AND PASSING UPON OF NOMINATION OBJECTIONS TO
NOMINATION PAPERS OF CANDIDATES FOR ELECTION TO THE
OFFICE OF DEMOCRATIC STATE CENTRAL COMMITTEEMAN FOR THE 6th
CONGRESSIONAL DISTRICT OF THE STATE OF ILLINOIS

Maureen Wagner,)
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Petitioner-Objector,)
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v.)
)
Terrell Barnes,)
)
Respondent-Candidate.)

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STATE BD OF ELECTIONS
ORIGINAL TIME STAMPED
AT 2009 NOV 9 PM 3:40 *my*

OBJECTOR'S PETITION

INTRODUCTION

Maureen Wagner, hereinafter sometimes referred to as the Objector, states as follows:

1. The Objector resides at 114 W. Monroe, Villa Park, Illinois, Zip Code 60181, in the 6th Congressional District of the State of Illinois, and is a duly qualified, legal and registered voter at that address.
2. The Objector's interest in filing this Petition is that of a voter desirous that the laws governing the filing of nomination papers for the office of Democratic State Central Committeeman for the 6th Congressional District of the State of Illinois are properly complied with, and that only qualified candidates appear on the ballot for said office.

OBJECTIONS

3. The Objector makes the following objections to the purported nomination papers ("Nomination Papers") of Terrell Barnes as a candidate for the office of Democratic State Central Committeeman for the 6th Congressional District of the State of Illinois ("Office") to be voted for at the Primary Election on February 2, 2010 ("Election"). The Objector states that the Nomination Papers are insufficient in fact and law for the following reasons:

4. Pursuant to State law, nomination papers for the Office to be voted for at the Election must contain the signatures of not fewer than 100 duly qualified, registered and legal voters of the 6th Congressional District of the State of Illinois collected in the manner prescribed by law. In addition, nomination papers must truthfully allege the qualifications of the candidate, be gathered

and presented in the manner provided for in the Illinois Election Code, and otherwise executed in the form provided by law.

5. The Nomination Papers contain petition sheets with the names of persons who are not registered voters, or who are not registered voters at the addresses shown opposite their respective names, as is set forth specifically in the Appendix-Recapitulation attached hereto and incorporated herein, under the heading Column a., "Signer Not Registered at Address Shown," in violation of the Illinois Election Code.

6. The Nomination Papers contain petition sheets with the names of persons who did not sign the papers in their own proper persons, and such signatures are not genuine and are forgeries, as is set forth specifically in the Appendix-Recapitulation attached hereto and incorporated herein under the heading, Column b., "Signer's Signature Not Genuine," in violation of the Illinois Election Code.

7. The Nomination Papers contain petition sheets with the names of persons for whom the addresses stated are not in the 6th Congressional District of the State of Illinois, and such persons are not registered voters in the 6th Congressional District, as is set forth specifically in the Appendix-Recapitulation attached hereto and incorporated herein, under the heading, Column c., "Signer Resides Outside District," in violation of the Illinois Election Code.

8. The Nomination Papers contain petition sheets with the names of persons for whom the addresses given are either missing entirely or are incomplete, as is set forth specifically in the Appendix-Recapitulation attached hereto and incorporated herein, under the heading, Column d., "Signer's Address Missing or Incomplete," in violation of the Illinois Election Code.

9. The Nomination Papers contain less than 100 validly collected signatures of qualified and duly registered legal voters of the 6th Congressional District, signed by such voters in their own proper person with proper addresses, below the number required under Illinois law, as is set forth by the objections recorded in the Appendix-Recapitulation attached hereto and incorporated herein.

10. The Appendix-Recapitulation is incorporated herein, and the objections made therein are a part of this Objector's Petition.

11. The Nomination Papers contain sheets circulated by individuals whose sheets demonstrate a pattern of fraud and disregard of the Election Code to such a degree that every sheet circulated by said individuals is invalid, and should be invalidated in order to protect the integrity of the electoral process. Such circulators are: Terrell Barnes. Specifically, Sheet 9 -17, all certified by the Candidate, contain instances of forgery as all signatures appear written by the same person.

WHEREFORE, the Objector requests: a) a hearing on the objections set forth herein; b) an examination by the aforesaid Electoral Board of the official records relating to voters in the 6th Congressional District, to the extent that such examination is pertinent to any of the matters alleged herein; c) a ruling that the Nomination Papers are insufficient in law and fact, and d) a ruling that the name of Terrell Barnes shall not appear and not be printed on the ballot for election to the office of Democratic State Central Committeeman for the 6th Congressional District of the State of Illinois, to be voted for at the Primary Election to be held February 2, 2010.

Maureen Wagner
OBJECTOR

Address:
Maureen Wagner
114 W. Monroe
Chicago, Illinois 60181

VERIFICATION

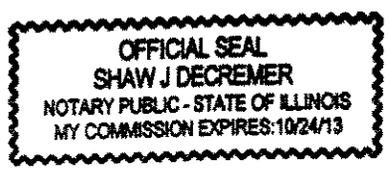
STATE OF ILLINOIS)
) SS.
COUNTY OF Cook)

I, Maureen Wagner, being first duly sworn upon oath, depose and state that I have read the above and foregoing OBJECTOR'S PETITION, and that the matters and facts contained therein are true and correct to the best of my knowledge and belief.

Maureen Wagner

Subscribed and sworn to before me
by Maureen Wagner
this 9 day of November, 2009.

Shaw J Decremier
Notary Public



BEFORE THE DULY CONSTITUTED ELECTORAL BOARD
FOR THE HEARING AND PASSING UPON OF NOMINATION OBJECTIONS TO
NOMINATION PAPERS OF CANDIDATES FOR ELECTION TO THE
OFFICE OF DEMOCRATIC STATE CENTRAL COMMITTEEMAN FOR THE 6th
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Maureen Wagner,)
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OBJECTOR'S PETITION

INTRODUCTION

Maureen Wagner, hereinafter sometimes referred to as the Objector, states as follows:

1. The Objector resides at 114 W. Monroe, Villa Park, Illinois, Zip Code 60181, in the 6th Congressional District of the State of Illinois, and is a duly qualified, legal and registered voter at that address.
2. The Objector's interest in filing this Petition is that of a voter desirous that the laws governing the filing of nomination papers for the office of Democratic State Central Committeeman for the 6th Congressional District of the State of Illinois are properly complied with, and that only qualified candidates appear on the ballot for said office.

OBJECTIONS

3. The Objector makes the following objections to the purported nomination papers ("Nomination Papers") of Terrell Barnes as a candidate for the office of Democratic State Central Committeeman for the 6th Congressional District of the State of Illinois ("Office") to be voted for at the Primary Election on February 2, 2010 ("Election"). The Objector states that the Nomination Papers are insufficient in fact and law for the following reasons:
4. Pursuant to State law, nomination papers for the Office to be voted for at the Election must contain the signatures of not fewer than 100 duly qualified, registered and legal voters of the 6th Congressional District of the State of Illinois collected in the manner prescribed by law. In addition, nomination papers must truthfully allege the qualifications of the candidate, be gathered

and presented in the manner provided for in the Illinois Election Code, and otherwise executed in the form provided by law.

5. The Nomination Papers contain petition sheets with the names of persons who are not registered voters, or who are not registered voters at the addresses shown opposite their respective names, as is set forth specifically in the Appendix-Recapitulation attached hereto and incorporated herein, under the heading Column a., "Signer Not Registered at Address Shown," in violation of the Illinois Election Code.

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8. The Nomination Papers contain petition sheets with the names of persons for whom the addresses given are either missing entirely or are incomplete, as is set forth specifically in the Appendix-Recapitulation attached hereto and incorporated herein, under the heading, Column d., "Signer's Address Missing or Incomplete," in violation of the Illinois Election Code.

9. The Nomination Papers contain less than 100 validly collected signatures of qualified and duly registered legal voters of the 6th Congressional District, signed by such voters in their own proper person with proper addresses, below the number required under Illinois law, as is set forth by the objections recorded in the Appendix-Recapitulation attached hereto and incorporated herein.

10. The Appendix-Recapitulation is incorporated herein, and the objections made therein are a part of this Objector's Petition.

11. The Nomination Papers contain sheets circulated by individuals whose sheets demonstrate a pattern of fraud and disregard of the Election Code to such a degree that every sheet circulated by said individuals is invalid, and should be invalidated in order to protect the integrity of the electoral process. Such circulators are: Terrell Barnes. Specifically, Sheet 9 -17, all certified by the Candidate, contain instances of forgery as all signatures appear written by the same person.

WHEREFORE, the Objector requests: a) a hearing on the objections set forth herein; b) an examination by the aforesaid Electoral Board of the official records relating to voters in the 6th Congressional District, to the extent that such examination is pertinent to any of the matters alleged herein; c) a ruling that the Nomination Papers are insufficient in law and fact, and d) a ruling that the name of Terrell Barnes shall not appear and not be printed on the ballot for election to the office of Democratic State Central Committeeman for the 6th Congressional District of the State of Illinois, to be voted for at the Primary Election to be held February 2, 2010.

Maureen Wagner
OBJECTOR

Address:
Maureen Wagner
114 W. Monroe
Chicago, Illinois 60181

VERIFICATION

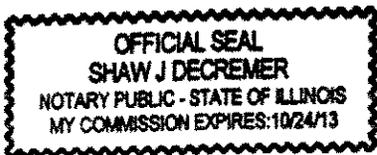
STATE OF ILLINOIS)
) SS.
COUNTY OF Cook)

I, Maureen Wagner, being first duly sworn upon oath, depose and state that I have read the above and foregoing OBJECTOR'S PETITION, and that the matters and facts contained therein are true and correct to the best of my knowledge and belief.

Maureen Wagner

Subscribed and sworn to before me
by Maureen Wagner
this 9 day of November, 2009.

Shaw J Decrem
Notary Public



Reidy v. Pilmer
09 SOEB GP 528

Candidate: Robert P. (Bob) Pilmer

Office: Resident Judge, 16th Circuit-Kendall County-A Vacancy

Party: Republican

Objector: Michael W. Reidy

Attorney For Objector: Richard J. Veenstra

Attorney For Candidate: John W. Countryman and John G. Fogarty

Number of Signatures Required: No less than 500

Number of Signatures Submitted:

Number of Signatures Objected to: Objector did not object to any signatures.

Basis of Objection: At least two of Candidate's nominating petition sheets failed to include the word "Kendall" in the blank immediately following the words "Resident Circuit Court Judge". This resulted in a basis of confusion as to which office the candidate was seeking. This is also a violation of the requirement in the Election Code that the heading of each petition sheet must be the same. In addition, the petitions were filed with the blank lines filled in with the word "Kendall", indicating that the petition heading was altered subsequent to being circulated and thereby evidencing a pattern of fraud.

Dispositive Motions: The Candidate filed a Motion to Strike and Dismiss Objector's Petition, alleging that the objection fails to name the candidate, in that the objection names Robert W. Pilmer. The candidate's correct name is Robert P. Pilmer. The objection only objects to 2 petition sheets, which is insufficient to disqualify enough signatures to bring the candidate below the necessary minimum to qualify for the ballot. The Objection fails to support removal of the candidate in that no basis of confusion resulted from the 2 sheets omitting the designation of Kendall county from the petition heading. Because the candidate clearly listed Additional Judgeship A and listed his address as being in Kendall county, persons signing the petition could only draw one conclusion; the candidate was seeking a resident judgeship from Kendall county, Additional Judgeship A. Finally, there was no evidence of fraud that would otherwise warrant the entire petition to be disqualified.

Binder Check Necessary: No

Hearing Officer: Dave Herman

Hearing Officer Findings and Recommendation:

Motion to Strike

The Hearing Officer recommends that the Motion to Strike be denied. The Motion is based on four points; 1) the objections lists the wrong middle initial of the candidate, thereby improperly naming the person objected to; 2) the objection does not challenge enough signatures to warrant removal from the ballot; 3) the challenged petition sheets do not form the necessary basis of confusion that would warrant

striking the entire petition and 4) the objector has not made a sufficient claim of a pattern of fraud and false swearing that would require the petition to be struck in its entirety.

Wrong middle initial: The claim that the candidate was not correctly named should be denied, as the objector was in substantial compliance with Section 10-8. Section 10-8 requires that the objector give his name and address, fully state the nature of the objection, declare his interest in the objection and state what relief he is seeking. This Section does not require that the objection name the candidate and provides no penalty for anything less than pinpoint accuracy in the listing of the name. In addition, the Hearing Officer found no prejudice resulted from the misnomer as he was adequately informed of the objection.

Insufficient number of challenged signatures: On the issue of only objecting to two pages (and thus 30 signatures) the Hearing Officer noted that the objector objected generally to the entire petition based on an overall pattern of fraud when the petition was altered post circulation. Because such objection went beyond simply challenging 2 pages, the Hearing Officer recommends that this part of the Candidates Motion to Strike be denied.

Voter confusion: On the issue of confusion resulting from the failure to include the county of Kendall in the appropriate blank line, the Hearing Officer recommends denial of this part of the Motion to Strike, as this is a factual issue on which the objector is entitled to present evidence.

Pattern of fraud: As for the issue of a pattern of fraud, the Hearing Officer also recommends that this part of the Motion to Strike be denied. The Hearing Officer noted that if the petition sheets circulated by the candidate (which contained the 2 specific pages challenged by the objector) were all stricken on the basis of a pattern of fraud, the candidate would still have over 900 presumably valid signatures, well over the 500 signature minimum. The objector however challenged the entire petition as possibly being the product of an overall pattern of fraud. Thus the objector is entitled to produce evidence to that affect.

Objector Petition

Evidence was introduced that 11 petition sheets were altered after they were circulated, by adding the word "Kendall" in the blank line identifying the resident judgeship sought. Even if all the signatures on those 11 sheets were stricken on the grounds that the signers were confused as to the office sought by the Candidate, he would still have 1,305 valid signatures remaining; well above the minimum requirement of 500. As such, this allegation of the objection should be denied.

The petition sheets, including the 11 that were changed post circulation, all identified the candidate as residing in the county of Kendall. In addition, they all identified the candidate as seeking the Additional Judgeship A position. Since the Election Code only requires the heading to provide information about the office the candidate is seeking, the Hearing Officer is of the opinion that the candidate substantially complied with this requirement. In addition, because the petition sufficiently identified the office elsewhere in the heading, the inclusion of the word "Kendall", even after circulation, was not a material alteration, and therefore cannot be the basis of a fraudulent act against the petition signers. Even if a basis of fraud could be established, the objector cited no authority that would require striking the entire petition. In fact, if all the sheets of the candidate (who committed the post circulation alteration) were stricken, a position the Hearing Examiner does not take, the petition would still contain enough valid signatures to qualify for the ballot. As such, the recommendation is to overrule the objection.

Recommendation of the General Counsel: I concur with the recommendation of the Hearing Officer.

the office as "Resident Circuit Court Judge Kendall County" and, therefore, failing to specify the office for which the signatures were collected, 2) not bearing identical headings, and 3) creating confusion for the voters signing the petitions.

- The headings on certain of the petition sheets were altered after they had been circulated wherein the previous blank contained in the description of the office was filled in with the word "**Kendall**". These altered petition sheet headings described the office the Candidate was running for as "Resident Circuit Court Judge **Kendall** County". The post-circulation modifications showed evidence of a pattern of fraud, false swearing and a total disregard for the mandatory requirements of the Election Code by the Candidate.

On November 18, 2009, Candidate, through his attorney John W. Countryman, filed a "Motion to Strike and Dismiss Objector's Petition" in response to the Verified Objector's Petition (attached hereto as Exhibit B). Specifically, Candidate alleges that the Verified Objector's Petition failed to name him as the Candidate. He alleges that the Objection names "Robert **W.** (Bob) Pilmer" and failed to name "Robert **P.** (Bob) Pilmer" and that Illinois law does not permit amendments to objections. Candidate further alleged that the Verified Objector's Petition only raises objections to two sheets (72 and 77) and therefore failed to disqualify enough signatures to prevent the Candidate from being placed on the ballot. Candidate further alleged that no confusion could exist over the office sought as there was only one opening for Kendall County Resident Circuit Judge, Additional Judgeship A and that the State Board of Elections has distinct forms for candidates to use for the other non-resident judicial races. Finally, Candidate asserts that the allegations of fraud by Objector fail to state an actionable objection as there has not been any allegation of false swearing or forgery.

On November 20, 2009, the Objectors filed "Objectors' Response to Candidate's Motion to Strike and Dismiss" (attached as Exhibit C). Objector, relying on Wollan v. Jacoby, 274 Ill.App.3d 388, 653 N.E.2d 1303 (1st Dist. 1995) asserts that identifying the Candidate with an incorrect middle initial is merely an identification error akin to a misnomer and that it is statutorily inconsequential because it creates no confusion or prejudice. He further asserts that the post circulation addition of the word "Kendall" to some of the Candidate's petitions shows that the Candidate deemed its absence from some of his petitions to be a fatal defect to those petitions. Objector further asserts that Candidate altered petition sheets after he personally circulated them showing a total disregard for the mandatory requirements of the Election Code and the purposes that underlie them. He asserts that his objections are not limited to sheets 72 and 77 and that "when in the course of hearing objections to nominating papers, evidence beyond specific objections comes to the electoral board's attention, it cannot close its eyes and ears if evidence is relevant to the protection of the electoral process." Finally, he asserts that the Candidate's actions of altering post-circulated petitions and submitting them to the State Board of Elections constitutes both fraud and forgery.

On November 23, 2009, Candidate filed a "Reply of Candidate in Support of Motion to Strike and Dismiss" (attached as Exhibit D). Candidate citing Reyes v. Bloomingdale Township Electoral Board, 265 Ill. App. 3d 69 (2nd Dist. 1994), asserts that the Election Code does not authorize amendments to objections. Candidate further distinguished the Wollan case, by asserting it construed the word 'commissioner' as "trustee". Candidate raises a concern about a post filing discussion Objector's legal counsel had with a State Board of Elections staffer at the time of the objection filing relating to the improper middle initial. He further asserts that there can be no confusion over the office sought and that there have been no allegations of fraud or false swearing. Finally, he asserts that based upon the objection filed and the signatures challenged Candidate will still have the statutorily required 500 signatures to remain on the ballot.

A hearing on Objector's petition was held at the Kane County Courthouse on Friday, December 4, 2009. The transcript is attached hereto as Exhibit E. Prior to the hearing, the parties entered into a Stipulation, which is attached hereto as Exhibit F. Among other things, the parties have stipulated as follows:

- 500 valid signatures are necessary for the office sought by Candidate.

- The 117 petition sheets filed by Candidate with the Board contain 1,470 signatures.
- Candidate was the circulator for 534 of the collected signatures.

See Transcript, at pp. 8-10.

II. Candidate's Motion to Strike and Dismiss Objector's Petition

A. Candidate's Motion regarding Objector's misidentification of Candidate's middle initial in his Verified Objector's Petition

1. Candidate's argument

Candidate claims that "The Objection Fails to Name This Candidate". Candidate points out that "The objection names Robert **W.** (Bob) Pilmer as respondent throughout the objection when in fact no person by the name of Robert **W.** (Bob) Pilmer has filed a petition with the Illinois State Board of Elections for the position of Resident Circuit Judge, Kendall County Additional Judgeship 'A'." Candidate does not claim that he was not given proper notice of the objection, or that he has been prejudiced in any way by the misnomer. He contends, "The Objector's attempt to invoke the rigidity or harshness of election law swings both ways. If Mr. Pilmer did not file his nomination papers with the proper name he could not change it. The same is true of the Objector. This mistake is fatal to the objection and it should be dismissed without further hearing."

2. Objector's argument

In response to Candidate's Motion, Objector cites to Wollan v. Jacoby, 274 Ill. App. 3d 388 (1st Dist. 1995). In that case, the candidates claimed that the objections to their nominating papers were so confusing that they should be deemed legally defective because the objections identified their offices as "Commissioner" instead of "Trustee". The appellate court concluded that there was no basis for confusion as to the office of for which the objections were filed. Moreover, the appellate court noted that "section 10-8 of the [Election] Code contains no requirement that the candidate or the office be precisely identified in the objections."

Furthermore, the appellate court in Wollan determined that there was no confusion or prejudice to the candidates due to the misnomer because both they and the Electoral Board knew that the misidentified office did not exist. The court reasoned:

Aside from conclusory allegations, respondents have failed to articulate evidence of any confusion, prejudice, or detriment as a result of the misidentification or correction thereof. Moreover, petitioners did not seek to add any new objections, as was the case in Stein [Stein v. Cook County Officers Electoral Board, 264 Ill. App. 3d 447, 449 (1st Dist. 1994)]; they merely sought to replace and correct the superfluous term "Commissioner" with that of "Trustee." Assuming *arguendo* that it was error to permit petitioners to correct the objections, it was harmless since we conclude that the use of the descriptive term "Commissioner" did not render the objections legally deficient.

Wollan v. Jacoby, 274 Ill. App. 3d 388, 391-92 (1st Dist. 1995).

3. Analysis

Candidate has failed to cite to any legal authority to support his claim that an error in designating the middle initial of a candidate's name in an objector's petition requires dismissal. See *In re Nomination Certificate of Luzerne County Democratic Executive Committee*, 62 Pa. Commw. 277, 280 (Pa. Commw. Ct. 1981) (*holding the objections based on candidate's middle initial being misidentified are "merely technical and devoid of merit."*). Rather, Candidate cites to two cases, Reyes v. Bloomingdale Township Electoral Board, 265 Ill. App. 3d 69 (2nd Dist. 1994) and Stein v. Cook County Electoral Board, 264 Ill.

App. 3d. 447 (1st Dist. 1994), in support of his proposition that "Illinois does not permit amendments to objections."

In Reyes v. Bloomingdale Township Electoral Board, 265 Ill. App. 3d 69 (2nd Dist. 1994), Reyes petitioned for nomination as an independent candidate for the office of township supervisor, and Stapinski filed an objection. During the hearing conducted by the Bloomingdale Township Electoral Board, the Board allowed Stapinski's request to amend her objection, which resulted in at least five additional signatures being stricken. Had those signatures remained, Reyes would have had sufficient signatures to place her name on the ballot. The appellate court reversed, holding that it was improper for the Board to allow the amendment to the objection because the Election Code did not authorize it.

In Stein v. Cook County Electoral Board, 264 Ill. App. 3d. 447 (1st Dist. 1994), Mark Stein and Wilma Baker each filed an objector's petition, separately and on the final day on which objections could be submitted. Stein filed a motion to consolidate Baker's objections with his objections, and the Cook County Officers Electoral Board ruled that the binder checks would be computed simultaneously, but that the results of the binder checks would be separately tallied. Thereafter, Baker withdrew her petition, and Stein filed a motion to amend his petition to include the objection to signatures found in Baker's petition. The Board denied the motion. The appellate court affirmed, reasoning that Stein's motion to amend was untimely in that it was filed after the time for filing further objections had expired and "that Stein had ample opportunity to include in his initial petition the objections he later tried to incorporate in an amended one".

The cases cited by Candidate do not support his argument that Objector's misnomer is fatal. Rather, the cases cited concern amendments to an objector's petition to assert new substantive reasons, and, here, Objector has not sought to amend the substantive reasons for his objection to Candidate's nomination papers. Therefore, the cases cited by Candidate are of limited assistance.

Section 10-8 of the Election Code governs objections to nomination papers. It provides, in pertinent part:

[N]omination papers . . . being filed as required by this Code, and being in apparent conformity with the provisions of this Act, shall be deemed to be valid unless objection thereto is made in writing within 5 business days after the last day for filing . . . nomination papers

* * *

Any legal voter of the political subdivision or district in which the candidate . . . is to be voted on . . . having objections to any . . . nomination papers or petitions filed, shall file an objector's petition together with a copy thereof in the principal office or the permanent branch office of the State Board of Elections

The objector's petition shall give the objector's name and residence address, and shall state fully the nature of the objections to the . . . nomination papers or petitions in question, and shall state the interest of the objector and shall state what relief is requested of the electoral board.

10 ILCS 5/10-8.

While the Election Code provides direction as to the content of an objector's petition, it "contains no requirement that the candidate or the office be precisely identified in the objections." Wollan, 274 Ill. App. 3d at 391. Likewise, the Code does not address the degree of precision that constitutes compliance, nor does it include a penalty provision for an objector's lack of strict compliance. It simply provides, "The objector's petition . . . shall state fully the nature of the objections to the certificate of nomination or nomination papers or petitions in question" 10 ILCS 5/10-8. Therefore, the Code does not support Candidate's argument that dismissal of the objection due to a misstatement concerning Candidate's middle initial is mandated by the Election Code.

Since the appellate court's decision in Wollan, there have been no changes to the pertinent provisions of the Election Code. Wollan governs and provides that any correction to a misnomer is harmless if the misnomer does not otherwise render the objection legally deficient. Because section 10-8 does not contain a requirement that the candidate or the office be identified in the objections with pinpoint precision, the misidentification of Candidate's middle initial does not render the objection legally deficient. Accordingly, any error with respect to Candidate's middle initial is harmless.

This conclusion is further supported by Morton v. State Officers Electoral Bd., 311 Ill. App. 3d 982 (4th Dist. 2000). There, an objector's petition was filed by "Perry Smith". The candidate filed a motion to dismiss the objection, contending that the objector was not registered to vote within the relevant voting boundaries and submitting certified copies of voting records showing that the person residing at the objector's listed address had registered to vote under the name "Perry S. Smith Jr." According to the candidate, the identification of "Perry Smith" as the objector without the inclusion of the suffix "Jr." on the face of the objection rendered it void because no registered voter by the name of "Perry Smith" was at the Blanchard Road address. The appellate court noted that, "While section 10-8 requires the inclusion of 'the objector's name and residence address', the Code does not include a penalty provision for an objector's lack of strict compliance with this requirement. Although objectors are obligated to comply with all provisions of the Code, it does not follow that every noncompliance will invalidate an objection." Morton v. State Officers Electoral Bd., 311 Ill. App. 3d 982, 985 (4th Dist. 2000).

If substantial compliance is sufficient to avoid dismissal of an objector's petition where the objector's name, which is required by section 10-8 to be included, is provided with imprecision, certainly substantial compliance is sufficient to avoid dismissal where the candidate's name, which section 10-8 does not explicitly require to be included, contains the wrong middle initial. Here, Objector's petition relates to a candidate for the office of Resident Circuit Court Judge, Kendall County, Additional Judgeship A. Only three persons filed Nomination Papers for such office: Objector, Michael W. Ready; Robert P. (Bob) Pilmer; and Theodore W. Lagerwall, Jr. By identifying "Robert W. (Bob) Pilmer" in his Verified Objector's Petition, Objector has substantially complied with the requirements of section 10-8.

Finally, long-standing legal principles provide that, unless there is an issue as to identity, the misidentification of a middle initial is immaterial. See McCreeery v. Burnsmier, 293 Ill. 43, 51 (1920) ("where a middle initial of the candidate's name is not written correctly the ballot will ordinarily be counted for the candidate where there is no other person in the same district of the identical same name and initial as used by the voter."); Behrensmeyer v. Kreitz, 135 Ill. 591, 620 (1891) ("While, ordinarily, a middle initial letter is not to be regarded as a substantial part of the name, yet sometimes, when a question of identity is raised, such initial letter becomes material"); see also Claffin v. City of Chicago, 178 Ill. 549 (1899) ("The common law recognizes but one [C]hristian name, and a middle initial may be dropped and resumed or changed at pleasure. It is not material in any legal proceeding, and its presence or absence or a difference in it does not create a variance.."). However, Candidate does not claim that Objector's use of an incorrect middle initial has caused any confusion, prejudice, or detriment as a result. Objector's petition relates to a candidate for the office of Resident Circuit Court Judge, Kendall County, Additional Judgeship A. There is no other candidate with a similar name, and, under the circumstances presented, there is no confusion as to who the proper respondent is in this case.

In summary, based on the above-cited authorities, the discrepancy of Mr. Pilmer's middle initial in the Objector's petition is insufficient to sustain a dismissal of the objection. Objector's failure to include Mr. Pilmer's correct middle initial is harmless and does not render the objection legally deficient. See Wollan, 274 Ill. App. 3d at 391-92. Accordingly, the Hearing Examiner recommends that the Board deny Candidate's Motion on this issue.

B. Candidate's additional reasons for dismissal

The remainder of Candidate's motion attacks the legal sufficiency of Objector's petition. The Board's Rules of Procedure adopts the Code of Civil Procedure of Illinois. Under the Code of Civil Procedure, we must view Objector's petition in the light most favorable to Objector and accept as true all allegations contained in Objector's petition. See Turner v. Mem'l Med. Ctr., 233 Ill. 2d 494, 499 (2009); Wackrow v. Niemi, 231 Ill. 2d 418, 422 (Ill. 2008).

1. Candidate's Motion regarding failure to support removal from ballot

a. Candidate's argument

Candidate submits that he obtained and filed 1,470 signatures. The required number of signatures for this position is 500. Candidate claims that Objector's petition is aimed at only 30 signatures, and, therefore, "[t]he objection fails to disqualify enough signatures to succeed."

b. Objector's argument

Objector alleges that Candidate's post-circulation modifications warrant the striking of all of Candidate's petition sheets and responds that "Nowhere does the Objection limit its scope to pages 72 and 77." Objector further adds that "The Objector will present ample evidence to support its allegation beyond that enumerated in the Objection and the Objection is not merely limited in scope to pages 72 and 77." Additionally, he states, "the Objection's allegation that the petition pages were altered and subsequently delivered to the State Board of Elections with different provisions than originally existed and with the apparent intent to represent that they were circulated in that form, not only constitutes fraud, but the basis for an allegation of forgery."

c. Analysis

Objector's petition raises concerns about "every petition page" paragraph 12 and "each of the pages" in paragraph 21, and it seeks "the invalidation of candidate Pilmer's nominating papers in their entirety" in paragraph 30.¹ Accordingly, viewing these allegations in the light most favorable to Objector, Objector's petition implicates more than just 30 signatures, and the Hearing Officer recommends that the Board deny Candidate's Motion on this issue.

2. Candidate's Motion regarding lack of confusion

a. Candidate's argument

Candidate outlines the four potential judgeships which a Kendall County resident could seek in the upcoming election. Candidate submits:

- "The full Circuit vacancy of the Hon. Robert P. Grometer would have required the use of SBE form P-17, which identifies the office as 'Judge of the Circuit Court.' This is not the language contained on the face of the petition of Robert P. (Bob) Pilmer. Clearly candidate Pilmer did not seek that office."
- The Third Subcircuit Additional Judgeship A created by the retirement of the Hon. Donald Fabian would have required use of SBE form P-16-A, which identifies the office as "Judge of the Circuit Court." Again, this is not the language contained on the face of the Candidate's petition sheets and Candidate clearly did not seek that office.
- The Resident Circuit Judgeship created by the retirement of the Hon. Grant S. Wegner requires use of SBE form P-18, which Candidate did use. However, for this position, this form would have required that, after the words "to fill the vacancy of", Candidate fill the blank with "Grant S. Wegner". The petition sheets

¹ In addition, following a case management teleconference on November 23, 2009, and in response to the Hearing Officer's request as to the scope of the inquiry of Objector's objection, Objector filed a document entitled Objector's Statement as to Scope of Inquiry, wherein Objector stated that his objection concerns all 117 of Candidate's signature pages.

clearly did not have that blank completed, and Objector does not claim that it was. "No confusion could possibly occur because the name 'Grant S. Wegner' never appeared on Candidate Pilmer's petitions, nor is there any contention of alteration regarding this necessary identification of Judge Wegner's name."

Accordingly, Candidate claims that "The contention that anyone could be confused . . . must fail."

b. Objector's argument

Candidate claims that "The fact that the word 'Kendall' was added after circulation substantiates his confusion argument that Candidate deemed its inclusion to be necessary and its absence a fatal defect to his nominating petitions."

c. Analysis

Paragraphs 16 and 17 of Objector's petition allege confusion. This is a purely factual issue, and Objector should be allowed to present evidence as to confusion. Accordingly, the Hearing Officer recommends that the Board deny Candidate's Motion on this issue.

3. Candidate's Motion regarding failure to state an actionable objection

a. Candidate's argument

Candidate claims that, "In order to sustain a case that would qualify under Illinois case law on the subject of petition fraud, the Objector would have to establish a pattern of **false swearing and forgeries**, neither of which is shown or even hinted at in his objection. There are no allegations whatsoever of false swearing by the circulators, nor is there any claim that any of the signatures are not genuine." (*Emphasis in original*).

b. Objector's argument

Objector alleges that Candidate's post-circulation modifications warrant the striking of all of Candidate's petition sheets and responds that "Nowhere does the Objection limit its scope to pages 72 and 77." Objector further adds that "The Objector will present ample evidence to support its allegation beyond that enumerated in the Objection and the Objection is not merely limited in scope to pages 72 and 77." Additionally, he states, "the Objection's allegation that the petition pages were altered and subsequently delivered to the State Board of Elections with different provisions than originally existed and with the apparent intent to represent that they were circulated in that form, not only constitutes fraud, but the basis for an allegation of forgery."

c. Analysis

Candidate cites to Canter v. Cook County Officers Electoral Board, 170 Ill. App. 3d 364 (1st Dist. 1988); Huskey v. Municipal Officers Electoral Board for Village of Oak Lawn, 156 Ill. App. 3d 201 (1st Dist. 1987); and Fortas v. Dixon, 122 Ill. App. 3d 697 (1st Dist. 1984) for his assertion that there must be allegations of a pattern of false swearing or forgery for objector to sustain a case for petition fraud.² As recited in Canter, Fortas and Huskey "held that when the sheets of a nominating petition submitted by a purported circulator evidence a pattern of fraud, false swearing and total disregard for the mandatory requirements of the Election Code (Ill. Rev. State. 1985, ch. 46, par. 1-1 *et seq.*), the sheets purportedly circulated by that individual should be stricken in their entirety." Canter, Ill. App. 3d at 368.

² In Canter, all of a purported circulator's petition sheets were stricken after evidence was presented that the circulator did not actually circulate certain petition sheets. The facts and holdings in Fortas and Huskey are identical. No such facts are alleged in Objector's petition.

Here, 500 signatures are required for ballot placement, and Candidate contends that he submitted 1,470 signatures. Candidate circulated pages 72 and 77, which have been specifically identified by Objector in his petition as being altered post-circulation. In all, Candidate circulated 37 petition sheets³ himself, accounting for 534 signatures. Thus, assuming for the sake of argument that it is found that the sheets circulated by Candidate are a product of "fraud, false swearing and a total disregard for the mandatory requirements of the Election Code", Canter, Huskey, and Fortas provide that the sheets circulated by Candidate should be stricken in their entirety, leaving Candidate with 936 signatures, which is more than necessary for ballot placement.

If Candidate is left with 936 signatures, Candidate is correct that this would be more than the 500 required, and Candidate's Motion to Dismiss would be well taken. However, as previously indicated, Objector's petition implicates all 117 petition sheets. Whether all petition sheets were altered after they were circulated and whether such modifications amount to "fraud, false swearing and a total disregard for the mandatory requirements of the Election Code" are factual determinations that must be made. Accordingly, the Hearing Officer recommends that the Board deny Candidate's Motion on this issue.

III. Objector's Petition

The Verified Objectors' Petition objects to the nominating petitions on three bases, caused by the sheets identifying the office as "Resident Circuit Court Judge _____ County" and then later filling the blank after they were circulated to specify "Kendall County": 1) the sheets do not specify with the required specificity what office is being sought in violation of 10 ILCS 5/10-4 and 10 ILCS 5/10-5, 2) the headings on those sheets are not the same as the headings on the other petition sheets in violation of section 10 ILCS 5/10-4, and 3) the sheets were misleading or confusing to people who signed the sheets. Furthermore, Objector contends that the post-circulation modifications showed evidence of a pattern of fraud, false swearing and a total disregard for the mandatory requirements of the Election Code by the Candidate, warranting the invalidation of Candidate's nominating papers in their entirety.

A. Objector's claim that Candidate's name should not be certified because the headings of Candidate's sheets failed to specify the office sought in violation of 10 ILCS 5/10-4 and 10 ILCS 5/10-4 and because the headings of Candidate's sheets are not uniform and violate 10 ILCS 5/10-4 should be denied.

1. Objector's argument

Objector claims that, because some of Candidate's sheets identified the office as "Resident Circuit Court Judge _____ County" when circulated, they failed to specify the office sought as required by the Election Code. In support of his claim that this blank was filled in after some or all of the sheets were circulated, Objector explains, "The word 'Kendall' where preceded by the pre-printed words 'Resident Circuit Court Judge' appears in a noticeably different font face than the other 'fill in the blank' typing in the heading of every petition page and its vertical and horizontal alignment varies considerably from page to page[.]"⁴ Objector also argues that if some petition sheets had this blank while others did not when they were circulated, then the headings ran afoul of the Election Code because Candidate's heading is different from page to page.⁵

³ Specifically, sheets numbered 3-4, 16-20, 44-45, 51-54, 59-77, 80-81, 85, 90, and 104.

⁴ Other than Candidate's own admission relating to the post-circulation modification of 11 petition sheets that were submitted, Objector has failed to present any evidence that the word "Kendall" was typed into the pre-printed petition form after being circulated on any of the other petition sheets submitted by Candidate.

⁵ A heading is described in the statute as being located "above the space for signature."

2. Candidate's argument

Candidate submits that he obtained and filed 1,470 signatures. The required number of signatures for this position is 500. Candidate claims that Objector's petition is aimed at only 30 signatures, and, therefore, "[t]he objection fails to disqualify enough signatures to succeed."

3. Analysis

Objector's petition specifically identifies pages 72 and 77 as deficient. Paragraph 6 of Objector's Statement as to Scope of Inquiry provides that "the Objector does not intend to introduce evidence from the signers of any specific[ally] filed nominating petition page other than as to pages 72 and 77." Candidate has admitted in discovery that he altered pages 59, 62, 63, 65, 67, 69, 70, 75, 76, 77, and 90 after those sheets had been circulated and signed by adding "Kendall" to the blank.

The evidence presented at the hearing established that only 11 petition sheets (those identified by Candidate in his discovery response) submitted by Candidate were circulated designating the office sought by Candidate as "Resident Circuit Court Judge _____ County". During the hearing, Candidate testified that the blank was filled with "Kendall" on all other petition sheets prior to circulation. *Transcript, at pp. 35-38*. Also, testimony was presented by a signer of page 72, Mark Carroll, that he could not recall whether the blank was filled with "Kendall" on the sheet that he signed. *Transcript, at pp. 93-94*. Candidate provided affidavits of all circulators of petition sheets (other than Candidate) stating that "Kendall" was filled in after Resident Circuit Court Judge on the sheets that were circulated by him or her at the time the sheets were circulated by them (Exhibit G). No evidence of post-circulation modification was presented concerning the remainder of the 117 petition sheets submitted by Candidate. Accordingly, the evidence concerning Objector's claim is limited to the 11 identified petition sheets.

During the hearing, the parties stipulated on the record that the striking that these 11 sheets would result in the loss of only 165 signatures. *Transcript, at pp. 39-40; 50-51*. As such, at best, this would still leave Candidate with a sufficient number of signatures (in excess of 500) necessary for placement on the ballot.⁶ Therefore, there is no need to engage in an analysis as to whether Candidate has strictly complied or substantially complied with the Election Code on this issue.⁷ Assuming *arguendo* that each signer of these 11 sheets were legally deficient and that these 11 sheets should be stricken, Candidate still has ample signatures to be placed on the ballot.

B. Objector's claim that Candidate's name should not be certified because Candidate's petition sheets confused signers should be denied.

1. Objector's argument

Objector claims that designating the office sought as "Resident Circuit Court Judge _____ County" confused signers due to the fact that several judgeships are up for election by voters of Kendall County and that Candidate stated his intent in running for two different judgeships.

2. Candidate's argument

Candidate outlines the four potential judgeships which a Kendall County resident could seek in the upcoming election, two of which required the use of different SBE form petitions. As for the remaining two, one was the office for which Candidate has filed, and the other required that, after the words "to fill the vacancy of", Candidate fill the blank with "Grant S. Wegner". The petition sheets clearly did not have

⁶ 1,470 – 165 = 1,305

⁷ The Hearing Examiner believes that strict compliance (and, if not strict, substantial compliance) was achieved pursuant to the discussions herein.

that blank completed, and Objector does not claim that it was. Accordingly, Candidate claims that "The contention that anyone could be confused . . . must fail."

3. Analysis

Objector's petition specifically identifies pages 72 and 77 as deficient. Paragraph 6 of Objector's Statement as to Scope of Inquiry provides that "the Objector does not intend to introduce evidence from the signers of any specific[ally] filed nominating petition page other than as to pages 72 and 77." Candidate has admitted in discovery that he altered pages 59, 62, 63, 65, 67, 69, 70, 75, 76, 77, and 90 after those sheets had been circulated and signed by adding "Kendall" to the blank.

The evidence presented at the hearing established that only 11 petition sheets (those identified by Candidate in his discovery response) submitted by Candidate were circulated designating the office sought by Candidate as "Resident Circuit Court Judge _____ County". During the hearing, Candidate testified that the blank was filled with "Kendall" on all other petition sheets prior to circulation. *Transcript, at pp. 35-38.* Also, testimony was presented by a signer of page 72, Mark Carroll, that he could not recall whether the blank was filled with "Kendall" on the sheet that he signed. *Transcript, at pp. 93-94.* Candidate provided affidavits of all circulators of petition sheets (other than Candidate) stating that "Kendall" was filled in after Resident Circuit Court Judge on the sheets that were circulated by him or her at the time the sheets were circulated by them (Exhibit G). No evidence of post-circulation modification was presented concerning the remainder of the 117 petition sheets submitted by Candidate. Accordingly, the evidence concerning Objector's claim is limited to the 11 identified petition sheets.

During the hearing, the parties stipulated on the record that the striking that these 11 sheets⁸ would result in the loss of only 165 signatures. *Transcript, at pp. 39-40; 50-51.* As such, at best, this would still leave Candidate with a sufficient number of signatures (in excess of 500) necessary for placement on the ballot.⁹ Therefore, there is no need to engage in an analysis as to whether Candidate has strictly complied or substantially complied with the Election Code on this issue.¹⁰ Assuming *arguendo* that each signer of these 11 sheets was confused when signing and that these 11 sheets should be stricken, Candidate still has ample signatures to be placed on the ballot.

C. Objector's claim that Candidate's name should not be certified because Candidate's post-circulation amendments of the petition sheets warrant the striking of all petition sheets should be denied.

1. Objector's argument

Objector contends that some of the petition sheets were altered after being circulated and that the post-circulation modifications of petition sheets constitute evidence of a pattern of fraud, false swearing, and a total disregard for the mandatory requirements of the Election Code" so as to warrant the invalidation of Candidate's nominating papers in their entirety.

2. Candidate's argument

Candidate claims that, "In order to sustain a case that would qualify under Illinois case law on the subject of petition fraud, the Objector would have to establish a pattern of **false swearing and forgeries**, neither of which is shown or even hinted at in his objection. There are no allegations whatsoever of false

⁸ These are the same 11 sheets discussed in the preceding section.

⁹ $1,470 - 165 = 1,305$

¹⁰ The Hearing Examiner believes that strict compliance (and, if not strict, substantial compliance) was achieved pursuant to the discussions herein.

swearing by the circulators, nor is there any claim that any of the signatures are not genuine." (*Emphasis in original*).

3. Analysis

Objector claims that Candidate's sheets identified the office as "Resident Circuit Court Judge _____ County" when circulated and that they were later completed to add "Kendall" into the blank. Objector contends that the post-circulation modifications constitute evidence of a pattern of "fraud, false swearing, and a total disregard for the mandatory requirements of the Election Code" so as to warrant the invalidation of Candidate's nominating papers in their entirety.

Canter v. Cook County Officers Electoral Board, 170 Ill. App. 3d 364 (1st Dist. 1988); Huskey v. Municipal Officers Electoral Board for Village of Oak Lawn, 156 Ill. App. 3d 201 (1st Dist. 1987); and Fortas v. Dixon, 122 Ill. App. 3d 697 (1st Dist. 1984) provide that "when the sheets of a nominating petition submitted by a purported circulator evidence a pattern of fraud, false swearing and total disregard for the mandatory requirements of the Election Code [citation], the sheets purportedly circulated by that individual should be stricken in their entirety." Canter, 170 Ill. App. 3d at 368 (*emphasis added*).

In this case, the heading of the petition sheets as filed with the Board of Elections is as follows:

RESIDENT CIRCUIT COURT JUDGE PRIMARY PETITION

We, the undersigned, members of and affiliated with the Republican Party and qualified primary electors of the Republican Party in the 16th Judicial Circuit of the State of Illinois, do hereby petition that Robert P. (Bob) Pilmer who resides at 12730 River Road in the City, Village, Unincorporated Area (circle one) of Piano (if unincorporated, list municipality that provides postal service) Zip Code 60545 County of Kendall and State of Illinois, shall be a candidate of the Republican Party for the nomination for the office of **RESIDENT CIRCUIT COURT JUDGE Kendall** County, to fill the vacancy of the Honorable _____ or Additional Judgeship A (specify one), of the State of Illinois for the 16th Judicial Circuit to be voted for at the primary election to be held on February 2, 2010 (date of election).

Objector presented ample evidence that "Kendall" had a different typeset when completing "Resident Circuit Court Judge _____ County" on the petition sheets. The evidence established, however, that only 11 petition sheets¹¹ were altered post-circulation to add "Kendall" to complete "Resident Circuit Court Judge _____ County".¹² However, there is no dispute that all of Candidate's petition sheets refer to the office sought as "Resident Circuit Court Judge". The Election Code requires that each heading give information relating to the office sought. *See 10 ILCS 5/10-4; 10 ILCS 5/10-5*. The term "office" is not defined in the Election Code. However, the Election Code defines "Judicial office" as "a post held by a judge of the Supreme, Appellate or Circuit Court." *10 ILCS 5/7-4*. In this case, the office sought is that of Resident Circuit Court Judge. Each of the sheets submitted by Candidate contain a reference to the office of Resident Circuit Court Judge; they do not refer to other offices. As such, the 11 sheets with the blank unfilled cannot be found misleading or fraudulent to the people who signed them because the petition sheets contain information that clearly gives "information as to" the office sought by Candidate and do not refer to other offices.

¹¹ These are the same 11 sheets discussed in the preceding two sections.

¹² Candidate submitted 37 affidavits from all other circulators, which provided that "Kendall" was typed into the blank prior to circulation. Testimony was also elicited from an Associate Judge, who circulated petition sheet number 82 on behalf of Candidate and testified that the blank was filled with "Kendall" when she received the petition sheet that she circulated. *Transcript*, at p. 107. No evidence to contradict these assertions was submitted by Objector.

Even if the reference to the office of "Resident Circuit Court Judge _____ County" on 11 sheets does not strictly comply with the Election Code's requirement of "giving information as to" the office sought, each sheet contains a reference to Resident Circuit Court Judge, as well as the Candidate's address in Kendall County. Article VI, Section 11 of the Illinois Constitution provides that only "a United States citizen, a licensed attorney-at-law of this State, and a resident of the unit which selects him" is eligible to hold judicial office. Only two Resident Circuit Court Judge positions for Kendall County are to be nominated on February 2, 2010, namely Additional Judgeship A and the vacancy of the Hon. Grant S. Wagner. Objector does not dispute that the headings of each of Candidate's petition sheets referenced "Additional Judgeship A" when circulated. Further, each of the petition sheets were preprinted to indicate that Candidate resided in Kendall County and the signatories would be from Kendall County. Because the reference to Kendall County is found elsewhere on the petition sheets, the post-circulation completion of these 11 sheets cannot be said to be fraudulent.¹³ For the same reasons, Objector has failed to demonstrate that Candidate has disregarded mandatory provisions of the Election Code.

It is always a cause for great concern when there are allegations that there were post-circulation changes. Objector correctly notes that the State of Illinois Candidate's Guide 2010 provides, "The top portion (heading) of the nominating petition pages which include information relative to the election, the candidate, the office and the political party, where applicable, must be completed prior to circulation of the petition sheet." In this case, however, for the reasons expressed above, the changes were not material.¹⁴

Therefore, because the alteration was not material on 11 of the 117 petition sheets submitted, Objector has not established the presence of "fraud, false swearing and a total disregard for the mandatory requirements of the Election Code" as required by Canter to warrant the striking of the petition sheets circulated by **Candidate**. Even if there was such evidence, there has been no legal basis presented to expand the holdings of Canter, Huskey, and Fortas or to contradict Candidate's contention that – at best – only the particular circulator's petition sheets should be stricken. *See Transcript, at pp. 13-14*. Thus, even if the 37 sheets¹⁵ circulated by Candidate are stricken, he still has a sufficient number of signatures to be placed on the ballot,¹⁶ and Objector has failed to provide any case law to support the

¹³ Candidate has cited to Galloway v. Village of Sauk Village Municipal Officers Electoral Board, Nos. 1-09-0620 & 1-09-0621 consolidated (Ill. App. 1st Dist. Filed March 24, 2009), in which the Appellate Court stated that "if a candidate's residence and, concomitantly his eligibility to run for a particular office, can be easily determined by looking at the rest of the petition, he has substantially complied with the statute and the purpose of the requirement is met." Courts have recognized the ability to consider language elsewhere in a petition in determining the validity of same. *See Bergman v. Vachata*, 347 Ill.App.3d 339, 345 (1st Dist. 2004); Nolan v. Cook County Officers Electoral Board, 329 Ill.App.3d 52, 57 (1st Dist. 2002); Madison v. Sims, 6 Ill.App.3d 795 (1st Dist. 1972); *see also Coluccio v. Fox*, 286 A.D.2d 552 (N.Y. App. 2001) (no confusion where candidate's address appearing at top of each page); Felsen v. Scaringe, 54 N.Y.2d 932, 934 (NY App. 1981) ("when all the information necessary to identify clearly the offices involved is included on the face of the petition," such petition substantially complies with the requirement that the nominating petition must clearly delineate offices sought.).

¹⁴ For example, if there was a blank for both "to fill the vacancy of the Honorable _____ or Additional Judgeship _____ (specify one)", which has not been alleged, then the post-circulation alteration would be material, and the Hearing Examiner's recommendation might be different. In this case, however, even if all 117 petition sheets identified the office as "Resident Circuit Court Judge _____ County" when circulated and were later altered to add "Kendall" in the blank, the addition of "Kendall" to the petition sheets was inconsequential because Candidate could have left the blank unfilled pursuant to the substantial compliance analysis set forth above.

¹⁵ These 37 sheets include the 11 petition sheets previously discussed.

¹⁶ 1,470 – 534 = 936

extraordinary remedy of striking all petition sheets if the circulator is also the candidate. Therefore, even if the limited evidence concerning the 11 petition sheets at issue could establish a pattern and practice¹⁷ of post-circulation modifications amounting to fraud, false swearing and a total disregard for the mandatory provisions of the Election Code, no legal basis has been presented to suggest that a candidate should be treated differently than any other circulator.

Therefore, the Hearing Examiner recommends that this objection be overruled.

Conclusion

Hearing Examiner recommends that:

1. Candidate's November 18, 2009 Motion to Strike and Dismiss be denied;
2. Objector's Verified Objector's Petition praying that Candidate's name not be certified be denied; and
3. Candidate's name be placed on the ballot as a candidate for Resident Circuit Judge for the Sixteenth Judicial Circuit Additional Judgeship A at the primary election to be held February 2, 2010.

DATED: December 10, 2009



David A. Herman, Hearing Examiner

¹⁷ Based on the evidence presented as to the 11 petition sheets, the Hearing Examiner does not believe that Objector has established a pattern and practice.

CERTIFICATE OF SERVICE

Service of the foregoing document was made by sending a copy via e-mail transmission and by mailing a copy thereof, in a sealed envelope, postage fully prepaid, addressed to all parties listed on the previous page and by depositing same in the United States Mail from the office of the undersigned this 10th day of December, 2009.



David A. Herman, Hearing Examiner

STATE OF ILLINOIS)
)
COUNTY OF DUPAGE) SS

BEFORE THE ILLINOIS STATE BOARD OF ELECTIONS SITTING AS THE DULY
CONSTITUTED STATE OFFICERS ELECTORAL BOARD

IN THE MATTER OF OBJECTIONS BY)
MICHAEL W. REIDY TO THE NOMINATION)
PAPERS OF ROBERT W. (BOB) PILMER FOR)
NOMINATION TO THE OFFICE OF RESIDENT) No.
CIRCUIT JUDGE, KENDALL COUNTY)
FOR THE SIXTEENTH JUDICIAL CIRCUIT,)
ADDITIONAL JUDGESHIP A, STATE OF ILLINOIS.)

STATE BOARD OF ELECTIONS
2009 NOV -9 PM 3:58
CHICAGO

VERIFIED OBJECTOR'S PETITION

NOW COMES, MICHAEL W. REIDY, hereinafter referred to as the "Objector," and respectfully represents that the Objector resides at 263 Chicago Rd., in the Village of Oswego, County of Kendall, State of Illinois, and; that the Objector is a qualified, legal, and registered voter at such address within the Sixteenth Judicial Circuit of the State of Illinois; that the Objector's interest in filing the following objections is that of a citizen desirous of seeing to it that the laws governing the nomination of candidates to public office, particularly the judiciary, are properly complied with and that only such candidates that meet the requirements of such laws appear on the ballot; and therefore makes the objections to the nomination papers of Robert W. (Bob) Pilmer for nomination to the office of Resident Circuit Court Judge, Kendall County, for the Sixteenth Judicial Circuit, Additional Judgeship A to be voted on at the February 2, 2010 General Primary Election, set forth as follows:

INTRODUCTION

1. At all times relevant to this objection, there were four open At-Large, Circuit, or Subcircuit judgeships eligible to be filled by election by voters in the Kendall County portion of the Sixteenth Judicial Circuit. Those vacancies included:
 - a. The Full Circuit Vacancy of the Honorable Peter Groemeter;
 - b. The Resident Circuit Judgeship – Kendall County, Vacancy of the Honorable Grant S. Wegner
 - c. The Residential Circuit Judgeship – Kendall County, Additional Judgeship A; and
 - d. The 3rd Subcircuit Additional Judgeship A;
2. On information and belief, judicial candidate Robert W. (Bob) Pilmer publicly considered becoming a candidate for nomination in at least one other circuit court

vacancy in addition to the additional judgeship A for Resident Circuit Court Judge in Kendall County;

3. On information and belief, candidate Pilmer began his candidacy for the election as a Circuit Judge in the Sixteenth Judicial Circuit in September 2009. As part of his candidacy, candidate Pilmer began to circulate and have circulated on his behalf, nominating petitions to obtain the proper number of signatures of registered voters required to secure placement on the February 2, 2010 Republican Primary ballot;
4. On information and belief, the nominating petition circulated by and on behalf of candidate Pilmer was originally generated from the Internet site of the Illinois State Board of Elections.¹ That document permits an individual to electronically “fill in the blanks” that appear in the petition’s heading so as to easily create a petition suitable for use for a specific office. The document contains a blank following the words “Resident Circuit Court Judge” and preceding the word “County” to allow the person preparing the petition to insert the name of the specific county that contains the resident judgeship;
5. On information and belief, on or about October 7, 2009, Jack Jenkins was given a petition to circulate on behalf of the Pilmer Campaign. This petition was identical to the petitions previously circulated by candidate Pilmer in that it contained the same blank following the words “Resident Circuit Court Judge” and preceding the word “County” observed by the Objector and others.
6. On or about October 13, 2009, the Objector personally observed an individual he believed to be a member of candidate Pilmer’s campaign circulating what appeared to be a new petition for Pilmer for Additional Judgeship A that appeared to have been of an entirely different design and format than what the campaign had previously circulated and which sufficiently identified the office to which he was seeking nomination. Petitions of this design do not appear to have been included in candidate Pilmer’s eventual filing with the State Board of Elections;
7. At some time prior to October 20, 2009, registered voter John Reeves signed candidate Pilmer’s nominating petition and specifically noticed that blank area following the words “Resident Circuit Court Judge” and preceding the word “County” in the petition’s heading had not been filled in at the time it was presented to him for his signature;
8. At some time prior to October 20, 2009, registered voter Mark Carroll signed candidate Pilmer’s nominating petition and specifically noticed that blank area following the words “Resident Circuit Court Judge” and preceding the word “County” in the petition’s heading had not been filled in at the time it was presented to him for his signature;
9. On October 29, 2009, candidate Pilmer’s nominating papers were filed with the State Board of Elections in Springfield Illinois;

¹ Available <http://www.elections.il.gov/Downloads/ElectionInformation/pdf/P-18.pdf>.

10. The signature of John Reeves appears on Page 77, Line 13 of candidate Pilmer's nominating papers. Although it was not present at the time Mr. Reeves was presented with and signed the petition, the typed word "Kendall" is present in the blank area following the words "Resident Circuit Court Judge" and preceding the word "County" in the petition's heading;
11. The signature of Mark Carroll appears on Page 72, Line 13 of candidate Pilmer's nominating papers. Although it was not present at the time Mr. Carroll was presented with and signed the petition, the typed word "Kendall" is present in the blank area following the words "Resident Circuit Court Judge" and preceding the word "County" in the petition's heading;
12. The word "Kendall" where preceded by the pre-printed words "Resident Circuit Court Judge" appears in a noticeably different font face than the other "fill in the blank" typing in the heading of every petition page and its vertical and horizontal alignment varies considerably from page to page;

AS ORIGINALLY CIRCULATED, CANDIDATE PILMER'S PETITION SHEETS DID NOT IDENTIFY THE OFFICE HE WAS SEEKING WITH LEGAL SUFFICIENCY

13. The Election Code, 10 ILCS 5/7-10, provides that each sheet of a candidate's nominating petition shall contain an appropriate heading that contains, *inter alia*, information as to the office a candidate is seeking.
14. The apparent purpose of the nominating petitions signed by voters is to expand the informed participation of members of the respective parties in their primary election. Nominating petitions should be free from a "basis for confusion" as to the office for which they are filed. A potential signatory to a nominating petition has the right to know the specific vacancy sought by the candidate so that the signatory may make an informed decision to sign the petition or support another candidate for the same vacancy. *Zapolsky v. Cook County Officers Electoral Bd.* 296 Ill.App.3d 731, 695 N.E.2d 1329 (1st Dist., 1998).
15. With respect to judicial elections, the relevant political subdivision from which a candidate may solicit signatures is the entire circuit or subcircuit to which he seeks election. *See* 10 ILCS 5/7-10(h). Since the Sixteenth Judicial Circuit consists of Kendall, Kane, and DeKalb Counties, candidate Pilmer could have obtained signatures from qualified primary electors in all three counties. Because the General Assembly recently created an additional resident circuit judgeship in each of these three counties, there is resident circuit "Additional Judgeship A" in *all three* counties in which Pilmer could have circulated his petitions;
16. Additionally, voters in Kendall County will nominate at least three types of Judges of the Sixteenth Judicial Circuit in the February 2, 2010 primary, including two Resident Circuit Judgeships in Kendall County and two "Additional Judgeship As," there is a substantial basis for confusion as to the office indicated on Candidate Pilmer's petition. This

confusion is exacerbated by the fact that Pilmer himself publicly considered becoming a candidate in a different judicial race other than the one he eventually circulated petitions for;

17. Candidate Pilmer's omission of the word "Kendall" in his early petitions clearly created a basis of confusion as to the office he was seeking both within Kendall County as well as within the entire Sixteenth Judicial Circuit;

**THE POST-CIRCULATION ALTERATION OF CANDIDATE PILMER'S
PETITIONS EVIDENCES A TOTAL DISREGARD FOR THE MANDATORY
REQUIREMENTS OF THE ELECTION CODE GOVERNING BALLOT
ACCESS**

18. Election laws exist to preserve the integrity of our government. *Glenn v. Radden*, 27 Ill.App.3d 712, 469 N.E.2d 616 (5th Dist., 1984). The general purpose of the Election Code's signature requirements is to provide an orderly procedure by which qualified persons seeking public office may enter elections. *See Lewis v. Dunne*, 63 Ill.2d 48, 344 N.E.2d 443, (Ill. 1976). As noted *infra*, a potential signatory to a nominating petition has the right to make an informed decision to sign the petition or support another candidate for the same office. *Zaplosky*, 296 Ill.App.3d 731 at 734.
19. When the heading contained on a signature sheet is altered *after* it has been circulated and after the signatures of voters have been added to it, the purposes which underlie the Election Code's signature requirements are entirely defeated. The alteration, no matter how seemingly minor, materially changes the document that was presented to the signatories. Here, candidate Pilmer's petitions were altered after circulation in an apparent attempt to correct a significant and likely fatal defect.
20. Though the Objector does not presently suggest that candidate Pilmer knew of or participated in the alteration of the petition sheets, the fact that pages 72 and 77 were circulated by Pilmer strongly suggests that the alterations were not performed by a rouge volunteer or an individual with merely a loose connection to the campaign;
21. Moreover, an examination of each of the pages submitted by candidate Pilmer shows that the vertical and horizontal alignment of the word "Kendall" varies (often substantially) from page to page giving rise (in light of the information regarding pages 72, and 77) to the strong inference that "Kendall" was added after they were circulated. For example, each of the five earliest notarized signature pages, Pages 55, 51, 52, 53, and 54 very clearly have the word "Kendall" in a different location ranging from slightly above, slightly below, and just on the line. Each of these pages was notarized on or prior to October 1, 2009, well before the redesigned petitions began to appear around October 13, and at a time that the Kendall-less petitions were still in circulation. Four of these five pages were circulated by candidate Pilmer;
22. "When the sheets of a nominating petition...evidence a pattern of fraud, false swearing, and a total disregard for the mandatory requirements of the Election Code, the sheets

should be stricken in their entirety.” *Canter v. Cook County Officers Electoral Bd.* 170 Ill.App.3d 364, 523 N.E.2d 1299 (1st Dist., 1988).

23. Though the *Canter* court considered allegations regarding the genuineness of large amounts of fraudulently signatures obtained by a single circulator, the alteration of the heading of signature pages post-circulation is in principle no less serious an example of disregarding the provisions of the Election Code;
24. Even if only some of the signature sheets were defective at the time of circulation, one of the additional requirements of 10 ILCS 5/7-10 is that the heading of each signature sheet shall be the same. If the “Kendall” omission was subsequently corrected, including on pages that had not been circulated then the information would not have been the same from sheet to sheet;
25. Although there is no Appellate Court opinion to interpret this specific provision, when considered with the other mandatory requirements of the Election Code with respect to the format of petition signature pages, the purpose of the “same information” clause is clear. When each sheet contains the same heading throughout the petition circulation process, the signers of all pages of the petition are provided with the same basic information about the candidate and the office he or she is seeking and is thus able to make an informed decision to sign the petition or to choose to support another candidate;
26. For this reason, even if candidate Pilmer corrected his later-circulated pages, then different petition signers were impermissibly given different information at different times about the nature of the office candidate Pilmer was seeking;

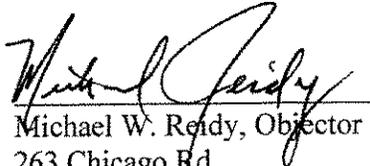
CONCLUSION

27. A candidate’s failure to comply with the mandatory provisions of Election Code mandates the removal of the candidate’s name from the ballot. *Merz v. Volberding*, 94 Ill. App.3d 1111 (1st Dist., 1981).
28. The General Assembly made provisions of 10 ILCS 5/7-10 governing nominating petitions mandatory. *Lawlor v. Municipal Officer Electoral Bd.* 28 Ill.App.3d 823, 329 N.E.2d 436 (1st Dist., 1975).
29. Because candidate Pilmer’s signature pages did not adequately set forth the office to which he is seeking nomination they do not comply, or substantially comply, with the requirements of the Code;
30. Moreover, the alteration of candidate Pilmer’s petitions after they had been circulated to correct a fatal defect is evidence of a total disregard for the mandatory provisions of the Election Code sufficient to justify the invalidation of candidate Pilmer’s nominating papers in their entirety.

WHEREFORE, for all of the forgoing reasons, the Objector respectfully requests this Honorable Board to:

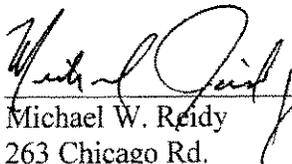
- (1) Convene for the purpose of ruling on this Objection;
- (2) Authorize the issuance of subpoenas for the deposition and subsequent oral testimony of candidate Pilmer and other individuals with information relevant to this Objection;
- (3) Enter an ORDER that the name of Robert (Bob) W. Pilmer be not certified as a candidate for the Office of Resident Circuit Judge, Kendall County, Additional Judgeship A for the Sixteenth Judicial Circuit of the State of Illinois to be voted for at the February 2, 2010 General Primary Election; and
- (4) Grant such further and other relief as deemed appropriate and just.

Respectfully Submitted,


Michael W. Reidy, Objector
263 Chicago Rd.
Oswego, IL 60543
(630) 947-2873

VERIFICATION

The undersigned as Objector, first being duly sworn on oath, now deposes and says that he has read this VERIFIED OBJECTOR'S PETITION and that the statements therein are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that he verily believes the same to be true and correct.

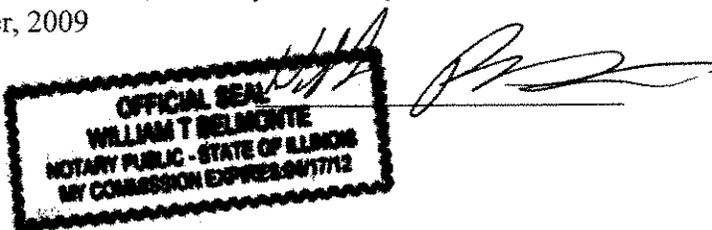


Michael W. Reidy
263 Chicago Rd.
Oswego, IL 60543
(630) 947-2873

STATE OF ILLINOIS)
) SS
COUNTY OF DUPAGE)

Subscribed to and Sworn before me, a Notary Public, by Michael W. Reidy, the Objector, on this the 9th day of November, 2009

[notary seal]



Else v. Moy
09 SOEB GP 529

Candidate: Kenneth Moy

Office: 2nd District Appellate Court Judge - Callum Vacancy

Party: Republican

Objector: Thomas A. Else

Attorney For Objector: Patrick Bond

Attorney For Candidate: Adam Lasker

Number of Signatures Required: No less than 1,535

Number of Signatures Submitted: 2,803

Number of Signatures Objected to: 980

Basis of Objection: The nomination papers contain the names of 442 persons who are not qualified voters of the Republican Party but in fact are qualified voters of the Democratic Party and as such are not valid signatures. In addition, the petitions contain the names of persons who; 1) did not sign petition sheets in their own proper person, and therefore the signatures are not genuine; 2) who are not registered to vote at the addresses shown; 3) who are not registered to vote in the District; 4) whose addresses are missing or incomplete; 5) who have signed the signature sheets more than once and 6) whose signatures are printed and not signed and therefore are not genuine. The nomination papers contain petition sheets for which the circulator did not actually witness voters' signatures and/or circulator address is incomplete. The nomination papers contain duplicates of other petition sheets. Because of numerous discrepancies (such as signatures appearing to have been circulated by the same person and addresses that are outside of the 2nd District) on certain petition pages, this constituted a pattern of fraud.

Dispositive Motions: Candidate filed a Motion to Strike and Dismiss in which he contested the allegation that the 442 persons who were allegedly Democratic voters were ineligible to sign a Republican candidate's petition. This issue was addressed in the body of the Hearing Officer's recommendation. In addition, the candidate objects to certain categories of objections such as "illegible signatures/addresses", "whole sheet same handwriting", "can't find address", "apt complex no apt #", etc., generally claiming that there is no basis in law for such an objection. Again, this was addressed by the Hearing Officer in the body of her recommendation and was also addressed at the records examination.

Binder Check Necessary: Yes

Hearing Officer: Kelly McCloskey Cherf

Hearing Officer Findings and Recommendation: The Hearing Officer noted that at the conclusion of the records examination, the candidate had 2,347 valid signatures (456 objections were sustained and 524 were overruled); which is 812 signatures more than the minimum number necessary to qualify for the office sought. The SBE staff did not rule on the party affiliation objection to the 442 signers, nor did they

rule on the “bad address” objection as it was not certain what part of the address the objector was challenging.

In rejecting the Objector’s contention that the Cullerton decision requires the disqualification of the 442 “Democratic” petition signers, the Hearing Officer felt that the Illinois Supreme Court’s decision in Sperling v. County Officers Electoral Board was controlling and noted that this decision struck down the previous two year restriction on petition signers. Combining this with the Illinois Legislature’s repeal of that portion of Section 7-10 that set forth the eligibility requirements to sign a petition and restricted such signers to those who have not voted in another party’s primary within the previous 23 months, the Hearing Officer concluded that there was no requirement that such signers had to be qualified primary voters of the Republican Party. This part of the Candidate’s Motion to Strike should be granted.

The Hearing Officer then determined that the “Bad Address” objection was not in conformity with Section 10-8 in that it did not state fully the nature of the objection and therefore did not fully apprise the candidate as to what specifically was being objected to. This part of the Candidate’s Motion to Strike should be granted.

As to the “Bad Signature” objection, since the body of the objection adequately described what constituted a bad signature (namely a signature that was not genuine), it was a proper objection and was rightfully subject to the records examination. As such it should be denied.

As for the remaining arguments in the Motion to Strike, the Hearing Officer recommended denial of same, based on the subject objections being proper.

The recommendation is to overrule the objection, based on the candidate having more than the minimum number of valid signatures necessary to qualify for the ballot.

Recommendation of the General Counsel: I concur with the recommendation of the Hearing Officer based on her reasoning as articulated above.

BEFORE THE DULY CONSTITUTED ELECTORAL BOARD
FOR THE HEARING AND PASSING UPON OF OBJECTIONS TO
THE NOMINATION PAPERS OF CANDIDATES FOR NOMINATION TO THE
OFFICE OF APPELLATE COURT JUDGE, SECOND JUDICIAL DISTRICT
FOR THE STATE OF ILLINOIS

THOMAS A. ELSE,)	
)	
Petitioner-Objector,)	No. 09 SOEB 529
)	
v.)	
)	
KENNETH MOY,)	
)	
Respondent-Candidate.)	

HEARING OFFICER' S FINDINGS AND RECOMMENDATIONS

This matter coming before the State Board of Elections as the duly qualified Electoral Board and before the undersigned Hearing Officer pursuant to Appointment and Notice issued previously, the Hearing Officer makes the following Findings and Recommendations:

I. PRELIMINARY FACTS

On October 26, 2009, the Candidate, Kenneth Moy (the "Candidate"), timely filed the following with the State Board of Elections to qualify as a Candidate for the Republican Party for the office of Appellate Court Judge in the Second Judicial District of the State of Illinois: a) a Statement of Candidacy; and b) two-hundred (200) Nomination Petition Sheets which contain 2803 signatures.

On November 9, 2009, the Objector, Thomas A. Else, timely filed a Verified Objector's Petition. The Objector's Petition also includes: 1) a copy of the Candidate's Nomination Papers (Exhibit 1); 2) an Appendix-Recapitulation (Exhibit 2); and 3) "Comments" (Exhibit 3).

In the Petition, the Objector argues that the Candidate's Nomination Papers are insufficient in that the petition sheets contain fewer than the requisite number of 1,535 signatures for the following reasons:

1. 422 of the individuals who signed the petition sheets "are registered and qualified voters of the Democratic Party, as shown by the official records of the local election authority" as set forth in Column G (labeled "Democrat") of the Appendix-Recapitulation, and therefore, their signatures are invalid and should be stricken as the signer must be a "qualified primary elector" of the Republican Party pursuant to 10 ILCS §5/7-10 (Objector's Petition at ¶¶ 4,5,7);

2. 490 of the individuals who signed the petition sheets “are not properly registered to vote at the addresses shown opposite their respective names” as set forth in Column A¹ (labeled “Not Registered”) of the Appendix-Recapitulation, and therefore, their signatures are invalid and should be stricken (Objector’s Petition at ¶ 9);

3. 32 of the individuals who signed the petition sheets are at addresses which “are not in the district . . . as not being within the geographical boundaries” as set forth in Column B (labeled “Not in District”) of the Appendix-Recapitulation, and therefore, their signatures are invalid and should be stricken (Objector’s Petition at ¶ 10)²;

4. 337 of the signatures contained on the petition sheets “are not signed, but are rather, printed and they are not substantially similar to the signatures of record” as set forth in Column C (labeled “Bad Signature”) of the Appendix-Recapitulation, and are therefore invalid and should be stricken (Objector’s Petition at ¶ 13);

5. 63 of the individuals who signed the petition sheets “have signed the petition sheets more than one time” as set forth in Column D (labeled “Petition Signed Twice”) of the Appendix-Recapitulation (Objector’s Petition at ¶ 12);

6. Certain signatures are “not genuine and are forgeries” (Objector’s Petition at ¶ 8), addresses given are “either missing entirely or are incomplete” (Objector’s Petition at ¶ 11), and the “purported circulator did not actually obtain, solicit or witness the affixing of voters’ signatures to those sheets” (Objector’s Petition at ¶ 14), all of which are set forth in Column F (labeled “Other”) of the Appendix-Recapitulation totaling 418 signatures which are invalid and should be stricken;

7. For 3 of the petition sheets (1 by circulator Horn and 2 by the Candidate), the circulator fails to “provide a full address” and therefore all of the signatures on those 3 petition sheets should be stricken (Objector’s Petition at ¶ 19); and

8. There is evidence of fraud and/or a pattern of fraud with regard to circulators Moy (circulator for 145 sheets), Klinger (circulator for 2 petition sheets) and Markvo (circulator for 5 sheets).³ (Objector’s Petition at ¶¶ 15, 16, 17, 18, 20, 21, 23, 24).

Also included in the Appendix-Recapitulation is a Column E labeled “bad address,” although the Petition itself does not explain the meaning or purpose of this label.

¹ For this objection, the Objector’s Petition incorrectly refers to Column B, “Not in District” of the Appendix-Recapitulation, but it is clear from the context of the Petition that the objector meant to refer to Column A, “Not Registered.”

² In a separate paragraph of his Petition, Objector also claims that “Upon information and belief, Sheet 47, Line 13 and Sheet 48, Line 10 contained signatures that are out of the District, and may not even exist” (Objector’s Petition at ¶ 22). This “Not in District” objection is not reflected in the Appendix-Recapitulation.

³ The Objector’s Petition regarding petition sheets for which Markvo was the circulator also is set forth in the “Other” column of the Appendix-Recapitulation.

An initial hearing and case management conference on this matter was held on November 17, 2009. Patrick Bond appeared on behalf of the Objector. Kenneth Moy appeared on behalf of himself.

On November 20, 2009, Adam Lasker filed an appearance on behalf of the Candidate and also a Motion for Leave to File a Motion to Strike. After argument by counsel in a hearing conducted telephonically on November 20, 2009, I recommended that the Candidate's Motion for Leave be granted.

On November 23, 2009, the Candidate filed a Motion to Strike the Objections. In his Motion, the Candidate argues that: a) under *Sperling v. County Officers Electoral Board*, 57 Ill. 2d 81, 309 N.E.2d 589 (Ill. 1974) (hereinafter referred to as "*Sperling*"), the Illinois Supreme Court held that the 2 year party switching restriction set forth in 10 ILCS §5/7-10 is unconstitutional, and therefore, the Objector's objection that the petition signers must be "qualified primary voters" of the Republican Party should be dismissed; b) certain comments set forth in the Objector's Exhibit 3 (i.e., "illegible signature and address," "whole sheet same handwriting," "can't find address," "apt complex no apt. #," "illegible signature and address," "cook written by petitioner overwritten by someone else," "crossout," "bad town") fail to set forth claims that would result in removal of any challenged signature; and c) the objections identified as "bad signatures" fail to set forth a claim that would result in removal of any signatures.

On November 24, 2009, the Objector filed a Response to the Motion to Strike the Objections. In the Response, the Objector argues that: a) under *Cullerton v. Dupage County Officers Electoral Board*, 384 Ill. App. 3d 989, 894 N.E.2d 774 (2d Dist. 2008) (hereinafter referred to as "*Cullerton*"), the signers must be "qualified primary voters" of the Republican Party or they are not eligible to sign the Nominating Papers for the Candidate; and b) the Objector's Petition properly identifies the objections raised to other signatures contained in the petition sheets and these objections should be ruled upon in a records examination.

The Records Examination commenced and was completed on December 2, 2009. Both parties were present at the Records Examination. In conducting the Records Examination, the Board did not rule on the following objections: 1) the 442 petition signers who are not "qualified primary voters" of the Republican Party (Column G of the Appendix-Recapitulation); and 2) the 213 signatures that fall under the "Bad Address" column of the Appendix-Recapitulation (Column E) because it was not properly explained in the body of the Petition and the examiners could not make a proper ruling on said objections.

The Candidate needs 1535 signatures to be on the ballot. The Candidate submitted 2803 signatures. The examiners ruled on objections to 980 signatures. 456 objections were sustained leaving 2347 valid signatures which is 812 signatures more than the required number of signatures.

A hearing was held telephonically on December 7, 2009. A court reporter was present. At the hearing, the parties argued and the hearing officer made her oral recommendation

regarding issues in the Candidate's Motion to Strike and specifically addressed the objections that were not ruled upon by the examiners in the Records Examination.

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

A. The Objector's Argument Regarding A Party Switching Restriction For Petition Signers is Not Viable Under *Sperling*

In his Petition, the Objector argues that 442 signers of the Candidate's petition sheets are registered and qualified voters of the Democratic Party and not "qualified primary electors" of the Republican Party, and therefore, their signatures are invalid and should be stricken. Under the holding in *Sperling*, I recommend that this objection be overruled.

In *Sperling*, the Illinois Supreme Court addressed the petition signer and candidate switching restriction set forth in 10 ILCS §5/7-10. The *Sperling* court noted two parts of 10 ILCS §5/7-10 which included party switching restrictions, *i.e.* i) the last paragraph of 10 ILCS §5/7-10 which stated: "For the purposes of determining eligibility to sign a petition for nomination or eligibility to be a candidate . . . a 'qualified primary elector' of a party (1) is an elector who has not requested a primary ballot of another party at a primary election held within 2 years of the date on which the petition must be filed;" and ii) the statement of candidacy section which states that the statement of candidacy, which must be filed by the candidate, "shall state that the candidate is a qualified primary voter of the party to which the petition relates" *Sperling*, 57 Ill. 2d at 83.

In addressing the issue of whether Illinois' party switching restriction for petition signers was valid, the *Sperling* court relied upon the U.S. Supreme Court decision in *Kusper v. Pontikes*, 414 U.S. 51, 94 S. Ct. 303 (1972) (hereinafter referred to as "*Kusper*") which held that the 2 year voter party switching restriction set forth in 10 ILCS §5/7-43(d) was unconstitutional. The *Sperling* court similarly held that the 2 year restriction upon voters who wish to sign petitions set forth in 10 ILCS §5/7-10 must fall. *Id.* at 83-4. The *Sperling* court did note, "This is not to say, of course that no limitation may be placed upon the right of a voter, or those who sign primary petitions, to change political parties . . . [b]ut absolute prohibition of that change for a 2 year period is, equally, clearly, invalid and its vice as to voters generally inheres in its application to voters who sign primary petitions." *Id.* at 84. With regard to the issue regarding the constitutionality of Illinois' party switching restriction for candidates, the Court held that although a 2 year party switching restriction on candidates may be constitutional, because the party switching restrictions for petition signers and candidates were so intertwined in 10 ILCS §5/7-10, it could not sever the restrictions on candidates from the unconstitutional restrictions on petition signers. *Id.* at 86.

After *Sperling*, the Illinois legislature, via Public Act 86-1348, repealed the last paragraph in 10 ILCS §5/7-10 which contained the 2 year lock-in period for petition signers and candidates. The legislature left intact the statement of candidacy requirement in 10 ILCS §5/7-10.

Subsequent to Public Act 86-1348, the Illinois Appellate Court for the Second Judicial District issued its decision in *Cullerton*. In *Cullerton*, the candidate had voted in the Republican Party primary election in February 2008. *Cullerton*, 384 Ill. App. 3d at 990. The candidate was subsequently appointed to fill a vacancy in nomination for the November 2008 general election ballot as a Democrat. *Id.* at 990-91. In connection with that appointment, on April 1, 2008, the candidate filed a statement of candidacy which stated that he was a “qualified voter for the Democratic Party.” *Id.* at 991. In *Cullerton*, the issue before the court was whether the candidate was barred from running as a Democratic candidate in the general election because he voted in the preceding Republican primary election and did not meet the statutory requirement set forth in 10 ILCS §5/7-10 which requires a candidate to file a statement of candidacy that states that he is a “qualified primary voter to which the petition relates . . .” *Id.* at 990.

In making its ruling, the *Cullerton* court discussed *Kusper*, *Sperling* and Public Act 86-1348. The *Cullerton* court held that in removing the party switching restriction previously found in the last paragraph of 10 ILCS §5/7-10 but leaving intact the statement of candidacy restriction set forth in the same statute, the legislature demonstrated that the candidate restriction could exist independently making it “viable even in light of *Sperling*.” *Id.* at 997.

Acknowledging that with the repeal of the last paragraph of 10 ILCS §5/7-10 the Election Code no longer had a definition for the phrase “qualified primary voter of the party to which the petition relates,” the court “resorted to the plain language” to determine the meaning of the phrase and stated:

The plain and ordinary meaning of the requirement that a candidate be a qualified primary voter of the party for which he seeks a nomination mandates, if nothing else, that the candidate have been eligible to vote in the primary for that party in the most recent primary election preceding the candidate’s filing the statement of candidacy.

Id. at 996. Thus, the court held that the candidate, who voted in the Republican primary preceding the upcoming general election, could not be considered a “qualified primary voter” of the Democratic Party for purposes of satisfying the statement of candidacy provision in 10 ILCS §5/7-10. *Id.* at 995.

I do not believe that the holding in *Cullerton* supports Objector’s contention that the signers for the Candidate’s petition papers must be registered and qualified voters of the Republican Party. In *Cullerton*, the only issue before the court was whether the candidate could run as a Democratic candidate in the general election when he voted in the preceding primary election for the Republican party. Unlike the court in *Sperling*, the *Cullerton* court did not resolve any issues regarding party switching restrictions on petition signers. Thus, the holding in *Sperling* is the controlling law on the petition signer party switching restriction issue in this case.

The objector seems to argue that there is a requirement that a petition signer must be a “qualified primary elector” of the party, as defined by the *Cullerton* court, for whose petition he or she is signing. At the hearing, when I asked Objector’s counsel for the provision in the

Election Code that sets forth this requirement, Objector's counsel pointed to the last sentence in 10 ILCS §5/7-10 which states: "A 'qualified primary elector' of a party may not sign petitions for or be a candidate in the primary of more than one party." 10 ILCS §5/7-10. However, I do not believe this part of 10 ILCS §5/7-10, together with the meaning of "qualified primary elector of a party" as discerned from the *Cullerton* decision, requires that the signers of a petition of a candidate be registered qualified voters for that candidate's party. Moreover, even if *Cullerton* somehow supports this argument, the holding in *Sperling*, a decision from the Illinois Supreme Court, is the controlling law. *People v. Artis*, 232 Ill. 2d. 156,164, 902 N.E.2d 677, 682 (2009) ("The appellate court lacks authority to overrule decisions of this court, which are binding on all lower courts."); *Winnebago County Citizens for Controlled Growth v. County of Winnebago*, 383 Ill. App. 3d 735, 749, 891 N.E.2d 448, 461 (2d Dist. 2008) ("[T]he lower courts have no power to ignore the holdings of our supreme court's decisions and to adopt some other approach that they may prefer."); *Ill. Labor Relations Bd. v. Chicago Transit Auth.*, 341 Ill. App. 3d 751, 758, 793 N.E.2d 730, 735 (1st Dist. 2003) ("After the supreme court has declared the law with respect to an issue, this court must follow that law because only the supreme court has authority to overrule or modify its decisions.").

Although the *Sperling* court acknowledged that there may be some limitation on changing parties for those who sign petitions, it concluded that "absolute prohibition of that change for a 2 year period is equally clearly, invalid" *Sperling*, 57 Ill. 2d at 84. The *Cullerton* court's definition of "qualified primary elector" of a party is based upon the preceding party primary in which the elector voted and, although it "is not always so" that "[t]he time between primaries, and thus the time a voter's party status is 'locked' is typically two years," *Cullerton*, 384 Ill. App. 3d at 996, the time between the 2008 primary and the 2010 primary (the primary elections at issue in the instant case) is 3 days shy of two years, which according to *Sperling* is an unconstitutional restriction on petition signers. *Sperling*, 57 Ill. 2d at 84. Thus, I recommend that the Board reject the Objector's theory and overrule his objection regarding the 442 signatures from petition signers who are "registered and qualified voters of the Democratic Party."⁴

B. The Objector's "Bad Address" Objection Fails to Comply with 10 ILCS §5/10-8 of the Election Code

Pursuant to Rule 4 of the Board's Rules of Procedure, the Board may on its own motion, strike any objection that does not satisfy 10 ILCS §5/10-8 of the Election Code. Section 10-8 of the Election Code provides in relevant part that the objector's petition "shall state fully the nature of the objections to the . . . nomination papers or petitions in question . . ." 10 ILCS §5/10-8. Under the Election Code, an objection petition must adequately and sufficiently apprise the candidate of the specificity of each objection making an evaluation possible. See *Elysee v. Patterson*, 04-EB-RGA-14, January 20, 2004.

⁴ After informing the parties of my recommendation at the December 7, 2009 hearing, I advised the Objector that he could submit his evidence on this issue in the event the Board disagreed with my recommendation. In a telephonic case management conference on December 8, 2009, Objector's counsel indicated that the objector did not intend to proceed with an evidentiary hearing previously scheduled for December 9, 2009.

It is unclear what "Bad Address" means in Column E of the Appendix-Recapitulation, and there is nothing in the body of the Objection Petition itself that explains the meaning of this phrase. The Objector does attach an Exhibit 3 which includes additional comments regarding specific objections. However, over half of the 213 objections labeled as "Bad Address" are not even referenced in Exhibit 3. Moreover, the comments in Exhibit 3 provide little guidance as to the meaning of "Bad Address," and are, in any event, inappropriate objections. For example:

1. There are over 10 "Bad Address" objections that include the comment "can't find address" in Exhibit 3. However, as the Candidate appropriately argues, there is no requirement that the objector be able to find the address.

2. There are over 30 "Bad Address" objections that include the comment "illegible name and address" in Exhibit 3. The Candidate, in his Motion to Strike, correctly argues that there is no requirement that the address be legible.

3. There are over 5 "Bad Address" objections that include a comment referring to "fraud". I do not believe this comment, coupled with "bad address" adequately apprises the candidate of the nature of the objection. Moreover, the Objector argues elsewhere in the Petition that the nomination papers demonstrate a pattern of fraud. (*See e.g.* Objector's Petition at ¶¶ 23, 24).

4. There are about 15 "Bad Address" objections that include the comment "no apartment number" or "apartment complex." The candidate, in his Motion to Strike, correctly argues that an apartment number is not a requirement.

For the foregoing reasons and because the 213 objections that fall under the "Bad Address" column of the Objector's Appendix-Recapitulation do not comply with 10 ILCS §5/10-8 in that they do not adequately advise the Candidate of the nature of the objection, I recommend that, pursuant to Rule 4 of the Board's Rules of Procedure, the Board strike these objections. Furthermore, I recommend that the Board grant the Candidate's Motion with regard to Paragraphs 4(a), (c), (d), (e) and (h) to the extent those arguments pertain to the "Bad Address" Objection.

C. The Candidate's Motion To Strike Should be Granted in Part and Denied in Part

In his Motion to Strike, the Candidate argues that the 337 objections contained in Column C (labeled "Bad Signature") of the Appendix-Recapitulation are improper because "the Election Code requires only that the signatures be genuine, but not that they be 'good' signatures, thus even 'bad' versions of a person's signature are permissible so long as they are genuine." (Motion to Strike at ¶ 4(i)). In his Petition, the Objector does explain the meaning of the term "Bad Signature" as "signatures of persons which are not signed, but are rather, printed, and they are not substantially similar to the signatures of record, and said signatures are not genuine signatures." (Objector's Petition at ¶ 13). Although objections alleging that signatures are invalid solely on the ground that the signer's signature was "printed and not written" do not state a sufficient basis upon which to invalidate a petition signature, the Objector in this case also

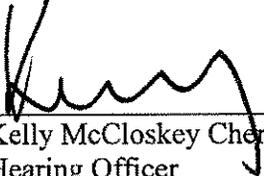
contends that the 337 objections listed in the "Bad Signature" column are not genuine, which is an appropriate objection and should be subject to a records examination. *See generally* Appendix to Board's Rules of Procedure. Therefore, I recommend that the Candidate's argument in Paragraph 4(i) of his Motion to Strike regarding the "Bad Signature" objection be denied.

With regard to the other arguments in the Candidate's Motion to Strike, as noted above, I recommend that the Candidate's Motion to Strike with regard to the party switching restriction objection (Motion to Strike at ¶¶ 1-3) be granted (*infra* at pp. 4-6). I also recommend that to the extent the Candidate's Motion to Strike pertains to the "Bad Address" objection (Motion to Strike at ¶ 4(a), (c), (d), (e) and (h)), that portion of the Candidate's Motion to Strike be granted (*infra* at pp. 6-7) as well. However, with regard to the remaining arguments in the Candidate's Motion to Strike which allege that the Objector's objections are improper, I believe that the subject objections are proper and therefore, recommend that the arguments set forth in paragraph 4(b), (f) (g) and (i) of the Candidate's Motion to Strike be denied.

III. RECOMMENDATIONS

For the foregoing reasons, I recommend that: i) the Board grant the Candidate's Motion to Strike with regard to the party switching restriction objection (Motion to Strike at ¶¶ 1-3) and to the extent the Candidate's Motion to Strike pertains to the "Bad Address" objection (Motion to Strike at ¶ 4(a), (c), (d), (e) and (h)); ii) the Board deny the remaining arguments in the Motion to Strike (Motion to Strike at ¶ 4 (b), (f), (g) and (i)); and iii) because the Candidate has the requisite number of signatures to be on the ballot,⁵ that Mr. Moy be certified for the ballot as a candidate for nomination to the Office of Appellate Court Judge, Second Judicial District for the State of Illinois.

Dated: December 9, 2009


Kelly McCloskey Chert
Hearing Officer

⁵ After the hearing officer advised the parties at the hearing on December 7, 2009 that she will be recommending to the Board that it overrule the objections regarding "Bad Address" and the requirement that the petition signers be "qualified primary elector" of the Republican party, Objector's counsel advised the hearing officer that the Objector did not intend to proceed at this time on an evidentiary hearing regarding the "pattern of fraud" objection.

**BEFORE THE DULY CONSTITUTED ELECTORAL BOARD
FOR THE HEARING AND PASSING UPON OBJECTIONS TO
NOMINATION PAPERS OF CANDIDATES FOR NOMINATION TO ELECTION
TO THE OFFICE OF APPELLATE COURT JUDGE, SECOND JUDICIAL DISTRICT
FOR THE STATE OF ILLINOIS**

THOMAS A. ELSE,)
)
Petitioner-Objector,)
)
KENNETH MOY,)
)
Respondent-Candidate.)

Case No.

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**VERIFIED OBJECTOR'S PETITION
TO NOMINATION PAPERS OF KENNETH MOY, CANDIDATE
FOR NOMINATION TO THE OFFICE OF APPELLATE COURT JUDGE
SECOND JUDICIAL DISTRICT, STATE OF ILLINOIS**

NOW COMES THOMAS A. ELSE (hereinafter referred to as the "OBJECTOR"), by and through his attorneys, BOND, DICKSON & ASSOCIATES, P.C., and pursuant to the Illinois Election Code, 10 ILCS 5/10-8, *et. seq.*, states as follows unto this Honorable Electoral Board:

Eligibility of Objectors

1. The OBJECTOR THOMAS A. ELSE resides at 2728 Stockton Road, Naperville, Illinois, 60564, DuPage County, Illinois, and is a duly qualified, legal and registered voter at that address, and a resident of the Appellate Court, Second Judicial District ("DISTRICT") for the State of Illinois.
2. The OBJECTOR'S interest in filing this Petition is that of a voter desirous that the laws governing the filing of nomination papers for the office of Appellate Court Judge, Second Judicial District, to fill the vacancy of the Honorable Thomas E. Callum ("OFFICE") are properly complied with, and that only qualified candidates appear on the ballot for said OFFICE.

Pertinent Provisions of Illinois Law

3. Pursuant to Illinois Election Code, 10 ILCS 5/7-10(h), Nomination Papers for the OFFICE to be voted for at the General Primary Election to be held on February 2, 2010, must contain the signatures of not fewer than 1,535 duly qualified, registered and legal voters of said DISTRICT, collected in the manner prescribed by law.

4. "Qualified primary voter" is defined by the Election Code as "a person who is registered to vote at the address shown opposite his signature on the petition or was registered to vote at such address at the time he signed the petition." 10 ILCS 5/3-1.2.

5. To be eligible to sign a Petition for the Respondent-Candidate KENNETH MOY ("MOY") as a purported nominee of the Republican Party, the signer must be a "qualified primary elector" of the Republican Party. To be a "qualified primary elector" of the Republican Party, the signer must be recognized as a primary elector of the Republican Party, and not one who is a primary elector of the Democratic Party, as is evidenced from the records of the local election authority. 10 ILCS 5/7-10.

6. In addition, said Nomination Papers must truthfully allege that the Petitions were gathered and presented in the manner provided for in the Illinois Election Code, and otherwise executed in the form provided by law. 10 ILCS 5/7-10.

OBJECTIONS

7. MOY'S Nomination Papers, copies of which are attached hereto and incorporated herein by reference as Exhibit "1," purport to contain the signatures of persons who, at the time of signing the Petitions, were registered and qualified voters of the Republican Party in the DISTRICT. In fact, 442 of those who signed the Petitions are registered and qualified voters of the Democratic Party, as shown by the official records of the local election authority. These signatures are shown on the Appendix/Recapitulation attached hereto and incorporated herein by reference as Exhibit "2", under the heading "Democrat", Column G. These signatures are invalid and should, therefore, be stricken.

8. MOY'S Nomination Papers contain the names of persons who did not sign said Petition Sheets in their own proper persons, and said signatures are not genuine and are forgeries" in violation of the Illinois Election Code. Such signatures are set forth specifically in the Appendix-Recapitulation attached hereto and incorporated herein as Exhibit "2", under the heading, Column F, "Other" as more fully explained in the "Comments" attached hereto and incorporated herein by reference as Exhibit "3." These signatures are invalid and should, therefore, be stricken.

9. MOY'S Nomination Papers contain Petition Sheets with the names of persons who are not properly registered to voter at the addresses shown opposite their respective names, as is set forth specifically in the Appendix-Recapitulation attached hereto and incorporated herein by reference as Exhibit "2", under the heading, Column B, "Not in District," and as more fully explained in the "Comments" attached hereto and incorporated herein by reference as Exhibit "3." These signatures are invalid and should, therefore, be stricken.

10. MOY'S Nomination Papers contain Petition Sheets with the names of persons for whom addresses are stated which addresses are not in the DISTRICT, and such signatures are not

valid as not being within the geographical boundaries, as is set forth specifically in the Appendix-Recapitulation attached hereto and incorporated herein as Exhibit "2", under the heading, Column B, "Not in District," and as more fully explained in the "Comments" attached hereto and incorporated herein by reference as Exhibit "3." These signatures are invalid and should, therefore, be stricken.

11. MOY'S Nomination Papers contain Petitions Sheets with the names of persons for whom the addresses given are either missing entirely or are incomplete, as is set forth specifically in the Appendix-Recapitulation attached hereto and incorporated herein as Exhibit "2," under the heading, Column F, "Other" and which are more fully explained in the "Comments" attached hereto and incorporated herein by reference as Exhibit "3." These signatures are invalid and should, therefore, be stricken.

12. MOY'S Nomination Papers contain the names of persons who have signed the Petition Sheets more than one time as is set forth specifically in the Appendix-Recapitulation attached hereto and incorporated herein by reference as Exhibit "2", under the heading, Column D, "Petition Signed Twice" and which are more fully explained in the "Comments" attached hereto and incorporated herein by reference as Exhibit "3." These signatures are invalid and should, therefore, be stricken.

13. MOY'S Nomination Papers contain Petition Sheets with the "signatures" of persons which are not signed, but are, rather, printed, and they are not substantially similar to the signatures of record, and said signatures are not genuine signatures as is set forth specifically in the Appendix-Recapitulation attached hereto and incorporated herein as Exhibit "2," under the heading, Column C, "Bad Signatures" which are more fully explained in the "Comments" attached hereto and incorporated herein by reference as Exhibit "3." These signatures are invalid and should, therefore, be stricken.

14. MOY'S Nomination Papers contain Petition Sheets for which the circulator's affidavit is false because the purported circulator did not actually obtain, solicit or witness the affixing of voters' signatures to those sheets, in violation of the Illinois Election Code, and all signatures on those sheets are invalid, as is set forth specifically in the Appendix-Recapitulation attached hereto and incorporated herein as Exhibit "2," under the heading, Column F, "Other" and more fully explained in the "Comments" attached hereto and incorporated herein by reference as Exhibit "3." These signatures are invalid and should, therefore, be stricken.

15. MOY'S Nomination Papers contain Petition Sheets for which MOY was the circulator, and on which the circulator's affidavit appears false because MOY attests that the signatures on the Sheets were signed in his presence, and yet, comparison of the signatures on Sheet 41, Lines 14 and 15, Sheet 69, Lines 5 and 6, Sheet 21, Lines 7 and 8, Sheet 153, Lines 7, 8 and 9, Sheet 55, Lines 2 and 3 and Sheet 59, Lines 8 and 10, are obviously not genuine as being the signatures of those individuals signing in their own proper persons, as they appear to have been written by the same individual. At a minimum, at least one of the names should be stricken for

having been obtained in violation of the Illinois Election Code. In light of the numerous signatures of this nature in both Sheets, these sheets should be stricken in their entirety on the basis of the pattern of fraud existing on Sheets circulated by this circulator.

16. MOY'S Nomination Papers contain Sheets 4 and 9, which were circulated by Nathan Klinger, and on which the circulator's affidavit appears false because Klinger attests that the signatures on these Sheet were signed in his presence, and yet, comparison of the signatures on these Sheets appear to contain signatures which are obviously not genuine as being the signatures of those individuals signing in their own proper persons, as they appear to have been written by the same individual. At a minimum, at least one of the names should be stricken for having been obtained in violation of the Illinois Election Code. Further, in that Klinger attested to a fact which, on information and belief, is not true, all of the aforementioned sheets should be stricken in their entirety. In light of the numerous signatures of this nature in both Sheets, these sheets should be stricken in their entirety on the basis of the pattern of fraud existing on Sheets circulated by this circulator.

17. MOY'S Nomination Papers contain Petition Sheets which are obvious duplicates of other Petition Sheets, said Sheets being 14, 180 and 198, and, for this reason, these Sheets should be deemed invalid and all signatures contained thereon should be stricken.

18. MOY'S Nomination Papers contain Sheets 14, 176, 180, 181 and 198, which were circulated by Petrovo Markvo, which, on the basis of the objection set forth in paragraph 17 of this Verified Objector's Petition, should be stricken in their entirety on the basis that a pattern of fraud exists within the sheets circulated by this circulator.

19. MOY'S Nomination Papers contain Petition Sheets in which the circulators did not provide a full address, in violation of the Illinois Election Code, 10 ILCS 5/7-10, said Sheets being Sheets 74, 103, and 161, and, for this reason, these Sheets should be deemed invalid and all signatures contained thereon should be stricken.

20. MOY circulated certain Petitions which contain signatures of individuals which MOY knew were not electors of the DISTRICT, and, on information and belief, MOY, or someone on his behalf, attempted to show those individuals as residing in the DISTRICT by changing the county of residence listed by certain signatories, specifically Sheet 106, line 2; Sheet 105, line 7; Sheet 134, Line 8 and 9; Sheet 73, Line 2, Sheet 51, Line 8. These signatures are invalid, and should be stricken. Further, as a result of the obvious attempt to change the signatures to provide, on their face, that such signatories lived in the DISTRICT, these Sheets, in total, should be stricken as evidence of a pattern of fraud.

21. MOY circulated certain Petitions contained signatures of individuals MOY knew were not electors of the DISTRICT, specifically Sheet 60, line 15; Sheet 75, line 13; Sheet 89, Line 12; Sheet 107, Line 3, Sheet 112, Line 13, 14, and 15; Sheet 125, Line 15 and Sheet 147,

Line 10. These signatures are invalid, and should be stricken, and, the Sheets in total should be stricken as being evidence of a pattern of fraud.

22. Upon information and belief, Sheet 47, Line 13, and Sheet 48, Line 10 contained signatures that are out of the DISTRICT, and may not even exist, and as such, these are not valid signatures, and must be stricken.

23. MOY'S Nomination Papers contain numerous sheets circulated by MOY which Sheets demonstrate a pattern of fraud and total disregard of the mandatory requirements of the Illinois Election Code to such a degree that every sheet circulated by said individual is invalid, and should be stricken in order to protect the integrity of the electoral process. Petitions which were circulated by MOY are shown in the Appendix-Recapitulation attached hereto and incorporated herein by reference as Exhibit "2."

24. Because the Nomination Papers circulated by MOY demonstrate such a pattern of fraud and disregard of the Illinois Election Code to such a degree, each and every sheet circulated by MOY should be deemed invalid, and should be stricken in order to protect the integrity of the electoral process. *Harmon v. Town of Cicero Municipal Officers Electoral Board*, 371 Ill. App. 3d 1111, 864 N.E.2d 996 (1st Dist. 2007); *Cantor v. Cook County Officers Electoral Board*, 170 Ill. App. 3d 364, 523 N.E.2d 1299 (1st Dist. 1988), *Huskey v. Municipal Officers Electoral Board for Oak Lawn*, 156 Ill. App. 3d 201, 509 N.E.2d 555 (1st Dist. 1987); and *Fortas v. Dixon*, 122 Ill. App. 3d 697, 462 N.E.2d 615 (1st Dist. 1984).

25. MOY'S Nomination Papers contain less than the required number of validly collected signatures of qualified and duly registered legal voters of the Second Judicial District of the State of Illinois, signed by such voters in their own proper person with proper addresses, far below the number required under Illinois law, as is set forth by the objections recorded in the Appendix-Recapitulation attached hereto and incorporated herein as Exhibit "2."

26. The NOMINATING PAPERS evidence a total disregard of the mandatory requirements of the Election Code, and constitute a pattern of fraud, as more specifically set forth in the Appendix-Recapitulation attached hereto and incorporated herein as Exhibit "2" and the Comments attached hereto and incorporated herein as Exhibit "3."

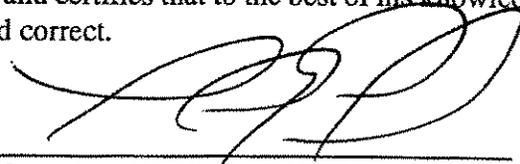
CONCLUSION

WHEREFORE, the OBJECTOR THOMAS A. ELSE requests a hearing before the Electoral Board on the Objections set forth herein, an examination by the aforesaid Electoral Board of the official records relating to voters in the Second Judicial District, State of Illinois, to the extent that such examination is pertinent to any of the matters alleged herein, and to issue Subpoenas to certain witnesses, to result in a ruling that:

- A. The Nomination Papers to place the name of KENNETH MOY on the Ballot for Nomination to fill the Office of Appellate Court Judge, Second Judicial District, to Fill the Vacancy of the Honorable Thomas E. Callum for the State of Illinois, to be printed for the February 2, 2010 Primary Election are insufficient in law and fact, and
- B. That the name KENNETH MOY shall not appear and not be printed on the ballot for the Office of Appellate Court Judge, Second Judicial District, to Fill the Vacancy of the Honorable Thomas E. Callum for the State of Illinois to be voted on at the General Primary Election to be held on February 2, 2010.

VERIFICATION

Pursuant to the requirements of the Illinois Election Code, 10 ILCS 5/10-8, the undersigned, by his signature attached hereto, verifies that he has reviewed the Verified Objector's Petition to the Nomination Papers of Kenneth Moy, Candidate for Nomination to the Office of Appellate Court Judge, Second Judicial District, State of Illinois, and certifies that to the best of his knowledge and belief, the objections as stated herein are true and correct.



THOMAS A. ELSE, OBJECTOR

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