

BEFORE THE DULY CONSTITUTED  
DU PAGE COUNTY OFFICERS' ELECTORAL BOARD  
FOR THE HEARING AND PASSING UPON OBJECTIONS TO PETITIONS  
FOR CANDIDATES FOR THE OFFICE OF COMMISSIONER OF THE DUPAGE COUNTY  
FOREST PRESERVE, DISTRICT 2, DU PAGE COUNTY, ILLINOIS

IN RE: THE MATTER OF THE OBJECTION )  
OF CHARLES MUELLER, OBJECTOR, TO )  
THE NOMINATION PAPERS OF )  
DONALD P. KIRCHENBERG, )  
CANDIDATE FOR THE ) DOCKET No. 2012 G-1  
OFFICE OF COMMISSIONER OF THE )  
DUPAGE COUNTY FOREST PRESERVE )  
DISTRICT, DISTRICT 2, IN THE )  
NOVEMBER 6, 2012 GENERAL ELECTION )

**COUNTY OFFICERS' ELECTORAL BOARD DECISION**

NOW COMES the County Officers' Electoral Board, consisting of Cathy Ficker Terrill, Chair, Arthur Ludwig, Member, and Kevin Millon, Public Member, organized and existing pursuant to law, and states as follows:

**PREFATORY REMARKS**

Pursuant to the Election Code, 10 ILCS 5/1-1 *et seq.* and in accordance with the County Officers' Electoral Board Rules of Procedure (hereinafter referred to as the "RULES") duly promulgated, approved, implemented and adopted on June 22, 2012, as required by the DuPage County Election Commission (hereinafter referred to as the "COMMISSION"), duly constituted, convened and sitting in its capacity as the County Officers' Electoral Board (hereinafter referred to as the "ELECTORAL BOARD") for the hearing and passing upon objections to Nominating Papers.

On June 15, 2012, which was continued to June 22, 2012, the ELECTORAL BOARD

conducted a hearing upon the Verified OBJECTOR'S Petition (hereinafter referred to as the "PETITION") filed by Charles Mueller, (hereinafter referred to as the "OBJECTOR"), to the Nominating Papers of Donald P. Kirchenberg (hereinafter referred to as the "CANDIDATE"), candidate for the Office of Commissioner of the County Forest Preserve District of DuPage County, District No. 2, (hereinafter referred to as the "OFFICE"), to be voted upon at the General Election to be held November 6, 2012, (hereinafter referred to as the "ELECTION").

Within the time frame set forth by statute, the CANDIDATE filed with the COMMISSION, Nominating Papers for the OFFICE to be voted on at the ELECTION. See Exhibit "A", attached hereto and incorporated herein by reference. Said Nominating Papers were filed on June 4, 2012, pursuant to 10 ILCS 5/7-12 of the Election Code. Objections to the Nominating Papers were timely filed with the COMMISSION on June 11, 2012. See Exhibit "B", attached hereto and incorporated herein by reference.

A Call Notice for Hearing was issued on June 12, 2012, by Cathy Ficker Terrill, Chair of the ELECTORAL BOARD. See Exhibit "C", attached hereto and incorporated herein by reference. The Call Notice was issued and served upon the OBJECTOR and the CANDIDATE, by certified mail, in accordance with the Election Code, 10 ILCS 5/10-10 as evidenced by a return receipt as required. See Exhibit "D", attached hereto and incorporated herein by reference. The CANDIDATE and the OBJECTOR were also served by the DuPage County Sheriff's Office in accordance with the Election Code. See Exhibit "E", attached hereto and incorporated herein by reference. The CANDIDATE appeared and filed a written Appearance in his own proper person. See Exhibit "F-1", attached hereto and incorporated herein by reference. CANDIDATE'S Counsel

appeared and filed a written Appearance by Counsel. See Exhibit “F-2”, attached hereto and incorporated herein by reference. The OBJECTOR appeared through Counsel and filed a written Appearance by Counsel. See Exhibit “G”, attached hereto and incorporated herein by reference. A Records Check was conducted by the Staff of the COMMISSION, which is identified as the Affidavit of Voter Registration. See Exhibit “H-1”, attached hereto and incorporated herein by referenced. The COMMISSION’S Records Check included information relative to CANDIDATE’S Voter Registration Records. See Exhibit “H-2”, attached hereto and incorporated herein by reference. The COMMISSION also provided the Voter Registration Records regarding the challenge to the signature of the Notary Public. See Exhibit “I”, attached hereto and incorporated herein by reference. CANDIDATE submitted a Memorandum of Law in opposition to the objection. See Exhibit “J”, attached hereto and incorporated herein by reference.

On June 15, 2012, and again on June 22, 2012, a public hearing was held before the full and legally constituted ELECTORAL BOARD in accordance with the Election Code, 10 ILCS 5/10-9(2), and the laws of the State of Illinois for Hearing and passing on the objections to the CANDIDATE for said OFFICE. Notice of such hearing was given in conformance with provisions of the Election Code and the Illinois Open Meetings Act.

The ELECTORAL BOARD was provided an opportunity to review the files and official records of the COMMISSION regarding the matters raised in the PETITION.

### **PROCEEDINGS**

The OBJECTOR challenges the CANDIDATE’S Nominating Papers on the following six (6) grounds:

(1) Whether the CANDIDATE’S Nomination Papers substantially conform to the requirements of the Election Code.

(2) Whether the Circulator’s Affidavit, in which the Circulator does not circle the type of municipality in which he or she resides, substantially complies with the Election Code.

(3) Whether the Circulator’s Affidavit, in which the Circulator fails to identify whether the Signators are qualified voters of the “Democratic Party” in the relevant District, substantially complies with the Election Code.

(4) Whether the CANDIDATE’S Nomination Petitions contain signatures of Signators who are not qualified registered voters.

(5) Whether Signators are invalidated because the CANDIDATE is running as a “Democrat” and Signators purportedly voted a Republican Ballot in the March 20, 2012, Primary Election.

(6) Whether the CANDIDATE’S Appointment to Fill a Vacancy in Nomination substantially conforms to the requirements of the Election Code.

The OBJECTION also raised issues relative to whether the Notary Public’s Signature was valid and whether the CANDIDATE was a Legal Registered Voter. At the hearing OBJECTOR voluntarily withdrew the objections regarding the validity of the Notary Public’s signature and the CANDIDATE’S status as a legal voter. Therefore, the ELECTORAL BOARD does not rule on those objections.

## LEGAL ANALYSIS OF ISSUES PRESENTED

**(1) Whether CANDIDATE’S Nomination Papers substantially conform to the requirements of the Election Code.**

OBJECTOR contends that CANDIDATE’S Nomination Papers do not satisfy the requirements of the Election Code. The OBJECTOR argues that CANDIDATE did not identify the County for the Office of Forest Preserve District Commissioner for which he seeks to be placed on the Official Ballot. Specifically, OBJECTOR contends that CANDIDATE fails to refer to the Office sought as the “Forest District of *DuPage County*” in both the Statement of Candidacy and Nominating Petitions. (*emphasis added*). OBJECTOR alleges that this failure has created confusion among voters as to which Forest Preserve District the CANDIDATE is seeking to be elected and shows that CANDIDATE does not have the requisite minimum appeal to voters. OBJECTOR further contends that the Nominating Papers create confusion among voters by referring to the Office sought as “Commissioner”, as opposed to “Commissioner, District 2”.

The ELECTORAL BOARD finds the Statement of Candidacy and Nominating Petition identify the Office sought as, “Forest Preserve Commissioner” and the District sought as, “2nd”. CANDIDATE states that he is a resident of DuPage County, but does not expressly provide that the Office sought is the, “Forest Preserve District of *DuPage County*.” (*emphasis added*). The Nominating Petitions refer to the “Forest Preserve District #2 of DuPage County in the county of DuPage”. The Nominating Petition also refers to the Office being sought as “Forest Preserve District #2”.

As a threshold matter, neither the Election Code, 10 ILCS 5/1-1 *et seq.*, (West 2012) nor the

Downstate Forest Preserve Act, 70 ILCS 805/1 *et seq.* (WEST 2012), require that the county be identified when referencing a Forest Preserve District or the Office of Commissioner. Instead, the Election Code and the Forest Preserve Act generically refer to the proper designation of Office as, the “Forest Preserve District” and “Commissioner”. The statutes do not require the reference to the political subdivision to include the County. Thus, the question becomes whether the Statement of Candidacy and Nominating Petitions create confusion among voters.

The Illinois Election Code, 10 ILCS 5/7-10, governs the form and content of nominating petitions for primary elections. The “general purpose of section 7-10 and related provisions of the Election Code is to provide an orderly procedure whereby qualified persons seeking public office may enter primary elections.” *Salgado v. Marquez*, 356 Ill. App. 3d 1072, 828 N.E.2d 805 (2d Dist. 2005). “Nominating petitions and statements of candidacy each serve particular purposes. . .” *Id.* The particular purpose of a Statement of Candidacy is to “obtain a sworn statement from the candidate establishing his qualifications to enter the primary election for the office he seeks.” *Id.* Section 7-10 provides that a Statement of Candidacy, among other things, “shall set out the address of such candidate” and “the office for which he is a candidate.” 10 ILCS 5/7-10 (West 2012). The primary purpose of nominating petitions is to reduce the electoral process to manageable proportions by confining ballot positions to a relatively small number of candidates who have demonstrated initiative and at least a minimal appeal to eligible voters.

Nominating papers substantially comply with section 7-10 so long as there is no basis for confusion as to the office for which the nominating papers were filed. Illinois courts set forth two requirements in determining whether a candidate has complied with section 7-10. “First, the

nominating papers as a whole must not create a basis for confusion as to the office sought” and “[s]econd, the purpose of the nominating paper that contains the incorrect office must not have been frustrated because of the error.” *Salgado v. Marquez*, 356 Ill. App. 3d 1072, 828 N.E.2d 805, 811 (2d Dist. 2005). Moreover, “[t]he minimal appeal component of the purpose of nominating petitions cannot be determined in a vacuum.” *Id.* “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 Board*, 296 Ill. App. 3d 731, 695 N.E.2d 1329 (1998).

Although the Election Code provides that CANDIDATE must identify the office being sought, the courts have also recognized that “access to a place on the ballot is a substantial right not to be lightly denied.” *Nader v. Illinois State Board of Election*, 354 Ill. App. 3d 335, 345 (2004). In *Siegel v. Lake County*, 385 Ill. App. 3d 452, 895 N.E. 2d 69, 77 (2d Dist. 2008), the court found, “a minor error in a candidate’s nominating papers should not result in a candidate’s removal from the ballot. Substantial compliance with the Election Code is acceptable when the invalidating charge concerns a technical violation that does not affect the legislative intent to guarantee a fair and honest election.” *Id. Lewis v. Dunne*, 63 Ill.2d 48, 344 N.E.2d 443 (1976), recognized that Nomination Papers must be read as a whole and, therefore, a deficiency in the Nomination Papers can be cured by another portion of the Nomination Papers. The Court held, “[w]hile their [Nominating Petitions and Statement of Candidacy] sufficiency must be determined with reference to the particular function each was designed to accomplish, it was not intended that for all purposes

they should be considered separate and apart as if the other did not exist.” *Id.* at 54.

**(a) Nominating Petitions:**

OBJECTOR failed to demonstrate that there was substantial voter confusion caused by CANDIDATE’S failure to include the words, “DuPage County” in his Nominating Petitions. OBJECTOR did not produce any evidence that electors did not know that the Petition they were signing was for the Forest Preserve District Commissioner, District No. 2, of *DuPage County*. (*emphasis added*). Further, there is no Forest Preserve District Commissioner for the State of Illinois. *Lyons MVP Party v. Lyons, Illinois, Mun. Officers Electoral Bd.* 407 Ill. App. 3d 1004, 1007-08, 945 N.E.2d 1175, 1179 (1st Dist. 2011) (“Generally, courts have found that where the office specified in the nominating papers can only refer to one possible vacancy, there is no basis for confusion”).

The Nominating Petition identifies the Office of the Forest Preserve Commissioner, District No. 2, as being located in DuPage County. The Nominating Petition provides, “We, the undersigned, members of and affiliated with the Democratic Party and qualified primary electors of the Democratic Party, in the FP District # 2 of DuPage County in the County of DuPage, and State of Illinois . . .” A Signator would not be confused as to the specific vacancy sought by the CANDIDATE. Therefore, on this basis, the Objection is overruled.

**(b) Statement of Candidacy:**

The Statement of Candidacy sets forth the CANDIDATE’S sworn statement attesting that he is qualified to run for the Office that he seeks. The Statement of Candidacy expressly provides that the CANDIDATE is seeking the Office of Forest Preserve Commissioner, District No. 2.

CANDIDATE identified “2nd” for the “District.” The Statement of Candidacy provides, “I have been selected to fill a vacancy in nomination for the office of Forest Preserve Commissioner in the 2nd District . . .”

The Illinois Supreme Court has held that deficiencies of a Statement of Candidacy may be cured by the CANDIDATE’S Nominating Petitions, and vice versa. *Lewis*, 63 Ill.2d at 54. Therefore, CANDIDATE’S alleged failure to provide in his Statement of Candidacy the County in which the Office he seeks is located, is cured by his Nominating Petitions expressly providing that the Office of Forest Preserve Commissioner, District No. 2, is located in DuPage County. Further, there is no apparent confusion to the electors regarding the exact office sought by the CANDIDATE because the electors do not see the Statement of Candidacy. Allegations of voter confusion and CANDIDATE’S failure to show minimum voter appeal are inapplicable to Statement of Candidacy. Therefore, on this basis, the Objection is overruled.

**(2) Whether Circulator’s sworn statement, in which the Circulator does not circle the type of municipality in which he or she resides, substantially complies with the Election Code.**

OBJECTOR asserts that CANDIDATE’S Nominating Petitions, sheets 4, 5, 6, 21, 27, 28, 29, 30, 31, 32, should be invalidated because the Circulator failed to identify whether he or she lived in a city, village or unincorporated area. Each Circulator, on the challenged sheets, provided a full address, and identified the municipality in which he or she resides. The Nominating Petitions allow for the Circulator to identify whether the municipality in which he or she resides is a City, Village, or Unincorporated Area by providing on Nominating Petition the phrase, “City/Village/Unincorporated Area (circle one).” The Circulators of 4, 5, 6, 21, 27, 28, 29, 30, 31,

32 did not circle whether their address was a City, Village or Unincorporated Area.

The Election Code, 10 ILCS 5/7-10, requires the Circulator to provide a signed statement including, among other things, his or her address and the municipality in which the Circulator resides. Section 5/7-10 provides in relevant part:

At the bottom of each sheet of such petition shall be added a statement signed by a registered voter of the political division, who has been a registered voter at all times he or she circulated the petition, for which the candidate is seeking a nomination, stating the street address or rural route number of the voter, as the case may be, as well as the voter's city, village or town; and certifying that the signatures on that sheet of the petition were signed in his presence. . .

10 ILCS 5/7-10 (West 2012). Section 5/7-10 only requires that Nominating Petitions be in *substantially the same form* as provided in the Statute. *Id.* (*emphasis added*). The Circulator's failure to circle whether he or she resides in a Village, City, or Unincorporated Area may be a technical violation but does not warrant invalidating the affected Nominating Petitions.

In *Siegel*, the court found, "substantial compliance with the Election Code is acceptable when the invalidating charge concerns a technical violation that does not affect the legislative intent to guarantee a fair and honest election. 895 N.E. 2d at 77." The Court held that the failure to provide the correct date of election on a candidate's Nomination Papers was a scrivener's error, which "does not impair the integrity of the electoral process. . ." and thus affirmed the circuit court's ruling overruling the objector's objection. *Id.*

In *Cunningham v. Schaefflein*, 2012 Ill App (1<sup>st</sup>) 120529, --- N.E.2d ---, 2012 WL 1592200 \*5 at p. 22 (1st Dist. 2012), the court found that "the circulator's innocent, minor error in recording his address did not prevent him from being located, and it did not put the integrity of the political process in jeopardy. . ." Therefore, the court held that the circulator substantially complied with the

Election Code despite failing to properly provide his address. The court determined not to invalidate the Nominating Petitions for a technical error. *Id.*

Although the Circulator failed to circle the appropriate municipality on the Nominating Petition, the Election Code does not require the exact form and language contained in the Nominating Petition. Instead, the Election Code requires the Circulator to identify his or her residence. The Circulator did identify the City, Village or Town in which he or she resided. Further, even for a technical violation of the Election Code, the Circulator's affidavit still substantially complies with the Election Code and the technical violation did not impair the integrity of the election process. Therefore, on this basis, the Objection is overruled.

**(3) Whether Circulator's Affidavit, in which the Circulator fails to identify whether the Signators are qualified voters of the Democratic Party in the relevant District, substantially complies with the Election Code.**

OBJECTOR contends that the Nominating Petitions, sheets 6, 7, 9, 17 and 23, are invalid because the Circulator fails to attest that the Signators were qualified voters of the "Democratic Party" in the relevant political subdivision. The Circulator of the aforesaid Nominating Petitions left blank a portion of the Statement which provided the Party Affiliation. At the hearing, CANDIDATE presented testimony relative to the circulation of Nominating Petitions. Mark Garrity, the Circulator of Sheet 17, testified that he went door to door to circulate the Nominating Petitions. His circulation was based upon an approved list and he requested particular individuals to sign the Nominating Petitions. Mr. Garrity testified that he did not fill in the term "Democrat" in each of the preprinted Circulator Affidavits. Mr. Garrity testified that he was present when the signatures were affixed to the list. Mr. Garrity testified that he did not ask the Signators their party affiliation, but he did point

out the CANDIDATE he was circulating on behalf of and the CANDIDATE'S party affiliation. Finally, Julie Schnell, the Circulator of Sheet 6, 7, and 9, testified that she did not ask voters if they were affiliated with the Democratic Party. She did not know the party affiliation of any individuals. Ms. Schnell further testified that she showed the Signators the Nominating Petition and assumed they read it to see she was circulating on behalf of a Democratic Candidate and asked them to sign the Petition.

The Election Code, 10 ILCS 5/7-10, provides that a Circulator must give a sworn statement, "certifying that to the best of his knowledge and belief the persons so signing were at the time of signing the petitions qualified voters of the political party for which a nomination is sought." The courts also recognize that "access to a place on the ballot is a substantial right not to be lightly denied." *Nader*, 354 Ill. App. 3d at 345.

In *Brennan v. Kolman*, 335 Ill. App. 3d 716, 781 N.E.2d 644 (1st Dist. 2002), the court found, "where, as here, the prefatory language of a candidate's signature sheets sufficiently represents that all of the signers satisfy a particular certification requirement, it neither serves a useful purpose nor aids in preserving the integrity of the electoral process to exclude the candidate from participation for failure to demonstrate strict compliance with the relevant statutory provision." 335 Ill. App. 3d at 720, quoting *Nolan v. Cook County Officers Electoral Board*, 329 Ill. App. 3d. 52, 58, 768 N.E.2d 216 (1st Dist. 2002).

In *Siegel*, the court found, "substantial compliance with the Election Code is acceptable when the invalidating charge concerns a technical violation that does not affect the legislative intent to guarantee a fair and honest election." 895 N.E. 2d at, 77. The Illinois Supreme Court also held that

Nomination Papers must be read as a whole. Therefore a deficiency in one portion of the Nomination Papers can be cured by another portion of the Nomination Papers. *Lewis*, 63 Ill.2d at 54.

The Nominating Petitions, sheets 6, 7, 9, 17 and 23, substantially comply with the Election Code. The first sentence of the Nominating Petition provides in relevant part,

[w]e, the undersigned, members of and affiliated with the Democratic Party and qualified primary electors of the Democratic Party, in the FP District #2 of DuPage County in the County of DuPage, and State of Illinois, do hereby petition that the following named person shall be a candidate of the Democratic Party. . .

The issue is whether the Circulator impaired the integrity of the electoral process. *Siegel*, 895 N.E. 2d at 77. Based on the language of the Nominating Petitions, the Circulator, though she did not have personal knowledge of the Signator's party affiliation, inferred to the best of his or her knowledge and belief that the Signators were members of the Democratic Party. Indeed, each Circulator testified that they directed the Signator to the language of the Nominating Petition, which provided that the Signator was a member of the Democratic Party. Further, the Circulator's omission did not "impair the integrity of the electoral process. . ." *Id.* Therefore, on this basis, the Objection is overruled.

**(4) Whether the CANDIDATE'S Nomination Petitions contain signatures of Signators that are not qualified registered voters.**

The OBJECTOR has alleged in his Verified Objection, paragraphs 9, 10, and 11, that certain signatures in the Nominating Petitions were invalid because the signatures: 1) were made by signators that were not registered to vote at the address listed, 2) did not match the signatures on the Voter Registration Card, and 3) the signators are not qualified legal voters in the applicable District.

The analysis for determining OBJECTOR'S signature challenge is the same. An ELECTORAL BOARD can hear testimony, including expert evidence, to determine the identity of the voter in the event of a challenge to a signature on a nominating petition. *Canter v. Cook County Officers' Electoral Board*, 170 Ill. App. 3d 364, 523 N.E.2d 1299 (1<sup>st</sup> Dist. 1988).

The primary purpose of the signature requirement is to preserve the integrity of the electoral process by limiting ballot access to only those Candidates who have demonstrated a preliminary showing of support. *Briscoe v. Kusper*, 435 F.2d 1046, 1054 (7<sup>th</sup> Cir. 1970). The challenge to signatures raises factual questions as to the registered voter status of the individuals who signed the Nominating Papers as well as to the eligibility of those individuals.

The Election Code provides that an individual, to be qualified to sign Nominating Papers, must be a qualified voter; that being a person who is registered to vote at the address shown opposite his or her signature on the petition. 10 ILCS 5/3-1.2. Moreover, to be valid, each signature contained in the Nominating Papers must be affixed thereon by the individual in his/her own proper person. The Election Code requires that, in order for an individual to be determined eligible to sign a nominating petition, that his/her signature must appear on the petition. Further, the Election Code requires the individual to sign in his/her own proper person. See 10 ILCS 5/7-10.

In *Greene v. Board of Election Commissioners*, 112 Ill. App. 3d 862, 868, 445 N.E.2d 1337 (1<sup>st</sup> Dist. 1983), the court held that persons signing Nominating Petitions must be registered to vote at the residence set forth on the petition. The court concluded that requiring strict compliance of the signature requirement was necessary to facilitate the verification procedure and to preserve the integrity of the election process. *Id.* at 869. Therefore, a signature shall be stricken if the signator is

not registered to vote, not registered to vote at the address listed on the Nominating Petition or the address does not fall under the applicable jurisdiction.

The CANDIDATE can prevail against the Objection as to a signature challenge if he brings the individual before the ELECTROAL BOARD or presents an affidavit to the ELECTORAL BOARD from the individual whose signature is challenged. Alternatively, through means of a Records Check, the ELECTORAL BOARD can compare the signature on the Petition to that which appears on the challenged individual's voter registration card. If there is a substantial similarity between the signature on the Nominating Petition and of the signature on the registration application, the signature should be deemed valid. Signatures are not stricken merely because they do not match the binder cards. *Reyes v. Bloomington Township Electoral Board*, 265 Ill. App. 3d 69, 638 N.E. 2d 782 (2d Dist. 1994), *vacated in part*, 640 N.E.2d 956 (1994). The genuineness of a "signature" is the guiding principle. *Id.* In the event the signatures are dissimilar, and there is no testimony or affidavit of the voter that he/she signed in his/her own proper person, the ELECTORAL BOARD can uphold the objection as to said signature.

The ELECTORAL BOARD adopted the findings of the COMMISSION Records Check as presented in Exhibit "H-1." The ELECTORAL BOARD also conducted a signature comparison on those challenged signatures deferred by the Commission Staff in the Records check. The CANDIDATE presented evidence in defense of the Objection.

The CANDIDATE presented testimony from several witnesses. The CANDIDATE'S first witness was the CANDIDATE himself. The CANDIDATE testified that he personally witnessed all of the individuals affix their signatures on the Nominating Petitions, including the challenged

signatures. The CANDIDATE testified that he did not personally know the Signators, but he did witness those Signators affix their signatures to the Nominating Petitions. Further, the ELECTORAL BOARD considered the testimony of Mark Garrity and Julie Schnell, both Circulators. Mark Garrity's circulation was based upon a Voter list and that he sought out particular individuals to sign the Nominating Petitions. Mr. Garrity further testified that he did not fill in the term "Democrat" in each of the Circulator Affidavits. Mr. Garrity also testified that he was present when the signatures were affixed to the Nominating Petition. Mr. Garrity testified that he did not ask the Signators their party affiliation, but he did identify the CANDIDATE that he was circulating on behalf of and his party affiliation. Julie Schnell testified that she did not ask voters if they were affiliated with the Democratic Party. She did not know the party affiliation of any individuals. Ms. Schnell further testified that she showed the Signators the Nominating Petition and assumed they read it to see she was circulating on behalf of a Democratic Candidate.

Consequently, upon due consideration of all the evidence admitted at hearing, including the testimony presented on this matter, the ELECTORAL BOARD hereby finds:

- 1) That the CANDIDATE submitted a total of Two Hundred and Forty Seven (247) signatures to its Nominating Papers;
- 2) That the OBJECTOR objected to One Hundred and One (101) signatures;
- 3) That One Hundred and Fifty Two (152) valid signatures are required to have the CANDIDATE'S name be placed on the Official Ballot;
- 4) That the ELECTORAL BOARD sustained Sixty Three (63) Objections for the reasons set forth in the ELECTORAL BOARD'S Summary of Findings. See Exhibit

“H-1”, attached hereto and incorporated herein by reference;

- 5) That the ELECTORAL BOARD overruled Thirty Eight (38) Objections, for the reasons set forth in the ELECTORAL BOARD’S Summary of Findings. See Exhibit “H-1”, attached hereto and incorporated herein by reference.

The ELECTORAL BOARD further finds that the Nominating Papers contain a sufficient number of valid signatures, pursuant to the Illinois Election Code for inclusion on the Official Ballot.

- (5) Whether the Signators are invalidated because the CANDIDATE is running as a Democrat and the Signators purportedly voted Republican in the March 20, 2012 Primary Election.**

The OBJECTOR asserts that signatures of Signators should be stricken if the Signator is registered to a political party that is not affiliated with the party stated on Nomination Papers. The Illinois Supreme Court, in *Hossfeld v. Illinois State Board of Elections*, 238 Ill.2d 418, 939 N.E.2d 368, 374 (2010), held that “the Election Code no longer contains express limitation on party switching,” and that a voter may sign any Nomination Petition, regardless of party affiliation, at the beginning of a new election cycle or season. Still, a voter may not attempt to switch parties during an election cycle. *Id.*

The current election cycle began with the March 20, 2012, General Primary Election and will conclude with the November 6, 2012, General Election. Therefore, a Signator who voted in the March 20, 2012, General Primary Election as a Republican is precluded from signing the Nominating Petition for a Democrat.

The ELECTORAL BOARD adopted the findings of the COMMISSION relative to the issue

of party affiliation of the Signators. The ELECTORAL BOARD finds that any individual who participated in the March 20, 2012, Republican Primary Election is precluded from participating as a Signator for the CANDIDATE, a nominee of the Democratic Party. The ELECTORAL BOARD'S rulings relative to the specific party affiliation challenges are summarized in Exhibit "H-1", which is attached hereto and incorporated herein. Therefore, on this basis, the Objection is overruled.

**(6) Whether the Candidate's Appointment to Fill a Vacancy in Nomination substantially conforms to the requirements of the Election Code.**

OBJECTOR claims that the Candidate's Appointment to Fill a Vacancy in Nomination does not satisfy the requirement of the Election Code. OBJECTOR contends that CANDIDATE did not reference the "County" in which the Office of Forest Preserve District Commissioner was located. Specifically, OBJECTOR contends that the Appointment fails to nominate the CANDIDATE for the "Commissioner of the Forest Preserve District of *DuPage County*". (*emphasis added*).

The Election Code, 10 ILCS 5/7-61, controls the procedure for appointing a candidate to fill a vacancy in nomination. Section 5/7-61 provides, in relevant part:

If the name of no established political party candidate was printed on the general primary ballot for a particular office and if no person was nominated as a write-in candidate for such office, a vacancy in nomination shall be filled only by a person designated by the appropriate committee of the political party and only if that designated person files nominating petitions with the number of signatures for an established party candidate for that office within 75 days after the day of the general primary.

10 ILCS 5/7-61 (West 2012). Section 5/7-61 does not require that the Appointment include the county in which the Office is located. Further, neither the Election Code, 10 ILCS 5/1-1 *et seq.*, nor the Downstate Forest Preserve Act, 70 ILCS 805/1 *et seq.*, require that the "county" be identified when referencing a Forest Preserve District or Commissioner. Also, Section 5/7-61 provides that the

Candidate is required to file the requisite Nominating Petitions; thus, the Appointment is analyzed as being incorporated into the Candidate's Nomination Papers. The Supreme Court recognized that Nomination Papers must be read as a whole and, therefore, a deficiency in the Nomination Papers could be cured by another portion of the Nomination Papers. *Lewis*, 633 Ill.2d at 54. The Nominating Petitions provide that the Office the Candidate is seeking is located in DuPage County. Finally, the Appointment was submitted to the Commission; thus, demonstrating that the location of the political subdivision was located in "DuPage County." There must be evidence that the Election Authority did not know that the Appointment was for the Forest Preserve District of "DuPage County." Therefore, the objection is overruled.

### **CONCLUSION**

It is the decision of the ELECTORAL BOARD that the Objections filed in connection with Donald P. Kirchenberg, CANDIDATE, for the Office of Commissioner of the DuPage County Forest Preserve District, District No. 2, are overruled. Accordingly, Donald P. Kirchenberg, CANDIDATE shall appear on the Official Ballot for the ELECTION to be voted on at the November 6, 2012, General Election.

### **REVIEW OF ELECTORAL BOARD DECISION**

Any party seeking to review the decision and determination of the ELECTORAL BOARD shall do so in accordance with the provisions and time frame set forth in the Election Code, 10 ILCS 5/1-1 *et seq.*, and other pertinent statutory provisions by filing a petition for judicial review within five (5) days from the date of this order with the Clerk of the Circuit Court of the Eighteenth Judicial Circuit, DuPage County, Illinois.

AYES:

DUPAGE COUNTY OFFICERS' ELECTORAL BOARD

/s/ Cathy Ficker Terrill  
CATHY FICKER TERRILL, CHAIR

/s/ Arthur Ludwig  
ARTHUR LUDWIG, MEMBER

/s/ Kevin Millon  
KEVIN MILLON, PUBLIC MEMBER

Dated: June 29, 2012

Prepared by:

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