

BEFORE THE DULY CONSTITUTED
DU PAGE COUNTY OFFICERS' ELECTORAL BOARD
FOR THE HEARING AND PASSING UPON OBJECTIONS TO PETITIONS
FOR CANDIDATE FOR THE OFFICE OF MEMBER OF THE DU PAGE COUNTY BOARD,
DISTRICT NO. 1, DUPAGE COUNTY, ILLINOIS

IN RE: THE MATTER OF THE OBJECTION)
OF JOYCE HUNDHAUSEN, OBJECTOR, TO)
THE NOMINATION PAPERS OF)
CAROL (NARDI) BARTUCCI OF 1324)
HEATHER COURT, ADDISON, ILLINOIS,) DOCKET No. 2012 G-2
AS AN INDEPENDENT CANDIDATE FOR)
THE OFFICE OF MEMBER OF DU PAGE)
COUNTY BOARD DISTRICT NO. 1 TO BE)
VOTED ON AT 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

The County Officers' Electoral Board (hereinafter referred to as the "ELECTORAL BOARD"), 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"), which were duly promulgated, approved, implemented and adopted on July 10, 2012, as required by the DuPage County Election Commission (hereinafter referred to as the "COMMISSION"), convened for the hearing and passing upon objections to Nomination Papers.

The ELECTORAL BOARD convened for the purposes of hearing and passing upon the Verified OBJECTOR'S Petition (hereinafter referred to as the "PETITION") filed by Joyce

Hundhausen, (hereinafter referred to as the "OBJECTOR"), to the Nominating Papers of Carol (Nardi) Bartucci (hereinafter referred to as the "CANDIDATE"), Independent Candidate for the Office of Member of DuPage County Board District No. 1, (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 25, 2012, pursuant to 10 ILCS 5/7-12 of the Election Code. Objections to the Nominating Papers were timely filed with the COMMISSION on July 3, 2012. See Exhibit "B", attached hereto and incorporated herein by reference.

A Call Notice for Hearing was issued on July 5, 2012, by Cathy F. 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 her own proper person. See Exhibit "F", 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 Supervisor of Voter Registration of the COMMISSION, which is identified as the Affidavit of Voter Registration. See Exhibit “H”, attached hereto and incorporated herein by reference. The OBJECTOR provided an Affidavit of Mary Bauer, a Signator on the Nomination Petitions. See Exhibit “I” attached hereto and incorporated herein by reference. The OBJECTOR provided an Affidavit of Khris Peppi, a Signator on the Nomination Petitions. See Exhibit “J” attached hereto and incorporated herein by reference. The OBJECTOR provided an Affidavit of Joanne Holleman, a Signator on the Nomination Petitions. See Exhibit “K” attached hereto and incorporated herein by reference. The OBJECTOR provided also an Affidavit of Thomas Tovello, a Circulator of the Nomination Petitions. See Exhibit “L” attached hereto and incorporated herein by reference.

On July 10, 2012, the ELECTORAL BOARD convened the Hearing on the objections, which Hearing was continued until July 20, 2012, where 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 CANDIDATE challenges whether the OBJECTOR had standing to contest the Nomination Papers.

The OBJECTOR challenges the Nominating Papers on the following four (4) grounds:

(1) Whether the placement of the Notary Jurat, and the Notary Public's signature on the Nominating Petitions, which allegedly were affixed prior to Signator's affixing their signatures, violated the Election Code.

(2) Whether Nominating Petitions that are not consecutively numbered violate the Election Code.

(3) Whether the Nominating Petitions contain invalid signatures because certain Signators were not duly qualified registered voters; Signators did not reside within the boundaries of the Political Subdivision; the signatures were not genuine, duplicate Signators appeared on the Nominating Petitions; Signators used a partial or improper name, Signators were improperly crossed out; and Signators cast partisan ballots at the March 20, 2012, Primary Election.

(4) Whether the Nominating Petitions demonstrate a pattern of fraud.

LEGAL ANALYSIS OF ISSUES PRESENTED

(1) Whether the CANDIDATE timely raised the issue of the OBJECTOR'S standing to contest the Nominating Papers.

The CANDIDATE, at the July 20, 2012, Hearing held before the constituted ELECTORAL BOARD, verbally raised the issue of the OBJECTOR'S standing to contest the Nomination Papers. The CANDIDATE asserts that the OBJECTOR was not a legal voter in County Board District No. 1. The dispositive issue is whether the CANDIDATE timely and appropriately raised the challenge to standing as an affirmative defense. The ELECTORAL BOARD finds that the CANDIDATE did not timely raise the affirmative defense and, therefore, waives the issue of standing.

In order to file a proper Objection, the Election Code, 10 ILCS 5/10-8, requires the OBJECTOR to reside in the political subdivision or district of the Office the CANDIDATE is seeking. Section 5/10-8 provides in relevant part:

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 office of the election authority or local election official with whom the certificate of nomination, nomination papers or petitions are on file.

10 ILCS 5/10-8. Courts have found that the requirements of Section 5/10-8 are mandatory. *Pochie v. Cook County Officers Electoral Board*, 289 Ill. App. 3d 585, 682 N.E.2d 258, 259-260 (1st Dist. 1997). The CANDIDATE is the only individual that can challenge the standing of the OBJECTOR. *Hagen v. Stone*, 277 Ill. App. 3d 288, 660 N.E.2d 189, 190 (1st Dist. 1995). Unless the CANDIDATE files an affirmative defense contesting standing, the PETITION will not automatically be dismissed on the grounds that the OBJECTOR does not have standing. *Id.* The affirmative defense must be pled in writing and submitted to the ELECTORAL BOARD prior to the hearing on the PETITION. *Id.* Failure to plead the affirmative defensive will waive any issue of the OBJECTOR'S standing. Without first pleading this defense in an affirmative defense, the CANDIDATE, is foreclosed from arguing at the hearing before the ELECTORAL BOARD that the OBJECTOR does not have standing to bring the Objection, because the OBJECTOR would have no notice of this assertion. *Id.*

The ELECTORAL BOARD first convened on the PETITION on July 10, 2012. Legal Counsel for the ELECTORAL BOARD, at the July 10, 2012, hearing, inquired of the CANDIDATE whether there were any preliminary issues or motions that the CANDIDATE sought to present to the ELECTORAL BOARD. The CANDIDATE did not present any preliminary issues or motions to be heard by the ELECTORAL BOARD, although the opportunity was presented to her several times. The Hearing was continued to July 20, 2012. The CANDIDATE did not file an affirmative defense

relative to the standing of the OBJECTOR on or before July 20, 2012. The CANDIDATE'S challenge to the OBJECTOR'S lack of standing at the July 20, 2012, Hearing was untimely. Therefore, the ELECTORAL BOARD hereby finds that the issue of standing was waived by the CANDIDATE predicated on the authority of *Hagen. Id.*

(2) Whether the placement of the Notary Jurat, and the Notary Public's signature on the Nominating Petitions, which allegedly preceded the Signator, violated the Election Code.

The OBJECTOR contends that the Nominating Petitions violated the Election Code because the Circulators' Affidavits were not properly attested, "before some officer authorized to administer oaths." 10 ILCS 5/10-4. The CANDIDATE submitted two hundred thirty-two (232) Nominating Petition sheets, which contained three thousand three hundred thirty (3,330) signatures. The OBJECTOR challenged the two hundred thirty (230) Petition sheets, which contained Three Thousand Three Hundred Two (3,302) signatures. The OBJECTOR contends that the two hundred thirty (230) contested Nominating Petitions violate the Election Code because they contained pre-notarized copies of the Nominating Petitions.

The Election Code, 10 ILCS 5/7-10 and 10 ILCS 5/10-4, states that a Circulator of Nominating Petitions is required to provide a signed statement certifying to the genuineness of the signatures. Further, the Circulator's, "statement shall be sworn to before some officer authorized to administer oaths in this State." 10 ILCS 5/7-10 (West 2012) and 10 ILCS 5/10-4 (West 2012). The Election Code's requirement that a Circulator must appear before a Notary Public to validate the Nominating Petitions has been held to be mandatory. *Bowe v. Chicago Electoral Board*, 79 Ill.2d 469, 404 N.E.2d 180 (1980). Therefore, the failure of the Circulator to appear before a Notary

Public will invalidate the Nominating Petition. *Id.* The ELECTORAL BOARD has the discretion to hear and weigh evidence and testimony. *Canter v. Cook County Officers' Electoral Board*, 170 Ill. App. 3d 364, 523 N.E.2d 1299 (1st Dist. 1988). Therefore, ELECTORAL BOARD has the authority to determine whether the Nominating Petitions were properly sworn to before a Notary Public.

In support of the OBJECTOR'S position, the OBJECTOR asserts that the Notary Jurat was placed in the identical location on all of the two hundred thirty (230) contested Nominating Petitions and the Notary Jurat was photocopied on the aforesaid Nominating Petitions. Therefore, the Nominating Petitions were pre-notarized before the signators signed the Nominating Petitions and the Circulator could not legally attest to the validity of the signatures. The OBJECTOR also requested the ELECTORAL BOARD take note that the Notary Jurat "bleeds" through certain sheets of the Nomination Papers, such as sheets "13" and "14", but not the other pages of the Nominating Petitions; thus, the pages in which the Notary Stamp does not "bleed" through are presumed to be photocopies. The Objector further identified a "smudge" above the Notary Jurat, which was identical on all two hundred thirty (230) contested Nominating Petitions. The OBJECTOR directed the ELECTORAL BOARD to exam the "dots" above the Circulator's address and the Circulator's Affidavit, which were found in the identical place on each of the contested Nominating Petitions.

The OBJECTOR further asserted that the Notary's signature was identical on each of the two hundred thirty (230) Nominating Petition sheets at issue. The OBJECTOR contended that the Notary signature did not leave an impression on the sheet, further evidencing that the challenged Nominating Petitions did not contain the original signature of the Notary Public. Finally, the OBJECTOR contends that sheet "195" and sheet "203" of the Nomination Petitions appeared to be

pre-notarized in which the Circulator's name was whited out and a new Circulator's name inserted in its stead. The Notary Public was not called as a witness by either Party, nor was there an affidavit from the challenged Notary Public.

The OBJECTOR presented witnesses who testified that they signed the Nomination Petitions. The Nomination Petitions that they signed were purportedly circulated by the CANDIDATE. The witnesses testified that the Nomination Petitions were in fact circulated by another Circulator, by the name of Connie Prince. See Exhibits "I," "J," and "K" attached hereto and incorporated herein. Further, the OBJECTOR provided an Affidavit from a Circulator, Thomas Tovello, who indicated that he was the Circulator of sheet "106" of the Nominating Petitions, but that he did not sign the Circulator's Affidavit on the bottom of the Nominating Petition. See Exhibit "L" attached hereto and incorporated herein. Although he was the proper Circulator, the CANDIDATE'S name appeared in the certification at the bottom of the Nomination Petition.

The CANDIDATE testified that she in fact signed what she was "directed to sign." The CANDIDATE indicated, in her closing argument that the Nomination Petitions were all signed between March 27, 2012, and April 12, 2012. The CANDIDATE testified that she did not sign all of the Nomination Petitions that bear her name. The CANDIDATE testified that she could not locate the Circulators of approximately thirty (30) sheets of her Nominating Petitions and, as a result, she affixed her signature as a Circulator, although she did not actually circulate the Nomination Papers.

Upon the review of the evidence presented, the ELECTORAL BOARD concludes that the Notary Jurat and Seal was, in fact, affixed to the Nomination Petitions, prior to those Petitions being circulated, and therefore, the Nominating Petitions were not properly circulated. This is a violation

of the Election Code, 10 ILCS 5/10-4, and the Notary Act, 5 ILCS 312/6-103. The ELECTORAL BOARD'S decision is predicated solely on the violation of the Election Code, 10 ILCS 5/10-4. The ELECTORAL BOARD sustains the Objection and, therefore, invalidates the signatures on two hundred thirty (230) pages of the Nominating Petitions, which results in the invalidation of three thousand three hundred two (3,302) signatures. The ELECTORAL BOARD finds that only Pages "13" and "14" of the Nomination Petitions are valid. The CANDIDATE was required to obtain a minimum of two thousand two hundred ninety-four (2,294) signatures. After the invalidation of three thousand three hundred two (3,302) signatures, the CANDIDATE had only twenty-eight (28) valid signatures. Therefore, the CANDIDATE does not have the requisite number of signatures to be placed on the Official Ballot.

(3) Whether the non-consecutive numbering of Nomination Petitions fails to conform to the Election Code.

The OBJECTOR asserts that two of the Nominating Petitions are identified by page number as sheet "26". The OBJECTOR requests that Nominating Petitions identified as sheet "26" be invalidated.

The Election Code, 10 ILCS 5/7-10 (West 2012) and 10 ILCS 5/10-4 (West 2012), requires that Nomination Petitions be consecutively numbered. Section 5/7-10 provides in relevant part:

Such sheets before being filed shall be neatly fastened together in book form, by placing the sheets in a pile and fastening them together at one edge in a secure and suitable manner, and the sheets shall then be numbered consecutively.

10 ILCS 5/7-10 (West 2012). While Section 5/10-4 provides that "the sheets shall then be numbered consecutively." 10 ILCS 5/10-4 (West 2012). The requirement that pages be consecutively numbered is mandatory. *Reynolds v. Champaign County Officers Electoral Board*, 377 Ill. App. 3d

1164, 884 N.E.2d 1175, 1177 (4th Dist. 2008). The purpose of the page numbering requirements is to allow people to identify a specific page and also to prevent tampering with the Nominating Petitions; thereby maintaining the integrity of Nominating Petitions and the Election. *Id.*

After reviewing the evidence presented, the ELECTORAL BOARD finds that the duplication of page numbering of the Nomination Petitions violates the Election Code, 10 ILCS 5/7-10 (West 2012) and 10 ILCS 5/10-4. The ELECTORAL BOARD therefore sustains the Objection relative to the duplicate page numbering of sheet “26” and hereby finds that the second sheet “26” of the Nomination Petition, and all of the signatures contained therein, are invalidated.

(4) Whether the Nomination Petitions contain invalid signatures.

The OBJECTOR contests the validity of two thousand one hundred thirty-two (2,132) signatures of the Nominating Petitions on the following grounds:

- A) the Signators identified in Column (A) of the Appendix-Recapitulation of the PETITION were not duly qualified, registered and legal voters at the address shown opposite their names;
- B) the Signators identified in Column (B) of the Appendix-Recapitulation of the PETITION do not reside within the boundaries of DuPage County Board District No. 1;
- C) the signatures identified in Column (C) of the Appendix-Recapitulation of the PETITION were not genuine;
- D) the Signators identified in Column (D) of the Appendix-Recapitulation of the PETITION had duplicate signatures appearing in the Nominating Petitions;

E) the Signators identified in Column (E) of the Appendix-Recapitulation of the PETITION were invalid because of a Signator's improper address;

(F) the Signators identified in Column (E) of the Appendix-Recapitulation of the PETITION were invalid because the Signator used a partial or improper name;

(G) the Signators identified in Column (E) of the Appendix-Recapitulation of the PETITION were invalid because they were stricken or crossed out from the Nominating Petition;

(H) the Signators identified in Column (E) of the Appendix-Recapitulation of the PETITION were invalid because the Signators cast a partisan ballot at the March 20, 2012, Primary Election. See Exhibit "B" attached hereto and incorporated herein by reference.

Each of the aforesaid issues provided in the PETITION was resolved through analysis of the signatures in question by a Records Check conducted by the staff of the COMMISSION and through the hearing of evidence.

A. Whether signature challenge should be sustained when Nominating Petitions contain Signators not registered to vote at the residence shown opposite his or her name.

The Election Code requires that, in order for an individual to be determined eligible to sign a nominating petition, his or her signature must appear on the petition along with his or her proper address. 10 ILCS 5/7-10 (West 2012); 10 ILCS 5/10-4 (West 2012). Further, Section 5/3-1.2, which pertains to determining the eligibility of a signator to sign a nomination petition, provides:

For the purpose of determining eligibility to sign a nominating petition or a petition proposing a public question the terms "voter", "registered voter", "qualified voter",

"legal voter", "elector", "qualified elector", "primary elector" and "qualified primary elector" as used in this Code or in another Statute *shall mean 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 when he signed the petition.* Any person, otherwise qualified under this Section, who has not moved to another residence but whose address has changed as a result of implementation of a 9-1-1 emergency telephone system shall be considered a "voter", "registered voter", "qualified voter", "legal voter", "elector", "qualified elector", "primary elector", and "qualified primary elector".

10 ILCS 5/3-1.2 (West 2012) (Emphasis added). In *Greene v. Board of Election Commissioners*, 112 Ill.App.3d 862, 868, 445 N.E.2d 1337 (1st 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 will be stricken if the signator is not registered to vote at the address listed on the nomination petition, or the candidate fails to provide an affidavit or testimony demonstrating that the signator is a proper registered voter, or the address is not located in the appropriate jurisdiction.

B. Whether signature challenge should be sustained when the Nominating Petitions contain signatures of Signators that do not reside in the proper Political Subdivision or District.

The Election Code requires that, in order for an individual to be determined eligible to sign a nominating petition, he or she must reside, “in the political division for which the nomination is sought” 10 ILCS 5/7-10 (West 2012); 10 ILCS 5/10-4 (West 2012). The term “political division” generally refers to “all of the various types of specifically identified electoral enclaves enumerated in subsections 7-10(a) through 7-10(k). . . .” *Jordan v. Glaub*, 196 Ill. App. 3d 736, 554 N.E.2d 994, 998 (1st Dist. 1990). Requiring strict compliance of Section 5/7-10 and Section 5/10-4

is required to facilitate the verification procedure and to preserve the integrity of the election process. *Greene*, 112 Ill.App.3d at 869. Therefore, a signature will be stricken if the Signator does not reside “in the political division for which the nomination is sought. . .” 10 ILCS 5/7-10 (West 2012); 10 ILCS 5/10-4 (West 2012).

C. Whether signature challenge should be sustained when the Nominating Petitions contain signatures of Signators that are not genuine.

The Election Code requires that, in order for an individual to be determined eligible to sign a nominating petition, his/her signature must appear on the petition. 10 ILCS 5/7-10 (West 2012); 10 ILCS 5/10-4 (West 2012). Further, the Election Code requires the individual to sign in his/her own proper person. *Id.* The requirements of Section 5/7-10 and Section 5/10-4 are mandatory. *Greene*, 112 Ill.App.3d at 869. Therefore, the ELECTORAL BOARD, through a Records Check and the hearing of testimony, has the authority to determine whether a signature is genuine. A signature is genuine if it is substantially similar to the signature identified in the Voter Registration Records. *Morton v. State Officers Electoral Bd.*, 311 Ill.App.3d 982, 726 N.E.2d 201, 204 (4th Dist. 2000).

D. Whether signature challenge should be sustained when the Nominating Petitions contain duplicate signatures of Signators in violation of the Election Code.

The Election Code requires that a signator may only sign his or her name once on a nominating petition. The primary purpose of the signature requirement is to ensure that the candidate has the minimal voter appeal necessary to be placed on the Ballot. *Salgado v. Marquez*, 356 Ill. App. 3d 1072, 828 N.E.2d 805, 811 (2d Dist. 2005). The signature requirements are mandatory. *Greene*, 112 Ill.App.3d at 869. Therefore, duplicate signatures will be stricken from the Nominating Petitions.

E. Whether signature challenge should be sustained when the Nominating Petitions contain signatures of Signators that fail to provide a complete address in violation of the Election Code.

Failure to provide a complete address on a Nomination Petition violates the Election Code. A signator's failure to provide a complete address may be rehabilitated and restored upon testimony of the signator or affidavit of the signator providing his or her complete address and the address corresponds to the Voter Registration Records. *See* Chicago Board of Elections, *Davis et al. v. Reed*, 04-EB-WC-81 (February 6, 2004). Unless evidence is presented, a signature that fails to provide the proper address is invalid.

F. Whether signature challenge should be sustained when the Nominating Petitions contain signatures of Signators that are not substantially similar to the Voting Records because of the use of an improper or partial name.

A signature is valid if it is substantially similar to the name that appears on the voting records. *Morton*, 726 N.E.2d at 204. Therefore, a signature shall be stricken if it is not substantially similar to the signature found in the voting records.

G. Whether signature challenge should be sustained when the Nominating Petitions contain signatures of Signators that have been crossed out, eradicated, stricken or removed from the Nominating Petitions.

The Election Code allows the candidate or circulator to strike any signature on the nominating petition, but the candidate or Circulator must comply with the procedures provided by the Election Code, which, in part, requires a filed, written revocation in order to revoke a signature appearing on the nominating petition. 10 ILCS 5/7-10 (West 2012); 10 ILCS 5/10-3 (West 2012). "The person striking the signature shall initial the Petition at the place where the signature is struck." *Id.* The person striking the signature must also sign a "certification listing the page number and line

of each signature struck from the petition. Such certification shall be filed as a part of the petition” *Id.* The person striking the signature is then required to sign “an additional certificate specifying the number of certification pages listing stricken signatures. . . and the page numbers indicated on such certification.” *Id.* This certification must be filed as part of the Nominating Petitions, must be numbered, and must “be attached immediately following the last page of voters’ signatures and before the certification of stricken signatures” *Id.* The aforesaid requirements are “necessary to effect a valid striking of any signature.” *Id.*

The purpose for allowing signature revocation was to give a person “a simple means of striking undesired signatures from petitions while simultaneously protecting them from fraudulent alterations subsequent to filing.” *Lizak v. Zadrozny*, 4 Ill. App. 3d 1023, 283 N.E.2d 252, 255 (1st Dist. 1972). Still, failure to comply with the statutory requirements for striking out signatures will result in a presumption that the stricken signature is valid. *Id.* “While we recognize the seeming inequity of enforcing this provision against the interest of the party it was intended to benefit . . . failure to comply therewith obligated the Board of Election Commissioners to compute all of the filed signatures, including all signatures which had been lined-out.” *Id.*

H. Whether signature challenge should be sustained when the Nominating Petitions contain signatures of Signators that previously voted in the March 20, 2012, Primary Election.

In regard to Signators who cast partisan ballots at the March 20, 2012, Primary Election, *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 a new election cycle. *Id.* The current election cycle began on the March 20, 2012, General Primary Election and will conclude on the November 6, 2012, General Election. Therefore, a Signator that voted in the March 20, 2012, General Primary Election as a Republican or Democrat is precluded from signing the Nominating Petition for an Independent Candidate.

I. The ELECTORAL BOARD decision on the Objections to the validity of signatures contained in the Nominating Petitions.

The use of a Records Check, the hearing of testimony and the presentation of evidence may be used by the ELECTORAL BOARD to determine the signature challenges. The ELECTORAL BOARD has the authority to hear testimony, including expert evidence, to determine whether the OBJECTOR'S challenge to signatures on Nominating Petitions should be sustained or overruled. *Canter*, 523 N.E.2d 1299. A signature comparison must be conducted for the objections on the signature challenges.

A Candidate could prevail against an objection as to the validity of a signature if he or she presents credible evidence through witness testimony or presents an affidavit from the individual whose testimony can rehabilitate a challenged signature. The CANDIDATE failed to present any evidence to rehabilitate the challenged signatures.

Alternatively, through means of a Records Check, the ELECTORAL BOARD can compare the signature on the Nominating 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 Petitions and of the signature on the Registration Card, the signature should be deemed valid. *Morton*, 726 N.E.2d at 204; *Bergman v. Vachata*, 347 Ill App.3d 339, 807 N.E.2d 558, 565-566 (6th

Dist. 2004). 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 may sustain the objection as to those signatures.

The ELECTORAL BOARD adopted the findings of the COMMISSION Records Check as presented in Exhibit “H.” The ELECTORAL BOARD also conducted a signature comparison on those challenged signatures deferred by the Commission Staff in the Records check, but the OBJECTOR withdrew all challenges relative to the deferred signatures. Consequently, upon due consideration of all the evidence admitted at the Hearing, the ELECTORAL BOARD hereby finds:

- (a) That the CANDIDATE submitted a total of three thousand three hundred thirty (3,330) signatures to its Nominating Papers;
- (b) That the OBJECTOR initially objected to the validity of two thousand two ninety-three (2,293) signatures, but withdrew his Objections to one hundred sixty-one (161) signatures and, therefore, the OBJECTOR challenged two thousand one hundred thirty-two (2,132) signatures;
- (c) That a minimum of two thousand two hundred ninety-four (2,294) valid signatures are required to have the CANDIDATE’S name be placed on the Official Ballot;
- (d) That the ELECTORAL BOARD sustained one thousand four hundred forty-one (1,441) Objections for the reasons set forth in the ELECTORAL BOARD’S Summary of Findings. See Exhibit “H”, attached hereto and incorporated herein by reference;
- (e) That the ELECTORAL BOARD overruled seven hundred sixty-eight (768)

Objections, for the reasons set forth in the ELECTORAL BOARD'S Summary of Findings. See Exhibit "H", attached hereto and incorporated herein by reference.

- (f) One thousand eight hundred eighty-nine (1,889) signatures remained, subject to further challenges on other grounds.

The ELECTORAL BOARD further finds that the Nominating Papers do not contain a sufficient number of valid signatures, pursuant to the Illinois Election Code, for inclusion on the Official Ballot. Therefore, the Objection is sustained.

(5) Whether the Nominating Petitions demonstrate a pattern of fraud.

OBJECTOR contends that the alleged violations of the Election Code demonstrate a pattern of fraud and false swearing and a, "contemptuous disregard for the mandatory provisions of the Election Code." The OBJECTOR requests that the ELECTORAL BOARD void the Nomination Papers.

Where certain Nominating Petitions "evidence a pattern of fraud, false swearing, and total disregard for the requirements of the Code," then those Nominating Petitions "should be stricken in their entirety." *Crossman v. Board of Election Commissioners of the City of Chicago*, 2012 IL. App (1st) 120291, 966 N.E.2d 518, 521 (1st Dist. 2012). The ELECTORAL BOARD has the discretion to determine what constitutes a pattern of fraud and whether a pattern of fraud exists based on the facts presented. *Crossman*, 966 N.E.2d at 522 ("determinations as to the weight of the evidence and the credibility of the witnesses are uniquely within the province of the Board. . ."). In determining whether there is a pattern of fraud the ELECTORAL BOARD can hear testimony, including expert evidence, and conduct a records check. *Canter*, 523 N.E.2d 1299.

The ELECTORAL BOARD finds that, although the CANDIDATE had the majority of the signatures appearing on the Nomination Petitions stricken, the CANDIDATE did not demonstrate a total disregard for the provisions of the Election Code nor did the CANDIDATE intend to commit a fraud. Therefore, the ELECTORAL BOARD overrules the Objection relative to whether the Nomination Petitions demonstrate a pattern of fraud.

CONCLUSION

While certain of the Objections were sustained and others overruled by the ELECTORAL BOARD, there remained only twenty eight valid signatures remaining on the Nominating Petitions, far below the required threshold for placement on the Official Ballot. It is the decision of the ELECTORAL BOARD that the Objections filed in connection with Carol (Nardi) Bartucci, CANDIDATE, for the Office of Member of DuPage County Board District No. 1, that were sustained by the ELECTORAL BOARD, as set forth above, cause the CANDIDATE to be precluded from appearing on the Official Ballot. Accordingly, Carol (Nardi) Bartucci, CANDIDATE shall not 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:

DU PAGE 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: July 27, 2012

Prepared by:

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