

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 TRUSTEE,
ROSELLE PUBLIC LIBRARY, DU PAGE COUNTY, ILLINOIS

IN RE: THE MATTER OF THE OBJECTION)
OF WALTER BRINAS, OBJECTOR, TO THE)
NOMINATION PAPERS OF ROBERT L. DAPRATO)
AS A CANDIDATE FOR THE OFFICE OF) Docket No. 2013 C-8
TRUSTEE OF THE ROSELLE PUBLIC LIBRARY)
DISTRICT TO BE VOTED ON AT THE)
APRIL 9, 2013, CONSOLIDATED GENERAL)
ELECTION)

DU PAGE COUNTY OFFICERS' ELECTORAL BOARD DECISION

NOW COMES the DuPage County Officers' Electoral Board, consisting of Cathy Terrill, Chair; Arthur Ludwig, Member; and Christopher Hage, 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 5/10-9, *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 January 11, 2013, convened for the hearing and passing upon objections to Nominating Papers filed with the Roselle Public Library District.

The ELECTORAL BOARD convened for the purposes of hearing and passing upon the Objector's Petition (hereinafter referred to as the "PETITION") filed by Walter Brinas (hereinafter referred to as the "OBJECTOR"), to the Nominating Papers of Robert L. Daprato (hereinafter referred to as the "CANDIDATE"), Candidate for the Office of Trustee of the Roselle Public Library District (hereinafter referred to as the "OFFICE"), to be voted upon at the Consolidated General Election to be held April 9, 2013, (hereinafter referred to as the "ELECTION").

Within the time frame set forth by statute, the CANDIDATE filed with the Local Election Official for the Roselle Public Library District, Nominating Papers for the OFFICE to be voted on at the ELECTION. A copy of the Nominating Papers is attached hereto and incorporated herein by reference as

Exhibit "A." An Objection to the Nominating Papers was timely filed with the Local Election Official for the Roselle Public Library District, who in turn filed them with the DuPage County Election Commission on January 4, 2013, as required by law. A copy of the Objection is attached hereto and incorporated herein by reference as Exhibit "B."

A Call Notice for Hearing was issued on January 7, 2013 by Cathy Terrill, Chair of the ELECTORAL BOARD. A copy of the Call Notice is attached hereto and incorporated herein by reference as Exhibit "C." 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 copy of the Certified Mail Receipt to both CANDIDATE and OBJECTOR, copy attached hereto and incorporated herein by reference as Exhibit "D." The CANDIDATE and the OBJECTOR were also served by the DuPage County Sheriff's Office, in accordance with the Election Code. Copies of the proof of service to both CANDIDATE and OBJECTOR are attached hereto and incorporated herein by reference as Exhibit "E." The CANDIDATE appeared and filed a written Appearance. A copy of the Appearance is attached hereto and incorporated herein by reference as Exhibit "F." The OBJECTOR appeared through counsel and filed a written Appearance. A copy of the Appearance is attached hereto and incorporated herein by reference as Exhibit "G." Based on the Objection filed herein, the DuPage County Election Commission Staff conducted an Examination of the Official Voter Registration Records, and provided a copy of the results of this Records Examination accompanied by the Affidavit of Rocky Lofendo, Supervisor of Registration. A copy of the Affidavit and Records Examination is attached hereto and incorporated herein by reference as Exhibit "H."

On January 11, 2013, the ELECTORAL BOARD convened the Hearing on the Objection. Prior to the commencement of the evidentiary portion of the Hearing, the CANDIDATE moved for a continuance to allow his attorney to be present for the proceedings. The ELECTORAL BOARD voted unanimously to grant the Motion, and reconvened on January 25, 2013. The Hearing on both dates 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 and acknowledged by the CANDIDATE and the OBJECTOR.

PROCEEDINGS

The OBJECTOR challenges the Nominating Papers based on the CANDIDATE'S failure to file Nominating Petitions with the requisite minimum number of valid signatures, alleging that certain signatures contained therein are invalid for being that of voters not registered to vote, are those of individuals not residing in the District, or are those which are not genuine, or contain signature lines which are blank. The CANDIDATE must submit forty-eight (48) valid signatures to have his name placed on the Ballot. The CANDIDATE submitted fifty-five (55) signatures on his Nominating Petitions.

A. SIGNATURE OBJECTIONS

In regard to challenges to signatures contained in the CANDIDATE'S Nominating Petitions, the law is as follows:

1. Required Number of Signatures

In order to be a Candidate for election to Office, the Election Code requires the Candidate to file Nominating Petitions containing a prescribed minimum number of valid signatures, which must be duly authenticated and attested to as provided by law. *See* 10 ILCS 5/10-3. The signature requirement is a mandatory requirement of the Election Code. *See Brisco v. Kusper*, 435 F.2d 1046, 1054 (7th Cir. 1970); *Merz v. Volberding*, 94 Ill. App. 3d 1111, 419 N.E.2d 628 (1st Dist. 1981). The *Briscoe* Court held that the "purpose of the signature requirement 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." *Id.* Failure to comply with mandatory provisions of the Election Code mandate the removal of a candidate's name from the ballot. *Bowe v. Board of Election Commissioners of the City of Chicago*, 614 F.2d 1147 (7th Cir. 1980); *see also Fortes v. Dixon*, 122 Ill. App. 3d 697, 462 N.E.2d 615 (1st Dist. 1984); and *Huskey v. Municipal Officers Electoral Board*, 156 Ill. App. 3d 201, 509 N.E.2d 555 (1st Dist. 1987).

2. Not Registered

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 Nominating Petition, along with his or her proper address. 10 ILCS 5/10-4. Section 5/3-1.2, which pertains to determining the eligibility of an individual 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. . . .*

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 Nomination Petitions must be registered to vote at the residence set forth on the petition. The court concluded that requiring strict compliance with the signature requirement was necessary to facilitate the verification procedure and to preserve the integrity of the election process. *Id.* at 869; *see also Benjamin v. Board of Election Commissioners*, 122 Ill. App. 3d 693, 462 N.E.2d 626 (1st Dist. 1984).

3. Not Residing in the District

Section 5/10-3 of the Election Code governs who can sign a Nominating Petition. In pertinent part, this Section provides:

Nominations of independent candidates for public office within any district or political subdivision less than the State, may be made by nomination papers signed in the aggregate for each candidate by qualified voters of such district, or political subdivision, equaling not less than 5%, nor more than 8% (or 50 more than the minimum, whichever is greater) of the number of persons, who voted at the next preceding regular election in such district or political subdivision in which such district or political subdivision voted

as a unit for the election of officers to serve its respective territorial area. (Emphasis added).

Pursuant to statute, therefore, in order to sign a Nominating Petition for the CANDIDATE, the signator must reside, and be a qualified voter, within the jurisdictional boundaries of the political subdivision at issue. As stated hereinabove, a qualified voter is defined 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 when he signed the petition. . . .* Section 5/3-1.2. (Emphasis added).

4. **Signature Not Genuine**

Only the name of the signator must be must be written in the hand of the voter. *See* 10 ILCS 5/010-4. Thus, individuals must sign the Petition in his/her own proper person. *Id.* The requirements of Section 5/10-4 are mandatory, and the failure to follow those requirements will render the signature invalid. *Id.*; *Greene v. Board of Election Commissioners*, 112 Ill. App.3d 862, 445 N.E.2d 1337 (1st Dist. 1983).

When signatures are challenged for reasons of being printed, illegible or incomplete, the ELECTORAL BOARD, through a Records Check and the hearing of testimony, has the authority to determine whether a signature is genuine. A signature will be deemed genuine if it is **substantially similar** to the signature identified in the Official Voter Registration Records, or if testimony is adduced from which the ELECTORAL BOARD can make such determination. *See Bergman v. Vachata*, 347 Ill. App. 3d 339, 807 N.E.2d 558 (1st Dist. 2004). If the ELECTORAL BOARD determines there is a substantial similarity between the signature on the Nominating Petition and of the signature on the registration card, the signature should be deemed valid. The ELECTORAL BOARD can also hear testimony by a witness or expert as to the genuineness of the challenged signature. *See Canter v. Cook County Officers' Electoral Board*, 170 Ill. App. 3d 364, 523 N.E.2d 1299 (1st Dist. 1988).

RULING AS TO SIGNATURE OBJECTIONS

Based on the legal analysis set forth herein, the ELECTORAL BOARD rules as follows on the following specific objections:

1. In response to specific signature objections, the ELECTORAL BOARD considered the findings of Staff of the DuPage County Election Commission as set forth in Exhibit "G," and adopted the findings therein, and rules consistent with those findings as to those signature challenges which were not deferred; therefore, the ELECTORAL BOARD

Sustains the Objection to:

Page 1, Line 10

Page 3, Line 3

Page 5, Line 4

Page 6, Line 2

Page 6, Line 3

Overrules the Objection to:

Page 5, Line 9

Page 6, Line 1

Concerning those signatures deferred for ruling by the ELECTORAL BOARD, after examining the challenged signatures and comparing them to the Official Voter Record, the Board rules as follows:

Sustains the Objection as to the following:

Page 1, Line 5

Page 1, Line 7

Page 5, Line 2

Page 5, Line 3

Page 5, Line 8

Page 5, Line 10

Page 6, Line 4

Page 6, Line 5.

CONCLUSION

Based on the rulings made herein as to the Objections set forth in the Objector's Petition, the ELECTORAL BOARD finds that the CANDIDATE'S Nominating Petitions contain forty-two (42) valid signatures. Therefore, the Petitions do not have the requisite minimum number of signatures of forty eight (48) required to have the CANDIDATE'S name placed on the Ballot. Accordingly, the name of ROBERT L. DA PRATO shall not be printed on the Official Ballot as a Candidate for the Office of Trustee of the Roselle Public Library District for the Consolidated General Election to be held on April 9, 2013.

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.

DU PAGE COUNTY OFFICERS' ELECTORAL BOARD,
SITTING IN ITS CAPACITY TO HEAR AND PASS ON
OBJECTIONS IN THE ROSELLE PUBLIC LIBRARY
DISTRICT

/s/ Cathy Terrill _____
CATHY TERRILL, CHAIR

/s/ Art Ludwig _____
ARTHUR LUDWIG, MEMBER

/s/ Christopher Hage _____
CHRISTOPHER HAGE, MEMBER

Dated: January 30, 2013

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