

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,
WEST CHICAGO PARK DISTRICT, DU PAGE COUNTY, ILLINOIS

IN RE: THE MATTER OF THE OBJECTION)
OF PETER GRIECO, OBJECTOR, TO THE)
NOMINATION PAPERS OF DEBBIE)
CULBERTSON, AS CANDIDATE FOR) DOCKET No. 2013 C-9
THE OFFICE OF COMMISSIONER OF THE)
WEST CHICAGO PARK 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 Nomination Papers filed with the West Chicago Park District.

The ELECTORAL BOARD convened for the purpose of hearing and passing upon the Objector's Petition (hereinafter referred to as the "PETITION") filed by Peter Grieco, (hereinafter referred to as the "OBJECTOR"), to the Nominating Papers of Debbie Culbertson (hereinafter referred to as the "CANDIDATE"), Candidate for the Office of Commissioner of the West Chicago Park 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 West Chicago Park 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 West Chicago Park District on January 3, 2013, 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. A copy of the Proof of Service to both CANDIDATE and OBJECTOR is 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 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, which 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 and acknowledged by the Parties.

PROCEEDINGS

The OBJECTOR challenges the Nominating Papers based on objections to signatures for being printed, duplicate, being that of voters not registered to vote, being illegible or incomplete, and for the use of ditto marks and the abbreviation of the City of West Chicago as “WeGo,” “W.C.” or “W.Chicago.” The Objector also challenges the Nominating Petitions for failure to properly designate the OFFICE sought. Forty-three (43) valid signatures are required to have the CANDIDATE’s name placed on the Ballot. The CANDIDATE submitted sixty (60) signatures on her Nominating Papers.

A. Signature Issues

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

a. 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*, 435 F.2d 1046, 1054 (7th Cir. 1970); *Merz*, 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); *Huskey v. Municipal Officers Electoral Board*, 156 Ill. App. 3d 201, 509 N.E.2d 555 (1st Dist. 1987).

b. Signature in Own Proper Person/Genuine/Illegible/Incomplete

The signature of the Signator 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 illegibility or incompleteness, 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). In the event the signatures are deemed dissimilar, and there is no testimony of the voter that he/she signed in his/her own proper person, the ELECTORAL BOARD may sustain the objection as to those signatures.

c. Printed Signatures.

Nothing in the Election Code or under the common law of Illinois renders a printed signature invalid *per se*. *See Bergman*, 347 Ill. App. 3d 339, 807 N.E.2d 558, thus the mere printing of a signature, rather than “signing” in cursive, is not necessarily fatal; particularly where there is evidence that the signer did in fact sign in their own proper person.

Instructive in this regard, in determining whether a stamped signature of an attorney constituted a valid signature on a Summons for Forcible Entry and Detainer the Second District found, “[I]n a variety of contexts, the law has consistently interpreted ‘signed’ to embody not only the act of subscribing a document, but also anything which can reasonably be understood to symbolize or manifest the signer’s intent to adopt a writing as his or her own and be bound by it. This may be accomplished in a multitude of ways, only one of which is a handwritten subscription.” *Knolls Condominium Association*, 321 Ill. App. 3d 916, 748 N.E.2d 1259, 1261 (2d Dist. 2001), citing, *Just Pants v. Wagner*, 247 Ill. App. 3d 166, 173-74, 617 N.E.2d 246 (1st Dist. 1993)(the type-written name of an arbitrator on an Arbitrator’s Award constituted a signature). The *Just Pants* Court cited Black’s Law Dictionary, which defines “sign” as:

To affix one’s name to a writing or instrument, for the purpose of authenticating or executing it, or to give effect to one’s act. To attach a name or cause it to be attached to a writing by any of the known methods of impressing a name on paper. To affix a signature to; to ratify by hand or seal; to subscribe in one’s own handwriting. To make any mark, as upon a document, in token of knowledge, approval acceptance, or obligation.” Black’s Law Dictionary 1239 (5th Ed. 1979).

d. Illegible Signatures

As to signatures which are objected to as “illegible,” the ELECTORAL BOARD must study the signature and compare it to Voter Registration Records to determine whether the signature is legible and matching that of a Registered Voter. If it is deemed substantially similar to the signature contained in the Voter Record, or can be determined to be the signature of the registered voter identified at the address given, the mere fact that the signature is illegible will not invalidate it.

e. 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).

f. Signing More than Once

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).

This Section is clear in suggesting that the signature number required be comprised of unique

signatures, and not those affixed by the same individual more than one time.

g. Not Residing in the District

Section 5/10-3 set forth above, clearly requires that 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. 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.

A. SIGNATURE OBJECTIONS

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

1. Finding that the County of DuPage and the City of West Chicago are commonly identified by the abbreviations used in the Nominating Papers, and that the unit of government the CANDIDATE has filed her Nominating Papers which is located solely in the City of West Chicago, there is no confusion in the use of the abbreviation for the designation of the City of residence of the Signators; therefore, the ELECTORAL BOARD **Overrules** the Objection on this basis as to:

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2. The use of ditto marks is not a fatal defect; therefore, the ELECTORAL BOARD

Overrules the objection on this basis as to:

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3. In response to specific signature objections, the ELECTORAL BOARD accepts the finding of Staff of the DuPage County Election Commission as set forth in Exhibit “H,” and adopts the findings therein, and rules consistent with those findings as to those signature challenges which were not deferred; therefore, the ELECTORAL BOARD

Overrules the Objection as to the following:

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Sustains the Objection as to the following:

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Page 3 Line 4

Page 3 Line 6

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Concerning those signatures deferred for ruling by the ELECTORAL BOARD, the Board rules as follows:

Overrules the Objection as to the following:

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Page 6 Line 9

Sustains the Objection as to the following:

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B. IMPROPER DESIGNATION OF OFFICE

The OBJECTOR asserts that the CANDIDATE failed to properly designate, in her Nominating Petitions, the OFFICE sought, wherein on Page 1 she designates the OFFICE as “Park Board” and on Page 5, misspells the OFFICE as “Park Board Commissioner.”

As to this objection, the ELECTORAL BOARD finds that review of the Nominating Petitions as whole, establishes that the CANDIDATE did misstate the OFFICE sought, and potentially misspelled the OFFICE; however the defect complained of is technical in nature, and there was no evidence submitted that those signing the Petitions at issue were “completely unaware” of the OFFICE sought by the CANDIDATE. In this regard, it has been long held that the Statement of Candidacy and Petitions for Nomination are to be read as a whole. *Lewis v. Dunne*, 63 Ill.2d 48 (1976); *see also Sullivan v. County Officers Electoral Board*, 225 Ill.App.3d 691, 693, 588 N.E.2d 475 (2nd Dist. 1992), in which the Court held that a minor error in a candidate's nominating papers should not result in a candidate's removal from the ballot. In this regard, the Court held that a candidate's name will not be removed from the ballot due to a minor error in a nominating petition where there is no basis for confusion as to the office for which the petition was filed and there is no conflict between the statement of candidacy and nominating petition in that regard. *Id.*

Based on *Lewis* and *Sullivan*, and reading the Nominating Papers as a whole, the defect complained of is not fatal to the CANDIDATE, and for this reason, the ELECTORAL BOARD **overrules** this Objection.

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 thirty-three (33) valid signatures. Therefore, the Petitions do not have the requisite minimum number of signatures

required to have her name placed on the Ballot. Accordingly, the name of DEBBIE CULBERTSON shall not be printed on the Official Ballot as a Candidate for the Office of Commissioner of the West Chicago Park 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.

BOARD,

DU PAGE COUNTY OFFICERS' ELECTORAL
SITTING IN ITS CAPACITY TO HEAR AND PASS ON
OBJECTIONS IN THE WEST CHICAGO PARK

DISTRICT

/s/ Cathy Terrill
CATHY TERRILL, CHAIR

/s/ Art Ludwig
ART LUDWIG, MEMBER

/s/ Christopher Hage.
CHRISTOPHER HAGE, MEMBER

Dated: January 18, 2013

Prepared by:

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