

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,
BENSENVILLE COMMUNITY PUBLIC LIBRARY, DU PAGE COUNTY, ILLINOIS

IN RE: THE MATTER OF THE OBJECTION)
OF SUSAN Z. DIAMOND AND NANCY S.)
RIZZO, OBJECTORS, TO THE)
NOMINATION PAPERS OF KRISTINA "TINA")
MCCAULEY, AS A CANDIDATE FOR) DOCKET NO. 2013-C12
THE OFFICE OF TRUSTEE OF THE)
BENSENVILLE COMMUNITY PUBLIC LIBRARY)
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 4, 2013, convened for the hearing and passing upon objections to Nominating Papers filed with the Bensenville Community Public Library.

The ELECTORAL BOARD convened for the purposes of hearing and passing upon the Objector's Petition (hereinafter referred to as the "PETITION") filed by Susan Z. Diamond and Nancy S. Rizzo (hereinafter collectively referred to as the "OBJECTOR"), to the Nominating Papers of Kristina "Tina" McCauley (hereinafter referred to as the "CANDIDATE"), Candidate for the Office of Trustee of the Bensenville Community Public Library (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 Bensenville Community Public Library, 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 Bensenville Community Public Library, who filed them with the DuPage County Election Commission 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, 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 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 then continued to January 25, 2013 for additional evidentiary proceedings. On both dates, the 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 Hearings was given in conformance

with provisions of the Election Code and the Illinois Open Meetings Act and acknowledged by the OBJECTOR and CANDIDATE. For purposes of the reconvened Hearing, the CANDIDATE submitted a Signator Second Sworn Affidavit in support of the validity of the signator Julia Barr-Bray. A copy of the Affidavit is attached hereto and incorporated herein by reference as Exhibit "I." A certification of the Records relative to an Application to Vote, or Application for Provisional Ballot for Ms. Julia Barr-Bray was also submitted by the DuPage County Election Commission. A copy of the Affidavit of Election Commission Executive Director Robert T. Saar is attached hereto and incorporated herein by reference as Exhibit "J." Last, the Affidavit of Rocky Lofendo, Supervisor of Registration, was submitted relative to the search of voter registration records of Julia Barr-Bray. A copy of the Affidavit and Records Examination is attached hereto and incorporated herein by reference as Exhibit "K."

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 or are those of individuals not residing in the District. The CANDIDATE must submit forty-eight (48) valid signatures to have her name placed on the Ballot. The CANDIDATE submitted fifty-two (52) total signatures on her 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/No Address

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 Nominating 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 Nominating 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). Therefore, to be valid, the signature must be that of a person registered to vote at the address next to his/her name. Failure to include a complete address is in violation of this Section, and if the address cannot be ascertained, the signature will be stricken.

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 a 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).

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 “H,” and “K” 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 3

Page 3, Line 8

Page 3, Line 9

Concerning those signatures deferred for ruling by the ELECTORAL BOARD, after examining the changed signatures and comparing them to the official records of the Election Commission the ELECTORAL BOARD rules as follows:

Sustains the Objection as to

Page 1, Line 8.

Following discussion and consideration of the evidence submitted by the CANDIDATE and the official voter registration records maintained by the DuPage County Election Commission, as to the signature on Page 1, Line 6, the ELECTORAL BOARD votes to sustain the Objection, finding that the signator, Julia Barr-Bray, was registered to vote at 760 S. John Street, Bensenville, and not at the address next to her name, which was 834 River Forest Court, Bensenville, as required by the Election Code to be considered an eligible elector for purposes of signing Nominating Papers.

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-seven (47) valid signatures. Therefore, the Petitions do not have the requisite minimum number of signatures required of forty-eight (48) to have the CANDIDATE'S name placed on the Ballot. Accordingly, the name of KRISTINA "TINA" MC CAULEY shall not be printed on the Official Ballot as a Candidate for the Office of Trustee of the Bensenville Community Public Library for the Consolidated 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 BENSENVILLE COMMUNITY
PUBLIC LIBRARY

/s/ Cathy Terrill _____
CATHY TERRILL, CHAIRMAN

/s/ Art Ludwig _____
ARTHUR LUDWIG, MEMBER

/s/ Christopher Hage _____
CHRISTOPHER HAGE, MEMBER

Dated: January 30, 2013

Prepared by:

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