

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,
BENSENVILLE PARK DISTRICT, DU PAGE AND COOK COUNTIES, ILLINOIS

IN RE: THE MATTER OF THE OBJECTION)
OF THOMAS EARLEY, OBJECTOR, TO THE)
NOMINATION PAPERS OF VIRGINIA "GINGER")
BARTON, AS A CANDIDATE FOR THE OFFICE) Docket No. 2013 C-13
OF COMMISSIONER OF THE BENSENVILLE)
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 4, 2013, convened for the hearing and passing upon objections to Nominating Papers filed with the Bensenville Park 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 Tom Earley (hereinafter referred to as the "OBJECTOR"), to the Nominating Papers of Virginia "Ginger" Barton (hereinafter referred to as the "CANDIDATE"), Candidate for the Office of Commissioner of the Bensenville 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 Bensenville 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 Bensenville Park District, 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, 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 and filed a written Appearance. A copy of the Appearance is attached hereto and incorporated herein by reference as Exhibit "G." The Supervisor of Voter Registration filed an Affidavit indicating the signature requirements for said OFFICE. A copy of the Affidavit is attached hereto and incorporated herein by reference, as Exhibit "H." No Exhibit "I" was utilized or submitted into evidence. The OBJECTOR submitted Affidavits from two (2) individuals who attested that the CANDIDATE whose name appeared in the Circulator Affidavit at the bottom on the Nominating Papers was not, in fact, the actual Circulator, nor was the CANDIDATE present at the time the Affiants affixed their signatures to the Nominating Papers. A copy the Affidavits are attached hereto and incorporated herein by reference as Exhibits "J" and "K."

On January 11, 2013, the ELECTORAL BOARD convened the Hearing on the Objection. Prior to commencing the evidentiary portion of the Hearing, the ELECTORAL BOARD voted to continue the Hearing in this cause to January 25, 2013 to allow Burton S. Odelson, of The Law Officers of Odelson &

Sterk, to be present and to serve as counsel to the ELECTORAL BOARD. In the event the CANDIDATE was unable to be present on the later date, the ELECTORAL BOARD voted to waive the requirement that she appear and offered her an opportunity to submit any supporting information in writing. 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 challenges to the Circulator named on Pages 1, 2, 6, 8 and 9 of the Nominating Papers, alleging that the CANDIDATE, who signed as the Circulator, was not, in fact, the Circulator of the Nominating Petitions at issue. On January 11, 2013, during the conduct of the Hearing, the CANDIDATE admitted that she was not, in fact, the person who circulated two (2) pages, and perhaps one/half of a third page of her Nominating Papers, despite attesting thereto as the Circulator. She could not identify the specific pages at issue. On January 25, 2013, the OBJECTOR submitted the Affidavits of two Signators who testified that the CANDIDATE, who signed the pages on which their signatures were found, was not, in fact, present at the time they affixed their signatures to the Nominating Papers.

The OBJECTOR also challenged twelve (12) signatures appearing on the Nominating Petitions as being those of individuals not registered to voter, or not being genuine. The CANDIDATE must submit forty-nine (49) valid signatures to have her name placed on the Ballot. The CANDIDATE submitted nine (9) Pages of Nominating Petitions, containing eighty (80) signatures.

1. General Case Law

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. Circulator Challenge

In regard to the requirement of a circulator on each Nominating Petition, the Illinois Election Code, 10 ILCS 5/10-3.1, states, in pertinent part:

At the bottom of each sheet of such petition shall be added a circulator's statement, signed by a person 18 years of age or older who is a citizen of the United States; stating the street address or rural route number, as the case may be, as well as the county, city, village or town, and state; *certifying that the signatures on that sheet of the petition were signed in his or her presence*; certifying that the signatures are genuine; and either (1) indicating the dates on which that sheet was circulated, or (2) indicating the first and last dates on which the sheet was circulated, or (3) certifying that none of the signatures on the sheet were signed more than 90 days preceding the last day for the filing of the petition; and certifying that to the best of his knowledge and belief the persons so signing were at the time of signing the petition duly registered voters under Articles 4, 5 or 6 of the Code of the political subdivision or district for which the candidate or candidates shall be nominated, and certifying that their respective residences are correctly stated therein. Such statement shall be sworn to before some officer authorized to administer oaths in this State. (Emphasis added).

It is clear that the Election Code requires that the person who actually circulated the petitions certify to the contents of the Petition. If the evidence establishes conduct indicating that a “pattern of improper swearing” has occurred, a finding of “substantial disregard” for the mandatory provisions of the Election Code can result, and the ELECTORAL BOARD can strike all Nominating Petitions submitted by the circulator. *See Cunningham v. Schaefflein*, 2012 IL. App. (1st) 120529, 969 N.E.2d 861 (1st Dist. 2012)(false swearing by circulators that they appeared before a notary in signing and attesting to the nominating petitions, resulted in striking nominating petitions at issue).

3. Signature Objections – 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 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.

RULING

Based on the admission of the Circulator the Affidavits submitted by the CANDIDATE and the absence of any evidence from the CANDIDATE, the ELECTORAL BOARD determined that the Nominating Papers were not, in fact, circulated in the presence of the Circulator, the ELECTORAL BOARD sustains the Objection made by the Objector that the CANDIDATE submitted Nominating Papers in which she attested that she was the Circulator, when in fact she was not. Based on the evidence adduced, the ELECTORAL BOARD holds that a pattern of fraud in the statement of the Circulator is evident, and, therefore, strike all the pages contained in the CANDIDATE'S Nominating Petitions. With respect to the individual signature challenges, the OBJECTOR elected not to pursue those objections. Accordingly, the board made no ruling on the individual signature objections.

CONCLUSION

Based on the rulings made herein as to the Objection set forth in the Objector's Petition, the ELECTORAL BOARD strikes the CANDIDATE'S Nominating Petitions, and, therefore, the CANDIDATE does not have the requisite minimum number of signatures to have the CANDIDATE'S name placed on the Ballot. Accordingly, the name of VIRGINIA "GINGER" BARTON shall not be printed on the Official Ballot as a Candidate for the Office of Commissioner, of the Bensenville 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.

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

/s/ Cathy Terrill
CATHY TERRILL, CHAIR

/s/ Art Ludwig
ARTHUR LUDWIG, MEMBER

/s/ Christopher Hage
CHRISTOPHER HAGE, MEMBER

Dated: January 30, 2013

Prepared by:
Burton S. Odelson
Odelson & Sterk, Ltd.
3318 W. 95th Street
Evergreen Park, Illinois 60805