

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 FOREST PRESERVE COMMISSIONER IN
DISTRICT 3, DU PAGE COUNTY, ILLINOIS

IN RE: THE MATTER OF THE OBJECTION)
OF RALPH STOMPANATO, OBJECTOR, TO)
THE NOMINATION PAPERS OF) DOCKET No. 2013 P-01
JOSEPH C. WOZNIAK, CANDIDATE FOR THE)
OFFICE OF FOREST PRESERVE)
COMMISSIONER IN DISTRICT 3, DU PAGE)
COUNTY, IN THE MARCH 18, 2014, GENERAL)
PRIMARY ELECTION)

COUNTY OFFICERS' ELECTORAL BOARD DECISION

NOW COMES the County Officers' Electoral Board, consisting of Christopher Hage, Chair; Art Ludwig, Member; and Kevin Millon, Public Member, organized and existing pursuant to law, and states as follows:

PREFATORY REMARKS

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") duly promulgated, approved, implemented and adopted on December 16, 2013, as required by the DuPage County Election Commission (hereinafter referred to as the "COMMISSION"), was duly constituted, convened and sitting in its capacity as the County Officers' Electoral Board (hereinafter referred to as the "ELECTORAL BOARD") for the hearing and passing upon OBJECTIONS to Nominating Papers.

On December 16, 2013, the ELECTORAL BOARD conducted the initial hearing, which was thereafter continued to, and completed on, December 23, 2013, upon the Verified OBJECTOR'S petition (hereinafter referred to as the "PETITION") filed by Ralph Stompanato, (hereinafter referred to as the "OBJECTOR"), to the Nominating Papers of Joseph C. Wozniak

(hereinafter referred to as the "CANDIDATE"), Candidate for the Office of Forest Preserve Commissioner in District 3, (hereinafter referred to as the "OFFICE"), to be voted upon at the General Primary Election to be held March 18, 2014 (hereinafter referred to as the "ELECTION").

Within the timeframe 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 December 2, 2013, pursuant to 10 ILCS 5/7-12 of the Election Code. Objections to the Nominating Papers were timely filed with the COMMISSION on December 9, 2013. See Exhibit "B", attached hereto and incorporated herein by reference.

A Call Notice for Hearing was issued on December 10, 2013, by Christopher Hage, 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 Official Signature Requirement for the OFFICE for established Political Parties is a minimum of one hundred ninety three (193). See Exhibit "F", attached hereto and incorporated herein by reference.

Kevin Millon is sitting on the ELECTORAL BOARD, as a Public Member, pursuant to an Administrative Order from the Chief Judge of the Eighteenth Judicial Circuit. See Exhibit "G", attached hereto, and incorporated herein by reference. The CANDIDATE appeared and filed a written Appearance. See Exhibit "H", attached hereto and incorporated herein by

reference. The OBJECTOR'S Counsel appeared and filed a written Appearance. See Exhibit "T", attached hereto and incorporated herein by reference. A Records Check was conducted by the Staff of the COMMISSION, which is identified as the Affidavit of Voter Registration. See Exhibit "J", attached hereto and incorporated herein by reference. The COMMISSION'S Records Check included the Voter Registration Records regarding the signatures challenged.

The CANDIDATE submitted the Business Card of the challenged Notary Public, Loretta Karkhoff, from Naperville Bank and Trust. The CANDIDATE also submitted evidence containing the Notary Public Application of the challenged Notary, the Notary Public Appointment and Commission from the Illinois Secretary of State's Office and the Certificate of Appointment from Office of the DuPage County Clerk. See Group Exhibit "K", attached hereto and incorporated herein by reference.

The OBJECTOR submitted a Certification of the Voter Registration Record of the challenged Notary from the Will County Clerk, which included the address of the Notary, the various election Districts in which the Notary is eligible to participate and the digitized signature of the Notary. See Exhibit "L", attached hereto and incorporated herein by reference. The OBJECTOR further submitted the Notary Public Search from the Illinois Secretary of State website. See Exhibit "M", attached hereto and incorporated herein by reference. The OBJECTOR also submitted a Certification from the State Board of Elections of a page of the Petition for Nomination for Lisa Thomas, the Democratic Candidate for State Representative in the 81st Representative District, containing the notary signature from the challenged Notary. See Exhibit "N", attached hereto and incorporated herein by reference. The OBJECTOR also submitted, over the objection of the CANDIDATE, duplicate copies of Petitions for Nomination for the CANDIDATE, along with a duplicate copy of a Petition for Nomination sheet from Lisa Thomas. See Exhibit "O", attached hereto and incorporated herein by reference.

On December 16, 2013, a public hearing was commenced, and thereafter continued and concluded on December 23, 2013, before the full and legally constituted 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 OBJECTOR challenges the CANDIDATE'S Nominating Papers on the following two (2) grounds:

1. Whether the CANDIDATE'S Statement of Candidacy and Nominating PETITIONS are invalid because these Nominating Papers were notarized by a Notary commissioned in DuPage County but who, allegedly, resides in Will County.
2. Whether the CANDIDATE'S Nominating PETITIONS contain the minimum threshold of valid signatures for the Office.

LEGAL ANALYSIS OF ISSUES PRESENTED

- (1) Whether the CANDIDATE'S Statement of Candidacy and Nominating PETITIONS are invalid because these papers were notarized by a Notary commissioned in DuPage County who, allegedly, resides in Will County.**

Section 7-10 of the Election Code provides that the circulator of each nominating PETITION make a certified statement and that "[s]uch statement shall be sworn to before some officer authorized to administer oaths in this State." 10 ILCS 5/7-10. Section 7-10 also requires the filing of a "statement of candidacy" and that statement of candidacy "shall be subscribed and

sworn to by such CANDIDATE before some officer authorized to take acknowledgment of deeds in the State.” *Id.* The notarization requirements of Section 7-10 are mandatory requirements of the Election Code. *Cunningham v. Schaefflein*, 2012 IL App (1st) 120529, ¶ 42, 969 N.E.2d 861, 832 (1st Dist. 2012); *Shiplely v. Stevenson County Electoral Board*, 130 Ill.App.3d at 906, 474 N.E.2d at 910 (2nd Dist. 1985).

Section 3-105 of the Illinois Notary Public Act (the Act”) provides that “[a] notary public shall have authority to perform notarial acts throughout the State *so long as the notary resides in the same county in which the notary was commissioned...*”. 5 ILCS 312/3-105 (emphasis added). Moreover, Section 4-101 of the Act provides that a notary’s commission ceases to be in effect “[w]hen any notary public legally changes his or her name or moves from the county in which he or she was commissioned.” 5 ILCS 312/4-101.

The Second District in *Shiplely* determined that notarization of election papers by a notary who did not reside in the Illinois County in which the notary was commissioned did not invalidate the election papers, at issue, in the absence of any evidence of fraud or corruption in the oath taking process or any evidence that the Notary or the Circulator knew of the violation of the Act. 130 Ill.App.3d at 904-07, 474 N.E.2d 908-10.

Shiplely, involved an objection to referendum petitions on the basis that the notarizations were performed by two (2) notaries who did not reside in the Illinois County in which the notaries were commissioned at the time they notarized the referendum petitions. *Id.* Like Section 7-10 of the Election Code, the election provision at issue in *Shiplely* provided that “[s]uch statement shall be sworn to before some officer authorized to administer oaths in this State.” *Id.* The court determined that the notaries were acting as “*de facto*” officers as to third persons and that their acts were not void under the Act and that the Election Code “was substantially, if not literally, complied with by the circulators of the petitions.” *Id.* The court explained that “by his

sworn statement, the circulator is subjecting himself to possible perjury prosecutions; thus, this requirement is considered a meaningful and realistic method of eliminating fraudulent signatures and protecting the integrity of the political process.” *Id.* The court further explained that it was clear that “the circulators believed they could be subjected to perjury prosecutions if the statements they made proved to be false;” therefore, “the integrity of the political process was not in jeopardy.” *Id.*

The instant case is distinguishable from *Shiple* in that, unlike the two (2) notaries in *Shiple*, the Notary on the challenged Petition Sheets undertook affirmative acts which would have, or should have, put her on notice that she did not possess the legal authority to notarize the Nominating Petitions. It is undisputed that the Notary lacked the legal authority to notarize the Nominating Petitions of the CANDIDATE, as the Notary was not compliant with the Act.

The Board reviewed the evidence submitted, including the Notary Public Application from the Notary. In said Application, the Notary submitted herself to the Notarial Oath in which she set forth her address, including referencing the County of Will. The Notarial Oath was also administered in the County of Will. Thereafter, the Notary received a Commission from the Illinois Secretary of State indicating that she was Appointed and Commissioned in the County of DuPage, with an effective Commission date of May 12, 2011 and an expiration date of May 12, 2015. See Exhibit “K”. Thereafter, the Notary filed with, and received, a conditional Commission from the DuPage County Clerk’s Office. Said Commission required the Notary to affix her signature in the area designated and to return the executed Form to the DuPage County Clerk’s Office. There was a statutory fee required to be paid to the DuPage County Clerk in order to have the Commission filed and certified in DuPage County. Based upon the evidence submitted, it appears as though the Notary completed the Application with the correct County designated. The Notary then received an Appointment and Commission from the Illinois

Secretary of State's Office for the incorrect County, that being DuPage. Rather than correcting the Secretary of State's Office, the Notary appears to have submitted the incorrect paperwork to the DuPage County Clerk, including the affixing of her signature and payment of the statutory fee payable to the DuPage County Clerk.

It is uncontroverted that the Notary resides in, and is a registered voter in, the Will County portion of Naperville, Illinois, as evidenced by the Voter Records in Exhibit "L". It further appears as though the Notary has notarized Nominating Petitions for other Candidates, other than the instant CANDIDATE. See Exhibit "N" and "O".

The instant case is factually distinguishable from the *Shiple*y case predicated entirely upon the action of the Notary. In *Shiple*y, the Court found that there was no evidence of fraud or corruption on the part of the notaries or the circulator. Likewise, in the instant case, the Board found that there was no evidence of fraud or corruption on the part of either the challenged Notary or the Circulators. The *Shiple*y Court found, and its conclusion was predicated upon, the fact that there was no evidence that any of the parties, including the notary or the circulator knew of the violation of the Act. Based upon those very limited circumstances, the Court concluded that the integrity of the political process was not in jeopardy. In the *Shiple*y case, the Court found that the Election Code was substantially complied with by the Circulators. In the instant case, as a result of the conduct of the challenged Notary, the Board found that there was, in fact, evidence that the Notary knew, or at the very least should have known of the violation of the Act. The Notary undertook the affirmative step of filing her Certification with the DuPage County Clerk, fully knowing that she was not a resident of DuPage County, as evident from her Notary Application. Based upon the Board's conclusion that there was evidence that the Notary knew, or should have known, that she was not properly Certified as a Notary in DuPage County, and the fact that she was the Notary on all of the Nomination Papers, that the integrity of the political

process was jeopardized under the instant facts.

Accordingly, said OBJECTION is sustained.

(2) Whether the CANDIDATE'S Nominating PETITIONS contain the requisite number of valid signatures required by 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 5/7-10. 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 requires 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).

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. Further, the individual must sign the petition in his/her own proper person. *Id.* The signature requirements of the Election Code 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, 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.

The ruling on the specific signature verifications will dictate whether the objection should be sustained or overruled. If the CANDIDATE fails to comply with the mandatory provision regarding the minimum number of signatures which must be contained on his nominating papers, the Objection must be sustained. *Havens v. Miller*, 102 Ill. App. 3d 558, 429 N.E.2d 1292 (1st Dist. 1981). If, however, a Records Check reveals that the nominating papers contain the requisite number of signatures, the Objection on this ground should be overruled.

In this matter, there is no dispute that the CANDIDATE is required to obtain a minimum of 193 valid signatures for the OFFICE. See Exhibit "F" and Exhibit "B", ¶ 12. The OBJECTOR has raised an objection to the CANDIDATE'S PETITION on the basis that the CANDIDATE has not obtained 193 valid signatures for the OFFICE. See Exhibit B ¶¶ 5-12. The ELECTORAL BOARD has performed a Records Check pursuant to the challenges to particular signatures in the PETITION raised by OBJECTOR. See Exhibit "J". Based on the Records Check, the ELECTORAL BOARD finds that the CANDIDATE has obtained a

minimum threshold of 193 valid signatures plus additional valid signatures for the OFFICE. *Id.*

Accordingly, in ruling on each of the individually challenged signatures, under the Board's obligation to hear and pass on all objections coming before it, said OBJECTION is overruled as to the specific signature challenges for the reasons set forth above and as more fully delineated in the adopted Staff findings and the Board's ruling on the deferred challenges.

Predicated upon the Board's ruling as to the invalidity of the Notary Public, who notarized each of the Nominating Petitions and the Statement of Candidacy, rendering each and every one of those Nominating Petitions invalid, the CANDIDATE has an insufficient number of signatures contained on his Nominating Papers to be eligible for inclusion on the Official Ballot, for reasons set forth more fully above.

CONCLUSION

Based upon the rulings made herein, it is the decision of the BOARD, in regard to the objections filed against the Candidacy of Joseph C. Wozniak for the Office of Forest Preserve Commissioner in District 3, that the overall objection is hereby sustained.

Accordingly, the name of Joseph C. Wozniak shall not be printed on the Official Ballot as a CANDIDATE for the OFFICE of Forest Preserve Commissioner in District 3, for the General Primary Election to be held on March 18, 2014.

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 timeframe set forth in the Illinois Administrative Review Act, 735 ILCS 5/3-101 *et seq.* and 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

[REDACTED]

CHRISTOPHER HAGE, CHAIR

[REDACTED]

ART LUDWIG, MEMBER

[REDACTED]

KEVIN MILLON, PUBLIC MEMBER

Dated: December 30, 2013
Prepared by:
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