

BEFORE THE DULY CONSTITUTED
DU PAGE COUNTY OFFICERS' ELECTORAL BOARD
FOR THE HEARING AND PASSING UPON OBJECTIONS TO THE NOMINATION
PAPERS FOR CANDIDATES FOR THE OFFICE OF COUNTY BOARD MEMBER IN
DISTRICT 1 IN THE COUNTY OF DU PAGE OF THE STATE OF ILLINOIS

MARK NOWAK,)	
)	
Petitioner-Objector,)	Docket No. 2014 G-04
)	
vs.)	
)	
ROLAND (ROLLY) WALLER,)	
)	
Respondent-Candidate.)	

DU PAGE COUNTY OFFICERS' ELECTORAL BOARD DECISION

NOW COMES the DuPage County Officers' Electoral Board, consisting of Cathy Terrill, Chairperson, and Christopher Hage and Art Ludwig, Members; 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 duly promulgated, approved, implemented and adopted on June 27, 2014, as required by the DuPage County Election Commission (hereinafter referred to as the "COMMISSION"), the COMMISSION was duly constituted, convened and sitting in its capacity as the DuPage County Officers' Electoral Board (hereinafter referred to as the "ELECTORAL BOARD") for the hearing and passing upon Objections to Nominating Papers.

On June 27, 2014, the ELECTORAL BOARD conducted the hearing upon the Verified Objector's Petition (hereinafter referred to as the "PETITION") filed by Mark Nowak (hereinafter referred to as "OBJECTOR"), to the Nominating Papers of Roland (Rolly) Waller

(hereinafter referred to as the "CANDIDATE"), Candidate for the Office of County Board Member in District 1 (hereinafter referred to as the "OFFICE"), to be voted upon at the General Election to be held November 4, 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. The PETITION was timely filed with the COMMISSION on June 9, 2014. *See* Exhibit "B," attached hereto and incorporated herein by reference.

A Call Notice for Hearing was issued on June 11, 2014, by Cathy Terrill, Chairperson 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. An Appearance was filed by counsel for the OBJECTOR. *See* Exhibit "F," attached hereto and incorporated herein by reference. An Appearance was filed by counsel for the CANDIDATE. *See* Exhibit "G," attached hereto and incorporated herein by reference.

PROCEEDINGS

The OBJECTOR challenges the CANDIDATE'S Nominating Papers on the grounds that (1) the CANDIDATE was not designated by the appropriate committee under the Election Code and that (2) notice of the meeting to designate the CANDIDATE to fill the vacancy in

nomination for the OFFICE was defective.

LEGAL ANALYSIS OF ISSUES PRESENTED

I. WHETHER THE CANDIDATE WAS DESIGNATED BY THE “APPROPRIATE COMMITTEE” UNDER SECTION 7-61 OF THE ELECTION CODE.

In this matter, it is uncontested that the CANDIDATE was designated by a subcommittee of the Democrat County Board District Committee for District 1. Section 7-61 of the Election Code states in pertinent part that “a vacancy in nomination shall be filled only by a person designated by the appropriate committee of the political party...”. 10 ILCS 5/7-61. Section 7-61 does not further define what constitutes an “appropriate” committee of a political party. Courts have previously determined that properly constituted subcommittees of a committee of a political party are “appropriate” committees to designate candidates to fill a vacancy in nomination. *Allen v. Electoral Bd. of St. Clair County*, 147 Ill.App.3d 782, 498 N.E.2d 878 (5th Dist. 1986); *Carlasare v. Will County Officers Electoral Bd.*, 2012 IL App (3d) 120699.

The OBJECTOR argues that the Election Code does not authorize the designation of candidates to fill the vacancy in nomination for the OFFICE by a political party subcommittee. The OBJECTOR relies on the absence of language set forth in Section 7-8.01 of the Election Code. 10 ILCS 5/7-8.01. The OBJECTOR argues that only the political party committee for the County Board District 1 is authorized to make such designation.

While the OBJECTOR’S argument is novel, it is contradicted by *Carlasare v. Will County Officers Electoral Bd.*, 2012 IL App (3d) 120699. The court in *Calasare* specifically addressed a challenge to a political party subcommittee designation of a candidate for a county board district office to fill a vacancy in nomination. *Id.* In doing so the court explained that:

There is no dispute that the “appropriate committee” to make the designation in this case, as referenced in section 7–61, was a district committee comprised of

precinct committeemen only from that particular district, and *that each district committee could properly delegate the task of designation to a district subcommittee.*

Id. at ¶ 20 (emphasis added) *citing* 10 ILCS 5/7–8(i); *Allen v. Electoral Board*, 147 Ill. App. 3d 782, 785 (5th Dist. 1986). The ELECTORAL BOARD is bound by the decision *Carlasare* and therefore, cannot accept the OBJECTOR’S argument, as a matter of law. The OBJECTOR’S objection concerning improper designation of the CANDIDATE to fill the vacancy in nomination for the OFFICE is OVERRULED.

II. WHETHER A FAILURE TO NOTIFY ALL COUNTY BOARD DISTRICT 1 COMMITTEEMEN OF THE MEETING OF THE COUNTY BOARD DISTRICT 1 SUBCOMMITTEE TO DESIGNATE THE CANDIDATE TO FILL THE VACANCY IN NOMINATION FOR OFFICE INVALIDATES THE CANDIDATE’S NOMINATION PETITION.

While there is no provision in the Election Code mandating notice of a committee meeting to fill a vacancy in nomination for the OFFICE, Illinois Courts have established a “precedential” requirement that such notice be given. *Sutton v. Cook County Officers Electoral Bd.*, 2012 IL App (1st) 122528, 979 N.E.2d 515; *Carlasare v. Will County Officers Electoral Bd.*, 2012 IL App (3d) 120699, 977 N.E.2d 298; *Graham v. State Officers Electoral Bd.*, 269 Ill. App.3d 609, 646 N.E.2d 1357 (4th Dist. 1995). Whether notice was actually received is not an aspect of the precedential notice requirement. *Carlasare*, 2012 IL App (3d) 120699 at ¶ 24.

According to the Record, there is no dispute that one or more Democrat committeemen for County Board District 1 were not notified of the subcommittee meeting to fill the vacancy in nomination for the OFFICE. According to the Record, there is no dispute that all County Democrat committeemen were provided notice of the County Central Committee Convention and that subcommittees would be designated to fill vacancies in nomination at that time.

The OBJECTOR argues that notice to *all* County Board District 1 Democrat

Committeemen of the District 1 subcommittee meeting was mandatory under the precedential notice requirement. The CANDIDATE argues that such notice is not required where notice was provided to all County Democrat committeemen of the County Central Committee Convention where the subcommittees to fill vacancies in nomination would be determined. We agree with the position of the CANDIDATE based on the reasoning set forth in the *Carlasare* and *Graham* decisions. 2012 IL App (3d) 120699; 269 Ill. App.3d 609, 646 N.E.2d 1357.

The circumstances in *Carlasare* are similar to the circumstances of this matter. In *Carlasare*, the court determined that the written notice of the central committee convention was provided to all committeemen and that because the “meeting was a central committee convention at which the party had the power to select a committee to designate candidates, *a separate notice indicating that designations would be made was not required.*” 2012 IL App (3d) 120699 at ¶ 24 (emphasis added). This finding does not support OBJECTOR’S position that a separate notice to all County Board District 1 Democrat Committeemen of the subcommittee meeting to fill the vacancy in nomination for the OFFICE was required.

In addition, the underlying basis for the presidential notice requirement, as established in *Graham*, does not have the same applicability where a subcommittee has been properly designated by the committee. 269 Ill. App. 3d 609, 646 N.E.2d 1357. In establishing the precedential notice requirement the court in *Graham* stated that:

Since some form of notice is indispensable, it is immaterial the Code does not expressly provide a sanction for noncompliance. Notice is the most basic prerequisite *to ensure the right to vote*. Failure to provide it vitiates the integrity of the democratic process.

Id. at 612, 1360 (emphasis added). Therefore, the court in *Graham* was concerned with the failure to provide notice to those committeemen of a meeting at which they have a right to vote.

Id. In this matter, once the County Board District 1 Democrat subcommittee was designated to

fill the vacancy in nomination for the OFFICE, only those subcommittee members had the right to vote to fill the vacancy in nomination for the OFFICE. The OBJECTOR'S position that all Democrat committeemen for County Board District 1 were required to be notified of the County Board District 1 subcommittee meeting is incompatible with the reasoning of *Graham*. *Id.* Therefore, OBJECTOR'S objection concerning improper notice is OVERRULED.

CONCLUSION

Based upon the rulings made herein, it is the decision of the ELECTORAL BOARD, in regard to the PETITION filed against the Candidacy of Roland (Rolly) Waller for the Office of County Board Member, District 1, that the PETITION is hereby denied.

Accordingly, the name of Roland (Rolly) Waller shall be printed on the Official Ballot as a Candidate for the Office of County Board Member in District 1, for the General Election to be held on November 4, 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 time frame set forth in Section 10-10.1 of Illinois the Election Code. 10 ILCS 5/10-10.1

DU PAGE COUNTY OFFICERS' ELECTORAL
BOARD

/s/ Cathy Terrill
CATHY TERRILL, CHAIRPERSON

/s/ Christopher Hage
CHRISTOPHER HAGE, MEMBER

/s/ Art Ludwig
ART LUDWIG, MEMBER

Dated: July 10, 2014
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