

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 REPRESENTATIVE IN THE
GENERAL ASSEMBLY FROM THE 48th REPRESENTATIVE DISTRICT
OF THE STATE OF ILLINOIS

MARIE LUPO and PATRICIA BAULER,)	
)	
Petitioner-Objectors,)	Docket No. 2014 G-05
)	
vs.)	
)	
MARIAN TOMLINSON,)	
)	
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 Arthur 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 Objectors' Petition (hereinafter referred to as the "PETITION") filed by Marie Lupo and Patricia Bauler (hereinafter referred to as "OBJECTORS"), to the Nominating Papers of Marian

Tomlinson (hereinafter referred to as the "CANDIDATE"), Candidate for the Office of Representative in the General Assembly from the 48th Representative District (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 OBJECTORS 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 OBJECTORS 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 OBJECTORS. *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 OBJECTORS challenge the CANDIDATE'S Nomination Papers on the grounds that (1) not all committeemen for the 48th Representative District were provided notice of the meeting

to designate the committee to fill the vacancy in nomination for the OFFICE and (2) that the CANDIDATE'S Nomination Papers are invalid because she was not designated to fill a vacancy in nomination for the OFFICE by the appropriate committee as mandated by Section 7-61 of the Election Code.

LEGAL ANALYSIS OF ISSUES PRESENTED

I. WHETHER OBJECTORS SATISFIED THEIR BURDEN TO PROVE A FAILURE TO NOTIFY COMMITTEEMEN FOR THE 48th REPRESENTATIVE DISTRICT OF THE MEETING TO DESIGNATE THE COMMITTEE TO FILL THE VACANCY IN NOMINATION FOR THE OFFICE.

While there is no provision in the Election Code mandating notice of 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; *Carlasare v. Will County Officers Electoral Bd.*, 2012 IL App (3d) 120699; *Graham v. State Officers Electoral Bd.*, 269 Ill. App. 3d 609, 646 N.E.2d 1357. However, “the quality or content of the notice is not paramount” and “basic notice—simple, direct and non-technical—will suffice.” *Sutton*, 2012 IL App (1st) 122528, ¶ 9 (finding that notice by e-mail and voicemail sufficient notice of meeting to fill vacancy in nomination); *see also, Carlasare*, 2012 IL App (3d) 120699, ¶¶ 24-25 (finding that e-mail and oral notice sufficient notice of meeting to fill vacancy in nomination). Whether notice was actually received is not an aspect of the precedential notice requirement. *Carlasare*, 2012 IL App (3d) 120699 at ¶ 24.

In *Carlasare*, the court also determined that where a 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). Significantly, the burden to show that certain committeemen

were not notified of a meeting to designate committees to fill vacancies in nomination falls upon the OBJECTORS, not the CANDIDATE. *Id.* at ¶ 25, 977 N.E.2d at 307.

The OBJECTORS argue that notice was defective in this matter and rely on witness testimony from certain committeemen stating that they did not “receive” notice. Yet, whether notice was actually received is not an aspect of the precedential notice requirement. *Carlasare*, 2012 IL App (3d) 120699 at ¶ 24. The OBJECTORS do not point to any evidence in the Record to establish that the notice was not *sent* to the requisite committeemen. The OBJECTORS had the opportunity to call and question whoever was responsible for providing such notice to the committeemen to elicit any favorable testimony, but did not. Therefore, OBJECTORS have not satisfied their burden of proof concerning this notice issue and OBJECTORS’ objection concerning improper notice is OVERRULED.

II. WHETHER CANDIDATE’S NOMINATION PAPERS ARE INVALID BECAUSE SHE WAS NOT DESIGNATED BY THE APPROPRIATE COMMITTEE UNDER THE ELECTION CODE.

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 (emphasis added). Section 7-61 does not further define what constitutes an “appropriate” committee of a political party. Both Parties agree that Section 8-5 of the Election Code determines the “appropriate” committee with respect designating a candidate to fill a vacancy in nomination for the OFFICE and provides that such committee “shall consist of the chairman of the county central committee and 2 members of the county central committee who reside in the legislative or representative district, as the case may be, elected by the county central committee.” 10 ILCS 5/8-5. The Parties also agree that Bob Peikert is the Democratic Party Chairman of the County Central Committee.

OBJECTORS argue that the Notice of Appointment in the Record as Exhibit A and the Minutes of the Nominating Committee in the Record as Exhibit L show that Bob Peikert did not participate as a member of the committee that designated the CANDIDATE to fill the vacancy in nomination for the OFFICE in violation of Section 8-5. The CANDIDATE argues that Exhibit L “establishes that Tom Gebka, Bob Peikert and Paul Fessenbecker were all present at that meeting, and that ‘all voted in favor of Marian Tomlinson to fill the vacancy’ in the 48th representative district.” We agree with the OBJECTORS.

The Notice of Appointment clearly shows that Paul Fessenbecker, Tom Gebka and Walt Zlotow were the only committeemen who designated the CANDIDATE to fill the vacancy in nomination for the OFFICE. The Minutes of the Nominating Committee further support that Paul Fessenbecker, Tom Gebka and Walt Zlotow acted as the members of the nominating committee. We find that the CANDIDATE was not designated by the appropriate committee as mandated by Section 7-61 because the Democratic Party Chairman of the County Central Committee, Bob Peikert, did not participate in designating the CANDIDATE to fill the vacancy in nomination for the OFFICE. In this way, there was no compliance with a mandatory provision of the Election Code which renders the CANDIDATE’S Nomination Papers invalid, in their entirety. OBJECTORS’ objection concerning the CANDIDATE’S invalid designation is SUSTAINED.

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 Marian Tomlinson for the Office of Representative in the General Assembly from the 48th Representative District, that the relief requested in the PETITION is hereby GRANTED in its entirety.

Accordingly, the name of Marian Tomlinson shall not be printed on the Official Ballot as a Candidate for the Office of Representative in the General Assembly from the 48th Representative District, 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 timeframe 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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