

BEFORE THE DULY CONSTITUTED ELECTORAL BOARD
FOR THE HEARING AND PASSING UPON OBJECTIONS TO NOMINATION PAPERS
FOR CANDIDATES FOR ELECTION TO THE OFFICE OF SCHOOL BOARD MEMBER
FOR HINSDALE TOWNSHIP HIGH SCHOOL DISTRICT 86

BRUCE DAVIDSON ,)	
)	
Objector,)	
)	Docket No. 2015 C-01
v.)	
)	
CHRIS FRANK,)	
)	
Respondent.)	

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 January 7, 2015, 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 January 7, 2015, the ELECTORAL BOARD conducted the hearing upon the Objector’s Petition (hereinafter referred to as the “PETITION”) filed by Bruce Davidson (hereinafter referred to as the "OBJECTOR"), to the Nominating Papers of Chris Frank (hereinafter referred to as the “CANDIDATE”), Candidate for the Office of School Board

Member for Hinsdale Township High School District 86 (hereinafter referred to as the "OFFICE"), to be voted upon at the Consolidated General Election to be held on April 7, 2015 (hereinafter referred to as the "ELECTION").

Within the time frame 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 December 31, 2014. See Exhibit "B," attached hereto and incorporated herein by reference.

A Call Notice for Hearing was issued on January 2, 2015, 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. See Exhibit "D," attached hereto and incorporated herein by reference. The CANDIDATE and the OBJECTOR provided written waivers of personal service of the Call Notice by the DuPage County Sheriff's Office. See Exhibit "E," attached hereto and incorporated herein by reference. The OBJECTOR also filed a Pre-Hearing procedural motion. See Exhibit "F," attached hereto and incorporated herein by reference. An Appearance was filed by the CANDIDATE. See Exhibit "G," attached hereto and incorporated herein by reference. An Appearance was filed by the OBJECTOR. See Exhibit "H," attached hereto and incorporated herein by reference. The CANDIDATE filed a written "Response to Objector's Petition". See Exhibit "I" attached hereto and incorporated herein by reference.

A Records Check was conducted by the Staff of the COMMISSION, which is identified as Election Commission Staff Findings. See Exhibit “J,” attached hereto and incorporated herein by reference.

PROCEEDINGS

The OBJECTOR challenges the CANDIDATE’S Nominating Petition on the grounds that the Candidate has not filed the requisite number of valid signatures for the OFFICE which requires a minimum number of 50 valid signatures. Specifically, OBJECTOR alleges (1) that certain signators are not registered voters or are not registered at the addresses set forth in the CANDIDATE’S Nominating Petition and (2) that certain signators have not signed the Nominating Petition in their own proper person.

LEGAL ANALYSIS OF ISSUES PRESENTED

WHETHER THE CANDIDATE’S NOMINATING PETITION CONTAINS THE MINIMUM NUMBER OF VALID SIGNATURES.

Candidate eligibility and ballot access is favored under Illinois law. *See Maksym v. Board of Election Commissioners of Cook County*, 242 Ill. 2d 303, 950 N.E.2d 1051, 1069 (2011); *Lucas v. Lakin*, 175 Ill. 2d 166, 676 N.E.2d 637 (1997) (“We are mindful of the need to tread cautiously when construing statutory language which restricts the people’s right to endorse and nominate the candidate of their choice.”) However, a nomination petition that lacks the number of valid signatures required for ballot access is not in conformity with the Election Code. *Druck v. Illinois State Bd. of Elections*, 387 Ill.App.3d 144, 155, 899 N.E.2d 437, 447 (1st Dist. 2008); *Greene v. Board of Election Commissioners*, 112 Ill. App. 3d 862, 868, 445 N.E.2d 1337 (1st Dist. 1983). Therefore, a candidate shall not be placed on the ballot when their nomination petition lacks the requisite minimum number of signatures required for the office sought. *Id.*

A. Objections That Signators Are Not Registered Voters or Registered at Address Set Forth in Nominating Petition.

Section 9-10 of the School Code provides that “[n]ominations for members of boards of education ... shall be made by a petition signed by at least 50 voters or 10% of the voters, whichever is less, residing within the district.” 105 ILCS 5/9-10. Section 9-10 also requires that signators indicate their addresses. *Id.* Section 3-1.2 of the Election Code further 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 (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 nomination petitions must be registered to vote at the residence set forth on the petition. The court concluded that requiring strict compliance of the signature requirement was necessary to facilitate the verification procedure and to preserve the integrity of the election process. *Id.* at 869. Moreover, although Section 3-1.2 contains an exception for those individuals whose address has changed as a result of an emergency resulting in a 911 call, there is no exception for those who have changed residence but failed to register at the new address. 10 ILCS 5/3-1.2. Therefore, a signature should be stricken if the signator is not registered to vote at the address listed on the Nomination Petition.

Here the CANDIDATE’S Nominating Petition contains a total number of 60 signatures. See Ex. A. The OBJECTOR challenges a total of 10 signatures on the basis that the signators are not registered voters or are not registered at the address set forth in the CANDIDATE’S Nominating Petition. See Ex. B. COMMISSION Staff performed a preliminary Records Check

which includes findings sustaining all of OBJECTOR’S specific objections on this basis which was admitted into evidence without evidentiary objection. See Ex. J.

In his case-in-chief, the OBJECTOR relied on the findings set forth in the Records Check. In his case-in-chief, the CANDIDATE disputed three of the Record’s Check findings as to the signators in sheet 3 line 7, sheet 6 line 1 and sheet 6 line 2 of the CANDIDATE’S Nominating Petition. See Ex. A.

Concerning the signator on sheet 3 line 7, the CANDIDATE sought to testify as to a conversation he had with the purported signator concerning her actual place of residence. The OBJECTOR made a hearsay objection. The ELECTORAL BOARD sustained the evidentiary objection on hearsay grounds because “[a]lthough certain evidentiary rules may be relaxed in administrative hearings, the rule against hearsay is a fundamental rather than a technical rule” and hearsay is generally not admissible. *Moscardini v. County Officers Electoral Bd. of Du Page County*, 224 Ill. App. 3d 1059, 1063, 590 N.E.2d 84, 87 (2d Dist. 1992); *Abrahamson v. Illinois Dept. of Professional Regulation*, 153 Ill. 2d 76, 94, 606 N.E.2d 1111, 1120 (1992). Therefore, the CANDIDATE failed to rebut the Record’s Check finding that the signator on sheet 3 line 7 of CANDIDATE’S Nominating Petition is not registered at the address set forth therein. See Exs. A and J.

Notwithstanding, Section 3-1.2 of the Election Code requires that an individual undertake the necessary steps to register to vote at a changed address to be considered a “voter” for the purpose of signing the Nominating Petition for the CANDIDATE. 10 ILCS 5/3-1.2. There is no indication that signator is registered at an address other than the address on file with the COMMISSION as indicated on page 1 of the Records Check. See Ex. J. Whether the signator

actually resides at the address set forth in the CANDIDATE'S Nominating Petition is immaterial to the specific objection raised.

Concerning the signator on sheet 6 line 1 of the CANDIDATE'S Nominating Petition, the CANDIDATE disputed the Records Check finding and argued that the COMMISSION website shows that the signator is registered at the address set forth in the CANDIDATE'S Nominating Petition. The CANDIDATE introduced a screen shot from the ELECTION COMMISSION website concerning the purported signator on sheet 6 line 1 of the CANDIDATE'S Nominating Petition. See Ex. I at Appendix B. Over the OBJECTOR'S objection, the ELECTORAL BOARD admitted the document into evidence pursuant to administrative notice as the document is a business record of the COMMISSION and, therefore an exception to the hearsay rule.

The COMMISSION website screenshot contradicts the CANDIDATE'S position because it clearly indicates that the individual's voter status is "PENDING." See Ex. I at Appendix B. This was corroborated by the testimony of Jessica Sierakowski, Acting Assistant Supervisor of the Voter Registration Division of the COMMISSION. Ms. Sierakowski testified that the COMMISSION has received a Voter Application from the individual indicated in the COMMISSION website screenshot but that the Application was not completed and, therefore, the individual's registration status is pending and the individual is not a registered voter. Consequently, the CANDIDATE was not adequately able to rebut the Records Check finding that the signator on sheet 6 line 1 of the CANDIDATE'S Nominating Petition was not a registered voter at the time of the signing of the PETITION.

Concerning the signator on sheet 6 line 2, the CANDIDATE argued that the signator resides at the address shown in his Nominating Petition. In support of his argument the

CANDIDATE attempted to introduce an e-mail from the purported signator as evidence. The OBJECTOR made a hearsay objection which was sustained by the ELECTORAL BOARD. Therefore, the CANDIDATE provided no admissible evidence to rebut the Records Check finding that the signator on sheet 6 line 2 is not a registered voter at the address set forth in the CANDIDATE'S Nominating Petition. Notwithstanding, whether the individual actually resides at the address set forth in the CANDIDATE'S Nominating Petition is immaterial to the specific objection as discussed above.

The ELECTORAL BOARD adopts all findings set forth in the unrebutted Records Check and hereby SUSTAINS all specific objections to the signators of the CANDIDATE'S Nominating Petition concerning signators who are not registered voters or are not registered at the address set forth in the Nominating Petition. 105 ILCS 5/9-10; 10 ILCS 5/3-1.2; *Greene*, 112 Ill. App. 3d 862, 445 N.E.2d 1337.

B. Objections That Signators Did Not Sign in Their Own Proper Person

Section 10-4 of the Election Code applicable to nominating petitions for the Office at issue provides in pertinent part that “[s]uch petition shall be signed by the qualified voters in their own proper persons only.” 10 ILCS 5/10-4. *See also*, 105 ILCS 5/9-10 (setting forth additional requirements for the form and content of a nominating petition for a school board member). This requirement is implicated when a signature on a nominating petition does not substantially match the voter signature on file with the COMMISSION. Where such signature does not substantially match the voter's signature on file with the COMMISSION, any related objection should be sustained. However, a candidate can successfully rebut such challenge by providing admissible evidence that the voter did sign the nominating petition in the voter's own proper person.

Here, the OBJECTOR challenges a total of 7 signatures on the basis that the signators did not sign the CANDIDATE'S Nominating Petition in their own proper person. See Ex. B. The COMMISSION Staff performed a Records Check which includes findings sustaining 2 and overruling 5 of OBJECTOR'S specific objections on this basis. See Ex. J. The OBJECTOR did not further contest any "overruled" finding in the Records Check.

The CANDIDATE disputed one of the Record's Check sustained findings concerning sheet 3 line 8 and argued that the signator did sign the CANDIDATE'S Nominating Petition in his own proper person. In support of his argument, the CANDIDATE attempted to introduce an e-mail from the purported signator as evidence. The OBJECTOR made a hearsay objection which was sustained by the ELECTORAL BOARD. Therefore, the CANDIDATE provided no admissible evidence to rebut the Records Check finding that the signator on sheet 3 line 8 did not sign the CANDIDATE'S Nominating Petition in his own proper person.

The ELECTORAL BOARD conducted an independent review of all the findings in the Records Check concerning signature matches and it concurs with all findings in the Records Check. Because the CANDIDATE did not sufficiently rebut any findings in the Records Check and based on the ELECTORAL BOARD'S independent examination, the ELECTORAL BOARD hereby adopts all findings as to "sustained" and "overruled" set forth in the Records Check concerning whether signators of CANDIDATE'S Nominating Petition signed in their proper person as required by law. 10 ILCS 5/10-4.

Based on these findings, the ELECTORAL BOARD determines that the CANDIDATE'S Nominating Petition contains 48 valid signatures, which does not satisfy the minimum signature requirement for the OFFICE provided in Section 9-10 of the School Code. 105 ILCS 5/9-10. The ELECTORAL BOARD further determines that the CANDIDATE is not eligible for

placement on the April 7, 2015, Consolidated General Election Ballot for the OFFICE for this reason.

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 Chris Frank for the Office of School Board Member for Hinsdale Township High School District 86, that the PETITION is hereby GRANTED and the OBJECTION is SUSTAINED. Accordingly, the name of Chris Frank shall not be printed on the Official Ballot as a Candidate for the Office of School Board Member for Hinsdale Township High School District 86 for the Consolidated General Election to be held on April 7, 2015.

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: January 9, 2015
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