

**BEFORE THE DULY CONSTITUTED ELECTORAL BOARD
FOR THE HEARING AND PASSING UPON OF OBJECTIONS
TO NOMINATING PAPERS OF CANDIDATES FOR ELECTION TO THE
OFFICE OF 18TH JUDICIAL CIRCUIT COURT JUDGE – REPUBLICAN PARTY
DU PAGE COUNTY, ILLINOIS**

MATTHEW DONALD PIKE,)	
)	
Petitioners-Objector,)	Docket No. 2015 P 003
)	
v.)	
)	
THOMAS J. LAZ,)	
)	
Respondent-Candidate.)	

DUPAGE COUNTY’S ELECTORAL BOARD DECISION

The DuPage County Electoral Board, consisting of Cathy Terrill, Chairperson, and James Lowe and Art Ludwig, Members; organized and existing pursuant to section 10-9 2. of the Illinois Election Code (the “Election Code”), hereby issues its Electoral Board Decision in the above referenced matter pursuant to section 10-10 of the Illinois Election Code. 10 ILCS 5/10-10.

PREFATORY REMARKS

Pursuant to the Election Code, 10 ILCS 5/1-1 *et seq.* and in accordance with the Electoral Board Rules of Procedure duly promulgated, approved, implemented and adopted on December 21, 2015, as required by the DuPage County Election Commission (the "Election Commission"), the Election Commission was duly constituted, convened and sitting in its capacity as the DuPage County Electoral Board (the "Electoral Board") for the hearing and passing upon Objections to Nominating Papers.

On January 7 and 20, 2016, the Electoral Board conducted the hearing upon the Objector’s Petition (the “Petition”) filed by Matthew Donald Pike (the “Objector”), to the Nominating Papers of Thomas J. Laz (the “Candidate”), Candidate for the Office of Circuit

Court Judge for the 18th Judicial Circuit, DuPage County to fill the vacancy of the Honorable John T. Elsner (the "Office"), to be voted upon at the General Primary Election to be held on March 15, 2016 (the "Election").

Within the time frame set forth by statute, the Candidate filed Nominating Papers for the Office to be voted on at the Election with the State Board of Elections. The Objector timely filed his Objector's Petition with the State Board of Elections on December 7, 2015 which was submitted for hearing to the Election Commission pursuant to section 10-9 2. of the Election Code.

A Call Notice for Hearing was issued on December 15, 2016, by Cathy Terrill, Chairperson of the Electoral Board. The Call Notice was issued and served upon the Objector and the Candidate, by certified mail, in accordance with section 10-10 of the Election Code. The Candidate was provided personal service of the Call Notice by the DuPage County Sheriff's Office and the Objector waived personal service of the Call Notice. An Appearance was filed by the Candidate and an additional Appearance was file by the Candidate's attorney. An Appearance was filed by the Objector's attorney on behalf of the Objector.

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 542 valid signatures. The Objector also alleges that the Candidate has improperly designated the name of the Office in his Nominating Petition such that his entire Nominating Petition should be declared invalid.

LEGAL ANALYSIS OF ISSUES PRESENTED

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

It is well established “that access to a place on the ballot is a substantial right not lightly to be denied.” *Jackson-Hicks v. E. St. Louis Bd. of Election Comm'rs*, 2015 IL 118929, ¶ 32, 28 N.E.3d 170, 178. It is equally well established that “the regulation of elections is within the power of the legislature, within constitutional limitations, for as the United States Supreme Court has recognized, ‘it is beyond question that States may, and inevitably must, enact reasonable regulations of parties, elections, and ballots to reduce election- and campaign-related disorder.’ ” *Id. citing Clingman v. Beaver*, 544 U.S. 581, 593 (2005).

The minimum signature requirements imposed by the Election Code are mandatory and must be followed. *Jackson-Hicks*, 2015 IL 118929, ¶ 42, 28 N.E.3d 170, 181. More than a century ago the Illinois Supreme Court held that “[e]very person has a right to be a candidate for any office for which he is legally qualified, but if every man might have his name on the official ballot great inconvenience might result” and “[t]herefore no person may have his name printed on the official ballot unless he has been nominated by a party or by a certain number of voters.” *People ex rel. Schnackenberg v. Czarnecki*, 256 Ill. 320, 327, 100 N.E. 283 (1912). 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.” *Briscoe v. Kusper*, 435 F.2d 1046, 1054 (7th Cir. 1970).

A. Specific Election Code Signature Requirements.

Section 7-10 of the Election Code applicable to the nominating petition for the Office at issue provides in pertinent part that “[s]uch petition shall be signed by qualified primary electors

residing in the political division for which the nomination is sought *in their own proper persons* only and opposite the signature of each signer, his residence address shall be written or printed.” 10 ILCS 5/7-10 (emphasis added). Also under section 7-10, nominating petition circulators are required to certify that and swear under oath that the signatures on the nominating petition are “genuine.” *Id.* This requirement is implicated when a signature on a nominating petition does not substantially match the voter signature on file with the Election Commission. Where such signature does not substantially match the voter’s signature on file with the Election 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.

Persons signing a nomination petition must also be registered to vote at the residence set forth on the petition. *Greene v. Board of Election Commissioners*, 112 Ill. App. 3d 862, 868, 445 N.E.2d 1337 (1st Dist. 1983).

Specifically, Section 5/3-1.2 of the Election Code 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).

Section 7-10 of the Election Code applicable to the nominating petition for the Office at issue provides in pertinent part that “[s]uch petition shall be signed by qualified primary electors *residing in the political division for which the nomination is sought* in their own proper persons only and opposite the signature of each signer, his residence address shall be written or printed.”

10 ILCS 5/7-10 (emphasis added). This requirement is implicated when it is shown that an address associated with a signer is outside the territorial boundaries of the political subdivision for which the nomination for the Office is sought. In this matter, the political boundary consists of the territorial boundary of DuPage County. *See generally, Jordan v. Glaub*, 196 Ill. App. 3d 736, 554 N.E.2d 994 (1st Dist. 1990).

As to the addresses required for a nominating petition for the Office, section 7-10 of the Election Code provides in pertinent part:

The residence address required to be written or printed opposite each qualified primary elector's name *shall include the street address or rural route number of the signer, as the case may be, as well as the signer's county, and city, village or town, and state...*

10 ILCS 5/7-10 (emphasis added). This requirement is implicated when an address is missing or incomplete.

Also, the Candidate is required to have no fewer than 542 separate valid signatures according to the minimum signature requirement set forth in section 7-10(h) of the Election Code for the Office. 10 ILCS 5/7-10(h). Therefore, the same qualified elector cannot sign the nominating petition for the Office more than one time.

B. Uncontested Invalid Signatures.

Here, the Candidate submitted a total of 726 signatures in the Nominating Petition. The Objector filed specific signature objections to certain signatures for the reasons outlined above. Under Electoral Board Rule 9, the Election Commission Staff conducted a review of Objector's specific objections and made recommended findings set forth in the Staff Findings sustaining the Objector's objections to 149 signatures. The Candidate did not file a Rule 10 request for hearing on the signatures deemed invalid by Election Commission Staff. The Electoral Board accepted the Staff's findings and recommendation as to 149 signatures on the Candidate's Nominating

Petition without the Candidate's objection.

In addition, the Electoral Board conducted an independent review of a number of signatures that Staff determined valid upon the Objector's Motion to Reconsider and Overrule Recommendation of Record's Clerk Pursuant to Rule 10 ("Rule 10 Motion"). In its review, the Electoral Board ruled to sustain the Objector's objection to an additional 21 signatures set forth in the Candidate's Nominating Petition. After conducting a comparison between these specific signatures appearing on the Candidate's Nominating Petition and the signatures on file with Election Commission, the Electoral Board ruled in the course of the Rule 10 hearing that these signatures were not genuine in that they did not substantially conform to the signatures on file with the Election Commission. The Parties have stipulated to the Electoral Board's rulings and that based on the Electoral Board's rulings the total number of signatures remaining after deducting the invalid signatures is 556, which is 14 signatures above the minimum required.¹

C. Pattern of Fraud – Evidence of False Swearing

"Where the signature sheets of a nominating petition submitted by a circulator evidence a pattern of fraud, false swearing, and total disregard for the requirements of the Code, the sheets circulated by that individual should be stricken in their entirety." *Crossman v. Bd. of Election Comm'rs of City of Chicago*, 2012 IL App (1st) 120291, ¶ 11, 966 N.E.2d 518, 521 citing *Canter v. Cook County Officers Electoral Board*, 170 Ill. App. 3d 364, 368, 523 N.E.2d 1299 (1988).

Under section 7-10 a circulator is required to swear or affirm under and subscribe that:

I,, do hereby certify that I reside at No. street, in the of, county of, and State of, that I am 18 years of age or older, that I am a citizen of the United States, and *that the signatures on this sheet* were signed in my presence, and *are genuine*, and that to the best of my knowledge and belief the persons so

¹¹ The Candidate filed a Candidate's Motion to Strike and Dismiss Portions of Objector's Rule 10 Motion ("Motion to Strike Rule 10 Motion"). The Objector filed an Objector's Response to Candidate's Motion to Strike and Dismiss Portions of Objector's Rule 10 Motion ("Objector's Response to Motion to Strike Rule 10 Motion"). The arguments raised in these filings are moot by the Parties stipulation.

signing were at the time of signing the petitions *qualified voters* of the party, and *that their respective residences are correctly stated*, as above set forth.

10 ILCS 5/7-10 (emphasis added). *See also, Cunningham v. Schaefflein*, 2012 IL App (1st) 120529, ¶ 40, 969 N.E.2d 861, 876 (enumerating the elements of a circulator's statement). "In other words, the swearing requirement gives meaning to the circulator's statement that he complied with the provisions of the Election Code when circulating his petitions" and "[a]lthough the requirement does not govern the actual process by which petitions are circulated, it nevertheless protects the integrity of the circulation process." *Id.*

Here, the Candidate's Nominating Petition was circulated by the Candidate and his brother David Laz. A number of sheets circulated by both circulators evidence a troubling number of invalid signatures. Sheet 23 of the Nominating Petition circulated by the Candidate contains 9 out of 15 invalid signatures. Sheet 24 of the Nominating Petition circulated by the Candidate contains 7 out of 15 invalid signatures. Sheet 28 of the Nominating Petition circulated by the Candidate contains 7 out of 14 invalid signatures. Sheet 31 of the Nominating Petition circulated by David Laz contains 7 out of 15 invalid signatures. Sheet 34 of the Nominating Petition circulated by David Laz contains 7 out of 15 invalid signatures. Sheet 51 of the Nominating Petition circulated by David Laz contains 7 out of 15 invalid signatures.

The vast number of invalid signatures on these Nominating Petition sheets evidences a pattern of fraud, false swearing and a total disregard for the mandatory requirements of the Election Code. *See Canter*, 170 Ill. App. 3d at 368, 523 N.E.2d at 1301; *Harmon v. Town of Cicero Mun. Officers Electoral Bd.*, 371 Ill. App. 3d 1111, 1116, 864 N.E.2d 996, 1001 (1st Dist. 2007).

While the legal standard for showing a "pattern of fraud" is uniform as to any elective office in Illinois, it is troubling to the Electoral Board that any candidate for a judicial office

would demonstrate such a complete disregard for the mandatory requirements of the Election Code as is clearly evidenced in sheets 23, 24 and 28 circulated by the Candidate.

On this basis, the Electoral Board hereby **STRIKES** sheets, 23-24, 28, 31, 34 and 51 of the Candidate's Nominating Petition in their entirety. This reduces the Candidate's total number of valid signatures by an additional 45 signatures bringing the Candidate's total number of valid signatures to 511 which is below the mandatory minimum number of valid signatures required for the Office.

The Objector argues that the Electoral Board should strike every sheet circulated by the Candidate and David Laz for reasons connected to David Laz's criminal and professional history. The Electoral Board will not consider the records attached to the Objector's closing brief in support of this argument. The Objector had the opportunity to introduce these records during the course of the hearing but did not do so before the Electoral Board closed the evidence. Notwithstanding, the Electoral Board has found no legal authority that would allow the Electoral Board to consider the veracity of a circulator's sworn statement in a Nominating Petition based on unrelated criminal or professional matters.

The Objector also argues that the Electoral Board should strike every sheet circulated by David Laz because of his role in the improper notarization of the Candidate's Loyalty Oath. The Electoral Board is troubled by the effort of David Laz to request the notarization of the Candidate's Loyalty Oath when the Candidate was not before the notary. However, the Electoral Board has found no legal authority that would permit the Electoral Board to consider the veracity of a circulator's sworn statement in a nominating petition based on his participation in the improper notarization of the Candidate's Loyalty Oath.

For the forgoing reasons, the Objector's general objection that the Candidate's

Nominating Petition contains less than the mandatory minimum number of valid signatures for the Office is **SUSTAINED**.

II. WHETHER THE CANDIDATE DESIGNATED THE OFFICE SOUGHT IN COMPLIANCE WITH THE ELECTION CODE.

Section 7–10 governs the form and content of nominating petitions. Section 7–10 states, “[e]ach sheet of the petition ... shall contain ... the office” sought. 10 ILCS 5/7–10. Section 7–10 states that “[t]he name of no candidate for nomination ... shall be printed upon the primary ballot unless a petition for nomination has been filed in his behalf as provided in this Article in substantially the following form.” 10 ILCS 5/7–10. *See Lewis v. Dunne*, 63 Ill. 2d 48, 52, 344 N.E.2d 443 (1976) (stating that the “general purpose of section 7–10 and related provisions of the Election Code is to provide an orderly procedure whereby qualified persons seeking public office may enter primary elections”).

It is well established that the “apparent purpose of the nominating petitions signed by voters is to expand the informed participation of members of the respective parties in their primary election.” *Salgado v. Marquez*, 356 Ill. App. 3d 1072, 828 N.E.2d 805 (2d Dist. 2005) quoting *Zapolsky v. Cook Cty. Officers Electoral Bd.*, 296 Ill. App. 3d 731, 695 N.E.2d 1329 (1st Dist. 1998).

As stated in *Salgado* and *Zapolsky*:

Nominating petitions should be free from a ‘basis for confusion’ as to the office for which they are filed. A potential signatory to a nominating petition has the right to know the specific vacancy sought by the candidate so that the signatory may make an informed decision to sign the petition or support another candidate for the same vacancy.

Id.

Here, the Objector asserts that the Candidate misnamed the Office as “office of Judge of the Circuit Court to fill the vacancy of the Honorable John T. Elsner.” The Objector maintains

that the proper designation should have stated “Resident Circuit Court Judge” because this is a distinct office from “Judge of the Circuit Court, At Large”. The Parties agree that there is a distinct “resident circuit judge” office in DuPage County and the Objector points to instructive Illinois State Board of Elections and Illinois Supreme Court materials. Interestingly, while the Circuit Courts Act establishes and references “resident judges” in certain circuits with a territorial jurisdiction including more than one county and in sub-circuits within certain circuits, there is no reference to “resident judge” in connection with the 18th Judicial Circuit, DuPage County. *See* 705 ILCS 35/2, 2g.

The Objector cites the Judicial Vacancies Act that provides a definition for “resident circuit judge” or “resident judge”, 705 ILCS 40/1.1, and provides that “[i]f in any county of 60,000 or more inhabitants, other than the County of Cook or as provided in paragraph (5), there remain in office no more than 2 resident judges following the occurrence of a vacancy, such vacancy shall be filled”, 705 ILCS 40/2(a)(3). However, it is not readily clear whether the office of “resident circuit judge” is currently established in DuPage County by statute or whether such Office is a vestige of custom and practice transitioned through the Illinois Constitution of 1970. Effectively, candidates for any circuit court judge vacancy, either “resident” or “full circuit”, in the 18th Judicial Circuit, DuPage County are all required to be residents of DuPage County.

Notwithstanding, there is no dispute that the Office at issue involves a circuit court judge vacancy created by John T. Elsner in the 18th Judicial Circuit, DuPage County. This information appears in the Candidate’s Nominating Petition in connection with the designation of the Office. The Electoral Board finds that this designation is either in full compliance with the Election Code if there is no longer the moniker of “resident judge” or “resident circuit judge” by statute in

the 18th Judicial Circuit, DuPage County, or this designation is in substantial compliance with the Election Code if such moniker does exist by law because this designation adequately informs the voters of the specific office sought and does not lead to voter confusion. *Zapolsky*, 296 Ill. App. 3d 731, 695 N.E.2d 1329. For this reason, the Objector's objection on this basis is **OVERRULED.**

CONCLUSION AND ORDER

Based upon the rulings made herein, it is the decision of the Electoral Board that the Candidate's name, Thomas J. Laz, not be printed on the March 15, 2016 General Primary Election Ballot for the Office of 18th Judicial Circuit Court Judge (Honorable John T. Elsner vacancy).

REVIEW OF ELECTORAL BOARD DECISION

Any Party seeking to review this 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 ELECTORAL BOARD

[REDACTED]

CATHY TERRILL, CHAIRPERSON

[REDACTED]

JAMES LOWE, MEMBER

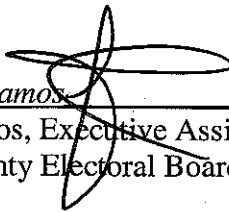
[REDACTED]

ART LUDWIG, MEMBER

Dated: January 20, 2016

CERTIFICATE OF SERVICE

I, Annette Ramos, Executive Assistant to the Electoral Board, certify that a copy of the DUPAGE COUNTY'S ELECTORAL BOARD DECISION IN CASE No. 2015 P 003 was served upon the Parties to the proceedings in open proceedings before the Electoral Board on January 20, 2016.


/s/ Annette Ramos
Annette Ramos, Executive Assistant to the
DuPage County Electoral Board