

**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 – DEMOCRAT PARTY  
DU PAGE COUNTY, ILLINOIS**

JOAN C. BRENNAN,	)	
	)	
Petitioner-Objector,	)	Docket No. 2015 P 004
	)	
v.	)	
	)	
JENNIFER SHILAKIS WIESNER,	)	
	)	
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 Joan C. Brennan (the “Objector”), to the Nominating Papers of Jennifer Shilakis Wiesner (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 her 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 Objector was provided personal service of the Call Notice by the DuPage County Sheriff's Office and the Candidate waived personal service of the Call Notice. An Appearance was filed by the Candidate's Attorney on behalf of the Candidate. An Appearance was filed by the Objector's Attorney on behalf of the Objector.

### **PROCEEDINGS**

The Objector challenges the Candidate's Nominating Papers on the grounds that the Candidate has not filed the requisite number of valid signatures for the Office which requires a minimum number of 500 valid signatures. The Objector also alleges that the Candidate has not provided for the same heading on all sheets of her Nominating Petition and has improperly designated the name of the Office in her Nominating Petition such that her entire Nominating Petition should be declared invalid. The Objector also requests that the Candidate be defaulted under Electoral Board Rule 13. Finally, the Objector argues that the Candidate's Statement of

Candidacy be stricken as invalid for the Candidate's failure to swear or affirm to the Statement of Candidacy before a Notary.

### **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).

In this matter, the statutory minimum number of valid signatures for the Office is 500. The Candidate's Nominating Petition contains a total of 966 signatures. In her Petition, the Objector raised a number of challenges to the individual signatures appearing on the Candidate's Nominating Petition.

During the course of the evidentiary hearing, the Objector adduced evidence that Terra Howard, one of the Notaries in connection with the Candidate's Nominating Petition, did not actually administer an oath or affirmation to any circulator. The Candidate also stipulated that Terra Howard did not actually administer an oath or affirmation to any circulator who circulated the Candidate's Nominating Petition.

Subsequent to the Parties stipulation concerning Terra Howard, the Objector withdrew her objections as to the individual signatures set forth in her Objector's Petition but did not withdraw her general objection that the Candidate's Nominating Petition fails to contain the minimum number of signatures required for the Office.

Despite the Candidate's stipulation, the Candidate argued that the Electoral Board cannot consider any violation of the Election Code concerning this Notary issue because the Objector did not specifically set forth this objection in her Objector's Petition. Alternatively, the Candidate argued that there is substantial compliance with the Election Code because the circulators *subscribed* to the Nominating Petition sheets in the presence of Terra Howard and Terra Howard signed the Nominating Petition sheets and affixed her Notary seal. The Candidate also alternatively argued that even if the Election Code was violated in connection with the Nominating Petition Sheets involving Terra Howard, the Candidate's Nominating Petition contains more than 500 valid signatures discounting the signatures that appear on sheets involving Terra Howard as a Notary.

It is well established under Illinois law, that an electoral board cannot raise its own objections to nominating petitions *sua sponte*; however, when in the course of hearing objections to nominating papers, evidence beyond specific objections comes to the electoral board's attention, it cannot close its eyes and ears if evidence is relevant to the protection of the electoral process. *Cunningham v. Schaefflein*, 2012 IL App (1st) 120529, ¶ 31, 969 N.E.2d 861, 872.

Here, the evidence and stipulations concerning Terra Howard were adduced in connection with the Objector's general objection that the Candidate's Nominating Petition does not contain the minimum number of valid signatures required for the Office. Therefore, that the Electoral Board is authorized and compelled to consider this Notary issue. *Id.*

Turning to the merits of the challenge, section 7-10 of the Election Code requires that a circulator subscribe before a Notary *and* swear or affirm before a Notary in connection with the circulator's statement in the Nominating Petition. 10 ILCS 5/7-10. It is well-established under the Illinois Supreme Court case of *Bowe v. Chicago Electoral Bd.*, 79 Ill. 2d 469, 470, 404 N.E.2d 180, 180 (1980) that the Notary requirements for a circulator's statement under section 7-10 are mandatory requirements on the Election Code.

The Illinois Oaths and Affirmations Act provides for the swearing by oath or the giving of an affirmation before a person authorized to administer oaths and affirmations. 5 ILCS 255/3, 4. If the declaration is by oath, the person swearing shall with hand uplifted, swear by the ever-living God. 5 ILCS 255/3. If the declaration is by affirmation, the person shall affirm that she does solemnly, sincerely and truly declare and affirm. 5 ILCS 255/4. It is the administration of the oath or affirmation that legally subjects the declarant to the penalty of perjury under the Act. 5 ILCS 255/5.

Here, the Candidate has stipulated that the Notary, Terra Howard, did not actually administer an oath or affirmation to the circulators in the Nominating Petition sheets she notarized despite this mandatory requirement in 7-10 of the Election Code. The purpose of the oath or affirmation requirement in section 7-10 of the Election Code is to ensure truthful circulator statements in a candidate's nominating petition in the interest of the protection of the electoral process. *See Cunningham*, 2012 IL App (1st) 120529, ¶ 40, 969 N.E.2d 861, 876 (“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.*”) (emphasis added).

Simply put, as to the Notary Terra Howard, there was *no* compliance with the swearing or affirmation requirement in section 7-10 of the Election Code in connection with the Candidate's Nominating Petition. Terra Howard notarized circulator statements on a total of 40 sheets containing a total of 509 signatures in the Candidate's Nominating Petition. Therefore, the Candidate's alternative argument that even if all the signatures on these sheets were declared invalid, the Candidate would, nonetheless, have more than 500 valid signatures in her Nominating Petition is in error as a matter of arithmetic.

Accordingly, all of the Candidate's Nominating Petition sheets notarized by Terra Howard are hereby **STRICKEN** because of the circulators failure to swear or affirm to their circulator statements as mandated by section 7-10 of the Election Code. Consequently the Candidates Nominating Petition is reduced by 509 signatures bringing the total number of valid signatures in her Nominating Petition to 457. Therefore, the Electoral Board hereby **SUSTAINS** the Objector's general objection that Candidate's Nominating Petition does not

contain the minimum number of valid signatures required for the Office which precludes the Candidate's name from appearing on the March 15, 2016 General Primary Election Ballot for the Office.

**II. WHETHER THE CANDIDATE HAS FAILED TO PROVIDE FOR THE SAME HEADING IN HER NOMINATING PETITION AND HAS IMPROPERLY DESIGNATED THE NAME OF THE OFFICE IN VIOLATION OF THE ELECTION CODE.**

Section 7–10 of the Election Code provides that the heading of each Nominating Petition sheet shall be the same and that each sheet of the petition shall contain the office sought. 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 headings of the Candidate's Nominating Petition Sheets are not the same. Specifically, some of the Nominating Petition Sheets name the Office

as “Resident Circuit Court Judge to fill the vacancy of the Honorable John T. Elsner, for the 18th Judicial Circuit” while other sheets name the Office as Judge of the Circuit Court to fill the vacancy of the Honorable John T. Elsner, for the 18th Judicial Circuit”.

The Objector also asserts that the Candidate misnamed the Office as “Judge of the Circuit Court to fill the vacancy of the Honorable John T. Elsner, for the 18th Judicial Circuit”. 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”.

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 Judicial Vacancies Act 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 is in connection with a circuit court judge vacancy created by John T. Elsner in the 18th Judicial Circuit, DuPage County. This information appears on all the sheets in the Candidate’s Nominating Petition in connection with



the designation of the Office.

There is no question that the heading of each Nominating Petition sheet in the Candidate's Nominating Petition is not the same. However, given that the information "to fill the vacancy of the Honorable John T. Elsner, for the 18th Judicial Circuit" is provided in the heading of each Nominating Petition sheet, there is substantial compliance with the Election Code in this regard because this information adequately informs the voters of the specific office sought and does not lead to voter confusion.

Concerning the proper designation of the Office, the designation of the Office in Candidate's Nominating Petition 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. For these reasons, the Objector's objections on these bases are hereby **OVERRULED**.

### **III. WHETHER THE CANDIDATE SHOULD BE DEFAULTED UNDER ELECTORAL BOARD RULE 13.**

Electoral Board Rule 13 provides that "failure to adhere to these Rules or a directive of the board, or a hearing examiner of the Board...shall be a ground for default of the candidate."

In this matter, the Electoral Board granted the Objector's Motion to Exclude witnesses prior to the taking of evidence and testimony on the January 7, 2016 hearing date. The Objector called the Candidate as a witness and adduced testimony from the Candidate concerning the failure of circulators to make a swearing or affirmation before Notary Terra Howard in connection with the Candidate's Nominating Papers. The Objector's Counsel requested a recess for the purpose of using the restroom facilities which was granted by the Electoral Board.

During the recess, Counsel for the Objector and at least one Electoral Board member observed Counsel for the Candidate conversing with a witness subject to the Electoral Board's order of exclusion. When the Electoral Board returned from recess, the Objector's counsel noted his observations for the record and the Electoral Board questioned Counsel for the Candidate on this issue.

Counsel for the Candidate disclosed that she did speak with a witness subject to the Electoral Board's order concerning the testimony adduced on the failure of circulators to make a swearing or affirmation before Notary Terra Howard. Counsel for the Candidate also instructed this witness to do some legal research on the issue.

Counsel's conduct in speaking with a witness subject to the Electoral Board's order of exclusion concerning the testimony adduced and Counsel's instruction to the witness to conduct legal research on the testimony was in clear violation of the Electoral Board's order of witness exclusion. Upon request of the Objector, the Electoral Board barred all of the Candidate's witnesses subject to the Electoral Board's order of exclusion from providing any testimony in this matter as a sanction for the violation.

The Objector requests that the Electoral Board further sanction the Candidate by finding the Candidate in default under Electoral Board Rule 13. The Electoral Board finds the Candidate's Counsel's violation of the order of exclusion particularly egregious because her conduct is what the Electoral Board's order was specifically designed to prevent – the coaching of witnesses who are under oath as to the nature of the testimony that they have been excluded from hearing.

However, the Electoral Board finds that the sanction previously imposed, barring the Candidate's witnesses from providing testimony, adequately preserves the integrity of the

hearing process from this violation. Therefore, the Electoral Board hereby **DENIES** the Objector's request for the Candidate's default under Rule 13.

**IV. WHETHER THE CANDIDATE'S STATEMENT OF CANDIDACY SHOULD BE STRICKEN AS INVALID FOR THE CANDIDATE'S FAILURE TO SWEAR OR AFFIRM TO THE STATEMENT OF CANDIDACY BEFORE A NOTARY.**

During the course of the evidentiary hearing, the Candidate admitted that Terra Howard, the Notary of the Candidate's Statement of Candidacy, did not actually administer an oath or affirmation to the Candidate in connection with the Statement of Candidacy.

The Candidate argued that the Electoral Board cannot consider any violation of the Election Code concerning this Notary issue because the Objector did not specifically set forth any such objection in her Objector's Petition. However, the Objector did state in her Objector's Petition that the *Nomination Papers* must truthfully allege the qualifications of the candidate and *be gathered and presented in the manner provided for in the Illinois Election Code.* (emphasis added).

Stated *supra* an electoral board cannot raise its own objections to nominating petitions *sua sponte*; however, when in the course of hearing objections to nominating papers, evidence beyond specific objections comes to the electoral board's attention, it cannot close its eyes and ears if evidence is relevant to the protection of the electoral process. *Cunningham*, 2012 IL App (1st) 120529, ¶ 31, 969 N.E.2d 861, 872. Therefore, the Electoral Board is authorized and compelled to consider this Notary issue on the Candidate's Statement of Candidacy.

Section 7-10 of the Election Code requires that a Candidate subscribe before a Notary *and* swear or affirm before a Notary in connection with the Statement of Candidacy. 10 ILCS 5/7-10. Under the Illinois Supreme Court case of *Bowe v. Chicago Electoral Bd.*, 79 Ill. 2d 469, 470, 404 N.E.2d 180, 180 (1980) the Notary requirements under section 7-10 are mandatory

requirements on the Election Code. For the reasons discussed *supra*, the Candidate is required to both subscribe (sign) *and* swear or affirm to her Statement of Candidacy. A candidate's failure to *subscribe or swear* to her statement of candidacy renders statement of candidacy illegal and void. *See Serwinski v. Bd. of Election Comm'rs of City of Chicago*, 156 Ill. App. 3d 257, 509 N.E.2d 509 (1st Dist. 1987).

Here, the Candidate admitted that the Notary, Terra Howard, did not actually administer an oath or affirmation to the Candidate in connection with the Statement of Candidacy despite this mandatory requirement in 7-10 of the Election Code. Therefore, the Electoral Board finds that the Candidate's Statement of Candidacy is illegal and void for her failure to swear or affirm to her Statement of Candidacy as mandated by section 7-10 of the Election Code. Accordingly, the Electoral Board hereby **STRIKES** the Candidate's Statement of Candidacy for the Candidate's failure to swear or affirm to her Statement of Candidacy as mandated by section 7-10 of the Election Code which precludes the Candidate's name from appearing on the March 15, 2016 General Primary Election Ballot for the Office.

#### **CONCLUSION AND ORDER**

Based upon the rulings made herein, it is the decision of the Electoral Board that the Candidate's name, Jennifer Shilakis Wiesner, 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 004 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

