

**BEFORE THE DULY CONSTITUTED ELECTORAL BOARD  
FOR THE HEARING AND PASSING UPON OBJECTIONS TO THE NOMINATION  
PAPERS FOR CANDIDATES FOR THE OFFICE OF FOREST PRESERVE DISTRICT  
COMMISSIONER IN DISTRICT 2 IN THE COUNTY OF DUPAGE OF THE STATE OF  
ILLINOIS TO BE VOTED UPON AT THE NOVEMBER 8, 2016 GENERAL ELECTION**

MICHAEL LEDONNE and RONALD EULIANO	)	
	)	
Petitioners-Objectors,	)	Docket No. 2016 G 01
	)	
v.	)	
	)	
KALI MORGAN PEICKERT,	)	
	)	
Respondent-Candidate.	)	

**ELECTORAL BOARD DECISION**

The DuPage County Electoral Board, consisting of James Lowe, Acting Chairperson; John Boske, Member; and Kevin Millon, Public Member; organized and existing pursuant to section 10-9 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 Election Code. 10 ILCS 5/10-10.

**PREFATORY REMARKS**

Within the time frame set forth by statute, the Candidate filed Nominating Papers for the Office of Forest Preserve District Commissioner of DuPage County, District 2, Democratic Party (the “Office”) to be voted on at the November 8, 2016 General Election with the DuPage County Election Commission (“Election Commission”) identified in the Record as Exhibit A. The Objectors timely filed their Verified Objector’s Petition (the “Petition”) with the Election Commission on June 7, 2016 identified in the Record as Exhibit B.

A Call Notice for Hearing was issued on June 9, 2016, by James Lowe, Acting Chairperson of the Electoral Board, identified in the Record as Exhibit C. The Call Notice was served upon the Objectors and the Candidate, by certified mail, in accordance with section 10-10

of the Election Code, as established in the Record by Exhibit D. The Candidate and the Objectors were personally served with the Call Notice by the DuPage County Sheriff's Office, as identified in the Record as Exhibit E. Appearances were filed by the Attorneys for the Objectors, identified in the Record as Group Exhibit F. An Administrative Order 13 - 1 (Public Member Appointment List) authorizing Kevin Millon to serve as an Electoral Board Public Member in the event of the absence of an established member of the Electoral Board is identified in the Record as Exhibit G. An e-mail correspondence dated June 11, 2016, from Robert Peickert to Robert Saar was made part of the Record and is identified as Exhibit H. The Appearance filed by the Attorney for the Candidate is identified in the Record as Exhibit I. The Objectors' Motion for Default was filed with the Election Commission and is identified for the Record as Exhibit J.

Pursuant to the Election Code, the DuPage County Electoral Board was duly constituted and convened for the hearing and passing upon Objections to Nominating Papers on June 13, 2016. The Electoral Board convened this matter on June 13, 2016 for the purpose of: (1) approving and adopting the Electoral Board Rules; (2) setting a briefing schedule on pre-hearing briefs; and (3) continuing the matter to a date certain for hearing on the merits of the Petition.

Prior to the June 13, 2016 initial hearing, Executive Director Robert Saar of the Election Commission received an e-mail correspondence from Robert Peickert, Chair of the Democratic Party of DuPage County, indicating that "our attorney will not be available until the first week in July for the electoral board hearing concerning the objections filed against Christopher English and Kali Morgan Peickert."

At the initial hearing on June 13, 2016, the Electoral Board approved and adopted the Electoral Board Rules; set a briefing schedule on pre-hearing briefs with briefs to be submitted to the Electoral Board on or before June 20, 2016 and continued this matter for hearing on the

merits of the Objectors' Petition to July 7, 2016. The Attorney for the Electoral Board and Executive Director Saar informed the Electoral Board and the Objectors that Executive Director Saar received an e-mail correspondence from Mr. Peickert indicating the unavailability of the Candidate's Attorney until the first week of July for scheduling purposes.

The Objectors made no objection to the continuance for a hearing on the merits and indicated that their lead Attorney was also unable to be in attendance at this initial hearing. Neither the Candidate, nor anyone on her behalf, was present at the June 13, 2016 hearing. The Objectors filed a pre-hearing brief in this matter, as requested by the Electoral Board but the Candidate did not file a pre-hearing brief.

On June 21, 2016, the Objectors filed a Motion for Default under Electoral Board Rule 2, because of the Candidate's failure to appear at the initial June 13, 2016 hearing.

On July 7, 2016, this matter proceeded to a hearing on the merits of the Petition. The Objectors and their Attorney and the Attorney for the Candidate were present.

### **PRELIMINARY MOTION FOR DEFAULT**

On July 7, 2016, as a preliminary matter, the Electoral Board first heard argument on the Objectors' Motion for Default based on the Candidate's failure to appear personally or by an attorney at the initial scheduling hearing of June 13, 2016.

The Election Code provides that “[c]ertificates of nomination and nomination papers ... being filed as required by this Code, and being in apparent conformity with the provisions of this Act, shall be deemed to be valid unless objection thereto is duly made in writing...”. 10 ILCS 5/10-8. The Election Code also provides that once an objection is filed:

The electoral board shall take up the question as to whether or not the certificate of nomination or nomination papers or petitions are in proper form, and whether or not they were filed within the time and under the conditions required by law, and whether or not they are the genuine certificate of nomination or nomination

papers or petitions which they purport to be, and whether or not in the case of the certificate of nomination in question it represents accurately the decision of the caucus or convention issuing it, and in general shall decide whether or not the certificate of nomination or nominating papers or petitions on file are valid or whether the objections thereto should be sustained and the decision of a majority of the electoral board shall be final subject to judicial review as provided in Section 10-10.1

10 ILCS 5/10-10. The burden of proof in a proceeding to contest nominating petitions lies with the objector. *Hagen v. Stone*, 277 Ill. App. 3d 388, 390, 660 N.E.2d 189 (1st Dist. 1995).

The Election Code does not provide for a consequence of “default” for a candidate’s failure to appear at a hearing on an objector’s petition. 10 ILCS 5/10-10. However, the Election Code does provide the Electoral Board the power and authority to adopt rules of procedure. *Id.* Pursuant to section 10-10 of the Election Code, the Electoral Board adopted its Rules concerning this matter which provide in pertinent part:

If a candidate fails to appear for a hearing, a default judgement shall be entered and the objections contained in the Objector’s Petition shall be confessed against the candidate ***only upon a determination by the Board that the Objector’s Petition sets forth valid grounds for removal on the candidate’s name from the ballot.***

Electoral Board Rule 2 (emphasis added). Therefore, even if a candidate fails to appear at a hearing of the Electoral Board, the Electoral Board is still required, by its own Rules and to ensure compliance with the Election Code, to examine and determine the validity of the objections raised in a petition prior to entering a default. In this matter, this would require, at a minimum, that the Electoral Board review and determine the legal sufficiency of the Petition in the event of the Candidate’s absence at the hearing on the merits of the Petition. Significantly, the Electoral Board’s application of Electoral Board Rule 2 must be reasonable under the circumstances. *See Wiesner v. Brennan*, 2016 IL App (2d) 160115, ¶ 34 (“As a reviewing court we must give deference to the Commission's application of its rules unless the Commission's

decision was arbitrary or unreasonable.”).

In the reasonable exercise of the Electoral Board’s application of its Rule 2, the Objectors’ Motion for Default is hereby **DENIED**. At the initial hearing in this matter on June 13, 2016, the Electoral Board approved and adopted the Electoral Board Rules; set a briefing schedule on pre-hearing briefs with briefs to be submitted to the Electoral Board on or before June 20, 2016; and continued this matter for hearing on the merits of the Objectors’ Petition to July 7, 2016. The Objectors made no objection to the continuance for a hearing on the merits. The Objectors made no request that the Electoral Board review and determine the legal sufficiency of the Petition at the initial June 13, 2016 scheduling hearing. While neither the Candidate nor anyone on her behalf was in appearance at the June 13, 2016 hearing, both the Candidate and her Attorney were present at the July 7, 2016 hearing on the merits of the Petition. Based on these circumstances, default of the Candidate under Electoral Board Rule 2 is not warranted or reasonable.

#### **LEGAL ANALYSIS OF THE ISSUE PRESENTED**

The Objectors raised the following objection in their Petition: that a vacancy in nomination for the Office cannot be filled by an appropriate committee of a political party, as a matter of law.

#### **WHETHER A VACANCY IN NOMINATION FOR THE OFFICE CAN BE FILLED BY AN APPROPRIATE COMMITTEE OF ANY POLITICAL PARTY, AS A MATTER OF LAW.**

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 Illinois Supreme Court decision in *Bonaguro v. Cty. Officers Electoral Bd.*, 158 Ill. 2d 391, 634 N.E.2d 712 (1994) is controlling on the specific objection raised by the Objectors. In *Bonaguro* a vacancy in nomination for a subcircuit judicial office was created when no Democratic candidate ran in the primary election. *Id.* Subsequent to the primary, the Democratic Party nominated its candidate for that office by party resolution, purportedly authorized by section 7–61 of the Election Code. *Id.*

The Illinois Supreme Court determined that section 7-61 of the Election Code authorizes filling vacancies in nomination by the “appropriate committee” and that section 7-7 of the Election Code provides an exhaustive list of appropriate committees authorized to fill vacancies in nomination for elected offices. *Id.* Missing from the list of committees authorized to make such nomination at the time of the *Bonaguro* decision was a judicial subcircuit committee. *Id.* Therefore, the Illinois Supreme Court in *Bonaguro* concluded that the legislature had not authorized the filling of a vacancy in nomination for a subcircuit judicial office by a committee of a political party, as a matter of law. *Id.*

In this matter, the Candidate filed Nomination Papers indicating that she had been nominated by a “Commissioner of Forest Preserve District 2 Committee” of the Democratic Party to fill the vacancy in nomination for the Office. Section 3c of the Downstate Forest Preserve Act (the “Act”) indicates that vacancies in nomination for the office of commissioner of a forest preserve district shall be filled in accordance with the provisions of the Election Code. 70 ILCS 805/3c. As in *Bonaguro*, section 7-7 of the Election Code does not provide for a

committee to make nominations for the office of a forest preserve district commissioner. Therefore, under the reasoning of *Bonaguro*, there is no authority in the Election Code for filling a vacancy in nomination for the Office by committee appointment of any political party.

The Objectors have provided the Electoral Board a copy of a Cook County Officers Electoral Board Decision in 06 COEB MWRD 02 involving a sustained objection to a candidate for the office of commissioner for the Metropolitan Water Reclamation District on identical grounds. In that matter, the Cook County Officers Electoral Board relied heavily on the reasoning of the Illinois Supreme Court in *Bonaguro*. *Id.* While the Cook County Officers Electoral Board decisions have no binding or controlling effect on this Electoral Board, the Cook County Officers Electoral Board Decision in 06 COEB MWRD 02 is informative.

The Candidate argued that the county board district committee set forth in section 7-7 of the Code is an appropriate committee to fill the vacancy in nomination for the Office because each district of the Forest Preserve District of DuPage County is coterminous with each district of the DuPage County Board. However, section 7-7 of the Election Code specifically provides for “a county board district committee *for each county board district created under Division 2-3 of the Counties Code.*” 10 ILCS 5/7-7 (emphasis added). Therefore, under the express language of section 7-7 of the Election Code the county board district committee referenced in section 7-7 is specific to “*each county board district created under Division 2-3 of the Counties Code.*” *Id.* Each forest preserve district of the Forest Preserve District of DuPage County was created under section 3c of the Act, not under Division 2-3 of the Counties Code. *See* 70 ILCS 805/3c.

For these reasons, the Electoral Board hereby finds that that a vacancy in nomination for the Office cannot be filled by an appropriate committee of any political party, as a matter of law. Accordingly, the Objectors’ objection in this regard is **SUSTAINED**.

**CONCLUSION AND ORDER**

Based upon the rulings made herein, it is the decision of the Electoral Board that the Candidate’s name, Kali Morgan Peickert, not be printed on the Official November 8, 2016 General Election Ballot for the Office of Forest Preserve District Commissioner of DuPage County, District 2, Democratic Party.

**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**

*/s/ James Lowe* \_\_\_\_\_  
JAMES LOWE, ACTING CHAIRPERSON

\_\_\_\_\_  
JOHN BOSKE, MEMBER

*/s/ Kevin Millon* \_\_\_\_\_  
KEVIN MILLON, PUBLIC MEMBER

Dated: July 18, 2016

**CERTIFICATE OF SERVICE**

I, Annette Ramos, Executive Assistant to the Electoral Board, certify that a copy of the ELECTORAL BOARD DECISION IN CASE No. 2016 G 01 was served upon the Parties pursuant to section 10-10 of the Election Code on July 18, 2016.

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