

**BEFORE THE DULY CONSTITUTED ELECTORAL BOARD
FOR THE HEARING AND PASSING UPON OBJECTIONS TO THE NOMINATION
PAPERS FOR CANDIDATES FOR THE OFFICE OF THE CLERK OF THE CIRCUIT
COURT OF DUPAGE COUNTY, ILLINOIS, EIGHTEENTH JUDICIAL CIRCUIT TO
BE VOTED UPON AT THE NOVEMBER 8, 2016 GENERAL ELECTION**

DENNIS REBOLETTI,)	
)	
Petitioner-Objector,)	Docket No. 2016 G 02
)	
v.)	
)	
CHRISTOPHER ENGLISH,)	
)	
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 Clerk of the Circuit Court of DuPage County, Illinois, Eighteenth Judicial Circuit, 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 Objector timely filed his 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 Objector 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 Objector were personally served with the Call Notice by the DuPage County Sheriff's Office, as identified in the Record as Exhibit E. An Appearance was filed by the Objector and the Objector's Attorney, identified in the Record as Exhibits F and F1. 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 for 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 Election Commission Staff Findings Report in connection with the Objector's individual signature objections to the Candidate's Nominating Petition is identified in the Record as Exhibit I. The Objector's Motion for Default was filed with the Election Commission and is identified for the Record as Exhibit J. An Appearance of the Candidate's Attorney was filed and is identified in the Record as Exhibit K.

Pursuant to the Election Code, the DuPage County Electoral Board was duly constituted, 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. Moreover, the Objector filed approximately 946 individual signature challenges for which Election Commission Staff needed additional time to evaluate and make recommended findings pursuant to Electoral Board Rule 9.

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 Objector’s Petition to July 7, 2016. The Attorney for the Electoral Board and Executive Director Saar informed the Electoral Board and the Objector 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 Objector raised questions concerning the communication between Mr. Peikert and Mr. Saar; however, the Objector made no objection to the continuance for a hearing on the merits and indicated that his Attorney was also unable to be in attendance at the initial hearing. Neither the Candidate nor anyone on his behalf was in appearance at the June 13, 2016 hearing. Neither the Objector nor the Candidate filed pre-hearing briefs in this matter, as requested by the Electoral Board.

On June 16, 2016, the Objector 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 Objector and his Attorney and the Candidate and his Attorney were present.

PRELIMINARY MOTION FOR DEFAULT

On July 7, 2016, as a preliminary matter, the Electoral Board first heard argument on the Objector's 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 Objector's 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 Objector's Petition to July 7, 2016. The Objector made no objection to the continuance for a hearing on the merits and indicated that his Attorney was unable to be in attendance at the initial hearing. The Objector made no request that the Electoral Board review and determine the legal sufficiency of the Petition at the initial June 13, 2016 scheduling hearing. Moreover, the Objector filed approximately 946 individual signature challenges for which Election Commission Staff needed

additional time to evaluate and make recommended findings pursuant to Electoral Board Rule 9. While neither the Candidate nor anyone on his behalf was in appearance at the June 13, 2016 hearing, both the Candidate and his 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 ISSUES PRESENTED

The Objector raised the following objections in his Petition: (1) that the vacancy in nomination for the Office was not filled by an appropriate committee of a political party; (2) that DuPage County Democratic Party Precinct Committeemen were denied the right to participate in the appointment of the Candidate to fill the vacancy in nomination for the Office; (3) that the Candidate's Statement of Candidacy is not in substantial compliance with the Election Code in its description of the Office; (4) that the Candidate's Nominating Petition is not in substantial compliance with the Election Code in its description of the Office; and (5) that the Candidate's Nominating Petition does not contain the minimum number of valid signatures required for the Office in the amount of 884 signatures.

At the July 7, 2016 hearing on the merits of the Objector's Petition, the Objector voluntarily withdrew many of his objections except the objections: (1) that the Candidate's Statement of Candidacy is not in substantial compliance with the Election Code in its description of the Office; and (2) that the Candidate's Nominating Petition is not in substantial compliance with the Election Code in its description of the Office.

I. WHETHER THE CANDIDATE'S STATEMENT OF CANDIDACY IS IN SUBSTANTIAL COMPLIANCE WITH THE ELECTION CODE IN THE DESCRIPTION OF THE OFFICE.

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).

Section 7–10 of the Election Code governs the form and content of statements of candidacy. 10 ILCS 5/7-10. Section 7–10 states, “[t]his statement shall set out ... the office for which he is a candidate...”. *Id. See also, 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”).

Where there is no basis for confusion as to the office sought or any conflict between the statement of candidacy and the nominating petition in this regard, the description of the office sought in a statement of candidacy is in substantial compliance with the Election Code. *Id.* at 53, 344 N.E.2d at 443. *See also, Sullivan v. Cty. Officers Electoral Bd. of Du Page Cty.*, 225 Ill. App. 3d 691, 693, 588 N.E.2d 475, 477 (2d Dist. 1992).

Here, the Objector alleged that the Candidate inadequately described the Office as “Clerk of the Circuit Court in the County-Wide district” in the Statement of Candidacy. The Objector alleged that the proper description of the Office is “Clerk of the Circuit Court, DuPage County, Illinois, Eighteenth Judicial Circuit.”

There is only one Office of Clerk of the Circuit Court in DuPage County. *See* 705 ILCS 105/1 (“One clerk of the circuit court in each county shall be elected as provided by law, and

shall hold office until a successor is elected and qualified.”). Moreover, the 18th Judicial Circuit Court is the only Judicial Circuit Court in DuPage County. *See* 705 ILCS 35/1 (“Eighteenth Circuit--The county of DuPage”). Further, there was no evidence or testimony provided by the Objector that the designation of the Office in the Candidate’s Statement of Candidacy created confusion on the part of any signors of the Candidate’s Nominating Petition.

The description of the Office in the Candidate’s Statement of Candidacy does not provide a basis of confusion concerning the office sought. Moreover, this description of the Office does not conflict with the description of the Office set forth in the Nominating Petition. *See Lewis*, at 53, 344 N.E.2d 443. Therefore, the description of the Office set forth in the Candidate’s Statement of Candidacy is in substantial compliance with section 7-10 of the Election Code and the Objector’s objection in this regard is **OVERRULED**.

II. WHETHER THE CANDIDATE’S NOMINATING PETITION IS IN SUBSTANTIAL COMPLIANCE WITH THE ELECTION CODE IN THE DESCRIPTION OF THE OFFICE.

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.

Where there is no basis for confusion as to the office sought or any conflict between the statement of candidacy and the nominating petition in this regard, the description of the office sought in a nominating petition is in substantial compliance with the Election Code. *Lewis*, 63 Ill. 2d at 53, 344 N.E.2d at 443. *See also, Sullivan*, 225 Ill. App. 3d at 693, 588 N.E.2d at 477.

Here, the Objector alleges that the Candidate failed to adequately describe the Office as “the county-wide district of Clerk of the Circuit Court” in his Nominating Petition. The Objector alleges that the proper description of the Office is “Clerk of the Circuit Court, DuPage County, Illinois, Eighteenth Judicial Circuit.”

As discussed supra, there is only one Office of Clerk of the Circuit Court in DuPage County. *See* 705 ILCS 105/1; *see also*, 10 ILCS 5/7-10. Moreover, the 18th Judicial Circuit Court is the only Judicial Circuit Court in DuPage County. *See* 705 ILCS 35/1. Further, there was no evidence or testimony provided by the Objector that the designation of the Office in the Candidate’s Nominating Petition created confusion on the part of any signors of the Candidate’s Nominating Petition.

The description of the Office in the Candidate’s Nominating Petition does not provide a basis of confusion concerning the office sought. Moreover, this description of the Office does not conflict with the description of the Office set forth in the Statement of Candidacy. *See Lewis*, at 53, 344 N.E.2d 443. Therefore, the description of the Office set forth in the Candidate’s Nominating Petition is in substantial compliance with section 7-10 of the Election Code and the Objector’s objection in this regard is **OVERRULED**.

CONCLUSION AND ORDER

Based upon the rulings made herein, it is the decision of the Electoral Board that the Candidate’s name, Christopher English, be printed on the Official November 8, 2016 General

Election Ballot for the Office of Clerk of the Circuit Court of DuPage County, Illinois, Eighteenth Judicial Circuit, 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

/s/ John Boske

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 DUPAGE COUNTY'S ELECTORAL BOARD DECISION IN CASE No. 2016 G 02 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