

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

MARTIN C. MANION, SR. and)	
LOUIS WITTMER)	
)	
Petitioner-Objectors,)	Docket No. 2016 G 03
)	
v.)	
)	
TIMOTHY GOODCASE,)	
)	
Respondent-Candidate.)	

ELECTORAL BOARD DECISION

The DuPage County Electoral Board, consisting of Cathy Terrill, Chairperson, and James Lowe and John Boske, Members; 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, Timothy Goodcase, (the “Candidate”) filed Nominating Papers for the Office of County Board Member in District 2 in the County of DuPage, State of Illinois, “Constitution 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 his Verified Objectors’ Petition (the “Petition”) with the Election Commission on July 5, 2016 identified in the Record as Exhibit B.

A Call Notice for Hearing was issued on July 6, 2016, by Cathy Terrill, Chairperson of the Electoral Board, identified in the Record as Exhibit C. The Candidate and the Objector were

personally served with the Call Notice by the DuPage County Sheriff's Office, in accordance with section 10-10 of the Election Code, as identified in the Record as Exhibit D. An Appearance was filed by the Candidate, identified in the Record as Exhibit E. An Appearance of the Objectors Attorney was filed and is identified in the Record as Exhibit F. The Objector filed a pre-hearing brief, identified for the Record as Exhibit G. The Election Commission Staff prepared an "Election Commission Staff Findings" ("Staff Findings") concerning the Objectors' individual signature objections, identified for the Record as Exhibit H.

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 July 11, 2016. The Electoral Board convened this matter on July 11, 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. On July 11, 2016, The Electoral Board continued this matter for a hearing on the merits of the Objectors' Petition to July 28, 2016.

On July 28, 2016, this matter proceeded to a hearing on the merits of the Petition. The Objectors' Attorney and the Candidate were present.

LEGAL ANALYSIS OF ISSUES PRESENTED

The Objectors raised the following objections in their Petition:

(1) Whether the Candidate has the minimum number of valid signatures required for the Office in the amount of 2,692.

(2) Whether the Candidate failed to complete the proper Statement of Economic Interests form; and if so, whether such failure is in violation of the Election Code precluding the Candidate's name from being printed on the Official Ballot.

(3) Whether the Candidate failed to file a receipt of a Statement of Economic Interests with the DuPage County Election Commission; and if so, whether such failure is in violation of the Election Code precluding the Candidate's name from being printed on the Official Ballot.

(4) Whether the Candidate failed to fill the full slate of candidates for DuPage County Board District 2; and if so, whether such failure is in violation of the Election Code precluding the Candidate's name from being printed on the Official Ballot.

I. WHETHER THE CANDIDATE HAS THE MINIMUM NUMBER OF VALID SIGNATURES REQUIRED FOR THE OFFICE IN THE AMOUNT OF 2,692.

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 also 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).

The Candidate is required to have no fewer than 2,692 valid signatures according to the minimum signature requirement set forth in section 10-2 of the Election Code for the Office. 10 ILCS 5/10-2. The Objectors raise a number of objections to individual signers set forth in the Candidate’s Nominating Petition including: (1) certain signers are not registered voters at address shown in the Nominating Petition, in violation of section 3-1.2 of the Election Code; (2) certain signers are not genuine and are not in proper person, in violation of section 10-4 of the Election Code; (3) certain signers do not reside in the political subdivision for the Office sought in violation of section 10-4 of the Election Code; (4) certain signers signed the nominating petition more than one time in violation of section 10-2 of the Election Code; and (5) a Nominating Petition sheet was not properly notarized, in violation of section 10-4 of the Election Code.

Under Rule 9 of the Electoral Board Rules, Election Commission Staff performed a records check and prepared Staff Findings making recommendations to sustain a number of the Objectors’ individual signature objections. Election Commission Staff determined that the Candidate’s Nominating Petition contains a total of 1,267 valid signatures which is below 2,692 valid signatures required for the Office. The Objectors and the Candidate received a copy of the Staff Findings on July 25, 2016. Under Electoral Board Rule 10, the Objectors and the Candidate were required to file specific objections to the Staff Findings Report within 24 hours of receipt thereof to preserve any objections thereto. The Candidate filed no timely objections to the Staff Findings.

At the hearing, the Candidate and the Objectors stipulated to the Staff Findings, which stipulation was accepted by the Electoral Board. Based on the Parties stipulation, the Electoral Board was not required to consider the 77 signature objections deferred by Election Commission Staff to the Electoral Board because even if all deferred objections were overruled, the Candidate's Nominating Petition would still contain less than 2,692 valid signatures required for the Office.

Therefore, Electoral Board determines based on the Staff Findings and the stipulation of the Parties that the Candidate's Nominating Petition does not contain the minimum number of valid signatures required for the Office in the amount of 2,692. Accordingly, the objection in this regard is **SUSTAINED**.

II. WHETHER THE CANDIDATE FAILED TO COMPLETE THE PROPER STATEMENT OF ECONOMIC INTERESTS FORM; AND IF SO; WHETHER SUCH FAILURE IS A VIOLATION OF THE ELECTION CODE PRECLUDING THE CANDIDATE'S NAME FROM BEING PRINTED ON THE OFFICIAL BALLOT.

The Illinois Ethics Act provides two different statements of economic interests – one for state-level candidates, which requires disclosure of the Candidate's interests related to the State of Illinois, and one for local office, which requires disclosure of the Candidate's interests related to the local unit of government at issue. 5 ILCS 420/4A-103 (state-level to be filed with the Secretary of State), 5 ILCS 420/4A-104 (local units of government to be filed with the County Clerk).

It is well established that the filing of the state-level Statement of Economic Interests form under section 4A-103 of the Ethics Act for an Office that requires a local level Statement of Economic Interests form under section 4A-104 of the Ethics Act requires invalidation of a Nominating Petition, in its entirety. *See Cortez v. Mun. Officers Electoral Bd. For Calumet City,*

2013 IL App (1st) 130442 (1st Dist. 2013).

In *Cortez*, a candidate sought municipal office but completed the state-level statement of economic interests form rather than the required form for local units of government. *Id.* The court explained that the very purpose of the statement of economic interests is to make certain information available to the public regarding either actual or potential conflicts of interest with the unit of government for which the candidate is seeking office. *Id.* The court further explained that allowing a candidate to complete the incorrect form would both allow a candidate to avoid disclosing information related to the office which he seeks while simultaneously insulating the candidate from perjury. *Id.* The court determined that since the very purpose of requiring the local form would be circumvented by allowing a candidate to avoid completing it when running for local office, substantial compliance is not met by a local candidate completing the state-level form. *Id.* Consequently, the court affirmed the decision of the electoral board in striking of the candidate's name from the ballot on this basis. *Id.*

In this matter, the Record shows that the Candidate filed the state-level Statement of Economic Interests form under section 4A-103 of the Ethics Act as opposed to the required local level Statement of Economic Interests form under section 4A-104 of the Ethics Act. Accordingly, the objection in this regard is **SUSTAINED**.

III. WHETHER THE CANDIDATE FAILED TO FILE A RECEIPT OF A STATEMENT OF ECONOMIC INTERESTS WITH THE DU PAGE COUNTY ELECTION COMMISSION; AND IF SO, WHETHER SUCH FAILURE IS IN VIOLATION OF THE ELECTION CODE PRECLUDING THE CANDIDATE'S NAME FROM BEING PRINTED ON THE OFFICIAL BALLOT.

Section 10-5 of the Election Code provides:

If the nomination papers of any candidate and the statement of economic interest of that candidate are not required to be filed with the same officer, *the candidate must file with the officer with whom the nomination papers are filed a receipt*

from the officer with whom the statement of economic interests is filed showing the date on which such statement was filed.

10 ILCS 5/10-5 (emphasis added). It is well-established that failure to file the receipt from the officer with whom the statement of economic interests is filed showing the date on which such statement was filed with the election authority requires the invalidation of a nominating petition, in its entirety. *Bolger v. Electoral Bd. of City of McHenry*, 210 Ill. App. 3d 958, 960, 569 N.E.2d 628, 629 (2d Dist. 1991); *Powell v. E. St. Louis Electoral Bd.*, 337 Ill. App. 3d 334, 785 N.E.2d 1014 (5th Dist. 2003).

In this case, the Candidate was required to file with the Election Commission a receipt from the DuPage County Clerk showing the date on which the Candidate's Statement of Economic Interests was filed with the DuPage County Clerk. The Record shows that the Candidate did not file with the Election Commission a receipt from the DuPage County Clerk showing the date on which the Candidate's Statement of Economic Interests was filed with the DuPage County Clerk. Accordingly, the objection in this regard is **SUSTAINED**.

IV. WHETHER THE CANDIDATE FAILED TO FILL THE FULL SLATE OF CANDIDATES FOR DU PAGE COUNTY BOARD DISTRICT 2; AND IF SO, WHETHER SUCH FAILURE IS IN VIOLATION OF THE ELECTION CODE PRECLUDING THE CANDIDATE'S NAME FROM BEING PRINTED ON THE OFFICIAL BALLOT.

The Election Code requires that any group of individuals desiring to form a new political party in a given district or political subdivision file a full slate of candidates for that district or political subdivision (10 ILCS 5/10-2; *See Reed v. Kusper*, 154 Ill. 2d 77 (1992), *Green Party v. Henrichs*, 822 N.E.2d 910 (3d Dist. 2005)) and it has been held that the failure to do so requires invalidation of a candidate's nominating petition in its entirety. *Id.*

Here, the Record shows that there are two Offices for DuPage County Board District 2 eligible for election in this election cycle. The Record also shows that the new "Constitutional

Party” DuPage County Board District 2 attempted to fill one of the two Offices for DuPage County Board District 2 eligible for election in this election cycle.

Recently, the Federal District Court for the Northern District of Illinois determined that the “full slate” requirement in section 10-2 of the Election Code is unconstitutional in violation of the First Amendment. *See Libertarian Party of Illinois v. Illinois State Bd. of Elections*, No. 12-CV-02511, 2016 WL 723076 (N.D. Ill. Feb. 24, 2016). *Libertarian Party of Illinois* is on appeal to the Seventh Circuit Appellate Court and the appeal is pending.

Notwithstanding, the Electoral Board is an administrative agency and “an administrative agency lacks the authority to invalidate a statute on constitutional grounds *or to question its validity.*” *Carpetland U.S.A., Inc. v. Illinois Dep’t of Employment Sec.*, 201 Ill. 2d 351, 397, 776 N.E.2d 166, 192 (2002) (emphasis added). Consequently, while a constitutional issue is required to be raised at the Electoral Board level to preserve the issue on appeal, the Electoral Board is without authority to consider constitutional issues. *Id.*

While the Electoral Board cannot and does not question the validity of the full slate requirement set forth in section 10-2 of the Election Code, the Electoral Board is mindful that Illinois courts begin with the presumption that a statute is constitutional and that, if reasonably possible, Illinois courts must construe a statute so as to affirm its constitutionality and validity. *People v. Hernandez*, 2016 IL 118672, ¶ 10, 51 N.E.3d 794, 798.

For this reason, the Electoral Board finds, as a matter of first impression, that where a new political party lists a candidate for one of two Offices for a district or political subdivision, there is substantial compliance with the mandatory requirements of section 10-2 of the Election Code. *See generally, Samuelson v. Cook Cty. Officers Electoral Bd.*, 2012 IL App (1st) 120581, ¶ 32, 969 N.E.2d 468, 477 (finding that substantial, not strict, compliance is the proper standard

for evaluating violations of section 7–10 of the Election Code).

Accordingly, the 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, Timothy Goodcase, not be printed on the Official Ballot for the Office of County Board Member in District 2 in the County of DuPage, State of Illinois, “Constitution Party” to be voted on at the November 8, 2016 General Election.

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/ Cathy Terrill
CATHY TERRILL, CHAIRPERSON

/s/ James Lowe
JAMES LOWE, MEMBER

/s/ John Boske
JOHN BOSKE, MEMBER

Dated: August 10, 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 03 was served upon the Parties pursuant to section 10-10 of the Election Code on August 10, 2016.

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