

**BEFORE THE DULY CONSTITUTED ELECTORAL BOARD FOR THE HEARING  
AND PASSING UPON OBJECTIONS TO THE NOMINATION OBJECTIONS TO  
NOMINATION PAPERS OF CANDIDATES FOR ELECTION TO THE OFFICE OF  
BOARD OF EDUCATION MEMBER FOR FENTON COMMUNITY HIGH SCHOOL  
DISTRICT 100**

Jon Aguilar,	)	
	)	Case No: 2017 CG 004
Petitioner/Objector,	)	
	)	
vs.	)	
	)	
David Vogel,	)	
	)	
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, David Vogel, (the “Candidate”) filed Nominating Papers for the Office of Board of Education Member for Fenton Community High School District 100 in the County of DuPage, State of Illinois, (the “Office”) to be voted on at the April 4, 2017, Consolidated Election with the (“Election Authority”) identified in the Record as Exhibit A. The Objector timely filed his Verified Objector’s Petition (the “Objector’s Petition”) with the Election Commission on December 27, 2016 identified in the Record as Exhibit B.

A Call Notice for Hearing and a copy of the proposed Rules was issued on December 29, 2016, by Cathy Terrill, Chairperson of the Electoral Board, identified in the Record as Exhibit C. The Candidate and the Objector were served with the Call Notice and a copy of the proposed Rules

by Registered Mail, as evidenced by the Receipt for said service, identified in the Record as Exhibit D. The Candidate and Objector were personally served with the Call Notice and copy of the proposed Rules by the DuPage County Sheriff's Office, in accordance with section 10-10 of the Election Code, as identified in the Record as Exhibit E. An Appearance was filed by Counsel for the Objector, identified in the Record as Exhibit F. An Appearance of the Candidate and Candidate's Attorney was filed and is identified in the Record as Exhibit G.

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 January 3, 2017. The Electoral Board convened this matter on January 3, 2017 for the purpose of: (1) approving and adopting the Electoral Board Rules and (2) continuing the matter to a date certain for hearing on the merits of the Petition. The Parties were asked if they had received a copy of the Proposed Rules. There were no objections to the Proposed Rules and the Proposed Rules were adopted by the Electoral Board. On January 3, 2017, the Electoral Board continued this matter for a hearing on the merits of the Objector's Petition to January 11, 2017.

The Election Commission Staff prepared an "Election Commission Staff Findings Report" ("Staff Findings Report") concerning the Objector's individual signature objections, identified for the Record as Exhibit I, which were served on the Parties by email on January 6, 2017. The Objector filed written objections to the Staff Findings Report as required by Rule 10 of the Electoral Board Rules identified for the Record as Exhibit H. The Candidate did not file written objections to the Staff Findings Report.

On January 11, 2017, this matter proceeded to a hearing on the merits of the Petition. The Objector's Attorney and the Candidate and the Candidate's Attorney were present.

**LEGAL ANALYSIS OF ISSUE PRESENTED**

**WHETHER THE CANDIDATE HAS THE MINIMUM NUMBER 50 OF VALID SIGNATURES REQUIRED FOR 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 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 50 valid signatures according to the minimum signature requirement set forth in section 10-3 of the Election Code for the Office. 10 ILCS 5/10-3. The Objector has raised 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) and certain signers do not reside in the political subdivision for the Office sought 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 Objector's individual signature objections. The Election Commission Staff determined that the Candidate's Nominating Petition contains a total of 47 valid signatures which is below 50 valid signatures required for the Office. The Objector and the Candidate received a copy of the Staff Findings on January 9, 2017. Under Electoral Board Rule 10, the Objector 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 Objector filed timely objections to the Staff Findings Report and the Candidate did not.

The Electoral Board considered the Objector's Rule 10 Motion and denied the Motion in its entirety.

The Candidate attempted to rehabilitate certain signatures through testimony and through affidavits identified in the Record as Exhibits J-M over the continuing objection of the Objector. However, the Candidate's arguments in this regard are procedurally defaulted and are not considered by the Electoral Board as being untimely under Rule 10. The purpose and intent of Rule 10 of the Electoral Board Rules is to prevent unfair surprise and hearing by ambush. *See generally, Jackson v. Mount Pisgah Missionary Baptist Church Deacon Bd.*, 2016 IL App (1st) 143045, ¶ 63, 59 N.E.3d 76, 91 (finding that pre-trial disclosure rule is designed to give those involved in the trial process a degree of certainty and predictability that furthers the administration of justice and eliminates trial by ambush). Therefore, the Electoral Board's consideration of the

Candidate's untimely arguments challenging the Staff Findings Report would result in exactly the type of hearing by ambush that Rule 10 is designed to prevent. *See id.*

In *Kowalski v. Cook Cty. Officers Electoral Bd.*, 2016 IL App (1st) 160217-U, a recent Rule 23 Order, the First District Appellate Court considered an identical circumstance involving Rule 8 of the Cook County Officers Electoral Board.<sup>1</sup> In *Kowalski*, the candidate failed to file written objections to the records examination report prepared by staff for the Cook County Officer's Electoral Board which was required under the Cook County Officer's Electoral Board's Rule 8. *Id.* The candidate attempted to file an untimely Rule 8 motion to challenge the records examination report. *Id.* The hearing officer determined that the candidate's motion was untimely under Rule 8 and that the candidate therefore waived her challenge to the records examination report. *Id.* This determination was accepted and adopted by the Cook County Officer's Electoral Board. *Id.* Based on the findings in the records examination report, the Cook County Officer's Electoral Board determined that the candidate's nominating petition did not contain the minimum number of valid signatures required for the office and ordered that her name not be printed on the ballot for the election. *Id.*

The court in *Kowalski* affirmed the decision of the Cook County Officer's Electoral Board and stated:

By [the candidate's] very own failure to comply with Rule 8, which she concedes, [the candidate] divested herself of the ability to be heard. A timely filed Rule 8 motion was her opportunity to make a record, to raise the allegations of impropriety she claims now before this court, and to potentially rehabilitate her candidacy. She chose not to pursue that opportunity. Because of that, there is nothing that can be done now.

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<sup>1</sup> Although the Electoral Board cannot cite a Rule 23 nonprecedential decision as authority, the Electoral Board is authorized to cite it as an example of a court's reasoning and as a reasonability check. *In re Estate of LaPlume*, 2014 IL App (2d) 130945, ¶ 24, 24 N.E.3d 792, 798.

By her failure to file a timely Rule 8 motion pursuant to the Board's rules of procedure, [the candidate], by her own actions, divested herself of the ability to challenge the Board's determination. [The candidate] provides us with no legitimate legal basis to go back in time, and we can do nothing but affirm the Board's decision.

*Id.* at ¶¶ 13-14. (alteration added).

In this matter, unlike *Kowalski*, the Candidate did not attempt to file a Rule 10 Motion. Instead, the Candidate proceeded to unfairly surprise the Objector with testimony and affidavits presented for the first time at the January 11, 2017 hearing in clear violation of Rule 10.

The Candidate admonished the Electoral Board that he should be excused from the requirements of Rule 10 because he is not an attorney and lacks an understanding of the Electoral Board's administrative hearing procedural rules. The Candidate's admonishment is ill-advised for many reasons. First, the Candidate is represented by Counsel in this matter. Second, it is well established that "*pro se* litigants are presumed to have full knowledge of applicable court rules and procedures, including procedural deadlines with respect to filing motions." *See Steinbrecher v. Steinbrecher*, 197 Ill. 2d 514, 528, 759 N.E.2d 509, 517 (2001). Third, the Candidate was provided a copy of the Electoral Board Rules at the time of service of the Objection Petition and was additionally asked by the Electoral Board if he was in receipt of a copy of the Electoral Board Rules at the time of adoption on January 3, 2011. The Candidate raised no objection to the Electoral Board Rule 10. Further, the Candidate is an incumbent Candidate on a School Board of Education and is presumed to have some familiarity with administrative rules. Under the Illinois School Code, it is an express power of school boards to adopt and enforce all necessary administrative rules for the management and government of the public schools of their district. 105 ILCS 5/10-20.5. For all these reasons, the Candidate's violation of Rule 10 cannot be excused.

Therefore, Electoral Board determines, based on the Objector's Petition and Staff Findings which the Electoral Board adopted, that the Candidate's Nominating Petition does not contain the

minimum number of 50 valid signatures required for the Office. Accordingly, the Objector's Petition 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, David Vogel, not be printed on the Official Ballot for the Office of in the Board of Education Member for Fenton Community High School District 100 County of DuPage, State of Illinois, to be voted on at the April 4, 2017, Consolidated 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: January 13, 2017

**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. 2017 CG 004 was served upon the Parties pursuant to section 10-10 of the Election Code on January 13, 2017.

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