

**BEFORE THE DULY CONSTITUTED ELECTORAL BOARD FOR THE HEARING
AND PASSING UPON OBJECTIONS TO THE NOMINATION PAPERS FOR THE
CANDIDATES FOR THE OFFICE OF PRESIDENT OF THE FOREST PRESERVE
DISTRICT OF DUPAGE COUNTY IN THE STATE OF ILLINOIS**

Joseph Amodeo,)	
)	
Petitioner-Objector,)	
)	2018 P 002
vs.)	
)	
Daniel Hebreard,)	
)	
Respondent-Candidate.)	

ELECTORAL BOARD DECISION

The DuPage County Electoral Board, consisting of Cathy Terrill, Chairperson, and James Lowe and Edward Charles Maher, 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, Daniel Hebreard, (the "Candidate") filed Nominating Papers for the Office of President of the Forest Preserve District, in the County of DuPage, State of Illinois, (the "Office") to be voted on at the March 20, 2018, General Primary Election with the ("Election Authority") identified in the Record as Exhibit A. The Objector timely filed his Verified Objector's Petition (the "Petition") with the Election Commission on December 11, 2017 identified in the Record as Exhibit B.

A Call Notice for Hearing and a copy of the proposed Rules was issued on December 12, 2017, 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 the 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 of the Objector and Objector's Counsel was filed and is identified in the Record as Exhibit F. An Appearance of the Candidate and Candidate's Counsel was filed and is identified in the Record as Exhibit G. The Candidate filed a Motion to Dismiss and Strike identified in the Record as Exhibit H. Subpoenas for testimony were issued to specific individuals identified in the Record as Exhibits I, J and K. The Objector filed his Response to the Candidate's Motion to Dismiss and Strike identified in the Record as Exhibit L. The Candidate filed his Reply in support of his Motion to Dismiss and Strike identified in the Record as Exhibit M. The Objector filed a Motion to Quash the Candidate's Notice to Appear identified in the Record as Exhibit N. The Objector filed a Motion to Strike Affidavits identified in the Record as Exhibit O. The Candidate filed a Response to Objector's Motion to Quash identified in the Record as Exhibit P. The Candidate filed a Response to Objector's Motion to Strike Affidavits identified in the Record as Exhibit Q. The Objector filed a Reply in support of the Motion to strike Affidavits identified in the Record as Exhibit R.¹ At the evidentiary hearing, the Candidate introduced, by stipulation of the Parties, a number of Affidavits identified in the Record as Exhibit T.

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 December 18, 2017. The Electoral Board convened this matter on December 18, 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. On December 18, 2017, The Electoral Board continued this matter for a hearing on the merits of the Objector's Petition to December 22, 2017.

¹ Exhibit S is a duplicate of Exhibit R.

On December 22, 2017, this matter proceeded to a hearing on the merits of the Petition. The Parties were present. On December 22, 2017, the evidentiary hearing was further continued to December 27, 2017. The Parties were present.

PRELIMINARY MOTIONS

(1) Candidate's Motion to Dismiss and Strike

The Candidate argues that the Objector's Petition does not sufficiently allege the nature of an objection. The Objector argues that his Petition satisfies the basic pleading requirements of Section 10-8 of the Election Code. 10 ILCS 5/10-8.

Finding

Section 10-8 provides in pertinent part:

The objector's petition shall give the objector's name and residence address, and *shall state fully the nature of the objections to the certificate of nomination or nomination papers or petitions in question*, and shall state the interest of the objector and shall state what relief is requested of the electoral board.

10 ILCS 5/10-8 (emphasis added). Here, the Objector has alleged that, "nowhere on the petition and nowhere on the Statement of Candidacy or elsewhere in the Nomination Papers does it state that the Candidate is seeking the office of the President of the Forest Preserve District of DuPage County" and that "your Objector states that nowhere on the Candidate's petitions does it state that voters of the Forest Preserve district of DuPage County were petitioning for the Candidate's name on the ballot" and that accordingly "taken as a whole fail to conform to the mandatory requirements clearly set out in Section 7-10 of the Election Code." See Exhibit A at ¶¶ 6-8.

From these allegations Objector has set forth the general nature of the objections to the Candidate's Nominating Papers that (1) the Candidate has not sufficiently designated the Office sought and (2) that the qualified primary electors' statement is not sufficient under Section 7-10 of the Election Code.

The Motion to Strike is **GRANTED**, as the Objector's Petition is fully compliant with the threshold requirements of the Election Code.

Indeed, much of the Candidate's Motion to Dismiss and Strike challenges the merits of these specific objections. However, the question to be resolved by the Electoral Board concerning the Candidate's Motion to Dismiss and Strike is only whether the nature of the objections have been stated in the Objector's Petition and not whether the objections have any merit as a matter of fact or law.

Accordingly, the Candidate's Motion to Dismiss and Strike is **DENIED**, without prejudice to the Candidate's ability to dispute the merits of the Objector's objections in the course of the evidentiary hearing.

(2) Objector's Motion to Quash Notice to Compel Appearance of Objector

The Candidate served on Objector's Counsel a "Notice to Compel Appearance and to Produce at Time of Trial and/or Hearing" for the attendance of Objector at the hearing under Illinois Supreme Court Rule 237. The Objector filed a Motion to Quash arguing that Candidate is precluded from serving an Illinois Supreme Court Rule 237 Notice because Candidate failed to request Objector's attendance at the initial scheduling hearing in this matter. The Objector relies on Electoral Board Rule 4 which authorizes the electoral Board to "[d]irect parties to appear...".

The Candidate argued that Electoral Board Rule 14, which provides "the Board will generally follow rules of practice, which prevail in the Circuit Court of DuPage County, Illinois", authorizes his use of Illinois Supreme Court Rule 237 to compel the attendance of the Objector at the hearing.

Finding

Illinois Supreme Court Rule 237 provides in pertinent part:

The appearance at the trial or other evidentiary hearing of a party or a person who at the time of trial or other evidentiary hearing is an officer, director, or employee of a party may be required by serving the party with a notice designating the person who is required to appear.

IL R S CT Rule 237. Additionally, Illinois Supreme Court Rule 237 is a rule of practice in the 18th Judicial Circuit Court, DuPage County.

There is nothing in the language of Electoral Board Rule 4 that requires the Candidate to request the Electoral Board order the Objector's attendance at the hearing and that the failure to do so precludes his use of Illinois Supreme Court Rule 237 to compel the attendance of the Objector at the hearing. Moreover, the Objector subscribed and swore to the truth of the allegations set forth in the Objector's Petition and it is permissible for the Candidate to compel the attendance of the Objector for the purpose of adverse or cross examination.

Accordingly, the Objector's Motion to Quash is **DENIED**.

(3) Objector's Motion to Strike Affidavits

The Objector argues that the Candidate submitted untimely Affidavits in violation of Electoral Board Rule 11(c), which requires that affidavits must be disclosed to the opposing party at least 24 hours prior to the introduction to the electoral Board at hearing. The Candidate concedes that the Affidavits were untimely, but only by a "very close" margin. The Candidate argues that the Objector had enough time to review the Candidate's submitted Affidavits.

Finding

The purpose of Rule 11(c) is to eliminate the unfair surprise of being presented affidavits on the day of hearing and to allow the opposing Party to have a subpoena issued to the affiant for the purpose of cross or adverse examination. Given Candidate's concession that the affidavits

were untimely disclosed in violation of Electoral Board Rule 11(c), the Objector's Motion to Strike the Affidavits is **GRANTED**.

OBJECTIONS

- (1) **Whether the Candidate's description of the Office sought in his statement and of Candidacy and Nominating Petitions is in substantial compliance with Section 7-10 of the Election Code where the description "Forest Preserve President" does not include the word "District". 10 ILCS 5/7-10.**

Finding

It is well-established that "ballot [access] is a substantial right and not to be lightly denied." *Siegel v. Lake County Officers Electoral Board*, 385 Ill. App. 3d 452, 460-61, 895 N.E.2d 69 (2d Dist. 2008). The Electoral Board is required to "read cautiously when construing statutory language which restrict[s] the people's right to endorse and nominate the candidate of their choice." *Lucas v. Lakin*, 175 Ill. 2d 166, 176, 676 N.E.2d 637 (1997). Section 7-10 of the Election Code requires a candidate to set forth "the office" sought in the Nominating Petition and in the Statement of Candidacy. 10 ILCS 5/7-10.

Substantial compliance with Section 7-10 is what is required concerning description of the office sought. *Samuelson v. Cook County Officers Electoral Bd.*, 2012 IL App (1st) 120581, 969 N.E.2d 468 (substantial compliance with requirements of Section 7-10 of the Election Code required). In this regard, substantial compliance is determined by examining whether the description of the office sought in the Nominating Papers creates a basis for confusion for signers of the Nominating Petition as to the Office sought by the Candidate. *Heabler v. Mun. Officers Electoral Bd. of Vill. of Lakemoor*, 338 Ill. App. 3d 1059, 789 N.E.2d 854 (2d Dist. 2003).

Here, there is no dispute that the Office at issue is the Office of President of the Forest Preserve District in DuPage County. The Candidate's Nominating Papers indicates an Office sought of "Forest Preserve President", but do not include the word "District" in the description of the Office. In this regard, the Candidate's description of the Office does not strictly comply with Section 7-10 of the Election Code. However, the question before the Electoral Board is whether the description of the Office is in substantial compliance with the Election Code. *Samuelson*, 2012 IL App (1st) 120581, 969 N.E.2d 468.

The Electoral Board finds that while the description of the Office is not in strict compliance with the Election Code, the description of the Office sought in the Candidate's Nominating Papers is in substantial compliance with the Election Code because, under the circumstances, the Nominating Papers do not create a reasonable basis for confusion as to the Office sought by the Candidate. *Heabler*, 338 Ill. App. 3d 1059, 789 N.E.2d 854.

There is only one Office of "Forest Preserve President" that exists in DuPage County and that is within the Forest Preserve District. There is no "county" Office of Forest Preserve President. The Forest Preserve District is coterminous with the territorial boundaries of DuPage County. The Objector submitted Affidavits of certain individual signers of the Candidate's Nominating Petition indicating that they experienced confusion regarding the description of the Office sought. Likewise, the Candidate's submitted Affidavits of certain individual signers of the Candidate's Nominating Petition suggesting that they experienced no confusion regarding the description of the Office sought. Given that there is no county office of Forest Preserve President, by law, there is no objective reasonable basis for confusion that the Candidate seeks the Office of Forest Preserve President of the Forest Preserve District of DuPage County. Accordingly, the Objector's Objection in this regard is hereby **OVERRULED**.

- (2) **Whether the qualified primary electors' petition statement is in substantial compliance with Section 7-10 of the Election Code where it indicates the qualified primary electors are qualified primary electors' of "DuPage County" as opposed to the "Forest Preserve District of DuPage County".**

Finding

A qualified primary electors' statement is also a requirement of Section 7-10 of the Election Code. 10 ILCS 5/7-10. Accordingly, substantial compliance with Section 7-10 is required for the qualified primary electors' statement. *Samuelson*, 2012 IL App (1st) 120581, 969 N.E.2d 468. The qualified primary electors' statement must include a description of the jurisdiction in which the Office is sought. 10 ILCS 5/7-10.

There is no dispute that the jurisdiction in which the Office is sought is the Forest Preserve District of DuPage County. The Forest Preserve District is coterminous with the territorial boundaries of DuPage County. The jurisdiction indicated in the qualified primary electors' statement in the Candidate's Nominating Petition is, "DuPage County" and not, the "Forest Preserve District". Accordingly, the Electoral Board finds that the qualified primary electors' statement does not strictly comply with Section 7-10 of the Election Code. However, the Electoral Board finds that the qualified primary electors' statement in the Candidate's Nominating Petition does substantially comply with Section 7-10 of the Election Code, under the circumstances. Specifically, because the Forest Preserve District is coterminous with the territorial boundaries of DuPage County the exact same qualified primary electors are implicated concerning the required qualified primary electors' statement. Accordingly, the Objector's Objection in this regard is hereby **OVERRULED**.

CONCLUSION AND ORDER

Based upon the rulings made herein, it is the decision of the Electoral Board that the Objector's Petition is **DENIED** and that the Candidate's name, Daniel Hebreard, shall be printed on the Official Ballot for the Office of President of the Forest Preserve District of DuPage County, State of Illinois, to be voted on at the March 20, 2018, General Primary Election.

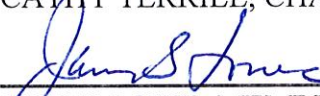
REVIEW OF ELECTORAL BOARD DECISION

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



CATHY TERRILL, CHAIRPERSON



JAMES LOWE, MEMBER



EDWARD CHARLES MAHER, PUBLIC MEMBER

Dated: December 27, 2017

CERTIFICATE OF SERVICE

I, Lori Kantner, Executive Assistant to the Electoral Board, certify that a copy of the DUPAGE COUNTY'S ELECTORAL BOARD DECISION IN CASE No. 2018 P 002 was served upon the Parties pursuant to Section 10-10 of the Election Code on December 27, 2017.



Lori Kantner, Executive Assistant to the
DuPage County Electoral Board