

STATE BOARD OF ELECTIONS
STATE OF ILLINOIS

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BOARD MEMBERS
Bryan A. Schneider, Chairman
Wanda L. Rednour, Vice Chairman
Patrick A. Brady
John R. Keith
William M. McGuffage
Albert S. Porter
Jesse R. Smart
Robert J. Walters

EXECUTIVE DIRECTOR
Daniel W. White

AGENDA
State Board of Elections
Sitting as the Duly Authorized
State Officers Electoral Board
Friday, June 11, 2010
10:30 a.m.

James R. Thompson Center – Suite 14-100
Chicago, Illinois
and via videoconference
1020 South Spring Street
Springfield, Illinois

1. Convene as the State Officers Electoral Board.
2. Approval of the minutes from the May 3 meeting.
3. Consideration of objections to resolutions to fill vacancies in nomination for the November 2, 2010 General Election; (material sent under separate cover)
 - a. *Pollard v. Warner*, 10SOEBGE100;
 - b. *Marquardt v. Grissoffi*, 10SOEBGE101;
 - c. *Kvernes v. Schorfheide*, 10SOEBGE102;
 - d. *Fowler v. Campbell*, 10SOEBGE103;
 - e. *Jenkins v. Wojcik*, 10SOEBGE500.
4. Other business.
5. Recess as the State Officers Electoral Board until Tuesday, July 6, 2010 at 3:30 p.m. or until call of the Chairman, whichever occurs first.

STATE OFFICERS ELECTORAL BOARD
Special Board Meeting Via Videoconference
Monday, May 3, 2009

MINUTES

PRESENT:

Bryan A. Schneider, Chairman
Wanda L. Rednour, Vice Chairman
Patrick A. Brady, Member
John R. Keith, Member
William M. McGuffage, Member
Albert S. Porter, Member
Jesse R. Smart, Member
Robert J. Walters, Member

ALSO PRESENT:

Daniel W. White, Executive Director
Rupert Borgsmiller, Assistant Executive Director
Steve Sandvoss, General Counsel
Amy Calvin, Administrative Specialist II

The special meeting of the State Officers Electoral Board was called to order via videoconference means at 3:30 p.m. with all Members present. Chairman Schneider and Members Brady, McGuffage and Porter were present in the Chicago office and Members Keith, Smart and Walters were present in the Springfield office. Vice Chairman Rednour was present via teleconference.

The first item on the agenda was to call cases and accept appearances for objections to resolutions to fill vacancies in nomination for the November 2, 2010 General Election. The General Counsel called the following cases:

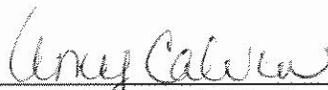
- a. *Pollard v. Warner*, 10SOEBGE10 – Michael Kasper present on behalf of the objector and John Fogarty present on behalf of the candidate;
- b. *Marquardt v. Grissoffi*, 10SOEBGE101 – John Fogarty present on behalf of the objector and Courtney Nottage on behalf of the candidate;
- c. *Kvernes v. Schorfheide*, 10SOEBGE102 – Andrew Finko present on behalf of the objector and Michael Kasper present on behalf of the candidate;
- d. *Fowler v. Campbell*, 10SOEBGE103 – Michael Kasper present on behalf of the objector and John Fogarty present on behalf of the candidate;
- e. *Jenkins v. Wojcik*, 10SOEBGE500 – Courtney Nottage present on behalf of the objector and Burton Odelson present on behalf of the candidate.

The General Counsel presented the Rules of Procedure for the State Officers Electoral Board. Discussion ensued concerning the stricken language on page five under item eight, Subpoenas. The General Counsel indicated the first sentence the word 'Chairman' was struck in error and will be re-inserted and the word 'Board' will be removed. The remainder of the stricken language in the paragraph will also be re-inserted and the very last sentence removed. Member Brady moved to approve the Rules of Procedure with the changes outlined by the General Counsel. Member Porter seconded the motion which passed unanimously.

The next item was authorization of the General Counsel to appoint hearing officers and asked for the appointment of Kelly McCloskey Cherf and David Herman. Member Brady moved to authorize the General Counsel to appoint the hearing examiners. Member Smart seconded the motion which passed unanimously.

With there being no further business before the State Officers Electoral Board Member Brady moved to recess until Monday, May 17, 2010 at 10:30 a.m. or until call of the Chairman whichever occurs first and reconvene as the State Board of Elections. Member Porter seconded the motion which passed unanimously. The meeting recessed at 3:57 p.m.

Respectfully submitted,



Amy Calvin, Administrative Specialist II



Daniel W. White, Executive Director

**BEFORE THE DULY CONSTITUTED ELECTORAL BOARD FOR THE HEARING
AND PASSING UPON OBJECTIONS TO THE NOMINATION PAPERS FOR
CANDIDATES FOR THE OFFICE OF REPRESENTATIVE IN THE GENERAL
ASSEMBLY FOR THE 102nd REPRESENTATIVE DISTRICT, STATE OF ILLINOIS**

Randy D. Pollard)
)
Petitioner-Objector,)
)
vs.)
)
John Warner,)
)
Respondent-Candidate.)

PRINCIPAL OFFICE
STATE BOARD OF ELECTIONS
10 APR 26 AM 11:04

VERIFIED OBJECTOR’S PETITION

Now comes Randy D. Pollard (hereinafter referred to as the “Objector”), and states as follows:

1. Randy D. Pollard resides at 2517 Mabry Lane, Vandalia, IL 62471, Fayette County, in the One Hundred Second Representative District of the State of Illinois; that he is duly qualified, registered and a legal voter at such address; that his interest in filing the following objections is that of a citizen desirous of seeing to it that the laws governing the filing of nomination papers for a Candidate for Election to the Office of Representative in the General Assembly from the One Hundred Second Representative District of the State of Illinois, are properly complied with and that only qualified candidates have their names appear upon the ballot as candidates for said office.

2. Your Objector makes the following objections to the nomination papers of John Warner (“the Nomination Papers”) as a candidate for nomination of the Democratic Party to the Office of Representative in the General Assembly from the 102nd Representative District of the

State of Illinois, and files the same herewith, and states that the said nomination papers are insufficient in law and in fact for the following reasons:

3. Your Objector states that in the 102nd Representative District of the State of Illinois the signatures of not less than 500 duly qualified, registered, and legal voters of the said 102nd Representative District of the State of Illinois are required. In addition, said Nomination Papers must truthfully allege the qualifications of the candidate, be gathered and presented in the manner provided for in the Illinois Election Code, and otherwise be executed in the form and manner required by law.

4. Your Objector states that the Candidate has filed 89 petition signature sheets containing a total of 1,178 signatures of allegedly duly qualified, legal, and registered voters of the 102nd Representative District of the State of Illinois.

5. Your Objector states that the laws pertaining to the securing of ballot access require that certain requirements be met as established by law. Filings made contrary to such requirements must be voided, being in violation of the statutes in such cases made and provided.

The Nomination Papers Do Not Comply With The Requirements Of Sections 8-17 and 7-61 In That The Nominating Petitions Were Circulated Before The Candidate Was Designated By The Nominating Committee

6. Your Objector states that numerous of the petition sheets were circulated before the Candidate was duly appointed by the Representative Committee for the 102nd Representative District (“the Committee”), and that those sheets were not therefore circulated and collected in accordance with Illinois law. Section 7-61 mandates that the circulation period for the nominating petitions begins on the day that the appropriate committee designates the candidate. 10 ILCS 7-61. The Resolution to Fill a Vacancy in Nomination for the Office of Representative

in the General Assembly (“The Resolution”) was executed by the Democratic Representative District Committee of the 102nd Representative District on April 7, 2010, and purports to appoint and nominate the Candidate to fill the vacancy in nomination and to be the Democratic nominee for the office of Representative in the General Assembly from the 102nd Representative District. On April 16, 2010, however, the Committee apparently executed another Resolution to Fill a Vacancy in Nomination for the Office of Representative in the General Assembly for the 102nd District, replacing the earlier Resolution (“The Replacement Resolution”). The circulator’s affidavit on each of the Candidate’s petition pages falsely swears that “none of the signatures on this sheet were signed prior to the date the 102nd Representative District Committee of the Democratic Party designated the candidate to fill the vacancy in nomination . . .” However, the circulator’s affidavit on each and every petition page filed by the Candidate alleges the actual dates said page was circulated, and each and every page purports to have been circulated *before* The Replacement Resolution was executed. Accordingly, because these petition sheets were not collected in accordance with Illinois law, each and every sheet should be declared null and void.

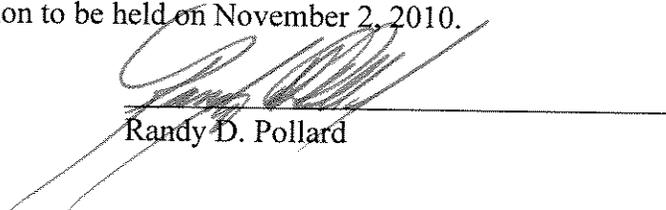
The Nomination Papers Do Not Comply With The Requirements Of Section 8-17 Of The Election Code Because The Resolution Was Not Filed Within 60 Days Of The General Primary Election

7. The Resolution was apparently signed and notarized on April 7, 2010, and initially filed on April 9, 2010. The Replacement Resolution was apparently executed on April 15, 2010, and filed on April 19, 2010. Section 8-17 of the Election Code, which governs the filling of vacancies in nomination for members of the General Assembly, mandates that vacancies that result after no person runs in the General Primary Election must be filled within 60 days of the General Primary, which was April 5, 2010. 10 ILCS 5/8-17. Neither version of

The Resolution was filed by April 5, 2010, as required by Section 8-17 of the Election Code, and therefore, the Resolutions are of no legal effect, and are null and void.

8. Your Objector states that the nomination papers herein contested consist of various sheets supposedly containing the valid and legal signatures of 1,178 individuals. The individual objections cited herein with specificity reduce the number of valid signatures by 1,178 or to 0, or 500 below the statutory minimum of 500.

WHEREFORE, your Objector prays that the purported nomination papers of John Warner as a candidate of the Democratic Party for nomination to the office of the Representative in the General Assembly from the 102nd Representative District of the State of Illinois be declared by this Honorable Electoral Board to be insufficient and not in compliance with the laws of the State of Illinois and that the Candidate's name be stricken and that this Honorable Electoral Board enter its decision declaring that the name of John Warner as a candidate of the Democratic Party for nomination to the office of the Representative in the General Assembly from the 102nd Representative District of the State of Illinois BE NOT PRINTED on the OFFICIAL BALLOT at the General Election to be held on November 2, 2010.



Randy D. Pollard

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**BEFORE THE DULY CONSTITUTED ELECTORAL BOARD
FOR THE HEARING AND PASSING UPON OBJECTIONS TO
NOMINATION PAPERS OF CANDIDATE FOR ELECTION TO THE
GENERAL ASSEMBLY OF THE 102nd REPRESENTATIVE DISTRICT
OF THE STATE OF ILLINOIS**

Randy D. Pollard,)	
)	
Petitioner-Objector,)	
)	
v.)	File No. 10 SOEB GE 100
)	
John Warner,)	
)	
Respondent-Candidate.)	

RECOMMENDATION OF HEARING EXAMINER

TO: John W. Countryman	Michael J. Kasper
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I. Procedural History¹

This matter commenced on April 26, 2010, when Randy D. Pollard (hereinafter "Objector" or "Petitioner") filed a "Verified Objector's Petition" with the State Board of Elections. (Exhibit A). The Objector alleged that the nomination papers of John Warner (hereinafter "Candidate"), a candidate for the office of representative in the Illinois General Assembly, were insufficient in that they were not in conformance with certain provisions of the Election Code. Specifically, Objector alleged that the Candidate's nomination papers did not comply with the requirements of 10 ILCS 5/8-17 and 10 ILCS 5/7-61, in that the nomination petitions were circulated prior to the Candidate's designation by the representative committee.

¹ No hearing was held in this matter, and the facts herein have been stipulated to by the parties through their respective counsel.

The Democratic Representative District Committee for the 102nd Representative District organized and met on April 7, 2010, and at that time voted to appoint and nominate Candidate to fill the vacancy in nomination for the office of Representative of the General Assembly for that District. On that same date, a Resolution to Fill a Vacancy in Nomination (Exhibit B) was executed and sworn to by the members, memorializing such meeting, vote, appointment and nomination.

On April 16, 2010², the Democratic Representative District Committee for the 102nd Representative District again met and on that date voted to appoint and nominate Candidate to fill the vacancy in nomination for the office of Representative of the General Assembly. Such meeting, vote and nomination was memorialized in a second Resolution to Fill a Vacancy in Nomination (Exhibit C) executed and sworn to by members of the committee.

Petitioner objects to Candidate's placement on the ballot for the general election on the basis that Candidate circulated his petition sheets prior to April 16, 2010. Petitioner argues that the second Resolution dated April 16 replaced the April 7 Resolution, thereby making April 16 the date of "designation" of the Candidate. Objector asserts that numerous petition sheets filed by Candidate were circulated *before* the Candidate was duly appointed by the representative committee on April 16, in violation of §7-61 of the Election Code, and that the circulator's affidavit on each of the Candidate's petition sheets falsely swears that "none of the signatures on this sheet were signed prior to the date the 102nd Representative District Committee of the Democratic Party designated the candidate to fill the vacancy in nomination..." As a result, Objector states that Candidate's petition sheets should be declared null and void.

Further, Objector asserts that neither the April 7 Resolution nor the April 16 Resolution were filed within 60 days of the primary election held on February 2, 2010. Objector asserts that 10 ILCS 5/8-17 mandates that vacancies that result after no person runs in the general primary election must be filled within 60 days of the general primary, and therefore both of the Resolutions should be declared null and void.

II. Candidate's Motion to Dismiss and for Summary Judgment

A. Circulation Prior to Designation

i. Candidate's Argument

In his Motion to Dismiss and for Summary Judgment (Exhibit D), Candidate asserts that the representative committee organized on April 7, 2010, and on that date executed a Resolution to Fill a Vacancy in Nomination reflecting its decision to nominate and appoint John Warner as a candidate entitled to begin circulating nominating petitions. Candidate asserts that both the Certificate of Organization and Resolution were filed with the State Board of Elections on April 9, 2010. Candidate argues that none of the petitions circulated by the Candidate bear a date earlier than April 7, 2010, and as a result, the allegation that signatures were gathered prior to the date that the Candidate was designated is incorrect.

² Although the parties hereto continuously refer to April 16, 2010, the Resolution filed with the Board on April 19, 2010, reflects a date of April 15, 2010.

Further, the Candidate asserts that he fulfilled all of the requirements of §7-61, as amended. Candidate states that the committee designated him on April 7, and subsequently executed a Resolution that notified the public that the Candidate's circulation period had begun. The Resolution was filed on April 9, in order to satisfy the three-day requirement of §7-61. Then, in order to comply with the "together" requirement of §7-61, the committee met for a second time on April 16 and executed a second Resolution that was filed together with Candidate's nomination papers on April 19, within three days of execution, and within 75 days of the general primary election.

Candidate argues that all of the signatures were gathered in accordance with the requirements of the Election Code and Objector's Petition should be stricken and dismissed.

ii. Objector's Argument

Objector states in his Response to Candidate's Motion to Dismiss (Exhibit E) that only the second Resolution, executed on April 16 and filed with the Candidate's nominating papers on April 19, may be given legal effect, because it was the only Resolution filed in accordance with §7-61. Objector argues that the three-day rule is inapplicable in this situation, where there is a vacancy in nomination rather than a vacancy by reason of death or resignation. As a result, Objector asserts that the April 7 Resolution is of no legal effect, and because the Candidate gathered signatures prior to the April 16 Resolution, Candidate has violated the mandatory requirements of §7-61.

iii. Analysis

The issue before the Board is whether the execution of the April 16 Resolution, and the filing of that Resolution together with Candidate's nominating papers, superseded and replaced the April 7 Resolution for purposes of "designation" of the Candidate to begin the petition circulation period.

The relevant portion of §7-61 states as follows:

"If the name of no established political party candidate was printed on the general primary ballot for a particular office and if no person was nominated as a write-in candidate for such office, a vacancy in nomination shall be filled only by a person designated by the appropriate committee of the political party and only if that designated person files nominating petitions with the number of signatures required for an established party candidate for that office within 75 days after the day of the general primary. The circulation period for those petitions begins on the day the appropriate committee designates that person. The person shall file his or her nominating petitions, statements of candidacy, notice of appointment by the appropriate committee, and receipt of filing of his or her statement of economic interests together."

10 ILCS 5/7-61.

The term “designates” is not defined in the Illinois Election Code. However, Black’s Law Dictionary defines “designate” as “to indicate, select, appoint, nominate, or set apart for a purpose or duty...” Black’s Law Dictionary, 447 (6th ed. 1990). The term “appoint” is defined as “to designate, choose, select, assign, ordain, prescribe, constitute, or nominate.” *Id.* at 99. The term “nominate” is defined as “to name, designate by name, appoint, or propose for election or appointment.” *Id.* at 1049. It is apparent from these definitions that the terms “designate,” “appoint,” and “nominate” are synonymous and the words may be used interchangeably.³

Both the April 7 Resolution and the April 16 Resolution were sworn to by the appropriate representative committee members and state that on those dates the representative committee met and voted to appoint and nominate Candidate to fill the vacancy in nomination. As a result, the meeting and vote memorialized in the sworn Resolution of April 7 was a “designation” within the meaning of §7-61. However, the meeting and vote memorialized in the sworn Resolution of April 16 was also a “designation,” satisfying the requirement of §7-61. It is thus necessary to determine which meeting and vote was the triggering event for beginning of the circulation period of Candidate’s nominating petitions pursuant to §7-61.

Section 7-61 of the Election Code was recently amended, effective January 1, 2010. Among the amendments is the requirement that a candidate for election “file his or her nominating petitions, statements of candidacy, notice of appointment by the appropriate committee, and receipt of filing of his or her statement of economic interests together.” 10 ILCS 5/7-61 [emphasis added].

The Election Code gives no instruction regarding the form required for a “notice of appointment by the appropriate committee,” and the requirement of filing such a notice appears in no other section of the Code. According to the facts before the Hearing Examiner, on April 19, 2010, Candidate filed his nomination petitions together with a sworn Resolution to Fill Vacancy in Nomination evidencing Candidate’s nomination and appointment on April 16, 2010.

The filing of this second Resolution by the Candidate together with his nominating petitions on April 19, 2010, pursuant to the amended statute, indicated Candidate’s intention that the second Resolution suffice as his “notice of appointment” in compliance with §7-61.⁴ As such, Candidate’s designation occurred upon the second meeting and vote held on April 16, 2010, rather than on April 7, 2010.

As Objector has alleged—and the Candidate has not refuted—that Candidate’s nominating petitions were circulated prior to April 16, 2010⁵, the Hearing Examiner recommends a finding by the Board that Candidate’s nominating petitions are in violation of §7-61 of the Election Code, and therefore should be stricken. Because the striking of all of Candidate’s petition sheets leaves Candidate with no unchallenged signatures, the Hearing Examiner recommends that Candidate’s name not be printed upon the ballot for the general election.

³ Although not cited by the parties, the hearing officer in *Rabb v. Lenkowski*, 10-EB-RES-04, recently stated that the definitions of “nominate” and “designate” are different. To the contrary, the definition of these terms are synonymous.

⁴ If Candidate sought to have the April 7 Resolution satisfy the requirements of §7-61, he could have filed it together with his nominating papers on April 19, 2010.

⁵ A review of the Candidate’s nominating petitions shows that all of Candidate’s petitions were circulated prior to April 15, 2010, the actual date of the Resolution.

Finally, several arguments were made by the parties in their briefs regarding whether compliance with the three day filing rule in paragraph 3 of §7-61 was necessary in this instance. Such arguments are not addressed, as they are irrelevant to the Petitioner's objection relating to the timing of the circulation of the nominating petitions.

B. Application of §8-17.

i. Candidate's Argument

Candidate argues that §8-17 does not require a "filing" by the committee. Rather, §8-17 references §7-61, which requires the filing of nominating petitions, statements of candidacy, notice of appointment and receipt of filing statement of economic interest together, within 75 days after the general primary election. Candidate asserts that Petitioner did not allege in his Objection that the documents were not filed "together" or were not filed within 75 days of the primary election, and therefore the argument that the April 7 Resolution was outside the 60 day requirement of §8-17 should be dismissed.

Further, Candidate argues that the Petitioner's objection should be dismissed because the recent amendment to §7-61 shows that the General Assembly intended for vacancies in nomination to be governed by the 75 day requirement of §7-61 and not the 60 day requirement of §8-17.

ii. Objector's Argument

Objector asserts that §8-17 governs the procedure for filling vacancies in nomination for candidates for the General Assembly, and contains an explicit 60-day time period for a committee to nominate a candidate following a primary election. Section 8-17 also explicitly references §7-61, which requires certain filings. The original Objection was clearly based on the fact that no paperwork was filed evidencing that the Candidate was properly nominated within 60 days of the primary election. Further, the plain language of §8-17 sets forth the 60-day time limit for nominating a candidate to fill a vacancy in nomination. To render the 60-day time limit meaningless would be contrary to well-settled rules of statutory construction.

iii. Analysis

Here, the issues before the Board are (1) whether §8-17 requires a "filing" by the representative committee; (2) whether the requirements of §8-17 were met by the Candidate; and (3) whether §8-17 applies to filling vacancies in nomination for candidates for the General Assembly.

The relevant portion of §8-17 is restated here, as follows:

If there is no candidate for the nomination of the party in the primary, no candidate of that party for that office may be listed on the ballot at the general election, "unless the legislative or representative committee of the party nominates a candidate to fill the vacancy in nomination within 60 days after the date of the general primary election. Vacancies in nomination occurring under

this Article shall be filled by the appropriate legislative or representative committee in accordance with the provisions of Section 7-61” of the Election Code.

10 ILCS 5/8-17.

1. Section 8-17 does not require a filing within 60 days of the general primary election.

First, the Candidate argues that the committee was not required to file anything pursuant to §8-17, and therefore Petitioner’s objection that the April 9 filing was outside 60 days should be dismissed.

Candidate is correct that §8-17 does not require a representative committee to “file” anything in order comply with the requirement that the committee nominate a candidate to fill the vacancy in nomination within 60 days. On its face, §8-17 gives no clear indication as to how the legislature intended for a representative committee to “nominate” a person to fill a vacancy to fulfill the 60-day requirement. As such Petitioner’s original objection that the April 7 and April 16 Resolutions were filed outside 60 days in violation of §8-17 should be dismissed.

2. Candidate was not nominated within 60 days of the general primary election, in violation of §8-17.

Objector’s Response to Motion to Dismiss raised issues outside the original objection that addressed more than the Candidate’s lack of “filing” within the 60 day period. Recently, the First District Appellate Court in *Mitchell v. Cook County Officers Electoral Board*, 924 N.E. 2d 585 (1st Dist. 2010), stated that there was “nothing to indicate that an objector is foreclosed from raising additional issues during the course of the proceedings or from arguing them in seeking relief.” *Mitchell*, 924 N.E.2d at 19-20. As a result, the Hearing Examiner will address the additional argument made by Objector in his Response, which is that the Candidate was not nominated within 60 days of the general primary election in accordance with §8-17.

Two Resolutions were filed with the State Board of Elections, executed and sworn to by the appropriate representative committee members, stating that Candidate was “nominated” on April 7, 2010 and “nominated” on April 16, 2010. Candidate has provided no alternative evidence that he was in fact “nominated” by the representative committee on a date prior to April 7.

April 7 was outside the 60 day requirement of §8-17, which concluded on April 5, 2010. While no filing was required at that time by the express language of §8-17, the committee did in fact file a sworn Resolution to Fill a Vacancy in Nomination on April 9, 2010, stating that a nomination took place on April 7, outside 60 days from the general primary election. From the evidence presented to the Hearing Examiner, the requirements of §8-17 were not met by the Candidate. As a result, it must next be determined whether the 60-day requirement of §8-17 even applies to the Candidate, or whether the 75-day filing requirement of §7-61 is controlling, as Candidate argues.

3. Section 8-17 applies.

Candidate argues that the 75-day filing provision in §7-61 governs, not the 60-day nomination requirement of §8-17.

Candidate asserts that the General Assembly recently amended §7-61, effective January 1, 2010, and specifically deleted the 60 day provision previously contained therein.⁶ Candidate argues that this shows an intention by the legislature for vacancies in nomination to be governed by the 75 day filing requirements set forth in §7-61, not the 60-day nomination requirement set forth in §8-17.

The primary rule of statutory construction is to ascertain and give effect to the true intent of the legislature, and legislative intent is best determined by the language of the statute. *Thurman v. Grinnell Mutual Reinsurance Co.*, 327 Ill. App. 3d 920, 928 (5th Dist. 2002) citing *Augustus v. Estate of Somers*, 278 Ill. App. 3d 90, 97 (1996). Statutes should be evaluated as a whole, with each provision construed in connection with every other section. *Roselle Police Pension Bd. v. Village of Roselle*, 232 Ill. 2d 546, 552 (2009) citing *Cinkus v. Village of Stickney Municipal Officers Electoral Bd.*, 228 Ill. 2d 200, 216-17 (2008). The courts are bound to give meaning and effect to all provisions of a statute, and must construe a statute so that no word, clause or sentence, to the extent that it is possible to do so, is rendered superfluous or meaningless. *People v. Galan*, 229 Ill. 2d 484 (2008).

The plain language of §8-17 cannot be ignored, as Candidate suggests. Although the requirements for filling a vacancy in nomination for the General Assembly where there was no candidate listed on the ballot in the primary election were changed by the recent amendment of §7-61, that amendment does not conflict with or otherwise nullify the requirements outlined in the plain language of §8-17. Further, the legislature did not act to modify or alter the requirements of §8-17 in making such amendments to §7-61. As a result, §8-17 is applicable here. Because it has been previously determined that Candidate failed to comply with §8-17, the Hearing Examiner recommends that Candidate's name not be placed on the ballot in the general election.

4. Constitutional challenge

Finally, Candidate argues that if the Board finds that the 60-day rule does apply, it would only apply to the General Assembly and not to other constitutional offices or lower offices such as county or municipal offices. Candidate further argues that such an interpretation would result in a system with different and stricter rules for the General Assembly, which would be unconstitutional under Article I, Section 2 (equal protection) and Article III, Section 3 (free and

⁶ Text deleted by P.A. 96-848: "created, but no candidate of the party for the office shall be listed on the ballot at the general election unless such vacancy is filled in accordance with the requirements of this Section within 60 days after the date of the general primary."

equal elections) of the Illinois Constitution.⁷ The Hearing Examiner submits that the constitutional issues raised by Candidate here cannot be ruled on in this proceeding.

Conclusion

Hearing Examiner recommends that:

1. Candidate's Motion to Dismiss and for Summary Judgment be denied;
2. Petitioner's objection regarding circulation of petitions prior April 15, 2010, should be granted and petition sheets 1 through 89 should be stricken, leaving Candidate with 0 valid signatures, which is below the statutorily required 500;
3. Petitioner's objection relating to the representative committee's failure to nominate Candidate within 60 days following the general primary election is granted; and
4. Objector's Verified Objection praying that Candidate's name not be printed on the official ballot at the General Election to be held on November 2, 2010, be granted.

DATED: 6/8/10



David A. Herman, Hearing Examiner

⁷ As a creature of statute, the Board possesses only those powers conferred upon it by law. Any power or authority it exercises must find its source within the law pursuant to which it was created. *Bryant v. Board of Election Commissioners of the City of Chicago*, 224 Ill. 2d 473, 476 (2007). "Our legislature did not intend the Electoral Board to entertain constitutional challenges to procedures employed in obtaining signatures for primary nominating petitions." *Wiseman v. Elward*, 5 Ill. App. 3d 249, 258 (1st Dist. 1972).

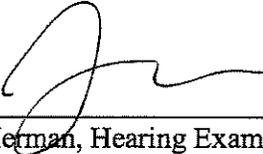
CERTIFICATE OF SERVICE

Service of the foregoing document was made by sending a copy via e-mail transmission and by mailing a copy thereof, in a sealed envelope, postage fully prepaid, addressed to all parties listed and by depositing same in the United States Mail from the office of the undersigned this 31st day of June, 2010.

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David A. Herman, Hearing Examiner

**Pollard v. Warner
10 SOEB GE 100**

Candidate: John Warner

Office: State Representative, 102nd Dist.

Party: Democratic

Objector: Randy D. Pollard

Attorney For Objector: John Fogarty Jr.

Attorney For Candidate: Michael Kasper

Number of Signatures Required: N/A

Number of Signatures Submitted: N/A

Number of Signatures Objected to: N/A

Basis of Objection: The candidate's nominating petitions were circulated prior to the appointment of the candidate to fill the vacancy in nomination by the Representative Committee. A Resolution to Fill the Vacancy in Nomination was filed by the Representative Committee on April 7, 2010, and a second "replacement" Resolution was filed on April 16, 2010. It is alleged that the circulator's affidavit on each petition page certifies that the signatures were gathered prior to the April 16th "replacement" Resolution.

The Resolution was not filed within 60 days of the General Primary Election as required by 10 ILCS 5/8-17.

Dispositive Motions: A Motion to Dismiss and for Summary Judgment was filed by the Candidate. Objector filed a Response to Motion to Dismiss and for Summary Judgment.

Binder Check Necessary: No

Hearing Officer: David Herman

Hearing Officer Findings and Recommendation: The Hearing Officer recommends that Candidate's Motion to Dismiss and for Summary Judgment be denied.

The Hearing Officer finds that the Candidate's second "replacement" Resolution, dated April 16, 2010, was filed together with his nominating petitions as required by the recently amended Section 7-61 of the Code. Accordingly, this simultaneous filing of the second Resolution with all the other required documents indicated Candidate's intention that the second Resolution suffice as his "notice of appointment" in compliance with Section 7-61. As such, Candidate's designation occurred upon the second meeting and vote held on April 16, 2010, rather than on April 7, 2010 (the date of the first Resolution). Both the Candidate and the Objector agree that Candidate's nominating petitions were circulated prior to April 16, 2010; therefore, the Hearing Officer recommends that the objection regarding circulation of petitions prior to the date of nomination be sustained and that Candidate's signatures sheets should be stricken. The striking of Candidate's petition sheets leaves the Candidate with zero valid signatures, which is below the statutorily required minimum of 500.

The Hearing Officer finds that Section 8-17, requiring legislative or representative committees to nominate a candidate to fill a vacancy in nomination within 60 days of the general primary election, does not require a committee to “file” anything in order to comply with the 60-day nomination requirement. As such, the objection that the April 7 and April 16 Resolutions were filed outside of 60 days in violation of Section 8-17 should be dismissed.

Objector’s Response to Candidate’s motion to Dismiss raised the additional objection outside the original objection petition that Candidate was not nominated within 60 days of the General Primary in violation of Section 8-17. The Hearing Officer relies on the recent First District Appellate Court holding in *Mitchell v. Cook County Officers Electoral Board*, which stated that nothing indicates that an objector is foreclosed from raising additional issues during the course of proceedings or from arguing them in seeking relief. As a result, the Hearing Officer addressed the additional objection made by Objector that Candidate was not nominated within 60 days of the primary.

The Hearing Officer finds that the recently amended language of Section 7-61 requiring vacancies in nomination for the General Assembly to be filled within 75 days when there was no candidate listed on the ballot in the primary does not nullify the requirements in Section 8-17 as applied to the Candidate. Since both April 7, 2010 and April 16, 2010 are outside 60 days of the general primary, which concluded on April 5, 2010, the objection that the Candidate failed to comply with Section 8-17 should be sustained and the Candidate’s name should not be placed on the ballot in the general election.

Recommendation of the General Counsel: I concur with the recommendation of the Hearing Officer.

**BEFORE THE DULY CONSTITUTED ELECTORAL BOARD FOR THE HEARING
AND PASSING UPON OBJECTIONS TO THE NOMINATION PAPERS FOR
CANDIDATES FOR THE OFFICE OF REPRESENTATIVE IN THE GENERAL
ASSEMBLY FROM THE 89th REPRESENTATIVE DISTRICT OF THE STATE OF
ILLINOIS**

Roger C. Marquardt)
)
Petitioner-Objector,)
)
vs.)
)
Victoria F. Grizzoffi,)
)
Respondent-Candidate.)

PRINCIPAL OFFICE
STATE BOARD OF ELECTIONS
10 APR 26 AM 11:06

VERIFIED OBJECTOR'S PETITION

Now comes **Roger C. Marquardt** (hereinafter referred to as the "Objector"), and states as follows:

1. **Roger C. Marquardt** resides at 15 Cinnamon Dr., Galena, IL 61036, Jo Daviess County in the Eighty Ninth Representative District of the State of Illinois; that he is duly qualified, registered and a legal voter at such address; that his interest in filing the following objections is that of a citizen desirous of seeing to it that the laws governing the filing of nomination papers for a Candidate for Election to the Office of Representative in the General Assembly from the Eighty Ninth Representative District of the State of Illinois, are properly complied with and that only qualified candidates have their names appear upon the ballot as candidates for said office.

2. Your Objector makes the following objections to the nomination papers of Victoria Grizzoffi ("the Nomination Papers") as a candidate for nomination of the Democratic Party to the Office of Representative in the General Assembly from the 89th Representative

District of the State of Illinois, and files the same herewith, and states that the said nomination papers are insufficient in law and in fact for the following reasons:

3. Your Objector states that in the 89th Representative District of the State of Illinois the signatures of not less than 500 duly qualified, registered, and legal voters of the said 89th Representative District of the State of Illinois are required. In addition, said Nomination Papers must truthfully allege the qualifications of the candidate, be gathered and presented in the manner provided for in the Illinois Election Code, and otherwise be executed in the form and manner required by law.

4. Your Objector states that the Candidate has filed 94 petition signature sheets containing a total of 873 signatures of allegedly duly qualified, legal, and registered voters of the 89th Representative District of the State of Illinois.

5. Your Objector states that the laws pertaining to the securing of ballot access require that certain requirements be met as established by law. Filings made contrary to such requirements must be voided, being in violation of the statutes in such cases made and provided.

The Nomination Papers Do Not Comply With The Requirements Of Section 8-17 Of The Election Code Because The Resolution Was Not Filed Within 60 Days Of The General Primary Election

6. The Resolution to Fill a Vacancy in Nomination for the Office of Representative in the General Assembly ("The Resolution") was executed by the "Slating" Committee of the 89th Representative District on April 13, 2010, and purports to have appointed and nominated the Candidate to fill the vacancy in nomination and to be the Democratic nominee for the office of Representative in the General Assembly from the 89th Representative District on April 12, 2010. The date The Resolution was filed is unknown. Section 8-17 of the Election Code, which governs the filling of vacancies in nomination for members of the General Assembly, mandates

that vacancies that result after no person runs in the General Primary Election must be filled within 60 days of the General Primary, which was April 5, 2010. 10 ILCS 5/8-17. The Resolution was not filed by April 5, 2010, as required by Section 8-17 of the Election Code, and therefore, the Resolution is of no legal effect, and is null and void.

7. Further, to be of legal effect, The Resolution must be executed by “the appropriate legislative or representative committee. . .” However, The Resolution purports to be executed by the “Slating” Committee for the Democratic Party for the 89th Representative District. Because there is no such legal entity as the “Slating” Committee, The Resolution is null and void, and of no effect.

The Nomination Papers Do Not Comply With The Requirements Of Sections 8-17 and 7-61 In That The Nominating Petitions Were Circulated Before The Candidate Was Designated By The Nominating Committee

8. Your Objector states that numerous of the petition sheets were circulated before the Candidate was designated by any Committee for the 89th Representative District, and that those sheets were not therefore circulated and collected in accordance with Illinois law. Section 7-61 mandates that the circulation period for the nominating petitions begins on the day that the appropriate committee designates the candidate. 10 ILCS 7-61. The Resolution was executed on April 13, 2010, and purports to have appointed and nominated the Candidate to fill the vacancy in nomination and to be the Democratic nominee for the office of Representative in the General Assembly from the 89th Representative District on April 12, 2010. Further, the circulator’s affidavit on each of the Candidate’s petition pages falsely swears that “none of the signatures on this sheet were signed prior to the date the 89th Representative District Committee of the Democratic Party designated the candidate to fill the vacancy in nomination . . .” However, the circulator’s affidavit on pages 1-3, 7-51, 53-67, 77, 80, 81, 85, 86, 89-91 of the Candidate’s

petitions alleges to have been circulated, signed and notarized *before* The Resolution was executed. Moreover, petition pages 4, 6, and 84 have no notary date; while pages 5, 52, and 82 were allegedly signed and notarized on April 30, 2010 – a physical impossibility, and also in violation of the statute. Accordingly, because these petition sheets were not collected in accordance with Illinois law, each and every sheet should be declared null, void and invalid.

The Candidate's Petitions Themselves Are Not Uniform Or Consistent As Required By The Election Code

9. The Candidate's petitions, as filed, are not uniform or consistent. They are confusing and thus do not comply with the Illinois Election Code, and as such all sheets should be stricken. The Illinois Election Code requires that for each petition sheet, "the heading of each sheet shall be the same." *10 ILCS 5/7-10*. More specifically, the sheets contain the following defects:

10. The headings on each and every one of the Candidate's petition sheets are different from one and other. On each and every petition sheet, the Candidate or her circulator has written in in the heading, *after the fact*, the names of the localities for the various signers.

11. The aforesaid failures to comply with the Election Code, in the aforesaid commingling of various forms and formats of the Candidate's purported petitions renders the entire petition set invalid.

12. Your Objector states that the nomination papers herein contested consist of various sheets supposedly containing the valid and legal signatures of 873 individuals. The individual objections cited herein with specificity reduce the number of valid signatures by 734 or to 134, or 366 below the statutory minimum of 500.

WHEREFORE, your Objector prays that the purported nomination papers of Victoria F. Grizzoffi as a candidate of the Democratic Party for nomination to the office of the

Representative in the General Assembly from the 89th Representative District of the State of Illinois be declared by this Honorable Electoral Board to be insufficient and not in compliance with the laws of the State of Illinois and that the Candidate's name be stricken and that this Honorable Electoral Board enter its decision declaring that the name of Victoria F. Grizzoffi as a candidate of the Democratic Party for nomination to the office of the Representative in the General Assembly from the 89th Representative District of the State of Illinois BE NOT PRINTED on the OFFICIAL BALLOT at the General Election to be held on November 2, 2010.



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BEFORE THE DULY CONSTITUTED ELECTORAL BOARD
FOR THE HEARING AND PASSING UPON OF OBJECTIONS TO
THE NOMINATION PAPERS FOR CANDIDATES FOR ELECTION TO THE
OFFICE OF REPRESENTATIVE IN THE GENERAL ASSEMBLY FROM THE 89TH
REPRESENTATIVE DISTRICT OF THE OF THE STATE OF ILLINOIS

ROGER C. MARQUARDT,)	
)	
Petitioner-Objector,)	No. 10 SOEBGE 101
)	
.v.)	
)	
VICTORIA F. GRIZZOFFI,)	
)	
Respondent-Candidate.)	

HEARING OFFICER'S FINDINGS AND RECOMMENDATIONS

This matter coming before the State Board of Elections as the duly qualified Electoral Board and before the undersigned Hearing Officer pursuant to Appointment and Notice issued previously, the Hearing Officer makes the following Findings and Recommendations:

I. PRELIMINARY FACTS

On April 16, 2010, the Candidate, Victoria Grizzoffi (the "Candidate"), filed the following with the State Board of Elections to qualify as a Candidate for the office of Representative in the General Assembly from the 89th Representative District of the State of Illinois to be voted for at the General Election on November 2, 2010: a) a Statement of Candidacy; b) 94 Nomination Petition Sheets which contain 883 signatures; c) a Receipt of Statement of Economic Interest dated March 31, 2010; d) a Receipt of Statement of Economic Interest dated April 5, 2010; and e) a Resolution to Fill a Vacancy in Nomination (Exhibit A).

On April 26, 2010, the Objector, Roger Marquardt (the "Objector"), timely filed a Verified Objector's Petition. In the Petition, the Objector argues that the Candidate's nomination papers are invalid and/or insufficient for the following reasons:

1. The nomination papers do not comply with the requirements of 10 ILCS § 5/8-17 because the Resolution to Fill a Vacancy in Nomination was not filed within 60 days of the general primary election (Objector's Petition at ¶ 6);
2. The Resolution to Fill a Vacancy in Nomination is null and void and of no effect because it purports to be executed by the "Slating Committee" for the Democratic Party for the 89th Representative District and the Resolution must be executed by the "the appropriate legislative or representative committee . . ." (Objector's Petition at ¶ 7);

3. The nomination papers do not comply with the requirements of 10 ILCS § 5/8-17 and 10 ILCS § 5/7-61 because the nominating petitions were circulated before the candidate was designated by the nominating committee (Objector's Petition at ¶ 8);

4. Petition pages 4, 6 and 84 do not include a notary date, and petition pages 5, 52 and 82 were allegedly signed and notarized on April 30, 2010, which is a physical impossibility and also a violation of the statute (Objector's Petition at ¶ 8); and

5. The nomination petitions are not uniform or consistent as required by the Election Code (Objector's Petition at ¶¶ 9-11).

An initial hearing and case management conference on this matter was held on May 3, 2010. John Fogarty appeared on behalf of the Objector. Courtney Nottage appeared on behalf of the Candidate.

On May 10, 2010, the Candidate timely filed a Motion to Strike and Dismiss the Objector's Petition. In his Motion, the Candidate argues that:

1. The objection regarding the Resolution to Fill a Vacancy in Nomination not being filed within 60 days in violation of Section 8-17 of the Election Code should be stricken because Section 8-17 does not require filing of resolutions to fill vacancies (Candidate's Mot. to Strike at Sec. II.A.);

2. The Representative District Committee (the "Committee") properly filled the vacancy in nomination and the Resolution to Fill a Vacancy in Nomination is valid (Candidate's Mot. to Strike at Sec. II.B.);

3. The objection that the Candidate gathered signatures prior to being designated by the Committee is legally insufficient and, in the alternative, the Committee met and designated the Candidate on March 16, 2010 prior to the circulation of any nominating petitions (Candidate's Mot. to Strike at Sec. II.C.); and

4. The objections regarding the headings of the nomination petitions are legally insufficient and should be stricken (Candidate's Mot. to Strike at Sec. II.D.).

On May 13, 2010, the Objector timely filed a Response to the Motion to Strike and Dismiss. In the Response, the Objector argues that:

1. The Candidate has not filed his nomination papers in accordance with Section 7-61 (Objector's Resp. at Sec. A.);

2. The Candidate was not nominated to fill the vacancy in nomination within 60 days as required by Section 8-17 of the Election Code (Objector's Resp. at Sec. B.);

3. There is no provision in the Election Code for a "Slating Committee" to make an appointment to fill a vacancy in nomination (Objector's Resp. at Sec. C.); and

4. It is mandatory for a candidate's petitions to be uniform and consistent (Objector's Resp. at Sec. D.).

A case management hearing was held telephonically on May 19, 2010, wherein the Hearing Officer directed counsel for the Candidate to submit any and all affidavits in support of his Motion to Strike and Dismiss by no later than May 19, 2010.

On May 19, 2010, the Candidate submitted the affidavit of Theodore J. Forsberg (Exhibit B) which states in relevant part that:

1. Mr. Forsberg is the Chairman of the Democratic Party of Jo Daviess County, Illinois and a member of the Democratic Representative District Committee for the 89th Representative District of the State of Illinois (Exhibit B at ¶ 2);

2. Mr. Forsberg, along with other members of the Committee, designated the Candidate as the Democratic Nominee to fill the vacancy in nomination for the office of Representative in the General Assembly for the 89th Representative District for the November 2, 2010 General Election (Exhibit B at ¶ 4); and

3. The Committee's designation of the Candidate to fill the vacancy in nomination was publicly announced at a meeting of the Jo Daviess County Democrats on March 16, 2010 (Exhibit B at ¶ 5).

A case management hearing was held telephonically on May 21, 2010, wherein counsel for the parties agreed to an oral argument/hearing on the matter.

A hearing was held on June 3, 2010 and counsel for both parties presented oral argument.

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

A. Whether the Candidate's Nomination Papers Fail to Comply with the Requirements of 10 ILCS § 5/8-17.

In his Petition, the Objector argues: "Section 8-17 of the Election Code . . . mandates that vacancies that result after no person runs in the General Primary Election must be filled within 60 days of the General Primary, which was April 5, 2010 . . . The Resolution was not filed by April 5, 2010, as required by Section 8-17 . . . and therefore, the Resolution is of no legal effect, and is null and void." (Objector's Petition at ¶ 6). As correctly pointed out by the Candidate, nothing in Section 8-17 requires a committee to file "anything, anywhere, anytime." (Candidate's Mot. to Strike at p. 2). Therefore, I recommend that the Board grant the Candidate's motion to strike the objection that the nomination was invalid because a Resolution to Fill a Vacancy in Nomination was not filed with the Board within 60 days of the primary election.

The Objector also argues, more specifically in his Response to the Motion to Strike and Dismiss, that the Candidate did not satisfy the requirement in Section 8-17 that the “party nominates a candidate to fill the vacancy in nomination within 60 days.” (Objector’s Resp. at p. 3). In support of this argument, the Objector relies exclusively upon the Resolution to Fill a Vacancy in Nomination, which was filed with the Candidate’s nominating papers, and which indicates at the bottom of the document a meeting date of April 12, 2010 which is outside the 60 day period.

As a preliminary matter, I think it is important to understand the purpose of the Resolution to Fill a Vacancy in Nomination and why it was filed with the Board together with the other nomination papers. Both parties agree that 10 ILCS § 5/7-61 sets forth the “nuts and bolts” of how to fill a vacancy in nomination. (Transcript of June 3, 2010 Hearing at pp. 12, 21). The only reference in Section 7-61 to a “resolution to fill a vacancy” is in paragraphs 3-6. However, I believe that paragraphs 3-6 (as well as paragraphs 7-8) apply to situations when a candidate has been nominated at the primary and a vacancy in nomination occurs as a result of death, resignation or other reasons. I do not believe that these paragraphs apply to the Candidate’s situation when no established political party candidate was printed on the general primary ballot for a particular office and no person was nominated as a write-in candidate for such office. (See Hearing Officer’s Findings and Recommendations at 4-8, *Jenkins v. Wojcik*, 1 SOEB GE 500 (June 7, 2010), a copy of which is attached hereto).

Paragraph 9 in Section 7-61 does apply to the Candidate’s situation here, i.e., when no established party was printed on the primary ballot for the office of Representative in the General Assembly from the 89th Representative District of Illinois. Paragraph 9 does not require the filing of a “resolution to fill a vacancy in nomination.” However, a candidate is required to file a “notice of appointment by the appropriate committee” together with the rest of the candidate’s nominating papers. Section 7-61 and the remaining provisions of the Election Code do not specify the information that must be included in this “notice of appointment” and, moreover, do not require that the “notice of appointment” include a date on which the candidate was appointed.

At the hearing on this matter, the Candidate’s counsel represented that the Resolution to Fill a Vacancy in Nomination was filed for purposes of satisfying the “notice of appointment” requirement in paragraph 9 of Section 7-61. (Transcript of June 3, 2010 Hearing at p. 31). I believe that the filing of a form entitled “Resolution to Fill a Vacancy in Nomination” satisfies the “notice of appointment” requirement. The Election Code makes it clear that designating/nominating/appointing¹ a candidate is a prerequisite to “filling the vacancy in nomination.” See 10 ILCS § 5/7-61 (requiring that “a vacancy in nomination shall be filled only by a person designated by the appropriate committee”). Therefore, if the Committee has “filled the vacancy in nomination,” as reflected on the Candidate’s Resolution, then the Candidate was

¹ Designate, nominate and appoint have similar meanings and are used interchangeably. Black’s Law Dictionary defines the term “nominate” as: “to name, designate by name, appoint, or propose for election or appointment.” BLACK’S LAW DICTIONARY 1049 (6th ed. 1990). The term “designate” is defined as: “to indicate, select, appoint, nominate, or set apart for purpose or duty . . .” *Id.* at 447. Further, the term “appoint” is defined as: “to designate, choose, select, assign, ordain, prescribe, constitute, or nominate.” *Id.* at 99. See also *United States v. Wall*, 225 F. 2d 905, 908 (7th Cir. 1955); compare 10 ILCS 5/7-61 (using the term “designate”) with 10 ILCS 5/8-17 (using the term “nominate”).

previously “appointed” by the Committee and the Resolution would obviously satisfy the “notice of appointment” requirement set forth in Section 7-61.

The next issue that needs to be resolved is what consideration the Board should give to the “Date of meeting: 4-12-2010” found at the bottom of the Resolution to Fill a Vacancy in Nomination.

The Resolution filed by the Candidate is a form from the State Board of Elections entitled “Resolution to Fill a Vacancy in Nomination.” It is not entitled a “Resolution to Designate/Nominate/Appoint a Candidate.” Therefore, to the extent the meeting date at the bottom of the Resolution has any purpose, I believe it refers to the date that the Committee resolved to fill the vacancy which, as set forth above, is a separate event than the designation/nomination/appointment of a candidate.

In the body of the Resolution, it does state “the Slating Committee of the Democratic Party in and for the 89th District . . . of Illinois hereby nominates Victoria F. Grizzoffi . . . for the office of State Representative General Assembly in and for the 89th District . . . of Illinois to be voted upon at the General or Consolidated Election to be held on November 2, 2010.” (Exhibit A). However, unlike other Resolutions that have been submitted to the Board, there is no reference to a date in the narrative portion of the Resolution. For instance, the “Resolution to Fill a Vacancy in Nomination for the Office of Representative in the General Assembly” filed by John Warner, which is the subject of an objection in *Pollard v. Warner*, 10 SOEB GE 100, includes the following language in the body of the document:

WHEREAS, at a meeting of the Democratic Representative District Committee of the 102nd Representative District **held on April 7, 2010** . . . BE IT RESOLVED, **on this 7 day of April 2010**, that the Democratic Representative District Committee of the 102nd Representative District of the State of Illinois hereby hereby appoints and nominates

(A copy of Warner’s Resolution is attached hereto as Exhibit C) (emphasis added). Similarly, the “Resolution to Fill a Vacancy in Nomination” filed by Adam Wojcik, whose nomination papers are the subject of an objection in *Jenkins v. Wojcik*, 10 SOEB GE 500, includes the following language in the body of the document:

WHEREAS, the Legislative Committee of the Republican Party in and for the 19th Legislative District of Illinois **met within the district on March 6, 2010** . . . and **at that March 6, 2010 meeting** voted to nominate a candidate of the Republican Party to fill said vacancy . . . BE IT RESOLVED, that the Legislative Committee of the Republican Party in and for the 19th Legislative District Of Illinois **met on March 6, 2010** and did nominate Adam Wojcik

(A copy of Wojcik’s Resolution is attached hereto as Exhibit D) (emphasis added).

With regard to the Candidate’s Resolution to Fill a Vacancy in Nomination in this case, the document states that “the Slating Committee . . . has voted to nominate a candidate” and “the

Slating Committee hereby nominates Victoria Grizzoffi,” but a date does not accompany any of these clauses. The only date that appears on the document is at the bottom. However, that date could reference when the “filling of the vacancy in nomination” occurred or was announced. I believe it is unclear to what “action” the meeting date refers (i.e., filling the vacancy versus designating/nominating/appointing).

The Candidate did submit the Affidavit of the Chairman of the Democratic Party of Jo Daviess County, Illinois and member of the Democratic Representative District Committee for the 89th Representative District of the State of Illinois (Exhibit B). The Affidavit states that the Committee’s designation of the Candidate to fill the vacancy in nomination was publicly announced at a meeting of the Jo Daviess County Democrats on March 16, 2010. Whereas I believe it is unclear what event actually occurred on April 12, 2010 (the date at the bottom of the Resolution), I do believe the Affidavit is clear that the designation of the Candidate occurred prior to March 16, 2010 when it was publicly announced.

In considering the objections regarding the Candidate’s compliance with Section 8-17 and Section 7-61, I also recommend that the Board consider the well established principle that “[a]ccess to a place on the ballot is a substantial right which should not be lightly denied.” See *Welch v. Johnson*, 147 Ill. 2d 40, 56, 588 N.E.2d 1119, 1126 (1992). See also *Siegal v. Lake County Officers Electoral Bd.*, 385 Ill. App. 3d 452, 460-61, 895 N.E.2d 69, 76-77 (2d Dist 2008). Moreover, interpreting the Candidate’s “Resolution to Fill a Vacancy in Nomination” to mean that the Candidate was nominated after the 60 day deadline in violation of Section 8-17 seems particularly unjust when: i) the Resolution itself did not need to be filed; ii) no filing is necessary to demonstrate that the Candidate was nominated within 60 days; iii) there is no requirement that the notice of appointment include the date of the appointment; and iv) it is unclear from the face of the Resolution what event occurred on April 12, 2010. Furthermore, under 10 ILCS § 5/10-10, “an election board’s scope of inquiry with respect to objections to nomination papers is limited to ascertaining whether those papers comply with the provisions of the Election Code governing such papers.” *Bryant v. Bd. of Election Commr’s*, 224 Ill. 2d 473, 476, 865 N.E.2d 189, 192 (2007). I would submit that under this principle, the Board’s scope with respect to the nomination papers is not whether there is a violation of Section 8-17, but whether the Candidate’s nomination papers comply with Section 7-61 -- the section of the Election Code that “governs such papers.”

For the foregoing reasons, I recommend that the Board grant the Candidate’s motion to strike the objection that the Candidate did not comply with Section 8-17.

B. Whether the Nomination Papers Fail to Comply with the Requirements of 10 ILCS § 5/8-17 and 10 ILCS § 5/7-61 in that the Nominating Petitions Were Circulated Before the Candidate Was Designated by the Nominating Committee.

The relevant part of Section 7-61 states:

If the name of no established political party candidate was printed on the general primary ballot for a particular office and if no person was nominated as a write-in

candidate for such office, a vacancy in nomination shall be filled only by a person designated by the appropriate committee of the political party and only if that designated person files nominating petitions with the number of signatures required for an established party candidate for that office within 75 days after the day of the general primary. *The circulation period for those petitions begins on the day the appropriate committee designates that person.*

10 ILCS § 5/7-61 (emphasis added).

The majority of the nomination petitions include an affidavit signed by the circulator with a notarization date between March 30, 2010 and April 11, 2010.² The Objector argues that the majority of the Candidate's nominating petitions were circulated before the April 12, 2010 meeting of the Committee, and for this argument, relies exclusively on the Resolution to Fill a Vacancy in Nomination which includes at the bottom of the document a reference to a meeting date of April 12, 2010 (Exhibit A).

For the reasons stated above, I would recommend that the Board not consider the Resolution as evidence that the Candidate was nominated on April 12, 2010. Instead, the Board should consider the Affidavit of the Commissioner which supports the Candidate's position that the Committee's designation of the Candidate occurred prior to March 16, 2010. In addition, the Board should consider the affidavits of the circulators set forth in the petition sheets which state that "the signatures on this sheet were signed in my presence, after the appropriate management committee's selection of the candidate as the party's nominee."

There is no clear evidence in the record that demonstrates that the nominating petitions were not circulated before the Candidate was designated by the nominating committee, and therefore, I recommend that the Board grant the Candidate's motion to strike the objection that the petition papers were circulated prior to the date the Candidate was designated in violation of Section 7-61.

C. Whether the Resolution to Fill a Vacancy in Nomination is Null and Void and of No Effect Because It Purports to be Executed by the "Slating Committee" for the Democratic Party for the 89th Representative District.

The Objector alleges that the Resolution to Fill a Vacancy in Nomination is invalid because the Committee completed the form as the "Slating Committee of the Democratic Party in and for the 89th District." 10 ILCS § 5/8-17 requires the "legislative or representative committee" to nominate a candidate, and 10 ILCS § 5/7-61 mandates that the candidate be designated by the "appropriate committee." The Objector fails to provide any authority which supports his position that the "Slating Committee of the Democratic Party in and for the 89th District" is not the "representative" or "appropriate" committee. The objector relies upon 10 ILCS § 5/8-5 which states: "There shall be constituted one legislative committee for each political party in each legislative district and one representative committee for each political party in each representative district." However, nothing in Section 8-5 prohibits a political party from forming a committee called the "Slating Committee." Moreover, as pointed out by the

² 56 out of 94 petition sheets reflect a notarization date before April 12, 2010.

candidate, the Board has promulgated a petition form for this purpose and uses the term “managing committee,” which has no more basis in the statute than “Slating Committee.” Therefore, for the foregoing reasons, I recommend that the Board grant the Candidate’s motion to strike the objection regarding the execution of the Resolution by the “Slating Committee.”

D. Whether the Candidate’s Nomination Petitions Are Uniform and Consistent and in Compliance with the Election Code.

The Objector argues that the Candidate’s nomination petitions are in violation of 10 ILCS § 5/7-10 because the heading of each sheet is not the same. Specifically, the Objector alleges that the blank spaces on the petition forms which call for information regarding the residences of the signers (i.e., the type of municipality, the name of the municipality and the name of the county) are not the same, rendering the nomination petitions invalid. For example, the heading in petition sheet number 7 refers to “the city/village of Galena/Elizabeth in the County of Jo Daviess” and the heading in petition sheet number 8 refers to “the Villages of Elizabeth/Scalesmound in the County of Jo Daviess.” I recommend that the Board grant the Candidate’s motion to strike this objection for several reasons.

First, the applicable statute governing the form of the petition for the Candidate in this matter is 10 ILCS § 5/8-8 and not 10 ILCS § 5/7-10. Whereas Section 7-10 includes the requirement that “the heading of each sheet shall be the same,” Section 8-8 does not include any such requirement. *Compare* 10 ILCS § 5/7-10 *with* 10 ILCS § 5/8-8.

Second, even if Section 7-10 applied, the Objector’s contention that the heading is not the same because the blank spaces regarding the signer’s residences are not uniform is without merit. With the exception of those blank spaces, the heading *is* identical for each of the Candidate’s nomination sheets. Moreover, Section 7-10 does in fact refer to blank spaces for the signer’s residence. A district such as the 89th Representative District may span several counties and hundreds of municipalities. However, there is no requirement in the Election Code that all the signers live in the same municipality. *See* 10 ILCS § 5/8-8. Therefore, under Section 7-10, which allows blanks to be filled in for the signers’ residences, and Section 8-8, which does not require that all the signers live in the same municipality, I do not believe that the Legislature intended that the residences of the signers be the same for each nomination sheet of a candidate.³

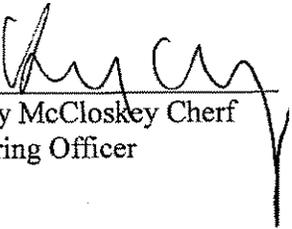
III. RECOMMENDATIONS

For the foregoing reasons, I recommend that the Board grant the Candidate’s motion to strike the following objections: i) the Candidate’s Nomination Papers fail to comply with Section 8-17; ii) the Candidate’s petition papers were circulated before the Candidate was designated in violation of Section 7-61; iii) the Resolution is null and void because it was executed by the “Slating Committee” for the Democratic Party for the 89th Representative District; and iv) the petition sheets are not uniform and consistent and not in compliance with the Election Code. I

³ The Objector also argues that the Candidate or circulator “has written in the heading, after the fact, the names of the localities for the various signers.” (Objector’s Petition at ¶ 10). However, there is no evidence in the record that the Candidate or circulator filled in the blank spaces after he or she circulated the petition sheets.

further recommend that Ms. Grizzoffi be certified for the ballot as a candidate for the office of Representative in the General Assembly from the 89th Representative District of the State of Illinois to be voted on at the General Election on November 2, 2010.

Dated: June 9, 2010


Kelly McCloskey Cherf
Hearing Officer

Marquardt v. Grizzoffi
10 SOEB GE 101

Candidate: Victoria Grizzoffi

Office: State Representative, 89th Dist.

Party: Democratic

Objector: Roger C. Marquardt

Attorney For Objector: John Fogarty Jr.

Attorney For Candidate: Michael Kasper and Courtney Nottage

Number of Signatures Required: 500

Number of Signatures Submitted: 873

Number of Signatures Objected to: 734

Basis of Objection: Several of the candidate's nominating petitions were circulated, signed and notarized prior to the designation of the candidate to fill the vacancy in nomination by any committee of the 89th Representative District. A Resolution to Fill the Vacancy in Nomination was filed by the Representative Committee on April 13, 2010. The Resolution states that the Candidate was appointed to fill the vacancy in nomination on April 12th. Three of the petition pages were not notarized and three other pages were allegedly signed and notarized on April 30th, (several days after the nomination petitions were filed with the SBE.)

The Resolution was not filed within 60 days of the General Primary Election as required by 10 ILCS 5/8-17. Further, the Resolution was executed by the "slating committee" for the Democratic Party of the 89th Representative District. There is no such legal entity as a "slating committee".

The headings on each petition sheet are not uniform and consistent as required by 10 ILCS 5/7-10, but rather, they are different from one another in that the Candidate or the circulator wrote in the locality of the various petition signers after the petition was circulated.

If the objected to petition sheets are determined to be defective as alleged, the total number of presumably valid signatures would be 134; 366 below the statutory minimum.

Dispositive Motions: A Motion to Strike and Dismiss was filed by the Candidate.

Binder Check Necessary: No

Hearing Officer: Kelly McCloskey Cherf

Hearing Officer Findings and Recommendation: The Hearing Officer recommends that the Candidate's Motion to Strike the objection that the Resolution to Fill a Vacancy in Nomination was not filed within 60 days of the primary election should be granted, because no requirement to *file* such Resolution is found in Section 8-17 of the Election Code.

The Hearing Officer then considered the objection that the Candidate, by submitting a Resolution to Fill a Vacancy in Nomination that stated at the bottom "Date of Meeting: April 12", failed to comply with Section 8-17 which requires a vacancy in nomination to be filled within 60 days of the primary. She concluded that this date should not be determinative as to the date of appointment of the Candidate for purposes of Section 8-17. A detailed analysis is contained in her recommendation.

The Hearing Officer then considered an affidavit filed by the Chairman of the Democratic Party of Jo Daviess County and member of the Democratic Representative District Committee for the 89th Representative District. The Hearing Officer found that the Affidavit stating that the Committee's designation of the Candidate to fill the vacancy in nomination was publicly announced at a March 16, 2010 meeting clearly indicates that the designation of the Candidate occurred prior to March 16, 2010. Furthermore, the Hearing Officer finds that although the Resolution is dated April 12, 2010, a date that is not within 60 days of the primary election, the actual designation occurred before March 16, 2010 and therefore, was within 60 days of the primary, in compliance with Section 8-17.

The Hearing Officer then turned to the Objection that numerous petitions were circulated prior to the candidate being designated by the Representative Committee in violation of Section 7-61. In recommending that the Board consider the affidavit's date as proof that the designation of the Candidate occurred prior to March 16, 2010, the Hearing Officer found that the petition papers, containing circulator affidavits signed and notarized between March 30, 2010 and April 11, 2010, comply with Section 7-61 and recommends that the Board grant the Candidate's motion to strike this objection.

The Hearing Officer recommends that the Board grant the Candidate's motion to strike the objection regarding the execution of the Resolution by the "Slating Committee" because the Objector has not provided any authority that supports the position that the "Slating Committee" is not the "representative" or "appropriate" committee required by Sections 8-17 and 7-61.

The Hearing Officer recommends that the Board grant the Candidate's motion to strike the objection that the Candidate's Nomination Petitions are not uniform and consistent because, with the exception of the blank spaces for the signer's residence, the heading is identical for each of the Candidate's nomination sheets.

On the basis of the above findings and recommendations, the Hearing Officer recommends that the Candidate be certified for the ballot to be voted on at the General Election.

Recommendation of the General Counsel: I concur in part and disagree in part with the recommendation of the Hearing Officer. I concur that the first objection; failure to file the Resolution to Fill a Vacancy in Nomination within 60 days of the Primary Election, should be overruled and the corresponding Motion to Strike be granted.

I do not concur with her recommendation to overrule the second objection, which alleged that the appointment to fill the vacancy in nomination did not occur within 60 days of the Primary, and was therefore in violation of Section 8-17. I believe that the Resolution that was filed by the Candidate, which stated that the date of the meeting was April 12, is dispositive of the issue of compliance with 8-17. The Resolution was filed with the Candidate's nominating petitions and other required paperwork in compliance with Section 7-61. The Resolution clearly referred to the actions of the Representative Committee of the 89th Representative District, appointing the Candidate to fill the vacancy in nomination. Whether required or not, the Candidate listed the date of April 12 as the date of the meeting, which I believe served as the designation of the Candidate for purposes of petition circulation and the nomination required by 8-17. Even if a separate meeting occurred on or about March 16 (as maintained in the affidavit submitted in the course of the Electoral Board hearing), no official notice of appointment or

resolution was filed as a result. In any event, the meeting on April 12 (which was the official meeting as suggested by the Resolution that was filed thereafter) would have superseded any earlier meeting. I therefore recommend that this objection be sustained and the corresponding Motion to Strike be denied.

For the reasons stated above, I also do not concur with the recommendation to overrule the objection that the circulation of the nominating petitions occurred prior to the Candidate being designated by the Representative Committee. This objection should be sustained and the corresponding Motion to Strike should be denied.

I concur with the remaining two recommendations; the recommendation to overrule the objection to the reference to "slating committee" and the recommendation to overrule the objection to the uniformity of the petition heading.

BEFORE THE DULY CONSTITUTED ELECTORAL BOARD
FOR THE HEARING AND PASSING UPON OF NOMINATION OBJECTIONS TO
NOMINATION PAPERS OF CANDIDATES FOR ELECTION TO THE
OFFICE OF REPRESENTATIVE IN THE GENERAL ASSEMBLY FOR THE 118th
REPRESENTATIVE DISTRICT OF THE STATE OF ILLINOIS

James Fowler,)
)
Petitioner-Objector,)
)
v.)
)
Rick Campbell,)
)
Respondent-Candidate.)

PRINCIPAL OFFICE
STATE BOARD OF ELECTIONS
10 APR 26 PM 2:12

OBJECTOR'S PETITION

INTRODUCTION

James Fowler, hereinafter sometimes referred to as the Objector, states as follows:

1. The Objector resides at 2715 Highway 13 W, Harrisburg, Illinois, Zip Code 62946, in the 118th Representative District of the State of Illinois, and is a duly qualified, legal and registered voter at that address.
2. The Objector's interest in filing this Petition is that of a voter desirous that the laws governing the filing of nomination papers for the office of Representative in the General Assembly for the 118th Representative District of the State of Illinois are properly complied with, and that only qualified candidates appear on the ballot for said office.

OBJECTIONS

3. The Objector makes the following objections to the purported nomination papers ("Nomination Papers") of Rick Campbell as a candidate for the office of Representative in the General Assembly for the 118th Representative District of the State of Illinois ("Office") to be voted for at the General Election on November 2, 2010 ("Election"). The Objector states that the Nomination Papers are insufficient in fact and law for the following reasons:
4. The name of no candidate of the Republican Party appeared on the ballot for nomination to the Office in the Primary Election. As a result, a vacancy in nomination was created that could be filled within 75 days of the Primary Election pursuant to Sections 8-17 and 7-61 of the Election Code. Any candidate designated to fill the vacancy in nomination is required to submit a nominating petition signed by a number of voters of the Representative District equal to the

number required for a candidate to qualify for the ballot in the Primary Election.

5. Pursuant to State law, nomination papers for the Office to be voted for at the Election must contain the signatures of not fewer than 500 duly qualified, registered and legal voters of the 118th Representative District of the State of Illinois collected in the manner prescribed by law. In addition, nomination papers must truthfully allege the qualifications of the candidate, be gathered and presented in the manner provided for in the Illinois Election Code, and otherwise executed in the form provided by law. The Nomination Papers purport to contain the signatures of in excess of 500 such voters, and further purport to have been gathered, presented and executed in the manner provided by the Illinois Election Code.
 6. The Nomination Papers contain petition sheets with the names of persons who are not registered voters, or who are not registered voters at the addresses shown opposite their respective names, as is set forth specifically in the Appendix-Recapitulation attached hereto and incorporated herein, under the heading Column a., "Signer Not Registered at Address Shown," in violation of the Illinois Election Code.
 7. The Nomination Papers contain petition sheets with the names of persons who did not sign the papers in their own proper persons, and such signatures are not genuine and are forgeries, as is set forth specifically in the Appendix-Recapitulation attached hereto and incorporated herein under the heading, Column b., "Signer's Signature Not Genuine," in violation of the Illinois Election Code.
 8. The Nomination Papers contain petition sheets with the names of persons for whom the addresses stated are not in the 118th Representative District of the State of Illinois, and such persons are not registered voters in the 118th Representative District, as is set forth specifically in the Appendix-Recapitulation attached hereto and incorporated herein, under the heading, Column c., "Signer Resides Outside District," in violation of the Illinois Election Code.
 9. The Nomination Papers contain petition sheets with the names of persons for whom the addresses given are either missing entirely or are incomplete, as is set forth specifically in the Appendix-Recapitulation attached hereto and incorporated herein, under the heading, Column d., "Signer's Address Missing or Incomplete," in violation of the Illinois Election Code.
 10. The Nomination Papers contain petition sheets with the names of persons who have signed the Nomination Papers more than one time as is set forth specifically in the Appendix-Recapitulation attached hereto and incorporated herein, under the heading, Column e., "Signer Signed Petition More Than Once at Sheet Indicated," in violation of the Illinois Election Code.
 11. The Nomination Papers contain petition sheets which bear a circulator's affidavit which is not signed by a circulator who does not reside at the address shown on the petition sheet, and every signature on such sheets is invalid, as is set forth in the Appendix-Recapitulation attached hereto and incorporated herein, under the heading, "Circulator Does Not Reside at Address Shown."
-

12. The Nomination Papers contain petition sheets that bear a circulator's affidavit on which the circulator's address is incomplete, and every signature on such sheets is invalid, as is set forth in the Appendix-Recapitulation attached hereto and incorporated herein, under the heading, "Circulator's Address is Incomplete."

13. The Nomination Papers contain petition sheets which bear a circulator's affidavit on which the circulator did not personally appear before the Notary Public to subscribe or acknowledge his or her signature as circulator in the presence of said Notary Public, and every signature on such sheets is invalid, as is set forth in the Appendix-Recapitulation attached hereto and incorporated herein, under the heading, "Circulator Did Not Appear Before Notary."

14. All of the petition sheets included with the Nomination Papers contain a circulator's affidavit which states that no signatures on the sheet were obtained more than 90 days preceding the last day for filing the petition. The circulation period for the Office cannot begin until: (a) at most 75 days prior to the last date for filing the petition; and (b) and the candidate has been designated by the Representative District Committee. Accordingly, the circulator's affidavit fails to include a statement, certified by the circulator, that the signatures were gathered within the time period permitted by law, and every signature on such sheets is invalid. This objection pertains to every petition sheet included in the Candidate's Nomination Papers.

15. The Nomination Papers are invalid in their entirety because the purported Representative District Committee of the Republican Party for the 118th Representative District lacked authority to fill the vacancy in nomination because the Committee failed to properly organize by failing to file a Certificate of Organization with the Illinois State Board of Elections as required by the Illinois Election Code.

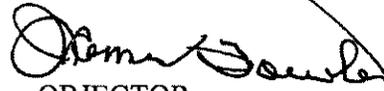
16. The Nomination Papers are invalid in their entirety because the Resolution to Fill the Vacancy in Nomination indicates that the vacancy was filled on March 15, 2010, but the Resolution to Fill a Vacancy in Nomination was not filed with the State Board of Elections until April 19, 2010. As a result, the Resolution to Fill a Vacancy in Nomination was not filed within three days of the date the vacancy was filled as required by the Illinois Election Code. As a result, the Nomination Papers are invalid in their entirety.

17. The Nomination Papers contain less than 500 validly collected signatures of qualified and duly registered legal voters of the 118th Representative District, signed by such voters in their own proper person with proper addresses, below the number required under Illinois law, as is set forth by the objections recorded in the Appendix-Recapitulation attached hereto and incorporated herein.

18. The Appendix-Recapitulation is incorporated herein, and the objections made therein are a part of this Objector's Petition.

WHEREFORE, the Objector requests: a) a hearing on the objections set forth herein; b) an examination by the aforesaid Electoral Board of the official records relating to voters in the 118th

Representative District, to the extent that such examination is pertinent to any of the matters alleged herein; c) a ruling that the Nomination Papers are insufficient in law and fact, and d) a ruling that the name of Rick Campbell shall not appear and not be printed on the ballot for election to the office of Representative in the General Assembly of the 118th Representative District of the State of Illinois, to be voted for at the General Election to be held November 2, 2010.



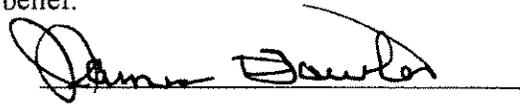
OBJECTOR

Address:
James Fowler
2715 Highway 13 W
Harrisburg, IL 62946

VERIFICATION

STATE OF ILLINOIS)
) SS.
COUNTY OF SALINE)

I, James Fowler, being first duly sworn upon oath, depose and state that I have read the above and foregoing OBJECTOR'S PETITION, and that the matters and facts contained therein are true and correct to the best of my knowledge and belief.



Subscribed and sworn to before me
by James Fowler
this 25 day of April, 2010.

Richard M. Sloan
Notary Public



**BEFORE THE DULY CONSTITUTED ELECTORAL BOARD
FOR THE HEARING AND PASSING UPON OF NOMINATION OBJECTIONS TO
NOMINATION PAPERS OF CANDIDATES FOR NOMINATION TO THE
OFFICE OF REPRESENTATIVE IN THE GENERAL ASSEMBLY FOR THE 118TH
REPRESENTATIVE DISTRICT OF THE STATE OF ILLINOIS**

James Fowler,)	
)	
Petitioner-Objector,)	
)	
v.)	No. 10 SOEB - 103
)	
Rick Campbell,)	
)	
Respondent-Candidate.)	

RECOMMENDATION OF HEARING EXAMINER

TO: Michael Kasper	John G. Fogarty
222 N. LaSalle, #300	Law Office of John Fogarty, Jr.
Chicago, Illinois 60601	4043 N. Ravenswood, Suite 226
Phone: (312)-704-3292	Chicago, Illinois 60613
Fax: (312)-368-4944	fogartyjr@gmail.com
	Phone: (773)-680-4962
	Fax: (773)-681-7147

Steve Sandvoss
Illinois State Board of Elections
1020 South Spring Street
Springfield, Illinois 62704
SSandvoss@elections.il.gov

This matter coming on for recommendation on the Verified Objection in this matter and the Hearing Examiner states as follows:

PROCEDURAL HISTORY

This matter commenced on April 26, 2010, when James Fowler filed a "Verified Objectors' Petition" with the State Board of Elections. Fowler (hereinafter "Objector") alleged that the nomination papers of Rick Campbell for the office of Representative in the General Assembly for the 118th Representative District of the State of Illinois (hereinafter "Candidate"), were insufficient in that they were not in conformance with certain provisions of the Illinois Election Code and that the nomination papers contain less than the 500 valid signatures required by law. Specifically, the Objector alleged that:

- The nomination papers contained petition sheets with names of persons 1) who were not registered voters or who are not registered voters at the

address shown, 2) whose signatures were not genuine, 3) whose addresses are not in the 118th Representative District, 4) whose addresses were missing or incomplete, and 5) who signed petitions more than once.

- The nomination papers contained petition sheets which bear a circulators affidavit 1) where the circulator does not reside at the address shown, 2) where the circulator's address is incomplete and 3) where the circulator did not appear before a notary.
- The nomination papers contained a circulators affidavit which stated that no signature was obtained more than 90 days preceding the last day for filing the petition and does not contain that the signatures were gathered within 75 days as required by law.
- The purported committee failed to properly organize by not filing a certificate of organization as required by law and therefore lacked authority to fill the vacancy in nomination.
- The resolution to fill a vacancy in nomination indicates the vacancy was filled on March 15, 2010, but was not filed until April 19, 2010, which is more than 3 days from the filling of the vacancy.

On May 11, 2010, a records examination was conducted by staff of the State Board of Elections. The records review revealed that Candidate had collected a total of 544 signatures. There were 200 line objections reviewed at the records examination. At the conclusion of the records examination there were 427 signatures considered valid (117 line objections were sustained, while 83 line objections were overruled). After the records examination, Candidate did not have the required statutory minimum of not fewer than 500 to be placed on the ballot.

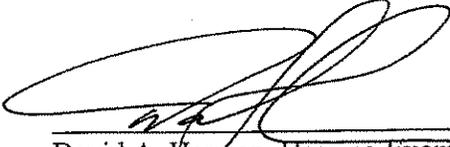
Both parties through their respective counsel indicated that they did not contest the results of the records examination. As a result no Rule 9 Motion was submitted by either party.

The results of the records examination stand uncontested and reveal that Candidate has not submitted the legally required minimum signatures to be placed on the ballot. Objector's additional arguments set forth in his objection are therefore moot and need not be considered.

Conclusion

Because Candidate has not met the minimum signature requirement set forth in the Election Code, the Hearing Examiner recommends that Candidate's name **not** be placed on the ballot as a candidate for the office of Representative in the General Assembly for the 118th Representative District of the State of Illinois to be voted on at the General Election on November 2, 2010.

DATED: June 7, 2010



David A. Herman, Hearing Examiner

CERTIFICATE OF SERVICE

Service of the foregoing document was made by sending a copy via e-mail to:

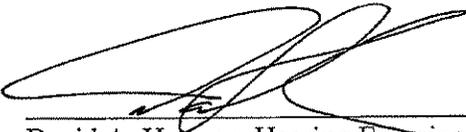
Steve Sandvoss
Illinois State Board of Elections
1020 South Spring Street
Springfield, Illinois 62704
SSandvoss@elections.il.gov

John G. Fogarty
Law Office of John Fogarty, Jr.
4043 N. Ravenswood, Suite 226
Chicago, Illinois 60613
fogartyjr@gmail.com

and by facsimile to:

Michael Kasper
222 N. LaSalle, #300
Chicago, Illinois 60601
Facsimile: (312)-368-4944

from the office of the undersigned this 7th day of June, 2010.



David A. Herman, Hearing Examiner

Fowler v. Campbell
10 SOEB GE 103

Candidate: Rick Campbell

Office: State Representative, 118th Dist.

Party: Republican

Objector: James Fowler

Attorney For Objector: Michael Kasper

Attorney For Candidate: John Fogarty

Number of Signatures Required: 500

Number of Signatures Submitted: 544

Number of Signatures Objected to: 200

Basis of Objection: Petition contains an insufficient number of valid signatures. (Both individual petition signers and the circulators of certain petition pages were challenged for a variety of reasons.)

The circulators' affidavit does not state that the signatures were gathered during the permissible circulation period; within 75 days following the date of the General Primary Election. Therefore, the petition in its entirety should be ruled invalid.

The Representative Committee lacked the authority to appoint the Candidate to fill the vacancy in nomination by failing to properly organize as no Certificate of Organization was filed with the SBE.

The Resolution to Fill a Vacancy in Nomination indicates that the vacancy was filled on March 15, 2010. The Resolution was filed on April 19, 2010; not within 3 days of the filling of the vacancy as required by the Election Code.

Dispositive Motions: A Motion to Strike was filed by the Candidate. A Response to the Motion to Strike was filed by the Objector.

Binder Check Necessary: Yes

Hearing Officer: David Herman

Hearing Officer Findings and Recommendation: A records examination conducted by the staff determined that Candidate submitted 427 valid signatures (117 line objections were sustained and 83 line objections were overruled). Neither party submitted a Rule 9 Motion.

Because Candidate has not submitted the legally required minimum number of signatures, the other objections raised are moot, and the Hearing Officer recommends that the Candidate's name not be placed on the ballot as a candidate for the office of Representative in the General Assembly for the 118th Representative District to be voted on at the General Election.

Recommendation of the General Counsel: I concur with the recommendation of the Hearing Officer.

BEFORE THE DULY CONSTITUTED ELECTORAL BOARD
FOR THE HEARING AND PASSING UPON OF NOMINATION OBJECTIONS TO
NOMINATION PAPERS OF CANDIDATES FOR ELECTION TO THE
OFFICE OF STATE SENATOR FOR THE 19th
LEGISLATIVE DISTRICT OF THE STATE OF ILLINOIS

Ralph D. Jenkins,)
)
Petitioner-Objector,)
)
v.)
)
Adam Wojcik,)
)
Respondent-Candidate.)

ORIGINAL ON FILE AT
STATE BD OF ELECTIONS
ORIGINAL TIME STAMPED
AT APR 26 2010 4:26 pm

OBJECTOR'S PETITION

INTRODUCTION

Ralph D. Jenkins, hereinafter sometimes referred to as the Objector, states as follows:

1. The Objector resides at 4920 190th Street, Country Club Hills, Illinois, Zip Code 60478, in the 19th Legislative District of the State of Illinois, and is a duly qualified, legal and registered voter at that address.
2. The Objector's interest in filing this Petition is that of a voter desirous that the laws governing the filing of nomination papers for the office of State Senator for the 19th Legislative District of the State of Illinois are properly complied with, and that only qualified candidates appear on the ballot for said office.

OBJECTIONS

3. The Objector makes the following objections to the purported nomination papers ("Nomination Papers") of Adam Wojcik as a candidate for the office of State Senator for the 19th Legislative District of the State of Illinois ("Office") to be voted for at the General Election on November 2, 2010 ("Election"). The Objector states that the Nomination Papers are insufficient in fact and law for the following reasons:
4. The name of no candidate of the Republican Party appeared on the ballot for nomination to the Office in the Primary Election. As a result, a vacancy in nomination was created that could be filled within 75 days of the Primary Election pursuant to Sections 8-17 and 7-61 of the Election Code. Any candidate designated to fill the vacancy in nomination is required to submit a nominating petition signed by a number of voters of the Legislative District equal to the number required for a candidate to qualify for the ballot in the Primary Election.

5. Pursuant to State law, nomination papers for the Office to be voted for at the Election must contain the signatures of not fewer than 1000 duly qualified, registered and legal voters of the 19th Legislative District of the State of Illinois collected in the manner prescribed by law. In addition, nomination papers must truthfully allege the qualifications of the candidate, be gathered and presented in the manner provided for in the Illinois Election Code, and otherwise executed in the form provided by law. The Nomination Papers purport to contain the signatures of in excess of 1000 such voters, and further purport to have been gathered, presented and executed in the manner provided by the Illinois Election Code.

6. The Nomination Papers contain petition sheets with the names of persons who are not registered voters, or who are not registered voters at the addresses shown opposite their respective names, as is set forth specifically in the Appendix-Recapitulation attached hereto and incorporated herein, under the heading Column a., "Signer Not Registered at Address Shown," in violation of the Illinois Election Code.

7. The Nomination Papers contain petition sheets with the names of persons who did not sign the papers in their own proper persons, and such signatures are not genuine and are forgeries, as is set forth specifically in the Appendix-Recapitulation attached hereto and incorporated herein under the heading, Column b., "Signer's Signature Not Genuine," in violation of the Illinois Election Code.

8. The Nomination Papers contain petition sheets with the names of persons for whom the addresses stated are not in the 19th Legislative District of the State of Illinois, and such persons are not registered voters in the 19th Legislative District, as is set forth specifically in the Appendix-Recapitulation attached hereto and incorporated herein, under the heading, Column c., "Signer Resides Outside District," in violation of the Illinois Election Code.

9. The Nomination Papers contain petition sheets with the names of persons for whom the addresses given are either missing entirely or are incomplete, as is set forth specifically in the Appendix-Recapitulation attached hereto and incorporated herein, under the heading, Column d., "Signer's Address Missing or Incomplete," in violation of the Illinois Election Code.

10. The Nomination Papers contain petition sheets with the names of persons who have signed the Nomination Papers more than one time as is set forth specifically in the Appendix-Recapitulation attached hereto and incorporated herein, under the heading, Column e., "Signer Signed Petition More Than Once at Sheet Indicated," in violation of the Illinois Election Code.

11. The Nomination Papers contain petition sheets with the names of persons who have signed the Nomination Papers whose signatures are invalid because they signed a nominating petition for another political party for the February 2, 2010 primary election, as is set forth specifically in the Appendix-Recapitulation attached hereto and incorporated herein, under the heading Column f., "Signer Signed for Another Political Party," in violation of the Illinois Election Code.

12. The Nomination Papers contain petition sheets with the names of persons who have signed the Nomination Papers whose signatures are invalid because they voted in another political party's primary election at the February 2, 2010 primary election, as is set forth specifically in the Appendix-Recapitulation attached hereto and incorporated herein, under the heading Column g., "Signer Voted in Another Party's Primary," in violation of the Illinois Election Code.

13. The Nomination Papers contain petition sheets which bear a circulator's affidavit which is signed by a circulator who had previously circulated nominating petitions for another political party for the February 2, 2010 primary election, and every signature on such sheets is invalid, as is set forth in the Appendix-Recapitulation attached hereto and incorporated herein, under the heading, "Circulator Circulated for Another Political Party."

14. The Nomination Papers contain petition sheets which bear a circulator's affidavit which is signed by a circulator who had previously voted in another political party's primary election at the February 2, 2010 primary election, and every signature on such sheets is invalid, as is set forth in the Appendix-Recapitulation attached hereto and incorporated herein, under the heading, "Circulator Voted in Another Party's Primary."

15. The Nomination Papers contain petition sheets which bear a circulator's affidavit which is not signed by the circulator in his/her own proper person, and such signatures are not genuine and are forgeries, and every signature on such sheets is invalid, as is set forth in the Appendix-Recapitulation attached hereto and incorporated herein, under the heading, "Circulator's Signature Not Genuine."

16. The Nomination Papers contain petition sheets that bear a circulator's affidavit containing an address at which the circulator does not reside, and every signature on such sheets is invalid, as is set forth in the Appendix-Recapitulation attached hereto and incorporated herein, under the heading, "Circulator Does Not Reside at Address Shown."

17. The Nomination Papers contain petition sheets which bear a notary jurat which is not properly completed, and every signature on such sheets is invalid, as is set forth in the Appendix-Recapitulation attached hereto and incorporated herein, under the heading, "Circulator's affidavit Not Properly Notarized."

18. The Nomination Papers contain petition sheets that bear a circulator's affidavit which states that no signatures were obtained more than 90 days preceding the last day for filing the petition. The circulation period for the Office cannot begin until: (a) at most 75 days prior to the last date for filing the petition; and (b) and the candidate has been designated by the Legislative District Committee. Accordingly, the circulator's affidavit fails to include a statement, certified by the circulator, that the signatures were gathered within the time period permitted by law, and every signature on such sheets is invalid. This objection pertains to every petition sheet included in the Candidate's Nomination Papers.

19. The Nomination Papers are invalid in their entirety because the purported Legislative District Committee of the Republican Party for the 19th Legislative District lacked authority to fill the vacancy in nomination because the Committee failed to properly organize by failing to

file a Certificate of Organization with the Illinois State Board of Elections as required by the Illinois Election Code.

20. The Nomination Papers are invalid in their entirety because the Resolution to Fill the Vacancy in Nomination indicates that the vacancy was filled on March 6, 2010, but the Resolution to Fill a Vacancy in Nomination was not filed with the State Board of Elections until April 19, 2010. As a result, the Resolution to Fill a Vacancy in Nomination was not filed within three days of the date the vacancy was filled as required by the Illinois Election Code. As a result, the Nomination Papers are invalid in their entirety.

21. The Nomination Papers contain less than 1000 validly collected signatures of qualified and duly registered legal voters of the 19th Legislative District, signed by such voters in their own proper person with proper addresses, below the number required under Illinois law, as is set forth by the objections recorded in the Appendix-Recapitulation attached hereto and incorporated herein.

22. The Appendix-Recapitulation is incorporated herein, and the objections made therein are a part of this Objector's Petition.

WHEREFORE, the Objector requests: a) a hearing on the objections set forth herein; b) an examination by the aforesaid Electoral Board of the official records relating to voters in the 19th Legislative District, to the extent that such examination is pertinent to any of the matters alleged herein; c) a ruling that the Nomination Papers are insufficient in law and fact, and d) a ruling that the name of Adam Wojcik shall not appear and not be printed on the ballot for election to the office of State Senator of the 19th Legislative District of the State of Illinois, to be voted for at the General Election to be held November 2, 2010.

Ralph D. Jenkins

OBJECTOR

Address:
Ralph D. Jenkins
4920 190th Street
Country Club Hills, Illinois, 60478

VERIFICATION

STATE OF ILLINOIS)
) SS.
COUNTY OF Cook)

I, Ralph D. Jenkins, being first duly sworn upon oath, depose and state that I have read the above and foregoing OBJECTOR'S PETITION, and that the matters and facts contained therein are true and correct to the best of my knowledge and belief.

Ralph D. Jenkins

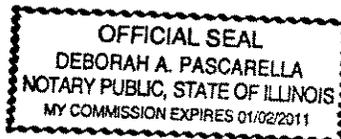
Subscribed and sworn to before me

by Ralph D. Jenkins

this 26th day of April, 2010.

Deborah A. Pascarella

Notary Public



WHEREFORE, the Objector requests: a) a hearing on the objections set forth herein; b) an examination by the aforesaid Electoral Board of the official records relating to voters in the 19th Legislative District, to the extent that such examination is pertinent to any of the matters alleged herein; c) a ruling that the Nomination Papers are insufficient in law and fact, and d) a ruling that the name of Adam Wojcik shall not appear and not be printed on the ballot for election to the office of State Senator of the 19th Legislative District of the State of Illinois, to be voted for at the General Election to be held November 2, 2010.

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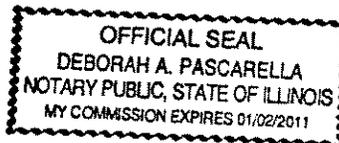
Subscribed and sworn to before me

by Ralph D. Jenkins

this 26th day of April, 2010.

Deborah A. Pascarella

Notary Public



BEFORE THE DULY CONSTITUTED ELECTORAL BOARD
FOR THE HEARING AND PASSING UPON OF OBJECTIONS TO
THE NOMINATION PAPERS OF CANDIDATES FOR ELECTION TO THE
OFFICE OF STATE SENATOR FOR THE 19TH LEGISLATIVE DISTRICT
OF THE STATE OF ILLINOIS

RALPH D. JENKINS,)	
)	
Petitioner-Objector,)	No. 10 SOEBGE 500
)	
v.)	
)	
ADAM WOJCIK,)	
)	
Respondent-Candidate.)	

HEARING OFFICER'S FINDINGS AND RECOMMENDATIONS

This matter coming before the State Board of Elections as the duly qualified Electoral Board and before the undersigned Hearing Officer pursuant to Appointment and Notice issued previously, the Hearing Officer makes the following Findings and Recommendations:

I. PRELIMINARY FACTS

On April 16, 2010, the Candidate, Adam Wojcik (the "Candidate"), filed the following with the State Board of Elections to qualify as a Candidate for the office of State Senator for the 19th Legislative District of the State of Illinois to be voted for at the General Election on November 2, 2010: a) a Statement of Candidacy; b) 259 Nomination Petition Sheets which contain 2401 signatures; c) a Receipt of Statement of Economic Interest; d) a Loyalty Oath; and e) a Resolution to Fill a Vacancy in Nomination (Exhibit A).

On April 26, 2010, the Objector, Ralph Jenkins (the "Objector"), timely filed a verified Objector's Petition. The Objector's Petition also includes an Appendix-Recapitulation. In the Petition, the Objector argues that the Candidate's Nomination Papers are invalid and/or insufficient for the following reasons:

1. The Nomination Papers contain fewer than the requisite 1000 signatures for the reasons set forth in the Objection and Appendix-Recapitulation (*see generally* Objector's Petition at ¶¶ 5-16) including the following arguments: a) the signer signed for another political party and/or voted in another party's primary (Objector's Petition at ¶¶ 11, 12); b) the circulator circulated for another political party and/or voted in another party's primary (Objector's Petition at ¶¶ 13, 14); c) the circulator's signature is not genuine (Objector's Petition at ¶ 15); d) the circulator does not reside at the address shown on the affidavit (Objector's Petition at ¶ 16); and e) the circulator's affidavit is not properly notarized (Objector's Petition at ¶ 17);

2. The Legislative District Committee of the Republican Party for the 19th Legislative District (the "Committee") lacked authority to fill the vacancy in nomination because the Committee failed to properly organize by failing to file a Certificate of Organization with the Illinois State Board of Elections as required by the Illinois Election Code. (Objector's Petition at ¶ 19);

3. The Resolution to Fill a Vacancy in Nomination indicates that the vacancy was filled on March 6, 2010, but the Resolution to Fill a Vacancy in Nomination was not filed with the State Board of Elections until April 19, 2010, and therefore, the Resolution to Fill a Vacancy in Nomination was not filed within three days of the date the vacancy was filled as required by the Illinois Election Code. (Objector's Petition at ¶ 20); and

4. The circulator's affidavit for each petition sheet states that no signatures were obtained more than 90 days preceding the last day for filing the petition; however, the circulation period for this office cannot begin until at most 75 days prior to the last day for filing the petition, and therefore, the circulator's affidavit fails to include a statement certified by the circulator that the signatures were gathered within the time period permitted by law. (Objector's Petition at ¶ 18).

An initial hearing and case management conference on this matter was held on May 3, 2010. Courtney Nottage appeared on behalf of the Objector. Burt Odelson appeared on behalf of the Candidate.

On May 7, 2010, the Candidate timely filed a Motion to Strike and Dismiss. In his Motion, the Candidate argues that:

1. The Certificate of Organization of the 19th Legislative Committee was filed with the State Board of Elections and is attached to the motion;

2. The objection that the circulator's affidavit is not properly notarized does not inform the candidate of the statutory violation, and the candidate has complied with all statutory requirements of the election code pertaining to notarization;

3. The objection that the Resolution to Fill a Vacancy in Nomination was not filed within three days of the date the vacancy was filled is not specific and assuming that the objector is referring to paragraph 3 of 10 ILCS § 5/7-61, this paragraph does not apply to situations when no established political party was printed on the general primary ballot;

4. The objection that the circulator's affidavit for each petition sheet is in violation of the requirement that the circulation period for this office cannot begin until at most 75 days prior to the last day for filing the petition is unfounded as to a violation of the requirements set forth in 10 ILCS § 5/8-8, and there is no proof that the circulator circulated the petitions prior to his nomination on March 6, 2010; in support of this argument, the candidate also submits an affidavit of the Candidate (Exhibit B) which states that he and the other circulators did not circulate petitions for nomination prior to March 6, 2010;

5. The requirement in Section 7-61 that the designated person must file nominating petitions within 75 days after the primary is unconstitutional and in violation of the Illinois Constitution at Article I, Section 2 and Article III, Sections 3 and 4 in that it would give less than 90 days for prospective candidates to circulate petitions;

6. There is no statute or state law that prohibits a signer from signing a nomination petition for another party or voting in a different political party's primary election; and

7. There is no statute or state law that prohibits a circulator from circulating petitions for another political party or voting in a different political party's primary election.

On May 11, 2010, the Objector timely filed a Response to the Motion to Strike and Dismiss. In the Response, the Objector withdrew its objection regarding the Certificate of Organization of the 19th Legislative Committee and argues that:

1. Paragraph 3 of Section 7-61 does apply to situations when no established political party candidate was printed on the general primary ballot;

2. The circulator's affidavits are invalid because they do not comply with Section 8-8; and

3. The signers and circulator are limited to participating in one party's nomination process per election.

The Records Examination commenced and was completed on May 11, 2010. Both parties were present at the Records Examination. In conducting the Records Examination, the Board did not rule on the following: 1) objections regarding the circulators (Objector's Petition at ¶¶ 13-16); 2) objections regarding the notary (Objector's Petition at ¶ 17); 3) objections that the "Signer Signed Petition of Another Political Party;" and 4) objections that the "Signer Voted in Another Party's Petition."

The Candidate needs 1000 signatures to be on the ballot. The Candidate submitted 2401 signatures. The examiners ruled on objections to 1206 signatures. 708 objections were sustained leaving 1699 valid signatures which is 699 signatures more than the required number of signatures.

Case management hearings were held telephonically on May 12 and May 13, 2010. Counsel for both parties represented that neither party will file a Rule 9 Motion. Counsel for both parties agreed that it was not necessary for the Hearing Officer to make a recommendation on the objections that "Signer Signed for Another Political Party" and "Signer Voted in Another Party's Petition" because said objections total 338, which even if sustained, would still leave the Candidate with 1355 signatures. Counsel for both parties further agreed that another hearing and/or oral argument was not necessary.¹

¹ On June 1, 2010, the objector filed a Motion for Leave to Cite Supplemental Authority and attached the May 26, 2010 "Recommended Findings of Fact and Recommended Decision" by a hearing officer at the Chicago Board of Election Commissioners in the matter of *Rabb v. Lenkowski*, 10 EB-RES-04. I recommend that the Board grant the

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

A. Whether the Candidate's Nomination Papers are Invalid Because the Resolution to Fill a Vacancy in Nomination was not Filed within Three Days of the Date the Vacancy was Filled.

On April 16, 2010, the Candidate filed his "Resolution to Fill a Vacancy in Nomination" with the Board of Elections (Exhibit A). The Resolution contains the following pertinent language:

WHEREAS, the Legislative Committee of the Republican Party in and for the 19th Legislative District of Illinois met within the district on March 6, 2010 . . . and at that March 6, 2010 meeting voted to nominate a candidate of the Republican Party to fill said vacancy as required by 10 ILCS 5/7-61, 5/8-17 and 5/10-11 . . .

BE IT RESOLVED, that the Legislative Committee of the Republican Party in and for the 19th Legislative District of Illinois met on March 6, 2010 and did nominate Adam Wojcik . . . for the office of State Senator in and for the 19th Legislative District of Illinois to be voted upon at the General Election to be held on November 2, 2010.

The Resolution reflects that the "Date of Meeting" was March 6, 2010, and the "Date of Nomination" was March 6, 2010.

The Objector argues that the Candidate's Nomination Papers are invalid because the Resolution to Fill a Vacancy in Nomination was filed on April 16, 2010, which is not within three days of when the vacancy was filled, i.e., March 6, 2010. In support of this objection, the Objector relies upon 10 ILCS § 5/7-61 and specifically paragraph 3 of that statute, which states:

Any vacancy in nomination under the provisions of this Article 7 occurring on or after the primary and prior to certification of candidates by the certifying board or officer, must be filled prior to the date of certification. Any vacancy in nomination occurring after certification but prior to 15 days before the general election shall be filled within 8 days after the event creating the vacancy. The resolution filling the vacancy shall be sent by U. S. mail or personal delivery to the certifying officer or board within 3 days of the action by which the vacancy was filled; provided, if such resolution is sent by mail and the U. S. postmark on the envelope containing such resolution is dated prior to the expiration of such 3 day limit, the resolution shall be deemed filed within such 3 day limit. Failure to so transmit the resolution within the time specified in this Section shall authorize the certifying officer or board to certify the original candidate. Vacancies shall be filled by the officers of a local municipal or township political party as specified

motion for leave. However, as set forth herein, I respectfully disagree with the recommended decision in *Rabb v. Lenkowski*, 10 EB-RES-04.

in subsection (h) of Section 7-8, other than a statewide political party, that is established only within a municipality or township and the managing committee (or legislative committee in case of a candidate for State Senator or representative committee in the case of a candidate for State Representative in the General Assembly or State central committee in the case of a candidate for statewide office, including but not limited to the office of United States Senator) of the respective political party for the territorial area in which such vacancy occurs.

10 ILCS § 5/7-61.² In his Motion to Strike, the Candidate argues that this objection is legally insufficient for the principal reason that paragraph 3 of Section 7-61 does not apply to the Candidate's situation when no established political party candidate was printed on the general primary ballot for a particular office and no person was nominated as a write-in candidate for such office.

Whether or not paragraph 3 of Section 7-61 applies to the situation in this case is a matter of statutory construction. The primary objective in interpreting a statute is to ascertain and give effect to the intent of the legislature. *County of DuPage v. Ill. Labor Relations Bd.*, 231 Ill. 2d 593, 603, 900 N.E.2d 1095, 1101 (2008). The most reliable indicator of such intent is the language of the statute, which is to be given its plain and ordinary meaning. *Id.* Moreover, words and phrases should not be considered in isolation but must be interpreted in light of other relevant provisions and the statute as a whole. *Id.*

The language of Section 7-61 supports the Candidate's position that paragraph 3 of the statute does not apply to situations when no established political party candidate was printed on the general primary ballot for a particular office and no person was nominated as a write-in candidate at the general primary election, but instead applies to situations when a candidate has been nominated at the primary and a vacancy in nomination occurs as a result of death, resignation or other reasons. There are four paragraphs in Section 7-61 which address the "resolution to fill the vacancy," i.e., paragraphs 3, 4, 5 and 6. There is language in two of those paragraphs that makes it clear that the filing of the resolution refers to situations when a candidate was nominated at the primary. The fourth sentence in paragraph 3 states: "Failure to so transmit the resolution within the time specified in this Section shall authorize the certifying officer or board to certify the *original candidate*." 10 ILCS § 5/7-61 (emphasis added). Paragraph 4 of the statute which sets forth the information that must be included in the resolution states: "The resolution to fill a vacancy in nomination *shall include*, upon its face, the following information: (a) the *name of the original nominee* and the office vacated; (b) *the date on which the vacancy occurred* 10 ILCS § 5/7-61 (emphasis added).

In his Response to the Motion to Strike, the Objector relies upon the case of *Forcade-Osborn v. Madison County Elec. Bd.*, 334 Ill. App. 3d 756, 778 N.E.2d 768 (5th Dist. 2002). The appellate court in *Forcade-Osborn* considered a situation where a candidate "was slated by the Republican Party to fill a vacancy for the office of county treasurer in Madison County when

² The Candidate contends that the Objector's objection regarding the failure to file the Candidate's Resolution to Fill a Vacancy in Nomination within three days is "not specific and does not state what statute or law is violated." (Candidate's Motion to Strike at ¶ 3). However, I recommend that the Board find that this objection does adequately apprise the Candidate of the nature of the Objection as required by 10 ILCS § 5/10-8.

no one was nominated in the March primary to serve as that party's candidate" but the candidate failed to file or mail her "certificate of nomination" within three days of the date the nominating committee selected her to fill the vacancy in nomination. *Id.* at 758, 778 N.E.2d at 770. Although the court dismissed the action because of a jurisdictional issue, the court addressed whether the three-day resolution filing requirement set forth in Section 7-61 applies to the candidate. *Id.* at 759, 778 N.E.2d at 771. The court rejected the candidate's argument that the three-day deadline only applies to vacancies occurring after certification and found that the three-day deadline applies to the candidate's situation as well. *Id.* The court also rejected the candidate's argument that the third and fourth sentences of paragraph 3 of Section 7-61 apply only to vacancies occurring after certification while the fifth sentence of paragraph 3 applies to vacancies that occur both before and after certification on the grounds that:

[It] defies logic and all rules of statutory construction. A statute is to be read as a whole . . . and a statute should not be construed so that its specific language is rendered meaningless or superfluous.

Id. (citations omitted).

Since *Forcade-Osborn* was decided in 2002, the General Assembly amended paragraph 9 of Section 7-61 as follows:

If the name of no established political party candidate was printed on the consolidated primary ballot for a particular office and if no person was nominated as a write-in candidate for such office, a vacancy in nomination shall be created which may be filled in accordance with the requirements of this Section. If the name of no established political party candidate was printed on the general primary ballot for a particular office and if no person was nominated as a write-in candidate for such office, a vacancy in nomination shall be filled only by a person designated by the appropriate committee of the political party and only if that designated person files nominating petitions with the number of signatures required for an established party candidate for that office within 75 days after the day of the general primary. The circulation period for those petitions begins on the day the appropriate committee designates that person. The person shall file his or her nominating petitions, statements of candidacy, notice of appointment by the appropriate committee, and receipt of filing his or her statement of economic interests together. The State Board of Elections shall hear and pass upon all objections to nomination petitions filed by candidates under this paragraph. ~~created, but no candidate of the party for the office shall be listed on the ballot at the general election unless such vacancy is filled in accordance with the requirements of this Section within 60 days after the date of the general primary.~~

Public Act 86-809, eff. 1-1-10.

Given that Section 7-61 has been amended, and specifically with regard to the requirements for a vacancy in nomination that occurs when the name of no established political party candidate was printed on the primary ballot, the judicial *dictum* in *Forcade-Osborn*

regarding the interpretation of Section 7-61 as it applies to a candidate filling a vacancy created by reason of a lack of candidate on the primary ballot is no longer controlling. *See Benno v. Cent. Lake County Joint Action Water Agency*, 242 Ill. App. 3d 306, 310-11, 609 N.E.2d 1056, 1058-59 (2d Dist. 1993). Moreover, by applying the principles of statutory construction relied upon by the court in *Forcade-Osborn*, i.e., that “[a] statute is to be read as a whole . . . and a statute should not be construed so that its specific language is rendered meaningless or superfluous,” *Forcade-Osborn*, 334 Ill. App. 3d at 759, 778 N.E.2d at 771 (citations omitted), the Board should find that paragraph 9 of Section 7-61, as amended by Public Act 86-809, applies exclusively to situations when no one was nominated in the primary to serve as that party’s candidate and paragraphs 3 through 8 apply exclusively to situations when a candidate has appeared on the primary ballot.

Public Act 86-809 added the following specific requirements for a vacancy in nomination when no established political party candidate was printed on the general primary ballot: 1) a vacancy in nomination shall be filled only by a person designated by the appropriate committee of the political party; 2) a vacancy in nomination shall be filled only if the designated person files nominating petitions with the number of signatures required for an established party candidate for that office within 75 days after the day of the general primary; 3) the circulation period for those petitions begins on the day the appropriate committee designates that person; 4) the person shall file his or her nomination petitions, statements of candidacy, notice of appointment by the appropriate committee and receipt of filing his or her statement of economic interests together; and 5) the electoral boards having jurisdiction under Section 10-9 to hear and pass upon objections to nominating petitions also shall hear and pass upon objections to nomination petitions filed by candidates under this paragraph. 10 ILCS § 5/7-61. At least one of these new requirements is duplicative of another part of Section 7-61. For example, the requirement that the nomination petitions be filed together with the statement of candidacy, notice of appointment by the appropriate committee, and receipt of filing his or statement of economic interests is partially duplicative of the requirement in paragraph 5 that the resolution shall be filed together with the statement of candidacy and receipt of filing his or statement of economic interests. Moreover, the requirement that the candidate who is filling a vacancy created by reason of a lack of candidate on the primary ballot must file “nomination petitions with the number of signatures required for an established party” is inconsistent with the requirements set forth in paragraphs 3 through 8, which do not require that nomination petitions be filed.

In order for the language in amended paragraph 9 of Section 7-61 to not be “superfluous” or “meaningless” or in conflict with the rest of Section 7-61, then the statute must be interpreted so that paragraph 9 only applies to vacancies in nomination when no established political party candidate was printed on the general primary ballot and paragraphs 3 through 8 only apply when a candidate has appeared on the primary ballot. Under this statutory construction, the candidate in this case was not required to comply with the three-day deadline set forth in paragraph 3 of Section 7-61.

In addition, to the extent the statute is deemed ambiguous, the Board may consider extrinsic aids to construction, such as the legislative history of Public Act 86-809, which originated as House Bill 723. *County of DuPage*, 231 Ill. 2d at 604, 900 N.E. 2d at 1101. I find

instructive the statements of Representatives Fortner and Graham from the House of Representatives Debate of House Bill 723:

Fortner: "Well, to look at the flip side, my opponent under the current system needs a total of one signature. I don't think that's equitable at all. I would encourage all the Parties to encourage their candidates to get the signatures and qualify for the Primary ballot.

* * *

Graham: "... [W]hat I would ask is, what happens, does your Bill address when there is a candidate on the ballot, we do have an opponent on the ballot and that person drops out? Does your Bill address that?"

Fortner: "Yes, it does. It provides . . . it does not change that process at all. The Party that had the person who had been qualified and got on, that could . . . that person could be replaced in the current process."

Graham: "So . . . so, if there's a person there on the ballot and he drops out of the race, so then he wouldn't be required . . . the new appointee would not be required to get the signatures?"

Fortner: "That's correct, because that Party has already demonstrated that they were able to get signatures."

Illinois House of Representative Transcript of Debate, House Bill 723, 96th General Assembly, 38th Legislative Day, April 2, 2009, pp. 7, 10.

The Representatives' statements indicate that the legislature intended, through its adoption of Public Act 86-809, which amends paragraph 9 of Section 7-61, to provide specific requirements exclusive to a candidate who fills a vacancy when no one was nominated in the primary to serve as that party's candidate nomination. The statements also demonstrate that the legislature interprets the requirements in paragraphs 3 through 8 to apply to those candidates who fill a vacancy when there was a candidate on the primary ballot. Therefore, the legislative history further supports the Candidate's position that paragraph 3 of Section 7-61 does not apply to the situation here, i.e., when no established political party candidate was printed on the general primary ballot.

B. Whether the Circulator's Affidavits in the Candidate's Petitions are Invalid Because They Do Not Comply with 10 ILCS § 5/8-8.

Each of the nomination petitions submitted by the Candidate includes the following language in the circulator's affidavit: "I . . . do hereby certify . . . that the signatures on this sheet were signed in my presence, not more than 90 days preceding the last day for filing of the petitions" The Objector contends that all of the Candidate's nomination petitions are invalid because this portion of the circulator's affidavit does not comply with 10 ILCS § 5/8-8

because the circulator's affidavit does not contain a certification that none of the signatures were gathered outside the circulation period provided for in paragraph 9 of 10 ILCS § 5/7-61.

The relevant part of Section 8-8 states:

In the affidavit at the bottom of each petition sheet, the petition circulator shall either (1) indicate the dates on which he or she circulated that sheet, or (2) indicate the first and last dates on which the sheet was circulated, or (3) certify that none of the signatures on the sheet were signed more than 90 days preceding the last day for the filing of the petition. No petition sheet shall be circulated more than 90 days preceding the last day provided in Section 8-9 for the filing of such petition.

10 ILCS § 5/8-8. The relevant part of Section 7-61 states:

If the name of no established political party candidate was printed on the general primary ballot for a particular office and if no person was nominated as a write-in candidate for such office, a vacancy in nomination shall be filled only by a person designated by the appropriate committee of the political party and only if that designated person files nominating petitions with the number of signatures required for an established party candidate for that office within 75 days after the day of the general primary. The circulation period for those petitions begins on the day the appropriate committee designates that person.

10 ILCS § 5/7-61.

In his Response in support of his Objections, the Objector relies on several cases in support of his Section 8-8 argument. However, only one of the cases, *Simmons v. DuBose*, 142 Ill. App. 3d 1077, 492 N.E.2d 586 (1st Dist. 1986), directly addresses Section 8-8. In *Simmons*, the issue was whether the affirmation section regarding the circulator's affidavits as set forth in Section 8-8 is a mandatory or directory provision. *Simmons*, 142 Ill App. 3d at 1079-80, 492 N.E.2d at 587-88. The *Simmons* court held that the provision is mandatory. *Id.* In other words, the candidate's affidavit must contain 1 of the 3 affirmations.

In this case, the Candidate did comply with the circulator's affidavit requirements set forth in Section 8-8 because the circulator's affidavits did contain 1 of the 3 affirmations, i.e., a certification that none of the signatures on the sheet were signed more than 90 days preceding the last day for the filing of the petition. The objector argues that given the language in paragraph 9 of Section 7-61, the Candidate should have selected option number 1 or 2 instead of option 3. However, there is nothing in Section 8-8 which designates a specific affirmation for situations when a candidate is filling a vacancy in nomination pursuant to paragraph 9 of Section 7-61. The Candidate followed Section 8-8, and therefore, I recommend that the Board overrule the objection that the circulator's affidavits in the candidate's petitions are invalid because they do not comply with Section 8-8.³

³In support of his Motion to Strike, the Candidate also relies upon his own affidavit which states: "I did not circulate nor did any of my circulators circulate petitions for my nomination prior to March 6, 2010, the date on which I was

C. Whether Circulators Are Limited to Participating in One Party's Nomination Process Per Election.

At the May 13, 2010 case management conference, counsel for both parties agreed that it was not necessary for the hearing officer to make a recommendation on the objections that "Signer Signed for Another Political Party" and "Signer Voted in Another Party's Petition" because said objections total 338, which even if sustained, would still leave the Candidate with 1355 signatures. However, because the objections that "Circulator Circulated for Another Political Party" and "Circulator Voted in Another Party's Primary" cover 1054 signatures and therefore, if sustained, could bring the candidates signatures below 1000, the hearing officer will make a recommendation on these objections.

There is no statute or case law which supports the Objector's argument that the circulators in this case are prohibited from circulating petitions for or voting in another political party in the prior primary election. In his Response to the Motion to Strike and Dismiss, the Objector relies upon the case of *Citizens for John W. Moore Party v. Board of Elec. Comm'rs of the City of Chicago*, 794 F. 2d 1254 (7th Cir. 1986) in support of the argument that the courts have upheld a statute preventing a person from circulating petitions for more than one party. (Response at p. 11). The statute at issue in *Citizens for John W. Moore Party* is 10 ILCS § 5/10-4 which states: "[N]o person shall circulate or certify petitions for candidates of more than one political party, or for an independent candidate or candidates in addition to one political party, to be voted upon at the next primary or general election, or for such candidates and parties with respect to the same political subdivision at the next consolidated election." 10 ILCS § 5/10-4. However, 10 ILCS § 5/10-4 which applies to new parties and independents does not apply in this case as the Candidate was nominated by the Republican party. In any event, the Objector has failed to submit any evidence that supports the allegations that the circulator circulated or voted in another party's primary. Accordingly, I recommend that the objection regarding the circulators participation in another party's nomination process at the February 2, 2010 primary be overruled.

D. Whether the Objection Regarding the Notarization of the Circulator's Affidavit is Sufficient.

As one of his objections, the Objector claims that the circulator's affidavit was not properly notarized "as set forth" in the Appendix Recapitulation attached to the Objection Petition. In his Motion to Strike, the Candidate argues that this objection is not specific and in

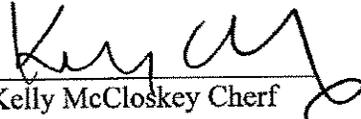
nominated to fill the vacant position for State Senator of the 19th Legislative District." (Exhibit B). If the Board disagrees with my recommendation regarding 10 ILCS § 5/10-8 and wants to consider the affidavit, I would recommend that the Candidate's affidavit only be considered as evidence for the 28 petition sheets that he circulated. With regard to the 231 petition sheets that other individuals circulated, I believe that the Candidate's statement regarding the other circulators fails to lay a proper foundation and is conclusory. See *Wisowaty v. Baumgard*, 257 Ill. App. 3d 812, 820, 629 N.E.2d 624 (1st Dist. 1994). In his Motion to Strike, the Candidate also challenges the constitutionality of Section 8-8. As appropriately pointed out by the Candidate, the Board cannot hold that a statute is unconstitutional but "the argument is made here to preserve the issue for the appropriate court to consider." (Motion to Strike at ¶ 24). See *Delgado v. Bd. of Election Comm'rs of Chicago*, 224 Ill. 2d 481, 485, 865 N.E.2d 183, 186 (2002).

violation of 10 ILCS § 5/10-8. I recommend that the Board find that the objection satisfies Section 10-8. However, none of the Appendix Recapitulation sheets include an objection based upon notarization. Therefore, I recommend that the Board overrule this objection.

III. RECOMMENDATIONS

For the foregoing reasons, I recommend that: i) the Board overrule the Objector's objections; and ii) Mr. Wojcik be certified for the ballot as a candidate for the office of State Senator for the 19th Legislative District of the State of Illinois to be voted on at the General Election on November 2, 2010.

Dated: June 7, 2010


Kelly McCloskey Cherf
Hearing Officer

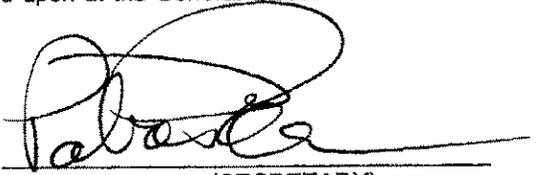
RESOLUTION TO FILL A VACANCY IN NOMINATION
(Failure to nominate candidate at primary election)

WHEREAS, a vacancy in the nomination of the Republican Party for the Office of State Senator in a Legislative District of Illinois exists due to the failure to nominate a candidate for the Office of State Senator in the 19th Legislative District of Illinois at the primary election conducted on February 2, 2010 (date of election);

WHEREAS, the Legislative Committee of the Republican Party in and for the 19th Legislative District of Illinois met within the district on March 6, 2010 at 39 Orland Square Drive, Orland Park, IL 60462 and at that March 6, 2010 meeting voted to nominate a candidate of the Republican Party to fill said vacancy as required by 10 ILCS 5/7-61, 5/8-17, and 5/10-11, and therefore;

BE IT RESOLVED, that the Legislative Committee of the Republican Party in and for the 19th Legislative District of Illinois met on March 6, 2010 and did nominate Adam Wojcik of 9117 Mansfield Drive, Tinley Park, Illinois 60487 for the office of State Senator in and for the 19th Legislative District of Illinois to be voted upon at the General Election to be held on November 2, 2010 (date of election).


(CHAIRMAN)


(SECRETARY)

Legislative Committee
of the 19th Legislative District

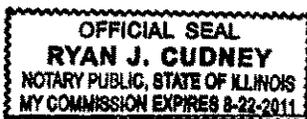
Legislative Committee
of the 19th Legislative District

Date of Nomination: March 6, 2010

Date of meeting: March 6, 2010

Signed and sworn to (or affirmed) by Patrice Barr & Patrick Rae before me, on March 6, 2010
(Name of Chairman & Secretary) (insert month, day, year)

(SEAL)




(Notary Public's Signature)

This resolution must be accompanied by a Statement of Candidacy and a receipt for filing a Statement of Economic Interests as required by the Illinois Governmental Ethics Act.

10 APR 16 PM 1:25
PRINCIPAL OFFICE
STATE BOARD OF ELECTIONS

EXHIBIT A

BEFORE THE COOK COUNTY
ELECTORAL BOARD

RALPH D. JENKINS,

Objector,

vs.

ADAM WOJCIK,

Candidate.

)
)
)
)
)
)
)
)
)
)

No. 10-SOEBGE 500

AFFIDAVIT

I, Adam Wojcik, after first being duly sworn and under oath state as follow:

1. I am the nominee of the 19th Legislative District for the Office of State Senator of the 19th Legislative District.
2. I did not circulate, nor did any of my circulators circulate petitions for my nomination prior to March 6, 2010, the date on which I was nominated to fill the vacant position for State Senator of the 19th Legislative District.
3. I did not cause petitions to be circulated, nor did any one of my circulators begin circulation until after I was nominated by the 19th Legislative District.
4. Further Affiant sayeth not.



Affiant

SUBSCRIBED AND SWORN TO before
me this 10 day of May, 2010.



NOTARY PUBLIC

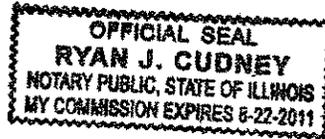


EXHIBIT B

BEFORE THE DULY CONSTITUTED ELECTORAL BOARD
FOR THE HEARING AND PASSING UPON OF OBJECTIONS TO
THE NOMINATION PAPERS OF CANDIDATES FOR ELECTION TO THE
OFFICE OF STATE SENATOR FOR THE 19TH LEGISLATIVE DISTRICT
OF THE STATE OF ILLINOIS

RALPH D. JENKINS,)	
)	
Petitioner-Objector,)	No. 10 SOEBGE 500
)	
v.)	
)	
ADAM WOJCIK,)	
)	
Respondent-Candidate.)	

A copy of the Hearing Officer's Report and Recommendation was served upon the parties on June 7, 2010. A hearing on this matter will be held by the State Board of Elections as the duly constituted State Officers Electoral Board on June 11, 2010 at 10:30 a.m. at the James R. Thompson Center, 100 W. Randolph St., Chicago Illinois, 60601.

Dated: June 7, 2010



Kelly McCloskey Cherf
Hearing Officer

**Jenkins v. Wojcik
10 SOEB GE 500**

Candidate: Adam Wojcik

Office: State Senator, 19th Dist.

Party: Republican

Objector: Ralph D. Jenkins

Attorney For Objector: Courtney C. Nottage

Attorney For Candidate: Burton S. Odelson

Number of Signatures Required: 1,000

Number of Signatures Submitted: 2,401

Number of Signatures Objected to: 1,206

Basis of Objection: Petition contains an insufficient number of valid signatures. (Both individual petition signers and the circulators of certain petition pages were challenged for a variety of reasons.) An additional basis for striking certain signatures and circulators was that such signers signed or voted in another party's Primary Election and such circulators circulated petitions for another political party or voted in another party's Primary Election.

Certain petition pages were not properly notarized.

The circulators' affidavit states that none of the signatures were gathered more than 90 days preceding the last day to file nominating papers. It does not state that the signatures were gathered during the permissible circulation period; within 75 days following the date of the General Primary Election. Therefore, the petition in its entirety should be ruled invalid.

The Legislative District Committee lacked the authority to appoint the Candidate to fill the vacancy in nomination by failing to properly organize as no Certificate of Organization was filed with the SBE.

The Resolution to Fill a Vacancy in Nomination indicates that the vacancy was filled on March 6, 2010. The Resolution was filed on April 19, 2010; not within 3 days of the filling of the vacancy as required by the Election Code.

Dispositive Motions: A Motion to Strike and Dismiss was filed by the Candidate. A Response to the Motion to Strike and Dismiss was filed by the Objector.

Binder Check Necessary: Yes

Hearing Officer: Kelly McCloskey Churf

Hearing Officer Findings and Recommendation: The Records Examination resulted in 708 objections being sustained, leaving 1699 valid signatures. Counsel for both parties agreed that it was not necessary for the Hearing Officer to make a recommendation on the objection that "Signer signed petition of

another political party” and “signer voted in another party’s primary” because sustaining all of said objections would still leave the Candidate with sufficient signatures. Neither counsel filed a Rule 9 Motion.

Regarding the objection that the Resolution to Fill a Vacancy in Nomination was not filed within three days of the filling of the vacancy as required by paragraph 3 of Section 7-61 of the Election Code, the Hearing Officer first recommended that the Motion to Strike this objection be overruled, as it was specific enough to apprise the candidate of the nature of the objection. She then considered relevant case law, the recent language in Public Act 86-809 regarding vacancies in nomination where no established political party candidate appeared on the primary ballot, and the legislative history of Public Act 86-809 and determined that the third paragraph of Section 7-61, requiring that the Resolution be filed within three days of the filling of the vacancy, does not apply to the situation where no established political party candidate was printed on the general primary ballot. The language of Section 7-61 and the legislative debate indicate that it was the intent of the legislature for paragraph 9 (the paragraph amended by P.A. 86-809) to be a distinct provision relating to vacancies in nomination caused by a failure to nominate at the Primary Election. The remaining paragraphs of that Section deal with vacancies caused by the death, resignation, etc. of the original nominee. She also noted that the one relevant case, *Forcade v. Osborne*, was decided prior to P.A. 86-809 taking effect, and was therefore distinguishable.

Regarding the objection to the circulator’s affidavit, the Hearing Officer found that the affidavit did comply with requirements set forth in Section 8-8 because the affidavit did contain one of the three required affirmations; none of the signatures on the sheet were signed more than 90 days preceding the last day for the filing of the petition. Because Section 8-8 does not designate a specific affirmation for the situation where a candidate is filling a vacancy in nomination due to failure to nominate a candidate at the primary election, the Hearing Officer recommends that the Board accept the affirmation contained on the circulator’s affidavit and overrule that objection.

Regarding the circulator objection that “Circulator circulated petition for another political party” and “Circulator voted in another party’s primary” the Hearing Officer found that no statutory or case law supports the Objector’s argument that the circulators in this case are prohibited from circulating petitions for or voting in another political party in the prior primary election. She considered the case cited by the Objector; *Citizens for John W. Moore v. Chicago Board of Election Commissioners*, but concluded that the case is inapplicable, since Section 10-4 only applied to new political parties and independent candidates. In addition, she noted that the objector provided no evidence that the circulators in this case circulated or voted in another party’s primary. The Hearing Officer therefore recommends that the objection regarding circulator’s participation in another party’s nomination process at the February 2010 primary be overruled.

Regarding the notary objection that the circulator’s affidavit was not properly notarized, the Hearing Officer recommends that the Board overrule the Candidate’s Motion to Strike and find that the objection petition is specific and therefore satisfies Section 10-8. However, none of the Appendix Recapitulation sheets include an objection based upon notarization; therefore, the Hearing Officer recommends that the Board overrule this objection.

For the foregoing reasons, the Hearing Officer recommends that the Board overrule the Objector’s objections and certify the Candidate for the ballot for the office of State Senator for the 19th Legislative District.

Recommendation of the General Counsel: I concur with the recommendation of the Hearing Officer in this case that the objection should be overruled. I would add that as to the multiple party circulator objection, I disagree with the Hearing Officer that Section 10-4 is limited only to new political party

candidates and independent candidates in light of the holding in Moore. However since the objector failed to submit any evidence that certain circulators passed petitions for more than one political party, I agree that this part of the objection be dismissed.

As to the Motion to Strike, I note that paragraph 1 was withdrawn and paragraph 6 was essentially waived when the parties agreed that further consideration of this issue was moot in light of the results of the records examination. I agree with the Hearing Officer that Paragraph 2 be dismissed as the objection upon which such paragraph is based, was specific enough, and further concur with her recommendation that the objection, be overruled. I agree that that part of Paragraph 3 alleging that the objection is not specific enough should be dismissed, however I recommend that the remainder of paragraph 3 and Paragraph 4 be granted based on the analysis contained in the Hearing Officers recommendation. I recommend that Paragraph 5 be dismissed, as the Board lacks the power to rule a statute unconstitutional. I recommend that Paragraph 7 be dismissed for the reasons stated in the paragraph immediately preceding.