

STATE BOARD OF ELECTIONS  
STATE OF ILLINOIS

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AGENDA  
State Board of Elections  
Sitting as the Duly Authorized  
State Officers Electoral Board  
Wednesday, December 2, 2009  
11:00 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. Consideration of objections to candidates' nominating petitions for the February 2, 2010 General Primary Election;
  - a. *Ferritto v. Farnick*, 09SOEBGP502;
  - b. *Bednar v. Blezien*, 09SOEBGP510;
  - c. *True v. Kuna*, 09SOEBGP512.
3. Other business.
4. Recess as the State Officers Electoral Board until a date certain or until call of the Chairman, whichever occurs first.

**Ferritto v. Farnick  
09 SOEB GP 502**

**Candidate:** Jonathan Farnick

**Office:** Congressman, 8<sup>th</sup> Congressional District

**Party:** Democratic

**Objector:** Gregory Ferritto

**Attorney For Objector:** Sally H. Saltzberg/Mike Kreloff

**Attorney For Candidate:** Pro Se

**Number of Signatures Required:** No less than 890

**Number of Signatures Submitted:** 876 (9 signatures were revoked by the candidate)

**Number of Signatures Objected to:** 115

**Basis of Objection:** The petition contains 14 signatures fewer than the required minimum. The petition contains at least 115 signatures of persons that should be disqualified for various reasons (signature not genuine, signer is not registered at address shown on petition, signer resides outside of district, etc.)

**Binder Check Necessary:** No

**Hearing Officer:** Kelly McCloskey Cherf

**Hearing Officer Findings and Recommendation:** The petition contains an insufficient number of signatures to qualify for the ballot. The objection should be sustained and the candidate should not be certified for the 2010 General Primary Election Ballot.

**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 OBJECTIONS TO  
THE NOMINATION PAPERS OF CANDIDATES FOR NOMINATION TO THE  
OFFICE OF REPRESENTATIVE IN CONGRESS, 8<sup>TH</sup> CONGRESSIONAL DISTRICT  
OF THE STATE OF ILLINOIS

GREGORY FERRITTO,

Petitioner-Objector,

v.

JONATHAN FARNICK,

Respondent-Candidate.

)  
)  
) No. 09 SOEB 502  
)  
)  
)  
)  
)  
)

**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 2, 2009, the Candidate timely filed the following with the State Board of Elections to qualify as a Candidate for nomination of the Democratic Party to the Office of Representative in Congress in the 8<sup>th</sup> Congressional District of the State of Illinois: a) Statement of Candidacy; b) sixty (60) Nomination Petition Sheets; and c) Certification of Deletions.

The Objector's Verified Petition to the Nomination Papers of the Candidate was timely filed on November 9, 2009. In the Petition, the Objector first argues the Nomination Papers are insufficient in that they fail to contain the requisite number of signatures for nomination of the Democratic Party to the office of Representative in the 8<sup>th</sup> Congressional District of the State of Illinois. In the alternative, the Objector objects to 115 of the Candidate's petition signatures for the reasons set forth in the Appendix attached to the Objector's Petition.

An initial hearing and case management conference on this matter was held on November 17, 2009. The Candidate Jonathan Farnick was present. Sally Saltzberg appeared on behalf of the Objector.

On November 18, 2009, the Candidate filed a Motion to Strike in which he stated, "I knew at the time I was short", when he filed his Nomination Papers. On November 20, 2009, the Objector filed his Response to Candidate's Motion. On November 23, 2009, the Candidate filed his Reply. At the case management conference on November 24, 2009, Mr. Farnick and Ms.

Saltzberg (the attorney for the Objector) each stated that a hearing on the Motion to Strike was not necessary.

## **II. FINDINGS OF FACT AND CONCLUSIONS OF LAW**

The Candidate filed sixty (60) petition signature page sheets containing 885 signature lines with the candidate revoking 9 signatures resulting in a total of 876 signatures.

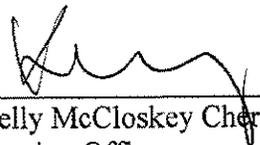
10 ILCS §5/7-10 requires that a candidate for congressional office “must obtain” on his or her petition for nomination no less than “the number of signatures equal to 0.5% of the qualified primary electors of his or her party in his or her congressional district.” 10 ILCS §5/7-10. Candidates who filed nomination petitions for nomination of the Democratic Party to the Office of Representative in Congress in the 8<sup>th</sup> Congressional District of the State of Illinois for the February 2, 2010 General Primary Election were required to obtain 890 signatures. ILL. STATE BD. OF ELECTIONS, STATE OF ILLINOIS CANDIDATE’S GUIDE 2010, 55 (2009).

The Candidate’s Nomination Papers required 890 signatures. The Candidate’s Nomination Papers contained only 876 signatures. Thus, the Candidate has failed to obtain the necessary signatures on his Nomination Papers as is required by 10 ILCS §5/7-10. Moreover, in his motion to strike, the Candidate concedes that at the time he filed his Nomination Papers, he knew that he had an insufficient number of signatures.

## **III. CONCLUSION AND RECOMMENDATION**

As the Candidate has failed to obtain the requisite number of signatures on his Nomination Papers, I recommend that the Objector’s first objection be sustained and that the Candidate’s name not be printed on the ballot as a candidate for nomination for the Democratic Party for the office of Representative in Congress in the 8<sup>th</sup> Congressional District of the State of Illinois.

Dated: November 25, 2009

  
\_\_\_\_\_  
Kelly McCloskey Chorf  
Hearing Officer

STATE OF ILLINOIS )  
 ) SS  
COUNTY OF COOK )

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BEFORE THE DULY CONSTITUTED ELECTORAL BOARD  
FOR THE HEARING OF AND PASSING UPON OBJECTIONS  
TO THE NOMINATION PAPERS FOR CANDIDATES FOR THE OFFICE OF  
REPRESENTATIVE IN CONGRESS, 8<sup>th</sup> CONGRESSIONAL DISTRICT  
OF THE STATE OF ILLINOIS.

IN THE MATTER OF THE OBJECTIONS OF )  
GREGORY FERRITTO TO THE NOMINATION )  
PAPERS OF JONATHAN FARNICK AS A )  
CANDIDATE FOR NOMINATION TO THE )  
OFFICE OF REPRESENTATIVE IN CONGRESS )  
FOR THE 8<sup>TH</sup> CONGRESSIONAL DISTRICT OF )  
THE STATE OF ILLINOIS TO BE VOTED UPON )  
AT THE FEBRUARY 2, 2010 PRIMARY ELECTION. )

**VERIFIED OBJECTOR'S PETITION**

NOW COMES GREGORY FERRITTO ("Objector"), and respectfully represents that Objector resides at 1526 Anderson Trail, Zion, IL 60099, in the 8<sup>th</sup> Congressional District of the State of Illinois; that Objector is a duly qualified, registered, and legal voter at such address; that Objector's 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 nomination of the Democratic Party to the office of Representative in Congress in the 8<sup>th</sup> Congressional 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; and therefore Objector makes the following objections to the nomination papers of Jonathan Farnick ("Candidate") as a candidate for nomination of the Democratic Party to the office of Representative in Congress in the 8<sup>th</sup> Congressional District of the State of Illinois and states that said nomination papers are insufficient in law and fact for the following reasons:

1. Illinois law requires that nomination papers for nomination of the Democratic Party to the office of Representative in Congress in the 8<sup>th</sup> Congressional District of the State of Illinois contain the signatures of not less than 890 duly qualified, registered and legal voters of said district.

2. The Candidate has filed 60 petition signature sheets as a part of his nomination papers containing a total of 876 lines of alleged signatures of duly qualified, legal, and registered voters of the 8<sup>th</sup> Congressional District of the State of Illinois (885 signature lines in toto, with the candidate revoking 9 signatures).

3. The petition signature sheets contain the names of numerous persons who are not in fact duly qualified, registered, and legal voters at the addresses shown opposite their names and their signatures are therefore invalid, as more fully set forth in the Appendix (attached hereto and made a part hereof) under the column designated "A – Signer Not Registered at Address Shown".

4. The petition signature sheets contain the names of numerous persons who did not sign the petition signature sheets in their own proper persons, and the signatures are not genuine, as more fully set forth in the Appendix (attached hereto and made a part hereof) under the column designated "B- Signer's Signature Not Genuine/Not In Proper Person".

5. The petition signature sheets contain the names of numerous persons who have signed the petition signature sheets but who are not, in fact, duly qualified, registered, and legal voters at addresses which are located within the boundaries of the 8<sup>th</sup> Congressional District of the State of Illinois, as shown by the addresses they indicated on the signature sheet, as more fully set forth in the Appendix (attached hereto and made a part hereof) under the column designated "C-Signer Not in District".

6. The petition signature sheets contain the names of numerous persons who have signed the petition signature sheets but who failed to provide a legally complete and adequate address, as more fully set forth in the Appendix (attached hereto and made a part hereof) under the column designated "D-Signer's Address Missing or Incomplete".

7. Due to the lack of an adequate number of purported signatures ever being filed, and due to the foregoing defects and invalidities of numerous signatures, the Candidate has remaining less than the statutorily required minimum of 890 signatures, rendering the Candidate's Nomination Papers insufficient and void.

WHEREFORE, Objector prays that the Nomination Papers of Jonathan Farnick ("Candidate") as a candidate for nomination of the Democratic Party to the office of Representative in Congress for the 8<sup>th</sup> Congressional District of the State of Illinois be declared by this 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 the Electoral Board enter its decision that the name of Jonathan Farnick as a candidate of the Democratic Party for nomination of the Democratic Party to the office of Representative in Congress for the 8<sup>th</sup> Congressional District of the State of Illinois be not printed on the official ballot for the Democratic Party at the Primary Election to be held on February 2, 2010.

  
GREGORY FERRITTO, OBJECTOR

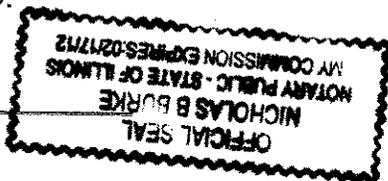
VERIFICATION

I, Gregory Ferritto, being first duly sworn on oath, state that I have read the foregoing Verified Objector's Petition and that the statements therein are true and correct to the best of my knowledge and belief.

  
\_\_\_\_\_  
GREGORY FERRITTO, OBJECTOR

Signed and sworn to before me, by Gregory Ferritto,  
this 24 day of November, 2009.

  
\_\_\_\_\_  
NOTARY PUBLIC



Michael Kreloff  
Attorney at Law  
1926 Waukegan, Suite 310  
Glenview, IL 60025  
847.657-1020

Sally H. Saltzberg  
Loftus & Saltzberg, P.C.  
Attorney at Law  
53 W. Jackson, Suite 1515  
Chicago, IL 60604  
312.913-2000

ATTORNEYS FOR OBJECTOR

**09 SOEB GP 510**

**Candidate:** Clint Blezien

**Office:** 77<sup>th</sup> District Representative

**Party:** Democratic

**Objector:** Gregory K. Bednar

**Attorney For Objector:** Andrew M. Raucci

**Attorney For Candidate:** Pro Se

**Number of Signatures Required:** No less than 500

**Number of Signatures Submitted:**

**Number of Signatures Objected to:**

**Basis of Objection:** The nomination papers contain the names of persons who 1) are not registered voters at the addresses shown; 2) are not registered voters of the 77<sup>th</sup> District; 3) have not signed in their own proper person and therefore the signatures are not genuine; 4) whose addresses are missing or incomplete and 5) whose signatures have been lined out. The Statement of Candidacy is defective in that it does not state that the candidate is a candidate for nomination to the office of Representative in the General Assembly. The candidate is unqualified for the office because he will not have resided in the 77<sup>th</sup> District for the two years immediately preceding the November 2, 2010 General Election.

**Binder Check Necessary:** Yes, if the issue of residency is resolved in favor of the candidate.

**Hearing Officer:** Jim Tenuto

**Hearing Officer Findings and Recommendation:** Prior to April 21<sup>st</sup>, 2009, the candidate was a registered voter at an address outside of the 77<sup>th</sup> District. The candidate voted from that address at the Consolidated Election in April of 2009. On April 21<sup>st</sup>, 2009, he changed his registration to an address within the 77<sup>th</sup> District. The objection sets forth a basis to conclude that the candidate does not fulfill the 2 year residency requirement to be eligible to the office of State Representative. The objection should be sustained and the candidate should not appear on the 2010 General Primary Election ballot.

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

BEFORE THE STATE BOARD OF ELECTIONS  
SITTING AS THE STATE OFFICERS  
ELECTORAL BOARD

In the Matter of the	)	
Objection of	)	
GREGORY K. BEDNAR	)	
to the nominating	)	
Petition of	)	
CLINT BLEZIEN	)	NO 09 SOEB GP 510
Candidate for Nomination	)	
of the Democratic Party	)	
for the Office of Representative	)	
in the General Assembly	)	
for the 77 <sup>th</sup> Representative	)	
District of Illinois	)	

RECOMMENDATION OF HEARING  
EXAMINER TO OBJECTOR'S MOTION  
FOR ORDER SUSTAINING OBJECTIONS

TO: See attached Service List

The initial call of the above-referenced Objection was held on November 17, 2009. Andrew M. Raucci appeared on behalf of the Objector. No one appeared either in Springfield or Chicago on behalf of the Candidate.

At the subsequent case management conference attended by myself and Mr. Raucci an Order was entered wherein a briefing schedule was established to allow for the filing of Motions.

On behalf of the Objector, the pending Motion was filed. A response to the Objector's Motion was not filed and the Objector filed no further pleadings to the Motion.

ANALYSIS

1. The Candidate or his representative failed to appear at the initial meeting on November 17, 2009.
2. The Candidate submitted by Regular Mail to the Hearing Examiner a letter of explanation. The letter was forwarded to the State Board of Elections and the Objector's attorney.

3. Prior to April 21, 2009, the Candidate was registered to vote outside of the district for the office for which he is seeking election.
4. It is not disputed that the Candidate changed his voter registration to his current address of 24 S. Addison, Apt. 614, Bensenville, IL on April 21, 2009.
5. As set forth in the Objector's Motion for Order Sustaining Objection, the verified Objection sets forth a basis to conclude the candidate does not meet the 2 year durational requirement of Article IV of the 1970 Constitution of the State of Illinois. The Candidate signed an Application for Ballot on April 7, 2009, stating he resided at 4N141 Route 83, Bensenville, Illinois 60106, an address outside the 77<sup>th</sup> Representative District.
6. The attachments in the Motion confirm that the Candidate does not satisfy the 2 year durational requirement.

### CONCLUSION

I recommend that the Objector's Motion for Order Sustaining Objection be granted for the reasons set forth in the Analysis and the name of Clint Blezien not be printed on the ballot for the General Primary Election to be held on February 2, 2010.

This is a dispositive Motion which must be ruled upon by the State Officer's Electoral Board.

Respectfully submitted,



James Tenuto  
Hearing Examiner

Date: November 24, 2009

James Tenuto & Associates, P.C.  
1060 E. Lake Street, Suite 103  
Hanover Park, IL 60133  
(630) 736-7870  
(630) 372-0989 (fax)

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STATE OF ILLINOIS     )  
  ) SS  
COUNTY OF COOK        )

IN THE MATTER OF THE OBJECTIONS OF     )  
GREGORY K. BEDNAR                             )  
TO THE NOMINATING PETITION OF             )  
CLINT BLEZIEN AS A CANDIDATE             ) NO.  
FOR NOMINATION OF THE DEMOCRATIC        )  
PARTY FOR THE OFFICE OF REPRESENTATIVE   )  
IN THE GENERAL ASSEMBLY FOR THE 77<sup>TH</sup>     )  
REPRESENTATIVE DISTRICT OF ILLINOIS     )

**VERIFIED OBJECTOR'S PETITION**

NOW COMES GREGORY K. BEDNAR, hereinafter referred to as "Objector", and respectfully represents that Objector resides in the 77<sup>th</sup> Representative District of Illinois at 4033 Kolze Avenue, Schiller Park, Cook County, Illinois Zip Code 60176, that your Objector is a registered, qualified legal voter at the Objector's residence address and that your Objector's interest in filing this objection is that of a citizen desirous of seeing that the election laws of the State of Illinois governing the filing of nominating petitions for the office of Representative in the General Assembly are fully and properly complied with and that only those candidates who properly comply therewith have their names printed upon the ballot as candidates for the said nominations and therefore your Objector makes the following objections to the nominating petition of **CLINT BLEZIEN** as a candidate for nomination of the Democratic Party to the office of Representative in the General Assembly for the 77<sup>th</sup> Representative District to be voted upon at the Primary Election to be held on February 2, 2010 (hereinafter sometimes referred to as "the petition"), and files the same herewith and states that the petition is insufficient in law and in fact for the following reasons:

1. Your Objector states that petitions for such nomination of the Democratic Party to the office of Representative in the General Assembly for the 77<sup>th</sup> Representative District require the signatures of not less than 500 qualified primary electors of the Democratic Party residing in the 77<sup>th</sup> Representative District.

2. Your Objector further states that the petition contains petition sheets with the names of persons who are not registered voters at the addresses shown opposite their respective names, as set forth specifically in the Appendix - Recapitulation under the heading, "Column A Signer not Registered at Address Shown", attached hereto and made a part hereof, all of said signatures being in violation of the statutes in such cases made and provided.

3. Your Objector further states that the petition contains the names of numerous persons who are not in fact residents of the 77<sup>th</sup> Representative District as shown by the address they have given on the petition, as set forth specifically in the Appendix - Recapitulation, under the heading, "Column B Signer Resides Outside District", attached hereto and made a part hereof, all of said signatures being in violation of the statutes in such cases made and provided.

4. Your Objector further states that the petition contains the names of persons who did not sign the petition in their own proper person, and said signatures are not genuine and are forgeries, as set forth specifically in the Appendix - Recapitulation, under the heading, "Column C Signer's Signature Not Genuine", attached hereto and made a part hereof, all of said signatures being in violation of the statutes in such cases made and provided.

5. Your Objector further states that the petition contains signatures of various persons who have not set forth their residence address opposite their names, or who have set forth an address so incomplete as to be meaningless, and their signatures are therefore invalid, as set forth specifically

in the Appendix - Recapitulation under the heading, "Column D Signer's Address Missing or Incomplete", attached hereto and made a part hereof, all of said signatures being in violation of statutes in such cases made and provided.

6. The candidate has deleted a number of signatures and those signatures are indicated in the Appendix - Recapitulation in "Column E Other" as "lined out".

7. Your Objector further states that the Statement of Candidacy is fatally defective in that it describes the office for which the candidate seeks nomination as "General Assembly" in the box at the top of the Statement of Candidacy, and as "Illinois General Assembly" in the text of the Statement of Candidacy, but nowhere in the Statement of Candidacy does it state that the candidate is a candidate for nomination to the office of Representative in the General Assembly. Offices in the General Assembly include State Senators and Representatives in the General Assembly. The Statement of Candidacy should be stricken.

8. The candidate is constitutionally unqualified to be a candidate for the office of Representative in the General Assembly for the 77<sup>th</sup> Representative District because he will not have resided in the 77<sup>th</sup> Representative District for the two years immediately preceding the November 2, 2010 General Election as required by Section 2(c) of Article IV of the 1970 Constitution of Illinois.

9. Your Objector states that the candidate has filed a false and perjurious Statement of Candidacy in that, contrary to the assertions therein, the candidate is not qualified for the office of Representative in the General Assembly for the 77<sup>th</sup> Representative District. Your Objector further states that the candidate does not satisfy the constitutional requirement that

To be eligible to serve as a member of the General Assembly, a person must be a United States citizen, at least 21 years old, and *for the two years preceding his election or appointment a resident of the district* which he is to represent.

Section 2(c) of Article IV of the Illinois Constitution of 1970. *Italics ours.*

The candidate has not resided within the boundaries of the 77<sup>th</sup> Representative District of the State of Illinois for the requisite 2-year durational residency period. The candidate is required to have resided in the 77<sup>th</sup> Representative District from November 2, 2008 thru the date of the General Election to be held on November 2, 2010.

The fact that the candidate is not constitutionally qualified is shown by his action on April 7, 2009, within the 2 year period, of presenting himself to vote at the Consolidated Election, in the 13th Precinct of Addison Township DuPage County, and signing a sworn affidavit (Application for Ballot), subject to the penalties for perjury, in which he asserted that he resided at 4N141 Route 83, Bensenville, Illinois, Zip Code 60106, an address outside of the 77<sup>th</sup> Representative District. His act of voting and signing the Application for Ballot established that he has does not satisfy the constitutional requirement. See *Neely v. Board of Election Commissioners for City of Chicago*, 371 Ill.App.3d 694, 863 N.E.2d 795, 309 Ill.Dec. 163 (2007). The false and perjurious Statement of Candidacy should be stricken, and results in the candidate's petition being fatally defective.

11. Your Objector further states that the Appendix - Recapitulation is incorporated herein and the objections made therein are a part of this Verified Objector's Petition.

12. Your Objector states that the purported petition herein contested purports to consist of various sheets purportedly containing the signatures of more than 500 qualified primary electors of the Democratic Party. The individual objections cited herein with specificity reduces the number of valid signatures to a number below the statutory minimum of 500.

WHEREFORE, YOUR Objector prays that the nominating petition of **CLINT BLEZIEN** as a candidate for nomination of the Democratic Party to the office of Representative in the General Assembly for the 77<sup>th</sup> Representative District be declared by this Honorable 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 Board enter its decision declaring that the name of **CLINT BLEZIEN** as a candidate for nomination of the Democratic Party to the office of Representative in the General Assembly for the 77<sup>th</sup> Representative District **BE NOT PRINTED** upon the **OFFICIAL BALLOT** for the Primary Election to be held on February 2, 2010.

*Greg Bednar*

VERIFICATION

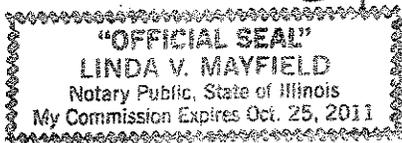
STATE OF ILLINOIS        )  
  )  
COUNTY OF C O O K        )        SS

The undersigned, being first duly sworn, deposes and states that the undersigned is the Objector in the above Verified Objector's Petition, and that the undersigned has read the contents thereof, and that the allegations therein are true to the best of the undersigned's knowledge and belief.

*Greg Bednar*

Subscribed and sworn to (or affirmed)  
before me, a Notary Public, by Gregory K. Bednar

this 8<sup>th</sup> day of November, 2009.  
Linda V. Mayfield  
Notary Public



**True v. Kuna**  
**09 SOEB GP 512**

**Candidate:** Thomas (Tom) Kuna

**Office:** United States Senator

**Party:** Republican

**Objector:** Raymond True

**Attorney For Objector:** Erick Peck

**Attorney For Candidate:** Pro Se

**Number of Signatures Required:** No less than 5,000 and no more than 10,000

**Number of Signatures Submitted:** 405

**Number of Signatures Objected to:** Objector did not object to any signatures.

**Basis of Objection:** The nomination papers contain 4,595 signatures fewer than the statutory minimum.

**Binder Check Necessary:** No

**Hearing Officer:** Ken Menzel

**Hearing Officer Findings and Recommendation:** Based on the submission of a number of signatures insufficient to qualify for appearance on the ballot for the office sought, the objection should be sustained and the name of the candidate should not appear on the General Primary Election ballot. The candidate challenged the standing of the objector and raised a constitutional challenge to the Illinois ballot access laws. The candidate's motions raising said challenges was denied.

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

STATE OF ILLINOIS )  
 ) SS  
COUNTY OF COOK )

STATE BOARD OF ELECTIONS SITTING AS THE DULY CONSTITUTED STATE  
OFFICERS ELECTORAL BOARD  
STATE OF ILLINOIS

IN THE MATTER OF:  
RAYMOND TRUE )

Objector, )

vs. )

) 09 SOEB GP 512

THOMAS (TOM) KUNA )

Candidate. )

HEARING OFFICER'S REPORT AND RECOMMENDATION

The matter having come before the State Board of Elections (the "SBE") 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 Report and Recommendation:

On November 2, 2009, a certain set of nomination papers (the "Petition") was filed by Thomas (Tom) Kuna (the "Candidate") for the Republican Party's nomination to the office US Senator of the State of Illinois. The Petition consisted of a Statement of Candidacy and various signature sheets numbered up to and including page number 42 containing, in total, 405 signatures.<sup>1</sup> The minimum signature requirement for established party candidates for that office is 5,000.<sup>2</sup>

A Verified Objector's Petition (the "Objection") was timely filed on November 9, 2009, by Raymond True (the "Objector"). The Objection alleged that the Petition contained an insufficient number of signatures to qualify the Candidate for the ballot. No other issue or point of objection was raised by the Objection.

A schedule for the submission of written pleadings was set at the case management conference, with the matter to be decided upon these written submissions by the parties without a "live" hearing. Both parties submitted their materials in a timely fashion.

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<sup>1</sup> The SBE staff produced a sheet by sheet count of the gross number of signatures contained on the Petition, with a cumulative total of 405. This count was provided to both of the parties at the case management conference and each of the parties was directed to either indicate concurrence with the staff count, or raise specific, itemized points of dispute as to the staff count, at the time of filing their respective written pleadings. The Objector indicated concurrence. The Candidate did not concur, nor did he raise any specific points of dispute as to the staff count.

<sup>2</sup> Section 7-10(a) of the Illinois Election Code (10 ILCS 5/7-10(a)).

## THE PARTIES' ARGUMENTS AND ANALYSIS

The Objector asserts that the Candidate was some 4,595 signatures short of the 5,000 signature minimum needed pursuant to Section 7-10(a) of the Illinois Election Code (10 ILCS 5/7-10(a)) to qualify for placement on the ballot, and thus should not be placed on the ballot.

The Candidate, in a motion raising constitutional issues, argued that that Illinois' statutory ballot access scheme is unconstitutional in several respects. However, as the Illinois Supreme Court stated in Cinkus v. Village of Stickney Municipal Officers Electoral Board (2008) 228 Ill.2d 200, 886 N.E.2d 1011, 319 Ill.Dec. 887, "[t]o be sure, an administrative agency lacks the authority to declare a statute unconstitutional, or even to question its validity." 886 N.E.2d at 1020, 319 Ill.Dec. at 886. An electoral board does not have the authority to declare the statutory ballot access scheme unconstitutional (see also Delgado v. Board of Election Commissioners of City of Chicago (2007) 224 Ill.2d 481, 865 N.E.2d 183, 309 Ill.Dec. 820, Phelan v. County Officers Electoral Board (1<sup>st</sup> Dist. 1992) 240 Ill.App.3d 368, 608 N.E.2d 215, 181 Ill.Dec. 142, Wiseman v. Elward (1<sup>st</sup> Dist. 1972) 228 Ill.App.3d 249, 283 N.E.2d 282).

The Candidate, in a motion to strike, also challenged Objector's standing, citing federal law and California law relating the standing necessary to permit a litigant to file suit in a court, asserting that an objector must have a personal interest in the outcome of a matter. The Objector noted that Section 10-8 of the Illinois Election Code (10 ILCS 5/10-8) authorizes an objection to be filed by "any legal voter of the political subdivision or district in which he candidate or public question is to be voted on..." There was no issue raised as to the Objector's status as a voter in Illinois.

As to the merits of the objection, the Petition contains signatures totaling approximately 8% of minimum number required pursuant to Section 7-10(a) of the Illinois Election Code (10 ILCS 5/7-10(a)).

## CONCLUSION AND RECOMMENDATION

Based upon the foregoing, the Hearing Officer denies both Candidate motions, and further finds that the Candidate's Petition contains fewer than the minimum number of signatures required under Section 7-10(a) of the Illinois Election Code (10 ILCS 5/7-10(a)) to qualify him for access to the ballot as an established party candidate for the US Senate from the State of Illinois. Therefore, the Hearing Officer recommends that Objection to the Candidate's Petition should be sustained and that the name of the Candidate, Thomas (Tom) Kuna, not be printed on the ballot as the candidate of the Republican Party for said office at the 2010 General Primary.

Respectfully submitted,

/s/ Kenneth R. Menzel

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Kenneth R. Menzel  
Hearing Officer

Dated: November 30, 2009

STATE OF ILLINOIS )  
 ) ss.  
COUNTY OF COOK )

ORIGINAL ON FILE AT  
STATE BD OF ELECTIONS  
ORIGINAL TIME STAMPED  
AT 2009 JUN 9 PM 1:50

BEFORE THE DULY CONSTITUTED ELECTORAL BOARD FOR THE HEARING AND PASSING UPON OBJECTIONS TO THE NOMINATION PAPERS FOR CANDIDATES FOR THE OFFICE OF UNITED STATES SENATOR OF THE STATE OF ILLINOIS.

IN THE MATTER OF THE OBJECTIONS )  
TO THE NOMINATION PAPERS OF )  
THOMAS (TOM) KUNA OF 300 N. JEFFERSON )  
#1, JERSEYVILLE, IL 62052 AS A CANDIDATE )  
FOR NOMINATION OF THE REPUBLICAN )  
PARTY TO THE OFFICE OF UNITED STATES )  
SENATOR OF THE STATE OF ILLINOIS TO BE )  
VOTED ON AT THE FEBRUARY 2, 2010, )  
PRIMARY ELECTION. )

VERIFIED OBJECTOR'S PETITION

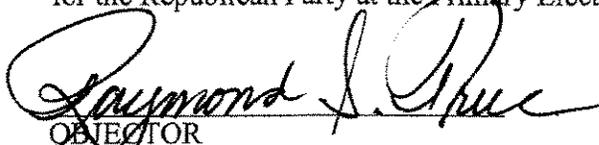
NOW COMES, Raymond True, (hereinafter referred to as the "Objector,") and respectfully represents that Objector resides at 839 South Terre Drive, Libertyville, in the State of Illinois; that Objector is a duly qualified, registered, and legal voter at such address; that Objector's interest in filing the following objections is that of a citizen desirous of seeing to it that the laws governing the filing of nomination papers for nomination of the Republican Party to the office of United States Senator of the State of Illinois are properly complied with and that only qualified candidates have their names appear on the ballot as candidates for the said office; and therefore your Objector makes the following objections to the nomination papers of Thomas (Tom) Kuna (hereinafter, referred to as the "Candidate") as a candidate for nomination of the Republican Party to the office of United States Senator 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:

1. Your Objector states that in the State of Illinois the signatures of not less than five thousand (5,000) duly qualified, registered, and legal voters 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.

2. Your Objector states that the Candidate has filed forty-two (42) petition signature sheets containing a total of 406 signatures of allegedly duly qualified, legal, and registered voters of the State of Illinois.

3. Your Objector states that the nomination papers filed for the Candidate are 4,594 fewer the statutory minimum of five thousand (5,000) and therefore insufficient as a matter of law.

WHEREFORE, your Objector prays that the purported nomination papers of Thomas (Tom) Kuna as a candidate for nomination of the Republican Party to the office of United States Senator 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 Thomas (Tom) Kuna as a candidate for nomination of the Republican Party to the office of United States Senator of the State of Illinois, BE NOT PRINTED on the OFFICIAL BALLOT for the Republican Party at the Primary Election to be held on February 2, 2010.

  
OBJECTOR  
Raymond True  
839 South Terre Drive  
Libertyville, IL 60048

VERIFICATION

The undersigned as Objector, first being duly sworn on oath, now deposes and says that he has read this VERIFIED OBJECTOR'S PETITION and that the statements therein are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that he verily believes the same to be true and correct.

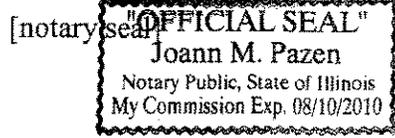
Raymond S. True  
OBJECTOR

Raymond True  
839 South Terre Drive  
Libertyville, IL 60048

STATE OF ILLINOIS        )  
  ) ss.  
COUNTY OF COOK        )

Subscribed to and Sworn before me, a Notary Public, by Raymond True, the Objector, on this the 9<sup>th</sup> day of November, 2009, at Park Ridge, Illinois.

Joann M. Pazen  
NOTARY PUBLIC



My Commission expires: 8/10, 2010.

Michael F. Zimmermann (6226440)  
Erik R. Peck (6227027)  
Jeffrey M. Stein (6278516)  
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