

**BEFORE THE DULY CONSTITUTED WILL COUNTY OFFICERS ELECTORAL
BOARD FOR THE HEARING AND PASSING UPON OBJECTIONS TO THE
NOMINATION PAPERS OF CANDADATES FOR ELECTION TOTHE OFFICE OF
STATE SENATOR FOR THE 43RD LEGISLATIVE DISTRICT OF THE STATE OF
ILLINOIS FOR THE ELECTION TO BE HELD ON NOVEMBER 2, 2010**

IN THE MATTER OF:

Robert L. Davis

Petitioner-Objector,

v.

Cedra Crenshaw,

Respondent-Candidate.

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CLERK OF WILL COUNTY
ILLINOIS

DECISION AND ORDER

The Will County Officers Electoral Board, Chairperson Nancy Schultz Voots, County Clerk of Will County, Illinois, Pamela J. McGuire, Circuit Clerk of Will County, Illinois and James W. Glasgow, State's Attorney of Will County, Illinois through his designee, Assistant State's Attorney Robert C. Lorz, convened on May 7, 2010 at which time a briefing schedule was entered and the date of May 24, 2010 was set for hearing to consider the Objection Petition of Robert L. Davis to the nomination papers of Cedra Crenshaw, candidate for State Senator for the 43rd Legislative District in Illinois. The Candidate filed a Motion to Strike Objector's Petition with the Board on May 14th. Upon agreement of the parties, on May 24, 2010 a hearing was held on Candidate's Motion to Strike and the underlying Objection of Robert L. Davis. Attorney Michael Kasper was present to represent the Objector and Attorney Burton Odelson was present to represent the Candidate. Evidence and arguments of the parties were heard and considered, at the end of which the Parties agreed that there were no questions of fact only two questions of law to be determined. Subsequent to the hearing the Objector and the Candidate filed Motions and then an Amended Motion For Leave To Cite Supplemental Authority.

THE OBJECTION

The Board finds that the Objector, Robert L. Davis has specifically alleged that Cedra Crenshaw's nomination papers are deficient for the following reasons:

1. That the Nomination Papers contain petition sheets that bear a circulator's affidavit which state's 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. [Objector's Petition at par. 18]

2. 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 30, 2010, but the Resolution to Fill a Vacancy in Nomination was not filed with the State Board of Elections until April 19, 2010. 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. [Objector's Petition at Par. 20]

3. The Objector cited numerous other deficiencies in the Petition. However, on the day of hearing the parties stipulated that the number of valid signatures is greater than 1,000 rendering the signature allegations irrelevant. [Transcript of Proceedings at pp.3-4] In support of his petition, the Objector orally argued that the legislature knew of the 3-day rule and yet failed to address it in the new legislation. [Transcript of Proceedings at pp. 9] Thus, according to the Objector, the 3-day rule applies in addition to the requirements under the new law which allows 75 days after the general primary to file the nominating petitions, statements of candidacy, notice of appointment by the appropriate committee, and the filing receipt for the statement of economic interests, which are all to be filed together.

The Objector attempts to further bolster his argument by citing Forcade-Osborn v. Madison County Electoral Board, 334 Ill.App.3d 756, 778 N.E.2d 768, 268 Ill.Dec. 502 (Dist. 5, 2002) in which the Court held that the 3 day rule mandatory and not directory. In an effort to reconcile the verbiage of 10 ILCS 5/7-61, the Objector, proposes that the legislature intended a 3 part nomination process. The appropriate committee would first be required to meet and designate a potential candidate or candidates who would then be eligible to circulate petitions. After acquiring the requisite number of signatures the candidate would submit them to the committee which would then be required to reconvene and pass a nominating resolution which would then be sent to the certifying officer or board within 3 days. [Transcript of Proceeding at p. 9]

Although the legislation does not set specifically set forth such a scheme, the Objector maintains that it is implied by the usage of the term "designate" rather than the term "nominate." The Objector referred the Board to Black's Law Dictionary which defines "designate" as "To indicate or set apart for a purpose or duty..." while to "nominate" means "to name, designate by name, or appoint...to name, designate, or propose for election or appointment." According to the Objector, the usage by the legislature of the term "designate" rather than the term "nominate" indicates an intent by the legislature to create this three part process for the nomination of a candidate when no name is printed on the ballot for the primary.

4. The Objector also argued that all of the pages of the petitions contain a certification that is deficient. The certification is as follows:

I, Cedra Crenshaw, do hereby certify that I reside at 616 Keystone Drive street, in the Village of Bolingbrook, Zip Code 60440, Will County, in the State of Illinois, that I am 18 years of age or older, that I am a citizen of the United States, and 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 and are genuine, and that to the best of my knowledge and belief the persons so signing were at the time of signing the petition registered voters and qualified primary voters of the Republican Party, residing in the 43rd Legislative District, and that their respective residences are correctly stated as above set forth.

Objector argues that the Illinois Election Code requires the circulator of a candidate's nominating petitions to either: "(a) indicate the dates on which the sheet was circulated; (b) indicate the first and last dates on which the sheet was circulated; or (c) certify that none of the signatures on the sheet were signed more than 90 days preceding the last day for filing petitions." [Transcript of Proceedings at pp. 10 -12] Although the Candidate utilized option (c) it is defective in this case because the period for circulation is no more than 75 days and thus the certification is inaccurate. The inaccuracy leaves open the possibility that the petitions were circulated prior to the designation of the Candidate by the Legislative Committee of the Republican Party.

CANDIDATE'S MOTION TO STRIKE

The Board finds that the Candidate timely filed a Motion to Strike responding to Objector's allegations, the relevant portions of which are set forth as follows:

1. That the certificate of organization of the 43rd legislative committee was filed with the State Board of Elections [Candidate's Motion to Strike at par. 1]

2. That par. 17 of the Objection does not adequately specify the deficiency in the notary. [Candidate's Motion to Strike at. par.2]

3. That the 3-day rule set forth in Section 7-61 is inapplicable and applies only when a candidate has been nominated at a primary and a vacancy occurs by reason of death or resignation. [Candidate's Motion to Strike at par.3]

4. That the procedure for filling a vacancy under the newly-added ninth paragraph of Section 7-61 requires that the notice of appointment be filed together with the Candidate's nominating petitions, statement of candidacy, and receipt of filing certificate of economic interests. [Candidate's Motion to Strike at par. 4]

5. That contrary to the prior law which applied when a vacancy occurred because the candidate died, resigned or vacated their nomination AND when no candidate appeared on the ballot or a write-in was not duly nominated, the new law applies only when no candidate appears on the ballot or is nominated by the write-in process. [Candidate's Motion to Strike at par. 5 & 6]

6. The new law does not prescribe any wording or affirmation by the circulator other than the language set forth in 5/8-8. There must be proof that the petitions were circulated prior to the Candidate's nomination on March 30, 2010. There is no such proof because the petitions were circulated after March 30, 2010. [Candidate's Motion to Strike at par. 8]

7. The new law does not require the circulator to swear that the petitions were circulated after the legislative committee selected the nominee. [Candidate's Motion to Strike at par. 9]

8. That the portion of the new law that requires signatures to be gathered in 75 days or less is unconstitutional. The Candidate argues that the new law violates Article III, Section 4, of the 1970 Illinois Constitution which provides: "...law governing voter registration and conduct of elections shall be general and uniform", Article I, Section 2 which provides: "No person shall be deprived of life, liberty or property without due process of law nor be denied equal protection

of the laws,” and Article III, Section 3: “All elections shall be free and equal.” The candidate argues that the Election Code gives candidates 90 days to circulate petitions and that the time may not be reduced without violating the above-cited provisions of the Illinois Constitution.

The Candidate’s oral arguments re-iterated the arguments set forth in his Motion to Strike.

APPLICABLE LAW

10 ILCS 5/8-8

Form of petition for nomination. The name of no candidate for nomination shall be printed upon the primary ballot unless a petition for nomination shall have been filed in his behalf as provided for in this Section...

...Each such petition shall include as a part thereof the oath required by Section 7-10.1 of this Act and a statement of candidacy by the candidate filing or in whose behalf the petition is filed...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 5/7-10

Form of petition for nomination. The name of no candidate for nomination, or State central committeeman, or township committeeman, or precinct committeeman, or ward committeeman or candidate for delegate or alternate delegate to national nominating conventions, shall be printed upon the primary ballot unless a petition for nomination has been filed in his behalf as provided in this Article in substantially the following form:...

...At the bottom of each sheet of such petition shall be added a circulator statement signed by a person 18 years of age or older who is a citizen of the United States, stating the street address or rural route number, as the case may be, as well as the county, city, village or town, and state; and certifying that the signatures on that sheet of the petition were signed in his or her presence and certifying that the signatures are genuine; and either (1) indicating the dates on which that sheet was circulated, or (2) indicating the first and last dates on which the sheet was circulated, or (3) certifying that none of the signatures on the sheet were signed more than 90 days preceding the last day for the filing of the petition and certifying that to the best of his or her knowledge and belief the persons so signing were at the time of signing the petitions qualified voters of the political party for which a nomination is sought. Such statement shall be sworn to before some officer authorized to administer oaths in this State.

10 ILCS 5/8-17

The death of any candidate prior to, or on, the date of the primary shall not affect the canvass of the ballots. If the result of such canvass discloses that such candidate, if he had lived, would have been nominated, such candidate shall be declared nominated.

In the event that a candidate of a party who has been nominated under the provisions of this Article shall die before election (whether death occurs prior to, or on, or after, the date of the primary) or decline the nomination or should the nomination for any other reason become

vacant, the legislative or representative committee of such party for such district shall nominate a candidate of such party to fill such vacancy. However, if there was 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 this Code. In proceedings to fill the vacancy in nomination, the voting strength of the members of the legislative or representative committee shall be as provided in Section 8-6.

10 ILCS 5/8-17

Whenever a special election is necessary the provisions of this Article are applicable to the nomination of candidates to be voted for at such special election...

...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...

... A vacancy in nomination occurs when a candidate who has been nominated under the provisions of this Article 7 dies before the election (whether death occurs prior to, on or after the day of the primary), or declines the nomination; provided that nominations may become vacant for other reasons.

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. These documents shall be filed at the same location as provided in Section 7-12. 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...

FINDINGS

1. The Board finds that pursuant to the requirements of state statute, certified mail notices were sent by the Chairman of the Board to each of the Board members, the Candidate

and the Objector within the time and in the manner required by statute giving notice of the time and place of the convening of the Board for May 7, 2010 and continued from time to time at the Will County Courthouse for hearings upon both the Objection the Motion to Strike which were both duly and timely filed. Additionally, within the time required by law, notice of the call was placed for service with the Will County Sheriff for service upon each of the members of the Board, the Objector and the Candidate giving notice of the time and place of the convening of the Board for hearing upon the Objection. The documents evidencing compliance with the notice requirements of the statute were filed with the Board. The Board hereby finds that it has been legally constituted according to the laws of the State of Illinois, has complied with the requirements of the Open Meetings Act and has jurisdiction over the parties and the subject matter.

2. The Board further finds that the Motions to Cite Additional Authority were timely filed and thus the Motions are granted and the authority accorded due weight.

3. The Board further finds and the Parties affirmed that there are no issues of fact to be determined and that the outcome of the Objection and Motion to Strikes rests solely on questions of law. [Transcript of Proceeding at pp. 25-26]

4. The Board further finds that "it is a fundamental principle that access to a place on the ballot is a substantial right and is not lightly to be denied." *Welch v. Johnson*, 147 Ill.2d 40, 56 (Ill. 1992).

5. The Board further finds that the parties stipulated that the only remaining issues before the Board are the issues of law set forth herein and that there are no factual issues that need to be determined. [Transcripts of Proceedings at p. 25]

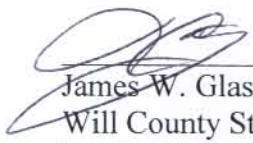
6. The Board further finds that the 3 day rule set forth in 10 ILCS 5/8-17 does not apply to vacancies resulting when no established political party candidate is printed on the primary ballot. The primary goal of statutory interpretation is to ascertain and give effect to the intention of the legislature. If the legislative intent can be ascertained from the plain language of the statute itself the intent must prevail. "The Court must not depart from the plain language of the statute by reading into it exceptions, limitations, or conditions that conflict with the express legislative intent." *Barnett v. Zion Park District*, 171 Ill.2d 378, 388, 665 N.E. 2d 808, 813, 216 Ill.Dec.550, 555 (1996) The Board finds that the terms "designate" and "nominate" are synonymous as indicated in Black's Law Dictionary's use of the term designate within the definition of the term "nominate". Thus the plain language of the statute requires only that appropriate political party designate a person, that the designated person gather the statutorily required number of signatures and that the candidate file all of the nominating papers together within 75 days after the day of the general primary. It would be improper to read into the legislation additional requirements.

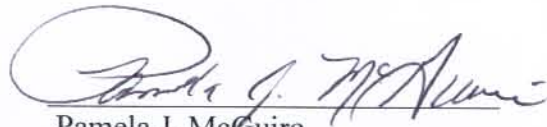
7. The Board further finds that the certification on all of the pages of Candidate's petitions were insufficient. It is clear that the requirement for a certification indicating the time frame in which the petitions is mandatory under 10 ILCS 5/8-8. *Simmons v. DuBose*, 142 Ill.App.3d 1077, 492 N.E.2d 586, 97 Ill.Dec. 150 (Dist. 1, 1986) Although the legislation does not set forth specific language for that certification, it does require that the language used for the certification be accurate and that it inform the election authority of compliance with the law. The certification in this case did not do that. In the instant case, the Candidate included a

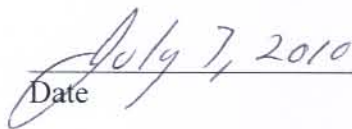
certification indicating that the petitions were circulated “not more than 90 days preceding the last day for filing of the petitions.” [Candidate’s petitions] The Resolution to Fill a Vacancy in Nomination was not passed until March 30, 2010 leaving only 19 days for circulating petitions within the statutorily prescribed timeframe. The certification leaves open the possibility that the petitions were circulated during a time period that was well outside that which is statutorily prescribed. Therefore, this Board has no alternative but to find that the Candidate failed to comply with the statutory requirements set forth under 10 ILCS 5/7-61 and 10 ILCS 5/8-8.

ORDER

The Board hereby grants paragraphs 3, 4 & 5 of the Candidate’s Motion to Strike but denies paragraphs 8 & 9, all other paragraphs of the Motion to Strike being disposed of by virtue of the parties stipulation at hearing and grants Objector’s Petition. The Board further orders the Will County Clerk to deny the nomination papers of Cedra Crenshaw, candidate for State Senator for the 43rd Legislative District in Illinois. The parties are informed that if they feel aggrieved by the decision of the Board they may seek judicial review of this decision by filing within 10 days of this decision a petition with the clerk of the circuit court along with a proof of service to all parties.


James W. Glasgow
Will County State’s Attorney
by: Robert C. Lorz, his assistant

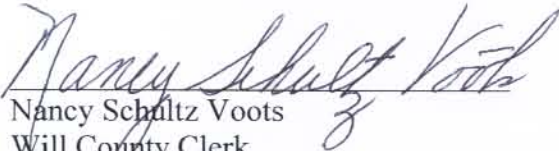

Pamela J. McGuire
Circuit Clerk of Will County

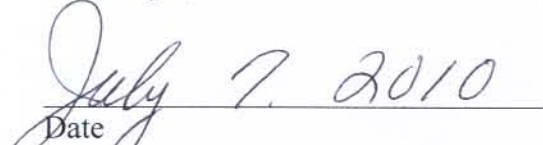

Date

Dissent:

Will County Clerk, Nancy Schultz Voots respectfully dissents from the findings of her fellow Electoral Board Members with regard to the sufficiency of the certification set forth in the Candidate’s Petitions. As was pointed out by the Board of Election Commissioners of the City of Chicago in the Objections of Melissa Rabb to the Nomination Papers of Dave Lenkowski, 10 EB-RES-04 at pp. 16-17, the new law under 10 ILCS 5/7-61 simply requires that petitions be circulated and filed. Under 5/7-61 there is no specific statutory language to be used in the certification. The Candidate must look to Section 5/8-8, which sets forth three different options any of which may be used to fully satisfy the statutory requirements. The Candidate in the instant case utilized the verbiage certifying that none of the signatures on the sheet were signed more than 90 days preceding the last day for the filing of the petition. That verbiage is not only accurate, it is the verbiage which is specifically set forth in Section 5/8-8. If it is unclear what verbiage ought to be used in the certification, it is because the legislation itself is unclear. “It would be a great injustice to penalize any candidate for failure to understand a provision in the Election Code which we ourselves have had considerable difficulty in interpreting.” Preuter v. State Officers Electoral Board, 334 Ill.App3d 979, 779 N.E.2d 3d (1st Dist. 2002).

Furthermore, there is no allegation nor any factual evidence presented that the Candidate circulated petitions outside of the statutorily prescribed time period. Nor is there any indication that the technical inaccuracy within the certification results in any inequity or unfairness in the election process. Finally, as the Board has previously acknowledged Illinois law favors ballot access. As such, questions of irregularities which do not impact the integrity of the election should be resolved in favor of the Candidate. In light of the foregoing, I respectfully disagree with the decision of my fellow Electoral Board Members and would grant Candidates Motion to Strike and grant Cedra Crenshaw access to the ballot.


Nancy Schultz Voots
Will County Clerk


Date