

**IN THE CIRCUIT COURT OF THE TWELFTH JUDICIAL CIRCUIT
WILL COUNTY, ILLINOIS**

CEDRA CRENSHAW,)
)
) **Petitioner,**)
)
 vs.)
)
) **WILL COUNTY OFFICERS**)
) **ELECTORAL BOARD, Honorable**)
) **Nancy Schultz Voots, Chairman,**)
) **Honorable Pamela J. McGuire, and**)
) **Honorable James W. Glasgow, by**)
) **Robert C. Lorz and Nancy Schultz**)
) **Voots, in her capacity as WILL**)
) **COUNTY CLERK, and ROBERT L.**)
) **DAVIS,**)
) **Respondents.**)

No.: 10 MR 674

Cedra Crenshaw
CLERK, CIRCUIT COURT
WILL COUNTY, ILLINOIS
WILL COUNTY COURT HOUSE

2010 JUL 21 PM 4:01

FILED

ORDER

This matter comes before the Court for ruling on the Petition for Judicial Review, with the Court having considered the briefs and arguments of the parties, the record submitted in this matter, and the applicable statutory and case law.

This matter arises out an electoral board challenge. Petitioner/Candidate, Cedra Crenshaw (hereinafter "Petitioner"), did not participate in the primary election on February 2, 2010, as a candidate for State Senator of the 43rd Legislative District. Rather, on March 30, 2010, Petitioner was nominated by the Republican Party to run for the office of State Senator of the 43rd Legislative District. The applicable statute, 10 ILCS 5/7-61, now requires a nominee to obtain nominating petitions with a specified number of signatures of registered voters living within the election district. Section 7-61 requires the signatures to be obtained within 75 days after the day of the general primary. Petitioner filed her paperwork with the Illinois State Board of Elections on April 19, 2010.

All of the pages of the petitions at issue contain a certification which states:

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.

(emphasis added)

Thereafter, the Respondent/Objector, Robert L. Davis (hereinafter "Respondent"), filed an Objector's Petition alleging Petitioner's petitions violated the Illinois Election Code. This matter was originally heard before the Will County Electoral Board (hereinafter "Electoral Board") on May 24, 2010. The Will County Electoral Board was comprised of Will County Clerk Nancy Schultz Voots, Will County Circuit Clerk Pamela J. McGuire and Will County State's Attorney James W. Glasgow by Will County Assistant State's Attorney Robert C. Lorz. In July, 2010, the Petitioner filed a Motion for Hearing. Attached to said Motion for Hearing was the Petitioner's affidavit which alleged that neither Petitioner nor any of her circulators circulated petitions prior to March 30, 2010, the date on which she was nominated. The Motion for Hearing was denied and a decision was rendered by the Electoral Board on the Motion to Strike and the Objector's Petition on July 7, 2010. A timely appeal was filed thereafter and the matter now comes before this Court for ruling.

In short, the Electoral Board determined that the certification on all pages of Petitioner's petitions were insufficient. The Electoral Board specifically noted that the requirement for a certification indicating the time frame is mandatory under 10 ILCS 5/8-8, citing Simmons v. DuBose, 142 Ill. App. 3d 1077, 492 N.E.2d 586 (1st Dist. 1986). The Electoral Board further determined that "the certification leaves open the possibility that the petitions were circulated during a time frame that was well outside that which is statutorily prescribed." As such, the Electoral Board ordered the Will County Clerk to deny the nomination papers of the Petitioner.

The question in this case is whether the Petitioner complied with the requirements of the Election Code in the circulation affidavit on her nominating petitions. There is no factual dispute in this matter. The parties have agreed that the only questions before the Court are questions of law. The Court reviews the statutory requirements *de novo*, and thus, is not required to give the Electoral Board's decision any deference in this matter. Thus, this review of a question of law is independent of any electoral board ruling.

The new statutory provision involved in this matter, Section 7-61 of the Election Code, states in relevant part:

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 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.

Section 8-8 of the Election Code addresses the form of petition for nomination and specifically states in relevant part:

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.

Access to the ballot is a substantial right not to be lightly denied and a minor error in a nominating petition should not result in a candidate's removal from the ballot. Welch v. Johnson, 147 Ill. 2d 40, 56, 588 N.E.2d 1119, 1126 (Ill. 1997); Ryan v. Landek, 159 Ill. App. 3d 10, 15-16, 512 N.E.2d 1, 4 (1st Dist. 1987). As the court noted in Jones v. Dodendorf, 190 Ill. App. 3d 557, 546 N.E.2d 92 (2d Dist. 1989):

Before a candidate can be denied a place on the ballot, the rights of both the candidate and the voters must be taken into consideration. In addition, the interest of the State in regulating elections must be recognized. The crucial question is whether it is conceivable that removing these candidates from the ballot has a rational relationship to a legitimate government objective.

Further, in Wollan v. Jacoby, 274 Ill. App. 3d 388, 653 N.E.2d 1303 (1st Dist 1995), the court stated:

Although election officials, including objectors, are obligated to comply with all of the provisions of the Code, it does not follow that every noncompliance will invalidate a ballot or an objection as in the present case. Pullen v. Mulligan, 138 Ill. 2d 21, 47, 561 N.E.2d 585 (Ill. 1990) "Where the effect of failure to comply with a particular statutory requirement is not specified, however, courts must consider the nature and object of the statutory provision and the consequences which would result from construing it one way or another." Pullen, 138 Ill. 2d at 78, 561 N.E.2d at 610.

Wollan, 274 Ill. App. 3d at 394, 653 N.E.2d at 1308.

It is undisputed that the courts interpret inclusion of the date of circulation in the circulator's affidavit as a mandatory provision of the Election Code. However, the discussion cannot end there. As noted recently in Siegel v. Lake County Officers Electoral Bd., 385 Ill. App. 3d 452, 895 N.E.2d 69 (2d Dist. 2008), mandatory compliance does not mean strict compliance. Substantial compliance can satisfy even a mandatory provision of the electoral code. Id., 385 Ill. App. 3d at 461, 895 N.E.2d at 77. See also Jakstas v. Koske, 352 Ill. App. 3d 861, 817 N.E.2d 200 (2d Dist. 2004). The court in Siegel further noted that the provisions of the Election Code are designed to protect the integrity of the electoral process. The Siegel court found no evidence of bad faith noncompliance with the mandatory provision of the Election Code and then stated:

[S]ubstantial compliance with the Election Code is acceptable when the invalidating charge concerns a technical violation that does not affect the legislative intent to guarantee a fair and honest election. [citations omitted]

Siegel, 385 Ill. App. 3d at 461, 895 N.E.2d at 77.

Respondent/Objector cites Simmons v. DuBose, 142 Ill. App. 3d 1077, 492 N.E.2d 586 (1st Dist. 1986). In that case, the candidate's petitions failed to include the circulation date or that the sheets were circulated within the statutory period. Id., 142 Ill. App. 3d at 1080, 492 N.E.2d at 588. The candidate contended that the time frame requirement in the certification section as set forth in the statute was directory, not mandatory. Id. However, the court determined that the time frame requirement was mandatory and that the statutory provision ensures fairness and integrity of the election system. Id. The court then noted that even if it were a technical requirement, the candidate failed to establish substantial compliance with the statute, as no direct proof was offered by the candidate that he circulated the petitions within the required time frame. Simmons, 142 Ill. App. 3d at 1081, 492 N.E.2d at 589.

Unlike Simmons, the Petitioner did include a time frame requirement and in fact mirrored the language set forth in Section 8-8. The Petitioner included 1 of the 3 affirmations required by Section 8-8. The Petitioner strictly complied with the statutory requirements by including the exact language of Section 8-8.

Although the legislature recently amended Section 7-61 to require circulation of petitions within 75 days after the general primary, the legislature did not amend Section 8-8, nor did the legislature include language within Section 7-61 to change that which is required under Section 8-8 in the form of the circulator's affidavit. Preuter v. State Officers Electoral Bd., 334 Ill. App. 3d 979, 991, 779 N.E.2d 322, 332 (1st Dist. 2002) ("[I]t 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.") (citing Merz v. Volberding, 94 Ill. App. 3d 1111, 1117, 419 N.E.2d 628, 632-33 (1st Dist. 1981)).

It is undisputed that the candidate did include the statutory language from Section 8-8. It is further undisputed that the discrepancy between Section 7-61 and Section 8-8

has not yet been reconciled by the legislature. Courts are clear that substantial compliance can satisfy even a mandatory requirement. In this case, there was no evidence of fraud, nor was there any evidence of voter confusion. The Respondent provided no evidence of bad faith noncompliance in support of the petition. No evidence was presented that the petitions were circulated in an untimely manner or that the Petitioner gained an unfair advantage over her opponents by circulating her petition in advance of the circulation period. See Hagen v. Stone, 277 Ill. App. 3d 388, 390, 660 N.E.2d 189, 190 (1st Dist. 1995) (burden of proof in proceeding to challenge nominating petitions lies with the objector.) Further, the Petitioner attempted to produce evidence to support her position, but the Electoral Board refused to address such evidence. The Petitioner's nominating petitions are in substantial compliance with the statutory requirements.

WHEREFORE, the Petitioner's nominating petitions are declared valid. The Petition for Judicial Review is GRANTED. The decision of the Electoral Board is REVERSED. The name of Petitioner, Cedra Crenshaw, shall be printed on the official ballot for the General Election to be held on November 2, 2010, as the Republican nominee for State Senator of the 43rd Legislative District. Clerk to notify.

7/21/10
Date

B. Petrunaro
Hon. Bobbi N. Petrunaro