

**LOGAN COUNTY
OFFICERS ELECTORAL BOARD**

IN RE:)
) No. 1
BILL SHELBY)

MEMORANDUM OF DECISION

This matter was heard upon the objection [see Exhibit A, attached] filed by Ms. Penny Thomas (hereinafter, the Objector). She has objected to the general primary petitions filed by Mr. Bill Shelby (hereinafter, the Prospective Candidate). He had filed petitions to be placed on the ballot for the nomination of the Republican Party for the Office of Logan County Coroner. Subsequently, the Objector filed her objection which disputed the validity of some of the signatures and addresses on his nomination petitions. The ex-officio Logan County Officers Electoral Board (hereinafter, the Board) was convened.

The Board found a rather noteworthy discrepancy in Exhibit A, particularly given the issue raised by the Objector. She asserted that twenty names were invalid and that thirty-four were valid. Consequently, she indicated by inference that there was fifty-four total signatures and addresses on the nomination petitions. In fact, the nomination petitions contained fifty-five total signatures and addresses.

Prior to the hearing, members of the Board informally reviewed each of the twenty signatures and addresses to which the Objector had objected. The Board identified three of the disputed signatures and addresses which appeared to be valid signatures and addresses. The Board discovered that one of the disputed signatures and addresses which appeared to be the signature of a person who was not registered to vote in Logan County. Also, the Board identified twelve signatures and addresses which appeared to be invalid because the addresses listed by their names on the nomination petitions were different from the addresses associated with those

individuals= voters= registration. The Board sent notice to the Objector and to the Prospective Candidate [see "Exhibit B," attached] via certified mail.

THE HEARING

On December 15, 2011, a hearing was convened in the County Board Room on the first floor of the Logan County Courthouse to inquire into this matter. The hearing began at approximately 9:00 a.m. and lasted approximately one hour. The members of the Board were Ms. Mary Kelley (hereinafter, "Kelley"), the Logan County Circuit Clerk; Ms. Sally J. Litterly (hereinafter, "Litterly"), the Logan County Clerk; and Mr. Michael D. McIntosh (hereinafter, "McIntosh") the Logan County State's Attorney. The Prospective Candidate attended the meeting and he was represented by counsel, Mr. Albert Cole. Ms. Danielle Clutter (hereinafter, "Clutter") also accompanied the Prospective Candidate. The Objector attended the meeting. Also in attendance, at the meeting were Ms. Theresa Moore and Miss Bethany Rea, as employees of the Logan County Clerk's Office.

At the hearing, the Board asked for and received certain concessions from the parties. Initially, the Board noted that on December 7, 2011, the Objector had filed her objection. The Prospective Candidate conceded that her objection was timely filed.

Litterly distributed a two-page document [see "Exhibit C," attached] entitled "Assessment from William V. Shelby's General Primary Petition Signatures," which had been prepared by personnel in the Logan County Clerk's Office. The first page of Exhibit C contained an error; at the bottom of the page it had what appeared to be a number representing the total number of names and addresses listed. However, the number on the bottom of this page was inaccurate. The number at the bottom of the page should have been thirty-eight instead of

thirty-seven. Thirty-five of the names were signatories to which the Objector had not objected. Based upon its earlier preliminary review of the twenty signatures and addresses the Objector had objected to, the Board identified three signatures and addresses which appeared to be valid. At the hearing, the Objector conceded the validity of the three of the twenty signatures and addresses which had been identified by the Board. Consequently, seventeen of the twenty original objections remained in dispute and the Board considered the thirty-eight signatories valid.

Of the remaining seventeen contested signatures and addresses, the Board identified twelve signatures and addresses which were potentially invalid because the addresses listed by their names on the nomination petitions were not the addresses associated with those individuals= voters= registration. At the hearing, the Prospective Candidate initially conceded to the invalidity of ten of signatures and addresses which had been identified by the Board. Subsequently, the Board determined that two of the ten signatures and addresses which the Prospective Candidate had conceded as invalid, were actually signatures and addresses that he wished to be considered valid, due to the fact that these signatories had changed their addresses for voters= registration purposes after the Objector had filed her objection. The Board decided to treat the Prospective Candidate=s initial concession to the invalidity of the ten signatures and addresses as him having conceded to only eight of the signatures and addresses being invalid. Consequently, nine signatures and addresses remained in dispute.

At the hearing, the Prospective Candidate submitted a memorandum that detailed part of his argument [see AExhibit D,@ attached]. In Exhibit D, he basically presented an argument and further postulated that this argument could be supported by either one of two different factual scenarios. The Prospective Candidate argued that substantial compliance was sufficient for the

purpose of determining the validity of an address provided by a signatory on a nomination petition and referred to *King v. Justice*, 284 Ill.App3d 866 (1st Dist., 1996) in support of his position. The first factual scenario that the Prospective Candidate opined supported his argument, was that subsequent to the filing of the objection, seven of the signatories who had signed his nomination petitions had filed change-of-address forms which eliminated their disability and consequently made them qualified primary electors because they had substantially complied.

The second factual scenario that the Prospective Candidate opined in support on his argument, was as follows. According to the Prospective Candidate, two of the signatories, Clutter and Bonnie Hastings (hereinafter, AHastings@), in addition to changing their addresses as described above, they had previously changed their addresses for voter registration purposes. However, in the case of both signatories the Prospective Candidate argued that there were bureaucratic blunders of some type which lead to their current addresses not being properly recorded by the Logan County Clerk=s Office. Clutter submitted an affidavit [see AExhibit E,@ attached] which indicated that she had previously complied when she changed her address on her driver=s license. Hastings submitted an affidavit [see AExhibit F,@ attached] which stated that she had previously complied when she changed her address for the purpose of the receipt of public assistance from the Illinois Department of Public Aid.

Also, at the hearing the Prospective Candidate presented an oral argument. In his oral argument, he alluded to the line of cases which supported an individual=s right to vote even if minor irregularities exist in his or her voter=s registration, etc. He analogized an individual=s right to sign a nomination petition, to an individual=s right to vote. The Board interpreted the Prospective Candidate=s oral argument as a more generalized plea for relief similar to the relief he

seeks in his substantial compliance argument.

THE LAW

One statute in the Election Code is particularly relevant to the issue presented here. A qualified primary elector for purposes of signing nominating petitions is a person who is registered to vote at the address shown opposite his signature. 10 ILCS 5/3-1.2. Also, the Illinois Supreme Court noted:

Lakin also maintains, as did the appellate court below, that his proposed construction of section 3-1.2 is necessary to effectuate the legislative intent behind that provision. Lakin notes that section 3-1.2 codified a 1983 appellate court decision. . . . In *Greene*, the appellate court determined that section 10-4 of the Election Code (Ill.Rev.Stat. 1981, ch. 46, par. 10-4) required a person who signs a nominating petition to be registered to vote at the address set forth on the nominating petition. The court noted that it would be difficult to verify that an individual is registered to vote, and is therefore qualified to sign the nominating petition, if that individual was registered to vote at an address other than the one shown on the petition. The court concluded that its holding was therefore necessary to facilitate the verification procedure and to preserve the integrity of the election process.

Lucas v. Lakin, 175 Ill.2d 166 (1997), which cited favorably *Green v. Board of Election Commissioners*, 112 Ill.App3d 862 (1st Dist. 1983).

FINDINGS:

I. The Board has found that to be eligible to be placed on the Primary Ballot for the nomination of the Republican Party for the Office of Logan County Coroner, the petitions submitted for nomination must have contained forty valid signatures and addresses.

II. The Board has found that on December 5, 2011, (the last day to file nomination petitions) the Prospective Candidate filed nomination petitions seeking to have his name placed on the ballot for the nomination of the Republican Party for the Office of Logan County Coroner with the Logan County Clerk's Office. The nomination petitions filed by the Prospective Candidate contained

fifty-five signatures and addresses.

III. The Board has found that on December 7, 2011, the Objector filed her objection. The Objector disputed the validity of twenty of the signatures and addresses on the Prospective Candidate=s nomination petitions. The Board has found that her objection was timely filed. As noted earlier, the Objector conceded the validity of thirty-eight names and addresses. The thirty-eight admittedly valid signatures and addresses are as follows:

1. John Yates B 1418 North Ottawa, Lincoln
2. Natalie Boward B 227 Peoria Street, Lincoln
3. Donna Givens B 311 23rd Street, Lincoln
4. Kathleen Yates B 1418 North Ottawa, Lincoln
5. David Campbell B 12 Saint Andrews Drive, Lincoln
6. Dennis Reves B 800 South College Street, Lincoln
7. David Hepler, II B 119 Lincoln Avenue, Lincoln
8. Kathy Wells B 504 North McLean, Lincoln
9. Richard Wells B 504 North McLean, Lincoln
10. Kristine Grof B 403 North Hamilton, Lincoln
11. Shannon Moore B 331 Oscar Street, Lincoln
12. Chris Moore B 331 Oscar Street, Lincoln
13. Randy Whiteman B 331 Oscar Street, Lincoln
14. Gene Witt B 1527 North Sangamon, Lincoln
15. Israel Sandel B 206 Decatur Street, Lincoln
16. John Sandel B 1575 1600th Avenue, Lincoln
17. Giuseppe Biundo B 305 11th Street, Lincoln
18. Robert M. Maestas B 221 Oglesby Avenue, Lincoln
19. Demetrios Vanos B 1347 State Route 121, Lincoln
20. Victor Board B 1440 State Route 121, Lincoln
21. Brett Borst - #3 Canterbury, Lincoln
22. Dwayne Knollenberg B 203 Grand Avenue, Lincoln
23. Kurt Wendlandt B 1267 450th Street, New Holland
24. Warren Wendlandt B 1019 Decatur Street, Lincoln
25. Linda Armstrong B 105 Ophir Avenue, Lincoln
26. Tamara Buse B 113 North 5th Street, Lincoln
27. Lois Mauney B 219 9th Street, Lincoln
28. Luke Donath B 550 8th Street, Lincoln
29. Donald Hatfield B 215 South Kankakee, Lincoln
30. Danny Eckert B 556 8th Street, Lincoln

31. Brandy Mullenbach B 503 North Adams, Lincoln
32. Adam Cheatham B 1301 Lincoln Ave, Lincoln
33. Cindy Dunovsky B 428 North Hamilton, Lincoln
34. Anna L. Eckert B 5586 8th Street, Lincoln
35. Beverly Buhrmester B 407 6th Street, Lincoln
36. Judy Schuman B 526 Garden Street, Lincoln *
37. Crystal Otter B 53 Sycamore Lane, Lincoln *
38. Marcia Stewart B 727 North Vine Street, Mount Pulaski *

The last three signatures and addresses in the above list (identified by asterisks), are the three signatures and addresses that the Objector had disputed but subsequently had conceded for being valid signatures and addresses.

IV. Prior to the hearing, the Board identified twelve signatures and addresses that were potentially invalid because they appeared to have listed addresses next to their names which were different from the addresses on their voters= registrations. As noted earlier, the Prospective Candidate conceded the invalidity of these eight names and addresses and the Board determined that they were invalid. Consequently, the Board has found that Objector=s objection to these eight signatures and addresses was well founded:

1. (name illegible) B 1011 North Hamilton, Lincoln
2. Josh Vincent B 707 Feldman Drive Lot #44
3. (name illegible) B 403 North Hamilton, Lincoln
4. (first name illegible) Sandel B 1575 1600th Avenue, Lincoln
5. Kimberly (last name illegible) B 1703 North Ottawa, Lincoln
6. Pam (last name illegible) B 1703 North Ottawa, Lincoln
7. Samantha Danosky B 1 Country Lane, Atlanta
8. Megan Scroggin B 1417 275th, Mount Pulaski

The Objector has stipulated to validity of thirty-eight signatures and addresses and the Prospective Candidate admitted the invalidity of eight signatures and addresses, leaving nine in dispute.

V. Prior to the hearing, the Board had identified that one of the disputed signatures and addresses appeared to the signature of a person who was not registered to vote in Logan County.

The Board has found that Harvey Suherode was not registered to vote in Logan County. However, he signed the nomination petition as if he was registered to vote at 200 North Sheridan, Lincoln. He was listed for voter registration purposes as Aremovable.@ The Election Code defines a Aqualified primary elector@ as a Aperson who is registered to vote at the address shown opposite his signature.@ 10 ILCS 5/3-1.2. Consequently, the Board has found that he was not a qualified primary elector and the Objector=s objection to this signature was well founded. With Prospective Candidate admitted eight invalid signatures and addresses and this finding, eight signatures and addresses remained in dispute.

VI. Given the fact that the Objector has conceded that thirty-eight signatures and addresses are valid, if any two of the remaining eight disputed signatures and addresses are determined valid by the Board, the objection will fail. Specifically, the Board has found that the disputed signatures and addresses were the ones associated with:

1. Vincent AScott@ Board (hereinafter, AVincent@)
2. Jacob Newman (hereinafter, ANewman@)
3. Vickie Buss (hereinafter, ABuss@)
4. Tanya Adams (hereinafter, AAdams@)
5. Clutter
6. Jeremy Knapp (hereinafter, AKnapp@)
7. Ruth Buttery (hereinafter, AButtery@)
8. Hastings

The Board has found that whether the correct addresses were listed by the names of above eight individuals was the gravamen of this dispute. The various addresses associated with each of these eight individuals are dealt with separately below:

- A. The Board has found that Vincent signed the nomination petition as if he was a registered voter at 819 North Kickapoo, Lincoln. However, he did not register at that address until after the Objector had filed her objection. The Prospective Candidate

- conceded the timing of these events in Exhibit D. The Election Code defines a *Qualified primary elector* as a *person who is registered to vote at the address shown opposite his signature.* 10 ILCS 5/3-1.2. Consequently, the Board has found that he was not a qualified primary elector and the Objector's objection to this signature was well founded.
- B. The Board has found that Newman signed the nomination petition as if he was a registered voter at 902 North Jefferson, Lincoln. However, he did not register at that address until after the Objector had filed her objection. The Prospective Candidate conceded the timing of these events in Exhibit D. The Election Code defines a *Qualified primary elector* as a *person who is registered to vote at the address shown opposite his signature.* 10 ILCS 5/3-1.2. Consequently, the Board has found that he was not a qualified primary elector and the Objector's objection to this signature was well founded.
- C. The Board has found that Buss signed the nomination petition as if she was a registered voter at 806 North Hamilton Street, Lincoln. However, she did not register at that address until after the Objector had filed her objection. The Prospective Candidate conceded the timing of these events in Exhibit D. The Election Code defines a *Qualified primary elector* as a *person who is registered to vote at the address shown opposite his signature.* 10 ILCS 5/3-1.2. Consequently, the Board has found that she was not a qualified primary elector and the Objector's objection to this signature was well founded.
- D. The Board has found that Adams signed the nomination petition as if she was a registered voter at 632 Seventh Street, Lincoln. However, she has not registered to vote at that address. The Election Code defines a *Qualified primary elector* as a *person who is registered to vote at the address shown opposite his signature.* 10 ILCS 5/3-1.2. Consequently, the Board has found that she was not a qualified primary elector and the Objector's objection to this signature was well founded.
- E. The Board has found that Clutter was registered to vote at 616 Fourth Street,

Lincoln, according to the voters= registration files as of December 5, 2011. However, she signed the nomination petition as if she was a registered voter at 424 South Kickapoo Street, Lincoln. Since she was in attendance at the meeting, she addressed the Board and indicated that she had previously changed her address for voting purposes when she had updated the address on her driver=s license. Other than her own statement, she offered no tangible proof of her contention. She indicated that she had earlier changed her address with the Secretary of State=s Office, but apparently some type of bureaucratic glitch must have caused the change not to be effectuated in their computer system. Subsequent to the hearing, personnel from the Logan County Clerk=s Office inquired with the Secretary of State=s Office regarding her contention. Personnel from the Secretary of State=s Office indicated that they maintained records of people who transact business with their office and that they had a record of a transaction by Clutter on December 9, 2011. However, according to the Secretary of State=s Office, they had no record of an earlier transaction as described by Clutter. The Board was not persuaded by Clutter=s claim and in our opinion, any further inquiry to determine of the validity of her claim beyond what we have already done was unnecessary.

The Board confined itself to comparing where she was registered to vote according to the records maintained by the Logan County Clerk with the address where she said she lived when she signed the nomination petition. She did change her address for voting purposes on December 9, 2011, to the address which she had recorded opposite her signature on the nomination petition. The filing period had closed December 5, 2011. The Prospective Candidate conceded the timing of these events in Exhibit D. The Election Code defines a Aqualified primary elector@ as a Aperson who is registered to vote at the address shown opposite his signature.@ 10 ILCS 5/3-1.2. Consequently, the Board has found that she was not a qualified primary elector and the Objector=s objection to Clutter=s signature was well founded.

- F. The Board has found that Jeremy Knapp was registered to vote at 616 Fourth Street, Lincoln. However, he signed the nomination petition as a resident of 424

South Kickapoo Street, Lincoln. He did not change his address for voter registration until after the Objector had filed her objection. The Prospective Candidate conceded the timing of these events in Exhibit D. The Election Code defines a "qualified primary elector" as a person who is registered to vote at the address shown opposite his signature. 10 ILCS 5/3-1.2. Consequently, the Board has found that he was not a qualified primary elector and the Objector's objection to this signature was well founded.

G. The Board has found that Buttery signed the nomination petition as if she was a registered voter at 113 Centennial Court, Lincoln. However, she did not register at that address until after the Objector had filed her objection. The Prospective Candidate conceded the timing of these events in Exhibit D. The Election Code defines a "qualified primary elector" as a person who is registered to vote at the address shown opposite his signature. 10 ILCS 5/3-1.2. Consequently, the Board has found that she was not a qualified primary elector and the Objector's objection to this signature was well founded.

H. The Board has found that Hastings signed the nomination petition as if she was a registered voter at 1102 North Ottawa Street, Lincoln. In Exhibit F, Hastings claimed that when she updated her address for the purpose of the receipt of public assistance from the Illinois Department of Public Aid in August of this year, she had changed her address for voting purposes. In fact, she changed her address for voting purposes on December 9, 2011, to the address which she listed opposite her signature on the nomination petition. The filing period had closed December 5, 2011. The Prospective Candidate conceded the timing of these events in Exhibit D. To be eligible to sign a nominating petition the person must be a qualified primary elector. The Election Code defines a "qualified primary elector" as a person who is registered to vote at the address shown opposite his signature. 10 ILCS 5/3-1.2. Consequently, the Board found that Hastings was not a qualified primary elector and that the Objector's objection to her signature was well founded.

The Board has determined that Hastings must have been mistaken in regard to the sequence of events with respect to the filing of her change-of-address. On September 2, 2011, she appears to have submitted a change-of-address form with the Illinois Department of Public Aid [see Exhibit G, attached]. Exhibit G was received by the Logan County Clerk's Office on September 27, 2011. Two points are significant with respect to Exhibit G. Initially, the form was not completed properly. Noting this discrepancy, the Logan County Clerk's Office sent Hastings a letter notifying her that she needed to complete her change-of-address form. She did not comply with this direction until December 9, 2011. Second, the address Hastings listed on Exhibit G is 1772 B 275th Avenue, New Holland, but the address that she used on the nomination petition was 1102 North Ottawa, Lincoln. Even if the Logan County Clerk's Office had changed Hastings' address based upon her incomplete change-of-address form, she listed a completely different address by her name on the nomination petition.

As indicated above, the Board has found invalid each one of the eight signatures and addresses which had remained in dispute. Therefore, the Board found that each one was not a qualified primary elector and the Objector's objection to each one of these signatures was well founded.

DISCUSSION

The Board disagrees with the Prospective Candidate's contention that substantial compliance is all that is required for the addresses of signatories on nomination petitions. His reliance on the *King* case is misplaced. The *King* case did not involve a dispute regarding the addresses of signatories on nomination petitions.

A credible conceptualization of the right of an individual to support a candidate's bid for an elected office, is significantly different from the conceptualization of that same individual's right to vote. When a person is elected to any public office he or she is vested with the public trust and consequently the process of obtaining such an office is fraught with difficulties. When a

candidate submits nominating petitions for office, another candidate can compete against him or her for that office. Ostensibly, both candidates have some rights and responsibilities with respect to each other and the electoral process generally. For the process to be fair, one candidate must have a meaningful opportunity to check the accuracy of any materials filed by the other candidate and some sort of mechanism to resolve a dispute involving any possible discrepancies he or she may have discovered. If a candidate was allowed to submit nomination petitions which listed incorrect names and addresses, any other potential candidate would not have a meaningful opportunity to determine whether the individual names and addresses correspond to registered voters. Yesterday, the State Board of Elections promulgated draft rules [see AExhibit H,@ attached]. Page A-12 of Exhibit G also provides guidance because it is clear that the State Board of Elections interprets incorrect addresses on nomination petitions in the same manner that this Board interprets incorrect addresses on nomination petitions.

CONCLUSION

The Board hereby finds the objection is proper because the Prospective Candidate did not have the required forty valid signatures and addresses on the nomination petitions which he had submitted to be placed on the ballot. Consequently, the Prospective Candidate is hereby notified that his name will not be placed on the ballot for the nomination of the Republican Party for the Office of Logan County Coroner. Finally, the Prospective Candidate is hereby notified that he has a right to judicial review of this Board=s decision.

Filed: December 21, 2011

Mary Kelley

Sally J. Litterly

Michael D. McIntosh