

**BOARD OF ELECTION COMMISSIONERS OF THE CITY OF CHICAGO
AS THE DULY CONSTITUTED ELECTORAL BOARD**

Objections of: WAYNE A. STRNAD)
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To the Nomination) No. 08-EB-WC-05
Papers of: ROBERT J. FOSS)
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Candidate for the office of Ward)
Committeeman for the 30th Ward of the)
City of Chicago, Republican Party)

FINDINGS AND DECISION

The duly constituted Electoral Board, consisting of Chicago Board of Election Commissioners Langdon D. Neal, Richard A. Cowen, and Marisel A. Hernandez, organized by law in response to a Call issued by Langdon D. Neal, Chairman of said Electoral Board, for the purpose of hearing and passing upon objections ("Objections") of WAYNE A. STRNAD ("Objector") to the nomination papers ("Nomination Papers") of ROBERT J. FOSS, candidate for election to the office of Ward Committeeman for the 30th Ward of the City of Chicago, Republican Party ("Candidate"), having convened on November 20, 2007, at 10:00 a.m., at 69 W. Washington Street, 8th Floor Conference Room, Chicago, Illinois, and having heard and determined the Objections to the Nomination Papers in the above-entitled matter, finds that:

1. Objections to the Nomination Papers of the Candidate herein were duly and timely filed.
2. The said Electoral Board has been legally constituted according to the laws of the State of Illinois.

3. A Call to the hearing on said Objections was duly issued by the Chairman of the Electoral Board and served upon the members of the Electoral Board, the Objector and the Candidate, by registered or certified mail and by Sheriff's service, as provided by statute.

4. A public hearing held on these Objections commenced on November 20, 2007 and was continued from time to time.

5. The Electoral Board assigned this matter to Hearing Examiner Linda Crane for further hearings and proceedings.

6. The Objector and the Candidate were directed by the Electoral Board to appear before the Hearing Examiner for a hearing on the date and at the time designated on the Electoral Board's docket. The following persons, among others, were present at such hearing: the Objector, WAYNE A. STRNAD, appearing pro se; and the Candidate, ROBERT J. FOSS, appearing by counsel, Thomas Jaconetty.

7. The sole objection raised in the Objector's Petition is that one of the Candidate's petition circulators also circulated petitions for another candidate for the same election but representing a different political party in violation of Section 10-4 of the Illinois Election Code. The Objector seeks to invalidate the Candidate's candidacy in its entirety for this alleged violation.

8. The Candidate filed a motion to strike and dismiss, contending that there is no "per se disqualification rule" requiring that the Candidate's Nomination Papers be invalidated in their entirety even if one of the Candidate's circulators were to admit he circulated petition sheets for a candidate of another political party.

9. Based on the evidence and argument presented, the Hearing Examiner found as follows:

A. That the Candidate's candidacy is not entirely nullified by the fact that the person who circulated a nomination petition for both the Republican candidate as well as a Democratic Party candidate.

B. That the Objector offered no evidence of the order in which the circulator circulated petitions for the two candidates.

C. There is no presumption that any of the signatures on the petition sheets are invalid in the absence of a record examination.

D. That the most severe remedy against the candidate under the facts is that only the 15 signatures collected by the offending circulator should be disqualified.

E. That if the 15 signatures were disqualified, the remaining number of signatures is 43 in a race for which the minimum number of valid signatures is 13, which is 30 more than required.

10. Accordingly, the Hearing Examiner granted the Candidate's motion to dismiss the Objector's petition and has recommended that the name of the Candidate be printed on the ballot as a candidate for the office of Ward Committeeman of the 30th Ward at the election to be conducted on February 5, 2008.

11. Section 10-4 of the Election Code (10 ILCS 5/10-4) states in part, "no person shall circulate or certify petitions for candidates of more than one political party or for an independent candidate or candidates in addition to one political party, to be voted

upon at the next primary or general election, or for such candidates and parties with respect to the same political subdivision at the next consolidated election.”

12. The Electoral Board finds that Section 10-4 of the Election has no application to the Candidate’s Nomination Papers here.

13. The first sentence of Section 10-4 states, “All petitions for nomination under this Article 10 for candidates for public office in this State, shall in addition to other requirements provided by law, be as follows” Article 10 of the Code, which is titled, “Making of Nominations in Certain Other Cases,” does not apply to nominations made by established political parties. The first section of Article 10, section 10-1, states: “No nominations may be made under this Article 10, however, by any established political party which, at the general election next preceding, polled more than 5% of the entire vote case in the State, district or unit of local government for which the nomination is made.”

14. The Candidate here is seeking to be nominated as a Ward Committeeman of the Republican Party. Without question, the Republican Party is an “established political party.”

15. Article 7 of the Election Code governs the making of nominations of established political parties. Section 7-1 of the Code provides in part, “Except as otherwise provided in this Article, the nomination of all candidates for all elective State, congressional, judicial, and county officers *** [and] precinct, township, *ward*, and State central committeeman *** by all political parties, as defined in Section 7-2 of this Article, shall be made in the manner provided in this Article 7 *and not otherwise.*”

16. Article 7 does not contain a prohibition similar to the prohibition in Section 10-4 against circulating petition sheets for more than one political party.

17. Courts have construed Section 10-4 as prohibiting someone from circulating petitions for a new political party candidate in addition to an established political party. See, e.g., *Citizens for John W. Moore Party v. Board of Election Commissioners for the City of Chicago*, 794 F.2d 1254, 1263 (7th Cir. 1986); *Schrober v. Young*, 322 Ill.App.3d 996, 751 N.E.2d 610 (4th Dist. 2001). The court has also construed Section 10-4 as not prohibiting someone from circulating petitions on behalf of two independent candidates for the same office. *McGuire v. Nogaj*, 146 Ill.App.3d 280, 496 N.E.2d 1037 (1st Dist. 1986). However, no Illinois court has not yet applied Section 10-4 in a manner that would prohibit a person from circulating nominating petitions for more than one established political party. Cf., *Citizens for John W. Moore Party v. Board of Election Commissioners for the City of Chicago*, 794 F.2d 1254, 1263 (7th Cir. 1986) (rejecting plaintiff's argument that a circulator may carry petitions for the two major parties in the same season but may not do so for a major party and a minor party and concluding that all political parties are treated alike under § 10-4). Indeed, the only court to date to directly address the issue as it relates to the circulation of petitions for more than one established political party held that Section 10-4 did not apply. In *Walsh v. Connors*, 90 CO 31 (Circuit Court of Cook County, Feb. 15, 1990), the circuit court held that Section 10-4's prohibition against circulating petitions for more than one political party did not apply to a candidate seeking the nomination of the Republican Party for the office of State Senator. One of the candidate's circulators had also circulated a petition sheet for the candidate of the Democratic Party at the same election. The court found that

the nomination of candidates for legislative office was governed by Article 8 of the Election Code and that Section 10-4 had no application to the candidate's nomination papers. The court said:

If the legislature intended certain provisions concerning circulation set forth in 10-4 to be applicable to Article 8, it could specifically have so provided for the interaction of such Articles. The absence of such a provision together with the specific language of 8-8 clearly reflects a legislative intent that this section be applicable to the signing and circulation of petitions for the General Assembly, and no Section 10-4 with its prohibition of circulation for candidates of more than one political party. In the absence of statutory language to the contrary neither legislative history, an overall policy opposition to inter party meddling, nor the doctrine of 'extensive' statutory construction and 'in paria materia' can provide a basis to vary or add to the plain and ordinary meaning of the Election Code as expressly stated by the legislature."

18. This Electoral Board has followed *Walsh v. Connor* and held that "a review of Sections 7-10 and 8-8 of the Election Code establishes that there is no prohibition against circulators for legislative candidates circulating for more than one established party." *Hendon v. Davis*, 02-EB-SS-10, CBEC, January 31, 2002. But see, an earlier decision of this Electoral Board in *Raether v. Shlifka*, 88-EB-WD-62, CBEC, January 26, 1988, finding that the prohibition against circulating petitions for more than one political party in 10-4 of the Election Code is applicable to Democratic and Republican political party candidates.

19. Just as Article 8 exclusively governs the nomination of legislative candidates, so too does Article 7 govern the nomination of candidates for the office of Ward Committeeman. As noted previously, there is no prohibition in Article 7 against circulating nominating petition sheets on behalf of more than one established political party.

20. Our courts have said, “It is basic that Illinois courts view the right of a citizen to hold political office is a valuable one” and that “The exercise of this right is not to be prohibited or curtailed except by *plain provisions of the law.*” *McGuire v. Nogaj, supra*, 146 Ill.App.3d at 282. Here, there is no “plain” provision of the law banning the circulation of petitions for more than one established political party.

21. For the reasons stated above, the Electoral Board declines to accept the Hearing Examiner’s recommended conclusions of law and finds that the petitions sheets of the Candidate circulated by a person who also circulated a petition on behalf of a Democratic candidate for the February 5, 2008 election are not invalidated by operation of Section 10-4 of the Election Code.

22. For the reasons stated above, the Electoral Board finds that the Objections are overruled and that the Candidate’s Nomination Papers are valid.

IT IS THEREFORE ORDERED that the Objections of WAYNE A. STRNAD to the Nomination Papers of ROBERT J. FOSS, candidate for election to the office of Ward Committeeman for the 30th Ward of the City of Chicago, Republican Party, are hereby OVERRULED and said Nomination Papers are hereby declared VALID and the name of ROBERT J. FOSS, candidate for election to the office of Ward Committeeman for the 30th Ward of the City of Chicago, Republican Party, SHALL be printed on the official ballot for the General Primary Election to be held on February 5, 2008.

Dated: Chicago, Illinois, this 11th day of December 2007.



Langdon D. Neal, Chairman



Richard A. Cowen, Commissioner



Marisel A. Hernandez, Commissioner

NOTICE: Pursuant to Section 10-10.1 of the Election Code (10 ILCS 5/10-10.1) a party aggrieved of this decision and seeking judicial review of this decision must file a petition for judicial review with the Clerk of the Circuit Court of Cook County within 10 days after the decision of the Electoral Board.