

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

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Objections of: Joe Laiacona	)	
	)	
	)	
To the Nomination	)	No. 10-EB-RGA-26
Papers of: Deborah L. Mell	)	
	)	
	)	
Candidate for the office of Representative	)	
in the General Assembly, 40th	)	
Representative District, State of Illinois,	)	
Democratic 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 Joe Laiacona ("Objector") to the nomination papers ("Nomination Papers") of Deborah L. Mell, candidate for the nomination of the Democratic Party for the office of Representative in the General Assembly, 40th Representative District, State of Illinois ("Candidate"), having convened on November 16, 2009, at 10:00 a.m., at 69 W. Washington Street, 8<sup>th</sup> 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 16, 2009 and was continued from time to time.

5. The Electoral Board assigned this matter to Hearing Officer Barbara Goodman for further hearings and proceedings.

6. The Objector and the Candidate were directed by the Electoral Board's Call served upon them to appear before the Hearing Officer for a hearing on the date and at the time designated on the Electoral Board's Initial Hearing Schedule.

7. The following persons, among others, were present at such hearing: the Objector, Joe Laiacona, appearing by counsel, Richard K. Means; and the Candidate, Deborah L. Mell, appearing by counsel, Michael J. Kasper. Later in these proceedings, Thomas A. Jaconetty filed an additional appearance on behalf of the Candidate.

8. The Objector's Petition alleges that the Candidate's Statement of Candidacy contains a false statement, to wit: "that I reside at 2656 West Melrose Street in the city of Chicago, Zip Code 60618 in the County of Cook, State of Illinois; that I am a qualified voter therein and am a qualified primary voter of the Democratic Party..." when, in fact, the Candidate, while she may reside at said address, was not, on the day

she signed the Statement of Candidacy nor on the day she filed it, a registered voter at said address. As a result of these alleged facts, the Objector claims,

- A. The Candidate is not a “qualified voter” or a “qualified voter of the Democratic Party at said address under Illinois law (Obj. Pet., ¶2);
- B. The Candidate’s statement on the Statement of Candidacy is false, in violation of the Illinois Election Code and other provisions of Illinois law (Obj. Pet., ¶¶2, 3);
- C. Because the statement is false, the Candidate’s Nomination Papers are invalid in their entirety (Obj. Pet., ¶¶4, 6);
- D. The Candidate is not qualified to hold the office of Representative in the General Assembly (Obj. Pet., 3)

9. Paragraph 5 of the Objector’s Petition further alleges that because the Candidate is not a duly registered voter at the address listed on her Statement of Candidacy, the Nomination Papers are invalid in their entirety.

10. The Candidate filed a motion to dismiss the Objector’s Petition. The Candidate’s motion argues that the Objector’s Petition should be dismissed because it is without merit and further contends that:

- A. There is no legal requirement that a candidate for the office of Representative in the General Assembly be a registered voter at the exact address on the nominating petitions;
- B. The Candidate’s Statement of Candidacy is accurate because the Candidate is a qualified primary voter of the Democratic Party residing in the city of Chicago and in the 40<sup>th</sup> Representative District; and

C. Even if there were a law requiring candidates to be registered voters at the address listed on their nominating petitions, such a law could not constitutionally be enforced against candidates for the General Assembly because only the qualifications for such office are those set forth in the Illinois Constitution and the legislature may not impose any additional eligibility requirements for that office.

11. For purposes of the Candidate's motion to dismiss, the following relevant facts are undisputed:

A. The Candidate initially registered to vote on October 10, 2000 at 3649 N. Mozart, Chicago, Illinois.

B. In 2002, the Candidate's registration was transferred to another address in the City of Chicago.

C. On November 1, 2005, the Candidate's registration was transferred to 3060 North Clybourn Avenue, Chicago, Illinois; said address is located in the 40<sup>th</sup> Representative District of the State of Illinois.

D. In December 2008, the Candidate moved her residence to 2656 West Melrose Street, Chicago, which is also located in the 40<sup>th</sup> Representative District of the State of Illinois.

E. In June 2009, the Chicago Board of Election Commissioners changed the status of the Candidate's voter registration from "Active" to "Inactive".

F. The Candidate signed her Statement of Candidacy and had it acknowledged by a notary public on October 24, 2009.

G. The Candidate's Statement of Candidacy states that she resides at 2656 West Melrose Street, Chicago, Illinois.

H. The Candidate's Nomination Papers were filed with the Illinois State Board of Elections on October 26, 2009.

I. The Objector's Petition was filed on November 9, 2009.

J. On November 17, 2009, the Candidate submitted a change of address form to the Chicago Board of Election Commissioners indicating a former address of 3060 North Clybourn Avenue, Chicago, Illinois and a new address of 2656 West Melrose Street, Chicago, Illinois.

12. The Hearing Officer heard argument from the parties on the Candidate's motion to dismiss on November 24, 2009. On November 25, 2009, the Hearing Officer read into the record her recommended decision to grant the Candidate's motion to dismiss and the reasons for such recommendation. The Hearing Officer submitted a written order on November 27 granting the Candidate's motion to dismiss and adopting her reasoning as set forth in the transcript of the proceedings of November 25, a copy of which is attached to her written order.

13. The Hearing Officer found that:

A. There is no express requirement in Section 8-8 of the Election Code that specifically requires that a candidate be a registered or qualified voter;

B. Even if there is an implied requirement that a candidate be a registered or qualified voter, there is no requirement that the candidate be registered to vote at the address listed on the candidate's nomination

papers and there is substantial compliance with a registration requirement under *Henderson v. Miller*, 228 Ill.App.3d 260, 592 N.E.2d 570 (1<sup>st</sup> Dist. 1992) if the candidate is registered at some address within the district in which she or he is seeking to be nominated and elected;

C. The fact that the voter registration status of the Candidate here was “Inactive” rather than “Active” at the time she signed and filed her Statement of Candidacy is not relevant because under the State Board of Elections’ rules, an “Inactive” voter is “a person who having once submitted a voter registration application subsequently acknowledged by the election authority having jurisdiction over the voter’s place of residence or a registration card, has not responded to a notice to confirm his or her address, but whose authority to vote has not yet been canceled.” Furthermore, under “fail safe voting” a person whose registration is inactive and who moves within the same election jurisdiction is allowed to vote for federal offices.

D. There was no need for her to address the constitutionality of any statute imposing a requirement that a candidate for Representative in the General Assembly be registered to vote at the residence address shown on the nomination papers because (i) she did not have authority to decide a constitutionality of a statute, (ii) there is no such requirement, and (iii) even assuming there is such a requirement, the Candidate here was a registered voter in the district, albeit her voter registration status is “Inactive.”

14. The Electoral Board finds Section 8-8 of the Election Code (10 ILCS 5/8-8) governs the form of petition for nomination for candidates for Representative in the General Assembly. Section 8-8 provides that a candidate's nomination petition shall include as a part thereof a statement of candidacy by the candidate. Section 8-8 further provides that the statement of candidacy shall: (i) set out the candidate's address; (ii) set out the office sought; (iii) state that the candidate is a qualified primary voter of the party to which the petition relates; (iv) state that the candidate is qualified for the office specified; (v) state that the candidate has filed a statement of economic interests as required by the Illinois Governmental Ethics Act; and (vi) request that the candidate's name be placed upon the official ballot.

15. After listing the six essential pieces of information that must be set forth in the statement of candidacy, Section 8-8 states that such statement shall be subscribed and sworn to by such candidate before some officer authorized to take acknowledgment of deeds in the State.

16. Finally, Section 8-8 states that the statement of candidacy "may be in substantially" in the form set forth in the statute. The form of the statement of candidacy prescribed by Section 8-8 does, among other things, contain a statement by the candidate "that I am a qualified voter therein and am a qualified primary voter of \_\_\_\_\_ party."

17. The Electoral Board finds that the form of the statement of candidacy filed by the Candidate does not deviate from the statement of candidacy form prescribed in Section 8-8 of the Code, but rather tracks it precisely. After setting out her name, her street number and name, her city, county and state, it contains the statement that she is a "qualified voter therein."

18. But Objector does not complain that the form of the Candidate's Statement of Candidacy is defective, but rather that the statement by the Candidate that she is a "qualified voter therein" is false because she was not at the time she signed or filed her Nomination Papers registered to vote at the address listed on her Statement of Candidacy, to wit: 2656 W. Melrose.

19. The Electoral Board finds, however, that there is nothing in Section 8-8 of the Election Code, or anywhere else in Illinois law for that matter, that specifically requires that a candidate for the office of Representative in the General Assembly be registered to vote at the residence address listed on the candidate's nomination papers. Objector concedes as much, stating in his Memorandum of Law and Argument in Support of His Rule 20 Motion ("Obj. Mem.") that "Illinois Election Code §8-8 which sets the requirements for nominating papers for General Assembly *does not directly require* that the candidate *be a registered voter ....*" Obj. Mem., 8.

20. The Objector argues, however, that Section 8-8 attempts to require *indirectly* what it does not require *directly* "when it requires that the candidate, under oath, '*shall state that the candidate is a qualified primary voter of the party to which the petition relates*.'" Obj. Mem., 8.

21. Objector contends that the terms "qualified primary voter" and "qualified voter" as they appear in Section 8-8 "are synonymous in that each term means, at a minimum, "registered voter." Obj. Mem., 9. Objector says that the "synonymous" nature of the terms is even "enshrined" in Section 3-1.2 of the Election Code and that "while §8-8 requires that candidates must be registered voters, it does so in different but synonymous words." Id. Objector even cites to the Election Law handbook published by



the Illinois Institute for Continuing Legal Education (“IICLE”), 2007, which states in part, “In order to seek office, a candidate must be a ‘registered voter,’ ‘qualified elector,’ ‘qualified voter,’ or ‘legal voter. This is true because the nomination papers that must be filed contain such candidate certifications. [citations].” Election Law, IICLE, 2007, B. §1.6.

22. The Electoral Board finds that Section 3-1.2 of the Election Code is of little support to the Objector inasmuch as that section defines certain terms only “For the purpose of determining eligibility to sign a nominating petition or a petition proposing a public question ....” .By its express language, it does seek to define such terms as “qualified voter,” “qualified elector,” or “qualified primary elector” as they might apply to candidates or others. See, e.g., *Lucas v. Lakin*, 175 Ill.2d 166, 676 N.E.2d 637 (1997) (statute defining “voter” and other terms for “purpose of determining eligibility to sign a nominating petition” does not govern actions of petition circulators); *Bass v. Hamblet*, 266 Ill.App.3d 1110, 641 N.E.2d 14 (1<sup>st</sup> Dist. 1994); and *Whelan v. County Officers’ Electoral Board of DuPage County*, 256 Ill.App.3d 555, 629 N.E.2d 842 (2<sup>nd</sup> Dist. 1994).

23. The Electoral Board finds that the terms “qualified voter” and “qualified primary voter of the party to which the petition relates” are not synonymous terms, as urged by the Objector. Indeed, courts have rejected that notion. In *Cullerton v. DuPage County Officers Electoral Board*, 384 Ill.App.3d 989, 894 N.E.2d 774 (2<sup>nd</sup> Dist. 2008), the candidate was challenged on the grounds that he was not a “qualified primary voter” of the Democratic Party. The candidate resorted to the definition of a “qualified voter” found in Section 3-1.2, arguing that because he was a United States citizen of voting age, he was a “qualified primary voter.” The court rejected this argument, stating that “[I]t

may very well be true that petition is a 'qualified voter,' but the relevant inquiry in this case is whether he is a 'qualified primary voter' of the Democratic Party, as required under section 7-10." 384 Ill.App.3d at 995. The court found that the statutory definition of "qualified primary elector" as used in Section 7-10 of the Code had been repealed by Public Act 86-1348, effective September 7, 1990. Previously, the term "qualified primary elector" was defined to mean "For the purpose of determining eligibility to sign a petition for nomination or eligibility to be a candidate \*\*\*; a 'qualified primary elector' of a party (1) is an elector who has not requested a primary ballot of any other party at a primary election held within 2 years of the date on which the petition must be filed \*\*\*." 384 Ill.App.3d at 992. Although Public Act 86-1348 deleted this statutory definition, the court noted that it "must look to the remaining language of the statute to find evidence of legislative intent." 384 Ill.App.3d at 995. The *Cullerton* court found that "[T]he plain and ordinary meaning of the requirement that a candidate be a qualified primary voter of the party for which he seeks a nomination mandates, if nothing else, that the candidate have been eligible to vote in the primary for that party in the most recent primary election preceding the candidate's filing the statement of candidacy." 384 Ill.App.3d at 996. In the present case, Objector makes no contention that the Candidate here was not eligible to vote in the February 2008 Democratic Primary Election. Moreover, it is clear from *Cullerton* that the terms "qualified voter" and "qualified primary voter" as used in Sections 7-10 and 8-8 are not synonymous terms.

24. With regards to the IICLE discussion of the meaning of these terms, the author started out the discussion cited by Objector by stating, "Implicit throughout the Election Code is an assumption" that in order to seek office, a candidate must be a

registered voter. Indeed, it is a mere assumption, because the clear language of Section 8-8 setting forth the information that must be contained within a statement of candidacy makes no such requirement.

25. Objector argues that some voter registration requirement is inferred by the language found in the form of the statement of candidacy set forth in Section 8-8 by stating that the candidate is a “qualified voter therein.” However, as noted above, this statement is not required by the language of Section 8-8 setting out what must be contained within the statement of candidacy. At best, the language in the statement of candidacy form can be viewed as directory or suggestive to the extent it exceeds what is required by Section 8-8. See, e.g., *O’Connor v. Cook County Officers Electoral Board*, 281 Ill.App.3d 1108, 667 N.E.2d 672 (1<sup>st</sup> Dist. 1996).

26. The Electoral Board finds, however, that even if it is assumed that language of the form of the statement of candidacy imposes a requirement that the candidate be registered to vote, the Candidate’s statement here that she was a “qualified voter therein” is not false in light of *Henderson v. Miller*, 228 Ill.App.3d 260, 592 N.E.2d 570 (1<sup>st</sup> Dist. 1992).

27. In *Henderson*, the complainant alleged that the candidate fraudulently misrepresented that he was registered to vote at the address listed on this statement of candidacy when he stated on such statement that “I am a qualified voter therein” after listing his street address, city, zip code, county and state of residence. 228 Ill.App.3d at 264. The complainant asked the court to infer that when the candidate swore that he was a “voter therein,” he was swearing that he was a voter at the address listed on his statement of candidacy and not in the city of Chicago. *Id.* The court observed that the

Municipal Code requires only that a candidate be a qualified elector of the municipality and that the act did not require a candidate be a voter at his place of residence. Therefore, the court found that the did not fraudulently misrepresent that he was a voter at the address listed on his statement of candidacy and that removal from office based on such an allegation was not justified.

28. In *Suter v. Acevedo*, 06-EB-RGA-04, this Board held that, under *Henderson v. Miller, supra*, “the form of the statement of candidacy prescribed by Section 7-10 of the Election Code does not require that a candidate be registered to vote at the residence address stated on his/her statement of candidacy so long as the candidate is registered vote at some address within the district in which he seeks to be nominated or elected.” In *Suter*, there was no allegation that the candidate was not registered to vote at some address within the district in which he was seeking nomination, only that the candidate did not, in fact, reside there.

29. In the present case, the Objector argues that the *Henderson* and *Suter* do not apply because the Candidate is not, in fact, a registered voter at any address in the district because her registration status was “Inactive” as of the dates that the Candidate signed and filed her Statement of Candidacy. The Objector does not cite any legal authority in support of this proposition.

30. Section 216.20 of the State Board of Elections’ rules define “Inactive voter” as “a person who, having once submitted a Voter Registration Application subsequently acknowledged by the election authority having jurisdiction over the voter's place of residence, or a registration card, has not responded to a notice to confirm his or her address, but whose authority to vote has not yet been canceled.” Under this

definition, a person remains a registered voter until his or her registration is canceled. The fact that a person's registration status is listed as "Inactive" does not change this outcome, and, in fact, this Board has previously held that a person whose registration was "Inactive" was still eligible to circulate nominating petitions before the legislature repealed the requirement that circulators be registered voters. *Barnett v. Miller*, 99-EB-ALD-189, affirmed, *Rhodes, et al. v. Board of Election Commissioners for the City of Chicago, et al.*, Circuit Court of Cook County, No. 99 CO 038, affirmed Appellate Court of Illinois, First District, No. 1-99-0529.

31. Under 42 U.S.C § 1973gg-6 and under Section 216.90 of the State Board of Elections' rules, any person who, once registered, moves to another address within the same election jurisdiction but fails to change his or her voter registration is still eligible to vote for federal offices. Thus, the fact that a person's voter registration is "Inactive" does not necessarily deprive that person of the right to vote.

32. Therefore, to the extent that the Objector claims that there is an "inferred" requirement that the Candidate be registered to vote at the address listed on her Nomination Papers when they are filed and that any statement in her Statement of Candidacy that she is a "qualified voter therein" must be necessarily false, the Electoral Board finds these claims to be without merit.

33. For the reasons stated above, the Electoral Board adopts the recommended findings and conclusions of law of the Hearing Officer.

34. The Electoral Board finds that the claim in paragraph 3 of the Objector's Petition that the Candidate is not qualified to hold the office of Representative in the General Assembly because she was not registered to vote at the address listed on her

Nomination Papers at the time they were filed is without merit and such objection is overruled.

35. The Electoral Board finds that the claims in paragraphs 2, 3, 4, 5, and 6 of the Objector's Petition that the Candidate's Statement of Candidacy is false and in violation of Illinois law are without merit and such objections are overruled.

36. The Electoral Board grants the Candidate's motion to dismiss the Objector's Petition.

37. The Electoral Board declines to address the contention by the Candidate that any statutory requirement that she be a registered voter at the address shown on her Statement of Candidacy is unconstitutional. First, the Electoral Board does not have the authority to hold a statute unconstitutional. Second, there is no need to decide whether the statute is unconstitutional because the Electoral Board finds that there is no violation by the Candidate of any statute.

38. The Electoral Board does not believe that the Objector's Motion to Admit or Deny, or, in the Alternative, Motion for Evidentiary Hearing is well taken inasmuch as the additional "facts" sought to be admitted regarding how and why the Candidate's voter registration status was changed to "Inactive" are not relevant to a decision in this case, but the Electoral Board nevertheless grants the Objector leave to supplement the record in this case with a copy of the canvassing rules of the Chicago Board of Election Commissioners. The meaning and effect of an "Inactive" designation for purposes of this case are questions of law, not fact.

IT IS THEREFORE ORDERED that the Objections of Joe Laiacona to the Nomination papers of Deborah L. Mell, candidate for nomination of the Democratic Party for the office of Representative in the General Assembly, 40th Representative District, State of Illinois, are hereby OVERRULED and said Nomination Papers are hereby declared VALID and the name of Deborah L. Mell, candidate for nomination of the Democratic Party for the office of Representative in the General Assembly, 40th Representative District, State of Illinois, SHALL be printed on the official ballot for the General Primary Election to be held on February 2, 2010.

Dated: Chicago, Illinois, on December 1, 2009.



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.