

STATE OF ILLINOIS     )  
                                       ) SS.  
 COUNTY OF WILL        )

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

TRACI FALESE, CECILIA LOEZA,  
 and CAROL SIMPSON,

Candidates/Petitioners,

vs.

No. 17 MR 280

DUPAGE TOWNSHIP ELECTORAL BOARD,  
 WILLIAM MAYER, Chairperson; PATRICIA  
 STACH, Member; WAYNE KWIAT, Public  
 Member; MARY SPIROS; and NANCY  
 SCHULTZ-VOOTS, in her Capacity as Will  
 County Clerk,

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 WILL COUNTY ILLINOIS  
 ANNEX

ORDER

This matter comes before the Court on a Petition for Judicial Review of the decision of the DuPage Township Electoral Board to sustain the Objection of MARY SPIROS, finding the nominating papers of Petitioners, TRACI FALESE, CECILIA LOEZA and CAROL SIMPSON to be invalid and directing the Will County Clerk not to print Petitioners' names on the April 4, 2017, ballot.

The Decisions in the FALESE and SIMPSON cases were rendered by the Electoral Board on January 26, 2017.

The Decision in the LOEZA case was rendered by the Electoral Board on January 27, 2017.

Among the errors in common cited by each of the Petitioner\Candidates in their Petitions for Judicial Review are claims that the Board erred in denying their motion to recuse Chairperson, WILLIAM MAYER, failed to allow the candidates to call the Objector "as a witness to prove up the photos attached to the candidate's motion", failed to hold a meeting with proper notice under the Open Meetings Act

when deliberating and removing the candidates from the ballot, and failed to act as an unbiased decision maker in ruling on the candidates nominating signatures. At the hearing of this cause, Ms. LOEZA abandoned the argument that the Board had violated the Open Meetings Act.

In addition to the error described above, each of the candidates argues that the decision of the Electoral Board was contrary to the manifest weight of the evidence, as regards its determination that the candidates nominating papers were insufficient due to a lack of signatures. While not specifically raised in her Petition for Judicial Review, candidate LOEZA also takes exception to the Board's determination that she was not an eligible candidate as that term is used in Section 55-5 of the Township Code.

This Court will first address the contention that the Board erred in denying the request that the Chairman, WILLIAM MAYER, be removed from the Board and not participate in the hearings. Section 10-9 of the Election Code mandates that an electoral board member is disqualified from serving if the he or she is holding the same office as that being sought by the candidate. *Anderson v McHenry Township*, 289 Ill.App.3d 830 (1997) holds that a board member may not serve if he or she has a pecuniary interest in the outcome of the hearing. *Girov v. Keith*, 212 Ill.2d 372 (2004) makes clear that an electoral board member should be removed if that board member is likely to be called as a witness in the case before the board. Finally, *Kaemmerer v. St. Clair County Electoral Board*, 333 Ill.App.3d 956 (2002) stands for the proposition that there should be a recusal when, in a case before the board, the objections against the candidate-respondent are identical to current objections being brought against those current board members.

Clearly, none of the conditions discussed above were present in the case at hand. Rather, the Petitioners, relying upon *Girov*, and the Fourteenth Amendment argue the proposition that they were deprived a fair hearing because "the Board prevented the candidate(s) from developing the record".

Petitioners claim they were prevented from presenting evidence and calling witnesses in order to establish the existence of bias on the part of Mr. MAYER.

The hearings on these matters began on January 3, 2017. At that time, all parties and the Electoral Board were represented by counsel. The only matters addressed were the scheduling of future dates. The matter of recusal first arose on January 13, 2017. At that time, the Board convened for hearing on all four pending Township Trustee cases. Mr. Pyles, attorney for all four candidates made a motion for the recusal/removal of Chairman MAYER. In support of that motion, various photographs taken of the objector and Chairman MAYER, including photos and Facebook entries showing the objector, her husband and both Mr. and Mrs. MAYER. Mr. Pyles also argued that the Township Board had taken votes to support a charity the objector was involved in and that the Township had been helpful in providing facilities for the event shown in the Facebook entries. Those entries were, according to Mr. Pyles, 3 or 4 years old. Mr. Pyles stated "I'm not accusing anybody of anything. I'm just saying there's a relationship here between the objector and one of the Board members, and I think that there should be a new member substituted in place". (Transcript at pg. 19) In summation, Mr. Pyles argued, "I think that in order for the public and the people who are here to have confidence in the decision of this Board in evaluating these candidates' objections so the parties have a fair shot, I think the Chair should recuse..." (Transcript at pg. 25)

At the conclusion of argument by counsel for all parties, the Electoral Board voted 2-0 to deny the motion, Chairman MAYER abstaining on advice of Board counsel. Prior to the vote, Mr. MAYER indicated that he could be objective, fair and impartial in his decisions regarding objections to the nominating papers that had been raised.

This motion was renewed on several occasions during the proceedings before the Board. On each occasion, over objection of the candidates counsel, it was treated as a motion to reconsider the

initial ruling and denied. Petitioner-candidate counsel also made attempts to call the objector and, on one occasion, the chairman's wife so as to develop a theory of an ongoing relationship of such a nature as to establish the existence of a level of bias on the part of Mr. MAYER as to necessitate his removal. Each of these attempts to call witnesses were rebuffed by the Electoral Board. Despite several invitations, counsel for the Petitioner-candidates declined to make an offer of proof by means of representation. Some insight can be gained from the remarks of the Petitioner's counsel during the hearing before this court. During those arguments, counsel conceded that without the discovery of the Facebook material:

...I wouldn't have had any evidence whatsoever that there had been a relationship between the Objector and the board chairman...

Additionally, counsel offered a glimpse as to what he may have intended to show, had he been allowed to call the objector or the Chairman's wife. The following was offered:

...I'm assuming Mr. Fogarty's not working for free.. (Mr. Fogarty is Objector's counsel)

...it's funny, that the Objector in this case, who's supposedly bringing this, didn't show up once

...no interest in how her moneys being spent

...no interest in how the cases are turning out

...didn't even bother to show up for the decisions

...everybody winks and nods at these things. Well...it's supposedly ok for this game to go on about who's actually behind the objections...

...the laws says, and I agree, that the motivations of the objector are irrelevant...

...but, if it goes to the motivations of the people that are sitting on the Board...making the decisions.

...and who has the interest here in making sure that his people that are on the Board will continue to be there...

...I was entitled to put that Objector on the stand and ask these questions

...I think it's pretty clear... what I thought she was going to say...that there was a relationship there... and that there was something involved..how Ms. Spiros got involved in these objections in the first place...she's not just the Objector in the Trustee case, she's the Objector in the Supervisor case...

...I was entitled to explore that....

...I'm not just shooting blanks...and on some fishing expedition...I had somewhat of a showing that there was something behind this...and I should have been allowed to explore it..

The issue now before this Court is whether the conduct of this Board, in addressing the motion to recuse and the requests of Petitioners' counsel to call witnesses in support of that motion, was clearly erroneous and deprived Petitioners of due process. It is clear that the **ONLY** evidence before the Board, and the only evidence Petitioners had, at the time the Motion to recuse was made, was a series of four year old Facebook photos and entries showing that the Chairman of the Board and the Objector may have once been friendly. It is apparent, now, that the purpose of the request by Petitioner's counsel to call witnesses was to attempt to somehow elicit an admission that the Chairman, Mr. Mayer, was "behind" the objections to these candidates nominating papers. I do not believe that any case has been cited, nor can the Court find a case that suggests that allowing such an endeavor would have been proper, given the facts before this Board. *Girot*, despite protests to the contrary, certainly does not support such a requirement.

To prove bias, a party must overcome a presumption of honesty by showing that the administrative proceedings were either tainted by dishonesty or by the existence of an unacceptable risk of bias. *Huff v. Rock Island*, 294 Ill.App.3d 477 (1998). In *Huff*, the Petitioner (a deputy sheriff) asked the Chairman of the Police Commission to recuse himself because the commission Chairman had been the committee chairman on the Sheriff's re-election team during a campaign two years prior. The Petitioner also asked for the recusal of another commissioner who had been overheard referring to the Petitioner as "the thorn in our side". Both members refused to step down. That Court held, under those facts that it was to each member to consider his own personal bias or prejudice and determine for himself whether his recusal was necessary, and affirmed their refusal. In this case, under a set of facts that pales in comparison to those described in *Huff*, the Electoral Board did not err in refusing to remove the Chairman, Mr. MAYER.

The next issue to be addressed is whether the Electoral Board violated the Open Meetings Act. The Court, having reviewed the various agenda for these hearings, and having reviewed the record in this case can find no support for such a contention. The Agenda for each meeting clearly indicated that the Electoral Board posted notice of each meeting as required by the Act, with the exception of the meeting which took place on January 26<sup>th</sup>, 2017 at 11:25 a.m. The Board had adjourned the night before at approximately 12:45 a.m. Counsel for the Board noted that under Section 2.02(a) of the Act would not require notice in the case of a meeting reconvened with 24 hours, if an announcement were made of the time and place of the reconvened meeting was made at the original meeting *and there was no change in the agenda*. Counsel for Petitioner/candidates argues that the Agenda had changed and therefore notice was required. The Court notes that the notice for the meetings of the Electoral Board, starting with the notice for the meeting of January 13, 2017 and ending with the meeting of January 27, 2017, contain Agenda that are identical. Each provides that each is for the "hearing and passing on of objections to nominating papers for candidates for Township Trustees". The Agenda then lists the four

Trustee cases. The suggestion by Petitioners that as the Board was going to "deliberate and render decisions", such activity constituted a change to the Agenda, is without merit. The Board properly posted notice throughout this process that at these meetings they were going to "hear and pass on" objections. The phrase "hear and pass on" seems to this Court to contemplate the process of conducting a hearing and, ultimately, ruling on the objections raised in that hearing. No additional notice or clarification was, or is, necessary to adequately advise the public of the Board's intended action to issue its rulings on three Trustee cases brought against candidates, FALESE, LOEZA AND SIMPSON. There was no violation of the Open Meetings Act.

As for the nominating papers of Petitioner CAROL SIMPSON, the Board found that Petitioner/Candidate had filed nominating petitions purporting to contain 392 valid signatures. Objection was made to the genuineness of 192 of the signatures submitted in support of the nominating papers filed. The board noted that, with regard to 103 of those contested signatures, the parties, as a result of a pre-hearing records check, agreed that 26 were valid and 77 were invalid. Based on the agreement between the parties, the Board found that Ms. SIMPSON had filed 315 valid signatures. The number of valid signatures necessary was 325. There is no basis in the record to suggest that this decision by the Board was contrary to the manifest weight of the evidence.

Petitioner/Candidate TRACI FALESE filed nominating petitions purporting to contain 476 valid signatures. Objection was made to the genuineness of 192 of the signatures submitted in support of the nominating papers filed by the Petitioner/Candidate. The board noted that, with regard to those contested signatures, the parties, as a result of a pre-hearing records check, agreed that 45 were valid and 62 were invalid. After the hearing in this matter, the Electoral Board sustained the objection to an additional 136 signatures, leaving Petitioner with 278 valid qualifying signatures. The record reflects that the Board addressed each objection, and the pertinent signature related thereto, individually, and considered all evidence offered by either the Petitioner/Candidate or the Objector's attorney. After such

consideration, the Board voted on each objection, individually, and sustained the objection to an additional 136 signatures. Based on the agreement between the parties, and on its ruling on the additional objections, the Board found that Ms. FALESE had filed 278 valid signatures. The number of valid signatures necessary was 325. There is no basis in the record to suggest that the examination process utilized by the Board was clearly erroneous, or that the decision ultimately reached by the Board was contrary to the manifest weight of the evidence.

Petitioner/Candidate CECELIA LOEZA filed nominating petitions purporting to contain 518 valid signatures. Objection was made to the genuineness of 226 of the signatures submitted in support of the nominating papers filed by the Petitioner/Candidate. The board noted that with regard to those contested signatures the parties, as a result of a pre-hearing records check, agreed that 26 were valid and 96 were invalid. After the hearing in this matter, the Electoral Board sustained the objection to an additional 88 signatures, leaving Petitioner with 334 valid qualifying signatures, *an amount sufficient to allow her name to be placed on the in the absence of any other objections*. The record reflects that the Board addressed each of these objection, and the pertinent signature related thereto, individually, and considered all evidence offered by either the Petitioner/Candidate or the Objector's attorney. After such consideration, the Board voted on each objection, individually. There is no basis in the record to suggest that this process was clearly erroneous, or that this initial determination by the Board was contrary to the manifest weight of the evidence.

The DuPage Township Electoral Board also struck Sheet 11 and Sheets 30-34 of the Candidate's nominating petitions. The Board explained that Sheet 11, a page the Petitioner/Candidate signed as circulator, was admittedly not circulated by Ms. LOEZA. No objection had been raised by the Objector to this Sheet. However, in testimony elicited by her counsel, Ms. LOEZA testified that Sheet 11 was circulated by a friend who "(took it) to her family in Romeoville". Ms. LOEZA admitted that she did not witness any of the signatures on that Sheet. (Transcript at pages. 267-268). Clearly, though not raised by



the Objector's objection, the Board could not ignore this evidence. The Board's decision striking Sheet 11, in its entirety, is consistent with the case of *Fortas v. Dixon*, 122 Ill.App.3d 697 (1984). See also, *Huskey v. Municipal Officers Electoral Board*, 156 Ill.App.3d 201 (1987), and *Cantor v. Cook County Officers Electoral Board*, 170 Ill.App.3d 364 (1988). That Board action rendered invalid an additional 5 signatures not addressed by the procedure previously described. After this action the number of valid signatures contained in Petitioner\Candidate LOEZA nominating papers was reduced to 329.

The Electoral board, as previously mentioned, also struck Sheet 30-34 of the nominating petitions. These Sheets were circulated by Ms. Rebecca England. The Board found that the evidence introduced established a "pattern of fraud". The Board explained:

"Rebecca England signed 5 pages of signatures as circulator for the candidate. She testified that she went door-to-door within DuPage Township, was driven into various neighborhoods by fellow circulator, Shirley Grzenia, would leave those neighborhoods and drive to other ones if people were not answering their doors, and retraced her name and information in the Circulator's affidavits for the subject pages because she was concerned about rain or snow ruining her petition. An examination of the original petition pages circulated by Ms. England reveals that the signors did not appear to live on the same streets or even the same neighborhoods to be consistent with walking door-to-door and that she obtained signatures (3 in a row on one page) from outside DuPage Township. Ms. England's testimony is not credible when compared to the physical and documentary evidence before the Board".

In *Fortas v. Dixon*, 122 Ill.App.3d 697 (1984) the Court affirmed the striking of entire nominating sheets where the evidence established a "pattern of fraud, false swearing, and total disregard for the mandatory requirements of the Election Code. In one instance (the circulator) went so far as to white-out the name of the person who had obviously circulated the sheet and inserted his own name as circulator", 122 Ill.App.3d at 700-701. In *Huskey v. Municipal Officers Electoral Board*, 156 Ill.App.3d 201 (1987) held that the invalidation of entire sheets, and not just individual signatures was permitted because of clear evidence of fraud permeating the entire petition circulation process. The *Huskey* court mentioned evidence that false affidavits were filed in connection with the circulation of sheets.

The *Fortas* court explained that the Election Code requires that anyone circulating a nominating petition must execute a circulator's affidavit. The court went on to point out that the courts of this State have viewed the circulators' oath as an important way to safeguard fair and honest elections. The court also noted that failure to that oath notarized before a notary was a sufficient basis to strike all signatures collected by a circulator.

Of the conduct described by the Board above, none seems to establish a clear pattern of fraud, save for the issue of Ms. England's circulator's affidavits for Sheets 30-34. Given the importance a circulator's affidavit plays in our electoral process, the issue of whether or not a circulator has provided a false affidavit cannot be minimized.

An examination of those sheets shows and Ms. England admits that she wrote her name and information over some earlier writing. It is true that Ms. England explained this anomaly, describing it as a "retracing" of her own earlier writing. The Electoral Board found Ms. England's testimony to not be credible. If, as the Board believed, the information Ms. England wrote over was not her own, then she was not the circulator of these petitions and her affidavit was false and striking them in their entirety was proper. It is not within the province of this Court to substitute its judgment for that of the Electoral Board on this issue. The Board is in the best position to determine Ms. England's credibility and they found her to be unreliable. The Board's action in striking nominating Sheets 30-34 was not contrary to the manifest weight of the evidence and not inconsistent with the remedy suggested in *Fortas* and *Huskey*. The Board's action in striking Sheets 30-34 reduced the number of valid signatures on Ms. LOEZA's nominating papers to 276, less than the 325 required for her name to be placed on the April ballot.

It should be noted that, contrary to assertions in the Petitioner's Brief, the Electoral Board did not strike Sheets 4, 5 and 10 of the nominating papers. Those sheets had also been circulated by Ms. LOEZA.

The last issue to be addressed is whether Ms. LOEZA was an eligible candidate, as that term is defined in Section 55-5 of the Election Code. 60 ILCS 1/ 55-5 and provides:

"No person is eligible to hold any office unless he or she is a legal voter and has been a resident of the township for one year."

This Court agrees with the Petitioner\candidate that this Electoral Board should not have concerned itself with the residency issue. The Objector, in her objection, paragraph 14 complains that Petitioner\Candidate LOEZA "is not in fact a qualified voter ...as required by Section 10-5 of the Election Code and Section 55-5 of the Township Code. No mention is made of any objection premised upon the fact that LOEZA had not been a resident of DuPage Township at the time her Statement of Candidacy was filed. It is argued that Petitioner\Candidate LOEZA introduced this issue when under direct exam by her counsel. The record in this matter shows that the issue of residency was raised by Objector's counsel in argument before the Board prior to that testimony. (Transcript at pages 489-491) It would be patently unfair to suggest that counsel waived any objection to this issue by his examination of Ms. LOEZA. It was clearly erroneous for the Electoral Board to consider this issue.

Unfortunately, it is not clear whether the ruling of the Board that Ms. LOEZA was not eligible for candidacy because she failed to meet both the durational residency requirement of Section 55-5 and because she failed to meet the requirement that she be a "legal voter. Counsel for the Objector concedes that there is no "durational" requirement attached to the requirement of being a "legal voter". Indeed, the record in this matter is clear that Ms. LOEZA was a "legal voter" at all times relevant hereto. There may a substantial question as to whether Ms. LOEZA was registered in Kendall County or Will County, at the time her Statement of Candidacy was filed. However, Section 55-5 does not require

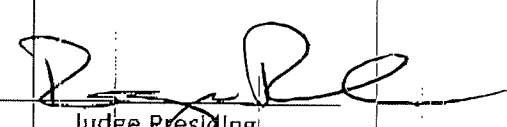
more than legal voter status. That Section is silent as to any registration situs requirement. It would be clearly erroneous to read any such requirement into the language of Section 55-5 of the Township Code. To the extent that this Electoral Board did so, such act was clearly erroneous. To the extent the Electoral Board found that Ms. LOEZA was not a "legal voter" such finding was contrary to the manifest weight of the evidence.

For all of the above reasons, the ORDER of this COURT is as follows:

- The Petition for Judicial Review brought by TRACI FALESE is Denied and the Decision of the DuPage Electoral Board, in case 16-2, dated January 26<sup>th</sup>, 2017 is affirmed;
- The Petition for Judicial Review brought by CECILIA LOEZA is Denied and the Decision of the DuPage Electoral Board, in case 16-3, dated January 27<sup>th</sup>, 2017 is affirmed;
- The Petition for Judicial Review brought by CAROL SIMPSON is Denied and the Decision of the DuPage Electoral Board, in case 16-5, dated January 31<sup>st</sup>, 2017 is affirmed.

Dated: March 8<sup>th</sup>, 2017

Signed: \_\_\_\_\_

  
Judge Presiding

STATE OF ILLINOIS )  
 ) SS.  
 COUNTY OF WILL )

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

SHIRLEY J. GRZENIA,

Candidate/Petitioner,

vs.

No. 17 MR 318

DUPAGE TOWNSHIP ELECTORAL BOARD,  
 KEN BURGESS, Chairperson; PATRICIA  
 STACH, Member; ALYSSIA BENFORD,  
 Member; MARY SPIROS; and NANCY  
 SCHULTZ-VOOTS, in her Capacity as Will  
 County Clerk,

ORDER

This matter comes before the Court on a Petition for Judicial Review of the decision of the DuPage Township Electoral Board to sustain the Objection of MARY SPIROS, finding the nominating papers of Petitioner, SHIRLEY J. GRZENIA, to be invalid and directing the Will County Clerk not to print Petitioner's name on the April 4, 2017, ballot. That Decision was rendered on February 1, 2017.

The Board found that Petitioner/Candidate had filed nominating petitions purporting to contain 496 valid signatures. The Board found that to be placed on the ballot for office in DuPage Township a candidate would need to file nominating papers supported by the signatures of 325 qualified registered voters residing within DuPage Township. Objection was made to the genuineness of 277 of the signatures submitted in support of the nominating papers filed by the Petitioner, SHIRLEY J. GRZENIA. The board noted that with regard to 117 of those contested signatures the parties, as a result of a pre-hearing records check, agreed that 37 were valid and 80 were invalid.

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After the hearing in this matter, the Electoral Board sustained the objection to an additional 132 signatures, leaving Petitioner with 284 valid qualifying signatures. The record in this matter reflects that the Electoral Board reviewed and voted as to each signature questioned. Petitioner submits in support of the argument that the Board's decision was clearly erroneous as to these determinations points to affidavits that were filed in support of the genuineness of challenged signatures. Each of those affidavits contained an acknowledgement, under oath, that the signature contained on a particular nominating petition was the signature of that voter. The Board, in its Decision, noted that it had reviewed each affidavit and had compared those affidavit to both the registration information obtained from the County Clerk's office and the signatures found in the nominating papers. The Board acknowledge that there was testimony that the notary checked the identification of each individual prior to the execution of that individual's affidavit. Nonetheless, the Board found "on most occasions...the signature to the affidavit did not match the signature found in the voter's registration records from the County Clerk's office, and there was no proffered explanation in the affidavits for that inconsistency".

The Petitioner refers to *Bergman v. Vachala*, 347 Ill.App.3d 399 (2004), in support of its contention that this Board's determination regarding the validity of these signatures and the Board's ultimate rejection of the supporting affidavits, was clearly erroneous. However, in *Bergman*; that Court, in finding that Board's decision to accept signatures supported by affidavits explained:

The Electoral Board made its factual determination as to the validity of the signatures based, in part, upon the affidavits of those voters attesting to the signatures as theirs. Those decisions were made by the Electoral Board without an expert in handwriting analysis. Petitioner now asks this court to review the determinations made by the Electoral Board. She does not provide a transcript or a complete record, but instead asks us to review the "most outlandish decisions." We may agree that the signature do not match and speculate that the voter stated in his affidavit that the signature was his when it was, in fact, somebody else's signature. But "[t]he fact that an opposite conclusion is reasonable or that the reviewing court might have ruled differently based upon the same evidence will not justify a reversal." *King v. Justice Party*, 294 Ill.App.3d 886, 888, 672 N.E.2<sup>nd</sup> 900 (1996).

Applying that rationale to the case at hand, it seems to equally improper for this Court to substitute its judgment for that of this Board, because this Board, unlike the Board in *Bergman*, found that the affidavits filed by this Petitioner did not adequately dispel their concerns regarding the genuineness of the signatures at question. While there may be sufficient evidence in this record to support an opposite conclusion, that evidence does not support a finding that this Board's factual determination was clearly erroneous, nor was that determination contrary to the manifest weight of the evidence introduced during the hearing before them.

The Petitioner also complains that the DuPage Township Electoral Board erred when it struck Sheet 19 of the Candidate's nominating petitions. The Board, in explain its decision to strike that sheet based on the testimony of the Petitioner/Candidate, SHIRLEY GRZENIA, and her husband, James Grzenia. James Grzenia was the circulator of Sheet 19. Petitioner's counsel called both Mr. and Mrs. Grzenia as witnesses and to the extent any issues existed as to Sheet 19, they were introduced into the record by the Petitioner. The Objection before the Board took issue with the genuineness of nominating signatures on Ms. Grzenia's nominating petitions. Under such circumstances the Board correctly found that it was compelled to address those issues regarding the genuineness of signatures introduced into the proceedings by the Grzenia's testimony. See, *Fortas v. Dixon*, 122 Ill.App.3d 697 (1984).


The Board in this matter noted that James Grzenia testified that while "he circulated Sheet 19, he could not recall any details of doing the same other than going door to door...and that he may have been across the street while some of the people signed..." The Board found that such evidence demonstrated an affront to the electoral process. This Court might not characterize Mr. Grzenia's conduct as constituting "an affront to the electoral process". However, the Court is not prepared to say that the Board's factual findings are inconsistent with the notion that the mandatory requirements of the Election Code were not met as regards the circulation of Sheet 19. Nor can this Court say that the Board erred in its determination that the deviations from those mandatory requirements were serious enough that legitimate issues

existed with regard to the genuineness of the signatures Sheet 19 contained. The Board's action in striking that sheet was based upon its evaluation of the witnesses and their testimony, and is not so contrary to the evidence introduced, as to provide a legitimate basis for this Court to substitute its judgment for that of the Board.

For all the above reasons, the Petition for Judicial Review is Denied and the Decision of the DuPage Electoral Board, dated February 1<sup>st</sup>, 2017 is affirmed.

Dated: March 8<sup>th</sup>, 2017

Signed: \_\_\_\_\_



Judge Presiding



STATE OF ILLINOIS     )  
                                   ) SS.  
 COUNTY OF WILL        )

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

JENNIFER SANNERMAN,

Candidate/Petitioner,

vs.

No. 17 MR 324

DUPAGE TOWNSHIP ELECTORAL BOARD,  
 WILLIAM MAYER, Chairperson; PATRICIA  
 STACH, Member; WAYNE KWIAT, Public  
 Member; MARY SPIROS; and NANCY  
 SCHULTZ-VOOTS, in her Capacity as Will  
 County Clerk,

ORDER

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The Petitioner filed no brief in this matter but was represented by counsel during the hearing before this Court. In her Petition it is asserted that the decision of the Electoral Board was contrary to the manifest weight of the evidence. Also raised is the failure of the Electoral Board to grant the motion to recuse Chairman MAYER.

With regard to the denial of the Motion for Recusal, this Court finds that the motion was properly denied. Section 10-9 of the Election Code mandates that an electoral board member is disqualified from serving if the he or she is holding the same office as that being sought by the candidate. *Anderson v*

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*McHenry Township*, 289 Ill.App.3d 830 (1997) holds that a board member may not serve if he or she has a pecuniary interest in the outcome of the hearing. *Girov v. Keith*, 212 Ill.2d 372 (2004) makes clear that an electoral board member should be removed if that board member is likely to be called as a witness in the case before the board. Finally, *Kaemmerer v. St. Clair County Electoral Board*, 333 Ill.App.3d 956 (2002) stands for the proposition that there should be a recusal when, in a case before the board, the objections against the candidate-respondent are identical to current objections being brought against those current board members.

Clearly, none of the conditions discussed above were present in the case at hand. Rather, the Petitioners, relying upon *Girov*, and the Fourteenth Amendment argue the proposition that they were deprived a fair hearing because "the Board prevented the candidate(s) from developing the record ". Petitioners claim they were prevented from presenting evidence and calling witnesses in order to establish the existence of bias on the part of Mr. MAYER.

The hearings on these matters began on January 3, 2017. At that time, all candidates were represented by counsel. The only matters addressed were the scheduling of future dates. The matter of recusal first arose on January 13, 2017. At that time, the Board convened for hearing on all four pending Township Trustee cases. Mr. Pyles, attorney for all four candidates made a motion for the recusal/removal of Chairman MAYER. In support of that motion, various photographs taken of the objector and Chairman MAYER, including photos and Facebook entries showing the objector, her husband and both Mr. and Mrs. MAYER. Mr. Pyles also argued that the Township Board had taken votes to support a charity the objector was involved in and that the Township had been helpful in providing facilities for the event shown in the Facebook entries. Those entries were, according to Mr. Pyles, 3 or 4 years old. Mr. Pyles stated "I'm not accusing anybody of anything. I'm just saying there's a relationship here between the objector and one of the Board members, and I think that there should be a new member substituted in place". (Transcript at pg. 19) In summation, Mr. Pyles argued, "I think that in order for the public and the people who are here

to have confidence in the decision of this Board in evaluating these candidates' objections so the parties have a fair shot, I think the Chair should recuse..." (Transcript at pg. 25)

At the conclusion of argument by counsel for all parties, the Electoral Board voted 2-0 to deny the motion, Chairman MAYER abstaining on advice of Board counsel. Prior to the vote, Mr. MAYER indicated that he could be objective, fair and impartial in his decisions regarding objections to the nominating papers that had been raised.

This motion was renewed on several occasions during the proceedings before the Board. On each occasion, over objection of the candidates counsel, it was treated as a motion to reconsider the initial ruling and denied. Petitioner-candidate counsel also made attempts to call the objector and, on one occasion, the chairman's wife so as to develop a theory of an ongoing relationship of such a nature as to establish the existence of a level of bias on the part of Mr. MAYER as to necessitate his removal. Each of these attempts to call witnesses were rebuffed by the Electoral Board. Despite several invitations, counsel for the Petitioner-candidates declined to make an offer of proof by means of representation. Some insight can be gained from the remarks of the Petitioner's counsel during the hearing before this court. During those arguments, counsel conceded that without the discovery of the Facebook material:

...I wouldn't have had any evidence whatsoever that there had been a relationship between the Objector and the board chairman...

Additionally, counsel offered a glimpse as to what he may have intended to show, had he been allowed to call the objector or the Chairman's wife. The following was offered:

...I'm assuming Mr. Fogarty's not working for free.. (Mr. Fogarty is Objector's counsel)

...It's funny, that the Objector in this case, who's supposedly bringing this, didn't show up once

...no interest in how her money's being spent

...no interest in how the cases are turning out

...didn't even bother to show up for the decisions

...everybody winks and nods at these things. Well...it's supposedly ok for this game to go on about who's actually behind the objections...

...the laws says, and I agree, that the motivations of the objector are irrelevant...

...but, if it goes to the motivations of the people that are sitting on the Board...making the decisions

...and who has the interest here in making sure that his people that are on the Board will continue to be there...

...I was entitled to put that Objector on the stand and ask these questions

...I think it's pretty clear... what I thought she was going to say...that there was a relationship there... and that there was something involved...how Ms. Spiros got involved in these objections in the first place...she's not just the Objector in the Trustee case, she's the Objector in the Supervisor case...

...I was entitled to explore that....

...I'm not just shooting blanks...and on some fishing expedition...I had somewhat of a showing that there was something behind this...and I should have been allowed to explore it...

The issue now before this Court is whether the conduct of this Board, in addressing the motion to recuse and the requests of Petitioners' counsel to call witnesses in support of that motion, was clearly erroneous and deprived Petitioners of due process. It is clear that the **ONLY** evidence before the Board, and the only evidence Petitioners had, at the time the Motion to recuse was made, was a series of four year old Facebook photos and entries showing that the Chairman of the Board and the Objector may have

once been friendly. It is apparent, now, that the purpose of the request by Petitioner's counsel to call witnesses was to attempt to somehow elicit an admission that the Chairman, Mr. Mayer, was "behind" the objections to these candidates nominating papers. I do not believe that any case has been cited, nor can the Court find a case that suggests that allowing such an endeavor would have been proper, given the facts before this Board. *Girot*, despite protests to the contrary, certainly does not support such a requirement.

To prove bias, a party must overcome a presumption of honesty by showing that the administrative proceedings were either tainted by dishonesty or by the existence of an unacceptable risk of bias. *Huff v. Rock Island*, 294 Ill.App.3d 477 (1998). In *Huff*, the Petitioner (a deputy sheriff) asked the Chairman of the Police Commission to recuse himself because the commission Chairman had been the committee chairman on the Sheriff's re-election team during a campaign two years prior. The Petitioner also asked for the recusal of another commissioner who had been overheard referring to the Petitioner as "the thorn in our side". Both members refused to step down. That Court held, under those facts that it was to each member to consider his own personal bias or prejudice and determine for himself whether his recusal was necessary, and affirmed their refusal. In this case, under a set of facts that pales in comparison to those described in *Huff*, the Electoral Board did not err in refusing to remove the Chairman, Mr. MAYER.

With regard to the number of nominating signatures filed with her candidacy papers, the Electoral Board found that Petitioner\Candidate had filed nominating petitions purporting to contain 498 valid signatures. The Board found that to be placed on the ballot for office in DuPage Township a candidate would need to file nominating papers supported by the signatures of 325 qualified registered voters residing within DuPage Township. Objection was made to the genuineness of 256 of the signatures submitted in support of the nominating papers filed by the Petitioner, JENNIFER SANNEMAN. The board

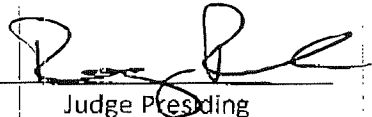
noted that with regard to 119 of those contested signatures the parties, as a result of a pre-hearing records check, agreed that 38 were valid and 81 were invalid.

After the hearing in this matter, the Electoral Board sustained the objection to an additional 123 signatures, leaving Petitioner with 294 valid qualifying signatures. The record reflects that the Board addressed each objection, and the pertinent signature related thereto, individually, and considered all evidence offered by either the Petitioner\Candidate or the Objector's attorney. After such consideration, the Board voted on each objection, individually, and sustained the objection to an additional 136 signatures. Based on the agreement between the parties, and on its ruling on the additional objections, the Board found that Ms. SANNEMAN had filed 294 valid signatures. The number of valid signatures necessary was 325. There is no basis in the record to suggest that the examination process utilized by the Board was clearly erroneous, or that the decision ultimately reached by the Board was contrary to the manifest weight of the evidence.

For all of the above reasons, the Petition for Judicial Review brought by JENNIFER SANNEMAN is Denied and the Decision of the DuPage Electoral Board, in case 16-4, dated January 31<sup>st</sup>, 2017 is affirmed;

Dated: March 8<sup>th</sup>, 2017

Signed: \_\_\_\_\_

  
Judge Presiding