2017 IL App (2d) 170122-U
No. 2-17-0122
Order filed March 16, 2017



IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

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| GREGORY SHADLE,<br><br>Petitioner-Appellant,<br><br>v.<br><br>ANDREW CRUTCHFIELD, candidate; CITY OF FREEPORT MUNICIPAL OFFICERS ELECTORAL BOARD; MARTHA E. ZURAVEL, as a member of the Board, and in her official capacity as City Clerk; THOMAS KLEMM, as a member of the Board; JAMES L. GITZ, as Chairman of the Board; and VICI OTTE, in her official capacity as Stephenson County Clerk,<br><br>Respondents-Appellees. | ) | Appeal from the Circuit Court of Stephenson County<br><br>No. 17-MR-4<br><br>Honorable Glenn R. Schorsch, Judge, Presiding. |

JUSTICE JORGENSEN delivered the judgment of the court.
Justices Burke and Spence concurred in the judgment.

**ORDER**

¶ 1 *Held*: The Board did not err in allowing respondent candidate to remain on the April 4, 2017, ballot for the office of Mayor of the City of Freeport. Affirmed.

¶ 2 Petitioner, Gregory Shadle, filed a verified objector's petition against the mayoral candidacy of respondent, Andrew Crutchfield. Shadle alleged that Crutchfield's nominating

petition did not contain the requisite number of signatures, as determined by the number of voters in the 2013 election. The City of Freeport Municipal Officers Electoral Board (Board) denied Shadle's petition, explaining that 2013 was not the relevant year, and, thus, Shadle "ha[d] not presented sufficient argument and evidence." Shadle appealed to the circuit court, which affirmed the Board. We also affirm the Board.

¶ 3 I. BACKGROUND

¶ 4 On December 27, 2016, Shadle filed a verified objector's petition with the Board, wherein he alleged that Crutchfield's mayoral nominating petition was insufficient in that it did not contain the requisite number of signatures. Shadle cited section 10-3 of the Election Code, which requires that nominating petitions of independent candidates for mayor have the signatures of not less than 5% of the number of persons "who voted at the next preceding regular election in such district or political subdivision in which such district or political subdivision voted as a unit for the election of officers to serve its respective territorial area." 10 ILCS 5/10-3 (West 2016). Shadle alleged that "[t]he next preceding regular election *** in which the City voted as a unit for the election of officers to serve its respective territorial area *** was the 2013 Consolidated Election." Shadle asserted that 4,974 people voted in the 2013 election, meaning that Crutchfield needed 249 signatures. (Five percent of 4,974 is 248.7.) Crutchfield's petition contained only 162 signatures. (Both parties ultimately would agree on the 162 number. The original petition contained 196 signatures, but 23 signatures were stricken with certificates of deletion, and another 11 signatures were stricken due to lack of notarization.) Shadle concluded that, because Crutchfield needed 249 signatures, but only obtained 162 signatures, his nominating petition was insufficient and Crutchfield's name should not be placed on the ballot.

¶ 5 On December 29, 2016, Crutchfield filed a response. He contended that "the next preceding regular election" was 2015, not 2013. In his view, because Shadle did not plead any facts associated with the 2015 election, including the number of voters who participated in the 2015 election, Shadle's objector's petition was insufficient.

¶ 6 On January 3, 2017, the Board conducted a hearing. There are no transcripts from the hearing, but the Board recounted the parties' arguments in its written order. Shadle argued that 2013 was the relevant election year, because it was the "last regular election in which the district or political subdivision *** voted as a unit for the Office of Mayor." Crutchfield argued that 2015 was the relevant election year, because, in that year, the city voted as a unit to elect an alderperson at large. Crutchfield noted that, in 2013, he was not allowed to be on the ballot as a candidate for mayor, because a different petitioner had filed a successful objector's petition alleging that he did not have enough signatures. In that case, the Board looked to the number of voters in the 2011 election to determine the requisite number of signatures. In the 2011 election, the city voted as a unit to elect an alderperson at large. In other words, in Crutchfield's view, it did not matter whether the previous election pertained to a mayor or an alderman. The key was whether the city voted as a unit to elect an official for public office. If, in the 2013 mayoral race, the Board looked to the 2011 alderman election, then, in the 2017 mayoral race, the Board should look to the 2015 alderman election.

¶ 7 On January 6, 2017, the Board voted 3-0 to deny Shadle's objector's petition. The Board noted that it had a policy of "err[ing] on the side of ballot access." As to the merits, it disagreed with Shadle that 2013 was the relevant election year from which to determine the requisite number of signatures:

> "The Board recognizes that nowhere in the Illinois Election Code[,] specifically, 10 ILCS 5/10-3[,] does the statute state that the Electoral Board should utilize the last election for the Office of *Mayor* as the benchmark to determine the total number of votes cast for a subsequent Independent Candidate. (The Electoral Board notes that the Illinois Election Code does so require a [board] to utilize the votes cast for Mayor as a benchmark, but only when the municipality operates under the City Manager form of government. The City of Freeport currently operates under the Aldermanic-City form of Illinois municipal government.) Rather, section 10-3 merely refers to 'at the next preceding regular election in such district or political subdivision in which such district or *political subdivision voted as a unit for the election of officers to serve its respective territorial area.*' *** It is undisputed that during the April 9, 2015[,] Consolidated Election, all of the registered voters within the City of Freeport were eligible to vote for the Office of Alderperson-At-Large. *** Accordingly, *** the 5% *** amount of valid registered voters' signatures [required] on an Independent Candidate's nomination papers, are determined by the total vote at the April 9, 2015[,] Consolidated Election." (Emphasis in original.)

The Board stated that Shadle carried the burden to provide sufficient evidence to support his petition. Shadle presented no evidence of the number of votes in the 2015 election. Therefore, Shadle did not prove that Crutchfield failed to obtain the requisite number of signatures. Shadle petitioned for judicial review before the circuit court.

¶ 8 On January 23, 2017, the circuit court heard Shadle's petition for judicial review. For the first time, Shadle alleged that there had been 3,821 votes in the 2015 election, 5% of which was 192, and, therefore, even if one looked to the 2015 election, Crutchfield did not have enough signatures. The trial court disagreed, asserting that the 3,821 figure was not necessarily correct,

because that number might have included voters who voted in contests for positions governing territories beyond Freeport. There was only one Freeport candidate, who ran unopposed, and 2,904 people voted for him. (Five percent of 2,904 is 146.) The City of Freeport responded, "Well, Judge, that's an interesting discussion, but it is beyond the scope of your review." Shadle then replied that, "if the court needs to return it to the Board to make the decision [as to the number of voters in the 2015 election], we request that happens." The court took the matter under advisement. It affirmed the Board. This appeal followed.

¶ 9 II. ANALYSIS

¶ 10 On appeal, Shadle argues that the Board erred in denying his petition, because: (1) 2013 was the correct election year from which to determine the requisite number of signatures; (2) alternatively, if 2015 was the correct year, the Board should have taken judicial notice of the number of persons who voted in 2015; and (3) still alternatively, if 2015 was the correct year, the number of persons who voted in 2015 demonstrate that Crutchfield did not have enough signatures. We review the decision of the Board and not of the circuit court. *Zurek v. Cook County Officers Electoral Board*, 2014 IL App (1st) 140446, ¶ 10.

¶ 11 A. Section 10-3 does not Mandate use of the 2013 Election

¶ 12 Shadle first argues that section 10-3 mandates use of the 2013 election. Again, section 10-3 states:

> "Nominations of independent candidates for public office within any district or political subdivision less than the State, may be made by nomination papers signed in the aggregate for each candidate by qualified voters of such district, or political subdivision, equaling not less than 5%, nor more than 8% (or 50 more than the minimum, whichever is greater) of the number of persons, who voted at the next preceding regular election in

> such district or political subdivision in which such district or political subdivision voted as a unit for the election of *officers* to serve its respective territorial area." (Emphasis added.) 10 ILCS 5/10-3 (West 2016).

Specifically, Shadle argues that section 10-3 mandates use of the 2013 election, because section 10-3 refers to the most recent election where the city voted as a unit for the election of "officers," *plural*, to serve its respective territorial area. Shadle notes that the 2015 election happened to involve only a *single* officer, that of alderman at large, and, therefore, does not satisfy the terms of section 10-3. In Shadle's view, the 2013 election, which involved the election of multiple officers, was the most recent election.

¶ 13 In cases of statutory interpretation, we must give effect to the intent of the legislature. *Hadley v. Illinois Department of Corrections*, 224 Ill. 2d 365, 371 (2007). The best evidence of the legislature's intent is the language of the statute, which must be given its plain and ordinary meaning. *Id*. Where the statutory language is clear, it will be given effect without resort to other principles of interpretation. *Id*. Where there is a statutory ambiguity, we defer to the agency charged with administering and enforcing the statute. *Id*. at 370. A statute contains an ambiguity if it is subject to more than one reasonable interpretation. *Bruder v. Country Mutual Insurance Co*., 156 Ill. 2d 179, 193 (1993). "Although creative possibilities may be suggested, only reasonable interpretations will be considered." *Id*. If an agency adopts one reasonable interpretation of a statutory provision, the court must accept it. *Hadley*, 224 Ill. 2d at 371.

¶ 14 Here, Shadle's interpretation that 10-3 mandates that the next preceding general election involve the election of multiple officers is certainly creative. In fact, Shadle did not raise this specific argument before the Board. Instead, Shadle argued before the Board only that section

10-3 mandates the use of the 2013 election, because the 2013 election was the most recent mayoral election. The Board rejected that argument.

¶ 15 At best, Shadle now presents an ambiguity in the statute to this court. However, this court is to defer to the Board's interpretation of any ambiguity in the statute. Here, Shadle never asked the Board to decide the import of the statute's use of the plural "officers," so the Board made no express determination of that alleged ambiguity. Therefore, we view Shadle's argument as forfeited. See, *e.g.*, *Board of Education, Joliet Township High School District No. 204 v. Board of Education, Lincolnway Community High School District No. 210*, 231 Ill. 2d 184, 205 (2008) (any issue that is not raised before the administrative agency will be forfeited by the party that failed to raise it). We cannot determine in the first instance an issue for which the Board would have been owed deference.

¶ 16 Alternatively, if we consider the Board to have implicitly decided that the next preceding general election need not involve multiple officers, such that the issue is not forfeited, we defer to that interpretation as reasonable. Illinois has a strong public policy in favor of ballot access. *Samuelson v. Cook County Officers' Electoral Board*, 2012 IL App (1st) 120581, ¶ 50. The Board noted this policy when issuing its decision. The Board also had a history of allowing the relevant election to involve a single officer. For the Board, the key was that all of the registered voters of Freeport had the opportunity to vote for the same city candidate (to "vot[e] as a unit") to serve all the voters in the city ("to serve its respective territorial area"). 10 ILCS 5/10-3 (West 2016). The 2015 election for alderman at large met this standard. As noted by Crutchfield, this interpretation actually worked against him in the 2013 election, when the Board relied upon the 2011 election involving the single office of alderman at large to determine the requisite number of nominating signatures. Where the Board has applied the statute in a consistent manner over

the years without bias toward any given candidate, we are all the more persuaded to defer to it. See, *e.g.*, *Business & Professional People for the Public Interest v. Illinois Commerce Comm'n*, 136 Ill. 2d 192, 228 (1989) (heightened degree of appellate scrutiny can be appropriate where an agency "drastically departs" from past practice).

¶ 17 We are not persuaded by Shadle's observation that the 2013 election was "more similar" to the 2017 election and, because it is a similar type of election, it provides a better baseline. This is a variant of an argument that the Board has already rejected, *i.e.*, that the 2013 election involved a mayoral election and, because it is a similar type of election, it provides a better baseline. Requiring a prospective candidate to look back and choose the election most similar to the one in which he or she seeks entry, in order to determine the number of signatures needed, would lead to confusion and uncertainty. Similarly, we are not convinced by Shadle's argument that, "[i]f the General Assembly had meant to base the number of signatures required on an election at which only one citywide officer was elected, it could have easily said so." The legislature could have just as easily specified that it excluded such elections. Where the legislature did neither, we affirm the Board's decision to err on the side of ballot access. We reject Shadle's argument that section 10-3 mandates use of the 2013 election.

¶ 18 B. The Board had no Obligation to Find Evidence for Shadle

¶ 19 Shadle next argues that the Board should have taken "judicial" notice of the number of voters in the 2015 election to determine the number of nominating signatures required. Shadle cites to civil cases and to the Illinois Rules of Evidence in support of his argument. The flaws in Shadle's argument are numerous, but, for the purposes of this appeal, the fatal flaw is that Shadle never asked the Board to take notice of the results of the 2015 election. Thus, the Board never denied a request to take judicial notice, ruled on admission of the evidence, or refused to

consider an issue presented for review. Thus, there is no action for us to review. The Board had no obligation to look for evidence that would support Shadle's case and then rule upon it. Shadle forfeited this issue. See, *e.g.*, *Samuelson*, 2012 IL App (1st) 120581, ¶ 50. We will not further discuss the issue.

¶ 20 C. Shadle Forfeited the Right to Contest the Number of Votes in the 2015 Election

¶ 21 Finally, Shadle argues that the number of votes in the 2015 election show that Crutchfield did not obtain the requisite number of signatures. Shadle posits that the number of votes in the 2015 election was 3,821, not 2,914 as suggested by the circuit court. As 162 is less than 5% of 3,821, Crutchfield did not have enough signatures.

¶ 22 First, the fact that Shadle now argues over the correct number of 2015 votes completely undercuts his previous argument that the Board should have taken "judicial" notice of the number of votes. Second, as to this issue, Shadle never asked the Board to determine the number of votes in the 2015 election. Shadle had the burden to prove the facts that supported his case and to persuade the Board that his position was correct. The Board's rules of procedures expressly state that the Board "shall only consider objections, and specifications of such objections, as set forth in the objector's petition." Shadle alleged only the 2013 election in his petition, and submitted numbers only from the 2013 election. Shadle did not include in his petition *any* allegations or facts pertaining to the 2015 election. The Board determined that Shadle did not prove his case. Shadle never petitioned the Board to determine the number of votes in the 2015 election, and he never asked the Board to determine that his interpretation of the statute, that led him to untimely allege 3,821 voters, was correct. Shadle has forfeited his right to ask a court of review to determine the number of votes in the 2015 election. *Samuelson*,

2012 IL App (1st) 120581, ¶ 50. Questions concerning the 2015 election are beyond the scope of our review.

¶ 23 III. CONCLUSION

¶ 24 For the reasons stated, we affirm the Board's decision.

¶ 25 Affirmed.