2018 IL App (1st) 180425-U

No. 1-18-0425

Order filed March 8, 2018

Fifth Division

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

HAL PATTON, Petitioner-Appellant, v. ILLINOIS STATE BOARD OF ELECTIONS, sitting as the duly constituted STATE OFFICERS ELECTORAL BOARD, *et al.*, Respondents-Appellees.	)	Appeal from the Circuit Court of Cook County. No. 18 COEL 000001
CHARLES A. YANCEY, Petitioner-Appellee, v. ILLINOIS STATE BOARD OF ELECTIONS, sitting as the duly constituted STATE OFFICERS ELECTORAL BOARD, *et al.*, Respondents-Appellees.	)	No. 18 COEL 000002 (consolidated with 18 COEL 000001) Honorable Alfred J. Paul, Judge Presiding.

JUSTICE HALL delivered the judgment of the court.
Justices Delort and Mason concurred in the judgment.

ORDER

¶ 1 *Held*: Candidate's statement of candidacy in which he claimed to be a "qualified primary voter of the Republican Party" in the upcoming March 20, 2018, primary election was invalid because prior to signing his statement of candidacy, he signed a Democratic nominating petition in violation of the restriction set forth in section 8-8 of the Election Code (10 ILCS 5/8-8 (West 2016)) against signing nominating petitions for more than one political party in the same election cycle.

¶ 2 "This appeal concerns the party-switching restrictions on political candidates for the General Assembly under section 8-8 of the Election Code (10 ILCS 5/8-8 (West 2008))." *Hossfeld v. Illinois State Board of Elections*, 238 Il. 2d 418, 420 (2010). At issue is the validity of Hal Patton's statement of candidacy in which he claimed to be a "qualified primary voter of the Republican Party" in the upcoming March 20, 2018, primary election, despite previously signing the nominating petition of Democrat Katie Stuart, a candidate seeking reelection to the General Assembly in the same March 2018 primary election. For the reasons that follow, we find that Patton's nominating petitions for Republican nomination for Representative in the General Assembly in the upcoming March 20, 2018, primary election are invalid under section 8-8 of the Election Code.

¶ 3 BACKGROUND

¶ 4 On December 11, 2017, Charles A. Yancey filed an objector's petition challenging Patton's eligibility to run as a Republican candidate in the primary election. See 10 ILCS 5/10-8 (West 2014). Yancey argued that Patton's statement of candidacy was invalid and he was not a "qualified primary voter" for the party for which he was seeking election (Republican Party), as required by section 8-8 of the Election Code, because prior to signing his statement of candidacy,

he signed the Democratic nominating petition of Katie Stuart, a candidate for Representative in the General Assembly running in the same election.

¶ 5 Following a hearing on Yancey's objection before the Illinois State Board of Elections (Board), the hearing officer issued a decision and recommendation to the Board, recommending that the objector's petition be granted and that Patton's name be removed from the Republican ballot for the March 2018 primary election. The Board's general counsel concurred with the recommendation and advised the Board to adopt it.

¶ 6 The Board failed to render a decision by a statutorily required majority vote or render a decision on the merits.[1] The legal effect of the Board's failure to adopt or reject the hearing officer's recommendation by a majority vote resulted in Patton's name remaining on the ballot. Despite this favorable result, Patton filed a multi-count complaint in the circuit court of Cook County consisting of a single-count petition for judicial review and three additional counts seeking declaratory relief under various theories alleging unconstitutionality of the underlying statues (case no. 2018 COEL 000001). Yancey filed his own single-count petition for judicial review (case no. 2018 COEL 000002). The circuit court consolidated the two cases. Patton also filed a three-count counterclaim in Yancey's case.

[1] One Board member abstained. The State Board of Elections typically consists of four Democrats and four Republicans. *Hossfeld v. Illinois State Board of Elections*, 398 Ill. App. 3d 737, 738 n. 1 (2010). The Election Code requires a majority vote by five Board members to invalidate nominating papers. 10 ILCS 5/1A-7, 10-10 (West 2016). However, our supreme court has determined that tie-vote decisions by the Board of Elections are subject to judicial review by an aggrieved party. See *Cook County Republican Party v. Illinois State Board of Elections*, 232 Ill. 2d 231, 240 (2009); *Hossfeld v. Illinois State Board of Elections*, 238 Ill. 2d 418, 422-23 (2010).

¶ 7 On January 30, 2018, the circuit court denied Patton's petition, granted Yancey's petition, and ordered that Patton's name be removed from the ballot on the ground that his nomination papers were invalid. The circuit court also denied Patton's request to stay enforcement of its order pending appeal.

¶ 8 On January 31, 2018, Patton filed a notice of appeal along with motions for an expedited appeal and for a stay of the circuit court's order pending appeal. Yancey filed a petition in opposition to Patton's motion for an expedited appeal.

¶ 9 Prior to this court's ruling on his motions, Patton filed a Rule 302(b) motion for direct appeal to the Supreme Court on February 6, 2018. On February 7, 2018, this court declined to consider Patton's pending motions because of lack of jurisdiction.

¶ 10 The Supreme Court denied Patton's Rule 302(b) request and directed this court to enter an order staying the circuit court's judgment and to expedite consideration of the appeal on February 8, 2018. This court allowed Patton's motions on February 13, 2018.

¶ 11 In an unpublished order filed on March 1, 2018, we determined that we lacked jurisdiction to review the circuit court's order because at the time Patton filed his initial notice of appeal, other matters remained pending in the circuit court and the court's order did not contain a finding pursuant to Illinois Supreme Court Rule 304(a) (Ill. S. Ct. R. 304(a) (eff. Mar. 8, 2016)). *Patton v. Illinois State Board of Elections*, 2018 IL App (1st) 180222-U, ¶¶ 14-17.

¶ 12 In response, Patton filed an emergency motion in the circuit court on March 2, 2018, requesting the court to clarify and amend its order of January 30, 2018. The circuit court entered an order on March 2, 2018, which recited that it was "final" and resolved all pending matters, and again determined that Patton's nominating petitions for Republican nomination for

Representative in the General Assembly were invalid under section 8-8 of the Election Code. The order also included Rule 304(a) language "to the extent necessary."

¶ 13 We note that the order at issue in this second appeal recites both that it is a "final, appealable" order and that "there is no just reason for delaying appeal" pursuant to Rule 304(a). The order is either final in the sense that it resolves all matters in controversy and is therefore appealable under Illinois Supreme Court Rule 301 (eff. Feb. 1, 1994), or it is a final order as to some, but not all of the matters in controversy and is appealable because the trial court has made the findings required under Rule 304(a). It cannot be both. We treat the order from which Patton appeals as a final order disposing of all matters in controversy. We further discourage trial courts from using Rule 304(a) language when it is not necessary. See *City of Chicago v. Soludczyk*, 2017 IL App (1st) 162449, ¶ 18.

¶ 14 Patton filed his notice of appeal on March 2, 2018. We now address the merits of Patton's claims.

¶ 15 ANALYSIS

¶ 16 The parties dispute the standard of review. Patton contends that since the Board failed to render a decision by a statutorily required majority vote as to the disputed facts or render a decision, the record and facts should be reviewed *de novo*. Yancey argues that since the Board "neither rejected nor made any finding inconsistent with the hearing officer's findings of facts," and because the hearing officer heard from the witnesses and had an opportunity to weigh their credibility, we should give deference to the hearing officer's factual determinations and use the hearing officer's findings of fact to determine whether they are against the manifest weight of the evidence.

¶ 17 Although the Board failed to render a decision by a majority vote, and therefore took no action on Yancey's objection, the Board's decision is nonetheless subject to judicial review under section 10-10.1 of the Election Code (10 ILCS 5/10-10.1 (West 2016)). See *Hossfeld*, 238 Ill. 2d at 422-23. While the Board's order does not set forth the reasons Board members voted to sustain or deny Yancey's objection, the hearing officer's decision and recommendation, and general counsel's recommendation, both contain detailed explanations for sustaining Yancey's objection. "Thus, judicial review may be accomplished by reviewing these documents." *Hossfeld*, 238 Ill. 2d at 423.

¶ 18 As to the appropriate standard of review, we agree with Patton that *de novo* review applies. "An electoral board is treated as an administrative agency, and thus, the standard of review is determined by the type of question on review." *Rosenzweig v. Illinois State Board of Elections*, 409 Ill. App. 3d 176, 179 (2011). In this case, the historical facts are not in dispute. While Patton argues to the contrary, the record clearly establishes that he signed Stuart's petition before signing any nomination paper affiliating himself with the Republican party for the 2018 election cycle. Therefore, the overarching question on review is a purely legal one: whether, based on our interpretation of section 8-8 of the Election Code, Patton is a qualified primary elector of the Republican Party. See, *e.g.*, *Hossfeld*, 238 Ill. 2d at 423. "Our review is 'independent and not deferential.' " *Id*. (quoting *Cinkus v. Village of Stickney Municipal Officers Electoral Board*, 228 Ill. 2d 200, 210 (2008)).

¶ 19 In resolving this appeal, we must examine the statutory language of section 8-8 of the Election Code. "When determining how the Election Code should be construed, we employ the same basic principles of statutory construction applicable to statutes generally." *Jackson-Hicks v.*

East St. Louis Board of Election Commissioners, 2015 IL 118929, ¶ 21. Our primary objective is to ascertain and give effect to the intent of the legislature. *Rosenzweig*, 409 Ill. App. 3d at 180. "In doing so, the courts should first look to the statutory language, since the language of the statute is the best indication of the legislature's intent." *Whelan v. County Officers' Electoral Board of Du Page County*, 256 Ill. App. 3d 555, 558 (1994).

¶ 20 The nomination of candidates for membership in the General Assembly is governed by Article 8 of the Election Code (10 ILCS 5/8-1 *et seq*. (West 2016)). See, *e.g.*, *Whelan*, 256 Ill. App. 3d at 556. "Section 8-8 of the Election Code concerns the form of nomination petitions for members of the General Assembly." *Schmidt v. Illinois State Board of Elections*, 2016 IL App (4th) 160189, ¶ 16. This section provides that each petition must include "a statement of candidacy," stating "that the candidate is a qualified primary voter of the party to which the petition relates." *Schmidt*, 2016 IL App (4th) 160189, ¶ 16 (quoting section 8-8 of the Election Code (10 ILCS 5/8-8 (West 2014)).

¶ 21 Under section 8-8 "A 'qualified primary elector' of a party may not sign petitions for or be a candidate in the primary of more than one party." *Id*. In construing section 8-8, our court has determined that "section 8-8 of the Election Code prohibits signing a nominating petition for a candidate from one political party and then running as a candidate for another political party in the same election cycle." *Rosenzweig*, 409 Ill. App. 3d at 181.

¶ 22 Here, the relevant facts show that prior to signing his own statement of candidacy on December 1, 2017, Patton, on October 3, 2017, signed the Democratic nominating petition of Katie Stuart, a candidate seeking reelection to the General Assembly in the same election cycle.

Because Patton first signed the petition of a Democratic candidate, he cannot then run as a Republican candidate in the same primary election cycle.

¶ 23 At the time Patton signed his statement of candidacy, he was not a qualified primary elector of the Republican party because he had already signed a nominating petition for a Democratic candidate. Patton's conduct in first signing the nominating petition for a Democratic candidate, and then subsequently signing his own nominating petition to run as a Republican candidate, in the same primary election cycle, clearly violated the restriction set forth in section 8-8 of the Election Code against signing nominating petitions for more than one political party in the same election cycle. When a person violates this provision of section 8-8 of the Election Code by signing the nomination petitions for more than one party, the initial signature is valid and all subsequent signatures are invalid. See *Rosenzweig*, 409 Ill. App. 3d at 180; *Schmidt*, 2016 IL App (4th) 160189, ¶¶ 24-25.

¶ 24 Patton raises a number of challenges to the hearing officer's and the circuit court's findings, none of which we find convincing.

¶ 25 Patton contends that section 8-8 of the Election Code creates an additional unconstitutional qualification for membership in the General Assembly, contrary to the qualifications for such membership established in Article IV, section 2(c) of the Illinois Constitution of 1970 (Ill. Const. 1970, art. IV, § 2(c)). We disagree.

¶ 26 In order to be eligible to serve as a member in the General Assembly, a person must meet three eligibility qualifications set forth in Article IV, section 2(c) of the Illinois Constitution: (a) citizenship; (b) 21 years of age; and (c) residency in the appropriate district for two years preceding election. Ill. Const. 1970, art. IV, § 2(c). Section 8-8 of the Election Code provides

only that a voter "may not sign petitions for or be a candidate in the primary of more than one party." 10 ILCS 5/8-8 (West 2014). A plain reading of this provision establishes that it has nothing to do with the qualifications to serve in office, but merely imposes restrictions on seeking election to office.

¶ 27 Patton also contends that, as applied by the circuit court's order, section 8-8 of the Election Code violates a candidate's voting rights, rights under the First Amendment to the United States Constitution (U.S. Const., amend. I), and rights under sections 4 and 5 of Article I of the 1970 Illinois Constitution (Ill. Const. 1970, art. I, §§ 4, 5), which pertain to the rights of free speech and to assemble and petition the government. Again, we must disagree.

¶ 28 "Statutes are presumed constitutional, and courts have a duty to construe enactments by the General Assembly so as to uphold their validity if there is any reasonable way to do so." *Wade v. City of North Chicago Police Pension Board*, 226 Ill. 2d 485, 510 (2007).

¶ 29 We reject Patton's suggestion that the circuit court's finding that his nominating petitions were invalid under section 8-8 of the Election Code implicates a fundamental right and the application of strict scrutiny. "[S]ubstantial burdens on the right to vote or to associate for political purposes are constitutionally suspect and invalid under the First and Fourteenth Amendments and under the Equal Protection Clause unless essential to serve a compelling state interest." *Storer v. Brown*, 415 U.S. 724, 729 (1974). However, "not every limitation or incidental burden on the exercise of voting rights is subject to a stringent standard of review." *Bullock v. Carter*, 405 U.S. 134, 143 (1972). Election laws invariably impose some burden upon individual voters. *Burdick v. Takushi*, 504 U.S. 428, 433 (1992). Consequently, to subject every voting regulation to strict scrutiny and to require that the regulation be narrowly tailored to

advance a compelling state interest, would tie the hands of States seeking to assure that elections are operated equitably and efficiently. *Id*. "[W]hen a state election law provision imposes only 'reasonable, nondiscriminatory restrictions' upon the First and Fourteenth Amendment rights of voters, 'the State's important regulatory interests are generally sufficient to justify' the restrictions." *Burdick*, 504 U.S. at 434 (quoting *Anderson v. Celebrezze*, 460 U.S. 780, 783 (1983)).

¶ 30 Here, there is no dispute that section 8-8 of the Election Code is nondiscriminatory in its application since it applies with equal force to all voters. The only question is whether the restriction contained in section 8-8 is reasonable. We find that it is reasonable because it supports the State's legitimate interest in guarding against "party raiding," a process in which dedicated members of one party formally switch to another party to alter the outcome of that party's primary *(California Democratic Party v. Jones*, 530 U.S. 567, 572 (2000)). That section 8-8 supports this legitimate State interest was made clear by our court in *Rosenzweig* where the court explained the importance of the restriction:

> "[S]uch restrictions prevent political maneuvers that could affect the quality of the candidates who will be on the ballot. [citations omitted] If one party determines that a certain opponent will be a weaker candidate in the general election, that party could circulate petitions on behalf of the weaker candidate for the primary election in the hope that voters will be drawn away from an opposition candidate the party deems to propose a greater threat to its chances of prevailing in the general election." *Rosenzweig*, 409 Ill. App. 3d at 181.

¶ 31 CONCLUSION

¶ 32 We therefore reject Patton's claim that he is a "qualified primary voter of the Republican Party" in the upcoming March 20, 2018, primary election. We also reject his claims that section 8-8 of the Election Code creates an additional, unconstitutional qualification for candidates to the General Assembly. And finally, we reject Patton's assertion that, as applied by the circuit court's order, section 8-8 of the Election Code violates a candidate's voting rights, rights under the First Amendment to the United States Constitution (U.S. Const., amend. I), and rights under sections 4 and 5 of Article I of the 1970 Illinois Constitution (Ill. Const. 1970, art. I, §§ 4,5).

¶ 33 Accordingly, for the foregoing reasons, we affirm the judgments of the circuit court of Cook County in Yancey's case finding that Patton's nominating petitions for Republican nomination for Representative in the General Assembly in the upcoming March 20, 2018, primary election are invalid under section 8-8 of the Election Code, and dismissing Patton's claims and counterclaims for declaratory judgment.

¶ 34 Moreover, because the practical effect of the Board's decision was to overrule Yancey's objections and leave Patton's name on the ballot, Patton was not an "aggrieved" party with standing to file a petition for judicial review.[2] Therefore, we vacate the circuit court's reversal of the Board's ruling in case no. 2018 COEL 000001, and remand to the court with directions to dismiss count I of Patton's case, his petition for judicial review.

[2] Only an aggrieved party may obtain judicial review of the decision of the State Board of Elections in accordance with the provisions of the Election Code. See 10 ILCS 5/10-10.1 (West 2016) ("Except as otherwise provided in this Section, a candidate or objector aggrieved by the decision of an electoral board may secure judicial review of such decision in the circuit court of the county in which the hearing of the electoral board was held.")

¶ 35 We take judicial notice that although Patton is unopposed, early voting and absentee voting has begun. As a result, we remand to the circuit court for the purpose of crafting a remedy to invalidate any votes cast for Patton.

¶ 36 Affirmed in part, vacated in part, and remanded with instructions; mandate to issue *instanter*.