

2019 IL App (1st) 190227-U

No. 1-19-0227

Order filed March 8, 2019

Fourth 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

PEOPLE OVER POLITICS PARTY as a)	
Purported New Political Party in the Village)	
of Orland Park, County of Cook, State of)	
Illinois; WILLIAM HEALY as Candidate for)	
Trustee; MICHAEL R. MILANI as Candidate)	
for Trustee; and CYNTHIA NELSON)	
KATSENES as Candidate for Trustee,)	
)	
Petitioners-Appellees)	Appeal from the
)	Circuit Court of
v.)	Cook County
)	
ORLAND PARK MUNICIPAL OFFICERS)	No. 2019 COEL 6
ELECTORAL BOARD; and its Members,)	
KATHLEEN FENTON, JAMES DODGE, and)	Honorable
JOHN MEHALEK, in Their Official Capacities as)	Paul A. Karkula,
Members of the Orland Park Municipal Officers)	Judge Presiding.
Electoral Board; KAREN YARBROUGH, in Her)	
Official Capacity as Cook County Clerk; and)	
CHRISTOPHER KASMER,)	
)	
Respondents.)	
)	
(Christopher Kasmer,)	
)	
Appellant).)	

JUSTICE BURKE delivered the judgment of the court.
Presiding Justice McBride and Justice Gordon concurred in the judgment.

ORDER

¶ 1 *Held:* We affirm the judgment of the circuit court reversing the decision of the Board where petitioners' nominating papers do not create a reasonable basis for confusion among the voters and do not frustrate the purpose of the Election Code.

¶ 2 The Petitioners, William Healy, Michael Milani, and Cynthia Nelson Katsenes, filed a petition in the circuit court seeking judicial review of a decision by the Orland Park Municipal Officers Electoral Board (Board) that petitioners' names would not be included on the ballot as candidates for Trustee of the Village of Orland Park in the consolidated election on April 2, 2019. The Board's decision was based on the fact that petitioners' failed to adequately identify the office sought on their nominating petitions, which was a basis for confusion among the voters as to which office the petitioners sought. The circuit court granted petitioners' petition for judicial review, reversed the Board's decision, and ordered the clerk to place petitioners' names on the ballot. Respondent, Christopher Kasmer, who filed the Objector's Petition that gave rise to the Board's decision, now appeals the circuit court's judgment. For the reasons that follow, we affirm the judgment of the circuit court.

¶ 3 I. BACKGROUND

¶ 4 Section 2A-1.1 of the Election Code (10 ILCS 5/1-1 *et seq.* (West 2016)) provides that in odd-numbered years, an election known as the consolidated election shall be held on the first Tuesday in April. 10 ILCS 5/2A-1.1(b) (West 2016). Petitioners filed nomination papers to form the People Over Politics Party, a new political party in the Village of Orland Park. Petitioners sought to be candidates for the office of Trustee of the Village of Orland Park at the April 2, 2019, consolidated election. As a requirement for their candidacy, petitioners were required to

gather signatures from qualified Orland Park voters. Petitioners' nominating petitions provided that:

“We, the undersigned, qualified voters of the Village of Orland Park in the County of Cook and State of Illinois, do declare our intention to form a new political party in the political division aforesaid, to be known and designated as the People Over Politics Party, and do hereby petition that the following named persons shall be candidates for the offices hereinafter specified, to be voted at the Consolidated Election to be held on April 2, 2019.”

Under this heading, each petitioner wrote his or her name and address. In the space to fill in the office sought, each petitioner wrote “Trustee.”

¶ 5 Under the Election Code, in order to be placed on the ballot, the petitioners were required to obtain signatures from five percent of the number of people who voted in the most recent municipal election for that office. 10 ILCS 5/10-2 (West 2016). Petitioners obtained about 1200 signatures, which both parties agreed was sufficient to meet the five percent requirement. In conjunction with these petitions for nomination, petitioners also filed Statements of Candidacy and other nomination papers. On their Statements of Candidacy, the petitioners indicated that they were seeking the office of “Trustee, Village of Orland Park.”

¶ 6 Respondent filed an Objector's Petition against petitioners pursuant to section 10-8 of the Election Code. 10 ILCS 5/10-8 (West 2016). In support of his petition, respondent contended that petitioners' nomination papers were insufficient as a matter of law because petitioners identified the office sought on their nominating petitions simply as “Trustee,” but in the Village of Orland Park there are at least three units of local government that will elect “trustees” at the April 2, 2019, consolidated election. Respondent contended that this included Trustees of the

Village of Orland Park, Trustees of the Orland Park Public Library, and members of the Board of Trustees of the Orland Fire Protection District. Respondent contended that petitioners' failure to properly identify the specific office they sought caused uncertainty in the minds of the petition signers and the voters. Respondent asserted that the petitioners' nomination papers therefore failed to comply with the mandatory requirements of the Election Code because they failed to specifically and clearly state the office sought. Respondent maintained that, as a result, petitioners' Statements of Candidacy were void as a matter of law.

¶ 7 Petitioners filed a motion to strike respondent's Objector's Petition contending that their nominating papers sufficiently identified the office sought as Trustee of the Village of Orland Park. Petitioners asserted that there was no authority suggesting that candidates had to specifically identify the office as "village trustee" even if there were other types of "trustees" in the jurisdiction. Petitioners maintained that identifying the office simply as "trustee" complied with the Election Code and Illinois Municipal Code. 65 ILCS 5/1-1-1 *et seq.* (West 2016). Petitioners further contended that Illinois has a strong public policy in favor of ballot access and that Illinois precedent demonstrated that even where candidates misname offices on their nomination papers, the nomination papers will nevertheless be found valid.

¶ 8 On January 10, 2019, the parties presented argument before the Board. The Board issued its judgment in a written decision. In its decision, the Board found that "there was a basis for confusion for the voters signing the nominating petitions filed by the People Over Politics Party as to what office was being sought." The Board determined that petitioners would therefore be removed from the ballot for the April 2, 2019, consolidated election.

¶ 9 Petitioners filed a petition for judicial review of the Board's decision in the circuit court. In their petition, petitioners contended that the Board's application of the law was "clearly

erroneous, arbitrary and capricious.” Petitioners contended that neither the Board nor respondent cited any authority that would justify petitioners’ removal from the ballot and the claimed “basis for confusion” was “strictly manufactured” by respondent and “merely feigned” by the Board. In a separate memorandum in support of their petition, petitioners contended that the nominating petitions “perfectly name the office sought” and complied with the Election Code and Illinois Municipal Code.

¶ 10 After further briefing, the circuit court granted petitioners’ petition for judicial review and reversed the decision of the Board finding no basis for confusion in petitioners’ nominating petition. The court ordered that petitioners’ names be placed on the ballot for the April 2, 2019, consolidated election. Respondent now appeals.

¶ 11 II. ANALYSIS

¶ 12 On appeal, respondent contends that the circuit court erred in reversing the Board’s decision where petitioners’ nominating petitions fail to sufficiently identify the office sought in violation of section 10-4 of the Election Code. Respondent asserts that petitioners’ designation of the office sought as “Trustee” causes confusion among the voters and the incomplete office designation frustrates the Election Code’s requirement that candidates establish a modicum of support from eligible voters in order to be placed on the ballot.

¶ 13 A. Standard of Review

¶ 14 Courts of review view an electoral board as an administrative agency. *Cinkus v. Village of Stickney Municipal Officers Electoral Board*, 228 Ill. 2d 200, 209 (2008). On appeal, this court reviews the decision of the electoral board, not the decision of the circuit court. *Jackson-Hicks v. East St. Louis Board of Election Commissioners*, 2015 IL 118929, ¶ 19. Our standard of review depends on whether the dispute at issue involves questions of fact, law, or mixed

questions of fact and law. *Id.* ¶ 20. The electoral board’s findings and conclusions on questions of fact are deemed *prima facie* true and correct, and will not be reversed unless they are against the manifest weight of the evidence. *Cinkus*, 228 Ill. 2d at 210. Where the historical facts are admitted or established, but there is a dispute as to whether the governing legal provisions were correctly interpreted by the electoral board, the case presents a purely legal question, which we review *de novo*. *Jackson v. Board of Election Commissioners of the City of Chicago*, 2012 IL 111928, ¶ 47. Finally, mixed questions of fact and law, “questions in which the historical facts are admitted or established, the rule of law is undisputed, and the issue is whether the facts satisfy the statutory standard” ((Internal quotation marks omitted.) *American Federation of State, County, & Municipal Employees, Council 31 v. State Labor Relations Board*, 216 Ill. 2d 569, 577 (2005) (quoting *Pullman-Standard v. Swint*, 456 U.S. 273, 289 n. 19 (1982)) are reviewed under a clearly erroneous standard of review (*Cinkus*, 228 Ill. 2d at 211).

¶ 15 Here, the parties disagree as to standard of review to be applied in this case. Respondent contends that the issue before us is a mixed question of fact and law because it involves an examination of the legal effect of a given set of facts. Respondent contends that the issue in this case is “whether the information contained in the petition sheets complied with the mandatory requirements of the Illinois Election Code.” Respondent asserts that we should therefore reverse the Board’s decision only if it was clearly erroneous.

¶ 16 Petitioners contend, however, that “office naming” cases present a question of law to be reviewed *de novo*. Petitioners assert that there were no extrinsic factual issues presented before the Board, and there were no witnesses or affidavits presented. Petitioners contend that the issue before us is, therefore, a purely legal question.

¶ 17 We agree with petitioners that the appropriate standard of review to be applied in this case is *de novo*. Here, there is no dispute as to the facts, and the only question is whether the governing legal provisions were correctly interpreted by the Board. In essence, the question is whether petitioners' nominating petitions meet the requirements of the Election Code. Such a question presents a question of law, which we review *de novo*. *Salgado v. Marquez*, 356 Ill. App. 3d 1072, 1075 (2005).

¶ 18 **B. Illinois Public Policy for Ballot Access**

¶ 19 At the outset, we recognize that it is the policy of this state to provide ballot access for candidates running for public office in order to allow citizens a vote. *Carlasare v. Will County Officers Electoral Board*, 2012 IL App (3d) 120699, ¶ 19 (citing *Wisnasky-Bettorf v. Pierce*, 2012 IL 111253, ¶ 22). As such, ballot access is a substantial right that should not be lightly denied. *Siegel v. Lake County Officers Electoral Board*, 385 Ill. App. 3d 452, 460 (2008) (citing *Nader v. Illinois State Board of Elections*, 354 Ill. App. 3d 335, 345 (2004)). "A minor error in a candidate's nominating papers should not result in a candidate's removal from the ballot." *Siegel*, 385 Ill. App. 3d at 461. Where the minor error does not violate the legislative intent to guarantee a free and honest election, a candidate's substantial compliance with the Election Code has been found to be sufficient to prevent the removal of the candidate's name from the ballot. *Id.* (citing *Reynolds v. Champaign County Officers Electoral Board*, 379 Ill. App. 3d 423, 425 (2008) (citing *Madden v. Schumann*, 105 Ill. App. 3d 900, 903-04 (1982))).

¶ 20 **C. Petitioners Nominating Petitions Comply with the Election Code and Illinois Municipal Code**

¶ 21 With these principles in mind, we will address respondent's contentions on appeal. Respondent contends that petitioners failed to comply with section 10-4 of the Election Code.

Respondent asserts that designating the office sought solely as “Trustee” had a high probability of confusing and deceiving voters who signed the nominating petitions. Respondent points out there are three “trustee” offices on the ballot for the April 2, 2019, Consolidated Election, village trustee, library trustee, and member of the Orland Fire Protection District Board of Trustees. Respondent contends that petitioners’ failure to specify which trustee office they sought invalidates their nominating papers and frustrates the requirement that candidates establish support from eligible voters.

¶ 22 Section 10-4 of the Election Code provides that petitions for nomination shall contain “an appropriate heading, giving the information as to name of candidate or candidates in whose behalf such petition is signed; the office; the party; place of residence; and such other information or wording as required to make same valid.” 10 ILCS 5/10-4 (West 2016). Respondent contends that the nominating petition here fails to give information as to the office because it incorrectly labels the office sought as “Trustee” rather than “Village Trustee” or “Trustee for the Village of Orland Park.” We find respondent’s argument unpersuasive.

¶ 23 The election of village and incorporated town officers is governed by the Illinois Municipal Code in conjunction with the Election Code. 65 ILCS 5/1-1-1 *et seq.* (West 2016). Section 3.1-25-5 of the Illinois Municipal Code defines the term of office for village trustees and provides:

“Trustees; terms. In each village incorporated under this Code, the electors of the village shall elect 6 trustees. The term of office of the trustees shall be 4 years and until their successors are elected and have qualified. Trustees elected at the first election for village officers after a village is incorporated, however, shall by lot designate one-half of

their number, whose terms shall be 2 years and until their successors are elected and have qualified.” 65 ILCS 5/3.1-25-5 (West 2016).

Thus, section 3.1-25-5 refers to the position simply as “trustee” and not any other designation as respondent asserts. In fact, the office petitioners seek in this case is consistently referred to throughout the Illinois Municipal Code simply as “trustee.” See, *e.g.*, 65 ILCS 5/3.1-25-10, 5/3.1-25-80 (West 2016).

¶ 24 In contrast, the position of “library trustee” is governed by the Illinois Local Library Act. 75 ILCS 5/1-0.1 *et seq.* (West 2016). Section 4-3.3 of the Illinois Local Library Act provides that “[n]ominations for the position of *library trustee* including the first board of library trustees shall be by petition ***.” (Emphasis added.) 75 ILCS 5/4-3.3 (West 2016). That section thus specifically designates the office as “library trustee,” rather than simply “trustee.” Respondent attached to his Objector’s Petition an example of a candidate’s nominating petition for library trustee. On that petition, Charles McShane, a candidate for library trustee in Orland Park, identified the office sought as “Library Trustee Orland Park Public Library Full Term.” The petition also indicated that it is “Nonpartisan” and thus the candidate did not identify a political party.

¶ 25 Similar to the position of library trustee, the position of member of the Board of Trustees of the Orland Fire Protection District has distinct characteristics that distinguish it from the position of trustee of the Village of Orland Park. The Fire Protection District Act (70 ILCS 705/0.01 (West 2016)) creates fire protection districts and confers upon those districts powers to provide fire protection and prevention. 70 ILCS 705/1 (West 2016). As petitioner points out, these fire protection districts may not be coterminous with the villages or counties they encompass. 70 ILCS 705/1 (West 2016); see also, *Gaffney v. Board of Trustees of Orland Fire*

Protection District, 2012 IL 110012. Thus, a candidate seeking a position on the Board of Trustees for the Orland Fire Protection District would specifically designate this district on their nominating papers rather than the Village of Orland Park. In fact, respondent attached an example of such nominating papers to his Objector's Petition. The Statement of Candidacy for Jayne Ellen Schirmacher, a candidate for the Board of Trustees of the Orland Fire Protection District, designated the office as "Board of Trustees Members (Full Term)" and the "District" as the "Orland Fire Protection District Cook County, Illinois." This is a separate and distinct area from the Village of Orland Park. Like library trustee, this position is also non-partisan and, thus, the candidate did not list a political party.

¶ 26 The nominating petitions at issue here are clearly distinct from the examples attached to respondent's Objector's Petition and show that there is no legitimate basis for confusion as the Board found. In the preamble of their nominating petitions, the petitioners indicated their intention to form a new political party, the People Over Politics Party, in the Village of Orland Park. The preamble further indicated that the "following named persons shall be candidates for the offices hereinafter specified" for the April 2, 2019, consolidated election. Each petitioner then listed their name and designated the office sought as "Trustee." Thus, petitioners' nominating petitions clearly show that they are seeking the office of Trustee in the Village of Orland Park.

¶ 27 It is clear from their nominating petitions that petitioners were not seeking the office of library trustee because they did not specifically name the office sought as library trustee as that office is identified in the Illinois Local Library Act. Similarly, it is clear that petitioners were not seeking a position on the Board of Trustees for the Orland Fire Protection District because they clearly indicated the "district" as Village of Orland Park, rather than the Orland Fire Protection

District, which is a distinct entity with distinct boundaries. Furthermore, as discussed, both the office of Library Trustee and Board of Trustees Member of the Orland Fire Protection District are nonpartisan offices, and thus candidates for those offices do not list political parties on their nominating petitions. Here, by contrast, petitioners clearly indicated their intent to form and affiliate with the People Over Politics Party.

¶ 28 Nonetheless, respondent contends that the Board's decision is supported by this court's rulings in *Heabler v. Municipal Officers Electoral Board of Village of Lakemoor*, 338 Ill. App. 3d 1059 (2003) and *Salgado v. Marquez*, 356 Ill. App. 3d 1072 (2005). Respondent contends that these cases illustrate that where a candidate misnames an office on their nominating papers, the candidate should be removed from the ballot where the misnaming causes confusion among the voters as to which office the candidate is seeking. Petitioners contend, however, that these cases actually support their position and show that the nominating petition here did not create a legitimate basis for confusion.

¶ 29 Both *Heabler* and *Salgado* rely in part on the supreme court's decision in *Lewis v. Dunne*, 63 Ill. 2d 48 (1976). In *Lewis*, the candidate sought nomination as the Democratic candidate for the office of judge of the Appellate Court in the First Judicial District. *Id.* at 50. On the candidate's nominating petitions, he described the office sought as "Judge of the Appellate Court of Illinois, First Judicial District, to fill the vacancy created by the retirement of the Honorable Robert E. English." *Id.* at 50-51. On his statement of candidacy, however, the candidate described the office as "Judge of the Appellate Court of Illinois, First Judicial District," without indicating the particular vacancy he sought to fill. *Id.* at 51. Reversing the decision of the Board, the supreme court determined that the candidate's failure to specify the vacancy in his statement of candidacy did not render his nominating papers invalid. *Id.* at 54.

The court found that “[t]here was no conflict or inconsistency between the description of the office in the petitions signed by electors and the statement of candidacy, and in our opinion there was no basis for confusion as to the office for which the nominating papers were filed.” *Id.*

¶ 30 Relying on the “no basis for confusion” language from *Lewis*, this court in *Heabler* found that where a candidate fails to specifically identify the office sought on any of his nominating papers, the candidate’s nominating papers create a basis for confusion as to the office for which the nominating papers were filed. *Heabler*, 338 Ill. App. 3d at 1062-63. In *Heabler*, at the consolidated election, there were two different types of trustee offices to be filled. *Id.* at 1060. One office was a full-term trustee office with a four-year term and the second office was a two-year term created by a vacancy. *Id.* On his nominating papers, the candidate identified the office sought solely as “trustee,” without specifying whether he sought the full, four-year term, or the two-year term. *Id.* Relying on *Lewis*, the *Heabler* court found that “a candidate must make clear the office that he seeks somewhere in his nominating papers.” *Id.* at 1063. The *Heabler* court determined that the candidate failed to do so and as a result it was not clear from the nominating papers which position the candidate intended to run for. *Id.* Accordingly, the court found that the candidate’s nominating papers were invalid. *Id.*

¶ 31 Similarly, in *Salgado*, the candidate sought to run for the office of alderman for the second ward of the City of Aurora. *Salgado*, 356 Ill. App. 3d at 1073. However, none of the candidates nominating petitions contained any indication of which office the candidate sought. *Id.* at 1074. Only his statement of candidacy listed the correct office. *Id.* During this election, voters would be voting for mayor, alderman of the second ward, and alderman at large. *Id.* at 1078. In evaluating the candidate’s nominating papers, the court determined that *Lewis* set forth two requirements for determining whether a candidate had complied with the Election Code. *Id.*

at 1079. “First, the nominating papers as a whole must not create a basis for confusion as to the office sought. Second, the purpose of the nominating papers that contains the incorrect office must not have been frustrated because of the error.” *Id.* at 1079 (citing *Lewis*, 63 Ill. 2d at 52-53). The *Salgado* court determined that the first requirement had been satisfied because there was no inconsistency in the nominating papers. *Id.*

¶ 32 With regard to the second requirement, the court stated that the purpose of the nominating petitions is to limit the electoral process to candidates who have “demonstrated initiative and at least a minimal appeal to eligible voters.” *Id.* The court determined that the petitions in this case demonstrated initiative because of the signatures obtained, but the purpose of the petitions had been frustrated because the nominating petitions did not list an office. *Id.* In the court’s opinion, “the minimal appeal shown by nominating petitions can be demonstrated only by reference to a particular type of office.” *Id.* The court determined that because the candidate failed to list the office on his nominating petition, the “voters were completely unaware” of which office the candidate sought. *Id.* Accordingly, the court found that the candidate’s nominating papers were invalid. *Id.*

¶ 33 Respondent contends that these cases demonstrate that petitioners’ nominating petitions in this case caused confusion among the voters and frustrated the purpose of establishing support from eligible voters. Respondent asserts that the instant case is “more extreme” than *Heabler* because here the petitioners omitted any specific description of the office sought. Respondent also asserts that, as in *Salgado*, voters signing petitioners’ nominating petitions would be unable to discern the specific office the petitioners’ sought, which frustrates the purpose of the nominating petitions.

¶ 34 Despite respondent's contentions, we find the case at bar easily distinguishable from *Heabler* and *Salgado*. As discussed, *supra*, it is clear from the information included on petitioners' nominating petitions that they were seeking the office of Trustee in the Village of Orland Park. This matches the information contained on petitioners' Statements of Candidacy, which indicated that they were seeking of the office of "Trustee, Village of Orland Park." In *Heabler*, eligible voters signing the nominating petitions at issue would be unable to discern whether the candidate sought the four-year term of office or the two-year office. Similarly, in *Salgado*, eligible voters signing the nominating petitions would be unable to discern which of the three offices available for election the candidate sought. Here, as discussed, petitioners' nominating papers clearly indicate that there was only one possible vacancy they sought. There is only one trustee office in the Village of Orland Park at the April 2, 2019, consolidated election and the nominating petitions did not list the office sought as "Library Trustee," nor did they list the district as the Orland Fire Protection District. "If nominating papers describe only one possible vacancy in that district, then there is no basis for confusion." *Pascente v. County Officers Electoral Board of County of Cook*, 373 Ill. App. 3d 871, 874 (2007).

¶ 35 Similarly, petitioners' nominating petitions did not frustrate the purpose of the nominating petitions. Unlike the nominating petitions in *Salgado*, petitioners nominating petitions here did list an office, and, as discussed the office listed could refer to only one vacancy in the April 2, 2019, consolidated election. Thus, eligible voters signing the petitions would not be "completely unaware" of which office petitioners sought as the court found in *Salgado*. Accordingly, we find that petitioners' nomination papers do not create a legitimate basis for confusion and do not frustrate the purpose of the Election Code.

¶ 36 We further find respondent's reliance on decisions from foreign jurisdictions unpersuasive. First, we find it unnecessary to rely on the persuasive authority of foreign jurisdictions where Illinois precedent is already well-established on the issue at hand. Secondly, as discussed, *supra*, Illinois has a strong public policy in favor of providing ballot access. Even assuming a defect in petitioners' nominating papers, petitioners' substantial compliance with the Election Code is sufficient to prevent their removal from the ballot. *Siegel*, 385 Ill. App. 3d at 461. Here, we find that petitioners have at the very least substantially complied with the Election Code and the Illinois Municipal Code, and, therefore, should not be removed from the ballot for the April 2, 2019, consolidated election as the Board found. In light of the foregoing, we find that petitioners' nominating papers are valid and we affirm the judgment of the circuit court reversing the Board's decision.

¶ 37

III. CONCLUSION

¶ 38 For the reasons stated, we affirm the judgment of the circuit court of Cook County.

¶ 39 Affirmed.