2019 IL App (2d) 190071-U
Nos. 2-19-0071 & 2-19-0076 cons.
Order filed February 22, 2019

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

JOSE A. GUZMAN, Petitioner-Appellee, v. MUNICIPAL OFFICERS ELECTORAL BOARD OF THE CITY OF WAUKEGAN, SAM CUNNINGHAM, Chairman, LARRY TENPAS and JANET KILKELLY, as Members of the Municipal Officers Electoral Board, and JANET KILKELLY, as City Clerk, Respondents-Appellants (Antonio Campos, objector, and Office of the County Clerk, Lake County, Illinois, as Election Authority, Respondents).	)	Appeal from the Circuit Court of Lake County. No. 18-MR-1506 Honorable David P. Brodsky, Judge, Presiding.

JOSE A. GUZMAN, Petitioner-Appellee, v. ANTONIO CAMPOS, Respondent-Appellant	)	Appeal from the Circuit Court of Lake County. No. 18-MR-1506

(Municipal Officers Electoral Board of the City of Waukegan, Sam Cunningham, Chairman, Larry TenPas, and Janet Kilkelly, as Members of the Municipal Officers Electoral Board, and Janet Kilkelly, as City Clerk, Respondents).	)	Honorable David P. Brodsky, Judge, Presiding.

JUSTICE HUDSON delivered the judgment of the court.
Justices McLaren and Jorgensen concurred in the judgment.

ORDER

¶ 1 *Held*: (1) Electoral board's appeal would be dismissed for lack of standing; but (2) objector had standing to prosecute appeal; and (3) judgment of the trial court would be reversed and decision of electoral board ordering that candidate's name not be printed on the official ballot for the February 26, 2019, consolidated primary election would be affirmed because the electoral board's finding that candidate did not substantially comply with section 7-10 of the Election Code (10 ILCS 5/7-10 (West 2016)) in that, prior to filing his nominating papers with the city clerk, he failed to place the papers in a pile and fasten them together at one edge in a secure and suitable manner, was not against the manifest weight of the evidence.

¶ 2 I. INTRODUCTION

¶ 3 Respondent, Antonio Campos, filed a written objection to the nominating papers of petitioner, Jose A. Guzman, a Democratic candidate for the office of alderman for the second ward of the City of Waukegan. In his objection, Campos alleged that Guzman's nominating papers were invalid because they were not "securely fastened together" in accordance with state law prior to being filed with the city clerk. Following a hearing, the Municipal Officers Electoral Board of the City of Waukegan (Board) unanimously sustained Campos's objection, declared Guzman's nominating papers invalid, and ordered that Guzman's name not be printed on the official ballot for the February 26, 2019, consolidated primary election. See 10 ILCS 5/7-10 (West 2016). Thereafter, Guzman sought judicial review.

¶ 4 The circuit court of Lake County reversed the Board's decision and ordered that Guzman's name be placed on the ballot. Campos and the Board filed separate appeals from the circuit court's decision. Guzman filed a motion to dismiss the Board's appeal for lack of standing. We consolidated the appeals for review, allowed an expedited appeal pursuant to Illinois Supreme Court Rule 311(b) (eff. July 1, 2018), and ordered Guzman's motion taken with the case. We now grant Guzman's motion to dismiss the Board's appeal, reverse the judgment of the circuit court, and affirm the decision of the Board which sustained Campos's objection, declared Guzman's nominating papers invalid, and ordered that Guzman's name not be printed on the official ballot for the February 26, 2019, consolidated primary election.

¶ 5 II. BACKGROUND

¶ 6 On or about November 19, 2018, Guzman caused to be filed with the office of the city clerk for the City of Waukegan various documents, including a statement of candidacy, loyalty oath, and five sheets of nominating petitions. Guzman sought his placement on the official Democratic ballot for the February 26, 2019, consolidated primary election as a candidate for nomination to the office of second ward alderman of the City of Waukegan. Ruth Ona, a member of the city clerk's staff, accepted the documents and issued a "Receipt for Filing Nominating Papers." The receipt for filing nominating papers contained check boxes to indicate the types of documents received. Among the boxes checked on the receipt for filing nominating papers issued in conjunction with Guzman's candidacy was one labeled "Binding of petition packet: attach picture."

¶ 7 On December 3, 2018, Campos filed a written petition objecting to Guzman's nominating papers. In his petition, Campos asserted that pursuant to state law, nominating papers must be "neatly fastened together in a secure manner" prior to being filed. Campos alleged that

Guzman's nominating papers were "invalid in their entirety" because they "were not securely fastened together prior to being filed with the Clerk, but rather the Nomination Papers were loosely submitted, unfastened and placed in a folder when presented to the Clerk, in violation of the Election Code." On December 4, 2018, the Board served a notice of hearing to various individuals, including Guzman and Campos.

¶ 8 On December 7, 2018, the Board convened a hearing on Campos's petition. At that time, the Board consisted of the following three officials from the City of Waukegan: (1) Mayor Sam Cunningham (serving as the chairman of the Board); (2) Senior Alderman Larry TenPas; and (3) City Clerk Janet Kilkelly. Campos did not personally attend the proceeding but was represented by counsel, Kevin Morphew, who filed an appearance on Campos's behalf pursuant to the Board's rules. See 2018 Rules of the Municipal Officers Electoral Board for the City of Waukegan, R. 1 (providing that a candidate or objector may appear before the Board in person or by a licensed attorney). Guzman appeared *pro se*. Among the other individuals present at the hearing were Robert Long (corporation counsel for the City of Waukegan) and Guzman's father.

¶ 9 At the commencement of the hearing, Morphew asked how the hearing would proceed "procedurally." Long informed the parties that they had the option of proceeding "on the briefs" or "through testimony and argument." Morphew indicated that he was prepared to argue. Before Morphew could proceed, Guzman moved to dismiss the objection petition on the basis that the hearing violated his right to face his accuser under the sixth amendment to the United States Constitution (U.S. Const., amend. VI) since Campos was not physically present, but opted to appear through counsel. Morphew responded that the Board's rules allow an objector to make an appearance through counsel and that, in any event, the sixth amendment applies only to criminal cases. Guzman declined the Board's offer to brief the sixth amendment issue or file any

case law in support of his position. The Board deferred ruling on Guzman's motion until after the parties presented their cases-in-chief.

¶ 10 Morphew then argued in support of the objection petition. Morphew noted that section 7-10 of the Election Code (10 ILCS 5/7-10 (West 2016)) states that, before being filed, nominating papers "shall be neatly fastened together in book form by placing the sheets in a pile and fastening them together one inch [*sic*] in a secure and simple manner." Morphew argued that the provisions of the Election Code are mandatory and a candidate's failure to "securely bound [*sic*] and fasten petition sheets together in book form invalidates the[] nominating petitions in their entirety." Morphew then sought to admit into evidence Guzman's "nominating petitions" as Exhibit A.[1] Guzman objected to the admission of Exhibit A, repeatedly citing his sixth amendment right to face his accuser. Over Guzman's objection, the Board received Exhibit A into evidence. Morphew maintained that a review of Guzman's nominating papers showed that they were "not bound securely" or "fastened in any form." As a result, Morphew asserted that the papers were "certainly not in compliance with the Election Code" and were therefore "invalid in their entirety." Morphew concluded that since Guzman failed to comply with a mandatory provision of the Election Code, Campos's objection should be sustained and Guzman's name should not appear on the ballot.

[1] The exact composition of Exhibit A is not entirely clear from the record. Campos represents that Exhibit A consists of the nominating papers, receipt for filing nominating papers, and photographs of the nominating packet. Guzman asserts that Exhibit A consists only of the nominating papers, but admits that the Board's "official" file also contains the receipt for filing nominating papers and photographs of the nominating packet.

¶ 11 The Board then asked Guzman if he wished to speak. Guzman responded, "I cannot say anything because my accuser is not here." Guzman then reiterated his request to dismiss Campos's petition on sixth-amendment grounds. Long noted that the Board had taken Guzman's motion with the case and asked Guzman whether he wished to respond to Morphew's argument "about the receipt of the filing of [his] papers." Guzman stated:

> "[Morphew] was not there at the time that those papers were filed. There is no way to rebuttal [*sic*] him because he was not there. He was hired by a Plaintiff. There is no way to go over this. And there is no way to rebuttal [*sic*] this statement because he was not there. He was hired for a purpose. That's it. Nothing else. That's it."

The Board then asked Guzman if he had concluded his argument. Guzman responded in the affirmative.

¶ 12 The Board deliberated in public. At the beginning of the deliberations, Guzman asked whether the hearing was "moving forward." The Board responded in the affirmative, noting that the proofs had closed. Long advised the Board that the law cited by Morphew was "accurate" and that the Election Code requires nominating papers to be bound "in some meaningful fashion typically through staples, binder clips, [or] physical fastening." Long also advised that the clerk is statutorily required to accept nominating papers "in whatever form they are handed to *** her" and that the clerk in this case "maintained that file in the same condition that it was handed to *** her and preserved [it] for the record." Long stated that the documents Guzman tendered to the city clerk's office consisted of "loose papers put inside of a purple folder" with "no other form of fastening that is apparent when you look at the documents." Following further deliberations, the Board unanimously overruled Guzman's motion to dismiss the objection petition on sixth amendment grounds. The Board also unanimously sustained the objection

petition and ordered that Guzman's name not appear on the ballot of the February 26, 2019, consolidated primary election. Long announced that the Board would reconvene at a later date to sign a formal order.

¶ 13 On December 13, 2018, Guzman filed a "Motion to Reopen Proofs and Reconsider." In the motion, Guzman complained that Campos did not personally appear at the hearing. Guzman also insisted that when his nominating papers were filed, they were "neatly and securely fastened together with a paperclip." Attached to the motion was an affidavit from Guzman's father. In the affidavit, Guzman's father stated that he filed Guzman's nominating papers with the city clerk's office. Guzman's father further stated that when he delivered the nominating papers, they "were in a purple folder" and "fastened securely with a paper clip which held the papers in order," but that Ona "took the nomination papers out of the purple folder and removed the paper clip" to review and stamp the documents. Guzman's father also stated that Ona "did not refasten the clip securely on the papers." Guzman's father stated that he did not observe Ona or any other member of the city clerk's staff take a picture of the nominating papers.

¶ 14 On December 19, 2018, the Board entered its written decision sustaining the objection petition. The Board rejected Guzman's motion to dismiss Campos's petition on sixth amendment grounds (U.S. Const., amend. VI). The Board reasoned that the protections provided by the sixth amendment apply only to criminal proceedings and, in any event, Guzman failed to show how he was prejudiced by proceeding in Campos's absence. Regarding the merits of the petition, the Board noted that under section 7-10 of the Election Code (10 ILCS 5/7-10 (West 2016)), nomination papers are required to be "neatly fastened together in book form, by placing the sheets in a pile and fastening them together at one edge in a secure and suitable manner." Based upon a review of the nominating papers admitted into evidence as well as a photograph of

the nominating papers taken at the time they were filed with the city clerk's office, the Board concluded that the documents "both clearly show that the papers were placed, unbound, in a purple folder, and were not held together by any means of binding." Accordingly, the Board sustained Campos's objection, declared Guzman's nominating papers invalid, and ordered that Guzman's name shall not be printed on the official ballot for the February 26, 2019, consolidated primary election.

¶ 15 Also on December 19, 2018, the Board denied Guzman's "Motion to Reopen Proofs and Reconsider." The Board noted that the allowable grounds for motions to reconsider or reopen proofs are extremely narrow. See *Stringer v. Packaging Corporation of America*, 351 Ill. App. 3d 1135 (2004). The Board determined that Guzman was provided the opportunity to present evidence or testimony to rebut Campos's arguments, but declined to do so. The Board also determined that none of the claims Guzman wished to raise were new or would have required evidence that was unavailable to him at the time of the hearing. The Board pointed out, for instance that Guzman's father was present at the December 7, 2018, hearing, but Guzman did not call him to testify. Moreover, Guzman himself did not testify beyond making a claim of a violation of his sixth amendment right to confront his accuser. Regardless, the Board concluded that it had no jurisdiction to hear Guzman's post-hearing motion because its statutory authority is explicitly limited to ascertaining whether a candidate's nominating papers complied with the governing provisions of the Election Code and the Election Code does not provide any mechanism for the Board to reopen and reconsider the case after a decision has been reached. As such, the Board determined that Guzman's sole recourse was an appeal to the circuit court.

¶ 16 On December 21, 2018, Guzman (represented by an attorney) filed a petition for judicial review in the circuit court of Lake County. Guzman named as respondents the Board, its

individual members (Cunningham, TenPas, and Kilkelly), Kilkelly in her capacity as city clerk, Campos, and the Office of the County Clerk of Lake County. In the memorandum in support of his petition, Guzman argued that the Board's decision should be reversed because it is unsupported by competent evidence and is against the manifest weight of the evidence. Guzman also suggested that Kilkelly should not have served on the Board because she was "5-10 feet away" when Guzman's father presented the nominating papers for filing and the Board deliberated "relying upon evidence or argument pertaining to her office and duties" as city clerk. Campos and the Board argued that Guzman waived the arguments raised in the trial court by failing to raise them at the administrative hearing. They also asserted that the Board's decision was amply supported by the evidence. On January 23, 2019, following a hearing, the trial court reversed the Board's decision. In a written order, the court determined that the Board's findings were "against the manifest weight of evidence and not based upon competent evidence." Accordingly, the court ordered Guzman's name to appear on the ballot for the February 26, 2019, consolidated primary election. In conjunction with its ruling, the court also affirmed the Board's decision denying Guzman's post-hearing motion and concluded that Kilkelly did not have a conflict of interest.

¶ 17 On January 25, 2019, Campos filed a notice of appeal in the circuit court. That same day, the Board and its three members filed a separate notice of appeal. We docketed the Board's appeal as No. 2-19-0071 and Campos's appeal as No. 2-19-0076. Guzman filed a motion to dismiss the Board's appeal for lack of standing, which we took with the case. We subsequently consolidated the appeals for review and because of the imminence of the election and the need for a prompt decision, allowed a request to expedite the appeal pursuant to Illinois Supreme Court Rule 311(b) (eff. July 1, 2018).

¶ 18 III. ANALYSIS

¶ 19 A. Motion to Dismiss

¶ 20 We first address Guzman's motion to dismiss. Guzman acknowledges that Campos may prosecute an appeal from the trial court's decision, but argues that the Board lacks standing and therefore is not a proper appellant. In support of this proposition, Guzman contends that the Board has no interest in the matter capable of protection, it was not aggrieved by the trial court's decision, and allowing the Board to appeal compromises its duty to be impartial. See *Kozenczak v. Du Page County Officer's Electoral Board*, 299 Ill. App. 3d 205 (1998).

¶ 21 The Board responds that its interest in this appeal arises from the specific findings and rulings of the trial court. According to the Board, the trial court determined that it (1) failed to give Guzman a fair opportunity to present his defense and (2) improperly examined the contents of Guzman's nominating papers without supporting testimony from a live witness. The Board contends that the trial court's findings were "widely published in the local news media" and painted the City of Waukegan, the Board, and the members of the Board "in a false light, resulting in public accusations that they were acting out of racially-charged biases and motives." The Board further suggests that resolution of this appeal will provide guidance to electoral boards regarding the disposition of objection petitions.

¶ 22 In *Speck v. Zoning Board of Appeals of the City of Chicago*, 89 Ill. 2d 482, 486-87 (1982), the supreme court addressed whether Chicago's zoning board of appeals had standing to prosecute an appeal from a reversal of its own decision by the trial court. In addressing this issue, the court noted that an administrative agency has only those powers conferred upon it by the legislative enactment creating it. *Speck*, 89 Ill. 2d at 485-86. The court analyzed the powers and responsibilities of the zoning board as set forth in the Chicago zoning ordinance, the

regulation that empowered the zoning board, and concluded that the zoning board was intended to function in an adjudicatory or quasi-judicial capacity. *Speck*, 89 Ill. 2d at 485. In this regard, the court noted that the ordinance authorized the zoning board to conduct hearings, render decisions regarding applications for variances, and decide appeals from orders of the zoning administrator, but did not authorize the zoning board, either expressly or implicitly, to assume the role of an advocate for the purpose of prosecuting an appeal. *Speck*, 89 Ill. 2d at 485. As such, the supreme court held that the zoning board lacked standing to prosecute an appeal from the reversal of its own decision. *Speck*, 89 Ill. 2d at 485-86.

¶ 23 The *Speck* court also rejected the notion that the zoning board had standing to prosecute an appeal because it must be joined as a nominal party defendant in an administrative review action. *Speck*, 89 Ill. 2d at 486. The court reasoned that " 'the right to review a final administrative decision is limited to those parties of record in the proceeding before the administrative agency "whose rights, privileges, or duties are affected by the decision." ' " *Speck*, 89 Ill. 2d at 486 (quoting *222 East Chestnut Street Corp. v. Board of Appeals*, 10 Ill. 2d 130, 135 (1956) (quoting *Winston v. Zoning Board of Appeals*, 407 Ill. 588, 595 (1950))). The court observed that the zoning board was not a party before an administrative agency and it did not contend that it was personally aggrieved by the reversal of its decision. *Speck*, 89 Ill. 2d at 486. The court acknowledged that the zoning board is entrusted with the duty of protecting the public health, safety, and welfare. *Speck*, 89 Ill. 2d at 486. Nevertheless, it held that this responsibility did not authorize the zoning board to act as a representative of the public for the purpose of vindicating its own decision on appeal. *Speck*, 89 Ill. 2d at 486. Indeed, the court determined that in assuming the role of advocate, a zoning board compromises its "required duty of impartiality." *Speck*, 89 Ill. 2d at 486.

¶ 24 After deciding *Speck*, the supreme court acknowledged that its ruling did not foreclose every appeal by an administrative agency seeking review of an adverse court judgment. Notably, in *Braun v. Retirement Board of the Fireman's Annuity & Benefit Fund of Chicago*, 108 Ill. 2d 119, 128 (1985), the supreme court implicitly recognized that a retirement board, unlike a zoning board, has standing to prosecute an appeal from a reversal of its own decision. *Braun*, 108 Ill. 2d at 128. The *Braun* court acknowledged that "under the normal rule *** an administrative agency has no standing to appeal a decision reversing its own decision." *Braun*, 108 Ill. 2d at 128 (citing *Speck*, 89 Ill. 2d 482). The *Braun* court determined, however, that the retirement board at issue was "more than a tribunal" because it had "extensive managerial responsibilities." *Braun*, 108 Ill. 2d at 128; see also *Petrovic v. Department of Employment Security*, 2016 IL 118562, ¶¶ 14-19 (holding that the Board of Review of the Illinois Department of Employment Security had standing to appeal the trial court's judgment reversing its denial of unemployment benefits because the Board of Review's functions were not limited to adjudicatory duties).

¶ 25 Our research has not uncovered any decision from the Illinois Supreme Court specifically addressing the standing of an electoral board to prosecute an appeal from the reversal of its own decision. However, in *Kozenczak*, 299 Ill. App. 3d 205, this court held that an electoral board lacks standing to prosecute an appeal from a reversal of its decision sustaining an objector's petition and striking the candidate's name from the ballot. In support of our holding, we reviewed both *Speck* and *Braun*. We observed that unlike the retirement board in *Braun*, an electoral board does not have extensive managerial responsibilities. *Kozenczak*, 299 Ill. App. 3d at 207. In this regard, we noted that the Election Code only authorizes an electoral board to conduct hearings, administer oaths, subpoena and examine witnesses, subpoena documentary evidence, and pass upon objections to nomination petitions and objections to petitions for the

submission of questions of public policy. *Kozenczak*, 299 Ill. App. 3d at 207 (citing 10 ILCS 5/10-9, 10-10, 28-4 (West 1996)). Thus, we concluded, an electoral board is more akin to the zoning board at issue in *Speck*, in that it "functions 'in an adjudicatory or quasi-judicial capacity.' " *Kozenczak*, 299 Ill. App. 3d at 207 (quoting *Speck*, 89 Ill. 2d at 485-86). Moreover, we determined that allowing an electoral board to assume the role of advocate "would compromise the [electoral board's] required duty of impartiality." *Kozenczak*, 299 Ill. App. 3d at 207. We also observed that the electoral board in *Kozenczak*, like the zoning board in *Speck*, was not a party before an administrative agency and it was not personally aggrieved by the reversal of its decision. *Kozenczak*, 299 Ill. App. 3d at 207. We ultimately dismissed the appeal in *Kozenczak* because, although the objector had standing and filed a joint notice of appeal with the Board, he had not filed an appellant's brief. *Kozenczak*, 299 Ill. App. 3d at 208.

¶ 26 Relying on *Kozenczak*, the court in *Bendell v. Education Officers Electoral Board for School District 148*, 338 Ill. App. 3d 458, 460 (2003), held that an electoral board and its individual members lacked standing to appeal the trial court's reversal of the electoral board's decision. The *Bendell* court, however, did not dismiss the appeal outright because the objector filed a notice of appeal separate and apart from the electoral board and also filed an appellant's brief. *Bendell*, 338 Ill. App. 3d at 461. *But cf. Zurek v. Franklin Park Officers Electoral Board*, 2014 IL App (1st) 142618, ¶¶ 42-58 (allowing electoral board to file a brief and argue its position in the appellate court as a nominal defendant).

¶ 27 Applying the holdings from the foregoing authorities to the facts of this case, we are compelled to hold that the Board lacks standing to prosecute this appeal. As we recognized in *Kozenczak*, while the Election Code permits the Board to function in an adjudicatory or quasi-judicial capacity, the statute does not confer upon the Board "extensive managerial

responsibilities." *Kozenczak*, 299 Ill. App. 3d at 207; see also *Bendell*, 338 Ill. App. 3d at 460-61. Additionally, the Board does not direct us to any provision of the Election Code which expressly or implicitly authorizes the Board to act as an advocate for the purpose of prosecuting an appeal. Indeed, as the courts in *Kozenczak* and *Bendell* observed, allowing the Board to do so would compromise its required duty of impartiality. *Bendell*, 338 Ill. App. 3d at 460; *Kozenczak*, 299 Ill. App. 3d at 207. Further, the Board in this case, like the electoral boards in *Bendell* and *Kozenczak* and the zoning board in *Speck*, was not a party before an administrative agency and it was not personally aggrieved by the reversal of its decision.[2] *Speck*, 89 Ill. 2d at 486; *Bendell*, 338 Ill. App. 3d at 460; *Kozenczak*, 299 Ill. App. 3d at 207. Finally, we point out that unlike the electoral board in *Zurek*, the Board in this case is not a nominal defendant in this court.

[2] As noted, in its response to Guzman's motion to dismiss, the Board alleges that the trial court's ruling and media coverage of the ruling have painted the City of Waukegan, the Board, and the members of the Board "in a false light, resulting in public accusations that they were acting out of racially-charged biases and motives." This is apparently an attempt by the Board to demonstrate that it was aggrieved by the trial court's decision. However, it is not clear from the Board's response whether the cause of the public's alleged perception is the reversal of the Board's decision by the trial court or the Board's underlying decision itself. Although the Board attached a newspaper article about the trial court's decision to its response to the motion to dismiss, we find nothing in the article intimating that the Board's decision was motivated by racial bias. Moreover, the Board does not cite any other evidence supporting its claim that the trial court's ruling and media coverage of it resulted in "public accusations" that it and its members were "acting out of racially-charged biases and motives." Accordingly, we find the Board's suggestion that it was aggrieved unsupported and speculative.

Nevertheless, because Campos filed a separate notice of appeal and his own brief, we find that Campos has standing to prosecute this appeal. *Bendell*, 338 Ill. App. 3d at 461.

¶ 28 B. Board's Decision

¶ 29 Turning to the merits, Campos argues that the Board properly sustained Campos's objection, declared Guzman's nominating papers invalid, and ordered that Guzman's name not be printed on the official ballot for the February 26, 2019, consolidated primary election. Campos's argument is twofold. First, Campos maintains that the arguments Guzman raised in the trial court were waived because he did not present them at the hearing before the Board. Second, Campos contends that the Board's finding that Guzman's nominating papers were not securely fastened was based on competent evidence and therefore was not against the manifest weight of the evidence. Guzman responds that the trial court did not err in reversing the Board's decision because it was not based on competent evidence. Guzman also contends that he was not afforded procedural due process.

¶ 30 The burden of proof in contesting nomination papers lies with the objector. *Daniel v. Daly*, 2015 IL App (1st) 150544, ¶ 28; *Samuelson v. Cook County Officers Electoral Board*, 2012 IL App (1st) 120581, ¶ 39. On appeal, we are required to review the decision of the electoral board rather than the judgment of the trial court. *Samuelson*, 2012 IL App (1st) 120581, ¶ 11; *Jakstas v. Koske*, 352 Ill. App. 3d 861, 863 (2004). The factual findings and credibility determinations of an electoral board are considered *prima facie* true and correct. *Jakstas*, 352 Ill. App. 3d at 863. In examining the electoral board's factual findings, a reviewing court does not reweigh the evidence or substitute its judgment for that of the agency. *Cinkus v. Village of Stickney Municipal Officers Electoral Board*, 228 Ill. 2d 200, 210 (2008). Instead, a reviewing court is limited to ascertaining whether such findings of fact are against the manifest

weight of the evidence. *Cinkus*, 228 Ill. 2d at 210; *Jakstas*, 352 Ill. App. 3d at 863; *Jones v. Dodendorf*, 190 Ill. App. 3d 557, 559 (1989). A decision is against the manifest weight of the evidence only if the opposite conclusion is clearly apparent. *Cinkus*, 228 Ill. 2d at 210. While we give deference to an electoral board's determinations as to the weight of the evidence and the credibility of witnesses, we are not bound by an electoral board's decision on questions of law. *Jakstas*, 352 Ill. App. 3d at 863. As such, we review questions of law, including the interpretation of a statute, *de novo*. *Samuelson*, 2012 IL App (1st) 120581, ¶ 11; *Jakstas*, 352 Ill. App. 3d at 863.

¶ 31 Section 7-10 of the Election Code (10 ILCS 5/7-10 (West 2016)) governs the form of petitions for nominations by political parties. Relevant here, section 7-10 provides:

> "§7-10. Form of petition for nomination. The name of no candidate for nomination *** shall be printed upon the primary ballot unless a petition for nomination has been filed in his behalf as provided in this Article in substantially the following form:
>
> * * *
>
> [Petition] sheets before being filed shall be neatly fastened together in book form, by placing the sheets in a pile and fastening them together at one edge in a secure and suitable manner, and the sheets shall then be numbered consecutively. The sheets shall not be fastened by pasting them together end to end, so as to form a continuous strip or roll." 10 ILCS 5/7-10 (West 2016).

Legislative directives using the word "shall" are generally interpreted to be mandatory. *Jakstas*, 352 Ill. App. 3d at 863; *El-Aboudi v. Thompson*, 293 Ill. App. 3d 191, 193 (1997); *Jones*, 190 Ill. App. 3d at 560. Likewise, if a statute imposes a requirement and specifies the result that will ensue if the requirement is not fulfilled, courts are generally bound to interpret the statute as

mandatory. *Jakstas*, 352 Ill. App. 3d at 863; *El-Aboudi*, 293 Ill. App. 3d at 192; *Jones*, 190 Ill. App. 3d at 560. In this case, section 7-10 provides that petition sheets "shall" be neatly fastened together and expressly states that the failure to do so precludes the candidate's name from being printed upon the primary ballot. Accordingly, the requirement of section 7-10 regarding the fastening of petition sheets is mandatory. *Reynolds v. Champaign County Officers Electoral Board*, 379 Ill. App. 3d 423, 424 (2008); *El-Aboudi*, 293 Ill. App. 3d at 193; see also *Jones*, 190 Ill. App. 3d at 560.

¶ 32 The fact that the requirements of section 7-10 are mandatory, however, does not mean that compliance therewith must be strict. Substantial compliance can satisfy even a mandatory provision of the Election Code. *Jakstas*, 352 Ill. App. 3d at 864. Indeed, application of a substantial-compliance standard is found in the language of the Election Code itself which provides that petitions for nomination must "substantially" conform to the statutory requirements. 10 ILCS 5/7-10 (West 2016); see also *Samuelson*, 2012 IL App (1st) 120581, ¶¶ 24, 29. Nevertheless, case law establishes that a candidate who completely ignores one of the statutory requirements has not substantially complied with the Election Code. *Samuelson*, 2012 IL App (1st) 120581, ¶ 36; *El-Aboudi*, 293 Ill. App. 3d at 193-94; *Jones*, 190 Ill. App. 3d at 561.

¶ 33 In this case, the Board sustained Campos's objection and prohibited Guzman's name from being printed on the ballot, finding that Guzman completely ignored section 7-10's binding requirement. The evidence of record supports the Board's finding. Upon the motion of Campos's attorney, and over Guzman's objection, the Board received into evidence Guzman's "nominating petitions" as Exhibit A.[3] Campos's attorney then argued that a review of the

[3] Guzman did not object to the admission of Exhibit A on the basis of foundation or authenticity. Instead, he objected solely on sixth amendment grounds. With regard to

nominating papers showed that they were "not securely bound" or "fastened in any form." In response, Guzman did not present any evidence to rebut Campos's claim that his nominating papers were submitted without any type of fastener. Rather, he reiterated his request to dismiss Campos's petition on sixth amendment grounds and asserted that Campos's attorney was not present at the time his nominating papers were filed. The Board determined that Guzman's nominating papers and a photograph of Guzman's nominating papers taken at the time the papers were filed "both clearly show that the papers were placed, unbound, in a purple folder, and were not held together by any means of binding." Based on our review of the transcript of the Board hearing and the evidence of record, we cannot say that the Board's finding that Guzman's nominating papers were not fastened in accordance with the statutory requirement was against the manifest weight of the evidence. In this regard we note that the receipt for filing nominating papers reflects that the "binding of petition packet" was photographically documented when the nominating papers were filed. There is no binding visible on the nominating papers in either of the two photographs. The first photograph shows an unbound stack of Guzman's nominating papers placed in one pocket of a two-pocket folder. The second photograph shows an unbound stack of Guzman's nominating papers removed from the folder pocket. The record on appeal before us does not reflect any objection to the admission of the photographs or their authenticity. Accordingly, we have no basis to conclude that a result opposite to that of the Board's is clearly apparent.

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evidentiary objections, specific objections to evidence, based solely on particular grounds, are a waiver of objections to all grounds not specified or relied upon. *Barreto v. Waukegan*, 133 Ill. App. 3d 119, 130 (1985). Thus, by objecting to the admission of Exhibit A solely on sixth amendment grounds, Guzman waived all other grounds not specified in his objection.

¶ 34 Despite the foregoing, Guzman raises various arguments as to why the Board's decision is erroneous. Initially, Guzman complains that he was "taken advantage of" because of his *pro se* status before the Board. However, it is well established that a party who chooses to proceed *pro se* must comply with the same rules and will be held to the same standards as licensed attorneys. *People v. Richardson*, 2011 IL App (4th) 100358, ¶ 12. Thus, Guzman's argument in this regard is not well taken.

¶ 35 Guzman further argues that, despite his *pro se* status, he did articulate concerns as to the lack of evidence presented in support of Campos's objection. We disagree. Although Guzman noted that Campos's attorney was not present at the time his nominating papers were presented to the city clerk's office for filing, he did not seek to enter any evidence into the record or call any witness at the hearing (such as his father or Ona) to contradict Campos's evidence that the nominating papers as filed did not meet the fastening requirement set forth in section 7-10 of the Election Code. Instead, Guzman repeatedly asserted a violation of his right to confront his accuser under the sixth amendment of the United States Constitution. This in no way amounted to a proper argument that the evidence presented by Campos was insufficient to support a finding that Guzman did not substantially comply with section 7-10's fastening requirement.

¶ 36 Guzman next asserts that the receipt for filing nominating papers issued by the clerk's office constitutes conclusive proof that his nominating papers were securely bound because Ona checked the box labeled "Binding of petition packet: attach picture." We disagree. Contrary to Guzman's suggestion, by checking the box indicating that a picture of the "binding of petition packet" was part of his nominating papers, the city clerk employee did not make any legal determination as to whether the nominating papers were securely bound. Indeed, Guzman does not cite any authority that the city clerk staff is authorized to make such a determination. Rather,

the employee checked the box merely to indicate that a photograph of the binding was taken and included in Guzman's nominating packet.

¶ 37 Guzman also claims that the Board did not consider a second photograph of the binding packet even though it was included in the Board's file. It is true that the Board only references a single photograph in its written decision. The Board noted that the nominating paper and a photograph taken at the time Guzman's nominating papers were filed "both clearly show that the [nominating] papers were placed, unbound, in a purple folder, and were not held together by any means of binding." However, as noted above, there is no binding visible on the nominating papers in either of the photographs of record. Nevertheless, Guzman observes that the second photograph shows "a paper clip lying on the upper left of the nominating petitions." While a portion of a paper clip is visible in the second photograph (peeking out from under the nominating papers), other office supplies are also visible in the photographs. The presence of a loose paper clip on a work surface in an office environment such as a city clerk's office is not unusual and, standing alone, does not enable us to conclude that a conclusion opposite to that reached by the Board is clearly apparent.

¶ 38 Even if, as Guzman suggests, his nominating papers were held together by a paper clip, we would still be compelled to affirm the Board's findings. See *Jakstas*, 352 Ill. App. 3d at 865 (noting that a reviewing court may affirm an agency's decision on any basis that appears in the record, even though the grounds may not be the ones relied upon by the agency). Courts have indicated that there may be substantial compliance with the Election Code if the purposes for a statutory requirement are satisfied by the candidate's actions. See, *e.g.*, *Jones*, 190 Ill. App. 3d at 562. The purpose of requiring candidates to securely bind and number the petitions is to prevent tampering, thereby preserving not only the integrity of the petitions submitted, but also the

election process in general. *Girot v. Keith*, 341 Ill. App. 3d 902, 904 (2003), *rev'd on other grounds*, 212 Ill. 2d 372 (2004); *El-Aboudi*, 293 Ill. App. 3d at 194; *Jones*, 190 Ill. App. 3d at 562. In the present case, however, the use of a paper clip itself would not satisfy the statutory purpose for the statute's fastening requirement. As one court has noted, "[b]y its very nature, a paper clip allows the papers it 'fastens' to be pulled apart and rearranged at will, showing no sign of tampering and doing little to assure the continued integrity of the petition package submitted to the electoral official." *Girot*, 341 Ill. App. 3d at 904. Therefore, even if Guzman secured his nominating papers with a paper clip, his effort would not comply with case law requiring the candidate "to securely bind the pages of his petition in a way that would prevent tampering." *Girot*, 341 Ill. App. 3d at 905.

¶ 39 Guzman nevertheless directs us to *Bendell*, 338 Ill. App. 3d 458, which he claims supports his position on the issue of using a paper clip. In *Bendell*, a majority of the court held that the use of a "large paper clip" to secure six to eight pages of the candidate's nominating papers complied with the binding requirement in section 10-4 of the Election Code (10 ILCS 5/10-4 (West 1993) (requiring petition sheets to be "neatly fastened together in book form, by placing the sheets in a pile and fastening them together at one edge in a secure and suitable manner")). *Bendell*, 338 Ill. App. 3d at 464. However, in support of its holding, the *Bendell* court observed that "[t]he uncontroverted evidence is that [the nominating papers] were securely fastened because a member of the Board was *unable to pull them apart without removing the paper clip*." (Emphasis added.) *Bendell*, 338 Ill. App. 3d at 464. Given this evidence, the *Bendell* court concluded that the use of a paper clip in that case "did not interfere with preserving the integrity of the petitions and the election process generally." *Bendell*, 338 Ill. App. 3d at 464. Contrary to Guzman's suggestion, however, the *Bendell* majority did not establish a rule that the

use of a paper clip always satisfies the fastening requirements set forth in the Election Code. Indeed, the *Bendell* court acknowledged that its decision was "fact-specific." *Bendell*, 338 Ill. App. 3d at 464. Here, even assuming a paper clip was used to hold together Guzman's nominating papers, there was no evidence that the paper clip satisfied the fastening requirement of section 7-10 of the Election Code, *i.e.*, that the paper clip was secure enough to prevent tampering and thereby preserve the integrity of the petitions and the election process.

¶ 40 In short, we have found no case law nor has any been called to our attention that the mere use of a paper clip in connection with the filing of a nominating petition complies with the Election Code's fastening requirement. While we are not unsympathetic to appellee Guzman's situation in this case, at the same time we are not at liberty to ignore the provisions of the Election Code.

¶ 41 Lastly, Guzman claims that he was not afforded procedural due process. Campos responds that this argument is not properly before this court because the issue of procedural due process was not raised in either his or the Board's notice of appeal and Guzman did not file an appeal raising a procedural-due-process claim. Regardless of whether this issue has been properly raised, it is without merit. "The essence of procedural due process is meaningful notice and a meaningful opportunity to be heard." *Trettenero v. Police Pension Fund of the City of Aurora*, 333 Ill. App. 3d 792, 799 (2000). In this case, the record discloses that the Board sent Guzman notice of the hearing on December 4, 2018. The record further discloses that Guzman appeared for the hearing and was given ample opportunity to present facts and arguments in support of his position. Under these circumstances, we must reject Guzman's claim that he was not afforded procedural due process.

¶ 42 IV. CONCLUSION

¶ 43 In light of the foregoing, we dismiss the Board's appeal for lack of standing. In addition, given the deference the court is required to accord to the Board's decisions in such matters, we conclude the record contains sufficient evidence to support the Board's determination that Guzman's nominating papers were not fastened in accordance with section 7-10 of the Election Code. Since a conclusion opposite to that reached by the Board is not clearly apparent, we reverse the judgment of the circuit court of Lake County and affirm the decision of the Board finding that Guzman failed to comply with section 7-10 of the Election Code and striking Guzman's name as a candidate for second ward alderman for the City of Waukegan from the ballot for the February 26, 2019, consolidated primary election.

¶ 44 No. 2-19-0071, Appeal Dismissed.

¶ 45 No. 2-19-0076, Circuit Court Judgment Reversed; Board Decision Affirmed.