

STATE BOARD OF ELECTIONS
STATE OF ILLINOIS

1020 South Spring Street, P.O. Box 4187
Springfield, Illinois 62708
217/782-4141 TTY: 217/782-1518
Fax: 217/782-5959

James R. Thompson Center
100 West Randolph, Suite 14-100
Chicago, Illinois 60601
312/814-6440 TTY: 312/814-6431
Fax: 312/814-6485



BOARD MEMBERS
Bryan A. Schneider, Chairman
Wanda L. Rednour, Vice Chairman
Patrick A. Brady
John R. Keith
William M. McGuffage
Albert S. Porter
Jesse R. Smart
Robert J. Walters

EXECUTIVE DIRECTOR
Daniel W. White

AGENDA

STATE BOARD OF ELECTIONS
SPECIAL BOARD MEETING
Sitting as the Duly Authorized
State Officers Electoral Board
Friday, August 6, 2010
2:30 p.m.

James R. Thompson Center
Suite 14-100
Chicago, Illinois
and via videoconference
1020 South Spring Street
Springfield, Illinois

1. Call State Board of Elections to order.
2. Recess as the State Board of Elections and convene as the State Officers Electoral Board.
3. Approval of minutes from the June 11 SOEB meeting.
4. Consideration of subpoena requests in connection with challenges to nominating petitions of Independent and New Political Party candidates;
 - a) *Heffernan, et al. v. The Libertarian Party, et al.*, 10SOEBGE567.
5. Consideration of objections to new party and independent candidate petitions for the November 2, 2010 General Election;
 - a) *Meroni v. Trexler*, 10SOEBGE524;
 - b) *Meroni v. Moore*, 10SOEBGE525;
 - c) *Meroni v. Malan*, 10SOEBGE526;
 - d) *Meroni v. Pauly*, 10SOEBGE527;
 - e) *Meroni v. Hanson*, 10SOEBGE528;
 - f) *Meroni v. Fox*, 10SOEBGE529;
 - g) *Meroni v. Labno*, 10SOEBGE530;
 - h) *Meroni v. Horton*, 10SOEBGE531;
 - i) *Meroni v. White*, 10SOEBGE532;
 - j) *Meroni v. Dunlap*, 10SOEBGE533;
 - k) *Meroni v. Cotton*, 10SOEBGE534;
 - l) *Meroni v. Becker*, 10SOEBGE535;
 - m) *Meroni v. Officer*, 10SOEBGE537;
 - n) *Meroni v. Walls III*, 10SOEBGE538;
 - o) *Meroni v. Dabney*, 10SOEBGE539;
 - p) *Meroni v. Scanlan*, 10SOEBGE540;
 - q) *Meroni v. Czamy*, 10SOEBGE541;
 - r) *Meroni v. Pedersen*, 10SOEBGE542;

- s) *Meroni v. Rutledge*, 10SOEBGE543;
 - t) *Meroni v. Green*, 10SOEBGE544;
 - u) *Meroni v. Pedersen*, 10SOEBGE545;
 - v) *Meroni v. Pedersen*, 10SOEBGE546;
 - w) *Meroni v. Pedersen*, 10SOEBGE547;
 - x) *Meroni v. Pedersen*, 10SOEBGE548;
 - y) *Meroni v. Martin*, 10SOEBGE549;
 - z) *Meroni v. Estill*, 10SOEBGE550;
 - aa) *Meroni v. Pedersen*, 10SOEBGE551;
 - bb) *Meroni v. Pedersen*, 10SOEBGE552;
 - cc) *Meroni v. Boyd Jr.*, 10SOEBGE553.
6. Other business.
 7. Recess as the State Officers Electoral Board until Tuesday, August 17, 2010 at 9:00 a.m. or the call of the Chairman, whichever occurs first.
 8. Reconvene as the State Board of Elections.
 9. Federal District Court Order in *Judge v. Walls* (special election) update.
 9. Other business.
 10. Executive session (if necessary).
 11. Adjourn until Tuesday, August 17, 2010 at 9:00 a.m. or until call of the Chairman, whichever occurs first.

STATE OFFICERS ELECTORAL BOARD

Friday, June 11, 2010

MINUTES

PRESENT: Wanda L. Rednour, Vice Chairman (Springfield)
Patrick A. Brady, Member (arrived at 9:08 a.m.)
John R. Keith, Member
Albert S. Porter, Member
William M. McGuffage, Member
Jesse R. Smart, Member
Robert J. Walters, Member

ABSENT: Bryan A. Schneider, Chairman

ALSO PRESENT: Daniel W. White, Executive Director
Steve Sandvoss, General Counsel
Rupert Borgsmiller, Assistant Executive Director
Darlene Gervase, Administrative Assistant II

In Chairman Schneider's absence, Vice Chairman Rednour called the meeting of the State Officers Electoral Board to order at 10:51 a.m. Members Brady, Keith, Porter, McGuffage, Smart and Walters were present in Chicago; Vice Chairman Rednour was present in Springfield and Member Smart held the Chairman's proxy.

Director White apologized for the close quarters, but no other shared conference rooms were available. He asked everyone to say their names and speak clearly for the benefit of a new court reporter.

The first order of business was to consider the minutes of the May 3rd meeting. With the word "proposed" inserted before the words "Rules of Procedure" in the first line of page 2, Member Keith moved to adopt the minutes as changed. Member Brady seconded the motion which passed unanimously by eight ayes in unison.

General Counsel Sandvoss presented the matter of *Pollard v. Warner*, 10 SOEB GE 10 and noted that Attorney John Fogarty was present for the objector and Attorney Michael Kasper for the candidate. He said an objection was timely filed to the nominating papers of John Warner, a Democratic candidate for the 102nd District for State Representative. The basis of the objection was that petitions were circulated prior to the appointment of the candidate to fill the vacancy in nomination by the Representative Committee and the Resolution was not filed within 60 days of the General Primary Election. A Motion to Dismiss and for Summary Judgment was filed by the Candidate and Objector filed a Response to Motion to Dismiss and for Summary Judgment. Mr. Sandvoss concurred with the recommendation of the hearing officer to dismiss the objection that the April 7 and April 16 Resolutions were filed outside the 60 days in violation of Section 8-17; the objection that the Candidate failed to comply with Section 8-17 should be sustained; and the motion to strike be denied; and the Candidate's name not be placed on the ballot in the General Election. Both parties presented their arguments to the Board. After discussion, Member Smart moved to accept the Recommendations of the Hearing Officer and General Counsel and the name of John Warner not be certified to the ballot and Member Walters seconded the motion. The Motion failed by 4-4 vote with Members Keith, McGuffage, Porter and Vice Chairman Rednour voting no.

An objection, 10 SOEB GE 101, filed by Roger Marquardt to the nominating papers of Victoria Grizzoffi, a Democratic candidate for State Representative from the 89th District was timely filed Mr. Sandvoss said. Objections included: nominating papers were circulated, signed and notarized prior to the 89th Representative District's appointment to fill the vacancy; the resolution to fill the vacancy in nomination showed the candidate was appointed on April 12, and the resolution was filed April 13th; three of the pages were not notarized and three other pages were allegedly signed and notarized on April 30th, several days after the petition were filed with the SBE; the resolution was not filed within 60 days of the General Primary election; a "slating committee" does not legally exist; the headings on each petition sheet are not uniform; and if the petition sheets are defective the total number of valid signatures would be below the statutory minimum. The Candidate filed a Motion to Strike and Dismiss. The General Counsel agreed in part and disagreed in part with the Hearing Officer's recommendations. He agreed that the failure to file the Resolution within 60 days of the Primary election should be overruled and the corresponding Motion to Strike be granted. He disagreed with the second objection because he believes the Resolution and papers filed by the candidate dated April 12th is dispositive of the issue of compliance with 8-17 and recommended this objection be sustained and the corresponding Motion to Strike be denied. In conclusion, for the reasons stated above, Mr. Sandvoss did not concur with the recommendation to overrule the objection that the circulation of the nominating petitions occurred prior to the Candidate being designated by the Representative

Committee. This objection should be sustained and the corresponding Motion to Strike be denied. Further that he concurred with the remaining two recommendations; 1) to overrule the objection to the reference of "slating committee" and 2) the recommendation to overrule the objection to the uniformity of the petition heading. Attorney John Fogarty, Jr., was present for the Objector and Attorneys Michael Kasper and Courtney Nottage were present for the candidate. Messrs. Fogarty and Nottage pled their case to the Board. After consideration and discussion, Member Porter moved that the Candidate's name be certified to the ballot. The motion was seconded by Member McGuffage and failed 3-5 with members Brady, Keith, Smart, Walters & Schneider voting No. Member Brady moved to accept the recommendation of the General Counsel to concur in part and more specific that the petitions were circulated prior to proper time; the nomination did not occur in the proper time frame; the petitions are not uniform and the candidate will not appear on the ballot. Member Smart seconded the motion. The motion failed 4-4 with Members Keith, McGuffage, Porter, and Vice Chairman Rednour voting no.

Although *Kvernes v. Schorfheide*, 10 SOEB GE102, was not yet ripe for decision, the Board reviewed the issuance of *subpoenas*. Lengthy discussion was had among the Board and several questions had been asked to both Andrew Finko, attorney for the objector and Michael Kasper, attorney for the candidate. Member Keith moved to reconsider the vote on the approved subpoena and not act upon that request until the Board receives copies of the proposed subpoena from Attorney Finko and a written response from Attorney Kasper as to specificity in the requested subpoenas and the Board will rule upon the issuance of each requested subpoena based upon those submissions without further oral argument. Member McGuffage seconded the motion which failed 4-4 with Members Brady; Smart, Walters & Chairman Schneider voting no. Member Brady moved that the subpoena request be submitted to the Board with specificity as to which documents and which people are to be subpoenaed, as well as Mr. Kasper's response for the Board's consideration. Member Smart seconded the motion which passed unanimously.

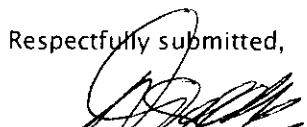
The General Counsel presented *Fowler v. Campbell*, 10 SOEB GE103. Mr. Campbell is a Republican candidate for State Representative from the 118th District. The objection was timely filed. He said that several objections were raised, but a binder check was conducted by staff and determined that the Candidate submitted 427 valid signatures; the minimum number required is 500. Neither party submitted a Rule 9 Motion. Attorney Michael Kasper was present for the objector and Attorney John Fogarty, Jr. for the candidate. Both parties agreed with the findings of the binder check. Member Smart moved to sustain the objection as the candidate has not submitted the minimum number of signatures and the candidate be stricken from the ballot. Member Brady seconded the motion which passed unanimously.

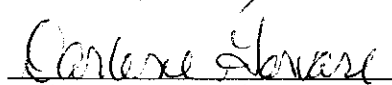
General Counsel Sandvoss presented *Jenkins v. Wojcik* 10 SOEB GE 500 adding that Adam Wojcik is a Republican candidate for State Senator from the 19th district. The objection was timely filed and claimed the petitions contained an insufficient number of valid signatures for a variety of reasons: there is no statement that the signatures were gathered during the permissible circulation period; the Legislative District committee lacked authority to appoint a candidate and did not file a Certificate of Organization; and the vacancy was not filled timely as required by the Election Code. The Candidate filed a Motion to Strike and Dismiss and the Objector filed a response. A binder check was necessary. Attorney Courtney Nottage was present for the objector and Burton Odelson for the candidate. Mr. Sandvoss concurred that the objection should be overruled. He disagreed that Section 10-4 is limited only to new political parties but since the objector failed to submit any evidence, he concurred that this part of the objection be dismissed. As to the Motion to Strike, the only issues left to be decided are: Paragraph 2 should be dismissed; Paragraph 3 should be dismissed as to specificity of the objection; and the remainder of paragraphs 3 and 4 be granted based on the Hearing officer's recommendation. Paragraph 5 should be dismissed and paragraph 7 be dismissed. Both sides presented their pleadings to the Board. After discussion by the Board, Member Brady moved to accept the recommendation of the General Counsel and certify the candidate to the ballot. Member Smart seconded the motion which failed with Members Keith, McGuffage, Porter and Vice Chairman Rednour voting no. Member Keith moved and Member McGuffage seconded a motion to sustain the objection as to lack of affirmation statement that signatures were gathered within 75 days and the candidate not appear on the ballot. The motion failed with Members Brady, Smart, Walters, and Chairman Schneider voting in the negative.

There being nothing further before the Board, Member Keith moved and Member Porter seconded a motion to recess the State Board of Elections to Tuesday, July 6th, at a time to be confirmed by the Chairman or the call of the Chair, whichever occurs first. The motion passed by 8 ayes in unison. The Board adjourned at 1:12 p.m.

DATED: June 16, 2010

Respectfully submitted,


 Daniel W. White, Executive Director


 Darlene Gervase, Administrative Assistant II

LAW OFFICE OF JOHN FOGARTY, JR.
4043 North Ravenswood, Suite #226
Chicago, IL 60613
(773) 549-2647 (phone)
(773) 681-7147 (fax)
fogartyjr@gmail.com

To: Steve Sawdust
From: Phil Krasny
2/7/782-5959

July 23, 2010

Mr. Philip Krasny
Illinois State Board of Elections
100 West Randolph, Suite 14-100
Chicago, Illinois 60601

Re: Heffernan, et al. v. Libertarian Party, et al., 10 SOEB GE 567

Dear Mr. Krasny:

My co-counsel, Brien Sheahan, and I respectfully request the Board's consideration of the enclosed subpoenas. Pursuant to Rule 8 of the Rules of Procedure adopted by the State Officers Electoral Board on July 6, 2010, attached please find copies of two subpoenas the Objector proposes to issue in this matter. The Objector's Petition herein alleges a pattern of fraud and false swearing, in that certain of the circulators of the petitions herein do not actually reside at the addresses listed by them on their circulator affidavit, and that certain circulators have submitted petition sheets with extraordinary numbers of invalid voter signatures. Our proposed subpoenas seek to obtain information that is relevant to these allegations.

The basis for each proposed subpoena is as follows:

1. Darryl Bonner. Mr. Bonner does not reside at 5045 Rose Ave., Long Beach, California, as set forth on in his circulator's affidavit. Rather, the current residents at the Rose Avenue address are Edwilda and Lori Isaac. Mr. Bonner has two Philadelphia, Pennsylvania addresses: 6151 Reach St., Philadelphia, PA, 19111 and P.O. Box 20647, Philadelphia, PA, 19138. This information is substantiated by a private investigator's report, which is attached.

2. Cheryle Forde. Ms. Forde does not reside at the address she has listed on her circulator's affidavit. A preliminary investigation reveals that Ms. Forde has not lived at the address she has listed in her circulator's affidavits since 2007, but rather, now resides at 6151 Reach Street, Philadelphia, PA 19111. This information is substantiated by a private investigator's report, which is attached.

Thank you for your consideration. The Objector respectfully requests the issuance of the aforesaid subpoenas, and respectfully reserves the right to request the issuance of additional discovery requests, should the circumstances call for it, pursuant to Rule 8 of the adopted Rules of Procedure.

Sincerely,

s/ John G. Fogarty, Jr./s

John G. Fogarty, Jr.

cc: Brien Sheahan
Andrew Spiegel

STATE OF ILLINOIS)
)
COUNTY OF Cook) SS.

STATE BOARD OF ELECTIONS SITTING AS THE DULY CONSTITUTED
STATE OFFICERS ELECTORAL BOARD
STATE OF ILLINOIS

IN THE MATTER OF:)
)
Heffernan, et al.,)
 Objectors,)
)
 vs.) No. 10 SOEB GE 567
)
The Libertarian Party, et al.,)
 Candidate.)

To: Darryl Bonner
6151 Reach Street
Philadelphia, PA 19111

SUBPOENA FOR DEPOSITION

YOU ARE HEREBY COMMANDED to appear to give your deposition before a notary public at 4043 N. Ravenswood, Suite 226, Chicago, Illinois, 60613, at 11:00 a.m. on August 10, 2010.

YOU ARE COMMANDED ALSO to bring the following: Any and all documents related to your work for the Libertarian Party of Illinois, or any Candidate affiliated with such party, performed on or before June 18, 2010, including but not limited to the names addresses and telephone numbers of all persons who performed any type of work for the aforesaid person and committee, all payroll records for said persons, copies of all petitions circulated in whole or part, whether filed or not filed, all instruction materials developed, used or given out by you to any circulator or instructor and any and all documents contained in any files in any form of media including all e-mails, and electric documents in your possession or control.

WITNESS, State Officers Electoral Board under authority of Illinois Law.

By: _____
(Seal)

Name: John Fogarty, Jr.
Attorney for: Objector
Atty Registration No.: 6257898
Address: 4043 N. Ravenswood, Suite 226
City: Chicago, IL 60613
Phone: 773-549-2647

PROOF OF SERVICE

I served this Subpoena by handing a copy to _____ on _____.
I paid the witness _____ for witness, mileage, and fees.

Signed and sworn before me
this _____ day of _____, 2010.

Notary Public

STATE OF ILLINOIS)
)
COUNTY OF Cook) SS.

STATE BOARD OF ELECTIONS SITTING AS THE DULY CONSTITUTED
STATE OFFICERS ELECTORAL BOARD
STATE OF ILLINOIS

IN THE MATTER OF:)
)
Heffeman, et al.,)
 Objectors,)
)
 vs.) No. 10 SOEB GE 567
)
The Libertarian Party, et al.,)
 Candidate.)

To: Cheryl Forde
6151 Reach Street
Philadelphia, PA 19111

SUBPOENA FOR DEPOSITION

YOU ARE HEREBY COMMANDED to appear to give your deposition before a notary public at 4043 N. Ravenswood, Suite 226, Chicago, Illinois, 60613, at 11:30 a.m. on August 10, 2010.

YOU ARE COMMANDED ALSO to bring the following: Any and all documents related to your work for the Libertarian Party of Illinois, or any Candidate affiliated with such party, performed on or before June 18, 2010, including but not limited to the names addresses and telephone numbers of all persons who performed any type of work for the aforesaid person and committee, all payroll records for said persons, copies of all petitions circulated in whole or part, whether filed or not filed, all instruction materials developed, used or given out by you to any circulator or instructor and any and all documents contained in any files in any form of media including all e-mails, and electric documents in your possession or control.

WITNESS, State Officers Electoral Board under authority of Illinois Law.

By: _____
(Seal)

Name: John Fogarty, Jr.
Attorney for: Objector
Atty Registration No.: 6257898
Address: 4043 N. Ravenswood, Suite 226
City: Chicago, IL 60613
Phone: 773-549-2647

MICHAEL E. CLANCY

53 W. Jackson Blvd. Suite 1401 • Chicago, IL 60604
mclancy202@comcast.net
(312) 505-7675

DATE: July 13, 2010
SUBJECT: Computer residence verification on Cheryl Forde

The undersigned is a private investigator licensed in the State of Illinois, License No. 115001684. The undersigned investigator's preliminary investigation revealed the following:

Cheryl Forde, date of birth, Sept. 30, 1948 resides at 6151 Reach St., Philadelphia, PA 19111. Ms. Forde also lists P.O. Box 56507 in Philadelphia, PA 19111. Ms. Forde resided at 143 E. Constitution in Smyrna, Delaware until 2007. The investigation revealed Ms. Forde no longer resides at 143 E. Constitution in Smyrna, Delaware.

The investigation continues and additional information will be provided in a subsequent report.

Michael E. Clancy

Michael E. Clancy

MICHAEL E. CLANCY

53 W. Jackson Blvd. Suite 1401 • Chicago, IL 60604
mclancy202@comcast.net
(312) 505-7675

DATE: July 23, 2010
SUBJECT: Computer residence verification on Darryl Bonner

The undersigned is a private investigator licensed in the State of Illinois, License No. 115001684. The undersigned investigator's preliminary investigation revealed the following:

Darryl Bonner does not reside at 5045 Rose Ave., Long Beach, California. The current residents at the Rose Avenue address are Edwilda and Lori Isaac. Mr. Bonner has two Philadelphia, Pennsylvania addresses: 6151 Reach St., Philadelphia, PA, 19111 and P.O. Box 20647, Philadelphia, PA, 19138.

The investigation continues and additional information will be provided in a subsequent report.

Michael E. Clancy

Michael E. Clancy

July 27, 2010

To: Steve

From: Phil

Re: Heffernan v. Libertarian Party 10 SOEB 567

Subpoena request

The Objector has filed a last minute (literally) request for the issuance of a subpoena to take the depositions of two Libertarian Party circulators, Darryl Bonner and Cheryl Forde. In support for issuance of the petition, the Objector sent an accompanying letter which stated, in part, as follows:

The Objector's Petition herein alleges a pattern of fraud and false swearing, in that certain of the circulators of the petitions herein do not actually reside at the addresses listed by them on their circulator affidavit and that certain circulators have submitted petition sheets with extraordinary numbers of invalid voter signatures. Our proposed subpoenas seek to obtain information that is relevant to these allegations.

The basis for each proposed subpoena is as follows:

1. Darryl Bonner. Mr. Bonner does not reside at 5045 Rose Ave., Long Beach, California, as set forth on in [sic] his circulator's affidavit. Rather, the current residents at the Rose Avenue address are Edwilda and Lori Isaac. Mr. Bonner has two Philadelphia, Pennsylvania addresses: 6151 Reach St, Philadelphia, PA, 19111 and P.O. Box 20647, Philadelphia, PA, 19138. This information is substantiated by a private investigator's report, which is attached.

2. Cheryl Forde. Ms. Forde does not reside at the address she has listed on her circulator's affidavit. A preliminary investigation reveals that Ms. Forde has not lived at the address she has listed in her circulator's affidavits since 2007, but rather, now resides at 6151 Reach Street, Philadelphia, PA 19111. This information is substantiated by a private investigator's report which is attached.

On 7/26/10, I e-mailed a request to the candidate/respondent's attorney to file any objection to the issuance of the subpoena by 10:00 am on 7/27/10. No objections were received at the time this recommendation was prepared.

Whether discovery should be allowed is dependent upon the relevance and materiality of the information to be discovered. Similarly, the issuance of a pretrial subpoena requires, among other things, that the documents sought be evidentiary and relevant. (See *People v. Shukovsky* (1988), 128 Ill.2d 210, 225, citing *United States v. Nixon* (1974), 418 U.S. 683, 699-700, 41 L. Ed. 2d 1039, 1059, 94 S. Ct. 3090, 3103; *People ex rel. Fisher v. Carey* (1979), 77 Ill.2d 259, 269.)

The four requirements for issuance of a subpoena, set out in *United States v. Nixon* (1974), 418 U.S. 683, 699-700, 41 L.Ed.2d 1039, 1059, 94 S.Ct. 3090, 3103, include

"(1) that the documents are evidentiary and

relevant; (2) that they are not otherwise procurable reasonably in advance of trial by exercise of due diligence; (3) that the party cannot properly prepare for trial without such production and inspection in advance of trial and that the failure to obtain such inspection may tend unreasonably to delay the trial; and (4) that the application is made in good faith and is not intended as a general 'fishing expedition.'"

Considering that Objector is seeking to establish a "pattern of fraud", the circumstances under which the signatures were gathered have relevance. To the extent that a Objector wants to interview the circulator to determine how the signatures were obtained and the instructions the circulator was provided in gathering the signatures seems to be reasonable request. Accordingly, I would recommend that the subpoena be issued. However, I would narrow the scope to the underlined sections noted below. The remainder seems to be too broad and constitutes a "fishing expedition"

Any and all documents related to your work for the Libertarian Party of Illinois, or any Candidate affiliated with such party, performed on or before June 18, 2010, including but not limited to the names addresses and telephone numbers of all persons who performed any type of work for the aforesaid person and committee, all payroll records for said persons, copies of all petitions circulated in whole or part, whether filed or not filed, all instructions materials developed, used or given out by you to circulator or instructor and any and all documents contained in any filed in any form of media including all e-mails, and electric documents in your possession or control

Additionally, although not raised, there is a question of whether the deponents can be ordered to come to Illinois; using Supreme court rule 203 as guidance, it appears that

Unless otherwise agreed, depositions shall be taken in the county in which the deponent resides or is employed or transacts business in person, or, in the case of a plaintiff-deponent, in the county in which the action is pending. However, the court, in its discretion, may order a party or a person who is currently an officer, director, or employee of a party to appear at a designated place in this State or elsewhere for the purpose of having the deposition taken. The order designating the place of a deposition may impose any terms and conditions that are just, including payment of reasonable expenses.

Further, Supreme Court Rule 208, entitled Fees and Charges states:

(a) Who Shall Pay. The party at whose instance the deposition is taken shall pay the fees of the witness and of

the officer and the charges of the recorder or stenographer for attending. The party at whose request a deposition is transcribed and filed shall pay the charges for transcription and filing. The party at whose request a tape-recorded deposition is filed without having been transcribed shall pay the charges for filing, and if such deposition is subsequently transcribed the party requesting it shall pay the charges for such transcription. If, however, the scope of the examination by any other party exceeds the scope of examination by the party at whose instance the deposition is taken, the fees and charges due to the excess shall be summarily taxed by the court and paid by the other party.

(b) Amount. The officer taking and certifying a deposition is entitled to any fees provided by statute, together with the reasonable and necessary charges for a recorder or stenographer for attending and transcribing the deposition. Every witness attending before the officer is entitled to the fees and mileage allowance provided by statute for witnesses attending courts in this State.

And Rule 204, entitled, "Compelling Appearance of Deponent" states

(a) Action Pending in This State.

(1) *Subpoenas.* Except as provided in paragraph (c) hereof, the clerk of the court shall issue subpoenas on request. The subpoena may command the person to whom it is directed to produce documents or tangible things which constitute or contain evidence relating to any of the matters within the scope of the examination permitted under these rules.

(2) *Service of Subpoenas.* A deponent shall respond to any lawful subpoena of which the deponent has actual knowledge, if payment of the fee and mileage has been tendered. Service of a subpoena by mail may be proved prima facie by a return receipt showing delivery to the deponent or his authorized agent by certified or registered mail at least seven days before the date on which appearance is required and an affidavit showing that the mailing was prepaid and was addressed to the deponent, restricted delivery, return receipt requested, showing to whom, date and address of delivery, with a check or money order for the fee and mileage enclosed.

You may want to address the issue of where the deposition will proceed and who is to pay, since I assume the issues will come up.

**BEFORE THE STATE BOARD OF ELECTIONS
SITTING AS THE STATE OFFICERS ELECTORAL BOARD**

Andrew Heffernan and Steve Nekic,)	
)	
)	
Petitioners-Objectors,)	
)	
-vs-)	No. 10 SOEB GE 567
)	
Libertarian Party of Illinois, and its state slate: Lex Green, Ed Rutledge, Josh Hanson, Bill Malan, James Pauly Julie Fox and its U.S. Senate candidate, Mike Labno,)	
)	
)	
Respondents-Candidates.)	

Objections to Subpoenas

NOW COME the Respondents-Candidates and the Libertarian Party of Illinois (hereinafter "LPI"), by their attorney Andrew B. Spiegel and hereby object to the request for issuance of subpoenas for the reasons set forth in both their Motion to Strike and Dismiss and in their Reply Brief in further support of that motion, both of which are incorporated herein by reference.

In addition, Since both Darryl Bonner and Cheryl Forde reside outside the state of Illinois whether the Board accepts their sworn addresses as verified by the documents submitted with the LPI's submissions, or the addresses the Objectors imagine them to have, they still reside outside the state of Illinois.

Therefore both Circulators are beyond the subpoena power of the courts and of this Board.

As stated in the LPI's submissions, these Objectors cannot be allowed to engage in a fishing expedition, which is what these subpoenas amount to, in a

belated attempt to conjure up specific acts of fraud when they have failed to allege any such acts in a timely fashion in their Objectors' Petition.

Respectfully submitted,

/s/ Andrew B. Spiegel
Candidates' Attorney

Andrew B. Spiegel
15 Spinning Wheel Road, Suite 126
Hinsdale, Illinois 60521
630 325-5557

**BEFORE THE STATE BOARD OF ELECTIONS
SITTING AS THE STATE OFFICERS ELECTORAL BOARD**

Andrew Heffernan and)	
Steve Nekic,)	
)	
Petitioners-Objectors,)	
)	
-vs-)	No. 10 SOEB GE 567
)	
Libertarian Party of Illinois, and its state)	
slate: Lex Green, Ed Rutledge,)	
Josh Hanson, Bill Malan, James Pauly)	
Julie Fox and its U.S. Senate candidate,)	
Mike Labno,)	
)	
Respondents-Candidates.)	

**MOTION TO STRIKE AND DISMISS
THE OBJECTORS' PETITION**

NOW COME the Respondents-Candidates and the Libertarian Party of Illinois, by their attorney Andrew B. Spiegel and moving to strike and dismiss the Objectors' Petition pursuant to Rule 7 of the Rules of Procedure, state as follows:

Introduction

1. There are two objectors included in this Objectors' Petition. They are objecting to the LPI as a "purported new political party" in Illinois. They are also objecting to the LPI state slate: Governor- Lex Green, Lieutenant Governor- Ed Rutledge, Secretary of State- Josh Hanson, Attorney General – Bill Malan and Comptroller- James Pauley. Their objection also includes the LPI U.S. Senate candidate – Mike Labno.

2. In this Motion, the Candidates are challenging the standing of these objectors and the legal sufficiency of their objectors' petition.

Standing

3. The candidates first raise the affirmative defense that **these objectors lack standing to bring this petition**. Any legal voter in the state of Illinois has standing to object to these candidates.

4. A check of the registration status of Andrew Heffernan and Steve Nekic reveals that the former may or may not be registered and the latter does not appear to be registered at the address shown in the objectors' petition. See Candidates' Exhibit 1 A (as to Andrew Heffernan) and 1 B (as to Steve Nekic). Said exhibit is attached hereto and made a part hereof.

5. The Board must order both objectors' to establish their voting registration before anything further proceedings on their objectors' petition. They have no standing to bring it if they are not registered as they claim in that petition.

Number of Signatures

6. The next question is the number of signatures submitted by the LPI. The candidates contend they submitted 48,039 valid signatures. The objectors claim there are 46,749, a substantial difference of 1,290 signatures.

7. The LPI nominating petition contains 20 lines per page. There are 2583 pages (and no dispute about the number of pages). If all lines were filled, the maximum number is 51,660. All lines are not filled and based on the painstaking count by the LPI, the total number of signatures submitted, after taking into account the ones deleted by LPI, is **48,039**.

Objection "F" in Paragraph 12 Must Be Stricken

8. The Category F Objection relates to voters who voted in the partisan General Primary Election on February 2, 2010. The objectors claim that if a voter

cast a vote in that election, that voter cannot then sign a petition to form a new political party for the general election.

9. According to the *Candidate's Guide* 2010, the question is: can a voter sign an established party petition and a new party and/or independent petition? (page 48 of the "Candidate's Guide"). The answer is YES.

10. Under the Election Code, 10 ILCS 5/7-10 and 5/10-3, a voter can sign a candidate's petition prior to the Primary and then subsequently sign a petition for a new party or independent candidate for the general election. That being the case, there is no legal basis for the "F" objection.

11. Any voter who voted in the Primary Election is not precluded by the Election Code from signing the LPI nominating petition for the General Election. Paragraph 12 of the Objectors' Petition alleges such a prohibition and must therefore be stricken.

Objection "E" in Paragraph 11 Must Be Stricken

12. The "E" objection – signed petition twice – is insufficient as a matter of law because it does not specify the sheets or lines at which the duplicate signatures allegedly appear. The Appendix Recapitulation sheets insufficiently describe the specifics for this type of object.

13. The Objectors failed to comply with the requirements of 10 ILCS 5/10-8 because they failed to state fully the nature of the objections to the nominating petitions by failing to reference any page or line numbers on which these objections appear. Paragraph 11 must be stricken.

***Paragraph 14 - Circulator Does Not Reside
at Address Shown Must be Stricken***

14. This objection to Circulator addresses is also insufficient as a matter of law because it does not specify which of the 130 people who circulated LPI petitions it is referring to.

14. The Objectors failed to comply with the requirements of 10 ILCS 5/10-8 because they failed to state fully the nature of the objections to the nominating petitions by failing to reference any page on which these objections appear.

15. Paragraph 14 must be stricken because it is incumbent upon the objectors to fully state the specific objections to the LPI petitions. It is not the duty of the candidates to sort through thousands of pages of appendix recapitulation sheets to see which sheets contain circulator objections if those objections are not specified in the objection itself.

Paragraphs 18 – 19 “Pattern of Fraud” Must be Stricken

16. The objectors attempt to use the “wrong address” allegations as a badge of fraud as well as a basis for the preceding objection. The fact of the matter is that each of the two Circulators actually named in fact reside at the address indicated on their petition sheets.

17. Cheryl Forde is one such circulator. She resides at 143 E. Constitution in Smyrna, Delaware as she stated in her circulator’s affidavit. This is the address on her driver’s license; it is the address on her motor vehicle registration; it is the address where she pays for service to Kent County Sewer operations. Each of these records are attached hereto and made a part hereof as Candidates’ Group Exhibit 2.

18. Since Ms. Forde listed her correct address, paragraph 19(d) must be stricken. It alleges that the listing of her incorrect residence address is indicia of fraud. It cannot be fraudulent for her to list her correct address.

19. The same is true for circulator Anthony Bonds, also alleged to have provided an incorrect address in paragraph 19. Other than the naked allegation that "The address listed by Mr. Bonds as his home address on his circulator affidavit is not in fact his residence," there is no other allegation that the stated address is not in fact the correct address.

20. Mr. Bonds listed 6427 S. Ashland Avenue, Chicago, Illinois as his address. Attached hereto and made parts hereof are his Illinois ID card, a Chase Bank statement, a Foundation for Emergency Services bill and a letter from Harold Washington College, all showing the same address Mr. Bonds stated as his address in his circulator's affidavit. Each of these records is attached hereto and made a part hereof as Candidates' Group Exhibit 3

21. Paragraphs 19(a), which claims Mr. Bonds failed to list his correct address, and paragraph 19(d) regarding Cheryl Forde must be stricken.

22. Other than parroting the language of cases that discuss the pattern of fraud, these objectors fail to allege any specific acts of fraud committed by any LPI circulator. Paragraph 18 sets forth the general principals, but neither it nor paragraph 19 rises to the level of specificity sufficient to put the candidates on notice of what acts of fraud they need to address to defend against these baseless allegations.

23. The other sub-paragraphs of paragraph 19 reference other circulators whose petition sheets contain signatures which these objectors have interposed objections to on the basis that there are "an extraordinarily high rate of improper

signatures.” The other allegation is that “on certain of his sheets nearly every single purported voter is not registered.” Some of the circulators are objected to on both grounds.

24. The Affidavits of each Circulator state that:

...to the best of my knowledge and belief the persons so signing were at the time of signing the petition registered voters...and that their respective residences are correctly stated.

LPI nominating petitions, pages 1-2,583. There are no allegations that any of the circulators engaged in any conduct other than collecting signatures, some of which may – but have not yet been proven to be invalid. Once again, this does not amount to fraud.

25. The objectors very coyly add that their allegation of fraud “is made with specific reference to the petition sheets circulated by *at least* the following individuals for *at least* the following reasons...”. The implication is that there are additional fraudulent acts the objectors will show at some future hearing.

26. The filing deadline for objections was 5:00p.m. on June 28 2010. Once the deadline has passed, the Election Code does not allow parties to file amendments to their objector’s petition and does not authorize an electoral board to raise *sua sponte* objections to nominating petitions. *Siegel v. Lake County Officers Electoral Board*, 385 Ill. App.3d 452, 895 N.E. 2d 69 (2nd Dist., 2008).

27. By failing to allege with specificity any acts of fraud, the objectors have waived that as an issue and cannot now attempt to amend their objectors’ petition with specifics not originally included in their objectors’ petition.

28. Paragraphs 18 and 19 must be stricken.

***The Libertarian Party Must be Stricken
from the Objectors' Petition***

29. The objection process set forth in the Election Code Article 10 is a means by which interested voters can object to candidates. It does not provide a means to strike a political party as an entity in and of itself, unless that party has attempted to adopt one of the *verboden* names prohibited in the Code.

30. The objectors have improperly included in the caption of their objectors petition, the LPI as if it were an actual party to this proceeding. The LPI cannot be a party in these proceedings and must be stricken from the objectors' petition.

Wherefore the Respondents-Candidates and the Libertarian Party of Illinois, by their attorney Andrew B. Spiegel move for entry of an Order that the Objectors' Petition be stricken and dismissed or in the alterative that their objections be overruled and for such other and additional relief as the Board deems just and equitable in the circumstances.

Respectfully submitted,

Andrew B. Spiegel
Candidates' Attorney

Andrew B. Spiegel
15 Spinning Wheel Road, Suite 126
Hinsdale, Illinois 60521
630 325-5557

Am I Registered to Vote in Illinois?
from the State Board of Elections web site

for **Andrew Heffernan:**

Please enter your first name, last name, and ZIP code then click submit to search for your voter registration.

First Name: Andrew
Last Name: Heffernan
Zip Code: 60402

We've found multiple voters with your name and ZIP code. Please enter your birthdate to help us refine our search.

Enter your Date of Birth:

Candidates' Exhibit 1 A

for **Steve Nekić:**

We were unable to locate your voter information. Please contact your local jurisdiction (this is usually your county).

You can also re-enter any of the information below and try to search again.

Please enter your first name, last name, and ZIP code then click submit to search for your voter registration.

First Name: Steve
Last Name: Nekic
Zip Code: 60618

Am I Registered to Vote in Illinois?

We were unable to locate your voter information. Please contact your local jurisdiction (this is usually your county).

You can also re-enter any of the information below and try to search again.
Please enter your first name, last name, and ZIP code then click submit to search for your voter registration.

First Name: Steven
Last Name: Nekic
Zip Code: 60618

Candidates' Exhibit 1 B

**BEFORE THE STATE BOARD OF ELECTIONS
SITTING AS THE STATE OFFICERS ELECTORAL BOARD**

Andrew Heffernan and)	
Steve Nekic,)	
)	
Petitioners-Objectors,)	
)	
-vs-)	No. 10 SOEB GE 567
)	
Libertarian Party of Illinois, and its state)	
slate: Lex Green, Ed Rutledge,)	
Josh Hanson, Bill Malan, James Pauly)	
Julie Fox and its U.S. Senate candidate,)	
Mike Labno,)	
)	
Respondents-Candidates.)	

**Reply Memorandum in Further Support of
MOTION TO STRIKE AND DISMISS
THE OBJECTORS' PETITION**

NOW COME the Respondents-Candidates and the Libertarian Party of Illinois (hereinafter "LPI"), by their attorney Andrew B. Spiegel and in further support of their motion to strike and dismiss all or a portion of the Objectors' Petition pursuant to Rule 7 of the Rules of Procedure, state as follows:

Introduction

1. The Objectors have conceded certain issues raised in the Candidates' Motion to Strike and Dismiss and as to those concessions at a minimum the motion must be granted.

2. Putting this case in context, the Candidates submitted 48,039 signatures on their nominating petitions. There are roughly 26,978 objections; that are not to the number of lines, but an approximate count that is available at this juncture. If it is used as the number of lines objected to, that leaves 21,061 signatures not objected to prior to the records examination.

3. The withdrawal of all "F" objections by the Objector adds approximately 1,250 F only signatures to the number of total valid signatures. It reduces the number of remaining objections to about 25,728 and raises the number of valid signatures to 22,311.

4. These numbers are significant because if the LPI Candidates need to prevail on just 2,689 of those objections, that means LPI needs to prevail on just 10.5% of the remaining objections in order to meet the 25,000 signature requirement. It also means the nominating petitions cannot have an inordinate amount of invalid signatures and that there is no factual or legal basis for the Objector's allegations of a pattern and practice of fraud.

***The Objectors Have No Standing Which Requires
Dismissal of This Objectors' Petition***

5. The candidates have raised the lack of standing of the Objectors as an affirmative defense in their Motion to Strike and Dismiss. It is axiomatic that the Objectors must give their correct names and residence addresses in the Objectors' Petition. This is a mandatory requirement of the Election Code. 10 ILCS 5/10-8; *Pochie v. Cook County Officers Electoral Board*, 289 Ill. App.3^d 585,586 (1st Dist., 1997). Further, ***whether an objector has standing is determined from the face of the petition and not according to what can be found in the records of the election commission. Pochie, Id., at 588.*** Therefore, Exhibit A attached to the Objectors' response, which consists of various records from the election authorities, is irrelevant to a determination of this issue.

6. The sole question is whether the Candidates can determine, from the face of the Objectors' Petition, whether either objector is a registered voter based on the name and address of each objector as it appears in that petition. Clearly this cannot be done and therefore the Objectors' Petition must be stricken.

7. The Objectors now concede that Andrew Heffernan interchangeably uses either Stickney or Berwyn as his town of residence, which makes it impossible to determine, from the face of the petition whether the name and address of this objector relates to a

registered voter. That is the same as not giving a town at all. In addition, based on the name and address on the petition (the Stickney address), the standing of Andrew Heffernan cannot be determined without further investigation. See Candidates' Exhibit 1A from the State Board of Elections voter search site indicating there were multiple voters with that name and zip code.

8. Steve Nekic, the other Objector, is even more problematic. Candidates' Exhibit 1B, shows there is no Steve Nekic registered at the address as shown in the objectors' petition. Stephen Q. Nekic may or may not be the same person as Steve Nekic. This cannot be determined from the face of the Petition and also requires additional investigation. It is this requirement of further investigation that renders Steve Nekic invalid as an objector.

9. Since the status of neither Objector can be determined from the face of the Objectors' petition, the Objectors lack standing to bring this objection *ab initio*. It is irrelevant that they may in fact be the registered voters in Exhibit A of the Objectors' Response. *Pochie v. Cook County Officers Electoral Board*, 289 Ill. App.3rd 585,586 (1st Dist., 1997).

10. There is no valid objector in this objectors' petition. It must therefore be stricken and dismissed with no further inquiry and no records examination.

***The Libertarian Party Must be Stricken
from the Objectors' Petition***

11. Even if the Board finds standing, the Objectors failed to address the question of whether the objection process set forth in the Election Code Article 10 is a means by which they can object to the LPI as well as to its candidates. There is no escaping the fact that Article 10 of the Election Code does not provide a means to strike a political party as an entity in and of itself.

12. The objectors persist in arguing, without any citation of authority, that the LPI is a necessary party to this action. While LPI Candidates are seeking a place on the ballot, the LPI itself is not, and therefore cannot be a party in these proceedings. The LPI must be stricken from the objectors' petition.

Objection "F" in Paragraph 12 Must Be Stricken

13. The objectors also concede the Category F Objection, relating to voters who voted in the partisan General Primary Election on February 2, 2010 is invalid. This paragraph 12 of the Objectors' Petition should be stricken rather than withdrawn.

14. There were about 1,250 "F" only objections and with that objection stricken, (or withdrawn) that number must be added to the number of valid signatures, bringing the total valid signatures, prior to a records examination to about 22,311.

Objection "E" in Paragraph 11 Must Be Stricken

15. The Objectors misapprehend the nature of the motion to strike the Column "E" objection - that the voter signed the petition twice. In most instances where this objection was made, the Appendix Recapitulation sheet fails to list the duplicate sheet and line number of the challenged voter. This failure is a fatal violation of the specificity requirement of §10-8 of the Code.

16. The Objectors failed to comply with the requirements of 10 ILCS 5/10-8 because they failed to state fully the nature of the objections to the nominating petitions by failing to reference any page or line numbers on which these voters appear to have signed twice. Paragraph 11 must be stricken.

Paragraph 14 - Circulator Does Not Reside at Address Shown Must be Stricken

17. This objection to Circulator addresses is also insufficient as a matter of law. It does not specify which of the 130 people who circulated LPI petitions are being objected to; the mere check off box on the Appendix recap sheets is insufficient specification in the

objectors' petition. It also fails to allege some other address where the Objectors claim a particular circulator lives rather than the address they swore to in their Circulator's Affidavit and therefore lacks the specificity required by §10-8.

18. Paragraph 14 must be stricken because it is incumbent upon the objectors to fully state the specific objections to the LPI petitions.

Paragraphs 18 – 19 "Pattern of Fraud" Must be Stricken

19. The Objectors cannot overcome the sworn Circulator Affidavits of Cheryl Forde and Anthony Bonds and the documents submitted relating to their addresses with inconclusive computer searches by and baseless conclusions of their investigator.

20. There has been no showing of "false swearing" in connection with any LPI circulator's affidavit. Instead, the Objectors have made false allegations of incorrect addresses and then attempt to sustain those false allegations with inconclusive hearsay computer searches and conclusions by their investigator based on those inconclusive records.

21. The fact of the matter is that each of the two Circulators at issue in fact resides at the addresses they indicated on their petition sheets. Cheryl Forde resides at 143 E. Constitution in Smyrna, Delaware as she stated in her circulator's affidavit. This is the address on her driver's license; it is the address on her motor vehicle registration; it is the address where she pays for service to Kent County Sewer operations.

22. Each of those records is attached to the Candidates' Motion to Strike and Dismiss as Candidates' Group Exhibit 2. Ms. Forde listed her correct address, and since paragraph 19(d) falsely alleges the listing of her incorrect residence address as indicia of fraud, it must be stricken. It is not fraudulent for her to list her correct address.

23. The same is true for circulator Anthony Bonds. Now we have, in addition to the naked allegation that "The address listed by Mr. Bonds as his home address on his

circulator affidavit is not in fact his residence," the inconclusive computer search by the Investigator – that cannot conclude whether the objectors' allegation is true or correct..

24. Mr. Bonds listed 6427 S. Ashland Avenue, Chicago, Illinois as his address. The Candidates' attached to their Motion, his Illinois ID card, a Chase Bank statement, a Foundation for Emergency Services bill and a letter from Harold Washington College, all showing the same address Mr. Bonds stated as his address in his circulator's affidavit. Each of these records is attached to the Motion as Candidates' Group Exhibit 3.

25. Paragraphs 19(a), which claims Mr. Bonds failed to list his correct address, and paragraph 19(d) regarding Cheryl Forde must be stricken.

26. Objectors cannot simply parrot the language of cases that discuss the pattern of fraud, without alleging specific acts of fraud in the petition that warrant such a finding, if proven, in the case where they allege it. The objectors here have failed to do so. These objectors fail to allege any specific acts of fraud committed by any LPI circulator.

27. Paragraph 18 sets forth the general principals, but neither it nor paragraph 19 rises to the level of specificity sufficient to put the candidates on notice of what acts of fraud they need to address to defend against these baseless allegations.

28. The other sub-paragraphs of paragraph 19 reference other circulators whose petition sheets are alleged to contain signatures which these objectors claim have "an extraordinarily high rate of improper signatures." The other allegation is that "on certain of his/her sheets nearly every single purported voter is not registered." Some of the circulators are objected to on both grounds.

29. The cases in which fraud has been found involve people other than the actual voter signing the voter's name, or someone other than the circulator circulating the petition sheets. None of that is alleged here. Instead, the Objectors' rely on the two most numerous

objections in their objectors' petition, even though the Candidates need to recover less than 11% of the remaining signatures to have this objection overruled on the facts..

30. The Affidavits of each Circulator state that:

...to the best of my knowledge and belief the persons so signing were at the time of signing the petition registered voters...and that their respective residences are correctly stated.

LPI nominating petitions, pages 1-2,583. There are no allegations that any of the challenged circulators engaged in any conduct other than collecting signatures, some of which may – but have not yet been proven to be - invalid. Once again, this does not amount to fraud, especially in a case such as this where the Candidates' need to prevail on so few objections.

31. In addition, the time for filing objections ended at 5:00p.m. on June 28 2010. The Objectors' are now barred from amending their petition. Once the deadline has passed, the Election Code does not allow parties to file amendments to their objector's petition and does not authorize an electoral board to raise *sua sponte* objections to nominating petitions. *Siegel v. Lake County Officers Electoral Board*, 385 Ill. App.3d 452, 895 N.E. 2d 69 (2nd Dist., 2008).

32. The failure to include specific allegations of fraudulent conduct by the filing deadline in their objectors' petition means the Objectors have waived fraudulent conduct as an issue. They cannot now attempt to amend their Objectors' Petition with specifics not originally included in that Petition. The Objectors also cannot be allowed to engage in a fishing expedition, with or without private investigators, to attempt to conjure up specific acts of fraud when they have failed to allege any such acts in a timely fashion.

33. This is the reason paragraphs 18 and 19 must be stricken. The allegations of fraud violate 10-8 of the Code by failing to specify what acts of fraudulent conduct any LPI circulator engaged in – other than the act of collecting signatures in and of itself. The

candidates cannot defend against acts of fraudulent conduct when no such acts have been specified in the Objectors' Petition.

Conclusion

The Respondents-Candidates: Governor- Lex Green, Lieutenant Governor- Ed Rutledge, Secretary of State- Josh Hanson, Attorney General – Bill Maian and Comptroller- James Pauley plus U.S. Senate candidate – Mike Labno and the Libertarian Party of Illinois, by their attorney Andrew B. Spiegel have moved for entry of an Order that all or the portions of the Objectors' Petition specified herein be stricken and dismissed or in the alterative that their objections be overruled and for such other and additional relief as the Board deems just and equitable in the circumstances. That Motion should be granted.

Respectfully submitted,



Andrew B. Spiegel
Candidates' Attorney

Andrew B. Spiegel
15 Spinning Wheel Road, Suite 126
Hinsdale, Illinois 60521
630 325-5557

BEFORE THE STATE BOARD OF ELECTIONS
SITTING AS THE STATE OFFICERS ELECTORAL BOARD

Andrew Heffernan and
Steve Neki,

Petitioners-Objectors,

-vs-

Libertarian Party of Illinois, and its state
slate: Lex Green, Ed Rutledge,
Josh Hanson, Bill Malan, James Pauly
Julie Fox and its U.S. Senate candidate,
Mike Labno,

Respondents-Candidates.

No. 10 SOEB GE 567

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BOARD OF ELECTIONS

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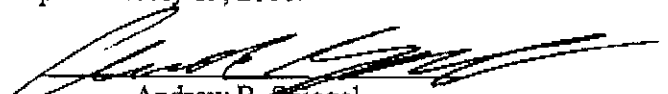
To: Philip Krasny, by fax to 312 345-9860
John Fogarty, Jr., by fax to 773 681-7147
State Board of Elections by fax to 312 814-6485 or by personal service

PLEASE TAKE NOTICE that on Jul 19, 2010, prior to 5:00 p.m., the undersigned filed with the State Board of Elections the Candidates' Reply Memorandum in Support of Their Motion to Strike and Dismiss, copies of which are attached hereto and herewith served upon you.


Andrew B. Spiegel

Proof of Service

The undersigned attorney certifies he served copies of this Notice and the attached submission on each of the above persons/entities by either facsimile transmission or by personal delivery (to the State Board), prior to 5:00 p.m. on July 19, 2010.


Andrew B. Spiegel

Andrew B. Spiegel
15 Spinning Wheel Road, Suite 126
Hinsdale, Illinois 60521
630 325-5557 (office)
630 325-6666 (fax)
630 567-5379 (cell)

**Objections of Sharon Ann Maroni (Motions to Strike filed by Candidates)
10 SOEB GE 524-530, 532-535, 537, 541, 543, 544, 550 and 553**

Candidates:

Michael L. White – Governor, Jeff Trexler – Lt. Governor, Gary Dunlap – Secretary of State, Louis Cotton – Attorney General, Timothy Becker – Comptroller, and Dawn Czarny – Treasurer (**Constitution Party**)

Lex Green – Governor, Ed Rutledge – Lt. Governor, Mike Labno – U.S. Senator, Josh Hanson – Secretary of State, Bill Malan – Attorney General, James Pauly – Treasurer and Julie Fox – Comptroller (**Libertarian Party**)

Carl E. Officer – U.S. Senator, (**Practical Party**)

Stephen F. Estill – Governor/Lt. Governor, Willie “Will” Boyd Jr. – U.S. Senator and Gregg Moore – Governor/Lt. Governor (**Independent candidates**)

Attorney For Objector: Pro Se

Attorney For Candidate: Doug E. Ibendahl (Constitution Party candidates), Andrew B. Spiegel (Libertarian Party candidates), Randy Crumpton (Willie “Will” Boyd, Jr. Remaining candidates appearing pro se.

Number of Signatures Required: 25,000

Number of Signatures Submitted: N/A

Number of Signatures Objected to: N/A

Basis of Objection: “The Candidate’s nomination papers are insufficient because they fail to demonstrate and/or provide documentation that the candidate meets the constitutional requirements for office.”

Dispositive Motions: Candidate Willie Boyd filed a Motion to Strike and Dismiss and Candidate Gregg Moore filed a Candidate Response.

Binder Check Necessary: No

Hearing Officer: Ken Menzel

Hearing Officer Findings and Recommendation: The Motions to Strike and Dismiss the Objector’s Petition should be granted, on the grounds that such petition does not allege any deficiencies that would invalidate any of the Candidates’ nominating papers. The Objector simply states that the nominating papers fail to demonstrate or provide documentation of the Candidate’s qualifications. On the contrary, the Candidates did file Statements of Candidacy with their nominating papers, which affirm their qualifications to hold the offices they seek.

Recommendation of the General Counsel: I concur with the recommendation of the Hearing Officer.

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

STATE BOARD OF ELECTIONS SITTING AS THE DULY CONSTITUTED STATE
OFFICERS ELECTORAL BOARD
STATE OF ILLINOIS

IN THE MATTER OF:)
SHARON ANN MERONI)
) Objector,)
vs.)
)
JEFF TREXLER) 10 SOEB GE 524
MICHAEL L. WHITE) 10 SOEB GE 532
GARY DUNLAP) 10 SOEB GE 533
LOUIS COTTON) 10 SOEB GE 534
TIMOTHY BECKER) 10 SOEB GE 535
DAWN CZARNY) 10 SOEB GE 541
)
BILL MALAN) 10 SOEB GE 526
JAMES PAULY) 10 SOEB GE 527
JOSH HANSON) 10 SOEB GE 528
JUILE FOX) 10 SOEB GE 529
MIKE LABNO) 10 SOEB GE 530
ED RUTLEDGE) 10 SOEB GE 543
LEX GREEN) 10 SOEB GE 544
)
GREGG MOORE) 10 SOEB GE 525
)
CARL E. OFFICER) 10 SOEB GE 537
)
STEPHEN F. ESTILL) 10 SOEB GE 550
)
WILLIE BOYD, JR.) 10 SOEB GE 553
) Candidates.)

HEARING OFFICER'S RECOMMENDATION TO GRANT
MOTIONS TO STRIKE AND DISMISS (AND/OR FOR SUMMARY JUDGMENT)

The matter having come before the State Board of Elections as the duly qualified Electoral Board (the "Board") and before the undersigned Hearing Officer pursuant to Appointment and Notice issued previously, the Hearing Officer makes the following Recommendation to grant the Motions to Strike and Dismiss (and/or for Summary Judgment) filed in the above referenced matters:

BACKGROUND

Over the period of June 14 through 21, 2010, the various above referenced candidates (the "Candidates") filed various independent or new party nomination petitions (the "Petitions") with the Illinois State Board of Elections, seeking to be placed upon the ballot as candidates for various statewide offices (both state and federal) for the November 2, 2010 General Election.

A Verified Objector's Petition was timely filed on June 28, 2010 with respect to each of the Candidates (the "Objections"). The Objections contained identical allegations that:

"The Candidate's nomination papers are insufficient because they fail to demonstrate and/or provide documentation that the candidate meets the constitutional requirements for office."

No further allegations were made, and no further detail as to any specific deficiencies is provided.

Pursuant to the schedule set forth by the Board, the Candidates filed respective motions to strike and dismiss (and/or for summary judgment, hereinafter the "Motions") and the Objector filed her substantially identical responses to the Motions (the "Response").

ANALYSIS

The basis of the Objections is that the Candidates have not provided proof that each possesses the requisite qualifications to hold office (but there are not any allegations as to any specific deficiencies on the part of any individual candidate). The Response is long, rambling, disjointed, and entirely devoid of any legal authority which is on point as to the relevant issues in an electoral board matter; it essentially asserts that the Board is obligated to uphold the constitution and appears to operate on the (erroneous) belief that should an unqualified candidate somehow appear in the ballot then the ballot is rendered "unconstitutional" and the Board would be derelict in its duties to let that occur.¹

However, the Objector does not raise, reference or cite any requirement under the Illinois Election Code indicating that the Candidates must provide the proof she desires to see, and there is no allegation as to any specific Election Code requirement(s) which any of the Candidates are alleged to have violated with regard to the Petitions. There is no presentation of arguments or evidence available that could sustain an Objector's burden sufficient to remove any of the Candidates from the ballot, as she has not alleged any specific legal deficiency in any of the Petitions, and can not go outside of the Objections' allegations in attempting to present a case.

Each of the Candidates signed standard forms of Statement of Candidacy which included, verbatim, the language averring to their qualifications for office that is required under Section 10-5 of the Illinois Election Code (10 ILCS 5/10-5). Those averments are unrebutted, and nothing could be presented by the Objector within the proper scope of hearing the Objections that would rebut them.

¹ The Objector appears to have some passing awareness that there are longstanding legal remedies provided at law should an unqualified person somehow be elected (e.g. *quo warranto*) and that the law provision for dealing with the situation (e.g. the doctrine of *de facto* officers) but finds them unsatisfactory.

CONCLUSION AND RECOMMENDATION

Based upon the foregoing, the Hearing Officer recommends that the Candidates' Motions to Strike and Dismiss (and/or for Summary Judgment) be granted primarily on the grounds that the Objections do not set forth allegations which raise any deficiency in the Petitions under the Illinois Election Code. The secondary basis for this recommendation is that to the extent that the Objections seek to raise challenges to the Candidates' Constitutional qualifications to hold office, the Objections fail to state any specific deficiencies as to those qualifications, and thus fail to "state fully the nature of the objections" as required by 10 ILCS 5/10-8.

The Hearing Officer therefore recommends that the names of the Candidates be printed on the ballot (as candidates for the respective offices specified as to each of the Candidates in the Petitions) at the November 2, 2010 General Election, except to the extent that any of such Candidates is subject to one or more other objections which might be sustained by the Board in the course of determining such other objections.

Respectfully submitted,

Kenneth R. Menzel
Hearing Officer

Dated: July 16, 2010

**Objections of Sharon Ann Maroni (No Motions filed by Candidates)
10 SOEB GE 531, 538-540, 542, 545-549, 551 and 552**

Candidate: Christopher Pedersen – U.S. Senator, Governor/Lt. Governor, Secretary of State, Attorney General, Treasurer and Comptroller (**Independent Conservative**)

Andy Martin – U.S. Senator (**Illinois Reform**)

Edmund J. Scanlan – Governor/Lt. Governor, Corey Dabney – U.S. Senator, William Walls III – Governor/Lt. Governor and Shon-Tiyon “Santiago” Horton – U.S. Senator (**Independent candidates**)

Attorney For Objector: Pro se

Attorney For Candidate: Andrew B. Spiegel (Ed Scanlan and William Walls III), Dan Johnson Weinberger (Corey Dabney), Candidate Horton appeared pro se.

Number of Signatures Required: 25,000

Number of Signatures Submitted: N/A

Number of Signatures Objected to: N/A

Basis of Objection: “The Candidate’s nomination papers are insufficient because they fail to demonstrate and/or provide documentation that the candidate meets the constitutional requirements for office.”

Dispositive Motions: None filed

Binder Check Necessary: No

Hearing Officer: Ken Menzel

Hearing Officer Findings and Recommendation: The Board should invoke Rule 4 of the adopted Rules of Procedure and strike the Objector’s petition sua sponte. Rule 4 provides that the Board may on its own motion strike any objection that fails to meet the requirements of Section 10-8 of the Election Code. Section 10-8 requires that an objector’s petition state fully the nature of the objection. The Objector’s petition does not allege any deficiency in the Candidates’ nominating papers, but rather states that such papers do not contain proof that each candidate possesses the qualifications to hold the office he or she seeks. This falls well short of stating fully the nature of the objection, in fact it does not allege any deficiency that if proven, would invalidate such candidacies.

Recommendation of the General Counsel: I concur with the recommendation of the Hearing Officer.

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

STATE BOARD OF ELECTIONS SITTING AS THE DULY CONSTITUTED
STATE OFFICERS ELECTORAL BOARD
STATE OF ILLINOIS

IN THE MATTER OF:)
SHARON ANN MERONI)
) Objector,)
vs.)
)
SHON-TIJAN "SANTIAGO" HORTON) 10 SOEB GE 531
WILLIAM WALLS III) 10 SOEB GE 538
COREY DABNEY) 10 SOEB GE 539
EDWARD J. SCANLON) 10 SOEB GE 540
ANDY MARTIN) 10 SOEB GE 549
)
CHRISTOPHER PEDERSEN) 10 SOEB GE 542, 545, 546, 547,
) 10 SOEB GE 548, 551 and 552
) Candidates.)

HEARING OFFICER'S RECOMMENDATION TO INVOKE RULE 4 *SUA SPONTE*
AND TO STRIKE OBJECTIONS IN THEIR ENTIRETY

The matter having come before the State Board of Elections as the duly qualified Electoral Board (the "Board") and before the undersigned Hearing Officer pursuant to Appointment and Notice issued previously, the Hearing Officer makes the following Recommendation to invoke Rule 4 of the Board's Rules of Procedure *sua sponte* and to strike the objections filed in the above referenced matters in their entirety:

BACKGROUND

Over the period of June 14 through 21, 2010, the various above referenced candidates (the "Candidates") filed various independent or new party nomination petitions (the "Petitions") with the Illinois State Board of Elections, seeking to be placed upon the ballot as candidates for various statewide offices (both state and federal) for the November 2, 2010 General Election.

A Verified Objector's Petition was timely filed on June 28, 2010 with respect to each of the Candidates (the "Objections"). The Objections contained identical allegations that:

"The Candidate's nomination papers are insufficient because they fail to demonstrate and/or provide documentation that the candidate meets the constitutional requirements for office."

No further allegations were made, and no further detail as to any specific deficiencies is provided.

A couple of the Candidates have not filed appearances as to those Objections relating to them (Pedersen and Martin), and the others have filed appearances but did not file Motions with respect to the Objections (Horton, Walls, Dabney and Scanlon).

ANALYSIS

The basis of the Objections is that the Candidates have not provided proof that each possesses the requisite qualifications to hold office (but there are not any allegations as to any specific deficiencies on the part of any individual candidate).

Section 10-8 of the Illinois Election Code states, in pertinent part, that:

“The objector’s petition ... shall state fully the nature of the objections to the ... nomination papers or petitions in question, and ... shall state what relief is requested of the electoral board.”

The Objector does not raise, reference or cite any requirement under the Illinois Election Code indicating that the Candidates must provide the proof she desires to see, and there is no allegation as to any specific Election Code requirement(s) which any of the Candidates are alleged to have violated with regard to the Petitions. If the Objector were to establish the substance of her Objections at a hearing, the Board would not have grounds to remove the Candidates from the ballot. The Objector may not, at this time, amend the Objections so as to assert new issues which, if proven, would justify removal (see e.g. *Siegal v. Lake County Officers Electoral Board* (2nd Dist, 2008) 385 Ill.App.3d 452, 895 N.E.2d 69, 324 Ill.Dec. 69; *Reves v. Bloomingdale Twp. Electoral Board* (2nd Dist. 1994) 265 Ill.App.3d 69, 638 N.E.2d 782, 202 Ill.Dec. 914).

Each of the Candidates (other than Mr. Pedersen) signed standard forms of Statement of Candidacy which included, verbatim, the language averring to their qualifications for office that is required under Section 10-5 of the Illinois Election Code (10 ILCS 5/10-5). Mr. Pedersen did not file any Statements of Candidacy, but the Objector did not raise that deficiency (or any of a number of other readily apparent deficiencies in those of the Petitions filed by Mr. Pedersen) in her Objections relating to him.

It should further be noted that the Objector asks that the Board declare Candidates’ Petitions “insufficient and not in compliance with the laws of the State of Illinois” but does not ask that the Candidates names be removed from (or otherwise not be printed on) the November 2, 2010 General Election ballot.

At least one court has held that due process prevents an electoral board from removing even a defaulting candidate without a showing that the objection against him or her sets forth valid grounds for removing the candidate (*Naples v. Community College District 504 Education Officers Electoral Board* (Cook Cty. Cir. 1987) No. 87 Co 319). Thus, the Objections present us with a situation where there is no possibility of lawfully removing even those of the Candidates who do not make any attempt to defend against the Objections.

The Board adopted its Rules of Procedure (the "Rules") for the Objections at its July 6, 2010 meeting. The Rules include Rule 4, which concludes with the following provision:

"The Board may on its own motion, strike any objection if it determines that the objection does not meet the requirements set forth in 10 ILCS 5/10-8. In addition, the Board on its own motion may strike any portion of an objection that it determines to be not well grounded in fact and/or law."

That provision in Rule 4 of the Rules was added after the 2008 election cycle, following the filing of certain objections based upon the utterly untenable assertion that non-white persons ought not be permitted to run for office. The Objections at issue here do not assert a proposition as socially offensive as the prior matter, but they are equally untenable as a matter of the applicable law.

The Objector herself appears to be totally sincere and earnest in presenting the Objections. However, as legal pleadings, the Objections can only be characterized as entirely frivolous.

CONCLUSION AND RECOMMENDATION

Based upon the foregoing, the Hearing Officer recommends that the Board invoke Rule 4 of its Rules of Procedure and strike each of the Objections in their entirety, based primarily upon the failure of the Objections to set forth allegations which raise any deficiency in the Petitions under the Illinois Election Code. The secondary basis for this recommendation is that to the extent that the Objections seek to raise challenges to the Candidates' Constitutional qualifications to hold office, the Objections fail to state any specific deficiencies as to those qualifications, and thus fail to "state fully the nature of the objections" as required by 10 ILCS 5/10-8.

The Hearing Officer therefore recommends that the names of the Candidates be printed on the ballot (as candidates for the respective offices specified as to each of the Candidates in the Petitions) at the November 2, 2010 General Election, except to the extent that any of such Candidates is subject to one or more other objections which might be sustained by the Board in the course of determining such other objections.

Respectfully submitted,

/s/ Kenneth R. Menzel

Kenneth R. Menzel
Hearing Officer

Dated: July 20, 2010

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

**GERALD ANTHONY JUDGE and)
DAVID KINDLER,)**

Plaintiffs,)

v.)

**PAT QUINN, GOVERNOR of the STATE of)
ILLINOIS and ROLAND W. BURRIS,)
U.S. SENATOR,)**

Defendants.)

**No. 09 C 1231
Honorable John F. Grady
Magistrate Judge Michael T. Mason**

PERMANENT INJUNCTION ORDER

This case is before the court on plaintiffs' motion for an injunction consistent with the June 16, 2010 and July 22, 2010 decisions of the U.S. Court of Appeals for the Seventh Circuit in this case, No. 09-2219, and the court being fully advised in the premises,

The court finds, declares, and orders as follows:

1. This court enters this order pursuant to and consistent with the directives of the Court of Appeals in its June 16, 2010 and July 22, 2010 decisions.
2. The Seventeenth Amendment to the Constitution of the United States provides in pertinent part,

When vacancies happen in the representation of any State in the Senate, the executive authority of such State shall issue writs of election to fill such vacancies: *Provided*, That the legislature of any State may empower the executive thereof to make temporary appointments until the people fill the vacancies by election as the legislature may direct.

U.S. Const. Am. XVII.

3. The Seventeenth Amendment requires that every time a vacancy occurs in a State's U.S. Senate delegation, the State must hold an election in which the people elect a permanent

replacement to fill the vacant seat and that the State's Governor must issue a writ of election that includes a date for such an election to take place.

3. The Seventeenth Amendment further provides that the State's legislature may empower the State's executive authority to appoint a temporary replacement until the vacancy is filled by election. The State's legislature may "direct" such election; this includes the authority to prescribe the date on which the election shall take place.

4. The Illinois Election Code provides,

When a vacancy shall occur in the office of the United States Senator from this state, the Governor shall make temporary appointment to fill such vacancy until the next election of representatives in Congress, at which time such vacancy shall be filled by election, and the senator so elected shall take office as soon thereafter as he shall receive his certificate of election.

10 ILCS § 5/25-8.

5. On November 16, 2008, a vacancy occurred in the Illinois U.S. Senate delegation upon the resignation of then-Senator Barack Obama. Consistent with the authority conferred upon the Illinois legislature by the Seventeenth Amendment, 10 ILCS § 5/25-8 provides that the election to fill that vacancy shall take place on November 2, 2010. But in prescribing the date for the vacancy election the Illinois legislature did not relieve the Governor of Illinois of his constitutional obligation to issue a writ of election.

6. On July 29, 2010, because of the rulings of the Court of Appeals in this case requiring that the Governor issue a writ of election, the defendant Governor of Illinois issued a writ of election to call an election on November 2, 2010 to fill the vacancy created by the Obama resignation.

7. The court finds that the writ of election issued by the Governor of Illinois complies with the Seventeenth Amendment and 10 ILCS § 5/25-8.

8. The court further finds that, in accordance with the June 16, 2010 ruling of the Court of Appeals, the time during which the Senator elected to fill the Obama vacancy will serve if elected at the November 2, 2010 election is not *de minimis*.

9. After the Court of Appeals issued its decision on June 16, 2010 this court conducted hearings on June 23, 2010, June 30, 2010, July 21, 2010, July 26, 2010, and July 29, 2010 to consider procedures for conducting a special election on short notice.

10. As the Court of Appeals has held in this case, to the extent that Illinois law makes compliance with a provision of the federal Constitution difficult or impossible, it is Illinois law that must yield to the extent that it otherwise might apply to cause delay or prevent action entirely. Accordingly, this court may formulate, as necessary, mechanisms for the conduct of a special election on November 2, 2010 to fill the U.S. Senate seat vacancy in order to comply with the Seventeenth Amendment consistent with the Court of Appeals' ruling in this case.

11. The court finds that, as in the case of the special election resulting from the decision of the Court of Appeals in Jackson v. Ogilvie, 426 F.2d 1333 (7th Cir. 1970), no primary is necessary to select the candidates to appear on the ballot for the special election to fill the vacancy in the U.S. Senate.

12. The candidates placed on the special election ballot must be limited to a manageable number and should be chosen, not arbitrarily, but for having demonstrated a measure of popular support for the office of U.S. Senator.

13. The court finds that the procedures applied in the special election resulting from the decision in Jackson v. Ogilvie, 426 F.2d 1333 (7th Cir. 1970), permitting the candidates for the subsequent six-year U.S. Senate term to stand as the candidates for the special election, also should apply in the special election to fill the current U.S. Senate seat vacancy. Accordingly, the established political party candidates who will appear on the ballot in the special election to fill the vacancy shall be those candidates who won their respective party primaries to run for the full six-year U.S. Senate term in the General Election; and the new political party candidates and independent candidates who will appear on the ballot in the special election to fill the vacancy shall be those candidates who have filed nomination petitions, who meet the signature and other applicable requirements to participate in the race for the full six-year U.S. Senate term in the General Election under Sections 10-2 and 10-3, respectively, of the Illinois Election Code and who are duly certified for that race by the Illinois State Board of Elections.

14. The ballot for the November 2, 2010 election shall be configured so that the choice of candidates to fill the vacancy shall appear immediately following the choice of candidates for the full six-year U.S. Senate term. The order of the parties and candidates on the special election ballot for the vacancy shall be the same as for the full six-year term.

15. The State Board of Elections (SBE) shall canvass the votes cast for the Special Election for U.S. Senator within 5 calendar days following receipt of the abstracts of votes from the Election Authorities. The Election Authorities shall transmit such abstracts to the SBE by e-mail attachment or by facsimile no later than the close of business on Friday, November 19, 2010. The 5 calendar day time period for the SBE to conduct its canvass may be extended up to 3 additional calendar days in the event that not all such abstracts are received by the SBE on

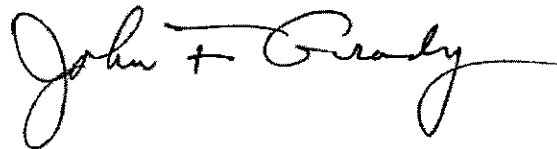
Friday, November 19, 2010 or that such abstracts contain errors or inconsistencies that are unable to be resolved within said 5 calendar days.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that:

- a. The November 2, 2010 special election to fill the vacancy in the U.S. Senate created by the resignation of then-Senator Barack Obama on or about November 16, 2008 shall be conducted consistent with the findings and declarations in this order.
- b. The Governor's temporary appointee shall continue his period of service in the U.S. Senate until the winner of the special election has taken the oath of office to serve out the remainder of former Senator Obama's term.

IT IS FURTHER ORDERED that notice of this injunction order shall be served on the Illinois State Board of Elections and the Illinois Secretary of State pursuant to Federal Rule of Civil Procedure 65(d)(2).

IT IS FURTHER ORDERED that this court shall retain jurisdiction for the purpose of ensuring that the special election is conducted in accordance with the terms of this order.



United States District Judge

Date: August 2, 2010