IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, COUNTY DIVISION

SUSAN F. HUTCHINSON, MARK CURRAN, NANCY RODKIN ROTERING, Petitioners-Candidates, v. The ILLINOIS STATE BOARD OF ELECTIONS, et. al, Respondents.	)	No. 2022 COEL 000009

ORDER ON PETITION FOR JUDICAL REVIEW

Petitioners-Candidates ("Candidates") filed this Petition for Judicial Review, challenging the April 21, 2022 decision by the Illinois State Board of Elections in its capacity as the State Officers Electoral Board (the "Electoral Board") sustaining certain Objections to the nomination papers of Susan F. Hutchinson and Mark Curran for the Republican nomination, and Nancy Rodkin Rotering as a candidate for the Democratic party, for the office of Judge of the Illinois Supreme Court in the newly formed Second Judicial District ("Thomas vacancy"). Collectively they are referred to as "the Candidates" who are running in the June 28, 2022 primary. Alan Spellberg, Cacilia Masover, and Nancy Waites ("Objectors") filed the objections below. The result of the Board's decision was to have all three candidates removed from the ballot. As set forth herein the decision of the Electoral Board is reversed.

Pertinent Facts

The issue involves an interpretation of section 7-10(h) of the Illinois Election Code, 10 ILCS 5/7-10(h), specifically whether the Candidates have tendered the minimum number of required signatures to be on the ballot. The material facts here are not in dispute. The January 1, 2022 effective date of the Illinois Judicial Districts Act of 2021, 705 ILCS 23/1 *et. seq.* (the "Act"),

created a new Second Judicial District. Formerly the district was comprised of thirteen counties and now has five counties.[1]

The applicable statute provides:

> Except as otherwise provided in this Code, if a candidate seeks to run for judicial office in a district, then the candidate's petition for nomination must contain the number of signatures equal to 0.4% of the number of votes cast in that district for the candidate for his or her political party for the office of Governor at the last general election at which a Governor was elected, but in no event less than 500 signatures.

10 ILCS 5/7-10(h).

This district did not exist in its current form in the 2018 election for governor. Both the Act and the applicable statute were silent as to the effect of the redistricting on the vote count to determine signatures for a recreated judicial district. Consequently, the Candidates and the Objectors have different opinions as to the required minimum of signatures.

The Candidates argue the signature requirement in the catch-all clause in the last sentence of the statute, "but in no event less than 500 signatures" applies because the current Second District, from which all the candidates are running, did not exist at the last election. This 500 number, was then reduced to 334 due to the calculation which applied across the board to all signature counts. 10 ILCS 5/2A-1.1(b). All parties agree the Candidates procured over 334 valid signatures.

The Objectors assert that the proper minimum number of signatures was 757 for Republican candidates and 791 for the Democratic candidates. These numbers are based on the total number of votes for the Democratic and Republican gubernatorial candidates in each of five counties comprising the new redistricted Second Judicial District, multiplied by 0.4%, and reduced

[1] DeKalb, Kendall, Kane, Lake, and McHenry.

by one-third. All parties agree the Candidates did not procure sufficient signatures to meet the Objectors' proposed amount.

The hearing officer and the General Counsel for the State Board overruled the objections (R. 280-81), and then the Electoral Board overruled those decisions, sustained the objections and removed the Candidates from the ballot. (R. 289).

Standard of Review

The dispute concerns the Electoral Board's interpretation of the governing legal provisions of the election code following the redistricting. Review of the decision of the Board is therefore *de novo*. *Corbin v. Schroeder*, 2021 IL 127052, ¶¶ 32-33. An agency's interpretation of the meaning of the language of a statute is a question of law. *Cinkus v. Stickney Mun. Officers Electoral Bd*. 228 Ill.2d 200, 210 (2008).

Analysis

The Illinois Supreme Court has recently reaffirmed that the signature requirement is a mandatory provision of the election code, and that principles of estoppel and reliance are not applicable. *Corbin v. Schroeder*, 2021 IL 127052, ¶ 45. The Candidates are not asserting estoppel but rather that the interpretation of the statute by the Illinois State Board of Elections Candidate's Guide for 2022 as to the required number of signatures as well as the cases of *Briscoe*, *Vestrup*, and *Illinois Green Party* are persuasive and that ignoring the past precedent violates their right to due process secured to the Candidates under the Fourteenth Amendment of the U.S. Constitution and Article I, Section Two of the Illinois Constitution. *Briscoe v. Kusper*, 435 F.2d 1046 (1970); *Vestrup v. Du Page County Election Comm'n*, 335 Ill. App. 3d 156 (2002); *Ill. Green Party v. Ill. State Bd. of Elections*, 2011 IL App (1st) 113375-U.

Both sides assert that the language of the statute is clear and yet both sides have different interpretations. A statute is ambiguous if it is capable of being understood by reasonably well-informed persons in two or more different ways. *People v. Jameson*, 162 Ill. 2d 282, 288 (1994). There is nothing in the plain language of section 10(h) that directs the candidates to calculate the minimum number of signatures by adding the vote totals in the counties that make up the newly configured Second Judicial District. It is true as the Objectors point out that it is possible to tally the votes of each County and come up with the numbers, but the statute directs that calculation to be made based on the "number of signatures equal to 0.4% of the number of votes cast **in that district** for the candidate for his or her political party for the office of Governor **at the last general election…**" 7-10(h) (emphasis supplied). The new Second District did not vote in the last election.

The 2022 Candidate's Guide promulgated by the Illinois State Board of Elections (hereinafter the "State Board") dedicated two pages to the nomination requirements for becoming a candidate for Supreme Court Judge. Listing the signature requirement, it concluded that "the 2nd thru 5th districts were all redistricted in 2021 so the minimum requirement is 500 and reduced by one-third." (Ill. St. Bd. of Elections, 2022 Candidate's Guide, at 33). The State Board directed that the Republican and Democratic Candidates were required to procure a minimum of 334 signatures for the Thomas vacancy. This number was drawn from the language in section 10 ILCS 5/7-10(h), "in no event less than 500" and reduced by one-third pursuant to 10 ILCS 5/2A-1.1(b). The State Board is the agency which certified all of the results for the 2018 election for the entire state. If the State Board thought that the signature requirement post-redistricting would be calculated by tabulating the votes in each County, it had the exact numbers and could have made that calculation in its Candidate's Guide for 2022.

As the agency charged with administering the Illinois Election Code, the courts should give "substantial weight and deference to an interpretation of an ambiguous statute by the agency charged with administering and enforcing that statute." *Crittenden v. Cook County Comm'n on Human Rights,* 2013 IL 114876, ¶ 19 (citing *People ex rel. Birkett*, 202 Ill. 2d 36, 46 (2002); *Bonaguro v. County Officers Electoral Board*, 158 Ill. 2d 391, 398-99 (1994). But at the same time, "[c]ourts *** are not bound by an agency's interpretation that conflicts with the statute, is unreasonable, or is otherwise erroneous." *Hadley v. Illinois Department of Corrections*, 224 Ill. 2d 365, 371 (2007). The construction of 7-10(h) by the Candidates and by the State Board here to revert to the catch-all 500-signature minimum is not unreasonable and therefore has a presumption of correctness. *See People ex rel. Birkett*, 202 Ill. 2d at 46 (citing *People ex rel. Watson v. House of Vision*, 59 Ill. 2d 508, 514-15 (1974)) ("A reasonable construction of an ambiguous statute by the agency charged with that statute's enforcement, if contemporaneous, consistent, long-continued, and in concurrence with legislative acquiescence, creates a presumption of correctness that is only slightly less persuasive than a judicial construction of the same act.") The interpretation of the statute by the State Board in the Candidate's Guide is reasonable and this court finds the conclusion persuasive.

Moreover, and most importantly, access to a place on the ballot is a substantial right not lightly to be denied**.** *Jackson-Hicks v. East St. Louis,* 2015 IL 118929, ¶ 32 (citing *Bettis v. Marsaglia,* 2014 IL 117050, ¶ 28). Ballot access laws in Illinois are to be interpreted liberally and impediments to candidacy are to be strictly construed. "We are mindful of the need to tread cautiously when construing statutory language which restricts the people's right to endorse and nominate the candidate of their choice." *Ahmad v. Board of Election Commissioners*, 2016 IL App (1st) 162811¶ 14 (citing *Lucas v. Lakin*, 175 Ill. 2d 166, 176 (1997)). To the extent that the court

is faced with two reasonable statutory constructions to adopt, “[w]e see no reason why the policy favoring ballot access should not lead us to adopt the interpretation that simplifies the procedure.” *Bettis,* 2014 IL 117050, ¶ 28.

Conclusion

The Court adopts the reasoning of the Candidates and the Candidate’s Guide with respect to the interpretation of 10 ILCS 5/7-10(h) and is bound by the state precedent favoring ballot access. The names of candidates Susan F. Hutchinson, Mark Curran, and Nancy Rodkin Rotering are to be on the ballot for the June 28, 2022 primary.

The decision of the Electoral Board is reversed.

Entered:________________ 2149
5-12-2022

Dated:_May 12, 2022