

Getting on, and staying on, the ballot

By Scott F. Uhler and Gregory T. Smith

Local election season will arrive shortly, opening with school board candidates circulating and filing nomination petitions for elected office. Each election season we see objections to new and incumbent candidates' petitions and these candidates' names being stricken from ballots because of failures to follow the requirements of the Illinois Election Code.

Section 10 of the Election Code sets forth the fundamental requirements regarding the collection of signatures and preparation of a candidate's nominating petitions for independent, nonpartisan, and new party candidates for office. Section 10-4 of the Election Code and Section 9-10 of the Illinois School Code set forth basic requirements regarding the form and contents of nominating petitions for nonpartisan school board candidates. Importantly, Section 10-4 of the Election Code specifically provides, "No signature shall be valid or be counted in considering the validity or sufficiency of such petition unless the requirements of this Section are complied with."

While a number of courts have held that a candidate need not strictly comply with each requirement regarding voter signatures and candidate nominating petitions, successful compliance, and withstanding a challenge, depend on the specific facts of each case. A failure to strictly follow the requirements of the Election Code is more likely to result in objections to nomination petitions, costs to both the candidate and the municipality with respect to the electoral board hearing process and, where a candidate has not "substantially" complied with certain requirements, the invalidation of a candidate's nominating petitions. Candidates are

advised to become familiar with these requirements for the proper circulation and preparation of their nominating petitions. Avoiding mistakes in the following areas reduces the possibility of successful objections to a candidate's nomination papers.

1. Properly collect qualifying signatures

The Election Code requires that a candidate collect a minimum number of signatures on petition sheets, to substantiate a basic showing of support from the registered voters of the school district to which the candidate seeks election. Under the Illinois Election Code, those petition sheets must be "signed" by "qualified voters."

There are a number of challenges that can be raised to the signatures of voters which are collected by a candidate on his or her nominating petitions:

A) "Printing" name on candidate's petition sheet — While there is no legal prohibition on a voter printing their name and not "signing" it in cursive, challenges are frequently made contending that "printing" a name is not "signing" it. Further, if a voter signed the voter registration card in cursive, and then printed the name on a candidate's nominating petition sheets, a legal challenge to that name could be made by an objector contending the "printed" signature of the voter does not match the "cursive" signature (or vice versa) on their voter registration card. Although not required, one way to minimize this problem is to include a space on the nominating petition sheet for both the cursive signature and the printed name of any voter signing the sheet. The most commonly used petition forms can be found in the Illinois State Board of Elections' "Candidates Guide,"

available at its website (see resource list, page 23). The forms are samples and can be revised (with care).

B) Voter signatures that are illegible — Having voters sign in cursive, print the name on a nominating petition sheet, and set forth the street address, all in a legible fashion, all reduces the possibility that the voter cannot be confirmed as a “qualified voter” because their writing on the petition sheet is illegible. At any rate, the person collecting signatures (the circulator) should be able to read the name of the voter signing and/or printing. If a name cannot be read by the person circulating the petition sheet, an objector could challenge the signature as invalid because it is not possible to confirm that it matches any particular voter’s signature on the voter registration card.

C) Signing nominating petition sheet for another voter — It may seem like common sense, but the Election Code requires that any voter signature on a candidate’s nominating petition sheet must be placed there personally by the voter. It is not uncommon for a person to sign a nominating petition sheet for him or herself, and for a spouse or other family member. Some people assume such an action is reasonable and authorized. It may be proper under other circumstances. However, if objected to, such a practice is unlawful. Anyone signing both their own name and the name of another could result in one or both of the signatures being stricken as invalid. The person collecting the signatures on a nominating petition sheet should therefore ensure that any voter signing the sheet signs only for him or herself.

D) Not enough valid signatures — Each school district has a specific minimum number of voter signatures which must be collected in order for a candidate to properly file nominating petition sheets. For boards of education, that number is 50 qualified voters, or 10 percent of voters, residing within the school district. For school “directors” that number is 25 or 5 percent. Those thresholds can be found in the Illinois School Code at Section 9-10 and the “Candidates Guide.”

If the minimum number of signatures is not collected on a candidate’s nominating petition sheets, they can be rejected by the election official with whom they are to be filed, or they can be challenged by an objector. If a challenge is brought to certain of the signatures on a nominating petition sheet and those signatures are invalidated, the number of remaining signatures becomes important. We therefore recommend collecting a reasonable “cushion” of extra signatures, over and above the minimum, to reasonably ensure enough valid signatures remain in the event of a challenge.

E) Unqualified voters signing petition sheets — A “qualified voter” who is eligible to sign a candidate’s nominating petition is defined in the Election Code (10 ILCS 5/3-1.2) as:

“For the purpose of determining eligibility to sign a nominating petition or a petition proposing a public question the term ... “qualified voter” ... shall mean a person who is registered to vote at the address shown opposite his signature on the petition or was registered to vote at such address when he signed the petition...”

In addition to this basic requirement, a voter signing a candidate’s nominating petition sheets must be registered to vote at an address within the boundaries of the governmental body for which the candidate is seeking election, e.g. the school district.

2. File a proper Statement of Candidacy

There are three basic forms which comprise a proper filing of nominating petitions by a candidate: (1) the nominating petition sheets, upon which the voter signatures are collected; (2) a statement of candidacy; and (3) a receipt for the filing of the candidate’s statement of economic interests. All three of these documents must be filed in order to constitute a lawful, proper filing. The requirements and a sample form for the completion of the Statement of Candidacy for each particular local government office (including school board) in Illinois are provided in the “Candidates Guide” and the “State of Illinois Local Election Official’s Handbook for the 2017 Consolidated Elections.” Both are available at the Illinois State Board of Election website (see resource list).

The name of the office being sought, the candidate’s name and the candidate’s address should be the same in the heading of this form, and in the body of this form, as is set forth in the heading of each of the nominating petition sheets upon which signatures are collected. After being completed, this Statement of Candidacy must also be signed by the candidate in front of a notary public.

3. State the office correctly on all petition sheets

The office being sought by the candidate should be set forth with specificity by the candidate, both as to the length of the term and the office itself. The governing entity and the local government itself should be stated specifically, for example, “for election as member of the Board of Education of [Anytown School District 101]” The specific office, the governing body, and the governmental unit should all be specifically stated in the heading of the nominating petition signature sheets

and in the candidate's Statement of Candidacy. School districts all have specific names and numbers, and the district name should be the complete, legal name of the school district. Referring to a school district simply by the city or village it is in could cause confusion about whether it the high school district or the elementary, or if a particular city or village is located in more than one school district. Further, there are other local government offices, such as park district commissioner, library trustee, or alderman on a city council. If there can be any uncertainty in the minds of voters about what governmental entity you are seeking election to, or the nature of the seat, a potential objection can be made to lack of specificity and potential confusion raised in the minds of voters as to the office being sought.

4. State the term of office correctly, too

In addition to naming the specific office and the specific governing entity or board of the specific governmental unit, there can be different "seats" on a particular governing entity or board that are up for election. A candidate should indicate whether he or she is running for a full term (and specify the years, such as two-, four-, or six-year term, as applicable) for a seat on a governing board. If he or she is running to fill the unexpired term of a vacant seat on the board, this must be specifically stated on the signature petition sheet and Statement of Candidacy. If there are seats up for election that are of differing terms (such as a vacancy on the board with an unexpired term to be completed), and if the candidate does not specify seeking a full term or to fill a vacant seat on a board with an unexpired term, there could be confusion in the minds of voters. Confusion can result in a successful objection to the candidate's nominating petitions.

5. Each person signing a petition for nomination must sign in the presence of the circulator

The Election Code requires that each circulator of a candidate's signature sheets must certify that each signature on the sheet of the petition was signed in his or her presence. The person who signs the circulator's affidavit need not be the person who physically presents the sheet to each voter signing the sheet, however the circulator must actually be present and see each of the signatories sign the petition. Circulators should therefore be aware that they cannot allow the petition to be removed from their presence in order to receive a signature from someone who they cannot physically observe sign the petition.

6. File securely bound nomination petitions

The Election Code requires that the sheets constituting the petition for nomination "shall be neatly fastened together in book form, by placing the sheets in a pile and fastening them together at one edge in a secure and suitable manner." The purpose of this requirement is to prevent tampering and preserve the integrity of the petitions. Courts have found that the key requirement is that the nominating petitions be fastened in a secure and suitable manner. It is recommended that all sheets be stapled or bound by two- or three-hole punch clips, also known as a universal metal binder. It is also recommended that paper clips and binding clips be avoided, as those manners of fastening, if not secure, could be determined to not provide a secure fastening and invalidate a petition filing.

7. Consecutively number each page of the petition for nomination

A candidate must also number each signature sheet constituting the petition for nomination consecutively. This requirement has been found to help in the identification and description of each petition and again, guard against tampering with the petitions. Failure to number or numbering of petition sheets for each circulator (if multiple circulators are used), rather than numbering all the sheets in one, consecutive order, has been found to be a fatal flaw which can result in a disqualification of the candidate's petitions.

8. Each circulator must sign each nomination petition sheet before a notary public

Any circulator of a petition for nomination must be at least 18 years of age and a citizen of the United States. They are not required to be residents or voters in the school district. Each sheet of a nomination petition must contain a circulator's statement/affidavit at the bottom, signed by the circulator of the petition and providing the circulator's street address or rural route number, as the case may be, as well as the county, city, village or town, and state. The circulator's statement should certify that:

- The signatures on that sheet of the petition were signed in his or her presence;
- The signatures are genuine; and either
 - Indicate the dates on which that sheet was circulated; or
 - Indicate the first and last dates on which the sheet was circulated; or

- Indicate that none of the signatures on the sheet was signed more than 90 days preceding the last day for the filing of the petition.
- To the best of his or her knowledge and belief, the persons so signing were at the time of signing the petition duly registered voters of the school district for which the candidate or candidates are to be nominated and certify that their respective residences are correctly stated.

The circulator’s statement on each nominating petition sheet must be signed and sworn to personally before a notary public. A failure of the person who circulated the petitions to personally appear before a notary public who acknowledged his or her signature can invalidate those petition sheets.

9. File Statement of Economic Interests properly and in the correct office

One of the three required documents that must be filed to be a proper, lawful filing by a candidate of their nominating petitions is a Statement of Economic Interests. The Statement itself is not filed with the candidate’s nominating petition sheets and the Statement of Candidacy; only the receipt for the filing is to be included. The Statement of Economic Interests form is available from the county clerk where the main office of the school district to which the candidate seeks election is located (usually available online, and can be printed). The form must be completed (the instructions are on the form itself) and filed by all candidates, even if the candidate is currently an elected official and has already filed a Statement of Economic Interests in relation to the office to which they seek election. The requirements related to the completion and filing of the Statement of Economic Interests form in Illinois are included in the “Candidates Guide” (see resource list).

Resources:

A shortcut to the links below is available at blog.iasb.com/2016/08/journal-resources-nominating-petition.html

Illinois Elections Code: www.ilga.gov/legislation/ilcs/ilcs5.asp?ActID=170

Illinois School Code: www.ilga.gov/legislation/ilcs/ilcs5.asp?ActID=1005

Illinois State Board of Elections Candidates Guide (2017): www.elections.illinois.gov/Downloads/ElectionInformation/PDF/2017CanGuide.pdf

Illinois State Board of Elections Local Election Official’s Handbook for the 2017 Consolidated Elections: www.elections.illinois.gov/Downloads/ElectionInformation/PDF/2017LEOBook.pdf

All candidates for local elective office are required to file their Statement of Economic Interests in the office of their applicable county clerk. The filing must be made in a written or printed form (cannot be filed electronically). Statements of Economic Interests should not be filed with the Illinois State Board of Elections. For some offices (generally state officials and judges), candidates are required to file their Statement of Economic Interests with the office of the Illinois Secretary of State, but this is not true for school board candidates.

10. File the receipt evidencing the filing of the Statement of Economic Interests with nomination petitions

A candidate must be certain he or she receives a written or printed receipt indicating that their Statement of Economic Interests was filed with the county and showing the date of filing. The receipt received from the applicable county clerk must then be filed along with the nominating petitions. Including this receipt for the filing of the Statement of Economic Interests, along with the filing of the nominating petition signature sheets and the Statement of Candidacy, is required in order for the filing to be considered lawful and complete.

11. Make the filing in the correct office

A candidate for a school board (or school director) is required to file the nominating petitions, Statement of Candidacy, and receipt for the filing of their Statement of Economic Interests with the applicable county election authority/clerk (or Board of Election Commissioners, if applicable), and **not** with the school board secretary or the administrative offices of the school district.

Conclusion

The discussion above is intended to highlight and clarify certain, common issues that tend to arise with the filing of nominating petitions by candidates for local elected office in Illinois, and to assist candidates in minimizing the possibility of any successful challenge to the preparation of nominating petition sheets, the collection of signatures on the sheets, or the filing of the sheets with the appropriate official. 

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