

BEFORE THE DULY CONSTITUTED ELECTORAL BOARD FOR THE HEARING AND PASSING
UPON OBJECTIONS TO THE NOMINATION PETITION FOR
STEPHANIE HOLDERFIELD, CANDIDATE FOR ELECTION AS CIRCUIT CLERK IN THE
COUNTY OF CHAMPAIGN, ILLINOIS.

STEPHEN R. FRANK)
PETITIONER-OBJECTOR)
)
v.)
)
STEPHANIE HOLDERFIELD)
RESPONDENT-CANDIDATE)

FILED
JAN 05 2012
Mindy Halter
CHAMPAIGN COUNTY CLERK

**BRIEF IN SUPPORT OF OBJECTOR'S PETITION
TO THE PETITION FOR NOMINATION**

NOW COMES the PETITIONER-OBJECTOR, STEPHEN R. FRANK by and through his attorneys Nally, Bauer, Feinen & Mann, P.C. and in support of his Objector's Petition states as follows:

STATEMENT OF FACTS

The undisputed facts admitted to in Respondent-Candidate Stephanie Holderfield's response include the facts that she signed her petitions for nomination on page 6 line 2 (*See*, Exhibit #1 page 6 line 2 of Objection) and also signed the petition of Ben Carlson, for nomination for the Democratic Party for Auditor in the County of Champaign, Illinois on page 34 line 9 (*See*, Exhibit #2 page 34 line 9 of Objection). Further, Candidate Holderfield admits in paragraph 4 of her Response that she signed the Statement of Candidacy and the Circulator's Affidavit for her Petitions. (*See*, Exhibit #1 of Objections for signatures).

In response to a Freedom of Information Act request submitted to the Champaign County Clerk's Office, The County Clerk has provided a statement confirming that Respondent-Candidate Stephanie Holderfield did not file a written request with the County Clerk's Office seeking to have her name

removed from the Petition of Ben Carlson where she signed. A copy of the Freedom of Information Act Request response is attached hereto as Exhibit A and hereby incorporated by reference.

LEGAL ARGUMENT

1. SIGNING A NOMINATING PETITION FOR BOTH A REPUBLICAN AND A DEMOCRAT CANDIDATE DISQUALIFIES RESPONDENT-CANDIDATE HOLDERFIELD FROM BEING ON THE BALLOT.

The act of signing both a Republican and Democratic nominating Petition and her Statement of Candidacy disqualifies Respondent-Candidate Holderfield from being on the ballot. 10 ILCS 5/7-10 the Election Code prescribing the form of petition nomination states in pertinent part A “qualified primary elector” of a party may not sign petitions for or be a candidate in the primary of more than one party. (10 ILCS 5/7-10 (k)). The First District Appellate Court interpreted this provision in Rosenzweig v. Illinois State Board of Elections, on April 7, 2011. (409 Ill. App. 3d 176 (1st Dist. 2011)). A copy of the Rosenzweig case is attached hereto as Exhibit B and hereby incorporated by reference.

In Rosenzweig, the Court was interpreting section 5/8-8 of the Election Code as it related to candidates for State Representative, however, the provision at issue that a “qualified primary elector” of a party may not sign petitions for or be a candidate in the primary of more than one party is identical to the provision in 5/7-10(k) which applies in our case. (10 ILCS 5/8-8 and 10 ILCS 5/7-10 (k)).

In Rosenzweig, the Appellate Court stated, “The Circuit Court examined the language of section 8-8 and determined that Hebda violated the statute because she signed a nominating petition for one party and ran as a candidate in the primary of another party.” (Id., at 179). The First District Appellate Court affirmed the circuit court order. However the Illinois Supreme Court stayed the order and directed the Appellate Court to vacate the order and reconsider Rosenzweig in light of Hossfeld v. Illinois State Board of Elections, 238 Ill. 2d 418 (2010). Hossfeld, is a case about party switching rather

than a case about 10 ILCS 5/8-8 relating to whether or not a qualified primary elector and candidate may not sign nominating petitions for more than one party. (See, Rosenzweig at 179). The Appellate Court in reviewing the case in light of Hossfeld, again affirmed circuit court's order removing Hebda from the ballot finding that the issue of party switching was irrelevant as the issue was interpretation of 10 ILCS 5/8-8 of the Code. There was no further appeal.

The facts of Rosenzweig are that the Republican candidate, Cynthia R. Hebda signed a nominating petition for both a Republican and a Democrat (in this case, her own petition and that of her opponent). The Court noted that the petition for the Democratic candidate included the language stating that "the undersigned were members of and affiliated with the Democratic party" and that the petition for Hebda stated that "the undersigned were members of and affiliated with the Republican party." (See, Rosenzweig, at 177). The Court further noted that Hebda filed her statement of candidacy declaring she was a member of the Republican party. (Id.)

The Court ultimately held that section 8-8 with the identical language to 7-10 "**prohibits signing a nominating petition for a candidate from one political party and then running as a candidate for another political party in the same election cycle**" and based upon that affirmed the fact that Hebda's nominating petitions were invalid. (Id. at 181 emphasis added).

In our case, the same statutory language applies and Respondent-Candidate Holderfield is prohibited from signing Ben Carlson's Petitions for Democratic nomination for Auditor and her own Petition for Republican nomination for Circuit Clerk and also filing a Statement of Candidacy for nomination as a Republican. Respondent-Candidate Holderfield's nomination petitions are therefore invalid and her name should be stricken from the ballot.

2. RESPONDENT-CANDIDATE HOLDERFIELD COULD HAVE WITHDRAWN HER OWN NAME FROM BEN CARLSON'S PETITIONS FOR NOMINATION.

Section 7-10 of the election code provided Respondent-Candidate Holderfield with an opportunity to withdraw her signature from Candidate Ben Carlson's petitions and she did not do so. (10 ICLS 5/7-10). This section of the Code states:

The petitions, when filed shall not be withdrawn or added to, and no signatures shall be revoked except by revocation filed in writing with the State Board of Elections, election authority or local election official with whom the petition is required to be filed, before the filing of such petition. (10 ILCS 5-7-10).

This statutory provision is echoed in the State Board of Elections Candidate's Guide 2011 available online at both the State Board of Elections and through a link from the Champaign County Clerk's Office. A copy of the 2011 Guide is attached hereto as Exhibit C and hereby incorporated by reference. On page 52 in the Frequently Asked Questions section, the guide states in paragraph 5 under Signing Petitions:

Who can remove a name from a nomination petition?
Only the circulator or the candidate on whose behalf the petition was circulated may strike the signature. [10 ILCS 5/7-10 and 10-3]. **However, an individual can submit a written request with the election authority or the local election official to have his/her name removed before the petition is filed.** (State Board of Elections Candidate's Guide 2011 page 52 emphasis added).

The Freedom of information Act response from the Champaign County Clerk's Office confirms that no request by Candidate-Respondent Holderfield to revoke a signature was received by them during the filing period for nomination petitions to be filed. (See, Exhibit A).

The inescapable conclusion is that, notwithstanding the right to revoke and the opportunity to do so, Respondent-Candidate Holderfield never revoked her signature on Ben Carlson's petition and it remains in full force and effect.

3. THE INTENT OF RESPONDENT CANDIDATE HOLDERFIELD RELATING TO THE REMOVAL OF HER NAME FROM BEN CARLSON'S NOMINATING PETITIONS IS IRRELAVENT.

In Rosenzweig, Hebda's excuse was that, "she informed the person who was circulating the petition that she was a Republican voter and that he responded that any registered voter could sign the petition." (Rosenzweig, at 177). However, the First District found that the issue before it was one that was a "pure question of law" consisting of the interpretation of the meaning of the language in a statute. (Rosenzweig, at 179). The exact same questions raised in Rosenzweig as to whether or not signing both a Democratic and Republican nominating petitions and signing a Statement of Candidacy for nomination by the Republican party should invalidate the nomination petitions of the signing candidate is before this Electoral Board and here again, it is a pure question of law. Respondent-Candidate Holderfield's intent with respect to why she signed the nominating petitions of a Democratic candidate is irrelevant to the issue of whether or not her nominating petitions are invalid. The same is true for her intent regarding removal of her name from the nominating petition of the Democratic candidate, it is simply irrelevant.

In the case of Nader et.al. v. Illinois State Board of Elections et. al., 354 Ill. App. 3d 335 (1st. Dist. 2004), the Court found, based on Section 10-10 of the Code that inquiry of the electoral board is limited to the validity of the objections and the sole issue is whether the nominating petitions comply with the provisions of the Election Code. (Id., at 344 and 340. Also citing Kozel v. State Board of Elections, 126 Ill. 2d 58 at 68 (1988) and Wiseman v. Elward 5 Ill. App. 3d 249 (1972)). *See Also*, Goodman v. Ward et al., 241 Ill. 2d 398 at 411 (March 24, 2011) ; Delgado v. Board of Election

Commissioners, 224 Ill. 2d 481, 485 (2007). The provisions of 10 ILCS 5/10-10 of the Code also apply to Objections in our case pursuant to 10 ILCS 5/7-12.1.

In Nader, the Petitioners were seeking to have the electoral board issue subpoenas to review exactly how the Objectors had compiled the facts for their objection including a review of the fact that allegedly State employees aided the Objector in sifting through the Candidates' nominating petition searching for suspect signatures while being paid by the government. (Id., at 344). The Court found that the Electoral Board's authority comes only from statute and that the statute empowers the Board only to determine if the candidate's nominating petition complied with the Code. In fact, the Court specifically stated in that case that it was irrelevant to the issue to investigate the propriety of the methods used by the Objector in raising his objections and affirmed the non-issuance of the subpoenas. (Id., at 344 and 345).

In our case, it is the intent of Respondent-Candidate Holderfield that is irrelevant to the inquiry of the Electoral Board. The Illinois Supreme Court ruled that the Code limits the Electoral Board's authority with respect to nominating papers to ascertaining whether those papers comply with the governing provisions of the Election Code and further, as the Court in Rosenzweig stated, for this particular inquiry, this is a pure question of law not fact.

4. **IF THE ELECTORAL BOARD FINDS THAT THE FACTS RELATING TO THE SIGNATURES OF RESPONDENT-CANDIDATE HOLDERFIELD ARE RELEVANT THE ISSUE IS ONE OF CREDIBILITY.**

The Electoral Board has not yet taken evidence but it at the last hearing did request evidence on intent. In the event that the Electoral Board concludes that intent is relevant to these proceedings, we state the following.

Respondent-Candidate Holderfield stated in the Champaign Urbana News-Gazette, on 12/13/11 that she asked Candidate Ben Carlson to strike her name from his petition. (*See*, Exhibit D). It is telling that she did not at the same time draw a line through her signature as was done on line 7 of sheet 19 of Respondent-Candidate Holderfield's petitions for someone who signed a petition Respondent-Candidate Holderfield circulated herself. (Exhibit #1 line 7 sheet 19 of Objection).

It is also telling that Respondent-Candidate Holderfield's husband signed both her petition for nomination as a Republican and those of Ben Carlson's as a Democrat (*See*, Exhibit #1 line 3 sheet 6 of Objection and Exhibit #2 line 5 sheet 34 of Objection). Additionally, if one examines the petitions of Respondent-Candidate Holderfield and Ben Carlson respectively at pages 28 (Exhibit #1 page 28 of Objection) and page 34 (Exhibit #2 page 34 of Objection) it becomes obvious that several people, possibly at the same event signed both Holderfield and Carlson petitions. The question then becomes, why as circulator would she have allowed people to sign her petition and those of Ben Carlson? Especially since as a circulator she is swearing that "to the best of my knowledge and belief the persons so signing were at the time of signing the petition qualified voters of the Republican Party in the political division in which the candidate is seeking nomination..." (*See*, Exhibit #1 Circulator's Affidavits on page 28 of Objection and Exhibit #1 Circulator's Affidavit of sheet 6 of Objection), something that can't possibly be true for both the Democratic and Republican petitions.

This behavior is exactly what the Appellate Court in Rosenzweig is guarding against when it stated:

The Seventh Circuit explained the reasoning behind a parallel provision in the Election Code that prohibits circulators from soliciting signatures for nominating petitions on behalf of more than one political party in a single election cycle. (*Citizens for John W. Moore Party v. Board of Election Commissioners*, 794 F.2d 1254, 1261 (7th Cir. 1986). The court explained that such restrictions prevent political maneuvers that could affect the quality of the candidates who will be on the ballot. *Id.* (Rosenzweig, at 181).

Finally, there is the issue of Ben Carlson's statement in the News-Gazette (See, Exhibit E), where he states, "No one asked us to remove any signature before filing our petitions." (Id.)

If the Electoral Board determines that it has the authority to hear evidence on the issue of intent or on any issue relating to more than the four corners of the nominating petitions that were filed, it must determine credibility of the witnesses testifying or the affidavit's submitted with the briefs. Based upon the fact that Respondent-Candidate Holderfield had the opportunity to remove her name from the Petition of Candidate Ben Carlson prior to him filing it by filing a request with the Champaign County Clerk's Office and didn't nor did she cross through her name on his petition, the Board should not accept without due consideration any statements of Respondent-Candidate Holderfield that she asked Ben Carlson to remove her name from his petition. (See, Exhibit D). The Board should be especially mindful that her statement is contradicted by Ben Carlson himself. (See, Exhibit E).

If the Board finds that Respondent-Candidate Holderfield is not credible on this issue it must hold that her nominating petitions are invalid and her name should be stricken from the ballot.

CONCLUSION

The Election Code clearly prohibits the signing of both a Democratic Petition for nomination and a Republican Petition for Nomination in the same election cycle. Further, it prohibits not only voters from doing so but also Candidates who then also file a Statement of Candidacy declaring they are a member of one particular party.

There is no dispute that Respondent-Candidate Holderfield a Republican seeking the nomination of Republican voters signed Ben Carlson's nominating petition, that Carlson is a Democratic candidate for County Auditor in the upcoming March 20, 2012 primary election, that after she signed Ben Carlson's petition she then signed a statement of candidacy as a Republican candidate for Circuit Clerk in the same election cycle, and her signature on the Carlson petition was never revoked or stricken.

These actions are a violation of Section 7-10 of the Election Code. (10 ILCS 5/7-10(k)).

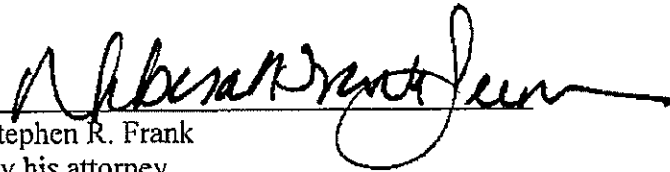
Pursuant to the Rosenzweig case and the Code, Respondent-Candidate Holderfield's nomination petitions are invalid and Respondent-Candidate Holderfield's name should not appear on the ballot.

Respectfully Submitted:

DATED: _____

1/5/12

Stephen R. Frank
By his attorney,
Deborah Frank Feinen



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