

**BEFORE THE DULY CONSTITUTED ELECTION 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
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Marilyn Hulsten
CHAMPAIGN COUNTY CLERK

RESPONDENT-CANDIDATE’S BRIEF IN OPPOSITION OF OBJECTOR’S PETITION

NOW COMES the RESPONDENT-CANDIDATE, STEPHANIE HOLDERFIELD, hereinafter referred to as “Candidate”, by and through her attorney, Gerald W. Smith of the SMITH LAW FIRM, P.C., who files this brief in opposition of the Objector’s Petition to the Petition for Nomination filed with the Champaign County Clerk on December 12, 2011.

I. Question Presented

Whether Candidate’s nomination petitions for Republican candidate for Champaign County Circuit Clerk should be invalidated and her name stricken from the ballot for the Republican primary election because Candidate was not only a signatory on her own nomination petition indicating she is a qualified voter in the Republican party, but also a signatory on Ben Carlson’s nomination petition indicating she is a qualified voter in the Democratic party.

II. Statement of the Case

During the Summer of 2011, Candidate Holderfield, a long-time Republican voter and current Republican Champaign County Board member, publically announced her intention to seek election as a Republican candidate for the office of Circuit Clerk for Champaign County.

(Respondent-Candidate’s Exhibit 1, ¶¶ 2.A. – 2.G.)

On or about September 11, 2011, while attending the Champaign County Republican Fall Festival/Picnic, Holderfield signed her own campaign petition and a number of Republican candidates' petitions, including Tim Johnson, Chapin Rose, Gordy Hulten, Barbara Frasca, Duane Northrup, John Farney, and others. (Respondent-Candidate's Exhibit 1, ¶¶ 2.H. – 2.I.; Objector's Petition, ¶¶ 3. & 5.; Objector's Exhibit #1, sheet 6). Throughout this campaign season, Holderfield only circulated petitions for herself. (Respondent-Candidate's Exhibit 1, ¶ 2.J.)

On or about October 22, 2011, while attending an Illini football game party at a mutual friend's house, Ben Carlson and Holderfield were both circulating petitions. Holderfield signed a petition for Ben Carlson, a long-time friend, who was running for County Auditor as a Democrat. (Respondent-Candidate's Exhibit 1, ¶ 2.K.; Objector's Petition, ¶¶ 3. & 6.; Objector's Exhibit #2, sheet 34). Upon realizing her error in signing Ben Carlson's petition, Holderfield spoke with Carlson in an attempt to have him strike her name or strike that petition sheet. (Respondent-Candidate's Exhibit 1, ¶¶ 2.L. – 2.M.)

On November 27, 2011, Holderfield signed her Statement of Candidacy, and filed that Statement of Candidacy with the County Clerk on November 28, 2011. (Objector's Exhibit #1, page 1). Ben Carlson signed and filed his Statement of Candidacy and accompanying petitions on December 1, 2011. (Objector's Exhibit #2, page 3). The petition of Ben Carlson with Holderfield's signature still intact was included in Mr. Carlson's candidacy packet submitted to and filed with the County Clerk. (Objector's Exhibit, #2, sheet #34).

On December 12, 2011, Stephen Frank filed his Objector's Petition to the Petition for Nomination. Candidate stipulated to ¶¶ 1-6 of the Objector's Petition, and denied ¶¶ 7-10 of the Objector's Petition. Thus, only those paragraphs denied are at question for this case.

III. Argument

WHETHER CANDIDATE HOLDERFIELD'S NOMINATION PETITIONS SHOULD BE DEEMED INVALID AND HER NAME REMOVED FROM THE BALLOT FOR THE REPUBLICAN PRIMARY BECAUSE SHE SIGNED NOMINATING PETITIONS FOR CANDIDATES IN THE PRIMARY OF MORE THAN ONE POLITICAL PARTY.

If Holderfield is a Democrat, then her nomination packet for office as a Republican would be invalid and her name would have to be removed from the ballot for the Republican Primary election. However, if Holderfield is a Republican, then her nomination packet for office as a Republican would be valid and her name would remain on the ballot for the Republican Primary election. Thus, the determination of Holderfield's political party affiliation is the issue at hand.

A. Candidate Holderfield is a Republican because she signed Republican nomination petitions prior to signing Ben Carlson's Democratic petition.

Objector states his basis for his objection as coming from section 7-10 of the Illinois Election Code which states, "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. While it is true that Holderfield did sign petitions for candidates in more than one party, whether intentional or inadvertent, the section 7-10 fails to provide a penalty for such an act. The only sanction stated in the Election Code that would be applicable to erroneous signatures is found in section 10-4, which states, "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." Thus, the apparent proper sanction is to strike invalid signatures.

The court further defined the role of valid petition signatures in *Watkins v. Burke*, 461 N.E.2d 625, 122 Ill.App.3d 499 (1st Dist. 1984). In *Watkins*, the court examined a similar situation where numerous signatures appeared on both the Republican candidate's petitions and

the Democrat candidate's petitions. After determining the intent of the legislature in construing the statutory provision prohibiting a voter from "sign[ing] the petitions for or be[ing] a candidate in the primary of more than one party" (10 ILCS § 5/7-10), the court held that "where an otherwise qualified voter has signed the nominating petitions of more than one party, the signature appearing on the petition first signed is valid and all subsequent signatures appearing on the nominating petitions of other parties are invalid." *Watkins*, 661 N.E.2d at 627.

The *Watson* court further clearly articulated the burden of proof for the order of signing lies with the plaintiff:

The mere appearance of a given voter's signature on both the democratic and republican nominating petitions was insufficient for disqualification. While we can appreciate the difficulty of proving the order of signing, the difficulty of proof does not shift the burden of proof. (citation omitted). Since plaintiff failed to present any evidence on the order of signing, the board correctly dismissed his objections." *Watkins*, 661 N.E.2d at 627.

The *Watkins* decision is still good law as noted this past year in *Rosenzweig v. Ill. State Bd. of Elections*, 409 Ill.App.3d 176, 946 N.E.2d 1113, 349 Ill.Dec. 617 (1st Dist. 2011).

With regards to the current case, the Objector has failed to present any evidence proving that Holderfield signed the Carlson's Democratic petition first. However, by sworn affidavit, Holderfield has stated that she had signed numerous Republican petitions (including her own petition) prior to signing Ben Carlson's Democratic petition.

Pursuant to the *Watkins* ruling, since Holderfield signed her petition as a Republican candidate and the petition of other Republican candidates on or about September 11, 2011, and then subsequently signed Ben Carlson's Democrat petitions on or about October 22, 2011, her signature(s) as a Republican would be valid and her subsequent signature as a Democrat would be invalid. Thus, Holderfield was a Republican all along and never a Democrat, negating the Objector's entire premise, and the Objector's Petition should be dismissed.

B. Objector's claim in ¶ 7 of his Objector's Petition is erroneous, incorrect, and should be dismissed.

Based on the *Watkins* decision and the facts of the case at hand, the Objector's conclusion stated in ¶ 7 of his Objector's Petition, "[a]nd thus, the signing of both Republican and Democratic nominating petition invalidates Respondent's Nominating Petitions" is erroneous and incorrect. Since pursuant to *Watkins*, Holderfield is considered a Republican because she signed Republican petitions prior to signing Carlson's Democratic petition, Respondent-Candidate's nominating petition is valid and the signature on Ben Carlson's petition would be invalid. Therefore, Objector's claim in ¶ 7 of his Objector's Petition should be dismissed.

C. Objectors claim in ¶ 8 of his Objector's Petition is erroneous, incorrect, and should be dismissed.

The Objector's conclusion stated in ¶ 8 of his Objector's Petition that "circulating Republican Petitions for Nomination...and...signing a Democratic nomination petition...is a further violation of 10 ILCS 5/7-10 by Respondent-Candidate" is also erroneous and incorrect. Nowhere in section 7-10 does the statute specify that a circulator of a petition must be of the same political party as the candidate for whom the petition is being circulated. The statute, however, does prohibit a circulator from "circulat[ing] or certify[ing] petitions for candidates of more than one political party. 10 ILCS 5/10-4. Regardless, the Objector did not base his claim on section 10-4. However, even if the statute did require the circulator of a petition to be of the same political party as the candidate for whom the petition is being circulated, based on the *Watson* ruling as discussed in paragraph A above, this would be a moot issue because the circulator (i.e., Holderfield) was a Republican who was circulating a petition for a Republican candidate, and who was also a Republican signatory on the petition. Therefore, Objector's claim in ¶ 8 of his Objector's Petition should be dismissed.

D. Objectors claim in ¶ 9 of his Objector’s Petition is erroneous, incorrect, and should be dismissed.

The Objector’s conclusion stated in ¶ 9 of his Objector’s Petition that “the circulator’s affidavit may be fraudulent” is likewise incorrect. The Objector was basing this statement on an incorrect premise that the signature of Stephanie Holderfield as a petitioner (Objector’s Exhibit #1, sheet 6, line 2) was signed at that location as a Democrat, and the circulator (also Stephanie Holderfield) knew that she signed the document on line 2 as a Democrat. This logic is erroneous because Ms. Holderfield signed as a Republican petitioner (as determined by the *Watkins* court), and believing all the time that she was a qualified Republican voter. Thus, according to her own belief and knowledge that she was a qualified Republican voter, she signed the circulator’s affidavit. Therefore, the circulator’s affidavit is not fraudulent and Objector’s claim in ¶ 9 of his Objector’s Petition should be dismissed.

Furthermore, for the circulator’s affidavit to be fraudulent, there must be fraud involved. The *Harmon* court discussed the element of fraud and its affect in invalidating petitions. In *Harmon*, the election board found sufficient evidence to indicate fraudulent behavior on the part of the petition circulators to merit invalidation of entire sheets of nomination petitions. *Harmon v. Town of Cicero Mun. Officers*, 864 N.E.2d 996 (Ill. App., 2007). Thus, if circulator fraud is present, nomination petitions may be ruled invalid. However, there was no fraud present in Holdferfield’s case.

The court in *Seefeldt v. Millikin Nat. Bank of Decatur*, 506 N.E.2d 1052, 154 Ill.App.3d 715 (4th Dist., 1987) outlined the elements of fraud:

The elements of fraud are: (1) a false statement of a material fact; (2) the party making the statement knew or believed it to be untrue; (3) that the party to whom the statement was made had a right to rely on it and did rely on it; (4) that the statement was made for the purpose of inducing the other party to act; and (5) that reliance by the person to whom the statement was made led to his injury.

Furthermore, the 7th Circuit, citing a 9th Circuit case, has stated that “the most important element is the ‘intent to deceive.’” *In re: James Ormal Anthony*, No. 10-2441 (7th Cir. 2011), citing *N.A. v. Eashai*, 87 F.3d 1082, 1090 (9th Cir. 1996).

Illinois Pattern [Jury] Instruction Nos. 800.02A and 800.02B provide that the plaintiff bears the burden of proving each of the elements of fraud by clear and convincing evidence; and the Illinois Supreme Court gives great deference to the IPI instructions:

Whenever Illinois Pattern Jury Instructions (IPI) contains an instruction applicable in a civil case, giving due consideration to the facts and the prevailing law, and the court determines that the jury should be instructed on the subject, the IPI instruction shall be used, unless the court determines that it does not accurately state the law. Illinois Supreme Court Rule 239(a).

Objector has not proved all of the elements of fraud in this case, nor has Objector provided any evidence of fraud on the part of Candidate Holderfield – that she knowingly made a false statement with the intent to deceive others or induce the others to act in reliance upon her statement. Therefore, Objector’s claim in ¶ 9 of his Objector’s Petition should be dismissed.

E. Objectors claim in ¶ 10 of his Objector’s Petition is erroneous, incorrect, and should be dismissed.

The Objector’s conclusion stated in ¶ 10 of his Objector’s Petition that “the [S]tatement [of Candidacy] is fraudulent as the Respondent-Candidate has...declared herself a qualified voter of both parties” is also incorrect. Although the Holderfield’s Statement of Candidacy was signed after she signed Ben Carlson’s petition, again, pursuant to *Watkins*, the signature on Ben Carlson’s petition is invalid since she had signed Republican petitions first. Thus, Holderfield was never a Democrat nor had she declared herself to be a Democrat. Furthermore, once again, Objector has not proved the elements of fraud. Therefore, Holderfield’s Statement of Candidacy remains valid and Objector’s claim in ¶ 10 of his Objector’s Petition should be dismissed.

F. Candidate Holderfield is a Republican because Holderfield never had any intent to be a Democratic voter.

Proving and challenging intent is difficult. The only party who truly can prove intent is the party who took the challenged action. The Illinois Supreme Court in *People v. Robinson*, 167 Ill.2d 397, 657 N.E.2d 1020 (Ill., 1995) discussed the concept of “intent” and stated that because direct evidence of intent is rare, such intent must usually be proven by circumstantial evidence (see also *People v. Friend*, 177 Ill.App.3d 1002, 1021, 127 Ill.Dec. 537, 533 N.E.2d 409 (1988)). Consequently, the Court held that the issue of determining “intent” involves the examination of the nature and quantity of circumstantial evidence necessary to support an inference of intent. The U.S. Supreme Court held that “Intent...may be inferred from all the circumstances surrounding the overt act.” *Haupt v. U.S.*, 330 U.S. 631, 67 S. Ct. 874 (1947). Therefore, it is important to view all of Holderfield’s actions in context and collectively.

Holderfield has a distinguished history of both voting as a Republican and being elected and selected to serve in various Republican positions. Candidate Holderfield has been a registered Republican voter in Champaign County for over 15 years, voting in the Republican primary elections and general elections. Holderfield was selected by the Champaign County Republican party in 2009 to serve as a delegate to the Illinois Republican Convention in Decatur, Illinois. She was also selected and served beginning in 2009 as a Fellow to the Illinois Lincoln Series and selected and served beginning in 2011 on the Board of Governors of the Illinois Lincoln Series. The mission of the Illinois Lincoln Series is: “*To increase the number of Illinois Republican women in elected and appointed governmental and political positions at the local, state, and federal levels.*” Illinois Lincoln Series: Excellence in Public Service, at <http://www.lincolnseries.com/Mission.html>, January 3, 2012. Holderfield was also selected in 2009 and served as a team member of the Illinois Republican Coalition. Republican Coalition

Groups provide opportunities for people with common interests and/or background to gather together around principles which are the foundation of the Republican Party. Coalition groups are helpful to the Republican Party by (1) building membership, (2) identifying Republican voters, (3) registering Republican voters, (4) holding meetings to provide opportunities for Republican speakers, (5) providing feedback to Party officials, (6) and volunteering to get out the Republican vote. Role of the Republican Coalition Groups in Illinois at <http://www.digitalvictorycms.com/uploaded/195681-role.pdf>, January 3, 2012.

In 2010, Holderfield was elected as a Republican candidate to the Champaign County Board, where she still currently serves. In 2011, Holderfield publically announced her intention to seek election as a Republican candidate to the office of the Champaign County Circuit Clerk. Throughout the summer, Holderfield attended and participated in various local events and parades, campaigning as a Republican candidate for the office of Circuit Clerk. Ben Carlson even assisted with her campaign, to include wearing one of her campaign T-shirts to these parades. Holderfield has also been a frequent attendee and participant in the monthly Champaign Republican breakfasts.

As a circulator of petitions, Holderfield indicated under oath 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.” Thus, Holderfield, as the petition circulator, under oath indicated that she, as a signatory on her own petition, was a “qualified voter” of the Republican party. Additionally, Holderfield indicated under oath on her Statement of Candidacy, which she signed on November 27, 2011, her status as a Republican candidate. Thus, Holderfield, twice indicated under oath her status as a Republican. However, Holderfield’s signature on Ben Carlson’s petition indicating her status as a Democratic voter is not a statement under oath. The

Court in *Havens v. Miller*, 429 N.E.2d 1292, 102 Ill.App.3d 558 (1st Dist., 1981) saw this as a significant factor.

[T]he people who signed the petitions were not under oath. [The Election Code] requires the circulator-not the signers-to certify under oath that the required statements are true. The distinction is significant because the criminal perjury provision of the Election Code (Ill.Rev.Stat.1979, ch. 46, § 29-10) applies only to false statements “in any affidavit, certificate or sworn oral declaration required by any provision of (the) Code.” *Id.*, 429 N.E.2d at 1299.

In all respects Holderfield has been considered a Republican by the electorate, her colleagues, and herself, with no action to indicate or imply her being a voter in the Democratic party, with the exception of this one petition signature. Thus, absent a proof of intent to switch parties and become a Democrat, the Objector’s Petition must fail.

G. Even though Holderfield signed petitions for candidates in two parties, her nomination packet should not be invalidated.

Election Boards and Courts have typically acted to remove invalid signatures rather than invalidating an entire nomination packet. The only sanction stated in the Election Code that would be applicable to erroneous signatures is found in section 10-4, which states, “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.” Thus, the apparent sanction is to strike invalid signatures. Courts have typically struck invalid signatures. (see *Hatch v. Holzman*, 204 N.E.2d 157, 55 Ill.App.2d 168 (1st Dist. 1964); *Stout v. Black*, 289 N.E.2d 456, 8 Ill.App.3d 167 (2d Dist. 1972); *Bowe v. City of Chicago Electoral Bd.*, 401 N.E.2d 1270, 81 Ill.App.3d 146 (1st Dist. 1980)).

However, entire sheets have been struck where there was evidence of circulator fraud. In *Fortas v. Dixon*, 122 Ill.App.2d 615, 462 N.E.2d 615 (1st Dist. 1984), the court invalidated entire sheets where there was evidence of improprieties associated with the circulator. “The trial court

struck all remaining names on those sheets where there was evidence that someone other than the person signing the circulator's oath had, in fact, circulated the [petition] sheet." *Id.* 122

Ill.App.2d at 617. (see also *Nolan v. Cook County Officers Electoral Bd.*, 768 N.E.2d 216, 329

Ill. App.3d 52, 263 Ill.Dec. 456 (1st Dist. 2002)

Holderfield attempted to have her signature struck from Ben Carlson's petition, however, unsuccessfully. Thus, Holderfield attempted to take corrective action once she discovered the error of her way. Since the Objector has proven no circulator fraud (see discussion in paragraph D above), the proper sanction would be to strike Holderfield's name from Carlson's petition, rather than invalidate her entire nomination petition packet. This would also be consistent with the *Watkins* holding discussed in paragraph A above.

IV. Conclusion

As a result of the *Watkins* ruling, Holderfield is considered a Republican and not a Democrat because she signed multiple Republican petitions first. Her subsequent lone signature on a Democrat's petition would not be valid, and she therefore would not be a Democrat.

Additionally, the Objector has not satisfied his burden to prove fraud or intent to deceive on the part of Holderfield. Nor has the Objector proved an intent on the part of Holderfield to switch political parties for this election.

Lastly, the typical sanction for signing petitions for candidates in multiple parties is to strike the signature, rather than invalidating a candidate's entire nomination packet based on an assumption that the candidate is switching parties. The Objector has not proved any intent on the part of Holderfield to switch parties.

Thus, the conclusions listed in ¶¶ 7, 8, 9, & 10 of Objector's Petition are without merit and this tribunal should rule accordingly, retaining Holderfield's name on the ballot for the Republican Primary election.




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CERTIFICATE OF SERVICE

I, GERALD W. SMITH, state that I did on the 5th day of January, 2012, send a true and correct copy of the foregoing Respondent-Candidate's Brief In Opposition Of Objector's Petition to the Petitioner's attorney via the fax number provided and listed on the Petition and listed below.

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