BOARD OF ELECTION COMMISSIONERS FOR THE CITY OF CHICAGO AS A DULY CONSTITUTED ELECTORAL BOARD

Objections of: PAUL WEBER	)	
	)	
	)	
To the Nomination	)	No.: 22-EB-RGA-015
Papers of: DAVID A. DEWAR	)	
	)	
Candidate for the nomination of the	)	
Democratic Party for the office of	)	
Representative in the General Assembly, 35th	)	
Representative District of the State of Illinois	)	

FINDINGS AND DECISION

The duly constituted Electoral Board, consisting of Board of Election Commissioners for the City of Chicago Commissioners Marisel A. Hernandez, William J. Kresse and June A. Brown, organized by law in response to a Call issued by Marisel A. Hernandez, Chair of said Electoral Board, for the purpose of hearing and passing upon objections ("Objections") of PAUL WEBER ("Objector") to the nomination papers ("Nomination Papers") of DAVID A. DEWAR, candidate for the nomination of the Democratic Party for the office of Representative in the General Assembly, 35th Representative District in the State of Illinois ("Candidate") at the General Primary Election to be held on Tuesday, June 28, 2022, having convened on March 28, 2022 at 9:00 a.m., in Room 800, 69 West Washington Street, Chicago, Illinois, and having heard and determined the Objections to the Nomination Papers in the above-entitled matter, finds that:

1. Objections to the Candidate's Nomination Papers were duly and timely filed.

2. The Electoral Board was constituted according to the laws of the State of Illinois.

3. A Call to the hearing on said Objections was duly issued by the Chair of the Electoral Board and served upon the members of the Electoral Board, the Objector and the

Candidate, by registered or certified mail and by Sheriff's service, as provided by statute or service was waived.

4. A public hearing held on these Objections commenced on March 28, 2022 and was continued from time to time. The Electoral Board assigned this matter to Hearing Officer Joseph Morris for further hearings and proceedings.

5. The Objector and the Candidate were directed by the Electoral Board to appear before the Hearing Officer on the date and at the time designated in the Hearing Schedule. Appearances were filed by or on behalf of the following persons: Objector, PAUL WEBER by Attorneys, MICHAEL J KASPER, KEVIN M. MORPHEW and JAMES HARTMANN; and the Candidate, DAVID A. DEWAR by Attorney, FRANK AVILA.

6. The Hearing Officer has tendered to the Electoral Board a report and recommended decision. Based upon the evidence presented, the Hearing Officer found that the Candidate's Nomination Papers should be found invalid due to the Candidate having changed political party affiliation within this single election cycle in violation of sections 8-8 and 7-10 of the Illinois Election Code (10 ILCS 5/8-8 and 5/7-10). In order to qualify as a candidate of the Democratic Party, as requested in this Candidate's Nomination Papers, he must not "sign petitions for or be a candidate in the primary of more than one party." 10 ILCS 5/8-8. However, prior to signing his own statement of candidacy form as a purported candidate of the Democratic Party, this Candidate previously signed the nominating petition of Republican Party candidate Herb Hebein, who happens to be seeking the very same elective office. The Hearing Officer found ample appellate court precedent in support of the finding that the Candidate's party-switching actions prohibit him from running as a Democratic Party candidate in the 2022 primary election. See, for example, *Patton v. Illinois St. Bd. of Elections,* 2018 Ill.App. 180425 (1st Dist.), See also *Schmidt v. Illinois St. Bd. of Elections,* 2016 Ill.App.4th 160189, *Rosenzweig*

v. Illinois St. Bd. of Elections, 409 Ill.App.3d, 176 (1st Dist. 2011), and *Watkins v. Burke*, 122 Ill.App.3d 499 (1st Dist. 1984).

7. The Electoral Board, having considered the evidence and arguments tendered by the parties and the Hearing Officer's report of recommended findings and conclusions of law, hereby adopts the Hearing Officer's recommended findings of fact and conclusions of law and incorporates them herein by this reference.

8. For the reasons stated above, the Electoral Board finds that the Nomination Papers of DAVID A. DEWAR are, therefore, invalid.

IT IS THEREFORE ORDERED that the Objections of PAUL WEBER to the Nomination Papers of DAVID A. DEWAR, candidate for the nomination of the Democratic Party for election to the office of Representative in the General Assembly, 35th Representative District of the State of Illinois, are hereby SUSTAINED and said Nomination Papers are hereby declared INVALID and the name of DAVID A. DEWAR, candidate for nomination of the Democratic Party for the office of Representative in the General Assembly, 35th Representative District of the State of Illinois, SHALL NOT be printed on the official ballot for the General Primary Election to be held on Tuesday, June 28, 2022.

Dated: April 29, 2022

Marisel A. Hernandez, Chair

William J. Kresse, Commissioner

June A. Brown, Commissioner

NOTICE: Pursuant to Section 10-10.1 of the Election Code (10 ILCS 5/10-10.1) a party aggrieved by this decision and seeking judicial review of this decision must file a petition for judicial review with the Clerk of the Circuit Court of Cook County within 5 days after service of the decision of the Electoral Board.

BEFORE
THE BOARD OF ELECTION COMMISSIONERS OF THE CITY OF CHICAGO
AS THE DULY CONSTITUTED ELECTORAL BOARD
FOR THE HEARING AND PASSING UPON OBJECTIONS
TO NOMINATION PAPERS OF CANDIDATES FOR NOMINATION
TO THE OFFICE OF REPRESENTATIVE IN THE GENERAL ASSEMBLY
FOR THE 35th REPRESENTATIVE DISTRICT OF ILLINOIS
TO BE VOTED UPON AT THE GENERAL PRIMARY ELECTION
TO BE HELD ON JUNE 28, 2022

PAUL WEBER,	)	
	)	
Petitioner-Objector,	)	
	)	No. 22-EB-RGA-015.
vs.	)	
	)	Hearing Officer Morris
DAVID A. DEWAR,	)	
	)	
Respondent-Candidate.	)	

REPORT OF THE HEARING OFFICER AND RECOMMENDED DECISION

To: The Chicago Board of Election Commissioners.

1. An Initial Hearing was held on March 28, 2022. Petitioner-Objector attended by counsel, Michael Kasper. The Candidate attended by counsel, Frank Avila. Appearances of the parties were entered and exchanged. Counsel on both sides submitted e-mail addresses from and through which they agreed to file and serve papers and otherwise communicate with the Electoral Board, the Hearing Officer, and each other. Confidentiality and non-disclosure Agreements were properly executed and filed. The Candidate's Nomination Papers were marked as Board Exhibit A and, without objection, were received into the record. The Objectors' Petition was marked as Board Exhibit B and, without objection, was received into the record. The Notice of Call and the

parties' waivers of service of summons were marked as Board Group Exhibit C and, without objection, were received into the record. The parties' written appearances and confidentiality and non-disclosure agreements were marked as Board Group Exhibit D and received into the record, all without objection. The parties reported that no motions would be filed under Electoral Board Rule 5 and no such motions were filed.

2. The parties agreed that the gravamen of Petitioner-Objector's challenge to the nominating papers of Respondent-Candidate is that Respondent-Candidate disqualified himself from seeking the nomination this year (in the General Primary Election scheduled to be held on June 28, 2022) of his now-declared party when, prior to the filing of his nomination papers, he effectively established himself as a member of another party in this election cycle when, as an elector, he signed a nominating petition of a candidate of another party for the same office that he now seeks.

3. The parties further agreed that the factual issues present in the case are the questions:

(a) Did Respondent-Candidate in fact sign a nominating petition in support of Herb Hebein, a candidate in the impending primary for the nomination of the Republican Party for State Representative in the 35th Representative District? and

(b) If so, when did he sign it?; that is, did he sign it before or after he signed his own nominating papers?

4. By agreement of the parties, an evidentiary hearing on these questions was scheduled to be held on Wednesday, April 13, 2022, commencing at 12:00 noon.

5. Objector filed two requests for a total of eleven subpoenas to compel witnesses to attend and give evidence at the hearing. The Hearing Officer recommended in writing that all subpoenas sought be issued, and the Electoral Board did issue the same. The Candidate requested

no subpoenas. The parties agreed that the Candidate would attend the evidentiary hearing and would permit himself to be examined by the Objector.

6. As scheduled, an evidentiary hearing was held on April 13, 2022. Both sides were present by counsel and the Candidate attended in his proper person. Opening statements were waived.

7. Objector called the Candidate as his first witness. The Candidate was duly sworn and was examined by both parties for all purposes (direct examination, cross examination, re-direct examination, re-cross examination, etc.) until both sides had exhausted their questions. The candidate testified that:

(a) His current candidacy is the second time he has ever sought public office; he previously ran in a non-partisan election for Alderman of the 19th Ward of the City of Chicago. (Tr. 5, 13.) [1]

(b) Candidate is not currently a member of the Republican Party. (Tr. 17.) He has never run for office as a Republican. (Tr. 18-19.)

(c) Candidate has been a voter for 37 years (Tr. 17), but has rarely if ever voted for candidates of the Democratic Party (Tr. 17-18). The last time he voted for a Democratic candidate in a general election may have been 35 years ago, that is, "a long time ago". (Tr. 18.)

(d) Candidate states, "I'm not tied to any party affiliation." (Tr. 15.)

(e) As a general matter Candidate signs nominating petitions for candidates of

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[1] All citations in this report and recommendation to oral testimony and proceedings are to the Transcript of Proceedings of April 13, 2022.

all political parties with whom he agrees on particular issues (Tr. 15), such as support for the Second Amendment (Tr. 15), including Democratic candidates for public office (Tr. 17). He has signed nominating petitions for independents, Democrats, and Republicans, regardless of party affiliations or lack thereof, when asked. (Tr. 20.) He will do so and will ask others to the same because his aim is "just to get me on the ballot and this is not that you are supporting me or you are affiliated with my particular party." (Tr. 20.)

(f) Candidate's "personal policy" is that he will sign any petition to gain ballot access for a candidate. (Tr. 16.)

(g) On January 13, 2022, Candidate attended a meeting of the Illinois State Rifle Association held at Kenootz Pizza in Midlothian , Illinois. (Tr. 11-12, 14-15.)

(h) Many candidates seeking public office, including as Republicans, Democrats, and independents attended that meeting and asked other attendees to sign their respective nominating petitions. (Tr. 15.)

(i) At that meeting Candidate signed a nominating petition for at least one Democratic candidate for public office, although he cannot recall who the candidate was or what office the candidate was seeking. (Tr. 16, 20.)

(j) Herb Hebein is a candidate in the General Primary Election to be held on June 28, 2022, who seeks the nomination of the Republican Party for the office of Representative in the Illinois General Assembly for the 35th District. (Objector's Ex. 1; Tr. 9.) At the evidentiary hearing Objector offered into evidence a copy (certified by the Illinois State Board of Elections) of the nominating papers of Herb Hebein and, without objection, the certified copy of the nominating papers of Herb Hebein was marked as Objector's Exhibit

1 and was received into the record.

(k) Candidate knows of Herb Hebein, and knows him personally, but as an acquaintance rather than as a friend. (Tr. 9.)

(l) Candidate knows that Herb Hebein is running as a Republican. (Tr. 9.)

(m) Herb Hebein had asked Candidate to sign Herb Hebein's petitions. (Tr. 12). Herb Hebein was at the meeting held on January 13, 2002, at Kenootz Pizza and said to Candidate, "I'm trying to get on the ballot. I need 400 plus signatures." (Tr. 16.)

(n) On January 13, 2022, at Kenootz Pizza in Midlothian, Illinois, Candidate signed the nominating petitions of Herb Hebein, doing so at Line 5 of Sheet 32. (Objector's Ex. 1, Sheet 32, Line 5; Tr. 11-12, 14-15, 16.)

(o) Candidate now seeks the nomination of the Democratic Party for the office of Representative in the Illinois General Assembly for the 35th Representative District in the General Primary Election to be held on June 28, 2022. (Board Ex. A at 1; Tr. 6; Tr. 18.)

(p) Candidate seeks the nomination of the Democratic Party "to talk about policy opposed to politics and party. So I feel that polic[y is] the most important thing, not speaking about parties ... [but] speaking to the people's issues." (Tr. 18.)

(q) Candidate decided to run in this election by seeking the nomination of an established party because doing so required him to obtain only 400 petition signatures, whereas if he had run as an independent he would have had to obtain at least 5,000 signatures. (Tr. 17.) Thus, the number of signatures that would have been required for an independent candidacy was about 12 times the number required for the candidacy of an established party, and Candidate did not have time to collect the number of signatures that

an independent candidacy would have required. (Tr. 17.)

(r) Candidate also took note that after redistricting "the district seems to have mostly Democrats". (Tr. 18.)

(s) Candidate decided on March 5, 2022, that he would seek the office for which he has filed the nomination papers that are at issue in the instant case, and he gained all petition signatures in support of his nomination between March 5, 2022, and March 13, 2022. (Tr. 6, 8.)

(t) Candidate personally used a typewriter to fill in the blanks in the prefatory paragraph of the form he used to gather petition signature sheets and did so on March 5, 2022. (Tr. 7.)

(u) On March 13, 2022, Candidate subscribed his own name as a signatory of the petition in support of his candidacy, and he did so on Sheet 86 of his petitions at Line 9. (Tr 8 - 9.)

8. No further witnesses were called. No further exhibits were offered into evidence. Both parties rested. The evidentiary record of was closed on April 13, 2022.

9. Objector submitted a written Pre-Hearing Memorandum setting forth points of law. Candidate elected not to make a written submission. Closing arguments were held on April 13, 2022, and the case was submitted for issuance of a report and recommendation by the Hearing Officer.

10. The evidence clearly and unambiguously shows that:

(a) On January 13, 2022, Candidate signed the nominating petitions of a candidate for the nomination of the Republican Party for the office of State Representative

for the 35th District.

(b) On March 5, 2022, Candidate decided that he would run for the same office as a candidate seeking the nomination of the Democratic Party, and began collecting petition signatures; he signed his own papers on March 13, 2022.

10. The applicable law is settled. Section 8-8 of the Illinois Election Code, specifically governing the nomination and election of members of the General Assembly, provides 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." 10 ILCS § 5 / 8-8. This language is echoed is other parts of the Election Code applicable to other offices, including Statewide offices, Federal offices, county offices, and internal party offices. *See, e.g.*, 10 ILCS § 5 / 7-10. In other words, to run for a party's nomination for an office, a candidate must be a "qualified primary elector" of the party whose nomination he seeks. In Illinois, a "qualified primary elector" of one party does not attempt to influence the outcome of another party's selection of its candidates by signing nominating petitions of the other party's candidates.

11. In construing and applying these provisions of the Election Code, the Illinois courts have been clear and consistent. For example, in *Patton v. Illinois State Board of Elections*, 2018 Ill. App. 180425 (1st Dist.), the Illinois Appellate Court held that "Candidate's statement of candidacy in which he claimed to be a 'qualified primary voter of the Republican Party' in the upcoming March 20, 2018, primary election was invalid because prior to signing his statement of candidacy, he signed a Democratic nominating petition in violation of the restriction set forth in section 8-8 of the Election Code (10 ILCS 5/8-8)." *See also Schmidt v. Illinois State Board of Elections*, 2016 Ill. App. 4th 160189; *Rosenzweig v. Illinois State Board of Elections*, 409 Ill. App.

3d 176, 946 N.E.2d 1113 (1st Dist. 2011). This line of cases goes back at least as far as *Watkins v. Burke*, 122 Ill. App. 3d 499, 502, 461 N.E.2d 625 (1st Dist. 1984), where the Illinois Appellate 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."

11. On this state of the law, then, the proper disposition of the instant case is exactly as held in *Patton, supra*, except substituting the date of the impending primary election and reversing the placement of the names of the political parties: Candidate's statement of candidacy in which he claimed to be a "qualified primary voter of the Democratic Party" in the upcoming June 28, 2022, primary election was invalid because prior to signing his statement of candidacy, he signed a Republican nominating petition in violation of the restriction set forth in section 8-8 of the Election Code (10 ILCS 5/8-8).

12. Candidate argues that in the last thirty years there have been many changes in the political culture such that "party affiliation" is not as "deep" as "issue affiliation", and "issue affiliation", in turn, is not as "deep" as "the desire to see other people run for office." (Tr. 28.) The fact that signature requirements for independent candidacies are so onerous, he contends, drives candidates into seeking the nominations of established parties with which they are not particularly interested in being affiliated, just to be able to have the platform for addressing the public that comes with access to the ballot. Current standards of ballot access favoring "substantial compliance", coupled with the spirit of the First and Fourteenth Amendments of the United States Constitution, militate, he asserts, in favor of a change in law so as to accommodate the needs and desires of candidates and voters who care more about the substance of issues and less about party affiliation.

(Tr. 26-38.)

13. Candidate concedes that, in the face of existing law, his "argument is more argument, theoretical and public policy than anything"; and that the Electoral Bard may not have "the ability to overthrow" existing law; and "[m]aybe it has to go to the Supreme Court". (Tr. 26.)

14. In short, Candidate does not argue that the instant case can be shown to fall outside the ambit of Section 8-8 of the Election Code, or that it can be distinguished on the facts from the decisions in *Patton* and other cases in the line of *Watkins*. Rather, Candidate contends that ethereal Constitutional doctrines (presumably "emanating" from unspecified Constitutional texts), coupled with sundry policy arguments, favor a change in current statutory and case law. Perhaps the strongest of these arguments are in the nature of potential claims under the Equal Protection Clause of the 14th Amendment to the effect that the numerical petition signature requirements of existing law make ballot access easier for candidates of established parties than for independent candidates. But, if so, then the solution would seem to lie somewhere in the realm of relaxing ballot access requirements for independents rather than in diminishing the associational freedoms of established parties. *See, e.g., Libertarian Party of Illinois v. Illinois State Board of Elections*, 164 F. Supp. 3d 1023 (N.D. Ill. 2016); *but see Jenness v. Fortson*, 403 U.S. 431 (1971). After all, the associational freedoms of political parties are as much protected by the First Amendment (including as incorporated in the 14th Amendment) as are any other liberties. Simply by availing itself of the electoral machinery that the public makes optionally available to political parties for the selection of their nominees through primary elections (as opposed to through conventions, caucuses, or any of numerous other ways in which a political party may choose its leaders and its candidates) a party does not surrender its rights to determine its own identity and to preserve its institutional integrity.

To put it simply, the First Amendment more likely protects the rights of Republicans to choose Republican nominees and of Democrats to choose Democratic nominees than it does to further the ability of people to assert the right to choose the candidates of parties to which they do not belong. As the United States Supreme Court has taught, "the political party and the independent candidate approaches to political activity are entirely different, and neither is a satisfactory substitute for the other." *Storer v. Brown*, 415 U.S. 724, 745 (1974).

15. In any event, Candidate's case is in the nature of an appeal to the legislature to rewrite the statutes or to the higher courts to offer relief from the statutes. Neither remedy is within the remit of this Electoral Board.

16. Given the settled law as the Electoral Board must find it, by signing the petitions of a Republican candidate for a particular office on January 13, 2022, Candidate declared himself to be a member of the Republican Party for purposes of the 2022 primary election. He was not entitled to change his mind two months later and then jump into the Democratic Party's primary for any office, let alone for the very same one.

17. Accordingly, the Hearing Officer recommends that the Electoral Board enter the following findings of fact:

(a) On January 13, 2022, Candidate signed the nominating petitions of a candidate for the nomination of the Republican Party for the office of State Representative for the 35th District.

(b) On March 5, 2022, Candidate decided that he would run for the same office as a candidate seeking the nomination of the Democratic Party, and began collecting petition signatures; he signed his own papers on March 13, 2022.

18. The Hearing Examiner recommends that the Electoral Board enter the following conclusions of law:

(a) Candidate's statement of candidacy in which he claimed to be a 'qualified primary voter of the Democratic Party' in the upcoming June 28, 2022, primary election was invalid because prior to signing his statement of candidacy, he signed a Republican nominating petition in violation of the restriction set forth in section 8-8 of the Election Code (10 ILCS § 5 / 8-8).

(b) The Objector's Petition is well founded, and the relief sought therein should be granted.

(b) The Candidate's nomination papers are insufficient in law and fact.

9. The Hearing Examiner recommends that the Electoral Board enter the following final administrative decision:

The name of DAVID A. DEWAR shall not appear and shall not be printed on the ballot for nomination to the office of Representative in the General Assembly for the 35th Representative District of Illinois to be voted upon at the General Primary Election to be held on June 28, 2022.

Enter:

/s/ **JOSEPH A. MORRIS**

JOSEPH A. MORRIS
Hearing Officer

Dated: April 25, 2022.