

No. 1-11-0305

**NOTICE:** This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e) (1).

FIRST DIVISION  
February 28, 2011

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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RIVERDALE CHOICE PARTY, <i>et al.</i> ,	)	Appeal from the
	)	Circuit Court of
	)	Cook County.
Petitioners-Appellants,	)	
	)	
v.	)	No. 2011 COEL 004
	)	
RIVERDALE ELECTORAL BOARD, <i>et al.</i> ,	)	
	)	Honorable
	)	LaGuina Clay-Clark,
Respondents-Appellees.	)	Judge Presiding.

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PRESIDING JUSTICE HALL delivered the judgment of the court.  
Justices Lampkin and Rochford concurred in the judgment.

**O R D E R**

*HELD:* Newly formed political party's failure to strictly comply with section 10-2 of the Election Code by failing to submit a complete slate of candidates for all available offices

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to be filled in the upcoming election did not mandate removal of the candidates' names from the electoral ballot.

Petitioners, Louis Peyton, Carmelia Shipp, and John Turman, candidates of the newly formed political party, the Riverdale Choice Party, appeal from an order of the circuit court of Cook County striking their names from the official ballot for the upcoming municipal consolidated election to be held in the Village of Riverdale, Illinois, on April 5, 2011.

An objector's petition was filed with the Board of Election Commissioners of the Village of Riverdale (Board), complaining that the nomination papers of the Riverdale Choice Party did not comply with section 10-2 of the Illinois Election Code (Election Code) (10 ILCS 5/10-2 (West 2004)), because the papers failed to nominate a candidate to fill all the vacant offices to be filled in the upcoming election. The objector maintained that the Riverdale Choice Party failed to nominate a candidate to fill the remaining two years of the unexpired term of a village trustee who had resigned from office.

The Board conducted a hearing on the objector's petition. The Board overruled the petition by a vote of 2 to 1, finding that section 10-2 of the Election Code did not require the Riverdale Choice Party to nominate a candidate to fill the remaining two years of the unexpired term of the village trustee.

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The Board ordered that petitioners' names be printed on the ballot. The circuit court reversed the Board's decision.

Petitioners now appeal. We affirm in part and reverse in part.

For purposes of judicial review, the Board is considered an administrative agency. *Cinkus v. Village of Stickney Municipal Officers Electoral Board*, 228 Ill. 2d 200, 209, 886 N.E.2d 1011 (2008). We review the Board's decision rather than the circuit court's judgment. *Cinkus*, 228 Ill. 2d at 212.

An electoral board's findings of fact are deemed *prima facie* true and correct and will not be disturbed unless they are against the manifest weight of the evidence. *Cullerton v. Du Page County Officers Electoral Board*, 384 Ill. App. 3d 989, 991, 894 N.E.2d 774 (2008). An electoral board's decisions on questions of law are reviewed *de novo*. *Siegel v. Lake County Officers Electoral Board*, 385 Ill. App. 3d 452, 455, 895 N.E.2d 69 (2008). And an electoral board's rulings on mixed questions of law and fact are reviewed under a clearly erroneous standard. *Cullerton*, 384 Ill. App. 3d at 991; *Siegel*, 385 Ill. App. 3d at 455-56.

The question presented to us is whether the Riverdale Choice Party's nomination papers complied with section 10-2 of the Election Code. This is a question of law, which we review *de novo*. *Salgado v. Marquez*, 356 Ill. App. 3d 1072, 1075, 828 N.E.2d

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805 (2005).

The portion of the Election Code at issue states that "[a]ny group of persons \*\*\* desiring to form a new political party \*\*\* shall at the time of filing contain a complete list of candidates of such party for all offices to be filled in the \*\*\* district or political subdivision as the case may be, at the next ensuing election." 10 ILCS 5/10-2 (West 2004). Our supreme court has determined that the quoted statutory language requires that in order for a new political party to gain access to the electoral ballot, it must nominate a candidate for "all of the offices to be filled" in the ensuing election. *Reed v. Kusper*, 154 Ill. 2d 77, 85, 607 N.E.2d 1198 (1992).

The Riverdale Choice Party failed to nominate a candidate to fill the remaining two years of the unexpired term of the village trustee who resigned from office. Pursuant to section 3.1-10-50(f) of the Illinois Municipal Code (Municipal Code) (65 ILCS 5/3.1-10-50(f) (West 2008)), the trustee's vacant office became subject to be filled in the upcoming election because the trustee resigned from office with more than 28 months remaining in a four-year term and the resulting vacancy occurred more than 130 days prior to the ensuing election.<sup>1</sup>

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<sup>1</sup> Section 3.1-10-50(f) of the Municipal Code provides in relevant part that "[i]f a vacancy occurs in an elective

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The Riverdale Choice Party's petition did not nominate a candidate to fill the office created by the vacancy, and therefore, it failed to satisfy the "full-slate" requirement set forth in section 10-2 of the Election Code. However, we do not believe that under the circumstances in this case, the Riverdale Choice Party's noncompliance with section 10-2 compels striking petitioners' names from the electoral ballot.

Although the word "shall" appears in the pertinent language of section 10-2 of the Election Code, the word has been interpreted as directory rather than mandatory in a number of election cases. *Ballentine v. Bardwell*, 132 Ill. App. 3d 1033, 1036, 478 N.E.2d 500 (1985); *Courtney v. County Officers Electoral Board*, 314 Ill. App. 3d 870, 873-74, 732 N.E.2d 1193 (2000) ("the word 'shall,' in construing election statutes, has been held directory rather than mandatory in a variety of cases").

In *People ex rel. Harris v. Powell*, 35 Ill. 2d 384, 386-87,  

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municipal office with a 4-year term and there remains an unexpired portion of the term of at least 28 months, and the vacancy occurs at least 130 days before the general municipal election next scheduled under the general election law, then the vacancy shall be filled for the remainder of the term at that general municipal election." 65 ILCS 5/3.1-10-50(f) (West 2008).

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221 N.E.2d 274 (1966), the Election Code provided that the chairmen of the county central committees of the subject counties "shall file" calls for the conventions of their respective parties; our supreme court determined that the words "shall file" were directory where there were no claims that the failure to file the call would adversely affect the merits of the election.

The criteria for determining whether the provisions of an election statute are mandatory or directory were set forth by our supreme court in *People ex rel. Meyer v. Kerner*, 35 Ill. 2d 33, 39, 219 N.E.2d 617 (1966), as follows:

"Where a statute provides that an election shall be rendered void by failure of those involved in the election process to perform certain duties, the courts are bound to enforce it as mandatory. [citations omitted] But, where the statute does not expressly declare its provisions to be mandatory or compliance therewith to be essential to its validity, the failure to strictly comply, in the absence of fraud or a showing that the merits of the election were affected thereby, is not fatal."

Moreover, if the statute in question "simply provides that certain acts or things shall be done within a particular time or in a particular manner, and does not declare that their performance is essential to the validity of the election, then

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they will be regarded as directory." *Pullen v. Mulligan*, 138 Ill. 2d 21, 65, 561 N.E.2d 585 (1990).

Section 10-2 of the Election Code does not prescribe any sanction for failing to follow its provisions. In addition, our supreme court has determined that strict compliance with section 10-2 is not essential to the validity of a qualified candidate's nomination. See *Anderson v. Schneider*, 67 Ill. 2d 165, 176, 365 N.E.2d 900 (1977) ("we hold section 10-2 confers no authority for the removal of all of the candidates because one is unqualified"). In this regard, section 10-2 should be given a directory construction.

"While all the requirements of the election law are mandatory in the sense that they impose a duty of obedience on those who come within their purview, and even directory provisions may not be disregarded; it does not follow that every departure or omission will vitiate the ballot or the proceeding." *Ballentine*, 132 Ill. App. 3d at 1040, citing *Powell*, 35 Ill. 2d at 387. The failure to strictly comply with a directory provision is not fatal in the absence of fraud or a showing that the merits of the election were affected. *Ferguson v. Ryan*, 251 Ill. App. 3d 1042, 1048, 623 N.E.2d 1004 (1993).

In this case, respondents have not alleged that the petitioners engaged in fraud or that the merits of the election

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would be affected by the Riverdale Choice Party's failure to nominate a candidate to fill the remaining two years of the unexpired term of the village trustee who resigned from office. We also note that the three candidates running for village trustee (all incumbents) demonstrated significant political viability by gathering the signatures of 668 voters, more than six times the minimum requirement of 100.

One of the primary purposes of nominating petitions "is to reduce the electoral process to manageable proportions by confining ballot positions to a relatively small number of candidates who have demonstrated initiative and at least a minimal appeal to eligible voters." *Salgado*, 356 Ill. App. 3d at 1079. We believe that the interests of fundamental fairness and the integrity of the electoral process will best be served by allowing the names of all three candidates to appear on the ballot as independents with the party name stricken. See, e.g., *Vasquez v. Municipal Officers Electoral Board*, 115 Ill. App. 3d 1014, 1018, 450 N.E.2d 1379 (1983). The candidates, however, should not be accorded top ballot positions since they failed to satisfy the statutory requirements governing the creation a new political party. 10 ILCS 5/10-15 (West 2004).

For the foregoing reasons, the judgment of the circuit court is affirmed to the extent that it denies the designation of the

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petitioners as the Riverdale Choice Party. The petitioners as individuals, without any party designation, may be placed on the ballot for the upcoming municipal consolidated election to be held in the Village of Riverdale, Illinois, on April 5, 2011.

Reversed in part, affirmed in part.