

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).

IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

FRANK WURSTER,)	Appeal from the Circuit Court
)	of Du Page County.
Petitioner-Appellant,)	
)	
v.)	No. 11-MR-1764
)	
DONALD PETERS, Candidate, DU PAGE)	
COUNTY OFFICERS' ELECTORAL)	
BOARD, J.P. "RICK" CARNEY, JEANNE)	
McNAMARA, CHARLOTTE MUSHOW,)	
and DU PAGE COUNTY ELECTION)	
COMMISSION,)	Honorable
)	Bonnie M. Wheaton,
Respondents-Appellees.)	Judge, Presiding.

JUSTICE HUTCHINSON delivered the judgment of the court.
Justices Burke and Hudson concurred in the judgment.

Held: The Board properly found that the election cycle was completed in April 2011, and thus, the signatures on Peters's nomination papers were valid. We affirmed the judgment of the trial court.

ORDER

¶ 1 Petitioner, Frank Wurster, filed a written objection to the candidacy of respondent, Donald, Peters, who sought election as Republican precinct committeeman for Downers Grove Township precinct No. 12, in the Republican primary to be held on March 20, 2012. After an evidentiary

hearing, the Du Page County Officers' Electoral Board (the Board) overruled petitioner's objection and determined that candidate Peters was entitled to have his name included on the ballot as a precinct committeeman candidate. Petitioner sought judicial review, which confirmed the decision of the Board. Petitioner filed a timely notice of appeal. We affirm.

¶ 2 On December 5, 2011, Peters filed nominating papers to have his name appear on the March 20, 2012, primary election ballot for the office of Republican Precinct Committeeman for Downers Grove Township Precinct No. 12. The nomination petition contained 20 signatures.

¶ 3 Petitioner filed an objection to Peters's nominating petitions with respondent, Du Page County Election Commission (the Commission). Petitioner argued that Peters's name should not appear on the primary election ballot on three grounds: (1) the petitions contained signatures of signators who were not registered voters in the political subdivision in which Peters sought elective office; (2) the petitions contained signatures of signators who were not signed in their own proper person; and (3) the signatures of the signators were invalid relative to the nomination petitions because Peters was running as a Republican and 70% of the signators were purportedly not Republican voters.

¶ 4 On December 19, 2011, the Board conducted a hearing on petitioner's objection. On December 23, 2011, the Board presented its findings and rulings in a written order. With respect to the first two grounds based on the signator's address and the validity of the signatures, the Board sustained petitioner's objection but found that Peters's nominating papers still contained the required number of valid signatures. With respect to the third ground concerning the purported party affiliation of the signators, the Board overruled petitioner's objection. The Board based its ruling on the rationale and holding of *Hossfeld v. Illinois State Board of Elections*, 238 Ill. 2d 418 (2010).

The Board quoted from *Hossfeld*, that “the Election Code no longer contains express limitation on party switching,” and that voters may sign any nomination petition, regardless of party affiliation, at the beginning of a new election cycle or season. *Hossfeld*, 238 Ill. 2d at 429. The Board continued, stating that a voter may not attempt to switch parties during a new election cycle. The Board concluded:

“The last election cycle was completed in April of 2011. Pursuant to the holding of *Hossfeld v. Illinois State Board of Elections*, the signators are not foreclosed from signing a Nomination Petition that was of a different party affiliation than the signator may have voted for in the last election cycle. The OBJECTOR’S Objection is, therefore, overruled.”

¶ 5 Petitioner sought judicial review in the trial court, and the trial court affirmed the Board’s decision. Petitioner filed a timely notice of appeal, and we expedited this appeal on our own motion pursuant to Illinois Supreme Court Rule 311 (eff. Feb. 26, 2010).

¶ 6 Petitioner contends that the Board’s decision was erroneous as a matter of law, arguing that a person may not seek election to a political party office based on nominating petitions signed by voters associated with an opposing political party. Petitioner asserts that *Hossfeld* is not controlling on the issue and that a distinction exists between the election of political party offices and public offices.

¶ 7 We review the Board’s decision rather than the trial court’s decision. See *Siegel v. Lake County Officers Electoral Board*, 385 Ill. App. 3d 452, 455 (2008) (citing *Cinkus v. Village of Stickney Municipal Officers Electoral Board*, 228 Ill. 2d 200, 212 (2008)). We view an electoral board as an administrative agency (*Cinkus*, 228 Ill. 2d at 209), and the standards of review are essentially identical to each other’s (*Cullerton v. Du Page County Officers Electoral Board*, 384 Ill.

App. 3d 989, 991 (2008)). An electoral board's findings of fact are deemed *prima facie* true and correct and will not be overturned on appeal unless they are against the manifest weight of the evidence. *Siegel*, 385 Ill. App. 3d at 455 (citing *Cullerton*, 384 Ill. App. 3d at 749). However, an electoral board's decisions on questions of law are not binding on a reviewing court, and a reviewing court will review *de novo* such questions. *Siegel*, 385 Ill. App. 3d at 455 (citing *Cullerton*, 384 Ill. App. 3d at 749-50). In the present case, petitioner presents no challenge to the Board's findings of fact; therefore, they will be deemed *prima facie* true and correct. See *Siegel*, 385 Ill. App. 3d at 455. The issue presented by petitioner raises no factual question but only a question of law; therefore, our review is *de novo*. See *Cullerton*, 384 Ill. App. 3d at 749-750.

¶ 8 The Board's authority is derived from our legislature. *Siegel*, 385 Ill. App. 3d at 456, (citing *Delay v. Board of Election Commissioners*, 312 Ill. App. 3d 206, 209 (2000)). Subsection (I) of section 7-10 of the Election Code provides, in relevant part:

“If a candidate seeks to run for precinct committeeperson, then the candidate's petition for nomination must contain at least 10 signatures of the primary electors of his or her party for the precinct. If a candidate seeks to run for ward committeeperson, then the candidate's petition for nomination must contain no less than the number of signatures equal to 10% of the primary electors of his or her party of the ward, but no more than 16% of those same electors; provided that the maximum number of signatures may be 50 more than the minimum number, whichever is greater.” 10 ILCS 5/7-10(I) (West 2010).

When construing provisions of the Election Code, reviewing courts employ the same basic principles of statutory construction applicable to statutes generally. *Goodman v. Ward*, 241 Ill. 2d 398, 408 (2011). Our primary objective is to ascertain and give effect to the intent of the legislature. *Id.* The

best indication of legislative intent is the language employed by the General Assembly, which must be given its plain and ordinary meaning. *Id.*

¶ 9 In *Hossfeld*, our supreme court detailed the history of the previous two-year restriction on party-switching in the Election Code. *Hossfeld*, 238 Ill. 2d at 425-27. The *Hossfeld* court noted that the legislature removed the two-year restriction on party-switching, and the only remaining restriction in section 8-8 was 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 (West 2008). Because the objector in *Hossfeld* did not claim that the candidate had run afoul of the one remaining restriction, the court only addressed the party-switching claim and determined that the candidate’s nominating papers were valid. *Hossfeld*, 238 Ill. 2d at 430.

¶ 10 In the present case, petitioner makes distinctions between a public office and a political party office; however, the distinctions are not relevant in this context. While there may be differences between the two offices, the Election Code provides no such distinction for signators of either nomination petition. The only restriction on a “qualified primary elector” is 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 5/7-10 (West 2010). Because the legislature made no restrictions on qualified primary electors and their party affiliation, it can be fairly construed that the legislature did not intend to create additional restrictions for candidates seeking a political party office or signators on their nominating petitions. See *Williams v. Board of Review*, 241 Ill.2d 352, 368 (2011) (citing *Holland v. Florida*, 560 U.S. ___, ___, 130 S. Ct. 2549, 2562 (2010)) (noting that under the principle of *inclusio unius est exclusio alterius*, the enumeration of certain exceptions in a statute is construed as an exclusion of all others).

¶ 11 The Board found that the last election cycle was completed in April of 2011. Although petitioner claims that the election cycle as addressed in *Hossfeld* has no application to political party office elections, the Board did not rely on *Hossfeld* in determining the completion date of the election cycle. This factual finding was not challenged, and we have already deemed it *prima facie* true. See *Siegel*, 385 Ill. App. 3d at 455 (citing *Cullerton*, 384 Ill. App. 3d at 749). Petitioner does not point to any provision in the Election Code to invalidate those signators, despite their purported party affiliation, from signing Peters's nomination petition.

¶ 12 Accordingly, pursuant to the provisions of the Election Code and controlling authority, we hold that the Board properly determined that the signatures on Peters's nomination papers were valid.

¶ 13 For the foregoing reasons, we affirm the judgment of the circuit court of Du Page County.

¶ 14 Affirmed.