

No. 1-13-0406

**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).

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IN THE APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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KENNETH P. ZUREK,	)	Appeal from the Circuit Court
	)	of Cook County
Petitioner-Appellant,	)	
	)	
v.	)	
	)	
FRANKLIN PARK OFFICERS ELECTORAL BOARD,	)	
CHERYL McLEAN, Substitute Chairman, JEFFERY	)	
GREENSPAN, a public member, and ELLEN	)	
RAYMOND, a public member, and YOUR VILLAGE	)	13 COEL 000024
YOUR VOICE PARTY, the political party, BARRETT F.	)	
PEDERSEN, a candidate, JOHN C. JOHNSON, a	)	
candidate, ANDY YBARRA, a candidate, KAREN D.	)	
SPECIAL, a candidate, TOMMY THOMPSON, a	)	
candidate and in his capacity as Franklin park Village	)	
Clerk, and DAVID ORR, in his capacity as Cook County	)	
Clerk,	)	Honorable
	)	Maureen Ward Kirby,
Respondents-Appellees.	)	Judge Presiding.

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PRESIDING JUSTICE McBRIDE delivered the judgment of the court.  
Justices Howse and Palmer concurred in the judgment.

ORDER

¶ 1 HELD: Petitioner failed to strictly comply with section 10-10.1 of the Election Code (10 ILCS 5/10-10.1 (West 2010)) and trial court properly dismissed his petition for lack of subject matter jurisdiction.

¶ 2 Petitioner Kenneth P. Zurek appeals the circuit court's order dismissing his petition seeking judicial review of the Franklin Park Officers Electoral Board's (Electoral Board) decision overruling plaintiff's objections to the Your Village Your Voice political party and its candidates, Barrett F. Pedersen, John C. Johnson, Andy Ybarra, Karen D. Special, and Tommy Thompson, for lack of subject matter jurisdiction. The trial court held that petitioner failed to serve the petition on the Electoral Board in compliance with section 10-10.1 of the Election Code. 10 ILCS 5/10-10.1 (West 2010). Petitioner argues on appeal that he properly served the Electoral Board and that the dismissal of his petition for lack of subject matter jurisdiction violates his constitutional rights.

¶ 3 Since our review is limited to the question of jurisdiction, we will review the facts only as necessary for this appeal.

¶ 4 The Your Village Your Voice party nominated the candidates for certain elected municipal offices in the Village of Franklin Park for the April 9, 2013 consolidated general election. Petitioner filed multiple objections to the candidacies. On January 24, 2013, the Electoral Board overruled petitioner's objections and ordered the candidates' names to be placed on the ballot.

¶ 5 On January 28, 2013, petitioner filed a petition for judicial review of the Electoral Board's decision in the circuit court. Petitioner filed a certificate of service for the petition which indicated that petitioner had served the Electoral Board as follows:

Franklin Park Officers Electoral Bd.  
Joseph Montana  
Odelson & Sterk

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3318 W. 95th St.  
Evergreen Park, IL 60805  
77010 2780 0003 5580 0927

¶ 6 The certificate of service also stated that service was made to Tommy Thompson as Franklin Park Village Clerk. The petition stated that "Tommy Thompson is the Village Clerk with a duty to certify the names of the candidates for Village office in April 9, 2013 Consolidated Election to County Clerk and is named in that capacity for relief only."

¶ 7 On February 4, 2013, the Electoral Board filed a motion to dismiss the petition for lack of subject matter jurisdiction, alleging that petitioner failed to properly serve the Electoral Board in compliance with section 10-10.1 of the Election Code. 10 ILCS 5/10-10.1 (West 2010). The candidates moved to join the motion to dismiss. Following a hearing on February 8, 2013, the trial court dismissed the petition for lack of subject matter jurisdiction, finding that petitioner failed to properly serve the Electoral Board, service on the Electoral Board's attorney was not sufficient, and the village clerk was not served in his capacity as the agent for service for the Electoral Board. The trial court held that *Nelson v. Qualkinbush*, 389 Ill. App. 3d 79 (2009), was "the law in the First District as to service on the Electoral Board."

¶ 8 This appeal followed.

¶ 9 The question before us on appeal is whether petitioner strictly complied with section 10-10.1 of the Election Code in his method of service on the Electoral Board. We review the grant of a motion to dismiss *de novo*. *Rivera v. City of Chicago Electoral Board*, 2011 IL App (1st) 110283, ¶ 19. Specifically, "[w]hether the trial court, or this court, was deprived of subject matter jurisdiction by petitioners' alleged failed compliance with the Code is a question of law

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and such jurisdictional determinations are reviewed *de novo*." *Nelson*, 389 Ill. App. 3d at 83.

¶ 10 "Illinois courts do not have general jurisdiction over election cases, but may only review them pursuant to statute, namely, sections 10-10 and 10-10.1 of the [Election] Code." *Rivera*, 2011 IL App (1st) 110283, ¶ 20. Section 10-10.1(a) provides, in relevant part:

"a candidate or objector aggrieved by the decision of an electoral board may secure judicial review of such decision in the circuit court of the county in which the hearing of the electoral board was held. The party seeking judicial review must file a petition with the clerk of the court and must serve a copy of the petition upon the electoral board and other parties to the proceeding by registered or certified mail within 5 days after service of the decision of the electoral board as provided in Section 10-10. The petition shall contain a brief statement of the reasons why the decision of the board should be reversed. The petitioner shall file proof of service with the clerk of the court." 10 ILCS 5/10-10.1 (West 2010).

¶ 11 Section 10-10.1 outlines "four explicit prerequisites to establish subject matter jurisdiction." *Nelson*, 389 Ill. App. 3d at 86. "Specifically, he must (1) file his challenging petition with the clerk of the court within five days after the Board's service of its decision; (2) serve copies of the petition on the Board and the other parties to the proceedings by registered or certified mail within five days after the Board's service of its decision; (3) state in that petition why the Board's decision should be reversed; and (4) file proof of service with the clerk of the

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court." *Rivera*, 2011 IL App (1st) 110283, ¶ 22 (citing 10 ILCS 5/10-10.1 (West 2010)). "If this mode of procedure is not strictly pursued, no jurisdiction is conferred upon the circuit court."

*Nelson*, 389 Ill. App. 3d at 86. Lack of strict compliance deprives the court of jurisdiction and dismissal of the petition is proper. *Nelson*, 389 Ill. App. 3d at 87. The failure to strictly comply with section 10-10.1 provides a basis for a motion to dismiss pursuant to section 2-619 of the Code of Civil Procedure (735 ILCS 5/2-619 (West 2010)) and such motion must be granted if the record fails to demonstrate strict compliance. *Nelson*, 389 Ill. App. 3d at 86-87.

¶ 12 Here, the only prerequisite under section 10-10.1 at issue is the service of the petition on the Electoral Board. Petitioner's certificate of service indicated that service of the Electoral Board was made to Joseph Montana at Odelson & Sterk. The Election Code "requires that service must be effected on both the Board as the entity making the decision and its members who voted on the decision to obtain jurisdiction over them." (Emphasis omitted.) *Nelson*, 389 Ill. App. 3d at 87. "Service on the attorney for the Board is not sufficient for purposes of meeting the requirements of the Code." *Nelson*, 389 Ill. App. 3d at 87 (citing *Hough v. Will County Board of Elections*, 338 Ill. App. 3d 1092, 1094 (2003)). See also *Rivera*, 2011 IL App (1st) 110283, ¶ 40 ("One of these requirements is the personal, individual service of all necessary parties—not their attorneys"); *Allord v. Municipal Officers Electoral Board*, 288 Ill. App. 3d 897, 902 (1997). These decisions held that service on the Electoral Board's attorney does not satisfy the strict requirements of section 10-10.1. Petitioner's service on the Electoral Board's attorney at Odelson & Sterk was not in compliance with the explicit statutory requirements.

¶ 13 The court in *Nelson* observed that service can be made to the Electoral Board at the city

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building where it conducts its business by filing with the city clerk. *Nelson*, 389 Ill. App. 3d at 88. Petitioner asserts that even if his service on the attorney was not sufficient, the village clerk was served in this case. The certificate of service stated that Tommy Thompson was served as the village clerk, but the petition clarified that he was served only in his capacity as the individual who certifies the candidates' names for the ballot. Neither the petition nor the certificate of service indicated that service of the Electoral Board was made through Thompson as the village clerk. Additionally, in an affidavit filed in the trial court, Thompson averred that he did not receive a notice of filing of petition for judicial review addressed to the Electoral Board. As *Rivera* held, section 10-10.1 requires service to "indispensable parties," which included the electoral board. *Rivera*, 2011 IL App (1st) 110283, ¶ 24. Personal service was not made to the Electoral Board in this case.

¶ 14 Petitioner argues that he substantially complied with section 10-10.1 and asserts that this court should follow the decisions in *Langenstein v. Kassimali*, 2012 IL App (5th) 120343, and *Carlasare v. Will County Officers Electoral Board*, 2012 IL App (3d) 120699. In *Langenstein*, the petitioners failed to serve the electoral board as an entity, but served all the board members in their individual capacity. The majority concluded that this action complied with section 10-10.1 because service of the board would have been made on the county clerk and the clerk received service in his individual capacity as a board member. *Langenstein*, 2012 IL App (5th) 120343, ¶ 7. However, the dissent maintained that the petitioners failed to strictly comply with section 10-10.1 by failing to serve the electoral board as a separate entity and the court lacked jurisdiction. *Langenstein*, 2012 IL App (5th) 120343, ¶ 19. In *Carlasare*, the Third District, citing

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*Langenstein*, concluded that duplicative service of the petition for judicial review to the county clerk was not necessary for compliance with section 10-10.1. *Carlasare*, 2012 IL App (3d) 120699, ¶ 17.

¶ 15 We decline to follow the decisions from the other appellate districts and adhere to the case law in the First District that requires strict compliance with section 10-10.1 to confer jurisdiction to the courts. In this case, petitioner failed to personally serve the Electoral Board. Service on the attorney for the Electoral Board was not sufficient. Further, service to the village clerk in his capacity as the individual who certifies the names for the election did not constitute service to the Electoral Board. Accordingly, we find that petitioner failed to comply with section 10-10.1 and the trial court properly dismissed his petition for lack of subject matter jurisdiction.

¶ 16 Petitioner also contends that the dismissal of his petition for judicial review for lack of proper service violated his constitutional rights. Specifically, petitioner asserts that he was denied due process because section 10-10.1 is unconstitutionally vague. According to petitioner, the words "serve a copy of petition on electoral board" in section 10-10.1 do not afford an individual of ordinary intelligence fair notice and sufficient guidance to enable him to conform his conduct to the law.

¶ 17 However, petitioner did not raise this argument before the trial court. In his response to the motion to dismiss, petitioner made a brief argument that "it would be fundamentally unfair and unjust and violative of due process to dismiss this case on the ground of insufficient service on the Electoral Board" because service was made on the board's designated attorney and "as the party designated by the Board as the proper party to serve notice on the Board and the Election

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Code is silent as to where or how to serve the Board." Petitioner did not challenge section 10-10.1 as unconstitutionally vague. "The mere fact that arguments offered for the first time on appeal raise constitutional questions does not prevent the otherwise proper application of the forfeiture rule." *Sherman v. Indian Trails Public Library District*, 2012 IL App (1st) 112771, ¶ 21. "In civil cases, constitutional issues not presented to the trial court are deemed forfeited and may not be raised for the first time on appeal." *Sherman*, 2012 IL App (1st) 112771, ¶ 21. Since petitioner failed to present the constitutional challenge raised on appeal before the trial court, this issue has been forfeited.

¶ 18 Based on the foregoing reasons, we affirm the decision of the circuit court of Cook County and dismiss the appeal.

¶ 19 Order affirmed; appeal dismissed.