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IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

ELEANOR SWEET McDONNELL,)	Appeal from the Circuit Court
)	of Lake County.
)	
Petitioner-Appellant,)	
)	
v.)	No. 19-MR-23
)	
MUNICIPAL OFFICERS ELECTORAL)	
BOARD of the VILLAGE OF NORTH)	Honorable
BARRINGTON and JOHN SCHNURE,)	Michell L. Hoffman
)	Judge, Presiding.
Respondents-Appellees.)	

PRESIDING JUSTICE BIRKETT delivered the judgment of the court.
Justices Schostok and Burke concurred in the judgment.

ORDER

¶ 1 *Held:* We held that the proper standard of review is *de novo* when a reviewing court is determining whether a candidate failed to apply with section 7-10 of the Illinois Election Code. We reversed the decision of the North Barrington Electoral Board that sustained the petition of an objector after we held that a candidate for the position of President of the Village of North Barrington’s nominating petitions did not cause confusion. We remanded this cause back to the electoral board to place candidate on the ballot, and we ordered the candidate to remove herself as a write-in candidate.

¶ 2 Appellant, Eleanor Sweet McDonnell, appeals the trial court’s order affirming the decision of the Appellee, Municipal Officers Electoral Board of the Village of North Barrington

(Board). The Board declared her nominating petitions invalid after co-appellee, John Schnure, filed objections to her petition. This court has granted accelerated review of this case under Supreme Court Rule 311(b) (eff. July 1, 2018). For the following reasons, we reverse.

¶ 3

I. BACKGROUND

¶ 4 The record reflects that on December 10, 2018, McDonnell filed a petition and statement of candidacy, along with nominating petitions that contained 63 signatures from voters in the Village of North Barrington (Village). At the top of each petition for nomination sheet McDonnell listed the office she was seeking as “President” and left the “District” field empty (the form indicated that the “District” field should be filled out “if applicable”). The wording of the top of every nominating petition read as follows:

¶ 5

“PETITION FOR NOMINATION

¶ 6

INDEPENDANT CANDIDATE

“We, the undersigned, qualified voters in the Village of North Barrington, in the County of Lake, and State of Illinois, do hereby petition that the following named person shall be an independent Candidate for Election of the office hereinafter specified to be voted upon at the Consolidated Election to be held on the 2nd day of April 2019.”

(The underlined words were handwritten in.)

¶ 7

In her Statement of Economic Interests McDonnell listed the office that she sought as “Village of North Barrington—President.” In her Declaration of Intent to be a Write-In Candidate McDonnell listed the office she sought as “Village of North Barrington—President.”

¶ 8

On December 26, 2018, John Schnure, a Village resident, filed a petition objecting to McDonnell’s nominating petitions. In his petition Schnure stated as follows:

“A. THE OBJECTOR STATES THAT THE CANDIDATE HAS (*sic*) FILED SIGNATURE SHEETS FOR NOMINATION FOR PRESIDENT WITHOUT DESIGNATING THE DISTRICT (*sic*) ON POLITICAL SUBDIVISION THAT SHE IS SEEKING TO BE ELECTED TO, NAMELY, PRESIDENT OF THE VILLAGE OF NORTH BARRINGTON.

* * *

3.¹ The Candidate’s nomination papers are without the necessary, required designation as to the specific governmental entity upon wherein she is seeking office.

4. The (*sic*) candidate nomination papers as filed and as such, without the necessary designation as to where the position is sought, and therefore can apply to a number of positions available in other districts and political subdivisions.

5. By failing to list the district or political subdivision the candidate caused confusion in the limited petition filed herein and thereby caused there to be duplicate signatures rendered as follows:

McDonnell Petition:

P. 6, line 2 – Murphy;

P. 6, line 5 – Andrew;

P. 6, line 8 – Weiner

P. 6, line 9 – Allman;

¹ Numbers one and two in Schnure’s petition did not contain any specific allegations.

P. 6, line 10 – Cifonelli; and

Pages 1 – 7 (all other voter signatures).

Wherefore, your Objector prays that the purported nomination papers of Eleanor Sweet McDonnell, as candidate to the office of the President of Board of North Barrington, be stricken and not printed on the official Ballot at the Municipal Election to be held on April 2, 2019.”

¶ 9 On January 2, 2019, the Board held a hearing on Schnure’s petition. The Board was made up of Lawrence Weiner, Chairman, Jackie Andrew, member, and Kathy Nelander, member. At the hearing Schnure’s counsel argued that McDonnell’s petitions were invalid because they did not inform voters of what office she was seeking. McDonnell could have been running for president of a library board or a fire protection district. He admitted that not all presidents of local government bodies were elected officials, but claimed that the average citizen was not aware of that fact. As for the introduction of evidence, counsel stated that his client would testify, but that the objections spoke for themselves.

¶ 10 Schnure testified that he was a voter in the Village and that he had filed the petition for objections to McDonnell’s nominating petitions. His counsel then stated that he was resting on the evidence. In closing, counsel said that he did not know what was said to the voters who signed McDonnell’s petition for candidacy. Perhaps some were told that McDonnell was running for Village President. Maybe they were simply told that she was running for President. Or maybe McDonnell just asked some of them to sign her petition. Finally, counsel referred to a case from this district in support of Schnure’s position, but he did not cite the case on the record. He also referred to an unpublished order from this district, again without citation.

¶ 11 McDonnell’s counsel then said that the issue here was not whether a voter was confused about what position McDonnell was running for. Instead, the issue was whether or not the statute required that the candidate write something in the “District” field of the nominating petition. The statute at issue was very clear that McDonnell was not required to do so, and even if she was required to do so, the evidence would show that McDonnell very clearly informed the voters of the position for which she was running when they signed her petition.

¶ 12 McDonnell testified that she was currently a candidate for the position of President of the Village and that she had filed her nominating petitions for that position. She was the only person who circulated her petitions. For each person who signed her petition, McDonnell would introduce herself and tell the person that she was running for Village President. She asked the voter if he or she would sign her petition. McDonnell also had a badge that she wore every time she asked someone to sign her petition. The badge read, “Eleanor Sweet McDonnell, Candidate for Village of North Barrington, President.” McDonnell then rested.

¶ 13 In closing, McDonnell’s counsel again referred to the statute in question and said:

“From the statute, this is 10 ILCS 5/10-4, and I will provide a copy to the Board here and to Counsel. It’s just an excerpt taken from the statute. ‘Form of Petition for nomination. All Petitions for nomination under this Article 10 for candidates for public office in this State shall, in addition to other requirements provided by law, be as follows: Such Petitions shall consist of sheets of uniform size and each shall contain, above the space for signature, an appropriate heading, giving the information as to name of Candidate or Candidates in whose behalf such Petition is signed, the office, the party, place of residence, and such other information or wording as required to make same valid, and the heading of each sheet shall be the same.’”

¶ 14 Counsel said that the statute requires the candidate to place the office on the nominating petitions, and McDonnell had done that. That was the only requirement about putting information on the nominating petition sheet. Again, as far as the statute was concerned, the Village is not a district. Section 1-3, subsection 14 of the Election Code (Code) defines a district as follows:

“‘[d]istrict’ shall mean any area which votes as a unit for an election of any officer, other than the state or a local unit of local government or school district, and includes, but is not limited to, legislative, congressional, and judicial districts, county board districts, municipal and sanitary district wards, school wards, districts and precincts.” 10 ILCS 5/1-3(14) (West 2018).

¶ 15 That statute does not define a municipality as a district. Counsel then asked the Board to take judicial notice that in the consolidated election pamphlet from the county clerk’s office, it only referred to the Village’s offices as “President, Trustee, Clerk, those types of things.” There also could not have been any confusion on the voters’ part because McDonnell testified that she introduced herself to everyone who signed her nominating petitions and told them that she was running for the office of the President of the Village. She always wore a badge on her clothes that stated the same as well. Since there could not have been any confusion, counsel urged the board to deny Schnure’s objections.

¶ 16 Schnure’s counsel asked for a continuance and it was denied. The chairman of the Board then asked if there was any more evidence to be produced or arguments to be made with respect to either Schnure or McDonnell from the parties or the public. Two hands went up in the crowd. The chairman picked one person and she said that her name was Adelaide Horcher. Ms. Horcher said that when McDonnell came to her house she clearly introduced herself as running for

Village President. Horcher said that as a member of the general public, it was important for the Board to know that when the public signed something, they knew what they were signing. It was not reasonable to imply that members of the public who had signed something were confused about what they had signed and did not know the position for which a candidate was running.

¶ 17 Kevin Horcher was chosen next. He said that he had “no horse in this fight.” He was a resident of North Barrington, and when his doorbell rang he opened the door. McDonnell was at the door; he had no idea what position for which she was running and he had no idea why she was at his door. McDonnell told him that she had a petition and that she was running for the office of President of the Village. She made that very clear. He could echo his wife’s thoughts about exactly what happened. He had no previous knowledge that McDonnell was running for Village President. He found Schnure’s objections very concerning. He was a physician and he found his signature was a part of his unique personality. When he signed prescriptions or orders on patient’s charts, putting down his signature was a part of his personal stamp that he knew what he was doing and that he agreed to what he was signing. If voters in the Village have put down their signatures on McDonnell’s nominating petitions, to imply that they did not know what they were signing was not reasonable and it was insulting.

¶ 18 After one of the Board members made a motion to deliberate in a closed session, the others members agreed to a closed session as well. After the closed session, with all Board members present, the Board voted 2 to 1 to grant Schnure’s petition to object to McDonnell’s nominating petitions. The dissenting vote, Trustee Andrew, made the following statement:

“I would like to say something. I would vote to overrule it. I think it is a sad state of affairs when we can’t have a couple people running for one office. This would limit it to only one person running. I think the intent there was to run. I think everybody in this

community is rather intelligent. I don't think there was any problem with people not knowing what they signed. I have a hard time with a lot of politics. I feel that that's where this is going."

¶ 19 Chairman Weiner asked Board member Nelander if she had anything else to say and she said, "[n]o. I don't feel the papers were filled out correctly." Then Chairman Weiner said,

"[w]ell, I don't practice election law and never will. I'm going to base my decision and have based my decision on the advice of counsel, of the Attorney for this Board and for the Village. I do—do acknowledge [Trustee Andrews'] feelings in the sense that, you know, we should try and encourage people to run, and that you have to give—that it would be in everyone's best interest.

But I have also been advised by counsel and shown case law in support—what I believe was in support of her recommendation that says that you know, if you mess up on these petitions, you know, it is the end, and it seems rather harsh. I have seen cases where you just, you don't number the pages, and they knock out people for that. I know that they—if you don't staple it right or bundle it, whatever you call it, you know. And I think that, you know, down deep, I really do think that—I mean these are technical things, but this is what the law is, and I think we are bound to follow this law."

¶ 20 The Board's vote was memorialized in a written decision, which found, "[w]hen looked at as a whole, we believe that the Candidate's papers create a basis for confusion (*sic*) is so much as the Candidate could have been running for President of any number of political subdivisions such as a library board, a school district, or even a park district." As support for these findings the Board cited to *Haebler v. Municipal Officers Electoral Board*, 338 Ill. App. 3d 1059 (2003) and *Jones v. Municipal Board*, 112 Ill. App. 3d 926, 929 (1983).

¶ 21 On January 7, 2019, McDonnell filed a petition for review in the circuit court of Lake County, arguing that she adequately described the office she was seeking. McDonnell, Schnure and the Board all filed briefs to support their positions.

¶ 22 The circuit court applied a *de novo* standard of review and found that the issue of whether McDonnell sufficiently described the office she sought in her nominating petitions was a question of law. The court conducted a hearing on January 29, 2019, after which it affirmed the Board's decision to sustain Schnure's objections to McDonnell's nominating petitions. That same day McDonnell filed a declaration of intent to be a write-in candidate for the office of "Village of North Barrington–President." On February 2, 2019, McDonnell filed a timely notice of appeal.

¶ 23

II. ANALYSIS

¶ 24 On appeal, McDonnell argues that her nominating petitions adequately described the office she was seeking. In response, the Board² contends: (1) it properly sustained Schnure's objections because McDonnell's description of the office she sought was confusing; and (2) McDonnell has rendered this appeal moot by filing a declaration of intent to be a write-in candidate for Village President. The Board also argues that the standard of review in this appeal is clearly erroneous.

¶ 25 In her reply brief, McDonnell argues that the standard of review here is *de novo*, not clearly erroneous. She also argues that this appeal is not moot because the case the Board cited

² During the briefing process we granted Schnure's motion to adopt the Board's brief on appeal. Therefore, we will refer to both parties as the "Board" when we are referring to both of them.

as support for its mootness argument does not apply to the facts of this case. We will address the applicable standard of review first.

¶ 26

A. Standard of Review

¶ 27 We initially note that in administrative cases, this court reviews the decision of the administrative agency and not the determination of the circuit court. *Walk v. Department of Children & Family Services*, 399 Ill. App. 3d 1174, 1181 (2010). The appropriate standard of review depends upon whether the question presented is one of law, one of fact, or a mixed question of law and fact. *Cinkus v. Village of Stickney Municipal Officers Electoral Board et al.*, 228 Ill. 2d 200, 210-11 (2008). “An administrative agency's findings and conclusions on questions of fact are deemed *prima facie* true and correct. In examining an administrative agency's factual findings, a reviewing court does not weigh the evidence or substitute its judgment for that of the agency. Instead, a reviewing court is limited to ascertaining whether such findings of fact are against the manifest weight of the evidence. An administrative agency's factual determinations are against the manifest weight of the evidence if the opposite conclusion is clearly evident.” *Id.* (citing *City of Belvidere*, 181 Ill. 2d, 191, 204 (1998)).

¶ 28 “In contrast, an agency's decision on a question of law is not binding on a reviewing court. For example, an agency's interpretation of the meaning of the language of a statute constitutes a pure question of law. Thus, the court's review is independent and not deferential.” *Cinkus*, 228 Ill. 2d at 210.

¶ 29 With regard to mixed questions of law and fact our supreme court has held the following:

“[w]here the historical facts are admitted or established, the controlling rule of law is undisputed and the issue is whether the facts satisfy the statutory standard, the case presents a mixed question of fact and law for which the standard of review is ‘clearly

erroneous’. *Cinkus*, 228 Ill. 2d at 211. We have also held, however, that where the historical facts are admitted or established, but there is a dispute as to whether the governing legal provisions were interpreted correctly by the administrative body, the case presents a purely legal question for which our review is *de novo*.” *Goodman v. Ward*, 241 Ill. 2d 398, 406 (2011) (citing *Hossfeld v. Illinois State Board of Elections*, 238 Ill. 2d, 418, 423 (2010)).

¶ 30 Here, the Board argues that this case presents a mixed question of law and fact and therefore the standard of review is clearly erroneous, citing a First District appellate case, *Guerrero v. Municipal Officers Electoral Board of the Village of Franklin Park*, 2017 IL App (1st) 170486, ¶ 12. However, it concedes that this district has applied the *de novo* standard of review when considering challenges to nominating papers and, specifically, to challenges based on the description of the office sought, citing *Heabler*, 338 Ill. App. 3d at 1060 (2003); *Salgado v. Marquez*, 356 Ill. App. 3d 1072, 1075 (2005) and *Wiesner v. Brennan*, 2016 IL App (2d) 160115, ¶ 25. Nevertheless, the Board argues that we only cited to the *de novo* standard in those cases and did not provide any analysis to support it.

¶ 31 It has long been held that the issue of whether a petitioner failed to comply with section 7-10 of the Illinois Election Code is a question of law. *Zapolsky v. Cook County Officers Electoral Board*, 296 Ill. App. 3d 731 (1998); 10 ILCS 5/7-10 (West 1996). “Since the issue is a question of law, our review is independent of the Electoral Board, and not deferential.” *Zapolsky*, 296 Ill. App. 3d at 733. Again, our supreme court has also made it clear that where the historical facts are admitted or established, but there is a dispute as to whether the governing legal provisions were interpreted correctly by the administrative body, the case presents a purely legal question for which our review is *de novo*. *Goodman*, 241 Ill. 2d at 406. Here, we are

reviewing whether the Board interpreted the Code properly when it found that McDonnell's nominating petitions caused such confusion with the voting public that Schnure's petition objecting to her candidacy needed to be sustained. For these reasons the *de novo* standard of review applies here. With that said, however, the result would be the same under either standard.

¶ 32

B. McDonnell's Nominating Petitions

¶ 33 On appeal, McDonnell argues that the Board erred in finding that her nominating petitions did not substantially comply with the requirements of the Code. Specifically, she contends that her nominating petitions clearly identified that she was running for Village President and no further detail was necessary. The Board based its decision on the mistaken notion that there was more than one office in the Village carrying the title, "President." Schnure presented nothing to bear his burden of showing that any such office was up for election, and Illinois law demonstrates that no other Village official with the title of "President" was elected by the Village at large.

¶ 34 In response, the Board argues that it properly sustained Schnure's objections because McDonnell's description of the office she sought was confusing. In her nominating petitions McDonnell simply listed the office she sought as "President" but did not designate the entity for which she was running for "President." It was unclear whether McDonnell was running for President of the Village, president of the library district, president of the school board, park district, or one of the two fire protection districts that serve the Village, all of which are elected positions within the Village. Therefore, because the particular office McDonnell sought was not sufficiently described in her nominating petitions, the petition's purpose was frustrated and the objections were properly sustained.

¶ 35 Illinois courts have long held that access to a place on the ballot is a substantial right not to be lightly denied. *Cortez v. Municipal Officers Electoral Board of City of Calumet City*, 2013 IL App (1st) 130442, ¶ 22. In a proceeding to contest a nominating petition, the objector bears the burden of proof. *Solomon v. Scholefield*, 2015 IL App (1st) 150685, ¶ 28.

¶ 36 Section 7-10 of the Code governs the form and content of nominating petitions. That section states,

“Each sheet of the petition other than the statement of candidacy and the candidate’s statement shall be of uniform size and shall contains above the space for signatures an appropriate heading giving the information as to name of candidate or candidates, in whose behalf such petition is signed; *the office*, the political party represented and place of residence; and the heading of each shall be the same.” (Emphasis added.) 10 ILC 5/7-10 (West 2018).

Section 10-4 of the Code, which applies to persons seeking nomination as independent or nonpartisan candidates (as here), requires:

“All petitions for nomination under this Article 10 for candidates for public office in this State, shall in addition to other requirements provided by law, be as follows: Such petitions shall consist of sheets of uniform size and each sheet shall contain, above the space for signature, an appropriate heading, giving the information as to name of candidate or candidates in whose behalf such petition is signed; *the office*; the party; place of residence; and such other information or wording as required to make same valid, and the heading of each sheet shall be the same.” (Emphasis added.) 10 ILCS 5/10-4 (West 2018).

¶ 37 The Code requires a candidate’s nominating petitions to list the office she is seeking. 10 ILCS 5/10-4 (West 2018). In determining whether the candidate has complied with section 7-10 (or, similarly, section 10-4) of the Code, our supreme court set forth two requirements: (1) the nomination papers as a whole must not create a basis for confusion as to the office sought; and (2) the purpose of the papers that contain the incorrect office must not be frustrated by that error. *Lewis v. Dunne*, 63 Ill. 2d 48, 52-53 (1976). The primary purpose of nominating petitions is to reduce the electoral process to manageable proportions by confining ballot positions to a small number of candidates who have demonstrated initiative and at least a minimal appeal to eligible voters. *Salgado*, 356 Ill. App. 3d at 1079 (2005). Again, the question in this case is whether McDonnell’s nominating petitions substantially complied with the requirements of the Code, which is a question of law we review *de novo*. *Wiesner v. Brennan*, 2016 IL App (2d) 160115, ¶ 22.

¶ 38 Here, we disagree with McDonnell’s contention that “her nominating petitions clearly identified that she was running for Village President *and no further detail was necessary.*” (Emphasis added.) In her Statement of Economic Interests she listed the office that she sought as “Village of North Barrington—President.” In her Declaration of Intent to be a Write-In Candidate McDonnell listed the office she sought as “Village of North Barrington—President.” She also testified at the hearing before the Board that the badge she wore while seeking signatures to her nominating petitions indicated that she was a “Candidate for Village of North Barrington, President.”

¶ 39 With this said, however, McDonnell’s nominating papers do not create a “basis for confusion.” The better practice here would have been for McDonnell to write “President of the Village of North Barrington” in the “office” field of her nominating petitions. However, a

review of the top section of the nominating petitions cannot be interpreted any way other than that McDonnell was running for Village President.

¶ 40 We disagree with the Board's contentions that McDonnell's nominating papers were fatally unclear because the voters would not know whether she was running for President of the Village, president of the library district, president of the school board, park district, or one of the two fire protection districts that serve the Village, "all of which are elected positions within the Village."

¶ 41 It is well settled in Illinois that if nominating papers describe only one possible vacancy in that district then there is no basis for confusion. *Pascente v. County Officers Electoral Board of the County of Cook*, 373 Ill. App. 3d 871, 874 (2007) (no basis for confusion when candidate for the office of township trustee of schools stated in his nominating papers that he sought the office of regional board of school trustees; township had only one elective office in it, that of school trustee, and only one vacancy available at the time of election); *Wiesner v. Brennan*, 2016 IL App (2d) 160115, ¶ 28 (candidate sufficiently described the office when there was only one office to be filled by the vacancy of a specific judge in the 18th Judicial District); *Bryant v. Cook County Electoral Board*, 195 Ill. App. 3d 556, 557-59 (1990) (since one office of representatives existed, candidate's receipt for statement of economic interest that described the office sought as "Fifteenth Representative District of the State of Illinois" adequately informed the public).

¶ 42 At one point in its brief, as we have noted, the Board claims "it is unclear whether the Candidate was running for President of the Village of North Barrington, president of the library district, president of the school board, president of the park district, or president of one of the two fire protection districts that serve the Village of North Barrington, *all of which are available*

elected positions within the Village of North Barrington.” (Emphasis added.) However, later in its brief the Board concedes that

“presidents of these districts must be first elected by the public, and then and only after they are elected by the public are they eligible to be elected internally by the board. The point is that the Candidate’s papers were confusing because it is not clear whether the Candidate was seeking president of the Village of North Barrington, President of the Barrington Library District, President of the Barrington School District, President of the Lake Zurich Rural Fire Protection District, President of the Wauconda Fire Protection District, President of the Barrington Park District, or even President of the Village of Barrington.”

¶ 43 The only thing confusing here are the Board’s arguments. Its initial argument that the positions of president in all of the entities listed above are all *available, elected* positions within the Village of Barrington is simply not true.

¶ 44 First, at the hearing before the Board Schnure presented no evidence that any other candidate in the April 2, 2019, election was running for any of these offices. Thus, he failed to carry his burden of proving a basis for any confusion on McDonnell’s nominating petitions. *Solomon*, 2015 IL App (1st) 150685, ¶ 28 (the objector bears the burden of proof in a proceeding to contest a nominating petition).

¶ 45 Second, as McDonnell correctly points out, presidents of fire protection districts, library districts, and boards of education are *not* elected officials. Rather, they are appointed by other board members or trustees. See 70 ILCS 705/6(a) (West 2018) (the board of trustees for a fire protection district elect their president); 75 ILCS 5/4-6 (West 2018) (trustees of a library district elect their president); 105 ILCS 5/10-13 (West 2018) (the president of a board of education shall

be elected from among their number); see 70 ILCS 1205/4-8 (West 2018) (the board of each park district shall elect from their number a president).

¶ 46 With regard to the Board's allegation that voters could confuse this election with an election for the President of the Village of Barrington, and not North Barrington, we are not persuaded. As we have noted, the best practice would have been for McDonnell to write "President of the Village of North Barrington" in the "office" field, but on the top of every nominating petition were the words,

"We, the undersigned, qualified voters in the *Village of North Barrington*, in the County of Lake, State of Illinois, do hereby petition that the following named person shall be an independent Candidate for Election as to the officer hereinafter specified to be voted upon at the Consolidated Election to be held on the 2nd day of April 2019."

(Emphasis added.)

¶ 47 Based upon the wording in McDonnell's nominating petition, we find that there was no possibility that a voter would confuse McDonnell's nominating petition for someone who was running for the office of President of the Village of Barrington.

¶ 48 Next, the Board notes that there were a total of 5 electors from whom McDonnell obtained signatures who signed both her nominating petition and her opponent's nominating petition. It points out that two of those signatures belonged to Board members who presided over the hearing, Chairman Weiner and member Jackie Andrew. The Board then claims that these voters were clearly confused as "[w]here a person signs nominating petitions for more than one party, the first signature is valid and all subsequent signatures are invalid," citing *Rosenzweig v. Illinois State Board of Elections*, 409 Ill. App. 3d 176, 180 (2011). We fail to see how the fact that five voters signed both petitions supports the Board's claim that it properly

sustained Schnure’s objections on the ground of confusion to the voters. The Board does not tell us how many of those five signatures were stricken for being the second signature on the petition, and we do not know the motivation of those five voters who signed the petition. The Board provides no authority for the proposition that these dual signatures constitute evidence of confusion on the part of the voters. Therefore, we reject this argument.

¶ 49 Next, the Board cites to three cases to support its proposition that its decision to sustain Schnure’s objections was in line with Illinois case law: *Zapolsky*, 296 Ill. App. 3d at 731; *Heabler*, 338 Ill. App. 3d at 1059; and *Pascente v. County Officers Electoral Board of County of Cook*, 373 Ill. App. 3d 871 (2007).

¶ 50 1. *Zapolsky v. Cook County Electoral Board*

¶ 51 In *Zapolsky*, the First District affirmed the decision of the Cook County Electoral Board invalidating the candidate’s nominating petitions where it held that it was “uncontroverted that there were numerous vacancies on the Reclamation District up for election and that petitioner’s nominating petitions did not specifically name the vacancy sought by petitioner. Further, it is uncontroverted that petitioner obtained signatures from registered voters by failing to inform them of the specific vacancy she sought.” *Zapolsky*, 296 Ill. App. 3d at 734. *Zapolsky* is distinguishable from the instant case. Here, there were no other vacancies for the office of Village President. McDonnell identified that office in her nominating petitions and there was no confusion regarding for what position she was running. Also, unlike *Zapolsky*, at the hearing before the Board, McDonnell testified that she informed every voter who signed her nominating petitions that she was running for Village President.

¶ 52 The Board then directs us to a case cited in *Zapolsky*, *Haynes v. Pritchett*, 07-EB-ALD-020 (Chicago Electoral Board 2007), wherein the Electoral Board allegedly applied an objective

test to determine whether a nominating petition caused confusion. The Board urges this court to also apply an objective test and find it immaterial that McDonnell may have verbally informed each voter of what office she was seeking. We decline to review an unrelated decision by a different electoral board, because we find that under either standard, objective or subjective, McDonnell's nominating petitions did not cause confusion among the voters.

¶ 53 2. *Heabler v. Municipal Officers Electoral Board of the Village of Lakemoor*

¶ 54 In *Heabler*, the appellate court affirmed the electoral board's decision that the candidate's nominating papers were a basis for confusion where the candidate only indicated that he was running for the office of "Trustee" when there was both a full term and an unexpired two-year term available. *Heabler*, 338 Ill. App. 3d at 1060. Here, the Board argues, "[l]ike in *Heabler*, the Board found that the description of "President" could refer to multiple public offices, again, for example the office of the president of the library board, president of the fire protection district, or president of a school board, and thus, that the nominating papers were confusing." We have already rejected the Board's theory regarding other offices of "President" on the ballot which may have caused confusion and we need not address it again. Accordingly, the *Heabler* case is not persuasive here.

¶ 55 3. *Pascente v. County Officers Electoral Board of County of Cook*

¶ 56 In *Pascente*, all of the candidate's nominating papers stated that he was seeking the office of member of the regional board of school trustees. In his nominating petition, it stated that he sought "the office of MEMBER OF THE REGIONAL BOARD OF SCHOOL TRUSTEES, TOWNSHIP 39, RANGE 12 of Cook County." *Pascente*, 373 Ill. App. 3d at 872. The latter position existed somewhere else in Illinois, but it was abolished in Cook County, where the candidate was running for election. *Id.* The County Officers Electoral Board of Cook County

found that the candidate's nominating papers were valid and ordered his name placed on the ballot as a candidate for the office of township trustee of schools, township 39 north, range 12 east. The trial court affirmed the decision of the electoral board. *Id.* The objector appealed, and the appellate court upheld the decision of the electoral board that the candidate's nominating petitions were sufficiently clear because there was only one school trustee office for which the candidate could be running. *Id.* at 873.

¶ 57 The Board claims that in this case, unlike in *Pascente*, the description of the office sought could include more than one vacancy within the Village because the voters could have thought that McDonnell was seeking several other "President" positions in the Village. Again, we reject this argument. It is clear that any other "President" position within the Village is elected among its board members and not the voters at large. Therefore, *Pascente* only serves to bolster our finding here that when there is only one vacancy for a position, there is no basis for voter confusion.

¶ 58 C. Mootness of the Appeal

¶ 59 Finally, the Board argues that this appeal is moot since McDonnell filed a declaration of intent to be a write-in candidate for Village President. In support of its argument the Board cites to *People ex rel. McCormick v. Czarnecki*, 266 Ill. 372 (1914), for the proposition that candidates are only allowed the opportunity to be on the ballot once. *Id.* at 380.

¶ 60 In *People ex rel. McCormick* our supreme court held in 1914 that a prohibition against the appearance of the same person as a candidate for the same office on the ballots of different political parties did not deprive voters of freedom of choice, an issue that is not present in this case. *People ex rel. McCormick*, 266 Ill. at 374-75.

¶ 61 The Board then cites to *Nelson v. Qualkinbush*, 389 Ill. App. 3d 79 (2009), *abrogated on other grounds*, *Bettis v. Marsaglia*, 2014 IL 117050, ¶ 12. In that case, the First District found that candidates' declarations of intent to be write-in candidates for the same office for which they were seeking to be placed on the ballot on appeal left the court "without the possibility of effectual relief because petitioners could not run in both the primary and as write-in candidates." *Id.* at 85.

¶ 62 The Board claims that *Nelson* is very similar to the instant case. It contends that in *Nelson*, the candidates who had been excluded from the ballot by an electoral board decision filed declarations of intent to be write-in candidates while litigation concerning their candidacies was still pending. *Id.* at 83. The Board admits that the *Nelson* court did not base its decision denying the appeal on mootness, but it did include the discussion of mootness as a guide for future candidates and to flag the issue for the legislature in the event the legislature wanted to clarify it. *Id.* at 83-84. According to the Board, since the legislature has not taken any action to amend the statute since that time, its lack of action suggests that "it had no disagreement with the conclusion reached by the court that an appeal is moot where a candidate seeking to be placed on the ballot files a declaration of intent to be a write-in candidate while litigation is pending."

¶ 63 In her reply brief McDonnell takes issues with the Board's attempt to apply *Nelson* to the instant case. She correctly states that the April 2, 2019, consolidated election has not occurred. We also note that early voting in the case, which begins on March 18, 2019, also has not occurred. McDonnell states that if this court reverses the Board's decision sustaining Schnure's objections, she will withdraw her declaration of intent to run as a write-in candidate and will have her name put back on the ballot. The Village Clerk could still print ballots and program

electronic voting machines to show her name on the ballot. Nothing had occurred that would make a reversal of the Board's decision ineffectual.

¶ 64 We agree with McDonnell. An appeal involving a challenge to nominating petitions is not moot if the election has not been held. An appeal is moot only “where the issues presented in the trial court no longer exist because events subsequent to the filing of the appeal render it impossible for the reviewing court to grant the complaining party effectual relief.” *Jackson-Hicks v. East Saint Louis Board of Election Commissioners*, 2015 IL 118929, ¶ 12.

¶ 65 Here, the only date that has passed is the February 26, 2019, primary election date. However, that date is irrelevant. Article 3.1 of the Illinois Municipal Code provides that “[n]o office for which a nomination is *uncontested* shall be included on the primary ballot and no primary shall be held for that office.” (Emphasis added.) 65 ILCS 5/3.1-20-45 (West 2018). That section then continues, “[f]or the purposes of this Section, an office is uncontested when not more than 4 persons to be nominated for each office have timely filed valid nominating papers seeking nomination for the election to that office.” 65 ILCS 5/3.1-20-45 (West 2018).

¶ 66 Here, only two candidates submitted nominating petitions for Village President, McDonnell and the incumbent, Albert Pino. Therefore, there was no primary election for Village President, and this court may still grant McDonnell relief before the April 2, 2019, consolidated election.

¶ 67 For all the reasons stated, we reverse the Board's decision sustaining Schnure's objections to McDonnell's nominating petitions and we remand this cause for the Board to place McDonnell's name on the ballot. We also order McDonnell to withdraw her name as a write-in candidate.

¶ 68

III. CONCLUSION

¶ 69 For the reasons stated, we reverse the Board's decision sustaining Schnure's objections and we remand this cause for further proceedings consistent with this order.

¶ 70 Reversed and remanded with directions.