

No. 1-16-0370

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).

JAMES ALBERT FALLIS & NICOLE JEAN MARIE MCINTYRE,)	Appeal from the
)	Circuit Court of
)	Cook County
Petitioners-Appellants,)	
)	
v.)	
)	
COOK COUNTY OFFICERS ELECTORAL BOARD,)	
and its members, DAVID ORR, Chairman, by and)	No. 16 COEL 08
through his designee, DANIEL P. MADDEN, ANITA)	
ALVAREZ, by and through her designee, KENT S. RAY,)	
DOROTHY BROWN, by and through her designee)	
LAUREN RAYMOND, DAVID ORR, in his official)	
capacity as Cook County Clerk, BOARD OF ELECTION)	
COMMISSIONERS FOR THE CITY OF CHICAGO,)	
and ANDREW SEO, Candidate,)	Honorable
)	Alfred J. Paul,
Respondents-Appellees.)	Judge Presiding.

PRESIDING JUSTICE PIERCE delivered the judgment of the court.
Justices Simon and Hyman concurred in the judgment.

ORDER

¶ 1 *Held:* Appeal challenging decision of electoral board to include the candidate's name on the March 15, 2016 primary election ballot was moot.

¶ 2 Objectors James Albert Fallis and Nicole Jean Marie McIntyre (Objectors) appeal the order of the circuit court confirming the decision of the Cook County Officers Electoral Board

(Board) finding Andrew Seo's nomination papers valid for the purpose of placing his name on the ballot as candidate for the office of the Commissioner of the Metropolitan Water Reclamation District of Greater Chicago.

¶ 3

BACKGROUND

¶ 4 Andrew Seo filed nomination papers with the Board to place his name on the March 15, 2016 primary election ballot as a candidate for the office of the Commissioner of the Metropolitan Water Reclamation District of Greater Chicago. These papers included petition sheets containing 23,981 signatures of individuals supporting Seo's nomination.

¶ 5 James Albert Fallis and Nicole Jean Marie McIntyre filed a petition objecting to the sufficiency of the signatures supporting Seo's nomination papers pursuant to section 10-8 of the Election Code (10 ILS 5/10-8 (West 2012)). The petition raised "line by line" objections to the signatures and also alleged a pattern of fraud by petition circulators.

¶ 6 The Electoral Board assigned a hearing officer to conduct proceedings, evaluate the evidence and the Objectors' petition, and provide recommendations to the Board. Thereafter, Seo filed a motion to dismiss the objections arguing that they were not made in good faith. After a hearing, Seo's motion to dismiss was denied. The hearing officer then scheduled a records examination whereby employees of the Board evaluated the "line by line" objections with the signatures on Seo's nomination petitions. The result of the records examination left Seo with 7,769 valid signatures.

¶ 7 The Objectors requested an evidentiary hearing to review this result, which was held over several days and included the presentment of testimonial and documentary evidence. After hearing and evaluating the evidence and the objections, the hearing officer issued his written

findings and recommendation concluding that the Objectors' petition should be granted in part and denied in part. Among other things, the hearing officer struck the petition sheets of nine circulators, including Seo, because there was evidence of roundtabling and a pattern of fraud. Ultimately, after finding that some circulated sheets were valid and others were not, the hearing officer determined that Seo had 6,489 valid signatures on his petition sheets, which is 1,230 signatures above the required minimum.

¶ 8 The Electoral Board accepted the hearing officer's findings and recommended decision that Seo's nomination papers were valid. The Board found the hearing officer's "treatment of the evidence was nuanced, sensitive and correct" and his decision was "thorough and thoughtful." The Board also found that the "judicially-approved remedy for fraudulent circulation is the striking of the fraudulently circulated sheets or the striking of all of the sheets of the fraud-committing circulator" and that it "do[es] not have the power to strike an entire candidacy on such a basis."

¶ 9 The Objectors sought judicial review of the Board's decision at the circuit court of Cook County. On February 17, 2016, the circuit court entered an order affirming the decision of the Electoral Board. This timely filed appeal followed. This court granted appellants' motion to expedite the appeal and entered a briefing schedule submitted and agreed to by the parties that extended appellate briefing to March 7, 2016.

¶ 10 ANALYSIS

¶ 11 On appeal, the petitioners challenge the Board's finding that Seo's nomination papers are valid and seek removal of Seo's name from the ballot for the primary election held on March 15, 2016. The petitioners also seek to overturn this court's holding in *Mitchell v. Cook County*

Officers Electoral Board, 399 Ill. App. 3d 18 (2010) and argue that the electoral board should have stricken Seo's nomination papers as void because "the Candidate engaged in a pattern of fraud" when serving as his own circulator. As a practical matter it is beyond our power to grant the relief sought by petitioners because the ballots have already been cast. We find that this case is now moot and no established exception to the mootness doctrine applies. Therefore, we *sua sponte* dismiss petitioners' appeal.

¶ 12 "The function of this court is to decide controverted issues between real parties."

Richardson v. Rock Island County Officers Electoral Board, 179 Ill. 2d 252, 256 (1997). A case is considered moot if it does not involve any actual controversy and intervening events "render it impossible for the reviewing court to grant effectual relief to either party." *Bluthardt v. Breslin*, 74 Ill. 2d 246, 250 (1979); *Richardson v. Rock Island County Officers Electoral Board*, 179 Ill. 2d 252, 256 (1997). Where the issues raised in an appeal are moot, the pending appeal is generally dismissed. See *In re Andrea F.*, 208 Ill. 2d 148, 156 (2003).

¶ 13 In the instant case, the Objectors seek to have Seo's name removed from the ballot as a candidate for the office of the Commissioner of the Metropolitan Water Reclamation District of Greater Chicago, for the primary election held on March 15, 2016. Because the election has already occurred and Seo was not elected to represent the Democratic party in the November 8, 2016 general election and will not appear on that ballot, we are unable to grant any meaningful relief. Accordingly, without the existence of an actual controversy, the instant appeal is moot and must be dismissed. *Davis v. City of Country Club Hills*, 2013 IL App (1st) 123634, ¶ 11 ("[w]here an election has already passed, a cause is moot"); see, e.g., *Richardson*, 179 Ill. 2d at 256.

¶ 14 Notwithstanding the general mootness rules, a reviewing court may address an otherwise moot issue "[w]here there is a substantial public or private question involved, where there is a need for authoritative determination for future guidance, and where the issue is likely to recur." *Id.* Among other arguments, petitioners assert that Seo's nomination papers should be rendered void due to his fraudulent conduct in circulating his own petition sheets. We find this issue does not qualify for review under an exception to the mootness doctrine because this court has previously addressed a very similar issue, and denied the same or similar relief sought here by the Objectors.

¶ 15 In *Mitchell v. Cook County Officers Electoral Board*, 399 Ill. App. 3d 18 (2010), we found that a candidate's fraudulent conduct in circulating her own petition sheets does not warrant the striking of her nomination papers where the nomination papers were supported by the required number of valid signatures. We relied on *Fortas v. Dixon*, 122 Ill. App. 3d 697 (1984); *Huskey v. Municipal Officers Electoral Board*, 156 Ill. App. 3d 201 (1987); and *Canter v. Cook County Officers Electoral Board*, 170 Ill. App. 3d 364 (1988), to conclude that where an electoral board finds a candidate engaged in irregularities sufficient to strike petitions circulated by the candidate, nothing "compels the conclusion that the Board was somehow required to terminate [the] candidacy" especially where the objector "has not offered a basis in the Board's enabling statutes or in the law for such a requirement. As noted, the function of the Board is to determine whether the nominating papers are valid and if the objections ought to be sustained. See 10 ILCS 5/10–10 (West 2008)." *Mitchell*, 399 Ill. App. 3d at 24. The relief sought from the electoral board, striking the candidacy of a candidate that is found by an electoral board to have engaged in misconduct in obtaining signatures on nominating petitions, is not a "measure of

authority granted it by statute." *Id.*, at 27.

¶ 16 Therefore, we find an "authoritative resolution of the question" presented in this appeal is not necessary or likely to reoccur, and this issue does not qualify for review under an exception to the mootness doctrine. See *Goodman v. Ward*, 241 Ill. 2d 398, 404 (2011).

¶ 17 For the reasons set forth above, we dismiss this appeal as moot.

¶ 18 Appeal dismissed.