

**BEFORE THE STATE BOARD OF ELECTIONS SITTING AS THE STATE OFFICERS
ELECTORAL BOARD FOR THE HEARING AND PASSING UPON OF OBJECTIONS
TO THE CERTIFICATES OF NOMINATION AND NOMINATION PAPERS OF
CANDIDATES FOR THE DEMOCRAT NOMINATION FOR THE OFFICE OF
PRESIDENT OF THE UNITED STATES TO BE VOTED UPON AT THE MARCH 19,
2024 GENERAL PRIMARY ELECTION**

Shane Bouvet, Timothy Conrad, Terry)
Newsome, Peggy Hubbard)
Petitioners-Objectors,)
) Case No. 24-SOEB-GP-119
vs.)
)
Joseph R. Biden, Jr.)
Respondent-Candidate.)

RECOMMENDATION

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This matter coming on for recommendation on Objectors' Petition in this matter and the Hearing Officer states as follows:

PROCEDURAL HISTORY

This matter commenced when Shane Bouvet, Timothy Conrad, Terry Newsome, and Peggy Hubbard (hereinafter “Objectors”) filed an “Objectors’ Petition” with the State Board of Elections. Objectors alleged the nominating papers of Joseph R. Biden, Jr. as a candidate for the Democratic Nomination for the Office of the President of the United States were insufficient in law and in fact for the following reasons:

- A. Candidate falsely swore in his Statement of Candidacy he was “qualified” for the Office of the President of the United States because he provided aid or comfort to the enemy under Section Three of the Fourteenth Amendment of the United States Constitution.

An Initial Case Management Conference was conducted on January 17, 2024, and the Parties were provided an Initial Case Management Order.

On January 19, 2024, Candidate filed a Motion to Dismiss Objectors’ Petition (“Motion”). The Motion argues Objectors’ Petition fails to allege any sufficient or plausible facts demonstrating a legal deficiency in Candidate’s nominating papers but instead provides a lengthy and exhaustive list of policy disagreements with Candidate’s Administration which are based on no admissible evidence. The purported evidence is not admissible as it lacks foundation and is hearsay with conclusory statements. The Motion claims Objectors’ Petition lacks any plausible allegation Candidate personally engaged in providing “aid or comfort” to an enemy of the United States. Candidate also preserves the issues involving the Board’s authority to disqualify a candidate under Section Three of the Fourteenth Amendment of the United States Constitution. Finally, the Motion argues there is no historical precedent for keeping someone off the ballot for policy disagreements and since Objectors failed to allege any credible facts the Motion should be granted.

On January 23, 2024, Objectors filed a Response to Candidate’s Motion to Dismiss (“Response”). The Response argues Candidate is not qualified for office as specified in Candidate’s Statement of Candidacy because Candidate has “previously sworn an oath as a member of congress.....to support the Constitution” and Candidate has given “aid or comfort to the enemies [of the United States], which is not permissible under Section Three of the Fourteenth Amendment of the United States Constitution. The Response also argues that Objectors have fully stated the nature of their objection through legal argument as well as with exhibits taken from public record which should be considered *prima facie* true as findings of public record. Objectors request the Hearing Officer to take judicial notice of multiple matters.

On January 23, 2024, Candidate filed a Case Management Status Report. The Status Report stated, (1) the legal issues are summarized and argued in Candidate’s Motion to Dismiss Objectors’ Petition; and (2) the Parties enter no factual stipulations. Objectors did not file a Status Report as required by the Initial Case Management Order.

On January 25, 2024, Candidate filed a Reply to Objectors’ Response to Candidate’s Motion to Dismiss. First, Candidate argues Candidate’s Motion to Dismiss should be granted because Objectors’ Petition alleges policy disagreements with Candidate along with conclusory

statements that aid or comfort was provided to enemies of the United States but the alleged facts in Objectors' Petition do not plausibly allege that Candidate provided aid or comfort to enemies of the United States. Candidate cites *Iqbal. Anderson v. Vanden Dorpel*, 661 N.E.2d 1296, 1300 (1996) and states that Illinois is a fact pleading state and conclusions of law and conclusory allegations unsupported by specific facts are not sufficient to survive a motion to dismiss. Candidate further argues that none of the exhibits provided with Objectors' Petition are admissible because these exhibits are copies that have not been "certified as correct" (Ill. R. Evid 1005) and they should not be admitted into evidence as public records and the Objectors' Petition should be dismissed. Finally, Objectors' request the Hearing Officer and the Board take judicial notice of various matters, including "the real world implications of the negligence which occurs at the direct and willful discretionary authority of the Candidate in his official capacity as he holds public office, and documentation thereof has been submitted from public records as exhibits to the Objectors' Petition" should be rejected because Objectors' Petition and the exhibits do not meet the standards for judicial notice found in *People v. Taylor*, 95 Ill.App.2d 130, 137 (1st Dist. 1968) and *People v. Davis*, 65 Ill.2d 157, 165 (1976).

A hearing was held on Friday, January 26, 2024, at the State Board offices in Chicago and Springfield starting at approximately 11:00 a.m. The Hearing Officer, court reporter, and Objectors, Shane Bouvet, Timothy Conrad, and Peggy Hubbard were present in Springfield. Candidate, through his counsel, and Objector, Terry Newsome, were present in Chicago and appeared by video. Oral argument was heard from the parties as to the Pending Objection and Motion to Dismiss. Counsel for Candidate objected to Objectors' Petition based upon among other things the lack of admissible facts to support the objection and the objection merely recited a dispute over Candidate's Administration's immigration policies and the impact of those policies but did not assert any lack of qualifications of Candidate to be placed on the ballot. Candidate requested the pending motion be granted and a hearing on the merits not take place. During their argument, Objectors moved for the admission of three sets of exhibits (A, B and C). Two sets of the exhibits (A and B) were supplements to the attachments to the Petitioners' Objection. The request to admit these three sets of exhibits at the hearing was denied by the Hearing Officer as untimely¹ and an improper attempt to amend their Objection Petition. Objectors also sought the Hearing Officer to take judicial notice of certain facts as set forth in their Response.² No further evidence was admitted, and no testimony was taken.

¹ Objectors failed to timely disclose the offered exhibits as required by the Initial Case Management Order and presenting them to Candidate's counsel and the Hearing Officer for the first time during the hearing.

² Objectors request judicial notice be taken "of the official capacities, the extent of authority, and the scope of the duties of the Candidate as he holds his public office", "of the real world implications of the negligence which occurs at the direct and willful discretionary authority of the Candidate in his official capacity as he holds his public office, and documentation thereof has been submitted from public record as Exhibits", and "Candidate' Biden's Oaths of office . . . and how . . . [it] applies to Candidate Biden in a way that is does not to other Candidate(s) who have not taken the same oath." Objectors' multiple requests for judicial notice are denied by the Hearing Officer as they do not meet the standards for judicial notice, are disputed, and are not the types of assertions commonly admitted into evidence using judicial notice. *People v. Taylor*, 95 Ill.A.2d 130, 137 (1st Dist. 1968) ("Illinois courts may take judicial notice of facts known to be true."); *People v. Davis*, 65 Ill.2d 157, 165 (1976) (judicial notice may be taken of facts not generally known if they are readily verifiable from sources of undisputed accuracy); *In re A.B.*, 308 Ill. App. 3d 227, 237 (2nd Dist. 1999) ("A court may take judicial notice of matters generally known to the court and not subject to reasonable dispute.").

ANALYSIS

“[A]ccess to a place on the ballot is a substantial right and not to be lightly denied.” *Siegel v. Lake Cnty. Officers Electoral Bd.*, 385 Ill. App. 3d 452, 460 (2d Dist. 2008) (citations omitted).

A. Objectors’ Petition Raises Issues Outside the Board of Election’s Scope of Inquiry as to Whether Candidate’s Nominating Papers Comply with the Election Code Because it Requires the Board to Address Issues Involving a Complex Federal Constitutional Analysis

Objectors’ Petition states “Candidate’s nomination papers are not valid because when he swore in his Statement of Candidacy that he is ‘qualified’ for the office of the presidency as required by 10 ILCS 5/7-10, he did so falsely.” Objectors’ further state that Candidate “cannot satisfy the eligibility requirements for the Office of the President of the United States established in Section 3 of the Fourteenth Amendment of the U.S. Constitution. Under Section 3 of the Fourteenth Amendment to the U.S. Constitution, known as the Aid or Comfort Disqualification Clause, “No person shall. . . . hold any office, civil or military, under the United States, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof.” Objectors’ Petition sets forth how Objectors believe Candidate “has given aid or comfort to the enemies thereof and is therefore disqualified from public office under Section 3 of the Fourteenth Amendment.”

Candidate’s Motion to Dismiss states: “The Board currently has other cases pending before it that involve the issue of whether it has authority to disqualify a candidate under Amendment XIV, Section 3 of the United States Constitution. The Candidate submits that the Board’s ruling in those cases on the question of the Board’s authority should govern in this case, and the Candidate seeks to preserve the issue of the Board’s authority by way of this pleading.” Given Candidate’s incorporation and preservation of the Board’s authority to rule on the current objection, the Hearing Officer will address the Board’s authority.

“As a creature of statute, the Election Board possesses only those powers conferred upon it by law” and “[a]ny power or authority [the Election Board] exercises must find its source within the law pursuant to which it was created.” *Delgado v. Bd. of Election Comm’rs*, 224 Ill. 2d 481,485 (Ill. 2007). In *Delgado*, the Illinois Supreme Court found that the Election Board (City of Chicago) exceeded its authority when it overruled the Hearing Officer’s recommendation and concluded that a provision of the Illinois Municipal Code was unconstitutional: “Administrative agencies such as the Election Board have no authority to declare a statute unconstitutional or even to question its validity. (Cites omitted). In ruling as it did, the Election Board therefore clearly exceeded its authority.” *Id.*, at 485.

The Illinois Supreme Court in, *Goodman v. Ward*, 241 Ill.2d 398 (2011), further illustrated the limits of an Election Board’s authority. In *Goodman*, Ward filed a petition with the electoral

board to have his name placed on the ballot as a candidate for circuit judge. At the time he filed his petition, Ward was not a resident of the subcircuit he wanted to run in. Two of the three officers of the electoral board decided that Ward could appear on the ballot because governing provisions of the Illinois Constitution were “arguably ambiguous and uncertain.” The Court affirmed the lower court’s reversal of the electoral board, holding, “. . . the electoral board overstepped its authority when it undertook this constitutional analysis. It should have confined its inquiry to whether Ward’s nominating papers complied with the governing provisions of the Election Code.” *Goodman*, at 414-415.

The Illinois Supreme Court in these two decisions has placed limits on what an electoral board can consider when ruling on an objection. In *Delgado*, the Court makes it clear that an electoral board may not, in performing its responsibilities in ruling on an objection, go so far as to even question the constitutionality of what it considers to be a relevant statute. The language in *Goodman* extends this prohibition when it uses the language of “constitutional analysis.” Thus, an electoral board goes too far not just when it holds a statute unconstitutional but also goes too far when it enters the realm of constitutional analysis. Instead, as the Court wrote, “It should have confined its inquiry to whether Ward’s nominating papers complied with the governing provisions of the Election Code.” *Id.*, at 414-415.

The question, then, is whether the Board can decide whether candidate Biden is disqualified by Section Three of the Fourteenth Amendment, without embarking upon a constitutional analysis. It simply cannot. It is impossible for the Board to decide whether Candidate is disqualified by Section Three without engaging in a significant and sophisticated constitutional analysis. These constitutional issues belong in the Courts.

Moreover, the Election Code and the Rules of Procedure adopted by the Board, indicate these matters are handled on an expedited basis with the intent for the Board to handle matters quickly and efficiently to resolve ballot objections so that the voting process will not be delayed or bogged down in protracted litigation. This is evident by the timeline (and deadlines) in the pending case and the lack of any real discovery. With the Rules guaranteeing an expedited handling of cases and with limited available discovery, the Election Code is simply not suited for issues involving complex constitutional analysis. Accordingly, Objectors’ Petition should be dismissed as the Board is without authority to disqualify a candidate under Section Three of the Fourteenth Amendment to the United States Constitution.

B. If Determined to be Within the Board’s Scope of Inquiry The Objection Should Be Dismissed

If it is determined this matter is within the Board’s scope of inquiry, Objectors’ Petition should be dismissed for the additional reasons stated in Candidate’s Motion to Dismiss. Objectors’ Petition asserts Candidate has filed a false Statement of Candidacy because he is not qualified for the office of the President of the United States. The allegation to support the claim Candidate is not qualified for office is based upon the assertion he provided aid or comfort to the enemy. See U.S. Const. amend. XIV, § 3. The aid and comfort allegations are based upon Candidate’s Administration’s immigration and border security policy and the alleged impacts of those policies. Factual allegations setting forth the dislike of Candidate’s policies and his

performance while in office are not a factual basis to disqualify a Candidate from the ballot. Asserting conclusory and causally dubious connections to those disliked policies also fail to factually establish any basis to disqualify Candidate.

Noticeably absent from Objectors' Petition are any factual allegations that Candidate personally engaged in providing aid or comfort to an enemy of the United States as contemplated by Section Three of the Fourteenth Amendment. Objectors' reliance upon a policy decision of Candidate's Administration that they or others may disagree with, in this case, simply does not rise to the level of pleading to support an allegation of providing aid or comfort to an enemy. The Hearing Officer believes Objectors' Petition fails to allege any factual basis to establish a colorable claim to remove Candidate from the ballot.

Moreover, the plain wording of Section Three of the Fourteenth Amendment to the United States Constitution does not apply to the office of President of the United States.³ The President is not listed in the hierarchy list of offices set forth in and governed by Section Three. The office of President and Vice President were removed from previous drafts of Section Three prior to its ultimate adoption. Accordingly, the Hearing Officer believes Section Three of the Fourteenth Amendment has no application.

Finally, Objectors cite no caselaw to support their position that a disagreement with the immigration policies of a sitting president or dissatisfaction with his performance while in office is a basis for preventing him to be placed on the ballot under Section Three of the Fourteenth Amendment to the United States Constitution.⁴ Accordingly, the Hearing Officer believes Objectors' Petition also fails to allege a legally recognized basis to remove Candidate from the ballot and should be dismissed.

C. If the Merits are Considered There is No Evidence of Candidate Providing Aid or Comfort

If the Board determines Section Three of the Fourteenth Amendment is deemed applicable to Candidate and the evidence proffered by Objectors regarding Candidate's Administration's Immigration Policies should be considered, the evidence presented does not establish Candidate provided aid or comfort to the enemy as contemplated by the United States Constitution. In the opinion of the Hearing Officer, there was no competent, admissible, and relevant evidence⁵ presented by Objectors to support a challenge to Candidate's Statement of Candidacy asserting he was not qualified for office because he had aided or comforted the

³ This issue is currently pending before the United States Supreme Court.

⁴ During oral argument, Objectors acknowledge they have been unable to locate any caselaw to support their theory.

⁵ The attachments to Objectors' Petition as argued by Objectors consists of hearsay evidence; evidence lacking the proper foundation; evidence consisting of conclusions, rather than fact; and consists of documents not certified consistent with Rule 902 as required by Ill. R. Evid. 1005. In addition to these infirmities, if the evidence is deemed admissible under the relaxed evidentiary rules as adopted by the Board, the Hearing Officer does not believe any of the purported evidence is relevant in any way to the adequacy of Candidate's Statement of Candidacy and should not be considered as to whether Candidate's name should appear on the ballot. To the extent any of the evidence can be considered relevant or admissible under the relaxed evidentiary rules adopted by the Board, given the above infirmities, the weight and credibility given to the evidence should be discounted and still does not meet Objectors' burden to have their Petition granted.

enemy. There was simply no evidence presented Candidate provided aid or comfort to the enemy and as a result his Statement of Candidacy was falsely sworn.

The evidence presented shows disagreements with Candidate's Administration's immigration policies, characterizations of such policies, attacks of such policies, conclusory allegations regarding the impact of such policies, and unsubstantiated assertions regarding those policies. Those that disagree with the immigration policies of the administration of a sitting president are not able to shape a narrative to turn disputed immigration policies and the alleged impact of those policies into a constitutional basis for preventing a candidate to be placed on the ballot. Objectors failed to present the required type and degree of evidence to show Candidate was personally engaged in aiding or comforting the enemy as contemplated by the United States Constitution. A disagreement as to immigration policies is simply not enough, there needs to be more. Here there is not more.

The situation asserted in Objectors' Petition is simply not the type of situation contemplated by Section Three of the Fourteenth Amendment, even if applicable. Thus, even if the Motion to Dismiss is denied, the evidence attached to the Objection is considered, and the merits of the Objection are reviewed, it is recommended the Objection be overruled and Candidate's name be placed on the ballot.

Accepting Objectors' argument would lead to the absurd result where the Electoral Board is called on to rule upon a candidate's previous performance in office and/or the effects of their previous policies and whether adopting and implementing those policies disqualify them from office. It is this Hearing Officer's opinion that disagreements with a candidate's policies are more appropriately addressed by voters at the ballot box.

Conclusions

It is recommended Candidate's Motion to Dismiss Objector's Petition be granted as Objectors' Petition raises issues outside the Board of Election's scope of inquiry as to whether Candidate's nominating papers comply with the Election Code because it requires the Board to address issues involving a complex Federal Constitutional analysis.

If this matter is found to be within the Board's scope of inquiry, it is recommended Candidate's Motion to Dismiss Objectors' Petition be granted because Objectors' Petition fails to factually and legally state a viable basis for an Objection and the allegations involving Candidate's immigration and border security policies do not equate to providing aid or comfort to the enemies of the United States.

However, if the Board disagrees with the granting of the Motion to Dismiss Objectors' Petition, it is recommended Objectors' Petition be overruled on the merits and Candidate be placed on the ballot.

Because Candidate **HAS** submitted a valid Statement of Candidacy as set forth in the Election Code, the Hearing Officer recommends that Candidate's name **BE PLACED** on the

ballot as a candidate for the Democratic Nomination for the Office of the President of the United States.

DATED: January 27, 2024

/s/ David A. Herman
David A. Herman, Hearing Officer

CERTIFICATE OF SERVICE

The undersigned certifies that on this 27th day of January, 2024, service of the foregoing document was made by electronic transmission from the office of the undersigned to the following individuals:

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