

**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, COUNTY DIVISION**

MICHAEL PATRICK MALONEY, *et al.*,

Petitioners-Candidates,

v.

MUNICIPAL OFFICERS ELECTORAL
BOARD FOR THE VILLAGE OF TINLEY
PARK, *et al.*,

Respondents.

Case No. 2024 COEL 000025

Judge John J. Tully, Jr.

MEMORANDUM OPINION AND ORDER

Petitioner-Candidates, Michael Patrick Maloney, Cynthia “Cindy” O’Boyle, Matthew F. Walsh, Melissa Sanfilippo, & Eric L. Schmidt, (the “Candidates”) sought to form a new political party, the “Tinley Together Party,” in their bid for municipal offices in the Village of Tinley Park. The sole issue presented by the Candidates’ Petition for Judicial Review (“Petition”) is whether the Candidates’ inclusion of six American flags across the top of their nominating petitions, three on either side of the heading “Petition for Election” (R. 000017-000223), violates Section 10-4 of the Election Code. The Municipal Officers Electoral Board for the Village (the “Board”), in a 2-1 decision, held that it did, sustaining Objectors’ Petition in this regard. (R. 000284-286 ¶ 11). In so ruling, the Board declared the Candidates’ nomination papers invalid and ordered that their names not appear on the ballot for the April 1, 2025 Consolidated General Election. (*Id.* at R. 000286.)

The court grants the Candidates’ Petition and reverses the decision of the Board. In short, the Board’s interpretation of Section 10-4 does not withstand scrutiny.

UNDISPUTED FACTS

1. On November 18, 2024, the Candidates filed their Nomination Papers on behalf of their candidacies for the offices of Mayor (Maloney), Clerk (O'Boyle), and Trustees (Walsh, Sanfilippo, and Schmidt) for the Village of Tinley Park.

2. The Nominating Papers contained at 207 petition signature sheets and approximately 2,000 signatures. (R. 000017-000223). Each petition sheet contained the six American flags across the top. An example of a petition sheet is reproduced here (R. 000017):

PETITION FOR ELECTION

We, the undersigned, being duly qualified and registered voters of the Village of Tinley Park, State of Illinois, do hereby declare that it is our intention to form a new political party in the political division aforesaid, to be known and designated as the **TINLEY TOGETHER PARTY**, and do hereby PETITION that the following named persons shall be candidates of said party for election to the offices hereinafter specified, for full terms, in the Village of Tinley Park, Counties of Cook & Will, State of Illinois, to be voted for at the Consolidated Election to be held April 1, 2025.

CANDIDATE NAME	RESIDENCE ADDRESS	OFFICE	PARTY
MICHAEL PATRICK MALONEY	17705 Harper Road, Tinley Park, IL 60487	Mayor	TINLEY TOGETHER
CYNTHIA "CINDY" O'BOYLE	8937 Linden Drive., Tinley Park, IL 60487	Village Clerk	TINLEY TOGETHER
MATTHEW F. WALSH	16338 Ridgeland Ave., Tinley Park, IL 60477	Village Trustee	TINLEY TOGETHER
MELISSA SANFILIPPO	16728 Tinley Park Dr., Tinley Park, IL 60477	Village Trustee	TINLEY TOGETHER
ERIC L. SCHMIDT	7501 Hanover Drive, Tinley Park, IL 60487	Village Trustee	TINLEY TOGETHER

SIGNATURE OF QUALIFIED VOTER	PRINTED NAME	VOTER RESIDENCE ADDRESS	VILLAGE, COUNTY, STATE
<i>[Signature]</i>	MICHAEL BUGAJSKI	8707 GLENBERRY LN	Tinley Park, Cook/Will, IL
<i>[Signature]</i>	JAMES POPP	8738 PAINTREE	Tinley Park, Cook/Will, IL
<i>[Signature]</i>	Marie Maloney	17705 HARPER RD	Tinley Park, Cook/Will, IL
<i>[Signature]</i>	Michael P. Maloney	17705 HARPER RD	Tinley Park, Cook/Will, IL
<i>[Signature]</i>	EDWARD BROZNIER	17720 HARPER RD	Tinley Park, Cook/Will, IL
<i>[Signature]</i>	Kimberly Bodinet	17720 Harper RD	Tinley Park, Cook/Will, IL
<i>[Signature]</i>	Nicole Bodinet	17720 Harper Rd	Tinley Park, Cook/Will, IL
<i>[Signature]</i>	Roseanne Bodinet	17720 Harper Rd	Tinley Park, Cook/Will, IL
<i>[Signature]</i>	Derek Kaptar	8513 170th Pl.	Tinley Park, Cook/Will, IL
<i>[Signature]</i>	ANTHONY L. RACON	16742 OCCENTO AVE	Tinley Park, Cook/Will, IL

STATE OF ILLINOIS,
COUNTY OF Cook, ss.

CIRCULATOR'S AFFIDAVIT

I, Michael P. Maloney being first duly sworn, do hereby certify that I reside at 17705 Harper Rd
(Print Circulator's Name) (Insert Circulator's Street Address or RR Number)
 in the CITY/TOWN/VILLAGE of Tinley Park, ZIP CODE 60487, County of Cook, State of IL
(Circle One) (Name of City, Town, or Village) (Insert Zip Code) (Insert County Name) (Insert State)
 that I am 18 years of age or older, that I am a citizen of the United States, and that the signatures on this sheet were signed in my presence, and are genuine, and that none of the signatures on the sheet were signed more than 90 days preceding the last day for filing of the petition, and that to the best of my knowledge and belief the persons so signing were at the time of signing the petition duly qualified and registered voters of the Village of Tinley Park, the State of Illinois, the political division in which the candidates are seeking elective office, and that their respective residence addresses are correctly stated as above set forth.

[Signature]
(Signature of Circulator Making the Affidavit) '24 NOV 18 4:17



[Signature] before me on 10/20, 2024.
(Print Name of Circulator) (Insert Date, day)
[Signature]
(Signature of Notary Public)

000001
 SHEET NUMBER
 000017

3. On November 25, 2024, Objectors filed their “Objectors’ Petition” against Candidates’ Nomination Papers. Objectors argued that Candidates’ use of the US flag on the petition sheets violated Sections 10-4, 10-5, and 10-5.1 of the Election Code as a ‘political slogan’ or ‘political messaging.’ *See, e.g.,* Objectors’ Petition, ¶¶ 7, 9, 10, 15-17. Specifically, the Objectors alleged, with respect to Section 10-4:

Candidates’ signature petitions sheets are official nomination papers that are filed by candidates seeking ballot access, and are not intended to be used for political slogans or other information, and nowhere in Sections 10-4, 10-5, and 10-5.1 is there a provision that allows candidates to add political slogans, promotional material, images, flags, or other information that could be deemed a political slogan.

R. 000287-291 ¶ 10; *see id.* ¶ 7.

4. Objectors’ Petition concluded that the use of a “six US flag banner on upon the signature sheets – the documents shown to voters – was not a requirement of the Election Code but was added to sway petition signers and convey a political slogan, and it is in violation of 10 ILCS 5/10-5.1, requiring the striking of Candidates’ signature petitions.” *Id.* ¶ 22.

5. On December 9, 2024, the Electoral Board (by a 2-1 vote) invalidated the Candidate’s Nomination Papers. The Board held:

Section 10-4 specifies that candidates’ nominating petitions must contain information as to the candidate’s name, address, political party, the office sought, and such “other information” that is “required” to make the petition valid, and the nominating petitions therefore do not comply with Section 10-4 of the Election Code.

R. 000285, ¶ 11.

6. Public Member Hon. Mathias Delort (Ret.) dissented, voting to overrule the objections. Justice Delort’s reasons were stated on the record and incorporated by reference. R. 000286 (dissenting member); Tr. 12/9/2024 at pp. 34-38, 45-46.

7. Though the board’s decision is captioned “Findings & Decision,” it contains no factual findings. Other than Justice Delort’s reasoning (*see* Candidates’ Reply at 2 n.2), members’ deliberations in the Transcript of Proceedings were not incorporated into their written ruling. (*E.g.* “A flag is not messaging? In this day and age, a flag is messaging.... [w]hat about the American flag? What about that? Is that going to be a Trump statement?” (Karkula, pp. 39-40)).

8. No evidence was taken or testimony presented below, including with respect to the Candidates’ intent. Objectors’ brief in this court asserts that the six American flags on the petition sheets “are similar to Blue Lives Matter” flags (Objectors’ Resp. at p.1), but conceded at oral argument there was no evidence presented in this regard. Objectors’ Petition also suggests or implies the American flag is more frequently used by Republicans/MAGA, another assertion with no support in the record here. *See* Candidates’ Mem. at p. 24, n.4.¹

9. Candidates timely filed a Petition for Judicial Review.

¹ As the court noted at oral argument, MAGA does not necessarily have any unique claim to the flag in American politics. Here, for example, are six flags (among hundreds more), three on either side of the podium, at the Democratic National in Chicago:



STANDARD OF REVIEW

The Candidates and the Board agree that this case presents a question of law, which typically warrants *de novo* review. *See Corbin v. Schroeder*, 2021 IL 127052, ¶ 32; *see also Cinkus v. Stickney Municipal Officers Electoral Board*, 228 Ill. 2d 200, 210 (2008); *see* Candidates’ Mem. at pp. 8-9; Board Mem. at 3; *but see* Objectors’ Mem. at 2-3. However, even though the facts are not in dispute, Objectors find some support in *Cinkus* that this case may present a mixed question. Under *Cinkus*, “an examination of the legal effect of a given state of facts involves a mixed question of fact and law with a standard of review of ‘clearly erroneous.’” *See Cinkus*, 228 Ill. 2d at 211 (2008). Even if this case presents a mixed question, this court concludes that the Board’s application Section 10-4 to the Candidates’ petition sheets was clearly erroneous.

ANALYSIS

The Board’s decision was based exclusively on Section 10-4 of the Election Code, which provides:

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.

10 ILCS 5/10-4. There is no express prohibition against images in Section 10-4. Objectors conceded as much below. (*See* Objectors’ Resp. and Cross Motion for Summary Judgment, R. 000244 (“a prohibition against images is not directly stated in the Election Code”).) Instead, the Board framed the issue as follows:

The issue presented is thus whether this provision of Section 10-4 provides a limitation on what can be included in a nominating petition (i.e. “shall be ... such ... information ... as required to make same valid”), or merely dictates what must

be included without prohibiting other information that is not necessary to make the petitions valid (such as the flag images here).

R. 0002085 ¶ 9.

The Board’s tortured attempt to articulate that Section 10-4 includes such a limitation requires the insertion of *four* ellipses in the statute, *see* R. 000285 ¶¶ 9-10 (“all petitions ... shall ... be as follows ... and [consist of] such ... [other] information or wording required to make same valid.”) (ellipses in original)) along with invocation of the doctrine *expressio unius est exclusio alterius* (Board Mem. at 4)² – shaky grounds indeed in a regime that favors ballot access in the absence of a clear legislative statement to the contrary. *See Lucas v. Lakin*, 175 Ill. 2d 166, 176 (1997) (“We are mindful of the need to tread cautiously when construing statutory language which restricts the people’s right to endorse and nominate candidates of their choice.”); *McCaskill v. Municipal Officers Electoral Board for City of Harvey*, 2019 IL App (1st) 190190, ¶ 55 (“We reiterate that, because of the importance of ballot access and the right to vote, we make every reasonable attempt to interpret election statutes to promote ballot access.”).

With all the ellipses and the Latin gap-filling, the argument advanced by the Objectors and the Board appears to be that because flags are not “necessary to make the petition valid,” they are excluded. The Board’s reliance on the so-called “residual clause” of Section 10-4 to impose such an exclusion, however, is overbroad and has been repeatedly rejected by courts interpreting Section 10-4. *See Wiggins v. Rogers*, 2019 IL App (1st) 190161, ¶ 22 (“This court has previously rejected the use of this residual clause as a basis for inventing new requirements for nomination petitions that are not set forth in statute or precedent.”); *Dean v. Smith*, 2017 IL App (1st) 170404, ¶ 25

² “The expression of one thing is the exclusion of another.” Under this doctrine, a court may infer that, when a statute lists certain things, those things omitted were intended as exclusions. *Bridgestone/Firestone, Inc. v. Aldridge*, 179 Ill. 2d 141, 151-52 (1997).

(“mere existence of a residual clause in a statute does not permit an administrative body or reviewing court to invent entirely new exceptions or requirements”). In this regard, the Board’s reliance on *expressio unius est exclusio alterius* is equally unavailing. According to the Supreme Court in *Bridgestone/Firestone*:

[T]he principle that the expression of one thing in a statute excludes any other thing is only a rule of statutory construction, not a rule of law. It is merely a rule that courts use to help them ascertain the intent of the legislature where such intent is not clear from the statute's plain language. The maxim is applied only when it appears to point to the intent of the legislature, not to defeat the ascertained legislative intent. The rule may be overcome by a strong indication of legislative intent.

Bridgestone/Firestone, Inc., 179 Ill. 2d at 153-54.

Of course, “Where the statutory language is clear and unambiguous, we will enforce it as written and will not read into it exceptions, conditions, or limitations that the legislature did not express.” *Sigcho-Lopez v. Illinois State Bd. of Elections*, 2022 IL 127253 ¶ 27. Here, this court will read no limitation or exclusion into 10-4 that the legislature did not express.

The legislature was perfectly capable of including an exclusionary provision in Section 10-4. For example, sections of the Election Code immediately following Section 10-4 relating to new parties include such express limitations or exclusions, namely those relating to party names, Section 10-5 (“such party shall not bear the same name as, nor include the name of any established political party as defined in this Article”) and candidate names, Section 10-5.1 (“**No other designation** such as a political slogan, title, or degree, or nickname suggesting or implying possession of a title, degree or professional status, or similar information may be used in connection with the candidate’s surname.”). The statute could provide, in words or in substance, that no graphic, symbol, character, or watermark may be used on a petition sheet. Or, as Candidates suggest, the legislature could have said, “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 **only** as follows...” Candidates’ Reply at p. 4. The First District has emphasized that “[i]t is basic that Illinois courts view the right of a citizen to hold political office as a valuable one. The exercise of this right is not to be prohibited or curtailed *except by plain provisions of the law*. See *Ahmad v. Board of Election Commissioners*, 2016 IL App (1st) 162811, ¶ 14 (emphasis added). The plain language of Section 10-4 simply does not include the exclusion adopted by the Board. See, e.g., *People v. Clark*, 2019 IL 122891, ¶ 47 (“No rule of construction authorizes this court to declare that the legislature did not mean what the plain language of the statute imports, nor may we rewrite a statute to add provisions or limitations the legislature did not include.”)

Objectors successfully walked Section 10-5.1’s exclusion on political slogans in connection with candidates’ names into Section 10-4, and the Board took the bait. The majority’s deliberations show that they were concerned about “messaging” or “political statement” on the petitions. (Tr. at 38-39.) But, as emphasized repeatedly and correctly by dissenting Member Delort, the Election Code’s restriction on political slogans is confined to the candidates’ names in Section 10-5.1 (not to mention that a slogan is also defined elsewhere as a word or words, not images). See 10 ILCS 5/10-5.1; see also 10 ILCS 5/16-3 (defining political slogan as “any word or words expressing or connoting a position, opinion, or belief that the candidate may espouse, including, but not limited to, any word or words conveying any meaning other than that of the personal identity of the candidate”; “A candidate may not use a political slogan as part of his or her name on the ballot, notwithstanding that the political slogan may be part of the candidate’s name.”) The cases cited in the Board’s decision, *Rita v. Mayden*, 264 Ill. App. 3d 913 (1st Dist. 2006) and *Jones v. Mun. Officers Electoral Bd.*, 112 Ill. App. 3d 926 (1st Dist. 1983) both dealt with impermissible nicknames and accordingly are inapposite.

This court's ruling reflects Justice Delort's dissent, the far better view. According to

Delort:

I think we're making this way more complicated than it needs to be. Here's why. Mr. Finko [Objectors' counsel], in your argument both in the written and oral, you kept omitting the last part of the statute, which was in connection with the name. All right. There has never been an electoral board in this State that I'm aware of, or that the parties cited that has ever thrown any candidate off the ballot for something like this.

...

And a higher court, which is the Illinois Supreme Court in Lucas versus Lakin made a decision, written by Justice McMorro said we do not throw candidates off the ballot in Illinois unless there's a clear violation of a specific statutory provision, and it's not necessarily a direct quote, it's a paraphrase, but I think lawyers have cited that over and over again because it is a relatively recent enunciation by our Illinois Supreme Court.

And so the question is what does the statute say? The statute says in connection with the name. All right. This is a flag used as a decorative motif on a petition, and that's all it is. It's not in connection with the name of the candidate. And with -- for that reason, I would suggest that, you know, the objections be overruled.

The legislature has set the policy and has said what is prohibited and what is not prohibited. And a lot of what Mr. Finko kept saying, well, where is the authority to put the flag on? It doesn't need to have -- they don't have to give authority to do that is my position, in my opinion. The only thing they took authority away from was to put a word next to a candidate's name, and that's not what this is.

Tr. 12/9/2024, pp. 34-35, 44-45. Likewise, the Orland Township Officers Electoral Board recently came to the same conclusion as the dissent when confronted with the same issue. Reply Ex. A at p. 5 ("Section 10-4 is not exclusionary.... Section 10-5.1 was not applicable because the item at issue was a picture of an American Flag, not a political slogan in a candidate's name.").

CONCLUSION

Candidates' petitions complied with requirements of Section 10-4 of the Election Code. The Electoral Board's ruling to the contrary is clearly erroneous, as it creates an exclusionary rule where none exists.

Ballot access is a substantial right not lightly denied. *Sutton v. Cook Cnty. Officers Electoral Bd.*, 2012 IL App (1st) 122528, ¶ 13. A court must “tread cautiously” when asked to restrict voters’ right to endorse and nominate the candidates of their choice. *Lucas v. Lakin*, 175 Ill. 2d 166, 176 (1997). As explained by the First District in *Ahmad*:

[T]he *Lucas* court noted that the candidate in question was entitled to ballot placement “in the absence of a clear legislative statement to the contrary.” This court has further noted that “[i]t is basic that Illinois courts view the right of a citizen to hold political office as a valuable one. The exercise of this right is not to be prohibited or curtailed except by plain provisions of the law. Indeed, our supreme court has held that statutes imposing disqualification should be construed liberally, resolving all doubts in favor of a candidate's eligibility.

Ahmad, 2016 IL App (1st) 162811, ¶ 14 (Delort, J.) (internal citations omitted).

For the foregoing reasons, the Petition for Judicial Review is granted, the Electoral Board’s December 9, 2024 Decision is reversed, and the Candidates’ names shall be printed on the ballot for the April 1, 2025 election.

Several other motions remain pending. The Candidates moved to strike the Board’s brief and moved to strike and deny the County Clerk’s motion for leave to adopt the Board’s brief. The court reviewed and considered all of the parties’ briefs and arguments in issuing its ruling. The Candidates’ motions to strike are denied.

ENTERED: /s/Judge John J. Tully, Jr. #2354

Dated: January 3, 2025