

Memorandum

Dated: January 13, 2015

To: Members, Wisconsin Government Accountability Board

From : Paul Bugenhagen Jr

Subject: 2015 Spring Election Ballot access Challenge of Linda Van De Water

The Board should reject the nomination papers of Linda Van De Water because, by her own admission in Exhibit D-2, they are illegal and do not comply with Wis. Stat. Section 8.10(2)(b) or the intent of the law. Judge Van De Water's campaign recognized this fact in its December 1, 2014 email to Richard Bohringer in which Vi Hammelman stated she was told by Judge Van De Water that the nomination papers "are illegal saying re-Elect "Judge"". (Exhibit D-2).

It is clear that Linda Van De Water violated the law in her use of the "judge" title. In fact, her campaign recognized that using the title of Judge is illegal and hope instead that the title can be used under a guise of a campaign statement or biographical information. However, while a campaign slogan may be permitted by other statute sections, the limiting language of section 8.10(2)(b) prohibits that campaign statement or biographical information from being a title. It is not logical that a candidate is prohibited from using a title in one box on the form but allowed to write a title in big bold letters just above the box. The staff memo states that the "provision related to excluding titles has been interpreted to apply only when the title is linked to the candidate's name within the statement that is signed by electors or in the header of the document, to which the statement refers." In this case, it is not possible to determine if an elector related the name to be the first, second, or third appearance of Linda Van De Water's name on the nomination papers. There is no indication that the specific statement required by Wis. Stat. 8.10(2)(b) links back to the name in the box rather than the first or second times the name appears with the "judge" title. Therefore, Wis. Stat. 8.10(2)(b) is violated because the required statement references back to all three references to Linda Van De Water's name, two of which have illegal titles.

Further, the prohibition in Wis. Stat. 8.10(2)(b) against titles is not focused on preventing a candidate from falsely identifying him or herself and misleading voters. Titles are prohibited because using a title, even if accurate, may improperly influence electors. For example, the statute does not say that a candidate may write judge, governor, or any other elected position just because it is true. This fact further clarifies the intent of the legislatures to prohibit the use of titles on nomination papers.

For further guidance on this question and consideration of the intent of this statute, this Board may consider the following excerpt from an Illinois case dealing with the intent of the legislature's prohibition of titles on nomination papers.

**364 Ill.App.3d 913
Appellate Court of Illinois,
First District, Sixth Division.**

John RITA, Petitioner–Appellee,

v.

**Michael MAYDEN (The Coach), Daniel Madden, Mary Scarlett Wilson, Mary Melchor, David Orr, as
Cook County Clerk, and The Chicago Board of Election Commissioners, Respondents (Michael E.**

Mayden, Respondent–Appellant; David Orr, as Cook County Clerk; Daniel P. Madden, and Mary Melchor, as Designees of the Cook County Clerk to the Cook County Officers Electoral Board; Mary Wilson, as Designee of the Cook County State’s Attorney to the Cook County Officers Electoral Board; Langdon Neal, Theresa Petrone, and Richard Cowen, as members of the Chicago Board of Election Commissioners, Respondents–Appellees).

⁶¹ We now turn to the question of whether Mayden’s use of the designation “THE COACH” on his nominating papers violated section 8–8.1 of the Election Code. 10 ILCS 5/8–8.1. That section provides as follows:

“In the designation of the name of a candidate on a petition for nomination, the candidate’s given name or names, initial or initials, a nickname by which the candidate is commonly known, or a combination thereof, may be used in addition to the candidate’s surname. 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, except that the title ‘Mrs.’ may be used in the case of a married woman.” 10 ILCS 5/8–8.1.

Mayden argues that the designation “THE COACH” after his name is appropriate because “THE COACH” is merely a “nickname” by which he is “commonly known” in his community. Mayden asserts that he has volunteered for nearly 20 years as a baseball coach and that as a result of this volunteer effort, he is known to “parents, players, friends, family members, and the community at large” as “the Coach.” Rita does not dispute Mayden’s factual assertions. Instead, he argues that the designation “THE COACH” is an improper title that suggests “professional status” or other “similar information” that is explicitly prohibited by Section 8–8.1 of the Code. 10 ILCS 5/8–8.1.

As stated previously, as a reviewing court, our job in interpreting a statute is to ascertain and give effect to the true intent of the legislature by first examining the language of the statute itself. See *Alexander*, 204 Ill.2d at 485, 274 Ill.Dec. 414, 791 N.E.2d 506; *Serwinski*, 156 Ill.App.3d at 259, 108 Ill.Dec. 813, 509 N.E.2d 509. The first sentence of Section 8–8.1 empowers the candidate to use his surname and certain other designations on his nominating papers; these designations include the candidate’s given name, initials, or a nickname by which the candidate is commonly known. 10 ILCS 5/8–8.1. All of the designations permitted by the first, empowering sentence of the statute are intimately related to the name or nickname used merely to identify the candidate. 10 ILCS 5/8–8.1.

The second sentence of Section 8–8.1 does not use empowering language; it limits a candidate’s use of designations. 10 ILCS 5/8–8.1 (providing that “[n]o other designation” may be used on the nominating papers and providing various categories of prohibited *921 designations). That the second, limiting sentence begins with the phrase “[n]o other designation” is a clear instruction that the General Assembly sought to limit the use of designations to those explicitly provided for in the prior sentence. The non-exhaustive list of categories of improper designations provided in the statute includes political slogans, titles, and other designations which communicate professional status. ***575 **585 10 ILCS 5/8–8.1. For example, in *Jones v. Municipal Officers Electoral Board*, 112 Ill.App.3d 926, 931, 68 Ill.Dec. 522, 446 N.E.2d 256 (1983), this court affirmed the decision of an electoral board that the designation “REVEREND” along with the candidate’s name was improper.

While a titular designation like “REVEREND” is not quite the same as the designation “THE COACH,” in our view, both designations are meant to communicate information about either the candidate’s profession or some other type of special status in the community to those individuals who sign the candidate’s nominating petitions. The plain language of Section 8–8.1 makes the purpose of the provision clear: Section 8–8.1 permits the disclosure of names, initials, and nicknames that assist voters in identifying the candidate, but prohibits the use of designations which communicate a candidate’s special educational, social, or community status. 10 ILCS 5/8–8.1; see also *Jones*, 112 Ill.App.3d at 931, 68 Ill.Dec. 522, 446 N.E.2d 256 (noting that the statute prohibited use of the title “Reverend” on a candidate’s nominating petition because it might induce a voter “to sign that petition on the strength of that title, whether or not he was familiar with the candidate’s abilities”). Mayden’s use of the designation “THE COACH” did more than merely identify him in the way that a name or common nickname does. “THE COACH” is a title meant to communicate information about Mayden’s volunteer work and his special status in the community. In this way, the designation “THE COACH” is much more like the improper designation “REVEREND” than it is like a nickname meant simply to help voters identify an individual candidate. See 10 ILCS 5/8–8.1; *Jones*, 112 Ill.App.3d at 931, 68 Ill.Dec. 522, 446 N.E.2d 256. Despite the deference owed to the Electoral Board’s interpretation of the Election Code, we find that the Board construed the prohibitions on designations provided for in Section 8–8.1 too narrowly.

Instead, the circuit court's assessment of Section 8-8.1's scope was proper. We thus affirm the circuit court's ruling and reverse the Electoral Board's decision.

¹⁷¹ ¹⁸¹ The circuit court also ordered that Mayden's name be struck from the ballot. This is a harsh remedy. We note, however, that striking a candidate's name from the ballot is necessary when a candidate uses an improper designation because it taints the nominating process itself, not simply the ballot. See Jones, 112 Ill.App.3d at 931, 68 Ill.Dec. 522, 446 N.E.2d 256 (striking *922 from the ballot the name of a candidate who used an improper designation). As this court noted in that case:

"It is possible that a voter, seeing the title 'Reverend' on a nominating petition, would be induced to sign that petition on the strength of that title, whether or not he was familiar with the candidate's abilities. We do not know whether that was the case here, but the statute was designed to eliminate the need for inquiry into the reasoning processes of the numerous persons who sign a candidate's petition." Jones, 112 Ill.App.3d at 931, 68 Ill.Dec. 522, 446 N.E.2d 256.

The Jones court rejected the candidate's argument that striking his name from the ballot was too harsh of a remedy. Jones, 112 Ill.App.3d at 931, 68 Ill.Dec. 522, 446 N.E.2d 256 (rejecting the argument that merely removing the title "Reverend" from the ballot would be a reasonable sanction). The court noted that it was concerned "not merely with orderly procedure but with conduct in direct violation of the Electoral Code." Jones, 112 Ill.App.3d at 931, 68 Ill.Dec. 522, 446 N.E.2d 256. Further, in Jones, as in the instant case, the harm had already occurred by the time ***576 **586 the candidate filed his nominating papers; any unfair advantage created by use of the improper designation had already tainted the nominating process itself; this cannot be corrected by simply removing the offensive title. See Jones, 112 Ill.App.3d at 931, 68 Ill.Dec. 522, 446 N.E.2d 256. As the Jones court noted, the only possible remedy in a case like this is removal of the offending candidate's name from the ballot; to do otherwise "might encourage others in the future to consider the use of titles on nomination papers knowing that it would result only in the removal of the titles on the ballots." Jones, 112 Ill.App.3d at 931, 68 Ill.Dec. 522, 446 N.E.2d 256.

Mayden attempts to distinguish Jones on the grounds that the titular designation "Reverend" is unlike his use of the designation "the Coach;" that the Jones court affirmed, rather than reversed, a decision of an electoral board; that Jones concerned a municipal electoral board rather than a county electoral board, and that the offending candidate in Jones also failed to disclose financial documents, as required by statute. In our view, however, none of these differences are sufficient to distinguish Jones from the instant matter. Like the Jones court, we find that a candidate's use of an improper designation on his nominating papers in violation of Section 8-8.1 of the Election Code requires that the offending candidate's name be struck from the ballot. Jones, 112 Ill.App.3d at 931, 68 Ill.Dec. 522, 446 N.E.2d 256; 10 ILCS 5/8-8.1.

CONCLUSION

For the reasons stated above, we affirm the judgment of the circuit court denying Mayden's 2-619 motion, exercising its jurisdiction *923 over the instant case, and striking Mayden's name from the primary election ballot; we reverse the decision of the Electoral Board.

Circuit court judgment affirmed.

This board should accept the Illinois Courts' holding and Judge Linda Van De Water's own admission that her use of "Judge" on her nomination papers violated Wis. Stat. section 8.10(2)(b) and reject all of the nomination papers of Linda Van De Water.