2026 IL App (1st) 261640-U

NOTICE: This order was filed under Supreme Court Rule 23 and is not precedent except in the limited circumstances allowed under Rule 23(e)(1).

FIRST DIVISION
October 8, 2026

No. 1-26-1640

IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

DARRYL ROBINSON, Petitioner-Appellant, v. THE STATE OFFICERS ELECTORAL BOARD, MARISEL A. HERNANDEZ, JUNE A. BROWN, LAURA KOTELMAN, JACQUELINE MORRIS, and the ILLINOIS STATE BOARD OF ELECTIONS, Respondents (Marisel A. Hernandez, June A. Brown, Laura Kotelman, and Jacqueline Morris, Respondents-Appellees).	)	Appeal from the Circuit Court of Cook County No. 26-COEL-17 The Honorable Catherine A. Schneider, Judge Presiding.

JUSTICE FITZGERALD SMITH delivered the judgment of the court.
Justices Howse and Cobbs concurred in the judgment.

ORDER

¶ 1 *Held:* Subject matter jurisdiction to review decision of election board was not present based upon petitioner's failure to strictly comply with the statutory requirement of serving respondents by registered or certified mail.

¶ 2 The petitioner, Darryl Robinson, appeals the trial court's order dismissing this action for judicial review of an electoral board decision on the basis that it lacked subject matter jurisdiction

due to various defects including the petitioner's failure to name the correct electoral board as respondent and to serve all respondents by registered or certified mail. We affirm.

¶ 3 BACKGROUND

¶ 4 The petitioner filed nomination papers with the Illinois State Board of Elections to be placed on the ballot as an independent candidate for the office of state representative in the Illinois General Assembly for the ninth district in the general election to be held on November 3, 2026. Respondent Jacqueline Morris filed an objection to the petitioner's nomination papers, which, because the ninth district is located mostly within the City of Chicago, was heard and passed upon by the Chicago Board of Election Commissioners.

¶ 5 Following a public hearing on Morris's objection on June 10, 2026, the matter was assigned to a hearing officer, who in turn ordered an that an examination of voter registration records be conducted by clerks and agents under the direction and supervision of the Chicago Board of Election Commissioners. On July 28, 2026, the Chicago Board of Election Commissioners issued its findings and decision that the number of valid signatures appearing on the petitioner's nominating petition following completion of the records examination was only 696, which was 1,214 fewer than the minimum number of valid signatures required by law to be placed upon the official ballot as an independent candidate for that office (which was 1,910 valid signatures). It thus sustained Morris's objection to the petitioner's nomination papers, declared those nomination papers invalid, and ordered that the petitioner's name shall not be printed on the ballot for the general election. Its findings and decisions were signed by Marisel A. Hernandez, chair of the Chicago Board of Election Commissioners, and by June A. Brown and Laura Kotelman, who are both commissioners of that electoral board.

¶ 6 On Monday, August 3, 2026, the petitioner initiated the present case by filing a document

titled "Verified Petition for Judicial Review of the Final Decision of the State Officers Electoral Board." While its findings and decision were attached, the petition did not name the Chicago Board of Election Commissioners as a respondent. Instead, it named as respondent the State Officers Electoral Board and inaccurately alleged that that had been the electoral board to sustain the objection to the petitioner's nominating papers on July 28, 2026. It also named Hernandez, Brown, and Kotelman as respondents, but it incorrectly identified them, respectively, as chair and commissioners of the State Officers Electoral Board. Morris and the Illinois State Board of Elections were also named as respondents in the petition.

¶ 7 Also filed with the petition was a certificate of service verified by the petitioner and dated August 3, 2026. Checkboxes on that certificate of service indicated that the petitioner had served the above-named respondents through electronic service via the Illinois e-Filing system and that he had not used certified mail or any other method of service.

¶ 8 After the petitioner recognized that he had named the State Officers Electoral Board as respondent and not the Chicago Board of Election Commissioners, on August 6, 2026, he filed a motion for leave to file an amended petition to correct an inadvertent "misnomer" as to "the formal designation of the governmental respondent whose July 28, 2026 decision has been challenged from the commencement of this action." He attached a proposed amended petition for judicial review naming the Chicago Board of Election Commissioners as respondent and clarifying that respondents Hernandez, Brown, and Kotelman were named in their capacities as member of the Chicago Board of Election Commissioners. Notably, at several points in his motion, the petitioner cited both sections 2-401(b) and 2-616 of the Code of Civil Procedure (735 ILCS 5/2-401(b), 2-616 (West 2024)) and argued that the trial court should deem the amended petition to "relate back to the date of the original timely filing" pursuant to one or both of these statutes.

¶ 9 On August 11, 2026, respondent Morris filed a motion to dismiss this action for lack of subject matter jurisdiction. That motion asserted that the petition for judicial review failed in two ways to comply with the mandatory jurisdictional requirements of section 10-10.1 of the Election Code (10 ILCS 5/10-10.1 (West 2024)), either of which resulted in the circuit court failing to acquire subject matter jurisdiction over this petition for judicial review. These grounds of alleged noncompliance with section 10-10.1 were (1) the petition's naming of the wrong electoral board and concomitant failure to name the correct electoral board as a respondent within five days of the July 28, 2026, decision, and (2) the failure to serve any respondents with a copy of the petition by registered or certified mail within five days of the Board's decision and to file proof of service demonstrating that service had been made by one of these two methods.

¶ 10 On August 17, 2026, respondents Hernandez, Brown, and Kotelman also filed a motion to dismiss this action on essentially the same grounds as those identified by respondent Morris.

¶ 11 The petitioner filed responses to both motions to dismiss. He asserted that he attempted to electronically file his petition on Friday, July 31, 2026, but it was not accepted by the clerk of the circuit court. He thus went to the courthouse and obtained a file-stamped copy. He also asserted that he personally served the Chicago Board of Election Commissioners with the petition at its offices on July 31, 2026; he obtained a file-stamp from it dated that day documenting receipt, as shown by an exhibit to his response brief. He argued that, except for an inadvertent misnomer in the name of the electoral board, everything about his petition made clear that he was challenging the decision of the Chicago Board of Election Commissioners issued on July 28, 2026, signed by Hernandez, Brown, and Kotelman sustaining an objection to his nominating papers by Morris. He argued that this was a good-faith error in misnaming a party that was correctable, not fatal.

¶ 12 As for serving respondent Morris, the petitioner asserted that he had attempted personal

delivery of the petition to her at the address available to him. He asserted that he has "contemporaneous video evidence concerning that attempted service and refusal or denial of delivery," and he attached what appear to be several video screenshots to his response brief. He also filed an affidavit detailing his attempts to serve Morris by personal service and purporting to establish a foundation for the video evidence showing his attempts at doing so. He acknowledges that he did not serve Morris by registered or certified mail, but he instead urged the court to look to his diligence in attempting service.

¶ 13 The petitioner further argued that the court should take into account that it had granted him a waiver of fees for service of process and other papers and to conclude that this also meant that he was excused from the costs associated with service by certified mail.[1] He asserted that good-cause exceptions exist for situations where the requirements of Illinois's electronic filing system present barriers to court access for self-represented litigants; he argued that such barriers were shown by the record in his case; and he urged the court to credit his diligence despite these barriers. Finally, he cited principles concerning the importance of access to the ballot and that the inability to pay a monetary charge should not result in the denial of ballot access for indigent candidates.

¶ 14 The trial court conducted a hearing on all pending motions on August 21, 2026. Following that hearing, the trial court granted the respondents' motions to dismiss and denied the petitioner leave to amend his petition after concluding that it lacked subject matter jurisdiction. First, it found that the failure of the petition to name the proper electoral board as respondent resulted in a lack of subject matter jurisdiction over a petition for judicial review. The trial court added that it found the naming of the State Officers Electoral Board as respondent instead of the Chicago Board of

[1] On appeal, the petitioner does note dispute that his application for a fee waiver was not granted until September 3, 2026, which was after the motions to dismiss were granted.

Election Commissioners was not an instance of misnomer of the right party; instead, the petitioner had simply named the wrong party.

¶ 15 Second, the trial court found that the failure to serve the Chicago Board of Election Commissioners and the other respondents with a petition naming the correct electoral board within five days of the Board's decision required dismissal. The trial court concluded by stating that even if it found that indigency was an excuse for not serving the petition by certified mail, it remained the case that the petitioner never attempted service of a petition that achieved subject matter jurisdiction. The court found that the petitioner cited no legal authority for his arguments about due process and ballot access, and it found the legislature's requirement of service by certified mail in this context to be a reasonable limitation on ballot access that served an important purpose in maintaining the integrity of the ballot. The petitioner filed a notice of appeal that same day.

¶ 16 ANALYSIS

¶ 17 The issue in this appeal is whether the trial court properly found that it did not have subject matter jurisdiction to decide this dispute, with the controlling question being whether the petitioner strictly complied with section 10-10.1(a) of the Election Code (10 ILCS 5/10-10.1(a) (West 2024)) in seeking judicial review of the electoral board decision by which he alleges to have been aggrieved. Whether the petitioner failed to comply with that statute and thereby failed to vest the circuit court, as well as the appellate court, with subject matter jurisdiction to decide his case is a legal question that we review *de novo*. *Bey v. Brown*, 2015 IL App (1st) 150263, ¶ 43.

¶ 18 Subject matter jurisdiction refers to a court's power to hear and determine cases of the general class to which the proceeding belongs. *Ontiveroz v. Khokhar*, 2025 IL 130316, ¶ 19. In cases involving judicial review of electoral boards' decisions, courts exercise "special statutory jurisdiction," which means they may exercise jurisdiction over election cases only as provided by

statute. *Id.* ¶ 42 (citing *Bettis v. Marsaglia*, 2014 IL 117050, ¶ 14). As with any instance in which a party seeks to invoke a court's special statutory jurisdiction, that party must comply strictly with the procedures prescribed by the statute; if the mode of procedure prescribed by the statute is not strictly pursued, no jurisdiction is conferred on the court to review the challenged electoral board action. *Id.* ¶¶ 23, 42.

¶ 19 Section 10-10.1(a) of the Election Code, which dictates the procedure for a candidate or objector aggrieved by the decision of an electoral board to secure judicial review of that decision by the courts, requires as follows:

> "Except as otherwise provided in this Section, a candidate or objector aggrieved by the decision of an electoral board may secure judicial review of such decision in the circuit court of the county in which the hearing of the electoral board was held. The party seeking judicial review must file, within 5 days after service of the decision of the electoral board as provided in Section 10-10, a petition with the clerk of the court that names as respondents the electoral board, its members, and the prevailing candidates or objectors in the initial proceeding before the board. The party seeking judicial review must serve a copy of the petition upon each of the respondents named in the petition for judicial review by registered or certified mail within 5 days after service of the decision of the electoral board as provided in Section 10-10. The petition shall contain a brief statement of the reasons why the decision of the board should be reversed. The petitioner shall file proof of service with the clerk of the court within 5 days after service of the decision of the electoral board as provided in Section 10-10. No answer to the petition need be filed, but the electoral board shall cause the record of proceedings before the electoral board to be filed with the clerk of the court on or before the date of the hearing on the petition or as ordered by the court." 10 ILCS 5/10-10.1(a) (West 2024).

¶ 20 This statute underwent amendment in 2024. See Pub. Act 103-600, § 10-5 (eff. July 1, 2024) (amending 10 ILCS 5/10-10.1(a)). This court has explained that the current version of section 10-10.1(a) requires a party contesting the decision of an election board to meet the following four requirements: (1) "file, within 5 days after service of the decision of the electoral board ***, a petition with the clerk of the court that names as respondents the electoral board, its members, and the prevailing candidates or objectors in the initial proceeding before the board," (2) "serve a copy of the petition upon each of the respondents named in the petition for judicial review by registered or certified mail within 5 days after service of the decision of the electoral board," (3) briefly state in the petition "why the decision of the board should be reversed," and (4) "file proof of service with the clerk of the court within 5 days after service of the decision of the electoral board." *Id.*; see *Williams v. Municipal Officers Electoral Board for the Village of Hazel Crest*, 2025 IL App (1st) 242534, ¶ 13.

¶ 21 In this case, there is no dispute that the petitioner failed to satisfy requirement (2) above, meaning that he did not "serve a copy of the petition upon each of the respondents named in the petition for judicial review by registered or certified mail within 5 days after service of the decision of the electoral board." There is no evidence or argument in this case that the petitioner ever served a copy of the petition on any respondent by registered or certified mail at any time.

¶ 22 In his substituted memorandum in lieu of brief filed in this court, the petitioner acknowledges that section 10-10.1(a) requires that service be made by registered or certified mail. He points out, however, that he physically delivered a copy of the petition to the Chicago Board of Election Commissioners within five days of its decision and obtained a file-stamp from it showing that this occurred. He also attempted personal delivery upon Morris at her residence within that time, and he documented such attempts through the video screenshots and photos that he attached to his

filings in the trial court. He clarifies that he is not arguing "that photographs, actual notice, electronic service, or attempted hand delivery automatically equal the statutory method," but he emphasizes that his evidence nevertheless "demonstrate[s] diligence and actual receipt."

¶ 23 He further highlights the fact that he had an application for a fee waiver pending throughout this case. It was eventually granted in full after the case had been dismissed, but it was made effective as of the date of application. He argues that the trial court should have determined the fee waiver application before treating his inability to pay the cost of a registered or certified mailing as working an irreversible forfeiture. He argues that allowing belated service of the petition by certified mail at this point would allow him as "an indigent litigant who timely invoked the waiver procedure [to] receive a practical opportunity to complete the required service without prepayment." He argues that this fee-waiver order, together with the diligence he showed in attempting to effect personal service, support allowing him to cure rather than a dismissal with prejudice. He cites the principle that a State may not require a candidate who is indigent to pay a fee that he is unable to pay as condition of ballot access, without providing an alternative means of ballot access. See *Lubin v. Panish*, 415 U.S. 709, 718 (1974).

¶ 24 Although we are not unsympathetic to the petitioner's arguments, we are constrained to hold that he did not strictly comply with section 10-10.1(a) of the Election Code when he failed to "serve a copy of the petition upon each of the respondents named in the petition for judicial review *by registered or certified mail* within 5 days after service of the decision of the electoral board." (Emphasis added.) 10 ILCS 5/10-10.1(a) (West 2024). And because it is well-established that strict compliance with section 10-10.1(a) is necessary to vest a court with subject matter jurisdiction to review an election board decision, we have no authority to excuse the petitioner's failure to serve the petition by registered or certified mail on the grounds that his efforts at personal or electronic

service of this petition constituted substantial compliance because they showed diligence or gave the respondents actual notice of the petition. See *Bettis*, 2014 IL 117050, ¶ 16 (stating that there is "no question" that strict compliance with section 10-10.1(a) is required and that substantial compliance is not enough). We likewise have no authority to excuse his failure to strictly comply with this plain requirement of the statute on equitable or policy grounds, and we add that we find no evidence in the record that the petitioner acted diligently to request a ruling from the trial court on his pending application for fee waiver at any time prior to dismissal.

¶ 25 The fact that dismissal for lack of subject matter jurisdiction is required here is supported by our decision in *Bey*, a materially identical case in which a candidate filed a petition for judicial review of an election board decision but did not serve the respondents by registered or certified mail. *Bey*, 2015 IL App (1st) 150263, ¶ 1. That case addressed the pre-2024 version of section 10-10.1(a) of the Election Code, which included the requirement that the party seeking review " 'serve a copy of the petition upon the electoral board and other parties to the proceeding by registered or certified mail within 5 days after service of the decision of the electoral board.' " See *id.* ¶ 46 (quoting 10 ILCS 5/10-10.1(a) (West 2012)). The proof of service filed with the petition indicated that the petitioner had completed service by hand delivery and by dropping the petition in a mailbox with prepaid postage, but it made no mention of service by registered or certified mail. *Id.* ¶ 54. The first indication that the petitioner had utilized certified mail occurred over a week after the circuit court had already dismissed the case for lack of jurisdiction. *Id.* ¶ 55. The court characterized such belated use of certified mail as "like closing the barn door when the horse is already a mile down the road." *Id.* ¶ 56. It reasoned that while access to a place on the ballot is a substantial right not lightly to be denied, that concern does not undercut the need for strict compliance with section 10-10.1(a) to invoke the court's jurisdiction. *Id.* The court concluded that

the petitioner in that case "failed to send his petition for judicial review by registered or certified mail as required by statute and we, thus, lack jurisdiction to hear it." *Id.*

¶ 26 As in *Bey*, the petitioner's failure in this case to serve the petition on the respondents by registered or certified mail is, in and of itself, a sufficient basis upon which we must conclude that neither the circuit court nor this court acquired subject matter jurisdiction to decide this case. Although we could for that reason dispense with any discussion of the petitioner's second argument—that his error in naming the State Officers Electoral Board as a respondent instead of the Chicago Board of Election Commissioners was one that he should have been allowed to correct through the filing of an amended petition—we will briefly proceed to address it.

¶ 27 In his substituted memorandum in lieu of brief, the petitioner makes an argument that is entirely focused on the procedural permissibility of amendments to petitions for judicial review of electoral board decisions. We are in complete agreement that amendments are procedurally permissible in election cases, and the trial court could have allowed an amendment to the petition that would have perfected subject matter jurisdiction. See *McDonald v. Cook County Officers Electoral Board*, 2018 IL App (1st) 180406, ¶¶ 18-24.

¶ 28 What the petitioner's argument on appeal is missing, however, is any argument about how an amended petition belatedly naming the Chicago Board of Election Commissioners more than 5 days after its decision could "relate back" to the date of his timely filed petition naming the State Officers Electoral Board. If the amended petition would not relate back to the date of the timely filed petition, then it is nevertheless untimely even if the amendment were allowed. See *Fassero v. Turigliatto*, 349 Ill. App. 3d 368, 370 (2004). In the trial court, the petitioner clearly recognized the importance of attempting to argue relation back, as the issue is mentioned several times in his motion for leave to file an amended petition. Specifically, he first argued that the trial court should

treat this as a misnomer that he could correct under section 2-401(b) of the Code of Civil Procedure (735 ILCS 5/2-401(b) (West 2024)). He then argued in the alternative that "to the extent the Court analyzes the amendment under section 2-616 [of the Code of Civil Procedure (*id.* § 2-616)], Petitioner requests relation back under the applicable provisions of that section." Although this was not clearly argued, this was presumably a reference to subsection 2-616(d), which provides:

> "A cause of action against a person not originally named a defendant is not barred by lapse of time under any statute or contract prescribing or limiting the time within which an action may be brought or right asserted, if all the following terms and conditions are met: (1) the time prescribed or limited had not expired when the original action was commenced; (2) the person, within the time that the action might have been brought or the right asserted against him or her plus the time for service permitted under Supreme Court Rule 103(b), received such notice of the commencement of the action that the person will not be prejudiced in maintaining a defense on the merits and knew or should have known that, but for a *mistake concerning the identity of the proper party*, the action would have been brought against him or her; and (3) it appears from the original and amended pleadings that the cause of action asserted in the amended pleading grew out of the same transaction or occurrence set up in the original pleading, even though the original pleading was defective in that it failed to allege the performance of some act or the existence of some fact or some other matter which is a necessary condition precedent to the right of recovery when the condition precedent has in fact been performed, and even though the person was not named originally as a defendant. For the purpose of preserving the cause of action under those conditions, an amendment adding the person as a defendant relates back to the date of the filing of the original pleading so amended." (Emphasis added.) *Id.* § 2-616(d).

¶ 29 In its written ruling, the trial court addressed the merits of the petitioner's argument for relation back. It reasoned that this was not a misnomer of the right party. Instead, the petitioner had simply named the wrong electoral board as respondent. The trial court did not separately address any argument about mistaken identity as a basis for relation back under section 2-616(d).

¶ 30 In his substituted memorandum in lieu of brief on appeal, the petitioner does not make any argument as to why the trial court erred in concluding that this was an instance of him simply naming the wrong electoral board, as opposed to a misnomer that could be corrected. He similarly makes no argument on appeal that this constituted a mistake as to the identity of the proper party and could thus relate back under section 2-616(d). And most significantly, he makes no argument about how these principles could be applied in this case given the requirement of strict compliance with section 10-10.1(a) of the Election Code.

¶ 31 The petitioner's failure on appeal to argue why the trial court was wrong to conclude that this was not a misnomer or otherwise to address the issue of relation back requires us to conclude that he has forfeited any argument that he should have been allowed to file an amended petition for judicial review. *Bremel v. Quedas, Inc.*, 2024 IL App (1st) 231209, ¶ 27 (appellant's failure to engage with the trial court's analysis or explain why it was wrong results in forfeiture). Addressing whether relation back could apply in this context would require us to assume the burden of argument and research and to act as advocate on the petitioner's behalf, which is not the role of the appellate court. See *People v. Universal Public Transportation, Inc.*, 2012 IL App (1st) 073303-B, ¶ 50.

¶ 32 CONCLUSION

¶ 33 For the foregoing reasons, the judgment of the trial court is affirmed.

¶ 34 Affirmed.