

BUTZEL LONG

ATTORNEYS AND COUNSELORS

a professional corporation

Kurtis T. Wilder
313 983 7491
wilder@butzel.com

150 West Jefferson Suite 100
Detroit, Michigan 48226
T: (313) 225-7000 F: (313) 225-7080
www.butzel.com

September 3, 2021

VIA E-MAIL

smitchell@lathrupvillage.org

sbaker@bakerelowsky.com

cityclerk@lathrupvillage.org

27400 Southfield Road
Lathrup Village, Michigan 48076

Re: Lathrup Village – City Council Nominating Petitions and Affidavits of Identity

Dear Dr. Theriot & Ms. Talley:

The City of Lathrup Village (the “City”) has received inquiries regarding the sufficiency of the nominating petitions and Affidavits of Identity for the upcoming City Council general election on November 2, 2021. On August 26, 2021, the City engaged Butzel Long, PC (“Butzel”), to review the attached nomination materials (candidates’ affidavits and petitions) for compliance with Michigan Election Law and the applicable City Charter provisions, and then issue a written legal opinion as to whether any candidates failed to comply with the applicable laws and provisions, thereby requiring removal of their names from the general election ballot. As discussed on our September 1 call, the City did not require Butzel to verify the petition signatures in reviewing the nominating petitions.

We are advised by the City that there are four open City Council seats for the November 2021 general election: three full term seats (the top two candidates with the highest number of votes get four-year terms, while the candidate with the third highest number of votes gets a two-year term, City Charter, § 4.5) and one partial term (two-year term). The filing deadline for the candidates’ nomination materials was July 20, with the withdrawal deadline on July 23. MCL 168.644(e). A candidate’s errors and omissions in their nomination materials, if not corrected by that filing deadline, could result in the disqualification of the candidate. As informed, the City Clerk forwarded the candidates’ names and addresses to the Oakland County Clerk on July 20, 2021. The Oakland County Clerk has requested a final determination on the City Council candidates by today, September 3.

For the reasons stated below, it is our opinion that:

- Jalen Jennings, Marvin Moore, and Saleem Siddiqi properly filed their nomination materials for a regular term and should be included on the ballot;

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- Karen Miller, Barbara Kenez, and Greg Ruvolo II should be removed from the ballot because they failed to file *two* Affidavits of Identity, see MCL 168.558(1), and did not supplement their filings before the July 20 filing deadline; and
- Bruce Kantor should remain on the ballot as a candidate for a regular term seat on the City Council. Per our recommendation, the City Clerk's office confirmed that Mark Dizik intends to be a City Council candidate for a regular term seat and he should be included on the general election ballot.

We discuss below the reasons for removing Mmes. Miller and Kenez and Mr. Ruvolo from the ballot and the reason for our conclusion that Mr. Kantor should remain on the ballot as a candidate for a regular term seat, but not for the partial term.

Karen Miller, Barbara Kenez, and Greg Ruvolo II

Based on the records provided, we recommend that Karen Miller (regular term), Barbara Kenez (regular term), and Greg Ruvolo II (partial term) be removed from the ballot for failing to file *two* Affidavits of Identity, and further failing to supplement their filings before the July 20 filing deadline.

Michigan Election Law requires that all candidates submit two Affidavit of Identity forms (an original and a copy are acceptable) when filing. See MCL 168.558(1) (“When filing a nominating petition . . . , a candidate shall file with the officer with whom the petitions, fee, or affidavit is filed 2 copies of an affidavit of identity.”). The Michigan Court of Appeals has expressly stated that “strict compliance with [Section] 558 is required.” *Nykoriak v. Napoleon*, ___ Mich. App. ___, 2020 WL 6219568, *3 (Mich. Ct. App. Oct. 22, 2020). And “[t]he failure to supply a facially proper affidavit of identity (AOI), i.e., an affidavit that conforms to the requirements of the Election Law, is a ground to disqualify a candidate from inclusion on the ballot.” *Stumbo v. Roe*, 332 Mich. App. 479, 481 (2020). The City Clerk further “shall not certify to the board of election commissioners the name of a candidate who fails to comply with [Section 558].” MCL 168.558(4).

The Bureau of Election (“**BOE**”) guidance is consistent with this position. “*A candidate who fails to file an Affidavit of Identity when filing is ineligible to appear on the ballot.*” Election Officials’ Manual, Ch. 3, p. 3 (emphasis in original). Because the July 20 filing deadline has passed, Mss. Miller and Kenez and Mr. Ruvolo cannot now file supplemental Affidavits of Identity. “Affidavits of Identity submitted after the filing deadline may not be recognized.” Election Officials’ Manual, Ch.3, p. 11. Additionally, “while ‘supplemental’ filings may be accepted up until the filing deadline, the initial filing must contain at least the minimum number of required signatures or full fee and two completed Affidavits of Identity.” *Ibid.* Thus, these candidates’ nomination materials were defective at the initial filing.

Mr. Ruvolo also filed two “affidavits of intent” with his nominating petition. Mr. Ruvolo’s affidavits of intent do not contain a residential address, statement of U.S. citizenship, or a statement

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that he meets the constitutional and statutory qualifications for the office, and one of these affidavits is not notarized. This information is required to be provided by a candidate in an Affidavit of Identity. MCL 168.558(2). Because this information is lacking, none of these affidavits of intent can substitute for the required second Affidavit of Identity. See also Election Officials' Manual, Ch. 3, p. 3 ("Only Affidavits of Identity with a revision date of 2/2019 or 8/2019 are currently approved.")¹

We recognize that disqualifying candidates may subject the City to possible litigation by the aggrieved parties. Specifically, a candidate may argue that the City failed to give notice that his or her Affidavit of Identity (or lack thereof) was deficient at the time of filing or sometime before the July 20 filing deadline.² Section 558(4), however, is clear that the City Clerk cannot certify the name of candidate who fails to file the proper Affidavit of Identity forms. Further, if an aggrieved candidate seeks a writ of mandamus against the City *after* the City has already submitted the candidate names to the Oakland County Clerk, then that claim would fail on its merits. In *Berry v. Garrett*, 316 Mich. App. 37, 44 n. 2 (2016), the court held that a writ of mandamus cannot issue against Plymouth Township because, since the affidavits of identity have already been submitted to the Wayne County Clerk, Plymouth Township lacked authority to take any action regarding the ballots. "Mandamus is not directed at ascertaining whether an error occurred in the *past*. In other words, even if the Plymouth Township defendants mishandled the affidavits of identity, their role in the matter has ended; ergo, mandamus will not lie against them." *Ibid.* (emphasis in original). But see *Hill v. Detroit City Clerk*, No. 354707, 2021 WL 2494246, *5 (Mich. Ct. App. June 17, 2021) (holding that whether a candidate submitted two copies of the Affidavit of Identity was a factual dispute, and thus, the trial court erred in sanctioning the candidate for a frivolous lawsuit). A candidate further cannot argue that he or she did not know the nomination requirements under Michigan Election Law. See *Curley v. Beryllium Development Corp.*, 281 Mich. 554, 556 (1937) ("It is a maxim of the law that 'ignorance excuses no one'").

¹ In addition, Mr. Ruvolo's filed Affidavit of Identity was deficient because it failed to include any information for the office sought (e.g., office name and jurisdiction), other than that the election is on November 2, 2021. Again, a candidate's Affidavit of Identity must contain "the title of the office sought." MCL 168.558(2). For this reason alone, Mr. Ruvolo could be removed from the ballot.

² An aggrieved candidate may rely on Section 553 for this argument, which provides in pertinent part: "In case it is determined that the nominating petitions of any candidate do not comply with the requirements of this act, or if for any other cause such candidate is not entitled to have his name printed upon the official primary ballots, it shall be the duty of the . . . city clerk to *immediately notify* such candidate of such fact, together with a statement of the reasons why his name was not certified to the respective boards of election commissioners." MCL 168.553 (emphasis added). Even if the candidate was correct that the City had violated Section 553, there does not appear to be a clear remedy that a court could lawfully provide to the candidate under Michigan Election Law.

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Ultimately, we believe that the Michigan Election Law and applicable caselaw support removing these candidates from the ballot.

In short, based on the records provided, we recommend that Mmes. Miller and Kenez, and Mr. Ruvolo be removed from the ballot for failing to file *two* Affidavits of Identity, and not supplementing their filings before the July 20 filing deadline.

Bruce Kantor

Although Mr. Kantor complicated his nomination process, we recommend that his name be placed on the ballot as a candidate for a City Council regular term seat. In April 2021, Mr. Kantor properly filed his nominating petitions and two copies of the Affidavit of Identity for a regular term. His initial filings did not indicate nomination for the partial term. In July 2021, Mr. Kantor filed one Affidavit of Identity (another issue) and nominating petitions indicating his candidacy for the partial term. Then, before the filing deadline, Mr. Kantor sent a letter to the City Clerk requesting that his name be removed from the ballot for the partial term, and he also completed a Withdrawal Notice for the partial term. We have no indication in the materials provided that Mr. Kantor ever withdrew his candidacy for the regular term seat and thus recommend that he remains on the ballot for that candidacy.

In conclusion, it is our opinion that (1) Ms. Miller, Ms. Kenez, and Mr. Ruvolo should be removed from the ballot because they failed to file *two* Affidavits of Identity, and did not supplement their filings before the July 20 filing deadline; and (2) Mr. Kantor should remain on the ballot as a candidate for a regular term seat on the City Council.

Very truly yours,

BUTZEL LONG, P.C.

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