

FILED

MAR 26 2012

*Gordy Hulten*  
CHAMPAIGN COUNTY CLERK

March 22, 2012

Gordy Hulten  
Brookens Administrative Center  
1776 E. Washington St.  
Urbana, IL 61802

Gordy Hulten,

On February 8, 2012, Richard J Winkel, Jr. officially withdrew as a candidate for the office of Circuit Clerk of Champaign County and requested his name no longer appear on the ballot. Since this occurred after the date of the certification of ballots by the State Board of Elections, the Board issued a notice to several election authorities on how to proceed with the situation. The Board of Elections suggested any votes for a withdrawn candidate not be counted and signs be posted in polling places informing the electorate that any votes cast for a withdrawn candidate would not be counted. The Board based its opinion on the case Bergeson v Mullinix 399 Ill.2d 470, 78 N.E.2d 297 (1948) which recognized a candidates right to withdraw and stated it would be inappropriate to seat a withdrawn candidate to office. A copy of the Board's full statement is enclosed.

A similar situation occurred in the 110<sup>th</sup> District Illinois House race where Roger Eddy withdrew his name for consideration on March 8, 2012. The Board of Elections gave the same information to the clerks of Coles, Cumberland, Crawford, Clark, Lawrence and Edgar counties and they all followed the instructions. They posted notices in polling places and any votes for Eddy were not counted. We do not understand why Mr. Hulten did not do the same.

We hope to get this resolved very soon because if not, we will be forced to file a Petition of State Election Contest before the end of the month with the circuit court.

Respectfully,

Mark Hewitt

Attorney for Stephanie Holderfield

505 N. Elm St

Champaign, IL 61820

Phone : 765-586-9786

Attorney Number : 6296736

**From:** Menzel, Ken  
**Sent:** Wednesday, March 07, 2012 3:38 PM  
**To:** 'Gordy Hulten'  
**Subject:** FW: Notice to Election Authorities regarding late withdrawals by candidates

Gordy

We're sending this notice to a number of election authorities regarding late filed withdrawals relating to offices where we are the certifying agency. It is relevant to the issue you raised a while back as to a county candidate, so I'm sharing it with you as well.

If you have any further questions or comments, please do not hesitate to contact me.

Ken Menzel  
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Illinois State Board of Elections  
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**From:**  
**Sent:** Wednesday, March 07, 2012 3:27 PM  
**To:**  
**Subject:** Notice to Election Authorities regarding late withdrawals by candidates

Your jurisdiction is one in which a candidate has filed a withdrawal of candidacy after the ballot was certified to you, and the State Board of Elections did not amend the ballot certification to remove the candidate's name from the ballot.

As you are aware, it is the SBE policy not to amend the certification of ballot with regard to candidate withdrawals filed after the ballot certification deadline if any affected election authority does not consent (such consent generally being based upon whether an election authority has begun printing ballots or not).

While that avoids the trouble and expense to you of having to reprint ballots, it does leave open a question as to the status of the candidate.

There is very little guidance on this issue in either the Election Code or case law. However, the Illinois Supreme Court, in *Bergeson v Mullinix* 399 Ill.2d 470, 78 N.E.2d 297 (1948), recognized a candidate's right to withdraw just 3 days prior to Election Day. The court indicated that it would be improper to declare such a candidate victorious even if he were to receive the most votes (see headnotes 5 – 8 at pages 5 – 6). The court further approved locking the voting machine levers so as to prevent votes for the withdrawn candidate as a ministerial act by the election authority (see headnotes 14 - 15, pages 7 – 8). We are attaching a copy of the court's opinion in *Bergeson* and the withdrawal affecting your jurisdiction. We recommend that you review these items with your State's Attorney (or other legal counsel) at your earliest opportunity.

We would suggest that the appropriate course of action with regard to the late withdrawn candidate in your jurisdiction is not to tally or report any votes for such candidate in the canvass. We would further suggest that it would be appropriate to post notice in the polling places and early voting locations (alongside the posted specimen ballots), that the candidate withdrew after the printing of the ballots and programming of the DRE equipment and that no votes will be tallied or reported for such candidate.

If you or your State's Attorney have any questions or comments, or need further clarification, please call Ken Menzel at (312) 814-6462.

Rupert T. Borgsmiller

Executive Director