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BOARD OF ELECTION COMMISSIONERS OF THE CITY OF CHICAGO AS THE DULY CONSTITUTED ELECTORAL BOARD

Objections of: GUADALUPE MIRANDA	)
	)
To the Nomination	)
Papers of: KATHLEEN J. CUMMINGS	)
	) No. 06-EB-NPP-02
Candidate for the office of	)
Representative in the General Assembly, 4th	)
Representative District, State of Illinois, Green Party	)

FINDINGS AND DECISION

The duly constituted Electoral Board, consisting of Chicago Board of Election Commissioners Langdon D. Neal, Theresa M. Petrone, and Richard A. Cowen, organized by law in response to a Call issued by Langdon D. Neal, Chairman of said Electoral Board, for the purpose of hearing and passing upon objections ("Objections") of GUADALUPE MIRANDA ("Objector") to the nomination papers ("Nomination Papers") of KATHLEEN J. CUMMINGS, candidate for nomination of the Green Party to the office of Representative in the General Assembly for the 4th Representative District, State of Illinois ("Candidate"), having convened on July 11, 2006, at 10:00 a.m., in the Room 800 Conference Room, 69 West Washington Street, Chicago, Illinois, and having heard and determined the Objections to the Nomination Papers in the above-entitled matter, finds that:

1. Objections to the Nomination Papers of the Candidate herein were duly and timely filed.

2. The said Electoral Board has been legally constituted according to the laws of the State of Illinois.

3. A Call to the hearing on said Objections was duly issued by the Chairman of the Electoral Board and served upon the members of the Electoral Board, the Objector and the Candidate, by registered or certified mail and by Sheriff's service, as provided by statute.

4. A public hearing held on these Objections commenced on July 11, 2006 and was continued from time to time.

5. The Electoral Board assigned this matter to Hearing Examiner TERENCE FLYNN for further hearings and proceedings.

6. The Objector and the Candidate were directed by the Electoral Board to appear before the Hearing Examiner for a hearing on July 12, 2006. The following persons, among others, were present at such hearing: the Objector, GUADALUPE MIRANDA, by and through her attorneys; and the Candidate, KATHLEEN J. CUMMINGS, pro se. Later in these proceedings, the Candidate retained an attorney.

7. The Hearing Examiner ordered that an examination of the registration records be conducted by clerks and agents under the Board's direction and supervision, in accordance with the laws of Illinois and the rules of the Board. The Hearing Examiner directed all parties to appear and be present, either personally and/or by their authorized representatives during the records examination.

8. The Candidate and the Objector or their duly authorized representatives were present during the examination of the registration records.

9. The examination of the registration records was completed and the Electoral Board hereby adopts and incorporates by reference the results of the records examination conducted by its clerks and agents. The written report of the results of the registration records examination is contained in the Electoral Board's file in this case and is available for inspection upon request of a party.

10. The Electoral Board has considered all evidence and arguments tendered by the parties, as well as the report and recommendations of the Hearing Examiner.

11. The Electoral Board finds that the records examination conducted by the clerks reflected the following:

A. The minimum number of valid signatures required by law for placement on the ballot for the office in question is 1,531.

B. The number of purportedly valid signatures appearing on the nominating petition filed by the Candidate total 3,494.

C. The number of signatures deemed invalid because of objections sustained total 2,030.

D. The remaining number of signatures deemed valid total 1,464;

12. The Electoral Board finds that the number of valid signatures appearing on the Candidate's nominating petition following completion of the records examination is 67 fewer than the minimum number of valid signatures required by law to be placed upon the official ballot as a candidate for nomination of the Green Party to the office of Representative in the General Assembly for the 4th Representative District, State of Illinois.

13. Motions were filed by both parties pursuant to Rule 7 and Rule 8 of the Electoral Board's Rules of Procedures. On his own motion, the Hearing Examiner struck paragraphs 11 through 18 of the Objector's Petition based upon the fact that there were

no specific allegations in the Objector's recapitulation appendix attached to her petition to support allegations concerning circulator objections and none were found during the records examination. Based upon the evidence submitted by the parties at the evidentiary hearing, the Hearing Examiner concluded that there are only 1,518 valid signatures on the Candidate's nominating petition, 13 fewer than the 1,531 signatures required by law. Therefore, the Hearing Examiner recommends that the Objections to the Candidate's Nomination Papers be sustained and that the name of the Candidate not appear on the ballot.

14. The Candidate filed a request pursuant to Rule 20 of the Electoral Board's Rules of Procedure seeking a review of the Hearing Examiner's recommended findings and conclusions. The Candidate also filed an "Offer of Proof" containing a list of names with alleged data entry errors and affidavits, as well as a "Supplement to the Offer of Proof" with additional similar documents in support of her request for review before the Electoral Board.

15. The Candidate claims that certain signatures (12 according to Candidate's Exhibit C) should be deemed valid because the petition signers were registered voters even though they were registered at addresses different than the addresses shown on the petition.

16. Section 3-1.2 of the Illinois Election Code (10 ILCS 5/3-.2) provides in relevant part:

> "For the purpose of determining eligibility to sign a nominating petition *** the terms 'voter', 'registered voter', 'qualified voter', 'legal voter', 'elector', 'qualified elector', 'primary elector' and 'qualified primary elector' as used in this Code or in another Statute shall mean a person who he is registered to vote at the address shown opposite his signature on the petition or was registered to vote at such address when he signed the petition."

17. According to the plain language of the statute, a person who signs a nominating petition must be registered to vote at the residence address set forth on the nominating petition. See also, *Greene v. Board of Election Commissioners,* 112 Ill.App.3d 862, 445 N.E.2d 1337 (1st Dist. 1983). The constitutionality of this requirement was upheld in *Nader v. Keith*, 2004 WL 1880011 (N.D.Ill., 2004), affirmed, 385 F.3d 729 (C.A. 7, 2004). Therefore, the Electoral Board finds that the signatures of petition signers who are not registered at the address shown opposite their signatures are invalid even though those persons may be registered as some other address.

18. The Candidate also argues that certain signatures of persons who signed mail voter registration application forms (also known as "Motor Voter" applications) should be deemed valid even though these applications were not received by the Chicago Board of Election Commissioners until after the Candidate's nominating petitions were signed. These include 4 signatures of persons who signed the application after the petition circulator's affidavit was signed (see Objector's Exhibit 1); 10 signatures that were signed before the circulator's affidavit was executed but before the Board of

Election Commissioners received them according to the Board's time stamp showing receipt (see Objector's Exhibit 2); and 1 signature on an application where there is no date but the Board's time stamp receipt is after the execution of the circulator's affidavit.

19. The plain language of Section 3-1.2 of the Election Code quoted above requires that a petition signer be registered to vote at the address shown on the petition "when he signed by the petition." Also, Section 10-4 of the Election Code (10 ILCS 5/10-4) governing the form of petitions for new political party candidates provides in relevant part that "at the bottom of each sheet of such petition shall be added a circulator's statement *** certifying that to the best of his knowledge and belief the persons so signing *were at the time of signing the petition duly registered voters* ...." Section 10-4 further provides that "[N]o signature shall be valid or be counted in considering the validity or sufficiency of such petition unless the requirements of this Section are complied with." The statutory requirements of a circulator's affidavit of a petition are mandatory and not directory. *Schumann v. Kumarich*, 102 Ill.App.3d 454, 430 N.E.2d 99 (1st Dist. 1981).

20. The Candidate argues that the National Voter Registration Act (42 U.S.C. §1973gg-6) ("NVRA") requires that mail-in registration forms make voters eligible if received or mailed within 30 days of the election and that the Help America Vote Act (42 U.S.C. §§15301, et seq.) ("HAVA") allows a person who has *claimed* to be registered but who has not met all the ID requirements to cast a provisional ballot.

21. Courts have rejected the Candidate's interpretation of Section 1973gg-6 of the NVRA. The sentence relied upon by the Candidate "does not mean that an applicant is registered upon filling out the form." *Association of Community Organizations for Reform Now v. Miller*, 912 F. Supp. 976, 987 (W. Dist. Mich. 1995). The form is an application only, and the applicant does not become registered to vote unless and until the appropriate election official receives, processes and acknowledges the voter registration application by sending the voter a voter registration card. See also, Section 216.30 of the Illinois State Board of Elections' rules governing the registration of voters (26 Ill.Adm.Code 216.30) ("each Voter Registration Application *acknowledged* by an election authority shall entitle the applicant to vote in all elections conducted in the State of Illinois under the Illinois Election Code").

22. The Electoral Board finds that while the Help America Vote Act permits persons who *claim* to be registered voters to *cast* a provisional ballot, HAVA does not require a State to *count* such a provisional ballot if it cannot be verified that the provisional voter actually is registered to vote. HAVA requires that the ballot be counted only if the election official "determines that the individual is eligible under State law to vote." 42 U.S.C.A. § 15482. See, *Sandusky County Democratic Party v. Blackwell*, 387 F.3d 565 (6th Cir. 2004); *Florida Democratic Party v. Hood*, 342 F.Supp. 2d 1073 (N.D. Fla. 2004).

23. Thus, the Electoral Board finds the signatures of persons whose mail voter registration applications were not received and acknowledged by the Board of

Election Commissioners prior to their signing the petition are not valid inasmuch as such persons were not registered to vote at the time of signing the petition.

24. On the day of the hearing before the Electoral Board, the Candidate filed her "Motion to Strike the Current Minimum Signature Requirement and to Require its Recalculation in Accordance with the U.S. Constitution and Statute." The Candidate argued before the Board that Section 10-2 of the Election Code (10 ILCS 5/10-2), which sets for the formula for calculating the minimum signature requirements for new political party candidates such as the Candidate, is vague and ambiguous. The Candidate argued that the 5% formula should be based upon the number of votes cast for the office of Representative in the General Assembly at the last election in the district, rather than upon the total number of voters who voted at the last election in the district as the statute provides. The Electoral Board finds that Section 10-2, as it pertains to the minimum signature requirement for new political party candidates for the office of Representative in the General Assembly, is clear and unambiguous and that in the 4th Representative District of the State of Illinois, a new political party candidate needed a minimum of 1,531 signatures of qualified voters in the district.

25. For the reasons stated above, the Electoral Board adopts the recommended findings and conclusions of law of the Hearing Examiner and sustains in part and overrules in part paragraphs 4 through 9 of the Objector's Petition as reflected in the records examination and in the evidence ruled upon by the Hearing Examiner. Accordingly, the Electoral Board finds that the Candidate's Nomination Papers are not valid because they fail to contain a sufficient number of valid signatures of registered voters in the district as required by law.

IT IS THEREFORE ORDERED that the Objections of GUADALUPE MIRANDA to the Nomination Papers of KATHLEEN J. CUMMINGS, candidate for nomination of the Green Party to the office of Representative in the General Assembly for the 4th Representative District, State of Illinois, are hereby SUSTAINED and said Nomination Papers are hereby declared INVALID and the name of KATHLEEN J. CUMMINGS, candidate for nomination of the Green Party to the office of Representative in the General Assembly for the 4th Representative District, State of Illinois, SHALL NOT be printed on the official ballot for the General Election to be held on November 7, 2006.

Dated: Chicago, Illinois, this 9th day of August, 2006.

Langdon D. Neal, Chairman

Theresa M. Petrone, Commissioner

ABSENT
Richard A. Cowen, Commissioner

NOTICE: Pursuant to Section 10-10.1 of the Election Code (10 ILCS 5/10-10.1) a party aggrieved of this decision and seeking judicial review of this decision must file a petition for judicial review with the Clerk of the Circuit Court of Cook County within 10 days after the decision of the Electoral Board.