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

Objections of: Richard Drew	)	
	)	
	)	
To the Nomination	)	No.: 12-EB-RES-01
Papers of: Roy Pletsch	)	
	)	
Candidate for the nomination of the	)	
Republican Party for the office of	)	
Representative in the General Assembly of the	)	
2nd Representative District, State of Illinois	)	

FINDINGS AND DECISION

The duly constituted Electoral Board, consisting of Board of Election Commissioners for the City of Chicago Commissioners Langdon D. Neal, Richard A. Cowen, and Marisel A. Hernandez, 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 Richard Drew ("Objector") to the nomination papers ("Nomination Papers") of Roy Pletsch, candidate for the nomination of the Republican Party for the office of Representative in the General Assembly of the 2nd Representative District in the State of Illinois ("Candidate") at the General Election to be held on November 6, 2012, having convened on June 18, 2012 at 9:00 AM, in Room 800, 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 June 18, 2012 and was continued from time to time.

5. The Electoral Board assigned this matter to Hearing Officer Mary C. Meehan for further hearings and proceedings.

6. The Objector and the Candidate were directed by the Electoral Board to appear before the Hearing Officer on the date and at the time designated in the Hearing Schedule. The following persons, among others, were present at such hearing: the Objector, Richard Drew, by attorney Michael Kasper; and the Candidate, Roy Pletsch, by attorney John Bernbom.

7. The Hearing Officer ordered that an examination of the voter 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.

8. The Hearing Officer directed all parties to appear and be present, either personally and/or by their authorized representatives, during this records examination.

9. The Candidate and/or his duly authorized representative was present during the examination of the registration records.

10. The Objector and/or his duly authorized representative was present during the examination of the registration records.

11. 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 result of the registration records

examination is contained in the Electoral Board's file in this case and a copy has been provided or made available to the parties.

12. The results of the records examination indicate that:

A. The minimum number of valid signatures required by law for placement on the ballot for the office in question is 500;

B. The number of purportedly valid signatures appearing on the nominating petition filed by the Candidate total 1509;

C. The number of signatures deemed invalid because of objections sustained as a result of the records examination total 1086;

D. The remaining number of signatures deemed valid as a result of the records examination total 423.

13. The Electoral Board finds that the number of valid signatures appearing on the Candidate's nominating petition following completion of the records examination was 77 less than the minimum number of valid signatures required by law to be placed upon the official ballot as a candidate for the nomination of the Republican Party for the office of Representative in the General Assembly of the 2nd Representative District of the State of Illinois.

14. The Hearing Officer conducted a hearing to allow the Candidate an opportunity to present evidence in support of his Rule 8 motion objecting to the Board's clerk's findings during the records examination.

15. At the beginning of the hearing, Candidate stated he wished to call the Objector as a witness pursuant to his subpoena request. Objector's counsel objected, arguing he had not received notice of the subpoena request. Candidate admitted he did not serve the subpoena as he was under the mistaken belief that the Board would serve it. The Candidate's request for

subpoena stated that he wanted to "elicit testimony and evidence as to the interest, basis, reasoning, intent, cause, motive and analysis and other relevant factors respecting the pending Objector's Petition, all for the purpose of enabling the Hearing Officer and the Board to hear and pass upon the Objector's Petition." When questioned by the Hearing Officer why the Objector's testimony was relevant, the Candidate said he wanted to know why the Objector chose to object to the specific signatures in the manner he did. The Hearing Officer ruled that the Objector's motive is not a prerequisite to filing an objection to a candidate's nomination papers, citing Havens v. Miller, 102 Ill.App.3d 558, 566, 429 N.E.2d 1292 (1st Dist. 1981), and found that the Objector's testimony would not be relevant to the case.

16. The Hearing Officer has tendered to the Electoral Board a report and recommended decision. Based upon the evidence presented, the Hearing Officer found that the Candidate's Nomination Papers contained only 461 valid signatures, which is 39 less than the minimum number of valid signatures required by law to be placed upon the official ballot as a candidate for nomination of the Republican Party for the office of Representative in the General Assembly for the 2nd Representative District of the State of Illinois, and that the Candidate's Nomination Papers should be found invalid.

17. Following the Hearing Officer's report, the Candidate filed a request under Rule 20 asking the Board to review the Hearing Officer's recommended findings and decision. In his request, the Candidate essentially raises two points: (1) alleged violations of the United States Constitution in that (a) Hearing Officer's denial of ballot access and (b) that the signature requirement and time limitations as applied to the Candidate constitute a denial of the privilege of holding public office; and (2) the failure to require testimony by the Objector. Each point will be addressed in turn:

A. As regards the statutory requirements for signatures and time limitations and their affect in allowing or denying ballot access, it is well established in Illinois law that administrative agencies such as electoral boards have no authority to declare statutes unconstitutional or to even question their validity. *Goodman v. Ward*, 241 Ill.2d 398, 411, 948 N.E.2d 580 (2011); *Wiseman v. Elward*, 5 Ill.App.3d 249, 257, 283 N.E.2d 282 (1972). Therefore, the Electoral Board declines to consider Candidate's arguments regarding the alleged unconstitutionality of Illinois' statutory requirements.

B. As regards to the Hearing Officer's ruling that Objector's testimony was irrelevant to the issue whether the Candidate's nomination papers met the requirements of the Election Code, the Candidate argues that the Hearing Officer's reliance upon *Havens v. Miller* was misplaced. He contends that *Havens* "is significantly different than the present matter," because the facts in that case were "not disputed," whereas in this case "the facts are strongly disputed concerning the issues of genuineness of signature, proper addresses and district and registration." Candidate cites *Welsh v. Johnson*, 214 Ill.App.3d 478 (1st Dist. 1991) in support of his argument that Havens is not controlling.

C. The Electoral Board finds that the discussion in *Welsh* regarding the *Havens* case centered on the requirements for and validity of the statement of economic interest. Nothing in *Welsh* diminishes that part of *Havens* holding that the objector's motive in filing objections is irrelevant to the determination of whether the candidate failed to comply with the requirements of the Election Code. Moreover, whether the facts set forth in an objector's petition are disputed

or undisputed has no bearing on the legal principle articulated in *Havens* that the objector's motivation in filing the objections is irrelevant to the ultimate issue whether the candidate's nomination papers comply with the Election Code. This principle, and the *Havens* case, has been cited with approval in *Hagen v. Stone*, 277 Ill.App.3d 388, 389, 660 N.E.2d 189 (1st Dist. 1995) and *Wollan v. Jacoby*, 274 Ill.App.3d 388, 392, 653 N.E.2d 1303 (1st Dist. 1995.

D. Candidate argues that he had a right to inquire into "the nature, reason and basis for the objections" and that this information would enable him to effectively rehabilitate signatures in greater number than the required minimum. But the nature, reason and basis for the objections were clearly set forth in the Objector's Petition and in the Appendix-Recapitulation document attached thereto. As the Hearing Officer's report accurately noted, "the parties agreed the issues were district boundary and signature issues," including whether: (a) a petition signature was genuine, (b) the petition signer was registered at address shown, (c) the signer resided outside the district, (d) the signer's address was missing or incomplete, and (e) the signer signed the petition more than once. Hearing Officer's Recommended Finding and Decision, ¶3. The Candidate was given ample opportunity to come forth with evidence to rebut those objections. The Objector's testimony regarding his "interest, basis, reasoning, intent, cause, motive or analysis" are irrelevant to Hearing Officer's fact finding on whether the Candidate's nominating papers complied with the Election Code's requirements.

E. Candidate also argues that under section 2-1102 of the Illinois Code of Civil Procedure (735 ILCS 5/2-1102), adverse parties are subject to examination

and he had a right to call the Objector. He further argues that the refusal to allow the examination of the Objector deprived him of his rights under the Equal Protection Clause of the Fourteenth Amendment and his right of political association under the First Amendment to the United States Constitution.

F. The Electoral Board finds that under Rule 10 of its Rules of Procedure the Board will generally follow rules of evidence and practice which prevail in the Circuit Court of Cook County, Illinois, including the Code of Civil Procedure and the Rules of the Illinois Supreme Court, "but because of the nature of these proceedings, the Electoral Board shall not be bound by such rules in all particulars." Where a party's testimony is deemed irrelevant to the issues before the Electoral Board, such testimony will not be required under the Board's rules or under the Illinois Code of Civil Procedure. In *Nader v. Illinois State Board of Elections*, 354 Ill.App.3d 335, 819 N.E.2d 1148 (1st Dist. 2004), the court held that the electoral board was correct to deny subpoenas requested by the candidate in an effort to determine whether the objector's petition was compiled in violation of the Election Code. The court held that the electoral board was not required or empowered to conduct an investigation into how the objector's petition was compiled, noting that such issues were irrelevant to the issues of whether the candidate's nominating papers satisfied the requirements of the Election Code and whether the candidate's petition contained enough valid signatures to be placed on the ballot. Here, *Nader* further supports the denial of subpoenas attempting to require the Objector to testify as to his "interest, basis, reasoning, intent, cause, motive or analysis."

G. The Electoral Board finds that the Hearing Officer's refusal to require the Objector to testify and her reliance upon *Havens v. Miller* was correct.

18. The Electoral Board, having considered the evidence and arguments tendered by the parties and the Hearing Officer's report of recommended findings and conclusions of law, hereby adopts the Hearing Officer's recommended findings and conclusions of law. A copy of the Hearing Officer's report is attached hereto and is incorporated herein and made a part of the Electoral Board's decision in this case.

19. For the reasons stated above, the Electoral Board finds that the Candidate has an insufficient number of valid signatures on his nominating petitions and that the Nomination Papers of Roy Pletsch are, therefore, invalid.

IT IS THEREFORE ORDERED that the Objections of Richard Drew to the Nomination Papers of Roy Pletsch, candidate for the nomination of the Republican Party for election to the office of Representative in the General Assembly of the 2nd Representative District of the State of Illinois are hereby SUSTAINED and said Nomination Papers are hereby declared INVALID and the name of Roy Pletsch, candidate for nomination of the Republican Party for the office of Representative in the General Assembly for the 2nd Representative District of the State of Illinois, SHALL NOT be printed on the official ballot for the General Election to be held on November 6, 2012.

Dated: Chicago, Illinois, on July 23, 2012.

Langdon D. Neal, Chairman

Richard A. Cowen, Commissioner

Marisel Hernandez, 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 5 days after service of the decision of the Electoral Board.

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

RICHARD DREW	)	
Objector	)	**12-EB-RES-01**
	)	
-v-	)	
	)	
ROY PLETSCH	)	**Mary C. Meehan**
Candidate	)	**Hearing Officer**

BOARD OF ELECTIONS
COMMISSIONER
2012 JUL 11 P 2:24

RECOMMENDED FINDING AND DECISION

The above named cause came to be heard before the Chicago Board of Election Commissioner's ("CBOE") on verified objection of Richard Drew ("Objector") to the nomination papers of Roy Pletsch ("Candidate") for the Office of State Representative in the General Assembly in and for the 2nd Representative District for the Republican Party, Mary C. Meehan, Hearing Officer finds and recommends as follows:

1. The initial hearing in this matter was conducted on June 18th, 2012 at 10:00 a.m. Attorney John Bernbom filed an appearance on behalf of the Candidate. Attorney Michael Kasper filed an appearance on behalf of the Objector. During the course of the evidentiary hearing on July 06th 2012 Attorney Dan Johnson filed an appearance as co-counsel with Michael Kasper for the Objector.

2. A records examination was conducted on June 27th, 2012 at 7:53a.m. The examination of the records was completed and is hereby adopted and incorporated by reference to the results of the records examination.

3. The matter was called on June 28th, 2012 at 12:00 p.m. for a final status before evidentiary hearing. The parties agreed the issues were district boundary and signature issues, including whether a signature was genuine; signer not registered at address shown; signer resides outside of the district; signer's address is missing or incomplete; and signer signed petition more than once at sheet indicated.

4. The Candidate stated he would be filing a Rule 8 motion. When asked about the evidence he intended to present, the Candidate represented he intended to rely primarily on Board signature clips, registration records and voter affidavits. The Candidate's request for signature clips was granted. The Candidate also intimated that may be asking for subpoenas for witnesses. The Candidate agreed to sign a confidentiality agreement regarding any records from the Board and to disclose all evidence to the Objector before the hearing. The matter was set for Evidentiary Hearing on July 06th at 11a.m.

5. On July 03, 2012 the Candidate filed a Rule 19 Request for a Subpoena for testimony and evidence of the Objector, Richard Drew. There was no response from the Objector. The subpoena was granted with the intention of possibly narrowing the scope of the testimony and evidence before the hearing.

6. The Candidate filed a timely Rule 8 Motion. The above matter came to be heard before this Hearing Officer on July 06, 2012 at 11:00 a.m. for evidentiary hearing.

7. At the beginning of the hearing the Candidate stated he wished to call the Objector, Richard Drew as a witness pursuant to his subpoena request. The Objector vehemently objected to relevance and stated Mr. Drew was not present because he had no notice the Candidate requested a subpoena. The Candidate claimed he gave notice of his Rule 19 Subpoena Request to Attorney Michael Kasper by email. However, the record reflected that Mr. Kasper never agreed on email service and specifically requested not to be served via email but by fax instead. Furthermore, the Candidate admitted he did not serve the subpoena and was under the mistaken belief the Board would serve it.

8. The Candidate's Request for Subpoena stated in effect that he wanted to know the Objector's basis, reasoning, intent, cause, motive and analysis. When further questioned as to why the Candidate believed this testimony was relevant he basically said he wanted to know why the objector chose to object to the specific signatures in the manner he did. The Objector responded that he would stipulate that as his attorney, he and a team hired by the Objector made all the objections in good faith and the Objector certified in his

petition that he read the Objector's Petition and the matters and facts contained therein are true and correct to the best of his knowledge and belief.

9. An Objector's motive is not a prerequisite to filing an objection to that candidate's nomination papers. *Havens v. Miller, 102 Ill.App.3d 558, 566, 429 N.E.2d 1292 (1st Dist. 1981).* Therefore, this Hearing Officer finds in this instance the Objector's testimony would not be relevant to the issues.

10. The records examination results reflects the following:
    A. The minimum number of valid signatures required by law for placement on the ballot for the office in question is 500;
    B. The total number of signatures filed is 1509
    C. Total number of objections to signatures objected to is 1247;
    D. The number of signatures deemed invalid because of objections sustained total 1086;
    E. The number of purportedly valid signatures appearing on the nominating petition filed by the Candidate total 423; 77 signatures fewer than the required the minimum.

11. As the hearing progressed and evidence was presented, the Candidate's attorney stated he would like to call the Candidate himself, Roy Pletsch as a witness. He explained the nature of the testimony was to attest to the signatures where he was the circulator and personally obtained or personally observed the signature in question and personally obtained an affidavit. Mr. Kasper, attorney for Objector initially objected to calling this witness due to lack of notice then withdrew his objection to the Candidate testifying.

12. Mr. Pletsch was called as a witness by his attorney. He was a very credible. He testified he circulated many pages himself and at times accompanied other circulators. His testimony included but was not limited to his recollection of the homes he visited and personal recollection of people from whom he obtained signatures and affidavits. He testified one signer was very sick and that was why the signature was so poor. He further testified to some printed signatures, recalling how he obtained those signatures himself

and how he obtained affidavits of signers before the hearing. Mr. Pletsch was unable to rehabilitate every signature objection on the pages he circulated or was present during, but he did rehabilitate most of the signatures he testified to. His testimony was given significant weight. Mr. Pletsch's testimony rehabilitated the following 12 signatures:

1) sheet 4 line 1
2) sheet 14 line 1
3) sheet 25 line 1
4) sheet 37 line 10
5) sheet 66 line 3
6) sheet 66 line 5
7) sheet 66 line 9
8) sheet 67 line 7
9) sheet 99 line 4
10) sheet 99 line 5
11) sheet 99 line 6
12) sheet 110 line 5

13. At the beginning of the hearing, the Candidate stated he will be presenting evidence regarding 130 signatures. In addition to Mr. Pletsch's testimony, signature clips and Board registration documents, the Candidate intended on presenting evidence affidavits. The Objector objected to any affidavits because they were not disclosed to him before the hearing. The Candidate admitted he just received the affidavits before the hearing and did not tender copies to the Objector. A ruling on signatures relying on affidavits was reserved.

14. In total, this Hearing Officer reserved ruling on 8 signatures based on affidavit, district boundaries, a signer's address appearing opposite the signature but one line below the signature, and a missing or incomplete address.

15. The following 9 signatures were rehabilitated by signature clips:

1) sheet 4 line 4
2) sheet 14 line 2
3) sheet 19 line 6
4) sheet 101 line 5
5) sheet 101 line 8
6) sheet 108 line 1

7) sheet 118 line 8
8) sheet 125 line 5
9) sheet 136 line 5

16. The following 10 signatures were rehabilitated by Board registration record:

1) sheet 1 line 9
2) sheet 3 line 1
3) sheet 25 line 8
4) sheet 56 line 6
5) sheet 67 line 6
6) sheet 98 line 3
7) sheet 135 line 4
8) sheet 142 line 8
9) sheet 155 line 2
10) sheet 158 line 3

17. After the presentation of all the evidence, this Hearing Officer overruled 31 objections which were sustained at the records examination, finding 31 signatures were successfully rehabilitated either by testimony, signature clip, or registration document. The Attorney for the Objector conceded the outstanding 7 signatures in favor of the Candidate.

18. The following 7 signatures were conceded by the Objector:

1) sheet 1 line 8
2) sheet 38 line 2
3) sheet 85 line 2
4) sheet 1 line 4
5) sheet 7 line 1
6) sheet 20 line 5
7) sheet 10 line 7

19. Therefore, at the close of the case, the total number of rehabilitated signatures was 38. However, the records exam found the Candidate was 77 signatures below the minimum requirement.

20. The Hearing Officer finds that the number of valid signatures appearing on the Candidate's nominating petition following completion of the records examination and evidentiary hearing is 39 below the minimum number of valid signatures required by law

to be placed upon the official ballot as a candidate for the office of State Representative in the General Assembly for the 2nd District, State of Illinois.

21. The Hearing Officer finds, therefore, that the objections to signatures appearing on certain sheets and lines of the Objector's Petition are sustained in part and overruled in part.

22. For reasons stated above, the Hearing Officer recommends the Electoral Board sustain the Objection and find that the Nominating Papers of Roy Pletsch are invalid and his name not be printed on the ballot for the General Election on November 6th, 2012.

ENTERED THIS 11th day of July, 2012.

Mary C. Meehan
Hearing Officer

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BOARD OF ELECTIONS
COMMISSIONER