

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

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Objections of: Marthenia Wiley	)	
	)	
	)	
To the Nomination	)	No.: 16-EB-WC-11
Papers of: David Clark	)	
	)	Rel.: 16-EB-WC-12
Candidate for the office of Republican Party	)	
Ward Committeeman for the 7th Ward, City of	)	
Chicago	)	

**FINDINGS AND DECISION**

The duly constituted Electoral Board, consisting of Board of Election Commissioners for the City of Chicago Commissioners Marisel A. Hernandez, William J. Kresse and Jonathan T. Swain, organized by law in response to a Call issued by Marisel A. Hernandez, Chairman of said Electoral Board, for the purpose of hearing and passing upon objections ("Objections") of Marthenia Wiley ("Objector") to the nomination papers ("Nomination Papers") of David Clark, candidate for the office of Republican Party Ward Committeeman for the 7th Ward of the City of Chicago ("Candidate") at the General Primary Election to be held on March 15, 2016, having convened on December 14, 2015, at 9:00 A.M., 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 December 14, 2015 and was continued from time to time.

5. The Electoral Board assigned this matter to Hearing Officer Joe Ponsetto for further hearings and proceedings.

6. The Objector and the Candidate were directed by the Electoral Board's Call served upon them 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, Marthenia Wiley, pro se; and the Candidate, David Clark, by his attorney, Brian P. Wojcicki.

7. The Hearing Officer has tendered to the Electoral Board a report and recommended decision. Based upon the evidence presented, the Hearing Officer found:

A. The sole issue raised by the Objection is whether the Candidate's Nomination Papers should be declared invalid because the Candidate's nominating petition sheets were not numbered consecutively.

B. The Candidate filed a motion to strike and dismiss the Objector's Petition. The Objector filed a response to the motion and the Candidate filed a reply in support of the motion. Oral argument ensued on December 24, 2015.

C. The Candidate's Nomination Papers contain a total of sixteen (16) nominating petition sheets. None of the petition sheets were numbered.

D. The Candidate argues that he substantially complied with the requirement in Section 7-10 of the Election Code (10 ILCS 5/7-10) that nominating petition sheets be numbered consecutively, citing *King v. Justice Party*, 284 Ill.App. 3d 886, 672 N.E.2d 900 (1<sup>st</sup> Dist. 1996), and *Reynolds v. Champaign County Electoral Board*, 337 Ill.App.3d 1164, 884 N.E.2d 1175 (4<sup>th</sup> Dist. 2008). Candidate further argues that because there were no other objections to his Nomination Papers and there are a limited number of petition sheets that numbering requirement should be set aside.

E. The cases cited by the Candidate are readily distinguishable in that in those cases there was at least some compliance with the petition numbering requirement; here, however, there was zero compliance with the numbering requirement.

8. The Hearing Officer recommends, therefore, that the Candidate's motion to strike and dismiss the Objector's Petition should be denied. Furthermore, the Hearing Officer recommends that the Objections should be sustained and that the Candidate's Nomination Papers be declared invalid.

9. 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 Examiner's Report and Recommended Decision is attached hereto and is incorporated herein as part of the decision of the Electoral Board.

10. Section 7-10 of The Election Code (10 ILCS 5/7-10) requires that petition sheets, before being presented to the electoral board or filed with the proper officer shall be neatly fastened together in book form and the sheets shall then be numbered consecutively.

11. The Board finds that *none* of the sixteen petition sheets filed by the Candidate as part of his Nomination Papers are numbered as required by Section 7-10 of The Election Code.

12. In *Reynolds v. Champaign County Officers Electoral Bd.*, 379 Ill.App.3d 423, 884 N.E.2d 1175 (Ill.App. 4 Dist. 2008), a case cited by the Candidate, the court held that the requirements of section 7-10 are mandatory and not directory. In *Reynolds*, the petition consisted of a total of four pages. The first two (circulated by the candidate himself) were properly numbered. The remaining two pages (circulated by two other individuals on behalf of the candidate) were each numbered as page 1. The fact that they were not renumbered when they were compiled and submitted on defendant's behalf was clearly an error. However, given the limited number of pages involved, the fact that the two pages at issue were easily identified by the name of the individuals who circulated them, and the lack of any claim of possible voter confusion, tampering, or fraud by the plaintiff, the electoral board and the court concluded that the candidate substantially complied with the requirements of the statute.

13. In another case cited by the Candidate, the court in *King v. The Justice Party*, 284 Ill.App.3d 886, 672 N.E.2d. 900, (First Dist. 1996), held that the page-numbering requirement had been "substantially complied with" as 4,427 pages of the Justice Party's petition were numbered, sixteen pages were not numbered, and two pages, numbered 1791 and 1792 were missing, rendering the numbering of the petition non-consecutive. The court concluded that the failure to number a single page in such a nominating petition is far less significant than the total

failure to number any pages, and the failure to insert or number a single page of petition is mere technicality that does not invalidate petition.

14. In contrast to cases where the candidate numbered some but not all petition sheets, the instant case is more akin to *Jones v. Dodendorf*, 190 Ill.App.3d 557, 546 N.E.2d 92, appeal denied 129 Ill.App.3d 557, 550 N.E. 2d 556, (Second Dist. 1989), and *El-Aboudi v. Thompson*, 293 Ill.App.3d 191, 687 N.E.2d 1166 (Second Dist. 1997), where the courts held that the failure to number *any* of the pages in a nominating petition justified invalidation of the petitions. In *El-Aboudi*, the court observed that “numbering the pages of the submitted petition requires substantial compliance to prevent tampering, which preserves not only the integrity of the petitions submitted, but also the election process in general.” 687 N.E.2d at 1168. “As in *Jones*, there is no way to ascertain effectively whether additional pages were later inserted. To allow a candidate to separate his petition into several petitions after it has been submitted would not only disregard the requirements of the Election Code, but also would corrupt the electoral process. Where plaintiff made no attempt to comply substantially with the numbering requirement, the failure to do so, as mandated, requires invalidation of his nominating petition.” 687 N.E.2d at 1168-69. The courts have concluded, therefore, that the statutes requiring page numbering is mandatory, rather than directory, and the failure to number *any* of the nominating petitions does not constitute “substantial compliance” with the statute.

15. This Electoral Board has adhered to the holdings in *Jones* and *El-Aboudi* and has held that a candidate's failure to number any of the pages of his or her nominating petitions is a violation of Sections 7-10 and 10-4 of the Election Code, which invalidates the nomination papers. See, e.g., *Crumpton v. Hendricks*, 99-EB-ALD-021 (CBEC 1999); *Ransom and Simpson v. Hendricks*, 99-EB-ALD-101 (CBEC 1999); *Smith v. Shotwell*, 99-EB-ALD-025 (CBEC 1999);

*Ransom and Simpson v. Hendricks*, 99-EB-ALD-101 (CBEC 1999); *Mitchell, Scheff and Zuckerman v. Thompson*, 99-EB-ALD-109 (CBEC 1999); *Delgado v. Ladien*, 99-EB-ALD-126 (CBEC 1999).

16. The fact that here there were no other objections to the Candidate's Nomination Papers is of no consequence. As in the *El-Aboudi* case, the failure to number the petition sheets as required by Section 7-10 is, alone, sufficient grounds to invalidate the nomination papers.

17. The fact that there were only a "limited" number (16) of petition sheets in the Candidate's Nomination Papers is not sufficient justification for ignoring the mandatory requirements of Section 7-10. For example, in the *Jones* case, there were only 12 petition sheets, and yet the court invalidated the entire set of nomination papers, finding that the sanction of removing the candidate from the ballot was rationally related to the legitimate interests of the State in preventing tampering of the petitions and protecting the integrity of the electoral process. 190 Ill.App.3d 562-563.

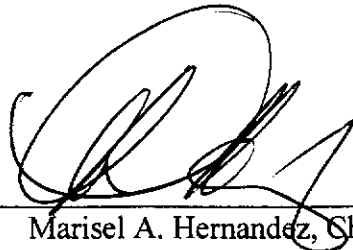
18. The Electoral Board finds, therefore, that the Candidate's failure to number any of the pages of his nominating petition invalidates his Nomination Papers. While substantial compliance with a mandatory requirement may sometimes be enough (see *King v. The Justice Party*, 284 Ill.App.3d 886, 672 N.E.2d. 900, (First Dist. 1996)), here there was no compliance at all.

19. For the reasons stated above, the Electoral Board sustains the Objections and finds that the Candidate's Nomination Papers are invalid.

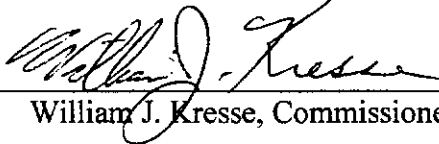
20. The Electoral Board further notes that objections in related case 16-EB-WC-12 were dismissed.

IT IS THEREFORE ORDERED that the Objections of Marthenia Wiley to the Nomination Papers of David Clark, candidate for the office of Republican Party Ward Committeeman for the 7th Ward of the City of Chicago, are hereby SUSTAINED and said Nomination Papers are hereby declared INVALID and the name of David Clark, candidate for the office of Republican Party Ward Committeeman for the 7th Ward of the City of Chicago, SHALL NOT be printed on the official ballot for the General Primary Election to be held on March 15, 2016.

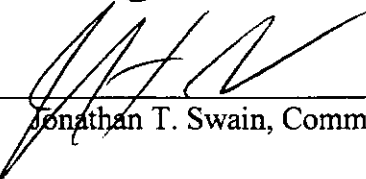
Dated: Chicago, Illinois, on January 12, 2016.



Marisel A. Hernandez, Chairman



William J. Kresse, Commissioner



Jonathan T. Swain, 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**

**MARTHENIA WILEY,**

**Petitioner-objector**

**vs.**

**DAVID CLARK,**

**Respondent-Candidate**

**No. 16-EB-WC-11**

**Joseph Ponsetto**

**Hearing Officer**

**RECOMMENDED DECISION**

This matter comes before the Chicago Board of Election Commissioners (CBOE) on the objection of Marthenia Wiley ("Objector") to the nomination papers of David Clark ("Candidate") for the Office of Republican Committeeman of the 7<sup>th</sup> Ward, City of Chicago, State of Illinois, to be voted upon at the March 15, 2016 Primary Election.

This matter first came before the Hearing Officer December 14, 2016. Both parties appeared, the Candidate, by his attorney, Brian P. Wojcicki, and the Objector pro-se. Both parties filed appearances, acknowledged service and the rules of procedure. Both parties stipulated that all service of documents would be made by e-mail. The Hearing Officer received into evidence the Nomination Papers of the Candidate and the Objection.

The sole issue raised by the Objector in this matter is whether the Nomination Papers of the Candidate should be declared invalid and dismissed because the Petition Sheets filed were not numbered consecutively.

The Candidate filed a Motion to Strike and Dismiss the objection. The Objector responded and the Candidate Replied. Oral arguments in support of the parties respective positions detailed in their written submissions were made to the hearing officer on December 24, 2016.

The Factual findings are as follows:

The Nomination Papers filed by the Candidate contain 16 pages of Petitions. NONE (emphasis added) of the pages are numbered.

Legal arguments and positions of the parties:

The candidates asks the Board to look at the failure to number his petition pages as a mere deviation from the statutorily mandated requirement of 10 ILCS 5/7-10 that the pages be numbered consecutively. He puts forth the position that since there is no other objection to the papers and the fact that there are a limited number petitions actually submitted that the requirement be set aside. He



submits that he has substantially complied with the Election Code by providing sufficient information in the papers to aid in the signature review process and prevent tampering. He relies on two well established cases, *King v. Justice Party*, 284 Ill. App. 3d 886, 672 N.E. 2<sup>nd</sup> 900 (1<sup>st</sup> Dist 1996) and *Reynolds v. Champaign County Electoral Board*, 337 Ill. App. 3d 1164, 884 N.E. 2<sup>nd</sup> 1175 (4<sup>th</sup> Dist. 2008) to support his substantial compliance position. However it appears that these cases are readily distinguishable from the instant matter in that in both of those matters there was a least some compliance which the Courts elevated to substantial after a review showed neither fatal interference with the signature review process nor any incidence of potential tampering.

In this matter as has been emphasized above we have zero compliance with the consecutive numbering requirement. In taking into account the apparent legislative intent of such a requirement, which is to allow for a structured manner in which to review, challenge and or validate signatures this cannot be ignored. It is acknowledged that the objector brings forth no challenge to the validity of the signatures submitted. It can also be suggested that there may have been some thought on behalf of the objector that once this issue was identified that they needed to go no further in evaluating the petitions in that they were dead on arrival so to speak. However the Candidate should not be allowed to benefit from such an argument, when it is fact he, who failed to properly submit his Nomination Papers in compliance with the mandate of our Election Code.

In light of the foregoing it is my report/recommendation that the Candidate David Clark's Motion to Strike and Dismiss the Objection of Marthenia Wiley be denied. Further it is recommended that the Nomination Papers of the Candidate David Clark be declared insufficient and not in compliance with the Illinois Election Code and that he not be placed on the ballot as a candidate for the Office of Republican Committeeman of the 7<sup>th</sup> Ward, City of Chicago, State of Illinois at the March 16, 2016 Primary Election.

Respectfully Submitted,

Joseph L. Ponsetto /s/

Joseph L. Ponsetto

Hearing Officer

January 6, 2016