

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

Objections of: SAMANTHA STINSON)
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To the Nomination) No. 08-EB-RES-07
Papers of: KERRY ANN YALDEN)
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)
Candidate for the office of Representative)
in the General Assembly, 10th)
Representative District, State of Illinois,)
Republican Party)

FINDINGS AND DECISION

The duly constituted Electoral Board, consisting of Chicago Board of Election 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 SAMANTHA STINSON ("Objector") to the nomination papers ("Nomination Papers") of KERRY ANN YALDEN, candidate for nomination of the Republican Party to the office of Representative in the General Assembly for the 10th Representative District, State of Illinois ("Candidate"), having convened on April 22, 2008, at 69 W. Washington Street, 8th Floor Conference Room, 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 April 22, 2008 and was continued from time to time.

5. The Electoral Board assigned this matter to Hearing Examiner MARIO CORREA 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 the date and at the time designated on the Electoral Board's docket. The following persons, among others, were present at such hearing: the Objector, SAMANTHA STINSON, appearing by counsel, MICHAEL J. KASPER; and the Candidate, KERRY ANN YALDEN, appearing by counsel, TIM SPRAGUE.

7. The Candidate was appointed to fill a vacancy in nomination for the Republican Party for the office of Representative in the General Assembly for the 10th Representative District, State of Illinois, pursuant to a resolution to fill such vacancy that was filed with the Illinois State Board of Elections. Such appointment was purportedly made by the Republican Party's Representative Committee for the 10th Representative District.

8. The Objector objects to the purported nomination of the Candidate to fill a vacancy in nomination alleging that the Representative Committee of the Republican Party for the Tenth District never filed a certificate of organization with the State Board of Elections indicating that it was organized as required by the Election Code. Specifically, the Objector claims that Section 8-5 on the Election Code requires that a representative committee meet and organize to elect a Chairman and a Secretary and then "immediately upon completion of the such organization," the chairman must forward to the State Board of Elections the names and addresses of the chairman and secretary of the committee. The Objector alleges that the Representative Committee for the Tenth Representative District for the Republican Party failed to fulfill these mandatory requirements of Section 8-5 of the Code and such failure invalidates the Nomination Papers.

9. Section 8-5 on the Election Code (10 I LCS 5/8-5) provides in relevant part:

"Within 180 days after the primary of each other even-numbered year, each legislative committee and representative committee shall meet and proceed to organize by electing from its own number a chairman, and either from its own number or otherwise such other officers as each committee may deem necessary or expedient. Immediately upon completion of organization, the chairman shall forward to the State Board of Elections, the names and addresses of the chairman and secretary."

10. The Candidate filed a motion to dismiss the Objections asserting that the Objector's Petition failed to allege non-compliance with a specific section of the Election Code. Second, the Candidate contended that a claim seeking to strike the name of the Candidate from the ballot based upon the purported failure of the Committee in question to tender the names and addresses of the Committee Chairman and Secretary under

Section 8-5 of the Election Code must fail because such duty is merely "directory" and the failure to fulfill such requirement is not sufficient grounds for striking the Candidate from the ballot.

11. After considering the briefs and arguments submitted by the parties on this issue, the Hearing Examiner concluded the Objector's Petition was sufficiently clear to apprise the Candidate of the issues involved. The Hearing Examiner also concluded that the requirement in Section 8-5 that the chairman of the representative committee forward to the State Board of Elections the names and addresses of the chairman and secretary of such committee "immediately upon completion of organization" of the committee is "mandatory" and not merely "directory" and that the failure to comply with the mandatory requirement operates to avoid the nomination. Accordingly, the Hearing Examiner denied the Candidate's motion to dismiss the objections.

12. On May 9, 2008, the Objector filed a certificate under oath dated May 6, 2008 and executed by Mark Mossman, director of the Election Information Division of the Illinois State Board of Elections, stating that as of May 6, 2008, there was not on file with the State Board of Elections any document from the Chairman of the Republican Party's 10th Representative District Representative Committee providing the names and addresses of the chairman and secretary of the said committee.

13. The Hearing Examiner found that Section 8-5 requires that "immediately upon completion of organization" the chairman must forward to the State Board of Election both the names *and addresses* of the new committee's chairman and secretary. The Hearing Examiner further found that the Representative Committee of the

Republican Party for the 10th Representative District failed to file the names and addresses of the its chairman and secretary as required by Section 8-5.

14. The Hearing Examiner concluded that the subject requirement of Section 8-5 is “mandatory” and that the failure to comply with such requirement renders the Candidate’s Nomination Papers invalid.

15. The Hearing Examiner has submitted his report recommending that the Electoral Board sustain the Objections to the Candidate's Nomination Papers and that the Electoral Board find that such Nomination Papers are, therefore, invalid.

16. The Electoral Board has reviewed the record of proceedings in this case, the arguments of the parties and the recommended findings of fact and conclusions of law submitted by the Hearing Examiner. The Electoral Board hereby adopts the recommended findings and conclusions of law of the Hearing Examiner.

17. For the reasons stated above and also for the reasons set forth in the Electoral Board’s decisions in cases 08-EB-RES-01, 08-EB-RES-03 and 08-EB-RES-05, the Electoral Board finds that the Candidate’s motion to dismiss the Objections is denied, the Objections to the Candidate’s Nomination Papers are sustained and that the Candidate’s Nomination Papers are, therefore, invalid.

IT IS THEREFORE ORDERED that the Objections of SAMANTHA STINSON to the Nomination papers of KERRY ANN YALDEN, candidate for nomination of the Republican Party to the office of Representative in the General Assembly for the 10th Representative District, State of Illinois, are hereby SUSTAINED and said Nomination Papers are hereby declared INVALID and the name of KERRY ANN YALDEN, candidate for nomination of the Republican Party to the office of Representative in the

General Assembly for the 10th Representative District, State of Illinois , SHALL NOT be printed on the official ballot for the General Election to be held on November 4, 2008.

Dated: Chicago, Illinois, this 3rd day of June 2008.



Langdon D. Neal, Chairman



Richard A. Cowen, Commissioner



Marisel A. 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 10 days after the decision of the Electoral Board.