

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

Objections of: JUDITH ROTHENBERG)
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To the Nomination) No. 08-EB-RES-09
Papers of: TIM QUIRK)
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)
Candidate for the office of Representative)
in the General Assembly, 12th)
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, 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 JUDITH ROTHENBERG ("Objector") to the nomination papers ("Nomination Papers") of TIM QUIRK, candidate for the nomination of the Green Party to the office of Representative in the General Assembly for the 12th 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, JUDITH ROTHENBERG, appearing by counsel, MICHAEL J. KASPER; and the Candidate, TIM QUIRK, appearing by counsel, SCOTT K. SUMMERS.

7. The Objector objects to the resolution to fill a vacancy in nomination filed by the Green Party's Representative District in the 12th Representative District nominating the Candidate to fill such vacancy. The Objector contends that only a properly constituted Representative District Committee may fill a vacancy in nomination. Objector further contends the 12th Representative District Committee is improperly constituted because the purported Chairman of such Committee, Tim Quirk (who is also the Candidate) is ineligible for that position because he is not a committeeman within the

12th Representative District. The Objector claims that the Candidate's Nomination Papers are invalid because the vacancy in nomination was not filled by the appropriate Green Party officials in the District.

8. The Objector presented evidence, in the form of certified election results from the February 5, 2008 primary election, that shows that Tim Quirk was not elected to the office of ward committeeman for the Green Party.

9. The Candidate presented evidence that the Green Party filled a vacancy in the office of Ward Committeeman for the Green Party in the 44th Ward of the City of Chicago, in accordance with the Green Party's by-laws, by appointing Mr. Quirk to such position.

10. The Hearing Examiner concluded that a vacancy in office existed in the office of Ward Committeeman for the Green Party in the 44th Ward of the City of Chicago by virtue of the fact that no one had been elected to such position at the February 5, 2008 election, that the Election Code is silent regarding the means by which a vacancy in office of Ward Committeeman is to be filled, that in the absence of any statute a political party may fill such vacancies according to the rules and practices of the political party, that the Green Party filled such vacancy in office in accordance with its own by-laws by appointing Tim Quirk to fill such vacancy, and that Mr. Quirk was and is the Ward Committeeman of the 44th Ward for the Green Party. Accordingly, the Hearing Examiner found that the 12th Representative District Committee of the Green Party was not improperly constituted, as alleged by the Objector, and that the appointment of Tim Quirk to fill the vacancy in nomination of the Green Party for the office of Representative

in the General Assembly for the 12th Representative District for the State of Illinois was valid. The Hearing Examiner, therefore, recommends that the Objections be overruled.

11. 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.

12. The Electoral Board hereby adopts the recommended findings of the Hearing Examiner that a vacancy existed in the office of Ward Committeeman of the Green Party for the 44th Ward of the City of Chicago, that the Green Party filled such vacancy in office in accordance with its own by-laws by appointing Tim Quirk to fill such vacancy, and that Mr. Quirk was and is the Ward Committeeman of the 44th Ward for the Green Party, that the 12th Representative District Committee of the Green Party was not improperly constituted, and that the appointment of Tim Quirk to fill the vacancy in nomination of the Green Party for the office of Representative in the General Assembly for the 12th Representative District for the State of Illinois was valid.

13. The Electoral Board finds that while it is true that the Election Code does not expressly provide the consequences for failing to elect a ward committeeman nor for method of filling vacancies in such office should they occur, the Code does provide that “Each committee and its officers shall have the powers usually exercised by such committees and by the officers thereof, not inconsistent with the provisions of this Article” (10 ILCS 5/7-8(i)) and that “Each [county and State] convention may perform all other functions inherent to such political organization and not inconsistent with the Article” (10 ILCS 5/7-9(d)). The Illinois Supreme Court long ago determined that such provisions “demonstrate that it was not the intention of the Legislature to take over and

regulate all inherent rights and powers existing in political parties, but that, on the other hand, the parties are left to the exercise of those privileges not expressly regulated by the law.” *People ex rel. Kell v. Kramer*, 328 Ill. 512, 520, 160 N.E. 60 (1928). The Court in *Kell* rejected the argument that the provisions of Article 7 violate the requirements of the Illinois Constitution that elections be free and equal because it fails to make provision for filling vacancies in party committeeman positions, finding instead that such vacancies “may be filled [sic] according to the rules and usages of the party.” 328 Ill. at 521. See also, Raucci, Andrew & Raucci, Lisa, *Vacancies in Office and Vacancies in Nomination*, IICLE, §14.39.

14. The Electoral Board finds here that no one was elected as Green Party Ward Committeeman for the 44th Ward at the February 5, 2008 primary election and that the Green Party acted within its powers in appointing Tim Quirk as Ward Committeeman for the 44th Ward. Accordingly, the 12th Representative District Committee for the Green Party was properly constituted when it appointed Mr. Quirk to fill the vacancy in nomination in question.

15. For the reasons stated above, the Electoral Board overrules the Objections and finds that the Candidate’s Nomination Papers are valid.

IT IS THEREFORE ORDERED that the Objections of JUDITH ROTHENBERG to the Nomination papers of TIM QUIRK, candidate for nomination of the Green Party to the office of Representative in the General Assembly for the 12th Representative District, State of Illinois, are hereby OVERRULED and said Nomination Papers are hereby declared VALID and the name of TIM QUIRK, candidate for nomination of the Green Party to the office of Representative in the General Assembly for the 12th Representative

District, State of Illinois, SHALL be printed on the official ballot for the General Election to be held on November 4, 2008.

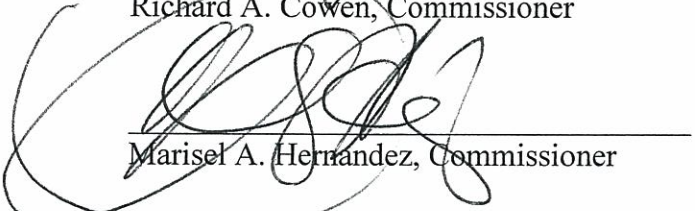
Dated: Chicago, Illinois, this 3rd day of June 2008.



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.