

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

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Objections of: AMY SUE MERTENS	)	
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	)	
To the Nomination	)	No. 08-EB-SS-06
Papers of: RICKEY R. HENDON	)	
	)	
	)	
Candidate for the office of	)	
State Senator for the 5th Legislative	)	
District, State of Illinois, Democratic 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 AMY SUE MERTENS ("Objector") to the nomination papers ("Nomination Papers") of RICKEY R. HENDON, candidate for the nomination of the Democratic Party to the office of State Senator for the 5th Legislative District, State of Illinois ("Candidate"), having convened on November 20, 2007, at 10:00 a.m., at 69 W. Washington Street, 8<sup>th</sup> 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 November 20, 2007 and was continued from time to time.

5. The Electoral Board assigned this matter to Hearing Examiner Rodney Stewart 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 November 20, 2007 at the time and place designated on the Electoral Board's docket. The following persons, among others, were present at such hearing: the Objector, AMY SUE MERTENS, by her attorney, Richard K. Means; and the Candidate, RICKEY R. HENDON, by his attorney, Michael C. Dorf.

7. The Objector's Petition alleges that the Candidate's Nomination Papers are invalid as a result of the so-called "ballot forfeiture" provisions of the Illinois Campaign Finance and Disclosure Act (10 ILCS 5/9-1 et seq.), which states as follows:

"Ballot forfeiture. The name of a person who has not paid any civil penalty imposed against him or her under this Article shall not appear upon any ballot for any office in any election while the penalty is unpaid."

8. The Objector contends that the Candidate has \$1,900 in unpaid civil penalties for violations of the Campaign Finance Act. Therefore, the Candidate is ineligible for the ballot, Objector contends. The Objector also argues that the Candidate's Statement of Candidacy contains a false statement inasmuch as the Candidate stated

under oath that he is "legally qualified" to hold the office of State Senator when, Objector argues, the Candidate has forfeited his right to stand as a candidate for be elected to the office of State Senate because he has unpaid civil penalties owed for violations of the Campaign Finance Act. The Objector further argues that the Candidate's statement that he is "legally qualified" to hold the office of State Senate was false and perjurious at the time he filed his Statement of Candidacy on October 29, 2007 and will remain false until such civil penalties are paid. The Objector argues that such false statements render the Candidate's Nomination Papers invalid in their entirety.

9. The Candidate filed a motion to strike and dismiss the Objector's Petition, arguing that the ballot forfeiture provision does not bear upon the legal qualifications to hold the office of State Senator. The Candidate maintains that the legal qualifications to hold such office are set forth in Article IV, Section 2(c), which provides, "To be eligible to serve as a member of the General Assembly, a person must be a United States citizen, at least 21 years old, and for the two years preceding his election or appointment a resident of the district which he is to represent." The Candidate contends that there are no other "qualifications" for the office in question and that the Objector has not alleged that the Candidate fails to meet any of the constitutional requirements.

10. The Candidate attached to his motion to dismiss a copy of a 4-page State Board of Elections' memorandum to "Potential Candidates" on the subject of "Petition Filing Instructions," dated July 2007. See, Motion to Strike and Dismiss, Exhibit A-1. At the very end of such document is a section titled "Ballot Forfeiture," which states:

"The Illinois Campaign Disclosure Act states that any candidate who owes a finding to the State Board of Elections cannot appear on an election ballot. Therefore, the name of any candidate whose committee has an outstanding assessment not paid by 10:30 a.m. on December 6, 2007 will

not be certified for the February 5, 2008 General Primary Election ballot. The name of a candidate whose committee as an outstanding assessment not paid by 10:30 a.m. on August 29, 2008 will not be certified for the November 4, 2008 General Election ballot."

11. The Candidate contends that he has until December 6, 2007 to pay any outstanding and unpaid civil penalties to qualify for certification for the February 5, 2008 General Primary Election ballot and that he intends to pay such penalties (and did, in fact, make payment of \$1,900 to the State Board of Elections on November 26, 2007). Therefore, Candidate argues that the Objector's demands are untimely and premature.

12. In response to the Candidate's motion to strike and dismiss the Objector's petition, the Objector argues that any violation of the ballot forfeiture statutes is akin to a violation of a statute in the Municipal Code which disqualifies individuals from holding elected municipal office if they are in arrears in the payment of any tax or indebtedness to the municipality. Section 3.1-10-5(b) provides, "A person is not eligible for an elective municipal office if that person is in arrears in the payment of a tax or other indebtedness due to the municipality or has been convicted in any court located in the United States of any infamous crime, bribery, perjury, or other felony." 65 ILCS 5/3.1-10-5(b) (West 2004).

13. Objector argues that established Illinois statute and case law provides that such an arrearage, if not paid at the time of the filing of the nomination papers, is a bar to candidacy, citing *Cinkus v. Village of Stickney Mun. Officers Electoral Bd*, 373 Ill.App.3d 866, 869 N.E.2d 861 (1st Dist. 2007) (leave to appeal granted).

14. In reply, the Candidate argues that the statute disqualifying candidates from elected municipal office for being in arrears in the payment of the tax or other indebtedness due to the municipality is distinguishable from the ballot forfeiture statute

because the Municipal Code statute states specifically that the candidate "is not eligible" for an elective municipal office in those circumstances. The Candidate correctly notes that the eligibility requirements for the office of the State Senate are found in the Illinois Constitution and that the ballot forfeiture provisions of Section 9-30 of the Campaign Financed Act are not directed at the "qualifications" or "eligibility" of candidates for State Senate and, indeed, could not change the constitutional qualifications. Instead, the Candidate notes that the ballot forfeiture statute is directed only to the issue of whether any candidate's name may be certified to or be placed on the ballot. The Candidate additionally notes that this administrative function is to be carried out by the State Board of Elections which, at the time of certification on December 6, 2007, will examine whether there are any unpaid penalties and whether there is any bar to placing the Candidate's name on the ballot.

15. The Hearing Examiner conducted a hearing in this matter on November 26, 2007, at which time neither the Objector nor her attorney appeared. The Hearing Examiner heard testimony by the Candidate that he had paid civil penalties in the amount of \$1,900 to the State Board of Elections on November 26, 2007 and that he was present when the check was tendered for payment. Copy of the check was introduced as Candidate's Exhibit 1. No cross-examination or evidence was presented on behalf of the Objector.

16. After considering the legal argument of the parties, the Hearing Examiner agreed with the Candidate that the legal qualifications applicable to the office of State Senator are set forth in the Constitution of the State of Illinois, that the Illinois Municipal Code provisions found in Section 3.1-10-5(b) regarding arrearages in the payment of any

tax or indebtedness to a municipality and eligibility to hold elective municipal officer were not applicable to the office of State Senator, and that the Objector did not raise any objections with respect to the Candidate's eligibility for State Senate under Article IV, Section 2(c) of the Illinois Constitution.

17. In addition, the Hearing Examiner noted that under Section 8-10 on the Election Code the last day for the State Board of Elections to certify candidates for the office of State Senate for the February 5, 2008 General Primary Election ballot is the 61st day prior to the date of the primary, or December 6, 2007. The Candidate would, therefore, have until December 6, 2007 to pay any unpaid civil penalties to the State Board of Elections and avoid penalty under the ballot forfeiture statute. Adding that the Candidate presented evidence of payment on November 26, 2007, the issue of payment was satisfied and is moot based upon the payment of a civil penalty prior to the time certification.

18. Following the Hearing Examiner's issuance of his recommended findings and conclusions of law, the Objector filed a motion pursuant to Rule 20 of the Electoral Board's Rules of Procedure to address the Board. Both the Objector and the Candidate presented their arguments directly to the Board on November 30, 2007.

19. Having reviewed the record and considered the evidence and arguments of the parties, as well as having considered the recommended findings and conclusions of law submitted by the Hearing Examiner, the Electoral Board agrees with and adopts the Hearing Examiner's recommended findings and conclusions of law.

20. The Electoral Board finds that where the Constitution undertakes to prescribe qualifications for office, its declaration is conclusive of the whole matter and

the legislature is without authority to change or add to the qualifications unless the Constitution gives it the power. *Thies v. State Bd. of Elections*, 124 Ill.2d 317, 325, 529 N.E.2d 565, 569 (1988). Therefore, to the extent that the ballot forfeiture statute in Section 9-30 of the Campaign Finance Act purports to change or add to the qualifications of elective office, as Objector contends, it is inapplicable to the candidates for the member in the General Assembly, whose qualifications are set forth in Article IV, Section 2(c) of the Constitution.

21. Further, as an administrative agency established by statute, an electoral board may exercise only the powers conferred upon it by the legislature. *Kozel v. State Bd. of Elections*, 126 Ill.2d 58, 68, 533 N.E.2d 796, 801 (1988). Under section 10-10 of the Election Code, the function of an electoral board is limited to a consideration of objections to a candidate's nomination papers. *Ibid.*

22. Section 10-10 of the Election Code sets forth the powers and duties of the Board when sitting as an electoral board:

"The electoral board shall take up the question as to whether or not the certificate of nomination or nomination papers or petitions are in proper form, and whether or not they were filed within the time and under the conditions required by law, and whether or not they are the genuine certificate of nomination or nomination papers or petitions which they purport to be, and whether or not in the case of the certificate of nomination in question it represents accurately the decision of the caucus or convention issuing it, and in general shall decide whether or not the certificate of nomination or nominating papers or petitions on file are valid or whether the objections thereto should be sustained and the decision of a majority of the electoral board shall be final subject to judicial review as provided in Section 10-10.1. \*\*\*\*" 10 ILCS 5/10-10 (West 2002).

23. The requirements for the form of nomination papers or petitions for the office of State Senator are prescribed in Article 8 of the Election Code, which provides that the "nomination of all candidates for members of the General Assembly by all

political parties as defined in Section 8-2 of this article shall be made in the manner provided in this article 8 and not otherwise.” Objector does not contend that the Candidate’s Nomination Papers violate the form requirements of Article 8, except to the extent that he alleges that the Candidate falsely swore that he was legally qualified to hold the office of State Senator. The ballot forfeiture statute does not add to or change the Article 8 requirements for forms of nomination papers.

24. The ballot forfeiture statute is limited only to the question whether a person’s name should be certified for printing on the ballot if there are unpaid civil penalties for Campaign Finance Act violations.

25. An electoral board has no authority to certify, or to refuse to certify, candidates. *Kozel v. State Bd. of Elections*, 126 Ill.2d 58, 68, 533 N.E.2d 796, 801 (1988). As the statutes indicate, the function of an electoral board is to hear and pass upon objections to a candidate's nomination papers. For the office at issue here, certification of candidates' names for inclusion on the primary ballot is a function reserved to the State Board of Elections, acting in its own capacity under Section 8-10 of the Election Code. *Ibid.*

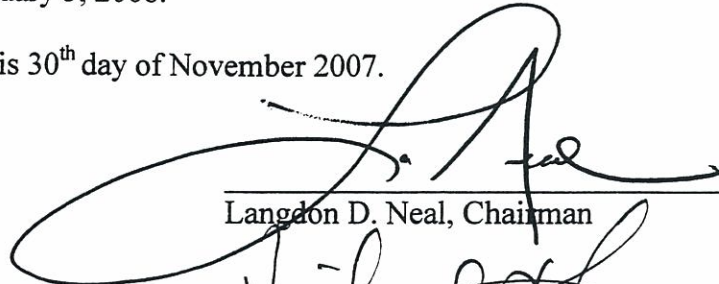
26. For the reasons stated above, the Electoral Board grants the Candidate’s motion to strike and dismiss the Objector’s Petition and finds that the Candidate’s Nomination Papers are valid.

IT IS THEREFORE ORDERED, that the Objections of AMY SUE MERTENS to the Nomination papers of RICKEY R. HENDON, candidate for the nomination of the Democratic Party to the office of State Senator for the 5th Legislative District, State of Illinois are hereby STRICKEN AND DISMISSED and said Nomination Papers are



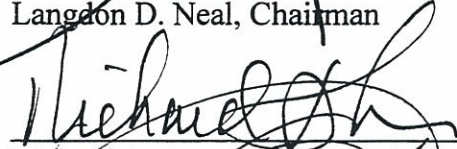
hereby declared VALID and the name of RICKEY R. HENDON, candidate for nomination of the Democratic Party to the office of State Senator for the 5th Legislative District, State of Illinois, SHALL be printed on the official ballot for the General Primary Election to be held on February 5, 2008.

Dated: Chicago, Illinois, this 30<sup>th</sup> day of November 2007.



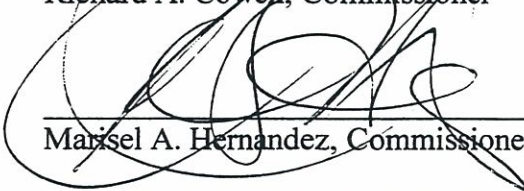
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Langdon D. Neal, Chairman



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Richard A. Cowen, Commissioner



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Marsel 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.