

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

Objections of: Casimir J. Kmak)
)
)
To the Nomination) No.: 12-EB-RGA-19
Papers of: Michael E. Mayden)
)
Candidate for the nomination of the)
Democratic Party for the office of)
Representative in the General Assembly of the)
28th 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 Casimir J. Kmak (“Objector”) to the nomination papers (“Nomination Papers”) of Michael E. Mayden, candidate for the nomination of the Democratic Party for the office of Representative in the General Assembly of the 28th Representative District in the State of Illinois (“Candidate”) at the General Primary Election to be held on March 20, 2012, having convened on December 19, 2011 at 8:30 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 December 19, 2011 and was continued from time to time.

5. The Electoral Board assigned this matter to Hearing Officer William Jones 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, Casimir J. Kmak, by attorney Michael J. Kasper; and the Candidate, Michael E. Mayden, pro se.

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 maximum number of signatures allowed by law is 1,500 (which the Candidate reached in the first 65 of the 104 petitions sheets filed;

C. The number of signatures deemed invalid because of objections sustained as a result of the records examination total 1,125;

D. The remaining number of signatures deemed valid as a result of the records examination total 375.

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 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 Democratic Party for the office of Representative in the General Assembly of the 28th Representative District of the State of Illinois.

14. Candidate did not preserve for review any of the findings or rulings made the records examiner during the Rule 6 records examination; therefore, Candidate waived any opportunity to present evidence objecting to the Board's clerk's findings during the records examination.

15. Objector filed objections to the first 65 petition sheets, which happened to contain the first 1,500 petition signatures. Sheets 66 through 104 were not included in the Candidate's

signature count pursuant to Rule 11 of the Board's Rules of Procedure inasmuch the maximum signature requirement was fulfilled on Sheets 1-65.

16. Rule 11 provides, "Whenever a statute places a limit on the maximum number of signatures that may appear on a petition and the nominating petition contains more than the statutory maximum number of signatures, the number of signatures on the petition shall be counted from the first signature on the first petition sheet (excluding any signature that was properly stricken in the manner provide by statute) and no signatures after the maximum number is attained shall be counted or used for any purpose."

17. The Candidate argues that the signatures on petition sheets 66 through 104 must be counted as valid signatures. He argues that Rule 11 "poses a direct conflict with the Illinois Constitution."

18. In *Richards v. Lavelle*, 620 F.2d 144 (7th Cir.1980), the Seventh Circuit U.S. Court of Appeals said that section 7-10 of the Election Code does not require that all signatures in excess of the maximum number allowed under that section be automatically invalidated and not considered in determining whether the candidate's nominating petition contains the required number of genuine signatures. The court observed, "Assuming that limitations [upon the number of signatures contained in the petition sheets] have an administrative justification, the same purpose can be served in a rational electoral system by returning the excess petitions, by refusing to consider any signatures beyond the statutory maximum or by concluding the objection hearing as soon as the minimum required signatures have been validated." 620 F.2d 144, 148.

19. In *Anthony v. Butler*, 166 Ill.App.3d 575, 581-582, 519 N.E.2d 1193 (1st Dist., 1988), the court said that although the court in *Richards* suggested certain alternative methods of handling this situation, it did not specifically require that any or all of those methods be adopted.

The *Anthony* court said it did not need to reach the question of which of *Richard*'s suggested alternatives the board should or must adopt, and rather than infringing on the electoral board's authority to choose an appropriate sanction by ordering the application of one particular sanction, the court urged the electoral board, on remand, to determine which of the sanctions suggested in *Richards v. Lavelle*, or another similar sanction, would be most appropriately applied to cases where the candidate files more than the maximum number of signatures.

20. In response to *Richards* and *Anthony*, this Electoral Board has created Rule 11.

21. When adopting the Rules of Procedure at the initial meeting of this Electoral Board on December 19, the Board, in response to questions about Rule 11, clearly re-affirmed that Rule 11 would be applied by considering only signatures under the maximum signature requirement and would start with the first signature on the first page and begin working toward the back of the petition until the maximum number of signatures was reached.

22. 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 375 valid signatures, which is 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 Democratic Party for the office of Representative in the General Assembly for the 28th Representative District of the State of Illinois, and that the Candidate's Nomination Papers should be found invalid.


23. 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.

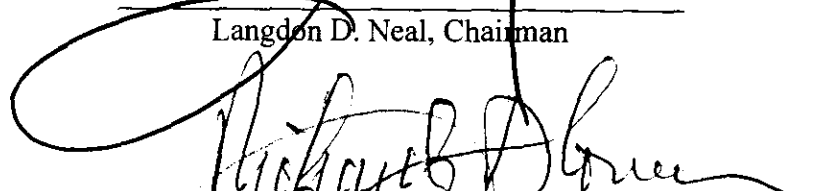
24. For the reasons stated above, the Electoral Board finds that the Candidate has an insufficient number of valid signatures on his nominating petitions and that the Nomination Papers of Michael E. Mayden are, therefore, invalid.

IT IS THEREFORE ORDERED that the Objections of Casimir J. Kmak to the Nomination Papers of Michael E. Mayden, candidate for election to the office of Representative in the General Assembly of the 28th Representative District of the State of Illinois are hereby SUSTAINED and said Nomination Papers are hereby declared INVALID and the name of Michael E. Mayden, candidate for nomination of the Democratic Party for the office of Representative in the General Assembly for the 28th Representative District of the State of Illinois, SHALL NOT be printed on the official ballot for the General Primary Election to be held on March 20, 2012.

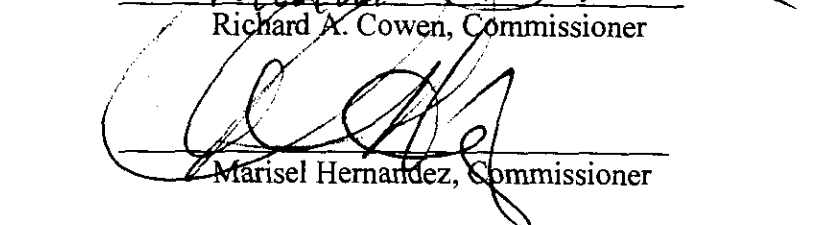
Dated: Chicago, Illinois, on January 17, 2012.



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.

COPY

BEFORE THE CHICAGO BOARD OF ELECTION COMMISSIONERS

Hearing Officer's Report

CASIMIR J. KMAK,
vs.
MICHAEL MAYDEN,
Objector,
Candidate.

No. 12-EB-RGA-19

BOARD OF ELECTIONS COMMISSIONER
2012 JAN 11 A 10:31

HEARING OFFICER'S FINDINGS AND RECOMMENDATIONS

1. The initial hearing commenced at 1:30 p.m., December 19, 2011. The Candidate appeared pro se. The Objector appeared through legal counsel, Robert Shannon. Board Exhibits A through D were marked and admitted as Candidate's Papers, Objector's Petition, Service Documents, and Party Appearances, respectively.

2. At the time of the initial hearing, the Candidate indicated he would be filing a Motion to Dismiss the Objector's Petition. Pursuant to Board Rules, a briefing schedule was set and the hearing on the Candidate's Motion to Dismiss was scheduled for December 23, 2011.

3. The Candidate filed a timely Motion: "Respondent Motion to Dismiss Objector Petition for No Legal Standing". Objector filed his response: "Petitioner - Objector's Response to Respondent's Motion to Dismiss Objector - Petitioner for No Legal Standing".

4. A hearing on Candidate's motion was conducted on December 23, 2011. Candidate had filed 104 sheets of signatures. Objector had filed objections to 65 sheets. The gist of Candidate's Motion was that because no objections were filed to Sheets 66 through 104, the

signatures on these sheets should be deemed to be valid and therefore contained more than the 500 minimum required signatures. In response Objector essentially argued that the combination of the current provision of the Election Code, 10 ILCS 5/8-8 (1500 signatures maximum) with the current Board Rule 11 means that the Board need not consider petition signatures over 1500 “for any purpose”. The hearing officer denied the Candidate’s Motion for the reasons cited by Objector and further noted that the law had evolved or changed since the decisions in Richards v. Lavelle, 620 F.2d 144 (7th Cir. 1980) and Anthony v. Butler, 166 Ill.App.3d 575, 519 N.E.2d 1193 (1st Dist. 1988). At this time the hearing officer prepared a directive for a Records Examination and the matter was scheduled for further hearing on January 4, 2012, at 10:00 a.m.

5. On January 4, 2012, at 10:00 a.m., a hearing was commenced to determine the status of the results of the Record Examination. It was determined that the results of the Record Examination had not been completed and therefore this matter was re-scheduled to January 10, 2012 at 10:00 a.m. for further hearing.

6. The Record Examination was completed on January 4, 2012 and the parties were notified of the results on the afternoon of January 4, 2012.

7. On January 5, 2012, the Candidate filed a Motion to Reinstate Candidate’s Petition Sheets 66-104. Objector filed no written response, but made an oral response at the time of the January 10, 2012 hearing.

8. Additional hearing commenced at 10:00 a.m. on January 10, 2012. The Petition Summary Report was marked and admitted as Board Exhibit E (copy attached hereto). The Final Petition Detail Report was marked and admitted as Board Group Exhibit F. During this hearing the Candidate stated that he did not attend the Board’s Record Examination. Further, the

Candidate stated that he did not have a “watcher” or representative at the Board’s Record Examination.

9. The Candidate presented his Motion to Reinstate. The Objector made his oral response. The gist of the Candidate’s Motion is that Sheets 66-104 should be counted as valid signatures and therefore that Candidate would have more than the 500 required minimum number of valid signatures. The Objector responded that Rule 11 applies and bars use of the signatures on Sheets 66-104. The hearing officer, citing Board Rule 11, denied the Candidate’s Motion to Reinstate and noted that this denial was largely based upon the same reasons previously stated when Candidate’s Motion to Dismiss was denied on December 23, 2011.

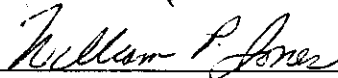
10. The hearing officer finds that during the Record Examination the Candidate (being absent) did not preserve for review any of the Board’s rulings and therefore pursuant to Board Rule 6 and the authority of Robinson v. Davis, 07-EB-ALD-101 (1/23/07), the Candidate having not appealed any of the Board’s Clerk’s findings, waived his rights “to present any evidence or argument of any kind with respect to the Clerk’s findings or the issue to which it related and any future appeal or reconsideration of the Clerk’s findings is waived.” Robinson, supra, pages 3-4.

11. Therefore, the hearing officer holds that the results of the Record Examination, under these circumstances, are final and conclusive.

12. The hearing officer finds that the Candidate’s Nomination Papers contain 375 valid signatures and thus these Papers have 125 signatures fewer than the required minimum of 500 valid signatures.

13. For all the foregoing reasons, the hearing officer recommends that the name of MICHAEL MAYDEN not appear on the ballot as a Candidate for the Office of Representative in the General Assembly for the 28th Representative District of the State of Illinois.

Date: January 11, 2012



Hearing Officer
William P. Jones

BOARD

Petition Summary Report

Petition: 12-EB-RGA-19	Objector Name: CASIMIR J KMAK
Election: 032012	Candidate Name: MICHAEL MAYDEN

Candidate Contact:

Phone:

Fax:

Objector Contact: CASIMIR J KMAK

Phone:

Fax:

Signature Required:

500

28th Representative District

Total Pages:

64

Total Signatures:

1500

Total Objections:

1320

Total Ruled On:

1318

Total Remaining:

2

Total Sustained:

1125

Total Overruled:

193

For Review (Candidate):

0

For Review (Objector):

426

Total Valid Signatures:

375

Total Unchallenged Sigs:

180

125 Signatures fewer than the required minimum

I acknowledge the completion of the records examination at 1/4/2012 1:03:56 PM

Candidate Representative

Objector Representative

County / City Representative

Board Exhibit E