

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

Objections of: Chris Cleveland)
)
)
To the Nomination) No.: 12-EB-WC-37
Papers of: Kent Griffiths)
)
Candidate for the office of Republican Party)
Ward Committeeman for the 43rd Ward, City)
of Chicago)

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 Chris Cleveland (“Objector”) to the nomination papers (“Nominating Papers”) of Kent Griffiths, candidate for the office of Republican Party Ward Committeeman for the 43rd Ward of the City of Chicago (“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 Kresse 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, Chris Cleveland, by attorney Richard K. Means; the Candidate, Kent Griffiths, pro se.

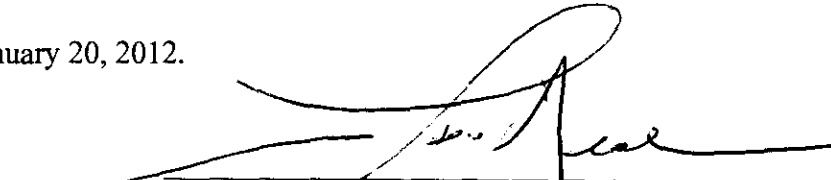
7. The Hearing Officer has tendered to the Electoral Board his report and recommended decision. The Hearing Officer recommends that the Objections to the Candidate's Nomination Papers be dismissed and that the Nomination Papers be declared valid.

8. The Electoral Board, having reviewed the record of proceedings in this matter and having considered the report and recommendations of the Hearing Officer, as well as all argument and evidence submitted by the parties, hereby adopts the Hearing Officer's recommended findings and conclusions of law. A copy of the Hearing Officer report and recommendations is attached hereto and is incorporated herein as part of the decision of the Electoral Board.

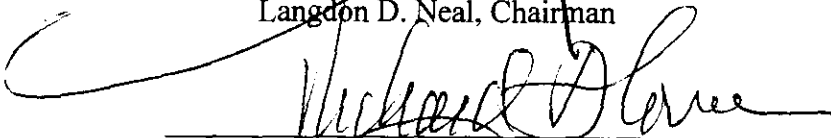
9. For the reasons stated above, the Electoral Board dismisses the Objections to the Candidate's Nomination Papers and finds that the Candidate's Nomination Papers are valid.

IT IS THEREFORE ORDERED that the Objections of Chris Cleveland to the Nomination Papers of Kent Griffiths, candidate for the office of Republican Party Ward Committeeman for the 43rd Ward of the City of Chicago, are hereby DISMISSED and said Nomination Papers are hereby declared VALID and the name of Kent Griffiths, candidate for the office of Republican Party Ward Committeeman for the 43rd Ward of the City of Chicago, SHALL be printed on the official ballot for the General Primary Election to be held on March 20, 2012.

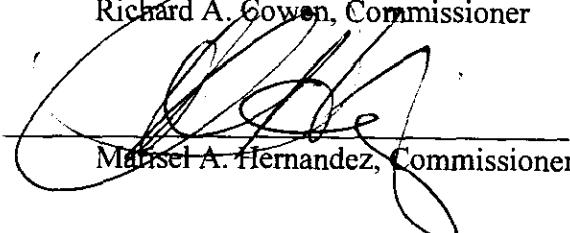
Dated: Chicago, Illinois, on January 20, 2012.



Langdon D. Neal, Chairman



Richard A. Gowen, 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 5 days after service of the decision of the Electoral Board.

BEFORE THE DULY CONSTITUTED ELECTORAL BOARD FOR THE HEARING AND PASSING UPON OF OBJECTIONS TO NOMINATION PAPERS OF CANDIDATES FOR THE MARCH 20, 2012 PRIMARY ELECTION IN THE CITY OF CHICAGO

CHRIS CLEVELAND,)
)
 Objector,)
) No. 12-EB-WC-037
 vs.)
) Hearing Officer William J. Kresse
 KENT GRIFFITHS,)
)
 Candidate.)

Report and Recommended Decision of the Hearing Officer

To the Board of Election Commissioners of the City of Chicago:

Hearing Officer William J. Kresse reports as follows:

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BOARD OF ELECTIONS
COMMISSIONER

1. This matter came before the Hearing Officer, pursuant to notice, for hearing on December 19, 2011. The Candidate was present, *pro se*, and the Objector was present by counsel. No issue was raised as to sufficiency or timeliness of notice of the objection or of the hearing. Both parties filed written appearances.

2. Without objection, the Candidate's nomination papers for the office of Republican Party Committeeman of the 43rd Ward of the City of Chicago were admitted into the record as Group Exhibit A; the Objector's Petition and attachments were admitted into the record as Group Exhibit B; and the return of service of process, and a copy of the Call and attachments were admitted into the record as Group Exhibit C.

The Claims of the Objector's Petition

3. The Objector's Petition, filed on or about December 9, 2011 asserted in substance as follows:

- a. That as the Candidate's petition sheets fail to make any statement in its heading regarding the signers' affiliation with the Republican party, the Candidate's nomination papers are in violation of Illinois law, the Candidate's Nomination Papers are invalid, and the Candidate's name should not appear on the March 20, 2012 ballot; and,
- b. That as the Candidate's petition sheets fail to make any statement in the circulator's affidavit regarding the signers' affiliation with the Republican party, the Candidate's nomination papers are in violation of Illinois law, the Candidate's nomination papers are defective, and the Candidate's name should not appear on the March 20, 2012 ballot.

Motion to Strike and Dismiss

4 At the December 19, 2011 status hearing, the Candidate requested leave to file a motion to strike and dismiss the Objector's Petition. The Hearing Officer set a briefing schedule and set a hearing on the motion for December 23, 2011.

Proceedings at the December 23, 2011 Hearing

5. At the December 23, 2011 hearing, the Hearing Officer, having considered the parties' briefs, allowed the parties to orally argue their positions on the Candidate's Motion. The Hearing Officer indicated that he was prepared to sustain the Candidate's Motion, citing the

Illinois Supreme Court case of *Dooley v. McGillicuddy*, 63 Ill.2d 54 (1976). The Objector made a motion requesting that the Hearing Officer withhold any final decision on the Candidate's motion, and requesting leave to file a supplemental brief regarding the applicability of *Dooley v. McGillicuddy* in the instant case. The Objector's motion was sustained, and the Hearing Officer set a briefing schedule and set a hearing on the motion for January 4, 2012.

Proceedings at the January 4, 2012 Hearing

6. At the January 4, 2012 hearing, the Hearing Officer, having considered the parties' briefs, including supplemental briefs, allowed the parties to orally argue their positions on the Candidate's Motion.

Question Presented by the Candidate's Motion to Dismiss the Objector's Petition

7. As submitted to the Board, this Motion presents one question, to wit: Does the failure to state in the heading and in the circulator's affidavit of the Candidate's petition sheets the words "of the Republican party" cause the Candidate's nomination papers to be in such violation of Section 10 ILCS 5/7-10 of the Illinois Election Code that the Candidate's name should not appear on the March 20, 2012 ballot?

8. It should also be noted that certain related issues are not currently before this Board. The question of the legality or constitutionality of who can sign a petition for a candidate for a party committeeman post is not before this Board; that question is not properly at issue here. Nor is the question of whether any of the signers of the Candidate's petition sheets were, in fact, members of a political party other than the Republican Party (e.g., a signer who had previously signed a

petition for a candidate of another party during this election cycle) before this Board; the Objector could have raised such an objection in his petition, but failing to do so, is now barred.

Recommended Findings of Fact With Regards to the Candidate's Motion to Dismiss the Objector's Petition

9. The Hearing Officer recommends that the Electoral Board enter the following findings of fact:

- a. The Candidate's petition sheets failed to include the words "of the Republican party" both in the opening paragraph of the petition sheets and in the circulator's affidavit at the bottom of the petition sheets.
- b. The Candidate's petition sheets stated in the opening paragraph of each such sheet that the candidate was "a candidate of the Republican Party".
- c. The Candidate's petition sheets, specifically, in the "Office" box toward the top of each such sheet, show the following words, in bold, in all capital letters, and in a font larger than the text which follows: **REPUBLICAN
COMMITTEEMAN.**

Recommended Findings and Conclusions on the Candidate's Motion to Dismiss the Objector's Petition

10. In regards to the Candidate's Motion to Dismiss, the Hearing Officer recommends that the Electoral Board enter the following findings and conclusions of law:

- a. That the Objector correctly states that the words "of the Republican party" are not included on the Candidate's petition sheets, both in the opening paragraph of the

petition sheets and in the circulator's affidavit at the bottom of the petition sheets, and that such language is effectively specified in the Illinois Election Code at 10 ILCS 5/7-10.

- b. That the Illinois Election Code, at 10 ILCS 5/7-10, also states that a candidate's nomination papers must be "in substantially the ... form" specified in that section of the statute.
- c. That the only authoritative guidance as to this situation, where this language regarding signers' party affiliation is missing on petition sheets, comes from the Illinois Supreme Court case of *Dooley v. McGillicuddy*, 63 Ill.2d 54 (1976). It should be noted that while *Dooley* may be "stripped bare and left up on blocks by subsequent rulings" it was never completely overruled; a matter that counsel for the Objector concedes. (*Cleveland v. Griffiths*, No. 12-EB-WC-37, Transcript of January 4, 2012 hearing at 11.) It should also be noted that neither party, neither in their briefs nor in their oral arguments, cited any other authority giving guidance as to this fact situation.
- d. That the Illinois Supreme Court in *Dooley* found that a failure of nominating petitions to contain a statement regarding party affiliation of signers did not disqualify the Candidate from appearing on the ballot.
- e. That in light of the guidance given by the Illinois Supreme Court in *Dooley v. McGillicuddy*, the fact that in two places on each of the Candidate's petition sheets reference is made to the Republican party (including in bold, all capital letters and in a larger font in one instance), and that the Objector was free to object to the actual party affiliation of any of the signers of the Candidate's petitions (but chose

not to do so), the Candidate's nomination papers were "in substantially the ... form" specified in Section 10 ILCS 5/7-10 of the Illinois Election Code.

- f. That the Candidate's Motion to Dismiss is sustained, and the relief sought therein should be granted.

Recommended Decision With Regard to the Objector's Petition

11. The Hearing Officer recommends that the Electoral Board enter the following final administrative decision:

That the Candidate's Motion to Dismiss is SUSTAINED, that the Objector's Petition be DISMISSED, and that the name of KENT GRIFFITHS SHALL appear and SHALL be printed on the ballot for election to the office of Republican Party Committeeman for the 43rd Ward of the City of Chicago to be voted for at the Primary Election to be held on March 20, 2012.

Dated: January 14, 2012.

Respectfully submitted,

s/ William J. Kresse

William J. Kresse
Hearing Officer

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COMMISSIONER

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