

On Wednesday, January 2, 2019, at 8:00 p.m., a hearing was held by the City of Rock Island Electoral Board at City Hall, 1528 Third Avenue, in Council Chambers, 3rd Floor. Present were members Chairman Stephen L. Tollenaer, member Eudell Watts III (appointed by Chief Judge Walter Braud to fill the vacancy of Mayor Thoms), and member City Clerk Judith H. Gilbert. Also present were City Attorney Dave Morrison, Objector Virgil J. Mayberry, Respondent-Candidate Randy Hurt, and his attorney Sarah Gorham. Court Reporter Vickie Fickel was also present.

The hearing was called to order at 8:00 p.m. by Chairman Tollenaer. Chairman Tollenaer opened the hearing by reading a statement regarding the purpose of the hearing, the timeliness of the filing of the objection, introduction of members of the Electoral Board and legal advisor Dave Morrison, declaration of a quorum, and the rules and procedure for the hearing.

City Clerk Gilbert stated that agenda items 2, 3, and 4 were covered by Chair Tollenaer's statement.

The written objection filing of candidate Mayberry for the nomination papers filed by candidate Hurt was entered into the record.

Mr. Virgil Mayberry began his statement with asking the City Clerk to verify the paperwork she received from Mr. Hurt. City Attorney Morrison stated the receipt she gave to the candidate acknowledges the same. Mr. Mayberry next read from the disclaimer document that was given to persons who requested election packets from the City Clerk. He showed that the disclaimer was signed by Mr. Hurt and City Clerk, acknowledging Mr. Hurt knew the rules and regulations.

Mr. Mayberry stated that on Mr. Hurt's Statement of Candidacy form, Mr. Hurt should have circled "Nomination" and entered the date of the primary, not the date of the consolidated election. Mr. Mayberry stated on page 1 of 5 of the nominating petitions, one number in the date of the primary was changed and initialed by Mr. Hurt; Mr. Hurt should also have signed and sworn in front of the notary. Mr. Mayberry stated on page 2 of 5, Mr. Hurt changed the date and wrote his initials again; he also stated the name of the circulator is not written on the page. Mr. Mayberry stated on page 3 of 5, the date of the primary was changed and initialed again; Illinois was not filled in for State and Rock Island was not filled in for County; and the name of the circulator was not completed in front of the notary. Mr. Mayberry stated on page 4 of 5, there is the same issue with the date again; and also at the bottom of the page, Illinois is not filled in for the state. Mr. Mayberry also noted that on page 4 of 5, it was not signed in front of a notary. Mr. Mayberry stated on page 5 of 5, the date is omitted and there is no name for the circulator. Mr. Mayberry then referenced the Statement of Economic Interest receipt and stated the office or position Mr. Hurt is running for is left blank. Mr. Mayberry stated that all of the pages mentioned are invalid and not done correctly. He also said any one of these pages is enough for Mr. Hurt not to be a candidate on the ballot. Mr. Mayberry said he would be happy to answer any questions from the board.

Mr. Morrison said he does not recommend the board ask questions; he added it is Mr. Mayberry's opportunity to give whatever information he would like the board to have or to call any witnesses.

Mr. Mayberry would like the City Clerk to be a witness and attest the information given to Mr. Hurt. Mr. Morrison stated the City Clerk acknowledges that Mr. Hurt filed those nomination papers with her. Mr. Mayberry stated Mr. Hurt should not be on the ballot and hopes he explains why he didn't follow the rules.

Mr. Morrison asked Mr. Mayberry about his written objection regarding the use of "Dr." which Mr. Mayberry did not address. City Clerk Gilbert read from the second page of Mr. Mayberry's objections the specific objection to Mr. Hurt's use of "Dr." on the five nominating petitions rather than just "Randy Hurt." Mr. Morrison asked Mr. Mayberry if the Electoral Board should consider the written statement in its entirety and not just what he addressed in his statement. Mr. Mayberry responded yes, that is correct.

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Attorney Sarah Gorham representing Mr. Hurt presented her rebuttal. She stated the general purpose of election law is to obtain a fair and honest election and to obtain correct expression of the intent of the voters. She stated the courts should not under the appearance of enforcing the laws, defeat the objectives of the law. She added case law says substantial compliance is acceptable when evaluating technical violations. She stated the issues and objections are merely technical violations. She added that is the case with mandatory provisions, not just directory provisions. Ms. Gorham stated that with regard to Mr. Hurt's Statement of Candidacy form, he entered the date of the consolidated election, not the primary date. She reviewed the statute and the consolidated election date is arguably the correct date to use. She reviewed the statute for the Electoral Board for what information is required versus the form version and the information required on the form. She said it is not required to use the form. She stated it made more sense to use the election date and not the nomination date. She stated the form is in substantial compliance with the election code.

Ms. Gorham next covered the objections of Mr. Hurt changing the date on his petitions from 2018 to 2019. She stated it is a minor technical error and should not lead to Mr. Hurt being kept off of the ballot. Ms. Gorham stated with regard to the objections regarding the notarization issue, there is nothing under the name of the circulator. Mr. Hurt signed his name as the circulator and the notary signed attesting to that with her seal and the date. Ms. Gorham said the name is clear because Mr. Hurt signed as the circulator. Ms. Gorham said the name of the circulator is duplicative and a minor technicality. She went on to state that case law affirms that substantial compliance is adequate and a minor deviation does not invalidate the notarization or underlying oath (Ken v. Smith). Ms. Gorham stated the objection regarding the use of "Dr." is a minor technicality. Ms. Gorham stated with regard to the objection regarding the Statement of Economic Interest receipt, there is no requirement that the receipt must identify the office; she found case law that supports that. Ms. Gorham concluded by stating that if any of the objections are determined to be valid, the petition of Mr. Hurt are still in substantial compliance and Mr. Hurt should be allowed to be on the ballot.

Mr. Mayberry responded that there are fourteen (14) different errors and they are not minor technicalities; he added that everything should be done correctly when completing nomination papers. He said the date of the election is April 2; however, when Mr. Hurt signed his nomination papers, he had no idea if there would be a primary or just the consolidated election; that is why the date is important. Mr. Mayberry stated that you must be a valid candidate for the primary first. Mr. Mayberry added that Mr. Hurt should have had his attorney review his paperwork before filing. Mr. Mayberry concluded that Mr. Hurt's nomination is invalid and he should not be on the ballot.

When asked by Chair Tollenaer if he had anything further to say, Mr. Hurt responded no.

MOTION by Tollenaer to go into closed session for record examination and deliberation; Watts seconded. The roll call vote was as follows: Tollenaer: Aye; Watts: Aye; and Gilbert: Aye. Motion passed on a 3-0 roll call vote. Time: 8:24 p.m.

Electoral Board members began their closed session with the deliberation of the eight objections to candidate Hurt's nomination papers at 8:27 p.m. Each objection was discussed in turn with City Attorney Morrison providing his legal recommendation relative to statewide standards, state statute, and case law.

MOTION by Tollenaer to go out of closed session at 8:58 p.m.; Watts seconded. VOTE: Motion passed on a 3-0 voice vote.

MOTION by Tollenaer to return to open session at 8:59 p.m.; Watts seconded. VOTE: Motion passed on a 3-0 voice vote.

MOTION by Tollenaer to OVERRULE the Objection #1 of Objector Mayberry to the Nomination Papers of Candidate Hurt; Gilbert seconded. VOTE: Motion passed on a 3-0 voice vote.

MOTION by Tollenaer to OVERRULE the Objection #2 of Objector Mayberry to the Nomination Papers of Candidate Hurt; Watts seconded. VOTE: Motion passed on a 3-0 voice vote.

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MOTION by Tollenaer to OVERRULE the Objection #3 of Objector Mayberry to the Nomination Papers of Candidate Hurt; Watts seconded. VOTE: Motion passed on a 3-0 voice vote.

MOTION by Tollenaer to OVERRULE the Objection #4 of Objector Mayberry to the Nomination Papers of Candidate Hurt; Watts seconded. VOTE: Motion passed on a 3-0 voice vote.

MOTION by Tollenaer to OVERRULE the Objection #5 of Objector Mayberry to the Nomination Papers of Candidate Hurt; Watts seconded. VOTE: Motion passed on a 3-0 voice vote.

MOTION by Tollenaer to OVERRULE the Objection #6 of Objector Mayberry to the Nomination Papers of Candidate Hurt; Watts seconded. VOTE: Motion passed on a 3-0 voice vote.

MOTION by Tollenaer to OVERRULE the Objection #7 of Objector Mayberry to the Nomination Papers of Candidate Hurt; Watts seconded. VOTE: Motion passed on a 3-0 voice vote.

MOTION by Tollenaer to SUSTAIN the Objection #8 of Objector Mayberry to the Nomination Papers of Candidate Hurt; Watts seconded. VOTE: Motion passed on a 3-0 voice vote.

MOTION by Tollenaer to rule Nomination Papers of Candidate Hurt are INVALID; Watts seconded. VOTE: Motion passed on a 3-0 voice vote.

MOTION by Tollenaer to recess to prepare the written decision to Monday, January 7, 2019 at 5:30 p.m. in Council Chambers at City Hall; Watts seconded. VOTE: Motion passed on a 3-0 voice vote.

The Electoral Board hearing was recessed at 9:03 p.m.

The Electoral Board hearing was reconvened on Monday, January 7, 2019 at 5:30 p.m. in Council Chambers at City Hall. MOTION by Tollenaer to reconvene; Watts seconded. VOTE: Motion passed on a 3-0 voice vote.

Present were Chair Stephen Tollenaer, member Eudell Watts III, and member Judith Gilbert, City Clerk. Also present were City Attorney Dave Morrison, Objector Virgil J. Mayberry and Candidate-Respondent Randy Hurt. Court Reporter Vickie Fickel was also present.

MOTION by Tollenaer that the Electoral Board for the City of Rock Island to adopt the written decision to SUSTAIN the objections of objector Mayberry to the nomination papers of candidate Hurt; Watts seconded. VOTE: Motion passed on a 3-0 voice vote.

The nomination papers of Randy Hurt were ruled INVALID. Members of the Electoral Board signed the written decision.

Chair Tollenaer offered comments regarding the written decision that it was settled law.

MOTION by Tollenaer to adjourn; Watts seconded. VOTE: Motion passed on a 3-0 voice vote.

The hearing was adjourned at 5:33 p.m.

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