

**CITY OF ROCK ISLAND ELECTORAL BOARD
MINUTES**

**HEARING/ELECTION CHALLENGE
DECEMBER 22, 2020**

On Tuesday, December 22, 2020, at 1:30 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 Mayor Mike Thoms, member Alderman James Spurgetis, and member Interim City Clerk Linda Mohr. Also present were City Attorney Dave Morrison, Objector Judith Higgins Gilbert, and Respondent-Candidate Jeffrey D. Westerfield. Attorneys for both the Objector and Respondent were present. Court Reporter Vickie Fickel was also present.

The hearing was called to order at 1:30 p.m. by Chairman Thoms. Chairman Thoms 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.

Member/Clerk Mohr called the roll. Present: Thoms, Spurgetis, and Mohr.

MOTION by Spurgetis that the Electoral Board adopt the rules of procedure of a relaxed hearing; Mohr seconded. VOTE: Motion passed on a 3-0 voice vote.

There was discussion of the fact that the Objector Gilbert had made an offer of proof at the prior hearing when counsel for the Respondent-Candidate Westerfield's counsel, Stengel, was not present.

Stengel addressed Respondent-Candidate Westerfield's motion to bar any further participation of Objector's counsel, Mr. Meloy, for reason that he is not licensed to practice in Illinois, and he is therefore ineligible to participate in this tribunal, which is subject to judicial review. Stengel stated he was obligated by the Illinois Rules of Professional Conduct to raise the issue.

Mr. Meloy requested time to respond to the motion to bar. He objected to the motion to bar on behalf of the objector Gilbert. He argued under Illinois rule 707 Ms. Gilbert can be represented by any representative, including a non-attorney, and such representation does not constitute the practice of law in the state of Illinois. Further he objected to lack of notice in that he was only served with the motion to bar by hand delivery at the hearing, while counsel for the Respondent/Candidate. Meloy argued Stengel failed to timely object to Stengel's representation at a prior hearing, despite that Meloy stated at that hearing that he was a licensed attorney in Iowa and not Illinois. Meloy argued the motion to bar is prejudicial to Gilbert.

Westerfield noted at the prior hearing that no objection was made to Meloy's representation, because it was not known that evidence would be re-opened.

Morrison noted that Rule 707(a) requires an out-of-state attorney to associate with an Illinois-licensed attorney. Morrison opined that Rule 707(c)(3) was met by this proceeding, and that therefore a non-Illinois-licensed attorney would need permission to represent.

Stengel noted he would not move to strike the evidence from the prior hearing. Meloy responded that the Rule requires permission if the tribunal requires the representative to be an attorney, and that this Election Board does not require representatives to be an attorney. Meloy argued the motion to bar must apply retroactively, and lack of timeliness is a fatal flaw of the motion.

Thoms noted a change in the agenda at the last meeting resulted in Mr. Stengel not being present, and it would not be fair to prejudice Westerfield for not making a motion at that time, when Gilbert was allowed to introduce new evidence, which had not been on the agenda.

Mohr noted Gilbert was allowed to re-introduce the same information as her attorney, therefore, the Board could bar Meloy retroactively and still consider the exhibits introduced by Gilbert prior to being represented.

Mohr further noted Meloy introduced himself as an attorney representing Ms. Gilbert, rather than as a citizen representative. Meloy argued Gilbert had the right to make a closing statement at the last hearing, and the agenda did acknowledge that, and the closing statement was mandatory.

MOTION by Thoms to bar Mr. Meloy from further representing Gilbert, but to allow all prior argument and evidence made on behalf of the Objector; Mohr seconded.

Mr. Spurgetis read from the hearing procedure rules from the electoral board manual, page 19 paragraph C, and requested guidance from the City Attorney in terms of the relaxed procedure paragraph or information in terms of whether we sure should not allow Mr. Meloy to continue.

Morrison noted from the manual that a party without an attorney may have the assistance of others but only the candidate or his attorney may speak. Morrison opined the Board is not in a position to modify the rules of the practice of law set forth by the Supreme Court of Illinois. Morrison agreed with the point made by Mohr that the evidence presented could still be considered because the Objector made the same testimony as her attorney.

VOTE: Motion passed on a 3-0 roll call vote.

Stengel addressed that Westerfield's application to vote by mail, which included a certification of residency, was an inadvertent mistake, and is not dispositive of disqualification of candidacy. Stengel said two cases could be cited from the appellate courts of Illinois, which found that one cannot graft onto another statute for the purpose of disqualifying candidacy. Even if an intent was found, it would not imply a disqualification of candidacy. Meloy noted the cases were not directly related to the present situation because they involved statements of economic interest, because the statement of economic requirement need not be truthful, but the issue of residency should be distinguished.

Thoms noted Gilbert would have a chance to speak. Gilbert noted if she was denied representation, she should be allowed to review the cases.

Stengel said if there were something wrongfully done in the process by Mr. Westerfield, it would not serve to allow the Electoral Board to create an additional penalty in response. Stengel addressed the issue of residency, referring to an affidavit of Mr. Charlotte, a neighbor of Westerfield, who stated he sees Westerfield coming and going on a daily basis and is acquainted. Westerfield has never rented the property, and it did not flow that because he did not file for a homestead exemption, that he was not a resident at that location. Stengel noted the objector introduced no firsthand testimony that Westerfield resided elsewhere. Stengel noted the timing of the Objector's request for a certified copy as the date the Clerk finalized Westerfield's change of voter registration. Stengel noted by statute, upon application, the change of registration is immediate, and thus there is no basis to disqualify the candidacy of Westerfield.

Gilbert argued Westerfield's voter registration registry was not a mistake, but a repeated pattern. As of March 12, 2019 Westerfield registered to vote residing at 8501 Ridgewood, and updated it at that address on December 30, 2019. His vote by mail application of August 1, 2020 also included an oath under penalty of perjury that he lived at that address, and this was repeated on November 3, 2020, and therefore this was not inadvertent. If Westerfield were convicted of perjury, he would be ineligible for office. Gilbert argued that per the manual, voter documents are official and pieces of mail are not. Gilbert argued Westerfield's online voter registration application of December 2020 at the 1414 32nd Avenue address was delayed because the County Clerk could not identify that address, and reached out to him and made other inquiries. Gilbert urged the Board to follow the manual of guidelines as to mail not being determinative and that voter documents are determinative. Gilbert claimed she followed up with the assessor's office, and it was not until December 4, 2020 that Westerfield changed the address to owner-occupied.

Stengel made a closing statement on behalf of the Respondent-Candidate. Gilbert made a closing statement on behalf of the Objector.

Morrison spoke to the applicable law and facts on residency. He said the cases cited by Stengel supports that if there is another wrong, it is irrelevant to the issue of residency. The main focus is statute 65 ILCS 3.1-10-5 regarding the qualifications of elective office. Morrison discussed cases including Nealy, involving a candidate who had lived with his parents before seeking election in a different ward, where the candidate intentionally gave an inaccurate address to protect his privacy as a criminal defense attorney. The board in that case found the evidence important that he had intentionally given a false address. In another case where there was no evidence of intentional misrepresentation, factors considered were a statement that she voted where she was registered, having thought she had filed a change of address. She provided affidavits and utility bills to support her contention of residence. Morrison opined what matters are the facts that support residency and those that support non-residency. The Board must state what factors are considered in making a determination.

Deliberations were opened.

MOTION by Spurgetis that the Electoral Board accept all evidence offered at the hearings on December 16, 2020 and December 20, 2020; Thoms seconded. VOTE: Motion passed on a 3-0 roll call vote.

MOTION by Thoms to deny Objection Number 1; Mohr seconded.

Thoms addressed that Westerfield attempted and intended to change his voter registration, and did not attempt to mislead the public, and therefore the objection should be denied.

Mohr raised that there was no reason for Westerfield to be under the understanding his voter registration was rejected or ineffective. She further noted that the board decision from Chicago that was cited is not authoritative upon this tribunal as it was a decision by an electoral board and not a court of law.

Thoms noted that Covid-19 has impacted government offices and may have impacted this document.

Spurgetis opined that the objection should be sustained because the arguments and evidences submitted by the Objector were compelling.

VOTE: Motion passed on a 2-1 on roll call vote, with Thoms and Mohr voting yes and Spurgetis voting no.

MOTION by Mohr to deny Objection Number 2; Thoms seconded.

Spurgetis said that the Objection should be sustained. Thoms opined that the Candidate and the Circulator made no error, but the notary did, and intent was clear that the Candidate did not sign the page, but rather his son. The Candidate was not required to be present, and should not be prejudiced.

Mohr attributed the error to the notary, and not the Candidate, Westerfield.

VOTE: Motion passed on a 2-1 on roll call vote, with Thoms and Mohr voting yes and Spurgetis voting no.

MOTION by Mohr to deny Objection Number 3; Thoms seconded.

Mohr found that the paperwork is in order for the reasons applicable to the prior two motions. Thoms agreed, having previously found that the Candidate had appropriate residency.

Spurgetis inquired of Morrison as to whether Objection three was based on Objection 1. It was clarified that Objection 3 is to residency while Objection 1 is as to voter registration.

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Gilbert clarified that Objection 3 does relate back to Objection 1.

VOTE: Motion passed on a 2-1 on roll call vote, with Thoms and Mohr voting yes and Spurgetis voting no.

MOTION by Mohr to deny Objection Number 4; Spurgetis seconded. VOTE: Motion passed on a 3-0 on roll call vote.

MOTION by Thoms to deny Objection Number 5; Mohr seconded.

VOTE: Motion passed on a 3-0 on roll call vote.

MOTION by Mohr to sustain Objection Numbers 6-12; Spurgetis seconded. VOTE: Motion passed on a 3-0 on roll call vote.

MOTION by Thoms to deny Objection Number 13; Mohr seconded.

Thoms noted the evidence in the form of testimony, affidavits, and documents which establish residency.

Spurgetis found it important that voter registration is determinative evidence while bills and statements are not. Spurgetis opined that the preponderance of the evidence does not prove that he was a resident for a year at the address on his statement of candidacy.

Mohr finds that the Candidate and a witness swore under oath, and the affidavit of his neighbor that he lived there two years is sufficient evidence of residency.

VOTE: Motion passed on a 2-1 on roll call vote, with Thoms and Mohr voting yes and Spurgetis voting no.

MOTION by Spurgetis to deny Objection Number 14; Thoms seconded.

Mohr noted that the former sheets had a blank for primary election date, while the current sheets just said date of election, which seemed misleading, and if it is an error on the part of the Candidate, it was not meant to defraud or mislead any of the candidates. She agreed with the motion to deny.

Thoms noted that a candidate may not be aware at the time of filing if there will or will not be a primary, even when it says consolidated primary.

VOTE: Motion passed on a 3-0 on roll call vote.

MOTION by Mohr to find that the candidate's nomination petitions are valid; Thoms seconded.

Spurgetis commented this is one of those decisions he wishes he never had to make, and based on his votes on the other objections, he felt the nomination papers were not valid.

Thoms said the most important concepts were intention and the potential for misleading. Thoms opined that Westerfield had no intention to mislead. Thoms felt the electorate should have the choice to select this candidate.

Mohr commended Gilbert for her hard work and knowledgeability. Mohr opined there was no intent to mislead or defraud the constituents and that the citizens of the 3rd Ward should hear from both candidates.

VOTE: Motion passed on a 2-1 on roll call vote, with Thoms and Mohr voting yes and Spurgetis voting no.

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MOTION by Spurgetis to place Jeffrey D. Westerfield on the ballot as a candidate; Mohr seconded.

VOTE: Motion passed on a 3-0 on roll call vote.

Morrison notes that a proposed written ruling was circulated at the December 16, 2020 meeting. Morrison circulated a revised proposed written ruling.

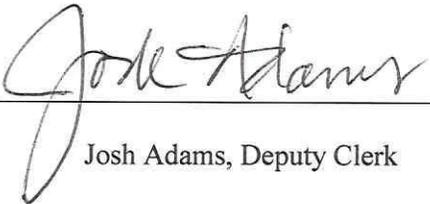
MOTION by Mohr to adopt the findings and adopt and issue written ruling; Spurgetis seconded.

VOTE: Motion passed on a 3-0 on roll call vote.

The meeting was opened for public comment. No comments.

MOTION by Spurgetis to adjourn; Mohr seconded. VOTE: Motion passed on a 3-0 on roll call vote.

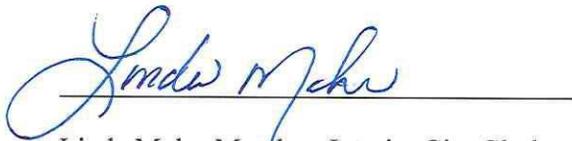
The meeting adjourned at 3:34 p.m.



Josh Adams, Deputy Clerk



Mayor Mike Thoms, Chairman



Linda Mohr, Member, Interim City Clerk



James Spurgetis, Member, Alderman