BCCON-ALD

**BOARD OF ELECTION COMMISSIONERS OF THE CITY OF CHICAGO
AS THE DULY CONSTITUTED ELECTORAL BOARD
FOR THE HEARING AND PASSING UPON OBJECTIONS
TO NOMINATION PAPERS OF CANDIDATES
FOR THE FEBRUARY 23, 1999 MUNICIPAL GENERAL ELECTION
FOR MAYOR, CLERK, TREASURER AND ALDERMAN
IN THE CITY OF CHICAGO**

Objections of: SUSANA A. MENDOZA	)	
	)	
To the Nomination	)	
Papers of: ASUNCION "MARIA" TORRES	)	No.: 99-EB-ALD-069
	)	
Candidate for the office of	)	
Alderman of the 12th Ward,	)	
City of Chicago		

FINDINGS AND DECISION

The duly constituted Electoral Board, consisting of Board of Election Commissioners of the City of Chicago Commissioners Langdon D. Neal, Richard A. Cowen, and Theresa M. Petrone, 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 ("Objection") of SUSANA A. MENDOZA to the nomination papers ("Nomination Papers") of ASUNCION "MARIA" TORRES, candidate for the office of Alderman of the 12th Ward for the City of Chicago ("Candidate"), having convened on December 28, 1998, at 9:00 a.m., in the City Council Chambers, City Hall, 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(s) and the Candidate, by registered or certified mail and by Sheriff's service, as provided by statute.

4. A public hearing was held on these Objections commencing on December 28, 1998 and was continued from time to time.

5. The following persons, among others, were present at such hearing: the members of the Electoral Board, the Objector, SUSANA A. MENDOZA, by counsel; and the Candidate ASUNCION "MARIA" TORRES, by counsel.

6. The Electoral Board assigned this matter to Hearing Examiner TERENCE FLYNN for further hearings and proceedings.

7. The Electoral Board ordered that an examination of the registration records be conducted by its 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 Electoral Board 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 her duly authorized representative(s) were present during the examination of the registration records at all times.

10. The Objector and/or her duly authorized representatives were present during the examination of the registration records at all times.

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 Board's file in this case and is available upon request of a party.

12. The Board has considered all evidence and arguments tendered by the parties.

13. The Board finds that:

    a. The minimum number of valid signatures required by law for placement on the ballot for the office in question is 240;

    b. The number of purportedly valid signatures appearing on the nominating petition filed by the Candidate total 1050;

    c. The number of signatures deemed invalid because of objections sustained total 384;

    d. The remaining number of signatures deemed valid total 666;

14. The Board finds that the number of valid signatures appearing on the Candidate's nominating petition following completion of the records examination exceeds the minimum number of valid signatures required by law to be placed upon the ballot as a candidate for election to the office of Alderman of the 12th Ward of the City of Chicago.

15. The Board finds, therefore, that paragraphs 3-9 of the Objector's Petition are sustained in part and overruled in part as more fully indicated in the results of the records examination.

16. The Objectors alleged that the Candidate's Nomination Papers list the Candidate's name as Asuncion "Maria" Torres. The Objector alleges that the Candidate is not a registered voter under the name Asuncion "Maria" Torres.

17. The Electoral Board finds that the Candidate's Nomination Papers list the Candidate's names as Asuncion "Maria" Torres. The Electoral Board finds that the Candidate provided evidence that she is commonly known by many people in the community as "Maria," that "Maria" is her birth middle name, that she has received awards or certificates in the name "Maria," and that she was registered to vote under the name "Asuncion M. Torres." The Electoral Board finds that the Objector offered no evidence that the Candidate was using the name "Maria" in an attempt to usurp the name of someone else known in the community, or in an attempt to mislead or confuse. The Candidate's name is her ballot name, albeit with quotation marks. The Electoral Board overrules this objection.

18. The Objector alleges that the some of the Candidate's nominating petitions were circulated by and contain signatures of voters registered to vote in federal elections only and therefore are invalid.

19. The Electoral Board finds that all voters registered under the National Voting Rights Act were to be treated in the same manner as other registered voters in Illinois, fully able to participate in state and local elections as well as federal elections. *Orr v. Edgar,* 283 Ill.App.3d 1088, 670 N.E.2d 1243 (First Dist. 1996) The Electoral Board finds that *Orr v. Edgar*, which abolished the two-tier registration system, therefore permitting "Federal only" registrants to vote in state and municipal elections, should also apply to the other incidents and conduct of the electoral process, including the circulating and signing of municipal candidates' petitions. First, the constitutional bases and rationales cited in both the trial court and appellate court opinions apply equally to other incidents and conduct of the electoral process, such as circulation and signing of petitions. No rational distinction separates voting from other functions of the electoral process.

20. The Objector alleges that petition sheets circulated by Lorena Vera, the Candidate's sister, are invalid as the circulator is not a registered voter within the political subdivision. The Objector also alleges that pursuant to the familial relationship between circulator Lorena Vera and the Candidate, and the involvement of the Candidate in all aspects of the circulation of her nominating petitions, the petition sheets of the Candidate should also be found invalid.

21. The Electoral Board finds that circulator Lorena Vera invoked the 5th Amendment when called to testify about the circulation of the nominating petitions. The Electoral Board

finds, per stipulation of the Candidate, that all of the petition sheets circulated by Lorena Vera are invalid. The Electoral Board finds that the appropriate and authorized remedy is to invalidate the circulator's petition sheets, not the entire set of Nomination Papers.

22. The Objector alleges that circulator Arnulfo Garcia did not in fact circulate the nominating petitions, as required by law.

23. Section 10-4 of the Election Code (10 ILCS 5/10-4) states in part that each petition sheet shall contain a statement from the circulator that the signatures on that sheet of the petition were signed in his presence.

24. The Electoral Board finds that circulator Arnulfo Garcia testified that he was not the only person who circulated the petition sheets bearing his signature. The Electoral Board finds that the petition sheets circulated by Arnulfo Garcia are invalid. The Electoral Board finds that improprieties in connection with the petition circulation process warranted invalidation of entire signature sheets rather than just individual signatures; circulator permitted individuals to sign their own names and names of family members who were not present, and someone other than affiant presented petition to signers. *Huskey v. Municipal Officers Electoral Board for the Village of Oak Park,* 156 Ill.App.3d 201, 509 N.E.2d 555 (First Dist. 1987)

25. The Objector alleges that various sheets of the Candidate's nominating petitions contain circulator affidavits that have a name crossed out in the jurat and the name of the circulator written in above the crossed out name, evidencing a pattern of fraud.

26. The Electoral Board finds that various sheets of the Candidate's nominating petitions contain circulator affidavits that had the name of the notary in the jurat which was subsequently crossed out with the name of the circulator written in above the crossed out notary's name. The Electoral Board finds that inserting the name of the notary rather than the name of the circulator in the jurat does not render the petition invalid. The jurat is not an affidavit but is evidence of the fact that the affidavit was properly sworn to by the affiant. Thus where the affiant is otherwise identified, courts tend to overlook clerical errors such as naming the wrong person in the jurat or omitting the affiant's name from the jurat entirely. *Cintuc Inc. v. Kozubowski,* 596 N.E.2d 101 (First Dist. 1992); Accord, *Riani v. Education Officers Electoral Board for School Dist. No. 87,* 93 CO 456, Cir.Ct.Cook Co., October 5, 1993 (Hon. J. Curtis Heaston.).

27. The Electoral Board finds that the initial error involving the jurat in the circulator's affidavit would not have invalidated the Candidate's nominating petitions and therefore a correction or alteration to the jurat to correct the harmless error does not invalidate the nominating petitions.

28. The Electoral Board finds that the petition sheets of circulators Arnulfo Garcia and Lorena Vera are invalid. The Electoral Board finds the Objector and Candidate stipulated that even with the invalidation of the petition sheets circulated by Garcia and Vera, the

Candidate still has valid signatures well in excess of minimum required 240 valid signatures to appear on the ballot.

29. For the reasons stated above, the Board finds that the Nomination Papers of ASUNCION "MARIA" TORRES are valid.

IT IS THEREFORE ORDERED that the Objections of SUSANA A. MENDOZA to the Nomination Papers of ASUNCION "MARIA" TORRES, candidate for election to the office of Alderman of the 12th Ward of the City of Chicago, are hereby OVERRULED and said Nomination Papers are hereby declared VALID and the name of ASUNCION "MARIA" TORRES, candidate for election to the office of Alderman of the 12th Ward of the City of Chicago, SHALL be printed on the official ballot for the Municipal General Election for Mayor, City Clerk, City Treasurer and Alderman to be held on February 23, 1999.

Dated: Chicago, Illinois, this Twenty-Ninth day of January, 1999.

Langdon D. Neal, Chairman

Richard A. Cowen, Commissioner

Theresa M. Petrone, 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.