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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 MARCH 21, 2000 GENERAL PRIMARY ELECTION FOR STATE SENATOR, REPRESENTATIVE IN THE GENERAL ASSEMBLY AND WARD COMMITTEEMAN IN THE CITY OF CHICAGO

Objections of: CLARA SIMMS-JOHNSON	)
	)
To the Nomination	)
Papers of: WILLIAM ("MR. D.") DELAY	)
	) No. 00-EB-WC-041
Candidate for the office of	)
Ward Committeeman for the 5th Ward of the City of	)
Chicago, Republican Party	)

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 ("Objections") of CLARA SIMMS-JOHNSON ("Objector") to the nomination papers ("Nomination Papers") of WILLIAM ("MR. D.") DELAY, candidate for election to the office of Ward Committeeman for the 5th Ward of the City of Chicago, Republican Party ("Candidate"), having convened on January 10, 2000, at 9:00 a.m., 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 January 10, 2000 and was continued from time to time.

5. The Electoral Board assigned this matter to Hearing Examiner GREGORY GINEX 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 Examiner on the date and at the time designated in the Call. The following persons, among others, were present at such hearing: the Objector, CLARA SIMMS-JOHNSON, by counsel; and the Candidate, WILLIAM ("MR. D.") DELAY, by counsel.

7. The Hearing Examiner ordered that an examination of the 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 Examiner directed all parties to appear and be present, either personally and/or by their authorized representatives during the record examination.

9. The Candidate or his duly authorized representative(s) were present during the examination of the registration records.

10. The Objector or her duly authorized representative(s) were 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 is available for inspection upon request of a party.

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

13. The Electoral Board finds that:

    a. The minimum number of valid signatures required by law for placement on the ballot for the office in question is 13;

    b. The number of purportedly valid signatures appearing on the nominating petition filed by the Candidate total 50;

    c. The number of signatures deemed invalid because of objections sustained total 10;

d. The remaining number of signatures deemed valid total 40.

14. The Electoral 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 placed upon the official ballot as a candidate for election to the office of Ward Committeeman for the 5th Ward of the City of Chicago, Republican Party.

15. The Electoral Board finds, therefore, that paragraph(s) 4-7 of the Objectors(s)' Petition are sustained in part and overruled in part as more fully indicated in the results of the records examination.

16. The Objector alleges in paragraph 2 that the Candidate's nomination petitions are invalid because the Candidate is a convicted felon. The Objector alleges that the Candidate was convicted in 1985 of solicitation of murder and unlawful possession of a firearm, both felonies. The Objector further alleges that Section 29-15 of the Election Code prohibits the Candidate from holding the office of Ward Committeeman for the 5th Ward, Republican Party.

17. The Electoral Board finds that the Candidate was convicted in 1985 for the offenses of solicitation to commit murder and unlawful possession of a firearm, both felonies, for which he was sentenced to eleven years of incarceration.

18. The Electoral Board further finds that between 1985 and 1988, the Candidate was subsequently convicted of theft (twice), insurance fraud, mail fraud (twice), possession of stolen motor vehicle, unlawful use of a weapon and solicitation of murder. The Candidate has served and completed his sentence for all of these crimes.

19. The Electoral Board further finds that on February 5, 1999, the Candidate entered into a plea agreement with the United States Attorney wherein the Candidate admitted he was guilty of one count of mail fraud in violation of Title 18, United State Code, Section 1341. Such offense carries with it a maximum penalty of five years imprisonment and a maximum fine of the greater of $250,000, twice the gross gain to the defendant, or twice the gross loss to the victim, whichever is greatest, and any restitution. The offense also carries a term of supervised release of at least two years but not more than three years, which the court may specify. The Candidate is due to be sentenced for this crime on March 3, 2000, which is before the March 21, 2000 election for Ward Committeeman for the 5th Ward, Republican Party.

20. Section 29-15 of the Election Code (10 ILCS 5/29-15) states that, "Any person convicted of an infamous crime as such term is defined in Section 124-1 of the Code of Criminal Procedure of 1963, as amended, shall thereafter be prohibited from holding any office of honor, trust, or profit, unless such person is again

restored to such rights by the terms of a pardon for the offense, or otherwise according to law."

21. The Electoral Board finds that the position of ward committeeman is neither a public office nor an "office of honor, trust, or profit" within the meaning and scope of Section 29-15. Therefore, Section 29-15 does not prohibit the Candidate from holding the position of Ward Committeeman for the 5th Ward, Republican Party, nor does it prohibit the Candidate from being a candidate for said office.

22. The Electoral Board further finds that even if Section 29-15 of the Election Code did apply to the office of ward committeeman, the case of *Coles v. Ryan*, 91 Ill.App.3d 382, 414 N.E.2d 932 (2nd Dist. 1980), is controlling and Section 29-15 cannot constitutionally be applied to bar persons from holding or seeking to hold legislatively created offices, such as ward committeeman.

23. The Electoral Board finds, therefore, that Section 29-15 of the Election Code cannot be applied to bar the Candidate from being a candidate for the office of Ward Committeeman for the 5th Ward, Republican Party, due to his prior convictions, for which he has completed his sentences.

24. The Electoral Board finds, however, that the Candidate is not legally qualified to hold the office, or be a candidate for the office, of Ward Committeeman for the 5th Ward, Republican Party, because he has entered into a plea agreement wherein he has admitted committing a felony and an infamous crime, for which he is scheduled to be sentenced just 18 days before the date of the March 21, 2000 election.

25. Section 25-2 of the Election Code (10 ILCS 5/25-2) provides in part that "Every elective office shall become vacant on the happening of any of the following events before the expiration of the term of such office: *** (5) His or her conviction of an infamous crime, or of any offense involving a violation of official oath." Section 25-2 further provides in part that "An admission of guilt of a criminal offense that would, upon conviction, disqualify the holder of an elective office from holding that office, in the form of a written agreement with State or federal prosecutors to plead guilty to a felony, bribery, perjury, or other infamous crime under State or federal law, shall constitute a resignation from that office, effective at the time the plea agreement is made."

26. The Electoral Board finds that the office of ward committeeman is an "elective office" within the meaning and scope of Section 25-2 and that its terms apply to the office of ward committeeman.

27. The Electoral Board further finds that the Candidate's February 5, 1999 plea agreement with the U.S. Attorney's office for the crime of mail fraud would, under the terms of Section 25-2, constitute a resignation from the office of Ward Committeeman for the 5th Ward, Republican Party, if the Candidate were to be

elected to such office. Furthermore, if the Candidate were to be elected to such office, upon the entry of his guilty plea, the office of Ward Committeeman for the 5th Ward, Republican Party, would automatically be vacated under the terms of Section 25-2.

28. Accordingly, the Electoral Board finds that because of his February 5, 1999 plea agreement with the United States Attorney, the Candidate is not legally qualified to hold the office of Ward Committeeman for the 5th Ward, Republican Party, and that his Statement of Candidacy declaring that he is legally qualified to hold said office is false.

29. Furthermore, the Electoral Board finds that it would be a useless act to allow the Candidate's name to be certified and printed on the ballot for the March 21, 2000 General Primary Election because if elected, the Candidate could not legally serve in office and the election would have been for naught.

29. The Electoral Board finds that for the reasons stated above, the Electoral Board sustains paragraph 2 of the Objections and further finds that the Nomination Papers of WILLIAM ("MR. D.") DELAY are not valid.

IT IS THEREFORE ORDERED that the Objections of CLARA SIMMS-JOHNSON to the Nomination Papers of WILLIAM ("MR. D.") DELAY, candidate for election to the office of Ward Committeeman for the 5th Ward of the City of Chicago, Republican Party, are hereby SUSTAINED to the extent and for the reasons as stated above and said Nomination Papers are hereby declared INVALID and the name of WILLIAM ("MR. D.") DELAY, candidate for election to the office of Ward Committeeman for the 5th Ward of the City of Chicago, Republican Party, SHALL NOT be printed on the official ballot for the General Primary to be held on March 21, 2000.

Dated: Chicago, Illinois, this 1st day of February, 2000.

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.

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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 MARCH 21, 2000 GENERAL PRIMARY ELECTION FOR STATE SENATOR, REPRESENTATIVE IN THE GENERAL ASSEMBLY AND WARD COMMITTEEMAN IN THE CITY OF CHICAGO

Objections of: CLARA SIMMS-JOHNSON	)
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	) No. 00-EB-WC-041
Candidate for the office of	)
Ward Committeeman for the 5th Ward of the City of	)
Chicago, Republican Party	)

FINDINGS AND DECISION ON REMAND

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, having re-convened in emergency session on March 17, 2000 pursuant to the March 16, 2000 opinion and order of the Illinois Appellate Court for the First Judicial District in the case of *William ("Mr. D.") Delay v. Board of Election Commissioners of the City of Chicago, et al.*, Number 1-00-0745, setting aside the Electoral Board's February 1, 2000 decision in this cause and remanding this cause to the Electoral Board, and noticing of this emergency meeting having been given to the Objector, Clara Simms-Johnson, and to the Candidate, William ("Mr. D.") Delay, and the Objector and Candidate being present and the Electoral Board having reviewed the opinion of the Appellate Court and having heard and considered the record and the arguments of the parties, finds that:

1. The Electoral Board issued a decision in this cause on February 1, 2000, finding that on February 5, 1999, the Candidate entered into a plea agreement with the United States Attorney wherein the Candidate admitted he was guilty of one count of mail fraud in violation of Title 18, United State Code, Section 1341 and that because of this plea agreement, the Candidate was not legally qualified under Section 25-2 of The Election Code (10 ILCS 5/25-2) to hold the office of Ward Committeeman for the 5th Ward, Republican Party, or be a candidate for that office and that his Statement of Candidacy declaring that he was legally qualified to hold said office was false.

2. Based on these findings, the Electoral Board found that paragraph 2 of the Objector's Petition should be sustained and that the Nomination Papers of the Candidate, William ("Mr. D.") Delay, should be declared invalid.

3. On February 1, 2000, the Electoral Board ordered that the Objections to the Candidate's Nomination Papers be sustained to the extent and for the reasons as stated above, that the Candidate's Nomination Papers be declared invalid, and that the name of the Candidate not be printed on the official ballot for the General Primary to be held on March 21, 2000 for the office of Ward Committeeman for the 5th Ward of the City of Chicago, Republican Party.

4. On February 9, 2000, the Candidate filed a petition for judicial review pursuant to Section 10-10.1 of The Election Code.

5. The Electoral Board moved to dismiss the petition for lack of subject matter and the Circuit Court of Cook County granted the motion on February 23, 2000.

6. On March 7, 2000, the Illinois Appellate Court reversed the decision of the Circuit Court. *Delay v. Board of Election Commissioners of the City of Chicago*, No. 1-00-0565.

7. On March 7, 2000, the Circuit Court of Cook County affirmed the February 1, 2000 decision of the Electoral Board.

8. On March 8, 2000, the Candidate appealed the March 7 decision of the Circuit Court.

9. On March 16, 2000, the Illinois Appellate Court reversed the decision of the Circuit Court, set aside the February 1, 2000 decision of the Electoral Board and remanded the cause to the Electoral Board. *Delay v. Board of Election Commissioners of the City of Chicago*, No. 1-00-0745.

10. The Illinois Appellate Court held that evidence of the Candidate's February 5, 1999 plea agreement was totally irrelevant to either of the grounds stated in the Objector's Petition and that the Electoral Board improperly invalidated the Candidate's nomination papers on a ground never raised in the Objector's Petition, thus exceeding its statutory authority.

11. On remand, the Electoral Board hereby finds that because the Electoral Board cannot, according to the Illinois Appellate Court, consider evidence of the Candidate's February 5, 1999 plea agreement, the Candidate's February 5, 1999 plea agreement cannot be used to invalidate the Candidate's Nomination Papers.

12. The Electoral Board further finds that the number of valid signatures appearing on the Candidate's nominating petition following completion of a records examination (40) exceeded the minimum number of valid signatures required by

law to placed upon the official ballot as a candidate for election to the office of Ward Committeeman for the 5th Ward of the City of Chicago, Republican Party (13).

13. Finally, the Electoral Board finds that because of opinion of the Illinois Appellate Court in this cause, the objections must be overruled, the Candidate's Nomination Papers are valid and the name of the Candidate should be certified and placed on the ballot for the office of Ward Committeeman for the 5th Ward of the City of Chicago, Republican Party.

IT IS THEREFORE ORDERED that the Objections of CLARA SIMMS-JOHNSON to the Nomination Papers of WILLIAM ("MR. D") DELAY, candidate for election to the office of Ward Committeeman for the 5th Ward of the City of Chicago, Republican Party, are hereby OVERRULED to the extent and for the reasons as stated above and said Nomination Papers are hereby declared VALID and the name of WILLIAM ("MR. D") DELAY, candidate for election to the office of Ward Committeeman for the 5th Ward of the City of Chicago, Republican Party, SHALL be printed on the official ballot for the General Primary Election to be held on March 21, 2000.

Dated: Chicago, Illinois, this 17th day of March, 2000.

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.