BCCON-RGA

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: LEO S. McCORD	)
	)
To the Nomination	)
Papers of: JULIUS D. PENN	)
	) No. 02-EB-RGA-15
Candidate for the office of Representative in the	)
General Assembly, 10th Representative District,	)
Democratic Party	)

FINDINGS AND DECISION

The duly constituted Electoral Board, consisting of Board of Election Commissioners of the City of Chicago Commissioners Langdon D. Neal, Theresa M. Petrone and Richard A. Cowen, 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 LEO S. McCORD ("Objector") to the nomination papers ("Nomination Papers") of JULIUS D. PENN, candidate for nomination to the office of Representative in the General Assembly for the 10th Representative District, Democratic Party ("Candidate"), having convened on January 8, 2002, 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 Objectors 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 8, 2002 and was continued from time to time.

5. The Electoral Board assigned this matter to Hearing Examiner RICHARD E. ZULKEY 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, LEO S. McCORD, by counsel; and the Candidate, JULIUS D. PENN, *pro se*.

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 was present during the examination of the registration records.

10. The Objector or his duly authorized representative(s) was 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 300;

    b. The number of purportedly valid signatures appearing on the nominating petition filed by the Candidate total 1,431;

    c. The number of signatures deemed invalid because of objections sustained total 898;

    d. The remaining number of signatures deemed valid total 533;

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 be placed upon the official ballot as a candidate for nomination to the office of Representative in the General Assembly for the 10th Representative District, Democratic Party.

15. The Objector alleges that the Candidate's receipt for the filing of his Statement of Economic Interests failed to specify the office sought. Objector contends that this omission invalidates the Candidate's Nomination Papers.

16. The Electoral Board finds that the Candidate's receipt evidencing the filing of his Statement of Economic Interests does fail to specify the office for which the Candidate is seeking nomination. However, the Electoral Board further finds that this omission is not a sufficient justification for invaliding the Candidate's Nomination Papers and removal from the ballot is not an appropriate sanction. See, *Requena v.Cook County Officers Electoral Board*, 295 Ill.App.3d 728, 692 N.E.2d 1217 (First Dist. 1998). Therefore, this objection is overruled.

17. The Objector also alleges that the jurat on sheets 35 through 43 and sheets 45 through 58 of the Candidate's petitions omit the name of the circulator and the date of notarization. The Objector alleges that these sheets should be invalidated and also argues that this omission, along with other irregularities, is part of a "pattern of fraud" which should invalidate the Candidate's Nomination Papers.

18. The Electoral Board finds that the failure to affix the circulator's name and the date of notarization at the bottom of the petition sheet does not invalidate that sheet. See, e.g., *Cintuc Inc. v. Kozubowski*, 596 N.E.2d 101 (First Dist. 1992); *Cottrell v. Pearson*, 99-EB-ALD-157 (CBEC, February 2, 1999); *Young v. Cook County Officers Electoral Board*, 90 Co 20, Cir.Ct. Cook Cty. Therefore, the Electoral Board overrules this objection.

19. The Objector further alleges that there is a "pattern of fraud" which should invalidate all petition sheets circulated by certain circulators. Objector alleges that these circulators did not see the persons who purported to sign their names on the Candidate's petition.

20. In support of these allegations, the Objector, Leo McCord, testified that he has been in the neighborhood for more than 20 years and he knows the people in the community, including several of the people who allegedly signed the petitions. He testified that certain petition sheets were not circulated by the purported circulator. He testified that 3400 Fulton, an addresses listed by the circulator on sheet 28, was a vacant lot. Mr. McCord submitted 8 circulators from various individuals who signed the petition. These affidavits involved 8 signatures on 4 sheets. Seven of the affidavits claimed that the person who signed the circulator's

affidavit on the sheet the voter signed was not, in fact, the circulator of that sheet. For reasons explained in his report, the Hearing Examiner found that these affidavits were lacking in essential information and did not place great weight upon the affidavits.

In addition, the Objector tendered a "Pattern of Fraud Allegations" sheet that summarized the results of the Board's records examination as to sheets circulated by certain circulators, the number of allegedly "forged" signatures, and the number of valid signatures remaining. Objector argued that this was evidence of a "pattern of fraud" whereby entire petition sheets must be stricken as opposed to only the improper signatures.

The Hearing Examiner also rejected the Objector's attempts to regard certain alleged comments made by the Candidate during the records examination as admissions that the circulation of the petitions was improper. Such comments, if made, were not made on the record or under oath and such casual comments made under the circumstances here should not be regarded as evidence.

21. The Hearing Examiner rejected Objector's contentions regarding the existence of a "pattern of fraud." Citing *In re Petition for Removal of Frank Bower*, 41 Ill 2d 277, 242 N.E.2d 252 (1968), the Hearing Examiner concluded that to invalidate all signatures on a petition, more proof is required than some false signatures on a sheet. In *Bower,* the court held that intentional fraud, willful misconduct or guilty knowledge must be established against those who circulated the petitions. The Hearing Examiner also found that this case was distinguishable from *Fortas v. Dixon*, 462 N.E.2d 216 (First Dist. 1984) and *Huskey v. Municipal Officers Electoral Board*, 509 N.E.2d 555 (First Dist. 1987) in that in those cases there was more direct evidence regarding the alleged irregularities by way of live testimony. Here, the Hearing Examiner found that the evidence presented was insufficient to establish a "pattern of fraud" and recommends that these objections be overruled.

22. The Electoral Board adopts the recommended findings and conclusions of the Hearing Examiner and hereby overrules the Objections.

23. For the reasons stated above, the Electoral Board finds that the Nomination Papers of JULIUS D. PENN are valid.

IT IS THEREFORE ORDERED that the Objections of LEO S. McCORD to the Nomination papers of JULIUS D. PENN, candidate for nomination to the office of Representative in the General Assembly for the 10th Representative District, Democratic Party, are hereby OVERRULED and said Nomination Papers are hereby declared VALID and the name of JULIUS D. PENN, candidate for nomination to the office of Representative in the General Assembly for the 10th Representative District, Democratic Party, SHALL be printed on the official ballot for the General Primary Election to be held on March 19, 2002.

Dated: Chicago, Illinois, this 31st day of January, 2002.

Langdon D. Neal, Chairman

Theresa M. Petrone, Commissioner

Richard A. Cowen, 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.