DEFAULTCAND-SS

BOARD OF ELECTION COMMISSIONERS OF THE CITY OF CHICAGO AS THE DULY CONSTITUTED ELECTORAL BOARD

Objections of: WALLACE DAVIS III	)
	)
To the Nomination	) No. 02-EB-SS-08
Papers of: DEBBIE GALLAGHER	)
	)
Candidate for the office of State Senator for the 5th	)
Legislative 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 WALLACE DAVIS III ("Objector") to the nomination papers ("Nomination Papers") of DEBBIE GALLAGHER, candidate for nomination to the office of State Senator for the 5th Legislative 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 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 8, 2002 and was continued from time to time.

5. The Electoral Board assigned this matter to Hearing Examiner TERENCE E. FLYNN 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.

7. The Hearing Examiner conducted an initial hearing of this case on January 8, 2002, at 11:00 AM. The following persons, among others, were present at such hearing: the Objector, WALLACE DAVIS III, by counsel; and the Candidate, DEBBIE GALLAGHER, *pro se*. At that time, the Candidate requested further time to obtain legal representation and requested that a Rule 6 record examination (requested by Objector) not proceed until sufficient time was granted to obtain legal representation or proceed *pro se*. The request for a continuance was granted and a further hearing was scheduled for January 14, 2002 at 11:00 AM.

8. The Candidate failed to appear at the hearing scheduled for 11:00 AM on January 14, 2002. The case was held until 11:53 AM and still the Candidate did not appear. A telephone call was placed by an employee of the Board to determine a) if some emergency prevented the Candidate's appearance and b) if so, what occurred. The telephone call was placed to the phone number on the Candidate's appearance form. However, there was a message that the phone was disconnected.

9. Based on these circumstances, the Hearing Examiner found the Candidate to be in default. The Objector then proceeded on the record with a prove-up of his objections. On the record, the Hearing Examiner sustained the objections stated in paragraphs 5-9, 12-15 and 17, the results of which invalidate the Candidate's Nomination Papers. The Hearing Examiner declined to make findings on the Objector's prove-up that the objections stated in paragraphs 10, 11, 16, 18-21 and 22-25 of the Objector's petition were sufficient to invalidate the Candidate's Nomination Papers.

10. Based upon the objections sustained as a result of the prove-up, the Hearing Examiner found the number of valid ballot signatures remaining after sustaining the objections noted above to be well below 300. The number of ballot signatures necessary to be eligible for placement on the ballot the March 19, 2002 General Primary Election for the office of State Senator is 600. Therefore, the Hearing Examiner recommended that the Candidate's Nomination Papers be found invalid.

11. At a hearing before the Electoral Board to consider the findings and recommendations of the Hearing Examiner, the Candidate appeared and offered an explanation why she did not appear at the January 14, 2002 hearing before the Hearing Examiner. The Electoral Board postponed consideration of the Hearing Examiner's findings and recommendations and continued the hearing until January 22, 2002 at 9:30 AM. The Candidate was ordered to have her attorney, if any, file an appearance on or before said time and date and to be ready to appear immediately for hearing before the Hearing Examiner. If not, the Electoral Board indicated that it would go forward with a final decision at that time and date.

12. On January 22, 2002, neither the Candidate nor her attorney appeared at the hearing.

13. The Electoral Board adopts the findings and recommendations of the Hearing Examiner and further finds that the Objector's petition contains sufficient allegations, if accepted as true, to invalidate the Candidate's Nomination Papers.

14. Therefore, the Electoral Board finds that the Candidate, DEBBIE GALLAGHER, is in default, that the Objections are sustained, and that the Candidate's Nomination Papers are invalid.

IT IS THEREFORE ORDERED that the Objections of WALLACE DAVIS III to the Nomination Papers of DEBBIE GALLAGHER, candidate for nomination to the office of State Senator for the 5th Legislative District, Democratic Party, are hereby SUSTAINED and said Nomination Papers are hereby declared INVALID and the name of DEBBIE GALLAGHER, candidate for nomination to the office of State Senator for the 5th Legislative District, Democratic Party, SHALL NOT be printed on the official ballot for the General Primary Election to be held on March 19, 2002.

Dated: Chicago, Illinois, this 18th 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.

BEFORE THE DULY CONSTITUTED ELECTORAL BOARD FOR THE HEARING AND PASSING UPON OBJECTIONS TO NOMINATION PAPERS OF CANDIDATES FOR ELECTION

In the matter of:

Wallace Davis III, Petitioner-Objector,	)	
v.	)	02-EB-SS-08 Fifth Legislative District
Debbie Gallagher, Respondent-Candidate.	)	

2002 JAN 15 A 10: 26
BOARD OF ELECTION

Report and Recommendation of Hearing Examiner
Terence E. Flynn

Recommendation

1. It is the recommendation of the Hearing Examiner that the name Debbie Gallagher not appear on the ballot in the Democratic party primary for State Senator from the 5th Legislative District. The reasons are the following:

Findings of Fact and Conclusions of Law

2. The case was initially called on January 8, 2002 at 11:00 A.M. The objector appeared personally and through his attorneys. The candidate appeared pro se. At that time the candidate requested further time to obtain representation and requested that a Rule 6 records examination (requested by objector) not proceed until sufficient time was granted to obtain representation or proceed pro se. Because the candidate was served on January 3rd (or 4th by her admission), the request for a continuance was granted. Further hearing was scheduled for January 14, 2002 at 11:00 A.M.

3. At the hearing of January 14, 2002, the candidate failed to appear. The case was held until 11:53 A.M. and still the candidate did not appear. A telephone call was placed by an employee of the Board to determine a) if some emergency prevented the appearance and b) if so, what occurred. The telephone call was placed to the phone number on the candidate's appearance form. However, there was a message that the phone was disconnected.

4. In light of the foregoing, a technical default was ordered against the candidate. An on-record prove-up was then ordered in which the objector must show that, on the objector's papers, valid objections were lodged to show that the candidate had insufficient valid signatures to sustain her candidacy.

5. On the record, the hearing examiner declined to find on a prove-up that the following of objector's paragraphs were sufficient to invalidate signatures: par. 10 (circulator not a registered voter); par. 11 (circulator not in district); par. 16 (pattern of fraud); pars. 18-21 (statement of economic interests incomplete); par. 22 (pattern of fraud); par. 23 (fictitious circulators); pars. 24 and 26 (false swearing and pattern of fraud) and par. 25 ("loading" the ballot).

6. On the record, the hearing examiner sustained the objections (and as incorporated in the Appendix-Recapitulation sheets) stated in paragraphs 5, 6, 7, 8, 9, 12, 13, 14, 15, and 17.

7. The result of sustaining these objections invalidates in whole or in part each and every petition sheet.

8. The number of valid signatures remaining after sustaining the objections referenced in #6 above is well below 300.

9. The number of valid signatures necessary to sustain a candidacy is 600 for this particular office.

10. Therefore, it is the report and recommendation of this hearing examiner to the Electoral Board that the name Debbie Gallagher not appear on the ballot in the Democratic party primary for office of State Senator for the Fifth (5th) Legislative District.

Terence E. Flynn,
Hearing Examiner

Dated: 01/14/02