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

Objections of: WALLACE DAVIS III	)
	)
To the Nomination	)
Papers of: RICKEY R. HENDON	)
	) No. 02-EB-SS-09
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 RICKEY R. HENDON, candidate for 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 the 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 following persons, among others, were present at such hearing: the members of the Electoral Board, the Objector, WALLACE DAVIS III, by counsel; and the Candidate, RICKEY R. HENDON, by counsel.

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

7. The Candidate filed a "Motion by Movant Rickey R. Hendon to Strike and Dismiss" and also a "Motion to Strike and Dismiss." The Objector filed a "Response to Motion to Strike" and also a "Response to Motion to Strike Specific Paragraphs of the Objector's Petition."

8. The Hearing Examiner ruled on the Candidate's Motion to Strike and Dismiss and, for the reasons stated on the record at the January 18, 2002 hearing in this matter and in her written Report and Recommended Decision of January 21, 2002, the Hearing Examiner granted the Motion to Strike and Dismiss the Objections and recommended that the Objector's objections be dismissed in its entirety.

9. The Electoral Board hereby adopts the recommended findings and decision of the Hearing Examiner, incorporates by reference the Hearing Examiner's Report and Recommended Decisions, a copy of which is attached hereto, finds that the Objector's objection petition should be stricken and dismissed in its entirety and further finds that the Candidate's nomination papers are valid.

IT IS THEREFORE ORDERED, that the Objections of WALLACE DAVIS III to the Nomination papers of RICKEY R. HENDON, candidate for the election to the office of State Senator for the 5th Legislative District, Democratic Party, are hereby STRICKEN AND DISMISSED and said Nomination Papers are hereby declared VALID and the name of RICKEY R. HENDON, candidate for election to the office of State Senator for the 5th Legislative 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 25th 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 CHICAGO BOARD OF ELECTION COMMISSIONERS
SITTING AS THE DULY CONSTITUTED MUNICIPAL OFFICERS
ELECTORAL BOARD FOR THE CITY OF CHICAGO

WALLACE DAVIS III	)	
	)	
Objector	)	
	)	
-v-	)	02 EB SS 09
	)	
	)	
RICKY HENDON	)	
	)	
Candidate	)	

HEARING OFFICER'S REPORT AND RECOMMENDED DECISION

This matter came before the Hearing Officer on January 8, 2002. At that time, the parties were given the opportunity to file motions. The candidate filed a *Motion by Movant Rickey R. Hendon to Strike and Dismiss* and also a *Motion to Strike and Dismiss*. The objector filed a *Response to Motion to Strike* and also a *Response to Motion to Strike Specific Paragraphs of the Objector's Petition.* The parties presented argument on the motions on January 11, 2002 and the matter was taken under advisement. A recommended decision on the Motions was presented to the parties on the record on January 18, 2002.

THE MOTION TO STRIKE AND DISMISS

The issues raised by Motion to Strike and Dismiss and the recommended rulings are as follows (a summary of the argument in the motion is underlined and in bold, the recommended ruling is in italics):

Section I of the Motion:

The Objection does not address movant's nominating papers in that the candidate was misnamed. Instead of naming RICKEY R. HENDON, the objector named RICKY HENDON and the objections should be stricken and dismissed in their entirety

Although the attorneys for the candidate filed a Special and Limited Appearance, there was no dispute that the candidate received actual notice. Additionally, while the candidate's name was misspelled, his last name was not misspelled and there was no evidence of actual confusion surrounding the party to whom the objections were directed. See, e.g. Wollan v Jacoby, 274 Ill. App. 3d 388, 653 N.E.2d 1303 (1st Dist. 1995) where court held that failure to property identify office was not fatal to objections. Also see Ryan v Landek, 159 Ill. App. 3d 10, 512 N.E. 2d 1, where the court determined that di minimis deficiencies are not sufficient to invalidate nominating papers. To hold that the objections should be stricken because of a minor deviation in the spelling of the candidate's name would result in holding an objector to a higher standard than a candidate. Therefore, Section I of the Motion was ***denied.***

Section II of the Motion:

The Prayer for Relief is not directed at the Movant. The Prayer for Relief contains the wrong name in that it asks that the name of JOHNNIE DAVIS not be printed on the ballot and, therefore, the relief sought is not directed at the candidate and the objections should be dismissed in their entirety.

An electoral Board has only those powers granted to it by statute. A request to print or not print the name of a candidate on the ballot, while common in practice, is beyond the authority of the electoral board and should, therefore, be regarded as surplusage. See Kozel v State Board of Elections, 126 Ill. 2d 58, 533 N.E.2d 796 (1988) for a discussion on the limited scope of an electoral board's authority.

Section III of the Motion:

The Objections contain errors which evidence that the objections are not addressed at the Candidate and, therefore, the objections should be dismissed in their entirety.

The candidate argues that because the objections contain certain misspellings, the wrong names and certain incorrect references, the objections should be dismissed in their entirety. These issues were addressed in more detail in the Candidate's Motion to Strike Certain Paragraphs Objections and will be discussed below. However, as specified below, the candidate also contend in his Motion that the Objector's Petition contains an insufficient number of specific

objections to invalidate the nominating papers. For the reasons set forth below, the candidate was correct and the objections were dismissed in their entirety.

MOTION TO STRIKE CERTAIN PARAGRAPHS OF THE OBJECTIONS

Paragraph 1A of the Motion:

Appendix Recapitulation Column E (Signer Signed Petition More than Once at Sheet Indicated) does not have accompanying text in the body of the objections and does not specify where the duplicated signatures appear and is therefore insufficient to constitute a valid objection.
The Column E category lacks sufficient specificity to put the candidate on notice of the purported deficiency and as such deprives the candidate of the opportunity to prepare a defense. For that reason, the Motion as to Column E was ***granted.***

Paragraph 1B of the Motion:

Appendix Recapitulation Column G (Other) does not have accompanying text in the body of the objections and does not specify what "other" means.
The Column G category lacks sufficient specificity to put the candidate on notice of the purported deficiency and as such deprives the candidate of the opportunity to prepare a defense. For that reason, the Motion as to Column G was ***granted****.*

Paragraph 2 of the Motion:

The Appendix Recapitulation sheets contain some check marks rather than "x's" and contain marks which, in some instances, straddle lines and, in some instances, are partially obliterated, making it impossible for the candidate to defend and all signature lines that do not contain an "x" should be disregarded.
The use of checkmarks rather than "x's" does not invalidate the marks in the appendix recapitulation. Standards for write-in ballots have no applicability to objections. Whether or not the marks are clear enough for purposes of a records examination can be preliminarily decided in the records examination. For that reason, paragraph 1C of the Motion was ***denied.***

Paragraph 3 of the Motion:

Paragraph 9 of the Objection and Column F allege that certain signatures are printed and not written and that the allegations made indicate that no review of the signatures was made and, in any event, printing is not a recognized ground for objecting to a signature.
Printed signatures are not, as a matter of law, invalid. However, whether or not

the signature matches the registration card can be resolved in a records examination. For that reason, paragraph 3 of the Motion was ***denied.***

Paragraph 4 the Motion:

Paragraph 10 of the Objection asks that certain sheets be invalidated because the circulator is not a registered voter at the address shown. However, the circulator no longer has to be a registered voter, the objector has acknowledged this fact and the allegation should be stricken.
Illinois law has been amended and no longer requires a circulator to be a registered voter. For that reason, paragraph 4 of the Motion was ***granted.***

Paragraph 5 of the Motion:

Paragraph 11 of the Objection alleges that certain sheets be invalidated because the circulator resides outside the 5th Legislative District. However, the circulator *no longer has to be a resident of the District, the objector has acknowledged this fact and the allegation should be stricken.*
Illinois law has been amended and no longer requires a circulator to be a resident of the district in which the candidate is running. For that reason, paragraph 5 of the Motion was ***granted.***

Paragraph 6 of the Motion:

Paragraph 14 of the Objection alleges that the notarization on certain sheets was invalid because of post notarial modifications evidenced by white outs, etc. Paragraph 6 of the Motion argues that the notary on certain pages was a proper, active notary.
Paragraph 6 of the Motion to Strike and Dismiss is not responsive to the allegations made in paragraph 14 of the Objection. Additionally, the issues raised in paragraph 14 of the Objection are fact questions for which an evidentiary hearing would be necessary. For these reasons, paragraph 6 of the Motion was ***denied.***

Paragraph 7 of the Motion :

Paragraph 15 of the Objection alleges that the circulator's address is incomplete. A review of some of the sheets complained of establishes that the allegations are not true.
The subject matter of paragraph 15 is appropriate for a preliminary determination in a records examination. For that reason, paragraph 7 of the Motion was ***denied.***

Paragraph 8 of the Motion:

Paragraph 16 of the Objection alleges a pattern of fraud and roundtabling in which the candidate himself engaged. This allegation lacks specificity in that no facts are alleged, and no sheets and lines are referenced.

Paragraph 16 lacks sufficient specificity to put the candidate on notice of the purported deficiency and as such deprives the candidate of the opportunity to prepare a defense. Objector correctly argued that the cases involving a pattern of fraud establish that it is not necessary to plead such a pattern when, in the course of hearing, facts become known to the electoral board beyond the specific allegations made. In such a case, the electoral board is not permitted to "close its eyes and ears" to the evidence before it. However, here, the question is whether the Objector is entitled to a hearing in the first instance. The Objector has attempted to use this general allegation in conjunction with other general allegations to bolster his objector's petition which, on its face, has insufficient specific allegations to invalidate the nominating papers . If such a practice was permitted, it would result in placing candidate in the untenable position of going through the exercise of participating in a records examination knowing that he will have more than a sufficient number of signatures to remain on the ballot and then having to guess at what further evidence the objector intends to offer to invalidate the nominating papers. Under this scenario, the candidate is clearly deprived of an opportunity to prepare a defense. For these reasons, paragraph 8 of the Motion was ***granted.***

Paragraph 9 of the Motion:

Paragraph 17 of the Objections contains a reference to County District rather than Legislative District and said reference invalidates the paragraph.

The inclusion of the word "County" is a di minimis deviation and does not invalidate the paragraph. For that reason, paragraph 9 of the Motion was ***denied.***

Paragraph 10 of the Motion:

Paragraph 18 and 19 of the Objection allege that the statement of Economic Interests and the receipt are invalid because the office is described as "State Senator" and the District is not specified. "State Senator" is a sufficient description. Nonetheless, the Secretary of State's Index Division prepared the statement and the candidate relied upon it.

The office is sufficiently described because the unit of government with which the disclosures must be made is the State of Illinois. Moreover, even if the designation was improper, removal from the ballot is an inappropriate sanction. See Requena v Cook County Officers Electoral Bd., 295 Ill. App. 3d 728, 692

*N.E.2d 1217, (1st Dist. 1988). For these reasons, paragraph 10 of the Motion was **granted.***

Paragraph 11 of the Motion:

Paragraph 20 of the Objection alleges that the Statement of Candidacy is invalid because it fails to provide a complete description of the office sought and merely designates the office as "State Senator". A review of the Statement of Candidacy reveals that the office is properly designated and the district is set forth.

*While paragraph 20 of the Objection involves a combined issue of law and fact, a cursory review of the Statement of Candidacy indicates that the proper district is designated both in the heading and the body of the Statement. For these reasons, paragraph 11 of the Motion was **granted.***

Paragraph 12 of the Motion:

Paragraph 21 of the Objection is "self referential" and ambiguous.

*Paragraph 21 is a summary paragraph which need not be stricken. For that reason, paragraph 12 of the Motion was **denied.***

Paragraph 13 of the Motion.

Paragraph 22 of the Objection alleges that certain numbered sheets of the nominating papers were missing and as a result, the nominating papers were not properly paginated. A review of the nominating papers establishes that each of the sheets specified were contained in the nominating papers.

*The Objector contended that he did not receive certain specified sheets from the State Board of Elections. However, the Objector conceded, without waiving his right to argue that he should be able to amend his objector's petition, that if the specified sheets were, in fact, contained in the nominating papers, the pagination issue would be moot. A review of the nominating papers indicated that the sheets were, in fact, contained in the nominating papers. For that reason, paragraph 13 of the Motion was **granted.** Additionally, regardless of what the Objector received from the State Board of Elections, amendments to objector's petitions are not permitted.*

Paragraph 14 of the Motion:

Paragraph 23 alleges that certain circulators were ghost circulators who did not, in fact exist. The objections do not specify which circulators and which sheets and fail to provide the candidate with sufficient information.

*Paragraph 23 lacks sufficient specificity to put the candidate on notice of the purported deficiency and as such deprives the candidate of the opportunity to prepare a defense. For that reason, paragraph 14 of the Motion was **granted**.*

Paragraph 15 of the Motion:

Paragraph 24 of the Objection alleges that certain circulators' addresses do not actually exist as designated in the Appendix Recapitulation as "other". Paragraph 25 alleges that certain circulators do not reside at the addresses given as designated in the Appendix Recapitulation as "other". Each of these allegations is separate and distinct and the objections fail to differentiate between them in the Appendix Recapitulation and fail to provide the candidate with sufficient information.

*The allegations in paragraph 24 and 25 are distinct allegations and combining them into one category fails to provide sufficient specificity to put the candidate on notice of the purported deficiencies and as such deprives the candidate of the opportunity to prepare a defense. For that reason, paragraph 15 of the Motion was **granted.***

Paragraph 16 of the Motion:

Paragraph 26 of the Objection does not address the validity of the nominating papers and the conduct complained of would not be a basis to invalidate the nominating papers.

*The motives of this candidate or any other candidate in filing nominating papers is not an appropriate area of inquiry for the electoral board. For that reason, paragraph 16 of the Motion was **granted.***

Paragraph 17 of the Motion:

Paragraph 27 of the Objection alleges a pattern of fraud but fails to specify the conduct the gives rise to the pattern of fraud or what sheets and lines evidence the pattern.

*Paragraph 27 lacks sufficient specificity to put the candidate on notice of the purported deficiency and as such deprives the candidate of the opportunity to prepare a defense. For that reason, paragraph 17 of the motion was **granted**. Additionally, the reasoning set forth in the ruling on paragraph 8 of the Motion is incorporated herein.*

Paragraph 18 of the Motion:

Paragraph 28 of the Objection alleges that certain sheets appear to be duplicate sheets which contain identical sets of signatures. No specific sheet or line has been specified and the allegation fails to provide the

candidate with sufficient information.
Paragraph 28 lacks sufficient specificity to put the candidate on notice of the purported deficiency and as such deprives the candidate of the opportunity to prepare a defense. For that reason, paragraph 18 of the Motion was ***granted.***

Paragraph 19 of the Motion:

Paragraph 29 of the Objection alleges matters which do not address the validity of the candidate's nominating papers and do not address any specific objection which would invalidate the nominating papers.
An electoral board is without authority to inquire into the matters raised in paragraph 29 of the Objection. The matters raised do not address the validity of the nominating papers. For these reasons, paragraph 19 of the Motion was ***granted.***

Paragraph 20 of the Motion:

The Prayer for Relief requests that Johnnie Davis not appear on the ballot ...for election to the office of ... The Objection therefore fails to meet the mandatory requirements for an Objection and the objections should be stricken in their entirety.
This issue was raised in candidate's Motion to Strike and Dismiss. As indicated above, *an electoral Board has only those powers granted to it by statute. A request to print or not print the name of a candidate on the ballot, while common in practice, is beyond the authority of the electoral board and should, therefore, be regarded as surplusage. See Kozel v State Board of Elections, 126 Ill. 2d 58, 533 N.E.2d 796 (1988) for a discussion on the limited scope of an electoral board's authority. For these reasons, paragraph 20 of the Motion was* ***denied.***

Paragraphs 21a, b and c of the Motion:

Certain objections contained in the Appendix-Recapitulation are false on their face as evidenced by an examination of the nominating papers.
The matters referenced in the Motion can either be resolved in a records examination or require an evidentiary hearing. For that reason, paragraphs 21a, b and c of the Motion were ***denied.***

Paragraphs 22a, b, c, d, e, f, g and h of the Motion:

(In summary), the Objections fail to contain sufficient specific allegations to invalidate the nominating papers.
Rather than rely on the arithmetic supplied by the parties, the employees of the Board, as directed by Robert Sawicki, tallied the number of signatures filed and the number remaining if all of the allegations not stricken herein were sustained.

The candidate would have 1077 signatures remaining. A total of 600 signatures is required to be placed on the ballot. For that reason, paragraphs 22 a-f of the Motion was neither granted nor denied, but rather, the objections were stricken and dismissed in their entirety based upon the tally of the Board's employees.

In light of the recommended rulings specified above, it is my recommendation that the objections of Wallace Davis, III be dismissed and that the nominating papers of Rickey R. Hendon be deemed valid.

Respectfully submitted,

Barbara Goodman 1-21-02

Hearing Officer