BCCOFF-MUN

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

Objections of: RAYMOND G. DRISH, JR.	)
	)
To the Nomination	)
Papers of: WILLIAM DOCK WALLS, III	) No.: 03-EB-MUN-2
	)
Candidate for the Office of	)
City Clerk of the 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, 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 RAYMOND G. DRISH, JR. ("Objector") to the nomination papers ("Nomination Papers") of WILLIAM DOCK WALLS, III, candidate for the office of City Clerk, of the City of Chicago ("Candidate") to be elected at the February 25, 2003 Municipal General Election, having convened on December 30, 2002, at 10:00 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 December 30, 2002 and was continued from time to time.

5. The Electoral Board assigned this matter to Hearing Examiner RODNEY W. STEWART for further hearings and proceedings.

6. The Objector and the Candidate were directed by the Electoral Board's Call to appear before the Hearing Examiner on the date and at the time designated in the Trial Call. The following persons, among others, were present at such hearing: the members of the Electoral Board, the Objector, RAYMOND G. DRISH, JR., by counsel; and the

Candidate WILLIAM DOCK WALLS, III, pro se. The Candidate retained legal counsel prior to the conclusion of these proceedings.

7. The Candidate filed a motion to strike and dismiss the Objector's Petition on January 2, 2003, and the Objector filed a response to the Candidate's motion on January 3, 2003. On January 3, 2003 a hearing was conducted on the Candidate's motion to strike and dismiss and at the conclusion of the hearing the motion was denied by the Hearing Examiner.

8. The Hearing Examiner 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.

9. The Hearing Examiner directed all parties to appear and be present, either personally and/or by their authorized representatives during this records examination.

10. The Candidate or his duly authorized representatives were present during the examination of the registration records at all times.

11. The Objector or his duly authorized representatives were present during the examination of the registration records at all times.

12. 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 upon request of a party.

13. The results of the records examination completed on January 22, 2003 indicate that:

    a. The minimum number of valid signatures required by law for placement on the ballot for the office in question is 25,000.

    b. The number of purportedly valid signatures appearing on the nominating petition filed by the Candidate total 38,182.

    c. The number of objections overruled total 6,689.

    d. The number of signatures deemed invalid because of objections sustained total 22,341.

    e. The remaining number of signatures deemed valid total 15,841.

14. The Candidate requested a master file examination that was completed on January 31, 2003. As a result of the master file examination, the number of objections overruled

changed from 6,689 to 6,834 and the number of signatures deemed invalid because of objections sustained changed from 22,341 to 22,196, leaving the candidate with a total of 15,986 valid signatures.

15. The Electoral Board finds that the number of valid signatures appearing on the Candidate's nominating petition following completion of the records examination and the master file examination is below the minimum number of valid signatures required by law to be placed upon the official ballot as a candidate for the office of City Clerk, City of Chicago.

16. Following completion of the master file examination, the Candidate filed a motion pursuant to Rule 8 of the Electoral Board's Rules of Procedure and several extensive hearings thereon were completed on February 9, 2003. Pursuant to the Hearing Examiner's interim decision, approximately 160 additional signatures were overruled after it was determined that the Board had erroneously sustained these signatures on the basis that the signatures were not genuine because no registration records could be found in the Board's file for these signatures against which to make a signature comparison and no objections had been made to these signatures on other grounds by the Objector. After a recheck of the Rule 8 motion and submissions by the Candidate, it was determined that the Candidate had 16,125 signatures.

17. During the Rule 8 hearings, a memo from the Board's Assistant Executive Director dated February 8, 2003 revealed if all of the objections to signatures properly placed at issue by the Candidate's Rule 8 motion were overruled and found valid by the Hearing Examiner, at best the Candidate would gain an additional 7,539 signatures. In fact, during the course of the Rule 8 hearings conducted thus far, not all objections to signatures were overruled. Even assuming that all 7,539 signatures were found to be valid and were added to the 16,125 signatures previously found valid, the Candidate would still have only 23,664 valid signatures. This is still below the minimum number of valid signatures required by law to be placed upon the official ballot as a candidate for the office of City Clerk, City of Chicago.

18. The Candidate argued during the Rule 8 hearings that there were a significant number of objections to signatures sustained even though the signers of his petitions were registered voters. However, the Hearing Examiner found that because the Candidate did not properly identify any of these signatures in his Rule 8 motion and submissions, they were not properly preserved for appeal and would not be considered.

19. On February 10, 2003, the day after the conclusion of the Rule 8 hearing, the Candidate filed an "Offer of Proof" and attachments with the Board. The Hearing Examiner, after reviewing this submission, concluded in his written report to the Electoral Board that the filing contained only allegations, they lacked any substance or any affidavits of individuals that would support the Candidate's contentions, and they cannot be considered as evidence.

20. The Hearing Examiner recommended to the Electoral Board that the Electoral Board find that the Candidate lacked the requisite number of valid signatures and that his name be removed from the ballot as a candidate for the office of City Clerk of the City of Chicago based upon section 10-3 of the Election Code (10 ILCS 5/10-3) and *Lipinski v. Chicago Board of Election Commissioners,* 114 Ill.2d 95, 500 N.E.2d 39 (1986) where the Illinois Supreme Court held that under the Election Code, any nonpartisan candidate for mayor, treasurer or clerk of Chicago would be required to file a minimum of 25,000 signatures to have his name placed on the ballot.

21. The Electoral Board, having considered the applicable law, the evidence and the arguments of the parties, and the recommended findings and conclusions of law of the Hearing Examiner, finds that:

A. In 1995, the Illinois General Assembly enacted legislation changing the method for electing the offices of Mayor, Clerk and Treasurer in the City of Chicago. Public Act 89-95, effective January 1, 1996, amended the Revised Cities and Villages Act of 1941 (65 ILCS 20/21-5, 21-12) and the Election Code (10 ILCS 5/2A-1.2(d)) to provide that instead of nominating candidates in partisan political party primary elections in February of odd-numbered years every fourth year to decide who would appear on the ensuing April general election ballot, candidates would be elected on a nonpartisan basis (i.e., without party primary elections and party labels) in the February election. However, if no candidate received a majority of the votes cast, the two candidates who received the highest number for the same office would face each other in a runoff election in April.

B. Public Act 89-95 did not provide specifically for the number of signatures required on nominating petitions.

C. Section 10-3.1 of the Illinois Election Code (10 ILCS 5/10-3.1) governs nonpartisan candidates, petitions for nomination, signature requirements and the application of Article 10 to nonpartisan candidates. Section 10-3.1 provides in part:

> Petitions for nomination of nonpartisan candidates for municipal offices where the statute creating the municipality or providing the form of government thereof, or the ordinance so providing, pursuant to Article VII of the Constitution, requires election to such office on a nonpartisan basis and does not permit political nominations *** shall be in conformity with any requirements as to contents and number of signatures as specified in such statute or ordinance.
>
> The provisions of this Article 10 relating to independent candidate petition requirements shall apply to nonpartisan petitions to the extent they are not inconsistent with the requirements of such other statutes or ordinances.

Section 10-3.1 further provides that:

If signature requirements for petitions for nomination of nonpartisan candidates are not specified in the statute creating the political subdivision or the signature requirements cannot be determined under Article 10, the signature requirements for the nonpartisan candidates shall be at least 0.5% of the total number of registered voters of the political subdivision for which the nomination is made or a minimum of 25, whichever is greater.

D. For the 0.5% signature in Section 10-3.1 to apply, two conditions precedent must exist. First, the statute creating the political subdivision must not specify the signature requirements for nonpartisan candidates. Second, it is impossible to determine the signature requirements for nonpartisan candidates under Article 10. While the first condition exists, the second does not.

E. Section 10-3.1 of the Illinois Election Code provides that the requirements for independent candidate petition requirements shall apply to nonpartisan petitions to the extent that they are not inconsistent with the requirements of the statutes or ordinances creating the municipality or providing the form of government thereof. Section 10-3 of the Election Code provides that nomination of independent candidates for public office within a political subdivision may be made by nomination papers signed in the aggregate by qualified voters equaling not less than 5% nor more than 8% of the number of persons who voted at the next preceding regular election in such political subdivision which voted as a unit for the election of officers to serve the area. However, whenever the minimum signature requirement for an independent candidate petition for a political subdivision office shall exceed the minimum number of signatures for an independent candidate petition for an office to be filled by the voters of the State at large at the next preceding Statewide general election, such State-wide petition signature requirement shall be the minimum for an independent candidate for political subdivision office. The signature requirement for independent candidates for offices to be filled by voters of the State at large is 1% of the number of voters who voted in the next preceding State-wide general election, or 25,000, whichever is less.

F. According to the official records of the Chicago Board of Election Commissioners, of which the Board may take official notice, 623,755 persons voted in the February 23, 1999 municipal election for city-wide offices in the City of Chicago. Applying the 5% minimum signature requirement to that number yields a minimum signature requirement of 31,187. However, because this minimum signature requirement exceeds the minimum signature requirement for State-wide independent candidates, the minimum signature requirement for independent candidates in the City of Chicago is "capped" at 25,000.

G. Thus, the signature requirement for nonpartisan candidates in the City of Chicago can be determined under the provisions of Article 10. Because one of the two conditions precedent as spelled out in Section 10-3.1 for applying the 0.5% signature requirement

does not exist, the 0.5% signature requirement therefore does not apply. Instead, the signature requirements spelled out by Section 10-3 for independent candidates apply to nonpartisan candidates for city office in the City of Chicago.

H. In *Lipinski v. Chicago Board of Election Commissioners*, 114 Ill.2d 95, 500 N.E.2d 39 (1986), the Illinois Supreme Court, in ruling upon the validity of a referendum proposition asking voters to determine whether the offices of Mayor, City Treasurer and City Clerk should be elected on a nonpartisan basis similar to the scheme subsequently approved by the General Assembly in Public Act 89-95, held that because the nonpartisan referendum was silent with respect to how many signatures are needed to get on the nonpartisan ballot, the petition signature requirements of Section 10-3 of the Election Code relating to independent candidates supplied the answer regarding the number of signatures to be required on nonpartisan candidate petitions. The Court noted that because five percent of the number of persons who voted in the 1983 mayoral election [the last mayoral election preceding the Court's decision] exceeded 25,000, consequently, under the Election Code any nonpartisan candidate for mayor, treasurer or clerk of Chicago would be required to file a minimum of 25,000 signatures to have his name placed on the ballot.

I. The Board finds, therefore, that Section 10-3 of the Election Code requires that petitions for candidates for the offices of Mayor, City Clerk and City Treasurer in the City of Chicago must contain 25,000 signatures of qualified and registered voters in the City of Chicago.

22. The Electoral Board further finds that, as a matter of law, an objection to a signature based only on the allegation that the signature is not genuine or was not made in proper person shall not be sustained where no registration record can be found by the Board in order to make a comparison of the signature on the nominating petition with a signature on a registration record. Therefore, the Electoral Board sustains the decision of the Hearing Examiner to overrule such objections here in this case.

23. The Electoral Board further finds that, as a matter of law, a person whose registration is deemed "Inactive" may sign a nominating petition and such signature will not be overruled on the grounds that the person is not registered so long as such person has not moved, has not died, has not been incarcerated by reason of conviction of a crime or otherwise lacks the requisite qualifications to be a registered voter in the political subdivision or district in which the candidate is seeking nomination or election. Here, however, the Candidate did not identify any such signatures in his Rule 8 motion or submissions and did not present any evidence to the Hearing Examiner on this issue.

24. The Electoral Board further finds, however, that the Candidate has not sustained his burden of proof to show by specific evidence as to individual signatures that his Nomination Papers contain the requisite number of valid signatures. Moreover, the Electoral Board does not accept the Candidate's arguments that the number of valid

signatures on his Nomination Papers can be derived through extrapolation or speculation as to what the numbers are or should be.

25. The Electoral Board finds, therefore, that the Candidate's Nomination Papers do not contain the signatures of 25,000 qualified and registered voters of the City of Chicago as required by law.

26. For the reasons stated above, the Electoral Board sustains the Objections and finds that the Nomination Papers of WILLIAM DOCK WALLS, III are not valid.

IT IS THEREFORE ORDERED that the Objections of RAYMOND G. DRISH, JR. to the Nomination Papers of WILLIAM DOCK WALLS, III, candidate for the office of City Clerk, City of Chicago, are hereby SUSTAINED and said Nomination Papers are hereby declared INVALID and the name of WILLIAM DOCK WALLS, III, Candidate for the office of City Clerk, City of Chicago, SHALL NOT be printed on the official ballot for the Municipal General Election for Mayor, City Clerk, City Treasurer and Alderman to be held on February 25, 2003.

Dated: Chicago, Illinois, this Twelfth day of February, 2003.

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.

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

WILLIAM "DOCK" WALLS, III

v.

BOARD OF ELECTION COMMISSIONERS OF THE CITY OF CHICAGO

No. 03 CO EL 032

ORDER

This matter coming before the Court for ~~hearing~~ continued hearing on the Plaintiff's Petition for Judicial Review and Other Relief and on the Board of Election Commissioners' motion to strike certain paragraphs of the Plaintiff's Supplement to Petition for Judicial Review, the parties being present in court and the Court being advised in the premises;

IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

1. For the reasons stated in open court and on the record, the Petition for Judicial Review and Other Relief is denied and the decision of the Electoral Board is affirmed.
2. This order is a final judgment and there is no just cause to delay enforcement or appeal thereof.

Atty. No.: 70383
Name: James M Scanlon
Atty. for: Bd of Election Commissioners
Address: 8 S. Michigan Ave Suite 3500
City/State/Zip: Chicago IL 60603
Telephone: 312-782-8163

CIRCUIT COURT OF COOK COUNTY
ENTERED
FEB 21 2003

JUDGE
ENTER: MICHAEL J. MURPHY-2003

Judge Judge' No.

DOROTHY BROWN, CLERK OF THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS