NBCON-RGA

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

Objections of: MARSHON HARRIS AND ROBERT G. BUTLER	)
To the Nomination Papers of: ANNAZETTE R. COLLINS	) No. 04-EB-RGA-09
Candidate for the office of Representative of the 10th Representative District, State of Illinois Democratic Party	)

FINDINGS AND DECISION

The duly constituted Electoral Board, consisting of Chicago Board of Election 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 MARSHON HARRIS AND ROBERT G. BUTLER ("Objectors") to the nomination papers ("Nomination Papers") of ANNAZETTE R. COLLINS, candidate for the nomination of the Democratic Party to the office of Representative in the General Assembly for the 10th Representative District, State of Illinois ("Candidate"), having convened on January 5, 2004, at 2:00 p.m., in the City Council Chambers, 121 North LaSalle Street, 2nd Floor, 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 5, 2004 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 Objectors, MARSHON HARRIS AND ROBERT G. BUTLER; and the Candidate, ANNAZETTE R. COLLINS.

6. The Electoral Board assigned this matter to Hearing Examiner Charles R. Bernardini for further hearings and proceedings.

7. The Objectors and the Candidate were directed by the Electoral Board to appear before the Hearing Examiner for a hearing on the date and at the time designated on the Electoral Board's docket. The following persons, among others, were present at such hearing: the Objectors, MARSHON HARRIS AND ROBERT G. BUTLER, by their attorney; and the Candidate, ANNAZETTE R. COLLINS, by her attorney.

8. The Candidate filed a motion to strike and dismiss the Objections to the extent they allege the Candidate's Statement of Economic Interests is defective because it fails to identify the 10th District. The Hearing Examiner, for reasons stated in his report and recommendations, has recommended that the Candidate's motion to strike and dismiss be granted in this regard.

9. The Objections also allege that the Candidate was not a legal resident of the 10th Representative District of the State of Illinois for the requisite two years preceding the next election as required by Article IV, §2(c) of the Illinois Constitution.

10. After considering all of the evidence and testimony, as well as the oral and written argument of the parties, the Hearing Examiner, for the reasons stated in his report and recommendations, recommends a finding that the Objectors have failed to demonstrate that the Candidate did not reside in the 10th Representative District of the State of Illinois during the required time period. The Hearing Examiner concluded that, in fact, the overwhelming and credible evidence was that the Candidate has resided in the 10th Representative District during the relevant time period. Therefore, the Hearing Examiner has recommended that the Objections to the Candidate's residency be overruled.

11. The Electoral Board, having reviewed the Hearing Examiner's report and recommendations, hereby adopts the Hearing Examiner's recommended findings and conclusions of law and his report is attached hereto and incorporated herein. Accordingly, the Electoral Board finds that the Objections to the Candidate's Statement of Economic Interest are stricken and dismissed and that the Objections to the Candidate's residency are overruled.

IT IS THEREFORE ORDERED that the Objections of MARSHON HARRIS AND ROBERT G. BUTLER to the Nomination papers of ANNAZETTE R. COLLINS, candidate for nomination of the Democratic Party to the office of Representative in the General Assembly for the 10th Representative District, State of Illinois are hereby OVERRULED and said Nomination Papers are hereby declared VALID and the name of ANNAZETTE R. COLLINS, candidate for nomination of the Democratic Party to the office of Representative in the General Assembly for the 10th Representative District,

State of Illinois, SHALL be printed on the official ballot for the General Primary Election to be held on March 16, 2004.

Dated: Chicago, Illinois, this 12th day of February, 2004.

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.

MARSHON HARRIS AND ROBERT G. BUTLER, Objectors

No. 04-EB-RGA-09

v.

ANNAZETTE R. COLLINS, Candidate

REPORT AND RECOMMENDATION OF HEARING EXAMINER, CHARLES R. BERNARDINI

Proposed Findings

1. The Objectors' petition was timely filed.

2. The initial hearing was held on January 6, 2004, at which time counsel appeared for all parties.

3. A public hearing held on the objections commenced on January 6, 2004 and was continued from time to time.

4. Objectors Petition alleged that candidate, on or prior to September 1, 2003, maintained her residence at 6127 South Woodlawn Avenue, Chicago, Illinois, an address that is not located within the boundaries of the district the candidate seeks to represent; and therefore that the candidate cannot meet the statutory requirement of being a resident in the district she will represent for the two years preceding election. In addition, Objectors alleged that the Statement of Economic Interest filed by the candidate is insufficient because it does not specify the particular office sought..

5. Counsel for the Objectors requested a number of subpoenas, to obtain evidence to support the objection of lack of legal residency at the address stated by the candidate. Subpoenas were approved and issued and most were responded to. The subpoena process was lengthy, due to slowness of response, and some misdirected subpoena responses by error. The attorney for the Objectors requested the Board to go to Circuit Court to ask for an order enforcing some subpoenas and the Board did so on behalf of the Objectors.

6. The Candidate moved to Strike and Dismiss objections relating to the Statement of Economic Interests, citing lack of jurisdiction of the Board to consider such objection and the Doctrine of Substantial Compliance. The Hearing Examiner accepted this Motion and recommends Striking and Dismissing such objection on the grounds of substantial compliance, in that the whole of the nominating petitions make it clear the office sought.

In addition, the following cases substantiate the lack of jurisdiction of the Board to consider challenges to the statement of economic interest: Welch v. Johnson, 147 Ill2nd 40 (1992), Troutman v. Keys, 156 Ill.App. 3rd 247 (1987).

7. As for the objection of lack of residency, extensive and repeated hearings were held and evidence and witnesses introduced. The Objectors introduced as their witnesses 1) the candidate herself as an adverse witness, and 2) a private investigator. In addition, the Objectors introduced into the record various and sundry documents which, taken in the light most favorable to the Objectors, demonstrated that the Candidate had an interest in or spent time at several residences outside the district during the pertinent time in question (beginning November 2002 to the present, by stipulation). Objectors periodically argued and sought to introduce evidence regarding the Candidate's residence prior to the relevant time period, and to make reference to an electoral board hearing involving the candidate two years ago on the residency issue, but the Hearing Examiner took the position that such arguments and evidence relating to a prior time period were essentially irrelevant to the issues in this case.

8. The testimony of the private investigator offered by the Objectors was that, on a single day in May, 2003, he saw furniture being moved from an address on Woodlawn Avenue outside the district where Mrs. Collins husband lived. He was unable to track where the furniture went, nor whose furniture it was. The testimony was actually consistent with that of the Candidate, who testified that in May, 2003, her husband moved from the Woodlawn Avenue address to join the Candidate and her daughter on Warren, the address listed on her nomination papers.

9. The only other witness testimony offered by the Objectors was that of the Candidate herself. She testified that the Woodlawn property was owned by her, used by her husband while they were waiting to build a house, that in the meantime she and her daughter resided on Walnut, that she was pregnant at the time and that it would have been too crowded on Walnut to have her husband live there permanently. Warren and Walnut are in the district. As the owner of the Woodlawn property, she visited there, but did not reside there, she testified. Objectors offered no testimony to rebut anything said by the Candidate and the Objectors themselves called the Candidate to testify

10. The Candidate stated unequivocally that she spent most of her time at the Walnut address and intended it to be her residence until the move to the Warren property in April, 2003. In addition to her testimony, the Candidate offered various exhibits as evidence of her residency on Walnut and Warren during the relevant time period of this challenge and the law. These documents included copies of tax documents, official government correspondence, bank statements, correspondence for her new baby, W-2 forms, credit card information, credit union statements, voter registration card, medical bills, pay records from the state and city, sworn affidavits.

11. Two elements are necessary to create a residence: 1) a physical presence in that place and 2) an intention of remaining there as a permanent home. See Stein v. County Board, 81 IllApp2nd 251 (1967).

12. The Objectors have the burden of proving that the Candidate has not resided within the 10th Representative District during the relevant time.

13. The only evidence presented by the Objectors was either 1) favorable to the Candidate's position (her testimony) or 2) irrelevant or unpersuasive (weak and almost irrelevant private investigator testimony re another address and documents re ownership of another address outside the district).

14. The Objectors, despite having been been given great leeway by the Hearing Examiner and support by the Board in terms of subpoenas and court support for such and extending the time period to the maximum to assist the Objectors to fully present all their evidence, have failed to meet their burden to demonstrate that the Candidate did not reside in the 10th Representative District during the required time period. In fact, the overwhelming and credible evidence was that the Candidate has resided in the District during the relevant time of November, 2002 to the present. One is left with the impression that the Objectors, to put it in the best light for them, simply do not understand the requirements of the law in a residency challenge. The mere fact that a Candidate spends some time in, or has an interest in, a location other than her legal residence does not mean that the Candidate can be properly charged with abandoning her legal residence or that she has established a different one. The factual basis for the Objectors' case, while put on with skill and competence by their very able counsel, was significantly lacking in relevant proof and surprisingly weak in its content. It was not even a close case.

RECOMMENDED: That the Objections of MARSHON HARRIS and ROBERT G. BUTLER to the nomination papers of ANNAZETTE R. COLLINS, candidate for nomination to the office of Representative in the General Assembly, 10th Representative District, be OVERULED and that said nomination papers be declared VALID and the name of ANNAZETTE R. COLLINS, candidate for nomination to the office of Representative in the General Assembly, 10th Representative District, SHALL be printed on the official ballot for the General Primary Election to be held on March 16, 2004.

Dated: Chicago, Illinois, this 11th day of February, 2004.

Charles R. Bernardini, Hearing Examiner

TOTAL P.04