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

Objections of: BRANDON MCNAIR	)
	)
To the Nomination	)
Papers of: CHARLES G. MORROW III	)
	) No. 04-EB-RGA-13
Candidate for the office of Representative of the	)
32nd 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 BRANDON MCNAIR to the nomination papers ("Nomination Papers") of CHARLES G. MORROW III, candidate for the nomination of the Democratic Party to the office of Representative in the General Assembly for the 32nd 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 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 5, 2004 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 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 Objector, BRANDON MCNAIR, by his attorney; and the Candidate, CHARLES G. MORROW III, by his attorney.

7. The Candidate filed a motion to strike the Objector's petition in its entirety, arguing that even if all of the allegations raised therein are true, the Candidate still has many more signatures than necessary to qualify for the ballot.

8. The Hearing Examiner, after considering the motion and briefs filed by both parties and having heard the argument of the parties, has submitted his report and recommendations granting the Candidate's motion to strike the Objector's petition in its entirety.

9. The Electoral Board hereby adopts the Hearing Examiner's recommended findings and conclusions of law as contained in his report, which is attached hereto and incorporated herein as though fully set forth.

10. Therefore, the Electoral Board grants the Candidate's motion to strike the Objector's petition in its entirety and the same is stricken. The Electoral Board finds that the Candidate's Nomination Papers are valid.

IT IS THEREFORE ORDERED, that the Objections of BRANDON MCNAIR to the Nomination papers of CHARLES G. MORROW III, candidate for nomination of the Democratic Party to the office of Representative in the General Assembly for the 32nd Representative District, State of Illinois are hereby STRICKEN AND DISMISSED and said Nomination Papers are hereby declared VALID and the name of CHARLES G. MORROW III, candidate for nomination of the Democratic Party to the office of Representative in the General Assembly for the 32nd 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 27th day of January 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.

BEFORE THE DULY CONSTITUTED ELECTORAL BOARD FOR THE HEARING AND PASSING UPON OBJECTIONS TO NOMINATION PAPERS OF CANDIDATES TO BE VOTED UPON AT THE MARCH 16, 2004 GENERAL PRIMARY ELECTION

BRANDON McNAIR, Petitioner-Objector, v. CHARLES MORROW, III, Respondent-Candidate.	))))))))	No. 04-EB-RGA-13 Office: 32nd Representative District in the General Assembly, Democratic Nomination Minimum Signature Requirement: 305

REPORT AND RECOMMENDATION OF HEARING EXAMINER, TERENCE E. FLYNN

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Proposed Findings

1. The Objector's petition was timely filed.

2. The initial hearing was held on January 6, 2004, at which time counsel appeared for both parties. Counsel for both parties agreed that no Rule 6 Records Examination was appropriate at that time. A briefing schedule was set on the Motion to Strike.

3. The next hearing was set for January 13, 2004. The Candidate's Motion and the Objector's Response had been received and reviewed. Argument on the motion was heard on January 13, 2004. The matter was set down for ruling on January 16, 2004. Rather than ruling at that hearing, the Hearing Examiner requested that each party file additional briefs on the Goodloe (99-EB-ALD-105) and Latimore (99-EB-ALD-098) Board decisions, which had not been previously cited or discussed. Copies of those decisions were distributed to the parties. Both parties filed supplemental briefs. Oral decision was rendered on January 20, 2004 with the parties present.

Proposed Conclusions

4. Before the Hearing Examiner is a question of law.

Paragraph 3 of Candidate's Motion to Strike seeks to strike as a matter of law the entirety of the Objector's Petition. Paragraph 3 states the following:

"The Objector's Petition should be stricken in its entirety because even if all of the allegations raised therein are true, the Candidate still has many more signatures than necessary to qualify for the ballot.

The Candidate filed a total of 1,481 signatures. The Objector raises specific objections to 421 of those signatures. In addition, the Objector alleges a pattern of fraud by the circulators of certain petition sheets. Those sheets contain a total of 558 additional signatures, excluding those to which specific objections were raised. Assuming that each and every individual objection were sustained, and assuming the Board were to find a pattern of fraud such as to invalidate all of the sheets circulated by all of the affected circulators, the Candidate would still have 502 signatures that were neither objected to nor gathered by circulators allegedly engaged in the pattern of fraud." (Emphasis supplied.)

5. The Objector's Response to Motion to Strike solely relies upon Paragraph 21 of the Objection. Paragraph 21 of Objector's Petition states in full:

"The Nomination Papers contain numerous sheets circulated by individuals whose sheets demonstrate a pattern of fraud and disregard of the election Code to such a degree that every sheet circulated by said individuals in invalid, and should be invalidated in order to Protect the integrity of the electoral process. Such circulators are those who circulated the sheets in which objections are made in Column A and Column G of the Appendix-Recapitulation. Specifically, but without limitation, the disregard of the Election Code evidenced by the actions of those circulators includes the submission of voters' signatures which were not signed by the voters in their own proper persons, but rather by one or a few individuals who forged the voters' signatures in a "roundtable" or seriatim fashion. These actions also include, without limitation, these circulators signing petitions as duly qualified voters multiple times. In particular sheets: 17, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 59 and 61, purportedly circulated by the candidate, were not in fact circulated by him, and contain such a large number of irregularities as to constitute a pattern of fraud, and all the petitions submitted on behalf of the candidate should be stricken, and the candidate be removed from the ballot."

Thus, in Paragraph 21 the Objector alleges that the Candidate as circulator himself falsely affied to circulating the 24 petitions, that "roundtabling" and forgeries of these particular sheets occurred on sheets purportedly circulated by the Candidate, and that "other irregularities" occurred. (Such "disregard of the Election Code" as alleged may violate 10 ILCS 5/29-12.)

6. However, the Objector stipulates that even if every objection were sustained, the Candidate would have sufficient signatures, unless other sheets in which the

circulator is not challenged are stricken in their entirety. The only circulator-challenge involves those sheets purportedly circulated by the Candidate. No other circulator is challenged.

7. The Candidate's argument is that even if all objections were true, including striking sheets purportedly circulated by the Candidate, which of course is not conceded, this Hearing Examiner is powerless to recommend and this Electoral Board is powerless to fashion a remedy beyond striking those specific sheets circulated by the Candidate. If so, argues the Candidate, the Candidate will still have sufficient signatures in non-objected-to sheets to fulfill the minimum signature requirement.

8. Another way to put this issue is whether the Electoral Board has power and jurisdiction over the Candidate or only over the Nomination papers? If the latter, then the only remedy would be striking sheets specifically objected-to on circulator grounds. If the former, then further remedies could apply. Another formulation: can the "taint" to Candidate-as-circulator be attributed to other, non-challenged sheets?

9. The Candidate is correct that no Illinois court has authorized striking a candidate's name from the ballot, even under "pattern of fraud" analysis, when the candidate still possessed sufficient signatures over the minimum requirement.[1] However, as conceded at oral argument on January 13, 2004, no Illinois court has rejected that argument either: thus apparently no court has faced this particular question because the candidate was always below the minimum signature requirement after striking of challenged circulation sheets.

10. As said in Cantor, supra (fn. 1), citing Fortas, "Likewise, the board here could not 'close its eyes and ears' to the evidence that ... the purported circulator ... did not in fact circulate the petition." (523 N.E.2d at 1301)

"The circulator's affidavit ... is mandatory, and must be strictly enforced as it ensures the fairness and honesty of the entire election process." 523 N.E.2d at 1302

Huskey: "The crucial question is whether it is conceivable that removing the candidate from the ballot has a rational relationship to a legitimate governmental objective." 509 N.E.2d at 557

Clearly, in Cantor, Huskey and Fortas, "good" signatures were stricken because of others' acts. Here, the question is whether otherwise "good" sheets can be stricken because of the Candidate's alleged acts on other sheets.

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[1] Fortas v. Dixon, 122 Ill.App.3d 697 (First District; 1984); Huskey v. Municipal Officers Electoral Board, 156 Ill.App.3d 201, 509 N.E.2d 555 (First District, 1987); Cantor v. Cook County Officers Electoral Board, 170 Ill.App. 3d 364, 523 N.E.2d 1299 (First District, 1988): All involved insufficient signatures after the remedy of striking sheets was approved and, of course, all three cases were petition-sheet centered.

11. The Candidate also argues that a remedy as proposed by Objector is unconstitutional, as violative of the Qualifications Clause of Article IV, Section 2(b) of the Illinois Constitution. (The Candidate cited 2(b); perhaps 2(c) was meant.) The argument is that a further condition, i.e., non-violation of Election Rules as circulator, would be an "additional" qualification which this Board is powerless to add. The Candidate also points out that Illinois law "strongly favors ballot access", citing Welch v. Johnson, 147 Ill.2d 40 (1992).

12. The Objector cites Mitchell v. McCann, 99-EB-ALD-119, for the undeniable proposition that "[t]his Board has not hesitated to invalidate nomination papers where a pattern of fraud and disregard for the Election code is evidenced by a candidate." However, that case's findings, just as in Fortas, Huskey and Cantor brought the candidate below the minimum signature requirement. Here, the Objector has to impute the Candidate's alleged violations to other of his nomination papers to bring him below the minimum signature requirement.

13. There are at least two Electoral Board cases that did not result in court decisions in which the Electoral Board took a further step in invalidation of sheets:

    a) In Catherine & Streeter v. Goodloe, 99-EB-ALD-105, the Board invalidated all sheets of the candidate-circulator because of "the extremely high number [84.5%] of petition signatures invalidated because the signature was found not [to]be genuine" (Pars. 15 and 20). However, that was a sole circulator case.

    b) In Catherine & Streeter v. Latimore, 99-EB-ALD-098, the candidate filed over 17,300 purported signatures on 867 pages when the minimum signature requirement was 140. Sixty circulators were purportedly utilized. After what was clearly a lengthy hearing with independent experts, the Hearing Examiner concluded, as adopted by the Board, that 98% of the signatures were invalid and the remaining signatures should also be stricken, even though there would remain more-than sufficient signatures.

14. Here, if all objections were sustained, 66% of the signatures would be invalid; 24 of 74 sheets (32.4%), all circulated by the Candidate, would be invalidated. The question presented is whether these percentages raise a flag sufficient to trigger a remedy that extends from the authorized remedy of invalidating otherwise presumably "good" signatures (by invalidating the alleged entire sheet) to the as-yet not authorized remedy of invalidating whole sheets circulated by others because of the Candidate's alleged malfeasance, under a "clear and convincing" evidence standard.

15. The pattern of fraud allegations here are not so pervasive (98% in Latimore, supra) nor do they involve a sole circulator (and 84.5% in Goodloe). The only

authority found for the proposition that other sheets not challenged can be stricken is the Latimore case.

16. If every single objection were sustained, the Board would still have to invalidate in their entirety 50 other sheets (and over 500 signatures) not otherwise challenged or objected-to, with the circulators not challenged. (As stated above in paragraph 6, the circulator challenge is solely to certain of the sheets purportedly circulated by the Candidate.)

17. Thus we have competing public policies: that the Board is not to "shut its eyes" versus the legitimate governmental objective for the candidate to demonstrate the public support and initiative to reach (or exceed) the minimum signature requirement. The courts have stated that both are important public policies: a) "eyes open" – Fortas; and b) "candidates who have demonstrated initiative and at least a minimal appeal to eligible voters." Merz v. Volberding, 94 Ill.App.3d 1111 (1st Dist. 1981), cited by the Candidate.

18. It would take a remedy only authorized in Latimore to strike otherwise not-challenged sheets. Latimore's 98% is the only standard authorizing such a remedy. The percentages here, before the evidentiary hearing, are well below that standard. In this Hearing Examiner's view, the Candidate's alleged violations as circulator cannot taint his other unchallenged sheets. In my view, we guard the process by guarding the papers, not the Candidate. I do not think that the Objector's proposed remedy is available at 32.4% of sheets and 66% of signatures challenged. I also note that granting the motion on the question of law concerning remedy conserves important scarce resources until such time as the Board, or a court, clarifies or authorizes that remedy.

Recommendation

On the basis of the above discussion, the Motion to Strike is granted in all respects[2], and the name "Charles Morrow, III" should appear for the nomination of the Democratic party for the office of State Representative in the 32nd Representative District in the March 16, 2004 primary election.[3]

Dated: January 21, 2004

Terence E. Flynn, Hearing Examiner

[2] Paragraphs 1 and 2 of the Motion to Strike are also granted. The Appendix-Recapitulation sheets do not support paragraphs 8, 9, 11-17, 19 and 20 of the Objector's petition..

[3] Upon the agreement of the parties, Objector filed an "offer of proof" (Objector's Exhibit 1) containing affidavits regarding the Candidate as circulator. The Record was left open for both sides to file "offers of proof" until close of business on Wednesday, January 21, 2004.