NBCON-WC

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

Objections of: CLARA SIMMS-JOHNSON	)
	)
To the Nomination	)
Papers of: WILLIAM "MR. D" DELAY	)
	) No. 04-EB-WC-06
Candidate for the office of Ward Committeeman for	)
the 5th Ward of the City of Chicago, Republican	)
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 CLARA SIMMS-JOHNSON ("Objector") to the nomination papers ("Nomination Papers") of WILLIAM "MR. D" DELAY, candidate for election to the office of Ward Committeeman for the 5th Ward of the City of Chicago, Republican Party ("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 JOHN R. ASHENDEN 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, CLARA SIMMS-JOHNSON, by her attorney; and the Candidate, WILLIAM "MR. D" DELAY, by his attorney.

7. The Candidate filed a motion to strike and dismiss the Objector's petition on grounds that the Objector is not a registered voter and that the Objector's petition lacks specificity. The Hearing Examiner found that the Objector is a registered voter in the 5th Ward and that the Objector's petition adequately states the nature of the objections so as to fully state the nature of the objections as required by Section 10-8 of the Election Code. Accordingly, the Hearing Examiner denied the Candidate's motion to strike and dismiss the Objector's petition.

8. The Objector withdrew all objections except one: that the Candidate is not a registered voter in the 5th Ward. The Objector alleges that the Candidate failed to register to vote upon being released from federal prison on or around April 2, 2002. The Objector asserts that by operation of law the Candidate became ineligible to vote upon his incarceration in May 2000. The Objector further argues that the Candidate's failure to reregister upon his release from prison in April 2002 renders his Nomination Papers invalid.

9. In support of her Objections, the Objector presented evidence tending to show the following:

A. On March 31, 2000, the Candidate pled guilty to a felony in federal court and was sentenced to 26 months of confinement at a penal institution and two years on supervised release. The Candidate began his sentence on May 15, 2000 and was released from the federal penitentiary on April 2, 2002.

B. Prior to his conviction and confinement, the Candidate was registered to vote at 7205 South Bennett, 2W, Chicago, IL.

C. The Candidate did not vote in the November 2000 general election or in the March 2002 primary general election.

D. According to the records of the Chicago Board of Election Commissioners, the Candidate's voter registration was challenged in November 2001 and his voter registration status was changed to "Inactive" approximately 16 1/2 months after his confinement.

E. According to the records of the Chicago Board of Election Commissioners, the Candidate's voter registration status remained "Inactive" until November 23, 2002 and the Candidate voted in the November 2002 general election.

10. The Objector argues that by operation of law, the Candidate's voter registration was canceled upon his felony conviction and sentence to confinement. In support of this contention, the Objector cites to 10 ILCS 5/3-5 which provides that a person legally convicted in this state or in any other state or in any federal court of any crime and who is serving a sentence of confinement in any penal institution shall not vote, offer to vote, attempt to vote or be permitted to vote at any election until released from confinement. The Objector also cites to Sections 6-55 and 6-63 of the Election Code that provide that a board of election commissioners shall obtain reports from clerks of the court and vital records officers and shall cancel the registration of criminals and of deceased persons who are reported to it. Section 6-63 provides that it shall be the duty of a board of election commissioners to strike the names of all such criminals and of all such deceased persons from the voter registration rolls. The Objector also cites to provisions in the Election Code that require election authorities to conduct a verification of voter registrations at least once every two years and shall cancel the registration of any persons who have ceased to be qualified voters. The Objector alleges that when the Candidate's voter registration was challenged in November 2001 and he did not respond in time, his registration should have been canceled.

11. The Objector further argues that the Candidate's voting rights were forfeited upon his confinement in May 2000, that he failed to reregister to vote upon his release from prison, and that because he is not a qualified voter, he is not qualified to be a Candidate for Republican Ward Committeeman of the 5th Ward.

12. The Objector argues that the Chicago Board of Election Commissioners had in its possession evidence of the Candidate's conviction and sentence as part of an objection to the Candidate's nomination papers in his previous attempt to become a candidate for Republican Ward Committeeman of the 5th Ward in March 2000. The Electoral Board finds that although the Board initially found that the Candidate's nomination papers for the March 2000 primary election were invalid, it subsequently reversed its findings on remand from the Illinois Appellate Court and determined that the Candidate was a duly registered voter and therefore eligible to run for Republican Ward Committeeman of the 5th Ward. This decision was made prior to the Candidate's conviction and sentencing.

13. At the January 26, 2004 hearing, the Hearing Examiner heard testimony from Charles Holliday, assistant manager of registration for the Chicago Board of Election Commissioners, who testified under oath that the Candidate's voter registration had at no time been canceled by reason of his conviction. Mr. Holliday further testified that the Candidate was a registered voter when he filed his Nomination Papers. When asked by the Objector's attorney whether the Board takes proactive measures to determine if a voter has been convicted, Mr. Holliday testified that it does not.

14. The Electoral Board finds that:

A. Article III, Section 2, of the Constitution of the State of Illinois provides that "a person convicted of a felony, or otherwise under sentence in a correctional institution or jail, shall lose the right to vote, which right shall be restored not later than upon completion of his sentence."

B. Section 3-5 of the Election Code provides that "no person who has been legally convicted, in this or any other state or in any federal court, of any crime, and is serving a sentence of confinement in any penal institution, or who has been convicted under any section of this Act and is serving a sentence of confinement in any penal institution, shall vote, offer to vote, attempt to vote or be permitted to vote at any election until his release from confinement."

C. Section 6-61 of the Election Code provides that it shall be the duty of the clerk of court to furnish monthly to boards of election commissioners the names of all parties convicted or sentenced for any crime, the punishment of which is confinement in the penitentiary, and their place of residence if such fact be in the possession on such clerk.

D. Section 6-63 of the Election Code provides that it shall be the duty of the board of election commissioners to strike the names of all criminals from the voter registration records.

E. Section 8 of the National Voter Registration Act of 1993 provides that the name of a registrant may not be removed from the official list of eligible voters except as provided in that Act. The Act provides that registrants may be removed, among other reasons, as provided by state law by reason of criminal conviction. The Act further provides that upon the conviction of a person of a felony in a district court of the United States, the United States attorney shall give written notice of the conviction to the chief state election official, which notice shall include the name of the offender, the offender's age and residence address, the date of entry of the judgment, a description of the offenses for which the offender was convicted, and the sentence imposed by the court.

F. Section 8 of the National Voter Registration Act further provides that the chief state election official shall notify the voter registration officials of the local jurisdiction in which an offender resides of the information received under this section.

G. In Illinois, the "chief state election official" for purposes of the National Voter Registration Act is the executive director of the State Board of Elections.

H. The Illinois State Board of Elections has adopted rules to implement the National Voter Registration Act. See, 26 Illinois Administrative Code, Ch. I, Sec. 216.50. Those rules provide that no voter registration may be canceled without following the procedures and providing the notice of suspension or cancellation required by Sections 8(a) through (d) of the National Voter Registration Act.

Those rules further provides that a voter's registration shall be canceled only upon the occurrence of certain events including, but not limited to, a notice from the State Board of Elections that the voter has been incarcerated in a United States correctional facility by reason of conviction.

15. The Electoral Board finds that with respect to the Candidate, the Chicago Board of Election Commissioners never received a notice from the State Board of Elections or the Unites States Attorney advising that the Candidate had been incarcerated in a United States correctional facility by reason of conviction of a felony. The Electoral Board further finds that with respect to the Candidate, the Chicago Board of Election Commissioners never received notice from any other official source designated by statute of the Candidate's conviction and sentence of confinement. Accordingly, the Electoral Board finds that there was no legal basis upon which to cancel the Candidate's voter registration by reason of his conviction of a felony in federal court. Finally, the Electoral Board finds that the Candidate's voter registration was not canceled during the period of his confinement, that his voter registration status was either "Inactive" or "Active" during this period, and that there was no requirement, therefore, that the Candidate reregister upon release from confinement.

16. Therefore, the Electoral Board adopts the recommended findings of the Hearing Examiner, overrules the Objector's petition and finds that the Candidate's Nomination Papers are valid.

IT IS THEREFORE ORDERED that the Objections of CLARA SIMMS-JOHNSON to the Nomination Papers of WILLIAM "MR. D" DELAY, candidate for election to the office of Ward Committeeman for the 5th Ward of the City of Chicago, Republican Party, are hereby OVERRULED and said Nomination Papers are hereby declared VALID and the name of WILLIAM "MR. D" DELAY, candidate for election to the office of Ward Committeeman for the 5th Ward of the City of Chicago, Republican Party, SHALL be printed on the official ballot for the General Primary Election to be held on March 16, 2004.

Dated: Chicago, Illinois, this 3rd 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.