NBCON-WC

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

Objections of: MICHAEL C. MARZULLO	)	
	)	
To the Nomination	)	
Papers of: MICHAEL P. MCAULIFFE	)	
	)	No. 04-EB-WC-74
Candidate for the office of Ward Committeeman for	)	
the 41st 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 MICHAEL C. MARZULLO ("Objector") to the nomination papers ("Nomination Papers") of MICHAEL P. MCAULIFFE, candidate for election to the office of Ward Committeeman for the 41st 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, MICHAEL C. MARZULLO, by his attorney; and the Candidate, MICHAEL P. MCAULIFFE, by his attorneys.

7. The Candidate filed a motion to strike and dismiss the Objector's petition.

8. The Hearing Examiner, after reviewing the motion to strike and dismiss as well as the briefs submitted by the parties, and after hearing argument from the parties, recommends that the Electoral Board grant the Candidate's motion to strike and dismiss.

9. The Electoral Board hereby adopts the findings and conclusions of law of the Hearing Examiner as contained in his written recommended decision, a copy of which is attached and incorporated herein. Therefore, the Electoral Board grants the Candidate's motion to strike and dismiss the Objector's petition and the same is hereby stricken and dismissed. There being no objections sufficient to invalidate to the Candidate's Nomination Papers, they are deemed valid.

IT IS THEREFORE ORDERED that the Objections of MICHAEL C. MARZULLO to the Nomination Papers of MICHAEL P. MCAULIFFE, candidate for election to the office of Ward Committeeman for the 41st Ward of the City of Chicago, Republican Party, are hereby STRICKEN AND DISMISSED and said Nomination Papers are hereby declared VALID and the name of MICHAEL P. MCAULIFFE, candidate for election to the office of Ward Committeeman for the 41st 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 23RD 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 OF OBJECTIONS TO NOMINATION PAPERS OF CANDIDATES FOR ELECTION TO THE OFFICE OF REPUBLICAN WARD COMMITTEEMAN OF THE 41ST WARD, CITY OF CHICAGO, COOK COUNTY, STATE OF ILLINOIS

MICHAEL C. MARZULLO,	)	
	)	
Petitioner-Objector,	)	
	)	
v.	)	**04-EB-WC-74**
	)	
MICHAEL P. McAULIFFE,	)	
	)	
Respondent-Candidate.	)	
	)	

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BOARD OF ELECTION

HEARING EXAMINER'S RECOMMENDED DECISION

The Respondent-Candidate, MICHAEL P. McAULIFFE, filed Nomination Papers for nomination to the office of Republican Ward Committeeman of the 41st Ward, City of Chicago, Cook County, Illinois, to be voted upon at the General Primary Election to be held on March 16, 2004. On December 26, 2003, the Petitioner-Objector, MICHAEL C. MARZULLO, filed a petition objecting to the Nomination Papers of the Candidate. The minimum number of required signatures for the office of 41st Ward Committeeman is 648. The Candidate's Nominating Papers contain approximately 1,380 voter signatures.

The Objector's Petition contains the following objections:

1. That due to alleged notary misconduct, all petition sheets should be invalidated (Objector's Petition, Paragraphs 14, 18).

2. That due to alleged circulator misconduct and voters allegedly signing petition sheets other than in their own proper persons, the 37 petition sheets containing 555 voter signatures

identified in Appendix A of the Objector's Petition be stricken from the Candidate's Nomination Papers (Objector's Petition, Paragraphs 12-15, 19).

3. That the 195 voter signatures identified in Appendix B of the Objector's Petition be stricken because those voters had previously signed petition sheets of Democratic primary candidates. (Objector's Petition, Paragraphs 8, 10, 16).

4. That the 178 signatures identified in Appendix C should be stricken because they are the signatures of unregistered voters or voters not registered in the 41st Ward. (Objector's Petition, Paragraph 17).

5. That the 30 signatures gathered by circulator Bruce Best be disregarded because Mr. Best allegedly gathered some signatures of voters not residing in the 41st Ward. (Objector's Petition, Paragraph 21).

The Objector requested, but later withdrew the request, that all initialed or impartial signatures on the petition sheets be disregarded.

On January 6, 2004, this matter appeared on the initial trial call. Appearing for the Objector was attorney Richard K. Means. Attorneys Michael Durkin and Michael Sturino appeared for the Candidate. The Candidate filed a Motion to Strike Portions of Objector's Petition. The Objector requested permission to file instanter a Clarified and Verified Objector's Petition in lieu of the original, timely filed *pro se* Objector's Petition. The Candidate objected and the hearing examiner took the matter under advisement. The hearing examiner set the matter for hearing on January 9, 2004 on the Candidate's Motion to Strike and Dismiss.

On January 7, 2004, the Objector filed a Response to Motion to Strike Portions of Objector's Petition and a Motion for Issuance of Subpoenas. On January 8, 2004, the Candidate

filed a Reply to Objector's Response to Motion to Strike Portions of Objector's Petition.

At the January 9, 2004 hearing on the Candidate's Motion to Strike and Dismiss, the hearing examiner denied the Objector's request to file a Clarified and Verified Objector's Petition, finding that no amended pleadings may be filed after the initial filing deadline.

The hearing examiner makes the following recommended rulings on the objections raised in the Objector's Petition:

1. **The Objector's Request to Exclude Every Signature Notarized by George Theodoropoulos Based on the Alleged Improper Notarization of Petition Sheet #33 Should Be Denied.**

In Paragraph 14 of the Objector's Petition, the Objector requests that all of the approximately 1,370 signatures submitted by the Candidate be invalidated because George Theodoropoulos, the notary who allegedly violated his oath by notarizing an allegedly forged circulator signature on petition sheet #33, notarized all petition sheets submitted by the Candidate. The Objector argues that because Mr. Theodoropoulos allegedly violated his oath with respect to sheet #33, and was an active participant in unspecified fraudulent acts in gathering petition signatures, that every petition sheet was improperly notarized and should be invalidated by the Board.

At the hearing, the hearing examiner asked the Objector's attorney, Richard Means, to identify the specific fact allegation with respect to alleged misconduct by notary George Theodoropoulos. Mr. Means's response was "that he notarized page 33 in the presence of a person different than [circulator] Michael Dillon." (Jan. 9, 2004 Hearing Transcript, Page 67, Lines 8-10). Mr. Means went on to confirm that the alleged notary misconduct with respect to petition sheet 33 "is all that has been alleged here....There is one act that is alleged. We will prove

numerous other acts." (Jan. 9, 2004 Hearing Transcript, Page 69, Lines 9-10, 23-24).

The hearing examiner recommends that the Objector's motion to exclude every voter signature in the Candidate's Nominating Papers, based on the alleged notary misconduct on petition sheet #33, be denied. First, the Objector has cited no support in the Code or in the case law for the proposition that an allegedly improper notarization on one petition sheet warrants the exclusion of every signature on every petition sheet notarized by that notary.

The hearing examiner further disagrees with the Objector's argument for the extension of the pattern of fraud approach the court applied in Fortas v. Dixon, 122 Ill. App. 3d 697 (1st Dist. 1984). At the hearing, Mr. Means contended that "it is reversible error...to foreclose a reasonable extension of [Fortas v. Dixon] to the notary by saying, there are no conceivable facts which under...[Fortas] would be applying to notary" (Jan. 9, 2004 Hearing Transcript, Page 70 Lines 20-24). The hearing examiner disagrees with the Objector's petition. The First Appellate District in Fortas held that the Board was correct to invalidate entire petition sheets where it was alleged that circulators had violated their oaths on multiple petition sheets. Fortas v. Dixon, 122 Ill. App. 3d 697 (1st Dist. 1984). In this matter, the Objector asserts that one allegation of an improper notarization on one petition sheet suffices to permit the Board to invalidate every signature acknowledged by that notary. The hearing examiner recommends a finding that the Objector has not brought forth sufficient allegations to extend the holding in Fortas to the alleged notary misconduct in this case.

2. **The Objector's Motion to Exclude 555 Signatures on 37 Petition Sheets (Identified in Objector's Petition Appendix A), Due to the Alleged False Swearing of the Circulators' Oaths with Respect to the Authenticity of the Signatures on These Sheets, Should Be Denied.**

The Objector further argues on a pattern of fraud theory that the circulators of 37 petition sheets containing 555 signatures (identified in Objector's Petition Appendix A) violated their oaths with respect to the authenticity of certain of the signatures contained on these sheets, resulting in a pattern of fraud necessitating the exclusion of all 555 signatures on the 37 sheets. (Objector's Petition, Paragraph 15,19, Appendix A). The hearing examiner recommends that the Board deny the Objector's motion to exclude the 555 signatures on 37 sheets as described in Appendix A for failure to sufficiently allege a pattern of fraud.

Under Section 10-4 of the Illinois Election Code, the circulator must sign a statement under oath at the bottom of each petition sheet, certifying that the signatures on the sheet were signed in her presence and are genuine. 10 ILCS 5/7-10. Entire petition sheets should be invalidated where there is clear evidence of fraud permeating the entire petition circulation process. Huskey v. Municipal Officers Electoral Board, 156 Ill. App. 3d 201at 205 (1 Dist. 1987) *citing* Fortas v. Dixon, 122 Ill. App. 3d 697 (1st Dist. 1984).

Pattern of fraud cases, however, generally turn on evidence that the contested petition sheets had not actually been circulated by the person who signed the circulator's affidavit. See Canter v. Cook County Officers Electoral Board, 170 Ill. App. 3d 364, 366 (1 Dist. 1988); Huskey v. Municipal Officers Electoral Board, 156 Ill. App. 3d at 205 (1 Dist. 1987); Fortas v. Dixon, 122 Ill. App. 3d at 701 (1st Dist. 1984).

In this proceeding, the Objector has not alleged that any circulator filed a false affidavit by

signing the oath on a petition sheet she did not actually circulate. An examination of some of the specific signatures challenged in Objector's Appendix A indicates that many of these signatures appear to be in the nature of ma-and-pa signatures, where a family member signs on another member's behalf (See Petition Sheet 3, Lines 3-4; Petition Sheet 6, Lines 10-13, etc). It is the opinion of the hearing examiner that signatures of voters not in their own proper persons, including ma-and-pa signatures, should be stricken individually. However, this conduct, taken as a whole, does not rise to the level of egregious conduct found in the pattern of fraud cases, where there is clear evidence that someone other than the person signing the affidavit had circulated the petition sheets. The hearing examiner therefore recommends that the Board deny the Objector's motion to exclude all 555 signatures on the 37 petition sheets enumerated in Appendix A of the Objector's Petition.

Based on the same analysis, the hearing examiner recommends that the Board deny the objection to all signatures collected by Colleen Dillon. There has been no allegation that Colleen Dillon signed a circulator's affidavit on any petition sheet she did not actually circulate. The Objector's sole allegation with respect to Ms. Dillon is that she allegedly signed Michael Dillon's name as the circulator of petition sheet #33. While this alleged misconduct would warrant the invalidation of sheet #33, it is the hearing examiner's opinion that this allegation is insufficient to invalidate every sheet circulated by Ms. Dillon.

The Objector's contention in Paragraph 12 and 13 of the Petition, that all signatures appearing on petition sheets containing some allegedly invalid signatures, should also be denied. The Objector has not offered, and the hearing examiner can find, no support for the proposition that, absent an allegation of circulator misconduct, petition sheets may be invalidated in their

entirety where some of the signatures on those sheets are shown to be invalid. No such allegation made in Paragraphs 12 and 13, so these objections should be denied.

3. The Objector's Motion to Strike the Signatures of Voters Who Previously Signed Petition Sheets for Democratic Primary Candidates Should Be Denied.

The Objector contends that any voter who previously signed the petition sheet of a Democratic primary candidate is prohibited from signing the petition sheet of the Candidate, a Republican. The Objector alleges in Paragraphs 8, 10, and 16, that the 195 signatures enumerated in Appendix B should be stricken because, based on the date of notarization of the petition sheets, these voters signed Democratic petition sheets prior to signing the Candidate's sheet.

At the January 9, 2004 hearing, the attorney for the Objector, Mr. Means, was asked what proof would be offered as to the date of the petition signatures; Mr. Means admitted that the allegation was based on the date of notarization of the petition sheets. (Jan. 9, 2004 Hearing Transcript, Page 51, Lines 17-20).

The circulator's affidavit requires the circulator to acknowledge that the signatures on a petition sheet were signed no more than 90 days preceding the last day for filing of the petitions. Therefore, the date of notarization only proves that the signatures were collected at some time within that 90 day period, and is not conclusive proof as to when the petitions were signed. It is therefore the hearing examiner's recommendation that this objection be denied. Furthermore, even if the 195 signatures in Appendix B were invalidated, the Candidate's Nominating Papers would contain well over the 648 valid signatures required for this office. Therefore, the hearing examiner recommends that the Board deny the objection as to the 195 signatures in Objector's Petition Appendix B.

4. **Signatures of Unregistered Voters and of Voters Not Registered in 41st Ward Should Be Stricken from the Candidate's Nomination Papers.**

In Paragraph 17 of the Objector's Petition, the Objector requests the invalidation of the 178 signatures appearing in Appendix C, on grounds that they were signed by unregistered voters and voters not residing in the 41st Ward. The hearing examiner's recommended finding is that even if all 178 signatures were invalidated, the Candidate's Nomination Papers would still present well over the 648 minimum valid signatures for nomination to this office. Therefore, this objection should be denied.

5. **The Board Should Not Exclude All Petition Sheets Circulated by Bruce Best Based on the Allegation That Mr. Best Acquired Signatures from Voters Not Residing in the 41st Ward.**

The Objector requests in Paragraph 21 that all sheets circulated by Bruce Best be stricken because Mr. Best allegedly knowingly or intentionally collected signatures from voters not residing in the 41st Ward. The total number of signatures the Objector seeks to invalidate on this basis is 30. (Objector's Petition, Paragraph 21).

The hearing examiner recommends that this objection be denied. The Objector offers no support for the allegation that Mr. Best collected signatures from voters residing outside the 41st Ward. Further, even if true, the invalidation of the 30 signatures enumerated in Paragraph 21 would leave the Candidate with well over the minimum number of 648 valid signatures.

The hearing examiner recommends that Candidate Michael McAuliffe's name be placed on the ballot for the March 16, 2004 election of Republican Ward Committeeman for the 41st Ward.

John R. Ashenden 1/15/04

John R. Ashenden, Hearing Examiner