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

Objections of: DENICE DAVIS AND SANDRA WHITE	)
	)
	)
To the Nomination Papers of: SANDRA REED	) No. 04-EB-WC-81
	)
Candidate for the office of Ward Committeeman for the 46th Ward of the City of Chicago, 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 DENICE DAVIS AND SANDRA WHITE ("Objectors") to the nomination papers ("Nomination Papers") of SANDRA REED, candidate for election to the office of Ward Committeeman for the 46th Ward of the City of Chicago, Democratic 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 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 Electoral Board assigned this matter to Hearing Examiner RICHARD E. ZULKEY for further hearings and proceedings.

6. 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, DENICE DAVIS AND SANDRA WHITE, by their attorneys; and the Candidate, SANDRA REED, by her attorneys.

7. The Candidate filed a motion to strike and dismiss the Objectors' petition alleging, among other things, that the Objectors' petition was notarized by one of the Objectors and that because the notary had an interest in the transaction in violation of the Notary Act, the notarization is void and the Objectors' petition must be stricken and dismissed. However, Section 10-8 does not require specifically that the objector's petition be signed or verified. *Powell v. Lang*, 95-EB-ALD-183, CBEC, January 28, 1995. Therefore, any defect in the notarization of an objector's petition does not render the petition defective. Accordingly, the Candidate's motion to strike the Objections on this ground is overruled.

8. The Candidate's motion to strike and dismiss also alleged that Objector Sandra White had no standing to file the objection because her voter registration is listed as "inactive." This Electoral Board has previously ruled that the fact that one's voter registration being listed as "inactive" does not make such person ineligible to either sign petitions or to circulate petitions 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. *Drish v. Walls*, 03-EB-MUN-02, CBEC (February 12, 2003), affirmed *Walls v. Board of Election Commissioners of the City of Chicago*, 03 CO EL 032 (Cir.Ct.CookCty, February 24, 2003) (Judge Murphy presiding). See also, *Barnett v. Miller*, 99-EB-ALD-189, CBEC, (February 2, 1999), aff'd. *Rhodes v. Board of Election Commissioners*, 99 CO 38 (Cir.Ct.CookCty), aff'd. *Rhodes v. Board of Election Commissioners for the City of Chicago*, No. 99-0529 (Rule 23 Order) (1st Dist. March 16, 1999) (Election Code requires that petition circulators be registered voters and although circulator's registration was on "inactive" status, he remained a registered voter at the time he circulated the nominating petition). The State Board of Elections' rules define an "inactive voter" as a "person who, having once submitted a voter registration application subsequently acknowledged by the election authority having jurisdiction over the voter's place of residence, or a registration card, has not responded to a notice to confirm his or her address, but whose authority to vote has not yet been canceled." 26 Illinois Administrative Code §216.20. The Electoral Board finds that the fact that Ms. White's voter registration was "inactive" does not render her ineligible to file objections pursuant to Section 10-8 of the election code. Moreover, even if Ms. White was deemed ineligible to file objections, there is another Objector in this case, Denice Davis, whose standing to file objections has not been challenged. Accordingly, the Electoral Board denies the Candidate's motion to strike on these grounds.

9. The Candidate's motion to strike also alleges that Objector Denice Davis accepted the voter registration application of Objector Sandra White. However, so long as Ms. Davis was a duly commissioned deputy registrar, there is nothing inappropriate in her acceptance of Ms. White's voter registration. Therefore, the Electoral Board denies the Candidate's motion to strike on these grounds.

10. The Hearing Examiner ordered that an examination of the registration records be conducted by clerks and agents under the Board's direction and supervision, in accordance with the laws of Illinois and the rules of the Board.

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

12. The Candidate or her duly authorized representative(s) was present during the examination of the registration records.

13. The Objectors or their duly authorized representative(s) was present during the examination of the registration records.

14. The 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 results of the registration records examination is contained in the Electoral Board's file in this case and is available for inspection upon request of a party.

15. The Electoral Board has considered all evidence and arguments tendered by the parties.

16. The results of the records examination indicated that:

    a. The minimum number of valid signatures required by law for placement on the ballot for the office in question is 563;

    b. The number of purportedly valid signatures appearing on the nominating petition filed by the Candidate total 993;

    c. The number of signatures deemed invalid because of objections sustained total 440;

    d. The remaining number of signatures deemed valid total 553.

17. The Hearing Examiner conducted an evidentiary hearing to receive evidence and hear testimony regarding the validity of signatures invalidated during the records examination.

18. The Candidate submitted affidavits from 37 individuals who purportedly signed the Candidate's nominating petitions. Upon examining these affidavits, the Hearing Examiner reversed the results of the records examination as to 27 signatures. This included four signatures of persons whose addresses on the petition were incomplete by the submission of affidavits from such persons attesting to their full and complete address. These signatures appear on Sheet 15, Line 13 ("3538A N. Grove" instead of "3538A N. Pine Grove"); Sheet 14, Line 19 ("4626 N. Clifton" instead of "4628 N. Clifton"); Sheet 19, Line 11 ("4640 N. Kenmore" instead of "4647 N. Kenmore"); and Sheet 42, Line 3 ("464 N. Sheridan Rd." instead of "4640 N. Sheridan"). Section 7-10 of the Election Code requires that petition signers print their address on the line next to their signature. Here, the petition signers attempted to do so, but did not do so correctly. The Hearing Examiner, after considering these affidavits, found that the signatures should be counted as valid because the persons who signed the petition were found to be registered to vote at the address as correctly shown on their affidavits. After restoring these 27 signatures, the Candidate had 580 purportedly valid signatures, or 17 more than the minimum signature requirement.

19. Based on the evidence presented, the Hearing Examiner found that sheet 1 purportedly circulated by William McNamee was not in fact circulated by him and he invalidated all remaining 19 signatures on the sheet (one signature had already been invalidated at the records examination). See, e.g., *Fortas v. Dixon*, 122 Ill.App.3d 697, 462 N.E.2d 615 (1st Dist. 1984), *Huskey v. Municipal Officers Electoral Board*, 156 Ill.App.3d 201, 509 N.E.2d 555 (1st Dist. 1987), and *Canter v. Cook County Officers Electoral Bd.*, 170 Ill.App.3d 364, 523 N.E.2d 1299 (1st Dist. 1988), all of which held that when the sheets of a nominating petition submitted by a purported circulator evidence a pattern of fraud, false swearing and total disregard for the mandatory requirements of the Election Code, the sheets purportedly circulated by that individual should be stricken in their *entirety*.

20. The Hearing Examiner sustained challenges to five signatures of individuals (Sheet 12, Line 24; Sheet 16, Line 15; Sheet 35, Line 8; Sheet 41, Line 14; and Sheet 44, Line 13) on the grounds that the signatures on the petition, which were printed and not in cursive handwriting, were not genuine even after considering affidavits from these individuals attempting to rehabilitate their signatures.

21. The Hearing Examiner sustained an objection to the signature appearing on Sheet 39, Line 15, on the ground that the person signing on that line was not registered. The Candidate submitted an affidavit from the person who signed the petition claiming that she signed using her married last name, but that she is registered in her maiden name. Section 6-54 of the Election Code requires a person who changes his or her last name by marriage or otherwise to register anew. The person who signed Sheet 39, Line 15, was not registered to vote under her new name.

22. The Hearing Examiner also sustained objections to the signatures of two persons signing Sheet 29, Line 21, and Sheet 29, Line 22, on the grounds that such persons were not registered at the address shown on the petition at the time they signed the petition. Section 3-1.2 of The Election Code defines eligibility to sign nominating petitions and requires that the person be registered to vote at the address shown opposite his signature on the petition or was registered to vote at such address when he signed the petition. Here, the petition signers stated on the petition that they resided at 1255 W. Foster. The official voter registration records show two people by the same name registered to vote at 1253 W. Foster. The Candidate's attorney argued that these signatures should be counted because 1253 W. Foster and 1255 W. Foster share a common vestibule. However, the Candidate presented no evidence to support this supposition and the Hearing Examiner refused to take judicial notice of this supposition.

23. The Hearing Examiner also found that no pattern of fraud had been sufficiently proven as to Sheets 6, 8 and 42 so as to require that they be invalidated.

24. The Objections also contests petition sheets circulated by Gregory Hope. The Objectors contend that Mr. Hope circulated sheets 25 and 32 but that he listed two different addresses as his residence in the circulator's affidavit at the bottom of each sheet. On one sheet Hope listed his address as 4426 North Clifton. On another sheet Hope listed his address as 4428 North Clifton. In signing the petition as a signer, Hope listed yet a third address -- 4626 North Clifton. Attached to the Candidate's motion to strike was an affidavit from Hope stating that he is homeless and that he is residing temporarily at a homeless shelter located at 4628 North Clifton. Hope's affidavit further stated that when he listed his addresses he gave his best guess. Although Hope was subpoenaed to testify by the Objectors and he was present throughout the hearing, Hope was never called to testify as to his true address or as to his actions in circulating the two petition sheets in question. The Hearing Examiner overruled the Objections to Hope's two petition sheets.

25. In the case of *Sakonyi v. Lindsey*, 261 Ill.App.3d 821, 825, 634 N.E.2d 444, 447-448, 199 Ill.Dec.605, 608-609 (5th Dist. 1994), the court inferred that one of the purposes behind the address requirement of the Election Code is to protect the integrity of the electoral process by furnishing the circulator's address which enables the Board to locate him or her, question the circulator about the signatures, and hold the circulator responsible for her oath. It is assumed by the circulator's sworn statement that the circulator is subjecting himself to possible perjury prosecution. "Thus, the circulator's affidavit requirement is considered a meaningful and realistic method of eliminating fraudulent signatures and protecting the integrity of the political process." 261 Ill.App.3d at 825. In *Sakonyi*, the circulator's address did not appear on three petition sheets that she circulated. However, her signature and address did appear on one of the petition sheets where she signed the top line of the petition. Furthermore, the circulator testified as to her address, which was the same address listed on the sheet that she

signed as a signer. She also testified that she circulated the petition sheets in question. The court found that the three petition sheets were valid notwithstanding the fact that the circulator's address was missing.

26. The Electoral Board finds that the two petition sheets circulated by Gregory Hope should be invalidated because he listed incorrect residence addresses not only in the circulator's affidavit on both sheets, but also on the petition that he signed as a signer. Unlike the circulator in *Sakonyi*, Hope never provided his correct address anywhere on the Candidate's Nomination Papers. Also unlike the circulator in *Sakonyi*, Hope was never called to testify under oath subject to penalty of perjury and to answer questions regarding his circulation of the petition sheets. Therefore, the Electoral Board overrules the Hearing Examiner and finds that petition sheets 25 and 32 purportedly circulated by Hope should be stricken in their entirety, resulting in the Candidate having 7 fewer valid signatures on her nomination petition.

27 The Electoral Board adopts the Hearing Examiner's recommended findings and conclusions of law as to all other matters to the extent that they are not inconsistent with the Electoral Board's findings herein.

28. The Electoral Board finds that the number of valid signatures appearing on the Candidate's nominating petition following completion of the records examination and evidentiary hearings is 9 signatures fewer than the minimum number of valid signatures required by law to be placed upon the official ballot as a candidate for election to the office of Ward Committeeman for the 46th Ward of the City of Chicago, Democratic Party.

29. The Electoral Board finds, therefore, that the Objectors' Petition is sustained in part and overruled in part as more fully indicated in the results of the records examination and the Hearing Examiner's findings following the evidentiary hearings.

30. For the reasons stated above, the Electoral Board finds that the Nomination Papers of SANDRA REED are not valid.

IT IS THEREFORE ORDERED that the Objections of DENICE DAVIS AND SANDRA WHITE to the Nomination Papers of SANDRA REED, candidate for election to the office of Ward Committeeman for the 46th Ward of the City of Chicago, Democratic Party, are hereby SUSTAINED and said Nomination Papers are hereby declared INVALID and the name of SANDRA REED, candidate for election to the office of Ward Committeeman for the 46th Ward of the City of Chicago, Democratic Party, SHALL NOT be printed on the official ballot for the General Primary Election to be held on March 16, 2004.

Dated: Chicago, Illinois, this 6th day of February, 2004.

Langdon D. Neal, Chairman

Theresa M. Petrone, Commissioner

CONCURRING IN PART AND DISSENTING IN PART:

I would respectfully disagree with the Hearing Examiner's findings as described in paragraphs 20 and 21 above. I would have allowed the five signatures on the basis of my examination of the affidavits presented to rehabilitate those signatures. Furthermore, I would have allowed the signature of the person who used her married name even though she is registered under her maiden name. Therefore, I respectfully dissent on those grounds, but I concur with the decision of my other Commissioners as to all other matters.

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.