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

Objections of: ANTHONY SUTOR JR.	)
	)
To the Nomination	)
Papers of: RAFAEL "RAY" FRIAS	)
	) No. 06-EB-SS-02
Candidate for the office of	)
State Senator for the 1st Legislative 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 ANTHONY SUTOR JR. ("Objector") to the nomination papers ("Nomination Papers") of RAFAEL "RAY" FRIAS, candidate for the nomination of the Democratic Party to the office of State Senator for the 1st Legislative District, State of Illinois ("Candidate"), having convened on January 3, 2006, at 10:00 a.m., in the Conference Room, Eighth Floor, 69 West Washington Street, 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 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 3, 2006 and was continued from time to time.

5. The Electoral Board assigned this matter to Hearing Examiner LYNNE OSTFELD 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.

7. On January 3, 2006, the Hearing Examiner opened the hearings in the matter. The following persons, among others, were present at such hearing: the Objector, ANTHONY SUTOR JR., by his attorney; and the Candidate, RAFAEL "RAY" FRIAS, by his attorney.

8. The Candidate filed a Motion to Strike and Dismiss the Objector's Petition in this matter on January 4, 2006. The Objector filed his response to the Candidate's motion and on January 5, 2006.

9. A hearing was held on January 9, 2006 on the Candidate's motion. After hearing argument on the Candidate's motion, the Hearing Examiner denied the Motion to Strike and Dismiss, finding that the Objector had met the minimal requirements to go forward. The Hearing Examiner ordered that a Records Examination be commenced. The Hearing Examiner further ordered that the objector prepare and submit an analysis of the number of signatures which could be stricken from the Candidate's nominating petitions if all arguments against their validity were upheld and to explain the rationale behind the calculation of the signatures to be stricken. The parties were also to submit additional legal briefs, citing supporting case law, on the following issues: (a) whether the defects as alleged in Objections number 2, 3, 4, 5 and 7 are sufficient to invalidate the nominating petitions; (b) whether the Objector's allegation of "round tabling" and Objection number 6 is sufficient to allege a "pattern of fraud" which, if shown by factual evidence, would jeopardized the validity of all of the nominating petitions; and (c) what the Objector must show to present a pattern of fraud. A hearing on these issues and the results of the Record Examination was scheduled for January 17, 2006. A written order reflecting her oral order was date by the Hearing Examiner on January 10, 2006 and was entered with the Board the following day.

10. On January 9, 2006, the Candidate filed a Rule 20 Motion seeking to reverse directing that a Record Examination of the conducted in this matter and ordering additional briefs. A response to the Rule 20 Motion was filed by the Objector on January 11, 2006. A reply to the Objector's response to the Rule 20 Motion was filed by the Candidate on January 12, 2006.

11. No ruling was made with regard to the Candidate's Rule 20 motion. However, the Record Examination originally ordered did not proceed pending additional briefs on the issues.

12. In response to the Hearing Examiner's written order, the following briefs and papers were filed by the parties:

a) Candidate's "Brief in Response to Hearing Officer's Order on the Issue of Pattern of Fraud with Caselaw", filed January 10, 2006;
b) Candidate's "Additional Brief in Response to Other Alleged Issues from the Original Petition Prescinding [sic] from the Issue of 'Pattern of Fraud'", filed January 11, 2006;
c) Objector's "Submission in Response to Hearing Officer Lynne Ostfeld's Order of January 11, 2006", filed January 11, 2006;
d) Objector's "Additional Submission in Response to Hearing Officer Lynne Ostfeld's Order of January 11, 2006", filed January 13, 2006;
e) Candidate's "Further Reply and Brief as to Notary Issues", filed January 14, 2006;
f) Candidate's "Adendum [sic] to Brief on Notary Issues", filed January 17, 2006;
g) Candidate's "Reply to Objector's Additional Respronse [sic] Hearing Officer's Order of January 11, 2006", filed January 17, 2006.

13. At the hearing on January 17, 2006, the Hearing Examiner summarized for the record the objections and the written arguments submitted by the parties. The Hearing Examiner announced her findings, which was followed up by a written Recommended Decision dated January 18, 2006. The Hearing Examiner made the following findings:

A. The Candidate needed 1000 signatures to be on the ballot;
B. The Candidate submitted 2,349 signatures on his petitions;
C. The Objections were made to, initially, 797 signatures, leaving 1,552 signatures not objected to. The number of objected to signatures would rise to 1,384 signatures if the Electoral Board were to invalidate all petitions circulated by circulators having one or more sheets stricken due to "round tabling," as requested by the Objector, leaving only 935 signature not being objected to.
D. While the Illinois Notary Act requires a notary to both sign and seal a document, there is precedent by this Electoral Board to not invalidate petitions were one of these items is missing on the grounds that this can be considered a technical violation of the Notary Act. In support of this statement, the Hearing Examiner cited *Sanders v. Bradley*, No. 03-EB-ALD-156; *Fletcher v. Giovanetti*, No. 00-EB-WC-008, and *Delgado v. Ladien*, No. 99-EB-ALD-126 – all prior decisions of this Electoral Board. The Hearing Examiner explained that in *Delgado*, the Electoral Board found that the "notary's affixation all of her rubber stamp containing her official seal without her signature on the notary certificate substantially complies with the requirements of Section 10-5 of the Election Code."
E. If the 276 signatures in jeopardy because the notary had not signed her name were added back into the count of signatures not objected to, the candidate would have more than the 1,000 signatures required to be on the ballot (i.e., 1,241);

F. There was no reason to address and rule on the other objections, or to conduct a record examination, because the Candidate had a sufficient number of signatures to be placed on the ballot even if all of the other objections were viewed in a light most favorable to him;

G. While the Hearing Examiner saw superficial evidence that numerous signatures were made with the same hand (i.e., a spouse or parent signing for family members in the same household), this cursory review did not reveal an egregious amount of same hand-writing signatures. There was no submittal of case law which would support turning an allegation of "round tabling" into a showing of a pattern of fraud sufficient to require the Electoral Board to look at all of the Candidate's petitions, as the Objector had argued based on *Canter v. Cook County Officers Electoral Board*, 170 Ill.App.3d 364, 523 N.E.2d 299 (1st Dist. 1988).

H. Based on the foregoing, the Hearing Examiner recommended that the Objections be denied and that the name of the Candidate be printed on the ballot for the March 21, 2006 general primary election.

14. The Electoral Board finds as follows:

A. The Candidate's nominating petitions contain a total of 2,349 signatures.

B. Paragraph 1 in the Objector's Petition was withdrawn by the Objector.

C. By the Objector's own calculations, if the Objector were to go forward on the objections in Paragraphs 2, 3, 6 and 8 of the Objector's Petition (although Objector mis-identified Paragraph 8 as Paragraph 7 in his submission) and assuming that the Electoral Board were to grant all of the relief requested by the Objector in these paragraphs, the total number of invalidated signatures on the petition would be 1,384, leaving 935 purportedly valid signatures to which there were no objections. See, Objector's "Submission in Response to Hearing Officer Lynne Ostfeld's Order of January 11, 2006," ("Submission") at p. 7). The Objector chose not to address Paragraph 4 and 5 of the Objector Petition in their Submission (see, Submission, at p. 5), which if sustained, would result in the invalidation of 50 signature thereon (49 signature on sheets 24 and 72 are already objected to in Paragraph 6). In addition, the Objector did not address Paragraph 7, which, if sustained, would result in the invalidation of 47 signatures thereon. Therefore, even if the Electoral Board were to grant the relief requested in these paragraphs, at best an additional 97 signatures would be invalidated, bringing the total number of purportedly valid and un-objected to signatures to 838.

D. The Objector has not demonstrated a sufficient basis in law to support his contention that if a "pattern of fraud" is shown by the results of a record examination of the sheets identified in Paragraph 6 of the Objector's Petition, then more investigation is required to determine whether circulators

of petition sheets other than those identified in Paragraph 6 engaged in fraudulent conduct. See, Submission, at p. 6.

E. This Electoral Board has previously ruled in the case of *Delgado v. Ladien*, No. 99-EB-ALD-126 (January 12, 1999), that "the notary's affixation of her rubber stamp containing her official seal without her signature on the notary certificate substantially complies with the requirements" of the Election Code. *Delgado*, ¶26. The Electoral Board subsequently cited *Delgado* in the case of *Sanders v. Bradley*, 03-EB-ALD-156 (January 24, 2003) ("even a failure of the notary to sign at all, though the seal was affixed, had not been deemed the type of error to cause invalidation").

F. Accordingly, the Electoral Board denies and overrules the objections in Paragraph 2 of the Objector's petition alleging that petition sheets 10, 11, and 52 through 62 were not notarized as required by law.

G. As a result of the Electoral Board's overruling of the objections in Paragraph 2, 325 signatures on these petition sheets are deemed valid, bringing the total number of purportedly valid signatures on the Candidate's petition sheets to at least 1,163, even assuming the Electoral Board were to grant the relief requested by the Objector in all of his remaining objections.

H. Therefore, the number of valid signatures on the Candidate's Nomination Papers exceeds the 1,000 minimum signatures required for the office of State Senator for the 1st Legislative District, even assuming that all other remaining objections were to be sustained. Accordingly, it is unnecessary to consider and decide the objections contained in Paragraph 3-8 of the Objector's Petition.

IT IS THEREFORE ORDERED, that the Objections of ANTHONY SUTOR JR. to the Nomination papers of RAFAEL "RAY" FRIAS, candidate for the nomination of the Democratic Party to the office of State Senator for the 1st Legislative District, State of Illinois are hereby OVERRULED and said Nomination Papers are hereby declared VALID and the name of RAFAEL "RAY" FRIAS, candidate for nomination of the Democratic Party to the office of State Senator for the 1st Legislative District, State of Illinois , SHALL be printed on the official ballot for the General Primary Election to be held on March 21, 2006.

Dated: Chicago, Illinois, this 20th day of January, 2006.

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.