NBCON-ALD

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

Objections of: HENRY MOSES	)	
	)	
	)	
To the Nomination	)	**No.: 07-EB-ALD-004**
Papers of: CARRIE M. AUSTIN	)	
	)	
Candidate for the office of	)	
Alderman of the Thirty-fourth Ward,	)	
City of Chicago	)	

FINDINGS AND DECISION

The duly constituted Electoral Board, consisting of Board of Election Commissioners of the City of Chicago Commissioners Langdon D. Neal 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 HENRY MOSES ("Objector") to the nomination papers ("Nomination Papers") of CARRIE M. AUSTIN, candidate for the office of Alderman of the Thirty-fourth Ward of the City of Chicago ("Candidate") to be elected at the Municipal General Election to be held on February 27, 2007, having convened on January 2, 2007, at 10:00 a.m., in Room 800, 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 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 2, 2007 and was continued from time to time.

5. The Electoral Board assigned this matter to Hearing Examiner Edwin Reyes for further hearings and proceedings.

6. The Objector and the Candidate were directed by the Electoral Board's Call served upon them to appear before the Hearing Examiner on the date and at the time designated in the Call. The following persons, among others, were present at such hearing; the Objector, HENRY MOSES, by counsel, Peter S. Cleary; and the Candidate, CARRIE M. AUSTIN, by counsel, Thomas A. Jaconetty.

7. The Objector alleges in part that the Candidate's Nomination Papers contained petition sheets that bear a circulator's affidavit that was not sworn to before a notary public or other appropriate officer and, as a result, every signature on such sheets is invalid. This is so, Objector alleges, because the person identified on such sheets as the notary public before whom the circulator signed the affidavit appearing on the bottom of each sheet, Dianne Turner, was not listed as having a notary public appointment by the Illinois Secretary of State or the office of the Cook County Clerk.

8. The Objector also alleges in part that the Candidate's Statement of Candidacy is defective because the Candidate indicated thereon that she was seeking to be a candidate of the Democratic Party for the office of Alderman in the 34th Ward when the February 27, 2007 election is a nonpartisan election.

9. The Hearing Examiner has tendered to the Electoral Board his report and recommended decision. The Hearing Examiner recommends that the Objections to the Candidate's Nomination Papers be overruled and that the Nomination Papers be found valid.

10. The Electoral Board, having reviewed the record of proceedings in this matter and having considered the report and recommendations of the Hearing Examiner, as well as all argument and evidence submitted by the parties, hereby adopts the Hearing Examiner's recommended findings and conclusions of law. A copy of the Hearing Examiner's report and recommended decision is attached hereto and is incorporated herein as part of the decision of the Electoral Board.

11. For the reasons stated above, the Electoral Board overruled the Objections to the Candidate's Nomination Papers and finds that the Candidate's Nomination Papers are valid.

IT IS THEREFORE ORDERED that the Objections of HENRY MOSES to the Nomination Papers of CARRIE M. AUSTIN, candidate for election to the office of Alderman of the Thirty-fourth Ward of the City of Chicago, are hereby OVERRULED and said Nomination Papers are hereby declared VALID and the name of CARRIE M. AUSTIN, candidate for election to the office of Alderman of the Thirty-fourth Ward of the City of Chicago, SHALL be printed on the official ballot for the Municipal General Election to be held on February 27, 2007.

Dated: Chicago, Illinois, this 23rd day of January 2007.

Langdon D. Neal, Chairman

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.

SERVICE ATTACHED

BEFORE THE DULY CONSTITUTED ELECTORAL BOARD OF ELECTION COMMISSIONS OF THE CITY OF CHICAGO AS THE DULY CONSTITUTED ELECTORAL BOARD FOR THE HEARING AND PASSING UPON OBJECTIONS TO NOMINATION PAPERS OF CANDIDATES FOR THE FEBRUARY 27, 2007 MUNICIPAL GENERAL ELECTION FOR ALDERMAN IN THE CITY OF CHICAGO

In the Matter of:

HENRY MOSES,	)	
	)	
Petitioner-Objector,	)	NO. 07-EB-ALD-004
	)	
vs.	)	
	)	
CARRIE M. AUSTIN,	)	
	)	
Respondent-Candidate	)	Hearing Officer: Edwin Reyes

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The Objector, HENRY MOSES, filed a Verified Objector's Petition on December 22, 2006. The Respondent filed a motion to strike and dismiss objections on January 6, 2007. The Objector filed a response to candidate's motion to strike and dismiss on January 9, 2007. The Respondent-Candidate Carrie M. Austin filed a reply to Objector's response to motion to strike and dismiss on January 11, 2007.

The Objector, Henry Moses alleges that:

A.) The nomination papers contained petition sheets which bear a **circulator's** affidavit which is not sworn to before a Notary Public or other appropriate officer, and every signature on such sheets is invalid.

B.) That Notary, "Dianne Turner" is not listed as having an appointment by the Illinois Secretary of State or the Office of Cook County Clerk.

C.) The statement of candidacy is defective the candidate is seeking to be a candidate of the Democratic Party for the Office of Alderman of the 34th District... the February 27, 2007 Municipal General Election is non-partisan.

The Respondent-Candidate moves to dismiss Objector's Petition citing Marcus v. Nimrod, 82-COEB-33 (Cook County Electoral Board Aff'd... 82 CO.0315 (Cir.Ct.Cook County), the Court upheld the dismissal of objections for "not adequately and sufficiently **apprising** the candidate and the Electoral Board of the Specifications of such objections making it impossible... to consider and evaluate such objections."

The Respondent-Candidate also states with respect to the Notary "Dianne Turner" that the Objector never alleges that "Dianne Turner" is not, a licenced Illinois Notary Public.

The **defacto** Notary doctrines protects **affiants**, candidates and her votes petition signers who place reliance upon the official acts of one holding herself out to be a notary. Shipley vs. Stevenson Cook County Electoral Board, 130 ILL.App3d.900, 474 N.E.2d 905, (1985).

Respondent's Exhibits 1 and 2 verify that Dianne Turner is a licensed Illinois Notary Public under Commission No. 408702 with a term of office from January 2, 2004 through January 2, 2008, and has registered with the Cook County Clerk.

With respect to Objector's allegation that the language in the Candidate's statement of candidacy using "a party label is inappropriate and confusing." The case by Dix vs. Terry, 03-EB-ALD-071(2003) is applicable. Here, as in Dix, whatever references there are to the Democratic Party are contained in the Statement of Candidacy that was filed with the Chicago Board of Election Commissioners, not in the petition sheets that were presented to the voters of the ward signature by them. Thus, there was no misleading information.

RECOMMENDED FINDINGS OF FACT AND DECISIONS:

After reviewing the Objector's Verified Petition, the Respondent-Candidate's response. The Objector's Response and the Reply to the Objector's Response; The Hearing Officer has determined that the Objector has **not** met his burden. The hearing officer grants the Respondent-Candidate's motion to strike and dismiss Petitioner's Objection.

In the 34th ward the number of valid signatures needed on petition sheets is 228. The candidate Carrie M. Austin has filed in excess of 4,000 signatures.

Carrie M. Austin should remain on the ballot for the February 27, 2007 Municipal General Election in the City of Chicago for the reasons stated.

Edwin Reyes

Hearing Officer Edwin Reyes