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

Objections of: Erica M. Vasquez	)	
	)	
	)	
To the Nomination	)	No.: 11-EB-ALD-113
Papers of: Raul Montes, Jr.	)	
	)	Related Case: 11-EB-ALD-368
Candidate for the office of	)	
Alderman of the 22nd 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, Richard A. Cowen, and Marisel A. Hernandez, 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 Erica M. Vasquez ("Objector") to the nomination papers ("Nomination Papers") of Raul Montes, Jr., candidate for the office of Alderman of the 22nd Ward of the City of Chicago ("Candidate") to be elected at the Municipal General Election to be held on February 22, 2011, having convened on December 6, 2010, at 9:00 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 December 6, 2010 and was continued from time to time.

5. The Electoral Board assigned this matter to Hearing Officer Travis Richardson 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 Officer on the date and at the time designated in the Hearing Schedule. The following persons, among others, were present at such hearing: the Objector, Erica M. Vasquez, Richard K. Means; and the Candidate, Raul Montes, Jr. by his attorney James R. Stevens. Thereafter, counsel for the Candidate file a Motion to Withdraw which was granted.

7. The Objector alleges that the Nomination Papers are invalid in that the petition sheets are not numbered. The Hearing Officer found that the petition sheets were not, in fact, numbered as required by the Election Code which rendered the Nomination Papers invalid.

8. The Objector further alleges that the Nomination Papers are invalid in that the petition sheets are not bound or fastened together. The Hearing Officer found that the petition sheets were not, in fact, bound or fastened as required by the Election Code which rendered the Nomination Papers invalid.

9. The Objector further alleges that the Nomination Papers are invalid in that the Candidate failed to file a receipt evidencing the filing of the Statement of Economic Interests.

The Hearing Officer determined that no receipt was, in fact, filed with the Nomination Papers which also rendered the Nomination Papers invalid.

10. The Hearing Officer has tendered to the Electoral Board a report and recommended decision. Based upon the evidence presented, the Hearing Officer found the Nomination Papers were invalid. The Electoral Board, having considered the evidence and arguments tendered by the parties and the Hearing Officer's report of recommended findings and conclusions of law, hereby adopts the Hearing Officer's recommended findings and conclusions of law.

11. For the reasons stated above, the Electoral Board finds that the Candidate's Nomination Papers are invalid.

12. The Electoral Board further finds that additional objections were filed against the Candidate's Nomination Papers in Related Case 11-EB-ALD-368 which are moot as a result of the decision in the instant case.

IT IS THEREFORE ORDERED that the Objections of Erica M. Vasquez to the Nomination Papers of Raul Montes, Jr., candidate for election to the office of Alderman of the 22nd Ward of the City of Chicago, are hereby SUSTAINED and said Nomination Papers are hereby declared INVALID and the name of Raul Montes, Jr., candidate for election to the office of Alderman of the 22nd Ward of the City of Chicago, SHALL NOT be printed on the official ballot for the Municipal General Election to be held on February 22, 2010.

Dated: Chicago, Illinois, on January 21, 2011.

Langdon D. Neal, Chairman

Richard A. Cowen, Commissioner

Marisel A. Hernandez, 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 5 days after service of the decision of the Electoral Board.

BOARD OF ELECTION COMMISSIONERS OF THE CITY OF CHICAGO

ERICA VASQUEZ,	)	
Objector	No. 11-EB-ALD-113)	
NEFTALIE GONZALEZ,	)	
Objector	No. 11-EB-ALD-368)	
	)	Consolidated Report
v.	)	
	)	Travis Richardson
RAUL MONTES, JR.,	)	Hearing Examiner
Candidate for the Office of Alderman	)	
of the 22nd Ward, City of Chicago	)	
General Primary Election, February 22, 2011)		

HEARING EXAMINER'S REPORT AND RECOMMENDED DECISION

These matters having come before the Chicago Board of Elections ("CBOE") on the verified objections of Erica Vasquez and Neftalie Gonzalez ("Objectors") to the nomination papers of Raul Montes, Jr. ("Candidate"), Travis Richardson, Esq., Hearing Examiner, finds and recommends as follows:

1. Separate hearings were held in each of the two matters which are the subject of this Report.

2. However, because the issues of fact and law that are present in these two subject cases are either identical or overlap substantially, the Hearing Officer has prepared this one Consolidated Report in the interest of justice and of economy in the administration of justice.

3. Objector Vasquez's petition presented the following issues regarding the Candidate's nomination papers:

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BOARD OF ELECTIONS

a) Failure to file with the Board the original or a copy of the receipt for the filing of a Statement of Economic Interests;

b) Failure to consecutively enumerate Candidate's petition sheets; and

c) Failure to properly bind Candidate's petition sheets.

4. Objector Gonzalez's petition presented the following issues regarding the Candidate's nomination papers:

a) Candidate's Statement of Candidacy was improperly filled out; and

b) Failure to enumerate Candidate's petition sheets.

5. The hearings on the objections began on December 6, 2010. Objector Vasquez appeared through her attorney, Richard K. Means, in ALD 113. Objector Gonzalez appeared through his attorney, Adam Lasker, in ALD 368. Raul Montes, Jr. appeared in person and through his attorney, James R. Stevens, in each case.

6. Candidate's counsel, Mr. Stevens, requested leave to file a Motion to Strike the Objector's petition in each of the subject cases. The Hearing Examiner granted Mr. Stevens leave to file his respective Motions and issued a briefing schedule. Both matters were continued to December 10, 2010.

7. Between the December 6th and December 10th hearing dates, counsel for the Candidate filed, in each case, a Motion to Withdraw Motion to Strike and Dismiss as well as his Attorney's Motion to Withdraw.

8. At the December 10, 2010 hearings, Objector Vasquez appeared through her attorney, Richard K. Means, in ALD 113. Objector Gonzalez appeared through his attorney, Adam Lasker, in ALD 368. Raul Montes, Jr. appeared in person and through his attorney, James R. Stevens, in each case.

9. Candidate's Motion to Withdraw Motion to Strike and Dismiss in each case was more, in function, a motion to withdraw counsel's request for leave to file a Motion to Strike. Counsel for the Candidate never actually filed a Motion to Strike and Dismiss in either of the two subject cases. Accordingly, the Hearing Examiner finds Candidate's Motion to Withdraw Motion to Strike and Dismiss in each case to be moot.

10. Mr. Means objected to Mr. Stevens' Motion to Withdraw from ALD-113. That objection was denied, and Mr. Stevens' Motion to Withdraw was granted and he was allowed to withdraw as Candidate's counsel in ALD-113. Mr. Lasker made no pronouncement one way or the other regarding his position as to Mr. Steven's Motion to Withdraw from ALD-368. Mr. Stevens' Motion to Withdraw was granted and he was allowed to withdraw as Candidate's counsel in ALD-368. The Candidate stated on the record that he wanted Mr. Stevens to withdraw.

11. The Candidate stated that he intended to retain another attorney to represent him in each case and requested additional time to do so. In light of the withdrawal of Mr. Stevens as counsel in each of the two cases challenging Mr. Montes' candidacy, the Hearing Examiner continued both matters to December 14, 2010 to give the candidate time to retain another attorney(s). The Candidate asked if he could proceed *pro se* if he did not retain counsel. The

Hearing Examiner stated that the Candidate was free to represent himself if he wished, and that if he did not secure counsel by the next hearing date that he would be proceeding *pro se*.

12. At the December 14, 2010 hearings, Objector Vasquez appeared through her attorney, Richard K. Means, in ALD 113. Objector Gonzalez appeared through his attorney, Adam Lasker, in ALD 368. The candidate, Raul Montes, Jr., appeared *pro se* in both cases.

14. At each hearing on December 14, 2010, the Candidate indicated that he was unable to retain another attorney. The Candidate also indicated that he wanted to file a motion to strike in each case. The Hearing Examiner granted the Candidate leave to file his motions and issued a briefing schedule in each case. Both matters were then continued to December 20, 2010.

Candidate's Motion to Strike and Dismiss

15. At the December 20, 2010 hearings, Objector Vasquez appeared through her attorney, Richard K. Means, in ALD 113. Objector Gonzalez appeared through his attorney, Adam Lasker, in ALD 368. The candidate, Raul Montes, Jr., appeared *pro se* in each case.

16. The Candidate filed identical Motions to Strike and Dismiss in each of the subject cases. Candidate's Motions did not address the respective issues alleged in the petitions filed by the Objectors. Instead, they argued that:

a) The petitions state no cause for relief;

b) The "complaints" ask for no proper relief as to questions to law or fact;

c) The Board does not jurisdiction over this matter because the Candidate was not properly served; and

d) The Candidate's due process and equal protection rights were violated when he was "made" or "advised" to sign a "service-waiver form."

17. The Objectors did not file a response, and therefore Candidate's reply was not necessary.

18. The Hearing Examiner finds that each petition did indeed state a cause for relief. The Hearing Examiner presumes that Candidate's reference to "complaint" is meant to refer to the respective petitions. The Hearing Examiner finds that the petitions indeed do request proper relief as to the questions raised in each of them. The Hearing Examiner finds that the Candidate waived any imperfections of service by i) retaining an attorney to represent him in each case, who did not at any time challenge the jurisdiction of the Board over his client or this process; ii) appearing with that attorney at the December 6, 2010 and December 10, 2010 hearings in both cases; and iii) continuing to appear *pro se* at each of the hearings in the two subject cases on December 14, 2010 and December 20, 2010, and failing to raise the issue of improper service at any of the hearings prior to December 20, 2010. The Hearing Examiner also is unconvinced that the signing of a waiver of service form amounts to a constitutional violation. In addition, Candidate's former counsel did not raise this issue while he was representing the Candidate. Further, the Candidate did not raise this as an issue until the December 20, 2010 hearing. The Candidate's Motions, accordingly, are each denied.

Analysis of Issues in Objectors' Petitions

19. Objector Gonzalez's counsel decided to forego any argument regarding the allegation that the Candidate's Statement of Candidacy was improperly filled out and focused on the fact that the Candidate's petition pages were not numbered. Objector Vasquez's petition likewise complained of this fact.

20. The Candidate's petition sheets were not numbered- consecutively or otherwise. A Candidate's failure to consecutively number his nominating petitions in violation of Section 10-4 invalidates his nomination papers. *Robinson v. Llongbey*, 95-EB-ALD-88, January 23, 1995. *See also, Jones v. Dodendorf,* 190 Ill.App.3d 557, 546 N.E.2d 92 (2nd Dist. 1989) (failure to number any of the pages in a nominating petition justified invalidation of the petitions); *Brummit v. Brewer*, 07-EB-ALD-062, CBEC, January 23, 2007 (candidate's failure to number any of 22 petition sheets invalidates nomination papers); *Nelson v. Washington*, 08-EB-WC-28, CBEC, December 7, 2007 (candidate's failure to number any of the 53 petition sheets filed by him invalidates his nomination papers). Both the Board and the courts have consistently ruled that the failure to consecutively number petition sheets invalidates a Candidate's nomination papers. The Hearing Examiner sees no need to disturb that precedent here, and accordingly finds that the Candidate's nomination papers are invalid as a result of the failure to consecutively number his petition sheets in both of the subject cases.

21. The Candidate's petition sheets were unbound. A Candidate's failure by any manner to bind or fasten the petition sheets together in a secure and suitable manner does not substantially comply with the mandatory requirements of Section 10-4 and renders the candidate's nomination papers invalid. *Wilson v. Rowans*, 03-EB-ALD-122, CBEC, January 14, 2003; *Brummit v. Brewer*, 07-EB-ALD-062, CBEC, January 23, 2007. *See also, Rivers v.*

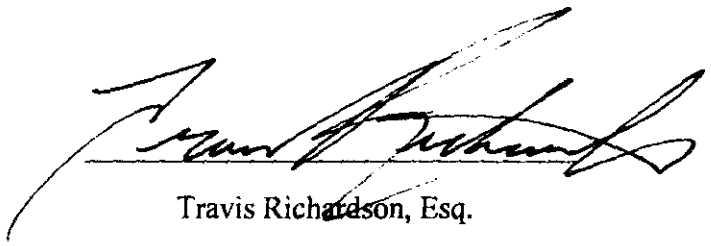
Calumet City School District #155, 01 CE 016, (Cir.Ct.CookCty. March 19, 2001) (Judge Williams-Hayes presiding) (Circuit Court of Cook County affirmed the decision of the electoral board finding that the failure to bind the petition sheets renders them invalid). Both the Board and the courts have consistently ruled that the failure to bind or fasten the petition sheets together in a secure and suitable manner invalidates a Candidate's nomination papers. The Hearing Examiner sees no need to disturb that precedent here, and accordingly finds that the Candidate's nomination papers are invalid as a result of the failure to bind or fasten his petition sheets together in a secure and suitable manner in both of the subject cases.

22. The Candidate failed to file the original or a copy of a receipt for the filing of a Statement of Economic Interests. The failure to file with the election authority with which nomination papers are to be filed a receipt evidencing that the candidate filed a Statement of Economic Interests with the appropriate official invalidates the nomination papers. *Bolger v. Electoral Board of City of McHenry*, 210 Ill.App.3d 958, 569 N.E.2d 628 (Second Dist. 1991); see also *Henning v. Lawrence*, 07-EB-ALD-052, CBEC, January 16, 2007, affirmed, *Lawrence v. Board of Election Commissioners, et al.*, Cir. Ct. Cook County, 2007 COEL 0008, affirmed Illinois Appellate Court, 1-07-0286 (unpublished order). In *Bolger*, the court rejected the plaintiff's argument that the Election Code did not make it mandatory to file the receipt for his statement of economic interests. The court stated that "[i]t is absolutely clear from the language used by the legislature that the plaintiff was required to file the receipt he received from the county with the local election official sometime during the period in which his nomination papers could be filed. *The failure to do so left his nomination papers incomplete....[P]laintiff's failure to comply with this requirement renders his nomination papers invalid.*" *Bolger*, at 960 (emphasis added). Both the Board and the courts have consistently ruled that the failure to file

the original or a copy of a receipt for the filing of a Statement of Economic Interests invalidates a Candidate's nomination papers. The Hearing Examiner sees no need to disturb that precedent here, and accordingly finds that the Candidate's nomination papers are invalid as a result of the failure to file the original or a copy of a receipt for the filing of a Statement of Economic Interests in both of the subject cases.

Conclusion

In light of the above findings of fact and legal analysis, it is the recommendation of the Hearing Examiner that the Chicago Board of Election Commissioners adopt the findings, decisions and recommendations herein, and that the name of the Candidate, Raul Montes, Jr., not be printed on the ballot for Alderman from the 22nd Ward, City of Chicago, in the General Primary Election to be held on February 22, 2011.



Travis Richardson, Esq.

Hearing Examiner

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