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

Objections of: Paul Stewart	)	
	)	
	)	
To the Nomination	)	No.: 11-EB-MUN-032
Papers of: Elida M. Cruz	)	
	)	
Candidate for the office of	)	
City Treasurer of the 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 Paul Stewart ("Objector") to the nomination papers ("Nomination Papers") of Elida M. Cruz, candidate for the office of City Treasurer of the City of Chicago ("Candidate") to be elected at the February 22, 2011 Municipal General Election, having convened on December 6, 2010 at 9:00 a.m., in the 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 Kelly McCloskey Cherf for further hearings and proceedings.

6. The Objector and the Candidate were directed by the Electoral Board's Call to appear before the Hearing Officer on the date and at the time to be designated in the Hearing Schedule. The following persons, among others, were present at such hearing: the Objector, Paul Stewart, by attorney, James P. Nally; and the Candidate Elida M. Cruz, by attorney, Andrew Finko.

7. The Candidate filed a motion to strike the Objector's Petition on the following grounds: (1) that the Objector's Petition is a bad faith "shotgun" objection because the majority of the Appendix-Recapitulation sheets serially list "signer not registered at address shown"; (2) that the objections based upon "signature printed and not written, not genuine" be overruled as a matter of law; (3) that the objections under the category of "other" in the Appendix-Recapitulation be stricken as a matter of law as facially deficient; and (4) that the pattern of fraud/round-tabling objection be stricken as the petition does not specifically and fully inform Candidate about the nature of those objections.

8. The Hearing Officer ordered that an examination of the voter 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.

9. The Hearing Officer directed all parties to appear and be present, either personally and/or by their authorized representatives, during this records examination.

10. The Candidate and/or her duly authorized representative was present during the examination registration records.

11. The Objector and/or his duly authorized representative was present during the examination of the registration records.

12. 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 result of the registration records examination is contained in the Electoral Board's file in this case and a copy has been provided or made available to the parties.

13. The results of the records examination indicate that:

A. The minimum number of valid signatures required by law for placement on the ballot for the office in question is 12,500.

B. The number of purportedly valid signatures appearing on the nominating petition filed by the Candidate total 23,126.

C. The number of signatures deemed invalid because of objections sustained as a result of the records examination total 12,945.

D. The remaining number of signatures deemed valid total as a result of the records examination total 10,181.

14. The Electoral Board finds that the number of valid signatures appearing on the Candidate's nominating petition following completion of the records examination was less 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 City Treasurer, City of Chicago.

15. Both parties filed motions pursuant to Rule 8 of the Rules of Procedure objecting to the Board's clerks' findings during the records examination. The Objector also filed a Motion to Dispense the Candidate's Rule 8 Hearing.

16. The Hearing Officer has tendered to the Electoral Board a report and recommended decision. Based upon the evidence presented, the Hearing Officer found that the Candidate's Nomination Papers contained less 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 City Treasurer, City of Chicago.

17. 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. A copy of the Hearing Officer's report and recommendations is attached hereto and is incorporated herein as part of the Electoral Board's decision in this matter.

18. For the reasons stated above, the Electoral Board finds that the Candidate has an insufficient number of valid signatures on her nominating petitions and that the Nomination Papers of Elida M. Cruz are, therefore, not valid.

IT IS THEREFORE ORDERED that the Objections of Paul Stewart to the Nomination Papers of Elida M. Cruz, candidate for the office of City Treasurer, City of Chicago, are hereby SUSTAINED and said Nomination Papers are hereby declared INVALID and the name of Elida M. Cruz, Candidate for the office of City Treasurer, City of Chicago, SHALL NOT be printed on the official ballot for the Municipal General Election to be held on February 22, 2011.

Dated: Chicago, Illinois, on January 18, 2011.

Langdon D. Neal, Chairman

Richard A. Cowen, Commissioner

Marisel 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
AS THE DULY CONSTITUTED ELECTORAL BOARD

Objections of: PAUL STEWARD	)	
To the Nomination Papers of: ELIDA CRUZ	)	No. 11-EB-MUN-032
Candidate for the office of Treasurer of the City of Chicago.	)	

BOARD OF ELECTIONS
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HEARING OFFICER'S REPORT AND RECOMMENDATION

This matter coming before the duly constituted Electoral Board, consisting of Chicago Board of Election Commissioners, and before the undersigned hearing officer, the hearing officer hereby makes the following Report and Recommendation:

PRELIMINARY FACTS

The Candidate filed Nomination Papers as a Candidate for the office of Treasurer for the City of Chicago. Such Nomination Papers consist of: a) Statement of Candidacy; b) Nomination Petition Sheets; c) loyalty oath and d) receipt for Statement of Economic Interests.

The Objector's Petition to the Nomination Papers of the Candidate was timely filed on November 30, 2010. In the Petition, the Objector alleges the petition pages contain: a) petition signer signatures which are not genuine; b) the names of persons who are not registered; c) the names of persons who reside outside the district; d) missing or incomplete addresses for signers; e) names of persons who signed more than one time; f) signatures which are "printed and not written, not genuine;" g) "other" signature violations "as set forth specifically in the Appendix-Recapitulation;" h) missing signatures from a circulator; i) circulator's signature which is not genuine; j) circulator's address which is incomplete; k) circulator's affidavit is not properly notarized; l) circulator did not appear before notary; m) sheet is not notarized; n) dates of circulation incomplete or not given; o) purported notary did not notarize sheet; p) circulator is not 18 years old; q) purported circulator did not circulate sheet; r) circulator does not reside at address shown; and s) circulator is not a U.S. citizen. Attached to the Objector's Petition is an Appendix-Recapitulation. The Objector also argues that the Nomination Papers contain sheets which demonstrate a pattern of fraud.

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 certified mail or by Sheriff's service, as provided by statute.

The initial hearing on the Objector's Petition was called on December 6, 2010. Mr. Bezzinini appeared on behalf of the Objector, and Mr. Nally also filed his appearance on behalf of the Objector. Mr. Finko appeared on behalf of the Candidate. At the hearing, the Candidate requested the opportunity to file a Motion to Strike and Dismiss Objector's Petition. A briefing schedule was set pursuant to the Rules of Procedure for the Board of Election Commissioners of the City of Chicago. The Candidate's Motion to Strike and the Objector's Response to the Motion to Strike Objector's Petition were timely filed. A hearing on the Candidate's Motion to Strike and Dismiss Objector's Petition was set for December 13, 2010. Mr. Nally appeared on behalf of the Candidate. Mr. Finko appeared on behalf of the Objectors.

MOTION TO STRIKE

The Parties' Arguments

For her Motion to Strike, the Candidate alleges the following: a) that the Objector's Petition is a bad faith "shot-gun" objection because the majority of the Appendix-Recapitulation sheets serially list "signer not registered at address shown" (Motion to Strike at para. 3); b) that the objections based upon "signature printed and not written, not genuine" be overruled as matter of law; c) that the objections under the category of "other" in Appendix-Recapitulation be stricken as a matter of law as facially deficient; and d) that the pattern of fraud/round-tabling objection be stricken as the Petition does not specifically and fully inform the Candidate about the nature of those objections.

For her response, the Objector argues that the Petition and Appendix-Recapitulation set forth in detail the basis for each objection and that the Petition is not a bad faith "shot-gun" objection just because of the number of objections. In addition, the objections based upon "signature printed and not written, not genuine" identify signatures that are printed and not genuine. The Objector also states that the Appendix-Recapitulation sheets and the objection text are to be read as a whole and that he is not pursing any objections that do not have markings referenced on the Appendix-Recapitulation sheets.

The Objector's Petition is not a Bad Faith "Shot-Gun" Petition

The Candidate has submitted approximately 23,000 signatures on her Nomination Papers. The Objector's Petition and the Appendix-Recapitulation sheets set forth the basis for each and every objection. The fact that the Objector submitted an objection to the majority of the signatures is not in itself a basis for finding that a petition was a "shot-gun" or filed in bad faith. In all of the cases cited to by the Candidate in her Motion to Strike, the Board made a bad faith/shot-gun finding only after the records examination or partial records examination showed that a high rate of objections were overruled. See *Delk v. Horist*, 95-EB-MUN-11, CBEC, February 1, 1995; *Barton v. Coleman*, 95 EB-ALD-144, CBEC, January 28,1995; *Arafat v. Shaw*, 91-EB-ALD-81, CBEC, January 30, 1991.

As set forth below, the results of the records examination show that a high rate of objections were sustained, *i.e.*, approximately 70% (*infra* at p. 4). As noted by the Candidate, the majority of the objections are "signer not registered at address shown." There were 18,356

such objections of which 11,803 were sustained. Therefore, the hearing officer recommends that the Candidate's Motion to Strike based upon a bad faith/shot-gun argument be denied.

Objections Based upon "Signature Printed and Not Written, Not Genuine" Should Not be Overruled as Matter of Law

In *Lyles v. McGee*, 02-EB-SS-04, CBEC, January 31, 2010, a case relied upon by the Candidate in her Motion to Strike, the Board did not find that objections based upon "signatures printed and not written" should be stricken as a matter of law. Rather, the Board made the following finding:

> [W]hile the fact that one's signature is printed on a candidate petition but written in cursive handwriting on the person's registration record may be *prima facie* evidence that it is not indeed the signature of that registered voter, such evidence is not irrebuttable and it does not conclusively establish that the signature on the petition is not the signature of the registered voter in question. If the preponderance of the evidence presented in the record established that the printed signature on the petition was in fact affixed by same person whose cursive or handwritten signature appears on the registration record, such signature should be deemed valid.

Lyles, 02-EB-SS-04, at p. 5.

Thus, under *Lyles*, the issue of whether the printed signature on the Nomination Pages is the same as the one found on the registration cards is an evidentiary issue and not an objection that should be overruled as a matter of law. Accordingly, the hearing officer recommends that the Candidate's Motion to Strike the "signature printed, not written" objection be denied.

146 of the 224 "Other" Objections are Sufficiently Described in the Appendix-Recapitulation Sheets

Although the "other" objection is not described in the text of the Petition, many of the objections are described more specifically in the Appendix-Recapitulation sheets. For example, the Objector's "other" objection is often accompanied with the following notations: voter inactive, cancelled, illegible. There are 224 "other" objections of which 146 contain such a notation specifying the nature of the objection in accordance with 10 ILCS 5/10-8. There are 78 "other" objections which do not include such a notation and/or specification and therefore, should not be ruled upon or should result in an overruled ruling at the records examination. Accordingly, the hearing officer recommends that the Motion to Strike be denied with regard to the 146 "other" objections that include a notation/specification and granted with regard to the 78 "other" objections that do not include a notation/specification.

The Pattern of Fraud/Round-Tabling Objection is Sufficiently Pled

Objectors that allege a "pattern of fraud" but fail to specify the conduct that gives rise to the pattern of fraud or what sheets and lines evidence the pattern lack sufficient specificity to put

the candidate on notice of the purported deficiency and as such deprive the candidate of an opportunity to prepare a defense. *Davis v. Hendon*, 02-EB-SS-09, CBEC, January 25, 2002. *See also Sutor v. Acevedo*, 06-EB-RGA-04, CBEC, January 30, 2006 (finding that the objector's allegation that certain petition sheets were "round tabled" does not "fully apprise Candidate of the source or sources of any alleged defects whereby the Candidate could affirmatively defend against these objections").

In his Petition, the Objector contends that the Nomination Papers demonstrate a pattern of fraud and specifically references the circulators which the Objector has identified by objection on the Appendix-Recapitulation sheets. This objection also states that the pattern of fraud is demonstrated by the actions of these referenced circulators who allegedly submitted voters' signatures which were not signed by the voters in their own proper persons and who also signed petitions as duly qualified voters multiple times. (Objector's Petition at para. 21).

The Petition does specify the pattern of conduct that gives rise to the "pattern of fraud" and "round-tabling" allegation in that the circulators who are alleged to have engaged in this conduct are identified in the Appendix-Recapitulation sheets and their conduct is specifically described, *i.e.*, submitting forged signatures and signing multiple times. Accordingly, the hearing officer recommends that the Candidate's Motion to Strike the pattern of fraud objection be denied.

Summary of Recommendations on the Candidate's Motion to Strike.

For the foregoing reasons the hearing officer recommends that the Candidate's Motion to Strike be granted in part and denied in part and specifically recommends the following with regard to the arguments set forth in the Candidate's Motion to Strike: 1) that the bad faith/shot-gun argument be denied; 2) that the "printed and not written" argument be denied; 3) that the "other" argument be denied in part and granted in part and that to the extent the records examiner sustains any "other" objection which does not include a notation, said rulings should be overruled; and 4) that the pattern of fraud/round-tabling argument be denied.

RECORDS EXAMINATION

The records examination commenced on December 7, 2010 and was completed on December 22, 2010. Notice of the records examination results was served on both parties on December 22, 2010.

The Candidate needed 12,500 signatures to be on the ballot. The Candidate submitted 23,126 signatures. There were 18,356 objections. 12,945 objections were sustained leaving 10,181 valid signatures which is 2,319 signatures fewer than the required signatures. The Candidate appealed 10,532 findings and the Objector appealed 3,623 findings.

RULE 7/RULE 8 MOTION

The Arguments in the Candidate's Rule 7/Rule 8 Motion

On December 23, 2010, the Candidate filed a Rule 7/Rule 8 motion.

The Rule 7 portion of the Motion

In her Motion, the Candidate requests two (2) types of documents from the Board. First she requests copies of original voter registration records "for the persons listed on the attached Exhibit A," or, in the alternative, "that copies of signatures be produced in batches of 200 signatures at a time, for review by the hearing officer . . . to the point that such signatures exceed the number of signatures that are required for her nomination as Treasurer." (Rule 7/Rule 8 Motion at para. 2). Although none of the attachments to the Rule 7/Rule 8 Motion are marked, counsel for the Candidate clarified at the status/case management hearing on December 23, 2010, that Exhibit A is the attachment which consists of a computer-generated print-out of 269 pages. Each of the 269 pages contains 48 lines (for a total of approximately 12,000 lines) with the following headings: a) page/line number; b) objection reason; c) ruling; d) for review; and e) voter name. There exists information for each of the foregoing headings with the exception of "Voter Name" for which a name appears sporadically throughout the 269 pages.

Second, the Candidate requests that the Office of General Counsel make available and review copies of the original "Application for Ballot," "Application for Ballot for Early Voters, Grace Period Voters, and/or Absentee Voters" and all corresponding "Correction Reports" which were signed by the voters listed on Exhibit A when they obtained a ballot to vote in connection with the November 2, 2010 General Election and the February 2, 2010 General Primary Election for the purposes of comparison with, and rehabilitation of signatures identified by page and line in Exhibit A. (Rule 7/Rule 8 Motion at paras. 3, 4).

The Rule 8 portion of the Motion

In her Motion, Candidate claims that she will produce witnesses and affidavits from the people identified by page and line number as shown on Exhibit A (and totaling approximately 12,000 lines) and that such people through live testimony or affidavits "will confirm that they are the very same duly registered voters in the City of Chicago who signed the Candidate's nominating papers." (Rule 7/Rule 8 Motion at para. 6).

Candidate further challenges "the veracity of the Rule 6 exam, for the persons identified on Exhibits A and B (three PDF files 'Recover Sheets' – 33 pages), attached – there are signatures that were identified as not in system when in fact, they are in the City of Chicago database of registered voters -- and that but for a corruption of the database being used, and/or interface (Cook County software), these voters would have been found and such objections overruled." (Rule 7/Rule 8 Motion at para. 9).

The Candidate claims that the following witnesses will testify "regarding the signatures, circulation of sheets, the objections made and Rule 6 records examination: the Candidate, Bruce Crosby, Will Crosby, Crystal Crosby, Robert Thomas, Sally Johnson, Israel Rivera and Michael Rosario." (Rule 7/Rule 8 Motion at para. 6).

The Candidate also re-alleges her argument regarding the Objector's "printed and not written, not genuine" objection on the same grounds set forth in her Motion to Strike. (Rule 7/Rule 8 Motion at paras. 7-8).

The Candidate claims that based upon the evidence set forth in her Motion, she "anticipates rehabilitating in excess of 3,000 and having at least 12,500 valid signatures upon her nomination petitions." (Rule 7/Rule 8 motion at para 13).

The Objector's Oral Motion to Strike Candidate's Rule 7/Rule 8 Motion

At the status/case management hearing on December 23, 2010, the Objector made an oral motion to strike the Candidate's Rule 7/Rule 8 Motion on the grounds, *inter alia*, that the Candidate fails to include for her Rule 7 requests the name and address of each name to be inspected as required by Rule 7 of the Rules of Procedure for the Board of Election Commissioners for the City of Chicago.

General Counsel's December 24, 2010 Order Denying the Rule 7 Requests

In an Order dated December 24, 2010, the General Counsel of the Board denied the Candidate's Rule 7 requests on the grounds that: a) the requests fails to provide the name and address for each name to be inspected as required by Rule 7 of the Rules of Procedure for the Board of Election Commissioners for the City of Chicago; and b) with regard to the request for the early voting applications, the request, which refers to Exhibit A of the motion, includes categories that do not relate to the genuineness of petition signatures and is overly broad.

Case Management Conference

On December 24, 2010, there was a case management conference for purposes of the Rule 8 Motion and the hearing officer issued a Case Management Order which set the following dates for the exchange of exhibits and witness lists among the parties:

1. By December 29, 2010, the Candidate shall serve Objector's counsel and the hearing officer with the following:

a) copies of all exhibits/documents that the Candidate intends to introduce at the Rule 8 hearing and for each exhibit/document, the Candidate shall identify the finding and/or objection for which the exhibit/document is being introduced; and

b) a list of witnesses she intends to call at the hearing and for each such witness, the address for the witness and the purpose for each witness' testimony.

2. By December 31, 2010, the Objector shall serve the Candidate's counsel and the hearing officer with the following:

a) copies of all exhibits/documents that the Objector intends to introduce at the Rule 8 hearing and for each exhibit/document, the Objector shall identify the finding and/or objection for which the exhibit/document is being introduced; and

b) a list of witnesses he intends to call at the hearing and for each such witness, the address for the witness and the purpose for each witness' testimony.

(Case Management Order dated Dec. 24, 2010 at paras. 4 and 5; *see also* Transcript of Dec. 24, 2010 hearing at pp. 14-15). The Case Management Order set January 3, 2011 as the date for the Rule 8 evidentiary hearing and further states that "generally no continuances will be granted." (Case Management Order dated Dec. 24, 2010 at paras. 8 and 9; *see also* Transcript of Dec. 24, 2010 hearing at p. 24).

The Candidate's "Witness, Evidence Lists"

On December 29, 2010, the Candidate filed a pleading labeled "Witness, Evidence Lists" which the Candidate claims "supplements her Rule 7/8 Motion with . . . additional information and witnesses, who will be called/produced to confirm the genuineness of their signatures and the validity and address of their voter registration being in Chicago, Illinois." (Candidate's Witness, Evidence Lists at p. 1).

Candidate claims that she will offer affidavits "that are simultaneously being gathered and will be tendered for the people identified on the attached 'Signature Rehabilitation PDF' attached hereto for the purpose of affirming that the people that signed Candidate's nomination petitions signed in their own proper person, and that their signatures are indeed genuine." (Candidate's Witness, Evidence Lists at para. 7). The Signature Rehabilitation PDF is a spreadsheet that contains 783 lines which includes the following information for each line: 1) page/line number; 2) ruling; 3) objection reason; and 4) voter name and address. The Candidate did not file any of the referenced affidavits on December 29, 2010 (the deadline for filing all evidence pursuant the Case Management Conference Order) nor were any affidavits ever submitted or offered to be submitted during the proceedings in the case.

The Candidate also states that she will "offer voter registration records for the personnel on the attached 'Out of District PDF' list, attached hereto, for the purpose of showing that the 'out of district' portion of the Rule 6 examination was incorrect . . . ." (Candidate's Witness, Evidence Lists at para. 8). The Out of District PDF has the following headings: 1) page/line number; 2) objection reason; 3) ruling; and 4) request for review/challenge; 5) VRN; and 6) Mapquest. There are 59 line items on the Out of District PDF and all of the headings for each line contain information except for VRN and Mapquest.

The Candidate further states that she "intends to rehabilitate, through voter registration records the person identified by sheet and line number on the attached 'Voters Registered Address Rehabilitation' PD [sic] document attached hereto. This list was previously provided with the Rule 7/8 Motion and the Candidate will be providing records to confirm that the persons listed on this list are indeed registered voters in the City of Chicago at the addresses on the nomination petitions." (Candidate's Witness, Evidence Lists at para. 10). The Voters Registered

Address Rehabilitation PDF is similar and appears to have the same information that is found in the Candidate's Exhibit A to the Rule 7/8 Motion *(i.e.*, page/line number, objection reason, ruling, and for review). However, Exhibit A to the Rule 7/Rule 8 Motion contains 269 pages and the Voter Registered Address Rehabilitation PDF contains 254 pages. In addition, whereas the Exhibit A attached to the Rule 7/Rule 8 Motion includes the names of some voters, the Voter Registered Address Rehabilitation PDF does not include any names. The Candidate did not file any of the referenced voter registration records on December 29, 2010 (the deadline for filing all evidence pursuant the Case Management Conference Order) nor were any registration records ever submitted or offered to be submitted by the Candidate during the proceedings in the case.

In her Witness, Evidence Lists pleading, the Candidate "requests leave of the Electoral Board to provide the information at the hearing, since she has not been afforded adequate time, given the Christmas holiday and short schedule to obtain such document prior to today." (Candidate's Witness, Evidence Lists at para. 9).

In addition to the foregoing "information" that the Candidate intends to use to rehabilitate the rulings listed on the Signature Rehabilitation PDF, the Out of District PDF and the Voter Registered Address Rehabilitation PDF, the Candidate also argues that the results of the Rule 6 records examination "being reviewed by Candidate's campaign staff" show evidence of serious deficiencies arising from database integrity and/or software errors. Specifically, the Candidate argues that the JPP database system, which was the system used during the records examination in this case, uses a "'new' database to review signatures, and not the City of Chicago Board of Election Commissioners' database, plus the database maintained by Cook County Clerk, David Orr's office, which comprises only suburban Cook County voters" and that "[d]uring the Rule 6 examination . . . many voters that are and were duly registered voters in Chicago, and were and are contained within the City of Chicago Board of Election Commissioners' database, were not found in the JPP system database and reported in the Rule 6 Report Detail as 'not in system' by the JPP system." (Candidate's Witness, Evidence Lists at para. 3).

In support of this database argument, the Candidate relies upon the recovery sheets (pages 1-33) that were filed as Exhibit B with the Rule 7/Rule 8 Motion as well as additional recovery sheets filed with the Candidate's Witness, Evidence Lists and numbered as pages 34-65. Each recovery sheet has 12 lines with the following headings: 1) page/line number; 2) name; 3) address; and 4) VRN. Not every line is filled out. The Candidate claims that the "recovery sheets identify the names, addresses and voter registration numbers for voters that signed Candidate's nomination papers, that were objected to and sustained because a voter record was not found in the JPP system that was used by the Board of Election Commissioners' staff to review the signature challenges and/or were deemed 'out of district.'" (Candidate's Witness, Evidence Lists at para. 2).

In her Witness, Evidence Lists, the Candidate requests leave to file her additional recovery sheets by January 3, 2011, "to identify voter registration numbers and records for voters that signed her nominating papers, yet were deemed 'not in system' and stricken from the Candidate's nomination papers." (Candidate's Witness, Evidence Lists at para. 6). The Candidate also "requests that a separate review be undertaken using the official (public access) database of registered Chicago voters (without suburban voters) that is maintained by the City of

Chicago Board of Election Commissioners" (Candidate's Witness, Evidence Lists at para 5), *i.e.* the VoterView system.

The Objector's Witness List

On December 30, 2010, the Objector filed the Objector's Witness List which listed five (5) witnesses and their addresses and the following purpose for the witnesses' testimony: to "testify as to the conduct and procedures of the records examination conducted in this case." The Objector did not submit any documentary evidence.

The Candidate's Requests for Continuances and Additional Time

As noted above, in the Candidate's Witness, Exhibit Lists, the Candidate requests, *inter alia*, leave to file her additional recovery sheets on or by January 3, 2011. On December 31, 2010, the Candidate filed an Emergency Motion to Reschedule Hearing whereby the Candidate requested that the Rule 8 evidentiary hearing set for January 3, 2011 be rescheduled. In an email dated December 31, 2010, the Objector notified the Candidate and hearing officer that he objected to the request for continuance.

In an email dated January 2, 2011, as confirmed by an Order dated January 3, 2011, the hearing officer advised the parties that because of the Rule 20 hearings before the Electoral Board on January 3, 2011 and the scheduling conflict for counsel for the Candidate, the Candidate's Emergency Motion to reschedule the Rule 8 hearing is granted. The hearing was rescheduled for Tuesday, January 4, 2011 at 5:15 p.m. (which was subsequently continued until December 5, 2011 at 7:45 a.m.), and the parties were notified that the hearing would be a status hearing and not an evidentiary hearing.

In addition, the hearing officer granted the Candidate's request set forth in her "Candidate's Witness, Evidence Lists" that she have "leave to file additional recover sheets on or by January 3, 2011 to identify voter registration numbers and records for voters that signed her nomination papers, yet were deemed to be 'not in system' and stricken from the Candidate's nomination papers," and by 5:00 p.m. on January 3, 2011, the Candidate was to file with the Electoral Board and serve opposing counsel and the hearing officer with all such "recovery sheets" and/or the 2,500 VRN's referenced in Candidate's Response to Objector's Motion to Dispense with Rule 8 Hearing at paragraph 3.

By 5:00 p.m. on January 3, 2011, the Candidate filed recovery sheets numbered 64-73 which were similar in format to the recovery sheets filed as Exhibit B to her Rule 7/Rule8 Motion and the Candidate's Witnesses, Evidence Lists. In addition, the Candidate filed another attachment called "blank signatures" which is a spreadsheet containing 134 lines with the following headings: 1) page/line; 2) ruling; 3) objection reasons; and 4) voter name/voter address. However, there are no names, addresses or VRN numbers on this attachment. In Candidate's Supplementary Exhibits pleading which was filed with the foregoing exhibits, the Candidate claims that the "blank signatures" document is a list of voters for whom objections should have been overruled for lack of signature on file but were instead sustained. In the Supplementary Exhibits pleading, the Candidate also asserts that the foregoing exhibits identify

objections that should be overruled and identify "as systemic database/software problem, representative of a larger and more far-reaching problem. This is a representative example of the results. . ." (Supplementary Exhibits at para. 3).

At 10:30 p.m. on January 3, 2011, the Candidate filed recovery sheets number 74-85 which the Candidate's counsel stated, through an email, were inadvertently omitted from the previous filing because he was in a hearing from 5:00-9:30 p.m.

The Objector's Motion to Dispense with Rule 8 Evidentiary Hearing

On December 30, 2010, the Objector filed a Motion to Dispense with Rule 8 Evidentiary Hearing on the grounds that given the evidence and witnesses identified by the Candidate on her Witness, Evidence Lists submission, the Candidate would not be able to rehabilitate the number of signatures needed to bring the Candidate up to the required minimum of 12,500 signatures.

In an email dated December 31, 2010, the hearing officer advised the parties that any response to the Motion to Dispense should be filed by January 2, 2011.

On January 2, 2011, the Candidate filed her Response to the Motion to Dispense which contained the following arguments: 1) Rule 8 does not authorize a Motion to Dispense; 2) there are serious flaws in the JPP software database which is the database that was used for the records examination, and that specifically, "registered voters that are not in fact duly registered and identifiably in the Chicago Board of Election commissioner's database are 'not in system' when the JPP software/database is used" and that there "are more than 2,500 VRN's that were improperly stricken" (Response to Motion to Dispense at para. 2); and 3) there is insufficient computer time to identify all VRN records and the Rule 6 Examination Detail Report (the Board's Copy) that was provided to the Candidate did not contain all the customary information about voters which prevented and hampered the Candidate in the preparation of the Rule 7/Rule 8 Motion.

At the hearing on January 5, 2011, counsel for the parties presented oral argument on the Objector's Motion to Dispense.

The Recommendation on the Objector's Motion to Dispense

There are two categories of arguments presented in the Candidate's Rule 7/Rule 8 Motion. The first argument is a line-by-line rehabilitation argument in which the Candidate contends that she will present evidence to show that the objections regarding signatures and voter registration that were previously sustained will be overturned. The second argument is the database argument in which the Candidate contends that the JPP database system which was used for the Rule 6 records exam is flawed in that there are "signatures that were identified as not in system, when in fact, they are in the City of Chicago database of registered voters." (Rule 7/Rule 8 Motion at para. 9).

With regard to the line-by-line rehabilitation argument, the Candidate was ordered to submit all of her evidence and to identify all of her witnesses by December 29, 2011, which was

one week after the Candidate received notice of the results of the records examination and over three weeks after the records examination commenced. (See Case Management Order dated Dec. 24, 2010 at para.4). In her Rule 7/Rule 8 Motion, the Candidate identified the following witnesses (and not addresses) as persons who will testify regarding "signatures, circulation of sheets, the objections made and Rule 6 records examination: Elida Cruz, Bruce Crosby, Will Crosby, Crystal Crosby, Robert Thomas, Sally Johnson, Israel Rivera, Michael Rosario." (Rule 7/Rule 8 Motion at para. 5). Also included in the Rule 7/Rule 8 Motion were the following documents: 1) Exhibit A which contain approximately 12,000 line items which includes information regarding the page/line number, the objection reason, the ruling, whether the ruling was challenged and sporadic names of voters; and 2) Exhibit B which are recovery sheets numbered 1-33 which lists the names and addresses of 343 purported voters. In the Candidate's Witness, Exhibits List, no other witnesses were identified and the following "exhibits" were submitted: 1) recovery sheets numbered 34-65 which list the names and addresses of 336 purported voters; 2) a Signature Rehabilitation PDF which contains 783 lines of purported voters and addresses; 3) an Out of District PDF which contains 59 lines which do not include any names or addresses; and 4) Voters Registered Address Rehabilitation PDF which is 254 pages consisting of approximately 12,000 lines but which do not include any names or addresses. Moreover, as leave was granted by the hearing officer over the objection of the Objector, the Candidate filed recovery sheets 66-85 which list the names and addresses of 160 purported voters.

No affidavits or voter registration records were ever submitted for purposes of a line-by-line rehabilitation. However, the Candidate did identify through various exhibits the names and addresses of voters who could arguably testify with regard to their signature and voter registration although they were not specifically identified as witnesses who will present testimony. The total number of purported voters which were identified by name and address is 1,630 which consists of the following: 1) 783 names identified in the Signature Rehabilitation PDF; 2) 839 names identified in recovery sheets numbered 1-85; and 3) 8 witnesses (whose addresses were never disclosed) identified in the Rule 7/Rule 8 Motion.[1] Therefore, assuming that the Candidate is able to rehabilitate each and every line to which each of these listed individuals would purportedly testify, and assuming the out of district objections were improperly sustained (59 line items as identified in the Out of District PDF) (*see infra* at p 13) and assuming the "other" objections without a notation/specification were improperly sustained by the Board during the records examination (78 line items)(*see supra* at p. 3), the Candidate would still be 552 signatures below the 12,500 minimum. Therefore, the hearing officer recommends that the Objector's Motion to Dispense with regard to the Candidate's line-by-line rehabilitation argument be granted.

With regard to the database argument, the hearing officer recommends that the Objector's Motion to Dispense be denied. The Candidate did identify 8 witnesses in her Rule 7/Rule 8 Motion who the Candidate alleges will testify as to the flaws of the JPP database system used at the Rule 6 records examination. Moreover, the Candidate has submitted 1-65 recovery sheets and, with leave from the hearing officer, an additional 20 recovery sheets, which allegedly show

[1] Of the approximate 12,000 lines in Exhibit A to the Candidate's Rule 7/Rule 8 Motion, a voter name (but no address) appeared on several occasions. However, in the majority of those instances when a name appeared on Exhibit A, the same name appeared on the Signature Rehabilitation PDF and/or the recovery sheets.

there is voter registration information in the City of Chicago database which does not exist in the JPP database.

The "Supplemental Records Examination" for Purposes of Reviewing Candidate's Database Argument

In an effort to resolving the database issue, the hearing officer, at the January 5, 2011 hearing, suggested and recommended to the parties that the Board conduct a "supplemental records examination" on the Candidate's recovery sheets numbered 1-85 using the "official (public access) database of registered Chicago voters (without suburban voters) that is maintained by the City of Chicago Election Commissioner" (Candidate's Witness, Evidence Lists at para. 5), also known as the VoterView system, as requested by the Candidate. (See Transcript of Jan, 5, 2011 hearing at p. 21). The hearing officer advised the parties that the purpose of conducting the "supplemental records examination" was not to provide evidence to either party for the purposes of rehabilitating on a line by line basis but "to see if there is a problem with the JPP database." (See Transcript of Jan. 5, 2011 hearing at p. 25). To that effect, the hearing officer explained that she will examine whether there is voter registration information for the lines identified in the recovery sheets reflected in the VoterView system that is not found in the JPP database system. The Candidate agreed that the suggestion and recommendation to conduct a "supplemental records examination" was "a good one." (See Transcript of Jan. 5, 2011 hearing at p. 22).

On January 5, 2011, the parties were notified that the "supplemental records examination" would commence on January 6, 2011 at 8:30 a.m. and that there would be 3 stations. As no one appeared on behalf of the Candidate at 8:30 a.m., the hearing officer recommended that the "supplemental records examination" commence at 9:00 a.m., which it did. The hearing officer asked the Board's callers to mark on a tally sheet, as well as the recovery sheets, whether the voter registration was not found in system. The hearing officer also asked that in addition to making a "not in system" notation, the caller should make a ruling on all the objections for the lines listed on the recovery sheets (and note the rulings on the tally sheet and recovery sheets) in the event that the Candidate proved there was a database problem, and there was a subsequent recommendation that there be a new Rule 6 records examination using VoterView, as the callers' rulings during the "supplemental records examination" could be used as part of any new Rule 6 records examination. The hearing officer was present in the room where the "supplemental records examination" took place throughout the duration of the examination.

At the completion of the records examination (also on January 5, 2011), the hearing officer and John Powell, a Board employee, reviewed the information in the recovery sheets as marked by the callers and compared it to the Board's Detailed Report of the Rule 6 Records Examination dated January 2, 2011 (the "January 2, 2011 Report") in order to see if voter registration information that appeared in VoterView was missing or present in the JPP database system. Based upon this comparison, there were 263 lines where voter registration was found in the VoterView system (per the "supplemental records examination") but did not have corresponding voter registration information in the January 2, 2011 Report. Charles Holiday, the Manager of the Registration Department of the Board, advised the hearing officer that missing

information in the January 2, 2011 Report does not mean that information does not exist in the JPP system. In order for the voter registration information to appear on the Report, the caller must click the "update and continue" button on the JPP system which "clips" and attaches the voter information on the Board's report. If the voter registration information was not attached or "clipped" to the January 2, 2011 Report, it does not mean that it does not exist in the JPP database as the caller during the Rule 6 records examination may not have clicked the "update and continue" button. Therefore, for those 263 lines that were identified on the January 2, 2011 Report as missing voter registration information when compared to the "supplemental records examination" results on the recovery sheets, the hearing officer asked the Board to verify whether the voter registration information was in the JPP database system and if so, to "clip" the information and print another report which would reflect whether the information was in the JPP database system. The hearing officer was advised by Mr. Holiday that for each of those lines previously missing information in the January 2, 2011 Report, with the exception of canceled voters, the voter registration information was found in the JPP database system and subsequently "clipped" as reflected in the Board's Detail Report of the Rule 6 Records Examination dated January 11, 2011 (the "January 11, 2011 Report").

At a hearing on January 11, 2011, the hearing officer notified the parties of the foregoing. The hearing officer also advised the parties that although the out-of-district sustained objections were not included in the recovery sheets and not part of the "supplemental records examination," Mr. Holiday had advised the hearing officer that there may have been a problem on the JPP database during the Rule 6 records examination with regard to the recording by a caller of any out-of-district objection which pursuant to the Candidate's Out of District PDF effects 59 rulings.

At the January 11, 2011 hearing, the hearing officer advised the parties that based upon her review and the January 11, 2011 Report, it appears that with the exception of cancelled voter registration information, all the voter registration information that was found in the VoterView system was found in the JPP database system. The hearing officer continued the status hearing until January 12, 2011 at 4:00 p.m. in order to allow the parties to review the January 11, 2011 Report.

On January 12, 2011, counsel for the parties appeared for the status hearing. The Objector argued that there is not enough evidence for the Candidate to go forward on her Rule 8 hearing. (Transcript of Jan. 12, 2011 hearing at pp. 8-13). In response to this request, the hearing officer advised the parties that based upon her review of the "supplemental records examination" and the January 11, 2011 Report, she did not believe the Candidate has met her burden of proof demonstrating that the JPP database is flawed. (Transcript of Jan. 12, 2011 hearing at p. 17). However, the hearing officer advised the parties that the Candidate may go forward with her Rule 8 hearing to meet her burden of proof on the database argument, and the parties would be limited to the evidence submitted and witnesses identified in accordance with the Case Management Order. (Transcript of Jan. 12, 2011 hearing at p. 17).[2] The Rule 8 hearing was then set for January 13, 2011 at 4:00 p.m.

[2] At the January 12, 2011 hearing, the Candidate asked that Mr. Holiday appear for the Rule 8 hearing. Mr. Holiday was not identified on the Candidate's Witness, Evidence Lists. The hearing officer advised the parties that "this allegation of database error it was brought up in the Rule 8 and I asked that all the witnesses be identified by the

Rule 8 Evidentiary Hearing

The Candidate's Case

The following witnesses testified in the Candidate's case: Elida Cruz, Bruce Crosby, William Crosby and Crystal Crosby.

Elida Cruz. Ms. Cruz, the Candidate, testified that she collected many of the signatures on the petitions sheets and that she collected a lot of the signatures from voters who left the polling places this past election day, *i.e.,* November 2, 2010. (Transcript of Jan.13, 2011 hearing at p. 23-24). Ms. Cruz also was present for the majority of the Rule 6 record examination. (Transcript of Jan.13, 2011 hearing at p. 7, 8). In the latter part of the records examination, there were 6 stations although Ms. Cruz was only actively observing one station. (Transcript of Jan.13, 2011 hearing at p. 51). She testified that she could hear rulings being made at the other stations but did not know what particular sheet and line numbers were being ruled on at those other stations. (Transcript of Jan.13, 2011 hearing at p. 45-46). She acknowledged that she "didn't understand all the rules" and "[t]hey actually had to acclimate me as to what I was supposed to be doing at that time." (Transcript of Jan.13, 2011 hearing at p. 11, 12). Ms. Cruz testified that a document containing rules was distributed to her team about a week into the process. (Transcript of Jan.13, 2011 hearing at p. 12). However, Ms. Cruz testified that she did not know when that document was made or if anyone else had that document prior to her receipt. (Transcript of Jan.13, 2011 hearing at p. 47). Ms. Cruz testified that she used the Objector's Appendix-Recapitulation sheets to document the rulings on the objections and that after a week into the examination, she set up a system to keep track of the rulings. (Transcript of Jan.13, 2011 hearing at p. 18-20, 29, 54-55). Ms. Cruz testified that she was surprised that persons who signed her petition papers on November 2, 2010, after leaving a polling place, were found not to be in the system during the Rule 6 records examination. (Transcript of Jan.13, 2011 hearing at p. 24-25). She also thought it was "bizarre" that none of the south side addresses on her petition sheets were "coming up." (Transcript of Jan.13, 2011 hearing at p. 28). Although the Candidate attempted to introduce into evidence the notes or summary sheets that she kept during the Rule 6 records examination, the hearing officer sustained the objector's objection to the document as it was not identified on December 29, 2010 pursuant to the Case Management Order. (Transcript of Jan.13, 2011 hearing at p. 20-23).[3] Ms. Cruz testified that she assisted in preparing the recovery sheets numbered 1-85 and that the lines reflected on the recovery sheets were those persons who she and her team found on the VoterView system as having voter registration information but to which an objection was sustained during the Rule 6 records examination. (Transcript of Jan.13, 2011 hearing at p. 30-31, 36-37, 41-42, 91). Ms. Cruz

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29th. You have listed five witnesses and we'll see what Mr. Nally does in response and we'll go from there. If Mr. Nally [who identified Mr. Holiday as a witness on his witness list] needs Mr. Holiday or if I decide that we need Mr. Holiday, he's upstairs. I can get him easily." (See Transcript of Jan. 12, 2011 hearing at p. 19-20). As evidenced by the testimony of the Candidate's witnesses who testified about their interactions with Mr. Holiday throughout the Rule 6 records examination, the Candidate was fully aware, prior to December 29, 2010, that Mr. Holiday was involved in the Rule 6 records examination process. (Transcript of Jan.13, 2011 hearing at pp. 25, 66, 75, 76, 106, 115, 130).

[3] The notes that the Candidate kept throughout the records examination process were obviously in existence on the date that the parties were required to submit the exhibits.

testified that members of the Board were still reviewing her petition sheets after the completion of the Rule 6 records examination but she admitted that she did not know what the Board members were doing. (Transcript of Jan.13, 2011 hearing at p. 38-39). Ms. Cruz admitted that she never saw the software for the JPP database system. (Transcript of Jan.13, 2011 hearing at p. 47).[4]

Bruce Crosby. Mr. Crosby testified that he has worked on records examinations for various candidates since 1982. (Transcript of Jan.13, 2011 hearing at p. 60-61). He testified that he assisted the Candidate with the records examination and kept track throughout the process of the objections that were overturned or sustained. (Transcript of Jan.13, 2011 hearing at p. 62, 78). Mr. Crosby testified that at the beginning of the Candidate's Rule 6 records examination, the room where the stations were located was "packed." (Transcript of Jan.13, 2011 hearing at p. 64). Mr. Crosby said that the document containing the rules was distributed "maybe three or four days in" but he does not recall what the document said and he did not notice any change in the way the callers were making the calls after "that document was given out." (Transcript of Jan.13, 2011 hearing at p. 64-65). He also testified that at least 3-4 times a day, the computer would "go out" although he admitted when questioned by the hearing officer that a ruling was never made when a computer was down. (Transcript of Jan.13, 2011 hearing at p. 73-77, 89-90). He also testified that the members of the Board were reviewing the Candidate's petition sheets after the completion of the Rule 6 records examination but "I don't know why." (Transcript of Jan.13, 2011 hearing at p. 87-88). Mr. Crosby admitted that "I am not a technical expert." (Transcript of Jan. 13, 2011 hearing at p. 83). Mr. Crosby testified that he also was an observer in the records examination for the objections against Candidate Neely and that he never complained about the JPP database system, including any out-of-district rulings, during that records examination. (Transcript of Jan. 13, 2011 hearing at p. 89)

William Crosby. Mr. Crosby has been working on records examinations since 1976. (Transcript of Jan.13, 2011 hearing at p. 92). Mr. Crosby became involved in the Rule 6 records examination on the second day. (Transcript of Jan. 13, 2011 hearing at p. 93). Mr. Crosby testified that in the past, the records examination was done on a system which would allow the watchers to see the registration record. (Transcript of Jan.13, 2011 hearing at p. 95-86). However, with the system that was used for the Candidate's Rule 6 records examination, Mr. Crosby claims there were "no records." (Transcript of Jan.13, 2011 hearing at p. 96). Like Ms. Cruz and his brother, Mr. Crosby kept notes of the objections that were sustained or overruled throughout the examination. (Transcript of Jan.13, 2011 hearing at p. 116). Mr. Crosby testified that "I'm asking too many questions. I'm not getting any answers." (Transcript of Jan.13, 2011 hearing at p. 100). In addition, Mr. Crosby testified that the Candidate's team compiled the names on the recovery sheets as the records examination was proceeding. (Transcript of Jan.13, 2011 hearing at p. 104-105, 115-116). Mr. Crosby also testified that he observed that even though the objector's watcher would leave the station during the records examination, the caller for the Board would continue to note challenges to any overruled objections. (Transcript of Jan.13, 2011 hearing at p. 108-109).

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[4] Elida Cruz, as well as the Candidate's other 3 witnesses, testified on problems that occurred with regard to the out-of- district rulings. (Transcript of Jan.13, 2011 hearing at pp. 32-36, 65-66, 130-131). However, as the hearing officer explained during the January 11, 2011 status hearing, Mr. Holiday has acknowledged an issue with regard to the out- of-district ruling which as noted above, effects only 59 rulings (*supra* at p. 13).

Crystal Crosby. Ms. Crosby testified that she has worked on records examinations for 30 years. (Transcript of Jan.13, 2011 hearing at p. 117). Ms. Crosby began working on the Candidate's records examination as an observer on a Saturday. (Transcript of Jan. 13, 2011 hearing at p. 118). Ms. Crosby, like the other witnesses, kept track of the rulings. (Transcript of Jan.13, 2011 hearing at p. 120). Ms. Crosby testified that she found a problem with her own voter registration on the City's database (i.e. VoterView) as "I didn't see a new registration card" although she re-applied as a voter before the last election. (Transcript of Jan.13, 2011 hearing at p. 122-124). When the caller ruled on a signature objection to a line signed by Ms. Crosby, the caller could not identify the signature "from what he saw" and he sustained the objection. (Transcript of Jan. 13, 2011 hearing at p. 125). Ms. Crosby's voter registration card was never entered into evidence. Ms. Crosby also testified that the computer froze once or twice a day. (Transcript of Jan.13, 2011 hearing at p. 126 -127). Ms. Crosby claims that there were 80 sheets that were never reviewed and that she specifically recalls that sheet 583 was not reviewed.[5] (Transcript of Jan.13, 2011 hearing at p.133).

The Objector's Case

One witness testified on behalf of the Objector, *i.e.* Claudia Chavez. Ms. Chavez personally checked the signatures on the Candidate's petition sheets by using the VoterView system and if she did not find a voter registered at the address that appeared on the sheet and line, she would mark it on recapitulation sheets which were later attached to the Objector's Petition. (Transcript of Jan. 13, 2011 hearing at p. 139-40), Ms. Chavez oversaw the records examination process on behalf of the Objector. (Transcript of Jan.13, 2011 at pp. 137). Ms. Chavez testified that she picked up a copy of the rules for the Rule 6 records examination prior to the commencement of the records examination as copies of the rules were available on the front counter on the 6th floor. (Transcript of Jan.13, 2011 at pp. 137-38). Ms. Chavez observed that on multiple occasions during the records examination at least 1 or 2 stations were without a watcher from the Candidate, and she witnessed one of the Candidate's watchers ask the caller to note a challenge in that watcher's absence. (Transcript of Jan.13, 2011 at pp. 140-41). Mr. Chavez also testified that the computer froze about 2 or 3 times during the 3 week period but there were never any rulings made on signatures when the computer was down. (Transcript of Jan.13, 2011 at p. 1431-45).

The Recommendation on the Candidate's Rule 8 Database Argument

The only argument remaining for the Rule 8 hearing is whether the JPP database system was flawed and specifically whether voter registration information found in the VoterView system is not found in the JPP database system. After conducting a "supplemental records examination" on the Candidate's handpicked lines as set forth in the Candidate's recovery sheets, the hearing officer finds that that all registered voters on the recovery sheets that appear in VoterView appear in the JPP database system. This finding is supported by the January 11, 2011

[5] The alleged failure to rule on any sheets would only benefit the Candidate during her records examination. Moreover, Page 1553-1556 of the Jan 11, 2011 Report shows that the objections on sheet 583 were ruled upon.

Report. With the exception of the out-of-district issue as addressed above, which effects only 59 rulings, the JPP database system is not flawed.

At the Rule 8 hearing, the Candidate failed to meet her burden of proof to demonstrate otherwise, *i.e.* that the JPP system is flawed. No experts, IT people or anyone with knowledge regarding the JPP database provided testimony about the JPP database system. The only witnesses that testified were the Candidate and the individuals on her team who were watchers during the Rule 6 records examination and who were unhappy with the process *(i.e.,* the room was crowded, the computers froze, questions were not answered). However, no one testified that he or she was an expert on, let alone familiar with, the JPP database system for purposes of testifying on the veracity of the system. Indeed, although the January 11, 2011 Report was made available to the Candidate for the purposes of verifying that the names that were previously identified on the Recovery Sheets were in the JPP database system, neither counsel nor any of the witnesses pointed to any name or line that showed that this was not true.

The Candidate argues that the large number of objections which were overruled during the supplemental records examination but sustained during the Rule 6 records examination (235 of the 839 lines) demonstrates that the database system is defective. However, this argument is flawed. First, the Candidate's own handpicked lines cannot provide a statistical valid sample. Second, the Candidate admits that the only lines she included on the recovery sheets (which were being prepared throughout the records examination and for which the Candidate received additional time to file) were those that she claims included voter registration information in the VoterView system but which were the subject of a sustained objection during the Rule 6 records examination. Therefore, the only statistical argument that could be made would be to divide 235 (the number of total overruled objections at the supplemental records examination that were previously sustained at the Rule 6 records examination) by 11,803 (the total number of sustained invalid address objections at the Rule 6 records examination), which shows a possible 2% reversal rate – a statistic that does not demonstrate a flawed JPP database system. At most, it shows minimal operator error for which the Candidate has the right to appeal under Rule 8.

Although not properly preserved in her Rule 8 Motion, counsel for the Candidate mentioned several other issues that the hearing officer would like to address. First, the Candidate's witnesses were asked questions about whether the Board's callers made proper rulings or whether the callers followed the rules. However, there was simply no evidence presented by the Candidate that demonstrates that there was operator error with regard to the Rule 6 records examination. There is no doubt that a caller may make an occasional mistake but the remedy for such a mistake is the Rule 8 Motion. Moreover, counsel for the Candidate represented that operator error was not at issue in this case. (Transcript of Jan. 5, 2011 at p. 15).

Second, counsel for the Candidate has argued that it is unfair to require the Candidate to have a limited amount of time to try to rehabilitate her signatures, especially given the holiday season and also an initial records examination report which did not "attach" the names and addresses of the voters. The hearing officer disagrees. The Rule 6 records examination commenced on December 7, 2010 and concluded over two weeks later on December 22, 2010. The Candidate was given until December 29, 2010 to file her evidence and list her witnesses for the Rule 8 Motion, and pursuant to the Candidate's requests, the Rule 8 hearing was ultimately

continued for an additional 10 days and the Candidate was given leave to file additional recovery sheets 5 days after the date they were to be filed. Moreover, the Candidate's witnesses all testified at the Rule 8 hearing that during the Rule 6 records examination, they kept track of the rulings made during the examination and also commenced preparing the recovery sheets. Therefore, the Candidate had ample time to timely prepare and file her Rule 8 Motion, gather her exhibits and identify her witnesses and prepare for her Rule 8 hearing. In any event, the time period for filing a Rule 8 Motion commences at the time the Candidate receives the summary of her results – not when she receives a detailed report from the Board.

Summary of Recommendation of Candidate's Rule 8 Motion

The hearing officer recommends that the Candidate's Rule 8 Motion be denied.[6]

CONCLUSION

For the foregoing reasons, the hearing officer makes the following recommendations:

1. The Candidate's Motion to strike the Objector's Petition should be denied with regard to the bad faith/shot-gun argument, the printed and not written argument, the pattern of fraud/round-tabling argument[7] and the "other" objection argument to the extent the "other" objection specifies on the Appendix/Recapitulation sheets the basis for the objection (146 objections) and should be granted with regard to the "other" objection argument to the extent the "other" objection does not specify the basis for the objection (78 objections).

2. The Candidate needs 12,500 signatures to be on the ballot. The Candidate submitted 23,126 signatures. There were 18,356 objections. At the Rule 6 records examination, 12,945 objections were sustained leaving 10,181 valid signatures which is 2,319 signatures fewer than the required signatures. The Candidate appealed 10,532 findings.

3. The Objector's Motion to Dispense the Candidate's Rule 8 Hearing should be granted with regard to the Candidate's line-by-line rehabilitation argument as the Candidate failed to submit sufficient evidence and/or list a sufficient number of witness, in accordance with the Case Management Order, to allow the Candidate to rehabilitate the 2,319 signatures necessary for having the 12,500 minimum. The Objector's Motion to Dispense should be denied with regard to the Candidate's database argument.

4. The Candidate's Rule 8 Motion with regard to the database argument should be denied.

5. The Candidate does not have the minimum number of signatures required to appear on the ballot for the office of Treasurer for the City of Chicago for the Municipal General Election to be held on February 22, 2011.

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[6] The hearing officer recommends that the "printed/not written" argument set forth in the Rule 7/Rule 8 Motion be denied for the same reasons the hearing officer recommends it be denied on the Candidate's Motion to Strike (*supra* at p.3).

[7] The objector did not present evidence on the fraud/round-tabling argument during the proceeding.

6. The name of Elida Cruz should not be printed on the ballot for the office of Treasurer of the City of Chicago for the Municipal General Election to be held on February 22, 2011.

Date: January 16, 2011

Kelly McCloskey Cherf
Hearing Officer