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

Objections of: Elida M. Cruz	)	
	)	
	)	
To the Nomination	)	No.: 11-EB-MUN-058
Papers of: Stephanie D. Neely	)	
	)	Related Case: 11-EB-MUN-059
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 Elida M. Cruz ("Objector") to the nomination papers ("Nomination Papers") of Stephanie D. Neely, candidate for the office of City Treasurer 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 Kelly McCloskey Cherf 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, Elida M. Cruz, by attorney, Andrew Finko; and the Candidate, Stephanie D. Neely by attorney, James P. Nally.

7. The Hearing Officer ordered that an examination of the Board's 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.

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

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

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

11. The examination of the registration records of the Board was terminated after it was determined that even if all of the remaining objections to individual signatures on the

petition were sustained in favor of the Objector, the Candidate would still have more than the minimum number of valid signature on her nominating petitions to qualify for a place on the ballot for the office of City Treasurer of the City of Chicago.

12. 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 Objector's allegations regarding a "pattern of fraud" was not raised in the Objector's Petition and further found that Candidate's Nomination Papers contained at least 21,570 valid signatures, which is more 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 of the City of Chicago, and that the Candidate's Nomination Papers should be found valid.

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

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

15. The Electoral Board further finds that the Candidate's Nomination Papers were also declared valid in Related Case 11-EB-MUN-059.

IT IS THEREFORE ORDERED that the Objections of Elida M. Cruz to the Nomination Papers of Stephanie D. Neely, candidate for election to the office of City Treasurer of the City of Chicago, are hereby OVERRULED and said Nomination Papers are hereby declared VALID and the name of Stephanie D. Neely, candidate for election to the office of City Treasurer of the City of Chicago, SHALL be printed on the ballot for the Municipal General Election to be held on February 22, 2011.

Dated: Chicago, Illinois, on January 3, 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
AS THE DULY CONSTITUTED ELECTORAL BOARD

In the matter of:	)	
ELIDA M. CRUZ,	)	
Petitioner-Objector,	)	
v.	)	No. 11-EB-MUN-058
STEPHANIE D. NEELY,	)	
Respondent-Candidate.	)	
	)	
SALLY JOHNSON,	)	
Petitioner-Objector,	)	
v.	)	No. 11-EB-MUN-059
STEPHANIE D. NEELY,	)	
Respondent-Candidate.	)	

BOARD OF ELECTION
POLLING PLACE DEPT
2010 DEC 19 P 3:39

HEARING EXAMINER'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 Examiner, the Hearing Examiner hereby makes the following Report and Recommendation:

PRELIMINARY FACTS

1. The Candidate, Stephanie D. Neely (the "Candidate"), filed Nomination Papers as a Candidate for the office of Treasurer for the City of Chicago. Such Nomination Papers consist of: a) a Statement of Candidacy; b) Nomination Petition Sheets; and c) a Receipt for Statement of Economic Interests.

2. The Objectors Elida Cruz ("Cruz") and Sally Johnson ("Johnson") (collectively the "Objectors") timely filed Objector's Petitions to the Nomination Papers of the Candidate. The Cruz and Johnson petitions are almost identical. In both petitions, the Objectors allege that the Candidate's petition sheets contain less than 12,500 validly collected signatures because the petition pages contain: a) the names of persons who are not registered at address shown; b) signatures which are not genuine; c) missing or incomplete addresses; e) persons who signed the petition more than once; d) names of persons who signed the petitions more than once; g) the names of circulators who do not reside at address shown. Attached to each of the Objector's petitions is an Appendix-Recapitulation. Cruz' Appendix-Recapitulation contains objections to specific signatures by page and line number. Johnson's Appendix-Recapitulation does not contain objections to specific signatures by page and line number. Instead, Johnson's Appendix-Recapitulation sheets include at the bottom of the sheet one of the three (3) following objections: a) sheet appears to be round tabled; b) purported copy/ink signatures; and c) purported notary did not sign sheet. In addition, the Johnson petition states on the last page: ". . . in further violation of the Illinois Election Code. See Enclosed: Pages referenced as follows. Nomination Papers

exhibit a pervasive 'pattern of fraud' throughout the Petition, in violation of the Illinois election code: see following page numbers for round tabling." Both petitions allege that the Nomination Papers contain a number of signatures in excess of the maximum permitted by law.

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

4. The initial hearing on these objections was called on December 6, 2010. Mr. Finko appeared on behalf of Ms. Cruz and Ms. Johnson and both Objectors also appeared. Mr. Bezzinini appeared on behalf of the Candidate and Mr. Nally filed his appearance on her behalf.

5. At the hearing, the Candidate requested the opportunity to file a motion to strike and dismiss Objectors' petitions. A briefing schedule was set pursuant to the Rules of Procedure for Board of Election Commissioners of the City of Chicago. On December 7, 2010, the Candidate filed her motion to strike and dismiss objector's petition in the Cruz case. On December 8, 2010, Cruz and Johnson filed a "supplementary brief and response to motion strike" ("supplementary brief"). On December 9, 2010, the Candidate filed a "reply to motion to strike objector's petition and motion to strike supplementary brief."

6. A hearing on the Candidate's motion to strike and dismiss Objectors' petition was set for December 13, 2010. Mr. Nally appeared on behalf of the Candidate. Mr. Finko appeared on behalf of the Objectors. At the hearing, the hearing examiner deferred making a recommendation on the Candidate's motion to strike until after the records examination had concluded. A hearing was set for December 15, 2010.

RECORDS EXAMINATION

7. The Records Examination commenced in both cases on December 7, 2010. On December 13, 2010, Charles Holiday, of the Board, issued a memorandum in the Cruz case which states: "This case was remanded to me for a record examination. Candidate Stephanie D. Neely, candidate for City Treasurer, filed 34,557 signatures. Of these signatures, there were no objections to 24,027 signatures. The minimum signature requirement is 12,500. Therefore, I am suspending the record examination as of 7:15 p.m. on December 13, 2010." Also on December 13, 2010, Mr. Holiday issued a memorandum in the Johnson case which states: "This case was remanded to me for a record examination. Candidate Stephanie D. Neely, candidate for City Treasurer, filed 34,557 signatures. The minimum requirement is 12,500. In this objection to the petition, there were recapitulation sheets filed, but not line by line objections. Therefore, it is not necessary to conduct a record examination in this case."

8. On December 14, 2010, the Objectors filed a "Rule 7/8 Motion" in both cases.

THE CANDIDATE'S MOTION TO STRIKE AND DISMISS

Summary of Parties' Arguments

9. For her motion to strike and dismiss the Cruz petition, the Candidate argues that Cruz objected to no more than 10,570 signatures and even if each of those objections were sustained, the Candidate would still have at least 21,570 valid signatures, which places the Candidate over the 12,500 minimum.

10. For their supplementary brief, the Objectors attach an article from the "Chicago Sun Times" dated December 7, 2010, which states that the Candidate submitted 725 election petitions bearing the names of two notaries (Alex Caplan and Maricela Rodriquez) who say they did not sign the petitions. The Objectors argue that "it has come to be generally and publicly known that Candidate Neely attempted to eliminate and impede a meaningful review of her nominating papers by citizens when she submitted 725 sheets with over 10,000 false and perjurious signatures." The Objectors request that the 725 petition sheets bearing the notarial jurats of Alex Caplan and Maricella Rodriguez be stricken. (supplementary brief at para. 3, 6). The Objectors cite to *Cantor v. Cook County Officers Electoral Board*, 170 Ill. App. 3d 364 (1st Dist. 1988) and *Fortas v. Dixon*, 122 Ill. App. 3d 697 (1st Dist. 1984) for the argument that "When in the course of hearing objections to nominating papers, evidence beyond specific objections comes to the electoral board's attention, it cannot close its eyes and ears if evidence is relevant to the protection of the electoral process." (supplementary brief at para. 5) In the supplementary brief, the Objectors also request that the Candidate's nominating papers be submitted to the Board's handwriting expert for review and opinion. (supplementary brief at para. 8).

11. In her reply and motion to strike the Objectors' supplementary brief, the Candidate argues that the Objector's supplementary brief is an attempt to amend the Objectors' petition which is prohibited under the applicable law. The Candidate also argues that the Election Code does not authorize an electoral board to raise its own objections to a nominating petition *sua sponte*.

The Candidate's Signatures Exceed the 12,500 Minimum Even if All of the Objections are Sustained

12. The argument in the Candidate's motion to strike and dismiss the Objector's petition in the Cruz case is correct. Assuming all the line item signature objections are sustained in the Cruz case, as well as the Johnson case, the Candidate would still have a significant number of signatures over the minimum requirement.

13. However, this analysis must also take into account the other signature objections such as those related to circulators or notaries which are generally found at the bottom of the Appendix-Recapitulation. The Appendix-Recapitulation attached to the Cruz petition includes objections to 19 pages on the basis of a circulator issue. However,

even if those objections are sustained, it would amount to 346 additional stricken signatures which still do not bring the Candidate below the 12,500 minimum. The Appendix-Recapitulation attached to the Johnson petition, which does not contain any line by line signature objections, does include objections based upon "purported round table," "purported copy sheet/no ink signatures" and "purported notary did not sign sheet problem." However, if every one of those objections was sustained, and assuming there are 25 signatures to a page, 7,300 signatures would be stricken which does not bring the Candidate below the 12,500 minimum.

The Objectors Are Not Permitted to Amend Their Objections

14. Under the Election Code, a party is not permitted to amend her objections. *Siegel v. Lake County Officers Electoral Bd.*, 385 Ill. App. 3d 452, 456 (2d Dist. 2008); *Reyes v. Bloomingdale Twp. Electoral Bd.*, 265 Ill. App. 3d 69, 72 (2d Dist. 1994).

15. The Objectors' supplementary brief requests the Board to strike the 725 nomination sheets bearing the notarial jurats of Mr. Caplan and Ms. Rodriquez. However, this objection is not set forth in the Objectors' petitions. Nowhere in the Cruz petition is there any allegation pertaining to Mr. Caplan and Ms. Rodriquez. In fact, there are no objections in either the petition or the Appendix-Recapitulation that relate to notaries. Similarly, there are no allegations pertaining to Mr. Caplan and Mr. Rodriquez in the Johnson petition. There is an allegation that appears on one page of the Johnson Appendix-Recapitulation which states "purported notary did not sign sheet problem" and lists petition sheets 1054-1121. However, the notary on those specific sheets is Marvalous Harris – not Mr. Caplan or Ms. Rodriquez.

The Pattern of Fraud and Round-Tabling Objection Does not Comply with 10 ILCS 5/10-8

16. The Objectors seem to argue that the supplementary brief does not amend the objections because they have pled pattern of fraud and round-tabling in their petitions.

17. However, there is no "pattern of fraud" or round-tabling allegation in the Cruz petition.

18. In the Johnson petition, the last page includes the following (in handwriting): ". . . in further violation of the Illinois Election Code. See Enclosed: Pages referenced as follows. Nomination Papers exhibit a pervasive 'pattern of fraud' throughout the Petition, in violation of the Illinois election code: see following page numbers for round tabling." 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."). Although the Johnson

petition does contain a "pattern of fraud" and "round tabling" allegation, Johnson fails to specify the conduct that gives rise to the pattern of fraud or the source of any alleged defects for alleging round tabling. It is also worth noting that of the 59 sheets that include the general "round tabling" objection, only two of those sheets were notarized by either Mr. Kaplan or Ms. Rodriquez.

19. The pattern of fraud and round tabling objection in the Johnson petition is not sufficiently pled and does not comply with 10 ILCS 5/10-8. Therefore, the Objectors cannot argue that it is a basis to now address the fraudulent notary issue presented in their supplementary brief.

The Election Code Does Not Authorize the Board to Raise Its Own Objections *Sua Sponte*

20. "The Election Code does not authorize . . . an electoral board to raise its own objections to nominating petitions *sua sponte*." *Delay v. Bd. of Election Comm'rs*, 312 Ill. App. 3d 206, 210 (1st Dist. 2000).

21. The Objectors contend that despite this limitation on the Board's ability to raise its own objections not otherwise in an objectors' petition, under the *Cantor* and *Fortas* line of cases, the Board cannot "close its eyes and ears if evidence is relevant to the protection of the electoral process."

22. The Objectors reliance on *Cantor* and *Fortas* (as well as *Johnson v. Cook County Officers Electoral Bd.*, 680 F. Supp. 1229 (N.D. Ill. 1988) and *Harmon v. Town of Cicero Mun. Officers Electoral Bd.*, 371 Ill. App. 3d 111 (N.D. Ill. 2007) as cited to in the Objectors' Rule 7/Rule 8 motion) is misplaced. In all of those cases, there was an evidentiary hearing and evidence submitted to the Board in connection with the objector's specific petition, and it was this evidence which was submitted in connection with the objector's specific objections that the court found that the Board could not "close its eyes and ears" to for purposes of striking signatures that were not otherwise objected to in the objection.

23. In the Cruz and Johnson cases, there is no evidence in the record or before the Board regarding alleged fraudulent notaries.[1] Moreover, because the number of objections is less than the number of signatures, the objection petitions should be stricken, and the Board should not consider any further evidence. Thus, the holdings in the *Cantor* and *Fortas* cases do not apply.

Summary of Recommendations On the Motion to Strike

24. Based on the foregoing analysis, the Hearing Examiner recommends the following:

[1] The "Chicago Sun Times" article attached to the supplementary brief and the list of petition pages containing certain notary signatures attached to the Objectors' Rule7/Rule 8 motion is not evidence.

a. The Candidate's Motion to Strike and Dismiss Objector Cruz' petition be granted and the objections in the Cruz petition be stricken and the petition be dismissed; [2] and

b. The Candidate's motion to strike the Objectors' supplementary brief be granted.

THE OBJECTORS RULE 7/RULE 8 MOTION

25. On December 14, 2010, the Objectors filed a Rule 7/Rule 8 motion. The arguments in the Objectors' Rule 7/Rule 8 Motion are the same arguments in the Objectors' supplementary brief, *i.e.*, it has become "publicly known" that 725 of Candidate's petition sheets contain fraudulent notarizations and the Board should not close its eyes and ears to this "evidence" and should strike the Candidate's Nomination Papers in their entirety. The Rule 7/Rule 8 motion also alleges that approximately 700 additional notarized petition sheets purported to be signed by another notary, Marvalous Harris, also should be stricken.

26. The parties presented oral argument on the Rule 7/Rule 8 motion at the hearing on December 15, 2010.

27. For the same reasons that I recommend that the candidate's motion to strike the Objectors' supplementary brief be granted (*infra* at para. 14-21), I recommend that the Objectors' Rule /Rule 8 motion be denied.

CONCLUSION

28. I recommend that: a) the Candidate's motion to strike and dismiss the Cruz petition be granted and the objections in the Cruz petition be stricken and the petition be dismissed; b) the objections in the Johnson petition be overruled; c) the Candidate's motion to strike the Objectors' supplementary brief be granted; d) the Objector's Rule 7/Rule 8 motion be denied; and e) the name of Stephanie D. Neely 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: December 19, 2010

Kelly McCloskey Cherf
Hearing Officer

[2] The Cruz and Johnson Petitions also request that the Candidate's Nomination Papers be invalidated because they contain a number of signatures in excess of the maximum permitted by law. There is no maximum, and therefore, this objection should be overruled.