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

Objections of: Jason C. Ervin	)	
	)	
	)	
To the Nomination	)	No.: 12-EB-RES-03
Papers of: Kimberly Small	)	
	)	(Rel. Case No. 12-EB-RES-02)
Candidate for the nomination of the	)	
Republican Party for the office of	)	
Representative in the General Assembly of the	)	
10th Representative District, State of Illinois	)	

FINDINGS AND DECISION

The duly constituted Electoral Board, consisting of Board of Election Commissioners for 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 Jason C. Ervin ("Objector") to the nomination papers ("Nomination Papers") of Kimberly Small, candidate for the nomination of the Republican Party for the office of Representative in the General Assembly of the 10th Representative District in the State of Illinois ("Candidate") at the General Election to be held on November 6, 2012, having convened on June 18, 2012 at 9:00 AM, 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 June 18, 2012 and was continued from time to time.

5. The Electoral Board assigned this matter to Hearing Officer Mary C. Meehan for further hearings and proceedings.

6. The Objector and the Candidate were directed by the Electoral Board 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, Jason C. Ervin, by attorney, James P. Nally PC; and the Candidate, Kimberly Small, by attorney, Charles M. Watts.

7. 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.

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 his duly authorized representative was present during the examination of the registration records.

11. 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.

12. 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 500;

B. The number of purportedly valid signatures appearing on the nominating petition filed by the Candidate total 1316;

C. The number of signatures deemed invalid because of objections sustained as a result of the records examination total 822;

D. The remaining number of signatures deemed valid as a result of the records examination total 494.

13. 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 the nomination of the Republican Party for the office of Representative in the General Assembly of the 10th Representative District of the State of Illinois.

14. Neither side filed motions under Rule 8 objecting to the Board's clerk's findings during the records examination and instead rested upon the results of the records examination.

15. Both parties submitted briefs regarding the validity of the objection contained in paragraph 24 of the Objector's Petition alleging that the nomination papers were invalid because they did not contain a certificate of committee organization. After considering the briefs and argument of the parties, the Hearing Officer concluded that neither Section 7-61 nor Section 8-5 of the Election Code requires that a certificate of organization of the appropriate representative

committee be filed with a candidate's nomination papers; therefore, the Hearing Officer overruled paragraph 24 of the Objector's Petition.

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 only 494 valid signatures, which is less than the minimum number of valid signatures required by law to be placed upon the official ballot as a candidate for nomination of the Republican Party for the office of Representative in the General Assembly for the 10th Representative District of the State of Illinois, and that the Candidate's Nomination Papers should be found invalid.

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 incorporated herein as a part of the Electoral Board's decision.

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 Kimberly Small are, therefore, invalid.

19. The Electoral Board further finds that in another objection to the Candidate's Nomination Papers in case 12-EB-RES-02 the Electoral Board also found that the Candidate's Nomination Papers were invalid.

IT IS THEREFORE ORDERED that the Objections of Jason C. Ervin to the Nomination Papers of Kimberly Small, candidate for nomination of the Republican Party for election to the office of Representative in the General Assembly of the 10th Representative District of the State

of Illinois are hereby SUSTAINED and said Nomination Papers are hereby declared INVALID and the name of Kimberly Small, candidate for nomination of the Republican Party for the office of Representative in the General Assembly for the 10th Representative District of the State of Illinois, SHALL NOT be printed on the official ballot for the General Election to be held on November 6, 2012.

Dated: Chicago, Illinois, on July 13, 2012.

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

JASON C. ERVIN,	)	
Objector	)	**12-EB-RES-03**
	)	
-v-	)	
	)	
KIMBERLY SMALL,	)	**Mary C. Meehan**
Candidate	)	**Hearing Officer**

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BOARD OF ELECTIONS
COMMISSIONER

RECOMMENDED FINDINGS AND DECISION

The above named cause came to be heard before the Chicago Board of Election Commissioner's ("CBOE") on verified objection of Jason C. Ervin ("Objector") to the nomination papers of Kimberly Small ("Candidate") for the Office of Representative in the General Assembly in and for the 10th Representative District for the Republican Party Mary C. Meehan, Hearing Officer finds and recommends as follows:

1. The initial hearing in this matter was conducted on June 18th, 2012 at 11:00 a.m. Attorney Charles Watts filed an appearance on behalf of the Candidate. Attorney James Nally filed an appearance on behalf of the Objector.

2. A records examination was completed on June 27th, 2012 at 5:22pm. The examination of the records is hereby adopted and incorporated by reference to the results of the records examination. Both parties acknowledged receipt of the records examination results by copy in a timely manner.

3. Before an evidentiary hearing and after the motion to dismiss, both parties submitted briefs regarding the validity of the objection in paragraph 24 of the Objector's Petition. Paragraph 24 stated, in essence, that the nomination papers were invalid because they did not contain a certificate of committee organization. The objector relied on the Election Code at *10 ILCS 5/8-5* and *Carnell v. Madison County Officers Electoral Board 299 IL App.3d 419 (5th District 1998)* to support his argument.

4. In his reply brief the Candidate argued that a certificate of committee organization is not required to be filed with the nominations papers. The Candidate relied on *10 ILCS 5/7-61* of the Election Code, specifically paragraph 9. He further relied on *Wisnasky-Bettorf v. Peggy Pierce 965 N.E.2d 1103 (Ill.), 2012 WL 966171 (Ill.))* to highlight his point that paragraph 9 of 5/7-61 is the applicable portion of the statute which mandates what is to be filed with nomination papers.
5. Section 5/8-5 of the Election Code does mandate that a certificate of committee organization be completed and forwarded to the State Board of Elections. However, the Objector's reliance on the *Carnell* case is misplaced. In *Carnell*, the Candidate admitted into the record the committee did not properly organize. Here, no such admission was made nor did the Objector present any evidence to that effect

6. The Candidate is correct on this issue. Therefore, the objection in paragraph 24 of the Objector's Petition is overruled. There is no requirement to file a certificate of committee organization *with* nominating papers. Nothing in *10 ILCS 5/7-61* or any other statute requires a certification of committee organization be filed with nominating papers. Section 7-61 of the Election Code sets forth the procedure to be followed when filing nominating papers in situations as this, where no name appeared on the primary ballot and no write-in candidate was nominated. The *Pierce* case confirms this point.

7. The above matter came to be heard before this Hearing Officer on July 06, 2012 at 1:30p.m. for an Evidentiary Hearing. Both parties failed to file a timely Rule 8 Motion and rested on the results of the records exam.

8. The Hearing Officer has considered all evidence and arguments offered by the parties and finds that:

    A. The minimum number of valid signatures required by law for placement on the ballot for the office in question is 500;
    B. Total number of objections to signatures objected to is 1102;
    C. The number of signatures deemed invalid because of objections sustained total 822;

D. The number of purportedly valid signatures appearing on the nominating petition filed by the Candidate total 494; 6 signatures fewer than the required the minimum.

9. The Hearing Officer finds that the number of valid signatures appearing on the Candidate's nominating petition following completion of the records examination is below the minimum number of valid signatures required by law to be placed upon the official ballot as a candidate for the office of Representative in the General Assembly for the 10th District, State of Illinois.

10. The Hearing Officer finds, therefore, that the objections to signatures appearing on certain sheets and lines of the Objector's Petition are sustained in part and overruled in part.

11. For reasons stated above, the Hearing Officer recommends the Electoral Board find that the Nominating Papers of Kimberly Smith are invalid.

ENTERED THIS 9th day of July, 2012.

Mary C. Meehan
Hearing Officer

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BOARD OF ELECTIONS
COMMISSIONER