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

Objections of: Charles Loeb Stanton	)	
	)	
	)	
To the Nomination	)	No.: 12-EB-RES-06
Papers of: Juan Antonio Diaz	)	
	)	
Candidate for the nomination of the	)	
Republican Party for the office of	)	
Representative in the General Assembly of the	)	
25th 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 Charles Loeb Stanton ("Objector") to the nomination papers ("Nomination Papers") of Juan Antonio Diaz, candidate for the nomination of the Republican Party for the office of Representative in the General Assembly of the 25th 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 Christopher Agrella 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, Charles Loeb Stanton, by attorney, Michael Kasper; and the Candidate, Juan Antonio Diaz, by attorney, John Bernbom.

7. The Candidate filed a motion to strike and dismiss the Objector's Petition, arguing that (a) the objections did not fully state the nature of the objections and (b) that the objections were inconsistent and conflicted with each other. After considering the briefs and arguments of the parties, the Hearing Officer has recommended that the motion to strike and dismiss the objections be denied.

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 his duly authorized representative was present during the examination of the 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 500;

B. The number of purportedly valid signatures appearing on the nominating petition filed by the Candidate total 645;

C. The number of signatures deemed invalid because of objections sustained as a result of the records examination total 472;

D. The remaining number of signatures deemed valid as a result of the records examination total 173.

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 the nomination of the Republican Party for the office of Representative in the General Assembly of the 25th Representative District of the State of Illinois.

15. The Candidate did not file a motion under Rule 8 objecting to the Board's clerk's findings during the records examination and rested upon the results of the records examination.

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 173 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 25th 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 is attached hereto and is incorporated herein and made a part of the Electoral Board's decision in this case.

18. For the reasons stated above, the Electoral Board finds that the Candidate has an insufficient number of valid signatures on his nominating petitions and that the Nomination Papers of Juan Antonio Diaz are, therefore, invalid.

IT IS THEREFORE ORDERED that the Objections of Charles Loeb Stanton to the Nomination Papers of Juan Antonio Diaz, candidate for the nomination of the Republican Party for election to the office of Representative in the General Assembly of the 25th Representative District of the State of Illinois are hereby SUSTAINED and said Nomination Papers are hereby

declared INVALID and the name of Juan Antonio Diaz, candidate for nomination of the Republican Party for the office of Representative in the General Assembly for the 25th 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.

BEFORE THE DULY CONSTITUTED ELECTORAL BOARD FOR THE HEARING AND PASSING UPON OF OBJECTIONS TO RESOLUTIONS TO FILL VACANCIES IN NOMINATION FOR THE NOVEMBER 6, 2012, GENERAL ELECTION IN THE CITY OF CHICAGO

CHARLES LOEB STANTON,

Objector

v.

JUAN ANTONIO DIAZ,

Candidate.

No. 12 EB-RES-06

BOARD OF ELECTION COMMISSIONER
2012 JUL -9 A 9:41

HEARING OFFICER'S REPORT AND RECOMMENDED DECISION

This matter first came before the hearing officer on June 18, 2012, set on the call for 11:00 a.m., at which time it came on for hearing. Objector appeared through counsel, Michael Kasper, Esq. and the candidate appeared through counsel, Mr. John Bernbom, Esq. with each filing their appropriate appearances.

The file contained the original petition papers of the candidate, seeking, pursuant to 10 ILCS 5/7-61, to fill a vacancy in nomination and thereby be placed on the ballot for election to the office of Representative in the General Assembly for the 25th Representative District of Illinois, to be voted upon at the November 6, 2012, General Election in the City of Chicago. These were marked as Board Group Exhibit A. The file also contained the original objections of the objector, which were marked as Board Group Exhibit B. The proof of service of notice of the call was marked as Board Group Exhibit C, indicating that objector was served by certified mail, the candidate by substitute personal service. The appearances of the parties were marked as Board Group Exhibit D. Board Group Exhibits A through D were accepted into evidence without objection.

The objection raised a line by line recapitulation sheet objection, incorporating an

attached recapitulation exhibit.

The minimum signature requirement for this office is 500 valid signatures.

At that point the hearing officer inquired of the parties whether either side intended to file any preliminary motions. Informed by the candidate that a motion would be forthcoming, the briefing schedule set out in the rules was put on the record and acknowledged by both sides. Hearing on any motion filed, was set down for June 26, 2012, at 10:00 a.m. In addition, the hearing officer scheduled the matter for a record examination to start on June 19, 2012, at 9:45 a.m. Both sides, through counsel, received verbal and written notice of this record examination date and time prior to leaving the hearing room on Jun 18, 2012. The June 26, 2012, date was also set down for status of record examination. At this juncture the hearing came to a close.

After the start of the record examination an issue was identified by board personnel regarding the Joint Petition Project software application used to access voter registration data and to conduct records examinations for objections to nomination papers. The issue affected only objections that the petition signer did not reside in, or was not a registered voter in, the district in which the candidate is seeking nomination ("out of district" objections). The software issue was corrected by 10:15 a.m. on June 21, 2012. All objections ruled upon prior to the correction were then checked manually to verify whether the original determination was correct.

On June 26, 2012, this matter was recalled for further proceedings. Both sides appeared through counsel. The candidate had filed a timely motion to strike, to which objector responded in a timely fashion. No reply was filed by the candidate. Both sides acknowledged awareness of the technical glitch referenced above, and that the record examination was not complete as of the June 26, 2012, hearing. At this point the hearing officer took up the candidate's motion to

strike, hearing argument on it.

The motion asserted, in substance, that the objection did not "state fully the nature of the objections", further analogizing, without citation to authority, that the needed specificity for pleading an objection was analogous to the specificity required in pleading common law fraud.

The motion also alleged that certain objections were internally inconsistent and conflicting, specifically, that "signer not registered at address shown", "address missing or incomplete", and "address outside of district" were in conflict with each other.

In response, objector asserted, in general, that the objections, being in an appendix-recapitulation format, fully stated the nature of the objection, and adequately informed the candidate of the objections he was being called to meet. Furthermore, that there was no internal inconsistency or conflict in the "signer not registered at address shown", "address missing or incomplete", and "address outside of district" objections. Finally, objector noted that no "pattern of fraud" argument had been made, and that the word fraud was not even set forth in the objection.

It is the recommendation of this hearing officer that the motion to strike the objection be denied, a recommendation made on the record at the time. The objection, in an appendix-recap format, adequately met the requirement of the Election Code that it "state fully the nature of the objections". *See e.g., Elysee v. Patterson.* 04-EB-RGA 14 (Jan. 20, 2004); *Ligas v. Martinez*, 95-EB-ALD-134 (CBEC, January 17, 1995); *Whitehead v. Hodges*, 91-EB-ALD-047 (CBEC, January 16, 1991)

Furthermore, this hearing officer would recommend overruling the inconsistency or conflict basis argued by the candidate as grounds for dismissal, a recommendation which was put on the record, finding that there is no *per se* inconsistency or conflict in objections which

include "signer not registered at address shown", "address missing or incomplete", and "address outside of district" objections. A petition signer could conceivably be all those things at the same time: a) not registered at the address listed; b) the address listed could be so incomplete that it was fatally deficient for proving it was within the geographical boundaries; and c) the portion that was readable was sufficient to evidence that the address was in fact outside of the relevant geographical boundary.

Additionally, while the Board is not bound by the rules of evidence and practice which typically prevail in the Circuit Court of Cook County, the Illinois Rules of Civil Procedure or Illinois Supreme Court Rules, it generally follows them, and Illinois civil pleading rules allow a party to plead in the alternative. *See 735 ILCS 5/2-613(b); Rule 10, CBEC Rules Adopted June 18, 2012; Bureau Service Co. v. King,* 721 N.E.2d 159, 163 (3rd Dist., 1999): *Wegman v. Pratt*, 219 Ill.App.3d 883, 895-96 (5th Dist. 1991) (at the pleading stage, a party may plead alternative theories that are legally inconsistent).

There being no other matters, the hearing was concluded, subject to recall upon the completion of the Rule 6 record examination.

On June 26, 2012, the Rule 6 record examination concluded and the parties were notified of the results by telephone, and by fax and/or email. At the conclusion of the record examination, the candidate, who had filed 645 signatures in total in support of his nomination, only had 173 valid signatures counted towards his nomination, and as such, was 327 signatures short of the 500 valid signatures required.

The candidate did not file a Rule 8 Motion and as such, the candidate waived any right to seek review of the results of the record examination. The matter was scheduled for further proceedings on July 6, 2012, at 11:40 a.m.

On July 6, 2012, this matter was recalled for further proceedings, and both sides appeared through counsel.

The case file contained a Petition Summary Report and Notice of Record Exam Results, the latter evidencing that both sides had received notice of the record exam results by phone, fax and/or email on June 26, 2012, and both sides acknowledged receipt of the results at that time.

The Petition Summary Report and Notice of Record Examination Results were marked as Board Group Exhibit E, and the hearing officer accepted Board Group Exhibit E into evidence without objection.

At this point the hearing officer read the results of the record examination into the record, as follows:

Signatures Required:	500
Total Pages:	66
Total Signatures Filed by the Candidate:	645
Total Objections:	534
Total Objections Ruled On:	534
Total Remaining to be Ruled On:	0
Total Objections Sustained:	472
Total Objections Overruled:	62
Findings Preserved For Review (Candidate):	556
Findings Preserved For Review (Objector):	207
Total Valid Signatures:	173
Total Unchallenged Signatures:	111

327 valid signatures below the 500 signature minimum required.

At this juncture the hearing officer stated on the record that it would be his recommendation that the results of the record examination be accepted and the objection be sustained, in that the evidence produced in the course of the record examination affirmatively

proved that the candidate has less than the minimum number of valid signatures required (500) in his nomination papers to permit his name to be placed on the ballot, and that the nomination papers of the candidate be declared invalid and the candidate's name not appear on the ballot.

As matters were set to conclude, candidate's counsel referenced pending federal litigation regarding the recent Illinois legislative remap, and stated that the candidate was reserving all rights to challenge the electoral board's decision in this matter depending upon the outcome of the federal litigation. The hearing officer noted in response that no stay or other injunctive prohibition was in effect that would stay the electoral board's action in the instant matter, and that the board was statutorily bound to apply the law as it exists at this time, including those laws which set out the legislative remap boundaries.

This hearing officer recommends to the Board that it adopt the above findings, decisions and recommendations of the hearing officer, that the Board further sustain the objection and declare that said nomination papers are insufficient and invalid in law and fact in that the nomination papers lack the minimum number of validly collected signatures of qualified and duly registered voters of the 25th Representative District of Illinois as required by law (500) for said office, and that this Board further declare that the name of the candidate, Juan Antonio Diaz, not appear and not be printed on the ballot for election to the office of Representative in the General Assembly for the 25th Representative District of Illinois, to be voted upon at the November 6, 2012, General Election in the City of Chicago.

Christopher J. Agrella
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Respectfully Submitted,

Christopher J. Agrella – Hearing Officer