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

Objections of: Joseph A. Barton	)	
	)	
	)	
To the Nomination	)	No.: 12-EB-RES-08
Papers of: Marcus C. Evans, Jr.	)	
	)	(Rel. Case No. 12-EB-RES-07)
Candidate for the nomination of the	)	
Democratic Party for the office of	)	
Representative in the General Assembly for the	)	
33rd 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 Joseph A. Barton ("Objector") to the nomination papers ("Nomination Papers") of Marcus C. Evans, Jr., candidate for the nomination of the Democratic Party for the office of Representative in the General Assembly for the 33rd Representative District of 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 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 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'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, Joseph A. Barton, pro se; the Candidate, Marcus C. Evans, Jr., by attorney Michael J. Kasper.

7. The Hearing Officer has tendered to the Electoral Board her report and recommended decision. The Hearing Officer recommends that the Objections to the Candidate's Nomination Papers be dismissed and that the Nomination Papers be declared valid.

8. 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, except for the following:

A. The Hearing Officer's report states on page 5 that the Democratic Party's rules, a copy of which were attached to the Candidate's Motion to Dismiss, "specifically permit proxy voting and nothing in the Election Code rule prohibits or even discusses proxy voting." The Hearing Officer goes on to state that "there

is nothing the Democratic Party's rules that is inconsistent with the Election Code's requirements in Section 7-61 for a resolution filling a vacancy." While this statement is technically correct, it should be clear that the "Rules of the Democratic State Central Committee" attached to the Candidate's motion do not expressly apply to representative committees and their duties and functions in filling vacancies in nomination. Said rules are, however, illustrative of the Illinois Democratic Party's approval and use of proxy voting in its proceedings, at least at the State Central Committee level. More importantly, the Election Code is silent regarding the methods of voting to be employed by representative and legislative committees in filling vacancies in nomination under Section 7-61 and in the absence of an express prohibition, the use of proxy voting in such proceedings is not prohibited nor is it inconsistent with the powers such committees and officers have under Article 7 of the Code.

B. The Hearing Officer's report also states on page 5, "Most importantly, nothing in the [sic] Section 7-61 requires members of the committee to even sign the resolution or affix their names to it." While it is true that Section 7-61 of the Code does not expressly require that members of a representative committee affix their signatures to a resolution filling a vacancy in nomination, the Electoral Board rejects this interpretation of Section 7-61. Signature(s) are required in order to establish the validity of the resolution.

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.

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

10. The Electoral Board further finds that another objection to the Candidate's Nomination Papers in case number 12-EB-RES-07 was also dismissed.

IT IS THEREFORE ORDERED that the Objections of Joseph A. Barton to the Nomination Papers of Marcus C. Evans, Jr., candidate for the nomination of the Democratic Party for the office of Representative in the General Assembly for the 33rd Representative District of the State of Illinois, are hereby DISMISSED and said Nomination Papers are hereby declared VALID and the name of Marcus C. Evans, Jr., candidate for the nomination of the Democratic Party for the office of Representative in the General Assembly for the 33rd Representative District of the State of Illinois, SHALL be printed on the official ballot for the General Election to be held on November 6, 2012.

Dated: Chicago, Illinois, on July 10, 2012.

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

EVELYN REID,	)	
Objector	)	11-EB-RES-07
	)	12
-v-	)	
	)	
MARCUS C. EVANS, Jr.,	)	**Mary C. Meehan**
Candidate	)	**Hearing Examiner**

BOARD OF ELECTIONS
COMMISSIONER
2012 JUN 29 A 10:19

HEARING OFFICERS'S REVISED ORDER ON CANDIDATE'S MOTION TO DISMISS

This matter came to be heard on June 25, 2012 on the Candidate's Motion to Strike and Dismiss Objector Evelyn Reid's Petition. The Candidate was present through his attorney, Michael Kasper. The Objector did not appear and case was dismissed. The matter was recalled and reinstated on June 26th, 2012. The Objector showed good cause for her absence on June 25th, 2012. Parties proceeded without objection on Candidate's Motion to Strike and Dismiss and the Hearing Officer being duly advised:

IT IS HEREBY FOUND THAT,

1) The Candidate's Nomination Papers Were Timely Filed

The Objector states in her objection that the Candidate did not meet the filing deadline of June 4, 2012 5 p.m. The Objector is mistaken; June 4th, 2012 was not the deadline for filing in this instance. June 4th would have been the correct deadline had the vacancy in question been created because no candidate appeared on the Primary Election ballot. Paragraph 9 of Section 7-61 specifically sets forth the procedure to be followed in situations

where no name was put forth on the primary ballot. In those types of vacancies the deadline to fill the vacancy is 75 days after the primary. However, in this case, that deadline does not apply. Here, there was indeed a candidate, Marlow H. Colvin who was also the incumbent State Legislator seeking re-election, already on the Ballot *after* the Primary Election. That candidate withdrew after the Primary Election by removing his name from the ballot and creating this vacancy.

The facts of precisely how and when this vacancy was created are correctly laid out in the Candidate's Motion to Dismiss. I will not repeat them. The Election Code provides for filling a vacancy in nomination in these circumstances. Section 7-61 Para. 3 of the Code provides in part:

> Any vacancy in nomination under the provisions of this Article 7 occurring on or after the primary and prior to the certification of candidates by the certifying board or officer, must be filled prior to the date of certification. Any vacancy in nomination occurring after the certification but prior to 15 days before the general election shall be filled within 8 days after the event creating the vacancy. The resolution filling the vacancy shall be sent by U.S. mail or personal delivery to the certifying officer or board within 3 days of the action by which the vacancy was filled; provided, if

such resolution is sent by mail and the U.S. postmark on the envelope containing such resolution is dated prior to the expiration of such 3 day limit, the resolution shall be deemed filed within such 3 day limit.

In *Whitney Wisnasky-Bettorf v. Peggy Pierce* 965 N. E.2d 1103 (Ill.), 2012 the Appellate Court has recently visited Section 7-61 of the code. The *Pierce* case further supports the Candidate's argument here that Paragraph 3 of Section 7-61 of the code applies when a vacancy is created after the primary. In *Pierce* the Court held, "paragraph 3 applies to situations where a candidate has been nominated at the primary and a vacancy in nomination occurs as a result of the death or resignation of that person nominated" *Id.* The court also noted that paragraph 9 specifically sets forth procedure to be followed in situations where no name was put forth on the primary ballot and no write-in candidate was nominated by primary voters.

The vacancy in nomination at issue was in fact created *after* the Primary Election. The Democratic Representative District committee and was required to fill the vacancy pursuant to Paragraph 3 Section 7-61. The Section's only requirement of the Democratic Representative District committee was to fill the vacancy in nomination "prior to certification". *Id.* The State Board of Election will certify the General Election on August 24th, 2012. 10 ILCS 5/7-60 (Not less than 74 days before the date of the

general election).

The documents in this case were filed in a timely manner. Paragraph 3 Section 7-61 clearly states that, where a vacancy in nomination occurs *after* the primary election, the documents filling the vacancy in nomination must be filed with the election authority within three days of the action filling the vacancy. *Id.* In this case, the Resolution is plainly dated June 2, 2012, and is also plainly time stamped by the Illinois State Board of Elections on June 5, 2012. June 5th is the third calendar day after June 2, 2012 and because June 2 was a Saturday, the documents were not due until June 6.

2) The Candidate's Statement of Economic Interests is Timely and Proper.

The objector argues the Candidate's Statement of Economic interest was not timely filed. Section 7-12 requires candidates to file a statement of economic interest in relation to their candidacy "unless he has filed a statement of economic interest in relation to the same governmental unit with that office within a year preceding the date on which such nomination papers were filed." 10 ILCS 5/7-12(8). In this case, the Candidate filed a Statement of Economic Interests in relation to the "same governmental unit" when he was appointed to fill Marlow H. Colvin's vacancy in office as Representative in the General Assembly. The Candidate's Statement is date stamped April 17,

2012. That date is clearly within one year preceding the filing of his nominations papers which were filed June 5, 2012.

3) The Statement of Candidacy is Valid.

In her Objection, the objector stresses that the Candidate's Statement of Candidacy is notarized and dated May 2, 2012. It is unclear as to whether the date was actually May 2, 2012, or whether the date contains a scrivener's error and was actually dated June 02, 2012. Even so, the Board has consistently held that an incorrect date in the notary jurat does not invalidate a document. The Board has ruled that the failure to place any date in the notary jurat constitutes an insufficient basis to invalidate nominating papers. *Hendon v. Davis*, 02-EB-SS-10, CBEC, January 31, 2002; *Curtis v. Parker*, 83-EB-ALD-94, CBEC, January 24, 1983. Whether dated May 02, 2012 or June 02 2012 neither date invalidates the document.

4) The Candidate was Not Required to Submit Nominating Petitions.

The objector argues that the Candidate was required to file nominating petitions. This contention is incorrect and is likely rooted in the initial argument and confusion between applying paragraph 9 and paragraph 3 of Section 7-61 of the Election Code. As stated above, because the vacancy in this case was created after the primary, Paragraph 3 of Section 7-61

is the proper provision of the code in this matter and nothing in that provision requires the Candidate to file nomination petitions.

IT IS THEREFORE ORDERED THAT:

A. The Respondents' Motion to Dismiss Objector's Petition is GRANTED for the reasons stated above.

B. The matter is DISMISSED.

Dated: 6/28/12

Mary C Meehan

BY: Mary C. Meehan
Hearing Officer

Mail to:
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Attorney for Candidate
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Ms. Evelyn Reid
Objector
1731 E. 92nd Pl.
Chicago, IL 60617

2012 JUN 29 A 10:19
BOARD OF ELECTIONS
COMMISSIONER

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

Laura Harney

v.

Chicago Board of Elections, Et. Al.

No. 2012 COEL 0024

ORDER

This issue having come before the Court and all parties represented by Counsel, the Court finds that:

- The Court agrees with the Chicago Board of Elections' (CBOE) finding that the ~~Code~~ By laws apply
- The Court upholds the CBOE's decision.

Petition Denied, this is a final appealable ruling.

Atty. No.: 45219

Name: David Ratowitz

Atty. for: Respondent

Address: 721 W. Lake #106

City/State/Zip: Addison, IL 60101

Telephone: 312-798-9308

ENTERED: ENTERED JUDGE JAMES A. ZAFIRATOS-1919 OCT 11 2012 DOROTHY BROWN CLERK OF THE CIRCUIT COURT OF COOK COUNTY, IL DEPUTY CLERK

Dated: _____

Judge

Judge's No.

DOROTHY BROWN, CLERK OF THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS