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

Objections of: ATANACIO GONZALEZ	)	
	)	
	)	
To the Nomination	)	No.: 20-EB-NPP-01
Papers of: MARY ELLEN "MARI" BROWN	)	
	)	
Candidate of the DEMOCRACY IN	)	
AMERICA Party for the office of State	)	
Senator for the 11th Legislative District, State	)	
of Illinois	)	

FINDINGS AND DECISION

The duly constituted Electoral Board, consisting of Board of Election Commissioners for the City of Chicago Commissioners Marisel A. Hernandez, William J. Kresse and Jonathan T. Swain, organized by law in response to a Call issued by Marisel A. Hernandez, Chair of said Electoral Board, for the purpose of hearing and passing upon objections ("Objections") of ATANACIO GONZALEZ ("Objector") to the nomination papers ("Nomination Papers") of MARY ELLEN "MARI" BROWN, candidate of the DEMOCRACY IN AMERICA Party for election to the office of State Senator for the 11th Legislative District of the State of Illinois ("Candidate") at the General Election to be held on Tuesday, November 3, 2020, having convened on Friday, August 7, 2020, at 10:00 a.m.., via teleconference and 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 Candidate's Nomination Papers were duly and timely filed.

2. The Electoral Board was constituted according to the laws of the State of Illinois.

3. A Call to the hearing on said Objections was duly issued by the Chair of the Electoral Board and served upon the members of the Electoral Board, the Objector and the Candidate, or their attorneys of record, via electronic mail or as provided by statute.

4. A public hearing held on these Objections commenced on Friday, August 7, 2020 and was continued from time to time. The Electoral Board assigned this matter to Hearing Officer Mary Celeste Meehan for further hearings and proceedings.

5. 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, ATANACIO GONZALEZ, by Attorneys LUKE CASSON and OSCAR KPOTA; the Candidate, MARY ELLEN "MARI" BROWN, by Attorney PERICLES ABBASI.

6. 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 overruled and that the Nomination Papers be declared valid.

7. 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.

8. 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.

IT IS THEREFORE ORDERED that the Objections of ATANACIO GONZALEZ to the Nomination Papers of MARY ELLEN "MARI" BROWN, candidate of the DEMOCRACY IN AMERICA Party for election to the office of State Senator for the 11th Legislative District of the State of Illinois, are hereby OVERRULED and said Nomination Papers are hereby declared VALID and the name of MARY ELLEN "MARI" BROWN, candidate for the DEMOCRACY IN AMERICA Party for the office of State Senator for the 11th Legislative District of the State of Illinois, SHALL be printed on the official ballot for the General Election to be held on Tuesday, November 3, 2020.

Dated: Chicago, Illinois, on Friday, August 28, 2020.

Marisel A. Hernandez, Chair

William J. Kresse, Commissioner

Jonathan T. Swain, 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 and, pursuant to 10 ILCS 5/2B-45, said service of these Electoral Board proceedings will be made by email transmission to the addresses set forth on the Appearance forms filed by each party.

BEFORE THE CHICAGO BOARD OF ELECTION COMMISSIONERS

Atanacio Gonzalez, Objector,	)	
	)	20-EB-NPP-01
v.	)	
Mary Ellen "Mari" Brown, Candidate.	)	Hearing Officer Meehan

RECOMMENDED DECISISION OF THE HEARING OFFICER

BACKGROUND

This matter came to be heard on August 7, 2020 before Hearing Officer Mary Celeste Meehan. Candidate Mary Ellen "Mari" Brown filed Nomination Papers for the Office of State Senator of the Eleventh (11th) Legislative District of the State of Illinois to be voted upon in the November 3, 2020 General Election. Atanacio Gonzalez filed the Objector's Petition. The Objector was represented by attorneys Luke Casson and Oscar Kpota and the Candidate was represented by attorney Perry Abbasi. Parties agreed this matter was not a records examination case. Parties agreed a Motion to Strike and Dismiss ("Motion") would be dispositive and a briefing schedule was set. The Candidate's Motion to Strike and Dismiss was heard on August 19, 2020. Attorney Abbasi was present for the Candidate, and Attorneys Oscar Kpota and Luke Casson for the Objector.

STIPULATED AND UNCONTESTED FACTS

The following facts are uncontested or were stipulated:

1. The Candidate cast a Democratic party ballot in the March 17, 2020 primary election.
2. The Candidate now seeks a place on the November 3rd 2020 General Election ballot under a new political party, 'Democracy in America'.

3. 'Democracy in America' is in fact a new political party as defined in the Election Code.
4. The U.S. Northern District of Illinois Judge Rebeca Pallmeyer entered a Preliminary Injunction Order[1] herein referred to as the "Order" on April 23, 2020 granting relief from certain provisions of the Illinois Election Code during the current pandemic.

THE OBJECTOR'S PETITION AND THE CANDIDATE'S MOTION TO DISMISS

The issues presented in the Objector's Petition are that the Candidate engaged in party switching, the petition sheets fail to meet circulatory and notary requirements of the Election Code, and the Northern District of Illinois's Order which enjoins provisions of the Election Code should not be enforced by the Election Board.

In her Motion, the Candidate contends the party-switching argument is a non-issue because the Candidate is running as a new political party candidate and new political party candidates are addressed in Article 10 of the Election Code, not Article 7 or 8, upon which the Objector relies. The Candidate argues her petition sheets are proper because the Order, which has been adopted by the Board[2] removes the circulator and notary requirements of the Election Code, and must be enforced.

CONCLUSIONS OF LAW

Article 10 governs new political party candidates. As Section 10-2 states, any group of persons hereafter desiring to form a new political party throughout the State, or in any congressional, legislative or judicial district, or in any other district or in any political subdivision (other than a municipality) not entirely within a single county, shall file with the State Board of

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1- The United States Court of Appeals for the Seventh Circuit affirmed the Order on 8/20/20.

2- Rule 7 of the Rules of Procedure for the Board of Election Commissioners of the City of Chicago (amended 8/7/2020) summarizes the relevant injunctions and orders entered by the Northern District of Illinois federal court, with citation to Libertarian Party of Illinois, et al., v. J.B. Pritzker, et al., No. 20-cv-2112 (4/23/2020 and as amended).

Elections a petition, as hereinafter provided. 10 ILCS 5/10-2.

The Objector's citations of *Hossfeld* and *Cullerton* interpret the requirements for Statements of Candidacy under Article 7 and Article 8; requiring candidates to state that they are a "qualified primary elector" or "qualified primary voter". Article 10 of the Election Code which governs new political party candidates does not require the Candidate to state that she is a "qualified primary voter" or a "qualified primary elector" of any party.

Public Act 97-0681 (PA 97-0681) which had the short title "Elections – Party Switching" was introduced in February 2011 and passed and became effective in March 2012, added the following language to Section 7-43 of the Election Code:

> A person (i) who filed a statement of candidacy for a partisan office as a qualified primary voter of an established political party or (ii) who voted the ballot of an established political party at a general primary election may not file a statement of candidacy as a candidate of a different established political party or as an independent candidate for a partisan office to be filled at the general election immediately following the general primary for which the person filed the statement or voted the ballot. A person may file a statement of candidacy for a partisan office as a qualified primary voter of an established political party regardless of any prior filing of candidacy for a partisan office or voting the ballot of an established political party at any prior election. 10 ILCS 5/7-43.

New parties are not mentioned in the "Party-Switching" language of Section 7-43. Principles of statutory construction and interpretation hold that since primary voters running as independents or for another established party is forbidden, and new political parties are not mentioned, then primary voters are allowed to run as candidates of new political parties. The Appellate Court addresses new-party candidates in *Rudd v. Lake Cnty. Electoral Bd.*, 60 N.E.3d 979, 406 Ill.Dec. 428 (Ill. App. 2016), and held:

> Section 7–43 does not disqualify new-party candidates on the same basis as independents can be seen as encouraging the post-primary formation of alternative political parties by voters and candidates who may be either dissatisfied with the status quo or disappointed with the results of the primary.

The Appellate court in *Rudd* acknowledges that Section 7-43 means primary voters are

allowed to run as new political party candidates in the immediately following general election.

The Order of the Northern District of Illinois in Libertarian Party of Illinois v. Pritzker, 20-cv-21123 removes the requirements of 10 ILCS 5/10-4 for a circulator statement, circulator's signature, and notarization on candidate's petition sheets. Rule 7 of the Board of Election Commissioners of the City of Chicago, Rules of Procedures (amended August 7, 2020), adopts the Northern District of Illinois' Order which enjoins relevant provisions of Electoral Code. The Board of Election Commissioners of the City of Chicago, Rules of Procedure states in relevant part:

> Rule 7 Special Rules for the November 2020 General Election as Required by Order of the U.S. District Court for the Northern District of Illinois.
>
> (a) Notwithstanding any Electoral Board Rule of Procedure or statutory provision to the contrary, pursuant to the Preliminary Injunction Orders entered by the United States District Court for the Northern District of Illinois in the matter of Libertarian Party of Illinois, et al., v. J.B. Pritzker, et al., No. 20-cv-2112 (4/23/2020 and as amended), the following rules and procedures are in effect for all objections filed against new political party and independent candidates for the November 2020 General Election:
>
> (i) The Electoral Board is enjoined from enforcing the in-person signature requirement, circulator statement, and notarization requirement of 10 ILCS 5/10-4 in regard to new political party and independent candidates, as defined in 10 ILCS 5/10-2 and 10 ILCS 5/10-3. Specifically, the Electoral Board is enjoined from enforcing the following portion of 10 ILCS 5/10-4:
>
> At the bottom of each sheet of such [nominating] petition shall be added a circulator's statement, signed by a person 18 years of age or older who is a citizen of the United States; stating the street address or rural route number, as the case may be, as well as the county, city, village or town, and state; certifying that the signatures on that sheet of the petition were signed in his or her presence; certifying that the signatures are genuine; and either (1) indicating the dates on which that sheet was circulated, or (2) indicating the first and last dates on which the sheet was circulated, or (3) certifying that none of the signatures on the sheet were signed more than 90 days preceding the last day for the filing of the petition; and certifying that to the best of his knowledge and belief the persons so signing were at the time of signing the petition duly registered voters under Articles 4, 5 or 6 of the Code of the political subdivision or district for which the candidate or candidates shall be nominated, and certifying that their respective residences are

correctly stated therein. Such statement shall be sworn to before some officer authorized to administer oaths in this State.

ANALYSIS

Party Switching Issue

The Candidate is seeking to be placed on the ballot under the new political party, Democracy in America, for the Office of State Senator, 11th Legislative District, in the State of Illinois. Paragraphs 1 through 8 of the Objector's Petition present a party switching argument. The Objector argues the Election Code requires the Candidate to be "legally qualified to hold such office"; swear he or she is "qualified primary voter to which the petition relates"; and be a "qualified primary elector" under Article 8. The Objector defines "qualified primary elector" as an "elector who has not requested a primary ballot of any other party at primary election held within 2 years of the date on which the petition must be filed", citing *Ill.Rev.Stat.1971, ch.46, par. 8-8. Hossfeld v. Illinois State Bd. Of Elections, 238 Ill.2d 418, 426, 939 N.E. 2d 368, 372-73 (2010).* The Candidate is running under a new political party and requested a Democrat ballot in the March 2020 primary.

In paragraphs 5-8 of the Objector's Petition the Objector argues that the Candidate must swear he or she is "legally qualified" to be a candidate of the party to which the nomination petition related, relying on *Hossfeld citing Cullerton c. Du Page Cty. Officers Electoral Bd., 384 Ill. App. 3d 989, 987, 894 N.E.2d 774, 780-81 (2008).* Relying further on *Cullerton*, the Objector states the Illinois Supreme Court concluded that the limitation on candidate party switching found in the statement of candidacy portion of Section 7-10 of the Election Code is viable and prevents a Candidate of one-party from being "legally qualified" if she has engaged in party switching.

The Objector 's reliance on *Hossfeld* and *Cullerton* is misplaced because they interpret language in the statement of candidacy required for petitions governed by Article 7 and Article 8 of

the Election Code, which state specifically the Candidate must swear she is a "qualified primary elector". Here, the Candidate's petitions are not governed by Articles 7 or 8 of the Election Code but rather Article 10, which covers candidates of new political parties. The Election Code addresses party-switching in 10 ILCS 5/7-43 and clearly states that someone who votes in an established political party cannot run in the immediately following general election as a candidate of a different established party or as an Independent. Section 7-43 refers to an *established political party* not a new political party which is the case here. Therefore, because the Candidate is seeking to run as a new political party candidate -'Democracy in America', not a different established party, she is not party-switching.

Circulator and Notary Issue and the U.S. District Court Order

Paragraphs 9 through 11 of the Objector's Petition raises the circulator and notary issues. In sum, the Objector asserts the Election Code provides that nominating papers must contain the circulator's address, circulator signature, and a notary certificate. The Candidates petition sheets lack any circulators, circulator's signatures, or notary certificates. The Objector argues all of her petition sheets should therefore be deemed defective.

On April 23, 2020, The United States District Court, Northern District Illinois, Eastern Division issued the preliminary injunction Order in *LPIL v. Pritzker, 20-cv-2112* enjoining provisions of the Illinois Election Code because of the difficulties caused by the current pandemic. The Order was affirmed on appeal by The United States Court of Appeals for the 7th Circuit in Case no. 20-1961 on August 20, 2020. The Objector refers to the Order in paragraphs 12-14 of his petition and concludes that the issues within "relate to the propriety of the Order and its enforceability" and "the Election Code, specifically, Section 10-4, is not unconstitutional and reflects the legitimate interests of the State of Illinois, and is therefore enforceable". The Objector's Petition lacks specificity regarding the unenforceability of the Order. In his Response to the

Candidate's Motion, the Objector expands his position regarding the unenforceability of the Order and the abuse of discretion by the District Court. The Objector's arguments regarding The United States District Court and the enforceability of the Order cannot be decided here because this Administrative Court is bound by decisions of the District Court and of the 7th Circuit Court of Appeals. In addition, on August 7, 2020 the Chicago Board of Election Commissioners adopted and incorporated the Order into Rule 7 of the Rules of Procedure.

The Order enjoins the Electoral Board from enforcing circulator and notarization requirements of 10 ILCS 5/10-4 in regard to a new political party and independent candidates, as defined in 10 ILCS 5/10-2 and 10 ILCS 5/10-3. Therefore, the Candidate, being a new political party candidate, submitted petition sheets which lacked circulator statements and notary certificates and are proper.

CONCLUSION AND RECOMMENDATION

Wherefore, for the foregoing reasons, the Candidate's Motion to Strike and Dismiss is GRANTED and the Objector's Petition is DISMISSED. Candidate's nomination papers should be deemed VALID and the name Mary Ellen "Mari" Brown should be placed on the November 3rd 2020 Illinois General Election ballot as a candidate of the Democracy in America party for the Office of State Senator of the 11th Legislative District, State of Illinois.

Mary C. Meehan

August 24, 2020 *Mary C. Meehan, Hearing Officer*