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

Objections of: ALI PATEL	)	
	)	
	)	
To the Petition for Referendum, "Shall the City of Chicago amend the Municipal Code of Chicago to create a community-elected civilian Police Accountability Council?"	)	No.: 20-EB-QPP-01
	)	
	)	
	)	
	)	
Precincts 5, 7, 8, 9, 10, 12, 22, 29 30, 33 and 35 in the 39th Ward of the City of Chicago		

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 ALI PATEL ("Objector") to the Petition for Referendum, "Shall the City of Chicago amend the Municipal Code of Chicago to create a community-elected civilian Police Accountability Council?" in Precincts 5, 7, 8, 9, 10, 12, 22, 29 30, 33 and 35 in the 39th Ward of the City of Chicago ("Referendum Petition") to be voted upon at the General Primary Election to be held on November 3, 2020 having convened on Tuesday, August 18, 2020 at 11:00 A.M., via teleconference and in Room 800, 69 West Washington Street, Chicago, Illinois, and having heard and determined the Objections to the Petition in the above-entitled matter, finds that:

1. Objections to the Referendum Petition herein 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 Proponents of the Referendum Petition, as provided by statute.

4. A public hearing held on these Objections commenced on August 18, 2020 and was continued from time to time. The Electoral Board assigned this matter to Hearing Officer Barbara Goodman for further hearings and proceedings.

5. The Objector and the Proponents 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, ALI PATEL, by his attorney, ROSS D SECLER; and the Proponents of the Referendum Petition, RACHEL DICKSON and LESLIE NATZKE, through their Attorney, ANDREW FINKO.

6. 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.

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

8. The Proponents and/or their duly authorized representative was present during the examination of the registration records. The Objector and/or his duly authorized representative was present during the examination of the registration records.

9. 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.

10. The results of the records examination indicate that:

A. The minimum number of valid signatures required by law for placement on the ballot is 382;

B. The number of purportedly valid signatures appearing on the petition filed total 390;

C. The number of signatures deemed invalid because of objections sustained as a result of the records examination total 82;

D. The remaining number of signatures deemed valid as a result of the records examination total 308.

11. The Electoral Board finds that the number of valid signatures appearing on the Referendum Petition following completion of the records examination was less than the minimum number of valid signatures required by law for a question of public policy to be placed upon the official ballot in Precincts 5, 7, 8, 9, 10, 12, 22, 29 30, 33 and 35 in the 39th Ward of the City of Chicago.

12. The Proponents filed a motion pursuant to Rule 8 of the Board's Rules of Procedure ("Rule 8 Motion"). The Objector did not file a motion pursuant to Rule 8 of the Board's Rules of Procedure ("Rule 8 Motion").

13. 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 Referendum Petition contained only 308 valid signatures, which is less than the minimum number of valid signatures required by law for a question of public policy to be placed upon the

official ballot in Precincts 5, 7, 8, 9, 10, 12, 22, 29 30, 33 and 35 in the 39th Ward of the City of Chicago, and that the Referendum Petition should be found invalid.

14. The Proponents also filed a Motion to Dismiss the Objector's Petition based on two issues: (a) that the Objector's Petition was allegedly filed later than the statutory deadline and should therefore be dismissed in its entirety; and (b) in the alternative, that Paragraph 20 of the Objector's Petition should be dismissed for failing to state a claim for which relief could be granted.

15. For the reasons set forth in the Hearing Officer's Report and Recommended Decision tendered to the Electoral Board, the Hearing Officer found that the Board's offices were closed to the public on August 10, 2020, and that the Objector's Petition was therefore timely filed on August 11, 2020. Therefore, that portion of Proponents' Motion to Dismiss is denied. As to Paragraph 20 of the Objector's Petition, the Hearing Officer recommends that it be stricken and dismissed for the reasons set forth the Hearing Officer's Report and Recommended Decision.

16. 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 Recommended Decision is attached hereto and is incorporated herein as part of this Final Decision of the Electoral Board.

17. For the reasons stated above, the Electoral Board finds that the Referendum Petition has an insufficient number of valid signatures and that the Referendum Petition is, therefore, invalid.

IT IS THEREFORE ORDERED that the Objections of ALI PATEL to the Petition for Referendum "Shall the City of Chicago amend the Municipal Code of Chicago to create a community-elected civilian Police Accountability Council?" in Precincts 5, 7, 8, 9, 10, 12, 22, 29 30, 33 and 35 in the 39th Ward of the City of Chicago are hereby SUSTAINED and said Referendum Petition is hereby declared INVALID and the Referendum "Shall the City of Chicago amend the Municipal Code of Chicago to create a community-elected civilian Police Accountability Council?"in Precincts 5, 7, 8, 9, 10, 12, 22, 29 30, 33 and 35 in the 39th Ward of the City of Chicago SHALL NOT be printed on the official ballot for the General Election to be held on November 3, 2020.

Dated: Chicago, Illinois, on Wednesday, September 2, 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 BOARD OF ELECTION COMMISSIONERS OF THE CITY OF CHICAGO AS THE DULY CONSTITUTED ELECTORAL BOARD

In the matter of the objections of	)	
ALI PATEL 5141 N. Bernard St.,	)	
Chicago, IL. 60625 to the advisory	)	
Question of public policy	)	
"Shall the City of Chicago amend	)	
The Municipal Code of Chicago to	)	20-EB-QPP-01
create a community-elected	)	
Civilian Policy Accountability	)	
Council	)	

HEARING OFFICER'S REPORT AND RECOMMENDATION

This matter was first heard on August 18, 2020 and continued to subsequent dates. The Objector appeared through counsel Ross Secler. The Proponent appeared through counsel Andrew Finko. The parties were given an opportunity to file preliminary motions. The Candidate filed a Motion to Dismiss, the Objector filed a response thereto and the Candidate filed a reply. Additionally, a records examination was ordered and the matter was continued for subsequent hearing.

THE PROPONENT'S MOTION TO DISMISS

Proponent raises two issues in his Motion to Dismiss. Proponent first alleges that the Objector's Petition was not timely filed in compliance with Section 10-8 of the Election Code because it was filed on August 11, 2020. In support of his argument, Proponent cites Section 10-8 which provides that objections must be filed within 5 business days after the last day for filing the certificate of nomination or nomination papers or petition for a public question. The last day to file the petition for public question was August 3, 2020 and, according to Proponent, the fifth business day was August 10, 2020.

It is undisputed that the office of the Chicago Board of Election Commissioners ("the Board") was closed on August 10, 2020. It is also undisputed that on August 10, 2020, the Board issued the following notice:

> **Calendars, Schedules and Notices**
>
> **NOTICE: The Board's offices are closed to the public on Monday, August 10, 2020, due to a general shutdown of downtown Chicago. The Board will reopen on Tuesday, August 11, 2020, for general Board and electoral Board purposes and business, including the filing of objections to petitions for questions of public policy pursuant to 10 ILCS 5/28-4 and 10-8.**

According to the Proponent, the Board did not have the authority to shut its offices or extend any statutory deadlines. Proponent argues that some official action had to have been taken in order for the Board to close its offices. Proponent cites no caselaw or other statutory authority for his unsupported argument.

The Objector correctly points out that while 10-8 required that the objection be filed *5 business days* of the last day for filing of the instant petition for a public question, August 10, 2020 was simply not a business day. Section 5/1-3(22) of the Election Code defines business day as follows:

> **"Business day" means any day in which the office of an election authority, local election office or the State Board of Elections is open to the public for a minimum of 7 hours.** 10 ILCS 5/1-3(22)

There is no question that the Board's Office was not open on August 10, 2020 and had Objector attempted to file on August 10, 2020, it would have been impossible for him to do so. Objector had the right to file the Objector's Petition on the last day for the filing which required that he file on August 11, 2020. Accordingly, it must be concluded that the Objector's Petition was timely filed and the Proponent's Motion to Dismiss the objections for lack of timeliness should be denied.

[1]The next issue addressed in Proponent's Motion to Dismiss relates to Paragraph 20 of the Objector's Petition in which Objector alleged:

> **The proposed Referendum is contrary to the laws of Illinois for a question of public policy and is ambiguous and vague. The referendum seeks the input of the electors of the Territory as to whether there should a "community-elected" "Civilian Police Accountability Council." The term, "community-elected" is ambiguous and vague, which is contrary to the laws of the State of Illinois and violates the "free and equal" clause of Article III, Section 3 of the Illinois Constitution of 1970. Furthermore, the proposed Referendum seeks voter input on a measure that, as present, would be asked of the City Council of the City of Chicago, However, there is no legal authority for the City of [sic] Chicago to "Amend" the Municipal Code of the City of Chicago to enact a new "Civilian Police Accountability Council" even if it could be determined what is meant by the term "community-elected". As such, the Referendum question presented does not conform to the legal requirements for submitting questions of public policy in the State of Illinois, is in violation of the law, and must be stricken in its entirety.**

While much of the Proponent's Motion and Reply addresses the importance and context of the referendum in light of current events, one need only read the question in order to determine that it is not invalid as presented and is not defective on its face. The question posed is:

> **Shall the City of Chicago amend the Municipal Code of Chicago to create a community-elected Civilian Police Accountability Council?**

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[1] This issue is moot in light of the first issue raised in the Motion to Dismiss and the results of the records examination. If the Board finds that the Objector's Petition *was not* timely filed, the objections must be dismissed in their entirety. If the Board finds that the Objector's Petition *was* timely filed, the results of the Records Examination will control and, as is indicated in this Report, the Proponent has an insufficient number of signatures for placement of the question on the ballot.

A simple reading of the question indicates that it is a single question capable of being answered either yes or no. There is nothing in the question that would deprive a voter of making a meaningful choice. Likewise, there is no caselaw that requires that an advisory question set forth the mechanics, details or background of the question. See e.g. *Hoogasian v Regional Transportation Authority* 58 Ill.2d117, 317 N.E.2d 534 (1974). As such, the Motion to Strike Paragraph 20 of the Objector's Petition should be granted.

THE RECORDS EXAMINATION

The results of the records examination were as follows:

A. The minimum number of valid signatures required by law for placement on the ballot for the office in question is 382.

B. The number of purportedly valid signatures appearing on the nominating petition filed by the Candidate total 390.

C. The number of signatures deemed invalid because of objections sustained in the records examination total 82.

D. The remaining number of signatures deemed valid as a result of the records exam total 308.

The results of the records examination indicated that the candidate had 74 signatures *less* than the statutory minimum. The Proponent filed a Motion pursuant to Rule 8 of the Board's Rules of Procedure ("Rule 8 Motion") and also filed Proponent's Notice to Produce to the Chicago Board of Election Commissioners. No motion was filed by the Objector. A deadline for the production of documents was set for August 27, 2020 and a hearing date for the Rule 8 Motion was set for August 29, 2020.

On August 27, 2020, Proponent produced a number of affidavits in relation to the rehabilitation of signatures. However, counsel for Proponent conceded through an exchange of emails that he did not have evidence to rehabilitate a sufficient number of signatures to meet the minimum signature requirement. In light of Proponent's concession that the affidavits would not change the results, Proponent advised that there would be no need for a further hearing. Counsel for the Proponent made an offer of proof of the affidavits and the Rule 8 hearing was cancelled. The parties agreed that the sole remaining issue in the matter was the issue of the timeliness of the filing of the Objector's Petition which has been addressed above.

CONCLUSION

In light of the foregoing, it is my recommendation that the objections of Ali Patel to the advisory question of public policy " Shall the City of Chicago amend The Municipal Code of Chicago to create a community-elected Civilian Policy Accountability Council" be **sustained** and that the petition setting forth said advisory question of public policy be deemed **invalid** and that said advisory question of public policy **not be** printed on the ballot at the November 3, 2020 General Election.

Respectfully submitted,

Barbara Goodman
Hearing Officer
8/30/2020