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

Objections of: WILLIAM KELLY	)
	)
	)
To the Nomination	) No.: 20-EB-WC-021
Papers of: RICHARD GORDON	)
	)
Candidate for the office of REPUBLICAN	)
Party Ward Committeeperson, 42nd Ward,	)
City of Chicago.	)

FINDINGS AND DECISION

The duly constituted Electoral Board, consisting of the 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 WILLIAM KELLY ("Objector") to the nomination papers ("Nomination Papers") of RICHARD GORDON, candidate for the office of REPUBLICAN Party Ward Committeeperson, 42nd Ward of the City of Chicago ("Candidate") at the General Primary Election to be held on March 17, 2020, having convened on December 16, 2019 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 Chair 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 or service was waived.

4. A public hearing held on these Objections commenced on December 16, 2019 and was continued from time to time.

5. The Electoral Board assigned this matter to Hearing Officer Yamil E. Colón 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, WILLIAM KELLY, Attorney, LAURA GROCHOCKI; and the Candidate, RICHARD GORDON, Attorney, ALAN SPITZ.

7. The Hearing Officer has tendered to the Electoral Board a report and recommended decision. Based upon the arguments and evidence presented, the Hearing Officer found that Candidate's Motion to Strike paragraphs 5, 7, 8, 9 and 10 of the Objector's Petition should be *granted* because the allegations in the body of the objection did not have any corresponding checkmarks in the appendix recapitulation sheets.

8. The Hearing Officer further found that Candidate's Motion to Strike paragraph 6 of the Objector's Petition, which alleged that certain signatures were not genuine/not signed in own proper person, should be *denied*, notwithstanding the fact that checkmarks were contained in the appendix-recapitulation to three petition lines where a signature did not exist. The Hearing

Officer determined that this may be evidence of sloppiness, but it was not evidence of a bad-faith pleading.

9. The Hearing Officer further found that paragraph 12 should not be stricken as it adequately advised the candidate that, in light of the objections pled in previous paragraphs, the Candidate had insufficient valid signatures.

10. Finally, the Hearing Officer found that, despite the Candidate's argument that the Objector's Petition must state the Candidate's political party affiliation and the failure to do so renders the entire Objector's Petition fatally defective, no such requirement exists in the law governing the content of objectors' petitions (section 10-8 of the Election Code, 10 ILCS 5/10-8), nor in any published or binding case law. Accordingly, the Hearing Officer denied the Motion to Strike as to the omission of the party affiliation in the Objector's Petition.

11. The Hearing Officer determined that the allegations in paragraph 6 of the Objector's Petition would generally be addressed in a records examination. However, after review of the Candidate's nominating papers, the Hearing Officer determined that the Nominating Papers contained 137 signatures, said number being 296 below the statutory minimum of 433 signatures, and that in light of Candidate's wholesale failure to file a sufficient number of signatures, a records examination was unnecessary and would be a waste of the Electoral Board's resources.

12. 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 and it attaches them to and incorporates them within this final decision.

13. For the reasons stated above, the Electoral Board finds that the Candidate's Nomination Papers are invalid.

IT IS THEREFORE ORDERED that the Objections of WILLIAM KELLY to the Nomination Papers of RICHARD GORDON, candidate for the office of REPUBLICAN Party of the City of Chicago, are hereby SUSTAINED and said Nomination Papers are hereby declared INVALID and the name of RICHARD GORDON, candidate for the office of REPUBLICAN Party Ward Committeeperson, 42nd Ward of the City of Chicago, SHALL NOT be printed on the official ballot for the General Primary Election to be held on March 17, 2020.

Dated: Chicago, Illinois, on December 31, 2019.

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.

BOARD OF ELECTION COMMISSIONER OF THE CITY OF CHICAGO AS THE DULY CONSITUTED ELECTORAL BOARD FOR THE HEARING AND PASSING UPON OF OBJECTIONS TO THE NOMINATNG PAPERS OF CANDIDATES FOR THE OFFICE OF REPUBLICAN WARD COMMITTEEPEERSON OF THE 42nd WARD, CITY OF CHICAGO, ILLINOIS TO BE VOTED UPON FOR THE MARCH 17, 2020 GENERAL PRIMARY ELECTION

WILLIAM KELLY,	)	
	)	
Petitioner-Objector,	)	
	)	
v.	)	NO. 20 EB-WC - 21
	)	
RICHARD GORDON,	)	
	)	
Respondent- Candidate.	)	

HEARING OFFICER'S REPORT AND RECOMMENDATION ON CANDIDATE'S RULE 5 MOTION TO STRIKE AND DISMISS

This matter came to be heard initially on December 16, 2019. The Objector, William Kelly, appeared with his counsel, Ms. Laura Grochocki. The Candidate appeared by counsel, Mr. Alan Spitz. Mr. Spitz indicated an intention to file a Rule 5 Motion, and a briefing schedule and hearing date was set by this Hearing Officer.

ISSUES RAISED IN OBJECTOR'S PETTION

The substance of the issues raised in Objector's Petition is contained in paragraphs 5, 6, 7, 8, 9, 10 and 12.

a) Paragraph 5 alleges that the Candidates Nomination Papers contain signatures of "... persons who are not registered voters, or who are not registered voters at the address specified in the petition, as is set forth specifically in the Appendix-Recapitulation attached hereto and incorporated herein under ... Column A, 'Signer Not Registered at Address Shown".

b) Paragraph 6 alleges that the Nomination Papers contain signatures that are "not genuine and are forgeries" as set forth specifically in an Appendix-Recapitulation sheet under the heading Column B, "Signer's Signature Not Genuine".

c) Paragraph 7 alleges that the Nomination Papers contain signatures of persons for whom the address stated is outside of the 42nd Ward in the City of Chicago, State of Illinois, as set forth in an Appendix-Recapitulation sheet under the heading Column C, "Signer Resides Outside District".

d) Paragraph 8 alleges that the Nomination Papers contain names of persons whose addresses given are either missing entirely or are incomplete, as set forth on the Appendix-Recapitulation sheet under Column D," Signer's Address Missing or Incomplete".

e) Paragraph 9 alleges that the Nomination Papers contain petition sheets with the names of persons who have signed the Nomination Papers more than once, as set forth in Appendix-Recapitulation sheet under Column E, "Signer Signed Petition More Than Once".

f) Paragraph 10 alleges that the Nomination Papers contain signatures of voters who have previously signed the nomination petition of other candidates for Ward Committeeperson of the 42nd Ward of the City of Chicago, as set forth in Appendix-Recapitulation Sheet under Column F, "Signed Multiple Petitions".

g) Paragraph 12, contains the general allegation that: "The Nomination Papers contain less than the 433 validly collected signatures of qualified and duly registered voters of the 42nd Ward of the City of Chicago, State of Illinois, signed by such voters in their own proper person with proper addresses, below the number required under Illinois law, as set forth by the objections recorded in the Appendix-Recapitulation attached hereto and incorporated herein."

THE CAUSES RAISED IN THE CANDIDATE'S MOTION TO DISMISS

The Candidate's Motion to Strike and Dismiss sets forth a rather succinct basis for striking the various paragraphs of Objector's petition enumerated above. He contends

that the allegations complained of in the Objector's petition set forth above in paragraphs a) through f) are not at all reflected by marks, checks or otherwise in any of the Appendix-Recapitulation sheets attached to the objection petition. The Candidate's motion further states that the Objector failed to state the Candidate has insufficient Signatures; fails to state the Candidate's Office; and that the Prayer for Relief is legally insufficient.

ARGUMENTS BY COUNSEL FOR THE PARTIES AND ANALYSIS

The Candidate's counsel argued that the Objector's wholesale failure to identify with a check mark or an "x" on the respective sheet and line number columns of his Appendix-Recapitulation sheets for the allegations of: signer not registered at address shown; signer residing outside the district; signer with missing or incomplete address; signer more than once; signer of other candidate's nominating petitions; not registered voters; and non-genuine signatures are all collectively evidence of shotgun objections made in bad faith and fraud. He seeks the striking of the Objector's entire petition as his remedy for the alleged fraud. The Candidate argues that a preliminary record exam will prove the alleged bad faith fraud by the Objector.

The Objector's argument in opposition to the motion relied on the legal sufficiency of the motion to dismiss, which does not allow a fact-finding mission. Objector's counsel argued that the objection sufficiently notified the Candidate of the basis for the objection, citing *Marcus v. Nimrod,* 82 CO 0315 (Cir. Ct. Cook County 1982) for the legal standard. It was further argued by the Objector that the line-by-line signature challenges can only be resolved by a fact-finding records examination.

The absence of the sheet and line voter identification marks on the various columns of the recapitulation sheets of the Objector's petition, standing alone, does not meet the clear and convincing burden of proof required to sustain a fraud claim under Illinois law. See *Durr v. Chicago Board of Election Commissioners,* 03 CO EL 028 (Cir. Ct. Cook Cty. 2003)

Nevertheless, it is incumbent upon all objectors to indicate on Recapitulation sheets with the sheet and line number of each signature seeking to be challenged. The Objection petition must adequately and sufficiently inform the Candidate with specificity of each objection, thereby making the evaluation possible. *Alschuler v. Feignholtz*, 94-EB–REP-009. Here, it does not. Therefore, the Objector's paragraphs 5, 7, 8, 9 and 10 should be stricken as failing to state a cause of action in that they do not specifically identify a voter to be evaluated.

Because paragraph 6 has identified on the Recapitulation sheets certain voters whose signatures are challenged as authentic, paragraph 6 should survive the Candidate's motion to dismiss.

The Candidate listed in his motion and argued at the hearing that the objection failed to state the Candidate's office because it omitted the party designation of "Republican" in the title of the 42nd Ward Committeeperson. He further argued that a party designation must be included in order to determine what office is being sought. No authority was cited for this proposition, except to state that the Objector has the same obligation as the Candidate, i.e., to state with specificity the office being sought to comply with Section 10-8 of the Election Code.

10 ILCS 5/10-8 provides that the objector's petition shall (a) give the objector's name and residence address; (b) state fully the nature of the objections to the certificate of nomination or nomination papers; (c) state the interest of the objector; and (d) state what relief is requested of the electoral board. No party identification is required by the statute. In addition, in the case of *Wollan v. Jacoby* 274 Ill. App.3rd 388, (First Dist. 1995), the Appellate Court upheld objections that misnamed the office of the candidate. It stated that "Section 10-8 contains no requirement that the candidate or the office be **precisely** (Emphasis Added) identified in the objections."

In the present case the Objector's petition identifies the Candidate by name as "Richard Gordon" and the nomination papers and petitions of the Candidate clearly identify him as Republican candidate for the "42nd Ward Committeeperson", thus avoiding any confusion. The Objector's petition should not be stricken as fatal on the basis of not naming the candidate's office correctly because he omitted the party designation of "Republican".

The Candidate further asserts in his motion to dismiss that the Objector's Prayer for Relief is legally insufficient. It reads as follows:

> **"WHEREFORE, the Objector requests: a) a hearing on the objections set forth herein; b) an examination by the aforesaid Electoral Board of the official records relating to voters in the 42nd Ward of the City of Chicago, State of Illinois, to the extent that such examination is pertinent to any of the matters alleged herein; c) a ruling that the Nomination Papers are insufficient in law and fact and d) a ruling that the name of Richard Gordon shall not appear and not be printed on the ballot for election to the office of Ward Committeeperson of the 42nd Ward of the City of Chicago, State of Illinois, to be voted for at the Primary Election to be held on March 17, 2010."**

In paragraph 22, of the Candidate motion he indicates that the prayer for relief is legally insufficient because of an alleged failure of the Objector to identify the office sought in the prayer. The Candidate argued that the failure to name the office correctly is again the omission of the party designation of Republican. However, the issue of naming the party of the office name has already been addressed above as not fatal under Section 10-8. Moreover, the prayer states that the Objector requests a hearing and record examination on the allegations contained in his objection; and for ruling of insufficiency of the nomination papers; and that the candidate not appear on the ballot. The prayer for relief contained in the Objector's petition is sufficient to notify the Candidate and the general public that the Objector's petition seeks to prevent the Candidate (Richard Gordon) from appearing on the ballot because of the deficiencies alleged in his petition.

Lastly, in his Response to the Motion to Dismiss, the Objector attempts to piggyback on his paragraph 12 of his original petition a new claim, that the Candidate's nomination

petitions lack the minimum number of 433 signatures. Paragraph 12 of the original Objector's petition does not specifically allege that the Candidate's nomination papers lack the requisite minimum 433 signatures. This new allegation should be considered an amendment or addition to the Objector's petition, and should not be taken into account.

The Candidate's Nomination Papers were previously admitted into evidence as Exhibit "A" in the Electoral Board case file. A review of the Candidate's Nomination Petition sheets disclosed a total of 16 sheets attached to the nomination papers. Each sheet allowed for 10 signatures. Sheet 1 contained 5 signatures. Sheet 9 and 10 contained only 1 signature each. The remaining 13 sheets contained 10 signatures per sheet. Even if all of the Candidate's signatures were found to be valid, he would only have 137 signatures. The net result is that the Candidate is 296 signatures short of the minimum 433 required by law. Therefore, on its face, the Candidates Nomination Papers are deficient in the minimum number of required valid signatures. It would serve no useful purpose to conduct a record examination.

FINDINGS AND RECOMMENDATION

The failure of the Objector to identify with specificity on the Appendix-Recapitulation sheets and line numbers of voter signatures with defects of not registered voters; not residing within the district; not listing or incomplete addresses; voters signing other candidate petitions; voters with repeat signatures; does not support the allegations in his petition paragraphs 5, 7, 8, 9 and 10. These paragraphs fall short of stating a cause of action, and therefore must be stricken.

While the Objector did not initially and specially allege that the Candidate lacked the minimum number of 433 signatures, a review of the Candidates Nomination Papers disclosed only 137 signatures. This Hearing Officer finds that the Candidate lacks the minimum number of signatures (433), and that a record examination is not necessary. It is

recommended that the Candidate's name not appear on the ballot for the March 17, 2020 Primary Election.

Respectfully Submitted,

S/ Yamil E. Colón

Hearing Officer
December 22, 2019