BCCOFF

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

Objections of: THOMAS KOTORAC	)	
	)	
	)	
To the Nomination	)	No.: 22-EB-RGA-009
Papers of: ABIGAIL C. NICHOLS	)	
	)	
Candidate for the nomination of the	)	
Democratic Party for the office of	)	
Representative in the General Assembly, 12th	)	
Representative District of the 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 June A. Brown, 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 THOMAS KOTORAC ("Objector") to the nomination papers ("Nomination Papers") of ABIGAIL C. NICHOLS, candidate for the nomination of the Democratic Party for the office of Representative in the General Assembly, 12th Representative District in the State of Illinois ("Candidate") at the General Primary Election to be held on Tuesday, June 28, 2022, having convened on March 28, 2022 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 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, 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 March 28, 2022 and was continued from time to time. The Electoral Board assigned this matter to Hearing Officer Christopher Agrella 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. Appearances were filed by or on behalf of the following persons: Objector, THOMAS KOTORAC, Attorneys, JAMES HARTMANN, KEVIN MORPHEW and BENJAMIN WHIPPLE; and the Candidate, ABIGAIL C. NICHOLS, Attorney, ED MULLEN.

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 Candidate and/or her duly authorized representative was present during the examination of the registration records.

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

10. 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.

11. 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 400;

B. The number of purportedly valid signatures appearing on the nominating petition filed by the Candidate total 498;

C. The number of signatures deemed invalid because of objections sustained as a result of the records examination total 133;

D. The remaining number of signatures deemed valid as a result of the records examination total 365.

12. 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 Democratic Party for the office of Representative in the General Assembly, 12th Representative District of the State of Illinois.

13. The Hearing Officer conducted a hearing to allow the Candidate an opportunity to present evidence in support of her Rule 8 motion objecting to the Board's clerk's findings during the records examination. However, the Hearing Officer found that the Rule 8 motion was insufficient on its face as it put at issue in inadequate number of signatures to restore the Candidate's ballot eligibility, even if all the allegations were proven to be true.

14. 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 365 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 Democratic Party for the office of Representative in the General Assembly, 12th Representative District of the State of Illinois, and that the Candidate's Nomination Papers should be found invalid.

15. 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.

16. For the reasons stated above, the Electoral Board finds that the Candidate has an insufficient number of valid signatures on her nominating petitions and that the Nomination Papers of ABIGAIL C. NICHOLS are, therefore, invalid.

[Continued on next page.]

IT IS THEREFORE ORDERED that the Objections of THOMAS KOTORAC to the Nomination Papers of ABIGAIL C. NICHOLS, candidate for the nomination of the Democratic Party for election to the office of Representative in the General Assembly, 12th Representative District of the State of Illinois, are hereby SUSTAINED and said Nomination Papers are hereby declared INVALID and the name of ABIGAIL C. NICHOLS, candidate for nomination of the Democratic Party for the office of Representative in the General Assembly, 12th Representative District of the State of Illinois, SHALL NOT be printed on the official ballot for the General Primary Election to be held on Tuesday, June 28, 2022.

Dated: Chicago, Illinois April 21, 2022

Marisel A. Hernandez, Chair

William J. Kresse, Commissioner

June A. Brown, Commissioner

NOTICE: Pursuant to Section 10-10.1 of the Election Code (10 ILCS 5/10-10.1) a party aggrieved by 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 THE NOMINATION PAPERS OF CANDIDATES FOR NOMINATION TO BE VOTED UPON AT THE JUNE 28, 2022, GENERAL PRIMARY ELECTION

IN THE MATTER OF THE OBJECTIONS OF:

THOMAS KOTARAC,

Petitioner(s)-Objectors(s),

v.

ABIGAIL NICHOLS,

Respondent-Candidate.

No. 2020-EB RGA 009

HEARING OFFICER'S REPORT AND RECOMMENDED DECISION

This matter first came before the hearing officer on March 28, 2022, set on the call for 10:20 a.m. at which time it was called for hearing in person. Objector appeared through counsel, Mr. James Hartman, Esq. and Ben Whipple, Esq. Said attorneys filed their appearances on behalf of the objector along with a third attorney, Mr. Kevin Morphew, Esq. Candidate presented herself at that time and asserted that she had not been served and only dashed downtown after being made aware of the hearing 20 minutes previously.

A review of the official file did not evidence the status of any service attempt on either party.

The candidate stated her intent to secure counsel and requested proper service by the Board. As such, the matter was continued to April 1, 2022, at 2:00 p.m. for an in-person status as to the service on the candidate.

On April 1, 2022, at 2:00 p.m. the matter was recalled in person. Objectors appeared through counsel. A review of the official record indicated the second service on candidate was

unsuccessful. However the candidate waived service by filing her general appearance through counsel, Mr. Edward Mullen, Esq. Both sides agreed to be served by email.

The file contained the original petition papers of the candidate and the objections of the objectors, which were marked as Group Exhibit A and Group Exhibit B, respectively. The proof of service of notice of the call was marked as Group Exhibit C, and the appearances of the objector and candidate were marked as Group Exhibit D. Group Exhibits A through D were accepted into evidence without objection by either side.

The candidate's nomination papers seek nomination to the Democrat primary ballot for nomination to the office of Representative in the General Assembly for the 12th Representative District of the State of Illinois to be voted upon in the June 28, 2022, General Primary Election. The Candidate filed 498 signatures within her nomination papers for an office requiring 400 valid signatures.

The objection raised a standard signature by signature challenge to the petition signers, incorporating an attached Appendix – Recapitulation sheets.

At this April 1, 2022, hearing the attorneys for the parties each acknowledged possession of a copy of the Board's rules and were informed of the briefing schedule for any preliminary motions.

Neither side indicated an intent to file any preliminary motions and no such motions were filed.

The parties were further informed of the deadline for filing requests for any subpoenas that might be required in order to secure records or witness testimony. Given that this matter was continued to April 1, 2022, for service on the candidate, the Hearing Officer extended the date for filing any subpoenas requests to April 8, 2022 at 5:00 p.m.

Neither party sought any subpoenas in this matter.

There being nothing further, the case was adjourned subject to recall predicated upon the completion of the Rule 6 examination.

Upon conclusion of the April 1, 2022, hearing the Hearing Officer made a request to Board personnel for a Rule 6 Examination in this matter.

On April 7, 2022, the Board served the parties, via email, with a Record Examination Directive, the record examination to commence on April 8, 2022, at 9:30 a.m.

The final Rule 6 Record Examination report issued on the morning of April 13, 2022. Candidate filed a timely Rule 8 motion on April 14, 2022. Objector did not file any Rule 8 motion.

This matter was set down for April 18, 2022, at 2:00 p.m. for entry of the Rule 6 examination results and further proceedings relative to the candidate's Rule 8 motion. The matter was scheduled to reconvene via remote Google Meet.

On April 18, 2022, at 2:00 p.m. this matter reconvened remotely, with objector and candidate appearing through counsel. The candidate also appeared remotely.

At this time the hearing officer entered into the record the results of the April 14, 2022, Final Rule 6 Record Examination and supporting record clerk tallies, accepting it into evidence as Board Group Exhibit E without objection. At this juncture the hearing officer read the results of the record examination into the record, as follows:

Signatures Required:	**400**
Total Pages:	**55**
Total Signatures Filed by the Candidate:	**498**
Total Objections:	**183**

Total Objections Ruled On:	**183**
Total Remaining to be Ruled On:	**0**
Total Sustained Lines:	**133**
Total Overruled Lines:	**20**
Findings Preserved For Review (Candidate):	**13**
Findings Preserved For Review (Objectors):	**4**
Total Valid Signatures:	**365**
Total Unchallenged Signatures:	**345**

35 Signatures fewer than the required minimum

With the above facts in evidence the Hearing Officer next turned to the candidate's Rule 8 motion, making a few prefatory remarks on the record. The Hearing Officer noted that the candidate, down 35 signatures, only preserved 13 Rule 6 rulings for further review. Furthermore, out of these 13 rulings that the candidate preserved during the Rule 6 examination, the candidate only sought further review in her Rule 8 motion for 5 signatures, (sheet 9 line 3, Sheet 35 line 5, sheet 43 line 2, sheet 43 line 3, and sheet 52 line 5) such that, at best the candidate would still be 30 signatures short of the required minimum.

The balance of the candidate's Rule 8 motion advanced various other arguments, amongst which the candidate alleged systemic efforts to prevent ballot access in Chicago and Cook County whenever incumbents ran, that the system encourages party selection over voter nomination, that changes in election laws and the time frame for this primary election was greatly shortened, and other 'structural' impediments in the statutory requirements as to the candidate's nomination efforts such that the candidate requested the Board exercise "discretion" to find that the candidate's nomination papers were "good enough" to permit the candidate's name to appear on the ballot.

The candidate also made certain other allegations, presumably against the nomination papers and procedures employed by other 12th Representative District candidates, allegations in the nature of an objection which was obviously improper, untimely, and disregarded as untimely and irrelevant.

In response to the Candidate's Rule 8 Motion objector's counsel orally argued that the candidate's position was fatally flawed at the end of the Rule 6 examination when the candidate did not preserve sufficient exceptions to specific Rule 6 record examination rulings to overcome her 35 signature deficit, and that the balance of the candidate's Rule 8 motion exceeded the board's scope of authority and jurisdiction to consider.

Objector's position is well founded.

The electoral board's function (and by extension, its Hearing Officer) is limited to determining whether a challenged nominating petition complies with the provisions of the Election Code. The Board is without jurisdiction or authority to decide statutory or constitutional issues. *See e.g., Drew v. Pletsch*, 12-EB-RES-01, (Chicago Electoral Board 2012) (citing *Goodman v. Ward*, 241 Ill.2d 398, 948 N.E.2d 580 (2011); *Troutman v. Keys*, 156 Ill.App.3d 247, 509 N.E.2d 453 (1987); *Wiseman v. Elward*, 5 Ill.App.3d 249, 257, 283 N.E.2d 282 (1972)); *Oberg v. Schreiner*, 96-EB-NPP-1 (Chicago Electoral Board 1996).

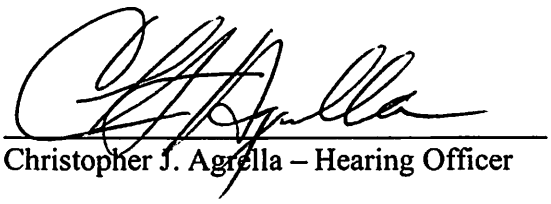
At this point in the hearing the Hearing Officer stated on the record that it would be his recommendation to the Board to accept the findings of the final Rule 6 record examination, deny the Candidate's Rule 8 Motion as insufficient to overcome the Rule 6 examination results as well as beyond the Board's scope of authority to consider, to sustain the objection on the merits, and to further find the Candidate's nomination papers invalid and insufficient in law and fact and that the Candidate's name not appear on the ballot.

There being nothing further offered by either party, at this juncture the Hearing Officer concluded the case.

It is the recommendation of this Hearing Officer that the Board adopt the above findings, decisions and recommendations of the Hearing Officer, sustain the objection of the objector, Thomas Kotarac, to the nomination papers of the candidate, Abigail Nichols, that the candidate's nomination papers be declare invalid and insufficient in law and fact, and that the candidate's name, Abigail Nichols, not appear on the ballot for the Democrat primary ballot for nomination to the office of Representative in the General Assembly for the 12th Representative District of the State of Illinois to be voted upon in the June 28, 2022, General Primary Election, in the City of Chicago.

Christopher J. Agrella
Hearing Officer
330 East Main Street
Suite 205
Barrington, Illinois 60010
Office: (847) 381-6800
Fax: (847) 381-6866
Email: agrellalaw@comcast.net

Respectfully Submitted,



Christopher J. Agrella – Hearing Officer