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

Objections of: GLADYS E. SMITH	)	
	)	
	)	
To the Nomination	)	No.: 22-EB-RGA-018
Papers of: SONYA MARIE HARPER	)	
	)	
Candidate for the nomination of the	)	
Democratic Party for the office of	)	
Representative in the General Assembly, 6th	)	
Representative District of the State of Illinois	)	

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 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 GLADYS E. SMITH ("Objector") to the nomination papers ("Nomination Papers") of SONYA MARIE HARPER, candidate for the nomination of the Democratic Party for the office of Representative in the General Assembly, 6th Representative District of 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 was held on these Objections commencing on March 28, 2022 and was continued from time to time. The Electoral Board assigned this matter to Hearing Officer Yamil E. Colón 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 Call. The following persons, among others, were present at or filed appearances during such hearing; the Objector, GLADYS E. SMITH, by Attorney, FRANK AVILA; and the Candidate, SONYA MARIE HARPER, by Attorneys, KEVIN MORPHEW, MICHAEL KASPER and JAMES HARTMANN.

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 Electoral Board finds that, while on the record during the initial hearing of this case on March 28, 2022, the Hearing Officer directed all parties to appear and be present, either personally and/or by their authorized representatives, during this records examination, which was scheduled to begin at 10 a.m. on March 30, 2022. The Electoral Board further finds that this actual notice of the start time for the records examination, which was given directly to the attorneys present on behalf of the Candidate and the Objectors, was routine and customary

actual notice in full compliance with the Electoral Board's Rules of Procedure, most particularly with Rule 6(a).

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

9. The Objector and/or her duly authorized representative was present during the examination of the registration records, except for the first day of the examination due to the Objector's attorney's apparent failure to inform his client of the pertinent information that the Hearing Officer provided to the parties on the record during the initial hearing on March 28.

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 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 904.

C. The number of signatures deemed invalid because of objections sustained as a result of the records examination total 475.

D. The remaining number of signatures deemed valid as a result of the records examination total 429.

12. The Electoral Board finds that the number of valid signatures appearing on the Candidate's nominating petition following completion of the records examination exceeds the minimum number of valid signatures required by law to be placed upon the ballot as a candidate for the nomination of the Democratic Party to the office of Representative in the General Assembly, 6th Representative District of the State of Illinois.

13. The Hearing Officer conducted a hearing to allow the Objector an opportunity to present evidence in support of her Rule 8 motion objecting to the Board's clerk's findings during the records examination. The Objector presented several affidavits, all of which were considered by the Hearing Officer. However, for the various reasons stated in the Hearing Officer's final report and recommended decision, most of the affidavits contained such infirmities, irregularities and flaws that they were either inadmissible or they carried no weight as probable evidence in support of the Objector's claims.

14. Indeed, after further discussion amongst the parties and the Hearing Officer, the Objector's attorney stipulated that all of the affidavits submitted during the Rule 8 hearing were related to objections that were already sustained in the Objector's favor during the records examination. Thus, the only remaining purpose of the affidavits was in support of the pattern-of-fraud allegations contained in the Objector's Petition.

15. The Hearing Officer also provided the Objector with an opportunity during the evidentiary hearing to call witnesses in support of her claims. Although not previously disclosed to the Candidate, the Objector was permitted the opportunity to call witness Hector Villafuerte, whose testimony was generally proffered as being able to confirm the contents of the aforementioned defective affidavits. The Hearing Officer found that Mr. Villafuerte's testimony, in conjunction with all other evidence submitted by the Objector, failed to meet the burden of

proof for pattern-of-fraud claims. For the reasons contained in the record and as stated in the Hearing Officer's final report, the Electoral Board adopts the Hearing Officer's findings and recommendations as its own.

16. As noted, the Hearing Officer has tendered to the Electoral Board a final report and recommended decision. Based upon the evidence presented, the Hearing Officer found that the Candidate's Nomination Papers contained 429 valid signatures, which exceeds the minimum number of valid signatures required by law to be placed upon the ballot as a candidate of the Democratic Party for the office of Representative in the General Assembly, 6th Representative District of the State of Illinois, and that the Candidate's Nomination Papers should be found valid.

17. 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 incorporates them herein by this reference.

18. In particular, the Electoral Board agrees that it has no authority to enforce the Illinois ballot-forfeiture law, 10 ILCS 5/9-30. That statute expressly provides such authority only to the Illinois State Board of Elections, which has original jurisdiction over all matters related to Illinois campaign finance laws and Article 9 of the Election Code (10 ILCS 5/9-1, *et seq.*), and to ballot-certifying election authorities acting in compliance with the State Board's guidance. (This Electoral Board is never a ballot-certifying agency, nor is the Board of Election Commissioners for the 2022 election cycle.) The ballot-forfeiture law further provides express remedies to candidates and authorities to the State Board of Elections that are simply not within the

jurisdiction nor authority of this Electoral Board. Thus, the Objector's claims on this issue are wholly without merit.

19. The Electoral Board further agrees that *actual notice* of the date and time of the commencement of a Rule 6 records examination, *provided on the record during a hearing with all parties present*, is in accord with the Electoral Board's traditional and customary practices, having occurred in countless cases in prior years, and is in full compliance with the notice requirements set forth in Rule 6(a).

20. Additionally, the Electoral Board agrees that the simple and obvious scrivener's error contained in the Candidate's Rule 8 motion does not invalidate the motion, and that words do matter but only when considered within their proper context. The Rule 8 motion is not subject to the same strictly enforced ballot-access laws and jurisdictional requirements that are imposed upon candidate nomination papers and objectors' petitions.

21. For these reasons, and for all other matters contained in the Hearing Officer's report and recommended decision, the Electoral Board adopts those recommendations as its own and, therefore, it denies the Objector's Rule 20 motion.

For the reasons stated above, the Electoral Board finds that the Candidate has a sufficient number of valid signatures on her nominating petitions and that the Nomination Papers of SONYA MARIE HARPER are, therefore, valid.

[Continued on next page.]

IT IS THEREFORE ORDERED that the Objections of GLADYS E. SMITH to the Nomination Papers of SONYA MARIE HARPER, candidate for nomination of the Democratic Party for the office of Representative in the General Assembly, 6th Representative District of the State of Illinois, are hereby OVERRULED and said Nomination Papers are hereby declared VALID and the name of SONYA MARIE HARPER, candidate for nomination of the Democratic Party for the office of Representative in the General Assembly, 6th Representative District of the State of Illinois, SHALL be printed on the official ballot for the General Primary Election to be held on Tuesday, June 28, 2022.

Dated: Chicago, Illinois, on Friday, April 29, 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.

BOARD OF ELECTION COMMISSIONER OF THE CITY OF CHICAGO AS THE DULY CONSITUTED ELECTORAL BOARD FOR THE HEARING AND PASSING UPON OBJECTIONS TO THE NOMINATNG PAPERS OF CANDIDATES FOR THE JUNE 28, 2022 PRIMARY ELECTION FOR REPRESENTATIVE OF THE EIGHTEENTH DISTRICT OF THE STATE OF ILLINOIS GENERAL ASSEMBLY

GLADYS E. SMITH,	)	
	)	
Petitioner-Objector,	)	
	)	
v.	)	NO. 22 EB-RGA-018
	)	
SONYA M. HARPER,	)	
	)	
Respondent- Candidate.	)	

HEARING OFFICER'S REPORT AND RECOMMENDATION

This matter came to be heard initially on March 28, 2022. The Objector, Gladys E. Smith, appeared by counsel, Mr. Frank Avila. The Candidate, Ms. Sonya M. Harper, appeared by counsel, Mr. Michael Kasper. After discussion with the attorneys, this Hearing Officer set a motion briefing schedule. In addition, a record examination was scheduled for March 30, 2022.

ISSUES RAISED BY OBJECTOR'S PETITION

In her petition, the Objector raised issues regarding the Candidate's nomination papers, including the following allegations:

a) Voters whose address was not shown on petitions;

b) Non-genuine signatures of registered voter;

c) Voters residing outside of district;

d) Missing/incomplete address of signer;

e) Individuals not registered to vote;

f) Voters not registered at address shown on petition;

g) Duplicate voter signatures.

h) Circulators did not meet qualifications (age, citizen, and voter residency).

i) Circulator did not "circulate affidavit" and did not witness all signatures thereby establishing a pattern of fraud;

j) Circulator did not witness signature of voter;

i) Circulator signatures that were forged;

j) Petition signatures signed in "round-table" fashion;

k) Notary objections relating to notary commission expired; notary signature not genuine;

l) That the Candidate exceeded the maximum number of signatures for this office;

m) That the Candidate is not qualified for office as she owes a campaign related fine to State of Illinois;

FACTS, EVIDENCE AND ANALYSIS

Prior to the record examination being completed, the Candidate filed a Motion to Strike Paragraph 18 of Objector's Petition, which was timely in accordance with the briefing schedule set on March 28, 2021. Objector did not file a response. A hearing on this motion was continued pending the outcome of the record examination.

The record examination results were not completed until April 10, 2022. However, the Candidate filed a Rule 8 Moton on April 4, 2022. As the record examination had not yet been completed, the Hearing Officer found that motion to be premature and instead, waited for the results of the examination.

On April 10, 2022, the examination results were published by a Petition Summary Report. It showed that the Candidate netted 29 signatures in excess of the required 400 signatures. After the examination results were known, the Candidate filed a second Rule 8 Motion (actually the same as first), followed by the Objector's Rule 8 Motion, all in a timely manner. In addition, the Objector filed a Motion to Join Candidates Rule 8 Motion and Motion for a Directed Finding. The case was set for hearing on April 19, 2022.

Candidate's Motion to Strike

At the hearing, the Hearing Officer elected to hear Candidate's initial Motion to Strike Paragraph 18 first. The Candidate presented a two-prong argument in support of her motion. First, that this Electoral Board has no authority to remove a candidate from the ballot because of a campaign fine debt to the State of Illinois Board of elections. Secondly, that Section 9-30 does not add an additional qualification factor for the office sought by the Candidate as representative in the Illinois General Assembly.

Section 10 ILCS 5/9-30 Fines to State Board of Election.

> **Sec. 9-30. Ballot forfeiture. The State Board of Elections shall not certify the name of any person who has not paid a civil penalty imposed against his or her political committee under this Article to appear upon any ballot for any office in any election if the penalty is unpaid by the date required for certification.**
>
> **The State Board of Elections shall generate a list of all candidates whose political committees have not paid any civil penalty assessed against them under this Article. Such list shall be transmitted to any election authority whose duty it is to place the name of any such candidate on the ballot. The election authority shall not place upon the ballot the name of any candidate appearing on this list for any office in any election while the penalty is unpaid, unless the candidate has requested a hearing and the Board has not disposed of the matter by the date of certification.**

Section 10 ILCS 5/10-10 Authority and Duty under granted this Board of Elections.

> **The electoral board shall take up the question as to whether or not the certificate of nomination or nomination papers or petitions are in proper form, and whether or not they were filed within the time and under the conditions required by law, and whether or not they are the genuine certificate of nomination or nomination papers or petitions which they purport to be, and whether or not in the case of the certificate of nomination in question it represents accurately the decision of the caucus or convention issuing it, and in general shall decide whether or not the certificate of nomination or nominating papers or petitions on file are valid or whether the objections thereto should be sustained and the decision of a majority of the electoral board shall be final subject to judicial review as provided in Section 10-10.1.**

The Candidate's contention that the Electoral Board is limited by the statutory duties expressed in Section 10-10 above is persuasive. The plain reading of the statute does not

grant this Electoral Board authority to remove a Candidate because of a fine due to the Illinois State Board of Elections. It is devoid of any such power. In addition, a review of the first sentence of Section 9-30 states that the Illinois Board of Elections shall not certify any person who does not pay a civil fine due and owing. Further, a list of such debtors will be sent to local boards of election to hold a candidate accountable where they may request a hearing. That candidate will not be certified for the ballot before the Board has disposed of the debt hearing, or presumably if he/she pays the fine before the date of certification.

This Electoral Board doe not have the authority to remove the candidate from the ballot because of a debt due to the Illinois Electoral Board. It is not provided for by Section 10-10. See *Kozel v. State Board of Elections*, 126 Ill.2d 58 (1998). It may only pass on the conformity of nomination papers of a candidate according to established standards.

Similarly, the Statement of Candidacy only asks the candidate to be (1) U.S. Citizen; (2) 21 years of age; (3) A resident of the district which she/he is to represent. Nothing contained in the Statement of Candidacy restricts this Candidate from office merely because her campaign may owe a fine to the Illinois State Board of Elections. Since no such requirement is stated in the Statement of Candidacy, there is no reason to find that the Candidate committed perjury by signing the oath stated therein. It should be noted for the record that no evidence regarding the Candidate's alleged fine-debt was presented at the hearing.

Objector's Motion to Join Candidate's Rule 8 Motion for Directed Finding

Counsel for the Candidate drafted and filed a Rule 8 Motion on behalf of his client. The motion was comprised of three succinct paragraphs. It was supported by an exhibit which contained an index identifying the signatures to be rehabilitated by counsel.

Paragraph 2 is that motion's focus, for better or for worse, of each party's Rule 8 Motion.

Paragraph two reads as follows:

"Any signature objected to under the column marked "Column" as "A" indicates that the Signer is a registered voter at the address indicated on the petition. Any signature objected to under the column marked "Column" as "B" indicates that the Signer's signature is genuine. Any signature objected to under the column marked "Column" as "C" indicates that the Signer's address is located in the appropriate District. Any signature objected to under the column marked "Column" as "D" indicates that the Signer's address is not missing or incomplete. Any signature objected to under the column marked "Column" as "E" indicates that the Signer did not sign the petition more than once. ***"The Candidate asserts that each of these objections was overruled without any legal or factual basis."*** (Emphasis Added).

The Objector's Motion to Join Candidate's Rule 8 Motion for Directed Finding relied heavily on the catchphrase, "Words Have Meaning". It appears that the Candidate may have likely misstated the word "overruled" for the word "sustained" in the last sentence of paragraph 2 of her Rule 8 Motion. The Objector is enthusiastically and completely agreeing with the Candidate's Rule 8 Motion that the signatures in question were rightfully overruled, and hence joining in that motion. The Objector is gleefully seizing upon this misstatement and riding it to a summary judgment-like conclusion, arguing that there are no disputed facts and granting her a windfall victory.

In paragraph 4 of her Motion to Join, the Objector states that "words have meaning" and are important and facts and statements and assertion should be taken as fact if the opposing side agrees with them – and in this case we are in agreement with the Candidate and the Objector agrees that each of these objections was overruled without any legal or factual basis.

In addition, Objector cites a string of cases for the proposition that "All pleadings are construed in the light most favorable to the non-moving party, and all well plead facts ... as

well as reasonable inferences therefrom ... are taken as true." *Ziemba v. Mierzwa*, 142 Ill.2d 42. (See Paragraph 4 of Objector's Motion to Join).

Upon a closer read of Candidate's Rule 8 Motion, it appears that she is making a cogent and logical allegation in paragraph two of her motion. But for the misstatement of "overruled" in place of "sustained", the express language in that paragraph is consistent with the Candidate's argument that various signatures are intended to be rehabilitated by her counsel's motion. An assertion in a motion that is clearly contrary to a party's own best interest, is not logical and does not make sense given the obvious opposing views of the litigants. It is illogical for a party to declare in a motion an intention to revive certain signatures because they have been found valid. Words do matter, but they must also be read in context to garner the full meaning communicated, and with full awareness of the attending circumstances. It is apparent that the Candidate made a misstatement or a scrivener's error in her motion, and it should be recognized as such.

Objector's Rule 8 Motion

This is the Objector's second motion presented at the hearing. It alleges that the Objector did not receive proper and sufficient notice of the Rule 6 Records Examination. Further, it alleges that the Hearing Officer ... "did NOT hand/deliver/serve a copy of the Rule 6 Records Examination to the Attorney ... nor was one given to the Objector' representative who was present".

Rule 6 of the Electoral Board Rules and Procedure provides in relevant part as follows:

"(a) Records Examination directive. At the direction of the Electoral Board or a hearing officer, the parties may be directed to appear at an examination of computer-based voter registration records, or a 'record examination'. Notice of the date and time of the records examination shall be given to the parties no later than 7:00 p.m. on the day preceding the records examination".

On March 28, 2022, Ms. Delilah Smith appeared during the initial hearing of this case. She was acting as a representative and record examination coordinator of the Chicago

Board of Elections, and a person authorized to set dates for record examinations. Present at that hearing were counsel for the Objector, Mr. Frank Avila, and for the Candidate, Mr. Michael Kasper. Also present was the court reporter and Ms. Angie Cerezo, an administrative assistant employee of the Board. At that time, Ms. Smith and the Hearing Officer gave **notice** to all persons present, including counsel, that the record examination was to take place on March 30, 2022 at 10:00 a.m. (See March 28, 2022 Transcript Page 8, lines 9 - 24, and Page 9, lines 1 – 12).

There are witnesses and indisputable evidence and that both parties received notice of the records examination date. Rule 6 does not specify the method of notice. There is no requirement to email or hand deliver notice of the examination to the parties. The Objector's objection of not receiving notice of the records examination is wholly without merit. Further, having had notice, it is incumbent upon the party/counsel to be present for the record examination to preserve all rights and objections. A finding of **actual personal notice** is appropriate under these facts and circumstances.

Next, Objector's Rule 8 Motion argues that a number of signatures of the Candidate were ruled sustained, when they should have been overruled. These include objections relating to: not registered at the address on petition; not genuine signature; signer's address not in the district; signer's address missing or incomplete; and signer signed more than one time. In support of these allegations, Objector presented a number of affidavits for consideration.

Review of these affidavits was initiated by all concerned. The first reviewed were S-3, L-10 and S-3 L- 18. Both of these affidavits did not contain the affiant's name, the affiant's signature, and they were not notarized. After the Objector had mentioned S-47, L-11, the Candidate objected to this affidavit as not having been preserved during the examination, and therefore waived. Likewise, S-8, L-6 was not preserved, and so it too was

deemed waived. A few of the affidavit objections had already been sustained in favor of the Objector during the record examination, yet they were being presented again.

Following this initial review of affidavits, there was a number of affidavits which suffered various infirmities, such as: Affiant's name missing; Affidavits stating "... my name is empty lot"; or "... my name is park"; or "... my name is parking lot"; or "... my name is no such address"; or "... my name is empty warehouse"; or "... my name is a tire shop". Others had an actual affiant name on them, but were signed by someone else. An affidavit containing the name of Richard Mayor was not signed by Mr. Mayor, but it had still been notarized by Ms. Suzanne M. Brown on April 14, 2022. Of the first 20 or so affidavits presented by the Objector, 15 of them were not allowed because of their defects. Even counsel for the Objector admitted that affidavits "... were not ideal, not even properly done...". (See Transcript of April 19, 2022 Pg. 43, L- 15-16).

After further discussion and review of affidavits, Mr. Avila stipulated that all of the affidavits that he submitted for this hearing were all sustained, and that he was only now going to use them to support his theory of a pattern of fraud.

A witness was produced by the Objector, who was identified as Mr. Hector Villafuerte. His testimony was generally proffered as being able to confirm that the affidavits identified as indicated above, were in fact empty lots, parks, parking lot, empty warehouse, etc. Mr. Villafuerte was expected to attest to the contents of the affidavits that were found to be defective by the Hearing Officer.

The Candidate objected to the presentation of this witness because he had not previously been disclosed to the Candidate; and because they did not have an opportunity to investigate the witness. Arguments ensued on this issue from both parties. In addition to being surprised by the proffering of this undisclosed witness, the Candidate made a strong argument against allowing this witness to testify.

It was noted by the Candidate, that Mr. Villafuerte's name appeared as the alleged signing affiant for 18 of those affidavits that did not have an actual affiant name identified at the beginning of the affidavit as is customary. (See April 19, 2022 Transcript Pg. 80, L 10 – 24; Pg. 81, L 1 – 17). It was argued that Mr. Villafuerte should have been identified properly as the affiant, and not merely signing affidavits identified as empty lots, park or parking lot.

Finally, when a party is claiming that a pattern of fraud has been committed by the opponent, it is difficult to overlook the irony of certain facts. When, in this case, the Objector stipulated that her defective affidavits submitted to demonstrate a pattern of fraud by the Candidate, had already been sustained in her favor. And if allowed, would have resulted in receiving additional undeserved signature removals.

CONCLUSIONS AND RECOMMENDATION

It may not be concluded that the Candidate committed perjury in her Statement of Candidacy because she signed her Statement of Candidacy oath; while allegedly owing a fine to the Illinois State Electoral Board. There is no authority granted to this Board to remove her from the ballot on that basis; nor is it a requirement in the Statement of Candidacy.

Objector's claim that no notice was given is inaccurate. The Hearing Officer finds that there is no doubt that the Objector received due notice of the record examination according to Rule 6. In addition, the Hearing Officer finds that the Candidate likely intended to say "sustained" instead of "overruled" in her Rule 8 Motion, however that issue has become moot in light of other findings herein.

Finally, the defective affidavits submitted to support objections of voter signature; residency within the district; forged signatures; residing at address not registered; were all

stipulated to as having been sustained already, and withdrawn for that purpose. Yet they were subsequently submitted to support a pattern of fraud claim. The affidavits were largely defective and unreliable. In addition, there was insufficient evidence presented to support a claim of a pattern of fraud.

Therefore, for the reasons set forth herein, it is determined that the Candidate has 29 signatures in excess of the required minimum 400 valid signatures. It is the recommendation of this Hearing Officer, Sonya M. Harper be placed on the ballot for the June 28, 2022 Primary Election for Representative of the Thirteenth (6th) District of the Illinois General Assembly.

Respectfully Submitted,

Yamil E. Colón, Hearing Officer
April 25, 2022