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

Objections of: EDWARD BANNON	)	
	)	
	)	
To the Nomination	)	No.: 22-EB-SS-006
Papers of: ERIN ELIZABETH JONES	)	
	)	
Candidate for the nomination of the	)	
Democratic Party for the office of	)	
State Senator, 10th Legislative 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 EDWARD BANNON ("Objector") to the nomination papers ("Nomination Papers") of ERIN ELIZABETH JONES, candidate for the nomination of the Democratic Party for the office of State Senator, 10th Legislative 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 Terence Flynn 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 hearings; the Objector, EDWARD BANNON, Attorneys, ERIC M MADIAR and MICHAEL J. KASPER; and the Candidate, ERIN ELIZABETH JONES, Attorneys, FRANK AVILA and PERICLES ABASSI.

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 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 650.

B. The number of purportedly valid signatures appearing on the nominating petition filed by the Candidate total 1,730.

C. The number of signatures deemed invalid because of objections sustained as a result of the records examination total 465.

D. The remaining number of signatures deemed valid as a result of the records examination total 1,265.

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 State Senator, 10th Legislative 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 his Rule 8 motion objecting to the Board's clerk's findings during the records examination. However, at that hearing, the parties reached an agreed stipulation that the Candidate would still have a sufficient number of valid signatures on the Nomination Papers even if 100% of the allegations in the Objector's Rule 8 motion and paragraph 11 of the Objector's Petition were proven to be true. Thus, the Rule 8 motion was taken under advisement and the Objector was permitted the opportunity to submit evidence as an offer of proof.

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 1,265 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 State Senator, 10th Legislative District of the State of Illinois, and that the Candidate's Nomination Papers should be found valid.

15. The Hearing Officer also declined, as a matter of law, to grant the Objector's argument that the Candidate's statement of candidacy form ("SOC") should be invalidated, thereby terminating the entire candidacy, if the paragraph 11 pattern-of-fraud allegations were proven to be true. The Hearing Officer found that the Electoral Board lacks jurisdiction over that subject matter, as no deficiency in the SOC form was pled in the Objector's Petition. Furthermore, the Hearing Officer found no basis in fact or law for the Electoral Board to terminate the candidacy when the record otherwise shows a sufficient number of valid signatures on the Nomination Papers.

16. In agreement with the Hearing Officer on that issue of law, the Electoral Board highlights the holding of the First District Appellate Court in *Mitchell v. Cook County Electoral Bd.*, 924 N.E.2d 585, 399 Ill.App.3d 18 (1st Dist. 2010). In that case, a candidate was found to have engaged in a pattern of fraud as the circulator of her own petition sheets. Despite applying the remedy of striking all sheets circulated by that candidate, the nomination papers still contained a sufficient number of valid signatures and the court upheld the electoral board's decision not to extend the penalties to the SOC form. In affirming the electoral board, the appellate court ruled that: **"In the absence of evidence that the nominating papers were invalid or the presence of sufficient objections to warrant termination of the candidacy, we**

discern no legal basis authorizing the Board to terminate a candidacy." *Mitchell,* 924 N.E.2d at 591.

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 in herein by this reference.

18. 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 ERIN ELIZABETH JONES are, therefore, valid.

[Continued on next page.]

IT IS THEREFORE ORDERED that the Objections of EDWARD BANNON to the Nomination Papers of ERIN ELIZABETH JONES, candidate for nomination of the Democratic Party for the office of State Senator, 10th Legislative District of the State of Illinois, are hereby OVERRULED and said Nomination Papers are hereby declared VALID and the name of ERIN ELIZABETH JONES, candidate for nomination of the Democratic Party for the office of State Senator, 10th Legislative 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 Thursday, 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 THE NOMINATION OBJECTIONS TO NOMINATION PAPERS OF CANDIDATES FOR NOMINATION TO THE OFFICE OF STATE SENATOR FOR THE 10th LEGISLATIVE DISTRICT

Edward Bannon, Petitioner-Objector v. Erin Elizabeth Jones, Respondent=Candidate.	)	No. 22 EB SS 006 Summary: Objection overruled Candidate on ballot

Report and Recommendation

1) This matter was assigned by the Electoral Board to Hearing Officer Terence Flynn. At the initial hearing on March 28, 2022, the Objector appeared by Attorney Eric Madiar and the Candidate by Attorney Frank Avila. (Later, Objector added Michael Kasper and Candidate added Perry Abassi as counsel.) The nature of the Objection was a typical line-by-line petition-signature challenge with the addition in ¶ 11 of a challenge to the Circulator (also the Candidate) of multiple sheets with a "pattern of fraud" allegation. The Candidate requested to file a Motion to Dismiss, which was granted, but both parties agreed that a Rule 6 Directive should be executed and it was. The matter was continued to April 4th for status on the Rule 6 exam and the Motion to Dismiss.

2) At the in-person Hearing on April 4th, the Rule 6 exam had not been completed. The Motion to Dismiss and Objector's Response had been filed and oral argument was heard. The Motion to Dismiss made a number of constitutional arguments, beyond the purview of this Hearing Officer, and therefore those arguments were denied. The Motion to Dismiss also attacked the

"pattern of fraud" allegation in ¶ 11 of the Objection. However, that argument appeared to require a factual hearing and therefore ruling was reserved.

3) There were telephone status hearings on 4/7, 4/11 and 4/14. Only at the 4/14 telephonic status were the Rule 6 final results available. An evidentiary hearing was scheduled for 4/18/22, with appropriate pre-hearing dates for exchange of witness lists, affidavits, pre-hearing briefs,etc. Rule 8 motions were filed by both parties.

4) **The Rule 6 Results:**

Of course, the full Rule 6 Report is of Record and in the file. These are the relevant ones:

Minimum Signature Requirement: 650

Total Valid Signatures: 1265

615 Signatures greater than the required minimum.

5) **The Stipulations Between the Parties:**

At the April 18, 2022, in-person court-reported hearing, the following was agreed to and stipulated by the parties:

A) The mathematical fact that ***if*** all the relief asked for in Objector's Rule 8 signature review ***and if*** all the circulator sheets identified in ¶ 11 were stricken, Candidate would still be ***above*** the minimum signature requirement of 650.

B) Candidate does not in any way admit that any fraud, much less pattern of fraud, would be established. Candidate's argument is she has sufficient signatures, either way.

C) Similarly, Objector does not admit "the validity" of the Nomination papers (especially given his argument below), but does stipulate to the "mathematical fact" identified in (A) above.

6) Candidate filed a Motion for Directed Finding, to be heard on April 18th. The Motion relied primarily upon *Mitchell v. Cook County Officers Electoral Board,* 399 Ill. App,3d 18 (1st Dist. 2010) and *Fallis et al. v. Seo,* 15 COEB MRWD 08, the sum and substance of which is that the

Electoral Board, no matter how heinous the Candidate's and his/her associates' misconduct may have been in circulating petitions, ***if*** the signature amount after striking all petitions tied to the misconduct ***still*** results in a signature amount above the minimum, the Electoral Board has no power to strike the Candidate from the ballot. The legislative enabling statutes do not so allow (and there's a further agreement between the parties that the enabling legislation has not been amended since *Mitchell).*

7) The Objector's response to *Mitchell* and *Seo* is, admittedly, novel. Objector argues that ***if*** he proved up all his claims – and by clear and convincing evidence – that there was a pattern of false swearing by the Candidate herself, then that "taint" of "pattern of fraud" could be utilized and transferred to attack the Statement of Candidacy itself. Two problems (at least) with that argument: 1) as "novel", it is unsupported by any precedent; and 2) nowhere in the Objection is the Statement of Candidacy attacked, even in the "pattern of fraud" paragraph, ¶ 11. Thus, the attempt to "transfer" the "taint" (if any there were) from Candidate/circulater oaths to the oath of the Statement of Candidacy would also be an end-around the "non-amendment" rule regarding Objections.

8) In the face of likely lengthy evidentiary hearings, this Hearing Officer thought it the right course of action to grant the Motion For Directed Finding, for the reasons stated above, and save the time and expense of an evidentiary hearing. If this Board disagrees, of course, that hearing can be re-scheduled. (The prior Recommendation for Subpoena is mooted as a result.)

9) In Summary:

Candidate was 615 signatures above the minimum requirement at the conclusion of Rule 6. The parties stipulated that ***even if*** all the ***alleged*** fraudulent conduct and resulting striking signatures were proven, Candidate would still be above the minimum signature requirement. *Mitchell, supra,* directs that an Electoral Board has no statutory power to strike a Candidate

from the ballot when that Candidate is above the required signature minimum, whatever the (as here) ***alleged*** conduct, or even if proven malfeasance.

The Objector's attempt to argue that a "pattern of fraud" finding would allow the Electoral Board to strike the Candidate from the ballot because the "taint" of false swearing would implicate the oath of the Statement of Candidacy is novel, and therefore unprecedented, and in any event would be an disallowed "amendment" to the Objection, as the Statement of Candidacy was never objected-to.

Recommendation:

This Hearing Officer recommends that the name Erin Elizabeth Jones ***shall*** appear on the ballot in the June 28, 2022 primary election for the office of State Senator for 10th Legislative District of the State of Illinois.

s/ Terence Flynn
Hearing Officer

Dated: 4/18/22