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

Objections of: EMMA J ROBINSON and CHARLES ENTER	)	
To the Nomination Papers of: SHAWN A. WALKER	)	No.: 23-EB-ALD-006
Candidate for the office of Alderperson of the 28th 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 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 EMMA J ROBINSON and CHARLES ENTER ("Objectors") to the nomination papers ("Nomination Papers") of SHAWN A. WALKER, for the office of Alderperson of the 28th Ward ("Candidate") at the Municipal General and Alderperson Elections to be held on Tuesday, February 28, 2023, having convened on Friday, December 9, 2022 at 4:00 p.m. 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 were duly and timely filed.

2. The Electoral Board was legally constituted under 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 Objectors 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 Friday, December 9, 2022 and was continued from time to time. The Electoral Board assigned this matter to Hearing Officer James Rosas for further hearings and proceedings.

5. The Objectors 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. The following persons, among others, were present at such hearing: The Objectors, EMMA J ROBINSON and CHARLES ENTER, through their attorneys, ED MULLEN and CLINTON DAVIS; and the Candidate, SHAWN A. WALKER, and or his 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 Candidate and/or his duly authorized representative was present during the examination of the registration records. The Objectors and/or their 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 for the office in question is 473;

B. The number of purportedly valid signatures appearing on the nominating petition filed by the Candidate total 1112;

C. The remaining number of signatures deemed valid as a result of the records examination total 526.

11. 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 office of Alderperson of the 28th Ward.

12. The Hearing Officer conducted a hearing to allow the parties an opportunity to present evidence in support of their Rule 8 motions objecting to the Board's clerk's findings during the records examination. At that hearing, the Hearing Officer determined that the Objectors' affidavits, Exhibit Numbers 1 through 67, "did not provide sufficient evidence to overcome the Final Petition Summary Report in that those did not provide detail of dates, locations and persons present when the nominating signatures were made." The members of the Electoral Board subsequently heard additional argument from the parties on this issue during a Rule 20 hearing. The Electoral Board disagreed that the Objectors' affidavits were, on their face, deficient. The Electoral Board found they carried probative weight as qualified evidence, of the kind customarily presented in proceedings such as these.

13. The Candidate had also proffered rehabilitative affidavits during the Rule 8 hearing, which were not considered due to the Hearing Officer's recommended findings at that

time being in favor of the Candidate. Therefore, the Electoral Board directed the Hearing Officer to also consider the Candidate's affidavits during the remanded evidentiary hearing.

14. During the subsequent remanded evidentiary hearing, the Candidate raised a new legal argument for the first time in these proceedings. Candidate argued that the Electoral Board lacked the authority to invalidate signatures when a voter signs more than one nominating petition. Section 10-3 of the Election Code states in relevant part that **"each voter may subscribe to one nomination for such office to be filled, and no more."** 10 ILCS 5/10-3 (emphasis added). Citing to *McNamara v. Oak Lawn Muni. Officers Elec. Bd.*, 356 Ill.App.3d 961 (1st Dist. 2005), the Candidate argued that the Appellate Court has ruled that Section 10-3, in its entirety, is full of directory – not mandatory – provisions and therefore an Electoral Board may not invalidate dual petition signatures despite the clear language of that statute. This legal argument by the Candidate was a challenge against the legal sufficiency of the Objectors' Petition and is therefore in the nature of a motion to strike or dismiss the objections.

15. The Hearing Officer agreed with the Candidate's argument and, following what was supposed to be a remanded evidentiary hearing for the purpose of considering the previously rejected affidavits submitted by both the Objectors and the Candidate, the Hearing Officer entered a second recommended decision to overrule the objections based on these legal grounds. The Hearing Officer therefore did not consider any of the affidavits during the remanded evidentiary hearing.

16. The Electoral Board finds that the Candidate's legal argument, raised for the first time in a remanded evidentiary hearing, was presented in violation of Rule 5 of the Electoral Board's Rules of Procedure. Rule 5 requires that "motions to challenge the legal sufficiency of the objector's petition ... must be made in writing and filed with the Electoral Board and served

upon other parties in the case by 5:00 p.m. on the first business day following the initial hearing." There was nothing precluding this candidate from presenting this legal argument in a timely filed Rule 5 motion. Therefore, the Electoral Board finds it was improper for the Hearing Officer to entertain this argument for the first time during a remanded evidentiary hearing.

17. Nonetheless, the Electoral Board also finds that Candidate's legal argument here is clearly erroneous because the *McNamara* appellate court decision is not relevant to the pending issue in the case at hand. In its *McNamara* opinion., the appellate court found that Section 10-3 of the Election Code prohibits "slates" of independent candidates, but that since Section 10-3 has no penalty provision *in that regard*, those slated candidates were still allowed to appear on the ballot. Notably for the case at hand, the *McNamara* court did *not* consider the issue of nonpartisan candidates signing more than one candidate's petitions.

18. Candidate argues that since the *McNamara* court found no penalty provision in Section 10-3, the entire Section must be "directory" and not "mandatory" and, therefore, the secondary petition signatures at issue in the case herein may not be invalidated despite the clear language of the statute. However, the Candidate's reading of *McNamara* is heavily flawed in this regard, and the court's limited-in-scope ruling in *McNamara* should not be extended to make the entire content of Section 10-3 directory, rather than mandatory. In fact, the *McNamara* court expressly stated that its decision was limited to the very precise issue of slated candidates.

19. In that regard, the *McNamara* court held that: **"The word 'shall' appears several times within section 10-3 but it does not appear <u>in the pertinent provision</u>. We conclude that the legislature did not intend that <u>this provision</u> be mandatory."** *McNamara,* 356 Ill.App.3d at 966 (emphasis added). The Electoral Board finds that the *McNamara* decision was,

and must remain, limited in scope to the specific issue of candidate slates and it is irrelevant as to whether voters are allowed to sign the petitions of more than one candidate in the same race.

20. The Electoral Board further finds that if the Candidate's argument were to prevail, such that the entirety of Section 10-3 is directory rather than mandatory, then there would be several various aspects of the nomination process that electoral boards and courts would have no legal authority to enforce, including:

A. Standard signature requirements for all nonpartisan and independent candidates in relation to most elective offices;

B. Special signature requirements for the first election following a decennial redistricting;

C. Circulators' and candidates' ability to lawfully strike signatures from nominating petitions;

D. Candidates for Governor and Lieutenant Governor must file a join petition;

E. The "sore loser" rule, where a candidate defeated in an established party primary is prohibited from running as an independent candidate in the corresponding general election; and, of course

F. The prohibition against a voter signing the petitions of more than one candidate in the same race. (See 10 ILCS 5/10-3 in its entirety.)

21. The *McNamara* decision cannot be interpreted in a way that creates such absurd results. Doing so would render meaningless most of the words contained in Section 10-3, all of which would merely be suggestions, directory rather than mandatory and therefore immune from

electoral board and judicial enforcement, despite the clearly mandatory language in relation to most (although not all) of the provisions contained within that section.

22. The electoral board finds that the language in Section 10-3 regarding the signing of more than one candidate's petitions to be mandatory. It is clear that in any particular race, a voter may sign the petition for one candidate, "and no more." The plain language of the statute invalidates all signatures that were signed after the first signature by a candidate in a particular race. This finding is in accord with a long history of this Electoral Board's prior decisions, dating back until at least 1991. (See, for example, *Arrington v. Jenkins*, 91-EB-ALD-93 (CBEC 1991).

23. In the Objectors' "Second Rule 20 Motion," they cited numerous prior Chicago Electoral Board cases in which this Board ruled that subsequent signatures by a voter who signed more than one candidate's nonpartisan aldermanic petitions are legally invalid, and only the first signature counts. Most notably, the Cook County Circuit Court and the First District Appellate Court both affirmed one of those cases in 2010, which was five years *after* the very same appellate court issued the *McNamara* decision. *Nice v. Popielarzyk*, 11-EB-ALD-202 (CBEC 2010), *aff'd,* Circuit Court of Cook Cty., No. 10-COEL-00017 (2010), *aff'd* Illinois Appellate Court, 405 Ill.App.3d 1204 (1st Dist. 2011).

24. For the above reasons, it was improper for the Hearing Officer to grant the Candidate's untimely challenge against the legal sufficienty of the Objectors' Petition. It was also, therefore, improper for the Hearing Officer to again decline to consider the affidavits previously presented by the Objectors and the Candidate. .

25. The Electoral Board, having considered the evidence and arguments tendered by the parties and the Hearing Officer's reports of recommended findings and conclusions of law,

hereby respectfully rejects the Hearing Officer's recommended findings and conclusions of law, both the original recommendations and those provided after the remanded evidentiary hearing.

26. The Electoral Board finds that the Candidate was 53 signatures over the minimum following the Rule 6 records exam. It also finds that the Candidate sought to introduce rehabilitative affidavits in the Rule 8 hearing that were not properly pled in the Rule 8 motion and are therefore not to be considered. Further, the Objector presented 68 affidavits during the Rule 8 hearing on the issue of voters who signed this Candidate's petitions after having signed the petition of another candidate in the same race. During the remanded evidentiary hearing, the Candidate presented (in an untimely fashion) four affidavits in rebuttal to four of the Objectors' 68 affidavits. If the Candidate's 4 rehabilitative affidavits were sufficient to rehabilitate those petition signatures, then the candidate would still be left with 462 valid signatures, which is 11 fewer than the required minimum of 473.

27. For the reasons stated above, the Electoral Board finds that the Candidate has an insufficient number of valid signatures on his nominating petitions and that the Nomination Papers of SHAWN A. WALKER are therefore invalid.

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IT IS THEREFORE ORDERED that the Objections of EMMA J ROBINSON and CHARLES ENTER to the Nomination Papers of SHAWN A. WALKER, candidate for election to the office of Alderperson of the 28th Ward, are hereby SUSTAINED and said Nomination Papers are hereby declared INVALID and the name of SHAWN A. WALKER, candidate for the office of Alderperson for the 28th Ward, SHALL NOT be printed on the official ballot for the Municipal General and Alderperson Elections to be held on Tuesday, February 28, 2023.

Dated: Chicago, Illinois, on Friday, January 20, 2023.

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 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.