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

Objections of: JAMES MCLAIN	)	
	)	
	)	
To the Nomination	)	No.: 23-EB-ALD-055
Papers of: LAWACO TOE	)	
	)	Rel.: 23-EB-ALD-003,
	)	23-EB-ALD-020 and
	)	23-EB-ALD-038
Candidate for the office of	)	
Alderperson of the 21st 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 JAMES MCLAIN ("Objector") to the nomination papers ("Nomination Papers") of LAWACO TOE, for the office of Alderperson of the 21st 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 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 Friday, December 9, 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 Hearing Schedule. The following persons, among others, were present at such hearing: The Objector, JAMES MCLAIN, through his attorney, ANDREW FINKO; and the Candidate, LAWACO TOE.

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.

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 473;

B. The number of purportedly valid signatures appearing on the nominating petition filed by the Candidate total 620;

C. The remaining number of signatures deemed valid as a result of the records examination total 22.

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 office of Alderperson of the 21st Ward.

13. The Candidate filed a motion for a second review of the Records Examination and the Hearing Officer found that such motion should be denied.

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 22 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 the office of Alderperson for the 21st Ward, 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 and incorporates 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 his nominating petitions and that the Nomination Papers of LAWACO TOE are, therefore, invalid.

IT IS THEREFORE ORDERED that the Objections of JAMES MCLAIN to the Nomination Papers of LAWACO TOE, candidate for election to the office of Alderperson of the 21st Ward, are hereby SUSTAINED and said Nomination Papers are hereby declared INVALID and the name of LAWACO TOE, candidate for the office of Alderperson for the 21st 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 13, 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.

BEFORE THE BOARD OF ELECTION COMMISSIONERS OF THE CITY OF CHICAGO AS THE DULY CONSTITUTED ELECTORAL BOARD FOR THE HEARING AND PASSING UPON OBJECTIONS TO NOMINATION PAPERS OF CANDIDATES FOR ELECTION TO THE OFFICE OF ALDERMAN OF THE 21ST WARD OF THE CITY OF CHICAGO, COUNTY OF COOK, STATE OF ILLINOIS TO BE VOTED UPON AT THE FEBRUARY 28, 2023 MUNICIPAL GENERAL ELECTION

JAMES MCLAIN,	)	
	)	
Petitioner-Objector	)	
	)	No. **23-EB-ALD-055**
vs.	)	
	)	
LAWACO TOE,	)	
	)	
Respondent-Candidate	)	

Report and Recommendation

Summary of Recommendation:

The final Rule 6 results showed that the Candidate had 22 valid signatures, 451 below the required minimum and thus the Candidate's name should not be on the ballot.

Procedural History:

The initial hearing in this matter was held on December 12, 2022. Attorney Andrew Finko appeared for the Objector. The Candidate did not appear. Service had been attempted at the Candidate's home address but no one answered. The matter was set over to December 22, 2022 and a second service was requested. Also, this matter was consolidated with ALD-020 and ALD-038 as the Candidate-Respondent was the same in each.

The second service was attempted and again no one answered at the Candidate's home address; however, Candidate appeared at the December 22nd hearing. The Objection attached an Appendix-Recapitulation which objected to each and every signature on lack of genuineness grounds and certain other signatures on other grounds as well. Accordingly, a Rule 6 directive

was executed. Given that the Candidate was pro se, this Hearing Officer cautioned him to read and familiarize himself with the Rules of the Board, specifically calling his attention to Rules 6, 8 and 20. This Hearing Officer also specifically told the Candidate that it was crucial to be present at the Rule 6 examination because if no objection was made to the Clerk's calls, all objections were waived and there was nothing for the Hearing Officer to consider or rule upon. A further status in all three consolidated cases was set for 12/30/22, at 9:30 a.m.

The Rule 6 Process:

On 12/29/22, a Record Exam Directive in ALD-055 was sent by the Board to Objector's Counsel and the Candidate (as well as this Hearing Officer and Board personnel) setting the Rule 6 exam for 12/30/22 at 9:15 a.m. The Candidate responded by reply e-mail "Received, thank you".

In the early morning hours of 12/30, Objector's Counsel emailed this Hearing Officer, the Candidate and the Board (and others) stating "Hello Mr Flynn. Only one records exam is set to start at 9:15am on 12/30 so there's nothing to report for status. Could we reset the status to next week, and cancel Friday @ 930am?" At 5:52 a.m. on 12/30, this Hearing Officer replied to that request as follows, sending it to the Candidate, all counsel in the consolidated cases and Mr. Powell of the Board:

> "1) There was a request from Mr. Finko to continue the status set before me at 9:30 a.m. given that the Rule 6 Records Exam will begin at 9:15 a.m. today. That makes sense.
>
> "2) The status will be continued to January 3, 2023 at 10:00 a.m. (Ms. Centeno requested to avoid that date if possible, but it does appear to be the most convenient given the holiday interruption.)
>
> "3) If anyone has difficulty with that date and time, please email me and we'll see what adjustments can be made but right now, the further status is scheduled for 1/3/23 at 10:00 a.m., in the lower level hearing room at 69 W. Washington.

"4) The Rule 6 Records Exam will start at 9:15 a.m. today as scheduled by the Board."

The Candidate responded by reply email: "Thank you for the update."

The Rule 6 Results:

The Preliminary results of the Rule 6 exam were first available at the hearing on 1/3/23. At that hearing were all counsel in the consolidated cases and the Candidate, Mr. Toe. The Preliminary results showed that the Candidate had 22 valid signatures out of 620 signatures submitted in his Nomination Papers, 471 signatures fewer than the minimum signature requirement The Preliminary Report also showed that neither the Candidate nor the Objector preserved any objections for review.

Upon being questioned as to why there were no objections preserved, the Candidate said he had been confused by the email of 12/30/22 and did not appear at the Rule 6 exam. Upon re-examining that email (quoted above), it is not apparent, nor could the candidate adequately explain, what was confusing, especially as the last line specifically stated "4) The Rule 6 Records Exam will start at 9:15 a.m. today as scheduled by the Board."

This Hearing Officer explained (again) that there was nothing for him to rule upon and that therefore a Rule 8 motion would provide no real remedy. The Candidate mentioned that he had other signatures on petitions not submitted that he could file and it was explained to him that such a submission would be an unauthorized amendment and would not be permitted. However, the Candidate was adamant that he would not discontinue his candidacy and wanted to see the Final Report. As a result, the matter was set over to 1/5/23 at 10:00 a.m.

Counsels' appearances in the consolidated cases were waived for that status as counsel in ALD-055 had a doctor's appointment conflict and the other cases – ALD-020 and 038 – were likely moot.

At the 1/5/23 status, the Final Summary Report of the Rule 6 exam was first available. There was no change in the final result with the Candidate still being 451 signatures below the required minimum. The Candidate repeated his claim of confusion. The

Candidate stated he desired another hearing at which he claimed an attorney for him would be present. Given the time constraints of the election process, this request was denied. Candidate was given, per Rule 8, until 5:00 p.m. on 1/6/23 to file a Motion for relief, with or without an attorney. The Candidate was told that a Report and Recommendation would follow and if a Motion (of whatever sort) was filed, it would be treated in that Report. The Candidate also claimed that this Hearing Officer favored the Objectors because he (I) had excused the appearances of Objectors' attorneys for the 1/5/23 status. The reasons were previously summarized – conflict and mootness – but I also said that I favored the numbers, not any individual.

Post-Rule 6 Motion:

Candidate Toe did file a motion before 5:00 p.m. on 1/6/23 in both this matter and ALD-003, addressed jointly to Hearing Officer Carney and me. That certainly allows this Report to refer to the Rule 6 exam results in ALD-003: 57 valid signatures for a deficit of 416 signatures below the minimum requirement. (The small difference can be accounted for because the Objection in ALD-003 contained 610 objections while this matter, ALD-055, contained 640 objections to be ruled upon by the Rule 6 examiners.)

The Motion filed by Candidate Toe requests "a second review" of the Rule 6 exams because he was not present "due to some misunderstanding of emails, timing and the death of my brother …." First, his brother's death was the stated reason for not appearing at the initial hearing on 12/12/22. Why that would involve the 12/30/22 Rule 6 exam is unknown. Second, this Hearing Officer's email regarding the start of the Rule 6 exam – quoted in full above – was apparently not the only one "misunderstood" by the Candidate: Apparently, he also did not appear at the Rule 6 exam in ALD-003!

For all those reasons, the Motion of Candidate Toe filed on 1/6/23 is denied. Of course, Candidate Toe retains his Rule 20 appeal rights, should he choose to exercise them.

Recommendation:

For all the reasons stated above, it is my Recommendation that the name Lawaco Toe ***should not*** appear on the ballot for 21st Ward Alderman of the City of Chicago in the February 28, 2023 General Municipal Election.

Dated: 1/6/23 s/Terence Flynn – Hearing Officer