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

Objections of: ISAAC S CAROTHERS	)	
	)	
	)	
To the Nomination	)	No.: 23-EB-PDC-021
Papers of: ODDIS"OJ JOHNSON	)	
	)	Rel.: 23-EB-PDC-016
Candidate for the office of Council Member	)	
for the 15th Police District	)	

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 ISAAC S CAROTHERS ("Objector") to the nomination papers ("Nomination Papers") of ODDIS "OJ" JOHNSON, candidate for the office of Council Member for the 15th Police District ("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 Lynne Ostfeld for further hearings and proceedings.

5. The Objector and the Candidate were directed by the Electoral Board's Call served upon them 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, ISAAC S CAROTHERS, through his attorney PERICLES ABBASI; the Candidate, ODDIS"OJ JOHNSON.

6. The Hearing Officer has tendered to the Electoral Board a report and recommended decision in which the Hearing Officer finds that the Nomination Papers are invalid due to the circulators' affidavits at the bottom of each petition sheet failing to identify the district in which the petition signers are required to reside. The circulator's affidavit identifies the political subdivision in which the signers reside (the City of Chicago) but the affidavit does not identify the Chicago's 15th Police District.

7. Having reviewed the record of proceedings in this matter and having considered the report and recommendations of the Hearing Officer, as well as all argument and evidence submitted by the parties to the Hearing Officer, and additional arguments made at a Rule 20 hearing before the members of the Electoral Board, the Electoral Board hereby rejects the recommended decision of the Hearing Officer for the reasons summarized below.

8. The Objector argues that the Nomination Papers are invalid because the circulators' affidavits (the "Affidavits") fail to identify the election district in which the petition

signers are required to reside. The Electoral Board finds that the political subdivision is identified in the Affidavits, but the district is not.

9. Section 10-4 of the Election Code requires that petition sheets include a sworn circulator's statement, or affidavit, in which the circulator certifies that "to the best of his knowledge and belief the persons so signing were at the time of signing the petition duly registered voters ... of the **political subdivision or district** for which the candidate or candidates shall be nominated." 10 ILCS 5/10-4 (emphasis added). By using the word "or" in this provision of the law, a candidate may strictly comply with the requirement by identifying the political subdivision OR the district – the law does not require both.

10. In the case at hand, the Electoral Board finds that it is undisputed that the Affidavits identify the political subdivision for which the candidate is seeking nomination. The Electoral Board finds that to be in full compliance with this aspect of Section 10-4.

11. Section 1-3(6) of the Election Code defines the term "political subdivision" as "any unit of local government or school district in which elections are or may be held." 10 ILCS 5/1-3(6). In the case at hand, the Electoral Board finds that the political subdivision for which the Candidate is seeking elective office is the City of Chicago. The Electoral Board further finds that a police district is *not* a "unit of local government" as that term is defined in Article VII, Section 1, of the Illinois Constitution of 1970, nor as that term is used in Section 1-3(6) of the Election Code.

12. Section 1-3(14) of the Election Code defines the term "district" as "any area which votes as a unit for the election of any officer, other than the State or a unit of local government or school district., and includes, but is not limited to, legislative, congressional and judicial districts, county board districts, municipal sanitary district wards [sic], school board

districts, and precincts. 10 ILCS 5/1-3(14). The Electoral Board finds that a Chicago police district is a "district" as defined in Section 1-3(14), and is neither a political subdivision nor a unit of local government as those terms are defined above.

13. Therefore, since Section 10-4 requires the Affidavits to identify the political subdivision **or** the district for which the Candidate is seeking nomination, and since this Candidate's petition Affidavits do identify the proper political subdivision, the Electoral Board finds strict compliance with the Election Code.

14. In the alternative, the Electoral Board finds that the Candidate's petition circulator Affidavits are in substantial compliance with the requirements set forth in Section 10-4. In support of this finding, the Electoral Board relies upon some of its own past precedent.

15. For example, in a prior case cited by the Objector, *Wilson v. Kato*, 99-EB-ALD-148 (Chi. MOEB, 1999), the Electoral Board found that "Section 10-4 requires that the circulator's affidavit acknowledge that to the best of the circulator's belief, the signers are duly registered voters of the political subdivision." *Id.* at ¶ 19. In the case at hand, the political subdivision is identified in the Affidavits. In *Wilson v. Kato*, the Electoral Board found that despite the omission of the district information in the petition heading, the ward designation did appear elsewhere on the petition sheet and, when taken as a whole, "The Electoral Board finds that the Candidate's nominating petitions clearly state the Candidate is seeking election as 29th Ward Alderman." *Id.* at ¶ 19.

16. Similarly, in the case at hand, the proper district information is contained in the petition headings. The headings expressly limit the petition signers only to those who reside within the 15th police district. The fact that the circulator Affidavits identify the political subdivision but not the district does not hinder the Electoral Board's ability to perform a records

exam and readily identify whether each of those petition signers resides inside or outside of the police district that is clearly stated on the petition sheet, thus presenting no threat to the integrity of the election process. Thus, with no threat to the integrity of the election, with no negative impact on the Electoral Board's ability to determine the eligibility of each individual petition signer, and with the political subdivision *and* district information clearly and expressly stated on the petition sheets, the Electoral Board may readily find substantial (if not strict) compliance with the Section 10-4 requirements.

17. This finding is also in accord with this Electoral Board's prior ruling in *Durr and Carpenter v. Smith*, 03-EB-ALD-093 (Chi. MOEB, 2003). The Electoral Boards this 2003 case to be even more directly on point and persuasive than the 1999 case that the Objector has cited. In this *Durr and Carpenter* case, the petition circulators' affidavits failed to state that the petition signers were duly registered voters "at the time they signed the petition," *Id.* at ¶ 17. As shown above, Section 10-4 of the Election Code requires, *inter alia*, that the circulator certify in the affidavit that "to the best of his knowledge and belief the persons so signing were *at the time of signing the petition* duly registered voters ... of the political subdivision or district." 10 ILCS 5/10-4 (emphasis added).

18. In the *Durr and Carpenter* case, the objector argued that the failure to include the provision "at the time of signing the petition" in the circulator's affidavit was non-compliance with Section 10-4 and it invalidated the petition sheets. However, the Electoral Board found that the prefatory language in the petition headings contained the statement "We, the undersigned, *qualified* voters of the 15th Ward in the City of Chicago ... do hereby petition..." *Durr and Carpenter* at ¶ 18. The Electoral Board further found that "A 'qualified' voter means the same thing as a 'registered' voter." *Id.* at ¶ 18, citing 10 ILCS 5/3-1.2.

19. The Electoral Board in the *Durr and Carpenter* case further found that in the appellate court opinion in *Nolan v. Cook Co. Electoral Bd.,* 329 Ill.App.3d 52, 58 (1st Dist. 2002), "the court held that where the prefatory language of a candidate's signature sheets sufficiently represents that all the signers satisfy a particular certification requirement, it neither serves a useful purpose nor aids in preserving the integrity of the electoral process to exclude a candidate from participation for failure to demonstrate strict compliance with the relevant statutory provisions." Thus, the Electoral Board in the *Durr and Carpenter* case looked at the petition sheet as a whole and found that the petition heading contained language that served to cure the omission in the ciruclator's affidavit, and that decision was fully in accord with the appellate court's mandate in *Nolan v. Cook Co. Electoral Bd.*

20. Indeed, the appellate court in *Nolan* made a ruling that is directly on point for the case at hand and fully supports this Electoral Board's decision herein. The court held: "Although Nolan's circulator's affidavit is itself devoid of any reference to the 18th legislative district, this court may incorporate by reference into a circulator's affidavit language contained elsewhere in a nominating petition in order to satisfy a certification requirement under the Election Code." *Nolan,* 329 Ill.App.3d at 58. This appellate court mandate appears to be fully controlling of the Electoral Board's decision in the case at hand.

21. The case at hand is therefore remarkably similar to *Durr and Carpenter*, and the decisions in that case and in the case at hand are in full accord with the appellate court's mandate that electoral boards look to the petition sheet as a whole to determine whether the document is in substantial compliance with the Election Code certification requirements.

22. For these reasons, the Electoral Board finds that the Candidate's petition headings adequately and expressly represent that the petition signers reside with in the 15th police district,

and that language cures any alleged deficiency with the circulators' Affidavits in accord with past precedent including, but not limited to, *Nolan v. Cook Co. Electoral Bd., supra.*

23. For the reasons stated above, the Electoral Board grants the Candidate's Rule 20 Motion, overrules the Objections to the Candidate's Nomination Papers, and finds that the Candidate's Nomination Papers are valid.

IT IS THEREFORE ORDERED that the Objections of ISAAC S CAROTHERS to the Nomination Papers of ODDIS"OJ JOHNSON, candidate for the office of Council Member for the 15th Police District, are hereby OVERRULED and said Nomination Papers are hereby declared VALID and the name of ODDIS"OJ JOHNSON, candidate for the office of Council Member for the 15th Police District, SHALL be printed on the official ballot for the Municipal General Elections to be held on Tuesday, February 28, 2023.

Dated: Chicago, Illinois, on Friday, December 30, 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 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.