

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

Objections of: WILLIAM TAYLOR)
)
)
To the Nomination) No.: 15-EB-ALD-109
Papers of: VINCENT ROSE)
) Rel. ALD-163 AND ALD-170
Candidate for the office of)
Alderman of the 7th Ward, City of Chicago)

FINDINGS AND DECISION

The duly constituted Electoral Board, consisting of Board of Election Commissioners of the City of Chicago Commissioners Langdon D. Neal, Richard A. Cowen, and Marisel A. Hernandez, organized by law in response to a Call issued by Langdon D. Neal, Chairman of said Electoral Board, for the purpose of hearing and passing upon objections (“Objections”) of WILLIAM TAYLOR (“Objector”) to the nomination papers (“Nomination Papers”) of VINCENT ROSE, candidate for the office of Alderman of the 7th Ward in the City of Chicago (“Candidate”) to be elected at the Municipal General Election to be held on February 24, 2015, having convened on December 8, 2014 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 Nomination Papers of the Candidate herein were duly and timely filed.
2. The said Electoral Board has been legally constituted according to the laws of the State of Illinois.

3. A Call to the hearing on said Objections was duly issued by the Chairman 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.

4. A public hearing held on these Objections commenced on December 8, 2014 and was continued from time to time.

5. The Electoral Board assigned this matter to Hearing Officer Martin Greene for further hearings and proceedings.

6. 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, WILLIAM TAYLOR, by his attorney, Randy Crumpton; and the Candidate, VINCENT ROSE, pro se.

7. 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.

8. The Hearing Officer directed all parties to appear and be present, either personally and/or by their authorized representatives, during this records examination.

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

10. The Objector and/or his duly authorized representative was present during the examination of the registration records.

11. 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.

12. 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 1,076;
 - C. The number of signatures deemed invalid because of objections sustained as a result of the records examination total 662;
 - D. The remaining number of signatures deemed valid as a result of the records examination total 414.

13. 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 election to the office of Alderman of the 7th Ward of the City of Chicago.

14. The Hearing Officer conducted a hearing to allow the Candidate 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, the Hearing Officer found that the Candidate failed to present evidence sufficient to rehabilitate any of the signature ruled invalid as a result of the records examination.

15. The Candidate argues that the minimum signature requirement as provided in 65 ILCS 20/21-28 violates the constitution.

16. In the City of Chicago, nominating petitions for candidates for Alderman must be signed by the number of legal voters of the ward as will aggregate not less than 4% of the total number of votes cast for Alderman in such ward at the last preceding general election. 65 ILCS 20/21-28(a), as amended by P.A. 98-115, eff. July 29, 2013. For the election following the redistricting of wards petitions for nominations of candidates shall be signed by the number of legal voters of the ward as will aggregate not less than 4% of the total number of votes cast for mayor at the last preceding municipal election divided by the number of wards. *Id.* At the last preceding municipal election (February 22, 2011), 590,391 votes were cast for Mayor. Four percent (4%) of 590,391 is 23,615.64, which, divided by the number of wards (50), yields a minimum signature requirement of 472.3128, or 473. Therefore, in the case of a candidate for the office of Alderman in any Ward of the City of Chicago, the candidate's nominating petitions shall contain not less than 473 signatures of legal voters of the Ward.

17. An electoral board's scope of inquiry is limited to the sole issue of whether a challenged petition and papers comply with the provisions of the Election Code pertaining thereto. *Phelan v. County Officers Electoral Board*, 240 Ill.App.3d 368, 608 N.E.2d 215 (1992); *Wiseman v. Elward*, 5 Ill.App.3d 249, 283 N.E.2d 282 (1972). An electoral board may only exercise the powers conferred upon it by the legislature. *Kozel v. State Board of Elections*, 126 Ill.2d 58, 533 N.E.2d 796 (1988); *Reyes v. Bloomingdale Township Electoral Board*, 265 Ill.App.3d 69, 638 N.E.2d 782 (1994) ("electoral boards are creatures of statute endowed with no power beyond what the Election Code enumerates;" "electoral board possess only the powers endowed to them by the Election Code;" "unauthorized actions are void").

18. A statute is presumed constitutional, and the party challenging the statute bears the burden of demonstrating its invalidity. *People v. Devenny*, 199 Ill.2d 398, 769 N.E.2d 942

(2002). The legislature, however, did not intend that an electoral board entertain constitutional challenges. *Tobin v. Illinois State Board of Elections*, 105 F. Supp.2d 882, 886 (N.D. Ill. 2000), *aff'd*, 268 F.3d 517 (7th Cir. 2001); *Troutman v. Keys*, 156 Ill.App.3d 247, 509 N.E.2d 453 (1987). “An administrative agency must accept as constitutional the statute over which it has jurisdiction.” *Board of Education of Rich Township High School v. Brown*, 311 Ill.App.3d 478, 724 N.E.2d 956, 966 (2000), citing *Wiseman v. Elward, supra*, and *Phelan v. County Officers Electoral Board, supra*. “An administrative agency lacks the authority to invalidate a statute on constitutional grounds or even to question its validity.” *Texaco-Cities Service Pipeline Company v. McGaw*, 182 Ill.2d 262, 695 N.E.2d 281 (1998), citing *Moore v. City of East Cleveland*, 431 U.S. 494, 497 n. 5, 97 S.Ct. 1932, 1934 n.5 (1977). Administrative agencies such as the electoral board have no authority to declare statutes unconstitutional or even to question their validity. *Goodman v. Ward*, 241 Ill.2d 398, 411, 948 N.E.2d 580, 588 (2011).

19. 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 414 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 election to the office of Alderman of the 7th Ward of the City of Chicago, and that the Candidate’s Nomination Papers should be found invalid.

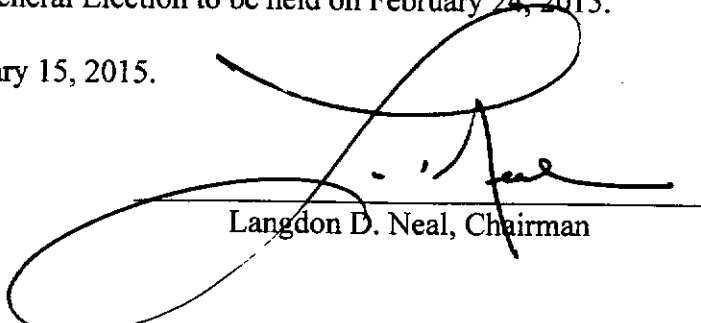
20. The Electoral Board, having considered the evidence and arguments tendered by the parties and the Hearing Officer’s report of recommended findings and conclusions of law, hereby adopts the Hearing Officer’s recommended findings and conclusions of law. A copy of the Hearing Officer’s report is attached hereto and is incorporated herein and made a part of the Electoral Board’s decision in this case.

21. 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 VINCENT ROSE are, therefore, invalid.

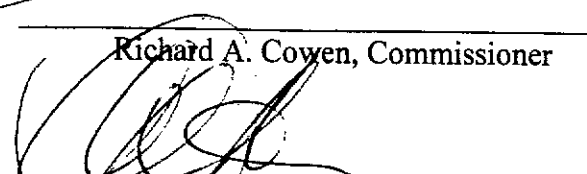
22. The Electoral Board further finds that additional objections to the Candidate's Nomination Papers were filed in related cases ALD-163 and ALD-170. The objections in ALD-170 were withdrawn. The objections in ALD-163 are rendered moot because of the decision in this case.

IT IS THEREFORE ORDERED that the Objections of WILLIAM TAYLOR to the Nomination Papers of VINCENT ROSE, candidate for election to the office of Alderman of the 7th Ward of the City of Chicago are hereby SUSTAINED and said Nomination Papers are hereby declared INVALID and the name of VINCENT ROSE, candidate for election to the office of Alderman of the 7th Ward of the City of Chicago, SHALL NOT be printed on the official ballot for the Municipal General Election to be held on February 24, 2015.

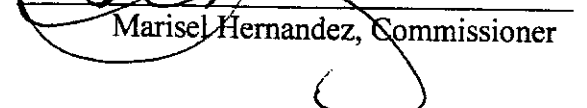
Dated: Chicago, Illinois, on January 15, 2015.



Langdon D. Neal, Chairman



Richard A. Cowen, Commissioner



Marisel Hernandez, 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
FOR THE CITY OF CHICAGO**

William Taylor)	
)	
)	Objector(s),
)	Case No. 15-EB-ALD-109
)	(Ref. ALD-163)
vs.)	
)	
Vincent Rose)	Hearing Officer: Martin P. Greene
)	
)	Candidate.

HEARING OFFICER'S FINDINGS AND RECOMMENDATIONS

In the matter of Petitioner-Objector, William Taylor ("Objector") regarding the Nomination Papers of Respondent-Candidate, Vincent Rose, for the nomination for the Office of Alderman, 7th Ward in the City of Chicago, State of Illinois ("Candidate"), to be voted upon during the upcoming Municipal General Election on February 24, 2015 ("Election"), the hearing having convened on December 10, 2014. Martin P. Greene, Esq., the duly appointed Hearing Officer, hereby makes the following Report and Recommended Findings to the Board of Election Commissioners of the City of Chicago ("CBEC" or the "Board"):

Objector filed a Verified Objector's Petition objecting to the sufficiency of the Candidate's nomination papers for various reasons stated primarily in Paragraphs 3 through 14 of his Petition, to wit.

3. *Signer Not Registered At Address Shown*
4. *Signer Resides Outside District*
5. *Signer's Signature Not Genuine*
6. *Signer's Address Missing or Incomplete*
7. *Signer Signed Petition More Than Once*
8. *Signer's Signature Printed and Not Written*
9. *"Other Reasons"*
10. *Purported Circulator Did Not Circulate Sheet*

11. *Circulator Did Not Sign Petition Sheet*
12. *Circulator Did Not Appear Before Notary*
13. *Evidence will establish "...a 'pattern of fraud and false swearing' ...In addition, an examination of the nominating petition as well as the results of the records examination hereunder will reveal a pervasive and systematic attempt to undermine the integrity of the electoral process." To wit:*
 - (a) *Several signatures ...were written by the same hand and are forgeries;*
 - (b) *Several signature sheets exhibit evidence of "round-tabling";*
 - (c) *An excessively high percentage of signatures procured by circulator(s) on the petition sheet(s) are not genuine;*
14. *Sheets 38 and 39 were notarized on August 6, 2014, which was before the time Candidates were allowed to circulate petitions for this election. These sheets were circulated and signatures collected prior to the time allowed by the Illinois Code of Civil Procedure and are invalid.*

The Objector's petition was filed on December 3, 2014. An initial status hearing took place on December 10, 2014, and both parties were present and filed their Appearances: the Candidate *pro se* and the Objector by and through his attorney, Randy Crumpton. The Hearing Officer encouraged the parties to read the Rules of Procedure, had the parties exchange email addresses, outlined the proceedings, described anticipated exhibits and asked Objector's counsel to summarize the objections; which was done. At that time, the Hearing Officer granted the Candidate until December 11, 2014, to file a motion to strike and dismiss. A motion to strike and dismiss was filed and responded to by Objector's petition. The motion was denied on December 23, 2014.

Also on December 23, 2014, a records examination directive was issued setting the records examination for December 26, 2014. On December 29, 2014, the records examination was completed and the final records examination results were served upon the parties. The final results of the records examination were as follows:

Signatures Required	473
Total Pages	55

Total Signatures	1076
Total Objections	817
Total Ruled On	817
Total Remaining	0
Total Sustained	662
Total Overruled	155
For Review (Candidate)	542
For Review (Objector)	103
Total Valid Signatures	414
Total Unchallenged Signatures	259

The result of the records examination was that the Candidate filed 59 signatures less than the required minimum.

The time for filing Rule 8 Motions expired on December 30, 2014. On that date, Candidate timely filed his Rule 8 Motion and sought an appeal of the rulings at the records examination. In his motion, the Candidate made several legal arguments, to wit:

1. Objector is estopped by issue preclusion, equitable estoppel, and waiver;
2. The Rules violate Due Process
3. Allowing the Objector to proceed "...is violative of Due Process, an abuse of the legal system, a denial of the fair government services to the public, and overall shocking to the conscience, immoral, unethical and destructive to the electoral system and the public's trust in the integrity of Government."

The Candidate also appealed the factual findings of the records examination on the basis that the signatures were, "...improperly ruled upon not in favor of Candidate".

On January 1, 2015, the Hearing Officer denied Objector's request to deny the evidentiary hearing based upon a failure to timely serve the Objector with Notice of the

Request for a Rule 8 Hearing. On the same date, the Hearing Officer recommended the Candidate's subpoena request for email service records be denied as moot.

On January 2, 2015, at a case management hearing in this matter, a Rule 8 hearing was scheduled to take place on January 9, 2015. On January 9, 2015 at 3:02 a.m., the Candidate filed a document entitled "Candidate's Motion Presenting Constitutional Matters." The Rule 8 Hearing, based upon Candidate's motion, proceeded as scheduled on January 9, 2015, beginning at approximately 11:00 a.m. and was concluded at approximately 12:30 p.m.

HEARING OFFICER'S FINDINGS

At the Rule 8 Hearing, the following Board Exhibits were identified, not objected to and received into evidence:

Board Group Exhibit A: Candidate's nominating papers including Statement of Candidacy, Loyalty Oath, nominating petition sheets, the receipt for Statement of Economic Interest. Board Group Exhibit B: Objector's petition including exhibits and attachments to the Objector's petition. Board Group Exhibit C: proof of service documents. Board Group Exhibit D: Appearance forms. Board Group Exhibit E, which consists of the notice of the record exam, the petition summary report and the final detail report as a result of the record exam in this case number 15-EB-ALD-109.

At or after the Rule 8 Hearing requested by Objector, the Hearing Officer has made the following findings:

The Candidate has failed to present evidence sufficient to rehabilitate any of the signatures ruled invalid as a result of the records examination. Candidate's counsel has

acknowledged this shortcoming as evidenced by the following colloquy, which took place at the Rule 8 Hearing:

MR. USHAROVICH: Well, judge, here is my issue. The rule specifically says, Rule 8, that it's our burden because we were below the number of signatures.

HEARING OFFICER GREENE: Yes.

MR. USHAROVICH: Right. And based on our evidence technically we haven't rehabilitated any of the signatures technically.

HEARING OFFICER GREENE: Right.

MR. USHAROVICH: Right. So the burden doesn't shift to anybody, the hearing is done.

HEARING OFFICER GREENE: So you rest?

MR. USHAROVICH: Yeah, that's what I said, we rested. So we're done here, judge. There is no point in petitions or anything. Transcript, January 9, 2015, page 33, lines 8 - 21

No further evidence was presented to attempt to rehabilitate any of the signatures. Under cross-examination by Objector's counsel, the Candidate acknowledged that he circulated and signed his petition sheet numbers 41 through 55.

Based on the Final Record Examination Results, the Nomination Papers filed by the Candidate do not meet the minimum requirements for him to have his name placed on the ballot as a candidate for the office of Alderman of the 7th Ward during the municipal election on February 24, 2015.

HEARING OFFICER'S RECOMMENDATIONS

Because of the foregoing, the Hearing Officer hereby makes the following recommendations for consideration by the Commissioners:

1. That the Objector's objections to this candidacy should be sustained because Respondent-Candidate failed to file the minimum of 473 valid signatures with his nomination papers, and;

2. That the Respondent-Candidate's name should be excluded from the names of the candidates who will be on the ballot for the office of Alderman of the 7th Ward during the upcoming election.

3. That Candidate's Motion Presenting Constitutional Matters be denied as moot.

Dated: Chicago, Illinois, on January 12, 2015

Respectfully submitted,



~~Martin B. Greene~~, Hearing Officer