

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

Objections of: DANIEL DAVID)	
GERHARDT ROGERS)	
)	
To the Nomination)	No.: 19-EB-MUN-014
Papers of: ELIZABETH "BETTY" ARIAS-)	
IBARRA)	
)	
Candidate for the office of City Clerk)	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 Jonathan T. Swain, 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 DANIEL DAVID GERHARDT ROGERS ("Objector") to the nomination papers ("Nomination Papers") of ELIZABETH "BETTY" ARIAS-IBARRA, candidate for the office of City Clerk for the City of Chicago ("Candidate") at the General Municipal Election to be held on Tuesday, February 26, 2019, having convened on Monday, December 10, 2018, at 8:30 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 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.

4. A public hearing held on these Objections commenced on Monday, December 10, 2018 and was continued from time to time.

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

6. 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, DANIEL DAVID GERHARDT ROGERS, and/or his Attorney, MICHAEL J KASPER; and the Candidate, ELIZABETH "BETTY" ARIAS-IBARRA, and/or her Attorney FRANK AVILA.

7. The Hearing Officer has tendered to the Electoral Board a report and recommended decision. Based upon the evidence presented, the Hearing Officer found that many of the petition sheets submitted by the Candidate are photocopies of other original sheets within the Nomination Papers, in violation of section 10-4 of the Illinois Election Code. That section requires, *inter alia*, that "All petition sheets which are filed with the proper ... election authorities ... shall be the original sheets which have been signed by the voters and by the circulator, and not photocopies or duplicates of such sheets." 10 ILCS 5/10-4.

8. Discounting the photocopied petition sheets, the Hearing Officer found that the Candidate's Nomination Papers contain a maximum of 9,434 valid signatures, which is 3,066

signatures fewer than the 12,500 required. The Hearing Officer found, therefore, that the Candidate's Nomination Papers are invalid.

9. The Candidate filed a Rule 20 motion to provide additional argument to the Electoral Board, alleging, *inter alia*, that the Hearing Officer erred in refusing to allow an inquiry into the manner in which the Objector prepared the Objector's Petition. The Candidate had previously claimed in her Motion to Dismiss that the Objector's Petition was prepared and filed in bad faith and, citing to *Daniel v. Daly*, 2015 Ill. App. (1st) 150544, the Candidate argued she was entitled to a preliminary showing of good faith by the Objector. In the Rule 20 motion and hearing, Candidate argued it was improper for the Hearing Officer to refuse such preliminary showing of good faith by citing to *Nader v. State Bd. of Elections*, 345 Ill.App.3d 335 (1st Dist. 2004).

10. The Electoral Board agrees that the Hearing Officer's reliance on *Nader* was erroneous. In *Nader*, there was no allegation that the objector's petition was filed in bad faith. Rather, the candidate in that case argued that some of the people who worked on preparing the objector's petition were government employees who had violated different sections of the Election Code by performing political work while "on the clock" for their tax-payer funded government jobs. The candidate therefore requested that the electoral board inquire into the manner in which the objections were lodged – not because it was done in bad faith, but because it could have been unlawfully produced at taxpayer expense. The Appellate Court in *Nader* affirmed the electoral board's decision not to allow such an inquiry, because enforcement of the laws prohibiting political work at taxpayer expense is not within the jurisdictional authority of an electoral board. That case, however, does not stand for the proposition that an electoral board

may not inquire into the methodology behind the preparation of an objector's petition so as to determine whether it was prepared and filed in good faith.

11. In the *Daniel* case, which the same First District Appellate Court ruled upon some 11 years after *Nader*, the court upheld the electoral board's right to inquire into the methodology of an objector's petition that was alleged to have been prepared and filed in bad faith. The court affirmed the electoral board's practice of requiring a preliminary showing of good faith. Thus, the Hearing Officer should have allowed that.

12. Nonetheless, after reviewing the Candidate's Rule 20 motion and additional argument during the Rule 20 hearing, the Electoral Board finds no need to remand this matter to the Hearing Officer. The Candidate has admitted that the Objector hired an experienced election-law attorney to assist with the preparation of this Objector's Petition, which did not require any line-by-line signature analysis. The Candidate admits that the Objector's attorney showed him summaries of the objections that were "prepared by the purported Objector's ostensible Attorney." (R. 20 Mot.) Thus, although the attorney did most of the work to prepare the Objector's Petition, the Candidate admits that the Objector nonetheless reviewed summaries of the objection's contents prior to signing and filing the Objector's Petition.

13. No prior court decision – not even *Daniel, supra*. – has ever ruled that the named Objector must perform all of the necessary inquiry on his or her own. As this Electoral Board has seen many times in the past, is common for objectors to hire attorneys and to use teams of volunteers to assist with the good-faith preparation of objections. In the case at hand, the Objector did not have to do any line-by-line signature analysis. Rather, the Objector's attorney identified the numerous petition sheets filed by the Candidate that were photocopies, and then – according to the Candidate – showed summaries of those allegations to the Objector. The

Objector, in good faith, relied upon the expertise of his attorney in accepting that the attorney properly and honestly performed the duties he was retained to perform. There is no bad faith in hiring an experienced and licensed attorney to perform the investigation, to summarize the findings to the client, and then prepare the Objector's Petition for filing. Furthermore, the evidence generated in these proceedings overwhelmingly supports the notion that this objection was filed in good faith, as the petition sheets alleged to be photocopies did, indeed, turn out to be photocopies in violation of law.

14. Furthermore, the Electoral Board finds that an Objector is required to provide his residence address on the Objector's Petition, and that the Objector is required to be a registered voter of the proper political subdivision. However, as explained in *Pochie v. Cook Co. Officers Electoral Bd.*, 682 N.E.2d 258 (1st Dist.), the Objector is not required to be registered to vote at the residence address stated in the Objector's Petition.

15. For the above reasons, and those stated in the Hearing Officer's report and recommended decision, the Electoral Board denied the Candidate's Rule 20 motion and entered judgement on the merits of the case.

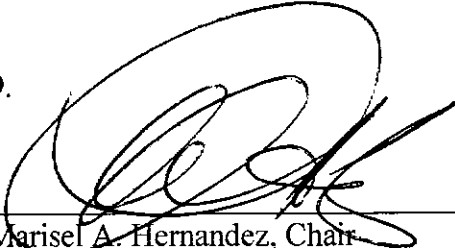
16. The Electoral Board, having considered the evidence and arguments tendered by the parties and the Hearing Officer's report of recommended findings and conclusions of law, hereby adopts the Hearing Officer's recommended findings and conclusions of law and incorporates them herein by this reference.

17. For the reasons stated above, the Electoral Board finds that the Objections filed in this matter should be sustained and that the Candidate's Nomination Papers are invalid.

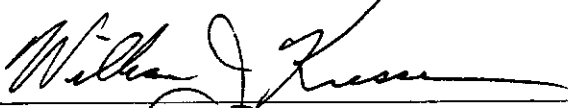
IT IS THEREFORE ORDERED that the Objections of DANIEL DAVID GERHARDT ROGERS to the Nomination Papers of ELIZABETH "BETTY" ARIAS-IBARRA, candidate for

the office of City Clerk for the City of Chicago, are hereby SUSTAINED and said Nomination Papers are hereby declared INVALID and the name of ELIZABETH "BETTY" ARIAS-IBARRA, candidate for the office of City Clerk for the City of Chicago, SHALL NOT be printed on the official ballot for the General Municipal Election to be held on Tuesday, February 26, 2019.

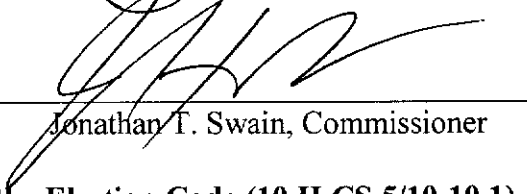
Dated: Chicago, Illinois, on Friday, January 18, 2019.



Marisel A. Hernandez, Chair



William J. Kresse, Commissioner



Jonathan T. Swain, 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.

BOARD OF ELECTION COMMISSIONERS OF THE CITY OF CHICAGO

AS THE DULY CONSTITUTED ELECTORAL BOARD

Objection of Daniel David Gerhardt Rogers,

Petitioner – Objector

No. 19 EB – MUN - 014

To the Nomination papers of:

Joseph L. Ponsetto- Hearing Officer

Elizabeth “Betty” Arias-Ibarra

Respondent - Candidate

RECOMMENDED DECISION

This matter having come before the Chicago Board of Election Commissioners (“CBOE”) on the objection of Daniel David Gerhardt Rogers (“Objector”) to the nomination papers of Elizabeth “Betty” Arias-Ibarra (“Candidate”) and the Candidate having filed a Motion to Dismiss, Joseph L. Ponsetto, Hearing Officer, being duly advised finds and recommends as follows:

IT IS HEREBY FOUND THAT,

This matter was called before the Electoral Board on December 10, 2019. The following exhibits were offered into evidence which the Hearing Officer admitted without Objection:

Board Exhibit A – Nomination Papers, including loyalty oath, statement of candidacy, statement of economic interest and receipt, petition sheets and all other attachments. The number of sheets filed is 1025 all with space for 15 signatures.

Board Exhibit B – Objectors Petition and appendix

Board Exhibit C – Proof of Service, the Call

Board exhibit D – Appearances of Attorney Frank Avila for the Candidate and Michael Kasper for the Objector

INTRODUCTION AND PROCEDURAL BACKGROUND

This recommendation will address the issue of standing of the Objector, based upon his residence along with his good faith effort and the Constitutionality of the signature requirement to be placed on the ballot for City of Chicago City Clerk. the City of Chicago. The Candidate filed a Motion Strike and Dismiss the Objector's Petition based upon these and hearings were held addressing those issues after the Objector filed a Motion to Dismiss. After those issues were addressed and resolved in favor of the Objector as will be detailed below the matter moved to an evidentiary hearing on the sole issue raised in the Objector's Petition, that being whether the Candidate had filed a sufficient number of signatures to be place on the ballot. However in this matter, as will also be detailed below , the objection did not go to the specific issue of the validity of the individual signatures rather it addressed what was alleged to be the tendering of copies of sheets filed as originals which are alleged to be photocopies. Therefore, no record exam directive was issued.

LEGAL ANALYSIS OF CANDIATES ISSUES

A.

With respect to the "Good Faith" issue the Candidate asks the Board through the Hearing Officer to conduct an inquiry into how the Objectors Petition was compiled. The Appellate Court has squarely declared that such an inquiry is beyond the scope of the Board. In *Nader v. State Board of Elections*, 345 Ill App 3d 335, 344 (1st Dist. 2004). In *Nader* candidates whose petitions were challenged "sought to heave the Electoral Board investigate the way in which the objector compiled his Objections". The Court specifically defined the Electoral Board's role holding that the Electoral Board can determine only determine whether the Candidates' nomination petition complies with the requirements of the Election Code.

Nader further concludes that how the objector's petition was compiled is simply not relevant to the issues of whether Candidates Petitions satisfy the formal requirements in in Section 10-4 of the Illinois Election Code.

This portion of the Candidates motion to strike is denied by the hearing officer.

B.

Next the Candidate argues that that the 12,500-signature threshold provided in the Revised Cities and Villages Act is unconstitutional. However, the Illinois Supreme Court has held that an Electoral Board has no authority to declare statutes unconstitutional or even question their validity. *Goodman v. Ward*, 241 Ill 2d 398,411 (2011)

This portion of the Candidates motion to strike is denied.

C.

Finally, the Candidate contends that the Objector lacks standing because he was not a registered voter at 1229 E. 53rd Street, the address stated in the Objector' Petition. He put forth evidence that the Objector gave up his residency at said address when he in fact voted in the November 2018 General

election from another address in the area. An evidentiary hearing was held to address this issue and the Objector credibly testified that he ever intended to abandon his residency on 53rd street. He testified that his voter registration was changed by the Board when he went to an early voting site with his girlfriend and used her address on Ingleside to vote in said 2018 election. He did not lie and listed his address on 53rd street as to where he was registered on the form provided to him by election authorities. When he learned that his voter registration had been changed to that of his girlfriend as a result of not voting in his home precinct he immediately went online and changed his registration back to his correct address of 1229 E. 53rd Street. He testified that he did this on December 5, 2018 before the first hearing on this matter and before anyone had challenged his standing which adds to his credibility. The Candidate offered no evidence other than this voting incident to support her claims. She called no witnesses and offered no traditional residency documents for any other address. The Objector in addition to his voter's registration on 53rd street, also offered his driver's license showing 53rd street in addition to his lucid explanation as to how this situation occurred.

His testimony established to the hearing officer that he is a legal voter and was at the time of filing the Objection. That he is a legal voter of the political subdivision or district in which the candidate or public question is to be voted on which complies with the requirement of 10 ILCS 5/10-8. Here the political subdivision is the City of Chicago. The Objector voted in the November 2018 General Election in the City of Chicago and is registered to vote in the City of Chicago for the upcoming Election for which the Candidate seeks placement on the ballot.

The Illinois Appellate Court holding in *Henderson v. Miller* 228 Ill App 3rd 260, 592 NE 2nd 570 (1st dist. 1992) supports the denial of the Motion to Strike in that residency and registration are two different concepts. The Objector is a "legal voter" of the City of Chicago. The hearing Officer finds that the Objector's Petition correctly sets forth his residence address. As a result, the Objector's Petition satisfies every requirement of Section 10-8. The Candidate does not allege that the Objector is not a qualified voter of the City of Chicago. The cases cited by the Candidate along with other findings of this Board those being respectfully *Harris v. Taliaferro* 19 EB ALD 069, *Branch v. Taliaferro* 10 ALD 070 and *Pochie v. Cook County Officers Electoral Board* 289 Ill App 3rd 585, 682 NE 2nd 258 (1st Dist. 1997) are inapposite to our case in that as discussed above it is not required that a voter be a registered voter at the stated address rather that he reside there which has been proven.

Therefore, this portion of the Candidates Motion to Strike and he request for reconsideration of said position are denied and the Objectors Petition is found to be valid. I would also call to the Boards attention to the finding of Hearing Officer John Ashendon the related case of 19 MUN 020 where he has also found that the Objector does reside at the address stated in the Objectors Petition in that matter.

The Objectors Motion to Dismiss the Candidates Motion to Strike is granted.

LEGAL ANALYSIS OF OBJECTORS PETITION

Subsequent to the denial of the Candidates unsuccessful attempt to Strike the Objection this matter proceeded to an evidentiary hearing on January 9, 2019. The Candidate was afforded more than ample time to prepare a response or defense to the allegations set for in Petitioner's Objection. Those

objections were very direct and concise. Pursuant to State Law, the nomination papers for the Office of City Clerk must contain the signatures of not fewer than 12,500 duly qualified, registered and legal voters of the City of Chicago collected in the manner provided by law.

The Objector at the hearing requested that the Hearing Officer examine the Nomination sheets which already in evidence and being relied on by the Candidate in her request that she be placed on the ballot. Entered into evidence specifically as Objectors Exhibit 1 was an appendix prepared by the Objector and is part of the objector's petition. This was stipulated to by the Candidate. This appendix incorporated the original Petition Sheet number and are set forth as under the column "Original Page Number" and the corresponding column lists the corresponding page numbers which are alleged to be photocopies. It was asked, that if in fact these sheets were found to be photocopies with only the page number changed, that they should be declared invalid. It was agreed that this would examination would be conducted by the Hearing Officer in the office of the Chicago Board of Elections with the assistance of Board employees. No defense or response was provided by the Candidate.

On January 10, 2019 the hearing officer and a clerk from the Board segregated all the pages from the Original page number sheets. Next, they segregated all the alleged photocopied sheets which allowed the hearing officer to personally observe the sheets and make a determination as to the validity of the challenged sheets. This painstaking process was completed, and it is the finding that every sheet alleged to be photocopies in the appendix were in fact photocopies of submitted originals. Therefore the finding of the hearing officer is that all of these sheets are invalid in their entirety because pursuant to 10 ILCS 10-4 all nominating petitions must be the original sheets which have been signed by the voters and the circulator and not photocopies or duplicates of such sheets.

The total number of sheets invalidated is 396. That leaves 629 sheets unchallenged and original. These original sheets contain a maximum of 15 signatures per page. Therefore the Candidates Nomination papers contain a maximum of 9434 signatures assuming in the light best for the Candidate assuming each signature on the original sheets is valid. Far less than the 12,500 required.

The objection is granted.

RECOMMENDATION

It is the strong recommendation that the findings of the Hearing Officer in this matter be accepted and the name of Elizabeth "Betty" Arias Ibarra NOT BE PLACED ON THE BALLOT for the Office of City Clerk for the City of Chicago.

Respectfully submitted'

Joseph Ponsetto /s/ Hearing Officer

ENTERED January 13, 2019