

**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-020
Papers of: PATRICIA HORTON)
) Rel.: 19-EB-MUN-024
Candidate for the office of)
City Clerk of the 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 PATRICIA HORTON, for the office of City Clerk of 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 John Ashenden 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, DANIEL DAVID GERHARDT ROGERS, and/or his Attorney, MICHAEL J KASPER; and the Candidate, PATRICIA HORTON, and or her Attorney, FRANK AVILA.

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 her 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 12,500;
- B. The number of purportedly valid signatures appearing on the nominating petition filed by the Candidate total 18,222;
- C. The remaining number of signatures deemed valid as a result of the records examination total 11,646.

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 the office of City Clerk of the City of Chicago.

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 11,646 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 City Clerk for the City of Chicago, and that the Candidate's Nomination Papers should be found invalid.

15. The Candidate filed a Rule 20 motion to present additional argument to the Electoral Board, and was then provided said opportunity during an open meeting of the Board. However, for the reasons stated in the Hearing Officer's final report and recommended decision,

the Board was not persuaded in the Rule 20 hearing to reject the Hearing Officer's findings of fact and conclusions of law. The Candidate misinterprets the holdings in *Neely v. Chicago Bd. of Election Commissioners*, 371 Ill.App.3d 694 (1st Dist. 2007), *Pochie v. Cook Co. Officers Electoral Bd.*, 682 N.E.2d 258 (1st Dist. 1997), and other cases as interpreted and distinguished in the Hearing Officer's final report.

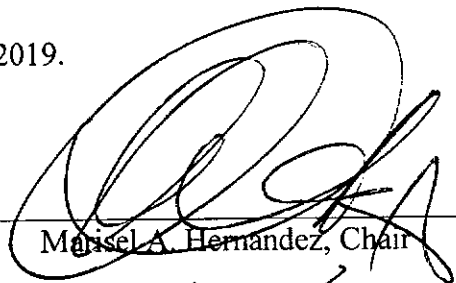
16. The Electoral Board, having considered the evidence and arguments tendered by the parties and the Hearing Officer's report of recommended findings and conclusions of law, hereby adopts the Hearing Officer's recommended findings and conclusions of law and incorporates them herein by this reference.

17. For the reasons stated above, the Electoral Board finds that the Candidate has an insufficient number of valid signatures on her nominating petitions and that the Nomination Papers of PATRICIA HORTON are, therefore, invalid.

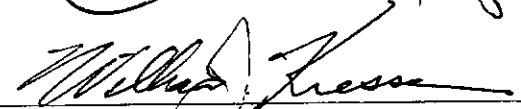
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IT IS THEREFORE ORDERED that the Objections of DANIEL DAVID GERHARDT ROGERS to the Nomination Papers of PATRICIA HORTON, candidate for election to the office of City Clerk of the City of Chicago, are hereby SUSTAINED and said Nomination Papers are hereby declared INVALID and the name of PATRICIA HORTON, 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.

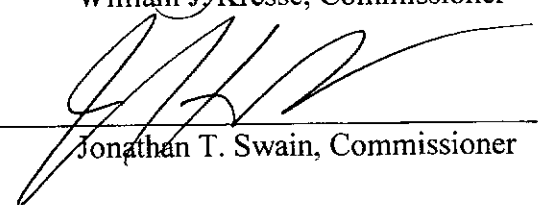
Dated: Chicago, Illinois, on Friday, January 18, 2019.



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.

BEFORE THE CHICAGO BOARD OF ELECTION COMMISSIONERS

DANIEL DAVID GERHARDT ROGERS,)
Objector,)
vs.) No. 19-EB-MUN-020
)
PATRICIA HORTON,)
Candidate.) John Ashenden
Hearing Officer
)

HEARING OFFICER’S FINDINGS AND RECOMMENDATION

This matter having come before the Chicago Board of Election Commissioners (“CBOE”) on the Objector’s Petition of Daniel David Gerhardt Rogers (“Objector”) to the nomination papers of Patricia Horton (“Candidate”) for the Office of City Clerk of the City of Chicago, John Ashenden, Hearing Officer, finds and recommends as follows:

December 10, 2018 Initial Hearing

1. Candidate appeared through Attorney J. McDonald, for the Law Offices of Frank Avila. The Objector appeared through Attorney J. Hartman, for Attorney Michael Kasper. Board Group Exhibits A through D were admitted as Candidate Nomination Papers, Objector’s Petition, Returns of Service and Appearances, respectively.
2. Candidate requested leave to file a motion to strike and dismiss Objector’s Petition. Hearing Officer instructed Candidate to file said motion by December 11, 2018 at 5:00 p.m. Objector was given leave to file a response by December 12, 2018 at 5:00 p.m. Candidate was given leave to file a reply by 5:00 p.m. the following day, December 13, 2018. Briefing schedules were agreed to and Candidate’s motion was set for hearing on December 17, 2018.
3. Hearing Officer reviewed the Board’s Petition Summary Report, stating total unchallenged signatures equaled 9,734 and that Candidate has 5,581 signatures greater than the required minimum of 12,500.

Candidate’s Extension Request

4. Via e-mail, Candidate’s Attorney Frank Avila requested an extension. Hearing Officer granted one extra day for Candidate to file her motion, no later than Wednesday, December 12, 2018 at 5:00 p.m. A copy of the e-mail was sent to Objector’s Counsel, Michael Kasper. Objector was instructed to file a response before 5:00 p.m. on December 13, 2018. Candidate was given leave to file a reply by 5:00 p.m. the following day, December 14, 2018.

Objectors’ Petition and Candidate’s Rule 5(b) Motion to Strike or Dismiss

5. Objectors’ Petition alleges that Candidate’s Nomination Papers contain: the names of people who are not registered voters or not registered to vote at the address specified, signatures

that are not genuine, the names of persons for whom the addresses stated are not in the City of Chicago, the names of persons for whom the addresses given are either missing entirely or incomplete, and duplicative signatures.

6. On December 12, 2018, Candidate filed her Motion to Strike and Dismiss, contending the Objector “did not even examine the Candidate’s Petitions and know[s] nothing substantively about this objection and thus did not act in good faith.” Candidate alleges the objection was “made by the puppet masters of the incumbent Chicago City Clerk and not by Daniel David Gerhardt Rogers.” Candidate also asserts the requirement of 12,500 signatures for “the obscure office of City Clerk” is unconstitutional as a violation of the First Amendment freedoms of speech and of association, as well as violative of Equal Protection and Due Process. Candidate further asserts that Objector’s address listed on the objection is not the address listed on his current election registration documents. Candidate cites to *Pochie v. Cook County Officers Electoral Bd.*, 682 N.E.2d 258 (Ill. App., 1997), for the proposition that Objector must be registered at the address listed on his objection. Candidate argues that “Daniel David Gerhardt Rogers” is not a registered voter, but “Daniel David Rogers” is. Along with her Motion to Strike and Dismiss, Candidate attached voter registration records of Daniel David Rogers, marked as Candidate’s Group Exhibit 3. Candidate supplies these documents despite arguing that the insertion of “Gerhardt” in the name of the Objector on the petition is confusing and leaves the Candidate unable to discern who the Objector is. Such discovery of Objector’s documents undermines the argument that Candidate was confused as to the Objector’s identity.

7. On December 14, 2018, Objector filed his Response to Candidate’s Motion. Objector states paragraphs 4 through 10 of Candidate’s Motion are allegations “historically resolved by a records examination,” and the Electoral Board does not have the authority to inquire as to how the Objector’s Petition was compiled (citing *Nader v. State Board of Elections*, 345 Ill.App.3d 335, 344 (1st Dist., 2004)). How Objector’s Petition was compiled “is simply not relevant to the issues of whether the Candidates’ nominating papers satisfied the formal requirements in section 10-4.” (*Id.* at 345.) As to the constitutional concerns raised by Candidate, Objector cites to *Goodman v. Ward* for the proposition that “[a]dministrative agencies such as the electoral board have no authority to declare statutes unconstitutional or even to question their validity.” 241 Ill.2d 398, 411 (2011). Lastly, Objector states Objector’s address on Objector’s Petition need not be his registered voting address. *Pochie* case involved a missing objector’s address whereas here the Objector’s address is “fully and accurately set forth in the Objector’s Petition.”

8. On December 15, 2018, Candidate filed her Reply. Candidate relies on *Pochie* for the assertion that Objector must be registered to vote at the address listed on his Objection and avers that whether Objector is a legal voter at another address in the district is irrelevant. Candidate requested the Electoral Board refer Objector to the Cook County State’s Attorney “for a felony perjury prosecution” for signing the Verification of an Objector’s Petition that states he resides at 1229 E. 53rd Street.

December 17, 2018 Evidentiary Hearing

10. The hearing on the Candidate’s Motion to Dismiss Verified Objectors’ Petition commenced, with all briefs having been timely filed. Attorney Avila appeared for Candidate along with Candidate, Michael Kasper appeared for Objector and with Objector. After argument

by Attorney Avila, Objector Daniel David Gerhardt Rogers was sworn in, and testified under oath. Objector credibly established his residency at 1229 E. 53rd Street, Chicago, IL 60615. In addition to his testimony explaining long-term residency on 53rd Street (his mother's house), he tendered current valid driver's license with that address, provided copies of the important mail he receives there, and testified that only junk mail goes to his girlfriend's address on S. Ingleside. See Board Group Exhibits E, F. His testimony, the explanation of his "Gerhardt" name, and the proofs tendered were credible. Objector explained his voter registration address changed on November 5, 2018 to the S. Ingleside address in error and he changed it back to the 53rd Street address once he discovered the error. Additionally, Candidate seeks a city-wide office; Hearing Officer notes both addresses are in the District. Hearing Officer orally recommended that the Motion be denied. A record examination directive was ordered.

Candidate's E-Mail Request for an Additional Evidentiary Hearing

11. On December 20, 2018, Candidate's Attorney, Frank Avila, requested an evidentiary hearing on grounds that the Electoral Board found actual signature cards of the Objector. Candidate supplied voter registration documents of Daniel David Rogers, which were marked as Board Group Exhibit H. The documents did not provide any new information that was not covered at the evidentiary hearing of December 17, 2018. Hearing Officer requested briefs from the parties concerning the new documents and whether an evidentiary hearing is appropriate.

12. On December 21, 2018, Candidate's Attorney, Frank Avila, submitted an e-mail regarding Candidate's request for an additional evidentiary hearing. Candidate cites to *Neely v. Board of Election Com'rs*, 863 N.E. 2d 795 (Ill. App. 2007) for the proposition that when someone changes their voter registration and votes from the new address that such act constitutes "a deliberate assertion of residence." Candidate cites to *Pochie* for the proposition that "for the purposes of being an objector one is not a legal voter if one is not registered to vote at their residence address." Candidate avers an evidentiary hearing is necessary to determine whether there is any evidence of "something done" from November 5, 2018 to December 3, 2018 that signaled Objector's abandonment of residency on S. Ingleside. Candidate, argues that "[t]he standard for the Objector . . . should be the same standard for the registered voter who signs a petition," and Objector's address needs to be the same address listed on his voter registration or the objection should be dismissed and stricken. Candidate cites to *Pochie* for this assertion.

13. On December 22, 2018, Objector submitted his Response. Objector cites *Maksym v. Board of Elec. Comm'rs*, 242 Ill.2d 303, 308 (2011) for the proposition that "once a permanent abode is established, residence continues until abandoned." Objector asserts he established residency on 53rd Street and never intended to abandon that residency. *Neely* does not support Candidate's position because that case concerned an aldermanic election from the 20th Ward where a candidate voted in the 8th Ward during the one-year durational residency required for that office. *Neely v. Board of Elec. Comm'rs*, 371 Ill.App.3d 694, 696 (1st Dist. 2007). Here, there is no dispute that Objector was at all times a legal voter of the City of Chicago, which is the political subdivision where Candidate seeks office. Objector points out that Candidate failed to note *Neely* suggested the outcome of the case would be different if the candidate presented "any evidence that the vote [in the 8th Ward] resulted from inadvertent error or misunderstanding."

Id. at 700. Here, Objector testified that he never intended to change his registration address from his 53rd Street address and that he “corrected the error” on December 5, 2018.

14. Independent of the parties’ arguments, Hearing Officer notes that Candidate’s reliance on *Pochie* is misplaced. *Pochie* states the exact opposite of what Candidate asserts. Candidate asserts *Pochie* held that the Objector needs “to be registered to vote at the address listed on his petition.” However, *Pochie* stated very clearly that “whether or not an objector has standing is determined according to the face of the petition and not according to what can be found in the records of the election commission.” 289 Ill.App.3d at 588.

January 2, 2019 Status Hearing

15. On January 2, 2019, at 2:00 p.m. status hearing commenced. Candidate and her Attorney, Frank Avila, were present. The Objector appeared through his Attorney, Michael Kasper. Parties noted that a record examination began that morning. Mr. Avila argued in favor of a ruling on his “dispositive motion,” stating that a record examination is improper and that Candidate deserves a full hearing on the issue of Objector’s residency. Mr. Kasper responded that the hearing officer’s decisions are not “dispositive,” but are recommendations and that the parties were there for a status hearing on the record examination. A status hearing was set for January 9, 2019 at 1:00 p.m.

Candidate’s E-Mail Request for Leave to File a Motion to Reconsider

16. On January 4, 2019, Candidate’s Attorney Frank Avila sent Hearing Officer an e-mail requesting leave to file a Motion to Reconsider and/or a Rule 20 request for review by the Electoral Board. Candidate proffers two recent cases that are, according to the Candidate, “on point.” Candidate was given leave to file her Motion to Reconsider by noon on January 5, 2019. Objector was given leave to file a response within 24 hours of receipt of Candidate’s Motion.

17. On January 5, 2019, Candidate filed her Motion to Reconsider, asserting that “recent Electoral Board precedent” affirms that objectors must be registered voters at the address stated on their petition. Candidate cites to *Harris v. Taliaferro*, 19-EB-ALD-069, and *Branch v. Taliaferro*, 19-EB-ALD-070, two cases that were dismissed because it was determined that the objectors did not reside at the address listed on their petitions. Because the evidence brought forth in those cases proved lack of residency via voter registration documents, Candidate asserts that a precedent is set by these two cases that merely showing an objector is not a registered voter at the address listed on his or her petition is “all [the Candidate] needed to do to have the present Objection dismissed with prejudice.”

18. On January 6, 2019, Objector filed his Response, asserting that Candidate’s Motion merely restates arguments already made and rejected, and the new authority does not support Candidate’s position. In the new cases Candidate cites, the objectors did not offer “any evidence that the address listed on the Objector’s Petition was, in fact, their residence address.” The matter before the board is different in that the Objector provided proof of residency. Candidate has offered no evidence other than voter registration documents to support her claim that Objector does not reside at the address listed on his petition.

19. Independent of the parties' submissions, Hearing Officer notes that the two cases that Candidate cites as binding precedent both clearly explain dismissal was appropriate in each because "Objector is not a legal resident *or* legal voter at the address designated in the Objector's Petition." *Harris v. Taliaferro*, 19-EB-ALD-069, ¶ 7 (emphasis added); *Branch v. Taliaferro*, 19-EB-ALD-070, ¶ 7 (emphasis added). The plain meaning of these two Electoral Board decisions suggests that an objector need not be a registered voter at their place of residency—the Objector may either be a legal resident at the address or a legal voter there.

January 9, 2019 Status Hearing

20. Candidate, her Attorney, Frank Avila and the Objector with his Attorney, Michael Kasper appeared. Hearing Officer received and summarized the Preliminary Petition Summary Report showing Candidate currently has 11,821 valid signatures and has 679 signatures fewer than the 12,500 signatures required. Parties noted the report was not final and was subject to review by a handwriting expert. Candidate's Attorney Avila sought leave to make oral argument on Candidate's Motion to Reconsider, arguing that the two new cases *Harris v. Taliaferro*, 19-EB-ALD-069 and *Branch v. Taliaferro*, 19-EB-ALD-070 are binding precedent the Hearing Officer must follow. According to Candidate, these cases were dismissed because the objectors were not registered at the addresses listed on their petitions, and both were dismissed on the precedent set by *Pochie*. Candidate reiterated the arguments from her Motion to Dismiss that Objector is registered to vote as Daniel David Rodgers and not Daniel David Gerhardt Rodgers, and that he was not registered at the address listed on his Petition on the date he filed it. In rebuttal, Objector's Attorney Kasper quoted the *Taliaferro* cases directly, stating, "[t]he Objector's Petition should be stricken in whole because he does not reside at the address stated in his petition." A status hearing was set for January 17, 2019 at 2:00 p.m.


The Final Petition Summary Report

21. On January 11, 2019, Hearing Officer received the Final Petition Summary Report. Of the 8,574 total objections, 6,576 signatures were sustained. Candidate has 854 fewer signatures than the required 12,500.

22. Candidate did not submit a Rule 8 Motion after the Final Petition Summary Report was released. On January 14, 2019, Candidate's Attorney Frank Avila sent an e-mail to Hearing Officer stating that Candidate would stand on the results and await a written recommendation.

For all the foregoing reasons, the Hearing Officer recommends that the name of Patricia Horton not appear on the ballot as a candidate for the Office of City Clerk of the City of Chicago, Cook County, Illinois.

Date: January 14, 2019


John R. Ashenden, Hearing Officer
No. 19-EB-MUN-020