

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

Objections of: RICHARD BARNETT)	
)	
)	
To the Nomination)	No. 08-EB-RGA-08
Papers of: ANTONNE 'TONY' COX)	
)	(rel. case RGA-09)
)	
Candidate for the office of)	
Representative in the General Assembly,)	
9th District, State of Illinois, Green Party)	

FINDINGS AND DECISION

The duly constituted Electoral Board, consisting of Chicago Board of Election 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 RICHARD BARNETT ("Objector") to the nomination papers ("Nomination Papers") of ANTONNE 'TONY' COX, candidate for nomination of the Green Party to the office of Representative in the General Assembly for the 9th District, State of Illinois ("Candidate"), having convened on November 20, 2007, at 10:00 a.m., at 69 W. Washington Street, 8th Floor Conference Room, 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 November 20, 2007 and was continued from time to time.

5. The Electoral Board assigned this matter to Hearing Examiner Mario Correa for further hearings and proceedings.

6. The Objector and the Candidate were directed by the Electoral Board to appear before the Hearing Examiner for a hearing on the date and at the time designated on the Electoral Board's docket. The following persons, among others, were present at such hearing: the Objector, RICHARD BARNETT, appearing by counsel, Michael J. Kasper; and the Candidate, ANTONNE 'TONY' COX, appearing pro se.

7. The Hearing Examiner ordered that an examination of the 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 Examiner directed all parties to appear and be present, either personally and/or by their authorized representatives during the records examination.

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

10. The Objector 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 results of the registration records examination is contained in the Electoral Board's file in this case and is available for inspection upon request of a party.

12. The Hearing Examiner has tendered to the Electoral Board his report and recommended decision. The Hearing Examiner recommends that the Objections to the Candidate's Nomination Papers be sustained and that the Nomination Papers be found invalid.

13. The Electoral Board, having reviewed the record of proceedings in this matter and having considered the report and recommendations of the Hearing Examiner, as well as all argument and evidence submitted by the parties, hereby adopts the Hearing Examiner's recommended findings and conclusions of law. A copy of the Hearing Examiner's Report and Recommended Decision is attached hereto and is incorporated herein as part of the decision of the Electoral Board.

14. The Electoral Board finds that:

A. The minimum number of valid signatures required by law for placement on the ballot for the office in question is 500;

B. The number of purportedly valid signatures appearing on the nominating petition filed by the Candidate total 694;

C. The number of signatures deemed invalid because of objections sustained total 510;

D. The remaining number of signatures deemed valid total 184.

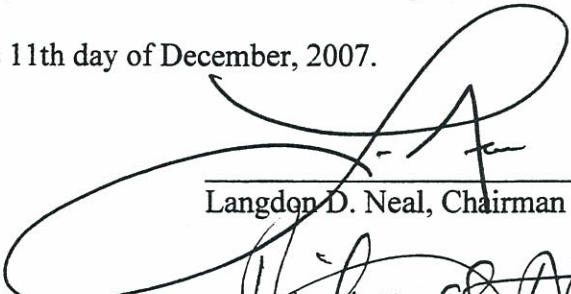
15. The Electoral Board finds that the number of valid signatures appearing on the Candidate's nominating petition following completion of the records examination is fewer than the minimum number of valid signatures required by law to be placed upon the official ballot as a candidate for nomination of the Green Party to the office of Representative in the General Assembly for the 9th District, State of Illinois.

16. For the reasons stated above, the Electoral Board sustains the Objections to the Candidate's Nomination Papers and finds that the Candidate's Nomination Papers are invalid.

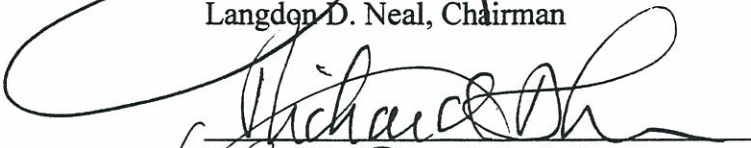
17. The Electoral Board finds that there were additional objections filed against the Candidate's Nomination Papers in case number 08-EB-RGA-09 and that the decision in that case was that the Candidate's Nomination Papers are invalid.

IT IS THEREFORE ORDERED that the Objections of RICHARD BARNETT to the Nomination Papers of ANTONNE 'TONY' COX, candidate for nomination of the Green Party to the office of Representative in the General Assembly for the 9th Representative District, State of Illinois, are hereby SUSTAINED and said Nomination Papers are hereby declared INVALID and the name of ANTONNE 'TONY' COX, candidate for nomination of the Green Party to the office of Representative in the General Assembly for the 9th District, State of Illinois, SHALL NOT be printed on the official ballot for the General Primary Election to be held on February 5, 2008.

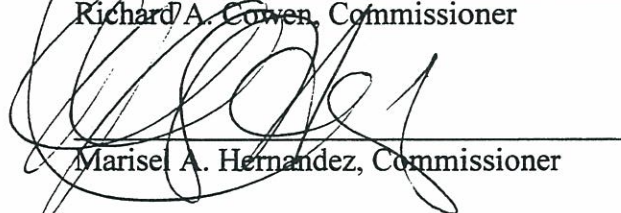
Dated: Chicago, Illinois, this 11th day of December, 2007.



Langdon D. Neal, Chairman



Richard A. Cowen, Commissioner



Marisel A. 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 10 days after the decision of the Electoral Board.

BEFORE THE BOARD OF ELECTION COMMISSIONERS
FOR THE CITY OF CHICAGO

In Matter of)
)
RICHARD BARNETT,)
Candidate,)
)
and) No. 08-EB-RGA-08
)
ANTONNE "TONY" COX)
Objector.)

2007 DEC - 7 P 3:21

**HEARING EXAMINER'S REPORT
AND RECOMMENDED DECISION**

I, hearing examiner, Mario Correa ("Hearing Examiner") hereby state and recommend that the Board of Election enters a decision to remove the candidate ANTONNE "TONY" COX (the "Candidate") from the ballot for the following reasons and based on the following evidence:

1. On November 20, 2007, the Hearing Examiner opened hearings in the matter. The following persons, among others, were present at such hearing: RICHARD BARNETT (the "Objector"), appearing through counsel; and the Candidate ANTONNE "TONY" COX, pro se. During said hearing the Candidate filed the following three motions: (a) Motion to Strike and Dismiss the Objector's Petition ("Motion to Strike"); (b) Motion for Discovery; (c) Motion for Discovery Deposition; and (d) Motion for Public Records. A record examination directive was issued.

2. A hearing was held on November 28, 2007, on the Candidate's Motion to Strike. Said motion raised the following three issues: (a) that the Objector failed to state the "interest of the objector" in compliance with Election Code, 10 ILCS 5/10-8, (b) that the Objector failed to state the "nature of the objections" as also required under Election

Code §10-8, and (c) the Objector used old address information to prepare their Objector's Petition.

a. The objections are based on a passage in Election Code §10-8 wherein it provides that "The objector's petition... shall state the full nature of the objections... and shall state the interest of the objector..." As the court in Wollan v. Jacoby, 274 Ill.App.3d 388, 392 (1st Dist, 1995), stated Election Code §10-8 does not include a penalty provision for the objector's noncompliance with the above stated provision. "Although objectors are obligated to comply with all provisions of the Electoral Code, it does not follow that every noncompliance will invalidate an objection." Mortan v. State Electoral Board, 311 Ill.App. 982, 985 (4th Dist, 2000) *citing* Pullen v. Mulligan, 138 Ill.3d 21 (1990). "Where the effect of failure to comply with a particular statutory requirement is not specified, however, courts must consider the nature and object of the statutory provision and the consequences which would result from contruing it one way or another." *Id.*

b. The first issue turns on whether the Objector's Petition adequately states the interest of the Objector. Here, paragraph number two of the Objector's Petition reads, "The Objector's interest in filing this Petition is that of a voter desirous that the laws governing the filing of nomination papers for the office... are properly complied with and that only qualified candidates appear on the ballot for said office." An objector's desire to see that the election laws are properly complied with has been held to be a sufficient statement of interest. Wollan v. Jacoby, 274 Ill.App.3d 388 (1st Dist, 1995). Therefore, the Objector's statement of interest is found to be in compliance with the Election Code.

c. The second issue raised was that the Objector allegedly failed to state the nature of the objections. The Candidate voluntarily withdrew this objection.

d. The third issue raised was that “the objector relies upon a signer not registered at the address shown, without consideration of 10 ILCS 5/5-2.” The Hearing Examiner did not understand what issue the Candidate was raising. The Candidate explained that the Chicago Election Board’s records are not sufficiently current to be the basis of an Objection Petition. He reasoned that Election Code, 10 ILCS 5/5-2, only requires that registered voters live in a district for 30 days prior to registering. Therefore, if a signer recently moved into the area, the Board’s records would not reflect that fact. The Hearing Officer ruled against the Candidate on this issue because it does not address the legal sufficiency of the Objector Petition. The Candidate concedes that a signer not residing in his district is a valid objection. The issue of the methodology used by an Objector is irrelevant so long as the Objector’s petition is in good faith. Here, the Candidate did not raise a “bad faith” argument generally. Rather, the Candidate’s objection focused on a particular methodology namely relying on outdated Board records. This is insufficient to rise to the level of “bad faith.”

e. The Candidate’s Motion for Discovery, Motion for Public Records and Motion for Discovery Deposition were all denied, because as the Candidate explained both those motions centered on the above issue, i.e., that the Objector used old records to prepare the Objector’s Petition. Since the Hearing Officer had already ruled on this issue, the underlying evidence that would be produced was

moot. Put another way, even if the Candidate were able to prove that the records used by the Objector were outdated, it does not invalidate their objections. However, the Hearing Officer did give the Candidate an opportunity to make a record by allowing him to question objector Geneva Roberts. Ms. Roberts was sworn in and the Candidate asked her about the methodology she used to prepare the Petition. Ms. Roberts explained that she used the Board's computer to review the voter registration records of the signers listed in his Petition. Thus, Ms. Roberts sworn testimony established that she used a reasonable method.

f. The Record Examination had not yet been scheduled. A hearing was scheduled for December 5, 2007 at 2pm. The Candidate was instructed that due to time constraints, if he did not have sufficient signatures due to objections being sustained, that he would need to be prepared to rehabilitate those signatures.

3. On December 1, 2007, the Record Examination took place.

4. On December 5, 2007, a hearing was held to give the Candidate an opportunity to rehabilitate signatures. The Candidate failed to present any evidence rehabilitating any of the signatures on the Petition. The Record Examination was read into the record indicating that there were 694 signatures on the petition, 510 objections sustained, leaving 184 valid signatures. The minimum signature requirement was 500.

a. After the signatures were read into the record, the Candidate handed the Hearing Examiner and Objector's counsel a copy of document entitled Motion to Recalculate Signature Requirement. The Objector's counsel wanted to proceed to argue on the merits of the motion and the parties agreed to argue the motion. Thus, while Board Rule 10 limits issues to be raised in the objector's petition and a

motion to strike, the fact that Objector's counsel wanted to proceed to argue the merits of the motion resulted in the waiving of an objection based on Board Rule 10.

b. The Hearing Officer found the Candidate's Motion to Recalculate Signature Requirements ("Motion to Recalculate") confusing. It appears that the Candidate took a motion originally made for Scott Summers, a Green Party candidate for the U.S. House of Representatives. The Hearing Examiner makes this assumption based on the following items found on the face of the Candidate's Motion to Recalculate: (i) the caption reads "State Board of Elections" instead of Chicago Board of Elections, (ii) in paragraph 1 the name Summers is stricken and with the name Cox filled out by hand above the name, and (iii) paragraph 7 of the motion references the "16th congressional district" which is the same district the Green Party has Scott Summers running for in the February 2008, and (iv) both Scott Summers and the Candidate happen are from the Green Party. In his Motion to Recalculate, the Candidate cites Election Code §10-7 but is quoting passages from Election Code §7-10. Election Code §7-10 applies to congressional offices, such as the one Scott Summers is seeking, but is not applicable to State Representative, the position the Candidate is seeking.


c. Only paragraph 8 of the Candidate's Motion to Recalculate seems to be applicable to the Candidate. That paragraphs seeks the Board find the minimum signature requirements under Election Code §8-8 unconstitutional. The Candidate made the same argument during the hearing. The Board should deny the Candidate's Motion to Recalculate because the Board does not have the authority

to find statutes unconstitutional. See Wiseman v. Elward, 5 Ill.App.3d 249 (1st Dist. 1972); Delgado v. Board of Election Commissioners of City of Chicago, 224 Ill.2d 481 (2007) *where the scope of the jurisdiction of electoral boards has been interpreted to bar their consideration of constitutional challenges*. The proper procedure for an electoral board faced with a constitutional claim is to take the statute or regulation in question before it as constitutional and adjudicate the case accordingly. The parties can contest the constitutional issue in court on judicial review: Phelan v. County Officers Electoral Board, 240 Ill.App.3d 368 (1st Dist. 1992), *rev'd on other grounds sub nom. Bonaguro v. County Officers Electoral Board*, 158 Ill.2d 391 (1994).

d. With the Motion to Recalculate denied, the Hearing Examiner found the Record Examination, including its minimum signature requirements, valid. The Hearing Officer informed the parties that he would recommend the Candidate's removal from the ballot.

As a result of the foregoing, the Examiner recommends that the Board remove ANTONNE "TONY" COX from the ballot.

Respectfully Submitted,



Mario Correa, Esq.
Hearing Examiner