

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

Objections of: Juan Elias)
)
)
To the Nomination) No.: 11-EB-ALD-024
Papers of: Deborah Lopez)
)
Candidate for the office of)
Alderman of the 1st 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 Juan Elias (“Objector”) to the nomination papers (“Nomination Papers”) of Deborah Lopez, candidate for the office of Alderman of the 1st Ward of the City of Chicago (“Candidate”) to be elected at the Municipal General Election to be held on February 22, 2011, having convened on December 6, 2010, 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 6, 2010 and was continued from time to time.

5. The Electoral Board assigned this matter to Hearing Officer Christopher Agrella 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, Juan Elias, by attorney, Richard K. Means; the Candidate, Deborah Lopez, by attorney, Michael Kreloff.

7. The Hearing Officer has tendered to the Electoral Board his report and recommended decision. The Hearing Officer recommends that the Objections to the Candidate's Nomination Papers be overruled and that the Nomination Papers be declared valid.

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

9. For the reasons stated above, the Electoral Board 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 Juan Elias to the Nomination Papers of Deborah Lopez, candidate for election to the office of Alderman of the 1st Ward of the City of Chicago, are hereby OVERRULED and said Nomination Papers are hereby declared VALID and the name of Deborah Lopez, candidate for election to the office of Alderman of the 1st Ward of the City of Chicago, SHALL be printed on the official ballot for the Municipal General Election to be held on February 22, 2011.

Dated: Chicago, Illinois, on December 29, 2010.

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 5 days after service of the decision of the Electoral Board.

BEFORE THE DULY CONSTITUTED ELECTORAL BOARD FOR THE HEARING AND PASSING UPON OF OBJECTIONS TO THE NOMINATION PETITIONS OF CANDIDATES FOR THE FEBRUARY 22, 2011, MUNICIPAL GENERAL ELECTION FOR MAYOR, CLERK, TREASURER AND ALDERMAN IN THE CITY OF CHICAGO

JUAN ELIAS,

Objector

v.

DEBORAH LOPEZ,

Candidate.

No. 11 EB-ALD-024

HEARING EXAMINER'S REPORT AND RECOMMENDED DECISION

This matter first came before the hearing examiner on December 6, 2010, set on the call for 11:00 a.m., at which time it came on for hearing, with both objector and candidate appearing through counsel, each filing their appropriate appearances.

The file contained the original petition papers of the candidate, seeking to be placed on the ballot for Alderman of the 1st Ward, and the objections of the objector, which were marked as Group Exhibit A and Group Exhibit B, respectively. The proof of service of notice of the call was marked as Group Exhibit C, and the appearance of the parties marked as Group Exhibit D. Group Exhibits A through D were accepted into evidence without objection.

The objection raised a line by line recapitulation sheet objection, incorporating an attached recapitulation exhibit.

The minimum signature requirement for this office is 93 valid signatures. A count indicated that the candidate had 67 signatures not objected to by the objector.

At that point the hearing examiner inquired of the parties whether either side

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intended to file any preliminary motions. Informed by candidate's counsel that the candidate intended to do so, and that it would be determinative, the parties were informed of the briefing schedule and the matter set over until December 13, 2010, at 9:00 a.m. for hearing. The hearing examiner postponed a request for a record examination based upon a discussion relative to the issues in candidate's anticipated motion to strike.

The candidate duly filed a motion to strike. The objector filed a timely written response, as well as a document captioned "Bill of Particulars". The candidate thereafter filed a timely reply.

On December 13, 2010, at 9:30 a.m. the matter came on for hearing. The candidate moved to strike paragraphs 5 and 6 of the objector's petition.

Paragraph 5 of the objector's petition asserts that certain line by line signers of candidate's petition must be struck in that the signers had previously signed for another candidate earlier in the nomination process.

Candidate sought to strike the objections contained and referenced in objector's paragraph 5 in that they failed to properly apprise the candidate of the identity of the other, earlier candidates, there being three other candidates in this race, or the sheet or line number on these other candidate's sheets where the prior signature could be located.

Candidate in the reply also objected to the "Bill of Particulars" filed by objector as being an improper effort to amend or supplement the objection.

Objector asserted in response that paragraph 5 was sufficiently specific, and that the "Bill of Particulars" supplied subsequently was merely in aid or clarification of what has been filed.

Paragraph 6 of the objector's petition asserts that sheets circulated by circulators that circulated for more than one candidate in this election for 1st Ward Alderman must be struck.

The candidate's motion attacked paragraph 6 of the objector's petition, asserting that Illinois allows dual circulation by a circulator for two or more independent candidates for the same office, citing *McGuire v. Nogaj*, 146 Ill.App.3d 280 (1st Dist. 1986) and *Brown v. Reynolds*, 95 EB-ALD 104.

The objector, in response to this argument, did not specifically controvert these holdings, essentially asserted that these cases and the statutes cited therein were violative of equal protection, in that the statutes treated independent candidates differently than established party candidates or new party candidates.

The hearing examiner recommends the Board grants candidate's motion to strike paragraphs 5 and 6 of objector's petition, as well as grant candidate's motion to strike and hold for naught objector's "Bill of Particulars".

An objection must adequately and sufficiently apprise the candidate of the specificity of each objection, thus making evaluation possible. *Pochie v. Cook County Officers Electoral Board*, 289 Ill.App.3d 585 (1st Dist. 1997); *Elysee v. Patterson*, 04 EB RGA 14 (Jan. 20, 2004)

A review of the objection, paragraph 5, evidences a lack of specificity such as to prevent this candidate's ability to evaluate the objection and to prepare a defense. There is no reference in the paragraph or corresponding recap sheet as to which of three other candidates the prior signing relates to, nor the page or line number of the prior signing,

rendering it extremely difficult, if not impossible, for the candidate to ascertain the nature of the objection.

The Election Code does not permit a party to file amendments to their objector's petitions. *Delay v. Board of Election Commissioners*, 312 Ill.App.3d 206 (1st Dist. 2000); *Reyes v. Bloomingdale Township Electoral Board*, 265 Ill.App.3d 69 (2nd Dist. 1994) While objector captioned his subsequent filing as a "Bill of Particulars", it is the opinion and recommendation of the hearing examiner that it was simply an impermissible effort to correct the deficiencies in paragraph 5, and that it be struck and held for naught as an improper effort to amend or supplement the objection.

The striking of paragraph 5 of the objection, standing alone, returns 87 valid signatures to the 67 unobjected to signatures already possessed by the candidate, for a total of 154 signatures, a number in excess of the 93 valid signatures required of a candidate for Alderman of the 1st Ward.

On this issue alone, the striking of objection paragraph 5, the candidate's nomination papers should be deemed sufficient and valid and the candidate's name placed on the ballot.

However, the hearing examiner also found that paragraph 6 of the objection should be struck, in that the objection, asserting that a circulator cannot circulate for more than one independent candidate, has no basis in law, and that the cases cited above control the instant matter and require a finding in favor of the candidate , in that there is no prohibition in the Electoral Code prohibiting a circulator from circulating for more than one independent candidate.

The equal protection argument raised by the objector is one that cannot be considered

by this board, in that an electoral board, as an administrative agency created under the Election Code, is limited in its role to the sole issue of whether a challenged petition complies with the relevant statutes of the Electoral Code, and can only exercise those powers conferred upon it by the legislature. A statute is presumed constitutional, and an electoral board does not have the authority to invalidate a statute on constitutional grounds, or even to consider the question of its validity. *Texaco-Cities Service Pipeline Company v. McGaw*, 182 Ill.2d 262 (1998); *Kozel v. State Board of Elections*, 126 Ill.2d 58 (1988); *Phelan v. County Officers Electoral Board*, 240 Ill.App3.d 368 (1st Dist. 1992).

As such, objector's equal protection argument on this issue is outside the jurisdiction of an electoral board to even consider.

The striking of paragraph 6 of the objection, standing alone, returns 42 valid signatures to the 67 unobjected to signatures already possessed by the candidate, for a total of 109 signatures, a number in excess of the 93 valid signatures required of a candidate for Alderman of the 1st Ward.

In combination, granting the candidate's motion to strike and striking both paragraphs 5 and 6 of the objection returns 149 valid signatures to the 67 unobjected to signatures already possessed by the candidate, for a total of 213, a number in excess of the 93 valid signatures required of a candidate for Alderman of the 1st Ward.

This hearing examiner recommends to the Board that it adopt these amended findings, decisions and recommendations of the hearing examiner in this report and recommended decision, that it grant the candidate's motion to strike paragraphs 5 and 6 of the objector's objection, that this Board overrule the objectors' petition and declare the

candidate's nomination papers valid and sufficient in law and fact in that the nomination papers contain the minimum number of validly collected signatures of qualified and duly registered voters of the 1st Ward of the City of Chicago as required by law (93) for said office, and that this Board further declare that the name of the candidate, Deborah Lopez, appear and be printed on the ballot for election to the office of 1st Ward Alderman of the City of Chicago, to be voted upon at the February 22, 2011, Municipal General Election for Mayor, Clerk, Treasurer and Alderman in the City of Chicago.

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Respectfully Submitted,

Christopher J. Agrella – Hearing Examiner