

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

Objections of: Erin Taylor)
)
)
To the Nomination) No.: 11-EB-ALD-027
Papers of: Diane M. Phillips)
)
Candidate for the office of)
Alderman of the 19th 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 Erin Taylor (“Objector”) to the nomination papers (“Nomination Papers”) of Diane M. Phillips, candidate for the office of Alderman of the 19th Ward in 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 Terence E. Flynn 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, Erin Taylor, by attorneys Adam W. Lasker and Lauren M. Davalle; and the Candidate, Diane M. Phillips, 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 her duly authorized representative was present during the examination of the registration records.

10. The Objector and/or her 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 429;
 - B. The number of purportedly valid signatures appearing on the nominating petition filed by the Candidate total 647;
 - C. The number of signatures deemed invalid because of objections sustained as a result of the records examination total 324;
 - D. The remaining number of signatures deemed valid as a result of the records examination total 323.

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 19th Ward of the City of Chicago.

14. The Candidate filed a motion seeking an evidentiary hearing under Rule 8 of the Electoral Board's Rules of Procedure, but such motion did not satisfy the requirements of Rule 8 and said motion was stricken by the Hearing Officer.

15. 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 323 valid signatures, which is less than the minimum number of valid signatures required by law to be placed upon the official ballot as a

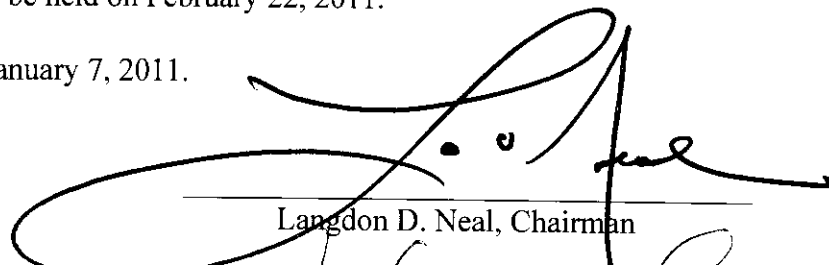
candidate for election to the office of Alderman of the 19th Ward of the City of Chicago, and that the Candidate's Nomination Papers should be found invalid.

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. A copy of the Hearing Officer's report and recommendations is attached hereto and incorporated herein as part of the Electoral Board's decision.

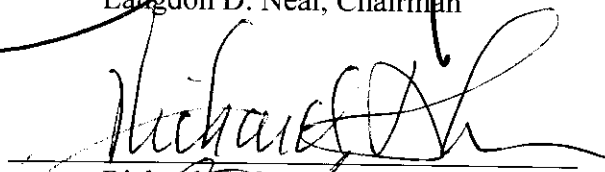
17. For the reasons stated above, the Electoral Board finds that the Candidate has an insufficient number of valid signatures on her nominating petitions and that the Nomination Papers of Diane M. Phillips are, therefore, invalid.

IT IS THEREFORE ORDERED that the Objections of Erin Taylor to the Nomination Papers of Diane M. Phillips, candidate for election to the office of Alderman of the 19th Ward of the City of Chicago are hereby SUSTAINED and said Nomination Papers are hereby declared INVALID and the name of Diane M. Phillips, candidate for election to the office of Alderman of the 19th Ward of the City of Chicago, SHALL NOT be printed on the official ballot for the Municipal General Election to be held on February 22, 2011.

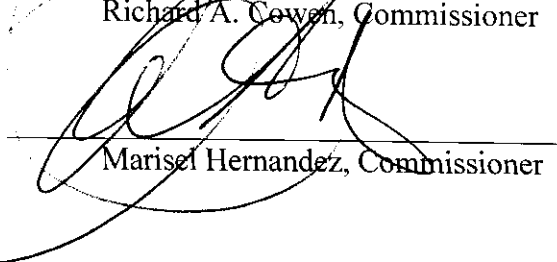
Dated: Chicago, Illinois, on January 7, 2011.



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 DULY CONSTITUTED ELECTORAL BOARD FOR THE
HEARING AND PASSING UPON OF OBJECTIONS TO NOMINATION
PAPERS OF CANDIDATES FOR ELECTION TO THE OFFICE OF
ALDERMAN OF THE 19TH WARD, CITY OF CHICAGO TO BE VOTED UPON
AT THE FEBRUARY 22, 2011 MUNICIPAL GENERAL ELECTION**

Erin Taylor, Petitioner – Objector)	
)	
v.)	11-EB- ALD- 027
)	
Diane M. Phillips, Respondent – Candidate)	minimum signature requirement: 429 valid signatures after Rule 6: 323
)	
)	

**Report and Recommendation of Hearing Examiner
Terence E. Flynn**

BOARD OF ELECTORAL
 PETITIONS MANAGEMENT
 2011 FEB 22 11 19 AM

1. This case was initially called for hearing on December 6, 2010. At that time the candidate appeared **pro se** and the objector by Attorney Devalle of Odelson’s office.

2. At that time, the candidate made an objection to being rebuffed and refused when requesting petition signatures, and that she believed there was an organized effort to deny her access to the ballot on the basis of her race. This Hearing Examiner stated that while such an attempt as described may be in other agencies’ jurisdictions, such a complaint was not in his jurisdiction. The Hearing Examiner stated that the question before him was to evaluate challenges to signatures the candidate actually obtained and not to test reasons why she did not obtain other signatures. (Transcript of 12/6/10, P. 19, L.1-8)

Further, at that initial hearing, the Hearing Examiner **sua sponte** struck paragraphs 10 through 15 of the Objector’s petition (regarding circulators and notaries) because there was no specification in the appendix-recapitulation, or anywhere else, of any electoral rule violation or other specific allegation by sheet and line number. That left, in the Hearing Examiner’s view, a traditional signature

challenge and thus a Rule 6 records examination was ordered and the appropriate directive was executed. The candidate requested and was granted leave to file a motion to strike under the briefing schedule in the rules and a new date was set for further hearing.

3. At the second hearing, on December 10, 2010, the candidate appeared and attorney Adam Lasker appeared for the objector. The Hearing Examiner had reviewed the candidate's motion to strike and the objector's written response. Argument was heard from both sides. The motion was denied, although the previous striking of paragraphs 10-15 was re-affirmed. The Rule 6 examination had not yet commenced; thus the matter was continued to December 16, for further status on the records examination. The Hearing Examiner cautioned both parties to familiarize themselves with the requirements of Rule 8. (Tr.,12/10/10, P.26,L.7-15)

4. At the third hearing, on December 16, 2010, the Rule 6 examination had commenced but not concluded. The Hearing Examiner again cautioned both sides, at length, regarding the requirements of Rule 8 for preservation of challenges on rehabilitation and the evidentiary methods that could be utilized. The matter was continued to December 20, 2010 at 1:00 p.m.

5. In the interim, the results of the Rule 6 records examination were received. They showed the following: total signatures submitted by candidate, 647; total objections, 425; total sustained, 324; total overruled, 101; total valid signatures at that time, 323. This ward has a minimum signature requirement of 429, so at the conclusion of the Rule 6 examination the candidate was 106 signatures below the required minimum. The candidate preserved 293 appeals of Rule 6 determinations and the objector preserved 115. The Rule 6 exam concluded on December 17th and thus any proper Rule 8 motion had to be filed by 5:00 p.m. on Saturday, December 18th.

6. At the December 20, 2010 hearing, the central issue concerned the propriety of the Candidate's purported Rule 8 motion.

A hard copy of the “Rule VIII” motion was filed on December 19th, outside the required period for filing. However, the candidate had electronically filed on December 18th at both 5:10 p.m. and 6:30 p.m. and the objector’s attorney agreed that he had received them as of December 18th. Thus the filing was in substantial compliance with the time-limits and the candidate’s “Rule VIII” motion was deemed timely filed.

A more troublesome issue concerned the contents of the Candidate’s Rule 8 submission (There may be some confusion in the file: for unexplained reasons, the objector’s Rule 8 motion was erroneously titled “Candidate’s”. However the Candidate’s Rule 8 submission uses Roman numerals and is entitled: “Motion Before the Board of Election Commissioners of the City of Chicago/Rule VIII Evidentiary Hearing”.) At no place in the Candidate’s Rule 8 submission does she specify by sheet and line number any of the signatures she desired to be rehabilitated. She actually quotes the entirety of Rule 8, yet failed to comply with its mandatory provisions.

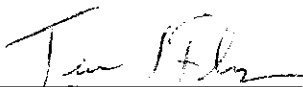
Rule 8, by its very terms, states that a proper motion “must” contain the identification and specification by sheet and line number of any signature (Rule 8 (d) (i)). Further “a party shall...be limited to those signatures identified by petition sheet and line number” and “shall not be permitted to present evidence” in the absence of such specification and identification. (Rule 8 (d) (ii) (2)) The quoted language, clearly mandatory in character -- “must”, “shall”, “shall not” – does not suggest that the Hearing Examiner has any discretion in the complete absence of the required elements of a proper Rule 8 motion. Of course, the purpose served is to place the opposing party on notice of the specifics of a challenge – an essential aspect of due process – just as the objector must specify in the original verified objection.

7. The candidate was cautioned at length at two different hearings regarding the necessity of compliance with Rule 8 and with specificity just what those requirements are. The candidate agreed at the December 20th hearing that she had been cautioned and was well aware of Rule 8’s requirements. Given the total absence of compliance with the identification requirements – by sheet and line number – in the candidate’s

Rule 8 submission, that motion is stricken. Therefore, the Rule 6 results remain and the candidate is 106 signatures below the required minimum.

Therefore, it is the recommendation of this Hearing Examiner that the name Diane M. Phillips not appear on the ballot for Alderman of the 19th Ward in the February 22, 2011 election.

Dated: December 22, 2010


Terence E. Flynn