

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

Objections of: Gary Crossman)
)
)
To the Nomination) No.: 12-EB-SS-07
Papers of: Raul Montes, Jr.)
)
Candidate for the nomination of the)
Democratic Party for the office of)
State Senator of the 12th Legislative District,)
State of Illinois)

FINDINGS AND DECISION

The duly constituted Electoral Board, consisting of Board of Election Commissioners for 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 Gary Crossman (“Objector”) to the nomination papers (“Nomination Papers”) of Raul Montes, Jr., candidate for the nomination of the Democratic Party for the office of State Senator of the 12th Legislative District of the State of Illinois (“Candidate”) at the General Primary Election to be held on March 20, 2012, having convened on December 19, 2011, at 8:30 AM, 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 was held on these Objections commencing on December 19, 2011 and was continued from time to time.

5. The Electoral Board assigned this matter to Hearing Officer June Brown 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 Call. The following persons, among others, were present at such hearing; the Objector, Gary Crossman, by attorney Burton S. Odelson; and the Candidate, Raul Montes, Jr., 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 his 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 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 1,000.
 - B. The number of purportedly valid signatures appearing on the nominating petition filed by the Candidate total 1,750.
 - C. The number of signatures deemed invalid because of objections sustained as a result of the records examination total 572.
 - D. The remaining number of signatures deemed valid as a result of the records examination total 1,178.

13. The Hearing Officer found that the number of valid signatures appearing on the Candidate's nominating petition following completion of the records examination exceeds the minimum number of valid signatures required by law to be placed upon the ballot as a candidate for the nomination of Democratic Party to the office of State Senator for the 12th Legislative District of the State of Illinois.

14. The Hearing Officer also rejected objections alleging that the Candidate's nominating petitions demonstrated a "pattern of fraud." The Hearing Officer found that the Objector failed to prove any fraud or "pattern of fraud" as regards the nominating petitions.

15. The Hearing Officer did, however, find that the Candidate's Statement of Candidacy failed to comply with Section 10-5 of the Election Code inasmuch as there were alterations to such Statement by a Mr. David Donohue after the Candidate had signed the

Statement under oath before a notary public and the Candidate failed to have the Statement signed and notarized again after such alterations had been made.

16. The gist of the Objector's case here is that December 3, 2011, subsequent to the Candidate having signed his Statement of Candidacy before a notary public, Mr. David Donohue, with whom the Candidate had consulted regarding the nomination papers, altered the Statement of Candidacy by (a) inserting the letters "th" after the numerals 12 in two locations, (b) inserting the words "Legislative District" after the numerals 12 in the "District" box, and (c) circling the word "City" once and the words "Nomination" twice in the body of the Statement. After such alterations had been made, the Candidate did not attempt to re-sign or re-notarize his Statement of Candidacy before filing it with his Nomination Papers on December 5.

17. The Hearing Officer concluded that, without these alterations, the Statement of Candidacy failed to comply with Section 10-5 (which is actually not the applicable section of the Code) and did not constitute a legally sufficient Statement of Candidacy (see Report and Recommendation, p. 9). She further found that the failure to have the Statement of Candidacy signed and notarized again after Mr. Donohue had marked up the Statement rendered it null and void. (Report, p. 10).

18. The Electoral Board respectfully disagrees with the Hearing Officer and declines to accept her recommendation on this point.

19. The Electoral Board finds that Statement of Candidacy would have been legally sufficient even without Mr. Donohue's additional language and markup. The Candidate's nominating petition sheets clearly stated at the top of each sheet in the box reserved for "District" that the Candidate was seeking the office of State Senator in the "12th Legislative District State of Illinois." When the Nomination Papers, including both the Statement of Candidacy and the

nominating petition sheets are read as a whole, it is clear what office the Candidate was seeking and there was no confusion as to which office the Candidate was seeking. See, e.g., *DeLay v. Ferral*, 08-EB-WC-03, CBEC, December 7, 2007; *Morgan v. Stowers*, 87-EB-ALD-140, CBEC, January 20, 1987 (candidate's failure to insert the ward number on his statement of candidacy is not fatal since the ward designation was clearly listed on each petition sheet); accord, *Robinson v. Colvin*, 07-EB-ALD-098, CBEC, January 23, 2007 and *Jones v. Dixon*, 07-EB-ALD-146, CBEC, January 16, 2007. The Candidate had inserted the number "12" both in the "District" box at the top of his Statement of Candidacy and in the body of the Statement where it has a blank space for the District number. Even without the letters "th" following the numerals 12 and the words "Legislative District" in the "District" box, there is no evidence that anyone would have been confused about the office and district that was the subject of the Candidate's candidacy.

20. The failure to circle the word "Nomination" on the Statement of Candidacy or the use of the words "Nomination/Election" on such Statement does not invalidate the Candidate's nomination papers. See, e.g., *Arce v. Santos*, 96-EB-WC-34, CBEC, January 29, 1996; *Slywczuk et al. v. Bank*, 04-EB-WC-77, CBEC, January 27, 2004.

21. No candidate has ever had nomination papers invalidated because he or she failed to circle one of the choices for "City/Village/or Unincorporated Area."

22. Thus, had Mr. Donohue not inserted the additional language or markups to the Candidate's Statement of Candidacy, such Statement would still have been in substantial compliance with the requirements of Section 7-10 of the Election Code (10 ILCS 5/7-10).

23. The decision whether to invalidate the Candidate's Nomination Papers comes down, therefore, to whether Mr. Donohue's markup of the Statement of Candidacy subsequent to

it being signed by the Candidate before a notary public and the failure of the Candidate to re-sign or have it notarized again renders it invalid.

24. In *Crumpton v. Williams-Bey*, 99-EB-ALD-023, CBEC, January 19, 1999, this Electoral Board found that the candidate's handwritten addition of "5th Ward" on her statement of candidacy shortly after it was tendered for filing to the Board of Election Commissioners was a violation of Section 10-4 of the Election Code, which provides that once nomination papers are filed, they cannot be withdrawn, amended or added to. The Electoral Board further found, however, that the alteration of the candidate's statement of candidacy was "a *de minimis* and spontaneous act done without forethought and was not an intentional mutilation of election materials." The Electoral Board found that the candidate's statement of candidacy was legally sufficient even without the handwritten addition of "5th Ward," citing *Lewis v. Dunne*, 63 Ill.2d 48, 344 N.E.2d 443 (1976), for the proposition that the failure to properly designate the office the candidate is seeking on the statement of candidacy does not render the nomination papers invalid if it can be determined by looking at the candidate's nominating petitions.

25. Here, the Candidate did not alter his Statement of Candidacy; rather it was done by Mr. Donohue. Mr. Donohue mentioned to the Candidate that there were "a couple of deficiencies" and asked the Candidate if he wanted to correct them. Transcript of Proceedings, December 30, 2011 ("Tr."), p. 28. The Candidate responded, "yes." *Id.* Mr. Donohue then proceeded to mark up the Statement of Candidacy as described above. All this occurred the Saturday before the Monday on which the Candidate filed his Nomination Papers. Tr., p. 28. Thus, it does not appear that the actions here were spontaneous or done without forethought, as in the *Williams-Bey* case.

26. The alterations here could, however, be characterized as *de minimis* inasmuch as nothing that was added to the Candidate's Statement of Candidacy cured what would otherwise be considered a legal deficiency. As discussed above, the absence of the "th" after the numerals 12, or the words "Legislative District" in the "District" box or the failure to circle the words "City" and "Nominate" would not have rendered the Candidate's Statement of Candidacy invalid. Although Mr. Donohue may have characterized these omissions as "deficiencies," they were not; rather, they were mere omissions that would not have rendered the Statement of Candidacy legally deficient.

27. The Electoral Board finds, therefore, that the Candidate's Statement of Candidacy was in substantial compliance with the requirements of Section 7-10 of the Election Code even before Mr. Donohue made his alterations and that the alterations did not affect the legal sufficiency of the document. The Electoral Board further finds that under the facts of this case, the alterations made by Mr. Donohue were of such a *de minimis* nature that it would not have required that the Statement of Candidacy be signed and/or notarized again subsequent to such alterations have been made and the failure to re-sign and re-notarize the document does not render it invalid.

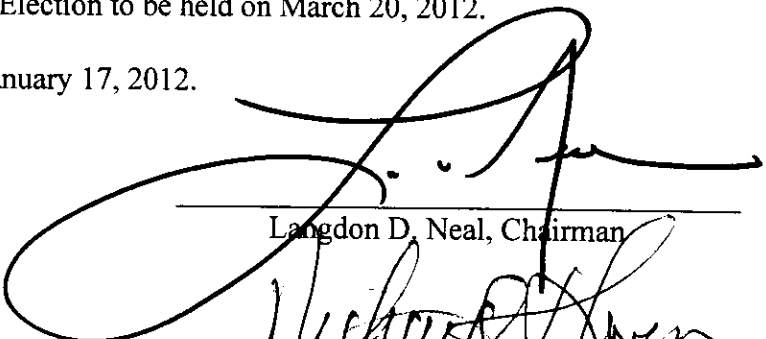
28. The Hearing Officer has tendered to the Electoral Board a report and recommended decision.

29. 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 with the exception of her findings and conclusions of law regarding the Candidate's Statement of Candidacy.

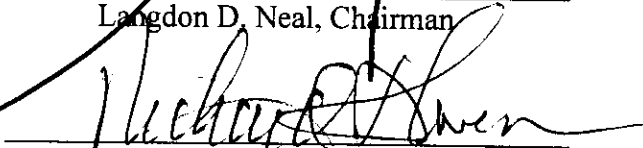
30. For the reasons stated above, the Electoral Board finds that the Candidate has a sufficient number of valid signatures on his nominating petitions, that the Statement of Candidacy is in substantial compliance with Section 7-10 of the Election Code and that the Nomination Papers of Raul Montes, Jr. are, therefore, valid.

IT IS THEREFORE ORDERED that the Objections of Gary Crossman to the Nomination Papers of Raul Montes, Jr., candidate for nomination of the Democratic Party for the office of State Senator for the 12th Legislative District of the City of State of Illinois, are hereby OVERRULED and said Nomination Papers are hereby declared VALID and the name of Raul Montes, Jr., candidate for nomination of the Democratic Party for the office of State Senator for the 12th Legislative District of the City of State of Illinois, SHALL be printed on the official ballot for the General Primary Election to be held on March 20, 2012.

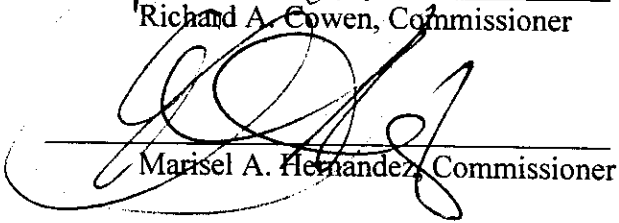
Dated: Chicago, Illinois, on January 17, 2012.



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.