

## **FINDINGS AND DECISION**

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 8, 2014 and was continued from time to time.

5. The Electoral Board assigned this matter to Hearing Officer Edna Turkington 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, CAROL J. AGUILA, by her attorney, Thomas A. Jaconetty; and the Candidate, MARY K. HUNTER, pro se.

7. The Objections alleged that the Candidate's Nomination Papers did not contain the signatures of 473 qualified, registered and legal voters of the 39<sup>th</sup> Ward as required by law.

8. In the City of Chicago, nominating petitions for candidates for Alderman must be signed by the number of legal voters of the ward as will aggregate not less than 4% of the total number of votes cast for Alderman in such ward at the last preceding general election. 65 ILCS 20/21-28(a), as amended by P.A. 98-115, eff. July 29, 2013. For the election following the redistricting of wards petitions for nominations of candidates shall be signed by the number of legal voters of the ward as will aggregate not less than 4% of the total number of votes cast for mayor at the last preceding municipal election divided by the number of wards. Id. At the last preceding municipal election (February 22, 2011), 590,391 votes were cast for Mayor. Four

percent (4%) of 590,391 is 23,615.64, which, divided by the number of wards (50), yields a minimum signature requirement of 472.3128, or 473.

9. Therefore, in the case of a candidate for the office of Alderman in any Ward of the City of Chicago, the candidate's nominating petitions shall contain not less than 473 signatures of legal voters of the Ward.

10. The Candidate contends that the legislature should have used the number of votes cast for Alderman in the 39<sup>th</sup> Ward race and not the mayoral race of February 22, 2011, which have reduced the minimum number of signatures to 204. The Candidate further contends that the law used to determine the minimum signature of 473 is unconstitutional as it created a burden on those seeking access to the ballot and denies those persons the constitutional right to participate in government.

11. An electoral board's scope of inquiry is limited to the sole issue of whether a challenged petition and papers comply with the provisions of The Election Code pertaining thereto. *Phelan v. County Officers Electoral Board*, 240 Ill.App.3d 368, 608 N.E.2d 215 (1992); *Wiseman v. Elward*, 5 Ill.App.3d 249, 283 N.E.2d 282 (1972). An electoral board may only exercise the powers conferred upon it by the legislature. *Kozel v. State Board of Elections*, 126 Ill.2d 58, 533 N.E.2d 796 (1988); *Reyes v. Bloomingdale Township Electoral Board*, 265 Ill.App.3d 69, 638 N.E.2d 782 (1994) ("electoral boards are creatures of statute endowed with no power beyond what the Election Code enumerates;" "electoral board possess only the powers endowed to them by the Election Code;" "unauthorized actions are void").

12. A statute is presumed constitutional, and the party challenging the statute bears the burden of demonstrating its invalidity. *People v. Devenny*, 199 Ill.2d 398, 769 N.E.2d 942 (2002). The legislature, however, did not intend that an electoral board entertain constitutional

challenges. *Tobin v. Illinois State Board of Elections*, 105 F. Supp.2d 882, 886 (N.D. Ill. 2000), *aff'd*, 268 F.3d 517 (7<sup>th</sup> Cir. 2001); *Troutman v. Keys*, 156 Ill.App.3d 247, 509 N.E.2d 453 (1987). "An administrative agency must accept as constitutional the statute over which it has jurisdiction." *Board of Education of Rich Township High School v. Brown*, 311 Ill.App.3d 478, 724 N.E.2d 956, 966 (2000), citing *Wiseman v. Elward*, *supra*, and *Phelan v. County Officers Electoral Board*, *supra*. "An administrative agency lacks the authority to invalidate a statute on constitutional grounds or even to question its validity." *Texaco-Cities Service Pipeline Company v. McGaw*, 182 Ill.2d 262, 695 N.E.2d 281 (1998), citing *Moore v. City of East Cleveland*, 431 U.S. 494, 497 n. 5, 97 S.Ct. 1932, 1934 n.5 (1977). Administrative agencies such as the electoral board have no authority to declare statutes unconstitutional or even to question their validity. *Goodman v. Ward*, 241 Ill.2d 398, 411, 948 N.E.2d 580, 588 (2011).

13. The Electoral Board must, therefore, presume that the statute establishing the minimum signature requirement for Alderman in the City of Chicago – 65 ILCS 20/21-28(a) – is constitutional and must be applied to the facts here.

14. The Hearing Officer found that the Candidate's Nomination Papers contained on the face of such of such papers only 268 signatures, far less than the 473 required by law.

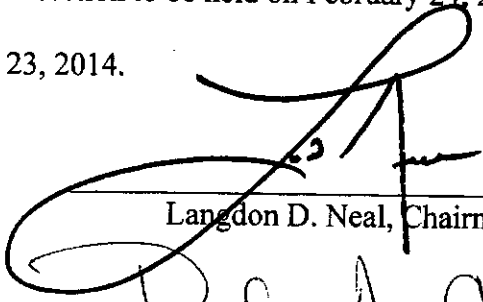
15. The Hearing Officer has tendered to the Electoral Board a report and recommended decision. Based upon the evidence presented, the Hearing Officer found that the Candidate's Nomination Papers contained only 268 signatures, which is less than the minimum number of valid signatures required by law to be placed upon the official ballot as a candidate for election to the office of Alderman of the 39th 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.

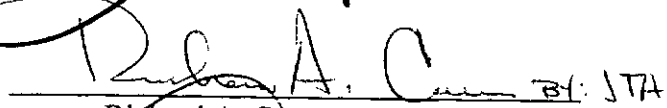
17. For the reasons stated above, the Electoral Board finds that the Candidate has an insufficient number of valid signatures on her nominating petitions and that the Nomination Papers of MARY K. HUNTER are, therefore, invalid.

IT IS THEREFORE ORDERED that the Objections of CAROL J. AGUILA to the Nomination Papers of MARY K. HUNTER, candidate for election to the office of Alderman of the 39th Ward of the City of Chicago are hereby SUSTAINED and said Nomination Papers are hereby declared INVALID and the name of MARY K. HUNTER, candidate for election to the office of Alderman of the 39th Ward of the City of Chicago, SHALL NOT be printed on the official ballot for the Municipal General Election to be held on February 24, 2015.


Dated: Chicago, Illinois, on December 23, 2014.



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Langdon D. Neal, Chairman



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Richard A. Cowen, Commissioner



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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.