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

Objections of: EMMA JEAN ROBINSON and KATHY DAVIS,	)	
To the Nomination Papers of: KOURI MARSHALL	)	No.: 24-EB-CON-002
Candidate for the nomination of the DEMOCRATIC Party for the office of Representative in Congress, 7th Congressional District of the State of Illinois	)	

FINDINGS AND DECISION

The duly constituted Electoral Board, consisting of the Board of the Election Commissioners for the City of Chicago, Commissioners Marisel A. Hernandez, William J. Kresse and June A. Brown, organized by law in response to a Call issued by Marisel A. Hernandez, Chair of said Electoral Board, for the purpose of hearing and passing upon objections ("Objections") of EMMA JEAN ROBINSON and KATHY DAVIS, ("Objectors") to the nomination papers ("Nomination Papers") of KOURI MARSHALL, candidate for the nomination of the DEMOCRATIC Party for the office of Representative in Congress, 7th Congressional District in the State of Illinois ("Candidate") at the General Primary Election to be held on Tuesday, March 19, 2024, having convened on December 18, 2023, at 9:30 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 were duly and timely filed.

2. The Electoral Board was constituted according to the laws of the State of Illinois.

3. A Call to the hearing on said Objections was duly issued by the Chair of the Electoral Board and served upon the members of the Electoral Board, the Objectors and the Candidate, by registered or certified mail and by Sheriff's service, as provided by statute or statutory service was waived and service by email was authorized.

1. A public hearing held on these Objections commenced on December 18, 2023 and was continued from time to time. The Electoral Board assigned this matter to Hearing Officer Mathias Delort for further hearings and proceedings.

2. The Objectors 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. Appearances were filed by or on behalf of the following persons: the Objectors, EMMA JEAN ROBINSON and KATHY DAVIS, by Attorney ED MULLEN; and the Candidate, KOURI MARSHALL, by Attorney FRANK AVILA.

3. 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.

4. The Hearing Officer directed all parties to appear and be present, either personally and/or by their authorized representatives during this records examination.

5. The Candidate and/or his duly authorized representative was present during the examination of the registration records or waived their right to do so.

6. The Objectors and/or their duly authorized representative was present during the examination of the registration records or waived their right to do so.

7. 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.

8. 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 821.

B. The number of purportedly valid signatures appearing on the nominating petition filed by the Candidate total 2,818.

C. The number of signatures deemed invalid because of objections sustained as a result of the records examination total 1,969.

D. The remaining number of signatures deemed valid as a result of the records examination total 903.

9. The Electoral Board finds that the number of valid signatures appearing on the Candidate's nominating petition following completion of the records examination exceeds by 82 the minimum number of valid signatures required by law to be placed upon the ballot as a candidate for the nomination of the DEMOCRATIC Party to the office of Representative in Congress of the 7th Congressional District, State of Illinois.

10. Following the records examination, both parties filed a motion pursuant to Rule 8 and the Hearing Officer conducted a hearing to allow the parties an opportunity to present evidence in support of their Rule 8 motions objecting to the Board's clerk's findings during the records examination, in addition to evidence and argument in relation to the Objectors' case in chief. Because the Candidate had 82 signatures more than required at the end of the records

examination, the Hearing Officer found the burden remained on the Objectors, who thus proceeded first with presenting their evidence and arguments in relation to their claims.

11. Following completion of the Rule 8 evidentiary hearing, the Hearing Officer tendered to the Electoral Board a final report and recommended decision. Based upon the evidence presented, the Hearing Officer found that the Candidate's Nomination Papers contained 54 valid signatures more than the minimum number of valid signatures required by law to be placed upon the ballot as a candidate of the DEMOCRATIC Party for the office of Representative in Congress of the 7th Congressional District, State of Illinois, and that the Candidate's Nomination Papers should be found valid.

12. 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 and incorporates them herein as part of the Electoral Board's final Findings and Decision.

13. Notably, the Hearing Officer sustained objections against six of the Candidate's petition sheets (pages 18, 24, 56, 188, 189 and 190) because those pages did not contain a signature of the purported circulator within the circulator's affidavit. This resulted in an additional 28 signatures being invalidated from the Candidate's Nomination Papers.

14. The Hearing Officer also considered the testimony of a petition circulator, Alfonzo Peterson, in relation to objections contained in paragraph 16 of the Objector's Petition. The Objectors alleged that Mr. Peterson did not appear before notary public Jason Campbell when Mr. Peterson signed petition sheets numbered 31 and 61. In the course of providing testimony as a witness called by both the Candidate and the Objectors, Mr. Peterson essentially recanted a previous affidavit he had signed in which he stated that he did not appear before said

notary in relation to those two petition sheets. Mr. Peterson also stated, *inter alia*, that some other individuals had helped him circulate some of his petition sheets – an issue the Hearing Officer found was not raised within the Objectors' Petition.

15. The Hearing Officer found that the testimony provided by Mr. Peterson, a 75-year-old who had never before circulated nominating petitions, was "wildly variant and imprecise," and that he "seemed to contradict known facts, such as the number of sheets that he actually circulated." The Hearing Officer further found that "Mr. Peterson was a guileless but unsophisticated witness" who "claimed to not understand virtually anything that he signed during the petitioning and objection process, which undermined the value of his testimony." Taken as a whole, the Hearing Officer found that "his testimony was so confused that it was of minimal, if any, probative value."

16. During the Rule 8 hearing, in their Rule 20 Motion and during a subsequent Rule 20 hearing before the Electoral Board, the Objectors argued that Mr. Peterson's testimony amounted to a self-admitted pattern of fraud in relation to allowing other people to assist with the circulation of petition sheets that he then signed as the circulator. Although this pattern-of-fraud objection was not contained within the Objectors' Petition, the Objectors argued that the Hearing Officer, and thus the Electoral Board, should not ignore the evidence that arose during Mr. Peterson's testimony. Citing a long line of well-known prior court decisions, the Objectors complained that the Electoral Board failed to consider this alleged evidence of a pattern of fraud.

17. However, quite to the contrary, the Hearing Officer in his recommended decision provided a very detailed analysis of these pattern-of-fraud allegations. Indeed, the learned Hearing Officer cited to and analyzed the same line of cases the Objectors cited, and more. The Hearing Officer acknowledged that he "observed Mr. Peterson's demeanor, his opportunity to

observe the relevant occurrences, his memory, and his choice of language." Thus, the Hearing Officer quite clearly provided the very same kind of factual and legal analysis that the cited line of cases requires when allegations of a pattern-of-fraud arise in the course of the proceedings. The Electoral Board therefore rejects the Objectors' claim that the Hearing Officer failed to act in accordance with the established case law.

18. After thorough analysis of those prior court rulings, the Hearing Officer rightly found that pattern-of-fraud allegations must be proved by "clear and convincing evidence," and there appears to be no clear error nor any abuse of discretion in the Hearing Officer's finding that the Objectors failed to provide the kind of evidence that is normally produced in relation to pattern-of-fraud objections. The Electoral Board has reviewed the case file and agrees with the Hearing Officer's finding that "The only evidence in this record supporting the invalidation of any sheets circulated by Mr. Peterson [as a remedy for a finding of a pattern of fraud] is his own testimony." The Hearing Officer also properly concluded that "nothing in the applicable case law suggests that the board may invalidate only a portion of the sheets (for instance half the sheets) as a 'split the baby' remedy."

19. For the reasons stated above, the Electoral Board finds that it and the Hearing Officer have performed the necessary analysis of the scant and imprecise evidence in the record that the Objectors allege proves a pattern of fraud committed by Mr. Peterson. The Electoral Board finds that there is no clear and convincing evidence in the record that Mr. Peterson did, in fact, engage in any pattern of fraudulent conduct. Thus, again, the Electoral Board adopts the Hearing Officer's recommended findings of facts and conclusions of law, and it finds that the Candidate has a sufficient number of valid signatures on his nominating petitions and that the Nomination Papers of KOURI MARSHALL are, therefore, valid.

IT IS THEREFORE ORDERED that the Objections of EMMA JEAN ROBINSON and KATHY DAVIS, to the Nomination Papers of KOURI MARSHALL are hereby OVERRULED and said Nomination Papers are hereby declared VALID and the name of KOURI MARSHALL, candidate for nomination of the DEMOCRATIC Party for the office of Representative in Congress of the 7th Congressional District, State of Illinois, SHALL be printed on the official ballot for the General Primary Election to be held on Tuesday, March 19, 2024.

Dated: January 12, 2024.

Marisel A. Hernandez, Chair

William J. Kresse, Commissioner

June A. Brown, Commissioner

NOTICE: Pursuant to Section 10-10.1 of the Election Code (10 ILCS 5/10-10.1) a party aggrieved by 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 CHICAGO BOARD OF ELECTION COMMISSIONERS
SITTING *EX-OFFICIO* AS AN ELECTORAL BOARD

EMMA JEAN ROBINSON and KATHY DAVIS,	)
	)
Petitioners-Objectors,	)
	)
vs.	) No. 23 EB CON 02
	)
KOURI MARSHALL,	) Hearing Officer Delort
	)
Respondent-Candidate.	)

FINAL REPORT AND RECOMMENDATIONS OF HEARING OFFICER

To:

Objectors	Candidate	Staff
Attorney Ed Mullen ed_mullen@me.com	**Attorney Frank Avila** frankavilalaw@gmail.com	**General Counsel Adam Lasker** electoralboard@chicagoelections.gov electionattorney@gmail.com

Pursuant to Rule 2(b) of this board's rules, the undersigned hearing officer respectfully submits this final report and recommendation.

FACTS

These objections came before me for in-person hearings held on December 18, December 26, December 29, 2023, and January 9, 2024, and for a telephone conference hearing on January 2, 2024.

Record Examination. The case was referred for a record examination, which began on December 19, 2023 at the board's office. The results of the record examination after the further review of the board's handwriting expert were:

Total signatures filed	2,818
Total signatures invalid	-1,915
Total signatures remaining valid	903
Minimum required by law	821
Excess over minimum	+82

Motion to Strike and Dismiss. On the first day of hearings, the candidate was not represented by counsel. On December 19, his counsel filed an appearance to which he appended a request for an additional day to file a motion to strike and dismiss. I granted that request.

The motion alleged that the objections were a "shotgun objection", filed in bad faith, "specious and reprehensible", and filed for the purpose of harrassment and to "divert her [*sic*] efforts from the

campaign". The motion went on at great length to argue that because the objection was not grounded in fact, it does not meet the requirements of section 10-8 of the Election Code (10 ILCS 10-8). However, the objections clearly meet the pleading requirements of section 10-8, and the motion improperly conflated these requirements with the ultimate *factual* issue of whether the signatures on the nominating petitions were valid. As the basis for his contention, the motion presented summary counts of the signatures on the petition and the number of signatures objected to, arguing that because the objectors objected to so many signatures, the objections could not have been made in good faith. The candidate therefore requested a hearing to inquire into the good faith of the objections.

In their response, the objectors noted that by that point, the record examination was showing that about 71% of their objections were being sustained. Therefore, they argued, the objections were clearly not pleaded in bad faith.

Board Rule 1(xvi) allows the board to "require the objector to make a preliminary showing that certain of the factual allegations in the objector's petition are pled in good faith based on knowledge, information and/or belief formed after reasonable inquiry and strike any objection or any portion of an objection if it determines that the objection does not meet the requirements set forth in 10 ILCS 5/10-8 or is not well grounded in fact and/or law."

Unfortunately for the candidate, he was not represented by counsel at the first hearing, and the board staff had already scheduled this case for a record examination to be held the very next day. By the time the candidate filed his motion to strike and dismiss, the cart had not only been put before the horse, but it had beaten the horse to the finish line, so to speak. The record examination was well under way, and the candidate did not move to stay the record examination pending consideration of his motion to strike and dismiss (which was actually a Rule 1(xvi) "shotgun" motion).

Additionally, in paragraphs 24 and 26, the motion argued that an objector cannot object to a signature on the ground that the signature was not genuine and that the signer is not a registered voter. Although not explained in the candidate's motion, presumably he intended to argue that the only possible way to allege that a signature is not genuine is by comparing it to the signature on the voter's registration record. This is incorrect, as an objector might make such an allegation merely because a petition sheet bears indicia of a pattern of forgery, such as where all the signatures on a page are clearly signed in the same hand. After all, the voter's signature used for comparison purposes might have been found on a valid registration card for a different address.

By the time the case returned to a hearing, the record examination had been completed, and the results showed that the objections were overwhelmingly factually valid. The candidate was only 4 signatures over the minimum. Accordingly, I denied the motion to strike and dismiss in its entirety as moot, reserving a few stray issues regarding particular full-sheet-based allegations for an evidentiary hearing.

Withdrawal of Certain Objections. At the December 26 hearing, the objectors withdrew their objections in paragraph 13 (the heading of two sheets did not contain the unit number of candidate's residence). They also withdrew the objection in paragraph 16 as to notary public Darva Watkins, but preserved their objection in that paragraph to notary public Jason Campbell.

Rule 8 Motions.
Objector's Rule 8 Motion.
As noted above, after the handwriting expert's review, the candidate had 82 more valid signatures

than necessary. Accordingly, the burden remained on the objectors to proceed with their Rule 8 motion.

The objectors presented the testimony of **Alfonzo Peterson**, age 75, one of the petition circulators. Mr. Peterson was also recalled to testify in the candidate's case-in-chief. Mr. Peterson was ostensibly called with respect to the allegation in paragraph 16 of the objections that Mr. Peterson did not appear before notary public Jason Campbell when he signed sheets 31 and 61 as the circulator. However, his testimony quickly veered in a completely different direction.

In the course of explaining how he came to circulate the petitions, he volunteered that others had helped him circulate some of the petition sheets which he (Mr. Peterson) purportedly circulated. There is no objection in the objector's petition that any sheet circulated by Mr. Peterson was actually circulated by someone else. Without objection by candidate's attorney as to relevance, Mr. Peterson was questioned extensively as to the quantity of these sheets and the circumstances surrounding their circulation.

Among other things, he testified that he gathered his sheets into a binder and that the "earlier" sheets would have been more likely to have been circulated by him personally, as opposed to having been circulated by others. Again, when pressed for more precision, he gave varying responses. Mr. Peterson stated that he had circulated the first half of his sheets, but he could not explain whether the "first half" meant the first half as they appeared in the order in the filed petitions, those bearing the first notary dates, or bearing some other characteristic. He also testified that he circulated numerous sheets at a senior citizen residence where he resided, and in the neighborhood.

The objectors introduced objectors' exhibit 1, an affidavit signed by Mr. Peterson on January 8, 2024, in which he stated that he did not appear before notary public Jason Campbell when he signed sheets 31 and 61 as circulator. Mr. Peterson recalled signing the affidavit but consistently claimed that he did not know what he was signing and that he thought that the person proffering the affidavit was doing so to help the candidate, rather than a supporter of the objectors. During his testimony, he essentially recanted the affidavit.

Sheets Not Signed by Circulator. The following sheets had a completed circulator's affidavit with the name of a circulator in the text of the circulator's affidavit and the notarial jurat, a notary seal, and a notary's signature and date. However, the line for the circulator's signature was blank on each. I find that these pages are invalid for violation of section 7-10 of the Election Code (10 ILCS 5/7-10), which requires that circulators' affidavits be signed by the circulator. The number of signatures remaining valid on each sheet following the post-handwriting expert review is set forth:

Sheet	Number of Additional Signatures Invalid Due to Lack of Circulator's Signature
18	6
24	6
56	4
188	5
189	5
190	2

This disposition results in an additional 28 signatures being invalidated.

Candidate's Rule 8 Motion.
After objectors rested, the candidate withdrew his Rule 8 motion. This resulted in the objectors'

motion to strike the candidate's Rule 8 motion being moot.

Also, as noted above, the candidate also recalled Mr. Peterson in his case-in-chief. That testimony is summarized above.

Closing Arguments.
In their closing arguments, the objectors conceded they pleaded no objection alleging that *any* circulator had not, in fact, circulated their purported sheets. However, they urged that this board should invalidate all sheets circulated by Mr. Peterson on the basis of a pattern of fraud, noting that evidence of this fraud came before the board during the presentation of evidence on their objection that Mr. Peterson did not appear before notary public Jason Campbell as to two particular sheets. The candidate argued that not only was he blindsided by evidence relating to a new objection which was never pleaded, but that Mr. Peterson's testimony showed that he lacked any intent to deceive, which he claimed was an element of fraud.

ANALYSIS

Following the handwriting expert's review of the record examination results and the deduction of 28 signatures for lack of a circulator's signature, the candidate had 54 signatures over the minimum. The only remaining issue is whether any additional signatures should be invalidated based on Mr. Peterson's testimony. It appears that he circulated a total of 38 sheets, upon which there are about 112 valid signatures still remaining after the handwriting expert's review.

I recommend that the board not invalidate any additional signatures circulated by Mr. Peterson for two reasons. First, the objector never alleged that Mr. Peterson, or any other circulator, did not actually circulate their petition sheets. Second, even assuming that this board could consider a completely new type of error not contained in the objection, the proof necessary to sustain a factual finding of fraudulent conduct was not clear and convincing.

Section 10-8 of the Election Code (10 ILCS 5/10-8) requires that objections to nomination papers "shall state fully the nature of the objections". In *Polanco v. Cook County Officers Electoral Board*, 2022 IL App (1st) 220712-U[1], the court explained the pleading requirements for objections filed under section 10-8 of the Election Code:

> "An electoral board is a creature of statute and its authority is derived from its enabling legislation. Section 10-8 of the [Election] Code states in pertinent part: 'The objector's petition shall give the objector's name and residence address, and shall state fully the nature of the objections to the certificate of nomination or nomination papers or petitions in question, and shall state the interest of the objector and shall state what relief is requested of the electoral board.' The [Election] Code does not allow parties to file amendments to their objections and does not authorize an electoral board to raise *sua sponte* objections to nominating petitions. Additionally, the [Election] Code does not specifically address the degree of precision required to satisfy section 10-8." *Id.*, ¶ 29 (internal citations omitted).

[1]This is an order published pursuant to Ill. Sup. Ct. R. 23 and cannot be cited as binding precedent in Illinois courts. However, since it was issued after January 1, 2021, it may be cited as persuasive authority. This hearing officer also notes that he was the author of the *Polanco* order when he served on the appellate court, but nonetheless cites it in light of the dearth of authority regarding the pleading standards applicable to objections filed under section 10-8 of the Election Code.

In *Polanco*, the objector filed a bare-bones objection alleging simply that the candidate failed to file the minimum number of signatures required pursuant to section 7-10(*i*) of the Election Code. The objector had a trick up his sleeve, though. His real argument, not revealed until the hearing, was that the signature requirements which the Cook County Clerk published were incorrect. The objector contended that the clerk had used an incorrect prior party candidate's vote totals (from the last prior township election) rather than the highest party vote-getter (who was a candidate for Illinois supreme court judge), in the prior election in which all voters in the township had voted (the last preceding general election) upon which to base her computation. See *id.*, ¶ 9. The result under the objector's methodology was a much higher signature requirement, one which candidate Polanco had clearly not met.

The *Polanco* court affirmed the dismissal of the objections, explaining:

> "Since Polanco's theory of the case was entirely based on such a nuanced analysis of the election cycle and township voting history, we cannot say that Polanco's bare-bone objection, compressed into a single opaque sentence, provided anyone, whether the candidate, the Board, or the public, with even the slightest scintilla of fair notice of the 'nature' of his objections, much less one which "fully" described them.* * * 'Illinois is a fact-pleading jurisdiction.' Accordingly, while the plaintiff is not required to set forth evidence in the complaint, he 'must allege facts sufficient to bring a claim within a legally recognized cause of action, not simply conclusions.' * * * 'We are mindful of the need to tread cautiously when construing statutory language which restricts the people's right to endorse and nominate the candidate of their choice.' In light of the extremely expedited nature of ballot access challenges, the need to put the candidate on fair notice at an early date is especially important, so that he can prepare a defense. We therefore affirm the Board's order dismissing the objections." *Id.*, ¶¶ 31-33 (internal citations omitted).

Here, the objectors could have easily pleaded that Mr. Peterson, or some other circulator, did not actually circulate their purported petition sheets. Indeed, this is a common, everyday, objection. However, they did not do so, and objections, once filed, cannot be amended. *Reyes v. Bloomingdale Township Electoral Board,* 265 Ill. App. 3d 69, *vacated in part on other grounds,* 265 Ill. App. 3d 69 (1994).

Objectors nonetheless argue that the facts presented warrant the application of the doctrine first enunciated in a famous trio of cases: *Fortas v. Dixon*, 122 Ill. App. 3d 697 (1984), *Huskey v. Municipal Officers Electoral Board for Village of Oak Lawn*, 156 Ill. App. 3d (1987), and *Canter v. Cook County Officers Electoral Board,* 170 Ill. App. 3d 364 (1988). In those cases, the court upheld the wholesale invalidation of all sheets circulated by a particular circulator after evidence of fraudulent activity by the circulator came to light which undermined the apparent veracity of the circulator's affidavit on all of the circulator's sheets.

In contrast, in a more recent case, the appellate court reversed an electoral board which invalidated a large number of sheets based on a "pattern of fraud" allegation. *Raila v. Cook County Officers Electoral Board*, 2018 IL App (1st) 180400-U[2]. Particularly relevant here is the *Raila* court's discussion of the availability of a pattern of fraud remedy when the evidence of the allegedly fraudulent act only goes to a portion of a circulator's petition sheets. The court stated: "* * * [t]he

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[2]This case is unpublished under Illinois Supreme Court Rule 23 and was issued before January 1, 2021. Therefore, it is not binding on circuit courts. *See* n. 1. However, it is cited herein for its persuasive value.

record reflects that the number of petition sheets that were circulated and returned signed but unnotarized were few in number. On their own, these sheets are clearly insufficient to establish by *clear and convincing* evidence a pattern of notarial fraud. The Board struck over 7800 valid signatures based on its finding of a pattern of fraud despite its acceptance of testimony from other notaries that they inadvertently or accidently notarized petition sheets." *Id.*, ¶ 41 (emphasis added).

Under Illinois law, the elements of a fraud claim are: (1) a false statement of fact by the defendant, (2) made with the knowledge that the statement was false; (3) the defendant intended that the statement would induce the plaintiff to act; (4) the plaintiff justifiably relied upon the statement; and (5) the plaintiff suffered damages arising from that reliance. *Connick v. Suzuki Motor Co.*, 174 Ill. 2d 482, 496 (1996). Fraud must be proven by clear and convincing evidence. *Metro. Capital Bank & Tr.*, 2020 IL App (1st) 190895. In a case involving a contested mayoral election, the Illinois Supreme Court explained: "Courts have defined 'clear and convincing' evidence most often as the quantum of proof that leaves no reasonable doubt in the mind of the fact finder as to the truth of the proposition in question. Although stated in terms of reasonable doubt, courts consider clear and convincing evidence to be more than a preponderance while not quite approaching the degree of proof necessary to convict a person of a criminal offense." *Bazydlo v. Volant*, 164 Ill. 2d 207, 213 (1995).

The only evidence in this record supporting the invalidation of any sheets circulated by Mr. Peterson is his own testimony. I observed Mr. Peterson's demeanor, his opportunity to observe the relevant occurrences, his memory, and his choice of language. Mr. Peterson's answers were widely variant and imprecise. At times, his testimony seemed to contradict known facts, such as the number of sheets that he actually circulated. While he generally indicated that others had circulated a portion of his apparent work product of 38 sheets, he thought he had circulated many more sheets, and he gave widely varying answers (both fractional and quantitative) when he was asked to be more precise. The objector presented absolutely none of the usual types of evidence identifying any particular sheet which was not circulated by Mr. Peterson, such as affidavits from petition signers identifying who circulated the sheet to them, or from witnesses to the alleged impostor circulation. Along the way, Mr. Peterson disclaimed an affidavit that he had signed just the day before the hearing. In sum, Mr. Peterson was a guileless but unsophisticated witness. While facially credible, he claimed to not understand virtually anything that he signed during the petitioning and objection process, which undermined the value of his testimony. Viewed as a whole, his testimony was so confused that it was of minimal, if any, probative value.

That being the case, I cannot find that the objectors carried their burden to prove by clear and convincing evidence that enough sheets circulated by Mr. Peterson bore a false circulator's affidavit sufficient to warrant invalidation of all of the sheets he circulated. Additionally, nothing in the applicable case law suggests that the board may invalidate only a portion of the sheets (for instance, half the sheets) as a "split the baby" remedy. At any rate, in light of the equivocation of the testimony, any such remedy would necessarily be wholly arbitrary. I therefore recommend that the the board not invalidate any signatures based on Mr. Peterson's alleged use of others to help circulate some of his petition sheets.

CONCLUSION

For these reasons, I recommend that the board:

1. Find that the candidate's motion to strike and dismiss is moot;

2. Accept the results of the record examination following the handwriting expert's review, which resulted in a finding that the candidate had 903 valid signatures;

3. From that total of 903 valid signatures, subtract an additional 28 signatures for sheets which did not contain a circulator's signature, resulting in a final total of 875 valid signatures, which is 54 over the statutory minimum of 821;

4. Decline to invalidate any sheets circulated by Alfonzo Peterson on the basis that he did not circulate them due to: (a) no objection having been made on that basis and (b) the objector's failure to show a pattern of fraud by clear and convincing evidence; and

5. Finding that the nomination papers of the candidate are VALID and that his name should be placed on the ballot for nomination to the office sought.

The undersigned transmitted this order by email to the above email addresses on January 9, 2024.

ENTER:

Mathias W. Delort

Mathias W. Delort
Hearing Officer

January 9, 2024