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August 27, 2021

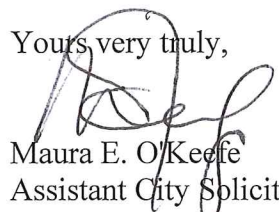
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Attorneys Newman and McDonough,

Enclosed please find the Decision and Statement of Reasons in connection with *In Re: Objection to the Nomination Papers of Alison Leary Candidate for Councilor-at-Large Ward 1.*

Yours very truly,


Maura E. O'Keefe
Assistant City Solicitor

Encl.

cc: Commissioners of the Newton Election Commission
Alissa O. Giuliani, City Solicitor
Christopher Sullivan, Acting City Clerk

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COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, ss.

NEWTON ELECTION COMMISSION

_____)
 IN RE:)
)
 OBJECTION TO THE NOMINATION)
 PAPERS OF ALISON LEARY)
 CANDIDATE FOR COUNCILOR-AT-)
 LARGE WARD 1)
 _____)

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STATEMENT OF REASONS

I. INTRODUCTION

Alison Leary (“Leary”), a candidate for City of Newton Ward 1 Councilor-at-Large, timely filed with the Newton City Clerk’s Office a total of one hundred fifty-nine certified signatures, nine more than required to secure ballot access to the municipal election. Newton Charter § 8-3(b)(requiring 150 signatures for At-Large Councilors). Objectors, Frank Perri and Sande Young (the “Objectors”), thereafter timely filed an objection to Leary’s nomination papers with the City Clerk’s Office. M.G.L. c. 53 § 11. The objection contains two counts: Count One claims that the notarization of Leary’s signature on the nomination papers violates the provisions of M.G.L. c. 222 § 16, “Notarial acts that should not be performed; prohibited actions by notary public” and, therefore, her name should not appear on the ballot. Count Two of the objection is comprised of challenges to twenty six signatures appearing in the nomination papers. Objectors assert, variously, that the signatures are non-genuine, the signatures on the nomination papers do not match the signatures on the registration cards, or that they are not registered voters in Newton. In order to prevail on the objections to the signatures, Objectors must succeed on ten (10) challenges.

II. THE HEARING

A hearing was held on the matter on August 16, 2021 during which evidence was submitted including twenty-six (26) exhibits and the testimony of four (4) witnesses. All evidence submitted by the parties was accepted by the Commissioners and evaluated in terms of weight and credibility. All witnesses were sworn under oath. The decision makers consisted of the four Election Commissioners and the City Solicitor. Commissioners McDermott, Levine and Butler were in person. Commissioner Huffman and the City Solicitor participated remotely. During the course of the hearing, sixteen (16) of the twenty-six (26) objections were withdrawn.¹

The following facts were presented and discussed by the Commission during the course of the hearing:

1. Leary was required to have 150 signatures, certified by the Clerk's office, in order for her name to be printed on the official ballot as a candidate for Ward 1 Councilor-at-large in the municipal election on November 2, 2021. Leary was required to submit a signed and notarized "City of Newton Statement of Candidate" pursuant to M.G.L. c. 53 § 7; M.G.L. c. 43 § 44C.
2. Leary timely filed nomination papers with the Clerk's office on various dates prior to the deadline on July 27, 2021. Included in the nomination papers was a signed and notarized "City of Newton Statement of Candidate."
3. Leary's nomination papers were notarized by her husband.
4. The Clerk's office accepted the Leary's "City of Newton Statement of Candidate," which was notarized and certified 159 signatures from Leary's nomination papers.
5. Objectors timely filed the objections contained in Counts One and Two at 4:40pm on August 12, 2021.

¹ The following objections were withdrawn: #1, 6, 12-21, 23-26.

6. Osman Osmani, a registered voter in Newton, and the subject of Objection #1, testified credibly that he signed his own name and witnessed the signatures of Adeba Osmani (Objection #2), Belal Osmani (Objection #3), Wafa Osmani (Objection #4), Qais Osmani (Objection #5), Robin Bianchi (Objection #7), Elizabeth Bianchi (Objection #8), Vevekanand Moses (Objection #9), and Rajmattie Moses (Objection #10).² Voter registration cards for Adeba Osmani, Belal Osmani, Wafa Osmani, and Qais Osmani were submitted in evidence.

7. Adeba Osmani also credibly testified that the signature that is the subject of Objection #2 is hers.

8. The Parties stipulated to the objections to the signatures of Robin Bianchi (Objection #7) and Elizabeth Bianchi (Objection #8).

9. The voter registration card for Rajmattie Moses, which was submitted into evidence, indicates that she registered to vote as Rajmattie Thakoordeen.

10. The voter roll for Rajmattie Moses, which was submitted into evidence, indicates her name as Rajmattie Moses.

11. The Leary nomination papers, which were examined during the hearing, indicate that Rajmattie Moses/Thakoordeen signed the Leary nomination papers as Rajmattie Moses.

12. Leary credibly testified that she personally collected and witnessed the signature of Victor Pan (Objection #11). A voter registration card for Victor Pan was submitted into evidence as well as a signature block from a document signed by Pan that was recorded with the Registry of Deeds.

² Osmani also testified that he witnessed a signature that was the subject of an objection that was withdrawn.

13. Leary credibly testified that she personally collected and witnessed the signature of Sahara Albayrak (Objection #22). A voter registration card for Sahara Albayrak was submitted as evidence.

III. ISSUES OF LAW and CONCLUSIONS

a. Count One: Notary Public

Chapter 222 of the General Laws governs those acts that may and may not be performed by a notary public. Pursuant to section 16(a)(vii) of chapter 222, “a notary public shall not perform a notarial act if: the notary public is a spouse . . . of the principal.” The statute explicitly states that the failure of a document to comport with the requirement of the chapter does not invalidate the document itself. M.G.L. c. 222 § 20(b)(i). Further, chapter 222 specifically provides two forms of relief for violations of any section thereof, both of which are directed towards the notary and not the signatory: 1) the attorney general or district attorney may prosecute the notary public (M.G.L. c. 222 § 18(a)); and 2) a private right of action is available under certain circumstances (M.G.L. c. 222 § 18(b)).

Objectors argued that the notarization of the nomination papers by Leary’s husband nullifies and invalidates the papers. Further, the Objectors offered that the requirements of the laws pertaining to nomination papers are absolute and require strict adherence. The Objectors argued that the failure to provide strict adherence demanded the result that Leary be prohibited access to the November ballot.

Leary cautioned that disenfranchising voters is a serious matter and drew attention to M.G.L. c. 222 § 20(b)(1), wherein the underlying document is not invalidated as a result of an improper notarization. Leary stated further that any error here must be ascribed to the husband, without impact of the right of the voters choose a candidate for election.

The Commission discussed whether they had jurisdiction to enforce chapter 222 in the first instance. The Commission further discussed the unfair negative impact on the voters and the candidate that would result from the enforcement of M.G.L. c. 222, when the infraction belonged to neither. After discussion, the Commission voted 4-0 to deny the objection as to Count One.³

b. Count Two: Objections to Nomination Papers

i) *Objector's Burden of Proof*

In proceedings to object to nomination papers, the objector has the burden of going forward. Hamill v. Sawyer, SBLC 90-10 (June 22, 1990). The objector must meet the burden of proof by producing by a preponderance of the evidence that the allegations are true. DeJong v. Ownes, SBLC 90-10 (1990).

ii) *The Commission's Review of the Objections*

It is well settled that the purpose of election laws is to “ascertain the will of the people, not to thwart it.” Fyntrilakis v. City of Springfield, 47 Mass.App.Ct. 464, 469 (1999), quoting Swift v. Registrars of Voters of Quincy, 281 Mass. 271, 276 (1932). In order to properly protect the rights of all voters, election laws must be construed with an eye towards securing this right. Swift, 281 Mass. at 277. Mere technical deviations or obstructions to the law cannot undermine the substantive purpose of the law or disenfranchise the ability to vote, participate in the process, and seek elected office. Fyntrilakis, 47 Mass.App.Ct. at 469; Blackmer v. Hildreth, 181 Mass. 29, 31 (1902); Goldstein v. Secretary of the Comm., 484 Mass. 516, 524 (2020)(“The right to seek office, like the right to vote, is a fundamental constitutional right.”)

In order to secure a place on the ballot, a candidate is required to submit signatures for certification within a specified time frame. M.G.L. c. 53 § 7. Voters who sign such nomination

³ Commissioner Huffman did not vote because it was unclear whether he was present and heard the entirety of the argument for Count One.

papers “shall sign in person as registered or substantially as registered.” Id. Election officials within the City of Newton’s clerk’s office are then required to certify the signatures submitted in accordance with the regulatory standards issued by the Secretary of State’s office. 950 CMR 55.03.

The regulatory standards present numerous examples to guide registrars with the certification process, two of which are applicable here. Pursuant to the standards for certification of signatures, a name is “substantially as registered” if the name is printed. 950 CMR 55.03(3)(g). A signature shall not be certified if “the name is not that of a registered voter at the indicated address.” 950 CMR 55.03(4)(c).

The Election Commission is empowered with broad discretion in resolving disputes as to the certifiability of signatures. McCavitt v. Registrars of Voters of Brockton, 385 Mass. 833, 837 (1982). In accordance with the general principals of election laws, such disputes where possible, should be resolved in favor of the voter. Id. Unless there is considerable doubt that the signatory is a registered voter who is eligible to sign nomination papers, then that signature should be counted. McCarthy v. Secretary of the Comm., 371 Mass. 667, 684 (1977).

Objections 2-5, 9-11 and 22

For Objections numbered 2-5, 9, 11 and 22, the Objectors presented evidence including voter registration cards, voter rolls, and signature blocks from recorded documents from the registry of deeds. Objectors argued that the signatures did not match, were non-genuine, and therefore, they were not made “substantially as registered.” Objectors offered that since the signatures on the nomination papers do not precisely match the voter registration cards or other signature evidence submitted, then those signatures cannot be deemed “substantially as registered” as a matter of law and must be not be certified.

In rebuttal to Objections 2-5, 9, 11 and 22, Leary submitted that printed names on nomination papers are properly certified under the regulations, that exact matches for signatures are not expected or required, and directed the Commission to the eyewitness testimony of Mr. and Mrs. Osmani, as well as Leary herself.

The Commission evaluated and weighed the evidence and assessed the credibility of the witnesses. The Commission considered Objections 2-5, 9, 11 and 22 individually and voted to accept the certification of the signatures by the Clerk's officer, thereby overruling Objections 2-5, 9, 11 and 22. The individual vote tallies for these objections are as follows:

- Objection #2: 3-2 in favor of accepting the certification of the signature;
- Objection #3: 3-2 in favor of accepting the certification of the signature;
- Objection #4: 4-1 in favor of accepting the certification of the signature;
- Objection #5: 3-2 in favor of accepting the certification of the signature;
- Objection #9: 4-1 in favor of accepting the certification of the signature;
- Objection #11: 5-0 in favor of accepting the certification of the signature;
- Objection #22: 5-0 in favor of accepting the certification of the signature.

Objection 10

As to Objection #10, the Objectors argued that the signature is not one of a registered voter in the City of Newton at that address. Objectors offered that, while a Rajmattie Moses signed the nomination papers, there is no registered voter by that first and last name at the listed address. Instead, there is a Rajmattie Thakoordeen registered at that address. Leary was unable to rebut the evidence pertaining to Objection #10.

The Commission considered Objection 10 in light of the credible testimony and evidence and voted 5-0 to deny the certification of the signature by the Clerk's office, thereby sustaining Objection #10.

Objections 7 and 8

For Objections #7 and 8, Leary agreed to stipulate to the substance of the objections. As a result, the Commission voted unanimously to deny the certification of those signatures, thereby sustaining Objections #7 and 8.

V. CONCLUSION

As a result of the evidentiary hearing, the Commission disallows three (3) signatures and overrules the objections to the remaining seven (7) signatures. As such, the total number of certified signatures appearing on the nomination papers of Alison Leary, candidate for Councilor-at-Large Ward 1, is 156, a number sufficient for ballot access.

SIGNED this 26th day of August, 2021.

NEWTON ELECTION COMMISSION

/s/ Marjorie Ann Butler
Marjorie Ann Butler

/s/ Nancy M. Levine
Nancy M. Levine

/s/ Jan Huffman
Jan Huffman

/s/ Alissa O. Giuliani
Alissa O. Giuliani, City Solicitor