

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

Objections of: KEVIN BAILEY)
)
)
To the Nomination) No.: 15-EB-ALD-145
Papers of: ANDRE SMITH)
)
Candidate for the office of)
Alderman of the 20th 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 KEVIN BAILEY ("Objector") to the nomination papers ("Nomination Papers") of ANDRE SMITH, candidate for the office of Alderman of the 20th Ward of the City of Chicago ("Candidate") to be elected at the Municipal General Election to be held on February 24, 2015, having convened on December 8, 2014, 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 was held on these Objections commencing on December 8, 2014 and was continued from time to time.
5. The Electoral Board assigned this matter to Hearing Officer Mary Celeste Meehan 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, KEVIN BAILEY, pro se; and the Candidate, ANDRE SMITH, by his attorney, Andrew Finko.
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 were 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 473.

B. The number of purportedly valid signatures appearing on the nominating petition filed by the Candidate total 1,277.

C. The number of signatures deemed invalid because of objections sustained as a result of the records examination total 777.

D. The remaining number of signatures deemed valid as a result of the records examination total 500.

13. The Electoral Board finds 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 election to the office of Alderman of the 20th Ward of the City of Chicago.

14. The Hearing Officer conducted a hearing to allow the Objector an opportunity to present evidence in support of his Rule 8 motion objecting to the Board's clerk's findings during the records examination and to present other evidence in support of his Objections. The Hearing Officer found that the Objector did not meet his burden of proving that 36 signatures allegedly contained on petitions for both the Objector's nominating petition sheets and the Candidate's nominating petitions were invalid under Section 10-3 of the Election Code (no person may sign more than one independent nomination petition for each office to be filled) because the Objector could not establish that the duplicate signatures his petition sheets were signed before such

signatures were affixed on the Candidate's nominating petition sheets. The Objector argued that the date on which the petition sheet circulator appeared before the notary to sign the circulator's affidavit at the bottom of each sheet (the notarization date) should be considered as evidence of the date on which the voter signed the petition. The Objector argued that "best practices" dictated that the circulator have the petition sheet notarized on the same date that the voters' signatures on such sheet were affixed. The Hearing Officer concluded that the notarization date was evidence only of the date when the petition circulator appeared before the notary to sign the circulator's affidavit and, while it may serve as evidence of the latest possible date on which voters may have signed the petition, it did not, standing alone, necessarily serve as evidence that the petition could not have been signed by voters prior to the notarization date, even as early as the first date permitted by law for signing petition sheets. The Hearing Officer concluded that without invalidating those 36 signatures, objections to 17 other signatures were moot inasmuch as even if they were sustained the Candidate would still more than the minimum number of valid signatures on his petitions.

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 as a result of the records examination the Candidate's Nomination Papers contained 500 valid signatures, which exceeds the minimum number of valid signatures required by law to be placed upon the ballot as a candidate for election to the office of Alderman of the 20th Ward of the City of Chicago, and that the Candidate's Nomination Papers should be found valid.

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 is attached hereto and is incorporated herein and made a part of the Electoral Board's decision in this case.

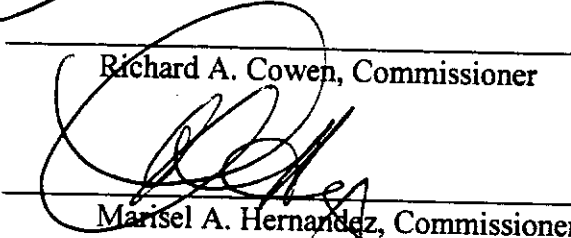
17. For the reasons stated above, the Electoral Board finds that the Candidate has a sufficient number of valid signatures on his nominating petitions and that the Nomination Papers of ANDRE SMITH are, therefore, valid.

IT IS THEREFORE ORDERED that the Objections of KEVIN BAILEY to the Nomination Papers of ANDRE SMITH, candidate for election to the office of Alderman of the 20th Ward of the City of Chicago, are hereby OVERRULED and said Nomination Papers are hereby declared VALID and the name of ANDRE SMITH, candidate for election to the office of Alderman of the 20th Ward of the City of Chicago, SHALL be printed on the official ballot for the Municipal General Election to be held on February 24, 2015.

Dated: Chicago, Illinois, on December 29, 2014.



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.

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

KEVIN BAILEY)	
Objector)	14-EB-ALD-145
)	
-v-)	
)	
ANDRE SMITH)	Mary C. Meehan
Candidate)	Hearing Officer

RECOMMENDED DECISION OF THE HEARING OFFICER

INTRODUCTION AND BACKGROUND

The above named cause came to be heard before the Chicago Board of Election Commissioners ("CBOE") on verified objection of Kevin Bailey ("Objector") to the nomination papers of Andre Smith ("Candidate") for the Office of Alderman of the 20th Ward for the City of Chicago, State of Illinois. The Objector was pro se and the Candidate was represented by attorney Mr. Andrew Finko. Mary C. Meehan, Hearing Officer finds and recommends as follows:

1. The above matter came to be heard on December 9th, 2014 for initial hearing. Board Exhibits were entered into evidence by the hearing officer which included: Board Group Exhibit A consisting of the Nominating Papers, Board Group Exhibit B consisting of the Objector's Petition and any attachments, Board Group Exhibit C consisting of the Call and Service of the Call and Board Group D consisting of the parties Appearances. A records exam was requested. The matter was set for December 16th, 2014 for a status hearing. The records exam was conducted. The final petition summary report was completed December 15th, 2014 at approximately 12:36 pm. All parties were timely notified of the final results. The records examination is hereby adopted and incorporated by reference as the results of the records examination. The Objector filed a Rule 8 Motion and the Candidate waived Response. The matter was set for Evidentiary Hearing December 19, 2014 at 1pm.

RULE 8 MOTION FOR EVIDENTIARY HEARING

2. The Objector's Rule 8 Motion relies on three arguments. First, the Objector is arguing 36 of the Candidates signatures are invalid on the basis the voter signed for another candidate for the same office in the same election before they signed for Candidate Andre Smith. The Objector cites Section 10-3 of the Election Code (10 ILCS 5/10-3) which states that a voter may subscribe to one independent nomination petition for each office to be filled, and no more. To support his position, the Objector also relies on Sharkey vs. Solar, 99-EB-ALD-072, CBEC, January 28, 1999, citing Swain v Frezados, 87-EB-ALD-071, CBEC, 1991; Frias v. Campos, Arrington v. Jenkins, 91-EB-ALD-083, 1991; Mitchell, Scheff and Zuckerman v. McCain, 99-EB-ALD-119, CBEC February 02, 1999, stating that only one aldermanic petition for the same office in the same election and the signature executed first in time is the valid one and any subsequent signatures should be stricken. The other candidate's petition sheets are the Objector's Kevin Bailey and those of Willie B. Cochran, both candidates for the office of Alderman in the 20th Ward for the February 24, 2015 primary election in the City of Chicago.
3. The second issue raised in the Objector's Rule 8 Motion pertains to paragraphs 34, 35, 36, 37, 38, and 39. Here the Objector argues that 13 signatures on the Candidate's petition sheets are invalid on the basis that the voter signed the Candidate's petition sheets more than once.
4. The final issue raised in the Objector's Rule 8 Motion asks that 4 signatures named therein, be reviewed and overruled or stricken as invalid on the basis of the signatures containing an initial and not a complete name.

FINDINGS OF FACT

5. Upon the conclusion of a hearing and after the consideration of the evidence and arguments the hearing examiner is authorized and directed to prepare and submit to the electoral board an outline of the issues, evidence and argument as well as a recommendation of proposed findings and decision. See, Hearme v. Chicago School

Reform Board of Trustees, 322 Ill.App.3d 479. The evidence presented here supports the following findings of fact and recommendation.

6. At the December 16th status hearing the Candidate asked to address the hearing officer and Objector regarding what he believed to be an error in paragraphs numbered 1 through 6 of the Objector's Petition. Said paragraphs claimed there were 50 unnumbered petition sheets and the petition sheets were not fastened together properly. The Objector made similar incorrect objections in other cases due to poor copies of petition sheets (see recommended decisions in 15-EB-ALD-148, and 15-EB-ALD-151). The parties reviewed the Candidate's original petition sheets against the copies attached to the Objector's Petition. The Objector agreed the Candidate's original nomination papers were intact in regards to the paragraphs 1 through 6 of his Objector's Petition. The Objector was granted leave to file a formal Withdrawal of that portion of his Objector's Petition before the evidentiary hearing set for December 19th 2014. The Objector did not file anything in regards to withdrawing or striking portions of his Objector's Petition. Therefore at the start of the evidentiary hearing the issue was addressed again. The hearing officer finds the objections in paragraphs 1 through 6 of the Objector's Petition are unfounded and should be overruled. The Candidate's petition sheets were appropriately secure and fastened and each signature page was in fact consecutively numbered.

7. The results of the Final Records Exam were as follows:
 - A. The minimum number of valid signatures required by law for placement on the ballot for the office in question is 473;
 - B. The number of purportedly valid signatures appearing on the nominating petition filed by the Candidate total of 1277;
 - C. The number of signatures deemed invalid because of objection sustained total 777;
 - D. The remaining number of signatures deemed valid total 500;
 - E. The Candidate is left with 27 above the minimum required signatures.

8. The Objector contends that 36 voters signed more than one candidate's petition sheets for the same office in the same election. The Objector attempted to prove this with documentation consisting of copies of Candidate Andre Smith's petition sheets, copies of the other candidate's petition sheets including his own and those of another candidate for the same office in the same election, Willie B. Cochran. These documents contained the signature in question from copies of petition sheets and copies of the page from his appendix recapitulation referencing the questionable signatures; see Objector's Group Exhibit 1. The Candidate made a standing objection to copies of the other candidate's petition sheets being used versus the originals. Over his objection, the evidence was received and admitted.
9. As the Objector presented Group Exhibit 1, it became evident the Objector was relying only on the date of notarization to show when a voter's signature was affixed to the petition sheet. See transcript Dec. 19th 2014 pg. 16, line 7-8. The Objector was not a circulator on any of the petition sheets but testified in regards to the petition sheets that in his campaign it was the normal practice to notarize the sheets the same day they were circulated. However, he did not state that he was present for any of the signatures, circulations, or notarizations. See transcript Dec. 19th 2014 pg. 28, line 24 and pg. 29, line 1-2.
10. All petition sheets proffered were notarized on or after August 26th 2014. The Candidate posited there is no way of ascertaining without the evidence from the circulators or voters or someone present when the voter signed as to when the signature was made. The Candidate's position is that the notary date is not when each voter signed the petition sheet but merely shows the date the entire sheet was notarized. The Candidate further explained his position that the time window for when the signature in question was made could be anytime from when the signatures began being collected on August 26th, 2014 until the notary date. Even if a sheet was notarized on August 26th, and another sheet was notarized on a later date, this is not evidence a voter didn't sign the sheet with a later notarization date also on August 26th. See transcript of Dec. 19th 2014 page 12 lines 3-

17. The Candidate argued that in other board cases affidavits were submitted from voters stating whose petition sheet they signed first, relying on Nice v. Popielarczyk 11-EB-ALD-202 and Slywczzuk v. Powers 03-EB-ALD-025.
11. The parties were in agreement that a voter may sign for only one aldermanic petition for the same office in the same election and the signature executed first in time is the valid one and any subsequent signatures should be stricken. The parties formally stipulated to the veracity of the dates of notarization in the Objector's Group Exhibit 1 and that there was no other evidence besides the notarization date as to the date of the voter's signature in question. See transcript Dec. 19th 2014 pg. 31 lines 17-24. The parties deferred to the hearing officer as to whether the notary date is the date when a signature is considered to be affixed to a petition sheet.
12. Each petition sheet presented as evidence, whether of the Candidate or of another candidate, was notarized under the circulator's statement. Each contained an appropriate circulator's statement at the bottom of the sheet. Each circulator's statement included the language "*I further certify that none of the signatures on this sheet were signed more than 90 days preceding the last day for the filing of this petition.*" None of the circulator's statements included the date or dates when the sheet was circulated. See Objector's Group Exhibits 1 and 2.
13. The Objector's second issue is whether the same voter's signatures (13 were named therein) appeared on two different sheets within the Candidate Andre Smith's petition sheets. The Objector proffered documents consisting of sets of two petition sheets from the Candidate's nomination papers which contained the signatures in question and copies of pages from his appendix recapitulation which referenced the signatures, see Objector's Group Exhibit 2.
14. The Candidate objected on the grounds of authenticity and that the originals are available from the board and should have been requested by the Objector. Further, the Candidate

argued that the exhibits contain no signature clip or signature to be compared against in order to ascertain if they are the same signer. The hearing officer admitted Objector's Group Exhibit 2 and gave it the weight it deserves.

15. But for the notarization date, the Objector offered no evidence as to when voters signed the petition sheets.
16. The Objector's final contention in his Rule 8 Motion is that 4 signatures named therein contained an initial and not a complete name. The Objector proffered no evidence with any weight to support this claim. The Objector attempted to rely on copies of the Candidate's petition sheets which reference the signatures in question, and copies of his appendix recapitulation which also reference his objections to those signatures. These documents were already entered into evidence at the initial hearing as board exhibits, and they offered no additional evidentiary value on their own and therefore were not admitted.

EXHIBITS

17. In sum, in addition to Board Group Exhibits A,B,C, and D, the following exhibits were admitted: Objector's Group Exhibit 1 consisting of the Candidate's petition sheets, other candidate petition sheets, and pages from Objector's appendix recapitulation which all corresponded with the signatures in question therein named in the Objector's Rule 8 Motion ; Objector's Group Exhibit 2 consisting of the Candidate Andre Smith's petition sheets and pages from the Objector's appendix recapitulation which correspond with the signature in question named therein in the Objector's Rule 8 Motion .

ANALYSIS AND CONCLUSIONS OF LAW

18. The Illinois Notary Public Act defines notarization as the performance of the notarial act. 5 ILCS 312/1-104(b). A "Notarial act" means any act that a notary public of this State is authorized to perform and includes taking an acknowledgment, administering an oath or affirmation, taking verification upon oath or affirmation, and witnessing or attesting a signature. 5 ILCS 312/6-101(a).

19. The circulator's statement appearing at the bottom of each nominating petition sheet "shall be sworn to before some officer authorized to administer oaths in the State." see 10 ILCS 5/7-10, 5/10-4. The date of circulation may be included in the in the circulators statement; see 10 ILCS 5/8-8, which states:

In the affidavit at the bottom of each petition sheet, the petition circulator shall either (1) indicate the dates on which he or she circulated that sheet, or (2) indicate the first and last dates on which the sheet was circulated, or (3) certify that none of the signatures on the sheet were signed more than 90 days preceding the last day for the filing of the petition. No petition sheet shall be circulated more than 90 days preceding the last day provided in Section 8-9 for the filing of such petition.

20. The circulator's affidavit at the bottom of the petition sheets in this case all state the third option of ILCS 5/8-8, that none of the signatures on the sheet were signed more than 90 days preceding the last day for the filing of the petition.
21. The requirement in the Election Code that the person who circulated nominating petition sheets personally appear before a notary public to *validate the petition* has been held to be mandatory and not directory. Thus, a violation of that requirement invalidates the petition sheets. Cardona v. Chavez, 07-EB-ALD-063, CBEC, January 12, 2007 citing Bowe v. City of Chicago Electoral Board.
22. Nothing in the election code, board cases, or case law state anything contrary to the purpose of notarizing the circulator's statement being to affirm that statement and thereby validate the petition sheet. Under the Election Code, the circulator's affidavit may contain the date of circulation. See 10 ILCS 5/8-8. Here, circulator's affidavits do not contain the date or dates of circulation; see Objector's Exhibits 1 and 2.

23. By relying on the date of notarization to prove when a voter signed a petition sheet, the Objector did not meet his burden to prove when the 36 signatures outlined in his Rule 8 motion and his Objector's Petition, were in fact signed. As the results of the records exam reflect, the Candidate is 27 signatures above the minimum required. Besides the 36 signatures referred to herein, the Objector also objected to 17 other signatures. However, because the 36 signature objections are overruled, any finding on the other signatures is moot.

RECOMMENDATION

24. For the reasons stated above, the Hearing Officer finds and recommends in the above referenced case, the Objector's Petition is OVERRULED, the Nominating Papers of the Candidate Andre Smith for the Office of Alderman for the 20th Ward, City of Chicago, State of Illinois are VALID;

ENTERED THIS 26th day of December 2014.



Mary C. Meehan

Hearing Officer