

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

Objections of: Jennifer Edwards-Eichelberger)
and Gerald Thomas)
)
To the Nomination) No.: 16-EB-CON-02
Papers of: Danny K. Davis)
) Rel.: 16-EB-CON-01
Candidate for the nomination of the)
Democratic Party for the office of)
Representative in Congress for the 7th)
Congressional District, State of Illinois)

FINDINGS AND DECISION

The duly constituted Electoral Board, consisting of Board of Election Commissioners for the City of Chicago Commissioners Marisel A. Hernandez, William J. Kresse and Jonathan T. Swain, organized by law in response to a Call issued by Marisel A. Hernandez, Chairman of said Electoral Board, for the purpose of hearing and passing upon objections (“Objections”) of Jennifer Edwards-Eichelberger and Gerald Thomas (“Objectors”) to the nomination papers (“Nomination Papers”) of Danny K. Davis, candidate for the nomination of the Democratic Party for the office of Representative in Congress for the 7th Congressional District of the State of Illinois (“Candidate”) at the General Primary Election to be held on March 15, 2016, having convened on December 14, 2015, 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 Objectors 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 14, 2015 and was continued from time to time.

5. The Electoral Board assigned this matter to Hearing Officer Barbara Goodman for further hearings and proceedings.

6. 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. The following persons, among others, were present at such hearing: the Objectors, Jennifer Edwards-Eichelberger and Gerald Thomas, pro se; the Candidate, Danny K. Davis, by his attorneys, Andrew Finko and Frank Avila.

7. The Hearing Officer has tendered to the Electoral Board his report and recommended decision. The Hearing Officer recommends that the Objections to the Candidate's Nomination Papers be stricken and dismissed and that the Nomination Papers be declared valid.

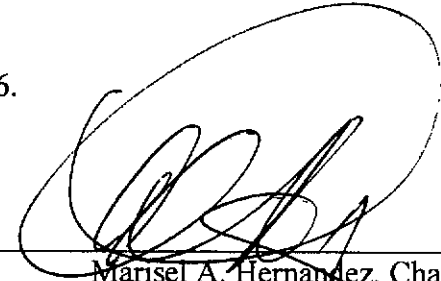
8. The Electoral Board, having reviewed the record of proceedings in this matter and having considered the report and recommendations of the Hearing Officer, as well as all argument and evidence submitted by the parties, hereby adopts the Hearing Officer's recommended findings and conclusions of law. A copy of the Hearing Officer report and recommendations is attached hereto and is incorporated herein as part of the decision of the Electoral Board.

9. For the reasons stated above, the Electoral Board dismisses the Objections to the Candidate's Nomination Papers and finds that the Candidate's Nomination Papers are valid.


10. The Electoral Board further finds that a similar result was reached in related case 16-EB-CON-01.

IT IS THEREFORE ORDERED that the Objections of Jennifer Edwards-Eichelberger and Gerald Thomas to the Nomination Papers of Danny K. Davis, candidate for the nomination of the Democratic Party for the office of Representative in Congress for the 7th Congressional District of the State of Illinois, are hereby DISMISSED and said Nomination Papers are hereby declared VALID and the name of Danny K. Davis, candidate for the nomination of the Democratic Party for the office of Representative in Congress for the 7th Congressional District of the State of Illinois, SHALL be printed on the official ballot for the General Primary Election to be held on March 15, 2016.

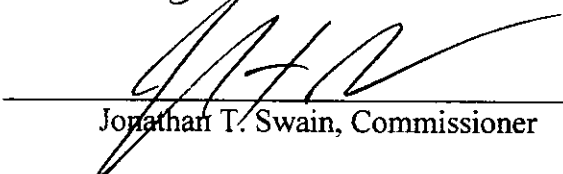
Dated: Chicago, Illinois, on January 15, 2016.



Marisel A. Hernandez, Chairman



William J. Kresse, Commissioner



Jonathan T. Swain, 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 FOR THE
HEARING AND PASSING ON OBJECTIONS
TO NOMINATION PAPERS OF CANDIDATES
FOR THE MARCH 15, 2016 GENERAL PRIMARY ELECTION**

Gerald Thomas and)	
Jennifer Edwards Eichelberger)	
)	
Objectors)	16 EB CON 02
-v-)	(Rel. case 16 EB CON 01)
)	
Danny K. Davis)	
)	
Candidate)	

HEARING OFFICER’S REPORT AND RECOMMENDED DECISION

This matter was first heard on December 14, 2015. The Objectors appeared pro se. The candidate appeared through counsel Andrew Finko and Frank Avila. The parties were given the opportunity to file preliminary motions. Candidate filed Candidate’s Motion to Strike, or in the Alternative for a Rule 1(b)(xv) Preliminary Showing of Good Faith by Objectors. Objectors filed Answer to Candidate’s Motion to Strike, or in the Alternative for Rule 1(b)(xv) Preliminary Showing of Good Faith by Objectors and Candidate filed a Reply. The case was consolidated with 16 COEB CON 01 for the purposes of arguments.

BACKGROUND

The candidate’s nominating papers contain approximately 8,989 signatures. The Objectors filed objections to virtually every signature on at least two grounds, specifically that the signer is not registered and that the signer’s signature is not genuine. Some signatures were objected to on additional grounds. A summary sheet was submitted with the Objector’s Petition which addressed 15 circulators that the Objectors allege engaged in a pattern of fraud. The summary sheet set out sheets and lines where purported improprieties occurred involving the 15

circulators. However, in the body of the objection, Objectors allege that each and every one of the approximately 93 circulators engaged in a pattern of fraud and false swearing. (Objectors' Petition, par. 10). Additionally, objections with the identical recapitulation sheets, an identical summary sheet and verbatim allegations were filed in 16 CBOEC CON 01 ("CON 01"). It was clear from a review of the objections in both cases that the summary sheets and the recapitulation sheets were photocopies of each other. However, the objections in CON 01 were filed by two different objectors.

The Candidate filed a Motion to Strike and Dismiss alleging that the objections were shotgunned and further alleging that the allegation regarding the purported pattern of fraud set forth in Objector's paragraph 10 lacked specificity and should be stricken. In his Motion, Candidate also requested a preliminary showing pursuant to Rule 1(b)(xv) of the Board's Rules of Procedure. Rule 1(b)(xv) provides, "***The Electoral Board may, on its own motion or upon motion of a party, 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. Objections to individual signers and/or circulators must consist of a specific objection or objections to that particular signer or circulator.***" In light of the number of specific sheet and line objections filed coupled with the fact that a duplicate set of objections was filed by other objectors, a preliminary showing was appropriate and necessary. Accordingly, Objectors were called to testify.

The testimony of Gerald Thomas

Objector Gerald Thomas was first called to testify pursuant to Rule 1(xv) so that it could

be ascertained what, if any, investigation was undertaken in relation to the multiple the Candidate's nominating papers. Mr. Thomas testified that he never went to the offices of any election authorities to review the registration records of the signers and that no one went for him. (Tr. of 12/21/15 at p. 19-20). He looked at no records to ascertain whether a signature was the genuine signature of the signer because it was "clear as a brand new day" (Tr. of 12/21/15 at p. 20). He did look at poll sheets for the City of Chicago, "walking sheets" and utilized different websites and googled names when preparing the objections. He did not obtain or use poll sheets for signatures in suburban Cook County despite having made objections to such signatures. (Tr. of 12/21/15 at p. 25). At no time during the purported investigation process were the actual signatures of the signers examined. (Tr. of 12/21/15 at p. 32).

Mr. Thomas further testified that he prepared the summary sheet which was submitted with the Objectors' Petition and that he and his co-objector prepared the recapitulation sheets. (Tr. of 12/21/15 at p. 32).

Having heard the testimony of the Objector Thomas, a random sheet from the recapitulation sheets in both CON 01 and CON 02 was selected by this Hearing Officer to serve as a basis for comparison. Sheet 84 in both cases was selected which established with abundant clarity that both sheets 84 were prepared in the same writing by the same individual despite Objector's sworn testimony to the contrary.

The testimony of Jennifer Edwards-Eichelberger¹

Objector Jennifer Edwards- Eichelberger testified that she never reviewed any records at

¹ In his Motion to Strike and Dismiss, the Candidate alleged that the Objector was not a registered voter in the 7th Congressional District and that she therefore had no standing to bring the objection. During Ms. Edwards-Eichelberger's testimony, she conceded that she was not a registered voter in the 7th Congressional District. (Tr. of 12/21/15 at p. 35). However, inasmuch as there is another Objector in the case, the registration status of Objector Edwards-Eichelberger was not dispositive in determining whether the entire Objector's Petition should be stricken and dismissed.

any election authority. She testified that she did assist Mr. Thomas in placing the x's in the recapitulation sheets.

Sample Records Examination

The testimony of the Objectors failed to establish that any of the signatures on the petitions were, in fact, compared to signatures on the registration records. Therefore, there was an insufficient basis to allow the Objectors to proceed on objections made regarding the genuineness of signatures. Indeed, the testimony served to establish that as it related to the issue of genuineness, there lacked a good faith basis for the Objectors to claim that virtually EVERY signature on the candidate's petition was not genuine. However, the testimony of Gerald Thomas raised the possibility that some investigation was made in regard to the other sheet and line objections. Therefore, a sample records examination was appropriate to ascertain whether the other objections were plead in good faith as required. Accordingly, it was determined that the allegations regarding the genuineness of signatures would not be reviewed in the sample records examination but the other allegations would be reviewed. For the sample, each party offered 10 sheets to review and this Hearing Officer offered an additional 10 sheets for a total of 30 sheets. Thereafter, a sample records examination was conducted.

The results of the sample records examination were as follows: The candidate filed 8,989 signatures and the Objectors alleged that 8,891 signatures were invalid on multiple grounds. 548 objections were ruled on resulting in 276 being overruled and 272 being sustained.

DISCUSSION

In relation to the sample records examination, it should be noted that the Objectors already had identified what they considered to be their "best sheets" in terms of the objections and were able to offer those sheets to be used in the sample records examination. The Candidate

was required to select the sheets randomly and without prior notice. Despite Objectors' offer of their "best sheets", slightly less than 50% of the objections submitted in the sample records examination were sustained. As Candidate correctly pointed out, if the results of the sample records examination are extrapolated through the entire nominating petition, Candidate would still have sufficient remaining signatures for placement on the ballot. Put another way, using the same rate of sustained objections, the Candidate would have more than 4,400 remaining valid signatures (with 1,322 being required for the office being sought).

It is long recognized that an Objector's Petition is not to be used as a source of harassment of a candidate or a misuse of the Board's resources. As the Candidate correctly points out in his Motion to Strike and Dismiss, "the Electoral Board should not be required to expend its valuable time and resources, nor the time and resources of a candidate, in engaging in a 'fishing expedition' for an objector who has not spent the requisite time and resources to make a reasonable inquiry of the facts. Entertaining such objections may invite future parties to interpose similar objections for improper purposes, such as to harass candidates, cause unnecessary delay in the preparation of the ballots or in the conduct of candidate campaigns, or needlessly increase the cost of conducting elections." *Derengowski v Lamm*, 96-EB-RGA-1 CBEC, January 17, 1996, affirmed *Derengowski v Electoral Board of City of Chicago*, 96 CO 16 (Cir. Ct. Cook Co. Judge Henry, February 9, 1996). Indeed, new Rule 1(xv) of the Board's Rules of Procedure recognizes the need for good faith objections by "requiring a preliminary showing that certain factual allegations in the Objector's petition are pled in good faith based on knowledge, information and/or belief formed after reasonable inquiry".

Case law makes clear that making some inquiry is not the same as making a reasonable inquiry. The Objectors in this case failed to provide credible evidence to justify the sweeping

allegations that virtually every signature on the Candidate's nominating petition was invalid on multiple bases. Even more disturbing is the failure of the Objectors to offer any credible explanation as to how identical objections in two different cases by two different sets of Objectors were submitted without any information or documents having been shared between the sets of objectors. The lack of any plausible explanation makes it impossible to determine who, if anyone, actually undertook an investigation sufficient to support the filing of the objections.

Accordingly, a finding that the objections were not pled in good faith based on knowledge, information and/or belief formed after reasonable inquiry is appropriate here and the objections should be stricken and dismissed in their entirety. Although the entire Objectors' Petition should be stricken and dismissed, paragraph 10 of the Objectors' Petition also fails to set forth with specificity the bases for the pattern of fraud allegations made against all 93 circulators. Candidate in his Motion to Strike and Dismiss, asks that paragraph 10 be stricken. Given that no specific allegations are made to any circulators except the 15 circulators mentioned in the summary sheet submitted with the Objectors' Petition, paragraph 10 of the Objectors' Petition as to the remaining circulators mentioned in said paragraph should be stricken on that basis as well.

CONCLUSION

In light of the foregoing, it is my recommendation that the objections of Gerald Thomas and Jennifer Edward-Eichenberger to the nominating papers of Danny K. Davis be stricken and dismissed and that the nominating papers of Danny K. Davis for the Democratic nomination to the office of Representative in the United States Congress for the 7th Congressional District be deemed **valid** and that the name of Danny K. Davis for said office **be** printed on the ballot at the March 15, 2016 General Primary Election.

Respectfully submitted,

A handwritten signature in cursive script that reads "Barbara Goodman". The signature is written in black ink and is positioned above a horizontal line.

Barbara Goodman, Hearing Officer
1/12/16