

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

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Objections of: JUAN CALDERON )  
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 To the Nomination ) No.: 19-EB-ALD-029  
 Papers of: DAVID HERRERA )  
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 Candidate for the office of )  
 Alderman of the 26th Ward of the City of )  
 Chicago )  
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**FINDINGS AND DECISION**

The duly constituted Electoral Board, consisting of the 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, Chair of said Electoral Board, for the purpose of hearing and passing upon objections (“Objections”) of JUAN CALDERON (“Objector”) to the nomination papers (“Nomination Papers”) of DAVID HERRERA, candidate for the office of Alderman of the 26th Ward of the City of Chicago (“Candidate”) at the General Municipal Election to be held on Tuesday, February 26, 2019, having convened on Monday, December 10, 2018, at 8:30 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 legally constituted under 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 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 Monday, December 10, 2018 and was continued from time to time.

5. The Electoral Board assigned this matter to Hearing Officer Linda R. Crane 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 or filed appearances during such hearing; the Objector, JUAN CALDERON, and/or his Attorney, FRANK AVILA; and the Candidate, DAVID HERRERA, and/or his Attorney, ED Mullen.

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 was 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 remaining number of signatures deemed valid as a result of the records examination total 940.

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 the office of Alderman for the 26th Ward of the City of Chicago.

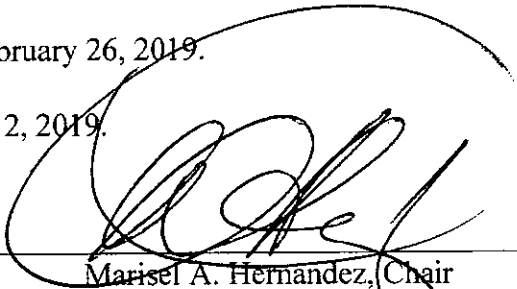
14. The Hearing Officer has tendered to the Electoral Board a report and recommended decision. Based upon the evidence presented, the Hearing Officer found that the Candidate's Nomination Papers contained 940 valid signatures, which exceeds the minimum number of valid signatures required by law to be placed upon the ballot as a candidate for the office of Alderman for the 26th Ward of the City of Chicago, and that the Candidate's Nomination Papers should be found valid.

15. 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.

16. 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 DAVID HERRERA are, therefore, valid.

IT IS THEREFORE ORDERED that the Objections of JUAN CALDERON to the Nomination Papers of DAVID HERRERA, candidate for the office of Alderman for the 26th Ward of the City of Chicago, are hereby OVERRULED and said Nomination Papers are hereby declared VALID and the name of DAVID HERRERA, candidate for the office of Alderman for the 26th Ward of the City of Chicago, SHALL be printed on the official ballot for the General Municipal Election to be held on Tuesday, February 26, 2019.

Dated: Chicago, Illinois, on Friday, January 12, 2019.



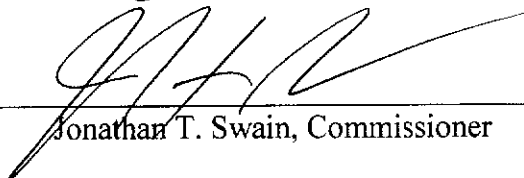
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Marisel A. Hernandez, Chair



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William J. Kresse, Commissioner



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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.

**BEFORE THE DULY CONSTITUTED BOARD OF ELECTION COMMISSIONERS FOR  
THE CITY OF CHICAGO FOR THE HEARING AND PASSING UPON OBJECTIONS TO  
NOMINATION PAPERS OF CANDIDATES FOR ELECTION TO THE OFFICE OF  
ALDERMAN OF THE 26<sup>TH</sup> WARD OF TH CITY OF CHICAGO, STATE OF ILLINOIS**

**IN THE MATTER OF  
JUAN CALDERON**

**Petitioner-Objector**

**Vs.**

**DAVID HERRERA**

**Respondent-Candidate**

**No. 19 – EB – ALD - 029**

**HEARING OFFICER’S RECOMMENDED DECISION**

This matter having come before the Board of Election Commissioners for the City of Chicago (“CBOE”) on verified objections of **JUAN CALDERON** (“Objector”) to the nomination papers of **DAVID HERRERA** (“Candidate”), Linda R. Crane, the Hearing Officer, finds and recommends the following:

1. That the Respondent Candidate, **DAVID HERRERA**, has filed Nomination Papers in support of his nomination to the office of Alderman of the 26<sup>th</sup> Ward of the City of Chicago in the State of Illinois to be voted upon during the upcoming Municipal General Election on February 20, 2019 (“Election”). The Petitioner-Objector, **JUAN CALDERON**, filed a Verified Objector’s Petition Objecting to the sufficiency of the Candidate’s nomination papers for various reasons stated in Paragraphs 5 through 12 of his Petition.

2. That the initial hearing on the matter was held on December 10, 2018. Both parties were present and filed their Appearances: The Candidate by and through his attorney, Edward Mullen; and the Objector, by and through his attorney, Frank Avila. The hearing began with a review of the file to make sure that it was complete. Following a discussion about general procedural matters and the issues and objections raised in the Petition, the Candidate stated that he intended to file a Motion to Strike or Dismiss some or all of the Objector's objections. A briefing schedule was established for the Motion to Strike and Dismiss as follows: The Candidate's Motion to Strike and Dismiss was due no later than 5 p.m. on December 11, 2018; the Objectors to file a Response, if any, was due no later than 5 p.m. on December 12, 2018; and the Candidate's Reply, if any, was due no later than 5 p.m. on December 13, 2018.
3. That the parties also requested a Records Examination. Because there were no legal issues alleged in the Objector's Petition that, if sustained, would have eliminated the need for a Records Examination, a Records Examination Directive was issued and, subsequently, the RE was scheduled for December 17, 2017 at 10:00 a.m.
4. The Candidate's Motion to Strike was filed timely. The Objector did not file a Response to the Candidate's Motion to Strike. Instead, Mr. Avila sent an e-mail message at 5:00 p.m. on December 12, 2018 stating the following in its entirety: *"I respectfully reserve the right to verbally argue my response at the Hearing. I am not filing a written response but do not waive hearing nor oral arguments. Thank you"*

5. That the second hearing was scheduled for December 17, 2018 at 2:00 p.m. and commenced at 2:36 p.m. Both attorneys were present. Mr. Mullen proceeded with his arguments in favor of his motion to strike Paragraph 11 of the Objector's Petition which alleged a pattern of fraud arising from the fact that the notary's name was written in the space provided for the name of the circulator on a number of sheets leading the Objector to conclude that the circulator never appeared before the notary when she notarized the sheets. Mr. Mullen argued against this conclusion on both legal and factual grounds. Legally, he argued, citing *"five of six cases that the Chicago Electoral Board has held that that's an insufficient basis to allege that the circulator did not personally appear before the notary."* (12-17-18 transcript, page 7). Factually, he argued that the Objector had not requested subpoenaed any of the circulators nor the notary nor otherwise offered any evidence to support the allegation. (12-17-18 transcript, pages 6-7). Next, Mr. Mullen argued that Mr. Avila should not be allowed to make any substantive oral arguments in response to his Motion to Strike because Mr. Avila did not file a written Response to said motion. Mr. Avila argued that the Board's Rules of Procedure Rule 5 do not require him to file a Response to the Candidate's Rule 5 motion. While that is technically accurate under Rule 5 (a), I disagreed with his assertion that the permissive language of the rule meant that he had the option of presenting his Response verbally. Rule 5 (b) (ii) states that *"A response, if any, to the motion (to strike or dismiss), must be made in writing and filed with the Electoral Board and served upon the other parties..."* Mr. Avila also argued that he should be allowed to proceed with substantive verbal arguments in response to the Motion to Strike because he was *"not inserting anything new besides the (original) objection."* (12-17-18 transcript, pages 9-10) But Rule 5 does not state that a written response is only required if it contains something

new that was not in the Objector's Petition. I did not allow Mr. Avila to make substantive verbal arguments in response to the Candidate's Motion to Strike because he failed to comply with the clear parameters of Rule 5 responses. Thereafter, I granted Mr. Mullen's motion to strike Paragraph 11 of the Objector's Petition.

6. That the parties agreed that all of the remaining allegations in the Objector's Petition were factual matters to be resolved by a record examination.
7. That a third hearing commenced on December 27, 2018 at 11:30 a.m. The purpose of this hearing was to review the results of the Records Examination, which was completed and certified by the Board's staff and handwriting expert on December 19, 2018.
8. That the Final results of the Record Examination duly certified and the reported results were as follows:

<b>Signatures Required:</b>	<b>473</b>
<b>Total Pages:</b>	<b>197</b>
<b>Total Signatures:</b>	<b>1562</b>
<b>Total Objections:</b>	<b>1653</b>
<b>Total Ruled On:</b>	<b>1656</b>
<b>Total Remaining:</b>	<b>-3</b>
<b>Total Sustained:</b>	<b>635</b>
<b>Total Overruled:</b>	<b>1021</b>
<b>For Review (Candidate):</b>	<b>24</b>
<b>For Review (Objector):</b>	<b>150</b>
<b>Total Valid Signatures:</b>	<b>940</b>
<b>Total Unchallenged Sigs:</b>	<b>600</b>

**467 Signatures greater than the required minimum**

9. That both parties stated that they were not going to file Rule 8 motions nor otherwise challenge the results of the Records examination.



For all of the foregoing stated reasons, I am recommending to the Board that the Objector's objections to the Candidate's candidacy be overruled; and that the Candidate's name be added to the ballot in the upcoming Election.

Respectfully submitted,

Date: January 7, 2019

By: *Linda R. Crane*  
Linda R. Crane, Hearing Officer