

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

Objections of: BRUCE WASHINGTON)
)
)
To the Nomination) No.: 19-EB-ALD-061
Papers of: ZERLINA A. SMITH)
)
Candidate for the office of)
Alderman of the 29th Ward of the City of)
Chicago)
)

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 BRUCE WASHINGTON (“Objector”) to the nomination papers (“Nomination Papers”) of ZERLINA A. SMITH, candidate for the office of Alderman of the 29th 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, BRUCE WASHINGTON, and/or his Attorney, PERICLES ABBASI; and the Candidate, ZERLINA A. SMITH, and/or her Attorneys, ANDREW FINKO and CHRISTOPHER KRUGER.

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 her 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 530.

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 29th 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 530 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 29th Ward of the City of Chicago, and that the Candidate's Nomination Papers should be found valid.

15. The Objector then filed a Rule 20 motion seeking additional argument and evidence before the Electoral Board, which granted such request with a hearing on Jan. 25, 2019.

The issue Objector raised is whether the Candidate's nomination papers were invalid due to not having been securely bound at the time of filing.

16. The Objector's attorney attempted to demonstrate to the Electoral Board that petition sheets could be removed from the package of Nomination Papers that were bound by a two-hole metal-prong fastener for which evidence showed the top locking mechanism was not installed at the time of filing. However, the Electoral Board found that the Objector's attorney had to manipulate the metal prongs in order to remove a petition sheet, and the Nomination Papers therefore were "securely bound" as under the test set forth in *Bendell v. Education Officers Elec. Bd.*, 338 Ill.App.3d 458 (1st Dist. 2003).

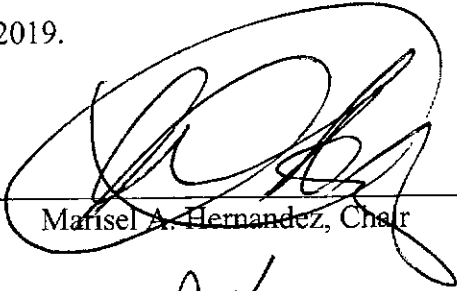
17. The Electoral Board, having considered the evidence and arguments tendered by the parties and the Hearing Officer's report of recommended findings and conclusions of law, hereby adopts the Hearing Officer's recommended findings and conclusions of law.

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

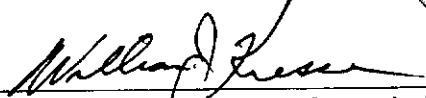
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IT IS THEREFORE ORDERED that the Objections of BRUCE WASHINGTON to the Nomination Papers of ZERLINA A. SMITH, candidate for the office of Alderman for the 29th Ward of the City of Chicago, are hereby OVERRULED and said Nomination Papers are hereby declared VALID and the name of ZERLINA A. SMITH, candidate for the office of Alderman for the 29th 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.

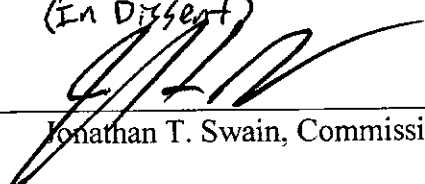
Dated: Chicago, Illinois, on Friday, January 25, 2019.



Marisel A. Hernandez, Chair



William J. Kresse, Commissioner
(In Dissent)



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 29TH WARD OF TH CITY OF CHICAGO,
STATE OF ILLINOIS**

IN THE MATTER OF)
BRUCE WASHINGTON)

Petitioner-Objector)

vs.)

ZERLINA A. SMITH)

Respondent-Candidate)

No. 19 – EB – ALD - 061

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 **BRUCE WASHINGTON** (“Objector”) to the nomination papers of **ZERLINA SMITH** (“Candidate”), the Hearing Officer, Linda R. Crane, (H.O.) finds and recommends the following:

1. That the Respondent Candidate, **ZERLINA A. SMITH**, has filed Nomination Papers in support of her nomination to the office of Alderman of the 29th Ward of the City of Chicago in the State of Illinois to be voted upon during the upcoming Municipal General Election on February 26, 2019 (“Election”). The Petitioner-Objector, **BRUCE WASHINGTON**, filed a Verified Objector’s Petition Objecting to the sufficiency of the Candidate’s nomination papers for various reasons stated in Paragraphs 3 through 22 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 her attorney,

Andrew Finko; and the Objector, by and through his attorney, Pericles Abassi. 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 an intention to file a Motion to Strike or Dismiss under the Board's Rule 5, a briefing schedule was established. The Candidate filed a Rule 5 Motion to Strike Objector's Petition and the Objector filed a Response to Candidate's Rule 5 Motion to Strike. Both were filed timely.

3. The Objector also filed a Request for Subpoenas for 10 persons: including eight (8) circulators, the notary who notarized all of the petition sheets, and the campaign manager. The Candidate filed a Response & Objections to Objector's Request for Subpoenas.
4. That the second hearing convened on December 17, 2018 for the purpose of allowing the parties to argue for and against the requested subpoenas; and for and against the Candidate's Motion to Strike.
5. That during the Rule 5 hearing, the parties argued their respective positions regarding whether photographs of unsigned petition sheets that the Candidate had posted to her Twitter account was proof that she had engaged in a pattern of fraud that invalidated all of her signatures; and whether, based on the large number of total objections, the Objector had engaged in bad faith by taking a "shotgun" approach to crafting the objections.
6. That the parties agreed, regarding the subpoena requests, that the information sought could be easily acquired through sworn affidavits that the Candidate agreed to provide voluntarily. Later on December 17, 2018, the H.O. filed a Recommendation to

Commissioners Re: Objectors' Subpoenas Request that recommended denial of the request without prejudice to the Objector pending the prompt production of sworn affidavits from the individuals named in the Subpoena Request.

7. That the parties requested a Records Examination and a Records Examination Directive was issued and, subsequently, the RE was scheduled for December 20, 2018 at 1:30 p.m.
8. That there was a hearing on December 27, 2018 where we learned that the RE had not yet concluded and the parties were instructed to collaborate in the drafting of the affidavits that would be used in lieu of subpoenas.
9. That, on January 4, 2019 a hearing was convened to review the results of the Records Examination, which had been completed and certified by the Board's staff and handwriting expert on January 2, 2019.
10. That the final results of the Records Examination were as follows:

Signatures Required:	473
Total Pages:	126
Total Signatures:	2393
Total Objections:	5853
Total Ruled On:	5853
Total Remaining:	0
Total Sustained:	2653
Total Overruled:	3200
For Review (Candidate):	2587
For Review (Objector):	3041
Total Valid Signatures:	530
Total Unchallenged Sigs:	150

57 Signatures greater than the required minimum

11. That the Candidate filed a Rule 8 Motion, accompanied by 80 rehabilitating affidavits. The Objector did not file a Rule 8 Motion nor did he file a Response to Candidate's Rule 8 Motion.

12. That Objector did, however, ask to resume the Rule 5 evidentiary hearing (that had been suspended pending the receipt of the RE results) on the objections in Paragraphs 17 & 18 of his Petition that contained the pattern of fraud allegation involving one of the circulators, Angelina Ortega; and the objections in Paragraph 20 of his Petition that contained the allegation that the Nomination Papers should be invalidated in their entirety because they were not securely bound when filed with the Board. The parties were instructed to prepare and exchange briefs on the fastener/binding issue and to exchange evidence that they would be presenting at the next hearing.

13. That when the next hearing convened on January 14, 2019, the Objector stated that he was not pursuing the objections against Ms. Ortega or the other circulator-related objections; but would be proceeding with the fastener/binder issue only. The Objector had requested copies of the Board's photocopies of the Nomination papers when they were filed and they showed that the pages were bound together by a 2 3/4 inch, 2-hole prong metal fastener spindled along the top edge of the stack of Nomination Papers. The ends of the prongs extended @1/4 inch in length above the top page did not have the brace that can be used to connect the prongs. The ends were however, bent outward to secure the pages together. One photo showed the staff handling the Nomination Papers and bending sections of them back to access pages in the middle of the book without the top pages appearing to be unsecure. 10 ILCS 5/110-4 invalidates in their entirety Nomination Papers that are not fastened together in a secure and suitable manner. Both parties in the present case relied on the standard

established in *Bendell v. Educational Offers Electoral Board for School District 148*, 338 Ill. App.3d 458, 788 N.E.2d173 (1st Dist. 2003) as support for their respective positions. The Objector argued that the pages could be removed from the fastener without tearing the pages. The Candidate argued that the pages could not be removed without being torn in the process.

In *Bendell* the Illinois Appellate Court, stated that binding cases are fact-sensitive and must be determined on a case-by-case basis. The Court found that the nomination papers "*were securely fastened because a member of the Board was unable to pull them apart without removing the paper clip*" (at 178)

The *Bendell* Court also established that substantial compliance with the Election Code was possible and that the Nomination Papers could be securely bound even though only a paperclip was used. So, the question is not really whether or not the pages can be removed without being torn but whether the Nomination Papers can be separated from the book without removing or manipulating the fastener. In this case, it may be true that the use of the brace to connect the prongs would have made it more secure by requiring additional steps to manipulate the fastener to allow removal of undamaged sheets from the book. Nevertheless, the use of the prongs alone (without the brace) appeared to create a book in a sufficiently secure manner once the prongs were bent down in either an outward or an inward direction insofar as the pages could not be removed unless the prongs were straightened out to loosen their grip on the pages, and meets the *Bendell* test.

Given all of the foregoing stated facts, I am recommending to the Board that the Objector's remaining 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 23, 2019

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