

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

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Objections of: KEVIN BAILEY )  
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 )  
 To the Nomination ) No.: 19-EB-ALD-131  
 Papers of: DERNARD D. NEWELL )  
 )  
 Candidate for the office of Alderman for the )  
 20th 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 KEVIN BAILEY (“Objector”) to the nomination papers (“Nomination Papers”) of DERNARD D. NEWELL, candidate for the office of Alderman for the 20th 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 held on these Objections commenced on Monday, December 10, 2018 and was continued from time to time.

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

6. The Objector 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 Objector, KEVIN BAILEY, and/or his pro se KEVIN BAILEY; the Candidate, DERNARD D. NEWELL, and/or his Attorney MABLE TAYLOR.

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 overruled and that the Nomination Papers be declared valid.

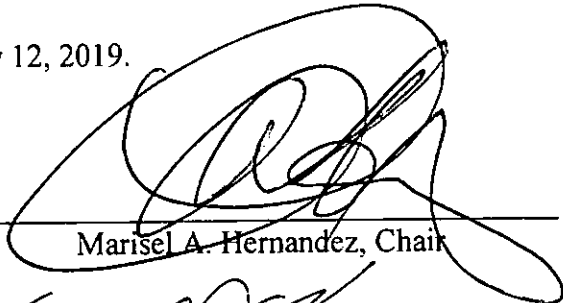
8. The Electoral Board, having reviewed the record of proceedings in this matter and having considered the report and recommendations of the Hearing Officer, as well as all argument and evidence submitted by the parties, hereby adopts the Hearing Officer's recommended findings and conclusions of law. 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 overrules the Objections to the Candidate's Nomination Papers and finds that the Candidate's Nomination Papers are valid.

IT IS THEREFORE ORDERED that the Objections of KEVIN BAILEY to the Nomination Papers of DERNARD D. NEWELL, candidate for the office of Alderman for the 20th Ward of the City of Chicago, are hereby OVERRULED and said Nomination Papers are

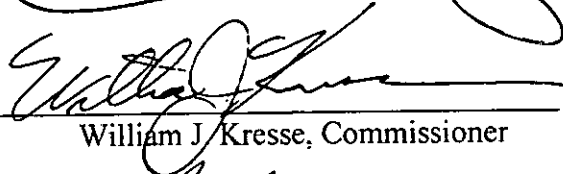
hereby declared VALID and the name of DERNARD D. NEWELL, candidate for the office of Alderman for the 20th Ward of the City of Chicago, SHALL be printed on the official ballot for the General Municipal Election to be held on Tuesday, February 26, 2019.

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



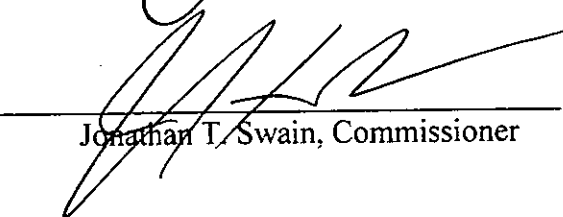
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Marisel A. Hernandez, Chair



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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 BOARD OF ELECTION COMMISSIONERS  
FOR THE CITY OF CHICAGO**

Kevin Bailey	)	
	)	
vs.	)	Case No. 19-EB- ALD-131
	)	
Denard Newell	)	Hearing Officer: Martin P. Greene
	)	
Objector	)	
Candidate	)	

**HEARING OFFICER'S FINAL REPORT AND RECOMMENDED DECISION**

1. In the matter of Petitioner-Objector, Kevin Bailey ("Objector") regarding the Nomination Papers of Respondent-Candidate, Denard D. Newell, for the nomination for the Office of Alderman, 20<sup>th</sup> Ward of the City of Chicago, State of Illinois ("Candidate") to be voted upon during the upcoming Municipal General Election on February 26, 2019 (election), the hearing having convened on December 10, 2018; Martin P. Greene, Esq., the duly appointed Hearing Officer, hereby makes the following Final Report and Recommended Decision to the Board of Election Commissioners of the City of Chicago ("CBEC" or the "Board"):

2. Objector filed a Verified Objector's Petition objecting to the sufficiency of the Candidate's nomination papers for various reasons stated primarily in Paragraphs 1 through 27 of his Petition, to wit:

1. "...the signatures of not less than 473 duly qualified, registered, and legal voters of the 20<sup>th</sup> Ward of the City of Chicago in the State of Illinois, are required."
2. "...Denard D. Newell has filed 251 petition signature sheets containing a maximum total of 2,500 signatures of allegedly duly qualified, legal, and registered voters..."
3. "...SIGNER NOT REGISTERED..."
4. "...SIGNER NOT IN DISTRICT..."
5. "...SIGNER NOT PROPER PERSON AND NOT GENUINE..."
6. "...nomination papers contain the names of numerous persons who previously and first signed nomination papers for Kevin Bailey and or another candidate for alderman..."

7. "...nomination papers contain the names of numerous persons who signed an affidavit attesting under the penalty of perjury that the signature...is his/her true and genuine signature"
8. "The Signer further attested...they have not signed any other petition sheet for any other candidate for Alderman of the 20<sup>th</sup> ward..."
9. "The Signer further attested under perjury, that his or her signature appearing on any other petition sheets for any other candidate for Alderman of the 20<sup>th</sup> ward of Chicago for the election to be held on February 26, 2019, was second to his or her signature signed on Kevin Bailey petition sheets."
10. "The Signer further attested under perjury, that his or her signature...was first in time..."
11. "The Signer signed Kevin Bailey's petition sheet and an affidavit attesting to and verifying their first in time signature, under Section 109 and in the presence of a notary."
12. "...SIGNER SIGNED THE PETITION SHEET OF CANDIDATE KEVIN BAILEY PRIOR TO SIGNING THE PETITION SHEETS FOR Darnard D. Newell (D)..."
13. "...that various purported signatures are legally defective and deficient for a variety of reasons, as more fully set forth in the Appendix-Recapitulation..."
14. "...various purported signatures are legally defective and deficient because the signer failed to put his/her address in the correct box..."
15. "...various purported signatures are legally defective and deficient because the purported signature is an "initial" purportedly of the signer's name..."
16. "...various purported signatures are legally defective and deficient because the purported signature is the "printed name" purportedly of the signer's name..."
17. "...various purported signatures are legally defective and deficient because the address and/or street name for purportedly the signer is incomplete and/or misspelled...and.."SIGNER NOT REGISTERED..."
18. "...petition signature sheets nos. 182, 183, 196, 201, 203, 230, 233, 234, 235, 236, 195, 198, 200, 202, 194, 249, 199, 228 and 251 are legally void in their entirety because a circulator circulated for two or more candidates for the same political office..."
19. "Each sheet petitions, numbers, 199, 228 and 251 were circulated by Arnetta Featherstone for and on behalf of Darnard Newell for the office of 20<sup>th</sup> Ward Alderman for the election to be held on February 26, 2019"
20. "Arnetta Featherstone circulated petitions on behalf of Kevin Bailey for the office of 20<sup>th</sup> Ward Alderman for the election to be held on February 26, 2019, prior to circulating petitions for Darnard Newell"
21. "Each sheet petitions, numbers, 194 and 249 were circulated by Kirkland Thornton for and on behalf of Darnard Newell for the office of 20<sup>th</sup> Ward Alderman for the election to be held on February 26, 2019"
22. "Kirkland Thornton circulated petitions on behalf of Kevin Bailey for the office of 20<sup>th</sup> Ward Alderman for the election to be held on February 26, 2019, prior to circulating petitions for Darnard Newell.
23. "Each sheet petitions, numbers, 195, 198, 200 and 202 were circulated by Candice Hunt for and on behalf of Darnard Newell for the office of 20<sup>th</sup> Ward Alderman for the election to be held on February 26, 2019.
24. "Candice Hunt circulated petitions on behalf of Kevin Bailey for the office of 20<sup>th</sup> Ward Alderman for the election to be held on February 26, 2019, prior to circulating petitions for Darnard Newell.
25. "Each sheet petitions, numbers 182, 183, 196, 201, 203, 230, 233, 234, 235 and 236 were circulated by Elijah Boswell for and on behalf of Darnard Newell for the office of 20<sup>th</sup> Ward Alderman for the election to be held on February 26, 2019.
26. "Elijah Boswell circulated petitions on behalf of Kevin Bailey for the office of 20<sup>th</sup> Ward Alderman for the election to be held on February 26, 2019, prior to circulating petitions for Darnard Newell.

27. "...the nomination papers herein contested consisted of various sheets supposedly containing valid and legal signatures of approximately 2,500 individuals. However, the individual objections cited herein with specificity reduce the number of valid signatures below the statutory minimum of 473"

3. The Objector's Petition was filed on December 3, 2018. On December 9 and December 10, 2018, Objector, Kevin Bailey, filed his Appearance *pro se*. On December 10, 2018, Mable Taylor filed her Appearance on behalf of Candidate Denard D. Newell. An initial status hearing took place on December 10, 2018, at which time Objector appeared *pro se* and Candidate appeared with his Counsel. The parties acknowledged that there were no challenges to the service of the Call. The parties provided signed Non-Disclosure and Confidentiality Agreements.

4. Also at the status hearing on December 10, 2018, the parties exchanged e-mail addresses and the Hearing Officer outlined the proceedings, described anticipated exhibits and asked Objector to summarize his objections, which was done. Candidate's Counsel indicated that it is Candidate's position that Objector failed to make sufficient objections to potentially bring the number of valid signatures below that which is required in order for Candidate to appear on the ballot. Specifically, she stated that approximately seventy-five pages were missing from Objector's Petition, those pages being numbered 75 through 149, leaving a total of unchallenged signatures at 1,121. The parties were advised by the Hearing Officer to consult with the Rules of Procedure specifically relating to subpoenas and deadlines. Candidate's Counsel indicated that she would be filing a Motion for a Directed Finding. The Hearing Officer provided a briefing schedule for the Motion, Response and Reply.

5. On December 10, 2018 at 11:30 a.m., Objector filed a Motion to Transfer and Consolidate seeking to consolidate into one hearing, thirteen separate objections

Objector filed to Nominating Petitions of thirteen Candidates for Alderman of the 20<sup>th</sup> Ward of Chicago (Objector did not pursue said Motion further and would not raise it at any of the hearings in this matter. Moreover, such a consolidation would not be proper in that each objection is entitled to a separate determination).

6. On December 10, 2018 at 12:49 p.m., a Petition Summary Report was generated relating to the subject objections. That Petition Summary Report indicated that there were 1,059 unchallenged signatures and that the Candidate had 2,316 signatures greater than the required minimum.

7. On December 11, 2018, Candidate filed his Motion for a Directed Filing. On December 12, 2018, Objector filed a Response to Candidate's Motion for a Directed Finding. As a part of that Response, Objector included a Request for several subpoenas to be issued, certain Affidavits of potential witnesses and Appendix Recapitulation Sheets numbered 1 through 251, which purportedly included missing sheets 75 through 149. On December 13, 2018, Candidate filed his Reply In Support of his Motion.

8. The next status hearing took place on December 18, 2018. At that status hearing, the Hearing Officer requested, and Objector provided a description of Objector's understanding of the pages that appeared to be missing from the Board's file. The Hearing Officer tendered to Objector the actual Board file which had been in the custody of the Clerk assigned to this matter. The Hearing Officer engaged in a discussion with Objector while Candidate and Candidate's Counsel were present, into the matter of the purportedly missing pages from Objector's Petition. The description also included Objector's statement of his justification for the subpoenas he had previously requested.

9. At the December 18, 2018 status hearing, Hearing Officer stated that he recommended the denial of the issuance of the subpoenas and that Objector should submit a Request to Produce upon the Board, for any additional documents or testimony he was seeking. The parties were also to file pleadings and/or arguments regarding the alleged missing pages. The matter was set for further status.

10. On December 19, 2018, Objector served a "Request to Produce" directed to the Board of Elections. The Hearing Officer later recommended that one of four requests be complied with by the Board.

11. On December 27, 2018, Objector served a second Request to Produce directed to the Board of Elections. The Hearing Officer later recommended that none of the five requests be complied with by the Board.

12. A status hearing took place on December 21, 2018. At that time, the Objector was present and Candidate and Candidate's Counsel were both in attendance. The Hearing Officer made a record of the filings that had been made since the last status hearing. The Hearing Officer further advised the parties that at the next hearing, December 31, 2018 at 10:00 a.m., the Hearing Officer would hear evidence on Objector's claim that the Board's file is incomplete, that is, the Board's file is missing sheets from Objector's Petition.

13. On December 31, 2018, the Hearing Officer heard evidence on the issue of the missing pages from Objector's Petition. Objector was the only witness presented.

The Objector was sworn in by the court reporter and he testified substantially as follows:

- On December 3, 2018, I walked into the (Board's) building at approximately 4:20, 4:30 p.m.



- I was accompanied by Hassan Muhammad and Marlon Watson. They are two of my team members. We got our objections in by 5:00 p.m.
- The objections were prepared by my team. We identified issues such as first-in-time signatures. I did not personally oversee everything. Different team members were doing different things.
- As we put the sheets together, there were a total of 251 sheets. We made four copies and I kept one. We turned in three. All of the copies had the same kind of rubber bands around them. The rubber bands divided the documents into thirds.
- Referring to the copy stamped "Original" from the Board's file, it shows that it was stamped at 4:45 p.m. on December 3<sup>rd</sup>. The case number appears. These are not the same rubber bands as we placed on our copies. There are many missing sheets.
- Preparation of the documents were performed at one table located in the Board offices and the Petitions, once completed, were taken over to another table;
- I do not recall who had the three sets immediately before they were turned into to Board employees;
- I do not recall who on my team actually turned in the three sets;
- The copy that was retained by Objector did not contain a time stamp;
- On December 3, 2018, I filed thirteen Objector's Petitions over a span of approximately 40 minutes;
- The same team was responsible for the preparation of the other twelve Objector's Petitions; and
- All of the team members arrived together and turned in the objections together. I cannot say who copied the pages.

Objector was cross-examined by Candidate's Counsel. He testified as follows:

- The team was working on the objections and there were three main people as a part of the team. It was me, Watson, and Muhammad. We put the objections together. I do not know who did the exact copying of all the documents.

The following testimony contained some questions by the hearing officer:

- We all insured that the package was complete. I do not recall who had the three sets before they were turned in. I do not recall who on our team actually turned in the documents. I kept one copy for myself. It does not contain a time stamp.

- TRANSCRIPT  
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7 HEARING OFFICER: Well, my question goes  
8 to a different point. I will put it to you this  
9 way.

10 When you were at the Board that day, was  
11 this the only order of business that you and your  
12 team members were attending to?

13 MR. BAILEY: Yes, it is. So the  
14 objections was the business --

15 HEARING OFFICER: Submitting these  
16 specific objections, I'm referring to.

17 MR. BAILEY: Yes.

18 HEARING OFFICER: In other words, were  
19 there other objections that you were also filing  
20 with respect to any other candidates?

21 MR. BAILEY: I filed multiple objections,  
22 but Candidate Dernard Newell's petitions were  
handed

23 in timely. And it was the specific reason to be at  
24 the Board that day and at that time.

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1 HEARING OFFICER: Did you file other  
2 objections on that day?

3 MR. BAILEY: Yes.

4 HEARING OFFICER: Did you file other  
5 objections during that approximate 40 minute time

6 span?

7 MR. BAILEY: Yes.

8 HEARING OFFICER: How many other

9 Objector's petitions did you file during that 40

10 minute time span?

11 MR. BAILEY: A total of 13.

Additional cross-examination by Candidate's Counsel:

- This was the team that was responsible for all of the objections we filed. We all arrived together. We walked in the door together and turned in the objections together. We made sure all of the copies were intact before we left our office. I cannot say who copied the pages.
- Of the other two witnesses I planned to have testify, one was sick and the other was not available. At that point, he closed his testimony.

The Candidate chose not to present any evidence other than to rely on the "Original" version of the Petition contained in the Board file.

14. Further, at the December 31, 2018 Evidentiary Hearing, the Hearing Officer advised the parties that the following would be marked as Exhibits:

- Group Exhibit A consists of the Statement of Candidacy, Loyalty Oath, Nominating Petition Sheets and Receipt for Statement of Economic Interest.
- Group Exhibit B consists of the Objector's Petition from the Board file. It is marked "Original".
- Group Exhibit C consists of the service documents including Proof of Service of the Call that was served on each party, including the Call itself and the other service documents.
- Group Exhibit D consists of the Appearance Forms filed by the parties.
- Objector's Group Exhibit 1 was identified and admitted into evidence over the objection of the Candidate. This Exhibit consists of what the Objector filed as his Response to the Motion for Directed Finding, including all attachments. Those attachments alleged contain all of the signature sheets the Objector has identified, including the missing sheet numbers 75-149.

15. The Hearing Officer advised the parties that he would take the matter under advisement and issue his recommendations.

#### RELEVANT LEGAL AUTHORITIES

- A) A candidate has a substantial right to appear on a ballot. *Daniel v. Daly*, 31 N.E.3d 379, 391 Ill.Dec. 703 (2015).
- B) A candidate's "access to a place on the ballot is a substantial right and [is] not to be lightly denied." *Siegel*, 385 Ill.App.3d at 460, 324 Ill.Dec. 69, 895 N.E.2d 69.
- C) The burden of proof in contesting nomination papers lies with the objector. *Hagen v. Stone*, 277 Ill.App.3d 388, 390, 213 Ill.Dec. 932, 660 N.E.2d 189 (1995).
- D) A candidate's nomination papers are deemed valid absent an objection that is in conformity with the requirements of the Election Code. See *Druck v. Illinois State Board of Elections*, 387 Ill.App.3d 144, 326 Ill.Dec. 220, 899 N.E.2d 437 (2008).
- E) Objections that refer to and purportedly incorporate by reference an "Appendix-Recapitulation" that is not, in fact, attached to the objector's petition fail to fully state the nature of the objections and are, therefore, subject to being dismissed. *Thomas v. Swiss*, 04-EB-WC-46, January 23, 2004.
- F) An objection petition must adequately and sufficiently apprise the candidate of the specificity of each objection, thus making evaluation possible. *Elysee v. Patterson*, 04-EB-RGA-14, January 20, 2004.
- G) An objector's petition that fails to strictly comply with section 10-8 of the Code is invalid and is subject to dismissal by an electoral board. See *Pochie v. Cook County Officers Electoral Board*, 289 Ill. App.3d 585, 224 Ill.Dec. 697, 682 N.E.2d 258 (1997)
- H) The Election Code does not allow parties to file amendments to their objectors' petitions. *Delay v. Board of Election Commissioners*, 312 Ill.App.3d 206, 726 N.E.2d 755 (Ill.App. 1 Dist. 2000), citing *Reyes v. Bloomingdale Township Electoral Board*, 265 Ill.App.3d 69, 638 N.E.2d 782 (1994).
- I) In *Bey v. Beale*, 07-EB-ALD-170, CBEC, January 19, 2007, Objector indicated that he had summary sheets which provided the sheet and line specificity for the objections. Objector conceded that the summary sheets had not been filed with the objector's petition. Inasmuch as an objector's petition cannot be amended once filed, the summary sheets could not serve to rectify the deficiencies in the objector's petition.

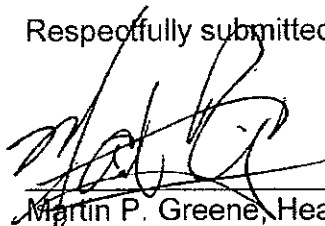
**RECOMMENDED DECISION**

Because of the foregoing, the Hearing Officer hereby makes the following Recommended Decision for consideration by the Commissioners:

1. That the Objector has failed to meet the burden of persuasion on the issue of the matter of the purported missing summary sheets from his Objector's Petition. Specifically, Objector testified to a very busy circumstance involved in the filing of multiple Petitions by multiple individuals. The testimony does not convey a situation demonstrating a likelihood that Objector's Petition was filed without error.
2. That without those missing summary sheets, and pursuant to the Petition Summary Report, there were 1,059 unchallenged signatures, and, further, that the Candidate had 2,316 signatures greater than the required minimum of 473;
3. That if all of the objections properly filed were ruled upon in favor of Objector, the Candidate would still have a sufficient number of signatures to appear on the ballot; and
4. That the Respondent-Candidate's name SHOULD BE INCLUDED on the ballot for the office of Alderman of the 20<sup>th</sup> Ward of the City of Chicago during the upcoming election of February 26, 2019.

Dated: Chicago, Illinois on January 8, 2019.

Respectfully submitted,



Martin P. Greene, Hearing Officer