

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

Objections of: RUSSELL BRIGHT)
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)
)
To the Nomination) No. 08-EB-WC-42
Papers of: KENNETH K. BELLAIRE)
)
)
Candidate for the office of Ward)
Committeeman for the 43rd Ward of the)
City of Chicago, Republican Party)

FINDINGS AND DECISION

The duly constituted Electoral Board, consisting of Chicago Board of Election 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 RUSSELL BRIGHT ("Objector") to the nomination papers ("Nomination Papers") of KENNETH K. BELLAIRE, candidate for election to the office of Ward Committeeman for the 43rd Ward of the City of Chicago, Republican Party ("Candidate"), having convened on November 26, 2007, at 10:00 a.m., at 69 W. Washington Street, 8th Floor Conference Room, 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 held on these Objections commenced on November 26, 2007 and was continued from time to time.

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

6. The Objector and the Candidate were directed by the Electoral Board to appear before the Hearing Examiner for a hearing on the date and at the time designated on the Electoral Board's docket. The following persons, among others, were present at such hearing: the Objector, RUSSELL BRIGHT, appearing by counsel, Keri-Lyn Krafthefer, Robert K. Bush and Jeff Jurgens; and the Candidate, KENNETH K. BELLAIRE, appearing pro se.

7. The Candidate filed a motion to strike and dismiss paragraphs 10 and 11 of the Objector's Petition.

8. The motion to strike and dismiss was granted in part, and denied in part.

9. The Hearing Examiner ordered that an examination of the 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.

10. The Hearing Examiner directed all parties to appear and be present, either personally and/or by their authorized representatives during the records examination.

11. The Candidate or his duly authorized representative(s) was present during the examination of the registration records.

12. The Objector or his duly authorized representative(s) was present during the examination of the registration records.

13. 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 results of the registration records examination is contained in the Electoral Board's file in this case and is available for inspection upon request of a party.

14. The results of the records examination conducted in this matter indicates that:

A. The minimum number of valid signatures required by law for placement on the ballot for the office in question is 51;

B. The number of purportedly valid signatures appearing on the nominating petition filed by the Candidate total 116;

C. The number of signatures deemed invalid because of objections sustained total 65;

D. The remaining number of signatures deemed valid total 51.

15. The Electoral Board finds that the number of valid signatures appearing on the Candidate's nominating petition following completion of the records examination equals the minimum number of valid signatures required by law to be placed upon the official ballot as a candidate for election to the office of Ward Committeeman for the 43rd Ward of the City of Chicago, Republican Party.

16. Following the records examination, the Hearing Examiner conducted an evidentiary hearing to consider material presented by both the Candidate and the Objector.

17. After the presentation of the evidence, the Hearing Examiner concluded that the Candidate had a total of 58 valid signatures on his Nomination Papers, 7 more than the minimum signature requirement of 51.

18. The Hearing Examiner has tendered to the Electoral Board her report and recommended decision. The Hearing Examiner recommends that the Objections to the Candidate's Nomination Papers be sustained in part and overruled in part and that the Nomination Papers be found valid.

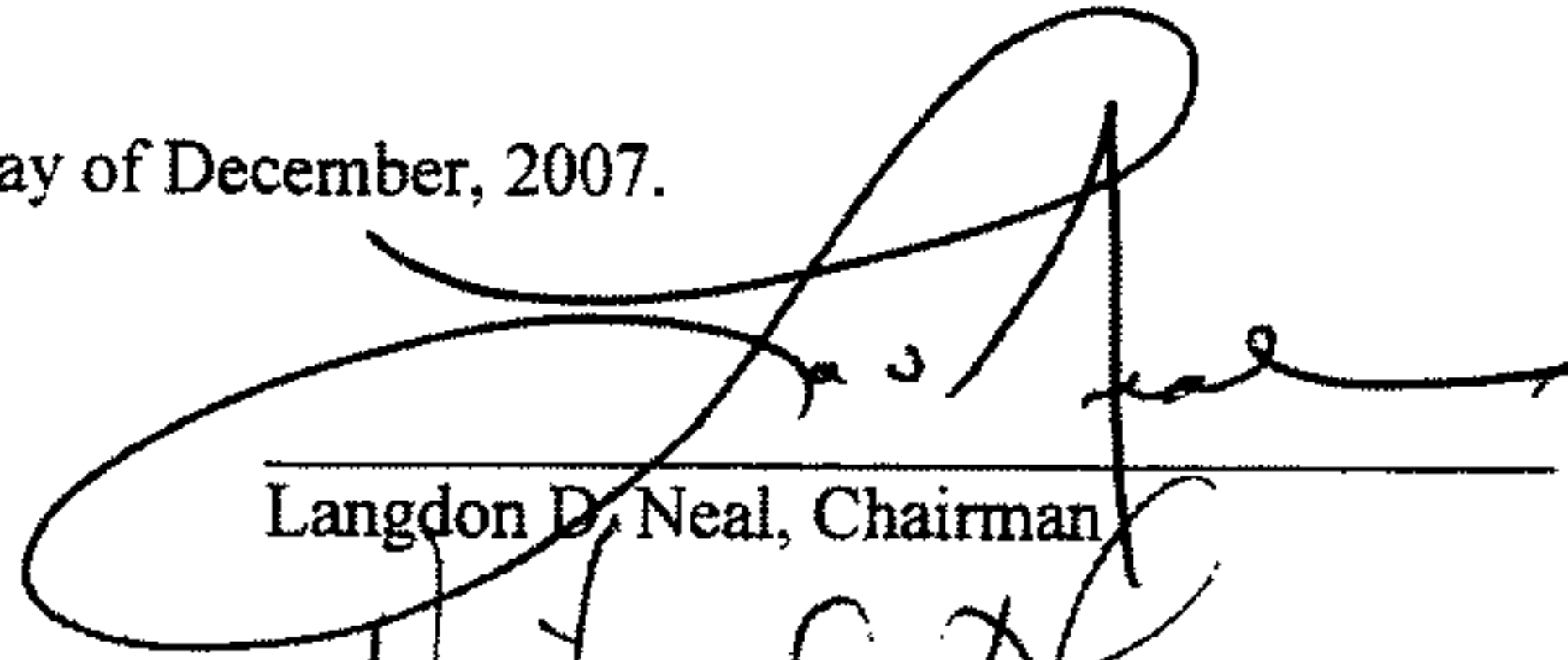
19. The Electoral Board, having reviewed the record of proceedings in this matter and having considered the report and recommendations of the Hearing Examiner, as well as all argument and evidence submitted by the parties, hereby adopts the Hearing Examiner's recommended findings and conclusions of law.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

20. For the reasons stated above, the Electoral Board overrules in part and sustains in part 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 RUSSELL BRIGHT to the Nomination Papers of KENNETH K. BELLAIRE, candidate for election to the office of Ward Committeeman for the 43rd Ward of the City of Chicago, Republican Party, are hereby OVERRULED and said Nomination Papers are hereby declared VALID and the

name of KENNETH K. BELLAIRE, candidate for election to the office of Ward Committeeman for the 43rd Ward of the City of Chicago, Republican Party, SHALL be printed on the official ballot for the General Primary Election to be held on February 5, 2008.

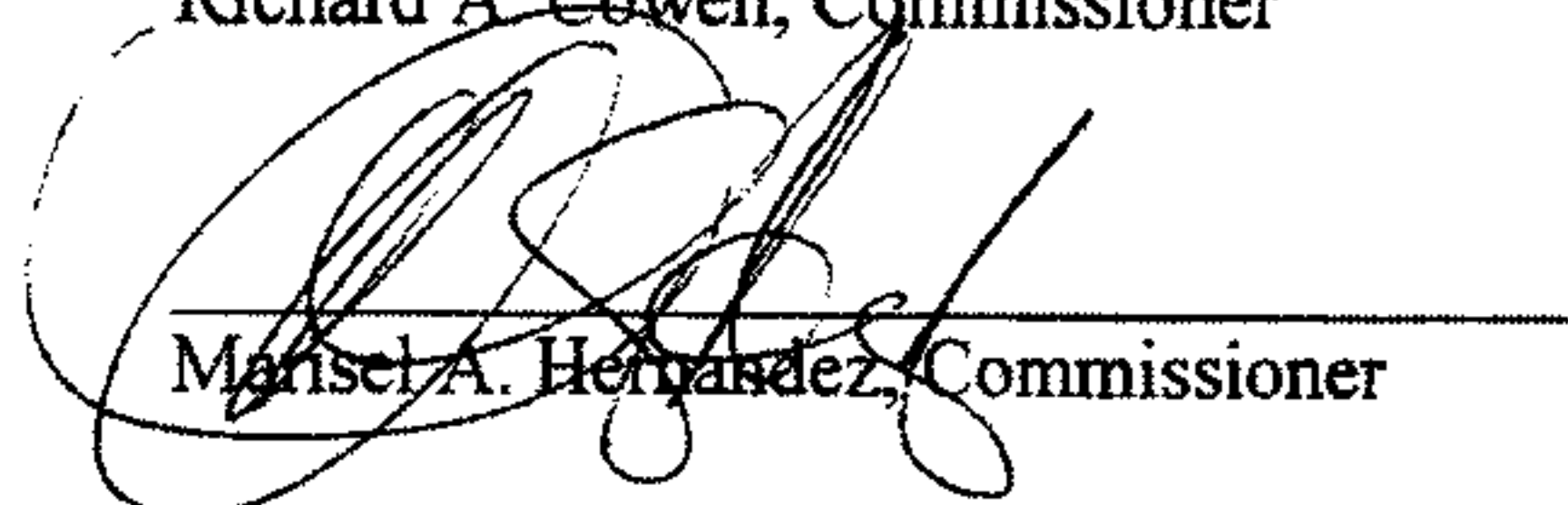
Dated: Chicago, Illinois, this 14th day of December, 2007.



Langdon D. Neal, Chairman



Richard A. Cowen, Commissioner



Mansel 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 10 days after the decision of the Electoral Board.

BEFORE THE CHICAGO BOARD OF ELECTION COMMISSIONERS
AS THE DULY CONSTITUTED ELECTORAL BOARD FOR THE HEARING
AND PASSING UPON OBJECTIONS TO NOMINATION PAPERS OF CANDIDATES
FOR THE FEBRUARY 5, 2008 GENERAL PRIMARY ELECTION

RUSSELL BRIGHT)
)
 Objector)
)
 -v-)
 KENNETH K. BELLAIRE)
)
 Candidate)

08 EB WC 42

2001 DEC 10 PM 3:43

HEARING EXAMINER'S REPORT AND RECOMMENDED DECISION

This matter was first heard on November 20, 2007. Objector appeared through Robert Bush and Jeff Jurgens of Ancel, Glink, Diamond, Bush, Dicianni and Kraffthefer. The candidate, Kenneth K. Bellaire, appeared pro se. The candidate filed a Motion to Strike and Dismiss requesting that paragraphs 10 and 11 of the Objector's Petition be stricken.

Paragraph 10 of the Objector's Petition alleged that certain signatures were not signed but were rather printed and all such signatures were not genuine and should be stricken. Candidate's motion correctly pointed out that printed signatures are not invalid per se and, accordingly, paragraph 10 of the Objector's Petition was stricken. It should be noted that there remained a dual allegation of "not genuine" to each of the signatures objected to on the basis of being printed and not signed.

Paragraph 11 of the Objector's Petition alleged that certain signers of the petition signed petitions for candidates of another political party. The Candidate alleged that striking signatures on this basis places an unconstitutional burden on both candidates and petition signers to "associate to advance political beliefs and vote effectively and denies a potential candidate a clear, orderly mechanism by which to obtain access to the ballot." Candidate's Motion at paragraph 4. The Motion to Strike paragraph 11 on the basis of the constitutional challenge raised by the Candidate was denied as this Hearing Examiner and this Electoral Board are without authority to consider the

constitutionality of a statute. Tobin v Illinois State Board of Elections, 105 F. Supp.2d 882 (N.D.Ill. 2000), aff'd. 268 F3d 517 (7th Cir. 2001); Wiseman v Elward, 5 Ill. App. 3d 249, 283 N.E. 282 (1st Dist. 1972).

The candidate further alleged that paragraph 11 should be stricken because the Objector "failed to allege, or make any showing, that the Objection No. 11 Signatures were signed later than the signatures in the related Democratic nomination papers." However, as the Objector correctly pointed out, establishing which signature was signed first is a matter of proof to be presented in an evidentiary hearing. Accordingly, the Motion was to Strike paragraph 11 of the Objector's Petition was denied on this basis.

A records examination was then ordered, a telephone status conference was held on December 3, 2007, and a deadline was set for the filing of Rule 8 Motions. Each party filed Rule 8 Motions and a further hearing was held on December 6, 2007.

The following results of the Records Examination were read into the record at the December 6, 2007 hearing :

Number of Signatures on Petition	= 116
Number of Objections Overruled	= 21
Number of Objections Sustained	= 65
Number of Signatures Invalid Because of Circulator	= 0
Number of Valid Signatures	= 51
Minimum Number of Signatures	= 51

The Objector then presented evidence pursuant to his Rule 8 Motion. Objector introduced Exhibit A, an affidavit of petition signer Helen Fauber, who signed the Candidate's petition at sheet 6, line 8. The affidavit indicated that the affiant signed a petition for a Democratic candidate prior to signing the candidate's petition. Pursuant to the holding in Watkins v Burke, 461 N.E.2d 625 (1984), the signature of Helen Fauber

was invalid and the objection as to her signature was sustained.

The Objector next called the candidate as a witness. The candidate testified that his petitions were not ready for circulation until November 2, 2007 and that November 2, 2007 was the first day of circulation. The Objector then presented Objector's Group Exhibit B, the petition sheets of Lauren Jung whose signature was contained at sheet 15, line 5 of the candidate's petition and at sheet 32, line 10 of the petitions of Charles E. Eastwood, Democratic candidate for ward committeeman of the 43rd Ward. Objector also presented Objector's Group Exhibit C, the petition sheets of David P. Walden, whose signature is contained at sheet 4, line 1 of the candidate's petition and at sheet 21, line 9 of the petitions of Charles E. Eastwood. Inasmuch as the date of notarization of the Eastwood petitions was prior to the first date of circulation of the candidate's petitions, the objections to the signatures of Lauren Jung and David P. Walden were sustained. At the end of the Objector's case, the candidate had 48 valid signatures.

Next, the Candidate addressed an issue with the rulings at sheet 8, line 3 and at sheet 13, line 8. Candidate pointed out that the rulings were incorrect because the board's rules require that where the objection is that the signature is not genuine and no record is located, the objection should be overruled, not sustained. As to these sheets and lines, the clerks incorrectly sustained the objections. Although this issue was not raised in the Candidate's Rule 8 Motion and Objector objected to the consideration of this issue, the signatures at these sheets and lines were restored as the Board has a duty to follow its own rules and due process requires that the rules be applied consistently. Accordingly, the signatures at sheet 8, line 3 and at sheet 13, line 8 were restored.

Candidate then presented evidence pursuant to his Rule 8 Motion. Candidate offered the affidavits of the following signers whose signatures were stricken in the

records examination as not being genuine but who state in their affidavits that they did in fact sign the Candidate's petition in their own proper person:

<u>SIGNER</u>	<u>SHEET/LINE</u>
Don Wheeler	3/1
John Hochbaum	5/5
Spring Jordan	8/6
Rachel Story	3/3
Steven Cerrone	5/1
Lawrence Sawyer	10/3
Geoffrey C. Benson	12/7
John Wanka	14/6
Kevin Rankin	18/4

Objector objected to the introduction of these affidavits because they were not notarized. However, the affidavits were verified pursuant to Section 1-109 of the Code of Civil Procedure. As the Candidate correctly pointed out, this Board has previously accepted affidavits in the form submitted. In support thereof, the Candidate cited Hazard v Carbol, 04 EB WC 22 in which this electoral board did, in fact, accept affidavits verified pursuant to 1-109. Accordingly, the objection as to the form of the affidavit and its lack of notarization was overruled.


After consideration of the text of the affidavits, as well as a review of the signatures on the affidavit, the nominating papers and the respective registration records, there was sufficient evidence to conclude that the rulings of the clerks as to all of the signers of the affidavits except for Rachel Story's should be changed from sustained to overruled. There was sufficient similarity between the signatures on each

of the documents to conclude that the signatures on the affidavits, the candidate's petitions and the registration records were signed by the respective registered voter. However, as to Rachel Story's affidavit and signatures, there was insufficient evidence to establish that the signer of the petition also signed the nominating papers and was the same person who signed the registration record. Accordingly, the ruling was not changed as to her signature.

Lastly, the candidate offered the registration record of Erika Welsh, who purportedly signed the petition at sheet 10 line 2. However, the name on the petition was Ericka Flores and without an affidavit or other evidence, there was no basis to change the sustained objection.

After the records examination and the presentation of all evidence pursuant to Rule 8, the candidate had 58 valid signatures, said number being 7 more than the minimum signature requirement. Accordingly, candidate's nominating papers contained a sufficient number of signatures for placement on the ballot. Therefore, it is my recommendation that the Objector's Petition be overruled in conformity with the results of the records examination and Rule 8 hearing, that Candidate Kenneth K. Bellaire's nominating papers be deemed valid and that the Candidate's name appear on the ballot at the February 5, 2008 General Primary Election.

Respectfully submitted,


Barbara Goodman
Hearing Examiner
12/9/07