

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

Objections of: Rosalba Guzman)
)
)
To the Nomination) No.: 12-EB-WC-14
Papers of: Sergio Bocanegra)
)
Candidate for the office of Republican Party)
Ward Committeeman of the 12th Ward, City of)
Chicago)

FINDINGS AND DECISION

The duly constituted Electoral Board, consisting of Board of Election Commissioners for the City of Chicago 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 Rosalba Guzman (“Objector”) to the nomination papers (“Nominating Papers”) of Sergio Bocanegra, candidate for the office of Republican Party Ward Committeeman for the 12th Ward of the City of Chicago (“Candidate”) at the General Primary Election to be held on March 20, 2012, having convened on December 19, 2011, at 8:30 AM, 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 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 December 19, 2011 and was continued from time to time.

5. The Electoral Board assigned this matter to Hearing Officer Fredrick Bates 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 such hearing; the Objector, Rosalba Guzman , by attorney, James P. Nally; and the Candidate, Sergio Bocanegra, by attorney, Christine Svenson.

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 her 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 10.
 - B. The number of purportedly valid signatures appearing on the nominating petition filed by the Candidate total 20.
 - C. The number of signatures deemed invalid because of objections sustained as a result of the records examination total 12.
 - D. The remaining number of signatures deemed valid as a result of the records examination total 8.

13. The Electoral Board finds that the number of valid signatures appearing on the Candidate's nominating petition following completion of the records examination was less than the minimum number of valid signatures required by law to be placed upon the ballot as a candidate for election to the office of Republican Party Ward Committeeman for the 12th Ward of the City of Chicago.

14. The Hearing Officer conducted a hearing to allow the Candidate an opportunity to present evidence in support of her Rule 8 motion objecting to the Board's clerk's findings during the records examination.

15. 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 11 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 Republican Party Ward Committeeman for the 12th Ward of the City of Chicago, and recommends that the Candidate's Nomination Papers be found valid.

16. 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. A copy of the Hearing Officer's report is attached hereto and is incorporated herein and made a part of the Electoral Board's decision in this case.

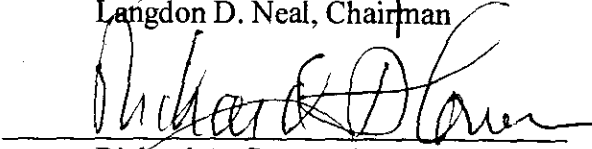
17. For the reasons stated above, the Electoral Board finds that the Candidate has a sufficient number of valid signatures on his nominating petitions and that the Nomination Papers of Sergio Bocanegra are, therefore, valid.

IT IS THEREFORE ORDERED that the Objections of Rosalba Guzman to the Nomination Papers of Sergio Bocanegra, candidate for the office of Republican Party Ward Committeeman for the 12th Ward of the City of Chicago, are hereby OVERRULED and said Nomination Papers are hereby declared VALID and the name of Sergio Bocanegra, candidate for the office of Republican Party Ward Committeeman for the 12th Ward of the City of Chicago, SHALL be printed on the official ballot for the General Primary Election to be held on March 20, 2012.

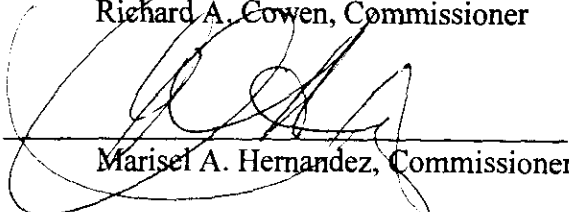
Dated: Chicago, Illinois, on January 13, 2012.



Langdon D. Neal, Chairman



Richard A. Cowen, Commissioner



Marisel 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 5 days after service of the decision of the Electoral Board.

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

Objections of: ROSALBA GUZMAN)
)
 To the Nomination)
 Papers of: SERGIO BOCANEGRA) No. 12-EB-WG-14
)
 Candidate for the Office of) Fredrick H. Bates
 Ward Committeeman, 12th) Hearing Officer
 Ward, City of Chicago, State of Illinois,)
 Republican Party.)

BOARD OF ELECTION COMMISSIONERS
 2012 JAN 11 P 1:33

HEARING OFFICER'S FINDINGS AND RECOMMENDATION

This matter coming before the Board of Election Commissioners of the City of Chicago ("CBEC") on the verified objections ("Objections") of ROSALBA GUZMAN ("Objector") to the nomination papers ("Nomination Papers") of SERGIO BOCANEGRA, candidate for the nomination of the Republican Party for the office of Ward Committeeman, 12th Ward of the City of Chicago, State of Illinois ("Candidate"), to be nominated for the General Primary Election to be held March 20, 2012, the hearing having convened on December 19, 2011. Fredrick H. Bates, Esq., the duly appointed Hearing Officer, hereby makes the following report and recommended findings:

1. The Candidate filed Nomination Papers for the nomination of the Republican Party for the office of Ward Committeeman, 12th Ward of the City of Chicago, State of Illinois ("Candidate"), to be nominated at the General Primary Election to be held March 20, 2012. Such Nomination Papers consisted of: a) A Statement of Candidacy; and b) two Nominating Petition Sheets containing a total of 20 signatures, more than the 10 required, but less than the maximum allowed of 60. The Candidate's Nomination Papers were marked as Board Group Exhibit A, and admitted into evidence.

2. The Verified Objectors' Petition was timely filed on December 12, 2011. Such Petition was marked as Board Group Exhibit B and admitted into evidence.
3. A Call to the hearing on said objections was duly issued by the Chairman of the CBEC and served upon all parties. The Call and proof of service thereof were marked and admitted into evidence as Board Group Exhibit C.
4. The initial hearing on these Objections was called on December 19, 2011, at which time the Objector Rosalba Guzman appeared *pro se* (though she subsequently appeared through her counsel, James P. Nally, whose appearance was appended to Board Group Exhibit D), and the Candidate Appeared through his Counsel Christine Svenson and John Bernborn. Appearances in this matter were filed by all counsel and Ms. Guzman. Such appearances were marked and admitted into evidence as Board Group Exhibit D.
5. At the initial hearing, the Hearing Officer covered the Rules of Procedure with the parties in some detail, and all parties agreed to service via e-mail with copies to the Hearing Officer. It was evident that a Rule 6 Record Examination would be required in this matter and a Record Examination Directive was served advising the Parties that the Record Examination would be conducted on December 21, 2011 at 10:00a.m. The matter was set for further Case Management Conference on December 23, 2011 at 9:15 a.m.
6. On December 21, 2011 the Hearing Officer also entered an Order concerning Rule 8 Motions which provided: "IF EITHER PARTY INTENDS TO FILE PURSUANT TO RULE 8, THEY MUST DO SO NOT LATER THAN 5:00 P.M. ON THE 1st BUSINESS DAY AFTER THE PARTIES ARE NOTIFIED OF THE RESULTS OF THE RULE 6 RECORDS EXAMINATION. See Rule 8(c)."

7. On December 23, 2011 the Record Examination was concluded. The results were as follows:

Ward Committeeman 12th Ward Republican Party
Signature Required: 10
Total Pages: 2
Total Signatures: 20
Total Objections: 15
Total Ruled On: 15
Total Remaining: 0
Total Sustained: 12
Total Overruled: 3
For Review (Candidate): 14
For Review (Objector): 11
Total Valid Signatures: 8
Total Unchallenged Signatures: 5
2 Signatures fewer than the required minimum

8. Both Parties filed said Rule 8 Motions in a timely manner. The Candidate requested an Evidentiary Hearing concerning the Records Examination Results essentially regarding all twelve (12) sustained objections indicating that he would seek to rehabilitate said signatures via Affidavits or testimony from the voters who signed the Nominating Petition. The Objector requested an Evidentiary Hearing concerning the Records Examination Results essentially regarding four (4) signatures.

9. On December 26, 2011, a further Case Management Conference was held. The results of the Rule 6 Record Examination (the Notice of Record Examination Results, the Petition Summary Report, and Final Petition Detail Report) were taken judicial notice of by the Hearing Officer, and were marked and admitted into evidence as Board Group Exhibit E. The Parties were instructed before the Final Pre-Trial Case Management Conference on December 30, 2011, to: a) Identify and agree upon the disputed issue(s) of fact to be resolved; b) disclose in writing to his/her opponent and to the Hearing Officer the number

of witnesses to be called or that may be called by that party, the name and address of each such witness, and the purpose of each witness' testimony; and c) serve a copy of every exhibit/document upon one another and the Hearing Officer at or before the Final Pre-Trial Case Management Conference on December 30, 2011, so that the opposing party was not taken by surprise and would have a reasonable opportunity to review such exhibits/documents.¹ The Hearing Officer's Order made it clear that the failure to comply with these directives would be grounds to exclude the submission and consideration of any document that was not served upon the opposing party by the deadline set forth in said Order. The matter was set for Final Pre-Trial Case Management Conference on December 30, 2011, and for Hearing on January 2, 2012.

10. At the December 26, 2011, Case Management Conference the objector made clear that the nature of her objection to the signature contained on Sheet 2, Line 3, was twofold: 1) The qualified primary elector signed petitions of candidates for more than one political party; and 2) He was a candidate for another political party and therefore could not sign the nominating petition in the instant case. Because the exact nature of the objection regarding Sheet 2, Line 3 did not become clear until the Case Management Conference held on December 26, 2011, the Candidate was given leave to move to strike the objection for failure of the Objector to "state fully" the nature of their objection. (See 10 ILCS 5/10-8 of the Election Code). She did so and the matter was fully briefed, and argued by the parties at a subsequent Hearing on the Motion.²

¹ The Parties essentially complied with this directive, although there was some delay in the Objector complying due to confusion created by the briefing schedule(s), and some delay in receiving documents from the Board, and the Candidate amended his submission of Exhibits at the Final Pre-Hearing Case Management Conference held on December 30, 2011.

² The parties also fully briefed and argued the issue of whether the Green Party was an established political party in as much as the Objector arguably had the burden of showing that the Green Party was an established political party

11. Following the Case Management Conference held on December 26, 2011, the Hearing Officer issued the following Order establishing a briefing schedule regarding the Candidate's Motion to Strike the Objection to Sheet 2, Line 3, the issue of whether the Green Party is an established political party, and on the Objector's *motion in limine* that became moot because the Candidate decided not to call the Objector as a witness:

1. On or Before 7:00PM on Monday, December 26, 2011, Objector shall submit a statement in writing identifying the records she seeks to have the Board produce, and describing why the records sought are relevant.
2. Objector shall file her brief in support of her *motion in limine* to exclude the objector from being called as a witness in the candidate's case in chief, with the supporting case citation referenced at the Case Management Conference earlier today, on or before 5:00PM on Tuesday, December 27, 2011. The Candidate shall have until 5:00PM on Wednesday, December 28, 2011, to file its Response. The Objector has until 5:00PM on Thursday, December 29, 2011, to file her Reply, if any. The matter is set for Arguments at the final Pre-Trial Conference on December 30, 2011 at 11:30AM.
3. As set forth on the record earlier today at the Case Management Conference, the Objector will have to carry the burden of showing that the Green Party is an established political party if she expect to invalidate the signature contained on Sheet 2, Line 3 under Section 7-10 of the Election Code and *Watkins v. Burke*, 461 N.E.2d 625 (1984) (When a voter has signed the nomination petitions of more than one **established political party**, the signature appearing on the petition signed first is the valid signature, and subsequent signatures of that person appearing on nomination petitions are invalid. 10 ILCS 5/7-10).
4. As such, the Objector shall file her brief in support of her contention that the Green Party is an established political party on or before 5:00PM on Tuesday, December 27, 2011. The Candidate shall have until 5:00PM on Wednesday, December 28, 2011, to file its Response. The Objector has until 5:00PM on Thursday, December 29, 2011, to file her Reply, if any. The matter is set for Arguments at the final Pre-Trial Conference on December 30, 2011 at 11:30AM.
5. The exact nature of the objection regarding Sheet 2, Line 3 became clear at the Case Management Conference earlier today. The Candidate is hereby given leave to move to strike the objection for failure of the Objector to "state fully" the nature of their objection. (See 10 ILCS 5/10-8 of the Election Code). The Candidate shall file his Motion and brief in support thereof on or before 5:00PM on Tuesday, December 27, 2011. The Objector shall have until 5:00PM on Wednesday, December 28, 2011, to file

if she expected to invalidate the signature contained on Sheet 2, Line 3 under Section 7-10 of the Election Code and *Watkins v. Burke*, 461 N.E.2d 625 (1984) (When a voter has signed the nomination petitions of more than one established political party, the signature appearing on the petition signed first is the valid signature, and subsequent signatures of that person appearing on nomination petitions are invalid. See 10 ILCS 5/7-10). Although she argued both, that she only needed to show that the Green Party was a "political party" under 5/7-10 and not that it was an "established" political party, and that the Board itself recognized the Green Part in it 2012 Election Calendar by promulgating signature requirements for said party, for the reasons set forth in my December 31, 2011 Order Ruling on said Motion, I did not decide this issue.

its Response. The Candidate has until 5:00PM on Thursday, December 29, 2011, to file his Reply, if any.

The matter is set for Arguments at the final Pre-Trial Conference on December 30, 2011 at 11:30AM.

The matter is set for Hearing on January 5, 2012.”

The matter was fully briefed, and argued by the parties at the Final Pre-Hearing Case Management Conference held on December 30, 2011

12. At the Final Pre-Trial Case Management Conference on December 30, 2011, the Parties presented their oral arguments concerning the Candidate’s Motion to Strike the Objection to Sheet 2, Line 3, for failure of the Objector to "state fully" the nature of their objection as required by the Illinois Election Code, 10 ILCS 5/10-8, and regarding the issue of whether the Green Party is an established political party. The Hearing Officer granted the Motion to Strike because the objection to Sheet 2, Line 3 “says neither that ‘he signed another political party’s petition,’ nor that ‘he is a candidate of another political party,’ [as the Objector alleges] nor can either be reasonably inferred [from the wording of said objection].” Because the Motion was granted, the issue surrounding whether the Green Party is an established political party, or even a political party, was moot and therefore not ruled upon by the Hearing Officer. (See Order Granting Motion to Strike set forth in Finding #14 herein).

13. Finally, at the Final Pre-Trial Case Management Conference on December 30, 2011, the Candidate was issued subpoenas for five witnesses, identified seven (7) potential witnesses to be called at the Evidentiary Hearing, and provided four (4) affidavits that would be offered to rehabilitate Sheet 1, Line 3; Sheet 1, Line 4; Sheet 1, Line 9; and Sheet 1, Line 10, as identified in his Rule 8 Motion. The Objector proffered that her case

would be limited to the submission of Board records concerning the signatures identified in her Rule 8 Motion. The Parties stipulated as the admissibility of Board records, and agreed to a bifurcated evidentiary hearing on the parties' cross Rule 8 motions with the Candidate proceeding first to attempt to rehabilitate at least two (2) signatures, and the Objector proceeding if necessary to attempt to have four (4) of her original objections sustained.

14. On December 31, 2011, the Hearing Officer issued a written Order formally ruling on the Candidate's Motion to Strike the Objection to Sheet 2, Line 3, for failure of the Objector to "state fully" the nature of their objection as required by the Illinois Election Code, 10 ILCS 5/10-8. Said Order provided in pertinent part as follows:

10 ILCS 5/10-8 of the Illinois Election Code provides:

"The objector's petition shall give the objector's name and residence address, and shall state fully the nature of the objection to the certification of nomination or nomination papers or petition in question, and shall state the interest of the objector and shall state what relief is requested of the electoral board." (Emphasis added).

The Electoral Code does not allow an objector to file amendments to their objections, nor does it authorize the Electoral Board (or its duly appointed Hearing Officers) to raise *sua sponte* objections to nominating petitions. See *Reyes v. Bloomingdale Township Electoral Board*, 265 Ill.App.3d 69, 72 638 N.E.2d 796 (1994).

In this case the objection does not say that the qualified primary elector signed a petition of a candidate of another political party or another political party's petition, nor does it mention the signer being a candidate of another political party. The objection states that the signer signed "more than one nominating petition." However, there is no prohibition in the Illinois Election Code against signing petitions for more than one candidate of the same political party.

The way the objection is worded leaves me no choice other than to grant the motion to strike. The objection almost reads that the signature is bad because it was made by a relative of the candidate and that relative signed another candidate's petition, which construed literally does not invalidate the signature. It says neither that "he signed another political party's petition," nor that "he is a candidate of another political party," nor can either be reasonably inferred.

The provisions of the Election Code (10 ILCS 5/10-8) are mandatory and require the objectors to "state fully" the nature of their objections, and what relief is being sought to comply with the Election Code. *Kopec v. Sims*, 07-EB-MUN-002, CBEC, January 19, 2007; *Crosby v. Beavers*, 95 EB-ALD-202, CBEC, January 24, 1995. 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. Such was not the case here. The objection did not apprise the candidate that the objection was either: 1) The qualified primary elector signed petitions of candidates for more than one political party, or 2) He was a candidate for another political party and therefore could not sign the nominating petition in the instant case. As stated above, the objection in this case does not say that the qualified primary elector signed a petition of a candidate of another political party or another political party's petition, nor does it mention the signer being a candidate of another political party.

Accordingly, IT IS HEREBY ORDERED that the objection to Sheet 2, Line 3 is hereby stricken, and that signature shall be allowed.

15. On January 5, 2012, a bifurcated evidentiary hearing was conducted on the parties' cross Rule 8 motions. Initially the Candidate presented his case in an effort to rehabilitate his Nominating Petition by offering evidence in the form of 4 notarized affidavits and the Candidate's sworn testimony. This evidence was adduced to proffer a basis sufficient to establish by a preponderance of the evidence facts sufficient to rehabilitate these signatures, and therefore his petition. The affidavits were marked and received into evidence as Candidate's Exhibits #1 through 4.³ At the request of the Candidate's counsel, the Hearing Officer took judicial notice of a Certified copy of the Board's records concerning Eleanor Cornell (Sheet 1, Line 10) to establish her residence at "4117 S. Maplewood Ave, Chicago, IL 60632" (See Rule 10(b)). Board Group Ex. F. Finally The Objector submitted two Exhibits that were marked and received into evidence as Objector Exhibits #1 and #2.⁴

³ Candidate's Ex. #1 Affidavit of Nicole Cornell (Sheet 1, Line 9); Candidate's Ex. #2 Affidavit of Rosa Montes (Sheet 1, Line 3); Candidate's Ex. #3 Affidavit of Richard Fleming (Sheet 1, Line 4); and Candidate's Ex. #4 Affidavit of Eleanor Cornell (Sheet 1, Line 10). The Candidate also had two subpoena duces tecum that were served upon Alfredo Alejandres and Juana Alejandres marked and received into evidence as Candidate's Exhibits #5 and #6 respectively. The witnesses did not appear, but the Candidate chose not to file a Motion pursuant to Rule 19(e) to compel their attendance at the Evidentiary Hearing.

⁴ Objector Ex. #1 is a Certified copy of the Board's records concerning Albert Quiroz (Sheet 1, Line 1). Objector Ex. #2 is a Certified copy of the Board's records concerning Alberto Bocanegra, Jr. as a Green Party Candidate and Nominating Petition signer, as well as his signature card. Counsel sought to admit this document for the sole purpose of preserving the issues set forth above in footnote 2, page 5, and Finding #14, pages 7-8. An updated Final Detailed Report from the Record Examination was added as an addendum to Board Group Exhibit E, previously admitted. See Finding #9, at page 3.

16. Sections 7-10 and 8-8, and 10-4 of the Illinois Election Code require that petition sheets be signed by “qualified primary electors” and by “qualified voters,” respectively. Section 3-1.2 of the Code provides that for the purpose of determining eligibility to sign a nominating petition or a petition proposing a public question the terms “voter,” “registered voter,” “qualified voter,” “legal vote,” “elector,” “qualified elector,” “primary elector,” and “qualified primary elector” shall mean a person who is registered to vote at the address shown opposite his signature on the petition or was registered to vote at such address when he signed the petition. To be a qualified voter, one must be registered to vote, and a person who signs a nominating petition must be registered to vote at the residence address set forth on the nominating petition. *Greene v. Board of Election Commissioners of the City of Chicago*, 112 Ill.App.3d 862, 445 N.E.2d 1337 (First Dist. 1983); *Miranda v. Cummings*, 06-EB-NPP-02, CBEC, August 9, 2006. The burden in this instance is upon the Candidate to demonstrate that the signatures in question are genuine keeping in mind as the Board found in *Lyles v. McGee*, 02-EB-SS-04, CBEC, January 31, 2002, that the courts of Illinois have held: “[I]n a variety of contexts, the law has consistently interpreted ‘signed’ to embody not only the act of subscribing a document, but also anything which can reasonably be understood to ... manifest the signer’s intent to adopt a writing as his or her own and be bound by it. This may be accomplished in a multitude of ways, only one of which is a handwritten subscription.” *Just Pants v. Wagner*, 247 Ill.App.3d 166, 173-74, 617 N.E.2d 246 (First Dist. 1993). Ultimately, there must be substantial compliance with the requirements of the Illinois Election Code, which are mandatory, that the voter signed “in their own proper person only.” See *Kopec v. Sims*, 07-EB-MUN-002, CBEC, January 19, 2007; *Bergman v. Vachata*, 347 Ill.App.3d 339, 807 N.E.2d 558 (2004). These necessarily are evidentiary issues. See *Stewart v.*

Cruz, 11-EB-MUN-032, CBEC January 18, 2011. It is with these general admonitions as guidance that the affidavits submitted by the Candidate are evaluated.

17. Through counsel the Objector argued that many of the affidavits were defective because the signatures clearly did not match those contained on the Nominating Petition, despite the Candidate's sworn testimony that he personally collected all but three of the affidavits. He argued that the affidavits were insufficient to reverse the rulings of the Record Examiner and Board's handwriting expert. The Hearing Officer agrees in part, and disagrees in part, with the oral arguments in this regard presented by the Objector as shall be set forth below with respect to each signature and the corresponding affidavit at issue.

18. Additionally, the Objector argued that without the Candidate utilizing Voter Registration clips or equivalent Board records evincing the actual signature of the voter, it is impossible for the Candidate to demonstrate via affidavit that the signature on the Petition is the signature of the voter. He argues that the affidavits are legally insufficient as a matter of law to meet the Candidate's burden of proof. I do not agree, particularly under the facts of this case where the affidavits are buttressed by the testimony of the person who secured them, and in one instances, is in fact supported by the Board's records. It is clear that the signature clip or other Board record evincing the voter's signature is not present in every instance, nor is such a prerequisite to overruling an objection in every instance. *See, e.g., Drish v. Walls*, 03-EB-MUN-02, CBEC (February 12, 2003), affirmed *Walls v. Board of Election Commissioners of the City of Chicago*, 03 CO EL 032 (Cir. Ct. Cook Cty., February 24, 2003 (Judge Murphy presiding), (An objection to a signature based only on the allegation that the signature is not genuine or

was not made in proper person shall not be sustained where no registration record can be found by the Board in order to make a comparison of the signature on the nominating petition with a signature on a registration record).⁵

19. The better evidence, and perhaps best evidence (certainly the preferred method), would have been for the Candidate to produce voter registration applications containing the voter's signatures, as well as notarized affidavits attesting that the signature on the Nominating Petition was in fact that of the voter. The three documents could then be compared. However, clearly that is not the sole means of rehabilitating the signatures as a matter of law. The Objector argues that the failure of the Candidate to request and produce Board documents to which the affidavits and nomination petitions could be compared is a fatal flaw in the Candidate's case prohibiting him from rehabilitating any of his signatures. The Objector contends that the affiants here only attest that the affidavit is signed by the same person who signed (and is the same signature that is on) the nominating petition, but that does not prove that the voter signed either. The Objector fails to take into account several factors that lead the Hearing Officer to disagree with his conclusion. First, in the instant case the person who collected the affidavits testified on oath that he collected them from the voters who signed the Nominating Petition, and that those individuals were asked to look at the Nominating Petition and acknowledged that they had signed it. That testimony is uncontroverted evidence, as are the affidavits themselves. Secondly, the signer of the Nominating Petition alleges therein that they are a qualified voter. If in fact the signature on the affidavit, made on oath and subject to the penalty of perjury, is substantially similar to the signature on the Nominating Petition, the

⁵ Admittedly the Candidate in the instant case did not request Board records though clearly given the opportunity to do so. See *infra* note 6, page 12.

affidavit and testimony taken together could arguably prove by a preponderance of the evidence facts that are adequate to rehabilitate said signature. The affiant is attesting that they signed the Nominating Petition and the Nominating Petition states the signer is the voter. Finally, the standard of proof here is the preponderance of the evidence, not beyond a reasonable doubt, or even clear and convincing evidence. However, the Hearing Officer also does not believe that it is a good practice for a hearing officer to make a finding as to the validity of a signature without making a comparison with the person's signature on his or her voter registration card, but is unwilling to rule that such proof is prohibited as a matter of law in all cases. Accordingly, the affidavits must be viewed on a case-by-case basis to determine what if any weight they should be given.⁶

20. "Thus, where the objector objected to a signature, and such objection was sustained by the CBOE staff [record examiner] and its hand writing expert, the hearing examiner can accept the use of an affidavit to overrule that ruling, unless it is clear from the face of the affidavit that the particularity is not present, the facts shown are not within the personal knowledge of the person, or a reasonable person could not believe the truth of the statements." *Fritchey v. Romanelli*, 08-EB-WC-37 CBEC (December 16, 2007).

⁶ On Sunday, January 8, 2012 the Hearing Officer was advised that the Signature Expert Report from the Board's handwriting expert should have been printed and placed in the Electoral Board's file for my use, but this was inadvertently not done in this case. At the same time the Hearing Officer was also advised that the Board's handwriting expert apparently did not review the signatures of Rosa Montes (Sheet 1, Line 3), or Richard Fleming (Sheet 1, Line 4) because the objection was mistakenly coded as "Printed Signature" and not "Signature Printed Not Written" as actually alleged. To correct these mistakes, and in the interest of justice, the Hearing Officer referred the signatures of Rosa Montes the (Sheet 1, Line 3), or Richard Fleming (Sheet 1, Line 4) to the Board's handwriting Expert, James Hayes, for his review and analysis. The Hearing Officer also directed that the voter registration signatures for the following voters be produced for his inspection: Nicole Cornell (Sheet 1, Line 9); Rosa Montes (Sheet 1, Line 3); Richard Fleming (Sheet 1, Line 4); and Eleanor Cornell (Sheet 1, Line 10). The above-referenced documents were taken judicial notice of and received into evidence in this matter as Board Group Ex. G.

**Ruling on Signatures Objected to That the Candidate
Seeks to Rehabilitate Through Testimony & Affidavits**

21. The following is a summary of the Hearing Officer's findings regarding each affidavit in the order presented by the Candidate:

Sheet 1, Line 9 Nicole Cornell: The objections that the signature was "not genuine," and that it was "Printed not written. Not genuine," were sustained by the Record Examiner ("RE"), and affirmed by the Board's Expert. The "signature" on the Nominating Petition is printed and the signature on the Affidavit is written, making a comparison of the two impossible. The Candidate's effort to rehabilitate this signature is further frustrated by his failure to adduce the Board's records containing the voter's signature for a comparison to either, as the Objector's counsel correctly noted in his summation. At the Hearing I was inclined to exclude this signature on these bases, however, upon reviewing the Candidate's testimony, and the contents of the sworn affidavit attested to by a third-party notary, I am persuaded that the objection should be overruled. Mr. Bocanegra testified on oath that he personally obtained the signature on the affidavit attesting that the affiant signed the Nominating Petition, and that he showed her the Nominating Petition while asking her to attest in the affidavit that the printed signature on the nominating Petition was indeed hers.⁷ The affidavit is notarized by a third party who attest to the fact that Nicole Cornell signed the affidavit in the notary's presence attesting that her signature is the one on the Nominating Papers.

In *Lyles v. McGee*, 02-EB-SS-04, CBEC, January 31, 2002, relying in part upon *Just Pants v. Wagner*, 247 Ill.App.3d 166, 173-74, 617 N.E.2d 246 (First Dist. 1993), the Board determined that there is nothing in either the Election Code or under the common law of the State of Illinois that renders a printed signature invalid *per se*. Indeed, there is no statutory prohibition against printing one's name on a nominating petition. *Simms-Johnson v. Coordes*, 04-EB-WC-05, CBEC, January 20, 2004; *Prince v. Douyon*, 06-EB-RGA-10, CBEC, January 26, 2006; *DeLay v. Ferral*, 08-EB-WC-03, CBEC, December 7, 2007. Objections alleging "Signature Printed and Not Written, Not Genuine" should not be overruled as a matter of law. Whether the printed signature on the nominating petition sheet is the same as the one found in the registration records is an evidentiary issue and not an objection that should be overruled as a matter of law. *Stewart v. Cruz*, 11-EB-MUN-032, CBEC January 18, 2011.

Here the written signature on the Affidavit, which the witness and notary confirm is Nicole Cornell, evinces the voter's intent to sign the Candidate's Nominating Petition. Subsequent to the Evidentiary Hearing the signature on the affidavit was also compared to the signature from the Board's voting records and that signature matches the signature

⁷ I found Mr. Bocanegra to be a completely credible witness who on cross-examination by the Objector's counsel recalled the specifics circumstances in some detail surrounding the manner in which the affidavits were collected in each such instance. (Tr. 15-32). I find that he was a credible witness, and therefore give great weight to his testimony. His testimony was completely consistent with, and buttressed the affidavits.

on the affidavit confirming my finding. Accordingly, the Candidate has proffered sufficient evidence that when viewed as a whole proves by a preponderance of the evidence that the signature on the Nominating Petition is, more likely than not, genuine and signed in proper person only by Nicole Cornell. Therefore he has successfully rehabilitated her signature.⁸ **Objection overruled.**

Sheet 1, Line 3 Rosa Montes: The objection that the signature was: "Printed not written. Not genuine," was sustained by the RE, although the Board's report shows the objection as only "Printed Signature." (Compare Board Group Ex. B, with Board Group Ex. E). Subsequent to the Evidentiary Hearing this signature was referred by the Hearing Officer to the Board's Expert for analysis. The Board could not locate a signature card. (See *infra* note 9). Accordingly, **the objection should be overruled.**

However, in the interest of judicial economy the Hearing Officer will also address the merits of the objection. The Candidate testified on oath that he personally obtained the signature on the affidavit attesting that the affiant signed the Nominating Petition. The affidavit contains samples of the voter's signature, **including a sample of her printed signature.** The affidavit is notarized by a third party who attest to the fact that Rosa Montes signed the affidavit in the notary's presence attesting that her signature is the one on the Nominating Papers. The signature was printed. Here the printed signature on the Affidavit evinces the voter's intent to sign the Candidate's Nominating Petition. Even though the signature in this case was printed and not written, it is clear based upon examination of the printed signature sample contained in the affidavit and the printed signature on the Nominating Petition that the affiant more likely than not is the person who signed the Nominating Petition. The Candidate proffered evidence sufficient to prove by a preponderance of the evidence that the signature on the Nominating Petition is genuine. **The objection should be overruled.**⁹

Sheet 1, Line 4 Richard Fleming: The RE sustained the objection that the signature was: "Printed not written. Not genuine." Subsequent to the Evidentiary Hearing this signature was referred by the Hearing Officer to the Board's Expert for analysis. The Board's Expert compared the printed signature on the Petition to two registrations of record at the Board. Not surprisingly, the printed signature on the Petition did not match the cursive signature on either record. The Candidate testified on oath that he personally obtained the signature on the affidavit attesting that the affiant signed the Nominating Petition. The signature was printed. I am guided by the case law referenced above in my

⁸ My determination would have been the same without the "best evidence" of the Board's voting registration records in this instance, but it is indeed confirmed by such evidence.

⁹ The Hearing Officer confirmed with the Board's General Counsel, James Scanlon, that this objection should have been overruled at the Record Examination, and the Hearing Officer recommends it be overruled now, because no registration signature record could be found by the Board. Apparently someone else's signature was attached to the voter registration record in the system. See, e.g., *Drish v. Walls*, 03-EB-MUN-02, CBEC (February 12, 2003), affirmed *Walls v. Board of Election Commissioners of the City of Chicago*, 03 CO EL 032 (Cir. Ct. Cook Cty., February 24, 2003 (Judge Murphy presiding), (An objection to a signature based only on the allegation that the signature is not genuine or was not made in proper person shall not be sustained where no registration record can be found by the Board in order to make a comparison of the signature on the nominating petition with a signature on a registration record). The Board's Expert's January 10, 2012, Report requested by the Hearing Officer further confirms that no signature was available for comparison. See Board Group Ex. G.

analysis of this signature. See *Lyles v. McGee*, 02-EB-SS-04, CBEC, January 31, 2002, relying in part upon *Just Pants v. Wagner*, 247 Ill.App.3d 166, 173-74, 617 N.E.2d 246 (First Dist. 1993); *Stewart v. Cruz*, 11-EB-MUN-032, CBEC January 18, 2011). Indeed, there is no statutory prohibition against printing one's name on a nominating petition. *Simms-Johnson v. Coordes*, 04-EB-WC-05, CBEC, January 20, 2004; *Prince v. Douyon*, 06-EB-RGA-10, CBEC, January 26, 2006; *DeLay v. Ferral*, 08-EB-WC-03, CBEC, December 7, 2007. Here the printed signature on the Affidavit evinces the voter's intent to sign the Candidate's Nominating Petition. Even though the signature in this case was printed and not cursive (or "written" as the case may be), it is clear to me based upon a comparison of the signature on the affidavit to the signature on the Nominating Papers that the affiant more likely than not is the person who signed the Nominating Petition. Subsequent to the Evidentiary Hearing the printed signatures from the affidavit and Nominating Papers were also compared to the signature from the Board's voting records. As previously indicated, the printed signature on the Petition could not be compared to the cursive signature on the Voting cards. The voting record was not outcome determinative here. The printed signature on the Petition resembled, but was not identical to the signature on the affidavit. Accordingly, based upon the totality of the evidence presented it does not appear to the Hearing Officer that the affiant is, more likely than not, the person who signed the Nominating Petition. In the interest of judicial economy, however, that does not end my analysis.

Counsel for the Objector also argued that the signature (nor the printed name) as it appeared on the affidavit, is not the same as that contained on the Candidate's Nominating Petition. Technically counsel for the Objector is correct. The signature on the Nominating Petition does not contain the voter's suffix "Jr." as does the affidavit, and the middle initials "E.D." are also included in the affidavit but not on the Petition. Again I am guided by the case law in my analysis of this signature. Failure to indicate a middle initial on signature on the petition sheets where the binder includes a middle initial does not invalidate them where the signatures are otherwise genuine. *Scianna v. Fredrickson*, 94-EB-REP-7, CBEC, January 24, 1994. Similarly, use of the first initial of the first name, plus the entire last name, on signature petition sheets does not invalidate them where they are otherwise genuine. *Id.* Where there has been substantial compliance with the Election Code's signature requirements, and the voter's intentions to affix his or her signature to the Nominating Petition are clear, the signature should not be invalidated. See e.g., *Scianna*. As set forth above (Finding #16, pages 9-10), as the Board found in *Lyles v. McGee*, 02-EB-SS-04, CBEC, January 31, 2002, the courts of Illinois have held: "[I]n a variety of contexts, the law has consistently interpreted 'signed' to embody not only the act of subscribing a document, but also anything which can reasonably be understood to ... manifest the signer's intent to adopt a writing as his or her own and be bound by it. This may be accomplished in a multitude of ways, only one of which is a handwritten subscription." *Just Pants v. Wagner*, 247 Ill.App.3d 166, 173-74, 617 N.E.2d 246 (First Dist. 1993) (emphasis added). Ultimately, there must be substantial compliance with the requirements of the Illinois Election Code, which are mandatory, that the voter signed "in their own proper person only." See *Kopec v. Sims*, 07-EB-MUN-002, CBEC, January 19, 2007; *Bergman v. Vachata*, 347 Ill.App.3d 339, 807 N.E.2d 558 (2004). The Hearing Officer is satisfied that such is the case with regard to Mr. Fleming's signature here. The inclusion of his middle initials, and use of the suffix "Jr." in the affidavit do not

sufficiently militate against the validity of his signature so as to warrant sustaining the objection.

However, because the signature on the Nominating Petition is not a match to the signature on the Affidavit, the Hearing Officer finds the Candidate has failed to proffer evidence sufficient to prove by a preponderance of the evidence that the signature on the Nominating Petition is, more likely than not, genuine. **The objection is therefore sustained.**

Sheet 1, Line 10 Eleanor Cornell: The Objector objected essentially that the signature was not genuine, that the signer was not registered at the address shown, and that she was outside the district. Both the RE and the Board's Expert overruled the objection that the signature was not genuine, and that she was outside the district. The objection that the signer was not registered at the address shown, was however sustained. The signature contained at Sheet 1 Line 10 had the address "4116 S. Maplewood" adjacent to it. The Candidate admits that address is incorrect. He obtained an affidavit from the voter in which the voter stated in part: "I reside in the 12th Ward at 4117 S. Maplewood, Chicago." The Board's records (Board Group Ex. F) show that the voter resides at 4117 S. Maplewood, consistent with her affidavit. The Objector contends that because the address is incorrect on the Nominating Petition, the objection must be sustained. The objector also maintains that the signature is not genuine. I will address the latter issue first.

The Candidate testified on oath that he personally obtained the signature on the affidavit attesting that the affiant signed the Nominating Petition. Upon examination comparing the affidavit to the Nominating Petition, the signatures are similar enough that when coupled with the witnesses testimony that he personally obtained the signature on the affidavit attesting that the affiant signed the Nominating Petition, it is clear to me that the affiant more likely than not is the person who signed the Nominating Petition.¹⁰ The signature from the Board's voting records appear to the Hearing Office to match the signature on the Nominating petition, as the Board's Expert re-confirmed in his January 10, 2012 Report. Board Group Ex. G). The Candidate has therefore proffered evidence sufficient to prove by a preponderance of the evidence that the signature on the Nominating Petition is, more likely than not, genuine. That does not end my analysis however.

Section 7-10 of the Election Code (10 ILCS 5/7-10) provides that "[S]uch petition shall be signed by qualified primary electors residing in the political division for which the nomination is sought in their own proper persons only **and opposite the signature of each signer, his residence address shall be written or printed** (and if a resident of a city having a population of over 10,000 by the then last preceding Federal census, the street number of such residence shall be given)." (Emphasis added). However, the case law interpreting that language and that concerning signatures on nominating petitions generally, militates against sustaining the objection presented here given the facts of this case. Here the uncontroverted evidence is that the voter clearly intended to sign this

¹⁰ My determination would have been the same without the "best evidence" of the Board's voting registration records in this instance.

petition, clearly resides in the Ward, and the technical shortcoming is belied by the clear facts as demonstrated by the Boards records and the affidavit. The case law's guidance is that signatures of signers of petition sheets whose addresses on the petition are incomplete may be rehabilitated and restored upon submission of affidavits from such persons attesting to their full and complete address and when such persons are found to be registered to vote at the address as correctly shown on their affidavits. *Davis et al. v. Reed*, 04-EB-WC-81, February 6, 2004. See e.g., *Madison v. Sims*, 6 Ill.App.3d 795, 286 N.E.2d 592, (1st Dist. 1972), (the Court held that the nominating petitions were in substantial compliance with Section 7-10 of the Code).

As the Board found in *Lyles v. McGee*, 02-EB-SS-04, CBEC, January 31, 2002, the courts of Illinois have held: "[I]n a variety of contexts, the law has consistently interpreted 'signed' to embody not only the act of subscribing a document, but also anything which can reasonably be understood to ... manifest the **signer's intent** to adopt a writing as his or her own and be bound by it. This may be accomplished in a multitude of ways, only one of which is a handwritten subscription." *Just Pants v. Wagner*, 247 Ill.App.3d 166, 173-74, 617 N.E.2d 246 (First Dist. 1993) (emphasis added). Ultimately, there must be substantial compliance with the requirements of the Illinois Election Code" See *Kopec v. Sims*, 07-EB-MUN-002, CBEC, January 19, 2007; *Bergman v. Vachata*, 347 Ill.App.3d 339, 807 N.E.2d 558 (2004).

The Hearing Officer believes that the signature of Eleanor Cornell at Sheet 1, Line 10 has been rehabilitated by the Candidate who proffered evidence sufficient to prove by a preponderance of the evidence that the signature on the Nominating Petition is genuine, and that Eleanor Cornell resides at the location shown in her official voter registration records at the Board of Elections of 4117 S. Maplewood in Chicago, consistent with her affidavit. Accordingly, **the objection is therefore overruled.**

22. Accordingly, the Hearing Officer finds that the Candidate has proffered sufficient admissible evidence via witness testimony, affidavits, and Board records, to establish by a preponderance of the evidence that the following signatures are rehabilitated, and therefore should be deemed to be valid:

Sheet 1, Line 9 Nicole Cornell
Sheet 1, Line 3 Rosa Montes
Sheet 1, Line 10 Eleanor Cornell

The Rule 6 Record Examination determinations regarding these signatures should be reversed, and the objections concerning the same overruled. Therefore, at the close of the Candidate's case he had eleven (11) valid signatures on his Nominating Petition – the 8

post-Record Examination valid signatures, plus the three (3) rehabilitated signatures set forth above; one (1) more than the number of signatures required.

23. As mentioned above the Hearing in this matter was bifurcated. The Candidate's Rule 8 Motion was heard first. After the conclusion of the Candidate's case in which he bore the burden of proof to rehabilitate at least two (2) signatures and did so, the Objector put on her case in which she bore the burden of establishing that the signatures identified in her Rule 8 Motion were not genuine.

Ruling on Objections Contained in the Objector's Rule 8 Motion That Certain Signatures are Not Genuine/In Their Own Proper Person

24. The following is a summary of the Hearing Officer's findings regarding the objection to the signature shown on Sheet 1, Line 1¹¹ raised by the Objector, as presented by her legal counsel:

Sheet 1, Line 1 Albert Quiroz: At the Rule 6 Record Examination the "Signature Not Genuine" objection was overruled by the RE and Expert. At the Hearing the Objector presented the Voter Record for Albert Quiroz that was marked and received into evidence as Objector's Exhibit #1. Counsel for the Objector argued that the signature was not the same as that contained on the Candidate's Nominating Petition. The Objector bears the burden of proof by a preponderance of the evidence that the signature on the Nominating Petition is not genuine. In this instance the signature on the Nominating Petition bears a considerable resemblance and similarity to the signature on the voting record, particularly the exceedingly unique writing of the "Q" in Quiroz, which almost appears to be a "Z." As such the Hearing Officer has concluded that the Objector has not meet that burden. Accordingly, the Hearing Officer concurs with the determinations by the RE and Board's Expert that the "Signature Not Genuine" **objection should be overruled.**¹²

25. Accordingly, the Hearing Officer finds that the Objector has not proffered evidence to establish by a preponderance of the evidence that the signature on Sheet 1, Line 1 is not

¹¹ Although the Objector identified multiple categories as the bases of his objections, at the Hearing he submitted evidence concerning only one (1) of the signatures, Albert Quiroz (Sheet 1, Line 1), as not being genuine -- not signed in their own proper person. He withdrew all other bases for objecting to Rule 6 Record Examination results, and to this signature.

¹² *Id.*

genuine, and therefore should be deemed to be invalid. The Rule 6 Record Examination determinations regarding this signature should be sustained, and the **objection should be overruled**. Therefore at the close of the Objector's case **the Candidate had 11 valid signatures on his Nominating Petition**: 8 valid signatures resulting from the Record Examination, plus the three (3) rehabilitated signatures.

RECOMMENDED DECISION

It is therefore the recommendation of the Hearing Officer that the Nomination Papers in this case be declared valid, and that that the name of SERGIO BOCANEGRA, SHALL be printed on the official ballot for the General Primary Election to be held on March 20, 2012.

Dated: Chicago, Illinois, on January 11, 2012.

Respectfully Submitted By:

Fredrick H. Bates /s/

Fredrick H. Bates, Hearing Officer