

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

Objections of: Kurt Fujio)
)
)
To the Nomination) No.: 12-EB-WC-39
Papers of: Suzanne Devane)
)
Candidate for the office of Republican Party)
Ward Committeeman of the 49th 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 Kurt Fujio (“Objector”) to the nomination papers (“Nominating Papers”) of Suzanne Devane, candidate for the office of Republican Party Ward Committeeman for the 49th 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 Thomas Quinn 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, Kurt Fujio, by attorney Stephen Boulton; and the Candidate, Suzanne Devane, 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 her duly authorized representative was present during the examination of the registration records.

10. The Objector and/or his duly authorized representative was present during the examination of the registration records.

11. The examination of the registration records was completed and the Electoral Board hereby adopts and incorporates by reference the results of the records examination conducted by its clerks and agents. The written report of the result of the registration records

examination is contained in the Board's file in this case and a copy has been provided or made available to the parties.

12. The results of the records examination indicate that:

A. The minimum number of valid signatures required by law for placement on the ballot for the office in question is 27.

B. The number of purportedly valid signatures appearing on the nominating petition filed by the Candidate total 48.

C. The number of signatures deemed invalid because of objections sustained as a result of the records examination total 24.

D. The remaining number of signatures deemed valid as a result of the records examination total 24.

13. The Electoral Board finds that the number of valid signatures appearing on the Candidate's nominating petition following completion of the records examination exceeds the minimum number of valid signatures required by law to be placed upon the ballot as a candidate for election to the office of Republican Party Ward Committeeman for the 49th Ward of the City of Chicago.

14. The Hearing Officer conducted a hearing to allow the Objector an opportunity to present evidence in support of his 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 30 valid signatures, which exceeds the minimum number of valid signatures required by law to be placed upon the ballot as a candidate for the

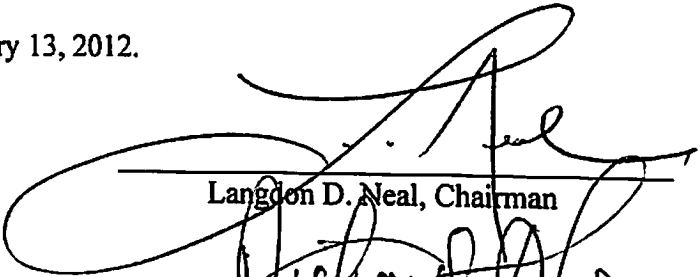
office of Republican Party Ward Committeeman for the 49th Ward of the City of Chicago, and recommends that the Candidate's Nomination Papers be found valid.

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.

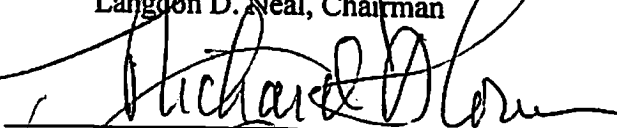
17. For the reasons stated above, the Electoral Board finds that the Candidate has a sufficient number of valid signatures on her nominating petitions and that the Nomination Papers of Suzanne Devane are, therefore, valid.

IT IS THEREFORE ORDERED that the Objections of Kurt Fujio to the Nomination Papers of Suzanne Devane, candidate for the office of Republican Party Ward Committeeman for the 49th Ward of the City of Chicago, are hereby OVERRULED and said Nomination Papers are hereby declared VALID and the name of Suzanne Devane, candidate for the office of Republican Party Ward Committeeman for the 49th 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.

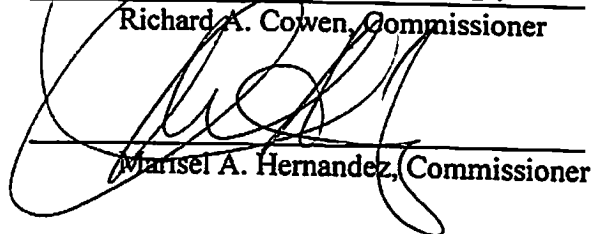
Dated: Chicago, Illinois, on January 13, 2012.



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.

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

KURT FUJIO,
Objector,

v.

No. 12-EB-WC-39

SUZANNE DEVANE,
Candidate.

**Election to the Office of Republican Ward
Committeeman for the Forty-ninth (49th)
Ward of the City of Chicago.**

2012 JAN - 9 A 8:00
BOARD OF ELECTIONS
COMMISSIONER

RECOMMENDED DECISION

This matter comes to be heard on the Objector's Petition directed against the Nomination Papers of Suzanne Devane ("Candidate") for Election to the Office of Republican Ward Committeeman for the Forty-ninth (49th) Ward of the City of Chicago. The Candidate filed her Petition for Election ("Petition") containing the signatures of 48 purported voters from the 49th Ward. The minimum number of qualified signers for placement on the ballot for the subject office is 27.

The initial hearing was held on December 19, 2011. The Candidate was represented by Christine Svenson and John Bernbom. The Objector was represented by Stephen Boulton. Both parties agreed to service via email. Board Group Exhibits A through D were marked and admitted, respectively, as Candidate's Nomination Papers, Objector's Petition, the Call, and the Appearances.

A Records Examination was completed on December 31, 2011, and the result thereof was served upon the parties that same day. The Petition Summary Report indicates that the Petition contained 24 valid signatures and that the Candidate, therefore, was 3 signatures short of the

required minimum. A Motion for Rule 8 Evidentiary Hearing was timely filed by the Candidate and an evidentiary hearing was held on January 7, 2012.

EVIDENTIARY HEARING

Since the records examination resulted in a Petition Summary Report that the Petition did not contain enough valid signatures, the Candidate proceeded first at the evidentiary hearing. The Candidate called three witnesses to testify - Kurt Fujio (Objector), the Candidate, and David Devane (Candidate's husband and primary circulator). Offered and received into evidence were copies of the original registration cards and voter change information of six Petition signers (Board Group Exhibit E) and the affidavits of two purported signers (Candidate's Exhibits 1 and 2). Each of these six Petition signers will be discussed in the order in which they appear in the Petition.

Jerry Elmore, Sheet 2 Line 1.

The Objector objects that this signer was not registered at the address shown and that the signature was printed. Both objections were sustained by the Record Examiner (the parties stipulate that the Final Petition Report is incorrect in the 5th column wherein it states that the Objector, and not the Candidate, preserved these objections "For Review").

The Candidate seeks to rehabilitate this signature by reference to Board Group Exhibit E which shows that Mr. Elmore is, in fact, registered at the address listed in the Petition. The Objector points out, however, that the Candidate has offered no evidence to contradict the additional ruling by the Record Examiner that the signature is improper because it was printed. The Objector did not, however, make the further objection in his Objector's Petition that this signature was not genuine and, therefore, the rulings of the Record Examiner were not reviewed by the Board's handwriting expert.

Thomas Thompson, Sheet 2 Line 7.

The Objector objects that this signer was not registered at the address shown. The Candidate seeks to rehabilitate this signature by reference to Board Group Exhibit E which shows that Mr. Thompson is registered at the address stated in the Petition. The Objector concedes that this signature has been rehabilitated. The signature of Mr. Thompson should, therefore, be counted.

L. David Kornreich, Sheet 3 Lines 4 & 5

Analysis of this signature is complicated by the fact that the signer used two lines to complete his information on the Petition. The Objector has made a total of six objections to lines 4 & 5. The objections to Line 4 state that the signer is not registered at the address shown, that he does not reside in the district, that the signature is not genuine, and that the given address is incomplete. The objections to Line 5 state that the signer is not registered at the address shown and that he does not reside in the district. The Record Examiner twice (at Lines 4 & 5) sustained an objection that the signer was not registered at the address shown. Curiously, the Record Examiner overruled an objection that the signer did not reside in the district at Line 4 but sustained the same objection at Line 5 despite the fact that both lines concern the same signer. The Record Examiner overruled the objection that the signature is not genuine.

The Candidate's Motion for Rule 8 Evidentiary Hearing references Sheet 3 Line 5 but does not mention Sheet 3 Line 4. The Objector argues that the Candidate has waived review of the objections sustained to Line 4 and, therefore, that this signature cannot be considered.

James D. Williams, Sheet 4 Line 4.

The Objector objects that the signer is not registered at the address shown, that the signature is not genuine, and that the signature is printed. The Record Examiner sustained the

last two objections and overruled the first objection. The Candidate seeks to rehabilitate this signature by submitting the purported affidavit of Mr. Williams that he did sign the Petition. The Objector objects to consideration of the affidavit because it was not notarized.

The Candidate testified that she personally knows Mr. Williams. She spoke with him on the phone and then asked her husband to go to the home of Mr. Williams to obtain his signature on the affidavit. Mr. Devane testified that he met with Mr. Williams on January 5, 2012, that he explained the nature of the objection to the printed signature, and that he asked Mr. Williams to sign the affidavit. Mr. Williams complied and signed the affidavit.

Serafin Naja, Sheet 7 Line 5.

The Objector objects that the signer is not registered at the address shown, that the signature is not genuine, and that the signature is printed. As was the case with the preceding signature, the Record Examiner sustained the last two objections and overruled the first objection. Once again, the Candidate seeks to rehabilitate this signature with an affidavit that was not notarized.

The Candidate testified that she personally knows Mr. Naja. Mr. Devane testified that he went to Mr. Naja's home, showed him his printed signature on the Petition, explained the nature of the objection, and asked him to sign the affidavit. Mr. Naja complied with this request.

Chad Willets, Sheet 7 Line 6.

The Objector objects that the signer is not registered at the address shown, does not reside in the district, that the signature is not genuine, and that there is no street direction. The Record Examiner overruled all objections except that the signer is not registered at the address shown. The Candidate seeks to rehabilitate this signature by reference to Board Group Exhibit E which shows that Mr. Willets is registered at the address stated in the Petition. The Objector concedes

that this signature has been rehabilitated. The signature of Mr. Willets should, therefore, be counted.

ANALYSIS

Access to position on a ballot is a substantial right which should not be lightly denied. *Sullivan v. County Officers Electoral Bd. of DuPage County*, 225 Ill.App.3d 691 (1992). A minor error in a nominating petition should not result in a candidate's removal from the ballot. *Ryan v. Lundek*, 159 Ill.App.3d 10 (1987). Objections alleging that the signatures of electors are "printed", without more, do not state sufficient grounds for invalidating such signatures. *Simms-Johnson v. Coordes*, 04-EB-WC-05, CBEC, January 20, 2004. A motion to strike and dismiss objections alleging only that signatures are "printed and not written" should be granted. *Id.* An objection that a printed signature on a petition does not match the cursive handwritten signature on a registration card should elicit an objection that the signature is printed *and* that it is not genuine. *Id.*; *Lyles v. McGee*, 02-EB-SS-04, CBEC, January 31, 2002.

As mentioned previously, the Petition Summary Report shows that the Candidate is three valid signatures short of qualifying for placement on the ballot. The Objector concedes, and this Hearing Officer finds, that the Candidate has sufficiently rehabilitated the signatures of Mr. Thompson and Mr. Willets and that these signatures should be considered valid. This means that the Candidate is now only one signature short of qualification for the ballot. Since similar facts and circumstances are involved in consideration of the signatures of Mr. Williams and Mr. Naja, the validity of these signatures is critical to the viability of the Petition.

The Objector seeks to preclude any consideration of the affidavits offered to rehabilitate the striking of these signatures because said affidavits were not notarized. "Affidavits may be considered in determining whether signatures found not to be genuine during a records

examination are, in fact, the genuine signatures of those signing the petition." *Rules of Procedure for the Board of Election Commissioners of the City of Chicago. Rule 10(c)*. An affidavit is normally a document that is subscribed and sworn to. *See, e.g., 10 ILCS 5/8-8*. The affidavits and the testimony of Mr. Devane show that these affidavits were neither subscribed nor sworn to. The issue becomes what, if any, consideration should be given to these affidavits (to be consistent, since the Candidate has titled these documents as affidavits, they will continue to be referred to as such, even though they are not legally sufficient to be considered as affidavits).

This Hearing Officer holds that the fact that Candidate's Exhibits 1 and 2 do not qualify as affidavits affects the *weight* to be given, but not the *admissibility* of, these documents. While it would have been preferable to have had these documents sworn and subscribed to in front of a disinterested notary public, the absence of this fact does not mean that Mr. Williams and Mr. Naja did not sign Candidate's Exhibits 1 and 2.

The Candidate testified that she personally knows both of these gentlemen. Both were contacted before Mr. Devane visited them at their homes. Mr. Devane testified that he showed each of them their signatures on the Petition, explained the nature of the objections, and asked them to sign the affidavits. Both complied with this request. This circumstance, where one who obtains a signature is under oath and the signer is not, is really no different than that which exists when a circulator obtains signatures for a Petition in the first place.

It is important to note that the printed names on the affidavits are an exact match to the Petition and that the cursive signatures on the affidavits are an exact match to the registration cards. The Candidate first viewed the registration cards at the evidentiary hearing on January 7, 2012. This conclusion is supported by the statement of Ms. Swenson (Candidate's lawyer) that she was viewing the registration cards for the first time and by the fact that the signed non-

disclosure and confidentiality agreement (the execution of which is a prerequisite to viewing the un-redacted registration cards) was signed at the evidentiary hearing. What this means is that the Candidate and her agents could not have known the cursive handwriting signature styles of Mr. Williams and Mr. Naja at the time that Mr. Devane visited these gentlemen on January 5, 2012, and obtained the affidavits. A comparison of the affidavits to the registration cards shows that these cursive signatures are identical. It is more probably true than not true that Mr. Williams and Mr. Naja signed the affidavits and the Petition.

It is acknowledged that the Objector also attacks the affidavits because they contain an admitted falsehood. The first line of the affidavit states that the signer was "duly sworn under oath". While this fact affects the weight to be given to the affidavits, it does not overcome the probative value of the evidence heretofore mentioned. It is held that the Petition signatures of James D. Williams and Serafin Naja should be considered valid. While this finding means that the Candidate has a sufficient number of Petition signatures to be placed on the ballot, a short discussion of the signatures of Jerry Elmore and L. David Kornreich may be useful.

As mentioned previously, the Objector objects that the signature of Mr. Elmore should not be considered because he is not registered at the address shown and because the signature is printed. A review of Board Exhibit E shows that Mr. Elmore is, in fact, registered at the address listed in the Petition (voter change information attested to by Lance Gough, Executive Director, shows that Mr. Elmore apparently moved from the address listed on the registration card to the one he listed on the Petition). The only remaining objection to be considered, therefore, is that Mr. Elmore's signature on the Petition is printed.

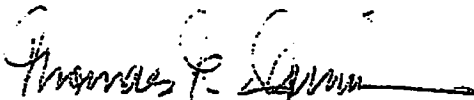
As previously discussed, *Simms-Johnson v. Coordes*, 04-EB-WC-05, CBEC, January 20, 2004, holds that an objection merely stating that a petition signature is printed should be stricken.

There has been no objection that Mr. Elmore's signature is not genuine. It is held, therefore, that the signature of Jerry Elmore should be considered.

A review of Board Group Exhibit E shows that Mr. Kornreich is registered at the address that he listed on the Petition. The address that he has given is not incomplete and it is located in the 49th Ward. The fact that Mr. Kornreich used two lines to complete his information has, as already noted, caused confusion to the Objector in specifying his objections, to the Record Examiner in ruling on said objections, and to the Candidate in composing her Rule 8 Motion. A Candidate, and by extension her circulator, has limited control over how a signer will sign her Petition. It is apparent that the Candidate has intended to rehabilitate and restore Mr. Kornreich's signature in her Rule 8 Motion. It is held that the signature of L. David Kornreich should be considered a valid signature.

Accordingly, the Hearing Officer recommends that the name of Suzanne Devane be printed on the ballot for office of Republican Ward Committeeman of the Forty-ninth (49th) Ward of the City of Chicago.

January 8, 2012



Hearing Officer - Thomas P. Quinn