

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

Objections of: Timothy C. Wolfe)
)
)
To the Nomination) No.: 12-EB-CON-3
Papers of: Susanne Atanus)
)
Candidate for the nomination of the)
Republican Party for the office of)
Representative in Congress for the 9th)
Congressional District, State of Illinois)

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 Timothy C. Wolfe (“Objector”) to the nomination papers (“Nomination Papers”) of Susanne Atanus, candidate for the nomination of the Republican Party for the office of Representative in Congress for the 9th Congressional District in the State of Illinois (“Candidate”) at the General Primary Election to be held on March 20, 2012, having convened on January 10, 2012 at 9:00 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 held on these Objections commenced on January 10, 2012 and was continued from time to time.

5. The Electoral Board assigned this matter to Hearing Officer Christopher Cohen 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 Hearing Schedule. The following persons, among others, were present at such hearing: the Objector, Timothy C. Wolfe, by attorney, John G. Fogarty, Jr.; and the Candidate, Susanne Atanus, pro se.

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 Electoral 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 600;
 - B. The number of purportedly valid signatures appearing on the nominating petition filed by the Candidate total 833;
 - C. The number of signatures deemed invalid because of objections sustained as a result of the records examination total 268;
 - D. The remaining number of signatures deemed valid as a result of the records examination total 565.

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 official ballot as a candidate for the nomination of the Republican Party for the office of Representative in Congress for the 9th Congressional District of the State of Illinois.

14. The Hearing Officer conducted a hearing to allow the Candidate and the Objector an opportunity to present evidence in support of their respective Rule 8 motions 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 only 565 valid signatures, which is less than the minimum number of valid signatures required by law to be placed upon the official ballot as a

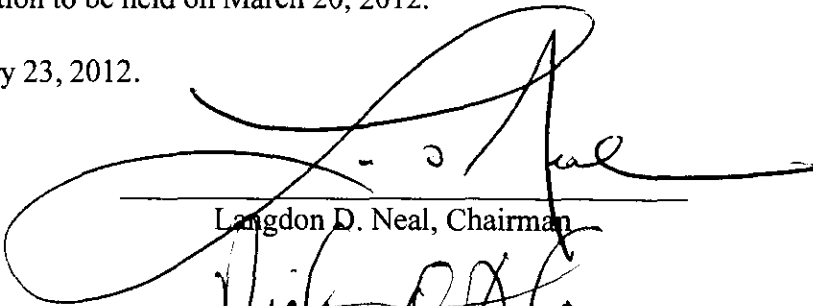
candidate for nomination of the Republican Party for the office of Representative in Congress for the 9th Congressional District of the State of Illinois, and that the Candidate's Nomination Papers should be found invalid.

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 an insufficient number of valid signatures on her nominating petitions and that the Nomination Papers of Susanne Atanus are, therefore, invalid.

IT IS THEREFORE ORDERED that the Objections of Timothy C. Wolfe to the Nomination Papers of Susanne Atanus, candidate for election to the office of Representative in Congress for the 9th Congressional District of the State of Illinois are hereby SUSTAINED and said Nomination Papers are hereby declared INVALID and the name of Susanne Atanus, candidate for nomination of the Republican Party for the office of Representative in Congress for the 9th Congressional District of the State of Illinois, SHALL NOT be printed on the official ballot for the General Primary Election to be held on March 20, 2012.

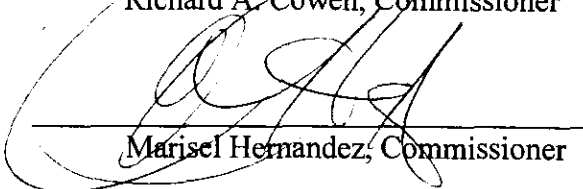
Dated: Chicago, Illinois, on January 23, 2012.



Langdon D. Neal, Chairman



Richard A. Cowen, Commissioner



Marisel 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 THE DULY
CONSTITUTED ELECTORAL BOARD

Objections of)
TIMOTHY C. WOLFE)
)
To the Nomination Papers of)
SUSANNE ATANUS)
)
Candidate for Nomination of the Republican Party)
to the Office of Representative in United States)
Congress for the 9th Congressional District to be)
voted upon at the March 20, 2012 Primary Election)

No. 12-EB-CON-03

BOARD OF ELECTIONS
COMMISSIONER

2012 JAN 18 P 9 30

HEARING OFFICER'S RECOMMENDED DECISION

This matter came before the Chicago Board of Election Commissioners ("Board") on the Verified Objector's Petition ("Objections") of TIMOTHY C. WOLFE ("Objector") to the Nomination Papers of SUZANNE ATANUS ("Candidate"). The Board appointed Attorney Christopher B. Cohen as hearing officer for this case. The hearing officer finds and recommends as follows:

1. The Candidate timely filed Nomination Papers as a Candidate for Nomination of the Republican Party to the Office of Representative in United States Congress for the 9th Congressional District, on December 23, 2011 with the Illinois State Board of Elections ("ISBE") pursuant to 10 ILCS 5/7-12(1) and 10 ILCS 5/10-6.
2. Verified Objections to the Candidate's Nomination Papers were timely filed with the ISBE by the Objector on January 4, 2012 pursuant to 10 ILCS 5/10-8.
3. This Board is the duly Constituted electoral board for hearing and passing on objections to Nomination Papers for the office which is the subject of these proceedings pursuant to 10 ILCS 5/10-9(6).
4. The Board's official file contained original Nomination Papers of the Candidate and the original Objector's Petition. The Objections alleged that the Candidate's Nomination Papers were insufficient and not in compliance with Illinois law for the following reasons: (¶3) the Nomination Papers contained fewer valid signatures of voters of the 9th Congressional District than the statutory minimum of 600; (¶6) they contained names of persons who were not registered voters at the addresses shown in the 9th Congressional District (as indicated in Column A of the Appendix-Recapitulation entitled "Signer Not Registered at Address Shown"); (¶7) they contained names of persons who signed but were not registered voters at addresses within the 9th Congressional District (as indicated in Column B entitled "Signer not in District"); (¶8) they contained names of persons who did not sign in their own proper person and the signatures were not genuine as indicated in Column C entitled "Signer not Proper Person and Not Genuine"; (¶9) they contained signatures of individuals who signed more than once (as indicated in column D entitled "Signed Petition Twice"); (¶10) they contained defective and deficient signatures in that the addresses shown next to names were incomplete (as indicated in Column E entitled "Incomplete Address").
5. On January 10, 2011, this hearing officer began a case management conference/hearing on the Objections at 69 W. Washington, Chicago, Illinois. The Objector appeared not in person but by his attorney, John Fogarty, Jr. Objector's counsel stated on the record that the Objector had been served with the Board's Call. The Candidate appeared personally and *pro se*. Ms. Atanus stated on the record that she waived service of the Call indicating the time and place of the Board's initial

- meeting and she signed a document entitled "Receipt of Call and other Electoral Board Documents and Waiver of Statutory Service."
6. On behalf of the Objector, Mr. Fogarty filed a formal written appearance indicating he was an attorney licensed to practice law in Illinois. Ms. Atanus filed a formal written appearance. The Parties exchanged copies of their respective appearance forms. The hearing officer provided each party with a hard copy of the Board's Rules as well as the Index of Electoral Board Decisions. They also were available on the Board's website at www.chicagoelections.com. The following Group Exhibits were marked and entered into evidence – The Candidate's Nominating Papers (Exhibit A), the Objector's Objections (Exhibit B) and the Board's Call, evidence of service on the Objector and the Candidate's Waiver of Statutory Service (Exhibit C).
 7. At the January 10, 2012 hearing, the Candidate indicated she would be filing a preliminary motion in the nature of a motion to strike or dismiss pursuant to Board Rule 5(b). The hearing officer set a briefing schedule which established deadlines of 5 pm on January 12, 2012 for the Candidate to file a preliminary motion, 5 pm on January 13, 2012 for the Objector to file any responsive pleadings and 5 pm on January 14, 2012 for the Candidate to file any reply. The Objector requested a records examination. The hearing officer directed that it occur. Mr. Charles Holiday of the Board indicated to each party on the record the time, date and place and explained the procedure for the records examination. No subpoenas were requested by either party. A continuation of the hearing was scheduled for January 13, 2012. Each of the parties in attendance received oral notice on the record of the date and time of the upcoming hearing.
 8. At the January 13, 2012 hearing, the hearing officer noted that the records examination had been completed. The parties reviewed copies of the Final Petition Detail Report ("Detail Report") – Including the Results of the Handwriting Expert as well as the Petition Summary Report ("Summary Report.") The Detail Report and the Summary Report were marked as Group Exhibit I. The Summary Report stated that the Candidate had filed 833 signatures and that of the 399 objections, 268 had been sustained and 131 overruled. The Summary Report indicated that the Candidate had appealed 269 signatures for review and the Objector had appealed 151 for review. The result of the records examination, prior to any further action, was 565 valid signatures or 35 fewer than the required minimum of 600.
 9. Pursuant to Board Rule 8, each party requested an opportunity to file a written motion for an evidentiary hearing and to present evidence regarding the results of the Rule 6 records examination. The parties were provided a deadline of 5 pm January 14, 2012 to file motions and a deadline of 4 pm, January 16, 2012 to file lists of witnesses, documents and other evidence. Charles Holiday indicated on the record that he would be present to testify at the evidentiary hearing. The Candidate's request for a subpoena to compel Mr. Holiday to appear was denied.
 10. At the January 13, 2012 hearing, the Candidate's Motion to Strike, timely filed before the January 12, 2012 deadline, was admitted as Exhibit H. The Objector waived his right to file a Response to the Motion to Strike. The hearing officer ruled that with no Objector's Response to which the Candidate could file a Reply, the previously scheduled deadline for the Candidate to file a Reply (by 5 pm January 14, 2012) was now moot. The hearing officer proceeded to a hearing on the Motion to Strike. The Candidate listed 77 signatures in her Motion to which she said Objections had been erroneously sustained by Board staff on the grounds that the signatories' addresses were outside the 9th Congressional District. The Candidate argued that the redistricting of the Congressional District's boundaries had not become effective until after her signatures were collected and that neither she nor the public had been provided notice of the new boundaries until after her signatures had been collected. Copies of the following were then provided to and reviewed by the parties – a legislative history of the passage of the Congressional District redistricting legislation in the Illinois General Assembly which became effective on June 24, 2011 as Illinois Public Act 97-14 (Exhibit D), an order by Federal District Court Judge Joan Lefko filed August 23, 2011 in Northern District of Illinois Case 11 cv 05065 (Exhibit E), an order by Judge Lefko filed November 22, 2011 in Case 11 cv 05065 (Exhibit F) and an Opinion and Order filed December 15, 2011 by Federal Circuit Judge John Tinder, District Judge Robert Miller, Jr. and

District Judge Joan Lefko (Exhibit G). Copies of the Board's Rules were again distributed to the parties. Pursuant to Board Rule 10, portions of which were read into the record, the hearing officer took judicial notice of Exhibits D, E, F and G after first notifying the parties of the substance of the Exhibits and affording them an opportunity to contest them.

11. The evidentiary hearing was scheduled for January 18, 2012 at 5 pm. Each of the parties received oral notice on the record of that upcoming hearing.
12. At the January 18, 2012 hearing, the Candidate's Rule 8 Motion timely filed on January 14, 2012 was entered into evidence as Exhibit J. It listed 77 specific signature lines identified by sheet and line numbers which the Candidate sought to rehabilitate. The Objector's Rule 8 Motion timely filed January 14, 2012 was entered into evidence as Exhibit K. It listed 87 specific signature lines identified by sheet and line numbers which the Objector sought to rehabilitate, The Candidate's List of Documents to be Presented, timely filed on January 16, 2012, was entered into evidence as Exhibit L. The Objector's Response and Disclosure of Documents timely filed on January 16, 2012, was entered into evidence as Exhibit M.
13. At the January 18, 2012 hearing, Charles Holiday testified regarding the Detail Report. He provided an analysis (Exhibit O) of the 77 lines the Candidate listed by sheet and line number in her Rule 8 Motion. The hearing officer found that three of the 77 signatures had been initialed and stricken by the Candidate prior to filing her Nominating Papers. These were identified as sheet 8 line 10, sheet 28 line 6 and sheet 29 line 11. The hearing officer found that evidence – including the Detail Report – indicated there was no signature, no objection, and no ruling by Board staff as to either sustaining or overruling an objection in these three instances. He concluded that this finding did not change the numbers in the Summary Report.
14. Additional exhibits submitted by the Candidate were marked as follows: Congressional District 9 Map including Maine Township Precinct 80 (Exhibit P), Voter Edit Screen Print for one of the Candidate's Home Addresses (Exhibit Q), Congressional District Map by Townships (Exhibit R), Lists of Niles addresses (Exhibit S), Article IV of the Illinois Constitution (Exhibit T), Page 32 from the Board's Index of Decisions (Exhibit U) and Declaration of No Knowledge of Boundary Change (Exhibit V).
15. During the January 13 and 18, 2012 hearings, the Candidate asserted orally that
 - there was a requirement that this Candidate be notified about what Congressional district she was or was not in;
 - this Candidate in a primary following a redistricting is authorized to obtain and file as valid, the petition signatures of electors residing outside the new congressional district in which she seeks to run;
 - the Board and the ISBE failed in their obligation to notify the public of the boundaries for the new congressional districts;
 - the Illinois Secretary of State failed to meet his obligation to publish a redistricting plan; and
 - the Board's computer system and maps are incorrect.
16. The hearing officer declined to rule in favor of these assertions but instead concluded that this Candidate was required to have her petitions signed by at least 600 qualified primary electors of the Republican Party residing in the new Congressional District from which she sought to be nominated. The hearing officer found further that the redistricting law applicable to the candidate's district was to be found in Illinois Public Act 97-14 and that this law became effective June 24, 2012 prior to the first day on which the Candidate was authorized to circulate petitions for the office at issue here.
17. At the January 18, 2012 hearing, the hearing officer drew attention to the following language in Rule 8(d)(ii) –

IMPORTANT

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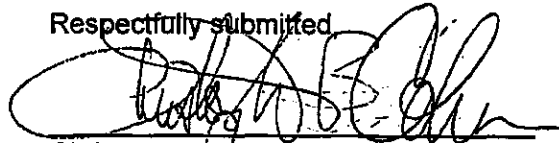
(2) A party shall, in presenting any evidence or argument relating to any signature examined in a records examination, be limited to those signatures identified by petition

sheet and line number in the party's written motion and shall not be permitted to present evidence or argument as to any signature not contained in such written motion.

18. At the January 18, 2012 hearing, the hearing officer determined that because the result of the records examination indicated the Candidate's petitions contained fewer than the number of valid signatures required by law, the Candidate would be assigned the burden of going forward first and presenting evidence and argument as to why the findings made by the records examiners should be reversed.
19. The hearing officer found that the Candidate was limited to attempting to rehabilitate signatures on the 77 lines listed in her Rule 8 Motion. Three of the 77 sheet and line numbers referred to signatures that the Candidate had initialed and stricken from her Nominating Papers. After reviewing the evidence, the hearing officer sustained the rulings of Board staff during the records examination as to the other 74 signatures. Mr. Holiday testified that after the Detail Report was issued, he investigated further and that one of the 2 not-found signatures was eventually found in the 10th Congressional District. The hearing officer found that of the 77 signature lines listed in the Candidate's Rule 8 Motion, one was for a record not found, 73 were from individuals with addresses outside the 9th Congressional District and three referred to signatures stricken by the Candidate. The Candidate did not meet her burden of proving by operation of law and by a preponderance of the relevant and admissible evidence that rulings by Board staff regarding the records examination should be reversed.
20. After all the evidence was in, the hearing officer found that the result of the records examination -- 565 valid signatures or 35 fewer than the required minimum of 600 -- remained unchanged and recommends that the Board adopt this finding. The parties' appearances filed and exchanged at the January 10, 2012 hearing were entered into evidence as Group Exhibit N. After hearing from the parties, previously marked Exhibits I, O, P, Q, R, S, T, U and V were admitted into evidence. As a result all marked exhibits were accepted into evidence.

In light of the above findings of fact and conclusions of law, it is this hearing officer's recommendation that the Verified Objector' Petition filed by TIMOTHY C. WOLFE be sustained, that the Candidate's Nomination Papers be deemed not valid in law and in fact and that the name of Candidate SUZANNE ATANUS not appear on the ballot as a Candidate for Nomination of the Republican Party to the Office of Representative in United States Congress for the 9th Congressional District, to be voted upon at the March 20, 2012 Primary Election.

Respectfully submitted,



Christopher B. Cohen
Hearing Officer
January 18, 2012