

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

Objections of: Anne M. Sullivan)
)
)
 To the Petition for Public Question: "Should a) No.: 16-EB-QPP-03
 promenade and bicycle path be constructed)
 along the lakefront in Edgewater?")

FINDINGS AND DECISION

The duly constituted Electoral Board, consisting of Board of Election Commissioners for the City of Chicago Commissioners Marisel A. Hernandez, William J. Kresse and Jonathan T. Swain, organized by law in response to a Call issued by Marisel A. Hernandez, Chairwoman of said Electoral Board, for the purpose of hearing and passing upon objections ("Objections") of Anne M. Sullivan ("Objector") to the Petition for Public Question: "Should a promenade and bicycle path be constructed along the lakefront in Edgewater?" ("Referendum Petition") to be submitted to voters in Ward 40, Precincts 9, 22, 25, 26, 27, 28, 31, 33, 35 and 37) and in Ward 48, Precincts 1 through 46 (the "Territory") at the General Election to be held on November 8, 2016, having convened on August 22, 2016 at 3:30 P.M., in Room 800, 69 West Washington Street, Chicago, Illinois, and having heard and determined the Objections to the Petition in the above-entitled matter, finds that:

1. Objections to the Referendum Petition 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 Chairwoman of the Electoral Board and served upon the members of the Electoral Board, the Objector and the

Proponent of the Referendum Petition, by registered or certified mail and by Sheriff's service, as provided by statute.

4. A public hearing held on these Objections commenced on August 22, 2016.

5. The Objector and the Proponent were directed by the Electoral Board to appear before the Electoral Board on August 22, 2016, at 3:30 p.m. The following persons, among others, were present at such hearing: the Objector, Anne M. Sullivan, pro se; and the Proponent of the Referendum Petition, Morry Clark Matson, pro se. The parties were asked if either of them wished additional time to retain legal counsel. Ms. Sullivan replied in the negative. Mr. Matson replied that he would like additional time to retain legal counsel. Over Ms. Sullivan's objection, Mr. Matson was given additional time to retain legal counsel. The Electoral Board recessed the meeting until August 30, 2016, at 9:00 a.m. to allow Mr. Matson to retain counsel, with a cautionary warning that he should be prepared to proceed on that date.

6. On August 30, 2016, the Electoral Board re-convened. Both the Objector and the Proponent were present. Attorney Ed Mullin filed his appearance on behalf of the Proponent. The Objector appeared pro se.

7. The Proponent indicated that he would be filing a motion to strike the Objector's Petition that day and suggested that the motion be briefed and that a records examination be scheduled concurrently. A briefing schedule was set so that the Proponent's motion to strike would be filed on August 30, the Objector's response would be due August 31 and the Proponent's reply, if any, would be due on September 1. In addition, the Electoral Board scheduled a records examination to start on August 31, 2016 at 9:15 a.m. The Electoral Board further instructed that the Board's handwriting expert, in addition to reviewing any signatures where either of the parties appealed a determination of the records examination clerk, review the

signatures appearing on sheets 9 through 13 of the Referendum Petition where it is alleged that the petition signatures are of common authorship and report back to the Electoral Board.

8. The Proponent did file a Motion to Strike Objector's Petition ("MTS") on August 30, and the Objector filed a response to the Motion on August 31. The Proponent did not file a reply in support of his motion.

9. The Proponent argued that the Objector's Petition does not include a statement of the Objector's interest, nor does it include a complete request for relief, as required by Section 10-8 of the Election Code. MTS, ¶ 4. The Proponent further contended that the Objector's Petition is deficient in the following respects:

- A. It fails to specify each individual signature objection sufficiently for the proponent and the Electoral Board to evaluate in that certain objections are that the petition signatures are "printed" and that such an objection standing alone is legally insufficient. MTS, ¶ 5.
- B. It objects that certain signatures are duplicate, but fails to identify the sheet and line number of the duplicate signature. MTS, ¶ 6.
- C. The Petition alleges that certain signatures have an "invalid" address, but fails to explain what that means. MTS, ¶ 7.
- D. The Petition alleges that certain signatures are "invalid," without explanation as to what that means. MTS, ¶ 8.
- E. Because of these alleged deficiencies, the Objector's Petition as a whole does not adequately state the nature of the objections and the Petition should be stricken in its entirety. MTS, ¶ 9.

F. The Objector's allegation of a "pattern of fraud" involving five petition sheets she believes were written in the same handwriting must be proven by a clear and convincing evidence and here, less than 3% of the petition sheets are alleged to constitute the pattern of fraud. MTS, ¶ 11. Thus, according to Proponent, even if Objector's allegation that five petition sheets contain signatures in the same handwriting, it is legally insufficient to support a claim of fraud and the objection should be stricken.

10. In a separate order, the Electoral Board granted paragraphs 5 and 6 of the Proponent's Motion to Strike the Objector's Petition, but denied the remainder of the Motion.

11. The Objector's Petition alleges that signature sheets on the Referendum Petition should be stricken due a pattern of fraud, false swearing and total disregard of the requirements of the Election Code in that in some cases, whole pages of signatures – pages 9, 10, 11, 12 and 13 – are written in the same hand. Obj. Pet., ¶ 1. Objector cites *Canter v. Cook County Officers Electoral Board*, 170 Ill.App.3d 364, 368, 120 Ill.Dec. 388, 523 N.E.2d 1299 (1988), which states, "Where the signature sheets of a nominating petition submitted by a circulator evidence a pattern of fraud, false swearing, and total disregard for the requirements of the Code, the sheets circulated by that individual should be stricken in their entirety."

12. The Objector also alleges that certain petition signatures, identified in the Objector's Petition by page and line designation, are invalid for the reasons stated in the Objector's Petition. Obj. Pet., ¶ 2.

13. It was evident to the Electoral Board that, based upon a simple visual examination of petition sheets 9 through 13 of the Referendum Petition, the "signatures" appearing on those sheets were in the same handwriting. Without objection from the parties, the Electoral Board

referred those petition sheets to the Board's handwriting expert for her examination to be conducted in conjunction with a records examination by the Board's clerks and agents under Rule 6 of the Electoral Board's Rules of Procedure.

14. The Electoral Board directed all parties to appear and be present, either personally and/or by their authorized representatives, during this records examination.

15. Although not expressly raised by either party, there is a threshold issue that needs to be addressed – i.e., the number of valid signatures required to be on the Referendum Petition in order to qualify for a place on the ballot. The Electoral Board finds that 10 ILCS 5/28-6 requires that petitions for public questions must be signed by registered voters who reside in any part of any precinct all or part of which includes all or part of the territory in which the question is to be submitted to voters equal in number to at least 8% of the total votes cast for candidates for Governor in the preceding gubernatorial election by the voters in such territory.

16. Section 28-3 of the Election Code (10 ILCS 5/28-3) require that petitions for the submission of public questions shall contain an appropriate heading above the space for signatures giving information as to the question of public policy to be submitted, and “specifying the state at large or the political subdivision or district *or precinct or combination of precincts or other territory in which it is to be submitted ***.*” Section 28-3 further provides, “In the case of a petition for the submission of a public question described in subsection (b) of Section 28-6 [in a municipality with more than 1,000,000 inhabitants when question to be submitted in a territory less than the entire municipality], the heading shall also specify the regular election at which the question is to be submitted *and include the precincts included in the territory concerning which the public question is to be submitted ***.*” Here, the heading of each petition sheet of the Referendum Petition states, above the space for signatures, the following:

**“48th WARD (pct 1-46), 40th WARD (pct 9,22,25,26,27,28,31,33,35,37)
PETITION FOR ADVISORY REFERENDUM**

Pursuant to 10 ILCS 5/28-6(a); 55 ILCS 5/3.1-40-60, WE, the undersigned registered voters residing within the City of Chicago, County of Cook, State of Illinois, do hereby PETITION that the following advisory referendum of public policy be placed on the ballot and submitted to the voters of the 48th Ward and the 40th Ward of the City of Chicago, for their approval or disapproval, by referendum, at the General Election, scheduled to be held on November 8, 2016.

SHOULD A PROMENADE AND BYCYCLE PATH BE CONTRUCTED
ALONG THE LAKEFRONT IN EDGEWATER? YES ___ NO ___”

17. As shown in the previous paragraph, at the very top of the petition sheet, above its title – PETITION FOR ADVISORY REFERENDUM – there is listing of precincts 1-46 of Ward 48, but only some, not all, precincts in Ward 40. This can be construed as an expression of intent by the persons signing the Referendum Petition that it be submitted to voters in all precincts in Ward 48, but only to voters in the precincts specified in Ward 40. However, in the paragraph below the title, it states that the undersigned registered voters are petitioning to have the advisory referendum of public policy “submitted to the voters of the 48th Ward and the 40th Ward of the City of Chicago” for their approval or disapproval. Therefore, there are inconsistent statements regarding the territory in which the advisory referendum is to be submitted to voters. To add to the confusion, there is a statement at the bottom of each petition sheet in what is commonly referred to as the circulator’s affidavit that the persons signing the petition “were, at the time of signing the petition, duly qualified and registered voters of 48/40 Ward of the City of Chicago ***.” This can be reasonably construed to mean that the persons signing petition were qualified and registered voters in *any* precinct of the 40th Ward.

18. The Electoral Board concludes that the listing of only ten identified precincts in Ward 40 in the very top of each petition sheet expressed an intention, by the drafters of the petition as well as those who signed the petition, that the question of public policy advanced by

the Referendum Petition is to be submitted to voters only in those enumerated precincts of Ward 40, while submitting it to voters in Precincts 1-46 of Ward 48. Accordingly, for the Territory affected by this Referendum Petition (Ward 48, Precincts 1-46, and Ward 40, Precincts 9, 22, 25, 26, 27, 28, 31, 33, 35, 37), a petition for public question must contain at least 1,611 valid signatures of registered voters in the Territory.

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

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

21. 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.

22. The results of the records examination indicate that:

A. The minimum number of valid signatures required by law for placement on the ballot is 1,611 (see discussion in paragraphs 15-17 above);

B. The number of purportedly valid signatures appearing on the petition filed total 1,890;

C. The number of signatures deemed invalid because of objections sustained as a result of the records examination total 101;

D. The remaining number of signatures deemed valid as a result of the records examination total 1,789.

23. The Electoral Board finds that the number of valid signatures appearing on the Referendum Petition following completion of the records examination was more than the minimum number of valid signatures required by law for a question of public policy to be placed upon the official ballot in the Territory identified in the Referendum Petition.

24. Section 28-3 of the Election Code (10 ILCS 5/28-3) provides in part that petitions for public questions “shall be signed by the registered voters of the political subdivision or district or precinct or combination of precincts in which the question of public policy is to be submitted *in their own proper persons only* ***.” (Italics added) Section 28-3 further provides, “Whoever forges any name of a signer upon any petition shall be deemed guilty of a forgery, and on conviction thereof, shall be punished accordingly.”

25. In addition, Section 28-3 requires that at the bottom of each petition sheet shall be added a statement of the circulator, under oath, that the signatures on such sheet were “signed in his or her presence and are genuine ***.”

26. The Electoral Board further finds that the Board’s handwriting expert, Diane Marsh, examined petition sheets 9 through 13 of the Referendum Petition and concluded that:

A. All of the handwritten signatures, printed names, and addresses on the petition sheets 9 through 13 were written by one and the same individual, except for Sheet 9, Lines 1 and 2.

B. Except for Lines 1 and 2 of Sheet No. 9, it is highly probable that all of the handwriting on petition sheets 9 through 13 were written by the same individual that wrote the information and signature for Morry Matson and that there are consistencies in the two sets of handwriting the following areas: pictorial appearance, letter design, beginning and ending strokes, writing size, base line

alignment, spacing between letters, line quality, slant, speed of writing, and writing skill.

27. However, the Electoral Board finds that even in the absence of an opinion of a handwriting expert, a cursory visual examination alone of the signatures beginning on line 3 of sheet 9 and all of the signatures on sheets 10, 11, 12 and 13 of the petition, demonstrates even to an untrained lay person's eyes that the so-called "signatures," as well as the printed names and street addresses, were all affixed by the same hand and that the same person also wrote the information and signature for Morry Matson as it appears in the circulator's affidavit at the bottom of each of those sheets. It is appropriate for an Electoral Board to make factual determinations as to the validity of the signatures without an expert in handwriting analysis. See, *Bergman v. Vachata*, 347 Ill. App. 3d 339, 348, 807 N.E.2d 558, 565 (1st Dist. 2004). In this particular case, the petitions, which are in evidence, speak for themselves ("*res ipsa loquitur*").

28. In addition, Mr. Matson testified under oath that he works at Walgreen's at 5625 N. Ridge and that fellow employees gave Mr. Matson permission to sign their names to the petition. Mr. Matson testified that he did sign all of the names on sheets 9 through 13, with the exception of lines 1 and 2 on sheet 9. He listed 5625 N. Ridge as their residence address on the petition, even though he knew they did not live there. He became aware only later that signing their names in the manner he did and listing the addresses in the manner he did was improper. He was told he could strike the lines where their signatures appeared, but he did not do so for fear that he would be altering the petition. Under questioning, he further testified that there were other petition signatures where the residence address was not, in fact, a place of residence, but that he did know that was wrong.

29. The Electoral Board finds that the “signatures” on petition sheets 9 through 13, with the exception of lines 1 and 2 on sheet 9, are not “genuine” as required by Section 28-3 of the Code, notwithstanding the circulator’s oath to the contrary, and the circulator made a false swearing under oath and disregarded the requirements of Section 28-3 of the Code. The Electoral Board finds, therefore, that there is clear and convincing evidence of a pattern of fraud, false swearing and a total disregard for the mandatory requirements of the Election Code.

30. In *Canter v. Cook County Officers Electoral Board*, 170 Ill.App.3d 364, 523 N.E.2d 1299 (First Dist. 1988), the electoral board found that on sheet 1 of the candidate’s petition, signatures on lines 18 through 25 appeared to be written in the same handwriting, which resembled that of circulator of the petition sheet, and that signatures on sheet 3, lines 10 through 25 also appeared to be written in the same hand as that of circulator. On judicial review, the court, citing *Fortas v. Dixon*, 462 N.E.2d 615 (1984), stated that the electoral board could not “close its eyes and ears” to evidence of fraud and there was ample support for the electoral board’s finding that circulator’s oath was “incredible,” making all signatures on sheets circulated by him invalid. See also, *Huskey v. Municipal Officers Electoral Board*, 156 Ill.App.3d 201, 509 N.E.2d 555 (1987) where the same result was attained as in *Fortas* after it was shown that the circulator allowed people to sign their own names and the names of family members who were not present. In *Huskey*, the court held, “The fact that the circulator misunderstood her instructions or was not properly instructed, and thus did not have fraudulent intent does not alter our holding.” 156 Ill. App.3d at 205.

31. In the face of evidence that numerous signatures on various petition sheets were similar and of common authorship, sheets may be stricken in their entirety from the candidate’s nomination papers because of false swearing and evidence of a clear pattern of disregard of the

Election Code. *Smith v. Jennings*, 99-EB-ALD-121 (Chicago Electoral Board, 1999). Evidence that a circulator's affidavits are false and perjurious, evidencing a pattern of false swearing, invalidates all signatures on those petition sheets. *Arrington v. Jenkins*, 91-EB-ALD-083 (Chicago Electoral Board, 1991). The impeachment of the circulator significantly undercuts the credibility of any other statements the circulator made under oath. An electoral board should be able to rely on the honesty of the circulator who swears that he witnessed each signature whenever the electoral board counts the signatures toward the number required for ballot access. If the evidence supports a finding that the circulator lied under oath, it further supports a decision to refuse to count any signatures that circulator purportedly witnessed. *Harmon v. Town of Cicero*, 371 Ill.App.3d 1111, 864 N.E.2d 996 (1st Dist. 2007). See also, *Cunningham v. Schaefflein*, 2012 IL App (1st) 120529, 969 N.E.2d 861 (1st Dist. 2012).

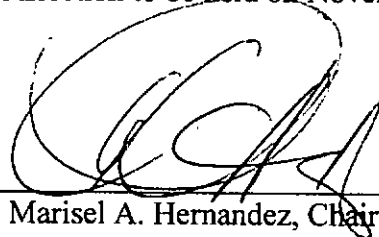
32. Here, the Electoral Board finds clear and convincing evidence that signatures on sheets 9 through 13 were, by his own admission, all signed by Morry Matson. The purported "signatures" on such sheets, with the exception of those on lines 1 and 2 on sheet 9, are not "genuine" as required by law and that there was a pattern of fraud, false swearing and total disregard of the requirements of the Election Code. The Electoral Board further finds that the appropriate remedy is the invalidation of every petition sheet tainted by such conduct.

33. Here, the same individual – Morry Matson – is identified as the circulator of each and every sheet in the Referendum Petition. The appropriate remedy under Illinois law, therefore, is to strike as invalid every sheet in the Referendum Petition, leaving it with no valid signatures.

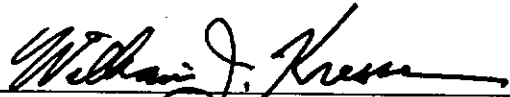
34. The Electoral Board, therefore, sustains the objections found in paragraph 1 of the Objector's Petition and finds that the Referendum Petition is invalid.

IT IS THEREFORE ORDERED that the Objections of Anne M. Sullivan to the Petition for Public Question: "Should a promenade and bicycle path be constructed along the lakefront in Edgewater?" ("Referendum Petition") to be submitted to voters in Ward 40, Precincts 9, 22, 25, 26, 27, 28, 31, 33, 35 and 37) and in Ward 48, Precincts 1 through 46 (the "Territory") are hereby SUSTAINED and said Referendum Petition is hereby declared INVALID and the Public Question: "Should a promenade and bicycle path be constructed along the lakefront in Edgewater?" ("Referendum Petition") to be submitted to voters in Ward 40, Precincts 9, 22, 25, 26, 27, 28, 31, 33, 35 and 37) and in Ward 48, Precincts 1 through 46 (the "Territory") SHALL NOT be printed on the official ballot for the General Election to be held on November 8, 2016.

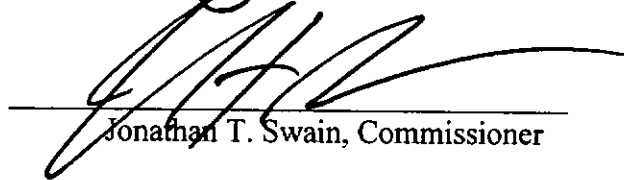
Dated: Chicago, Illinois, on September 2, 2016.



Marisel A. Hernandez, Chairwoman



William J. Kresse, Commissioner



Jonathan T. Swain, Commissioner

NOTICE: Pursuant to Section 10-10.1 of the Election Code (10 ILCS 5/10-10.1) a party aggrieved of this decision and seeking judicial review of this decision must file a petition for judicial review with the Clerk of the Circuit Court of Cook County within 5 days after service of the decision of the Electoral Board.