

**BOARD OF ELECTION COMMISSIONERS OF THE CITY OF CHICAGO
AS THE DULY CONSTITUTED ELECTORAL BOARD
FOR THE HEARING AND PASSING UPON OBJECTIONS
TO NOMINATION PAPERS OF CANDIDATES
FOR THE FEBRUARY 23, 1999 MUNICIPAL GENERAL ELECTION
FOR MAYOR, CLERK, TREASURER AND ALDERMAN
IN THE CITY OF CHICAGO**

Objections of: ERIC P. MCKENNIE)	
)	
To the Nomination)	
Papers of: CAROL MOSELEY-BRAUN)	No.: 99-EB-ALD-163
)	
Candidate for the office of)	
Alderman of the 37th Ward,)	
City of Chicago)	

FINDINGS AND DECISION

The duly constituted Electoral Board, consisting of Board of Election Commissioners of the City of Chicago Commissioners Langdon D. Neal, Richard A. Cowen, and Theresa M. Petrone, 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 ERIC P. MCKENNIE to the nomination papers ("Nomination Papers") of CAROL MOSELEY-BRAUN, candidate for the office of Alderman of the 37th Ward for the City of Chicago ("Candidate"), having convened on December 28, 1998, at 9:00 a.m., in the City Council Chambers, City Hall, 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 December 28, 1998 and was continued from time to time.

5. The following persons, among others, were present at such hearing: the members of the Electoral Board, the Objector, ERIC P. MCKENNIE, by counsel James Nally; and the Candidate, CAROL MOSELEY-BRAUN, by Ernest B. Henton.
6. The Electoral Board assigned this matter to Hearing Examiner JOHN ASHENDEN for further hearings and proceedings.
7. Paragraph 15 of the Objector's petition alleges that the Candidate is not a registered voter at the address specified in her Nomination Papers as required by law.
8. Paragraph 16 of the Objector's petition alleges that the Candidate is not eligible to seek the office of Alderman of the 37th Ward of the City of Chicago because the Candidate is not a registered voter of the City of Chicago as required by law.
9. Section 3-1-10-5 of the Municipal Code (65 ILCS 5/3-1-10-5) states that a person is not eligible for an elective municipal office, including the office of Alderman of the City of Chicago, unless a "qualified elector" of the municipality.
10. Although the Municipal Code does not define who is a "qualified elector," Section 3-1.2 of the Election Code (10 ILCS 5/3-1.2) provides, for example, that to be eligible to sign a petition the terms "qualified voter" or "registered voter" as used in this Code is 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. Therefore, to be a "qualified elector," a person must be registered to vote. See, e.g., *Jeffries v. Jones*, 85-EB-RGA-14, CBEC, January 14, 1986.
11. Section 10-5 of the Election Code (10 ILCS 5/10-5) requires candidates for office to file a statement of candidacy with their nomination papers that is substantially in the form set forth in that section. The form of the statement requires that the candidate state his or her residence address, including the city, county and state, and state that "I am a qualified voter therein."
12. Section 10-5 of The Election Code also requires that the candidate's statement of candidacy "shall state that the candidate is qualified for the office specified...." The Electoral Board finds that this provision requiring a statement that the candidate is qualified is phrased in the present tense only and that the candidate must meet the legal qualifications at the time he or she signs the statement and at the time the statement is filed with the proper election officers, not at some future time. See, e.g., *Schumann v. Fleming*, 199 Ill.Dec 497, 634 N.E.2d 336 (Second Dist. 1994) ("*** the section requiring a statement that he is qualified is phrased in the present tense only. In other words, at the time that the candidate obtains the necessary petitions for nomination, he or she must swear that he is (not 'will be') qualified to hold office"); see also, *Jeffries v. Jones*, 85-EB-RGA-14, CBEC, January 14, 1986.

13. Section 10-6(4) of the Election Code (10 ILCS 5/10-6(4)) provides the deadline for filing nomination petitions for the office of Alderman is not more than 78 nor less than 71 days before the consolidated primary in the case of municipal offices to be elected on a nonpartisan basis pursuant to law. The deadline for candidates for the office of Alderman for the City of Chicago to file nominating petitions in relation to the February 23, 1999 Municipal General Election was December 14, 1998.
14. The Electoral Board finds that the Candidate registered to vote on May 2, 1996 under the name of Lauryn Valentine and at the address of 445 N. Central 3, Chicago, Illinois 60644.
15. The Electoral Board finds that the Candidate legally changed her name from Lauryn Valentine to "Carol Moseley-Braun" on September 24, 1998.
16. The Electoral Board finds that the Candidate, CAROL MOSELEY-BRAUN, did not become a registered voter under the name "Carol Moseley Braun" until December 28, 1998.
17. The Electoral Board finds that on October 21, 1998 the Candidate, CAROL MOSELEY-BRAUN, signed her statement of candidacy attesting that she was a "qualified voter" at 445 N. Central Avenue in the City of Chicago, in the County of Cook and the State of Illinois and further stating that "I am legally qualified" to hold the office of Alderman of the 37th Ward of the City of Chicago.
18. The Electoral Board finds that on December 14, 1998 the Candidate filed her Nomination Papers, including her statement of candidacy, with the Chicago Board of Election Commissioners.
19. The Electoral Board finds that, pursuant to Section 6-54 of The Election Code, any registered voter who changes her name shall be required to register anew and authorize cancellation of the previous registration. *People ex rel. Rago v. Lapsky*, 327 Ill.App.63, 63 N.E.2d 642 (1945).
20. The Electoral Board finds that the Candidate, CAROL MOSELEY-BRAUN, did not register anew as required by Section 6-54 until December 28, 1998, well after the Candidate her signed statement of candidacy and after she had filed her Nomination Papers including the statement of candidacy.
21. The Electoral Board finds that the Candidate, CAROL MOSELEY-BRAUN, was not a registered voter on either October 21, 1998, the date the Candidate signed the statement of candidacy, or on December 14, 1998, the date the Candidate's Nomination Papers were filed, as required by law.
22. The Electoral Board finds, therefore, that the Candidate, CAROL MOSELEY-BRAUN, was not legally qualified for the office of Alderman of the 37th Ward of the City of

Chicago nor was she a qualified voter at 445 N. Central Avenue in the City of Chicago at the time she either signed her statement of candidacy or at the time she filed her statement of candidacy with the Board.

23. The Electoral Board finds that the Candidate's statement of candidacy is false and, therefore, void.
24. The Electoral Board, therefore, adopts the Recommended Findings and Proposed Decision of Hearing Examiner John R. Ashenden filed in this matter, a copy of which is attached hereto and incorporated herein, sustains paragraphs 15 and 16 of the Objector's petition and finds the Candidate's Nomination Papers to be invalid.
25. The Electoral Board further finds that the Candidate's deliberate and intentional use of the name of another person whose name is well-known in the political and civic community in the 37th Ward and in the City of Chicago, is false and misleading and designed to create confusion in the minds of voters.
26. The Electoral Board, in light of the above findings, makes no findings as to the other remaining objections in the Objector's petition.
27. The Electoral Board finds that additional objections were filed against the Candidate's Nomination Papers in related case 99-EB-ALD-001, Robertson v. Moseley-Braun, and that the Objector's petition in that case was dismissed.

IT IS THEREFORE ORDERED, that the Objections of ERIC P. MCKENNIE to the Nomination Papers of CAROL MOSELEY-BRAUN, candidate for election to the office Alderman of the 37th Ward for the City of Chicago are hereby SUSTAINED and said Nomination Papers are hereby declared INVALID and the name of CAROL MOSELEY-BRAUN, candidate for election to the office of Alderman of the 37th Ward for the City of Chicago, SHALL NOT be printed on the official ballot for the Municipal General Election for Mayor, City Clerk, City Treasurer and Alderman to be held on February 23, 1999.

Dated: Chicago, Illinois, this Nineteenth day of January, 1999.



Langdon D. Neal, Chairman

Richard A. Cowen, Commissioner

Theresa M. Petrone, Commissioner

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

ELECTORAL BOARD
FOR THE HEARING AND PASSING UPON OBJECTIONS TO NOMINATION
PAPERS OF CANDIDATES FOR ALDERMAN OF THE 37TH WARD IN THE
FEBRUARY 23, 1999 MUNICIPAL GENERAL ELECTIONS IN THE CITY OF
CHICAGO, ILLINOIS.

ERIC P. McKENNIE)	
)	
Objector,)	
)	
v.)	99 EB ALD 163
)	
CAROL MOSELEY-BRAUN,)	37th WARD
)	
Candidate.)	

RECOMMENDED FINDINGS AND PROPOSED DECISION
OF HEARING EXAMINER JOHN R. ASHENDEN

I. DECEMBER 28, 1998 HEARING

The initial hearing was held on December 28, 1998 at 12:45 p.m. at 5th Floor of the Board of Elections located at 69 West Washington Street. The Hearing Examiner reviewed the objectors' petitions, and obtained stipulations as to the receipt of service of the trial call. Ernest Henton Jr. filed an appearance on behalf of the candidate. Attorney, Robert Fioretti and James Nally of Fioretti and DesJardins appeared for the Objector, Eric P. McKennie. The Candidate's representative will file a motion to strike the Objector's Petition. The parties agreed upon a briefing schedule. Hearing on the candidate's motion to strike and the Objector's was scheduled for January 5, 1999 at 2:00 p.m.

II. JANUARY 5, 1999 HEARING

The candidate filed a motion to strike the objector's petition based solely on the objector's alleged untimely filing of his petition. The objector filed a written memorandum in response,

alleging that the objector was in the office of the Board prior to 5:00 p.m. and, due to the large volume of objections being filed that day, the objection was not time stamped until 5:14 p.m. At this hearing, the objector's attorney stated the objector was in line before 5:00 p.m., and that the Board's policy was to lock the door at 5:00 p.m. All the petitions were then time stamped as per the Board's time requirements.

The Hearing Examiner denied the candidate's motion to strike. The basis for the denial was a Board of Election memorandum dated December 21, 1998, which ordered the Board to lock the front door of the Board of Election Commission at precisely 5:00 p.m. Only those persons who were in line at 5:00p.m. were allowed to file their objection petitions due to the large number of people in line. As a result, the instant objector's petition reflected a time later than 5:00 p.m., although he arrived in a timely fashion and filed consistent with the relevant statutes. No one was permitted to enter the office until all filing documents were processed. As such, the candidate's motion to strike was denied.

Following this ruling, the Hearing Examiner then heard the substantive argument of the objector's attorney. The objector's main argument addressed the issue of whether the candidate, Carol Moseley-Braun, was in fact a duly qualified voter at 445 North Central in Chicago, Illinois, as stated on her candidacy papers. The candidate's representative argued that Carol Moseley-Braun is a registered voter of the 37th Ward, residing at 445 North Central, Chicago, Illinois. The candidate's representative submitted for entry into the record the affidavit of Lance Gough, Executive Director of the Chicago Board of Election Commissioners, certifying that "Carol Moseley Braun became a registered voter" on "this 28 day of DECEMBER A.D. 1998." This affidavit is one of the principal documents relied upon by the Hearing Examiner to make his finding.

At this juncture, upon recommendation of the Hearing Examiner, the parties agreed to brief the issue of whether Candidate Carol Moseley-Braun (formerly Ms. Valentine) was a validly registered voter at the address she indicated at the time her affidavit and Statement of Candidacy for Alderman of the 37th Ward was filed.

III. JANUARY 15, 1999 HEARING

When the hearing was reconvened on January 15, 1999, arguments were heard on whether the candidate's nominating papers, along with her Statement of Candidacy, complied with the candidate's qualification requirements of pertinent statutes and the applicable case law. The parties acknowledge receipt of the briefs pursuant to the briefing schedule.

The objector argued that "by the candidate's own admission," she was not a duly qualified registered voter until December 28, 1998. (See Gough's December 28, 1998 affidavit discussed with reference to the January 5, 1999 hearing). The filing deadline for nominating papers, including the Certificate of Candidacy, was December 14, 1998. The candidate's representatives filed the December 28, 1998 Gough affidavit establishing that Aldermanic Candidate Braun wasn't registered during the time sworn to under oath.

The Candidate's sworn and filed Statement of Candidacy for Alderman is a part of the official record. It incorrectly affirms that Ms. Braun was a "qualified voter" at 445 N. Central in the City of Chicago as of October 21, 1998. As stated above, the candidate's own exhibit, the December 28, 1998 Gough Affidavit verifies to the Hearing Examiner, that this representation made by the candidate under oath was inaccurate and untrue. Nevertheless the Candidate filed this Statement of Candidacy with the Election Board on December 14th and after the objector's petitions were filed against her candidacy, she later registered to vote under Carol Moseley Braun.

The pertinent statutes state the following:

65 ILCS 5/3.1-10-5 qualifications; elective office states at section 3.1-5-10-5:

(a) A person is not eligible for an elective municipal office unless that person is a qualified a qualified elector of the municipality and has resided in the municipality at least one year next preceding the election.

Although section 5/3-1.2 of the Election Code applies to eligibility to sign petitions, it does provide a clear definition of qualified voter:

... the terms ... 'qualified voter', 'qualified elector' ... shall mean a person who is registered to vote at the address shown opposite his signature on the petition ... 10 ILCS 5/3-1.2.

It is well established that a candidate must file a statement of candidacy in her nominating petition stating that she is "legally qualified ... to hold such office." 10 ILCS 5/7-10. See *infra*, *Schumann v. Fleming*, 261 Ill.App.3d 1062, 634 N.E.2d 336 (1994). Therefore, the applicable statute provides that in order to be eligible to run for municipal office one must be a registered voter under whatever name the individual chooses to run for office. In *Schumann*, the court stated that the qualification requirements of the statute provides: "[A]t the time the candidate obtains the necessary petitions for nomination, [s]he must swear that she is (not "will be") qualified to hold office." (Emphasis added), *Id* at 261 Ill.App.3d at 1066.

On October 21, 1998, at the time Ms. Braun signed her Statement of Candidacy, she was not a "qualified elector" as required by 65 ILCS §5/3-10.5 insofar as she was not "registered to vote" at 445 N. Central. As such, Ms. Braun was not eligible to sign the nominating petition under the Braun name. The only person who would have been so qualified was the individual named "Valentine" since "Valentine" was the registered voter.

The candidate's representative argued that Ms. Braun simply changed her name and just "updated" her registration. However, the "name change" section of the Election Code is clear regarding the requirements for registration pursuant to a name change: "Any registered voter who changes [her] name . . . shall be required to register anew and authorize the cancellation of the previous registration; . . ." 10 ILCS 5/6-54. As such, Ms. Braun was not simply "updating" her registration on December 28, 1998, but she was actually registering "anew." On October 21, 1998, when she signed her Statement of Candidacy, she was not a registered voter and, therefore, she was not "a qualified voter" eligible to be a candidate for the Office of Alderman. See, *Cruz v. Colt*, 86-EB-RES -1, CBEC, June 9, 1986. (Candidate was not a registered voter on the date of execution of his statement of candidacy and therefore the statement of candidacy was invalid); See also, *Jeffries v. Jones*, 85 EB-RGA-14, CBEC, January 14, 1986.

Moreover, the Illinois Courts have long held that the name- change statute is clear and unambiguous. A registered voter who changes her name shall be required to register anew and authorize cancellation of the previous registration. People ex rel. Rago v. Lapsky, 327 Ill.App. 63, 63 N.E. 2d 642 (1945) The purpose of the provision is to prevent fraudulent duplication of registrations. In the case at bar, the Candidate's sworn and filed Statement of Candidacy incorrectly affirms that Ms. Braun was a "qualified voter" (or registered voter) at 445 N. Central. Additionally, the candidate's own exhibit, the December 28, 1998 Gough Affidavit establishes that she was not. Nevertheless the Candidate filed this incorrect or false Statement of Candidacy with the Election Board on Decemder14th.

Furthermore, in Marszlalek v. Kelenson, 212 ILL. App.3d 836, 571 N.E. 2d 877, (1991, 1stDist.) The court found that when the candidate circulated her petitions, she qualified as a

registered voter under the name- change statute. In the case at bar, by the candidates own documents submitted into the record, she was not qualified as a registered voter when she signed her Statement of Candidacy, nor when she filed her nominating papers with the Board of Election Commissioners.

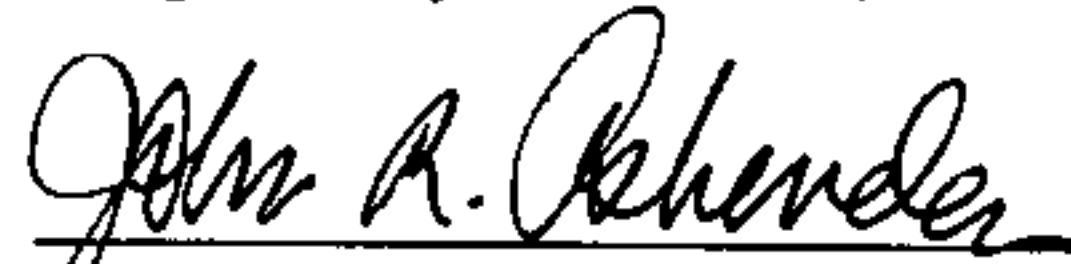
Finally , at this final hearing the candidate's representative requested that a subpoena issue for the objector Eric McKennie. This was the candidates first such request. The Hearing Examiner denied the request since it was untimely and not relevant to the issues raised in the briefs on file.

As stated at the hearing, the Hearing Examiner grants the objector's petition and finds that:

1) the nomination papers of Carol Moseley Braun as a candidate for the election to the Office of Alderman for the 37th Ward, in the City of Chicago, are insufficient and not in compliance with the laws of the State of Illinois; and

2) that her name should not be printed upon the official ballot for the general aldermanic election to be conducted on February 23, 1999.

Respectfully Submitted,



John R. Ashenden
Hearing Examiner

1/16/99
Date

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