NBCON-SS

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

Objections of: RICKEY R. HENDON AND DIANE SPENCE	)
	)
	)
To the Nomination	)
Papers of: WALLACE DAVIS III	) No. 02-EB-SS-10
	)
Candidate for the office of	)
State Senator, 5th Legislative District,	)
Democratic Party	)

FINDINGS AND DECISION

The duly constituted Electoral Board, consisting of Board of Election Commissioners of the City of Chicago Commissioners Langdon D. Neal, Theresa M. Petrone and Richard A. Cowen, 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 RICKEY R. HENDON and DIANE SPENCE ("Objectors") to the nomination papers ("Nomination Papers") of WALLACE DAVIS III, candidate for nomination to the office of State Senator for the 5th Legislative District, Democratic Party ("Candidate"), having convened on January 8, 2002, at 9:00 a.m., 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 Objectors 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 8, 2002 and was continued from time to time.

5. The Electoral Board assigned this matter to Hearing Examiner BARBARA GOODMAN for further hearings and proceedings.

6. The Objectors and the Candidate were directed by the Electoral Board's Call served upon them to appear before the Hearing Examiner on the date and at the time designated in the Call. The following persons, among others, were present at such hearing: the Objectors, RICKEY R. HENDON and DIANE SPENCE, by counsel; and the Candidate, WALLACE DAVIS III, by counsel.

7. The Candidate timely filed a Motion to Strike and Dismiss. The Objectors timely filed a Response to Motion to Strike. The parties presented argument on the motions on January 11, 2002 and the parties' motions were taken under advisement.

8. The Hearing Examiner ordered that an examination of the 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.

9. The Hearing Examiner directed all parties to appear and be present, either personally and/or by their authorized representatives during the record examination.

10. The Candidate and his duly authorized representative(s) were present during the examination of the registration records.

11. The Objectors and their duly authorized representative(s) were present during the examination of the registration records.

12. 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 is available for inspection upon request of a party.

13. The Electoral Board finds that as a result of the records examination:

    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 5,017;

    c. The number of signatures deemed invalid because of objections sustained total 3,232;

    d. The remaining number of signatures deemed valid total 1,785;

14. The Electoral Board finds that the number of valid signatures appearing on the Candidate's nominating petition following the completion of the records examination exceeds the minimum number of valid signatures required by law to be placed upon the official ballot as a candidate for nomination to the office of State Senator for the 5th Legislative District, Democratic Party.

15. Following completion of the record examination on January 22, the Objectors filed on January 23, 2002 a Rule 18 Motion and a Motion to Review Circulator Registration Records. The Candidate filed a Response to Motion to Review Circulator Registration. On January 24, a hearing was held on the objections pursuant to the Objectors' and the Candidate's motions.

16. The Hearing Examiner granted in part and denied in part the Candidate's Motion to Strike and Dismiss, as more fully explained in the Hearing Officer's Report and Recommended Decision/Summary of Case, a copy of which is attached hereto and incorporated herein.

17. As to Objectors' Rule 18 Motion and their Motion to Review Circulator Registration Records seeking a review of the circulators' signatures that had not been reviewed in records examination, the Objectors requested a continuance in order to have the signatures reviewed by a handwriting expert. The Hearing Examiner denied the Objectors' request for a continuance in that the date of the hearing was previously set on record at the previous hearing, the parties were previously given the opportunity to request subpoenas in order to be prepared for the January 24 hearing, and no such requests were made. After denying the Objectors' request for a continuance, the hearing proceeded and the Objectors offered no further proof regarding the individual signatures specified in the Rule 8 Motion. Instead, the Objectors requested that the sheets of certain circulators be stricken in their entirety because they evidenced a "pattern of fraud." In support of this request, the Objectors submitted the results of the record examination and summarized the results purporting to show the total number of overruled objections based on genuineness of petition signatures, the total number of sustained objections as to genuineness of petition signatures and number of valid signatures remaining on each sheet. The Objectors offered no testimony from any petition signer, circulator, handwriting expert or other witness in support of their request to strike the sheets in question.

18. For the reasons stated in her Report and Recommended Decision, the Hearing Examiner denied the Objectors' request to strike the petition sheets of certain circulators based upon allegations of a "pattern of fraud." The Objectors then made an offer a proof as to other issues presented in the Objectors' petition. However, the Objectors stipulated that the remaining specific allegations in the Objectors' petition would be insufficient to invalidate the Nomination Papers. The Objectors conceded, in light of the Hearing Examiner's rulings, that the Candidate's Nomination Papers would have at least 1,279 valid signatures

remaining. The Hearing Examiner recommended, therefore, that the Objections be overruled and that the Nomination Papers be deemed valid.

19. The Electoral Board hereby adopts the recommended findings and decision of the Hearing Examiner and finds that the Objections to the Candidate's Nomination Papers are hereby overruled and said Nomination Papers are declared valid.

IT IS THEREFORE ORDERED, that the Objections of RICKEY R. HENDON and DIANE SPENCE to the Nomination papers of WALLACE DAVIS III, candidate for nomination to the office of State Senator for the 5th Legislative District, Democratic Party, are hereby OVERRULED and said Nomination Papers are hereby declared VALID and the name of WALLACE DAVIS III, candidate for nomination to the office of State Senator for the 5th Legislative District, Democratic Party, SHALL be printed on the official ballot for the General Primary Election to be held on March 19, 2002.

Dated: Chicago, Illinois, this 31st day of January, 2002.

Langdon D. Neal, Chairman

Theresa M. Petrone, Commissioner

Richard A. Cowen, 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.

BEFORE THE CHICAGO BOARD OF ELECTION COMMISSIONERS
SITTING AS THE DULY CONSTITUTED MUNICIPAL OFFICERS
ELECTORAL BOARD FOR THE CITY OF CHICAGO

RICKEY R. HENDON and DIANE SPENCE Objector -v- WALLACE DAVIS III Candidate	)	02 EB SS10

2002 JAN 25 A 11:09
BOARD OF ELECTION

HEARING OFFICER'S REPORT AND RECOMMENDED DECISION

SUMMARY OF CASE

This matter came before the Hearing Officer on January 8, 2002. Both parties were represented by counsel. At that time, the parties were given the opportunity to file motions. The candidate timely filed a *Motion to Strike and Dismiss* and the objector timely filed a *Response to Motion to Strike* The parties presented argument on the motions on January 11, 2002 and the matter was taken under advisement. A records examination was ordered and a recommended decision on the Motion was presented to the parties on the record on January 18, 2002. The results of the records examination indicated that the candidate had a sufficient number of signatures to remain on the ballot. Subsequent to the records examination on January 22, 2002, the Objectors filed a *Rule 8 Motion.* On January 23, 2002, the Objector filed a *Motion to Review Circulator Registration Records.* On January 23, 2002, the Candidate filed a *Response to Motion to Review Circulator Registration.* On January 24, 2002, a further hearing was held on the objections pursuant to the Objector's motions.

THE MOTION TO STRIKE AND DISMISS

The issues raised by the Motion to Strike and Dismiss and the recommended rulings are as follows (a summary of the argument in the motion is underlined and in bold, the recommended ruling is in italics):

Paragraph 1 of the Motion:

The law favors ballot access and objections must be specifically plead and strictly construed.
This paragraph of the Motion is a summary of the law and does not contain a specific request to strike. Therefore, paragraph 1 of the Motion was ***neither granted nor denied.***

Paragraph 2 of the Motion:

Paragraph 1 of the Objection relates to the Objectors being residents and registered voters in the 5th Legislative District and the residency of at least one of the objectors is contested and the Objections should be stricken and dismissed.
The candidate conceded that only the residency of Objector Hendon might be at issue and that there was no such issue regarding Objector Spence. Inasmuch as the standing of only one of two Objectors could not be the basis for dismissing the objections in their entirety, paragraph 2 of the Motion was ***denied.***

Paragraph 3 of the Motion:

Paragraph 3 of the Objection contains only bear allegations and fails to contain the requisite specificity.
Paragraph 3 is a summary paragraph which need not be stricken. For that reason, paragraph 3 of the Motion was ***denied.***

Paragraph 4 the Motion:

Paragraph 5 of the Objection asks that the nominating papers be found invalid in their entirety because of the inclusion of sheet number 199 which is for another candidate. The inclusion violates the requirement that two different candidates have separate sets of nominating papers. The paragraph also alleges that the inclusion of 199 violates the requirement that all sheets be uniform and further alleges that the inclusion of sheet 199 places all of the sheets out of sequence and violates Section 7-10 which requires that the sheets be properly numbered. Paragraph 5

alternatively requests that all sheets after 199 be ignored. The proper remedy for the inclusion of one sheet for another candidate is to ignore the sheet but not invalidate the entire nominating petition. The petitions are numbered and are therefore in compliance with statutory requirements
The inclusion of one sheet for another candidate is insufficient to invalidate the nominating papers in their entirety. Rather, the proper remedy is to ignore the aberrant sheet. The candidate has substantially complied with the uniformity requirements of Section 7-10 and there is no evidence that the candidate specified on Sheet 199 intended the nominating papers in the instant matter to represent his own set of nominating papers. Further, the nominating papers are numbered and any sequencing flaw created by the aberrant sheet is di minimis and insufficient to invalidate any sheet other than Sheet 199. For these reasons, paragraph 4 of the Motion was ***granted*** *except that* ***sheet 199*** *was deemed* ***invalid.***

Paragraph 5 of the Motion:

The Objections in paragraph 6 relating to the genuineness of signatures were shotgunned and all of the allegations relating to Column A should be stricken.
A records examination would best establish the validity of the objections and, therefore, paragraph 5 of the Motion was ***denied.***

Paragraph 6 of the Motion:

Paragraph 11 of the Objection alleges that because of the number of out of district signers, the circulator's affidavits are false and all sheets with "out of district" signers should be stricken in their entirety. Cirulator's affidavits are only signed upon information and belief and there is no requirement which puts a burden on a circulator to verify that the signers are residents of the district.
Circulators can not guarantee the validity of the signatures on the sheets they circulate. Having "out of district" signatures on a sheet is not a sufficient basis to strike the entire sheet. For this reason, paragraph 6 of the Motion was ***granted.***

Paragraph 7 of the Motion:

Paragraph 12 alleges that a circulator circulated for more than one established party and the sheet circulated in Candidate Davis is invalid. There is no prohibition against circulating for two established parties. The prohibition is against circulating for an independent and a political party. In any event, in light of the recent changes eliminating the requirement that

a circulator be registered, this allegation does not state a basis to invalidate any portion of the nominating papers.
At the hearing on January 18, 2002, this matter was first taken under advisement. A review of Sections 7-10 and 8-8 of the Election Code establishes that there is no prohibition against circulators for legislative candidates circulating for more than one established party. See Walsh v Connors, 90 CO 31, February 15, 1990. At the final hearing in this matter, the Objector was permitted to make an offer of proof regarding the allegations in this paragraph. In light of the lack of an express prohibition and the recent changes in the law regarding circulator requirements, paragraph 7 of the Motion is hereby ***granted.***

Paragraph 8 of the Motion :

Paragraph 13 alleges irregularities in the signatures of certain circulators. However, a review of the sheets indicates that the circulator's signatures are contained under the printed name of the circulators.
The subject matter of paragraph 13 is appropriate for a preliminary determination in a records examination. For that reason, paragraph 8 of the Motion was ***denied.***

Paragraph 9 of the Motion:

Paragraph 14 of the Objection alleges that the circulator of certain sheets signed circulator's affidavits under two different names, thus misrepresenting her identity and all of her sheets are invalid. The circulator used her maiden and married names interchangeably and in light of the elimination of registration requirements for circulators, this paragraph is insufficient to invalidate her sheets.
Paragraph 14 alleges matters appropriate for an evidentiary hearing. For that reason, paragraph 9 of the Motion was ***denied.***

Paragraph 10 of the Motion:

Paragraph 16 of the Objection alleges that the notarial jurat on certain sheets is invalid because it does not contain a date of notarization. The sheets are in substantial compliance with a long line of cases involving notaries. (Fitzgerald v Brandt 92 EB WC 63, Maltbia v Muhammad 92 EB WC 65, Gregory v Tines 95 EB ALD 137)
The failure to place a date in the notarial jurat constitutes an insufficient basis to invalidate the nominating papers. For that reason, paragraph 10 of the Motion was ***granted.***

Paragraph 11 of the Motion:

Paragraph 17 of the Objection alleges that the failure to place a name in the notarial jurat invalidates the sheet. The sheets complained of are in substantial compliance with the notary requirements (citing the cases specified above).

The failure to place a name in the notarial jurat constitutes an insufficient basis to invalidate the sheet. Cases establish that even placing the wrong name in the jurat is not a basis to invalidate the nominating papers. See, e.g. Cintuc v Kozubowski, 596 N.E. 2d 101 (1st Dist. 1992). For that reason, paragraph 11 of the Motion was ***granted.***

Paragraph 12 of the Motion:

Paragraph 18 of the Objection alleges that the failure of the notary to sign the jurat invalidates the sheet. The failure to sign is an insufficient basis to invalidate the nominating papers.

The circumstances regarding the failure to sign is relevant to this inquiry and may impact the overall validity of notarial requirement. For that reason, paragraph 12 of the Motion was ***denied.***

Paragraph 13 of the Motion:

Paragraph 21 of the Objection alleges a pattern of fraud but fails to specify the conduct that gives rise to the pattern of fraud or what sheets and lines evidence the pattern.

While Paragraph 21 of the Objection alleges a pattern of fraud without specifics as to the conduct complained of, such a pattern need not be plead at all where there are sufficient other allegations to invalidate the nominating papers. For that reason, paragraph 13 of the Motion was ***denied.***

HEARING ON RULE 8 MOTION AND OTHER EVIDENTIARY MATTERS

The records examination was completed and the results indicated that the candidate had 1785 valid signatures, 600 being the minimum required. A copy of the Record Examination Results is attached hereto as Exhibit A.

Objectors filed a *Rule 8 Motion* seeking the opportunity to present further evidence in order to reverse the findings of the clerks as to certain signatures. Objectors also filed a *Motion to Review Circulator Registration Records* seeking a review of the circulators' signatures that had not been reviewed in the records

examination. Objectors also requested a continuance in order to have the signatures reviewed by a handwriting expert. The continuance was denied in that the date of the hearing was previously set on the record at the hearing on January 18, 2002. The parties were also previously offered the opportunity to request subpoenas in order to be prepared for the hearing on January 24, 2002 and no requests were made. Therefore, the hearing proceeded and the Objectors offered no further proof regarding the signers specified in the Rule 8 Motion.

Additionally, the Objectors requested that the sheets of certain circulators be stricken in their entirety because they evidenced a pattern of fraud. In support of this request, the Objectors submitted the results of the records examination and summarized the results in a demonstrative exhibit (Petitioner's No. 1). Petitioner's Exhibit No. 1 purported to summarize the total number of overruled "genuineness" objections, the total number of sustained "genuineness" objections and the number of valid signatures remaining on each sheet.

The Objectors offered no testimony from any signer, circulator, handwriting expert or other witness in support of striking the sheets in question.

The difficulty with striking entire sheets solely on the basis of the results of a records examination is that it requires supposition as to the conduct of the circulators. Just as an electoral board may not close its eyes or ears to the evidence before it, neither can it engage in conjecture from the raw data before it.

As the Court in *In re Petition of Frank Bower* observed, there must be some evidence that the circulator "corruptly or intentionally" filed false affidavits or had "guilty knowledge" regarding the affidavits. Fraud or guilty knowledge is not imputed to the

circulator but must be affirmatively established. 41 Ill. 2d 277 at 286. In other words, in order to strike signatures based on a pattern of fraud, some evidence beyond the results of the records examination is necessary.

In essence, Objectors suggest that the fraud springs forth from the number of non-genuine signatures on each sheet in question. The Hearing Officer disagrees. For example, included in Objectors' request were sheets of circulator Derrick Allen, wherein 13 objections were made to genuineness, 8 of those objections were overruled and 5 were sustained with a total of 11 signatures valid on the sheet. The Objectors request that the sheet be stricken because of those numbers. However, the findings reflect that no more than 46% of the objections were sustained which could conceivably be a basis for a motion to strike based upon a theory that the objections were shotgunned. As a further example, the sheets of Vito Battaglia were included wherein a total of 123 objections were made to genuineness and slightly more than half of those objections were overruled.

These examples illustrate that there is simply no quantitative benchmark to justify the findings requested. Indeed, when asked, the Objectors counsel stated that he could not suggest a specific number that would support the requested striking of sheets.

The Objectors' request would require the Board to draw conclusions based upon raw numbers where, as illustrated above, no conclusions are evident. Even where the ratio of sustained to overruled "genuineness" objections is high, the only conclusions that can be drawn, absent further evidence, is that those signatures did not sufficiently correspond to the signatures in the registrations records. For these reasons, the

Objectors' request to strike the sheets of certain circulators as more specifically identified on the record, was denied.

After the ruling on the foregoing issue, the Objectors made an offer of proof as to other issues presented in Objectors' petition. However, the Objectors stipulated that the remaining specific allegations in the Objectors' Petition would be insufficient to invalidate the nominating papers. The Objectors conceded that in light of the foregoing rulings, the candidate would have at least 1279 signatures remaining. (The record reflects that the parties were uncertain as to whether the correct number would be 1289 or 1279. However, using either number, the candidate would have signatures well in excess of the minimum.)

In light of the recommended rulings specified above, it is my recommendation that the objections of Rickey R. Hendon and Diane Spence be overruled and that the nominating papers of Wallace Davis III be deemed valid.

Respectfully submitted,

Hearing Officer