NBCOFF-ALD

**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: IVORY D. MITCHELL, LAWRENCE J. SCHEFF and L.S. ZUCKERMAN	)	
	)	No.: 99-EB-ALD-119
To the Nomination Papers of: EZRA L. MCCANN	)	
Candidate for the office of Alderman of the 4th Ward	)	

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 IVORY D. MITCHELL, LAWRENCE J. SCHEFF and L.S. ZUCKERMAN to nomination papers ("Nomination Papers") of EZRA L. MCCANN, candidate for the office of Alderman of the 4th 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(s) 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 Objectors IVORY D. MITCHELL, LAWRENCE J. SCHEFF and L.S. ZUCKERMAN, by counsel; and the Candidate, EZRA L. MCCANN, pro se.

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

7. The Electoral Board hereby incorporates herein and adopts the findings of the attached report of Hearing Examiner BARABARA GOODMAN except with respect to her recommended finding that signatures affixed to the petition by other family members constitute evidence of fraud or a pattern of fraud. The Electoral Board finds that isolated instances of persons affixing the signatures of other family members to a petition do not, by themselves, constitute sufficient evidence of fraud or a pattern of fraud.

8. The Electoral Board therefore finds that the Candidate EZRA L. MCCANN'S Nomination Papers are invalid and hereby removes the Candidate from the ballot.

IT IS THEREFORE ORDERED, that the Objections of IVORY D. MITCHELL, LAWRENCE J. SCHEFF and L.S. ZUCKERMAN to the Nomination Papers of EZRA L. MCCANN, candidate for election to the office Alderman of the 4th Ward for the City of Chicago are hereby SUSTAINED and said Nomination Papers are hereby declared INVALID and the name of EZRA L. MCCANN, candidate for election to the office of Alderman of the 4th 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 Second day of February, 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.

Paragraph Q of the Objectors' Petition alleges that because the notary, Patricia A. Valentine, signed her name as Pat Valentine, the notarial act was invalid, rendering the sheets she notarized invalid. Paragraph S and T allege that because the candidate used Ezra Leon McCann on his Statement of Economic Interests and receipt rather Ezra L. McCann as indicated on his petitions, the Statement of Economic Interests and receipt are invalid. A Motion to Strike and Dismiss was filed and was granted as to paragraphs Q, S and T. Paragraphs Q, S & T do not set forth cognizable bases to invalidate the sheets they address.

A records examination was conducted. The results indicated that the candidate filed 2,061 signatures of which 1,644 were stricken, leaving a total of 417 valid signatures, 204 above the minimum of 213. The Objectors filed a Rule 8 Motion and a Motion to Correct Tally Errors by Board's Clerks and to Remand for Further Checking of Un-Ruled Upon Objections.

THE OBJECTORS' MOTION TO CORRECT TALLY ERRORS BY BOARD'S CLERKS AND TO REMAND FOR FURTHER CHECKING OF UN-RULED UPON OBJECTIONS

Paragraph 1 alleges that the board's tally sheets were incorrect in six instances. A review of the sheets establishes that the Objectors' contention was correct. The following sheets and lines are changed from an overruled ("o") finding to a sustained ("s") finding: Sheet/Line 28/4, 33/5, 33/8, 72/4, 76/17, 79/8. As a result of these corrections, the number of valid signatures was reduced by 6 to **411**.

Paragraph 2 of the Candidate's Motion alleges that because of the unavailability of records, a number of allegations could not be checked. Evidence was presented to support a finding that the signatures at sheet 13, line 9 and sheet 18, line 23 should be stricken which reduced the number of valid signatures by 2 to **409**.

OBJECTORS' ALLEGATIONS REGARDING SIGNERS SIGNING MORE THAN ONE Candidate'S PETITION

The Objectors presented evidence that a number of signers of the candidate's petitions also signed petitions of other candidates for the same office in violation of Section 10-3. In each of the following instances, the dates of notarization coupled with the candidate's testimony that the circulation process did not begin until after Thanksgiving, established that the other candidate's petitions were signed first. Pursuant to Watkins v Burke, 461 N.E.2d 625, only the signature signed first could be valid. Below are the sheets and lines of the candidate's petitions and the other petitions which contain the signature of the same voter.

McCann	11/9	Williams	6/8
	36/9		13/6

McCann	18/14	Martinez	9/13
	24/18		3/8
	28/20		11/2
	11/25		63/14
	74/14		10/1
McCann	19/21	Preckwinkle	76/1
	20/18		318/2
	21/22		229/9
	25/5		480/1
	25/11		1182/10
	26/20		872/7
	28/17		870/4
	7/6		607/5

The allegations as to the signatures contained on the above sheets and lines of the candidate's petition reduced the number of valid signatures by 15 to **394.**

THE OBJECTORS' RULE 8 MOTION:

The Objectors' presented evidence in a Rule 8 Motion resulting in Sheet 21/20 being changed from a finding of overruled to sustained because the signer was not registered in the ward reducing the number of valid signatures by 1 to **393.**

EVIDENCE OF A PATTERN OF FRAUD

The Objectors presented the testimony of Diane Marsh (Marsh), Forensic Document Examiner. She testified that she found improprieties on sheets circulated by five different circulators. The circulators are: Ezra McCann, the candidate; Michael Sanders; Brenda Taylor, Michael Anderson, Kimberley Milsap and Ruben Wilson.

All of the signatures on the sheets of circulators Ruben Wilson and Michael Anderson were stricken at the records examination. Anderson's signature was found to be not genuine and Wilson was not registered. Marsh testified that she found that one or a small group of persons signed numerous signatures on some of the Anderson and Wilson sheets. Since all of the signatures were already stricken, the testimony did not change the number of valid signatures.

Circulator Ezra McCann: Marsh testified that on sheet 53, lines 24 and 25 appeared to be written in the same hand. The evidence was not sufficient to find that a pattern of fraud existed as to Mr. McCann and therefore there is no change to the total number of valid signatures submitted by this circulator.

Circulator Michael Sanders: Marsh testified that on sheet 60, lines 5 and 6 were signed by one person and on sheet 71, lines 23 and 24 were signed by one person. The evidence was not

sufficient to find that a pattern of fraud existed as to Mr. Sanders and therefore there is no change to the total number of valid signatures submitted by this circulator.

Circulator Brenda Taylor: Brenda Taylor circulated 16 sheets. Diane Marsh offered testified regarding 11 of those sheets. As a result of her examination of the Taylor sheets, Marsh concluded that several of the sheets contained signatures that were signed by one person or a small group of persons. She testified that Sheet 72 contained signatures at lines 3 and 4 that were signed by one person and that the signatures on lines 7,8,9,10,11,12,13,14,15,16,17,18 19,20,21,22,23,24 and 25 were signed by one person or a small group of people. Sheet 73 contained 3 signatures that matched signatures contained on sheet 72 and lines 21 and 23 were signed by one person. Sheet 75 contained 6 signatures that matched signatures on sheet 72. Sheet 76 contained a signature that matched a signature on sheet 72. Sheet 78 contained signatures at lines 7,8,9,10,11,12,13,14,18,19,24 and 25 that were all signed by one person or a small group of people. Several of those signatures matched the signatures on Sheet 72. Sheet 79 contained signatures at lines 23,24 and 25 that were signed by one person. Sheet 62 contained signatures at lines 14,15 and 16 that were all signed by one person. Sheet 65 contained signatures at lines 16 and 17 that were signed by one person. Sheet 68 contained signatures at lines 6 and 7 that were signed by one person and at lines 1 and 24 that were signed by one person. Sheet 74 contained signatures at lines 4 and 5 that were signed by one person. Additionally, this circulator submitted three sheets about which Ms. Marsh offered testimony where none of the signatures on the sheets were valid (Sheets 73,75 and 78) after the records examination. Further, none of the sheets submitted by this circulator contained signatures where more than 40% remained valid after the records examination.

The candidate offered no evidence in rebuttal.

The sheets circulated by Brenda Taylor evidenced a pattern of fraud and false swearing and a complete and utter disregard for the requirements of the Election Code. The testimony established that Ms. Taylor filed sheets containing numerous forgeries and that she therefore knowingly submitted false circulator's affidavits. Pursuant to Fortas v Dixon, 462 N.E.2d 615; Huskey v Municipal Officers Electoral Board, 509 N.E.2d 555; Canter v Cook County Officers Electoral Board, 523 N.E.2d 1299, all of the sheets of this circulator should be stricken in their entirety. As a result, the candidate's nominating papers are reduced by 71 to **322**.

Circulator Kimberely Milsap: Circulator Kimberley Milsap circulated 19 sheets. Of those sheets, Marsh offered testimony regarding 11 sheets. After her review of the Milsap sheets, Marsh concluded that several of the sheets circulated by this circulator were signed by one person or a small group of persons. Sheet 14 contained signatures at line 7 and 8 that were signed by one person and signatures at lines 24 and 25 that were signed by one person. Sheet 15 contained signatures at lines 20 and 21 that were signed by one person. Sheet 17 contained signatures at lines 16,17,18,19,20,21,22,23,24 and 25 that were signed by one person or a small group of persons. The signature on line 16 of sheet 17 matched the handwriting on Taylor sheet 72, line 7.

Sheet 20 contained signatures at lines 19 and 20 that were signed by one person. Sheet 23 contained signatures at lines 1 and 2 that were signed by one person, lines 7 and 8 that were signed by one person and lines 17 and 18 that were signed by one person. Sheet 25 contained signatures at lines 15 and 16 that were signed by one person. Sheet 26 contained signatures at lines 20 and 21 that were signed by one person. Sheet 27 contained signatures at lines 8 and 9 that were signed by one person; lines 10 and 11 that were signed by one person and lines 20 and 21 that were signed by one person. Sheet 28 contained signatures at lines 3,4,6,7,8,9,10,11 and 12 that were signed by one person or a small group of persons. Sheet 30 contained signatures at lines 2 and 3 that were signed by one person. Sheet 31 contained signatures as lines 11,12 and 13 that were signed by one person.

The candidate offered no evidence in rebuttal.

The sheets circulated by Kimberley Milsap evidenced a pattern of fraud and false swearing and a complete and utter disregard for the requirements of the Election Code. The testimony established that Ms. Milsap filed sheets containing numerous forgeries and that she therefore knowingly submitted false circulator's affidavits. Pursuant to Fortas v Dixon, 462 N.E.2d 615; Huskey v Municipal Officers Electoral Board, 509 N.E.2d 555; Canter v Cook County Officers Electoral Board, 523 N.E.2d 1299, all of the sheets of this circulator should be stricken in their entirety. The candidate's nominating papers are reduced by 127 leaving a total of 195 valid signatures, 18 below the minimum.

It should be noted that at the hearing, the parties and hearing examiner reached the number of 192 valid signatures. However, a further review of the evidence indicates that 195 is the number of valid signatures remaining.

In accordance with the above findings, it is my recommendation that the objections be sustained, that the nominating papers of the candidate be declared invalid and that the candidate's name not appear on the ballot at the February 23, 1999 Election.

The remaining matters raised by the Objectors in their various motions are moot as a result of the above recommended decision.