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

Objections of: IDA D. WALKER and ANITA ARCHIBALD	)	
To the Nomination Papers of: AARON TURNER	)	No.: 20-EB-RGA-009
Candidate for the nomination of the Democratic Party for the office of Representative in the General Assembly, 9th Representative District of the State of Illinois	)	

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, Chair of said Electoral Board, for the purpose of hearing and passing upon objections ("Objections") of IDA D. WALKER and ANITA ARCHIBALD ("Objectors") to the nomination papers ("Nomination Papers") of AARON TURNER, candidate for the nomination of the Democratic Party for the office of Representative in the General Assembly, 9th Representative District of the State of Illinois ("Candidate") at the General Primary Election to be held on Tuesday, March 17, 2020, having convened on December 16, 2019 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 Chair 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 or service was waived.

4. A public hearing was held on these Objections commencing on December 16, 2019 and was continued from time to time.

5. The Electoral Board assigned this matter to Hearing Officer Richard Zulkey for further hearings and proceedings.

6. The Objectors 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 Call. The following persons, among others, were present at or filed appearances during such hearing; the Objectors, IDA D. WALKER and ANITA ARCHIBALD through their Attorney, SCOTT B ERDMAN; and the Candidate AARON TURNER through his Attorney, ANDREW FINKO.

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 his duly authorized representative was present during the examination of the registration records.

10. The Objectors and/or their 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 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 500.

B. The number of purportedly valid signatures appearing on the nominating petition filed by the Candidate total 1,500.

C. The number of signatures deemed invalid because of objections sustained as a result of the records examination total 715.

D. The remaining number of signatures deemed valid as a result of the records examination total 785.

13. The Electoral Board finds that the number of valid signatures appearing on the Candidate's nominating petition following completion of the records examination exceeds the minimum number of valid signatures required by law to be placed upon the ballot as a candidate for the nomination of the Democratic Party to the office of Representative in the General Assembly, 9th Representative District of the State of Illinois.

14. The Hearing Officer conducted a hearing to allow the parties the opportunity to present evidence on the issue of whether 2,165 signatures had been properly deleted in

conformity with the requirements of the Election Code. Based upon the evidence presented, the hearing Officer found that the deletions were proper.

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 785 valid signatures, which exceeds the minimum number of valid signatures required by law to be placed upon the ballot as a candidate of the Democratic Party for the office of Representative in the General Assembly, 9th Representative District of the State of Illinois, and that the Candidate's Nomination Papers should be found valid.

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 and incorporates them herein by this reference.

17. Specifically in response to the Objectors' Rule 20 Motion, the Electoral Board finds that Objectors' expert witness, certified forensic document analyst Diane Marsh, is a highly qualified and experienced handwriting analyst and this Board has sustained her findings many times in the past. However, the Board finds that with the particular analysis of the Candidate's initials – as compared to complete signatures – in the case at hand, having used only photocopied documents – not the original petition sheets – and having not used additional scientific methods or tools, raises the level of scientific uncertainty of her findings to the point that it was not an abuse of the Hearing Officer's discretion to weigh Ms. Marsh's findings against the Candidate's own sworn testimony. It was within his discretionary authority for the Hearing Officer to find that signatures – and perhaps initials even moreso – may change over time and are never written

the same way twice. The Board takes notice of the lawsuit cited by the Candidate in which Ms. Marsh, again serving as an expert witness, came to the opposite conclusion as another certified document analyst in that case, thus again showing the lack of scientific certainty with the kinds of less-than-ideal forensic analyses that tend to occur with expedited election cases. (See *U.S. Bank N.A. v. Wendy S. Cook*, No. 07-c-1544 (N.D. Ill., 1/6/2009).) The Electoral Board therefore will not disturb the Hearing Officer's discretionary findings in this regard.

18. For the reasons stated above, the Electoral Board finds that the Candidate has a sufficient number of valid signatures on his nominating petitions and that the Nomination Papers of AARON TURNER are, therefore, valid.

[Continued on next page.]

IT IS THEREFORE ORDERED that the Objections of IDA D. WALKER and ANITA ARCHIBALD to the Nomination Papers of AARON TURNER, candidate for nomination of the Democratic Party for the office of Representative in the General Assembly, 9th Representative District of the State of Illinois, are hereby OVERRULED and said Nomination Papers are hereby declared VALID and the name of AARON TURNER, candidate for nomination of the DEMOCRATIC Party for the office of Representative in the General Assembly, 9th Representative District of the State of Illinois, SHALL be printed on the official ballot for the General Primary Election to be held on Tuesday, March 17, 2020.

Dated: Chicago, Illinois, on Tuesday, January 21, 2020.

Marisel A. Hernandez, Chair

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.

BEFORE THE BOARD OF ELECTION COMMISSIONERS
OF THE CITY OF CHICAGO

Ida B. Walker and Anita Archibold	]	
Objector	]	
v.	]	**No. 2020-EB-RGA-09**
	]	**Richard E. Zulkey**
Aaron Turner	]	**Hearing Officer**
Candidate	]	

RECOMMENDATION OF HEARING OFFICER

The appointed Hearing Officer Richard E. Zulkey makes the following recommendation:

I. **Preliminary:** The Objectors are represented by Scott B. Erdman. The Candidate is represented by Andrew Finko.

II. **Initial Hearing:** The initial hearing was on December 16, 2019. At this time a record exam was ordered. Objector raised issues as to Pattern of Fraud and the Propriety of Striking Signatures. Candidate moved to strike these objections alleging that the Candidate has 655 signatures that were not challenged thereby giving the Candidate more than the required number of signatures which is 500.

III. **Issues:** The Objectors' challenges stem from Paragraphs 17 and 19 of the Objections wherein they allege a Pattern of Fraud and Improper Deletion of Signatures. Objector withdrew Paragraph 18 which contained a challenge to the consistency of the nomination papers. In Preliminary Findings dated December 27, 2019 and entered in the record on January 2, 2020 the Pattern of Fraud issue was reserved, but the Signature Deletion matter was set for an evidentiary hearing on January 8, 2020.

It is noted that on January 3, 2020, the Final Petition Summary Report was printed. It disclosed that the Candidate had:

- 785 total valid signatures;
- 657 total unchallenged signatures;
- 285 signatures greater than the required minimum.

IV. Evidentiary Hearing of January 8, 2020: Ida Walker and Anita Archibold, the Objectors in this cause, filed an objection in Paragraph 19 asserting that the nomination papers contain improper deleted signatures. Sections 10 ILCS 5/17-10 and 10 ILCS 5/8-8 of the Election Code of Illinois state:

> *The person circulating the petition, or the candidate on whose behalf the petition is circulated may strike any signature from the petition provided that:*
>
> > *1. The person striking the signature shall initial the petition at the place where the signature is struck; and*
> >
> > *2. The person striking the signature shall sign a certification listing the page number and the line number of such signature struck from the petition. Such certification shall be filed as a part of the petition.*

The Board of Elections issues this Certification of Deletions form.

At the hearing, the Objector introduced Diane Marsh, a certified Document Examiner as his "expert witness." Her curriculum vitae was presented and accepted as she appeared at the Board of Election Commissioners before. This was over the objections of the Candidate. She was sworn to testify.

The expert stated she reviewed photo copies of the documents and did not view the original documents until the hearing. She said she examined each page and the initials "AT" of the Candidate, Aaron Turner. She used a microscope and magnifying glass and concluded that the initials were not all made with the same hand. She presented a grid (marked as Objector's Exhibit A) which contained 5 rows of signatures, each row purportedly having different characteristics and probably belonging to a different writer. These signatures were blown up by 300% of actual size.

She advised she was engaged on January 4, 2020 by attorney Scott Erdman, who represented the Objectors. She admitted she was being compensated for her services.

She began her study with photocopies. Admittedly, she said, originals are always better. She observed that even with just initials, there is a pictorial as to the strokes, pressure of printed and cursive letters. Just the two initials "AT" were enough for her to conduct her analysis. She commented that people have writing habits. This was a general conclusion, with no statistical data.

The expert said, even in older hands, there are no design changes in writing. Rather the older hand gets sloppier but basic habits stay the same.

The expert opined that in the present case study, there were sudden shifts in styles. No dates were noted in the subject matter. Also, she commented that haste can be an issue, maybe a body position, use of a clipboard or a recliner chair could change a slant of letters. The body is not a machine, she noted.

The Candidate cross-examined Ms. Marsh concerning the hierarchy of conclusions. She described it: on one side they seem to go from Definite to Inconclusive and then from Inconclusive to Definite. Her analysis had some concern due to the lack of access to the original sheets. It was possible, she said, for another expert to disagree and reach another conclusion. There is not always agreement. She looked at all sheets, but had no list of sheets.

The Candidate presented two case citations, *Deputy v. Lehman Brothers, Inc.* 345 F. 3d 494 (2003) and *U.S. Bank v. Cook*, 07 C-1544 (2009). In both cases the methods of analysis of handwriting examiners were discussed. In both cases the instant witness was referenced.

With Aaron Turner, the expert did not utilize any of his signatures on the nomination papers for analysis. She only used the "AT" initials on the petitions for examination. She stated that the person's style of handwriting does not change. Haste, body position, slants all make writing sloppy, she stated. The expert concludes that more than one hand highly probably made the AT initials and probably 5 or more made them.

Aaron Turner, the Candidate, testified. For the past 20 years, he worked in campaigns. He obtained signatures, struck out signatures, checked petitions sheets, prepared appendix forms and recaps.

Around November 23, 2019, the Candidate began the process of striking out signatures on his nomination papers. It was nearing time for filing. He wished to file early to gain a first position on the ballot. He was putting in long days getting signatures. He was out between 7:30 and 8:00 a.m. At the end of the day, he would go through the "cross out" procedure. He testified, it was late and he was tired. He did this in his office.

The Candidate stated, every time he was asked the question, that he struck out all the names in his petition sheets. He used a ruler. He initialed all the petition sheets. He was not concerned where certain initials were fixed – right side or left side. He was familiar with the process from prior years. He did it all himself.

He wanted to be first on the ballot.

The hearing ended.

V. Discussion: Regarding striking signatures, there is not much case law. In the matters of *Lizak v. Zadrozny*, 4 Ill. App. 3d 1023, 1027, 283, N.E. 2s 252, 255 (1st Dist. 1972) and *Ley v. William,III*, 14-EB-CON-06 (CBEC, 2014), the court stated that "....this provision was in fact directed primarily at candidates, affording them a simple means of striking undesired signatures from petitions while simultaneously protecting them from fraudulent alterations subsequent to filing. The provision may even have been designed specifically to benefit a candidate who finds himself with signatures in excess of the statutory maximum..."

The deletion process is not calculated to deceive or foster fraud. This has nothing to do with roundtabling or forging names on petitions to get names on a ballot. There is no wrong doing with deletions.

It is a given that access to a place on the ballot is a substantial right that should not be denied lightly. *Welch v. Johnson*, 147 Ill. 2d 40 (1992). The candidate pursued the steps necessary to obtain signatures to enable him to be on the ballot. Aware that certain signatures were invalid, he engaged in the process of striking signatures from the sheets. From a physical review of the sheets, the striking process was proper.

At the hearing, testimony was heard from the expert handwriting analyst saying the initials were written by more than one person or even many. Handwriting is not an exact science.

On the other hand, the Candidate steadfastly stated that he did all of the striking and initialing of the signatures himself. Indeed, to this trier of fact, the initials appeared to be fitting and proper. The trier of fact – this hearing officer – may rely on his experiences and observations and use common sense gained in evaluating what is seen and heard at the hearing. *Steinberg v. N. Ill. Tel. Co*. 260 Ill. App. 538, 543 (1931). The process of striking signatures is an avenue to the candidate to cure his signature sheets from what he perceives to be too many or for one reason or other, improper signatures. It is more convincing to rely upon the testimony of the Candidate himself than upon the opinion of the expert witness.

VI. Other Issues: In the Objection, Paragraph 17, the Objector raises a Pattern of Fraud issue alleging forgery and roundtabling or signing as voters multiple times. This fails to comply with Section 10-8 of the Election Code that requires the objector's petition, "state fully the nature of the objections to the ... nomination paper or petitions in question." Such objection does not

apprise the candidate of the source whereby the candidate could affirmatively defend against the objections. *Sutor v. Acevedo*, 06-EB-RGA-04, CBEC, January 30, 2006.

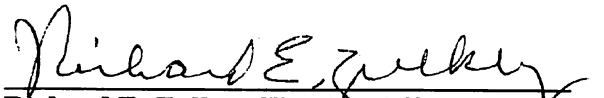
In Objection Paragraph 18, it alleged that the nomination papers and statement of candidacy are not consistent with the office. This was withdrawn by the Objector.

VII. Recommendation: Based upon the foregoing discussion, it is recommended that the name of the Candidate Aaron Turner be printed on the ballot for the office of 9th District Representative in the March 2020 election.

Hearing on Monday, January 13, 2020 is cancelled.

Dated: January 12, 2020.

Respectfully submitted,



Richard E. Zulkey, Hearing Officer

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