

**NOTICE**

The text of this order may be changed or corrected prior to the time for filing of a Petition for Rehearing or the disposition of the same.

SIXTH DIVISION  
March 14, 2008

No. 1-08-0063

IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

ARMANDO CASTILLO, HARRY KUDESH, and ANGELO MAVRAGANES	)	Appeal from the Circuit Court of Cook County.
	)	
Petitioners-Appellants,	)	
	)	
v.	)	No. 08 COEL 01
	)	
COOK COUNTY OFFICERS ELECTORAL BOARD, and its members, DAVID ORR, Chairman, by and through his designee, DANIEL P. MADDEN, RICHARD A. DEVINE, by and through his designee, MICHAEL C. PRINZI, and DOROTHY BROWN, by and through her designee, MARY A. MELCHOR, DAVID ORR, in his official capacity as Cook County Clerk, BOARD OF ELECTION COMMISSIONERS FOR THE CITY OF CHICAGO, and JAY PAUL DERATANY,	)	
	)	Honorable
	)	Alfred J. Paul,
Respondents-Appellees.	)	Judge Presiding.

ORDER

Petitioners Armando Castillo, Harry Kudesh, and Angelo Mavraganes (hereinafter collectively referred to as Objectors) filed an objectors' petition against the nomination papers of respondent Jay Paul Deratany (Deratany), which respondent Cook County Officers Electoral Board (the Board) overruled. The trial court affirmed the Board and the petitioners now appeal, challenging the Board's findings. For the reasons that follow, we affirm.

## BACKGROUND

On November 13, 2007, Objectors filed a verified objectors' petition challenging Deratany's nomination papers as a candidate of the Democratic party for the office of Commissioner of the Board of Review of Cook County, Second Election District, which was an office that required a potential candidate to submit the signatures of 3,858 registered and legal voters from the district in order to appear on the ballot.

In their petition, Objectors alleged that Deratany's nomination papers were legally insufficient in law and fact where Deratany failed to obtain the requisite number of valid signatures because numerous signatures were not signed by registered voters, were signed by voters who did not reside in the Second Election District, were "not genuine" because they were not signed by the proper person and did not match the voter's registration signature, and for various other irregularities and deficiencies.<sup>1</sup>

Objectors further alleged that oaths from approximately 30 individuals who had circulated Deratany's nomination papers were false and perjurious because those circulators (1) did not reside at the addresses provided in their affidavits; (2) had signed the circulator affidavits and the nomination papers as voters using a variety of addresses; and (3) had been engaged in a "pattern of fraud and false swearing" with an "utter contempt for the

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<sup>1</sup>According to Objectors', their verified petition contained approximately 1,400 appendix recapitulation sheets with specific line-by-line objections.

mandatory provisions of the Election Code." In particular, relevant to the issues raised on appeal, Objectors' maintained that 13 circulators fraudulently attested that they resided at 2049 West Jarvis (hereinafter referred to collectively as the West Jarvis circulators) and because of this fraudulent representation all signatures obtained by the West Jarvis circulators should be invalidated.

Subsequently, the Board ordered a records examination in connection with Objectors' petition to be conducted by the Cook County Clerk and the Chicago Board of Election Commissioners. The preliminary results of the records examination indicated that Deratany had submitted 4,813 valid signatures, or 955 more signatures than the minimum required.

A. The Board's Hearings on Objectors' Petition

On November 19, 2007, and December 19, 2007, the Board held hearings on Objectors' petition. At those hearings, the Objectors presented several witnesses who were investigators and process servers and had attempted to serve 32 witness subpoenas to some of Deratany's circulators, including 13 subpoenas for the West Jarvis circulators who had attested that they resided at 2049 West Jarvis. In pertinent part, through the testimony of these investigators and process servers, the Objectors represented that the building located at 2049 West Jarvis was a rehabilitation center, which served as a temporary residence, and none of the witness subpoenas could be served at that location.

Objectors' also presented the witnesses Craig Thompson and Tyrone Sims, who were both paid circulators for Deratany.

Thompson testified that the Deratany campaign paid him \$1.00 per signature he obtained from voters who were registered in Cook County, but he was not paid for signatures of non-registered voters. Thompson worked for Deratany's campaign for approximately two weeks and provided about 200 "sheets," which contained an estimated 2,000 voter signatures. According to Thompson, he asked potential signers whether they were registered to vote in Cook County and that he typically worked between 10 and 12 hours per day collecting signatures.

Sims testified that the Deratany campaign paid him \$10 for every 7 signatures he obtained. Sims testified that he worked for Deratany's campaign less than two days and he did so because working for the campaign "was just a good way to get moving off the site so I could see my family." At the time that Sims worked for Deratany's campaign, Sims was living at 2049 West Jarvis, which he identified as "the Safe Have site" and described as a transitional residence. Sims was told by other individuals living at 2049 West Jarvis that he could earn money by collecting signatures on behalf of Deratany.

Sims identified at the hearing a number of sheets he had circulated and acknowledged that on some he had listed his address as 2049 West Jarvis, but on other sheets he had used a different address where he had previously lived. Sims explained that he was provided with conflicting instructions by unidentified members of Deratany's campaign as to which address he should use. Sims acknowledged that he had signed a number of other circulators' sheets as a registered voter using a different



address, but explained that he was told to sign those sheets with the address he was registered to vote at and sign his own circulator sheets using the 2049 West Jarvis address.

Objectors also called as a witness Victor Santana, who testified that he had approximately 27 or 28 years of experience in obtaining signature petitions. Santana compiled data and prepared 55 demonstrative exhibits analyzing the results of the records examination for 27 of Deratany's circulators, including all of those who had listed 2049 West Jarvis as their residence. Santana also provided a statistical analysis of the records examination. In regard to those 27 circulators' petition, Santana analysis revealed that those petitions comprised approximately 52% of Deratany's total signatures and that the average objection-sustained ratio was 88% and the average invalidity ratio of all signatures submitted was approximately 80%.

In regard to objections to sustained objections, Santana explained that his reports and compilation of data were based on the official records, but that those records did not provide a specific reason that an objection had been sustained. Santana acknowledged that he did not know and did not have any information regarding how many signature challenges had been sustained based on voters who were not registered, who lived out of district, "ma and pa signatures," printed names, or 40 years-old registration records.

#### B. The Board's Decision

On December 24, 2007, the Board issued a detailed written

decision overruling Objectors' petition. In that decision, the Board noted that the registration record check had resulted in a preliminary result that Deratany had obtained 955 additional signatures over the requisite amount of 3,858 signature. The Board further noted that "[t]he heart of Objector[s'] case is that so many of his objections were sustained that something must be wrong with the circulation process by which [Deratany] gathered those signatures."

The Board disagreed with Objectors' position and determined that there was no legal authority for a *per se* rule regarding a certain percentage of disqualified signatures from a given circulator requiring disqualification all remaining signatures from that circulator. In particular, the Board found that this court's decision in Harmon v. Town of Cicero Municipal Officers Electoral Board, 371 Ill. App. 3d 1111 (2007) did not announce such a *per se* rule. In addition, the Board observed that Objectors' had failed to provide the specific grounds for disqualification of Deratany's signatures and thus the Board could not find any "pattern of fraud." In regard to the testimony from the circulators Thompson and Sims, the Board found that their respective testimony "did not show any systematic, fraud-driven behavior on the part of them individually or on the part of [Deratany]."

Ultimately, in pertinent part, the Board concluded as follows:

"The lynchpin of Objector's case, the basis for all of his efforts, is the notion

that a high percentage of signatures disallowed is indicative of a 'pattern of fraud' as defined by the case law. [However,] we do not believe that the law has reached that point. Moreover, Objector's decision not to analyze the reason for signatures being disallowed is a great weakness in his approach. We do not see how an objection sustained because a signer is 'out-of-district' can be seen as a sign of fraudulent motivation. The same may be said for a signer who turns up 'not registered.' Mere numbers without reasons are not apt to carry a burden of proof as weighty as fraud." The Board then adopted the results of the records examination, and overruled Objectors' petition.

#### C. Circuit Court's Review of the Board's Decision

On January 2, 2008, Objectors filed in the circuit court a petition for judicial review of the Board's decision.

On January 10, 2008, following a hearing, the court affirmed the Board's decision. In relevant part, the court found that the Board's decision was not against the manifest weight of the evidence and that this court's decision in Harmon did not announce a *per se* rule pertaining to any percentage of sustained objections.

This appeal followed.

## ANALYSIS

On appeal, Objectors contend that the Board's decision that Deratany had obtained 4,813 signatures, or 955 signatures over the requisite 3,858 minimum, is against the manifest weight of the evidence. Specifically, Objectors assert that the Board should have disqualified an additional 1,523 signatures obtained by Deratany, which would have resulted in 3,290 signatures, a number below the required 3,858 minimum.

In reaching their calculated total of 1,523 signatures that the Board should have disqualified, Objectors maintain that the Board should have (1) disqualified 949 signatures obtained by the West Jarvis Circulators because of a "pattern of fraud and false swearing" revealed by a high objection sustain rate for those circulators and because those circulators attested that they lived at the West Jarvis building, which was not a legal residence; (2) stricken 85 signatures obtained by circulator Berka because of an attestation regarding his address at a Chicago Park District Field House; (3) invalidate 119 signatures obtained by circulators Davis, Griffin, and Pabon because those circulators had been served process but did not appear to testify; (4) void 29 signatures obtained by circulator Martin because he attested he lived at a street address that did not exist; (5) invalidate 7 signatures obtained by circulators Hasey and Johnson because of improper use of white-out on a circulator affidavit; and (6) invalidate 334 signatures obtained by circulators Brown, Eckert, Hasey, Howard, Huck, E. Johnson, Mathis, Orsini, Sanders, T. Sims, and Smith because of a "pattern



of fraud" revealed by a high sustain rate of objections to signatures obtained by those circulators.

The factual findings of an electoral board, such as the Board here, are *prima facie* true and correct. King v. Justice Party, 284 Ill. App. 3d 886, 888 (1996). This court's function on judicial review is to determine whether the Board's findings and decision are against the manifest weight of the evidence. King, 284 Ill. App. 3d at 888. We will find that the Board's decision is against the manifest weight of the evidence only if the opposite conclusion is clearly evident. King, 284 Ill. App. 3d at 888. Reversal is not justified where the opposite conclusion is only reasonable or the reviewing court may have ruled differently based on the same evidence. King, 284 Ill. App. 3d at 888.

In addition, we review *de novo* the legal findings of an electoral board. Bill v. Education Officers Electoral Board, 299 Ill. App. 3d 548, 551 (1998).

A. 949 Signatures from West Jarvis Circulators

We first address Objectors' argument that the Board should have disqualified an additional 949 signatures obtained by the West Jarvis circulators for two reasons, namely, (1) because of a "pattern of fraud and false swearing" revealed by a high objection sustain rate for those circulators and (2) because those circulators attested that they lived at the West Jarvis building located at 2049 West Jarvis, which was not a legal permanent residence but a temporary living arrangement.

1. Alleged Pattern of Fraud and False Swearing under Harmon

In support of their argument regarding a "pattern of fraud and false swearing," Objectors' rely primarily on this court's recent decision in Harmon v. Town of Cicero Municipal Officers Electoral Board, 371 Ill. App. 3d 1111 (2007). According to Objectors, Harmon requires that where 50% or more of objections to signatures obtained by a circulator are sustained all remaining signatures obtained by the circulator should be disqualified.

In Harmon, in pertinent part, the electoral board at issue concluded that where "at least half" of objections to a candidate's signatures had been sustained such evidence showed a pattern of fraud and false swearing that "warranted striking all signatures" of that candidate. Harmon, 371 Ill. App. 3d at 1114. On judicial review of the electoral board's decision, the circuit court reversed the electoral board's decision. Harmon, 371 Ill. App. 3d at 115.

The Harmon electoral board appealed to this court and we ultimately reversed the circuit court and affirmed the electoral board's decision. Harmon, 371 Ill. App. 3d at 1117. In relevant part, this court reviewed the record in Harmon and noted that 50% or more of the signatures contained on a number of pages of the candidates signatures petitions had been found invalid. Harmon, 371 Ill. App. 3d at 1001. Ultimately, based on this record, this court found that "the record sufficiently supports the [electoral board's] finding that [the successfully challenged signatures] evidence a pattern of false swearing that warranted the decision

to strike those pages altogether." Harmon, 371 Ill. App. 3d at 1001-02.

We disagree with Objectors' interpretation of our decision in Harmon as holding that where 50% or more of signatures submitted by a candidate are found to be invalid, such evidence constitutes a pattern of fraud and false swearing that requires the Board to invalidate all remaining signatures. Instead, after carefully analyzing Harmon, we conclude, as the Board and circuit court similarly concluded, that Harmon stands for the proposition that an electoral board is permitted to find that a candidate has engaged in a pattern of fraud and false swearing where that candidate submits signatures and 50% of those signatures are invalidated and the record supports the electoral board's conclusion. Harmon, 371 Ill. App. 3d at 1001-02. However, we emphasize that Harmon did not announce a *per se* regarding a percentage of successfully sustained challenges to signatures.

Moreover, in stark contrast to Harmon, the Board in the case *sub judice* did not find that the successfully challenged signatures evidenced a pattern of fraud or false swearing by Deratany's campaign. Furthermore, the Board here was troubled by the fact that Objectors did not identify the reasons that certain signatures had been found to be invalid, again dissimilar to Harmon. Simply put, we find that Harmon does not support Objectors' challenges to Deratany's signature petitions regarding an alleged pattern of fraud and false swearing based on the sustain rate of challenges to the signatures contained therein or otherwise require reversal of the Board's decision.

2. Circulators' Attestations Regarding Their  
Residency at 2049 West Jarvis

Objectors next argue that all signatures from the West Jarvis signatures should be invalidated because those circulators attested that their residence was at 2049 West Jarvis, but that address was merely a temporary living arrangement. According to Objectors, the West Jarvis circulators were required to provide the address of their permanent legal residence and because they failed to do so "the Board should have found that the use [of] temporary and false residence addresses undermined and compromised the integrity of the circulator oaths and rendered all of those [West Jarvis circulator] petition sheets invalid in their entirety." The Objectors characterize the West Jarvis circulators as having "executed false circulator affidavits, rendering each and everyone of the signatures on those petition sheets invalid."

The United States Supreme Court has held that circulators cannot be required by statute to be resident voters of the district in which they circulate nomination petitions because such a restriction would violate an individual's First Amendment free speech guarantee. Buckley v. American Constitutional Law Foundation, Inc., 525 U.S. 182, 194-96, 142 L. Ed. 2d 599, 611-12, 119 S. Ct. 636, 643-44 (1999). When addressing the concern of the circulators being amenable to subpoena power, the court concluded that the State's interest in reaching law violators was served by the attestation requirement that each circulator submit an affidavit identifying the address at which the circulator



resides, including street name and number, city, county, and state. Buckley, 525 U.S. at 196, 142 L. Ed. 2d at 612, 119 S. Ct. at 644. In particular, the court explained that:

"This [circulator] address attestation, we note, has an immediacy, and corresponding reliability, that a voter's registration may lack. The attestation is made at the time a petition section is submitted; a voter's registration may lack that currency."

Buckley, 525 U.S. at 196, 142 L. Ed. 2d at 612, 119 S. Ct. at 644.

Subsequently, in accordance with Buckley, an Illinois statute requiring circulators to be registered voters was found to be unconstitutional. Tobin for Governor v. Illinois State Board of Elections, 105 F. Supp. 2d 882, 888 (N.D. Ill. 2000).

Currently, section 7-10 of the Election Code pertaining to circulators in Illinois requires, in pertinent part, that each nomination petition sheet include a "circulator statement," which must be signed by a person who is a United States citizen and is at least 18 years of age. 10 ILCS 5/7-10 (West 2006). The circulator statement must also include the circulator's "street address or rural route number \*\*\* as well as the county, city, village or town, and state." 10 ILCS 5/7-10 (West 2006). Finally, the circulator must certify that the signatures appearing on each sheet were signed in his or her presence and that the signatures are genuine. 10 ILCS 5/7-10 (West 2006). Notably, consistent with Buckley, section 7-10 of the Election

does not require circulators to be registered voters.

Here, Objectors recognize the holdings of Buckley and Tobin,<sup>2</sup> but nevertheless argue that circulators in Illinois are required to attest to their *permanent* legal residence in their circulator affidavits. According to Objectors, because the West Jarvis circulators listed their address at a building which served as *temporary* housing, those circulators' affidavits were fraudulent and warrant invalidation of every signature obtained by them. We disagree.

Significantly, Objectors do not argue that the West Jarvis circulators lied, or otherwise were dishonest, when they attested that they were residing at 2409 West Jarvis at the time that they circulated petitions for Deratany. In fact, Objectors implicitly concede that those circulators were residing at 2409 West Jarvis by focusing their objections on the nature of the building located at that address and repeatedly referring to it as "temporary" or "transitional" housing. Consequently, contrary to Objectors' assertions that the West Jarvis circulators were engaging in fraud, we necessarily conclude that the West Jarvis circulators were being truthful and accurate when they attested that they lived at 2409 West Jarvis when they circulated petitions for Deratany where there is no evidence to suggest otherwise.

Moreover, Objectors provide no legal authority for their

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<sup>2</sup>Objectors state in their brief that "[i]n the post-Buckley and Tobin era, circulators are no longer required to be residents or voters of the district in which they circulate."

proposition that circulators are required to attest to their their permanent legal residence. Instead, Objectors rely exclusively on authority that addresses and governs residency requirements for registered voters. Considering that the United States Supreme Court in Buckley held that circulators cannot be required by statute to be registered voters, we find it illogical to apply legal authority regarding residency requirements for registered voters to circulators.

Furthermore, it is apparent that the United States Supreme Court contemplated that in certain circumstances the address provided by a circulator may be different than that circulator's actual legal voter registration address. Specifically, as the Buckley court explained, "[t]he [circulator] attestation is made at the time a petition section is submitted; a voter's registration may lack that currency." Buckley, 525 U.S. at 196, 142 L. Ed. 2d at 612, 119 S. Ct. at 644. Such is the case here, where the circulators were apparently living in temporary housing at the time that they circulated the signature petitions for Deratany.

We reiterate that Objectors have provided no evidence that the West Jarvis circulators were being fraudulent when they attested that they were living at 2409 West Jarvis; instead, the record supports a conclusion that the West Jarvis circulators were being truthful when they made those attestations regarding their residency at West Jarvis during the time that they circulated petitions for Deratany. Ultimately, therefore, we reject Objectors' challenges to the West Jarvis circulators based

on their residency attestations.

#### B. Objectors' Remaining Challenges

Because we have found that the Board and circuit court properly rejected Objectors' challenges to the 949 signatures obtained by the West Jarvis circulators, Objectors' remaining challenges to 574 other signatures for various reasons have been rendered moot. Even assuming *arguendo* that we agreed with Objectors' remaining challenges on appeal and invalidated those 574 signatures from Deratany's total 4,813 valid signatures, Deratany would still have 4,239 signatures, which exceeds the requisite 3,858 signatures required to appear on the ballot. Consequently, we do not address Objectors' remaining challenges.

#### CONCLUSION

For the foregoing reasons, we affirm the judgment of the circuit court.

Affirmed.

O'MALLEY, J., with McBRIDE, P.J., and McNULTY, J.,  
concurring.