NBCON-ALD

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

Objections of: ANTHONY SUTOR	)	
	)	
	)	
To the Nomination	)	**No.: 07-EB-ALD-059**
Papers of: DANIEL "DANNY" SOLIS	)	**(Rel. 07-EB-ALD-001)**
	)	
Candidate for the office of	)	
Alderman of the Twenty-fifth 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 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 ANTHONY SUTOR ("Objector") to the nomination papers ("Nomination Papers") of DANIEL "DANNY" SOLIS, candidate for the office of Alderman of the Twenty-fifth Ward of the City of Chicago ("Candidate") to be elected at the Municipal General Election to be held on February 27, 2007, having convened on January 2, 2007, at 10:00 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 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 January 2, 2007 and was continued from time to time.

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

6. The Objector 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 Objector, ANTHONY SUTOR, *pro se*; and the Candidate, DANIEL "DANNY" SOLIS, by counsel, Jack Hagerty and Brian Hynes.

7. The sole objection presented is that the Candidate's Nomination Papers are invalid because the Statement of Economic Interests filed by the Candidate did not correctly state the office or position being sought in that the Candidate listed the office or position as "City of Chicago."

8. The Hearing Examiner has submitted his Report and Recommended Decision finding, among other things, that the Candidate was not obligated to file with his Nomination Papers a full copy of the Statement of Economic Interests he filed with the Cook County Clerk as required by law and any failure, presuming one existed, in identifying the office or position on the Statement of Economic Interests would not justify the Candidate's removal from the ballot. Therefore, the Hearing Examiner has recommended that the Objections to the Candidate's

Nomination Papers brought on these grounds be overruled and that the Candidate's Nomination Papers be found valid.

9. The Electoral Board has reviewed and considered the Hearing Examiner's Report and Recommended Decision, the Objector's Petition, the Candidate's Nomination Papers, the evidence presented and the arguments submitted, and the Electoral Board hereby adopts the recommended findings of fact and conclusions of law therein. A copy of the Hearing Examiner's Report and Recommended Decisions is attached to this decision and is incorporated and made a part hereof.

10. The Objector filed a request pursuant to Rule 20 of the Electoral Board rules of procedure to appeal the recommended decision of the Hearing Examiner and to directly address the Board concerning that recommendation. The Objector states that he had filed another "letter" on December 21, 2006 complaining against the Nomination Papers of the same Candidate in this case, Daniel "Danny" Solis. The "letter" in question was docketed as an objection in related case 07-EB -ALD-001. Objector further states that he then filed on December 26, 2006 a "letter" complaining against the Candidate's Nomination Papers "attempting to amend and expand upon his previously filed objection (case 07-EB-ALD-001) which was improperly deemed by the Board staff as a separate and distinct Illinois Election Code §10-8 objector's petition and which the Board staff docketed as case 07-EB-ALD-059." The Objector argues that the December 26 "letter" was filed within the objection filing period "and should be deemed to have amended the December 1, 2006 filing to a point that the complaints of this Objector against this Candidate then constituted one single Illinois Election Code §10-8 objector's petition alleging all of the necessary elements thereof." The Objector further argues that as a consequence of the Board's "arbitrary and capricious docketing of the two letters in

separate cases instead of the same case, the initial filing is allegedly deficient and subject to dismissal for failure to allege the Objector's residence address" under *Pochie v. Cook County Officers Electoral Board*, 289 Ill.App.3d 585, 682 N.E.2d 258 (First Dist. 1997).

11. The Electoral Board finds that the Objector's attempt here to file an amendment to his original objector's petition filed on December 21, 2006 in case 07-EB-ALD-001 cannot be permitted. The Objector is both trying to add critical information missing in the objection petition in 07-EB-ALD-001 (i.e., his residence address) and to add additional objections (alleged error in identifying the office or position on his Statement of Candidacy). Neither should be allowed.

12. An electoral board is a creature of statute. The electoral board may only allow amendments to the objection where it is authorized by statute to do so; however, the Election Code does not authorize amendments to the objection, and an electoral board's action in allowing amendments is void. *Reyes v. Bloomingdale Township Electoral Board*, 265 Ill.App.3d 69, 638 N.E.2d 782 (Ill.App. 2 Dist. 1994). See, e.g., *Stein v. Cook County Officers Electoral Board*, 264 Ill.App.3d 447, 636 N.E.2d 1060 (First Dist. 1994) (motion to amend objector's petition made after the deadline for filing objection petitions is untimely and refusal of electoral board to permit objector to amend his petition is not an abuse of the electoral board's discretion).

13. In *Wollan v. Jacoby*, 274 Ill.App.3d 388, 653 N.E.2d 1303 (First Dist. 1995), objectors were allowed to "correct" their objections. There the candidate contended the use of the term "Commissioner" instead of the term "Trustee" in the original objections made the objections so confusing that they should be deemed legally defective. However, the court noted that both the original and the corrected objections were served upon respondents within hours of filing. Although there was an office of Commissioner of the Wilmette Park District, the court

found that such office and entity was entirely separate from the office of Trustee and the Village of Wilmette. As the objections to each respective office would have to be filed with different election officials, at different locations, and heard by different boards, the court concluded there was no basis for confusion as to the office of Trustee of the Village of Wilmette for which the objections were filed. Finally, the court found that section 10-8 of the Code contains no requirement that the candidate or the office be precisely identified in the objections. Absent an express mandate in the statute, the court concluded that an error in referring to the office for which the candidates seek was not fatal to the objections. Regarding the attempt to amend the original objector's petition, the morning after the final day for filing objections, objectors attempted to "correct typographical errors" in the objections which named the office of Commissioner rather than Trustee. The electoral board denied the motion to correct the error, stating that the objections could not be cured by amendment after the expiration of five business days allowed by section 10-8 of the Code. The circuit court reversed, finding that petitioners' attempt to correct the error was not an amendment, but instead was a permissible correction of a scrivener's error. While the appellate court did not consider the error to be one of a scrivener, it found no confusion or prejudice to the candidates in view of the fact that both they and the electoral board knew that there was no office of Commissioner in the Village of Wilmette. Moreover, the objectors did not seek to add any new objections, as was the case in *Stein*; rather, they merely sought to replace and correct the superfluous term "Commissioner" with that of "Trustee." The court held that, assuming *arguendo* that it was error to permit petitioners to correct the objections, it was harmless since the court concluded that the use of the descriptive term "Commissioner" did not render the objections legally deficient.

14. In *Pochie v. Cook County Officers Electoral Board*, 289 Ill.App.3d 585, 682 N.E.2d 258 (First Dist. 1997), the objector's residence address was not set out in the objector's petition as required by section 10-8 of the Election Code. The objector contended that the address provision of section 10-8 of the Election Code is directory, relying primarily on the holding in *Wollan*. The *Pochie* court found that the objectors' reliance on *Wollan* was misplaced because *Wollan* did not address the "residence address" requirement of section 10-8 of the Election Code. In the *Pochie* court's view, the objector's address in the case before it could not be readily determined from the number of the address on a street in the district without the name of the street. When the name of the street where an objector resides is not given in the objector's petition, a candidate whose nominating petitions are being challenged cannot readily determine that the objector resides in the district. Although an objector's legal standing to bring the objector's petition may be evident from the face of the petition in which it attests that objector is "a duly qualified, legal and registered voter" residing in the applicable district and although it may be further evidenced by a certified voter registration record attached to a response to the motion to strike and dismiss, the *Pochie* court held that whether or not an objector has standing is determined according to the face of the petition and not according to what can be found in the records of the election commission. As the court observed, the failure to plead an objector's address is an affirmative defense, which must be raised by the respondent. *Hagen v. Stone*, 277 Ill.App.3d 388, 660 N.E.2d 189 (First Dist. 1995). The issue is waived if it is not raised by the respondent. In preparing affirmative defenses, respondents would be confronted with undue burdens if the residence requirement of section 10-8 of the Election Code was construed to be directory rather than mandatory because respondents often would be unable to make the decision to raise a defense without taking extraordinary steps to determine whether an objector resides in

the relevant political subdivision. The fact that records publicly available at the Chicago Board of Election Commissioners' offices allow any person to check registration status, including the registration address and representative district, of any citizen of Chicago, including that person's name is not compelling. In the court's view, mandating such searches of records by candidates is not an intended consequence of the legislation. Even though searches of records at the Chicago Board of Election Commissioners' offices for persons with a last name of the objector are possible, no candidate should suffer the consequences of bearing the burden of searching the records to determine whether or not an objector is registered in a district.

15. Unlike in *Wollan*, here the missing information regarding the Objector's residence address is critical and the omission of such information renders the Objection defective. Therefore, *Wollan* is distinguishable and not controlling.

16. *Stein* stands for the principle that an objector's petition cannot be amended to add new and additional objections not raised in the original objection petition.

17. Therefore, the Electoral Board finds that the Objector cannot use the objection petition he filed on December 26, 2006 and docketed as 07-EB-ALD-059 to amend the objection petition filed on December 21, 2006 and docketed as 07-EB-ALD-001. The Board's staff was correct in docketing each of those documents as separate objection petitions, each document to stand on its own.

18. For the reasons stated above, the Electoral Board overrules the Objections.

19. The Electoral Board finds that there are other objections pending against the Candidate's Nomination Papers in case 07-EB-ALD-001 that will ultimately determine whether the Candidate's Nomination Papers are valid or invalid.

IT IS THEREFORE ORDERED that the Objections of ANTHONY SUTOR to the Nomination Papers of DANIEL "DANNY" SOLIS, candidate for election to the office of Alderman of the Twenty-fifth Ward of the City of Chicago, are hereby OVERRULED.

Dated: Chicago, Illinois, this 16th day of January 2007.

Langdon D. Neal, Chairman

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.

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, COUNTY DIVISION

ANTHONY SUTOR,	)	
PETITIONER,	)	
vs.	)	
THE CITY OF CHICAGO MUNICIPAL OFFICERS ELECTORAL BOARD, and its members, LANGDON D. NEAL and RICHARD A. COWEN;	)	**Case Nos. 2007 COEL 9** **2007 COEL 10**
CHICAGO BOARD OF ELECTION COMMISSIONERS, in its official capacity as the Election Authority, and its members, LANGDON D. NEAL and RICHARD A. COWEN; and DANIEL "DANNY" SOLIS,	)	
RESPONDENTS.	)	

MEMORANDUM OPINION AND ORDER

Each of these matters is before the court on Petitioner's Petition for Judicial Review, pursuant to 10 ILCS 5/10-10.1 (2007), seeking, *inter alia*, an order enjoining Respondent Chicago Board of Election Commissioners "from issuing ballots for the subject election until further order of Court (sic) or the termination of these proceedings before this Court." The petition in case number 2007 COEL 9 seeks review of City of Chicago Municipal Officers Electoral Board (hereinafter "Board") case number 07-EB-ALD-001, and the petition in case number 2007 COEL 10 seeks review of Board case number 07-EB-ALD-059. The court, having reviewed the papers, related exhibits, and the Board's record of proceedings, having been fully advised in the premises, and having had due deliberation thereon, hereby rules on said petitions as set forth below.

Background:

On December 21, 2006, Petitioner filed a *pro se* "Objection of Nomination Petitions for Mr. Solis" (07-EB-ALD-001, hereinafter "first petition") objecting to the nomination certificate and nominating papers of Respondent Daniel "Danny" Solis (hereinafter "candidate").[1] The first petition did not state Petitioner's address. On or about December 26, 2006, Petitioner filed another *pro se* "Objection of Nomination Petitions for Mr. Solis" (07-EB-ALD-059, hereinafter "second petition") objecting to the nomination certificate and nominating papers of the candidate. The second petition included an address of Petitioner's residence and an additional substantive objection. It neither repeated the objections of the first petition nor included any language indicating it was an attempt to amend the first petition.

The cases were consolidated for purposes of proceedings before the hearing examiner. Between the first and second dates scheduled for the hearing, Petitioner retained counsel, who appeared with him on the all subsequent dates for hearings before the hearing examiner and the Board.

The hearing examiner recommended that the Board overrule (sic) both objection petitions and place the candidate's name on the ballot for the February 27, 2007, election. The Board consolidated the petitions for purposes of review.

The Board's decision as to the first petition dismissed Petitioner's objections to the form of the candidate's name used in the Statement of Candidacy, the completeness or correctness of the name of the municipality and election in which the candidate had filed, and the authenticity of the candidate's signatures on various required forms. The decision also found the candidate's

---

[1] No objections have been made to the time or place of the filings in these matters.

nomination papers to be valid and directed that the candidate's name be printed on the ballot for the election to be held February 27, 2007. The grounds for the decision were that the petition was defective in failing to allege the objector's residence address and that the objector's attempt to amend the first petition by filing the second petition is not authorized by law.

The Board's decision as to the second petition overruled (sic) Petitioner's objections to the completeness and correctness of the required Statement of Economic Interests filed by the candidate. The decision also declared the candidate's nomination papers to be valid and directed that the candidate's name be printed on the ballot for the election to be held February 27, 2007. The grounds for the decision were that the alleged errors in the Statement of Economic Interests do not justify removing the candidate from the ballot and that the objector's attempt to amend the first petition by filing the second petition is not authorized by law.

Analysis and Law:

Petitioner requests remedies in both law and equity. The requested legal remedy, as provided in the Election Code, 10 ILCS 5/10-10.1 (2007), is reversal of the Board's decisions. Giving the petitions for judicial review the benefit of the doubt, the equitable relief requested is, in effect, a preliminary injunction.[2]

As recently restated by the Illinois Supreme Court in *Mohanty v. St. John Heart Clinic, S.C.*, __Ill. 2d__, 2006 Ill. LEXIS 1689 (2006), a party seeking a preliminary injunction is required to show the following:

---

[2] The emergency motion accompanying each petition requests an order, "[e]njoining [Respondent Election Commissioners] . . . from issuing ballots for the subject election until further order of Court or the termination of these proceedings . . . ."

1. a clearly ascertained right in need of protection,

2. irreparable injury in the absence of an injunction,

3. no adequate remedy at law, *and*

4. a likelihood of success on the merits of the case.

Id. at *12. Neither of Petitioner's petitions for judicial review alleges *any* of these grounds in support of his requests for injunctive relief, and a preliminary injunction is therefore inappropriate.

The factual allegations of an evidentiary nature in the petitions for judicial review and the records of the Board's proceedings in both cases provide the court with a legally sufficient basis to review the Board's decisions without further evidentiary proceedings. The applicable standard of review of an election challenge was recently clarified by the Illinois Supreme Court:

> This appeal arises not from an administrative review proceeding, but from an election challenge filed in circuit court. There is no decision of an administrative agency at issue in this appeal. We, therefore, review any factual questions under the manifest weight of the evidence standard, but review *de novo* the legal determination of substantial compliance with the [statute]. . . .
>
> A factual finding is against the manifest weight of the evidence when the opposite conclusion is clearly evident or the finding is arbitrary, unreasonable, or not based in evidence.

Samour, Inc. v. Bd. of Election Comm'rs, __Ill. 2d__, 2007 Ill. LEXIS 7, *16, 19 (Jan. 19, 2007) (citations omitted). *See also Girot v. Keith*, 212 Ill. 2d 372, 378-379 (2004). When a question of law requires review of an agency's own rules, the Appellate Court, First District, has further stated:

> Judicial review of the interpretation given an administrative agency of its own rules is conducted *de novo*. Yet, the agency's interpretation is entitled to "respectful consideration", and enjoys a presumption of validity. This

> determination, however, is not binding on this court and will not be followed where clearly erroneous, arbitrary or unreasonable.

Nolan v. Hillard, 309 Ill. App. 3d 129, 143 (1st Dist. 1999)(citations omitted). The same standard is appropriate here.

The court has considered matters of both substance and procedure. Chief among the issues decided by the Board is the procedural question of whether it must allow an objector to amend an objection petition. In support of its denial of the request to amend, the Board relied on the decision in *Reyes v. Bloomingdale Township Electoral Bd.*, 265 Ill. App. 3d 69 (2nd Dist. 1994), which, in relevant part, stated:

> [T]he Board is a creature of statute. (*Kozel*, 126 Ill. 2d at 68; *Maske*, 234 Ill. App. 3d at 510.) It may only allow amendments to the objection where it is authorized by statute to do so. (*See Caldwell*, 167 Ill. App. 3d at 1061; *Pearce Hospital Foundation v. Illinois Public Aid Comm'n* (1958), 15 Ill. 2d 301, 307, 154 N.E.2d 691.) The Code does not authorize amendments to the objection, and therefore the Board's action in so doing is void.

Id. at 72. The Appellate Court, First District, citing *Reyes*, has reached the same conclusion. *Delay v. Board of Election Comm'rs*, 312 Ill. App. 3d 206 (1st Dist. 2000).

Regarding the discretion a hearing examiner or the Board allegedly may exercise with respect to allowing amendments, this court notes that Board Rule[3] 10 provides that, "Amendments to the objector's petition raising additional objections and points will not be allowed." Following the general rule of statutory interpretation that a specific provision governs a more general one addressing the same topic, both the hearing examiner and the Board were well within their discretion to apply Rule 10 rather than be constrained or compelled by other

---

[3] Rules of Procedure for the Board of Election Commissioners of the City of Chicago as the Duly Constituted Electoral Board for Hearing and Passing Upon Objections to Nomination Papers and Petitions of Public Policy (Jan. 2, 2007)(hereinafter "Board Rule").

Rules allowing exceptions "in the interests of fairness, equity or substantial justice." *Cf.* Board Rules 3, 4, 20.

This court further notes that Board Rule 13 provides: "General Procedures. For matters not covered herein, the . . . Board will generally follow rules of . . . practice which prevail in the Circuit Court of Cook County . . . , including the Code of Civil Procedure . . . , but the . . . Board shall not be bound by such rules in all particulars." To the extent the procedure for amending objections is not completely addressed in said Rules, without ruling on the question of whether it is, this court notes the Code of Civil Procedure provides:

> Sec. 2-616. Amendments. (a) At any time before final judgment amendments *may be allowed* on just and reasonable terms . . . changing the cause of action or defense or adding new causes of action or defenses, and in any matter, either of form or substance, in any process, pleading, . . . or proceedings, which may enable the plaintiff to sustain the claim for which it was intended to be brought. . . .
>
> (c) A pleading may be amended at any time, before or after judgment, to conform the pleadings to the proofs . . . .

735 ILCS 5/2-616(a, c) (2007)(emphasis added). In other words, permission to amend must be obtained from the decision-making authority. The Rules of the Supreme Court of Illinois, in addressing amendments on appeal, provide:

> Rule 362. Amendment of Pleadings and Process in the Reviewing Courts
>
> (a) Application. Any party who seeks *on appeal* to amend his or her pleadings or the process in the record on appeal *shall* present a *written application* therefor, supported by *affidavit*. No application shall be presented until the record on appeal is on file.
>
> (b) Showing Necessary. The *application*, and the *affidavit* in support thereof, *must* show the amendment to be necessary, that no prejudice will result to the adverse party if the amendment sought is permitted, and that the issues sought to be raised

> by the amendment are supported by the facts in the record on appeal. *The amended pleading or process shall be presented with the application*. . . .

Ill. Sup. Ct., R 362 (2006)(emphasis added)

When applying the provisions of the Code of Civil Procedure or Supreme Court Rules to matters before the Board, the proceedings from the initial filing of an objection through the recommendation of the hearing examiner are analogous to the proceedings in the trial courts and are, therefore, governed by the Code of Civil Procedure. Similarly, the proceedings from the initial filing of an appeal of a hearing examiner's recommendation through the Board's written decision[4] are analogous to an appeal to the appellate or supreme court and are, therefore, governed by the Supreme Court Rules.

In reviewing the objection petitions, the other filings before and during the hearings before the hearing examiner, and the verbatim reports of said hearings, the court finds no record of a motion or other written request by the objector, when *pro se* or represented by counsel, to amend either objection. This was also the finding stated in the report and recommendation of the hearing examiner regarding the first petition. The issue of amendment was first mentioned in the objector's Board Rule 20 requests for review of the hearing examiner's recommendations. At that time, the objector merely stated the Board should have deemed the second petition an amendment to the first petition instead of a separate petition. Although the objector also stated that, in filing the second petition, he was "attempting to amend and expand upon [the first petition]," there is no allegation that an amendment was requested, or otherwise expressly sought, at any time prior to the appeal, and no affidavit or other evidence before the hearing

---

[4] The same is true for the circuit court and appeals courts, all of which only hear appeals from the Board's decisions.

examiner in support of this allegation. The finding by the hearing examiner that, in effect, the objector had not met his burden of proof, as required by Board Rule 8, was not against the manifest weight of the evidence. Consequently, the first attempt to amend the initial objection petition was on appeal and is governed by Supreme Court Rule 362.

When seeking an amendment of a trial court pleading on appeal, Rule 362 requires a written application, a supporting affidavit, and the proposed amended pleading. The affidavit must show the amendment is necessary, will not prejudice the adverse party, and is supported by the facts in the record on appeal. Assuming, for the sake of argument only, that the Board Rule 20 requests herein are the functional equivalent of the required applications, objector has filed neither a supporting affidavit nor a proposed amended objection in either case.

Although amendments are to be liberally construed by the circuit court to permit resolution of cases on the merits, when leave to amend is first requested on appeal, a court is well within its discretion to deny the amendment. *Selcke v. Bove*, 258 Ill. App. 3d 932, 937 (1st Dist. 1994). This principle applies to appeals to the Board. This court finds, with respect to both requests for judicial review, as follows: 1) there was no request made in the proceedings before the hearing examiner for an exercise of discretion allowing amendments, 2) any request for amendment on appeal to the Board was legally insufficient and failed to comply with Supreme Court Rule 362, and 3) the Board's decision to deny leave to amend substantially complied with its Rules and was well within its discretion.

Petitioner has also raised a procedural question as to the timeliness of the candidate's motions to dismiss during the proceedings before the hearing examiner. As this issue was not raised before the hearing officer or the Board and the motions were neither a procedural or

substantive prerequisite for any part of the Board's decisions, it should be noted: 1) this issue is not properly before this court; 2) the objector, both *pro se* and represented by counsel, agreed to a schedule for motions, discovery and continuances of the hearing on the various issues litigated before the hearing examiner in a manner that effectively waived objections to the timeliness of the candidate's filings addressed to those proceedings; and 3) the hearing examiner and Board would have been within the discretion granted by the Board Rules and Illinois Supreme Court Rule 183 to extend the time for filing such motions.

In light of the above, the court need only address two substantive issues to conclusively dispose of these matters. With respect to the first petition's failure to comply with the Election Code requirement in 10 ILCS 5/10-8 that, "The objector's petition shall give the objector's name and residence address," the Board relied on the holding by the Appellate Court, First District, that, "the 'residence address' requirement of section 10-8 of the Election Code is mandatory and not directory." *Pochie v. Cook County Officers Electoral Bd.*, 289 Ill. App. 3d 585, 588 (1st Dist. 1997). In *Pochie*, the court held that failure to comply with this requirement alone sufficed to affirm the Board's dismissal of the objector's petition, because the objector had thereby failed to establish standing to object.

In the second petition, the sole objection is that the candidate failed to completely and correctly describe in his Statement of Economic Interests (hereinafter "SEI") the office for which he is a candidate. The Election Code provides:

> Nomination papers filed under this Section are not valid if the candidate named therein fails to file a statement of economic interests as required by the Illinois Governmental Ethics Act [5 ILCS 420/1-101 et seq.] in relation to his candidacy with the appropriate officer by the end of the period for the filing of nomination papers unless he has filed a statement of economic interests in relation to the same

> governmental unit with that officer during the same calendar year as the year in which such nomination papers were filed.

10 ILCS 5/10-5 (2007)

The Board decided it did not have to reach the issue of whether the alleged defects in the SEI constituted a failure by the candidate to file an SEI "in relation to his candidacy," on the grounds that removal of the candidate from the ballot is not an authorized remedy for a violation of this statutory provision. In adopting the hearing examiner's recommendations and report, including the reasons therein, the Board's conclusion and reasoning are fully supported by the Illinois Supreme Court, which has held:

> [W]e are not unmindful that the provisions of the Election Code are designed to protect the integrity of the electoral process. Ultimately, however, we believe that access to a place on the ballot is a substantial right not lightly to be denied. In this regard, we find that plaintiffs have raised a meritorious issue. However, the remedy they seek is drastic, and absent a clearer statement by the legislature that it intended that remedy as a sanction for an inadvertent, as well as willful, omission from a candidate's statement of economic interests, we decline to construe the Election Code in [that] manner.

Welch v. Johnson, 147 Ill. 2d 40, 57 (1992)(citations omitted). More recently, the Appellate Court, First District, has further noted:

> [T]he supreme court . . . held that removal from the ballot is not a permissible sanction for the filing of a statement of economic interests which is not true, correct and complete merely due to *inadvertence* on the part of the person filing the statement. *Welch*, 147 Ill. 2d at 51.
>
> . . . *Crudup v. Sims*, 292 Ill. App. 3d 1075, 686 N.E.2d 714, 226 Ill. Dec. 931 (1997), . . . extended the holding of *Welch*. Relying on the *Welch* rationale, the court held that a candidate's name cannot be ordered off the ballot where the candidate has *willfully* filed a false statement of economic interests, as the General Assembly had not provided for such a sanction. *Crudup*, 292 Ill. App. 3d at 1077.

Requena v. Cook County Officers Electoral Bd., 295 Ill. App. 3d 728, 732 (1st Dist. 1998)

(emphasis added). The *Requena* court went on to hold:

> The state has a compelling interest in preserving the integrity of the electoral process and in regulating the number of candidates on the ballot. *Havens v. Miller*, 102 Ill. App. 3d 558, 429 N.E.2d 1292, 57 Ill. Dec. 929 (1981). However, provisions imposing disqualification of candidates must be construed strictly in favor of eligibility. *Bryant*, 195 Ill. App. 3d at 558. We will not impose a sanction of disqualification for an inadvertent mistake such as the one in the present case without a clear indication from the General Assembly that this is the appropriate penalty.

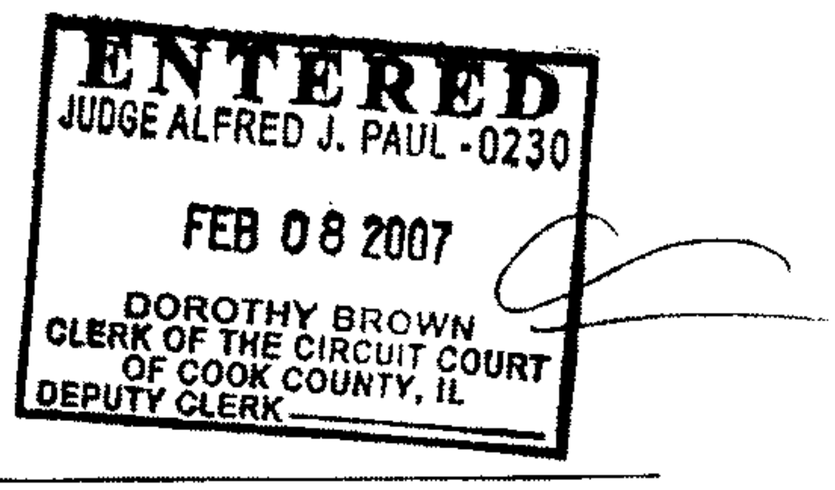
Id. at 734. In light of the foregoing, this court finds the Board's decisions with respect to the objector's address and the candidate's Statement of Economic Interests substantially comply with the Election Code.

IT IS HEREBY ORDERED, that:

1. Petitioner's requests for preliminary injunctions in the cases before this court numbered 2007 COEL 9 and 2007 COEL 10 are hereby **DENIED.**

2. Petitioner's requests for reversal of the decisions by the City of Chicago Municipal Officers Electoral Board in the Board cases numbered 07-EB-ALD-001 and 07-EB-ALD-059 are hereby **DENIED**.

ENTER



Hon. Alfred J. Paul
Circuit Court Judge