NBCON-ALD

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

Objections of: Dwayne Burgess	)	
	)	
	)	
To the Nomination	)	No.: 11-EB-ALD-041
Papers of: Ronald Mitchell	)	
	)	Related Cases: 11-EB-ALD-045,
	)	11-EB-ALD-267
Candidate for the office of	)	
Alderman of the 16th 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, Richard A. Cowen, and Marisel A. Hernandez, 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 Dwayne Burgess ("Objector") to the nomination papers ("Nomination Papers") of Ronald Mitchell, candidate for the office of Alderman of the 16th Ward of the City of Chicago ("Candidate") to be elected at the Municipal General Election to be held on February 22, 2011, having convened on December 6, 2010, 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 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 December 6, 2010 and was continued from time to time.

5. The Electoral Board assigned this matter to Hearing Officer Yolanda Sayre 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 Officer on the date and at the time designated in the Hearing Schedule. The following persons, among others, were present at such hearing: the Objector, Dwayne Burgess; and the Candidate, Ronald Mitchell, pro se.

7. The Hearing Officer has tendered to the Electoral Board her report and recommended decision. The Hearing Officer recommends that the Objections to the Candidate's Nomination Papers be overruled and that the Nomination Papers be declared valid.

8. With respect to the issue of voter confusion as a result of approximately 14 petition sheets containing reference to voters within the 6th Ward where the Candidate is seeking election in the 16th Ward, the Electoral Board declines to adopt the Hearing Officer's finding that it is not likely that there could be voter confusion. The Electoral Board finds as to the issue of voter confusion, the Objector failed to present any evidence that there was, in fact, voter confusion over the reference to voters in the 6th Ward.

9. The Electoral Board, having reviewed the record of proceedings in this matter and having considered the report and recommendations of the Hearing Officer, as well as all argument and evidence submitted by the parties, hereby adopts the Hearing Officer's

recommended findings and conclusions of law. A copy of the Hearing Officer's report and recommendations is attached hereto and is incorporated herein as part of the decision of the Electoral Board.

10. For the reasons stated above, the Electoral Board overrules the Objections to the Candidate's Nomination Papers and finds that the Candidate's Nomination Papers are valid.

11. The Electoral Board further finds that objections to the Candidate's Nomination Papers were filed in Related Cases 11-EB-ALD-045 and 11-EB-ALD-267 and that the Candidate's Nomination Papers were also found to be valid in said cases.

IT IS THEREFORE ORDERED that the Objections of Dwayne Burgess to the Nomination Papers of Ronald Mitchell, candidate for election to the office of Alderman of the 16th Ward of the City of Chicago, are hereby OVERRULED and said Nomination Papers are hereby declared VALID and the name of Ronald Mitchell, candidate for election to the office of Alderman of the 16th Ward of the City of Chicago, SHALL be printed on the official ballot for the Municipal General Election to be held on February 22, 2011.

Dated: Chicago, Illinois, on January 13, 2011.

Langdon D. Neal, Chairman

Richard A. Cowen, Commissioner

Marisel A. Hernandez, 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.

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

DWAYNE BURGESS	)	
Objector	)	
	)	
-v-	)	**11-EB-ALD-041**
	)	
RONALD MITCHELL	)	**Yolanda H. Sayre**
Candidate	)	**Hearing Officer**

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RECOMMENDED FINDINGS AND CONCLUSIONS OF LAW

This matter having come before the duly constituted Chicago Board of Election Commissioners ("CBEC" or "the Board"), and before the undersigned Hearing Officer on December 6, 2010; the Hearing Officer hereby makes the following report and recommended findings:

1. The Candidate filed Nomination Papers for the Alderman of the 16th Ward in the City of Chicago. Such Nomination Papers consisted of: a) a Statement of Candidacy; b) a Receipt for Statement of Economic Interests (The Receipt was a sheet of paper cut in half, containing only the top portion of the document exhibiting the stamp of the Cook County Clerk.); and c) Nominating Petition Sheets numbered one (1) through seventy-three (73). Without objection, the Candidate's Nomination Papers were admitted into evidence and marked as Group Exhibit A.
2. The Verified Objector's Petition was timely filed on November 30, 2010. Such Petition was admitted into evidence and marked as Group Exhibit B.
3. A Call to the hearing on said objections was duly issued by the Chairman of the CBEC and served upon all parties. The Call and Certificate of Service thereof were admitted into evidence and marked Group Exhibit C.
4. However, the Candidate said he had not been served. There was no proof of service in the file; so the matter was immediately continued until December 15, 2010, to allow time for proper service and to comply with the Candidate's request to obtain an attorney.

5. The initial hearing on these objections was called on December 15, 2010. An appearance of counsel, Mr. Dan Johnson-Weinberger, was filed on behalf of the Objector on December 15, 2010. An appearance *pro se* was filed by the Candidate. The Candidate indicated that he was unable to obtain an attorney and wished to appear *pro se*. Copies of said appearances were served on all parties in open proceedings. Such appearances were re-admitted into evidence and marked Group Exhibit D.
6. The Candidate filed a Motion to Dismiss the Objections of Dwayne Burgess on December 7, 2010, despite the continuance granted, and prior to the rescheduled initial hearing on December 15, 2010. During the initial hearing, Counsel for the Objector was given leave to file Responses to the Candidate's Motion in this matter as well as 11-EB-ALD-045 by 5:00 p.m. on December 16, 2010. The Objector's Response was timely filed.
7. During the initial hearing on December 15, 2010, the Candidate refused to allow the consolidation of this matter and matter 11-EB-ALD-045, despite the similarity of issues raised by the identical Objector's Petitions as well as those issues raised in the Candidate's Motions to Dismiss both matters. Hearings were scheduled to argue the Motions to Dismiss for both matters separately on December 18, 2010.
8. The parties reconvened on December 18, 2010. The matter of *Yvette Major v. Ronald Mitchell*, 11-EB-ALD-045, was called first. It was during that Hearing that the Hearing Officer denied in part the Candidate's Motion to Dismiss the Objections of Yvette Major, which were similar to the Candidate's challenges to the Objector's Petition of Dwayne Burgess. As a result, the Candidate's Motion to Dismiss the present matter was not ruled on during the Hearing. Therefore, the rulings on the paragraphs that coherently addressed the legal sufficiency of and were responsive to the Objector's Petition are set forth below. Such paragraphs of the Candidate's Motion to Dismiss are hereby denied. A detailed explanation of said rulings will be provided herein.
9. In addition, the Hearing Officer decided to treat the remaining paragraphs of the Candidate's Motion to Dismiss the Objections of Yvette Major as a Rule 8 Motion for an Evidentiary Hearing. Due to the factual nature of the Candidate's arguments as well as the requests for subpoenas and other evidence contained therein, the Hearing Officer believed the other issues could be resolved in or required an evidentiary hearing and

hearing on the Objector's Petition. The parties agreed with that assessment and plan of action on the record. The Hearing Officer scheduled the Evidentiary Hearing and Hearing on the Objector's Petition to be held on December 22, 2010. Moreover, six (6) subpoenas were issued for the notary and most of the purported circulators of the Candidate's Petition Sheets.

10. At this time the parties, in matters 11-EB-ALD-041 and 11-EB-ALD-045, agreed off the record to consolidate the matters for purposes of avoiding duplicative testimony and evidence. Such agreement was announced on the record.
11. This matter was then called. The parties agreed, on the record, that since the issues discussed were identical and all parties were present, reliance could be had on the record (transcript) of the related matter 11-EB-ALD-045 that preceded it. In essence, the Hearing Officer retroactively consolidated the Hearings held December 18, 2010.
12. The Hearing Officer referred the Candidate's Nomination Papers to the Board's Forensic Document Examiner for analysis and examination of the following sheets containing "White-out" in the jurat. The Petition Sheets in question are numbered 1 - 16, 22 - 57, and 62 - 64. There are fifty-five (55) sheets that contain the "White-out" and the name of the purported circulator written over it with a permanent type marker.
13. The Evidentiary Hearing was held on December 22, 2010, wherein the parties had the opportunity to put forth evidence pertaining to all objections and defenses thereto. The following witnesses offered sworn testimony regarding the circulation of the Petition Sheets: 1) Ms. Josephine Shields for the Objectors; and for the Candidate 2) Mr. Mack Durham; 3) Ms. Brenda Herron ("the Notary"); 4) Ms. Linda Triplett; 5) Mr. Walter Toney; and 6) Ms. Jackie Harris. Witness 1, was a witness for the Objectors, and will be referred to as "Ms. Shields." The witnesses 2, 4, 5, and 6 are Circulators of the Petition Sheets and will be hereinafter referred to as "Circulator (Last Name)."
14. At the December 22, 2010 Evidentiary Hearing, Counsel for the Objectors requested permission to question the Candidate. The Candidate indicated that he would answer questions. Toward the end of the Hearing, the Candidate conditioned his testimony on being able to question the Objectors. Counsel for the Objectors refused; thus, the Candidate refused. The Candidate was then instructed that he could be compelled to

testify under Supreme Court Rule 237, after being served notice; to which he responded that he would appear if so served but would not testify.

15. The Parties reconvened on December 27, 2010 for the purpose of hearing the Candidate's testimony. The Candidate initially refused to testify and asserted his Fifth Amendment rights. The Candidate's argument can be summarized as follows. The Candidate argued that he shouldn't be made to sabotage his own candidacy by accepting being questioned by an attorney who was accusing him of fraud. In addition, he believed Counsel for the objectors had not followed the rules and was carrying out a personal vendetta by accusing him of fraud for conduct that he allegedly knew was a simple clerical error.
16. The Candidate did respond, in between speeches, to the questions; but due to the chaotic nature of the Hearing, the Hearing Officer inadvertently failed to have him sworn in. His statements, although without evidentiary value, were consistent with arguments he had made in prior hearings.
17. After hearing all argument and evidence put forth by the parties, and there having been no other matters to be heard, the Hearing Officer concluded the case. The first issues to be addressed will be those raised by the Candidate in his Motion to Dismiss and during the hearing on that Motion. Second, the Hearing Officer will address those issues raised in the Objector's Petition.
18. The Hearing Officer made the following findings as they relate to the coherent paragraphs in the Candidate's Motion to Dismiss that challenged the sufficiency of the Objector's Petition. The Hearing Officer deferred ruling on the Motion due to the consolidation issues discussed in paragraph 11 above. Each indented section is a paraphrased or quoted version of the Candidate's challenge and an abbreviated version of the Hearing Officer's ruling on the Motion and rationale for such ruling. Each section is then followed by a more complete version of the relevant analysis.

THE FIRST CHALLENGE TO THE OBJECTOR'S PETITION
(Paragraphs 1, 4 and 5 of the Candidate's Motion to Dismiss):
The Candidate argues in several paragraphs that the Objector's Petition should be dismissed because he failed to use appendix-recapitulation sheets to identify the objections.

HEARING OFFICER'S FINDING:
This paragraph of the Candidate's Motion is denied. The Objector was alleging fraud, based on specific facts, with respect to entire Petition Sheets, not specific signatures in the Petition Sheets. Therefore, no appendix recapitulation sheets were necessary.

HEARING OFFICER'S ANALYSIS:

19. Section 10-8 of the Election Code requires that an Objector's Petition must fully state the nature of the objections. 10 ILCS 5/10-8 (Thomson Reuters, 2010). In addition, "an objection petition must adequately and sufficiently apprise the candidate of the specificity of each objection, thus making evaluation possible." *Elysee v. Patterson*, 04-EB-RGA-14, CBEC, January 20, 2004. However, there is no specific requirement that an appendix-recapitulation be used. The Candidate is conflating the use of an appendix-recapitulation form with the idea of specifically apprising the Candidate of the objection. The appendix-recapitulation sheet is used when specific signatures on specific petition sheets are being objected to in order to provide the required specificity. No such sheet is required when the Objector seeks to challenge or invalidate an entire nomination petition sheet. Here, the Objector's Petition alleges in paragraph six (6) that there is a "pattern of fraud and false swearing" on "almost all" of the circulator's affidavits in that the names of the actual circulators were covered with "White-out" and replaced with the names of the purported circulators. In addition, the use of the phrase "almost all" was sufficient to apprise the Candidate when the actual number of petition sheets that contain the "White-out" is sixty-five (65) out of seventy-three (73).
20. Therefore, paragraphs one (1), four (4) and five (5) of the Candidate's Motion to Dismiss are denied.

THE SECOND CHALLENGE TO THE OBJECTOR'S PETITION
(Paragraph 8 of the Candidate's Motion to Dismiss):
The Candidate argued both in his Motion and during oral argument that because the Objector used the name "Ron Mitchell" instead of "Ronald Mitchell," the entire Objector's Petition should be dismissed.

HEARING OFFICER'S RULING:
This paragraph of the Candidate's Motion is denied. According to Illinois

Law a "misnomer" is not grounds for dismissal. In addition, Section 10-8 does not require that the candidate or the office be precisely identified in the Objector's Petition.

HEARING OFFICER'S ANALYSIS:

21. The Objector, in his Response, relied upon *Wollan v. Jacoby*, to argue that the Objector's Petition must comply with Section 10-8 of the Election Code, most of the provisions of which have been held by the Appellate Court to be directory rather than mandatory. 274 Ill. App. 3rd 388, 653 N.E.2d 1303, 210 Ill.Dec. 841 (1st Dist. 1995) Further, Section 10-8 contains no requirement that the candidate or the office for which election is being sought be precisely identified. *Id.* At 391. In *Wollan*, an objector incorrectly used the term "Commissioner" instead of "Trustee" to describe the office; and the court refused to consider such an error fatal to the objections, in the absence of "an express mandate in the statute." *Id.* Here, the Objector argues that because of the lack of an express mandate in the statute as to the precise identification of the Candidate, the Board cannot grant the Motion to Dismiss.
22. The Hearing Officer agrees with the Objector, but finds stronger support in the Illinois law regarding the "misnomer rule." In Illinois, a "misnomer" occurs when the plaintiff brings an action against a party intended to be the defendant, but the complaint does not refer to the person by his correct name. In such a situation, the real party in interest was given actual notice of the lawsuit. *Shaifer v. Folino*, 272 Ill.App.3rd 709 (1st Dist. 1995) (citing 735 ILCS 5/2-401 (West, 1992)).
23. Here, Ronald, the real party in interest, was served; Ronald appeared; and Ronald filed a Motion to Dismiss despite being referred to as "Ron" in the Objector's Petition. Therefore, the real party in interest had notice and an opportunity to defend himself.
24. Section 2-401(b) of the Illinois Code of Civil Procedure provides that a "misnomer" is not grounds for dismissal; and the party's name may be corrected by motion at any time before or after judgment. *Id.*; see also *Arendt v. Vetta Sports, Inc.*, No. 96-1270 (7th Cir. 1996) (Section 401(b) permits correction of the defendant's name at any time.)
25. Although the Illinois Code of Civil Procedure is not applicable to administrative proceedings, the matter at issue is one not covered by the Board's Rules of Procedure; and therefore, the Hearing Officer may rely on the rules of practice that prevail in the

Circuit Court of Cook County. *Rule 10, Rules of Procedure for the Board of Election Commissioners*, as adopted December 6, 2010. Accordingly, the Hearing Officer granted the Objector leave to amend the pleadings on its face by filing a Motion to Correct Misnomer in order to substitute the proper name of "Ronald Mitchell."

26. The result would have been different had this been a case of "misidentification" rather than "misnomer." A "misidentification" occurs when the plaintiff has named and served the wrong person, thereby preventing the real party in interest from having notice and the opportunity to defend the action. *Barbour v. Fred Berglund & Sons, Inc.*, 208 Ill.App.3rd 644 (1st District 1990). For example, if a different party had been named and appeared, the defendant and / or the entire case could have been dismissed because that would have been a case of mistaken identity rather than the misspelling or shortening of the correct party's name.
27. For the aforementioned reasons, the Candidate's Motion to Dismiss the Objections of Dwayne Burgess is denied.
28. The Hearing Officer will now set forth recommended findings on the objections alleged in the Objector's Petition. **The following recommended findings are identical to those in the matter of *Yvette Major v. Ronald Mitchell*, 11-EB-ALD-045, as the Objector's Petitions are identical and the Evidentiary Hearing and Hearing on the Objector's Petitions were jointly conducted.** Each indented section is either a quote of the objection or a paraphrased version thereof and an abbreviated version of the Hearing Officer's recommended finding and rationale. Each section is then followed by a more complete version of the relevant analysis.

> **THE FIRST OBJECTION: (Paragraph 3 of objector's Petition)**
> The Nomination Petition fails to contain a full and complete Receipt for Statement of Economic Interests that is a mandatory requirement, the absence of which renders the petition fatally defective.
>
> **HEARING OFFICER'S RECOMMENDED FINDING:**
> **This Objection should be overruled.** The Candidate timely filed a Statement of Economic Interests with the Cook County Clerk and the Receipt thereof with the Board. Removal from the ballot would not be a proper remedy for any insufficiency or inaccuracies therein. Inquiry as to the sufficiency of the contents of such Statement or Receipt is beyond the scope of the Board's authority.

HEARING OFFICER'S ANALYSIS:

29. In the instant case, the Candidate submitted, along with his Nomination Papers, a Receipt for Statement of Economic Interests. The Receipt was a sheet of paper cut in half, containing only the top portion of the Statement exhibiting the stamp of the Cook County Clerk. The only other discernible information on the Receipt, as filed with the Board, is the Candidate's name and address.

30. The Objector cites *Bolger v. Electoral Board of City of McHenry*, 210 Ill.App.3rd 958, 569 N.E.2d 628 (Second Dist. 1991) and *Powell v. East St. Louis Electoral Board*, 337 Ill.App.3rd 334, 785 N.E.2d 1014 (5th Dist. 2003) to support his position that the Candidate's Nomination Papers "fail to contain a full and complete Receipt . . . that is a mandatory requirement, the absence of which renders the petition fatally defective."

31. The Objector is conflating two separate issues. The cases cited above involve candidates who either did not file a Receipt evidencing the filing of the Statement of Economic Interests (*Bolger, Supra*), or the Receipt wasn't date / time stamped by the County Clerk's Office (*Powell, Supra*); neither of which is the issue in the instant case. Here the Candidate filed a Receipt evidencing the filing of the Statement of Economic Interests with the Cook County Clerk—the appropriate official. Thus, the Receipt may not be "full and complete" or sufficient as the Objector argues; but that is an entirely different issue from the issues raised in the cases upon which the Objector relies.

32. To the issue of the sufficiency of the Receipt, Section 10-5 of the Illinois Election Code provides that the Candidate's Nomination Papers are "not valid if the candidate named therein fails to file a statement of economic interests as required by the Illinois Governmental Ethics Act in relation to his candidacy with the appropriate officer . . . ." 10 ILCS 5/10-5 (Thomson Reuters, 2010). However, the Appellate Court, in *Requena v. Cook County Officers Electoral Board*, held that Section 10-5 is applicable only when there is a "complete failure to file such a statement, and does not refer to the filing of a statement that is untrue, incorrect, or incomplete. 295 Ill.App.3rd 728, 692 N.E.2d 1217, 1220 (1st Dist. 1998); *citing Crudup v. Sims*, 292 Ill.App3d 1075, 226 Ill.Dec. 931, 686 N.E.2d 714 (1997) and *Welch v. Johnson*, 147 Ill.2d 40, 588 N.E.2d 1119 (1992).

33. In *Requena*, a candidate for a judicial office failed to properly identify the office she was seeking on her Statement of Economic Interests. *Id.* The court held that removal from the ballot was not the appropriate sanction for such a failure. *Id.* at 1220. The Appellate Court relied in part on *Welch v. Johnson*, in which the Illinois Supreme Court ruled 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 when filed with the appropriate officer merely due to the inadvertence on the part of the person filing the statement." Citing *Welch*, 147 Ill.2d, at 51.
34. Moreover, the Board has also held that the failure of a candidate's Statement of Economic Interests and Receipt thereof to contain certain information will not invalidate a candidate's Nomination Papers. *Lenzen v. Orozco*, 01-EB-ALD-4, CBEC, January 23, 2001 (failure to identify office); citing *Requena v. Cook County Officers Electoral Board*, 295 Ill.App.3rd 728, 692 N.E.2d 1217 (1st Dist. 1998).
35. These cases support the Candidate's position, because he did in fact file the Statement and Receipt with the appropriate officers, although the Statement itself appears to be incomplete.
36. Finally, the scope of the Board's inquiry is limited to whether or not the Statement and Receipt thereof have been timely filed with the appropriate government agencies. *Greer v. Johnson*, 95-EB-ALD-74, CBEC, January 13, 1995; *Greer v. McGowan*, 95-EB-ALD-75, CBEC, January 13,1995. In fact, the Board itself held that it lacks jurisdiction to determine the sufficiency of the responses to a timely filed Statement of Economic Interests. *Mills v. Orbach*, 87-EB-ALD-191, CBEC, January 22, 1987.
37. For the forgoing reasons, the first objection should be overruled. The Hearing Officer finds that Candidate's Statement of Economic Interests and the Receipt thereof were timely filed with the appropriate officers; and the Board's inquiry regarding their content would be contrary to the prevailing law.

THE SECOND OBJECTION: (Paragraph 4 of Objector's Petition)
The Statement of Candidacy does not list the Ward that the Candidate wishes to represent, leaving it incomplete and not in compliance with the Election Code. Such failure is further exacerbated by the inconsistency of the nominating petitions where 14 of the 73 sheets incorrectly list the ward as the "Sixth (6th)

Ward" while the rest list the Ward as the "Sixteenth (16th) Ward;" and such failure is a fatal defect.

HEARING OFFICER'S RECOMMENDED FINDING:
This Objection should be overruled. The Ward number can be ascertained by examining the Petition Sheets submitted with the Statement of Candidacy. While there are fourteen (14) sheets that refer to the incorrect Ward in the introductory paragraph and circulator's affidavit, all of the Petition Sheets have the correct 16th Ward listed more prominently in the box at the top of the page; and the likelihood of confusion was minimal.

HEARING OFFICER'S ANALYSIS:

38. During the Evidentiary hearing it was determined that the Candidate had written the word "ALDERMAN" in the box designated for the description of office on the Statement of Candidacy. The Candidate did not specify the Ward within which he was seeking to be elected. In the box entitled "City, Village, or Special District," the Candidate wrote "CHICAGO." Furthermore, the Candidate wrote the word "ALDERMAN" in the affidavit portion of the Statement of Candidacy. The Candidate failed a second time to specify the Sixteenth (16th) Ward and instead wrote "Chicago" in the second line designated for the "Name of City, Village, or Special District."
39. In addition to his Statement of Candidacy, the Candidate filed seventy-three (73) pages of Petition Sheets. Fifty-nine (59) of the seventy-three (73) Petition Sheets submitted list the correct Sixteenth (16th) Ward information in all places calling for the office to be identified. On the other hand, fourteen (14) erroneous Petition Sheets include at the top of the page an introductory or preambular paragraph that states in pertinent part: "We, the undersigned, being duly qualified and registered voters of the SIXTH (6th) Ward . . . ." Immediately following that paragraph, and directly above the signatures, are three (3) prominent heading boxes entitled "Name, Office, and Address." Within the box for Office, the Candidate typed "ALDERMAN OF THE SIXTEENTH (16) WARD OF THE CITY OF CHICAGO STATE OF ILLINOIS" on all of the Petition Sheets, including the erroneous ones. Such erroneous Petition Sheets are numbered 9, 17, 18, 25, 31, 32, 34, 36, 51, 58, 61, 62, 67, and 69.
40. The Objector argues that the failure to include the Ward number on the Statement of Candidacy coupled with the conflicting Ward information on fourteen (14) of seventy-

three (73) petition sheets is an absolute failure to identify the Ward and is a fatal defect. The Objector cites *Hacker v. Adamcik*, 04-EB-WC-069, CBEC, to support his argument that this failure should be considered fatal. However, the *Hacker* case is completely inapplicable to this case in that it involved a Candidate's failure to sign the Statement of Candidacy not the failure to include the Ward number.

41. Also inapplicable to the instant matter is *Serwinski v. Board of Election Commissioners of City of Chicago*, another case relied on by the Objector in support of his petition. 156 Ill. App. 3rd 257, 509 N.E.2d 509 (1st Dis. 1987). In *Serwinski*, the court held that the failure to subscribe or swear to the Statement of Candidacy rendered it illegal and void. *Id.*

42. Finally, the Objector cites *Lewis v. Dunne*, a case in which the Illinois Supreme Court held that the failure to properly designate the office the Candidate is seeking in the heading of the Statement of Candidacy does not render his Nomination Papers invalid if the office for which the Candidate is filing can be determined or ascertained, without confusion, by looking at the Nomination Petitions. 63 Ill.2d 48, 344 N.E.2d 443 (1976). In very similar cases, this Board has also held that the failure of a candidate to include the Ward number on a Statement of Candidacy did not invalidate a candidate's Nomination Papers when the ward number was written on the Petition Sheets. *Morgan v. Stowers*, 87-EB-ALD-140, CBEC, January 20, 1987; *Jones v. Dixon*, 07-EB-ALD-146, CBEC, January 16, 2007; *Delay v. Ferral*, 08-EB-WC-03, CBEC, December 7, 2007.

43. The instant case presents a somewhat unique situation in that every Petition Sheet prominently lists the Sixteenth (16th) Ward in the large box above the signatures; but some of the Petition Sheets are conflicting in that they also list the Sixth (6th) Ward in the introductory paragraph. Such conflicting information on approximately twenty percent (20%) of the Petition sheets presents a different fact pattern than in the cases cited above. In fact, the Objector argues that such differences make this case more similar to *Haynes v. Pritchett*, 07-EB-ALD-020, CBEC, January 16, 2007; thus, it should be treated similarly.

44. The Hearing Officer disagrees. In *Haynes v. Pritchett*, the Ward number wasn't listed anywhere in the Nomination Papers making it impossible to ascertain what Ward the Candidate was seeking to represent. *Id.* None of the petitions listed the Ward, nor did

the Statement of Candidacy. Here, the majority of the Nomination Papers list the correct Ward. Therefore, the central issue is whether the correct Ward or office can be ascertained without confusion by looking at the Nomination Papers as a whole despite the conflicting information.

45. After examining the Nomination Papers, the Hearing Officer determined that any potential confusion was miniscule or should be considered *de minimis* for several reasons. First, it took several examinations of the fourteen (14) Petition Sheets for the Hearing Officer and an Electoral Board employee to notice the mistaken reference to the wrong Ward because the correct Ward is prominently displayed in the large boxes at the top of each of the erroneous sheets. Second, the addresses of the individuals who signed the Petition Sheets were all in the Sixteenth (16th) Ward rather than the Sixth (6th) Ward; so it would seem that the voters weren't confused either. In fact, Circulator Durham testified that he never noticed the error until Counsel for the Objector pointed it out at the Evidentiary Hearing. Third, there certainly was no confusion on the part of the Board as evidenced by the Service of Call, marked Group Exhibit C, as well as the categorization of this Candidate as having filed his Nomination Papers for the office of Alderman the Sixteenth (16th) Ward. Finally, the Objector failed to proffer any evidence of confusion on the part of any signers of said Petition Sheets or anyone else.
46. For the aforementioned reasons, the Hearing Officer finds that the office for which the Candidate filed his Nomination Papers can be determined by looking at the vast majority (80%) of the Nomination Petitions. In the absence of any offer of concrete factual evidence of voter confusion, the Candidates Nomination Papers should not be invalidated. Therefore, the second objection should be overruled.

THE THIRD OBJECTION: (Paragraph 4 of Objector's Petition)
The Statement of Candidacy lists the incorrect date for the Municipal General Election as February 22, 2010, not the correct date of February 22, 2011, which is also a major defect in the nominating petition.

HEARING OFFICER'S RECOMMENDED FINDING:
This Objection should be overruled. The Board has ruled that listing the incorrect date of election will not invalidate the Candidate's Nomination Papers.

HEARING OFFICER'S ANALYSIS:

47. The Statement of Candidacy in the instant case incorrectly lists the date for the Municipal General Election as February 22, 2010, not the correct date of February 22, 2011. The Objector argues that this is also a major defect in the Nominating Petition.
48. In a case in which this identical issue was addressed, the Board ruled that the Candidate's error in referring to an election in 2006 instead of the correct date of 2007 did not invalidate the candidate's nomination papers. *Robinson v. Colvin*, 07-EB-ALD-98, CBEC, January 23, 2007. The Board has also ruled that the incorrect date did not invalidate the nomination papers when the correct date could be ascertained from the reading of the nomination papers together. *Summers, et al. v. Morrow*, 04-EB-WC-09, CBEC, February 12, 2004. Moreover, the Board has ruled similarly in cases dating back to 1992. See e.g., *Ahimaz v. Sheriff*, 92-EB-WC-88, CBEC, January 29, 1992; *Gordon v. Pellet*, 92-EB-WC-93, CBEC, January 30, 1992.
49. Here, the correct election date is listed on each Petition Sheet; and it is unlikely to have created any confusion among voters since the Statement of Candidacy is not a document presented to voters. Thus, the third objection should be overruled.

THE FOURTH OBJECTION: (Paragraph 5 of Objector's Petition)
The nomination papers fail to specifically identify the office being sought, and the heading of each petition sheet is not the same. Individual petition sheets identifying an incorrect district within a set of nomination papers are legally insufficient and void.

HEARING OFFICER'S RECOMMENDED FINDING:
This Objection should be overruled. The reasons are similar to those set forth in the analysis of the second objection. However, the issue regarding the form of the petition warranted a separate discussion.

HEARING OFFICER'S ANALYSIS:

50. As is discussed above, the Candidate submitted seventy-three (73) Petition Sheets with his Nomination Papers. There were, however, fourteen (14) of the seventy-three (73) Petition Sheets that, despite having the correct language in the box entitled "Office,"

incorrectly referred to the "Sixth (6th) Ward" in the introductory paragraph. Again, such sheets are numbered 9, 17, 18, 25, 31, 32, 34, 36, 51, 58, 61, 62, 67, and 69.

51. The Objector claims that such a lack of uniformity is fatal and should result in the Petition Sheets enumerated above being declared void. The Objector bases his claim on Sections 7-10 and 8-8 of the Election Code.

52. The Petition Sheets in question include at the top of the page an introductory paragraph that states in pertinent part: "We, the undersigned, being duly qualified and registered voters of the SIXTH (6th) Ward . . . ." Immediately following that paragraph are three (3) prominent heading boxes entitled "Name, Office, and Address." Within the box for Office, the Candidate typed "ALDERMAN OF THE SIXTEENTH (16) WARD OF THE CITY OF CHICAGO STATE OF ILLINOIS."

53. Section 7-10, on which the Objector relies, governs the form of the petition when making the nominations for political parties, and includes language that no candidate for nomination "shall be printed on the primary ballot unless a petition for nomination has been filed . . . in substantially the following form" and then prescribes an introductory paragraph similar in pertinent part to the introductory paragraph the Candidate here used in his Petition Sheets. 10 ILCS 5/7-10 (Thomson Reuters, 2010).

54. Section 8-8, on which the Objector also relies, governs the form of the petition when making the nominations of members of the General Assembly and does not include any such language either suggesting or mandating an introductory paragraph as the Candidate here used in his Petition Sheets 10 ILCS 5/8-8 (Thomson Reuters, 2010).

55. However, section 10-4, which governs the form of petition for the making of nominations for independent candidates, as is actually the case here, calls for "an appropriate heading, giving the information as to name of candidate . . . the office . . . and such other information or wording as required to make same valid, and the heading of each sheet shall be the same." 10 ILCS 5/10-4 (Thomson Reuters, 2010).

56. Other than the conflicting Ward numbers on the fourteen (14) erroneous sheets, the heading on the seventy-three (73) Petition Sheets appear the same and conform to the express requirements of the Statutes discussed above. Section 10-4 does not require an introductory paragraph in the heading identifying the voters as being of a particular political subdivision. *Wilson v. Kato*, 99-EB-ALD-148, CBEC, January 29, 1999.

57. In *Wilson v. Kato*, the board held that an introductory paragraph, similar to the one in question that contains the error, was not required by Section 10-4; but rather the requirement was that the circulator's affidavit acknowledge that the signers were, to the best of their knowledge, duly registered voters of the political subdivision. *Id.*
58. This case differs from *Wilson v. Kato* in that the circulator's affidavit, on the fourteen (14) sheets, contains the same error as the heading; and while the introductory paragraph is not required, the circulator's affidavit is. Again, the conflicting Ward numbers on the same Petition Sheets create a unique situation. Unlike other cases involving lack of specification of the office sought, here the most prominent identification of the Ward identifies the correct Ward—the large boxes above the signatures; but the less prominent print, the circulator's affidavit and the introductory paragraph at the top of the page, contain the wrong Ward.
59. Another case involving related issues is *Haynes v. Smith*, 07-EB-ALD-016, CBEC, January 16, 2007. The *Haynes* case is distinguishable from the instant case because the candidate in *Haynes* completely failed to include the office he was seeking. In *Haynes v. Smith*, the Board held that "nominating petitions are intended to expand informed participation of voters in elections, and should be free from any basis of confusion as to the office for which they are being filed. A potential signatory has the right to know the specific office . . . so as to make informed decisions." *Citing* Zapolsky v. Cook County Officers Electoral Board, 296 Ill.App.3d 731, 695 N.E.2d 1329 (1st Dist. 1998).
60. With this stated purpose in mind, the Hearing Officer, therefore, suggests that the central question is not whether the headings of the Petition Sheets are in substantial compliance with the controlling Statute, but rather whether the error caused any confusion thereby depriving the signers of said Petition Sheets of informed participation in elections and their right to know of the specific office sought by the Candidate.
61. For reasons set forth in the discussion of the Second Objection (paragraph 45 above) the Hearing Officer concludes that despite the error in the heading, it is highly unlikely there was any confusion on the part of the voters. In fact, the Objector offered no evidence of any confusion on anyone's part, principally the voters. Thus, the fourth objection should be overruled.

THE FIFTH OBJECTION: (Paragraph 6 of Objector's Petition)
The Objector alleges a "pattern of fraud and false swearing" surrounding the petitions submitted by the Candidate. The names and addresses of almost all circulators were covered with "White-out" creating a strong inference and presumption that the purported circulators of the petition sheets were not the actual circulators and that the circulators of these sheets never appeared before the Notary Public; but instead presented these sheets to other persons who procured notarization after the fact.

HEARING OFFICER'S RECOMMENDED FINDING:
This Objection should be overruled. The Objector has failed to sustain his burden of providing clear and convincing evidence of a pattern of fraud.

HEARING OFFICER'S ANALYSIS:

62. The Objector's Petition pledges to present "substantial, clear, unmistakable, and compelling evidence that establishes a 'pattern of fraud and false swearing' with 'utter contemptuous disregard for the mandatory provisions of the Election Code'." The Objector's Petition urges further that "an examination of the nominating petition will reveal a pervasive and systematic attempt to undermine the integrity of the electoral process." Such revelation is one to which the Board "'cannot close its eyes and ears;'" but rather must void the Candidate's Nomination Papers. The Candidate relies on the following authority to support its assertions: *Harmon v. Town of Cicero Municipal Officers Electoral Board*, 371 Ill.App.3d 1111, 864 N.E. 2d 996, 309 Ill.Dec. 755 (1st Dist. 2007); *Canter v. Cook County Officers Electoral Board*, 170 Ill.App.3d 364, 523 N.E. 2d 1299, 1300-1301, 120 Ill.Dec. 388 (1st Dist. 1988); *Huskey v. Municipal Officers Electoral Board for Village of Oak Lawn*, 156 Ill.App.3d 201, 509 N.E. 2d 555, 556 – 558, 108 Ill.Dec. 859 (1st Dist. 1987); and *Fortas v. Dixon*, 122 Ill.App.3d 697, 462 N.E. 2d 615, 617, 78 Ill.Dec. 496 (1st Dist. 1984).
63. While it is true that the cases cited by the Objectors support the striking, in their entirety, of any sheets of a nominating petition that evidence a pattern of fraud, such fraud must be proven by clear and convincing evidence. *Durr v Love*, 03-EB-ALD-101, CBEC, February 5, 2003, *affirmed Durr v. Chicago Board of Election Commissioners*, 03 CO EL 028 (Cir.Ct.CookCty, February 20, 2003).
64. The Objectors base their "pattern of fraud" argument on the following improper activities alleged: a) The actual circulators of the sheets in question are not the purported

circulators in that the names of the actual circulators were covered with "White-out" and replaced with the names of the purported circulators; and b) the circulators never appeared in front of a notary but rather presented the sheets to others who procured notarization after the fact and out of the circulator's presence. Each of these allegations will be analyzed below.

a) "White-Out" in the Circulator's Affidavit used to conceal the identity of the actual Circulators

65. After examining the Candidate's Nomination Papers, the Hearing Officer found that there are fifty-five (55) sheets that contain "White-out" in the jurat and the name of the purported circulator written over the "White-out" with a permanent type black marker. The Petition Sheets in question are numbered 1 - 16, 22 - 57, and 62 - 64. The signature of the purported circulators appeared to be original, without "White-out" or tampering of any kind. The space where the Circulator's name would have been printed is what was covered and written over with black marker.
66. The Hearing Officer requested examination and the issuance of a report by the Board's Forensic Document Examiner, Mr. Jim Hayes, regarding what was written underneath the "White-out." Said report was issued on December 20, 2010 and stated that the "name Brenda Herron was the original entry hand printed in the area for the Circulator's name and then a white 'opaquing' material was placed over those names."
67. Ms. Brenda Herron was the Notary who notarized the Candidate's Nomination Papers. Ms. Herron ("the Notary") was called to testify on December 22, 2010 and offered testimony that she made a mistake and printed her own name in the jurat. She testified that she was nervous, that it was her first "shift" as a notary, and that she made a human error. In addition, she testified that she was not aware of the use of "White-out" to correct the mistake and was not the one who made the correction. The Hearing Officer found the Notary's testimony to be credible.
68. Circulator Harris testified that she and the Candidate discovered the error several days before the deadline for filing Nomination Papers and that she affixed the "White-out" and printed the Circulator's name over it. She testified that she only printed the name of the person who had signed each sheet before the Notary. The Hearing Officer found Circulator Harris' testimony to be credible as well.

69. The Objectors didn't present the argument, either in the Evidentiary Hearing or their written submissions, that an error or correction of an error using "White-out," in the jurat should invalidate the Nomination Sheets; therefore, the Hearing Officer omitted discussion of those issues. Rather, their argument centered upon the use of the "White-out" as evidence of a "pattern of fraud" and a "systematic attempt to undermine the integrity of the electoral process."
70. The Hearing Officer disagrees and finds that the evidence overwhelmingly proves the "White-out" was used to correct a clerical error made by the Notary.

b) The actual Circulators never personally appeared before the Notary.

71. The second allegation put forth by the Objectors is that the Circulators of the Sheets containing the "White-out" never appeared before the Notary Public to take the Circulator's Oath, but instead presented the sheets to others who later procured notarization out of the presence of the actual Circulators.
72. The Objectors, through Counsel, called Ms. Shields as their first and only witness to the alleged fraud. Ms. Shields testified that she circulated two (2) Petition Sheets numbered 48 and 50 in order to help Circulator Durham who is her boyfriend. She identified those sheets on the record as her own, despite the fact that the Circulator's affidavits were signed by Circulator Durham and Circulator Toney respectively. Circulator Durham later testified that Ms. Shields did in fact help him circulate two (2) Petition Sheets but could not remember exactly which ones. Ms. Shields testified that she "went to 56th and Morgan to 63rd and Morgan" and personally collected signatures door to door, in one day from 1:00 to 5:00 p.m.
73. Examination of Petition Sheets 48 and 50 presents several problems with that testimony. First, each of those sheets contains addresses from both sides of the streets on the Petition Sheets—odd and even numbered addresses. So unless Ms. Shields and Circulator Durham switched sides periodically, she could not have possibly walked one side of each street while he walked the other with Petition Sheets 48 and 50. Second, the addresses on those Sheets don't fit the description of the route she took. She testified that she walked Morgan St. from 56th St. to 63rd St. Yet the addresses on those Sheets would indicate that

either those were not Sheets that she circulated, or she actually walked a different route than that to which she testified. The addresses on Petition Sheets 48 and 50, when plotted on a map of the Sixteenth Ward neighborhood in question, cover an eight (8) square block area or radius. In addition, the order of addresses jump from one end of that plotted area to the other end and back. The order in which the addresses appear on these Petition Sheets does not support Ms. Shields' testimony that she walked up one side of a street going door to door, even if support for the Candidate were sporadic.

74. Finally, Circulator Durham testified under oath that Petition Sheet 48 was a sheet that he circulated, as indicated by his signature at the bottom; and Circulator Toney similarly testified that Sheet 50 was one that he alone circulated, as he never had any help. Thus, it is undisputed that Ms. Shields "assisted" Circulator Durham by collecting signatures for two (2) of his Petition Sheets, as she testified and as Circulator Durham corroborated. The question then becomes: which Petition Sheets did Ms. Shields help Circulator Durham circulate? The Hearing Officer does not believe them to be Petition Sheets 48 and 50, as asserted by the Objectors and testified to by Ms. Shields.
75. Despite this apparent conflict, the testimony given by the witnesses at the Evidentiary Hearing was largely consistent and credible. There were several facts to which the witnesses consistently testified. First, the Candidate had no knowledge of the Circulator Durham's delegation of his duties. Several Circulators testified that as soon as the Candidate became suspicious that Circulator Durham might be seeking assistance from Ms. Shields, he told Circulator Durham that he did not want her to assist and that he must circulate his own Petition Sheets. Ms. Shields even testified that the Candidate had no knowledge of her and that she didn't know she was helping gather signatures for the Candidate.
76. Second, the Circulators testified consistently that they circulated the Petition Sheets they signed; and they personally appeared before the Notary. The Notary's testimony corroborated that the Circulator whose name appeared at the bottom of each sheet appeared before her and signed in her presence, after presenting proper identification.
77. Finally, the last consistent piece of testimony was that the petitions were turned in to the Candidate upon completion and then later signed by the Circulator when the Notary was available from time to time. When questioned as to how, after having their Petition

Sheets returned to them to procure notarization they could be sure that the Sheets were their own, they all responded that they knew where they had gone. Certainly such a system of procuring notarization seems inefficient, careless and could lead to discrepancies and even fraud. However, the Objector failed to provide any evidence that such a system did in fact result in a pattern of fraud.

78. Therefore, at issue is whether the two (2) Petition Sheets are subject to invalidation as a result of not having been actually circulated by the Circulator who signed them, but by a friend enlisted to help; and if so which Petition Sheets should be invalidated. The Hearing Officer suggests that the answer to the first part of this inquiry is yes; when faced with testimony from both the purported Circulator and the actual Circulator that the affiant is not the person who actually circulated the Petition Sheets, the Sheets in question should be invalidated. However, here, the answer to the second question precludes that result—which ones?

79. The Hearing Officer does not believe it is necessary to thoroughly investigate or analyze each of the Petition Sheets in an attempt to determine which two (2) Sheets to possibly strike because even if such sheets were stricken in their entirety, the Candidate would still have seventy-one (71) unchallenged Petition Sheets—well over the statutory requirement to be placed on the ballot. In fact, the Candidate would have enough unchallenged signatures to remain on the ballot even if all twenty-six (26) of Circulator Durham's Petition Sheets were invalidated. In any event, the Hearing Officer believes the responsibility of accurately identifying the "tainted" Petition Sheets lies with the Objector.

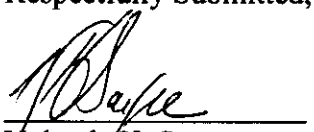
80. Therefore, the analysis proceeds to the ultimate issue raised by this objection: whether evidence that would support the invalidation of two (2) out of seventy-three (73) Petition Sheets amounts to clear and convincing evidence of a "pervasive and systematic attempt to undermine the electoral system" so as to invoke the doctrine of *Fortas v. Dixon, Supra*, and its progeny and invalidate the Candidate's Nomination Papers as a whole.

81. In *Fortas v. Dixon*, there was un-rebutted testimony that someone other than the affiant had circulated specific petitions; and in one instance the circulator used "White-out" to conceal the identity of the actual circulator, rather than to correct a clerical error. *Supra*, at 701. Here, Circulator Durham really believed he could subcontract out some of his

duties. His false attestation on those two (2) unidentified Sheets could be attributed more to ignorance than to any conscious attempt to undermine the electoral process. In fact, he admitted getting Ms. Shields' help as opposed to trying to cover it up.

82. In *Durr v. Chicago Board of Election Commissioners*, the Circuit Court affirmed the Board's refusal to find a pattern of fraud despite the invalidation of eleven (11) petition sheets due to the fact that the purported circulator was not the actual circulator. 03 CO EL 028 (Cir.Ct.CookCty, 2003). Recent cases where the evidence presented was deemed to rise to the level of a "pattern of fraud" have involved conduct considered egregious, have had a great deal more evidence proffered to support those allegations, and usually involve the complicity of the Candidate him / herself. *See e.g.*, *Mitchell v. Cook County Officers Electoral Board*, No. 1-10-0002 (March 5, 2010) (Where the Candidate presented sheets already signed by the circulators to the notary without the circulators being present. Although the candidate was allowed to remain on the ballot, her conduct supported finding of a "pattern of fraud."); *Harmon v. Town of Cicero Municipal officers Electoral Board*, No. 1-07-0499 (March 16, 2007) (Where, in addition to invalidated signatures and petition sheets, the circulator was found to have lied under oath regarding being coached by the Candidate as to how to testify at the hearing.)
83. The recent Board decision Moreno v. Delgado, 08-EB-SS-01, CBEC, December 17, 2007, described it best in that "a 'pattern' must be a regular, intentional and an organized framework used with the purpose of undermining the electoral process."
84. The Hearing officer finds that the Objector has failed to sustain his burden of proof to support the allegation that the Candidate engaged in a "pattern of fraud and false swearing" with an "utter and contemptuous disregard for the mandatory provisions of the Election Code." Likewise, the evidence failed to reveal a "pervasive and systematic attempt to undermine the integrity of the electoral process," so as to invalidate the Candidate's Nomination Papers as a whole per the Objector's request. For the aforementioned reasons, the fifth objection should be overruled as well.
85. In light of the recommended findings specified for each objection set forth above, the Hearing Officer recommends that the OBJECTIONS of DWAYNE BURGESS be OVERRULED and that the NOMINATION PAPERS of RONALD MITCHELL be deemed VALID.

Respectfully Submitted,



Yolanda H. Sayre
Hearing Officer