NBCOFF-ALD

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

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| Objections of: Marie J. Wohadlo | ) | |
| | ) | |
| | ) | |
| To the Nomination | ) | No.: 11-EB-ALD-088 |
| Papers of: Sylvester "Junebug" Hendricks | ) | |
| | ) | Related Case: 11-EB-ALD-066 |
| Candidate for the office of | ) | |
| Alderman of the 5th 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 Marie J. Wohadlo ("Objector") to the nomination papers ("Nomination Papers") of Sylvester "Junebug" Hendricks, candidate for the office of Alderman of the 5th 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 William P. Jones 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, Marie J. Wohadlo, by attorney, Andrew Finko; and the Candidate, Sylvester "Junebug" Hendricks, pro se.

7. The Hearing Officer has tendered to the Electoral Board his report and recommended decision. The Hearing Officer recommends that the Objections to the Candidate's Nomination Papers be sustained and that the Nomination Papers be found invalid.

8. 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 report and recommendations is attached hereto and is incorporated herein as part of the decision of the Electoral Board.

9. The Electoral Board further finds that homelessness does not preclude a person who is otherwise eligible from running for elective municipal office.

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

11. The Electoral Board further finds that objections to the Candidate's Nomination Papers in Related Case 11-EB-ALD-066 were earlier withdrawn.

IT IS THEREFORE ORDERED that the Objections of Marie J. Wohadlo to the Nomination Papers of Sylvester "Junebug" Hendricks, candidate for election to the office of Alderman of the 5th Ward of the City of Chicago, are hereby SUSTAINED and said Nomination Papers are hereby declared INVALID and the name of Sylvester "Junebug" Hendricks, candidate for election to the office of Alderman of the 5th Ward of the City of Chicago, SHALL NOT be printed on the official ballot for the Municipal General Election to be held on February 22, 2010.

Dated: Chicago, Illinois, on January 3, 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.**

**BEFORE THE CHICAGO BOARD OF ELECTION COMMISSIONERS**

**Hearing Officer's Report**

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| MARIE J.WOHADLO, | ) | |
| | ) | |
| Objector, | ) | |
| | ) | No. 11-EB-ALD-088 |
| vs. | ) | |
| | ) | |
| SYLVESTER "JUNEBUG" HENDRICKS, | ) | |
| | ) | |
| Candidate. | ) | |

BOARD OF ELECTION
POLLING PLACE
2010 DEC 23 P 3:46

**HEARING OFFICER'S FINDINGS AND RECOMMENDATIONS**

1. The initial hearing was called on December 6, 2010 at approximately 1:30 p.m. The Candidate appeared *pro se*. The Objector was represented by legal counsel, Andrew Finko.

2. The Candidate stated he wished to file a Motion to Dismiss. A Rule 5 briefing schedule was ordered and the matter was set for 10:30 a.m. on December 15, 2010 for hearing on the Candidate's Motion to Dismiss. Also, a directive for a Records Examination was issued and thus the December 15, 2010 date was for purposes of the status of the Records Examination.

3. At some time between hearings, the Candidate approached the hearing officer at the site of the hearings which hearing officer utilized. This approach was on December 13, 2010 at a time not scheduled for hearing on this matter. The hearing officer informed the Candidate that no ex parte conversations must occur. At this time the Candidate stated he was going to file a Motion to Continue the December 15, 2010 hearing date because he had a court appearance in Room 1504 in the Daley Center. I suggested to the Candidate that he file his Motion on the 6th Floor and that he send copies of his Motion to his opponents. I suggested to the Candidate that

because the Daley Center appearance was at 9:30 a.m. and that our hearing was at 10:30 on December 15, 2010, he could still make both appearances. I suggested to him that he place a call from his cell phone from Room 1504 to Objector's counsel to let us know his availability.

4. On December 15, 2010 at approximately 10:00 a.m. during the pendency of the hearings before me in *Hemphill, Wohadlo, and Brummit v. Tankersley*, ALD 64, 92, 149, the hearing officer observed Candidate Hendricks speaking to Attorney Finko. After a short conference with Attorney Finko, the Candidate left the room and did not return.

5. This matter was called for additional hearing at 10:30 a.m. on December 15, 2010. The hearing officer informed the Objector's counsel of the facts contained in Paragraph 3 above.

6. Attorney Finko reported that Candidate Hendricks had told him that the Candidate could not appear for hearing because he had to attend a funeral.

7. During this hearing, counsel for Objector stated that they had not received a copy of Candidate's Motion for Continuance. It was also noted that the Motion did not state that a justification for a continuance was the attendance at a funeral, but solely the 9:30 a.m. court appearance in Room 1504 of the Daley Center. Over Objectors' objections, the matter was continued to 12:30 p.m. on December 17, 2010, for the purpose of the hearing on the Candidate's Motion to Dismiss and hearing to determine the status of the Records Examination.

8. On December 17, 2010 the matter was called for further hearing. The Petition Summary Report was marked and admitted as Board Group Exhibit E. The Board found 206 valid signatures. The minimum valid signatures required is 181.

9. During the December 17, 2010 hearing, the Candidate presented argument based upon his Motion to Dismiss. The Objector responded orally. The hearing officer denied the

Candidate's Motion to Dismiss primarily because the arguments of Candidate are such that they be heard at the time of the evidentiary hearing upon the Objector's Petition. Concomitantly, Candidate's Motion did not contain reasons to hold that the Objector's Petition was legally insufficient.

10. The matter was continued to December 21, 2010 at 9:30 a.m. for purposes of conducting and completing the evidentiary hearing on the Objector's Petition.

11. This matter was called for hearing at 9:30 a.m. on December 21, 2010. It was noted that the Objector had not filed Rule 7 or Rule 8 Motions. At this time the Candidate stated he had filed a Motion to Dismiss the Objector's Petition. Objector's Attorney, Mr. Finko, noted that he had not received a copy of this Motion, which Motion had been filed at the Board on December 17, 2010. The Candidate stated that he had sent the Motion to Attorney Finko by facsimile transmission. The hearing officer requested that the Candidate present evidence that any facsimile transmission had indeed been accepted and delivered to Attorney Finko's office. After approximately 10 minutes of searching his materials, the Candidate acknowledged he did not have evidence of delivery. The hearing officer noted that the Candidate had failed to sign the certification on the portion of the Motion for proof of service of delivery to Attorney Finko. Objector's counsel objected to the Motion for failure to serve copies to the Objector's counsel. The hearing officer struck the Motion on the grounds that the evidence, or lack of evidence, establishes that the Candidate violated the Rules of Procedure in that the Candidate did not serve his opponent with a copy of the Motion. Secondly, the Motion was stricken on the basis that upon review by the hearing officer the Motion's contents were legally immaterial. Thirdly, Candidate's Motion was found by the hearing officer not to be Rule 7 or Rule 8 Motions.

12. At this time, the evidentiary hearing upon Objector's Petition was commenced. Objector marked and sought admission of Objector's Exhibit A, being certified records from the Chicago Board of Election Commissioners. These records contain a copy of the original registration card and voter information. On page 3 of Objector's Exhibit A is the form signed by the Candidate. Item #3 on page 3 of Exhibit A is the "mailing address" the Candidate has inserted as "P.O. Box 289292, Chicago, IL 60628-9292". At this time Objector's Exhibit A was admitted over objection by the Candidate.

13. The Objector (in the absence of the Candidate's Nomination Papers in the Board File, Board Group Exhibit A) made an offer proof that Board Group Exhibit A contains a number of documents which all include the mailing address of P.O. Box 289292, namely:

a. Receipt of filing (Statement of Economic Interests);

b. Cook County Contact Information Sheet;

c. Statement of Economic Interests;

d. Appearance of Candidate Hendricks (Board Group Exhibit D); and

e. The motions and papers filed within the Board's File.

14. The Objector marked and sought admission of Objector's Exhibit B, a document from the United States Postal Services. The Objector called the Candidate as a witness. The Candidate refused to be sworn in and to act as a witness. The Candidate stated that he will not be sworn in as a witness because Attorney Finko may not be sworn in to act as a witness. Over objection of the Candidate, Objector's Exhibit B was admitted. Attorney Finko represented that this two-page document demonstrates that the Post Office Box for addresses with a zip code of 60628 is located at 11033 South State Street, Chicago, Illinois.

15. The Objector marked and sought admission of Objection's Exhibit C, a one-page document from the Office of the City Clerk, City of Chicago. This document depicts the ward boundaries to the 9th Ward. This document establishes that the east side of South State Street at 11033 South is in the 9th Ward. The Objector stated that in Chicago odd numbered addresses are located on the east side of the street. The hearing officer sua sponte took judicial notice of this fact. Objector's Exhibit C was admitted over objection of the Candidate.

16. For demonstrative purposes and without the document being marked, the Objector presented a Ward Map published by the City of Chicago. This document establishes that the 11033 South State Street address is in the 9th Ward or, alternatively that this document establishes that the address is not in the 9th Ward, it can only be in the 34th Ward and thus, under either analysis, the address is not in the 5th Ward.

17. The Objector stated that based upon the contents of the documents presented, the Candidate is not eligible to be a candidate for the office of Alderman of the 5th Ward.

18. Additionally, Objector argued that a homeless individual cannot be a candidate for alderman because such an individual does not have a permanent abode. Finally, Objector cited *Davis v. Hendon*, No. 02-EB-55-09 (3/19/02) and *Kozel v. State Board of Elections*, 126 Ill.2d 58, 533 N.E.2d 796 (1988), presumably on the scope of the Board's authority within the context of a Motion to Dismiss.

19. At this time the Candidate made his presentation. The Candidate referred to Item #3 in Objector's Exhibit A and argued that a post office box was listed. With respect to Objector's Exhibit B, the Candidate stated that "nobody can reside at a post office box". With respect to Objector's Exhibit C, the Candidate stated "it is moot". The Candidate offered to be admitted a one-page document which the Candidate stated listed him as a registered voter by the

Chicago Board of Elections, covering the period of October 12, 1998 to June 5, 2006. The Objector objected to admission of this document because, among other reasons, the relevant time period per Illinois statute is limited to the one year preceding the February 22, 2011 election date. The hearing officer sustained the objection to admission of this document. The hearing officer indicated that notwithstanding the denial of admission of the document, the document could be marked and the Candidate could make an offer of proof. At this point the Candidate began describing additional offerings that were similar to the first document and that those documents described would be outside the relevant and material one-year preceding the election. The hearing officer rescinded the offer of proof on the first proffered document and on any other similar document unless and until the Candidate could demonstrate that the contents were within the relevant time period. The Candidate did not seek to admit other relevant evidence. Several times the Candidate mis-stated the hearing officer's evidentiary rulings. The Candidate was given an opportunity to seek to admit additional evidence, such as a driver's license, but the Candidate refused.

20. The hearing office makes the following findings of fact:

    a. The Candidate, in his papers and other documents in the Board File, has admitted being a homeless individual;

    b. The Candidate, in his papers and other documents in the Board File, has admitted having a mailing address of Post Office Box of 289292, Chicago, Illinois 60628-9292;

    c. The hearing officer finds that the United States Post Office location for Post Office Box 289292, Chicago, Illinois 60628-9292 is 11033 South State Street;

d. The hearing officer finds that the address of 11033 South State Street is located in the 9th Ward of the City of Chicago and is not located in the 5th Ward;

e. Therefore, the hearing officer finds that the mailing address of the homeless Candidate is in the 9th Ward and not the 5th Ward.

21. The hearing officer renders the following conclusions of law:

a. 10 ILCS 5/3-2(b) applies to this matter which Section states in pertinent part:

> A homeless individual must have a mailing address in order to be eligible to register to vote. For purposes of this Act, a mailing address shall constitute a homeless individual's residence for voting purposes...

b. 65 ILCS 5/3.1-5-5(a), (c) apply to this matter, which sections state in pertinent part:

> A person is not eligible for an elective municipal office unless that person is a qualified elector of the municipality and has resided in the municipality at least one year next preceding the election...
>
> A person is not eligible for the office of alderman of ward unless that person has resided in the ward that the person seeks to represent.

c. 65 ILCS 20/21-14(a) applies to this matter, which Section states in pertinent part:

> No member may be elected or appointed to the City Council after the effective date of this Mandatory Act of the 93rd General Assembly unless he or she has resided in the ward he or she seeks to represent at least one year next preceding the date of the election or appointment... (emphases added)

d. The Candidate is not a qualified elector under the "homeless" statute;

e. The Candidate through his mailing address in the 9th Ward has failed to establish sufficient residency in the 5th Ward in the year next preceding the February 22, 2011 election; and

f. The Candidate is not eligible and not qualified to be a candidate for the office of Alderman of the 5th Ward of the City of Chicago.

22. For all the foregoing reasons, the hearing officer recommends that the name of Sylvester "Junebug" Hendricks not appear on the ballot for candidate of the office of 5th Ward Alderman of the City of Chicago.

23. Finally, as the result of the recommendation of Paragraph 22 above, the hearing officer does not need to address Objector's allegations that a homeless individual has no permanent abode so therefore cannot be a candidate for Alderman.

Date: December 23, 2010

Hearing Officer
William P. Jones