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

Objections of: GERALDA MORGAN	)	
	)	
	)	
To the Nomination	)	No.: 20-EB-RGA-013
Papers of: MARLO BARNETT	)	
	)	
	)	
Candidate for the nomination of the	)	
Democratic Party for the office of	)	
Representative in the General Assembly, 27th	)	
Representative District of the State of Illinois	)	

FINDINGS AND DECISION

The duly constituted Electoral Board, consisting of Board of Election Commissioners for the City of Chicago, Commissioners Marisel A. Hernandez, William J. Kresse, and Jonathan T. Swain, organized by law in response to a Call issued by Marisel A. Hernandez, Chair of said Electoral Board, for the purpose of hearing and passing upon objections ("Objections") of GERALDA MORGAN ("Objector") to the nomination papers ("Nomination Papers") of MARLO BARNETT, candidate for the nomination of the Democratic Party for the office of Representative in the General Assembly, 27th Representative District of the State of Illinois ("Candidate") at the General Primary Election to be held on March 17, 2020, having convened on December 16, 2019 at 9:00 a.m., in Room 800, 69 West Washington Street, Chicago, Illinois, and having heard and determined the Objections to the Nomination Papers in the above-entitled matter, finds that:

1. Objections to the Candidate's Nomination Papers were duly and timely filed.

2. The Electoral Board was constituted according to the laws of the State of Illinois.

3. A Call to the hearing on said Objections was duly issued by the Chair of the Electoral Board and served upon the members of the Electoral Board, the Objector and the Candidate, by registered or certified mail and by Sheriff's service, as provided by statute or service was waived.

4. A public hearing held on these Objections commenced on December 16, 2019 and was continued from time to time. The Electoral Board assigned this matter to Hearing Officer Joseph A. Morris for further hearings and proceedings.

5. 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, GERALDA MORGAN, through her Attorneys, JAMES HARTMANN and MICHAEL KASPER; and the Candidate, MARLO BARNETT, through her Attorney, ERIC M. WHITE.

6. The sole objection in this case alleged a lack of proper residency by the Candidate. Thus, no records examination was necessary, but the Hearing Officer did conduct an evidentiary hearing and accepted oral arguments

7. The Hearing Officer has tendered to the Electoral Board a report and recommended decision. Based upon the evidence presented, the Hearing Officer found that the Candidate was not a lawful resident of the 27th Representative District for the requisite two-year period prior to the election. The Hearing Officer found, therefore, that the Candidate's Nomination Papers are legally invalid.

8. The Electoral Board, having considered the evidence and arguments tendered by the parties and the Hearing Officer's report of recommended findings and conclusions of law, hereby adopts the Hearing Officer's recommended findings and conclusions of law and incorporates them herein by this reference, except as follows.

9. The Electoral Board disagrees with the Hearing Officer's conclusion of law stated in paragraph 60(b) of the Hearing Officer's report. The Electoral Board hereby finds that the Candidate maintained his lawful residency within the 35th Representative District until such time as he abandoned that residency by establishing a new lawful residency within the 27th Representative District on or about July 1, 2019, as stated in paragraph 60(c) of the Hearing Officer's report. This is the only exception to the Electoral Board's adoption of the Hearing Officer's report and recommended decision, and this exception does not affect the overall outcome of the case. For all the above reasons, the Electoral Board does adopt the Hearing Officer's recommendation that the Candidate's nomination papers be found legally invalid.

10. For the reasons stated above, the Electoral Board finds that the Objections filed in this matter should be sustained and that the Candidate's Nomination Papers are invalid.

[Continued on next page.]

IT IS THEREFORE ORDERED that the Objections of GERALDA MORGAN to the Nomination Papers of MARLO BARNETT, candidate for the nomination of the Democratic Party for the office of Representative in the General Assembly, 27th Representative District of the State of Illinois, are hereby SUSTAINED and said Nomination Papers are hereby declared INVALID and the name of MARLO BARNETT, candidate for the nomination of the Democratic Party for the office of Representative in the General Assembly, 27th Representative District of the State of Illinois, SHALL NOT be printed on the official ballot for the General Primary Election to be held on March 17, 2020.

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

Marisel A. Hernandez, Chair

William J. Kresse, Commissioner

Jonathan T. Swain, Commissioner

NOTICE: Pursuant to Section 10-10.1 of the Election Code (10 ILCS 5/10-10.1) a party aggrieved of this decision and seeking judicial review of this decision must file a petition for judicial review with the Clerk of the Circuit Court of Cook County within 5 days after service of the decision of the Electoral Board.

BEFORE
THE BOARD OF ELECTION COMMISSIONERS OF THE CITY OF CHICAGO
AS THE DULY CONSTITUTED ELECTORAL BOARD
FOR THE HEARING AND PASSING UPON OBJECTIONS
TO NOMINATION PAPERS OF CANDIDATES
FOR THE MARCH 17, 2020, GENERAL PRIMARY ELECTION
FOR THE NOMINATION OF THE DEMOCRATIC PARTY
FOR THE OFFICE OF
REPRESENTATIVE IN THE ILLINOIS GENERAL ASSEMBLY
FOR THE 27th REPRESENTATIVE DISTRICT

GERALDA MORGAN,	)	
	)	
Objector,	)	
	)	No. 19-EB-RGA-013
vs.	)	
	)	Hearing Officer Morris
MARLO BARNETT,	)	
	)	
Candidate.	)	

REPORT OF THE HEARING OFFICER

To the Board of Election Commissioners of the City of Chicago:

Hearing Officer JOSEPH A. MORRIS reports as follows:

Introduction

1. In this case a candidate removed her abode from one State Representative District to another in plenty of time to satisfy the physical presence dimension of the Illinois Constitution's requirement that she reside in the latter district for at least two years prior to being elected to represent it in the General Assembly. After moving, however, she did not re-register to vote or update her voter registration for some 14 months. What is more, during those 14 months she voted at a polling place in her former district, associated with the address of her former dwelling place in that district, in three elections — in fact, in every election that has been held since she moved out

of her old district and into her new one. Objector contends that, regardless of where Candidate dwelt in a physical sense, her voting record maintained her residence in her former district until far too late for her to be qualified for election from her new district in November 2020. Objector invokes the decision of the Illinois Appellate Court in *Neely v. Board of Election Commissioners*, 371 Ill.App. 3d 694, 863 N.E.2d 795 (Ill.App. 1st Dist.), *app. den.*, 224 Ill.2d 577, 871 N.E.2d 56 (2007), in support of that proposition. Yet *Neely* was a case in which there was evidence of the candidate's physical presence in both districts, and the Neely court relied on the candidate's voting history to show that the candidate himself, by voting in one place rather than in the other, had made a dispositive election between the two of them as to his place of residence. In this case, by contrast, there is no evidence whatsoever that, after moving, Candidate retained any physical connection at all to the place that had been her residence. The question for this Board, then, is, when all the evidence of physical presence supports the Candidate's claim that she will have resided for more than two years in her new district, and yet during those two years she has voted elsewhere, can it be concluded that she has been a resident of her new district, for purposes of meeting the Constitutional residency test, for the entirety of those two years?

Procedural Background

2. Candidate's nomination papers were seasonably filed with the Illinois State Board of Elections on November 25, 2019. *See* Candidate's Nomination Papers, Board Group Exhibit A. In those papers she declared her candidacy for State Representative for the 27th Representative District of Illinois and she stated that she then resided at 1249 West 97th Street in the City of Chicago, Cook County, Illinois, *ibid.* a place that, it is undisputed, is situated within the 27th Representative District. She further stated, "I am legally qualified to hold such office". *Ibid.*

3. Objector's Petition was seasonably filed on December 9, 2019. *See* Objector's Petition, Board Group Exhibit A. The gravamen of Objector's Petition is set forth in its fifth and sixth paragraphs as follows:

> The Candidate's Nomination Papers are invalid because the Candidate is not qualified for the office of Representative in the General Assembly because he [*sic*] does not satisfy the residency requirements of Article IV, Section 2(c) of the Illinois Constitution, which provides that a person is ineligible for the Office unless that person has been a resident of the applicable district for the two years preceding the election.

and

> The Candidate is not eligible to be elected to the Office because ...the Candidate voted from an address outside the 27th Representative District within the two years preceding the November, 2020 election.

Ibid.

4. This matter came before the Hearing Officer, pursuant to notice, for initial hearing on December 16, 2011. The Objectors were present by counsel, Michael J. Kasper and James Hartmann. The Candidate was present in her proper person, and she filed a written appearance *pro se*. Within a day her appearance was supplemented by that of her counsel, Eric M. White. During the course of these proceedings Mr. White was injured, sustained a broken leg, was hospitalized, had surgery, and commenced a period of convalescence. Mr. White physically appeared at only one hearing held in this proceeding, the hearing on Candidate's Motion to Strike and Dismiss the Objector's Petition, at which he argued orally. Despite his injuries, hospitalization, and physical incapacitation, however, Mr. White participated in all proceedings held in this case, taking part in every other hearing by telephonic connections. He also filed and served a variety of required and elective written submissions, all of them timely, notwithstanding his physical travails, and at no time were these proceedings continued or delayed on his account. If the election bar awarded the

equivalent of a Purple Heart, Mr. White would have earned it.

5. It appeared from the Sheriff's returns of service that there had been regular and timely service of process upon the Objectors and the Candidate. This was confirmed by the parties, who acknowledged timely receipt of the Call and of notice of the proceeding, and who orally waived any objections to such notice. The parties filed, and exchanged with each other, their written appearances and all counsel agreed to service by electronic mail. All participants executed and filed the necessary non-disclosure and confidentiality agreements regarding the protection of private personal information that might be disclosed in the course of proceedings.

6. Without objection, the Candidate's nomination papers for the office of Representative in the General Assembly for the 12th State Representative District were admitted into the record as Board Group Exhibit A; the Objectors' Petition and attachments were admitted into the record as Board Group Exhibit B; the returns of service of process by the Sheriff of Cook County, Illinois, were admitted into the record as Board Group Exhibit C; and the parties' written appearances and written non-disclosure and confidentiality agreements were admitted into the record as Board Group Exhibit D.

Ultimate Issues Involved

7. The parties agreed that there was no issue in the case regarding the number or sufficiency of valid petition signatures and, so, no records examination was directed.

8. It was further agreed that the sole issue in the case was the question of whether or not the Candidate met the Illinois Constitution's two-year residency requirement.

Candidate's Motion to Strike and Dismiss

9. The Candidate filed a Motion to Strike and Dismiss the Objectors' Petition pursuant

to Rule 5 of the Rules of the Electoral Board. Briefing was held thereon, with the Objector filing a response and the Candidate filing a reply. Oral argument on the motion was held on December 23, 2019.

10. The Candidate sought to strike and dismiss the Objector's Petition on three grounds: (a) Substantial evidence supports the contention that, in and after April 2018, Candidate had established a physical presence in the 27th Representative District. In addressing this point, Candidate attached to her motion various exhibits that sought to document the Candidate's physical presence in the 27th Representative District. Meanwhile, attached to Objector's response was a copy of the Board's record of the Candidates' registration and voting history. (b) Objector's Petition referred in many places to Candidate, who is of the female sex, with a masculine gender pronoun such as "he". Candidate contended that this created confusion as to the identity of the Candidate whose nomination papers were challenged. (c) Objector's Petition stated, at Paragraph 5, that "he [Candidate] has not been a resident of the 32nd Representative District for the two years that will precede the November, 2020 General Election". *See* Objector's Petition, ¶5, Board Group Exhibit A.

11. As for the first ground in Candidate's motion, the purpose of a motion to strike and dismiss under Rule 5 of the Rules of the Electoral Board is "to challenge the legal sufficiency of the objector's petition". *See* Rule 5(b). A preliminary motion under Rule 5 is analogous to a motion with respect to pleadings brought in a civil action under Section 2-615 of the Illinois Code of Civil Procedure, 735 ILCS § 2-615, under which an adverse party may seek "that a pleading or portion thereof be stricken because substantially insufficient in law...." or a motion brought under Rule 12(b)(6) of the Federal Rules of Civil Procedure under which an adverse party might test whether

or not a pleading is defective for "failure to state a claim upon which relief can be granted". If a challenge to an objector's petition asserts that the objection "is barred by other affirmative matter avoiding the legal effect of or defeating the claim", as would be raised by a motion for involuntary dismissal under Section 2-619 of the Illinois Code of Civil Procedure, 735 ILCS § 2-619, or by a motion raising "matters outside the pleadings" that would be treated as a motion for summary judgment under Rule 12(d) of the Federal Rules for Civil Procedure, the matter is not properly decided on a preliminary motion under Electoral Board Rule 5. Thus, questions requiring findings of fact or otherwise going to ultimate factual questions in the case, are not cognizable under Rule 5, but must abide a hearing on the merits of the objector's petition. For that reason questions regarding the Candidate's physical abodes and the Candidate's registration and voting history were not decided on the Candidate's motion under Rule 5.

12. It appears that the Objector did use an inapposite pronoun in various places throughout the Objector's Petition. The reasons for this are not obvious, and they were never explained on the record of this case. One may speculate that it happened as a typographical error, or because boilerplate text borrowed from a pleading in another case was never adequately proofread, or because of doubt or error as to Candidate's actual sex or uncertainty as to with which sex the name "Marlo" is ordinarily associated. Such speculation is uninstructive, save to highlight that there is no indication that the error was anything other than an innocent one, and that it had no scandalous or prejudicial effect. In any event, the Illinois Statute on Statutes, 5 ILCS § 70/1.04, provides useful guidance in interpreting statutory texts, which may be imported for the interpretation of other texts that must be carefully scrutinized, when it provides: "Words importing the masculine gender may be applied to females." In the end, the use of an erroneous pronoun, however

infelicitous, left no doubt as to the identity of the Candidate or as to the substance of the Objector's contentions regarding defects in the Candidate's nomination papers.

13. The averment set forth Paragraph 5 of the Objector's Petition, that "he [Candidate] has not been a resident of the 32nd Representative District for the two years that will precede the November, 2020 General Election", also worked no prejudice against the Candidate. In fact, it stands as a statement of fact with which both Objector and Candidate agree: Candidate had not been, and in fact never was, a resident of the 32nd Representative District, and any considerations regarding the 32nd Representative District are completely irrelevant to the issues actually present in this case. An allegation that is true and irrelevant, and that does no harm and works no prejudice to Candidate, is at most surplusage. It left no doubt as to what was actually at issue in this case: Whether or not for the requisite two-year period, Candidate will have been a resident of the 27th Representative District.

14. For these reasons, the Motion to Strike and Dismiss was denied. The parties were directed to exchange lists of witnesses, lists of exhibits, and exhibits, and they both did so seasonably, on or before December 30, 2019. The matter was then set down for an evidentiary hearing on January 3, 2020.

Trial

15. The evidentiary hearing was held on January 3, 2020,. The Objector was present by counsel. The Candidate appeared in her proper person and her counsel attended via a telephone and speakerphone arrangement. At several times during the proceedings the Hearing Officer confirmed that the telephonic arrangement continued to work, that Candidate's counsel could hear everything and, in turn, was heard, and that exhibits and events in the hearing room were described in such a

way that counsel, despite his remote location, could understand what they were. *See, e.g.,* Tr. at 2-3, 5, 10, 11-12, 16, 19, 40-41, 66-67, 78-79, and 99. The hearing was open to the public. A motion to exclude witnesses was made and was granted.

16. Opening statements were waived by both parties.

17. Testimony was taken from the following four witnesses, each of whom duly put upon oath or affirmation to tell the truth, the whole truth, and nothing but the truth:

(a) The Candidate, Marlo Barnett, called by the Objector (in its case in chief for direct examination as an adverse witness) and called again by the Candidate (in her case in chief).

(b) Lamarlo Tyler, called by the Candidate.

(c) Joshua Barnett, called by the Candidate.

(d) Sylvia Jones, called by the Candidate.

18. Each party had an opportunity to examine each witness on initial examination, on re-examination, and, where requested, on re-re-examination.

19. The following exhibits were received into evidence and made part of the record:

(a) Board Group Exhibit A, consisting of the Candidate's nomination papers, including voter petition sheets.

(b) Board Group Exhibit B, consisting of the Objector's Petition.

(c) Board Group Exhibit C, consisting of returns of service of the Objector's Petition and of the call and notice of the initial hearing.

(d) Board Group Exhibit D, consisting of the written appearances filed on behalf of the parties and exchanged with each other and of the confidentiality and

non-disclosure agreements executed by the Candidate, when she appeared *pro se*, and by all counsel.

(e) Objector's Exhibit A, consisting of a four-page document setting forth the Board's registration and voting record of the Candidate, certified by Lance Gough, the Board's Executive Director, on December 18, 2019.

(f) Candidate's Group Exhibit A, consisting of the first (and sometimes other) pages of Xfinity bills, all addressed to the Candidate at 1279 West 97th Street, Chicago, Illinois 60643-1415, dated on or about April 25, 2018, June 18, 2018, July 19, 2018, August 18, 2018, September 18, 2018, October 19, 2018, November 18, 2018, December 19, 2018, January 18, 2019, February 18, 2019, March 21, 2019, April 18, 2019, May 19, 2019, May 29, 2019, June 18, 2019, July 19, 2019, August 18, 2019, September 18, 2019, October 19, 2019, and November 18, 2019.[1]

(g) Candidate's Group Exhibit B, consisting of the first (and sometimes other) pages of Commonwealth Edison bills, all addressed to the Candidate at 1279 West 97th Street, Chicago, Illinois 60643-1415, dated on or about July 13, 2018, August 14, 2018, September 12, 2018, October 12, 2018, November 12, 2018, February 15, 2019, March 18, 2019, April 16, 2019, May 15, 2019, June 13, 2019, July 15, 2019, August 14, 2019, September 12, 2019, October 14, 2019, November 11, 2019, November 12, 2019, and December 12,

[1] The reasons for and significance of the issuance of two Xfinity bills in May 2019 was not explored during the examination of any witness or in closing statements.

2019.[2]

(h) Candidate's Exhibit C, consisting of an e-mail message sent by Julie Lopez, identified in Candidate's testimony (Tr. at 33, testimony relating to the same person there identified as the author of the communication set forth as Exhibit J, discussed *infra*) as a representative of her former landlord at 10435 South Church Street in Chicago, to Candidate on April 2, 2018, stating, in pertinent part, "[Y]ou are scheduled to move out [from 10435 South Church Street] on April 30, 2018".

(i) Candidate's Exhibit D, consisting of an e-mail message sent by Carl Lowe, identified in the exhibit as a realtor, to Candidate on April 13, 2018, telling her to expect to receive the same day a request for Candidate's "consent to complete the credit and background checks for 1249 W. 97th rental". In her testimony Candidate described Exhibit D as "a rental application for the 1249 West 97th Street address". Tr. 29. A facial inspection of the document shows that it is not a "rental application" as that phrase is commonly understood, but the document and the substance of the communication it conveyed certainly relate to an application to rent property and, in particular, to the property at 1249 West 97th Street.

(j) Candidate's Exhibit E, consisting of an e-mail message sent by an unnamed person or persons at customerservice@myrental.com to Candidate on April

[2] The reasons for and significance of the issuance of two Commonwealth Edison bills on consecutive days in November 2019 was not explored during the examination of any witness or in closing statements.

13, 2018, informing her that "We have sent your reports to the landlord for rental property: 1249 W. 9th St. Chicago, IL 60643 The landlord will review the screening and make a decision...."

(k) Candidate's Exhibit F, consisting of an e-mail message from Julie Lopez sent to Candidate on April 18, 2018, seeking Candidate's "availability to schedule a Pre-Move-Out Inspection...."

(l) Candidate's Exhibit G, consisting of a one-page contract, bearing No. 21507412 and dated April 27, 2018, between U-Haul (whose agent was Daniel Thomas), with premises at 12326 South Halsted Street in Calumet Park, Illinois, and Candidate relating to the rental by Candidate of a truck and the purchase of "Safe Move" insurance relating to the rental, with Candidate to take possession of the truck on April 27, 2018, at 3:43 p.m. and to return same to U-Haul on April 28, 2018, by 3:30 p.m. Candidate testified that she rented the truck "Because I was moving my personal items from the 10435 South Church to the 1249 West 97th Street address". Tr. 31.

(m) Candidate's Exhibit H, consisting of an e-mail message from Julie Lopez sent to Candidate on April 30, 2018, asking Candidate, "Please remember to email me once you have completely vacated the home and have left the keys in the lock box." Candidate testified that the message related to the home at 10435 South Church Street. Tr. 32. The e-mail message also asked Candidate, "[P]lease be sure to provide us with your forwarding address." Candidate testified that she complied with that request and provided a forwarding

address, although she did not testify as to what forwarding address she provided. *Ibid.*

(n) Candidate's Exhibit I, consisting of an e-mail message sent by an unnamed person or persons at U-Haul to Candidate on April 30, 2018, at 11:05 a.m. confirming that the rented truck had been returned to U-Haul on a timely basis on April 28, 2018, and supplying a receipt for Candidate's payment of the agreed-upon rental sum. The receipt stated the Candidate's address at "10435 S Church".

(o) Candidate's Exhibit J, consisting of an e-mail message sent by Candidate to Julie Lopez on May 1, 2018, at 4:43 p.m. stating, "I left the keys in lock box".

(p) Candidate's Group Exhibit K, consisting of two e-mail messages, one sent by Julie Lopez to Candidate and the other sent by Candidate to Julie Lopez, both on May 2, 2018, the former at 11:31 a.m. and the latter at 11:55 a.m. In these messages Ms. Lopez asked again for Candidate's "forwarding address" and Candidate responded, "My address is 1249 W.97 street, Chicago, 60643".

(q) Candidate's Exhibit L, consisting of pages 1/19, 2/19, 3/19, and 4/19 of a residential lease, entered into on November 14, 2019, by and between Michael Dugue, as Landlord, and Candidate, as Tenant, providing for the rental by Mr. Dugue to Candidate of the premises at 11634 South May Street, Chicago, Illinois 60643, for a term commencing on November 16, 2019, and ending on May 31, 2020.

20. Objector had an opportunity to present a case-in-chief, to call witnesses, and offer

exhibits. Objector presented her case-in-chief, called one witness, and offered one exhibit, as set forth *supra*. Without objection, Objector's Exhibit A was received into the record. Objector rested.

21. Candidate had an opportunity to present a case in chief, to call witnesses, and to offer exhibits. Candidate presented her case-in-chief, called four witnesses, and offered 12 exhibits, as set forth, *supra*. Objector had an opportunity to cross-examine each witness, and Candidate had an opportunity to conduct a re-direct examination of each witness. Without objection, Candidate's Exhibits A (Group), B (Group), C, D, E, F, G, H, I, J, K (Group), and L were all received into the record. Candidate rested.

22. Each party was given an opportunity to call rebuttal witnesses. No rebuttal witnesses were called.

23. The evidentiary record was closed. The evidence will be discussed, *infra*.

24. Each party was invited to deliver an oral closing argument. Closing arguments were held immediately upon the close of the evidence on January 3, 2020. Neither party requested an opportunity to file a written brief. The case was submitted for decision by the Board.

Evaluation and Analysis

25. Candidate seeks to represent the 27th Representative District in the General Assembly of Illinois, and seeks the nomination of her party in the primary election that will be held on March 17, 2020, for election to that office in the general election that will be held on November 3, 2020.

26. Section 2(c) of Article IV of the Illinois Constitution provides, in pertinent part, "To be eligible to serve as a member of the General Assembly, a person must be a United States citizen, at least 21 years old, and for the two years preceding his election or appointment a resident of the

district which he is to represent."

27. There is no dispute about the age or other qualifications of the Candidate save for the matter of her residence. The ultimate question in this case, then, is whether or not Candidate is, and continuously since November 3, 2018, has been, a resident of the 27th Representative District.

Prior Residence Outside the 27th Representative District

28. It is undisputed that, prior to late April 2018, Candidate resided at 10435 South Church Street in Chicago, Illinois (hereinafter, "the Church Street address"). It is further administratively noticeable and stipulated, Tr. at 43, and thus undisputed, that the Church Street address was and is in the 35th Representative District, which is to say *not* in the 27th Representative District.

Moving to 97th Street in the 27th District in April 2018

29. The evidence shows without contradiction that in late April 2018, in a sequence of physical acts that concluded no later than May 1, 2018, Candidate removed her abode from the Church Street address to 1249 West 97th Street in Chicago, Illinois (hereinafter, "the 97th Street address"). She testified orally to making this move "at either the end of April or the beginning of May" of "2018". Tr. 37-38. All relevant documentary evidence in the record easily and consistently supports that assertion. She communicated with a representative of her landlord at the Church Street address regarding the scheduling of a move-out, Candidate's Ex. C; a post-move-out inspection, Candidate's Ex. F; the completion of the move-out, Candidate's Ex. H; and the turning in of her keys, Candidate's Ex. J. The assertion is also buttressed by the testimony of Joshua Barnett, Candidate's brother, who testified that in April 2018 he physically assisted her in moving her belongings from the Church Street address to the 97th Street address. Tr. 74-75.

30. The evidence also shows without contradiction that by no later than May 1, 2018, Candidate had abandoned her abode at the Church Street address. She so testified herself. Tr. 35-36. As noted, others witnessed her remove her belongings, vacate the premises, submit the vacated premises to a post-departure inspection by her landlord, and surrender her keys. What is more, there is no evidence in the record that she continued to maintain a physical presence or abode at the Church Street address after May 1, 2018.

31. The evidence also shows, without contradiction, that, from at least May 1, 2018, until on or about November 16, 2019, she physically dwelt at the 97th Street address. Candidate herself testified that she did so, Tr. 26, 28. She informed others, including her former landlord, that she could be found at the 97th Street address, Tr. 34, Candidate's Group Ex. K. She arranged for necessary services that are consistent with maintaining an abode to be supplied to her new home. She had cable service, suppled by Xfinity, at the 97th Street address "from the day I moved in to the day I moved out. From April of 2018 to November of 2019." Tr. 26. Similarly, she arranged and paid for electrical service, supplied by the Commonwealth Edison Company, at the 97th Street address from April 2018 "all the way through November of 2019". Tr. 26-28. She was observed by other people as dwelling at the 97th Street address, including her cousin, Lamarlo Tyler, who "dropped her off; I picked her up; I went in; I went out. I visited her there extensively." Tr. 70. Ms. Tyler observed Candidate's personal property furnishing the abode and Ms. Tyler formed the opinion that Candidate would be residing at the 97th Street address "permanently". Tr. 69. Similar observations were made and opinions formed by Candidate's brother, Joshua Barnett, Tr. 72-73, and her friend Sylvia Jones, who visited Candidate at least once or twice a year, most recently in September or October 2019, and observed Candidate's furnishings and belongings in the home and

formed the opinion that Candidate intended to "reside" there "permanently". Tr. 82-83.

Moving to May Street Within the 27th District in November 2019

32. In fact, Candidate did not reside at the 97th Street address permanently. As she herself testified, she "moved sometime in November" 2019, Tr. 52, to a new abode, at 11634 South May Street in Chicago, Illinois (hereinafter, "the May Street address"). She lives at that address "today" (that is, as of the date of the evidentiary hearing in this cause, January 3, 2020). Tr. 39.

33. In testifying at the evidentiary hearing Candidate was uncertain as to the exact date of her relocation from the 97th Street address to the May Street address, Tr. 47-52, and the best she could answer was "sometime in November [2019]". Tr. 52. She testified that she entered into a lease for property at the May Street address, Cand. Ex. L, on November 14, 2019, Tr. 34-35, and moved into the May Street address "near the date of the lease". Tr. 48. Joshua Barnett testified that on Thanksgiving Day 2019, which we may administratively notice was November 28, 2019, Candidate hosted a brunch, which he attended, in her abode at the May Street address. Tr. 79. Candidate testified that in December 2019 she transferred her Commonwealth Edison service to the May Street address. Tr. 28.

34. It is administratively noticed, and it is undisputed, that the May Street address is situated within the 27th Representative District.

Question of a False Statement of Address When Filing Nomination Papers

35. In the adducing of evidence and in oral argument, Objector seemed to suggest a conflict between the representations made in Candidate's nomination papers, to the effect that she resided at the 97th Street address, on the one hand, and the reality that the Candidate now dwells at the May Street, address, on the other, despite the fact that both abodes lie within the 27th

Representative District. As Objector's counsel put it in closing argument, "[H]er testimony is that the address at which she filed her nominating petitions on 97th Street was not actually her address on the date that she filed them. Which further renders it an unreliable document." Tr. 88.

36. On the face of Candidate's nomination papers, Board Group Exhibit A, it appears that Candidate subscribed to her declaration of candidacy before a notary public on October 11, 2019. Although Candidate recalled signing the declaration of candidacy, Tr. 45-46, she could not recall the exact date, even when the date stated in the declaration was suggested to her. *Ibid.*

37. It was established, both from the face of the nomination papers and from Candidate's testimony, Tr. 46, that the notary was Sylvia Jones, whom Candidate described as a "business acquaintance". *Ibid.* A Sylvia Jones was called by Candidate in her case-in-chief and tendered to Objector for cross-examination, but it was never established during the examination of Witness Jones if she were the same Sylvia Jones who was the notary before whom Candidate acknowledged her declaration, nor were the date or other circumstances of the acknowledgment and notarization explored with Witness Jones. Tr. 80-84.

38. It appears from the face of the nomination papers that they were filed with the Illinois State Board of Elections on November 25, 2019, at 8:00 a.m. It is thus possible that, between the time when, on October 11, 2019, Candidate subscribed her declaration, stating that she resided at the 97th Street address, and the time when, on November 25, 2019, Candidate filed the declaration, her address had changed. The evidence does not establish exactly when her address changed from the 97th Street address to the May Street address. At the earliest it was on November 14, 2019, when she executed the lease for the property at the May Street address; at the latest it was on November 28, 2019, when she hosted a Thanksgiving Day brunch there.

39. Exploration during the evidentiary hearing of the exact circumstances and timing of Candidate's relocation from the 97th Street address to the May Street address did not yield precise information as to the date. Candidate suggested that there was a period of time in November 2019 when she slept and otherwise lived at both the 97th Street and the May Street addresses. She could not remember exactly where she slept before and after the day on which she filed her nominating papers in Springfield, Illinois. She testified that the questions left her "confused right now. I'm not sure." Tr. 89.

40. The evidence is thus unclear as to when Candidate's abode changed from the 97th Street address to the May Street address.

41. As for the issue of residency, which is the issue to which Objector's petition speaks, the question is irrelevant, because both addresses are situated within the 27th Representative District.

42. As for any contention that Candidate willfully misstated her address on her declaration of candidacy, the evidence does not justify the conclusion that the address stated on her declaration (the 97th Street address) was false or incorrect either on the day of the declaration's execution, October 11, 2019, or of its filing, November 25, 2019.

43. In any event, Objector's petition does not seek relief on the ground that Candidate's nominating papers set forth a false or erroneous address, and the law is well-established that the Election Code does not allow objectors to amend their objectors' petitions once filed. Correlatively, the Election Code does not authorize an electoral board to raise, *sua sponte*, objections to nominating petitions. *Delay v. Board of Election Commissioners*, 312 Ill.App.3d 206, 726 N.E.2d 755 (1st Dist. 2000), *citing Reyes v. Bloomingdale Township Electoral Board*, 265 Ill.App.3d 69, 638 N.E.2d 782 (2d Dist.1994). This Board has further held that an objector is estopped from introducing evidence

not stated in the objections. *Fisher v. Barnett*, 88-EB-WD-10 (Chicago Electoral Board 1988) ¶ 12, at 3. So the matter of when, how, and why Candidate relocated from the 97th Street address to the May Street address will not be considered further, as it is not germane to the ultimate question raised by Objector's petition: Will Candidate have been a resident of the 27th Representative District for the two years preceding the election on November 3, 2020?

Candidate's Voting History in 2018 and 2019

44. Candidate testified that "possibly" on or about July 1, 2019, she changed her voter's registration to register as a voter residing at the 97th Street address. Tr. 7. Prior to the time when she changed the address associated with her voter's registration she was registered to vote as a resident of the Church Street address. Tr. 7-8.

45. Candidate testified on direct examination by Objector's counsel that in November 2018 she voted from the Church Street address "if that's what my voting record shows." Tr. 8. She "vaguely remembers" voting in that election, *ibid.*, and then testified that "I voted at the polling place that's near that address [the Church Street address]". *Ibid.* On cross-examination Candidate's counsel asked:

> Q. [C]ould you just explain why was it required, or why you had voted at the -- why your registration was still at the 104 Church registration?
>
> A. Yes. I had not changed my driver's license over, I believe.

The record contains no other explanation as to why Candidate voted after April 2018 at the polling place associated with the Church Street address.

46. Objector's Exhibit A, is a copy certified on December 18, 2019, by Lance Gough, the Executive Director of this Board, under the Board's seal, of the voter registration and voting history

of the Candidate. The instrument was administratively noticed by the Hearing Officer, and is administratively noticeable by the Board, as the Board's own official record. There was no objection to the authenticity or the accuracy of the document, and without objection it was received into the record. The instrument showed the following:

(a) At some time prior to November 6, 2018, Candidate had registered to vote as residing at 10435 South Church Street in Chicago, Illinois.

(b) On November 6, 2018, Candidate voted in the general election held that day, at the polling place associated with the Church Street address.

(c) On February 26, 2019, Candidate voted in the municipal election held that day, at the polling place associated with the Church Street address.

(d) On April 2, 2019, Candidate voted in the municipal election held that day, at the polling place associated with the Church Street address.

(e) On July 1, 2019, Candidate re-registered to vote, now as residing at 1249 West 97th Street in Chicago, Illinois, and has not yet ever voted from that address.

(f) As of December 18, 2019. Defendant was still registered to vote as residing at the 97th Street address.

47. Thus, the evidence shows that on three occasions after moving out of the Church Street abode in the 35th Representative District and into the 97th Street abode in the 27th Representative District, the Candidate three times voted in the 35th Representative District, including as recently as April 2, 2019; and that, as of yet, the Candidate has never voted in the 27th Representative District.

Legal Standards Controlling Determination of a Candidate's Residence

48. In *Maksym v. Board of Election Commissioners of the City of Chicago*, 242 Ill.2d 285, 319 950 N.E.2d 1051, 1060 (2011), the Illinois Supreme Court taught:

> First, to *establish* residency two elements are required: (1) physical presence, and (2) an intent to remain in that place as a permanent home. *Hughes v. Illinois Public Aid Comm'n*, 2 Ill.2d 374, 380 [118 N.E.2d 14] (1954).... Second, once residency is established, the test is no longer physical presence but abandonment. Indeed, once a person has established residence, he or she can be physically absent from that residence for months or even years without having abandoned it....

Emphasis original.

Application of *Neely*

49. Objector invokes the holding of the Illinois Appellate Court in *Neely v. Board of Election Commissioners for the City of Chicago*, 371 Ill.App.3d 694, 863 N.E.2d 795 (1st Dist), *app. den.*, 224 Ill.2d 577, 871 N.E.2d 56 (2007), and contends that "[Voting] is the determinative act in asserting one's residency." Tr. 87.

50. If Objector's argument means that, by voting in the 35th Representative District as recently as April 2, 2019, Candidate had successfully established or, better, perpetuated in the face of evidence suggesting abandonment of her residence in that district, her claim to continuing residence in the 35th Representative District, Objector misapprehends the holding of *Neely*. Neely supplies a rule of decision in determining which of two abodes in which a candidate dwells is the one in which he resides for purposes of meeting an electoral residency requirement. It does not stand for the proposition that, without more, one is a resident of the district in which one votes. As *Maksym* makes clear, residency requires both physical presence and intention of permanence. Voting is not a form of, or a substitute for, physical presence. A careful reading of *Neely* shows, however,

that voting supplies important evidence of one's intentions.

51. A careful review of the facts of *Neely* shows that in that case the candidate, for a number of years, deliberately maintained ties to two abodes, usually sleeping and otherwise dwelling in one, and sometimes sleeping and dwelling in, but always voting from, the other. When the time came to determine which of those two abodes was the candidate's residence, the *Neely* court held that the abode from which the candidate voted was the abode of residence. In reaching its decision, the *Neely* court considered cases from other jurisdictions whose jurisprudence it found instructive and persuasive: *McClelland v. Sharp*, 430 S.W.2d 518 (Tex.Civ.App. 1968), a case in which a State legislative candidate living and voting in one district acquired a second abode in another district, but continued to maintain the first home as a part-time dwelling and continued to vote from it, was held ineligible to pursue a candidacy for office in the district of the later-acquired home; and *People v. Platt*, 117 N.Y. 159, 22 N.E. 937 (1889), a case in which a man who owned abodes in both New York City and in Tioga County in "upstate" New York, but who voted in Tioga County, was held ineligible to hold an appointive office in the City the qualifications for which included residence there. In all of these cases — *Neely* in Illinois, *McClelland* in Texas, and *Platt* in New York — the place of voting was held to establish residency for office-holding purposes when the voter was also attached to an abode and had a physical presence in that place.

52. In the framework of Illinois law in the light of *Maksym*, then, merely casting a vote or votes in the 35th Representative District without having a "physical presence" there would not make Candidate a resident of the 35th District.

53. The evidence shows, convincingly, that in April 2018 Candidate effectively terminated her physical presence in the 35th District and commenced a physical presence in the 27th

District. Her physical presence in the 27th District has been continuous since April 2018, despite the relocation of her abode within the 27th District from the 97th Street address to the May Street address. Within the framework of *Maksym*, then, Candidate satisfied the first test of residency for a candidate: She created a convincing physical presence in the 27th District.

54. By continuing to cast votes in the 35th District, however, she cast doubt on her satisfaction of the second test of residency set forth in *Maksym*: She failed to manifest an intent to remain in that place, the 27th District, as a permanent home. One of the foreign courts quoted by our Appellate Court in *Neely* could have been speaking directly about this Candidate: "[P]articular significance should be attached to the repeated exercise of the right to vote, because this right depends upon citizenship and domicile***. ***[S]uch act is a distinct, unequivocal, and public assertion by the voter of his legal domicile." *Cooper's Administrator v. Commonwealth*, 121 Va. 338, 349, 93 S.E. 680, 683 (1917), cited in *Neely, supra*, 371 Ill.App.3d at 699. 863 N.E.2d at 799.

55. In sum, by her own actions Candidate put herself into a residency no-man's-land. She effectively and completely terminated her physical presence in the 35th District, so she ceased to be a resident, for constitutional purposes relating to candidacy in that district. At the same time she manifestly commenced and maintained, notwithstanding an internal move, her physical presence in the 27th District, but her failure to vote in her new district left doubt about her intention to remain in the new district as her permanent home. She extinguished that doubt on July 20, 2019, when she finally registered herself to vote in the 27th District. Thereby she satisfied, at last, both of *Maksym*'s tests, physical presence and intention of permanence. In so doing she established herself as a resident of the 27th District. Perfected residency came, however, too late to qualify her as a candidate for election in the 27th District in November 2020.

56. The preponderance of the evidence shows that Candidate terminated her physical presence in the 35th Representative District not later than May 1, 2018.

57. The preponderance of the evidence shows that the Candidate commenced her physical presence in the 27th Representative District not later than May 1, 2018, and has maintained her physical presence in the 27th District continuously since that time.

58. The preponderance of the evidence shows that the Candidate did not perfect her intention to remain permanently in the 27th Representative District until July 1, 2019.

Recommended Decision

59. On the bases of a facial examination of the nomination papers, of the Objector's Petition, of all the testimony heard and exhibits received at an evidentiary hearing, of the arguments of counsel, and of all other proceedings held herein, the Hearing Officer recommends that the Electoral Board enter the following findings of fact:

(a) Prior to May 1, 2018, the Candidate resided at the Church Street address.

(b) At all times relevant hereto the Church Street address was and is situated within the 35th Representative District and outside the 27th Representative District.

(c) The Candidate terminated her physical presence at the Church Street address on May 1, 2018.

(d) The Candidate commenced her physical presence at the 97th Street address on May 1, 2018.

(e) At all times relevant hereto the 97th Street address was and is situated within the 27th Representative District.

(f) In late November 2019 the candidate relocated her physical presence from the

97th Street address to the Wood Street address and continues to dwell at the Wood Street address.

(g) At all times relevant hereto the Wood Street address was and is situated within the 27th Representative District.

(h) The Candidate has maintained a physical presence within the 27th Representative District continuously since May 1, 2018.

(f) On November 6, 2018, February 26, 2019, and April 2, 2019, the Candidate voted at the polling place associated with the Church Street address, that is, outside the 27th Representative District.

(g) On July 1, 2019, Candidate registered herself to vote from the 97th Street address.

60. The Hearing Examiner recommends that the Electoral Board enter the following conclusions of law:

(a) Prior to May 1, 2018, the Candidate was a resident of the 35th Representative District.

(b) On May 1, 2018, the Candidate ceased to be a resident of the 35th Representative District.

(c) On July 1, 2019, the Candidate became a resident of the 27th Representative District.

(d) The Candidate does not satisfy the residency requirement prescribed by Section 2(c) of Article IV of the Illinois Constitution as a qualification for election on November 3, 2020, as the Representative of the 27th Representative District in the Illinois

General Assembly.

(e) The Objector's Petitions is well founded, and the relief sought therein should be granted.

(f) The Candidate's nomination papers are insufficient in law and fact.

61. The Hearing Examiner recommends that the Electoral Board enter the following final administrative decision:

The name of Marlo Barnett shall not appear and shall not be printed on the ballot for nomination for the office or Representative of the 27th Representative District in the General Illinois Assembly at the General Primary Election to be held on March 17, 2020.

Enter:

/s/ **JOSEPH A. MORRIS**

JOSEPH A. MORRIS
Hearing Officer

Dated: January 19, 2020.