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

Objections of: NADIA MILLER	)	
	)	
	)	
To the Nomination	)	No.: 24-EB-SBD-018
Papers of: BRITTANY BAILEY PRESTON	)	
	)	
	)	
Candidate for the office of Member of the	)	
Chicago Board of Education, 9th District	)	

FINDINGS AND DECISION

The duly constituted Electoral Board, consisting of the Board of Election Commissioners for the City of Chicago, Commissioners Marisel A. Hernandez, William J. Kresse, and June A. Brown, 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 NADIA MILLER ("Objector") to the nomination papers ("Nomination Papers") of BRITTANY BAILEY PRESTON, candidate for the office of Member of the Chicago Board of Education, 9th District ("Candidate") at the General Election to be held on Tuesday, November 5, 2024, having convened on Tuesday, July 9, 2024, at 10:30 a.m., 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 were duly and timely filed.

2. The Electoral Board was constituted under 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 and service by email was authorized.

4. A public hearing held on these Objections commenced on Tuesday, July 9, 2024 and was continued from time to time. The Electoral Board assigned this matter to Hearing Officer Joseph 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, NADIA MILLER, and/or her Attorney, STEVEN FINE; and the Candidate, BRITTANY BAILEY PRESTON, and/or her Attorney ANDREW FINKO.

6. 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 failed to file a Statement of Economic Interests with the Cook County Clerk's office and failed to file a proper receipt with her nominating papers. The Hearing Officer found, therefore, that the Candidate's Nomination Papers are invalid.

7. 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 and incorporates herein the Hearing Officer's recommended findings and conclusions of law.

8. 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.

IT IS THEREFORE ORDERED that the Objections of NADIA MILLER to the Nomination Papers of BRITTANY BAILEY PRESTON, candidate for the office of Member of

the Chicago Board of Education, 9th District, are hereby SUSTAINED and said Nomination Papers are hereby declared INVALID and the name of BRITTANY BAILEY PRESTON SHALL NOT be printed on the official ballot for the General Election to be held on Tuesday, November 5, 2024.

Dated: Chicago, Illinois, on Tuesday, August 27, 2024.

Marisel A. Hernandez, Chair

William J. Kresse, Commissioner

June A. Brown, 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 NOVEMBER 5, 2024, GENERAL ELECTION
FOR MEMBER FOR DISTRICT 9 OF THE CHICAGO BOARD OF EDUCATION
IN THE CITY OF CHICAGO

NADIA MILLER, *Objector,*	)	
vs.	)	No. 24-EB-SBD-018
BRITTANY BAILEY PRESTON, *Candidate.*	)	Hearing Officer Morris

REPORT OF THE HEARING OFFICER

Introduction

1. The Objector alleged that the Candidate failed to file, first, a Statement of Economic Interests and, second, a receipt for the filing of such a statement, both as required (among other qualifying criteria) to win a place on the ballot for election as Member for the Ninth District of the Chicago Board of Education. The evidence shows that the Candidate failed to file such a statement. Although the Candidate's Nomination Papers include a paper purporting to be a receipt for the filing of such a statement, in the absence of the actual filing of such a statement the purported receipt must be deemed a nullity. When the Candidate filed her Nomination Papers a member of the Board's staff marked a checklist indicating the presence of the required receipt. The Candidate contends that this action by the Board's staff estops the Board from looking behind the purported receipt to determine whether or not the underlying statement was in fact actually filed. That contention is unsupported

by law. The ultimate fact remains that the Candidate failed to file the required Statement of Economic Interests. That fact compels the sustaining of the Objector's Petition.

Procedural Background

2. An Initial Hearing was held herein on July 9, 2024. Steven Fine appeared on behalf of the Objector. Andrew Finko appeared on behalf of the Candidate. Appearances of the parties were entered and exchanged and counsel on both sides submitted e-mail addresses from and through which they agreed to file and serve papers and otherwise communicate with the Electoral Board, the Hearing Officer, and each other. Confidentiality and Non-Disclosure Agreements were properly executed and filed. The Candidate's Nomination Papers were marked as Board Exhibit A and received into the record. The Objectors' Petition was marked as Board Exhibit B and received into the record. The Notice of Call and the parties' waivers of service of summonses were marked as Board Group Exhibit C and received into the record. The parties' written appearances and confidentiality and non-disclosure agreements were marked as Board Group Exhibit D and received into the record.

3. It was evident on the face of the Objector's Petition that the only issues in the case relate to whether or not the Candidate met statutory requirements that she file a Statement of Economic Interests and, further, that she submit with her Nomination Papers a receipt for the filing of such a statement.

4. (a) At the initial hearing counsel for the Candidate stated that he wished to file, pursuant to Electoral Board Rule 5(b), a preliminary motion to challenge the legal sufficiency of the Objector's Petition. Electoral Board Rule 5(b) provides:

> Such motions must be made in writing and filed with the Electoral Board and served upon the other parties in the case by 5:00 p.m. on the first business day following the initial hearing.

The Candidate's preliminary motion, then, would ordinarily have been due not later than 5:00 p.m. on Wednesday, July 10, 2024. Candidate's counsel, explaining burdens of his caseload, asked that he be permitted to file the Candidate's preliminary motion on or before Thursday, July 11, 2024, at 5:00 p.m. Counsel for the Objector did not object to the Candidate's request for such enlargement of time.

(b) Electoral Board Rule 1(b)(ii) permits the Board, *inter alia*, to "set times and deadlines for filing of documents" and, upon good cause shown, to "extend the time for filing any document or paper permitted or required by these rules...." Electoral Board Rule 2(a), in turn, generally confers upon the Hearing Officer "the duties and powers of the Electoral Board provided in these Rules".

(c) Accordingly, the Hearing Officer granted the application of the Candidate for an enlargement of time, and the Candidate was directed to file her preliminary motion on or before Thursday, July 11, 2024, at 5:00 p.m. A further briefing schedule was set with the Objector to file her response on or before Saturday, July 13, 2024, at 5:00 p.m.; the Candidate to file her reply on or before Monday, July 15, 2024, at 5:00 p.m.; and a hearing in the matter was scheduled for Wednesday, July 17, 2024.

5. The Candidate failed to file her preliminary motion on Thursday, July 11, 2024, however, and did not file it until the close of business on Friday, July 12, 2024. The Objector objected to the late filing of the preliminary motion in a motion to strike same filed on Saturday, July 13, 2024, asserting prejudice resulting from the truncation of the already compressed briefing

schedule to which the Objector, as with all parties, was subject.

6. At the hearing scheduled on the preliminary motion that was held on July 17, 2024, counsel for the Candidate confessed error, acknowledging failure, based on a miscalendaring of the matter, to effect a timely filing of a motion for which the time for filing had already been enlarged. At the hearing of July 17, 2024, the Hearing Officer struck, as untimely, the Candidate's preliminary motion filed under Rule 5(b) without prejudice to the right of the Candidate, upon consideration of the case on its merits, to raise any issue that was presented in the untimely motion.

7. There being no further preliminary matters to address, the parties were directed at the hearing on July 17, 2024, to exchange exhibits and witness lists, and the case was set down for a hearing on its merits, including an evidentiary hearing, on July 24, 2024.

8. During the hearing on July 17, 2024, the parties narrowed and framed issues for the forthcoming evidentiary hearing. The parties stipulated to the facts that "the candidate did not file a Statement of Economic Interest with the County Clerk", and that "a receipt for the Statement of Economic Interests and a version of the Statement of Economic Interests were filed with the Board of Elections". Tr. of June 17, 2024, at 11-16. Having so stipulated, each party reserved her right to argue her views as to the legal significance of the stipulated facts.

Documentary Evidence

9. At the evidentiary hearing on July 17, 2024, Board Group Exhibits A, B, C, and D, were already entered into the record. The Candidate offered no documentary evidence for the record. The Objector proffered two exhibits that were received into the record:

(a) Objector Exhibit A was the affidavit of the Candidate that was by her placed into the record as an exhibit to her preliminary motion under Rule 5(b), unseasonably filed on July 12, 2024.

Because the motion had been stricken (see ¶¶ 4(c), 5, and 6 of this Report, *supra*), the Candidate objected to the receipt of Exhibit A into the record. The Hearing Officer ruled, however, that the fact that the preliminary motion was stricken for purposes of decision as a matter of summary disposition of the case, with the questions it framed left for proof, argument, and disposition when the case was decided on the merits, did not strike the document from the common law record of the case. A copy of Objector Exhibit A is attached to this Report.[1]

(i) The Electoral Board is governed by rules of evidence that generally conform to those prevailing in the Circuit Court of Cook County, Illinois, allowing — given the nature of election proceedings and the expedition that must attend them — for latitude, except where express forbidden by law, that will allow "evidence...if it is of a type commonly relied upon by reasonably prudent men in the conduct of their affairs or in matters relevant to the issues in the hearing." Electoral Board Rule 10(a).

(ii) In that light, when a party's affidavit is available to any party for a proper purpose it is available to all parties for any proper purpose. "An admission made by the party or his agent in sworn testimony may be used as evidence to the same extent as any other admission made by that person. *See Security Savings Loan Association v. Commissioner of Savings Loan Associations* (1979), 77 Ill. App.3d 606, 611, 396 N.E.2d 320." *Doherty v. Kill*, 140 Ill. App. 3d 158, 162 (Ill. App. Ct. 1986). Moreover, where evidence is received for a general purpose (that is, for other than a specifically limited purpose), the usual rule is that such evidence may be used by any

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[1] Objector Exhibit A as marked and entered into the record at the evidentiary hearing held on July 24, 2024, was a very dark photocopy of a signed and acknowledged affidavit. It does not reproduce well. Accordingly, attached to this Report is also a copy of the same affidavit in the form, unsigned and unacknowledged, in which it was filed in the case on July 12, 2024, as appended to the Candidate's preliminary motion under Electoral Board Rule 5(b).

party. *Morris v. Central West Casualty Co.*, 351 Ill. 40, 183 N.E.2d 595 (1932); *Dudanas v. Plate*, 44 Ill. App.3d 901, 358 N.E.2d 1171. (1976). "'[I]t is well established that a court may properly consider matters of record in its own proceedings.' *In re M.D.*, 2022 IL App (4th) 210288, ¶ 80." *People v. Samantha S. (In re D.W.)*, 2023 Ill. App. 4th 220806, 9 (Ill. App. Ct. 2023).

(iii) In any event, the Candidate's affidavit stands as an acknowledged document receivable into evidence as a self-authenticating document in accordance with Rule 902(8) of the Illinois Rules of Evidence.

(iv) Besides, even if the Candidate's affidavit had been stricken from the record for the use for which the Candidate proffered it, an admission by a party opponent is a recognized exception to the hearsay rule and is admissible as substantive evidence. Ill. R. Evid. 801(d)(2); *In re Estate of Rennick*, 181 Ill. 2d 395, 406 (1998). To fall within this exception, the statement must be offered against a party and it must be the party's own statement. Ill. R. Evid. 801(d)(2)(A).

(v) An admission made by a party is admissible against that person's estate after his death. *Rennick, supra* at 405 (death does not erase an admission from a party's lips). If an admission survives the physical death of the party making it, then, *a fortiori*, an admission ought to survive the procedural death of the motion to which the admission was appended. In this case a party's admissions, memorialized and acknowledged by the party herself, may be considered as evidence for such purposes as summary judgment proceedings and, as effectively applicable here, at trial. *See Rennick, supra*, at 407.

(b) Objector Exhibit B was a certificate given by County Clerk of Cook County on July 10, 2024, regarding the contents of the Clerk's records. On its face the exhibit is a self-authenticating public record. Ill. R. Evid. 902(1). Objector Exhibit B is attached as Exhibit B to

this Report.

Testimonial Evidence

10. At the evidentiary hearing on July 24, 2024, the Candidate was called to testify on her own behalf; was duly sworn upon oath or affirmation; and testified in material part as follows:

Q. Go ahead. What office were you running for?

A. Oh. Member of the Chicago Board of Education.

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Q. So the Board of Education, Ninth District?

A. Yes.

Tr., Hrg. of July 24, 2024, at 5. Her testimony continued:

Q. Who put the petition sheets together and organized them for you?

A. I did.

Q. All right. And when you put them together, let me ask you, does this Group Exhibit A appear to be the same petition sheets that you had filed?

A. Yes.

Q. Okay. And the two-ring binders is what you used?

A. Yes.

Q. Okay. And when you put them together, tell us what day you filed those papers with the Chicago Board of Elections?

A. June 17th, 2024.

****

Q. All right. And what did you bring with you to file with the Chicago Board

of Elections?

A. My nomination papers; my statement of economic interest; my petitions; my loyalty oath and my statement of candidacy.

Q. All right. And when you brought those to the Board of Elections, was everything filled out ahead of time?

A. Yes.

Id. at 6-7. The Candidate's testimony continued:

Q. So when you -- let me show you the statement of candidacy. I'm borrowing Exhibit A here, Group Exhibit A from the Board, and I want to turn to the statement of candidacy page. Is that your signature?

A. It is.

Q. And when you signed this, did you believe everything was true and correct?

A. Yes.

Q. All right. And when it references that -- it says that: I have filed, or I will file a statement of economic interest, what is it that you understood that sentence to mean when you signed this page?

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A. That when I go and turn in my petition sheets, when I go to the Board of Elections on June 17th with my nomination papers, that I would file my papers with the Board of Elections.

Q. Okay. And did you understand that when it says statement of economic

interest it was referring to the pages, the first three pages?

A. Yes.

Q. All right. So you believed that your statement of candidacy was correct because you turned in the Statement of Economic Interests and the receipt with your nomination papers?

A. Yes.

Q. Now, in relation to this paperwork, did you get any document back from the Chicago Board of Election Commissioners?

A. Yes. I got the checklist.

Q. Okay. Let me show you, which is -- there's a ticket on the front which I'm not talking about, but let me show you Group Exhibit A. The first page says nomination paper checklist, if you can take a look at that. Is that the document you received from the Chicago Board?

A. Yes.

Q. Okay. And what is it -- what does it mean to you when there's these boxes and the checkmarks?

A. Looking at the checklist, to me I assumed that I had turned in everything correctly.

Q. All right. And it says: Receipt for Statement of Economic Interest and there's a checkmark for yes, right?

A. Yes.

Q. All right. And did you have any reason to doubt the accuracy of this document?

A. No.

Q. And did the Board of Election employees tell you anything that you had to -- that you were missing, or anything that you needed to add?

A. No.

Q. And this is the Chicago Board of Elections?

A. Yes.

Q. All right. And then -- so the -- let me give this checklist back. And if I could ask you to take a look at the first page of the nomination papers again. Tell us what this page is on the first page.

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A. It's a statement of economic interest receipt.

Q. The receipt, right?

A. Yes.

****

Q. All right. So you believed that this was the receipt that was asked for; is that right?

A. Yes.

Q. Okay. And then you actually -- you turned in the Statement of Economic Interest on the following two pages, correct?

A. Yes.

Q. Okay. Now, let me ask you. So after you handed these to the Chicago Board of Elections and they gave you the checklist back, what did you do next?

A. I went home.

Id. at 7-11. Under cross-examination by counsel for the Objector, the Candidate testified further as follows:

Q. Now, you did not file your Statement of Economic Interests with the Clerk's Office on the 17th, did you?

A. No.

Q. You did not file it on the 18th, did you?

A. No.

Q. You did not file it the following day, either, did you?

A. No.

Q. You never returned back to the Clerk's Office to file your Statement of Economic Interest within the filing period; is that correct?

A. I never returned after the 17th.

Id. at 28. On redirect-examination, the Candidate testified additionally as follows:

Q. Okay. Your husband told you you had to file a statement of economic interest with the Clerk's Office, right?

A. He asked me if I did.

Q. Okay. And when you told him no, that's when you went to the Clerk's Office, correct?

A. I told him that everything was done at the Board of Elections.

Q. You didn't call to the Clerk's Office --

A. That's why I went to the Clerk's Office.

Q. You went there in person. Were you prepared to file anything?

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A. I was prepared to do anything that I needed to do to make sure that I was going to be able to be on the ballot.

Q. Did you bring any documents with you?

A. I brought the receipt only.

Q. When you say receipt, what are you referring to?

A. Well, the checklist.

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Q. Other than the checklist, did you bring any other documents?

A. I did.

Q. What did you bring.

A. I had another Statement of Economic Interests form.

Q. That you filled out?

A. It wasn't filled out, because I had already submitted it. But I was prepared at that moment, if the Cook County Clerk's Office told me that I needed to fill it out and file it with them, to do it.

Q. Okay. So you had a blank form?

A. I did..

Id. at 44-46. Upon the conclusion of the examinations of the Candidate by Counsel for the parties, the Hearing Examiner questioned the witness as follows:

Q. Ms. Preston, what was the date on which you filed your nominating papers?

A. June 17th.

Q. What was the day on which you went to the Office of the County Clerk of Cook County?

A. June 17th.

Q. Did you go to the Office of the County Clerk of Cook County on any day other than June 17, 2024?

A. No, I did not.

Q. Did you ever, on that day, by mail, by messenger, by a third party, by any means whatsoever, hand over, tender, deliver, or cause to be submitted to the County Clerk of Cook County a completed and signed Statement of Economic Interests on your behalf?

A. No.

Q. As you look at Paragraph 1 of your affidavit, the affidavit of July 12, 2024 which is Objector's Exhibit A, what is inaccurate in Paragraph 1?

A. Nothing.

Q. What's inaccurate in Paragraph 2?

A. Nothing.

Q. What's inaccurate in Paragraph 3?

A. The word "after". Well, "before," it should say after.

Q. That very first word that is "before", you are testifying today should be in fact "after"? Is that what you would do if you were changing this today?

A. Yes.

Q. Any other changes you would make in Paragraph 3?

A. No.

Q. What's inaccurate in Paragraph 4?

A. Nothing.

Q. What's inaccurate in Paragraph 5?

A. Nothing is inaccurate.

Q. What's inaccurate in Paragraph 6?

A. Nothing.

Q. What's inaccurate in Paragraph 7?

A. "[A]nd then went to the Chicago Board of Election Commissioners' Supersite and then showed them all of my nomination papers, and the Board of Election employee at the Supersite confirmed that I had all necessary documents and accepted my petitions; my nomination papers."

Q. What's inaccurate about that?

A. So, it starts off by saying, "I relied upon the information provided by the Clerk's Office staff employee, who refused to take my Statement of Economic Interests, and then went to the Chicago Board of Election Commissioners' Supersite." I didn't then go to the Chicago Board of Elections Supersite, I went to the Supersite initially, first, and then I went to

the Cook County Clerk's Office second.

Q. When you went to the Cook County Clerk's Office, as you state here: A member of the staff, quote, "refused to take my Statement of Economic Interests, "end quote. Did you in fact attempt to give a statement of economic interest to an employee of the Cook County Board?

A. No.

Q. So that's inaccurate. Is it inaccurate when you say that a member of the staff, quote, "refused," end quote, to take your statement? That's inaccurate, correct?

A. Yes.

HEARING OFFICER MORRIS: Any re-cross based on the Hearing Officer's examination?

MR. FINE: No.

MR. FINKO: No.

HEARING OFFICER MORRIS: Okay. Anything further with this witness by either of you?

MR. FINE: No.

MR. FINKO: No.

Id. at 53-57.

11. No other witnesses were called by either party.

Applicable Law

12. Section 4A-101.5(a) of the Illinois Governmental Ethics Act, 5 ILCS § 420/4A-101.5(a), provides in pertinent part as follows:

> The following persons shall file verified written statements of economic interests with the county clerk, as provided in this Article:
>
> (a) Persons who are elected to office in a unit of local government, and candidates for nomination or election to that office, including regional superintendents of school districts.

13. Section 34-4.1 of the Illinois School Code, 105 ILCS § 5/34-4.1, provides in pertinent part as follows:

> All petitions for the nomination of members of the Chicago Board of Education shall be filed with the board of election commissioners of the jurisdiction in which the principal office of the school district is located within the time provided for by Article 7 of the Election Code, except that petitions for the nomination of members of the Chicago Board of Education for the 2024 general election shall be prepared and certified as outlined in Article 10 of the Election Code. The board of election commissioners shall receive and file only those petitions that include a statement of candidacy, the required number of voter signatures, the notarized signature of the petition circulator, and a receipt from the county clerk showing that the candidate has filed a statement of economic interest on or before the last day to file as required by the Illinois Governmental Ethics Act.

14. The commands of those two acts correlate with the mandates of Section 10-5 of the Illinois Election Code, 10 ILCS § 5/10-5, which provides in pertinent part, as follows:

> All petitions for nomination shall, besides containing the names of candidates, specify as to each:
>
> Such certificate of nomination or nomination papers in addition shall **** state that the candidate is qualified for the office specified and has filed (or will file before the close of the petition filing period) a statement of economic interests as required by the Illinois Governmental Ethics Act ...shall be subscribed and sworn to by such candidate before some officer authorized to take acknowledgments of deeds in this State, and may be in substantially the following form:
>
> State of Illinois)
>) SS.
> County of.....)

> I,...., being first duly sworn, say ... that I am legally qualified to hold such office and that I have filed (or will file before the close of the petition filing period) a statement of economic interests as required by the Illinois Governmental Ethics Act, and I hereby request that my name be printed upon the official ballot for election to such office.
> Signed.....
> Subscribed and sworn to (or affirmed) before me by.... who is to me personally known, this.... day of....,.....
> Signed.....
> (Official Character)
> (Seal, if officer has one.)
> *****
> Nomination papers filed under this Section are not valid if the candidate named therein fails to file a statement of economic interests as required by the Illinois Governmental Ethics Act in relation to his candidacy with the appropriate officer by the end of the period for the filing of nomination papers unless he has filed a statement of economic interests in relation to the same governmental unit with that officer during the same calendar year as the year in which such nomination papers were filed. If the nomination papers of any candidate and the statement of economic interest of that candidate are not required to be filed with the same officer, the candidate must file with the officer with whom the nomination papers are filed a receipt from the officer with whom the statement of economic interests is filed showing the date on which such statement was filed. Such receipt shall be so filed not later than the last day on which nomination papers may be filed.

Analysis and Evaluation

15. It is undisputed that each of the Ethics in Government Act, the School Code, and the Election Code all required that a Statement of Economic Interests be filed by or on behalf of the Candidate.

16. Each act also specified that the office in which the Statement of Economic Interests was to be filed was that of the County Clerk of the relevant county; in the instant case that would be the office of the County Clerk of Cook County.

17. No Statement of Economic Interests was ever filed by or on behalf of the Candidate with the County Clerk of Cook County. The Candidate admits that central, salient fact.

18. The failure of the Candidate to file her Statement of Economic Interests with the

County Clerk of Cook County; to obtain from the County Clerk a receipt showing the timely filing of the Statement; and then attaching the receipt to her nominating papers; would ordinarily be fatal to her candidacy. *DeFabio v. Gummersheimer*, 192 Ill.2d 63, 733 N.E.2d 1241 (2000); *Stein v. Howlett*, 52 Ill.2d 5760, 289 N.E.2d 409 (1972).

19. The Candidate seeks to excuse her failure to file because she asserts that she was misled by an unidentified person, believed to be an employee of the County Clerk of Cook County, who mistakenly assured her that she did not need to file anything with the County Clerk. As the Candidate puts it in her CANDIDATE WITNESS LIST AND MEMO OF LAW (July 22, 2024), at 6:

> Candidate brought her receipt and her statement of economic interests to the Cook County Clerk's office, and presented it to the Clerk's office. The Clerk's office refused to accept the statement of economic interest. Rather the Clerk's staff offered information to Candidate, and affirmatively told Candidate that there was nothing to file at the Clerk's office, but rather, all documents for school board members had to be filed at the Chicago Board of Election Commissioners' supersite.
>
> Candidate relied upon this advise [*sic*] from the Clerk's office, particularly from an employee who confirmed he was familiar with school board member filings, and directed Candidate to the Chicago Board's supersite. This was reasonable to do, since the employee at the Clerk's office expressed knowledge and familiarity with the filing process.

There are three flaws, however, with this argument. First, aside from her naked averment, unsupported by any other evidence, that someone in apparent authority in the County Clerk's office misled her, she has furnished no evidence of, and certainly has not proved, that she received official guidance from the County Clerk of Cook County upon which she was justifiably entitled to rely. The evidentiary burdens of the proponent of such an argument are steep. An analogy may be made to a reliance-on-official-guidance defense asserted in a criminal trial, and the analysis of the resultant evidentiary burdens as described in such a case by the United States District Court for the Northern District of Illinois are persuasive:

> To present the defense of "reliance on public authority," or "entrapment by estoppel," the defendant must produce sufficient evidence upon which a rational jury could find the elements of the defense, namely that a public official affirmatively misled the defendant and that the defendant reasonably relied on the public official in engaging in the unlawful charged conduct. *See Santiago-Godinez*,12 F.3d at 726; *United States v. Howell*, 37 F.3d 1197, 1204 (7th Cir. 1994). More particularly, the defendant must show that: (1) he was misled by an official of the state; (2) the official actively misled him; and (3) the reliance on the official's misleading statement was "reasonable in light of the identity of the agent, the point of law represented, and the substance of the misrepresentation," and (4) the reliance was in good faith. *Howell*, 37 F.3d at 1204. A party asserting this defense bears a heavy burden not only of proving the elements of the defense, but also of outweighing "the strong, countervailing interest in obedience to the law." *United States v. McGaughey*, 977 F.2d 1067, 1074 (7th Cir. 1992).

United States v. Kapp, 02 CR 418, at *8-9 (N.D. Ill. Nov. 4, 2003). Second, she argues no facts and no law as to why her reliance upon the advice of the mysterious person was justified. Third, the evidence of her own testimony shows that, in fact, she took only a blank form to the County Clerk's office; that she was easily deterred, even in the face, as she testified, of the warnings and specific advice of her husband, himself an elected public official in Illinois, from seriously attempting to file her Statement of Economic Interests in the County Clerk's office; and that she never actually filed her Statement of Economic Interests with the County Clerk — or even presented it to the County Clerk only to have the County Clerk reject it. But this is not a case of an attempted filing wrongfully rejected by the County Clerk; this is a case of a filing never even attempted.

20. The Candidate also asserts that she filed with her nominating papers a document styled as a receipt from the County Clerk for the filing of her Statement of Economic Interests, and that the Electoral Board has no authority to pass judgment on, or go behind, the substance of her Statement of Economic Interests. This argument is unavailing, however, because the filing of the Statement of Economic Interests with the proper authority, and then the submission to the Board with

the nominating papers of a receipt issued by the proper authority showing that the Statement of Economic Interests was filed, is a mandatory provision of election law. *Wojkowski v. Hamblet*, 95 CO 12 (Cir. Ct., Cook Cty., Ill., 1995), *aff'd*, Ill.App. Ct. No. 1-59-0374, Feb. 16, 1995); *Bolger v. Electoral Board of City of McHenry*, 210 Ill.App.3d 958, 569 N.E.2d 628 (2d District 1991). Determining that the Statement of Economic Interests was actually filed with the County Clerk, and that the receipt submitted with the nominating papers was actually issued by the County Clerk, does not "go behind" the Statement of Economic Interests, nor does it involve the substantive evaluation of the contents of the Statement of Economic Interests. It simply decides whether or not there was compliance with mandatory provisions of the Election Code and other applicable statutes relating to the sufficiency of the nominating papers, not to the lawfulness or legitimacy of the economic interests or to the sufficiency of their disclosure.

21. The Candidate reframes this last argument simply as the proposition that her filing with the Board of an actual copy of her Statement of Economic Interests coupled with a receipt, not issued or stamped by the County Clerk, should suffice as evidence of compliance with the relevant statutory requirements. In so doing she offers a defense of her papers that this Board has rejected more than once before. Where a candidate attached a statement of economic interests and a blank receipt with his nomination papers, the Board held there was no evidence that candidate filed a statement of economic interest with the county clerk as required by law. *Curtis v. Municipal Officers Electoral Board*, 95 CO 33 (Cir. Ct., Cook Cty., 1995); *Sneed v. Board of Election Commissioners*, 95 CH 1140 (Cir. Ct. Cook Cty., 1995); *Delgado v. Ladien*, 99-EB-ALD-126, CBEC, January 12, 1999.

22. The Candidate argues that her nominating papers should not be rejected because of "deficiencies" in the receipt for the filing with the County Clerk of her Statement of Economic Interests:

> [U]nder the provisions of Section 10-5, deficiencies in the SEI receipt do not support removal from the ballot. See *Reid v. Bednarz*, No. 19-EB-ALD-053 (Chicago Elec. Bd. 2019); *Brown v. LaFargue*, 15-EB-ALD-017 (Chicago Elec. Bd. 2014) ("*Welsh* [147 Ill.2d 40, 51] underscores that the appropriate remedy for such deficiency does not involve removal from the ballot" and the content of the receipt for the SEI is "a non-issue and of no consequence in this case."). The Chicago Electoral Board has held many times that the failure to designate the office on the SEI does not render the nomination papers invalid.

CANDIDATE WITNESS LIST AND MEMO OF LAW (July 22, 2024), at 6-7. The flaw in this argument is that the Objector does not attack the receipt for the Statement of Economic Interests as being "deficient" in some way, such as that it failed to designate the office that the Candidate seeks. Rather, the attack is that the "receipt" that the Candidate filed is not what it purported to be. That is, inasmuch as no Statement of Economic Interests was ever filed with the County Clerk; and the County Clerk never issued a receipt for the filing of such a Statement; then the "receipt" filed by the Candidate with the Electoral Board was not "deficient"; it was false or, more charitably, it was a nullity. That is, the County Clerk's receipt was not "deficient"; it was non-existent.

23. The Candidate also contends that the Electoral Board should be estopped from barring her candidacy because an employee of the Board who physically received the Candidate's nominating papers when she filed them with the Board checked a box on the Board's receipt indicating that a receipt for the Statement of Economic Interests was included among the nominating papers. This Board rejected precisely that argument in *Henning v. Persons*, 07-EB-ALD-050, CBEC (Jan. 16, 2007), holding that a clerical employee of the Board does not have the power to bind the Board. That is, the clerical employee's observation that the nominating papers superficially

appear to be complete and to comply with applicable laws — a decision typically made in mere minutes if not seconds at the filing desk — is not to be confused with the Electoral Board's substantive review of the nominating papers, particularly as subsequently undertaken in the formal and adversarial context of proceedings on an objector's petition.

24. Finally, the Candidate attempts to recast this last argument in light of the text of the revision of the School Code that created the elective office that the Candidate seeks:

> The recently enacted School Code, 105 ILCS 5/34-4.1, shifts the burden of review to the election authority as follows:
>
> > All petitions for the nomination of members of the Chicago Board of Education shall be filed with the board of election commissioners of the jurisdiction in which the principal office of the school district is located within the time provided for by Article 7 of the Election Code, except that petitions for the nomination of members of the Chicago Board of Education for the 2024 general election shall be prepared and certified as outlined in Article 10 of the Election Code. *The board of election commissioners shall receive and file only those petitions that include* a statement of candidacy, the required number of voter signatures, the notarized signature of the petition circulator, and *a receipt from the county clerk showing that the candidate has filed a statement of economic interest on or before the last day to file as required by the Illinois Governmental Ethics Act.* The board of election commissioners may have petition forms available for issuance to potential candidates and may give notice of the petition filing period by publication in a newspaper of general circulation within the school district not less than 10 days prior to the first day of filing. The board of election commissioners shall make certification to the proper election authorities in accordance with the general election law.
>
> Thus, the Legislative intent is to dispense with objections to nomination papers, which are instead reviewed and accepted by the election authority. This is confirmed for Candidate's nomination papers, where the election authority reviewed the nomination papers, and accepted them as filed.

CANDIDATE WITNESS LIST AND MEMO OF LAW (July 22, 2024), at 2-3 (*emphasis added*). Thus, the Candidate argues that the School Code now includes a novel provision giving the Electoral Board one and only one bite at the apple of reviewing nominating papers for factual and legal sufficiency.

The Candidate seizes upon the language that the Hearing Officer italicized in quoting the statute as quoted by the Candidate in her CANDIDATE WITNESS LIST AND MEMO OF LAW. That text merits careful parsing. It is part of Section 34-4.1 of the School Code, 105 ILCS § 5/34-4.1. It reads in pertinent part as follows:

> The board of election commissioners shall *receive and file only* those petitions that include a statement of candidacy, the required number of voter signatures, the notarized signature of the petition circulator, and...a receipt from the county clerk showing that the candidate has filed a statement of economic interest on or before the last day to file as required by the Illinois Governmental Ethics Act.

(*Emphasis added.*) The Election Code frequently instructs that papers be "filed" for one purpose or another. The appearance in the Education Code of the verb "receive" and the creation of the new phrase "receive and file", coupled with the adverb "only", gives some fresh impetus to the theory that an electoral board is bound by the actions of its counter clerk, thus legislatively overruling, at least with respect to Chicago Board of Education candidacies, the Board's precedent in *Henning v. Persons, supra.* But the addition of the word "receive" does not work that magic at all. Most likely it reflects the General Assembly's direction that, unlike with local school council candidacy papers, nomination papers for seats on the newly-elective Chicago Board of Education are to be tendered to election, as opposed to school, authorities, and the election officials are directed to "receive" them. By distinguishing between the acts on the part of the election board in "receiving, on the one hand, and in "filing", such papers on the other, the legislature, if anything, was underscoring the distinction between a merely clerical function ("receiving", or physically taking possession of, papers) and "filing" them, which then commences the familiar and well-limned process of subjecting candidacy papers to public scrutiny, to formal objections, and to the full panoply of procedures inherent in a ballot access case such as the one at bar. The new legislative commands, far from overturning the

process of scrutiny, objection, and adversarial electoral board hearings, as applied to candidacy papers pertaining to the Chicago Board of Education, reinforces them. This is especially so in light of the last sentence of the quoted provision of the School Code:

> The board of election commissioners shall make certification to the proper election authorities *in accordance with the general election law.*

(*Emphasis added.*) No reasonable reading of Section 34-4.1 of the School Code gives clerical employees of an election board new-found powers to bind an electoral board; nor does it exempt the nominating papers of a candidate for election to the Chicago Board of Education from being subjected to public scrutiny or objections under the Election Code.

Recommended Decision

25. On the bases of an examination of the face of the Nomination Papers, of the Objector's Petition, of all the submissions of the parties, of the testimonial and documentary evidence received into the record, and of all other proceedings held herein, the Hearing Officer recommends that the Electoral Board enter the following findings of fact:

(a) The Candidate did not file a Statement of Economic Interests with the County Clerk of Cook County.

(b) The purported receipt, filed with the Candidates Nominating Papers, for a Statement of Economic Interests filed with the County Clerk of Cook County, was not in fact issued by the County Clerk of Cook County.

26. The Hearing Officer recommends that the Electoral Board enter the following conclusions of law:

(a) The Candidate's Nomination Papers were not accompanied by a timely and authentic receipt, issued by the County Clerk of Cook County, for a Statement of Economic Interests filed by or on behalf of the Candidate with the County Clerk, and such Nomination Papers are thus insufficient as a matter of law.

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

(c) The Candidate's Nomination Papers are insufficient in law and fact.

27. The Hearing Officer recommends that the Electoral Board enter the following final administrative decision:

The name of BRITTANY BAILEY PRESTON shall not appear and shall not be printed on the ballot for election to the office of Member for the Ninth District of the Chicago Board of Education to be voted for at the General Election to be held on November 5, 2024.

Enter:

/s/ **JOSEPH A. MORRIS**

JOSEPH A. MORRIS
Hearing Officer

Dated: August 12, 2024.

Affidavit

The undersigned, Brittany Bailey Preston, having been first duly sworn, under oath deposes and states the following on personal knowledge and belief, and if called to testify, would testify under oath as follows.

1. I gathered over 1,000 signatures upon my signature petition sheets as a candidate for member of the Chicago Board of Education, District 9, and submitted those sheets along with my statement of candidacy, receipt for my statement of economic interests, and the actual statement of economic interests with the Chicago Board of Election Commissioners on June 17, 2024.

2. The attached receipt is a true and accurate copy of the receipt that the Chicago Board of Election Commissioners issued to me after my nomination papers were reviewed and accepted.

3. Before filing the nomination papers with the Chicago Board of Election Commissioners, on June 17, 2024 at some time between 1:00 PM and 3:00 PM I went to the Cook County Clerk's office at 69 W. Washington St. 5th Floor, Chicago, IL to submit a copy of my statement of economic interests that I had filled out and signed ahead of time.

4. On June 17, 2024 at the Cook County Clerk's office, I approached an employee at the Clerk's office that was behind the desk, and asked where to file my statement of economic interests, which I had previously filled out and signed, and had with me if needed by the Clerk's office.

5. The Clerk's staff employee told me that everything regarding petition filings and statements to run for office for school board was being handled at Chicago Board of Elections' supersite for the first day and the last day of petition filing.

6. The Clerk's employee behind the desk told me directly that there "wasn't anything I needed to do at the Clerk's office."

7. I relied upon the information provided by the Clerk's office staff employee, who refused to take my statement of economic interests, and then went to the Chicago Board of Election Commissioners' supersite, and then showed them all of my nomination papers, and the Board of Election employee at the supersite confirmed that I had the necessary forms, and accepted my nomination papers.

Brittany Preston
Brittany Bailey Preston

Subscribed and sworn to before me
by Brittany Bailey Preston who appeared
before me on July 12, 2024.

Mark Haberlin
Notary Public (seal)

OFFICIAL SEAL
MARK HABERLIN
NOTARY PUBLIC, STATE OF ILLINOIS
MY COMMISSION EXPIRES: 3/4/2028

OBJECTOR EXHIBIT
A

Objector's Ex

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_____
Brittany Bailey Preston

Subscribed and sworn to before me
by Brittany Bailey Preston who appeared
before me on July ____ , 2024.

_____
Notary Public (seal)

ELECTIONS
OFFICE OF THE COOK COUNTY CLERK
69 W. Washington Street, Suite 500, Chicago, Illinois 60602

TEL 312.603.0906 FAX 312.603.9786 WEB cookcountyclerkil.gov

The Honorable Cedric Giles, Cook County Clerk, in his capacity as keeper of records for Cook County, state that the Clerk's duties and responsibilities include the maintenance of certain documents and records of Cook County, including the documents and records specifically identified herein. The Cook County Clerk's Office has conducted a due and diligent search, concluding that no filing of a STATEMENT OF ECONOMIC INTERESTS FORM on behalf of Brittany Bailey Preston, appears in our records.

By Alberto Arreola

July 10, 2024

OBJECTOR EXHIBIT

B