

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

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Objections of: DUANE E. BURGESS )  
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To the Nomination ) No.: 15-EB-ALD-060  
Papers of: CYNTHIA LOMAX )  
 ) Rel. ALD-038 AND ALD-140  
Candidate for the office of )  
Alderman of the 16th Ward, City of Chicago )

**FINDINGS AND DECISION**

The duly constituted Electoral Board, consisting of Board of Election Commissioners of the City of Chicago Commissioners Langdon D. Neal, Richard A. Cowen, and Marisel A. Hernandez, organized by law in response to a Call issued by Langdon D. Neal, Chairman of said Electoral Board, for the purpose of hearing and passing upon objections (“Objections”) of DUANE E. BURGESS (“Objector”) to the nomination papers (“Nomination Papers”) of CYNTHIA LOMAX, candidate for the office of Alderman of the 16th Ward of the City of Chicago (“Candidate”) to be elected at the Municipal General Election to be held on February 24, 2015, having convened on December 8, 2014, at 9:00 a.m., in Room 800, 69 West Washington Street, Chicago, Illinois, and having heard and determined the Objections to the Nomination Papers in the above-entitled matter, finds that:

1. Objections to the Nomination Papers of the Candidate herein were duly and timely filed.
2. The said Electoral Board has been legally constituted according to the laws of the State of Illinois.

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

4. A public hearing held on these Objections commenced on December 8, 2014 and was continued from time to time.

5. The Electoral Board assigned this matter to Hearing Officer Eileen Letts for further hearings and proceedings.

6. The Objector and the Candidate were directed by the Electoral Board's Call served upon them to appear before the Hearing Officer on the date and at the time designated in the Hearing Schedule. The following persons, among others, were present at such hearing: the Objector, DUANE E. BURGESS, by his attorney, James P. Nally P.C.; the Candidate, CYNTHIA LOMAX, pro se.

7. The Hearing Officer correctly noted that Objector's Petition contends that the Candidate's Nomination Papers are invalid because the Candidate:

- A. Failed to properly bind her Nomination Papers in book form;
- B. Unlawfully identified herself as a Democrat on her Statement of Candidacy for 16<sup>th</sup> Ward Alderman.
- C. Incorrectly stated in her Statement of Candidacy that the date of the Municipal General Election was February 25, 2015; and
- D. Did not include her address on the receipt for the Candidate's Statement of Economic Interest.

8. Because the Objector's memorandum of law focused only on the contention that the Candidate failed to properly bind her Nomination Papers, that is the only issue upon which

the Hearing Officer made a recommendation. In her recommendation, the Hearing Officer concluded that the Candidate's Nomination Papers were, in fact, securely fastened by a large binder clip at the top of such papers and that this strictly complied with the binding or fastening requirements of Section 10-4.

9. The Objector filed a motion pursuant to Rule 20 of the Electoral Board's Rules of Procedure to address the Board regarding the Hearing Officer's report. In it, the Objector claims that the Hearing Officer overlooked and did not rule upon his other objections.

10. The Electoral Board has reviewed the Objector's Petition and the Candidate's Nomination Papers and overrules the Objector's other objections.

11. The Objector contends that the Candidate's statement of candidacy for Alderman indicated that she was seeking the nomination of the "Democratic Party." The words "Democratic Party" did not appear on her nominating petitions. Aldermanic candidates are nonpartisan and no political party affiliation is allowed on the ballot.

12. The Electoral Board finds that because the words "Democratic Party" were not on the Candidate's petition sheets when they were presented to the voters for signature, there was no misleading or incorrect information concerning party affiliation presented to the voters when signing the candidate's petition sheets. There is no evidence that the voters were confused about the candidate's stated or unstated political affiliations. Under these facts, there is not enough to invalidate the Candidate's statement of candidacy simply because it contained extraneous information concerning the candidate's political party affiliation where none was required. See, *Dix v. Terry*, 03-EB-ALD-071, CBEC, January 31, 2003; accord, *Moses v. Austin*, 07-EB-ALD-004, CBEC, January 23, 2007; *Anderson v. Ward*, 07-EB-ALD-034 January 25, 2007; *Brown v. Washington*, 11-EB-ALD-009, CBEC, January 13, 2011; *Wright v Davis*, 11-EB-ALD-100,

CBEC, January 7, 2011; *Walker v. Earls*, 11-EB-ALD-188, CBEC, January 11, 2011; *Bocanegra v. Rodriguez*, 11-EB-ALD-197, CBEC, January 18, 2011, *candidate defaulted*, Circuit Court of Cook County, No. 11 COEL 00031.

13. Regarding the Objector's contention that the Candidate incorrectly stated in her Statement of Candidacy that the date of the Municipal General Election was February 25, 2015, the Electoral Board finds that such date is incorrect in that the date of the Municipal General Election is February 24, 2015. Thus, Candidate was off by one day. This Electoral Board has held in the past that a minor error in stating the date of the election on a statement of candidacy will not operate to invalidate a candidate's nomination papers. See, *Ahimaz v. Sheriff*, 92-EB-WC-88, CBEC (1992) (candidate's statement of candidacy listed March 17, 1991 as date of primary election, when the actual date of the primary election was March 17, 1992, which is reflected in the body of the petition, did not invalidate the nominating petitions); *Gordon v. Pellett*, 92-EB-WC-93, CBEC (1992); *Burgees v. Mitchell*, 11-EB-ALD-041, CBEC, (2011) (listed date of Municipal General Election as February 22, 2010 instead of the correct date of February 22, 2011); *Robinson v. Colvin*, 07-EB-ALD-098, CBEC (2007) (candidate's error in referring to 2006 rather than 2007 does not invalidate nomination papers); *Summers, et al. v Morrow*, 04-EB-WC-09, CBEC (2004) (statement of candidacy stating that the election is to be held on "03-16-2003" instead of March 16, 2004 does not invalidate the candidate's nomination papers in that it was clear from reading the nomination papers together the office that the candidate was seeking and the correct date of the election). This objection is overruled.

14. Regarding the Objector's claim that the Candidate did not include her address on the receipt for her Statement of Economic Interest, an examination of such receipt reveals that the Candidate's address is, in fact, listed on the receipt filed with her Nomination Papers, even

though the form of the receipt provided by the Cook County Clerk does not provide a line for the candidate's address. The objection is, therefore, overruled.

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

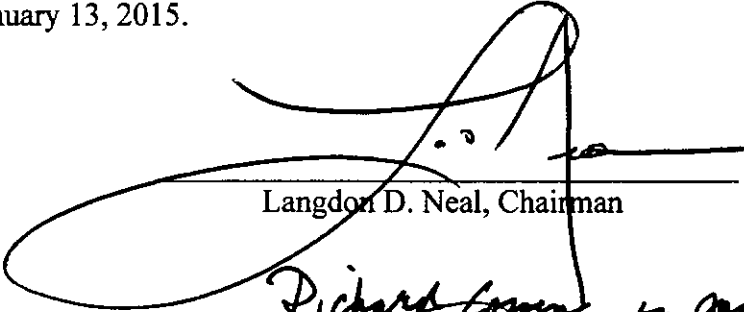
16. The Electoral Board, having reviewed the record of proceedings in this matter and having considered the report and recommendations of the Hearing Officer, as well as all argument and evidence submitted by the parties, hereby adopts the Hearing Officer's recommended findings and conclusions of law, except that we wish to clarify that substantial compliance with the page numbering and fastening requirements of Section 10-4 of the Election Code (10 ILCS 5/10-4) is sufficient. A copy of the Hearing Officer report and recommendations is attached hereto and is incorporated herein as part of the decision of the Electoral Board.

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

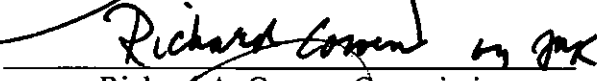
18. The Electoral Board further finds that additional objections to the Candidate's Nomination Papers were filed in related cases ALD-038 and ALD-140, but the objections in those cases were also overruled.

IT IS THEREFORE ORDERED that the Objections of DUANE E. BURGESS to the Nomination Papers of CYNTHIA LOMAX, candidate for election to the office of Alderman of the 16th Ward of the City of Chicago, are hereby OVERRULED and said Nomination Papers are hereby declared VALID and the name of CYNTHIA LOMAX, candidate for election to the office of Alderman of the 16th Ward of the City of Chicago, SHALL be printed on the official ballot for the Municipal General Election to be held on February 24, 2015.

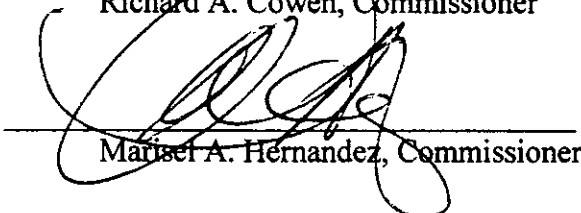
Dated: Chicago, Illinois, on January 13, 2015.



Langdon D. Neal, Chairman



Richard A. Cowen, Commissioner



Maribel A. Hernandez, Commissioner

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

**BOARD OF ELECTION COMMISSIONERS OF THE CITY OF CHICAGO  
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Objections of: DUANE BURGESS )  
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To the Nomination )  
Papers of: CYNTHIA LOMAX ) No. 15-EB-ALD-060  
 )  
Candidate for the Office of )  
Alderman, 16<sup>th</sup> Ward ) Eileen M. Letts  
City of Chicago, State of Illinois, ) Hearing Officer

**HEARING OFFICER'S FINDINGS AND RECOMMENDATION**

In the matter of DUANE BURGESS, ("Objector") regarding the Nomination Papers of CYNTHIA LOMAX, candidate for the nomination for the Office of Alderman, 16th Ward in the City of Chicago, State of Illinois ("Candidate"), the hearing having convened on December 9, 2014. Eileen M. Letts, Esq., the duly appointed Hearing Officer, hereby makes the following Report and Recommended Findings to the Board of Election Commissioners of the City of Chicago ("CBEC" or the "Board"):

1. The candidate filed Nomination Papers with the CBEC for the nomination for the Office of Alderman, 16th Ward in the City of Chicago, State of Illinois, for the Municipal General Election to be held on February 24, 2015. Such Nomination Papers consisted of: a) a Statement of Candidacy; b) a Loyalty Oath; c) the Candidate's Statement of Economic Interest; and d) 56 Nominating Petition Sheets. The Candidate's Nomination Papers were marked as Board Group Exhibit A and admitted into evidence.

2. The Verified Objector's Petition was timely filed on December 3, 2014. Such petition was marked as Board Group Exhibit B and admitted into evidence.

3. A Call to the hearing on said objections was duly issued by the Chairman of the CBEC and served upon all parties. The Call and proof of service thereof were marked and admitted into evidence as Board Group Exhibit C.

4. The initial hearing on these objections was called on December 9, 2014, at which time Objector Duane Burgess appeared through his counsel James P. Nally and Candidate Cynthia Lomax appeared *pro se*. Appearances in this matter were filed by Mr. Nally and Ms. Lomax. Such appearances were marked and admitted into evidence as Board Group Exhibit D. All Parties were provided copies of the Rules of Procedure of the CBEC, and were instructed to become familiar with the Rules. At that initial status, the Hearing Officer reminded the parties that the case was on an expedited basis and that continuances would not be granted as a matter of course, but rather only for good cause shown.

5. It was agreed that the Objector would file a short legal memo arguing the merits of his objections that the Candidate:

- a. failed to properly bind her Nomination Papers in book form;
- b. unlawfully identified herself as a Democrat on her Statement of Candidacy for 16th Ward Alderman;
- c. incorrectly stated in her Statement of Candidacy that the date of the Municipal General election was February 25, 2015; and
- d. did not include her address on the receipt for the Candidate's Statement of Economic Interest.

6. The Candidate was informed of her right to file a Response to the Objector's legal memo, all parties agreed to service via emailed copies, and the Hearing Officer set a hearing date for December 16, 2014, at 10:00 a.m.



7. At the December 16, 2014 hearing, the Candidate and James P. Nally on behalf of the Objector, Duane Burgess were present. The Objector had filed his Brief in Support of his Petition on December 11, 2014.

8. The Hearing Officer noted that the Objector's December 3, 2014 Verified Petition listed several objections to the Candidate's Nomination Papers; however, the Brief in Support of Objector's Petition only addressed the Candidate's alleged failure to properly bind her Nomination Papers. The Hearing Officer inquired whether the Objector wished to forgo his other claims. In response, Mr. Nally indicated that the dispositive issue in this case concerned the manner in which the Candidate's Nomination Papers were bound.<sup>1</sup> Therefore, the Hearing Officer proceeded to hear testimony and collect evidence into the record solely on the issue of whether the Candidate bound her Nomination Papers in strict compliance with 10 ILCS 5/10-4.

9. The Objector alleged in his objection, that the Candidate's Nomination Papers, including petition sheets, "were not securely bound in book form" as required by law and that "failure to bind petition sheets and nomination papers is a fatal defect." 10 ILCS 5/10-4.

10. Section 10-4 provides that an election candidate's nomination papers "shall be neatly fastened together in book form, by placing the sheets in a pile and fastening them together at one edge in a secure and suitable manner..." 10 ILCS 5/10-4.

11. The Candidate testified that when she submitted her Nomination Papers to the Board that they were bound with a metal binder clip. Candidate introduced a photograph, which

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<sup>1</sup> It should be noted that although the Objector did not pursue his other objections at the December 16, 2014 hearing, such objections would have to be overruled. The objections to the Candidate's Statement of Candidacy because she identified herself as a Democrat and incorrectly stated the date of the Municipal General Election were specifically overruled in related case number No. 15-EB-ALD-0140. Moreover, the Objection that the Candidate failed to include her address on her Statement of Economic Interest would be similarly overruled. A review of the Board's copy of the form shows that the Candidate did, in fact, include her address.

depicts a large black binder clip, centered and attached to the top of her Nomination Papers. The photograph was entered into the record as Candidate Exhibit 1.

12. The Candidate testified that the Board attendant who collected her Nomination Papers tendered to her a receipt indicating that her Nomination Papers were bound and described the binding mechanism as a "metal clip." The receipt was entered into the record as Candidate Exhibit 2.

13. Two additional photographs, which were taken by Board staff show a large binder clip attached at the top of Candidate's Nomination Papers. These photographs are contained in Board Group Exhibit A.

14. Through counsel, the Objector argued that the photographs demonstrate that the Candidate's Nomination Papers failed to comply with 10 ILCS 5/10-4 as interpreted in *Jones v. Dodendorf*, 190 Ill. App. 3d 557 (Ill. App. Ct. 2d Dist. 1989).

15. Given the facts of this case and Board precedent, the Board should declare that the Candidate's use of a single large binder clip to fasten her Nomination Papers strictly complied with 10 ILCS 5/10-4. *Bendell v. Educ. Officers Electoral Bd.*, 338 Ill. App. 3d 458, (Ill. App. Ct. 1st Dist. 2003); *Haynes v. Anderson*, 07-EB-ALD-017 CBEC, January 12, 2007.

16. Objector's reference to *Jones v. Dodendorf*, an opinion from the Second District of the Illinois Appellate Court, is inapplicable to the instant case. In *Dodendorf*, several candidates for school board bound their petitions with paper clips and failed to number any of the petitions as required by Section 10-4. *Dodendorf*, 190 Ill. App. 3d at 560-561. The candidates argued that their failure to consecutively number their petitions was not a fatal error because their nomination papers otherwise *substantially complied* with Section 10-4. *Id.* The Second District held that the candidates had not *substantially complied* with the page numbering requirements of Section 10-4

and could not have their names placed on the ballot. The Second District reasoned that the candidates had made no attempt to comply with the page numbering requirement. The Second District stated that completely ignoring an election code mandate cannot be interpreted as *substantial compliance*. *Id.* at 561.

The Second District decision did not address the manner in which the candidates bound their nomination papers, beyond non-binding dicta. The Second District acknowledged that the Board had found that paper clipping nomination papers together *substantially complied* with the election code, but admonished the candidates that such a binding mechanism did not *strictly comply* with the code and was yet another example of how the candidates deviated from its requirements. *Dodendorf*, 190 Ill. App. 3d at 561-562.

The *Dodendorf* case is not applicable to this instant matter for two additional reasons. First, the Second District Appellate Court reviewed the *Dodendorf* case under a substantial compliance standard, not a strict compliance standard as asserted by the Objector.

Second, the Board has explicitly held that it applies the First District's interpretation of Section 10-4's binding provision rather than the Second District's substantial compliance standard. *See Haynes v. Anderson*, 07-EB-ALD-017 CBEC, January 12, 2007. In *Bendell*, the First District opined that where an election code statute like Section 10-4 mandates the performance of certain acts or things and provides a penalty for noncompliance, compliance with its provisions must be strict rather than substantial. *Bendell v. Educ. Officers Electoral Bd.*, 338 Ill. App. 3d 458, 463 (1st Dist. Ill. App. Ct. 2003). Accordingly, the *Bendell* court held that a candidate's nomination papers, which were bound together along one edge by a large paper clip, did not interfere with preserving the integrity of the petitions or the election process and *strictly complied* with section 10-4. *Id.* at 464. The CBEC applied the *Bendell* strict compliance standard in *Haynes v. Anderson*, 07-EB-

ALD-017 CBEC, January 12, 2007, and held that where a conflict of applicable law occurs regarding the binding provision of Section 10-4, it "must follow the precedent of the First District of the Illinois Appellate Court in *Bendell*." *Haynes v. Anderson*, 07-EB-ALD-017 CBEC, January 12, 2007.

**RECOMMENDED DECISION**

It is the recommendation of this Hearing Officer that the objection to the Nomination Papers of Cynthia Lomax, candidate for the Office of Alderman in the 16<sup>th</sup> Ward of the City of Chicago, State of Illinois; must be overruled.

Dated: Chicago, Illinois, on January 7, 2015.

Respectfully Submitted By:



Eileen M. Letts, Hearing Officer