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

Objections of: Alonso Zaragoza and Alberto Arroyo	)	
To the Nomination Papers of: Joaquin Vazquez	)	No.: 16-EB-RGA-03
	)	Rel.: 16-EB-RGA-02
Candidate for the nomination of the Democratic Party for the office of Representative in the General Assembly of the 3rd Representative District, 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, Chairman of said Electoral Board, for the purpose of hearing and passing upon objections ("Objections") of Alonso Zaragoza and Alberto Arroyo ("Objectors") to the nomination papers ("Nomination Papers") of Joaquin Vazquez, candidate for the nomination of the Democratic Party for the office of Representative in the General Assembly of the 3rd Representative District in the State of Illinois ("Candidate") at the General Primary Election to be held on March 15, 2016, having convened on December 14, 2015 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 Objectors 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 14, 2015 and was continued from time to time.

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

6. The Objectors and the Candidate were directed by the Electoral Board 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 Objectors, Alonso Zaragoza and Alberto Arroyo, by their attorneys, Michael Kasper, James Gleffe, Frank Avila, and Pericles Abbasi; and the Candidate, Joaquin Vazquez, by his attorney, John Spina.

7. The Hearing Officer ordered that an examination of the voter registration records be conducted by clerks and agents under the Board's direction and supervision, in accordance with the laws of Illinois and the rules of the Board.

8. The Hearing Officer directed all parties to appear and be present, either personally and/or by their authorized representatives, during this records examination.

9. The Candidate and/or his duly authorized representative was present during the examination of the registration records.

10. The Objectors and/or their duly authorized representative were present during the examination of the registration records.

11. The examination of the registration records was completed and the Electoral Board hereby adopts and incorporates by reference the results of the records examination conducted by its clerks and agents. The written report of the result of the registration records examination is contained in the Electoral Board's file in this case and a copy has been provided or made available to the parties.

12. The results of the records examination indicate that:

A. The minimum number of valid signatures required by law for placement on the ballot for the office in question is 500;

B. The number of purportedly valid signatures appearing on the nominating petition filed by the Candidate total 1,091;

C. The number of signatures deemed invalid because of objections sustained as a result of the records examination total 580;

D. The remaining number of signatures deemed valid as a result of the records examination total 511.

13. The Electoral Board finds that the number of valid signatures appearing on the Candidate's nominating petition following completion of the records examination was greater than the minimum number of valid signatures required by law to be placed upon the official ballot as a candidate for the nomination of the Democratic Party for the office of Representative in the General Assembly of the 3rd Representative District of the State of Illinois.

14. The Hearing Officer conducted a hearing to allow the Objectors an opportunity to present evidence in support of their Rule 8 motion objecting to the Board's clerk's findings during the records examination and to present evidence in support their other Objections to the Candidate's Nomination Papers.

15. 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's Nomination Papers contained only 496 valid signatures, which is less than the minimum number of valid signatures required by law to be placed upon the official ballot as a candidate for nomination of the Democratic Party for the office of Representative in the General Assembly for the 3rd Representative District of the State of Illinois, and that the Candidate's Nomination Papers should be found invalid.

16. The Candidate filed a motion under Rule 20 of the Electoral Board's Rules asking the Board to review the Hearing Officer's recommendations and to review additional evidence. The Candidate contended:

A. The Hearing Officer's recommendation to strike 23 petition sheets circulated by Jerry Glenn is improper as "substantial compliance" is the proper standard to be used, citing *Samuelson v. Cook County Officers Electoral Board*, 2012 IL App (1st) 120581.

B. Mr. Glenn's "mistake" relative to the address he was supposed to include in his circulator affidavits has not undermined the integrity of the electoral process. The Candidate contends that because the Mr. Glenn was found and the Objector and the Electoral Board were ultimately afforded an opportunity to question Mr. Glenn concerning the accuracy of his oath, the invalidation of petition sheets circulated by Mr. Glenn is unnecessary, unreasonable and unconstitutional.

C. The Hearing Officer's review of 137 affidavits submitted by the Candidate to rehabilitate signatures ruled as invalid during the records examination was

improper because he took it upon himself to compare the form of the signatures on the affidavit and nominating petition to the signature on the voter's registration card, and in doing so refused to count the affidavits of 48 voters in this case (and 55 voters in 16-EB-RGA-02).

D. The Hearing Officer refused to consider 13 additional affidavits proffered by the Candidate prior to the commencement of his case because they were presented after the January 11th, 10:00 p.m. deadline for submission of evidence.

17. Section 7-10 of the Election Code (10 ILCS 5/7-10) requires that a petition circulator provide a signed, sworn statement certifying that the signatures on the circulated sheet was signed in his or her presence, are genuine, and that the persons so signing were at the time of signing qualified voters of the political party for which the nomination is sought. The circulator affidavit must also state the circulator's "street address or rural route number, as the case may be, as well as the county, city, village or town and state...."

18. It is undisputed that the circulator affidavit requirement is a mandatory requirement of the Election Code. *Cunningham v. Schaeflein*, 2012 IL App (1st) 120529, ¶ 23, 969 N.E.2d 861. The Electoral Board agrees that substantial compliance can satisfy a mandatory provision of the Election Code and that "substantial compliance with the circulator's affidavit requirement saves a petition sheet from being rendered invalid." *Id.*

19. In *Cunningham*, the circulator testified that "he wrote his address incorrectly on the petition and he was staying with his sister at 9078 Emerson – not 9708 Emerson," as listed in the circulator's affidavit. *Cunningham*, ¶ 8. The court concluded that the circulator's address with a "minor mistake" such as the one presented did not invalidate the petition, as the error did

not preclude the parties from locating the circulator and holding him to his oath. *Cunningham*, ¶ 26.

20. Here, Mr. Glenn testified that he circulated the Candidate's nominating petition sheets in October and November 2015 and that on the circulator affidavit of such sheets he listed his residence as 180 Prairie Avenue, Apartment B, Wilmette, Illinois. The testimony of Mr. Glenn was clear and unequivocal that he had been legally evicted from his apartment in Wilmette in June, 2015, and that he then moved in with his mother at an address in Matteson, Illinois. Knowing he no longer lived at the Wilmette address, he made the conscious decision to list the Wilmette address on his circulator's affidavit anyway. He did so, he testified, because, because it was the address listed on his state ID. Transcript of proceedings, January 13, 2016, pp. 60. Even when he renewed his state ID in December 2015, however, he continued to list the Wilmette address as his residence, even though he no longer lived there. Transcript of proceedings, January 13, 2016, pp. 36-38; Obj. Exhibit 3. Thus, unlike the circulator in *Cunningham*, Mr. Glenn was not guilty of a "minor mistake;" rather, he made the conscious decision to falsely state under oath that he lived at the Wilmette address when he knew he no longer lived there and had taken up residence at a different address in Matteson by the time he began circulating the Candidate's nominating petition sheets.

21. Mr. Glenn willfully and knowingly provided a false address in his circulator's address. Unlike cases where the circulator mistakenly transposed digits on the street number (see, *Cunningham*) or omitted his address on some sheet but provided it on other petition sheets (see, *Sakonyi v. Lindsey*, 261 Ill.App.3d 821, 634 N.E.2d 444 (1994)), it cannot be said that Mr. Glenn substantially complied with the mandatory requirement of Section 7-10 to list his residence address in the circulator's affidavit. The fact that the circulator here falsely stated his

residence under oath is even worse than a complete absence of a circulator address, which the court found justified the invalidation of all signatures on the petitions with missing circulator addresses in *Schumann v. Kumarich*, 102 Ill.App.3d 454, 457-58, 430 N.E.2d 99 (1981).

22. The fact that Mr. Glenn was subsequently found and appeared to testify before the Electoral Board should not require a different result. While it is true that the courts have held in certain cases where the circulator who has made a minor mistake can be found and made to testify that the integrity of the electoral process has been preserved, it does little to preserve the integrity of the electoral process if electoral boards are required to overlook the fact that a circulator has knowingly and willfully falsely stated his residence address under oath simply because the circulator, in this case, was subsequently found and brought to testify. The circulator's oath "is designed to preserve the integrity of the electoral process by preventing forgeries and improper signatures." *Bowe v. City of Chicago Electoral Bd.*, 401 N.E.2d 1270, 81 Ill.App.3d 146 (1980), affirmed, 79 Ill.2d 469 (1980). "The second purpose of the oath is to subject the circulator to possible prosecution for perjury for falsifying the petition or engaging in other improper conduct." *Id.* The dual purpose of the statute cannot be served by allowing circulators to knowingly and willfully list false addresses on their circulator affidavits.

23. The Electoral Board finds that the 23 petition sheets circulated by Jerry Glenn do not substantially comply with the mandatory circulator affidavit requirements of Section 7-10 of the Election Code and that all signatures on such sheets are invalid. *Schumann v. Kumarich*, 102 Ill.App.3d 454, 430 N.E.2d 99 (1981); *Canter v. Cook County Officers Electoral Board*, 170 Ill.App.3d 364, 523 N.E.2d 1299 (1988); *Harmon v. Town of Cicero Municipal Officers Electoral Board*, 371 Ill.App.3d 1111, 864 N.E.2d 996 (2007).

24. Regarding the Hearing Officer's review of the affidavits submitted by the Candidate to rehabilitate petition signatures invalidated during the records examination, Section 7-10 of the Election Code (10 ILCS 5/7-10) provides that candidate petitions "shall be *signed* by qualified primary electors residing in the political division for which the nomination is sought *in their own proper persons only* ...." That section further provides that at the bottom of each petition sheet shall be an affidavit signed by the circulator of that sheet certifying that "the signatures on that sheet of the petition were signed in his or her presence and certifying that *the signatures are genuine* ...." The purpose of this portion of section 7-10 is to prevent the filing of nominating petitions with fraudulent signatures. *Williams v. Butler* (1976), 35 Ill.App.3d 532, 536, 341 N.E.2d 394.) (1976).

25. Electoral boards have been permitted the flexibility to fashion their own rules of procedure and rules of evidence. See, e.g., *Carnell v. Madison County Officers Electoral Board,* 299 Ill.App.3d 419, 701 N.E.2d 548, 233 Ill.Dec. 698 (Fifth Dist. 1998). Of necessity, electoral boards are under significant pressure to settle all pre-election ballot access disputes as fairly and as quickly as possible. Time is of the essence.

26. If an objection is made that the signatures on a petition are not genuine, the customary practice of electoral boards in Illinois is to engage in an examination of the official voter registration records and make a comparison of the signature on the petition to the signature of the petitioner on his or her voter registration record. See, e.g., *Election Law* (IICLE, 2012), §§ 2.20, 2.43. This Electoral Board has adopted procedures for "records examinations" in Rule 6 of its Rules of Procedure. The procedure for conducting a records examination and making a comparison of the petition signer's signature on the petition with that found on the signer's voter registration record has found acceptance in the courts. See, e.g., *Daly v Stratton*, 215 F. Supp.

244, 245 (N.D. Ill. 1963) ("When a cursory comparison of a petition and the relevant voting lists reveals, as it does here, that fewer than the statutorily required number of signatories appearing in the former also appear in the latter, the petition is not genuine and the candidate need not be certified"). In *In re Cook*, 122 Ill.App.3d 1068, 1072-73, 462 N.E.2d 557 (5 Dist. 1984), the court rejected an argument that the electoral board's method of authenticating signatures constituted reversible error. The court noted that the signatures were compared to each person's registration card. Likewise, a similar process was discussed in the *Bergman* case, *supra*, noting "the parties participated in a binder check, which is used to initially determine the validity of objections to individual signatures and circulators." 347 Ill.App.3d at 343. "The Cook County clerk sustained objections as to 'signatures not genuine signature of purported voter' where the petition signatures were printed or where the clerk believed the signature on the petition differed in any way from the signature on the voter registration signature cards." Ibid. The *Bergman* court found no disfavor with the process.

27. The Electoral Board's rules here provide that if any party to the records examination disagrees with a finding of the Board's records examiner made during the records examination, they may appeal that finding. See, Rule 6(h). In order to preserve such objection for future hearing, the party's "watcher" at the records examination is required to immediately inform the Board's records examiner of his or objection at the time such finding is made by the examiner and the objection shall be noted.

28. Rule 6(h) provides that "Any finding overruling or sustaining an objection that a signature appearing on the candidate's petition is not genuine that is timely and properly appealed by a party may be reviewed by a handwriting expert employed by the Board of Election Commissioners." If the handwriting expert reverses a finding or findings of the records

examiner, the results of the records examination shall be amended accordingly and any such reversal shall be deemed to have been automatically appealed by both parties.

29. The parties are then "given an opportunity to address all such appeals properly taken and noted to the Electoral Board or to the hearing officer, if one has been assigned, at the evidentiary hearing on the merits of the objection scheduled and conducted pursuant to Rule 8 hereof." Rule 8(h). "The party making the appeal bears the burden of producing evidence proving that the records examiner's finding was in error." Ibid.

30. When given the opportunity to contest the findings of the Electoral Board's clerks made during the records examination, the burden is on the party wishing to reverse the clerks' finding of "producing evidence proving that the records examiner's finding was in error." Rule 6(h). Ideally, this evidence would take the form of live testimony from the petition signer stating either that he or she did sign the candidate's petition and that the signature that appears on the petition is his or her own or stating that the signature appearing on the petition is not genuine, as the case may be. The witness would then be subject to cross-examination.

31. Affidavits, however, are admissible as evidence under the Electoral Board's rules and "may be considered in determining whether signatures found not to be genuine during a records examination are, in fact, the genuine signatures of those signing the petition." Rule 10(c). The purpose of allowing affidavits in evidence is to avoid the need to subpoena and require the attendance of petition signers at electoral board hearings. This tends to avoid disrupting the daily lives of people who sign nominating petitions who would otherwise be required to attend electoral board hearings. This also tends to enhance the orderly and expeditious conduct of electoral board proceedings. The use of affidavits by electoral boards has been approved by the courts. See, *In re Cook*, 122 Ill.App.3d 1068, 462 N.E.2d 557 (5 Dist.

1984) (the court rejected arguments that the electoral board there could not rely on affidavits); *Bergman v. Vachata*, 347 Ill.App.3d 339, 807 N.E.2d 558 (1 Dist., 2004). But see, *Moscardini v. County Officers Electoral Board*, 224 Ill.App.3d 1059 (2 Dist., 1992) (use of affidavits in electoral board hearings was improper).

32. Here, the Plaintiff chose to attempt to prove that the findings of the Board's records examiner were in error by bringing in affidavits of certain individuals whose names were on the petition instead of subpoenaing or otherwise bringing in such individuals to testify subject to cross-examination. Such a decision was permitted by the Board's rules.

33. Supreme Court Rule 191 allows the use of affidavits in lieu of testimony so long as they set forth with peculiarity the fact upon which the claim, counterclaim of defense is based. The process employed in examining affidavits in the electoral board setting on issues concerning the genuineness of petition signatures is that where the objector objected to a signature, and such objection was sustained by the Board's records examiner and its handwriting expert, the hearing officer can accept the use of an affidavit to overrule that ruling, unless it is clear from the face of the affidavit that the requisite particularity is not present, the facts shown are not within the personal knowledge of the person, or a reasonable person could not believe the truth of the statements. The hearing officer then proceeds to review each and every affidavit submitted by the party by comparing the signature on the affidavit with the signature on the petition and with the signature on the voter registration record card for that petition signer, taking into account that the original objection was sustained by the Board's records examiner and, in most cases, also sustained by the Board's handwriting expert. See, e.g., *Fritchey v. Romanelli*, 08-EB-WC-37 (CBEC 2008), affirmed *Romanelli v. Fritchey*, No. 1-08-0031 (1st Ill. App. 2008) (unpublished order) (petitioner was afforded procedural due process when the board-appointed hearing

examiner accepted the affidavits submitted in support of rehabilitating the stricken signatures and weighed the affidavits against all of the evidence presented).

34. Not only is it possible for people to lie in affidavits -- that is, not only can they be falsified -- it also possible that the affidavits themselves can be manufactured or forged by unscrupulous persons. Unfortunately, Illinois has a notorious reputation for election fraud. See, e.g., *Nader v. Keith*, 385 F.3d 729 (7th Cir. 2004), which notes the importance for a procedure for verifying that candidates submit petitions that have been actually signed by registered voters and to weed out forgeries. Therefore, there needs to be some reasonable means to assess the veracity and trustworthiness of the affidavits and to accord them only the weight they truly deserve.

35. Section 10-10 of the Code does not specify that affidavits are required or may be used in electoral board proceedings. The statute certainly does not state that affidavits used in electoral board settings constitute "prima facie evidence" of the truth of the matter asserted therein. Thus, the legislature left it to electoral boards to decide whether to allow affidavits and what weight, if any, must be accorded them.

36. The Board's Rules of Procedure do not specify that affidavits are to be accorded any particular weight nor do they presume that such affidavits are legally binding. The rules simply state that affidavits may be considered to establish that signatures are genuine.

37. The process employed by the hearing officers in electoral board cases is not unlike that found in Section 8-1501 of the Code of Civil Procedure (735 ILCS 5/8-1501), which provides a means for determining the genuineness of signatures. It provides as follows: "In all courts of this State it shall be lawful to prove handwriting by comparison made by the witnesses or the jury with writings properly in the files of records of the case, admitted in evidence or treated as genuine or admitted to be genuine, by the party against whom the evidence is offered,

or proved to be genuine to the satisfaction of the court." Although section 8-1501 refers to "the witnesses or the jury," it is proper for a jury or a judge to form an opinion as to the genuineness of handwriting based upon a comparison of proven and disputed handwriting samples. *1601 South Michigan Partners v. Measuron*, 271 Ill.App.3d 415, 417-18, 648 N.E.2d 1008 (First Dist. 1995). Thus, it is proper to attempt to prove the authenticity of a signature without expert testimony, by requesting that a trial court, or in this case a hearing officer, as trier of fact, compare the signatures on a disputed document to the purportedly genuine signature of a person on another document.

38. In this case, the hearing officer used a procedure similar to that found in section 8-1501 and found that, in some cases, the signatures were genuine. In other cases, he found, based upon a comparison of the signature on the petition, the signature in the Board's voter registration records, and the signature on the affidavit, that the signatures were sufficiently dissimilar and that he concurred with the finding of the Board's records examiner and the Board's handwriting expert that those signatures on the petition were not genuine. The hearing officer found that the reasons for the dissimilarities between these signatures were not adequately explained by the affidavits.

39. If the trier of fact (i.e., the hearing officer) is presented with evidence showing that the signatures on documents are dissimilar to each other, including the signature on the affidavit, the candidate may arguably require that the signature on the petition be found genuine simply because an affidavit says so. However, it is well settled that a fact finder is not bound to accept non-credible testimony, or testimony without a sufficient foundation, simply because it is uncontroverted. *Sorenson v. Industrial Commission*, 281 Ill.App.3d 373, 382-42, 666 N.E.2d

713 (1996). An affidavit may be contradicted by other documentary evidence. *Webb v. Mt. Sinai Hospital*, 347 Ill.App.3d 817, 826 (2004).

40. "It is the responsibility of the trier of fact to assess the credibility of the witnesses and the weight of their testimony, resolve conflicts in the evidence and draw reasonable inferences from the evidence ...." *People v. McCulloch*, 404 Ill.App.3d 125, 131-132, 936 N.E.2d 743 (2nd Dist. 2010). The administrative body, through its hearing officers, weighs the evidence, makes credibility determinations and resolves conflicting evidence. *Abrahamson v. Illinois Department of Professional Regulation*, 153 Ill.2d 76, 88, 606 N.E.2d 1111 (1992). Courts will not reweigh evidence or substitute their judgment for that of the hearing officer. *Abrahamson*, 153 Ill.2d at 88.

41. The weight a hearing officer chooses to give to evidence is left to his or her discretion as the trier of fact. *Sanchez v. Ryan*, 734 N.E.2d 920, 315 Ill. App. 3d 1079 (2000). A trier of fact abuses his discretion when he applies an improper legal standard. *Rockford Police Benevolent & Protective Ass'n v. Morrissey*, 398 Ill. App. 3d 145, 154 (2010). An abuse of discretion also occurs "when the trial court's ruling is arbitrary, fanciful, unreasonable, or where no reasonable person would take the view adopted by the trial court." *Blum v. Koster*, 235 Ill. 2d 21, 36 (2009).

42. A trier of fact's factual findings and conclusions are held to be prima facie true and correct and will be affirmed unless they are against the manifest weight of the evidence. "A factual finding is against the manifest weight of the evidence when the opposite conclusion is clearly evident or the finding is arbitrary, unreasonable, or not based in evidence." *Samour, Inc. v. Board of Election Commissioners of the City of Chicago*, 224 Ill. 2d 530, 544 (2007); *Cinkus v. Village of Stickney*, 886 N.E.2d 1011, 228 Ill.2d 200 (2008). The fact that opposite conclusion

is reasonable or that reviewing court might have ruled differently based on same evidence will not justify reversal of findings of electoral board upon judicial review. *King v. The Justice Party*, 284 Ill.App.3d 886, 672 N.E.2d. 900 (1996).

43. Here, the Hearing Officer's determinations as to the affidavits were made using the appropriate legal standards. He compared the signature on the affidavit with the signatures on the Candidate's nominating petitions and on the Board's voter registration record for the named petition signer to determine whether the signature on the Candidate's petition was made in proper person and was genuine. The Hearing Officer's findings as to the genuineness of the petition signatures were not unreasonable and were supported by the record. Thus, there was no abuse of discretion either in the legal standard employed in considering the evidence or in the weight given to the affidavits or other evidence before the Hearing Officer. Furthermore, such findings were not against the manifest weight of the evidence.

44. Regarding the Hearing Officer's refusal to consider or admit the 13 additional affidavits proffered by the Candidate after the deadline established by the Hearing Officer for submission of such affidavits, the Electoral Board finds that the Hearing Officer did not abuse his discretion in refusing to consider such evidence. Rule 1(b)(ii) provides that the Board, and hearing officers under Rule 2, shall have the power to set times for filing of documents, as well as the power to extend the time for filing upon a showing of good cause. Deadlines necessarily "operate harshly and arbitrarily with respect to individuals who fall just on the other side of them, but if the concept of a filing deadline is to have any content, the deadline must be enforced." *U.S. v. Locke*, 471 U.S. 84, 101, 105 S.Ct. 1785 (1985). Here, the Hearing Officer did not find good cause to extend the filing deadline and his decision to refuse to consider affidavits submitted after the deadline is not an abuse of his discretion.

45. 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. 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.

46. For the reasons stated above, the Electoral Board finds that the Candidate has an insufficient number of valid signatures on his nominating petitions, sustains the Objections, and finds that the Nomination Papers of Joaquin Vazquez are, therefore, invalid.

47. The Electoral Board further finds that objections to the Candidate's Nomination Papers in related case 16-EB-RGA-02 were overruled; however, the Electoral Board's findings in this case renders the objections in related case 16-EB-RGA-02 moot.

IT IS THEREFORE ORDERED that the Objections of Alonso Zaragoza and Alberto Arroyo to the Nomination Papers of Joaquin Vazquez, candidate for the nomination of the Democratic Party for election to the office of Representative in the General Assembly of the 3rd Representative District of the State of Illinois are hereby SUSTAINED and said Nomination Papers are hereby declared INVALID and the name of Joaquin Vazquez, candidate for nomination of the Democratic Party for the office of Representative in the General Assembly for the 3rd 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 15, 2016.

Dated: Chicago, Illinois, on January 19, 2016.

Marisel A. Hernandez, Chairman

I DISSENT:

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.

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

Objections of Alonso Zaragoza and Alberto Arroyo	
To the Nomination Papers of Joaquin Vazquez	No. 16-EB-RGA-03
Candidate for the Nomination of the Democratic Party for the Office of State Representative in the General Assembly of the 3rd Representative District, State of Illinois at the 2016 Primary Election	Related Case 16-EB-RGA-02

HEARING OFFICER'S RECOMMENDED DECISION

This matter came before the Chicago Board of Election Commissioners ("Board") sitting as the Duly Constituted Electoral Board on the Objectors' Petition ("Objections") of Alonso Zaragoza and Alberto Arroyo ("Objector") to the Nomination Papers of Joaquin Vazquez ("Candidate") Candidate for the Nomination of the Democratic Party for the Office of State Representative in the General Assembly of the 3rd Representative District, State of Illinois at the March 15, 2016 Primary Election. The Board appointed Attorney Christopher B. Cohen as Hearing Officer for this case. The Hearing Officer finds and recommends as follows:

1. The Candidate timely filed Nomination Papers with the Illinois State Board of Elections. The Objector timely filed Objections to the Candidate's Nomination Papers.

2. This Board is the duly constituted Electoral Board for hearing and passing on objections to Nomination Papers for the office that is the subject of these proceedings.

3. Objectors' Petition in this matter was Verified and alleged that the Candidate's Nomination Papers were insufficient in fact and law for the following reasons: (¶5) some signers were not registered at the address shown; (¶6) some signers' signatures were not genuine; (¶7) some signers resided outside the District; (¶8 the address of some signers was missing or incomplete; (¶9) some signers signed more than once (¶10) some circulators did not sign the circulator's affidavit (¶11) some circulators did not sign in their own proper person; (¶12) they contained fewer than the required minimum of 500 valid signatures; (¶13) some circulators did not reside at the address indicated; and (¶14) the signature of some specified circulators was not genuine.

4. On December 14, 2014, the Board's Hearing Officer began a public hearing regarding the Objections in the nature of a case management conference at 69 W. Washington, Chicago, Illinois. Those proceedings and subsequent proceedings held on December 18 and 28, 2015 and January 7, 12, 13 and 14, 2016 were all recorded for transcription by a court stenographer. Also present on each of those dates was this Board's Clerk.

5. At the December 14, 2014 hearing, the Candidate appeared not personally but by his attorney, John Spina and the Objector appeared not personally but by counsel, Michael Kasper, Pericles Abbasi, James Gleffe and Frank Avila. The Board's official file contained the Nomination Papers of the Candidate and the Objections of the Objectors. The file also included Proofs of Service, Appearances, Non-Disclosure Agreements and Waivers of Service – all of those items from each party.

6. On their respective Appearance forms, each attorney agreed to accept service of pleadings and other documents and notices by email. The Hearing Officer made available to each party a copy of the Rules this Board had adopted earlier the same day as well as a one-page explanation of changes to those Rules.

7. During the December 14, 2014 hearing, the Candidate asked the Hearing Officer to require Objector to make a preliminary showing that certain of the Objectors' allegations in the Objections were pled in good faith. After oral argument, the Hearing Officer requested written pleadings. The Candidate announced he would be filing a preliminary motion. The Hearing Officer set the dates and times for filing pleadings in writing with argument on those pleadings to begin at 2:15 pm, December 18, 2015.

8. Each side requested a Records Examination pursuant to Board Rule 6. After conferring with Charles Holiday, the Board's Records Examination Assignment Officer, the Hearing Officer signed an order directing that a Records Examination be conducted by Board staff beginning 10 am, December 21, 2015 for both this case -- RGA-03 -- and also for related case RGA-02 where the Objectors are different but the Candidate is the same. Neither party requested subpoenas at this time. The Hearing Officer then continued the matter until 2:15 pm, December 18, 2015 for argument on the Candidate's Motion and for other appropriate proceedings.

9. At the reconvened hearing December 18, 2015, neither Objectors nor the Candidate appeared personally but each appeared by counsel.

10. The Candidate argued his previously filed Motion to Strike and for a preliminary showing that the Objections were pled in good faith.

11. The Candidate alleged that
    - 10 ILCS 5/10-8 mandates that Nomination Papers such as those of this Candidate shall be valid unless objections are made; and
    - Objectors' Petition failed to state fully the nature of the objections to the Candidate's Nominating Papers as required by 10 ILCS 5/10-8; and
    - The Board's Rule 8 states that the Objector has the burden of proving allegations in the Objectors' Petition; and
    - Objectors had not introduced any evidence contrary to the Candidate's Nomination Papers; and
    - Some of Objectors' allegations are unsupported and they must at a minimum provide a good faith factual basis for those allegations; and
    - It is the Objector, not the Candidate, who must submit sufficient factual evidence to sustain the Objection; and

- The Objector must make a preliminary showing that allegations are pled in good faith based on knowledge, information and/or formed after reasonable inquiry; and
- Objections in specific paragraphs should be stricken; and
- This Board's Rule 1 (b) (xv) states:

> The Electoral Board may, on its own motion or upon motion of a party, require the objector to make a preliminary showing that certain of the factual allegations in the Objectors' Petition are pled in good faith based on knowledge, information and/or belief formed after reasonable inquiry and strike any objection or any portion of an objection if it determines that the objection does not meet the requirements set forth in 10 ILCS 5/10-8 or is not well grounded in fact and/or law. Objections to individual signers and/or circulators must consist of a specific objection or objections to that particular signer or circulator.

12. The Candidate's Motion further alleged that this Board's Rule 8 (b) reads, in pertinent part, as follows:

> Burden of proof. With regard to the substance of the objections, generally the objector must bear the burden of proving by operation of law and by a preponderance of the relevant and admissible evidence ("the burden of proof") that the objections are true and that the candidate's nomination papers or the petition to submit a public question is invalid. If fraud is alleged, it must be proved by clear and convincing evidence.

13. The Objector argued that:
    - In a motion to strike, pleadings are to be construed in the light most favorable to the non-moving party; and
    - The Objections do fully state the nature of the objections as the statute requires; and
    - The allegations in the objections are clearly stated; and
    - The Board rule does not require a "showing" but rather a "stating"; and
    - The Objections were verified under oath,
    - The Objectors stated under penalty of perjury that each had read the Objectors' Petition and the information in it was true and correct to the best of his knowledge; and
    - At the prior hearing, Objectors reiterated the good faith basis of their allegations and made an offer of proof to that effect; and
    - The Objectors' investigation continues; and
    - There is no evidence that Objector made any misrepresentations in the Petition or Verification; and
    - Consequently, there is no reasonable basis to hold an Evidentiary Hearing on these issues; and
    - The Candidate's Motion to Strike should be denied.

14. In evaluating the pleadings, the Hearing Officer considered each of the allegations and arguments as well as the offers of proof and the lack of other evidence. In overruling and dismissing the Candidate's Motion, the Hearing Officer found and concluded that
    - The Objectors' Petition did not fail to state fully the nature of the Objections; and

- Under penalty of perjury, the Objectors verified that they had read the Petition and that the information in it was true and correct to the best of their knowledge; and
- An Objector does have the burden of proof at a Rule 8 Evidentiary Hearing which had not yet taken place; and
- Whether the signatures in the Candidate's Nominating Papers are valid and are those of registered voters will be reviewed in the Records Examination and at the time when the Rule 8 Evidentiary Hearing takes place; and
- As of this stage in the proceedings, no evidence has been presented that Objector's allegations were not made in good faith; and
- No Rule 1 (b) (xv) hearing is required in this factual instance to show that allegations are pled in good faith based on knowledge, information and after reasonable inquiry.

15. In his analysis of the Candidate's argument regarding newly adopted Board Rule 1 (b) (xv), the Hearing Officer took official notice of a memorandum drafted by the Board's General Counsel and directed to All Electoral Board Parties entitled "Chicago Board of Election Commissioners' Electoral Board Rules of Procedure – Explanation of Changes. This Explanation dated December 14, 2015 states in part:

> Rule 1 (b) (xv) is amended to provide that the Electoral Board may require an objector to make a preliminary showing that certain of the factual allegations in the Objectors' Petition are pled in good faith based on knowledge, information and/or belief formed after reasonable inquiry. **This expressly states what has been the approach taken by the Board in prior electoral board proceedings.** (emphasis added).

16. From his own experience in ruling on preliminary hearing requests in prior electoral board proceedings and in evaluating prior Board decisions in factual situations similar to the instant one, the Hearing Officer concluded that the factual allegations in this Objectors' Petition met the Board's prior standard for being pled in good faith and that the Board had not found a lack of good faith in similar fact situations prior to amending the Rule. He concluded that the facts here did not require such an inquiry pursuant to Rule 1 (b) (xv) as amended.

17. The Hearing Officer found that the Objections in both RGA-02 and RGA-03 stated some grounds which, if accepted as true, would invalidate part or all of the Candidate's Nomination Papers.

18. As a consequence, the Hearing Officer denied the Candidate's Motions on the basis that there was insufficient legal and factual support for the Candidate's argument at this point in the proceedings. The Hearing Officer recommends that the Board overrule and dismiss the Candidate's Motions, that the Records Examination continue to its conclusion and that the parties be provided the opportunity to decide if either needs or wants to request a Rule 8 Evidentiary Hearing.

19. At this point on December 18, 2015, Board staff indicated that the Records Examination had not yet concluded. The Hearing Officer also reminded the parties that subpoenas would not be issued for Board Records, that Requests for Board Documents would have to be approved by the Hearing Officer and by the General Counsel, and that the Board did

not serve subpoenas. The Hearing Officer continued the matter for further proceedings until 3 pm, December 28, 2015.

20. At the reconvened hearing December 28, 2015, neither Objectors nor the Candidate appeared personally but each appeared by counsel. The Hearing Officer and the parties confirmed receipt by the parties of a Final Petition Summary Report from the Rule 6 Records Examination. It showed the Candidate with 537 valid signatures in RGA-02 and 511 in RGA-03. Each number at this point was greater than the required minimum of 500.

21. The parties confirmed that each had requested a Rule 8 Evidentiary hearing for both 16-EB-RGA-02 and 16-EB-RGA-03 and that each had requested multiple subpoenas and Requests for Board Documents.

22. After discussions between the parties about how to proceed with the overlapping issues in these two related cases and challenges in the Rule 8 Hearings, the Hearing Officer continued the matter for an Evidentiary Hearing on January 13 and 14, 2016.

23. At 4 pm, December 29, 2015, a case management telephone conference call including Attorneys John Spina, Thomas Jaconetty and Pericles Abbasi took place with the Hearing Officer. The upcoming hearing dates for both 16-EB-RGA-02 and 16-EB-RGA-03 were discussed. Both cases were advanced and rescheduled to 3:30 pm, January 7, 2016 and 11:30 am, January 12, 2016. The January 13 and 14 dates were confirmed – each to begin at 9:30 am. Out of District allegations and signatures not signed before a notary will begin January 7. The Hearing Officer filed a report pursuant to Rule 4 (e) (vii) (2) (a).

24. At the first day of the Rule 8 hearing January 7, 2016, neither Objectors nor the Candidate appeared personally. Each appeared by counsel. Because of the amount of overlap, the parties and the Hearing Officer agreed that hearings would be consolidated in order to take evidence in both 16-EB-RGA-02 and 16-EB-RGA-03.

25. After discussion, the parties agreed and the Hearing Officer then ordered that the deadline for exchange of affidavits to rehabilitate or to attack signatures in both RGA-02 and RGA-03 was set as 10 pm, 1/11/16.

26. The parties then discussed the significance of the Board document entitled "Final Petition Detail Report Including the Results of the Handwriting Expert" hereinafter ("Detail Report"). This Detail Report was prepared after the Board's staff members and handwriting expert conducted a line-by-line examination of the nominating petitions. The parties and the Hearing Officer confirmed that if there are multiple final decisions by Board staff and the Handwriting Expert in the box entitled "New Ruling" which relate to one sheet and line number, the existence of only one or of more than one "Sustain" decision means the "Sustain" controls and the signature does not count towards the Candidate's total.

27. On January 7, Objectors presented evidence regarding their allegations that certain identified petition signers provided addresses which were outside the 3rd Representative District and therefore, if proven, the signatures would not count towards the Candidate's total needed to get on the ballot.

28. Charles Holliday testified regarding split precincts and the timing of corrections made to Board records on January 2, 2016 after the Board produced records on December 28, 2015. One of the Candidate's notaries, Notary Christopher Robinson, testified about the process by which he sought photo identification and identified circulators before notarizing their sheets.

29. At the end of the January 7 hearing day, after the Hearing Officer's rulings on Rule 8 out-of-district allegations and after challenges regarding signatures not signed in front of a notary, there were 14 fewer valid signatures in RGA-02 and 21 fewer valid signatures in RGA-03. The results were as follows:

Case number	RGA-02	RGA-03
Detail Report result after Rule 6 Exam	537	511
Change due to 1/7/16 Hearing Officer Rule 8 rulings	-14	-21
Valid signatures as of end of 1/7/16	523	490

30. The consolidated hearing was continued to 11:30 am, January 12, 2016 for further Rule 8 proceedings.

31. At the reconvened hearing January 12, 2016, neither Objectors nor the Candidate appeared personally but each appeared by counsel. By prior agreement among the parties, this day's affidavits were brought by the Candidate.

32. Each of several notaries including Conception Navarrete, Vera Bell, Madeline Sanders and Christopher Robinson testified about details of how s/he identified and verified the identity and residence of circulators of petition sheets prior to that particular notary notarizing the circulators' affidavits.

33. The Candidate also moved to introduce affidavits by signers for specific sheet and line numbers. Attached to each affidavit was a photocopy of the sheet on which the affiant's purported signature appeared. Objectors objected to introduction of Candidate affidavits as hearsay and because the affiants did not swear that they had signed in their own proper person.

34. In overruling Objectors' oral objection against admission of Candidate-offered affidavits, the Hearing Officer took official notice that Board Rule 1 (b) and sub paragraph (x) provide the Electoral Board with all powers necessary to conduct a fair hearing and to consider documents, affidavits and oral evidence. Attention was called to Rule 10 (c) which clearly states that the Board:

> [m]ay consider all evidence relevant to the issues presented by the objections, including, but not limited to, documentary evidence, affidavits and oral testimony. Affidavits may be considered in determining whether signatures found not to be genuine during a records examination are, in fact, the genuine signatures of those signing the petition.

35. During the January 12 hearing, the Candidate submitted the affidavits one-by-one. They purported to be from registered voters in the 3rd Representative District who had signed the petitions. They were presented in order to rehabilitate signatures found to be not valid

during the Records Examination or to counter the Objector's Rule 8 allegations. The affidavits contained the person's name, address, ward, precinct as well as sheet and line where s/he purportedly signed the Candidate's Petition. The affidavits contained a line for the affiant's printed name and a line where the affiant was to put his or her signature.

36. The Hearing Officer and the parties had before them the line-by-line findings of the Board's Detail Report. In conducting his factual inquiry, the Hearing Officer reviewed and considered decisions by Board staff in the Detail Report, decisions by the handwriting expert also in the Detail Report, the signature and printed name on each affidavit, the signature and printed name on the Board's voter registration card or other signature document and the printed name and signature on the Candidate's Petition.

37. At the end of the January 12 hearing day, after the Hearing Officer's rulings on affidavits to rehabilitate individual signatures the Candidate gained 82 signatures in RGA-02 and 89 signatures in RGA-03. Results were as follows:

Case number	RGA-02	RGA-03
Detail Report result after Rule 6 Exam	537	511
Change due to 1/7/16 out-of-district rulings	-14	-21
Valid signatures as of end of 1/7/16	523	490
Signatures rehabilitated by affidavit	+82	+89
Valid signatures as of end of 1/12/16	605	579
Minimum signatures required	500	-500
Signatures more than minimum as of end of 1/12/16	105	79

38. The consolidated hearing for RGA-02 and RGA-03 was continued to 9:30 am, January 13, 2016 for further Rule 8 proceedings.

39. At the reconvened hearing January 13, 2016, neither Objectors nor the Candidate appeared personally but each appeared by counsel. Circulator Jerry Glenn was the first witness to testify. He testified credibly that the handwriting of the signatures on the petition sheets he circulated was his signature. Mr. Glenn swore that for all 23 of the circulator affidavits he signed, he was older than 18, a citizen of the United States and that the signatures on the 23 sheets were signed in his presence.

40. Jerry Glenn appeared pursuant to subpoena. He testified that at the time he circulated petition sheets for the Candidate and at the time he signed the circulator's affidavit before a notary – October 21 and November 4, 2015 – he resided at 180 Prairie Avenue Apartment B, Wilmette, Illinois 60091. He produced his state identification card and testified that he put his Wilmette address on all 23 of the circulator's affidavits because it was the address on his ID card. Mr. Glenn testified that since signing the circulator's affidavits before notary Christopher Robinson he renewed his state ID, again using the Wilmette address as his own.

41. Under cross-examination, circulator Glenn admitted that at one point his roommate had moved out, that his landlord had filed an eviction suit and that on October 21 and November 4, 2015, he was living with his mother in Matteson, Illinois. He testified under

oath that he did not reside or sleep at the Wilmette address during a period that included September 1 through November 4, 2015 inclusive. He testified that his mother filed a change of address form for him with the US Postal Service.

42. Objectors introduced an Order of Possession entered in a Cook County Circuit Court eviction case dated May 28, 2015 which stayed until June 4, 2015 this Order for Mr. Glenn to be out of the Wilmette apartment. Witnesses subpoenaed by the Objectors including Gerald Buster and Charles Seigan testified that Glenn did not live at that address after the summer of 2015 including during the time period he circulated petitions or on the dates they were notarized. Mr. Seigan also testified that he has lived in apartment B since July 15, 2015. Objectors introduced a certified copy of records from the Cook County Clerk showing that on May 8, 2014 Mr. Glenn registered to vote from 4300 Lindenwood, Matteson, Illinois 60443.

43. At Objectors' request, the Hearing Officer took official notice of the 2016 Election Calendar found on this Board's website that the first day for Established Political Party Candidates to circulate nominating petition sheets was Tuesday, September 1, 2015.

44. Circulator Vanity Woods did not appear to testify. The Hearing Officer compared an exemplar of her signature from this Board's records with the signature on her purported circulator's affidavit and made a finding that the latter signature was not valid. The Hearing Officer sustained ¶13 of Objectors' Objection in RGA-02 and recommends that the Board make the same finding and also sustain ¶13. The parties agreed that this ruling did not and would not result in changing the number of valid signatures for the Candidate, because objections to all 4 signatures on the one petition sheet she circulated had already been sustained in the Board's Detail Report.

45. Also at the January 13, 2016 hearing, the Objectors in RGA-02 announced they would not be proceeding on or presenting evidence regarding ¶15 of their Objection which challenged the genuineness of Jerry Glenn's signatures on the circulator's affidavits.

46. Circulator Timothy Northcross, a Chicago Fireman, testified in person. The Hearing Officer reviewed and compared the signature on his Illinois driver's license, the signatures on petition sheets Mr. Northcross swore he circulated and the computer-stored data on his voter records from this Board including his written and printed signature. Noting that the birth year on Mr. Northcross' driver's license differed from the birth year on his voter registration information, the Hearing Officer asked the Board for clarification. Board employee John Powell located and produced a record indicating that on a prior date the Board had corrected its records. The birthdate on the Board's current corrected record was the same as the birthdate on the current driver's license that Mr. Northcross had produced. The Hearing Officer made a finding contrary to and overruled ¶14 of the Objectors' Objection in RGA-02. It alleged that Mr. Northcross did not sign circulator affidavits for petition sheets 27, 39, 62 and 128 in his own proper person. The Hearing Officer recommends that the Board make a similar finding and overrule ¶14.

47. Objectors in RGA-02 also announced they would not be proceeding on or presenting evidence regarding the first ¶16 of their Objection (It contained two ¶¶16) which alleged

that circulators Lawaune Bell, Vanity Woods and Timothy Northcross did not appear before a notary. The substance of this paragraph was not alleged in RGA-03.

48. At this point, the Candidate sought to introduce 13 affidavits in which petition signers swore that their signatures were genuine. These affidavits were similar in form to those the Hearing Officer had ruled on to rehabilitate 82 signatures in RGA-02 and to rehabilitate 89 signatures in RGA-03. The Objectors in RGA-02 and RGA-03 objected to these affidavits on the grounds that they were served and exchanged after the Hearing Officer's deadline of 10 pm, January 11, 2016.

49. The Candidate argued that there was no prejudice to the Objectors, that the Objectors had not tendered any affidavits of their own, that all sheet and line numbers to which the affidavits were a response appeared in the Candidate's timely filed Rule 8 Motion and that this is a ballot access issue. Objectors called attention to an email from the Candidate's attorney at 10:10 pm on January 11, 2016 which remarked that the 10 pm deadline had passed and that he had not received any affidavits from Objectors in either RGA-02 or RGA-03.

50. In response to the Candidate, Objectors argued that fairness requires mutual exchange, that the deadline was agreed to by the parties on the record, that the order was entered by the Hearing Officer, that the purpose of the deadline was so that the opposing party could respond, that this was a case management decision and that each side has to obey deadlines equally. The Objectors also noted that unlike affidavits previously introduced by the Candidate, all blanks above the signature line on the form were filled in by the same hand. Objectors continued to object but made an oral motion that if admitted into evidence, these affidavits should not be given the same weight as those previously introduced by the Candidate.

51. Citing the 10 pm deadline on January 11, 2016, the Hearing Officer denied the motion to admit the Candidate's 13 affidavits in both RGA-02 and RGA-03.

52. The Candidate then noted that there were sheet and line numbers in his Rule 8 Motions for which he had not submitted affidavits and which had not been ruled on by the Hearing Officer. With respect to the sheet and line numbers not yet ruled on, the Candidate made a motion that the Hearing Officer review and compare the decisions by Board staff and the handwriting expert in the Detail Report with the signature and printed name on the Board's voter registration card and with the printed name and signature on the Candidate's petition sheets.

53. The Candidate argued that his affidavits had rehabilitated at least 90 signatures between both cases and that it was more likely than not that given the number of handwriting-expert decisions the Candidate had overturned previously, errors by that expert would be found based on these new reviews. The Candidate argued that Rule 8 does not prohibit his motion. The Objectors argued that because no new evidence was available, this would result in a *de novo* review of the same evidence previously available for the Rule 6 Records Exam and that such a "do over" was not appropriate.

54. After argument by the parties, the Hearing Officer denied the motion with respect to both RGA-02 and RGA-03. He stated that with no new evidence to consider, this would be a de novo Record Examination review, that a *de novo* review is not authorized or contemplated by Rule 6 or elsewhere by the Board Rules, that in the absence of affidavits or other extrinsic evidence there is no precedent for this "do over" type of review, that absent other new evidence that was not previously available to the handwriting expert, the Hearing Officer does not believe there is a compelling or sufficient basis to overrule the handwriting expert, that without new information, it is speculative how close or how far the Candidate would be from meeting the minimum signature requirement. The Hearing Officer concurred with the Recommended Decision in *Robinson v Jackson* 15-EB-ALD-112 (CBEC, 2015) which was adopted by this Board. In that Recommendation, the Hearing Officer found that

> No basis was presented, either in fact or in law, that would have justified the request for either a) a re-review by the Board's independent signature expert or b) for a review by the Hearing Officer of the decision by that independent expert in which the Hearing Officer would have been asked to substitute his judgment for that of the Board's independent expert.

55. When making his recommended ruling, the Hearing Officer indicated that he agreed with the concept expressed elsewhere that filing deadlines, like statutes of limitations, can operate harshly and are inherently arbitrarily with respect to individuals who are on the other side of them, but if the concept of a filing deadline is to have any content, it must be enforced. A less rigid standard could risk encouraging a lax attitude toward filing dates.

56. The consolidated hearing for RGA-02 and RGA-03 was continued to 10:30 am, January 14, 2016 for further proceedings.

57. At the reconvened hearing January 14, 2016, neither Objectors nor the Candidate appeared personally but each appeared by counsel. When reviewing the case status, the parties confirmed that the Candidate had 605 valid signatures in RGA-02 and 579 valid signatures in RGA-03.

58. Each of the parties requested the opportunity to provide legal memoranda regarding the validity of signatures collected by Jerry Glenn. The parties indicated that each agreed that the petition sheets circulated by Jerry Glenn contained 83 valid signatures. The Hearing Officer set the filing deadline as 7 pm, January 15, 2016. The in-person hearings were concluded. No new hearing date was set.

59. The Candidate and Objectors filed memoranda of law in RGA-02 and RGA-03 which the Hearing Officer reviewed in detail. After consideration of the arguments and citations in each memorandum, the Hearing Officer concludes that 10 ILCS 5/7-10 contains a mandatory requirement that the circulator provide the address at which he resides and certify to that information before some officer authorized to administer oaths in this State.

60. Evidence adduced in these proceedings establishes clearly and convincingly that Mr. Glenn knowingly signed a false statement before a notary – Christopher Robinson – above the notary's statement "Subscribed and sworn to before me..." The evidence in this

fact situation does not allow for exercise of the Hearing Officer's discretion or permit a standard of substantial compliance. The Hearing Officer finds and recommends that the Board also find that Mr. Glenn's sworn certification was not truthful and was sworn to falsely. As a result, all of the signatures on all petition 23 sheets which contain his false certification are invalid.

61. This Board has faced a similar situation and held that evidence indicating that a circulator's affidavits are false and perjurious is evidence of a pattern of false swearing and invalidates all signatures on those petition sheets. See *Arrington v. Jenkins*, 91-EB-ALD-083, CBEC, February 5, 1991.

62. After subtracting the 83 previously valid signatures found on the petition sheets circulated by Jerry Glenn, the Hearing Officer finds that the Candidate's Nomination Papers contain 522 valid signatures in RGA-02 and 496 valid signatures in RGA-03.

ANALYSIS

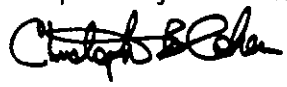
63. The Hearing Officer finds and recommends that after the Evidentiary Hearings the Candidate's Nominating Papers contained 522 valid signatures in RGA-02 which is 22 greater than the required minimum of 500 and 496 valid signatures in RGA-03 which is 4 fewer than the required minimum of 500.

RECOMMENDATIONS

It is the Hearing Officer's recommendation that the Objections in this case, 16-EB-RGA-03, be sustained and that the Candidate's Nomination Papers be declared invalid, and that the Candidate's name will not appear on the ballot for the Nomination of the Democratic Party for the Office of Representative in the General Assembly of the 3rd Representative District, State of Illinois, at the March 15, 2016 Primary Election.

The Hearing Officer notes that the Objections in related case 16-EB-RGA-02 were overruled. However, in light of the decision in this case, the decision in related case 16-EB-RGA-02 becomes moot.

Respectfully submitted,



Christopher B. Cohen
Hearing Officer
January 16, 2016

Order (2/24/05) CCG N002

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

Joaquin Vazquez

v.

Board of Election Commissioners et al.

No. 16 COEL 03

Page 1 of 2

ORDER

This Cause Coming before the Court for hearing on Complaint for Expedited Judicial Review, the Court having reviewed the entire record, considered the evidence and the rulings of the hearing officer and the Electoral Board and having considered the arguments of counsel;

It is ORDERED as follows:

(1) The Electoral Board's decision on the Sufficiency of the Terry Glenn circulated petitions is Affirmed;

(2) The Court finds that, on the facts of this case, the hearing officer and Electoral Board abused their discretion when they failed to consider and take evidence on the 13 additional signature rehabilitation affidavits (Can. Ex. 8) and REMANDS this cause

Atty. No.:

Name: ENTERED:

Atty. for:

Address: Dated: ,

City/State/Zip:

Judge Judge's No.

Telephone:

DOROTHY BROWN, CLERK OF THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

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IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

Vazquez

v.

Bd. of Election Commissioners, et al

No. 16 COEL 03

Pg 2 of 2

ORDER

to the Electoral Board on the limited issue of hearing evidence on the sole issue of genuiness of the voter signatures raised in said 13 affidavits.

(3.) The objector's request to re-open the case on any ~~other~~ issue other than the genuiness of the 13 signatures on Exhibit 8 is Denied

(4) The objectors request for a stay of this order pending appeal is denied. This order is final and appealable.

Atty. No.: 00135

Name: Spiha McGuire & Ord

Atty. for: Juan Vazquez

Address: 7610 W. North Ave

City/State/Zip: Elmwood Park IL 60707

Telephone: 708 453 2800

ENTERED: ENTERED Judge Maureen Ward Kirby-1974

Dated: FEB 11 2016

DOROTHY BROWN CLERK OF THE CIRCUIT COURT OF COOK COUNTY, IL DEPUTY CLERK

Maureen Ward Kirby #1974

Judge Judge's No.

DOROTHY BROWN, CLERK OF THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

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2016 IL App (1st) 160349-U

SECOND DIVISION
February 26, 2016

Nos. 1-16-0349 & 1-16-0374 (Consolidated)

JOAQUIN VAZQUEZ, Petitioner-Appellee, v. BOARD OF ELECTION COMMISSIONERS OF THE CITY OF CHICAGO, as the duly constituted electoral Board for the hearing and passing upon of objections to nomination papers and petitions for questions of public policy, LANCE GOUGH, Board Executive Director, MARISEL A. HERNANDEZ, Board Chairperson and Board Commissioner, WILLIAM J. KRESSE, Board Commissioner and Secretary, JONATHON T. SWAIN, Board Commissioner, ILLINOIS STATE BOARD OF ELECTIONS, STEVE SANDVOSS, Executive Director of Illinois State Board of Elections, ALONSO ZARGOZA, Objector, and ALBERTO ARROYO, Objector, Respondents-Appellants.	)	Appeal from the Circuit Court of Cook County No. 16-COEL-3 Honorable Maureen Ward Kirby Judge Presiding.

PRESIDING JUSTICE PIERCE delivered the judgment of the court.
Justices Neville and Hyman concurred in the judgment.

ORDER

¶ 1 *Held:* Petitioner's motion to dismiss Respondents' appeal is denied. The Electoral Board did not abuse its discretion in denying petitioner's untimely motion for admission of 13 affidavits into evidence. Decision of the Electoral Board that 23 nominating petitions are invalid because they contain a false statement sworn to by the

circulator is affirmed. Decision of Electoral Board affirmed. Stay of circuit court order vacated.

¶ 2 Alonso Zargoza and Alberto Arroyo (collectively Objectors) filed objections to the nomination papers of Joaquin Vazquez, candidate for the office of Representative in the General Assembly for the 3rd District, State of Illinois. A hearing officer was assigned to hear evidence and rule on the Objectors' petition. After a records review and several days of hearings, the hearing officer set, and the parties agreed to, a deadline for the exchange of rehabilitating signature affidavits. During the final day of the hearing, after the hearing officer ruled that one circulator's 23 petition sheets were invalid, and after the deadline to exchange the affidavits, Vazquez sought leave to submit 13 additional affidavits to rehabilitate voter signatures previously found invalid. The hearing officer denied the motion finding the submission of the affidavits was untimely. Ultimately, the hearing officer found Vazquez was 4 signatures short of the statutory minimum required to place his name on the primary election ballot.

¶ 3 The Board of Election Commissioners of the City of Chicago (Electoral Board) adopted the hearing officer's recommendations and found that Vazquez had an insufficient number of valid signatures supporting his nomination petitions. Thereafter, Vazquez sought review in the circuit court of Cook County, which affirmed in part and reversed in part the Electoral Board's decision and remanded the matter back for the Electoral Board to consider and take evidence on the 13 affidavits.

¶ 4 The Objectors and the Electoral Board appealed that part of the circuit court order finding the Board abused its discretion in not allowing evidence on the 13 affidavits. Vazquez initially responded arguing that the appeal should be dismissed because the circuit court's order was not a final and appealable order. We took the motion to dismiss under advisement, stayed the circuit

court order and ordered the appeal to be placed on an expedited docket. Ill. S. Ct. R. 311(b) (eff. Feb. 26, 2010). Vazquez then filed his own appeal from the circuit court's order affirming the Board's decision that the circulator's 23 petition sheets were invalid. For the following reasons, we deny Vazquez's motion to dismiss this appeal, vacate the stay order entered February 17, 2016 of the circuit court order dated February 11, 2016 and affirm the final decision of the Electoral Board.

¶ 5 BACKGROUND

¶ 6 On November, 30, 2015, Joaquin Vazquez filed his nomination papers to place his name on the March 15, 2016 primary election ballot as a candidate for the office of Representative in the General Assembly for the 3rd District. These papers included petition sheets containing 1,091 signatures of individuals supporting Vazquez's nomination.

¶ 7 Alonso Zargoza and Alberto Arroyo filed a petition objecting to the sufficiency of the signatures supporting Vazquez's nomination papers pursuant to section 10-8 of the Election Code (10 ILCS 5/10-8 (West 2012)). The Objectors alleged the nomination papers were not signed by the requisite number of eligible voters in the 3rd District and that certain signatures were not genuine, the signers were not registered at the address shown or were outside the district, the address was missing or incomplete, there were duplicative signatures, and there were defects with the circulators' affidavits.

¶ 8 The Electoral Board assigned a hearing officer to conduct proceedings, evaluate the evidence and Objectors' petition and provide recommendations to the Board. The hearing officer scheduled a "records examination" whereby an employee of the Board compared signatures on Vazquez's nomination petition sheets with the signatures of those voters as they appear on the Electoral Board's registration system. A handwriting expert, employed by the Board, reviewed

the findings made at the examination and conducted his own comparison of the signatures. The results of the records examination and the expert's examination were issued to the parties on December 28, 2015. At that point, Vazquez had 511 valid signatures, 11 more than the 500 statutory minimum required number of signatures.

¶ 9 Vazquez requested an evidentiary hearing regarding the signatures found invalid as a result of the records examination. On January 7, 2016, a hearing was conducted and the hearing officer adjusted the records examination report results by striking 21 additional signatures which brought the number of valid signatures down to 490, 10 signatures below the 500 statutory minimum. At the conclusion of this hearing, Vazquez's attorney explained to the hearing officer that he was in the process of obtaining affidavits to support the validity of the challenged signatures. The parties then discussed the scheduling of further hearings and Vazquez's counsel proposed January 12 for a hearing "to deal with the signatures" and "the challenges or rehabilitation of signatures" and January 13 and 14 for hearings dealing with the "circulator objections." The parties then agreed, and the hearing officer ordered, that the deadline to exchange "affidavits to rehabilitate or to attack signatures" was 10:00 p.m. on January 11, 2016, the night before the hearing addressing rehabilitating signatures. The hearing officer then continued the hearing to January 12, 2016.

¶ 10 At the reconvened January 12 hearing to address rehabilitating signatures, testimony of two notary publics was heard regarding the verification of the identity and residence of the signators to the circulator petition sheets. The hearing officer then reviewed over 100 affidavits produced by Vazquez, compared the signatures appearing on the affidavits and the petition sheets, considered the Electoral Board staff recommendation from the records examination, and determined that 89 of the challenged signatures were valid, increasing the total number of valid

signatures to 579.

¶ 11 The hearing was continued to January 13, 2016, where the hearing officer heard testimony from circulator Jerry Glenn, and other witnesses, in order to determine whether Glenn's circulated petition sheets were valid. The testimony involved whether the Wilmette, Illinois address sworn to by Glenn on his circulated petition sheets was his actual residence or a false address. Glenn admitted that he had been evicted from the Wilmette address and, at the time he circulated the petitions and signed the circulator's affidavit, he was not living in Wilmette but rather in Matteson, Illinois. After the eviction, a change-of-address form was submitted by Glenn's mother, to the U.S. Post Office to ensure mail sent to the Wilmette address was forwarded to a different address. Glenn listed the Wilmette address on the circulator affidavit because it was the address listed on his state identification card and he was only staying at the Matteson address temporarily. Glenn has since registered to vote using the Matteson address. After Glenn testified, Vazquez's attorney sought to introduce 13 affidavits from petition signers attesting that their signatures were genuine. The purpose of these affidavits was to rehabilitate signatures previously determined invalid during the records examination. Counsel for the Objectors argued that the additional affidavits were untimely because they had not been provided to the Objectors prior to the agreed upon January 11 deadline and therefore, should not be considered. The hearing officer denied Vazquez's request to admit the additional affidavits as untimely, citing the mutually agreed to January 11 deadline. The hearing officer further explained that although deadlines "can operate harshly," they must be enforced.

¶ 12 At the final hearing on January 14, 2016, the parties agreed that Vazquez was left with 579 valid signatures, which included the petition sheets Glenn circulated that contained 83 signatures. The hearing adjourned for the day.

¶ 13 On January 16, 2016, the hearing officer issued his written findings and recommendation concluding that the evidence established that Glenn knowingly signed a false statement of residency before a notary and therefore, Glenn's 23 circulated petition sheets containing 83 signatures were invalid. This left Vazquez with only 496 valid signatures, 4 fewer than the statutory minimum of 500.

¶ 14 The Electoral Board adopted the hearing officer's recommendations and, in a 17-page order, the Board found that: (1) Vazquez's nomination papers were invalid because they did not include the requisite number of signatures; (2) Glenn's circulated petitions were invalid because he "knowingly and willfully provided a false address in his circulator affidavit"; and (3) the hearing officer did not abuse his discretion in denying Vazquez's request to submit the late evidence. One member of the Electoral Board dissented.

¶ 15 Vazquez sought review of the Board's decision arguing the Board erred in: (1) striking Glenn's petition sheets; (2) not finding all signatures supported by affidavits were valid; and (3) abusing its discretion by refusing to consider the 13 affidavits to rehabilitate signatures submitted after the January 11 deadline.

¶ 16 On February 11, 2016, the circuit court entered a "final and appealable" order affirming the Board's decision to declare the petitions circulated by Glenn invalid and reversed the Board's decision finding the Board abused its discretion by failing to "consider and take evidence on the 13 additional signature affidavits." The circuit court remanded this matter to the Board "on the limited issue of hearing evidence on the sole issue of genuineness of the voter signatures raised in said 13 affidavits." In addition, the court denied the Objectors' request to "re-open the case on any issue other than the genuineness of the 13 signatures" and also denied the Objectors' request to stay the order pending appeal.

¶ 17 ANALYSIS

¶ 18 The Objectors timely filed this appeal seeking review of the circuit court's February 11, 2016 order and argue the Board did not abuse its discretion in denying Vazquez's motion for admission of the 13 untimely affidavits. In response, Vazquez filed a motion to dismiss this appeal on the ground that under the Administrative Review Law (735 ILCS 5/3-101 *et seq.* (West 2012)) the circuit court's order is not final and appealable and thus, we do not have jurisdiction to review this appeal. Section 3-104 of the Administrative Review Law provides that the court first acquiring jurisdiction to review a final administrative decision retains jurisdiction of the action until its final disposition (735 ILCS 5/3-104 (West 2012)), including after remand to the administrative board to make additional findings (*Hooker v. Retirement Board of Firemen's Annuity & Benefit Fund of Chicago*, 391 Ill. App. 3d 129, 135 (2009)). Vazquez contends that when the circuit court issued the order remanding this matter to the Board for "tak[ing] evidence" on the 13 affidavits, the circuit court retained jurisdiction of this matter until its final disposition and accordingly, that order is not final and appealable. Vazquez has since abandoned his position by filing, on his own behalf, a notice of appeal from the circuit court's order affirming the Electoral Board's finding that the Glenn petitions are invalid.

¶ 19 For purposes of clarity, we address Vazquez's initial contention. Our Supreme Court has made clear that "[a]lthough proceedings under the Election Code are in the nature of administrative review, the Administrative Review Law applies only where it is adopted by express reference, and there is no express adoption of the Administrative Review Law for electoral board decisions." *Bettis v. Marsaglia*, 2014 IL 117050, ¶ 30. The Administrative Review Law is looked to by courts for guidance but "has no direct bearing" upon the review of electoral board decisions. *Bill v. Education Officers Electoral Board for Consolidated*

Community School District No. 181, 299 Ill. App. 3d 548, 556 (1998). Therefore, Vazquez's motion to dismiss this appeal contending the circuit court's order was not a "final order" pursuant to the Administrative Review Law is denied.

¶ 20 Relevant to this consolidated appeal, the Electoral Board issued a final order finding the petitions circulated by Glenn were invalid, the hearing officer properly denied Vazquez's motion for admission of the 13 untimely affidavits and, without the requisite number of valid signatures to his petition sheets, his nomination papers were invalid. The circuit court found that the Electoral Board properly found Glenn's petitions were invalid, however, the Board abused its discretion when it failed to consider and take evidence on the 13 additional affidavits, and remanded the matter to the Board for the "limited issue of hearing evidence" on the voter signatures raised in the 13 affidavits. In effect, the circuit court affirmed in part and reversed in part the Electoral Board's final decision. In our view, the language in the circuit court's order limiting the role of the Electoral Board on remand is mere surplusage and does not make the court's order interlocutory. Now on appeal, the Objectors seek reversal of the circuit court's order that the Board abused its discretion in refusing to consider the 13 affidavits and Vazquez seeks reversal of the Board's finding that the Glenn petitions are invalid.[1] Accordingly, we find the order of the circuit court finally decided the issues between the parties and each party is allowed to invoke our jurisdiction to review the Electoral Board's decision. Ill. S. Ct. R. 303 (eff. eff. Jan. 1, 2015).

¶ 21 *Objectors and Electoral Board Appeal*

[1] We note that neither party raises objection to the procedures employed in determining the valid number of signatures supporting Vazquez's nomination papers. Rather, they only dispute the two narrow issues of whether the 13 additional affidavits should have been considered and whether Glenn's circulated petition sheets were valid.

¶ 22 The Objectors and the Electoral Board appeal the circuit court's order finding the Board's decision to deny Vazquez's motion to admit additional evidence was an abuse of the Board's discretion.

¶ 23 We review the decision of the Electoral Board rather than the decision of the circuit court. *Cinkus v. Village of Stickney Municipal Officers Electoral Board*, 228 Ill. 2d 200, 210 (2008). The standard of review depends on whether the question presented is one of fact, one of fact and law, or a pure question of law. *Id.* The Objectors and the Electoral Board appeal involves whether the Board abused its discretion by denying Vazquez's motion to admit the affidavits into evidence that were submitted after the agreed upon and ordered deadline. An abuse of discretion occurs where no reasonable person could take the view adopted by the adjudicating body. See *Peraica v. Riverside-Brookfield High School District No. 208*, 2013 IL App (1st) 122351, ¶ 34.

¶ 24 Electoral boards may adopt their own rules of procedure and rules of evidence. *Carnell v. Madison County Officers Electoral Board*, 299 Ill. App. 3d 419 (1998). In this instance, the Electoral Board adopted rules of procedure applicable to a petition challenge. Pertinent to this appeal are Board Rules 1, 4 and 8. Rule 4(a) provides that "[d]ue to impending statutory deadlines for the certification of candidates and the preparation and printing of ballots, proceedings before the Electoral Board must be conducted expeditiously." Accordingly, Board Rule 1(b) provides that hearing officers and the Board "will conduct and preside over all hearings and take necessary action to avoid delay, maintain order, ensure compliance with all notice requirements and ensure the development of a clear and complete record." It further provides that hearing officers and the Board shall "regulate the course of the hearings," set time for hearings, set times for the filing of documents or for the introduction of new and additional

evidence, and grant an extension of time upon good cause shown. Rule 4(e) provides that the hearing officer and Board shall conduct a case management conference to consider, among other things, the limitation of the number of witnesses, the scheduling of hearings, the proposed plan and schedule of discovery and any other matters that may aid in the disposition of the objection hearing. Lastly, Rule 8(a) provides that the Board or the hearing officer may conduct hearings for the purpose of hearing evidence relating to the findings made during a records examination.

¶ 25 Here, the records examination results were released to the parties on December 28, 2015. Vazquez sought review of the records examination findings. During the January 7, 2016 hearing, the parties agreed and the hearing officer ordered that the deadline for the parties to exchange affidavits to rehabilitate signatures that were previously found invalid would be 10:00 p.m. on January 11, which was 15 days after the records examination results were issued. As previously scheduled, on January 12 a hearing was held to consider Vazquez's rehabilitating affidavits. Approximately 116-137 rehabilitating affidavits[2] submitted by Vazquez were examined and after consideration of the rehabilitating affidavits the hearing officer found 89 additional signatures valid.

¶ 26 At the prescheduled January 13 hearing to address the sufficiency of circulator affidavits, after the Objectors presented their evidence, Vazquez moved for the admission of 13 additional affidavits obtained that morning from voters whose signatures were previously found invalid. Vazquez did not provide a reason why the 13 affidavits could not have been obtained and exchanged prior to the January 11 deadline. The Objectors contended the affidavits were

[2] The parties disagree as to how many rehabilitating affidavits were submitted and considered at the January 12 hearing. Due to the expedited nature of this appeal, this court will not search the record to confirm the exact number considered.

untimely and should not be admitted into evidence because there was no notice given or opportunity for the Objectors to assess the affidavits. The Objectors argued that, based on what they received prior to the deadline, they had already made decisions on who to subpoena and formulated their strategy and evidence in support of their challenge. They further argued that the nature of challenging petitions is time sensitive and it would be prejudicial to admit these affidavits after the deadline and at this stage of the proceeding.

¶ 27 The hearing officer took the issue under advisement and later, after consideration of the arguments of counsel, denied Vazquez's motion for the admission of the 13 affidavits because they were untimely. He found the affidavits were procured two days after the agreed upon deadline and because of the expedited nature of the hearings, the "deadline must be enforced." The Electoral Board accepted the hearing officer's reasoning and found the hearing officer did not abuse his discretion in denying Vazquez's motion.

¶ 28 Vazquez argues that the denial of his motion is an abuse of discretion because judgment had not yet been rendered, evidence was still being heard, and the Objectors had not yet finished presenting evidence at the time the affidavits were offered. Therefore, the admission of the affidavits would not have caused prejudice to the Objectors, who could have later rebutted them.

¶ 29 In determining the hearing officer did not abuse his discretion by denying Vazquez's motion the Board relied on its own procedural rules and found that in ballot disputes, time is of the essence, the hearing officer had the power to set the filing deadlines and while deadlines may be harsh, they must be enforced. As a reviewing court we must give deference to the Board's application of its rules unless the Board's decision was arbitrary or unreasonable. *Portman v. Department of Human Services*, 393 Ill. App. 3d 1084, 1092 (2009). In proceedings to determine validity of a candidate's nominating papers, it is paramount that there is prompt resolution of the

objections so that "ample time remains for the preparation of ballots." *Geer v. Kadera*, 173 Ill. 2d 398, 408 (1996). In fact, " '[i]t is vitally important that nomination objections be resolved at the earliest possible time.' " *Id.* We find the hearing officer set a deadline for the filing of affidavits, based on Vazquez's proposed hearing schedule, which was agreed upon by the parties, Vazquez did not meet that deadline and instead, two days later, after the hearing addressing rehabilitating signatures and during a hearing on the sufficiency of Glenn's petition sheets, Vazquez moved for the admission of affidavits procured that morning. Under these circumstances, where the timeliness of a Board's decision on the Objectors' petition was "vitally important," and where Vazquez had 15 days to procure these 13 affidavits and gave no reason for their lateness, we cannot say that the Board's denial of Vazquez's motion to admit the untimely affidavits was an abuse of discretion. Therefore, we affirm the decision of the Electoral Board on this basis.

¶ 30 *Vazquez Appeal*

¶ 31 Vazquez appeals the Electoral Board's determination that the Glenn petitions are invalid.

¶ 32 There is no dispute that Glenn did not reside at the Wilmette, Illinois address he listed in the circulator affidavit found on his circulated petition sheets at the time he collected the voter signatures and when he signed the petition sheets. Glenn testified that he actually resided with his mother in Matteson, Illinois, and he listed the Wilmette address on the petition sheets only because it was the address listed on his state identification card, which he had not yet updated.

¶ 33 The Electoral Board found that Glenn's 23 petition sheets were invalid because he "willfully and knowingly" listed a false address in the circulator affidavit. The Board found that Glenn's misrepresentation was not a mistake but rather a false statement made under oath and therefore, Glenn's petition sheets did not comply with the Election Code.

¶ 34 Vazquez argues that Glenn's misrepresentation was a mistake and therefore, his petitions

substantially comply with the Election Code. The parties dispute whether the standard of review is clearly erroneous (*Portman v. Department of Human Services*, 393 Ill. App. 3d 1084 (2009)) or *de novo* (*Zurek v. Pederson*, 2014 IL App (1st) 140446). We find that regardless of the standard employed, the result is the same.

¶ 35 Section 7-10 of the Election Code (10 ILCS 5/7-10 (West 2012)) mandates the form and content of nomination petitions. It requires that at the bottom of each nominating petition a circulator's sworn statement appear certifying that: he is 18 years of age or older, a citizen of the United States, the signatures on the petition were signed in his presence and that the persons signing were to the best of his knowledge and belief were registered voters in that precinct, and the address of his residence. *Id.* This requirement "is considered a meaningful and realistic method of eliminating fraudulent signatures and protecting the integrity of the political process." *Sakony v. Lindsey*, 261 Ill. App. 3d 821, 825 (1994). Where there is a "total failure to provide an address" in the circulator affidavit, it "renders all signatures on the petition invalid." *Cunningham v. Schaeflein*, 2012 IL App (1st) 120529, ¶ 23. In addition, where there is evidence of a pattern of fraud, false swearing and total disregard for these mandatory requirements, the circulator's petition sheets " 'should be stricken in their entirety.' " *Bergman v. Vachata*, 347 Ill. App. 3d 339, 347 (2004) (citing *Huskey v. Municipal Officers Electoral Board*, 156 Ill. App. 3d 201 (1987) (evidence of fraud by the circulator who did not strictly follow the Code's requirements necessitates a finding that the petitions are invalid). While substantial compliance with section 7-10 is sufficient to find a circulator's petition valid (*Bergman*, 347 Ill. App. 3d at 345), a false statement by a circulator in the petition invalidates the petition entirely (*Huskey*, 156 Ill. App. 3d at 205). However, an innocent or minor error in the circulator's address may substantially comply with section 7-10 where a circulator accidently transposed two digits in his street address

(*Cunningham*, 2012 IL App (1st) 120529, ¶ 28) or where the address was omitted but included on another petition sheet (*Sakonyi v. Lindsey*, 261 Ill. App. 3d 821 (1994)).

¶ 36 Here, the Board made a finding that Glenn "willfully and knowingly" swore to a false statement on his circulating petitions. An electoral board's findings and decision are considered *prima facie* true and correct. *Samuelson*, 2012 IL App (1st) 120581, ¶ 11. Determinations as to weight of evidence or credibility of witnesses are within the " 'province of the agency.' " *Bergman*, 347 Ill. App. 3d at 347. For that reason, in reviewing a board's findings and decision we do not weigh the evidence or substitute our judgment for that of the board. *Cinkus v. Village of Stickney Municipal Officers Electoral Board*, 228 Ill. 2d 200, 211(2008). Where the decision of the agency is supported by competent evidence in the record, it should be affirmed. *Id.*

¶ 37 Although Vazquez characterizes Glenn's misrepresentation as a mistake, there is evidence in the record to support the Electoral Board's finding. Glenn testified that since his June 2015 eviction, he has not resided at the Wilmette address. At the time he circulated the petitions and signed the circulator's affidavit he lived in Matteson, Illinois. Although section 7-10 of the Election Code requires circulators to attest to where they "reside," Glenn listed the Wilmette address because his state identification card, which was renewed in December 2015, still reflected his prior address of residence, even though he no longer lived there. In addition, after his eviction, Glenn submitted a change-of-address form to ensure he no longer received mail at the Wilmette address, which supports the finding that he no longer considered that address as his residence.

¶ 38 Vazquez further contends that Glenn's affidavit is in substantial compliance with section 7-10 of the Code. However, the Code calls for his address of residency. It does not call for a former address, or a recent address or any address that will enable an objector to locate him in

connection with a petition contest. Based on this record, there can be no dispute that Glenn lived and resided in Matteson at the time he circulated the petitions. There can be no question that he knowingly put his former Wilmette residence as his residence on his circulator affidavit even though he had been evicted from Wilmette several months earlier. We do not agree that placing an address that is unquestionably not the correct address of residency is substantially compliant with the statutory requirements. Showing a Wilmette address was not true: it was false. Glenn did not mistakenly show his Wilmette address: he did it knowingly. Therefore, we find sufficient evidence in the record to support the Electoral Board's finding that Glenn "willfully and knowingly" listed a false address in his sworn circulator's affidavit and that Glenn's circulator affidavit was not in substantial compliance with the Code.

¶ 39 Lastly, Vazquez argues that Glenn is essentially a "homeless person" and the address requirement in section 7-10 of the Election Code is unconstitutional because it excludes all homeless persons, like Glenn, from qualifying to circulate nominating petitions because by definition homeless persons do not have a residence address. He cites to the Public Health and Welfare Act (42 U.S.C. 254(b) (West 2012)) for the proposition that a person with an "unstable or non-permanent" housing situation is considered homeless. Without citing to the record, Vazquez asserts that Glenn does not have a permanent residence but has only "stayed with" several family members since his eviction is therefore, "essentially homeless."

¶ 40 The Objectors dispute this contention arguing it is not supported by the record. In addition, the Election Code makes specific provisions for the homeless (see 10 ILCS 5/3-2 (West 2012)), Glenn never took advantage of these provisions and instead is registered to vote at his residence in Matteson.

¶ 41 We agree with the Objectors and find Vazquez's argument unmeritorious because there is

nothing in the record to support the contention that Glenn is homeless. Glenn testified that after the eviction he went to "stay" with his mother in Matteson, where he is registered to vote, and submitted a change-of-address form to ensure mail was no longer delivered to his former residence in Wilmette. Glenn could have described himself as a homeless person but chose to testify, without reservation, that he did not reside at the location shown on his circulator's affidavit. Vazquez's attempt to create an untrue fact as a means of contesting the Board's finding that Glenn listed a false address in his circulator's affidavit must be rejected.

¶ 42 CONCLUSION

¶ 43 For the foregoing reasons, we affirm the final decision of the Electoral Board. The stay order entered by this court dated February 17, 2016 is vacated.

¶ 44 Affirmed.