

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

Objections of: MILDRED HARE)	
)	
)	
To the Nomination)	No.: 19-EB-ALD-120
Papers of: EBONY D. LUCAS)	
)	
Candidate for the office of Alderman for the)	
4th Ward of the City of Chicago)	

FINDINGS AND DECISION

The duly constituted Electoral Board, consisting of the Board of Election Commissioners for the City of Chicago, Commissioners Marisel A. Hernandez, William J. Kresse and Jonathan T. Swain, organized by law in response to a Call issued by Marisel A. Hernandez, Chair of said Electoral Board, for the purpose of hearing and passing upon objections (“Objections”) of MILDRED HARE (“Objector”) to the nomination papers (“Nomination Papers”) of EBONY D. LUCAS, candidate for the office of Alderman for the 4th Ward of the City of Chicago (“Candidate”) at the General Municipal Election to be held on Tuesday, February 26, 2019, having convened on Monday, December 10, 2018, at 8:30 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 were duly and timely filed.
2. The Electoral Board was legally constituted under the laws of the State of Illinois.
3. A Call to the hearing on said Objections was duly issued by the Chair of the Electoral Board and served upon the members of the Electoral Board, the Objector and the Candidate, by registered or certified mail and by Sheriff’s service, as provided by statute.

4. A public hearing held on these Objections commenced on Monday, December 10, 2018 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 Objector and the Candidate were directed by the Electoral Board's Call served upon them to appear before the Hearing Officer on the date and at the time designated in the Hearing Schedule. The following persons, among others, were present at such hearing: the Objector, MILDRED HARE, and/or her Attorney MICHAEL C DORF; the Candidate, EBONY D. LUCAS, and/or her Attorney SCOTT B ERDMAN.

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

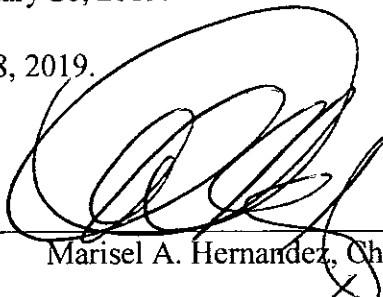
8. The Electoral Board, having reviewed the record of proceedings in this matter and having considered the report and recommendations of the Hearing Officer, as well as all argument and evidence submitted by the parties, hereby adopts the Hearing Officer's recommended findings and conclusions of law. A copy of the Hearing Officer Report and Recommendations is attached hereto and is incorporated herein as part of the decision of the Electoral Board.

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


IT IS THEREFORE ORDERED that the Objections of MILDRED HARE to the Nomination Papers of EBONY D. LUCAS, candidate for the office of Alderman for the 4th Ward of the City of Chicago, are hereby OVERRULED and said Nomination Papers are hereby

declared VALID and the name of EBONY D. LUCAS, candidate for the office of Alderman for the 4th Ward of the City of Chicago, SHALL be printed on the official ballot for the General Municipal Election to be held on Tuesday, February 26, 2019.

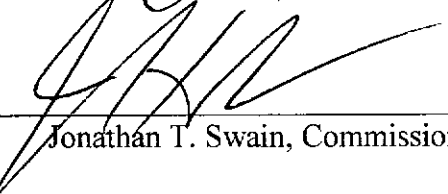
Dated: Chicago, Illinois, on Tuesday, January 08, 2019.



Marisel A. Hernandez, Chair



William J. Kresse, Commissioner



Jonathan T. Swain, Commissioner

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

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

Objections of)	
MILDRED HARE)	
Petitioner and Objector)	
)	19-EB-ALD-120
To the Nomination Papers of:)	
EBONY D. LUCAS)	
Respondent and Candidate for)	
election to the Office of 4th Ward Alderman)	
of the City of Chicago to be voted on at the)	
February 2, 2018 Municipal General Election))	

HEARING OFFICER'S RECOMMENDED DECISION

This matter came before the Chicago Board of Election Commissioners sitting as the Duly Constituted Electoral Board for the Hearing and Passing upon Objections to Nomination Papers of Candidates for the February 26, 2019 Municipal General Election in the City of Chicago ("Board") on the Verified Objector's Petition ("Objections") of MILDRED HARE ("Objector") to the Nomination Papers of EBONY D. LUCAS, Candidate for election to the office of 4th Ward Alderman of the City of Chicago at the February 26, 2019 Municipal General Election ("Candidate"). The Board appointed attorney Christopher B. Cohen as Hearing Officer for this matter. The Hearing Officer finds and recommends as follows:

1. On November 19, 2018, the Candidate filed Nomination Papers with the Board for the office of 4th Ward Alderman of the City of Chicago.
2. On December 3, 2018, the Objector filed with the Board Verified Objections to the Candidate's Nomination Papers. The Board's time-stamp on the face of the Objections indicates erroneously that they were filed with the Board on January 3, 2018. The Hearing Officer concluded this was an inadvertent error and deemed the Objections to be timely filed on December 3, 2018.
3. This Board is the Duly Constituted Electoral Board for hearing and passing on objections to Nomination Papers for the office which is the subject of these proceedings.
4. The Board's official file contained the original Nomination Papers of the Candidate and the original Objections of the Objector.
5. The Objections averred that the Candidate's Nomination Papers were insufficient in law and in fact. The Objections alleged in Paragraph 5 that the Statement of Economic Interests (SEI) filed by the Candidate did not state the office she was seeking and must be filed in relation to her candidacy thus violating the requirement in 5 ILCS 420/4A-101. The Objections further alleged in Paragraph 6 that the Receipt filed by the Candidate as part of her Nomination Papers did not state the office she was seeking, and that her SEI was not filed in relation to her candidacy thus violating the requirement in 10 ILCS 5/10-5.
6. On December 10, 2018, this Board's Hearing Officer began a public hearing in the nature of a case management conference regarding the Objections at 69 W. Washington, Lower Level Pedway, Chicago, Illinois. This hearing was recorded for transcription by a court stenographer.
7. The Objector, MILDRED HARE, did not appear in person but did appear by her attorney Michael Dorf. Candidate EBONY D. LUCAS did not appear in person but did appear by her attorney, Scott Erdman. The Board's Clerk was Monica Garcia.

8. During the hearing, the Clerk Garcia indicated that the Board's file contained a written appearance as well as a signed Receipt of the Board's Call and a Waiver of Statutory Service from the attorney for the Candidate and also from the attorney for the Objector.
9. The Hearing Officer confirmed that a copy of the Board's Rules adopted at its December 10, 2018 meeting and the Index of Electoral Board Decisions were available on the Board's website – www.chicagoelections.com.
10. During the December 10, 2018 hearing, the Candidate timely filed an oral Motion to Strike and Dismiss the Objections pursuant to Board Rule 5(b). That Rule authorizes a Candidate to file Preliminary motions to challenge the legal sufficiency of Objections in the nature of a motion to strike or dismiss the Objectors' petition in whole or in part. Rule 5(b) states in part:

Preliminary motions to challenge the legal sufficiency of the objector's petition in the nature of a motion to strike or dismiss the objector's petition in whole or in part may be filed and may be heard first.
11. The Candidate's Motion claimed that the allegations in Paragraph 6 and Paragraph 7 of the Objections were insufficient and should be stricken.
12. At the December 10, 2018 hearing, the Hearing Officer set a briefing schedule with these deadlines – December 11, 2018 at 5 pm for the Candidate's written Motion to Strike or Dismiss; December 12, 2018 at 5 pm for the Objectors' Response to the Candidate's Motion to Strike or Dismiss; and December 13, 2018 at 5 pm for the Candidate's written Reply, if any. Each party requested service by email.
13. The Hearing Officer scheduled the hearing and oral argument on the Candidate's Motion and responsive pleadings for December 14, 2018 at 11 am. At the December 10, 2018 hearing, each party received oral notice on the record of the date and time of the upcoming hearing.
14. The Objector and the Candidate indicated that neither requested a Records Examination.
15. Subsequently via email the Candidate requested that a new hearing date be set. The Hearing Officer rescheduled the hearing for oral argument on the Candidate's Motion and responsive pleadings from December 14, 2018 to 4 pm, December 17, 2018. Each of the parties received notice via email of the date and time of the upcoming hearing.
16. At the reconvened December 17, 2018 hearing, the Candidate appeared by attorney Scott Erdman and Objectors appeared by attorney Michael Dorf. The Board's Clerk was Monica Garcia. These proceedings were recorded for transcription by a court stenographer.
17. The Board's official file contained the Candidate's Motion to Strike and Dismiss the Objectors' Petition as well as the Objector's Response to the Candidate's Motion to Strike. Each was timely filed.
18. The Candidate argued that 1) on her SEI the Candidate wrote her office address in the blank after the word "Office" instead of placing in this blank the name of the office she was running for; 2) this was an inadvertent error; 3) this error did not violate the Illinois Governmental Ethics Act; 4) the Illinois Election Code did require the Candidate to file a Statement of Economic Interest in relation to her candidacy; 5) this error did not violate the Illinois Election Code; 6) the Candidate timely filed the SEI with the County Clerk as required by law; 7) the Candidate timely filed the Receipt with this Board as required by law; 8) the error is not fatal to her Nomination Papers and is not sufficient to warrant depriving the Candidate of the right to run for this office; 9) the Candidate filed 3,492 signatures more than the 473 minimum required for ballot access for this office; 10) Illinois law favors candidate eligibility and ballot access; 11) removal from the ballot is not a sanction permitted by the statute for filing a SEI that is not true, not

correct or not complete when filed with the appropriate officer merely due to inadvertence on the part of the person filing; 12) the sanction in section 10-5 of the Election Code only applies where there is a complete failure to file the SEI; and 13) the Code provides no authority to remove a candidate's name from the ballot for inadvertence in filling out a Statement that was timely filed.

19. The Objector argued that 1) the Illinois Election Code (10 ILCS 5/10-5) states that Nomination Papers are invalid if the Candidate fails to file a SEI in relation to her candidacy as required by 5 ILCS 420/4A-101 of the Illinois Governmental Ethics Act; 2) the Candidate does not dispute that she failed to name the elective office she was seeking in her Statement of Economic Interest; 2) the Candidate does not dispute that the Receipt filed with the Board as part of her Nomination Papers failed to name the elective office she was seeking in relation to her candidacy; 3) the sample form in 5 ILCS 420/4A-102 of the Illinois Governmental Ethics Act requires the Candidate to fill in the "office or position of employment for which this statement is filed;" 4) this is not a burdensome requirement and 5) if people looked up this Candidate's SEI by her name, that Statement would not inform them of what office the Candidate was seeking;
20. After both sides had the opportunity to state their arguments and analyze cases they cited, the Hearing Officer began with analysis of Paragraph 4 of the Objector's Petition. It alleged that the Candidate's petitions must contain signatures of not fewer than 473 qualified voters of the 4th Ward of the City of Chicago. In the Objections, the Hearing Officer found no allegation that the Nomination Papers contained fewer than the required number of valid signatures.
21. In addition, during the initial hearing in this matter held on December 10, 2018, the Objector's attorney stated that he would not be requesting a Records Examination. No evidence was alleged or proffered that the number of signatures filed by the Candidate was insufficient. The Hearing Officer found that without a records examination, no such evidence would be available. Therefore, the Hearing Officer struck and dismissed Paragraph 4 of Objector's Petition.
22. The Hearing Officer then turned to Paragraphs 5 and 6 of the Objector's Petition. They alleged that the Receipt for the SEI filed as part of the Candidate's Nomination Papers did not state the office she was seeking. The Objector alleged this violated some or all of the following statutes – 10 ILCS 5/10-3.1, 65 ILCS 20/21-28(a), 5 ILCS 420/4A-101 and 10 ILCS 5/10-5.
23. The Hearing Officer summarized the Objector's position to be that these alleged statutory violations caused the Nomination Papers to be invalid in their entirety.
24. The Hearing Officer then took official notice of Exhibit A attached to the Objector's Petition. That Exhibit contained the following found in the Electoral Board's official file:
 - The Board's Receipt for the Candidate's Nomination Papers and
 - The Candidate's SEI.
25. After reviewing these materials, the Hearing Officer found that:
 - The Candidate filed an SEI.
 - The correct form – "For Candidates only" – was used.
 - The SEI was filed with the correct office – that of the Cook County Clerk.
 - The SEI form that was filled out and filed contained the Cook County seal in its upper left corner.
 - The SEI contained a file stamp from the Cook County Clerk of November 16, 2018.
 - That date – November 16, 2018 – was prior to the date the Candidate's Nomination Papers were filed with this Electoral Board – November 19, 2018.
 - The SEI was filed with the Board in one packet of Nomination Papers.
 - The Board's Receipt indicated that the Nomination Papers filed on November 19, 2018 included:
 - Statement of Candidacy.
 - Loyalty Oath.
 - Statement of Economic Interests.

- o Petitions ending with the last petition page numbered As "450."
- Each of those documents except the SEI contained the office the Candidate was running for.
- The Board's Receipt showed on its face that Nomination Papers were filed for "Alderman, Ward 4th."

26. Therefore, the Hearing Officer found that 3 of 4 documents plus the Receipt as well as every one of the petition sheets contained notice that the office for which the Candidate was running was Alderman, 4th Ward or 4th Ward Alderman.

27. The Hearing Officer then observed that the SEI as filed by the Candidate responded to each of these headings. The first 3 questions were:

- Name: _____
- Full Mailing _____
Address: _____
- Office: _____

28. The Hearing Officer took judicial notice that the 2018-2019 edition of Sullivan's Law Directory listed the Candidate's law office address as the same one listed after the word "Office" in the SEI. The Hearing Officer found that in response to the one-word question "Office" the Candidate listed the address of her law office.

29. The Hearing Officer also reviewed 5 ILCS 4A-101 and took judicial notice that the wording of the SEI in the statute that requires filing the SEI states:

.....
(name)
.....
(each office or position of employment for which this statement is filed)
.....
(full mailing address)

30. The Hearing Officer found further that the SEI form as printed by the Cook County Clerk differed from the form wording in the statute. Both the Cook County form and the statute contain the word "Name" and each contains the phrase "Full Mailing Address." However, the Hearing Officer observed that the statute asks filers to answer the question "each office or position of employment for which this statement is filed," while the Cook County Clerk's form which must be filed with the Cook County Clerk merely asks filers to fill in the blank marked "Office." The Hearing Officer found that the Candidate did exactly that. Had the County Clerk asked filers to state, "each office for which the SEI is filed," rather than merely "Office," the Candidate's answer would have been non-responsive.

31. The Hearing Officer found that when filling in the blank form, the Candidate provided an accurate response to the question asked – "Office." She filled in the address of the office where she works. The answer was truthful with no apparent intent to evade. If there was an error, it was inadvertent because the form provided to the Candidate did not faithfully follow the language in the state statute. The Hearing Officer concluded that the negative consequences for a person relying on a form created and printed by a local government should not be visited on that person who relied on that government's actions.

32. After a review of documents in evidence, the Hearing Officer determined that:

- the Statement of Candidacy contained the Ward number in which the Candidate was seeking to become Alderman along with the word "Alderman" and
- the Loyalty Oath contained the Ward number and the word "Alderman" and
- each of the petition sheets contained the Ward number and the word "Alderman" and
- all of those documents plus the SEI collectively constituted the Candidate's nominating Papers; and
- the Boards Receipt also contained the Ward number and the word "Alderman."

33. As a consequence, the Hearing Officer concluded that the Candidate attempted to comply with the relevant statutes.
34. The Hearing Officer found that the Candidate's SEI did not state a public office for which the Candidate was running including that of 4th Ward Alderman. It did, however, list the address of the Candidate's law office after the word "Office" on the SEI form. Her answer on the form as filed was responsive but not inaccurate. However, the Hearing Officer ruled that if failure to state the name of the office sought on a timely-filed SEI or on a timely-filed SEI Receipt is viewed as an error, that error is not fatal to the Nomination Papers under existing law.
35. The Objector failed to demonstrate evidence of confusion, prejudice or detriment as a result of the Candidate's action in accurately listing the address for her law office.
36. By statute, the Illinois General Assembly provided for criminal penalties for a person who willfully files a false or incomplete SEI. The General Assembly also provided the sanction of forfeiture of office for a person who completely neglects to file a SEI. However, when adopting the Governmental Ethics Act and the Illinois Election Code, the members of the General Assembly chose not to impose any sanction for filing an inadvertently incomplete or inadvertently inaccurate SEI. The Hearing Officer analysis was that this indicated that the General Assembly intended no sanction for such a filing.
37. Consequently, the Hearing Officer concluded that this Candidate's name cannot be ordered off the ballot for her error of putting her office address in the blank marked "Office" rather than writing the name of the office she was running for in the blank marked "Office."
38. In explaining his ruling on the Candidate's Motion to Strike and Dismiss the Objectors' Petition during the proceedings on December 17, 2018, the Hearing Officer indicated that he considered the following cases were applicable to the facts of the instant case: Welch v Johnson, 147 Ill.2d 40, 167 Ill.Dec. 989, 588 N.E.2d 1119 (1992); Reguena v Cook County Officers Electoral Board, 295 Ill.App.3d 728, 692 N.E.2d 1217 (1st Dist. 1998); and Crudup v Sims, 292 Ill.App.3d 1075, 226 Ill.Dec. 931, 686 N.E.2d 714 (1997).
39. The Hearing Officer further indicated that he did not consider the following case cited in the Objector's Verified Petition as applicable to the facts of the instant case: Jones v Municipal Officers Electoral Board, 112 Ill.App.3d 926, 68 Ill.Dec. 522, 446 N.E.2d 256 (1983).
40. The Hearing Officer also noted that the Appellate Court has held that ballot access is a substantial right and not lightly to be denied. Vestrup v. DuPage County Election Commission, 335 Ill.App.3d 156, 779 N.E.2d 376 (2nd Dist. 2002); Reyes v. Bloomingdale Township Electoral Board. Courts are mindful of "the need to tread cautiously when construing statutory language which might be read to restrict the people's right to endorse and nominate the candidate of their choice." Lucas v. Lakin. The right to stand for office is to some extent derivative from the right of the people to express their opinions by voting. Nader v. Keith, 385 F.3d 729 (7th Cir. 2004).
41. This Hearing officer finds and concludes that based on the allegations and evidence provided in the Objector's Petition, the SEI was filed in relation to the Candidate's candidacy and that contrary to Paragraphs 5 and 6 of the Objector's Petition, none of the following statutes was violated:
- 10 ILCS 5/10-3.1
 - 65 ILCS 20/21-28(a)
 - 5 ILCS 420/4A-101
 - 10 ILCS 5/10-5
42. Based on the above findings, the Hearing Officer granted the Candidate's Motion to Strike paragraphs 4, 5 and 6 of the Objections.


43. At this point, neither party made any other request or filed a motion.

44. With no other issues to be decided, the Hearing Officer determined that these proceedings were concluded on December 17, 2018.

DECISION

In light of the above findings of fact and conclusions of law, this Hearing Officer recommends to the Board that the Candidate's Motion to Strike be granted, that the Verified Objector's Petition filed by MILDRED HARE be overruled, that the Candidate's Nomination Papers be deemed sufficient and valid in law and in fact and that the name of EBONY D. LUCAS, Candidate for election to the Office of 4th Ward Alderman of the City of Chicago, be printed on the official ballot for the Municipal General Election to be held in the City of Chicago on February 26, 2019.

Respectfully submitted,



Christopher B. Cohen
Hearing Officer
January 1, 2019