

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

Objections of: VIRGIL E. JONES)
)
To the Nomination) **No.: 07-EB-ALD-148**
Papers of: ROSA PRITCHETT) **(rel. 07-EB-ALD-020)**
)
Candidate for the office of)
Alderman of the Fifteenth Ward,)
City of Chicago)

FINDINGS AND DECISION

The duly constituted Electoral Board, consisting of Board of Election Commissioners of the City of Chicago Commissioners Langdon D. Neal and Richard A. Cowen, organized by law in response to a Call issued by Langdon D. Neal, Chairman of said Electoral Board, for the purpose of hearing and passing upon objections (“Objections”) of VIRGIL E. JONES (“Objector”) to the nomination papers (“Nomination Papers”) of ROSA PRITCHETT, candidate for the office of Alderman of the Fifteenth Ward of the City of Chicago (“Candidate”) to be elected at the Municipal General Election to be held on February 27, 2007, having convened on January 2, 2007, at 10:00 a.m., in Room 800, 69 West Washington Street, Chicago, Illinois, and having heard and determined the Objections to the Nomination Papers in the above-entitled matter, finds that:

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

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

4. A public hearing held on these Objections commenced on January 2, 2007 and was continued from time to time.

5. The Electoral Board assigned this matter to Hearing Examiner Joseph Morris 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 Examiner on the date and at the time designated in the Call. The following persons, among others, were present at such hearing; the Objector, VIRGIL E. JONES, *pro se*; and the Candidate, ROSA PRITCHETT, *pro se*.

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

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

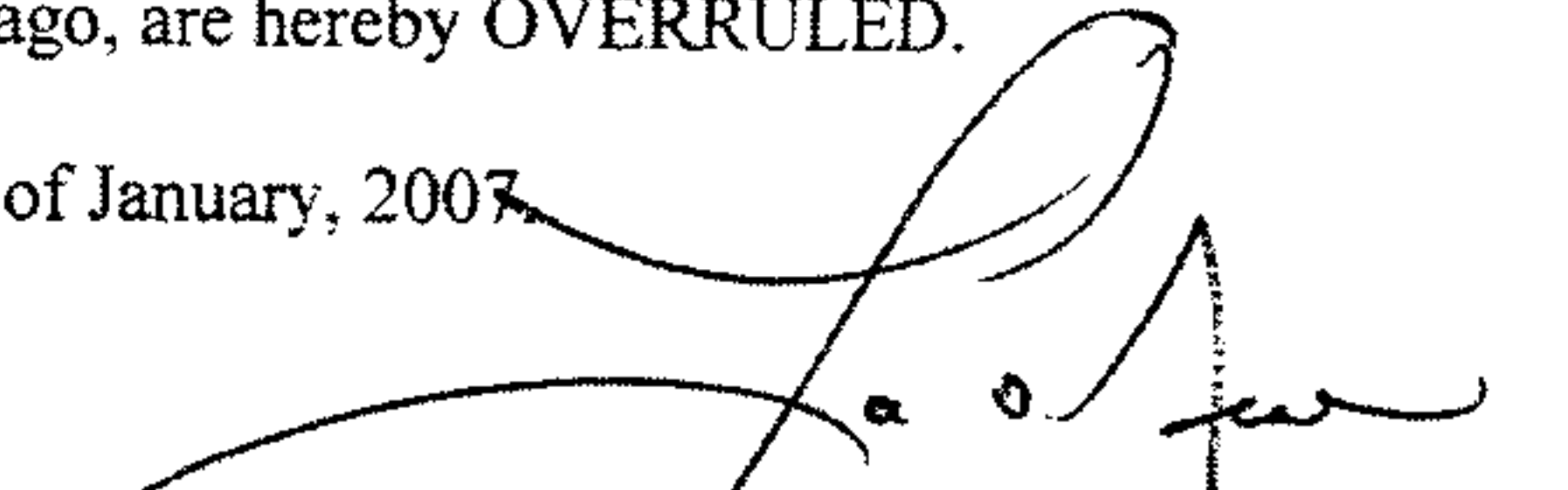
9. For the reasons stated above, the Electoral Board overruled the Objections to the Candidate's Nomination Papers.

10. The Electoral Board further finds, however, there is another set of objections filed against the Candidate's Nomination Papers in case 07-EB-ALD-020 wherein the Electoral Board found that the Candidate's Nomination Papers are invalid.

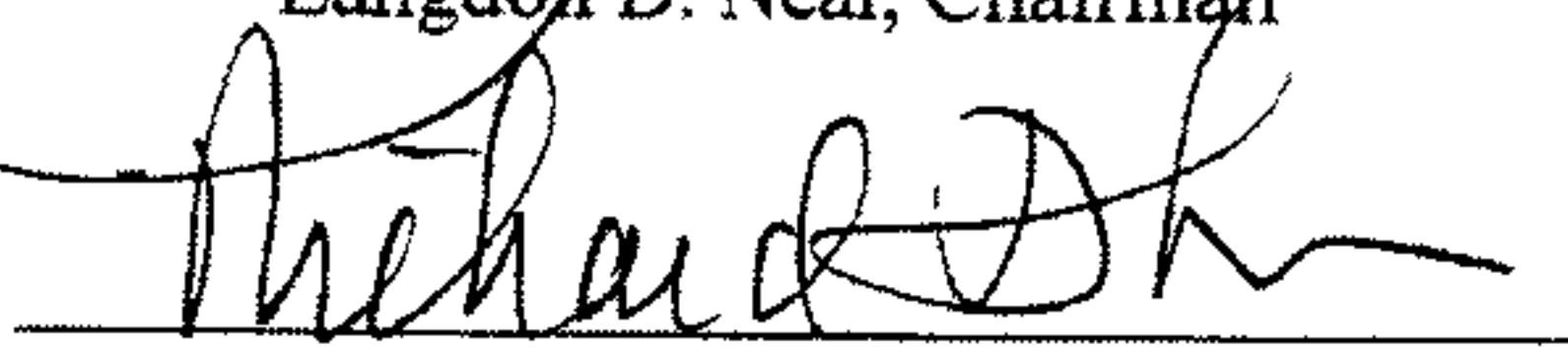
11. For the reasons stated above, the Electoral Board finds that the Candidate's Nomination Papers are invalid.

IT IS THEREFORE ORDERED that the Objections of VIRGIL E. JONES, to the Nomination Papers of ROSA PRITCHETT, candidate for election to the office of Alderman of the Fifteenth Ward of the City of Chicago, are hereby OVERRULED.

Dated: Chicago, Illinois, this 16th day of January, 2007.



Langdon D. Neal, Chairman



Richard A. Cowen, 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 10 days after the decision of the Electoral Board.

BEFORE
 THE BOARD OF ELECTION COMMISSIONERS OF THE CITY OF CHICAGO
 AS THE DULY CONSTITUTED ELECTORAL BOARD
 FOR THE HEARING AND PASSING UPON OBJECTIONS
 TO NOMINATION PAPERS OF CANDIDATES
 FOR THE FEBRUARY 27, 2007, MUNICIPAL GENERAL ELECTION
 FOR MAYOR, CLERK, TREASURER, AND ALDERMAN
 IN THE CITY OF CHICAGO

VIRGIL E. JONES,)	
)	
	<i>Objector,</i>	
)	No. 07-EB-ALD-148
vs.)	
)	Hearing Examiner Morris
ROSA PRITCHETT,)	
)	
	<i>Candidate.</i>	

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REPORT OF THE HEARING EXAMINER

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

Hearing Examiner JOSEPH A. MORRIS reports as follows:

1. This matter came before the Hearing Examiner, pursuant to notice, for initial hearing on January 2, 2007. The Objector was present *pro se*. The Candidate was present *pro se*. No issue was raised as to sufficiency or timeliness of notice of the objection or of the hearing. Both parties filed written appearances.

2. Without objection, the Candidate's nomination papers for the office of Alderman of the 15th Ward of the City of Chicago were admitted into the record as Group Exhibit A; the Objector's Petition and attachments were admitted into the record as Group Exhibit B; the returns of service of process by the Sheriff of Cook County, Illinois, and written waivers were admitted into the record as Group Exhibit C; and the parties' written appearances were admitted into the record as Group Exhibit D.

3. Each party stated that he was in possession of the Rules of the Electoral Board. The Candidate stated that she intended to file a motion to strike and dismiss the objection. A filing, briefing, and hearing schedule was established for the motion to strike and dismiss, under which such a motion was to be filed by the Candidate on or before January 4, 2007, at 5:00 p.m.; a response, if any, was to be filed by the Objector on or before January 5, 2007, at 5:00 pm.; a reply, if any was to be filed by the Candidate on or before January 6, 2007, at 5:00 p.m.; and a hearing on the motion was set for January 8, 2007. The parties agreed that there was no issue as the number or sufficiency of petition signatures, and that no records examination was required.

4. The Candidate filed a timely motion to strike and dismiss. The Objector filed no response. The Candidate nonetheless filed an additional document on January 6, 2007, which was styled "Rosa Pritchett response to Objector Virgil Jones." The document was received into the record and considered by the Hearing Examiner. A hearing was held on January 8, 2007.

5. The Candidate orally noted that the prayer for relief contained in the Objector's Petition asked that "THE CHICAGO BOARD OF ELECTION [*sic*] SHALL NOT ALLOW THE NAME OF THE CANDIDATE *RICHARD ANDERSON* TO APPEAR ON THE BALLOT..." (*Emphasis added.*) The Candidate conceded that this was not an issue raised in her motion to strike and dismiss. The Hearing Examiner stated that the matter would be considered with the merits of the case.

6. The parties agreed that three ultimate issues are presented in this case: (a) Whether or not the form of the Candidate's nomination papers are legally sufficient in connection with a non-partisan general municipal election. (b) Whether or not the Candidate's nomination papers were properly bound at the time of filing. (c) Whether or not the Candidate had an enforceable duty to

file a statement of disclosure of economic interests with the Board of Ethics of the City of Chicago and, if so, whether or not she seasonably filed such a statement.

7. With respect to the issue of whether or not the form of the Candidate's nomination papers are legally sufficient in connection with a non-partisan general municipal election, the Objector withdrew the allegation of Paragraph 6 of his Objector's Petition, wherein it was averred that "THE STATEMENT OF CANDIDACY HAS BEEN WHITED OUT IN SEVERAL PLACES WITH NO INITIALS TO INDICATE AGREEMENT WITH THE CHANGES". The parties thereupon stated that there were no factual issues in dispute and that the question should be decided on the basis of a legal evaluation of the face of the Candidate's nomination papers.

8. With respect to the issue of whether or not the Candidate's papers were properly bound, the parties agreed that there is one question of fact in the case: What was the manner of binding, if any, of the Candidate's nomination papers at the time of their filing? The parties stipulated that, when the Candidate's nomination papers were filed with the Board, they consisted of 32 pieces of legal size paper and one slip of paper, assembled as follows, and in the order stated: (a) A slip of paper issued by the Cook County Clerk, being a receipt showing the filing of a statement of economic interests; (b) 28 numbered petition sheets; (c) one certificate of attached list of deletions; (d) one certification of deletions; (e) one statement of candidacy; and (f) one loyalty oath; and that all 33 pieces of paper were held together by two jumbo-sized paper clips, each measuring about three inches in length, with the two paper clips placed about two inches apart at the center of the top of the bundle of papers.

9. With respect to the issue of whether or not the Candidate had an enforceable duty to file a statement of disclosure of economic interests with the Board of Ethics of the City of Chicago

and, if so, whether or not she seasonably filed such a statement, the parties stipulated that the Candidate filed such a statement with the Board of Ethics of the City of Chicago subsequent to 3:00 p.m. on December 22, 2006, and prior to the date of hearing, and that there were no other relevant facts to be adduced.

10. Accordingly, the parties waived an evidentiary hearing and any written arguments. The parties made oral statements. The Objector contended that the Board had issued a rule requiring compliance with the City of Chicago Campaign Financing Ordinance and providing that the Board would enforce said ordinance in the course of its administration of electoral proceedings. The Objector asked for, and was granted, leave to file on or before January 9, 2007, at 5:00 p.m., evidence of the existence of such a rule. Otherwise, the record was closed and the matter was submitted for decision by the Electoral Board.

11. On January 9, 2007, the Objector filed a supplemental memorandum to which he attached a copy of an undated notice, printed on the stationery of the Chicago Board of Election Commissioners, which read, in its entirety, as follows:

TO: ALL CANDIDATES FOR ELECTION TO CITY OFFICE
FROM: Lance Gough, Executive Director
RE: City of Chicago Campaign Financing Ordinance
(Chapter 2-164 of the Municipal Code of Chicago)

The City of Chicago has adopted a "Campaign Financing Ordinance" (Chapter 2-164 of the Municipal Code of Chicago) which applies to any person who seeks nomination for election, election to or retention in any elected office of the government of the City of Chicago whether or not such person is elected. The Ordinance contains provisions regulating gifts, favors and contributions.

The Ordinance is administered and enforced by the Board of Ethics of the City of Chicago. You should contact the Board of Ethics, Suite 500, 740 North Sedgwick Street,

Chicago, Illinois, 60610 (312-744-9660), for further information regarding the Ordinance and your obligations under the Ordinance.

Sufficiency of the Nomination Papers for a Non-Partisan Municipal Election

12. In Paragraph 6 of the Objector's Petition, the Objector stated:

THE STATEMENT OF CANDIDACY IS NOT THE PROPER STATEMENT FOR THE NON-PARTISAN ELECTION OF THE MUNICIPAL ELECTION THAT WILL BE HELD 27 FEBRUARY 2007. THE CANDIDATES HANDBOOK CLEARLY SHOWS THAT THE PROPER FORM IS CLEARLY LISTED AS SBE NO. P-1A WHICH SHALL CONTAIN NON-PARTISAN AT THE TOP AND CONTAIN ONLY THE NAME ADDRESS-ZIP CODE OFFICE CITY, VILLAGE, OR DISTRICT FAILURE TO FOLLOW THIS FORM AS SET OUT IN 10 ILCS 5/7(1).

13. Examination of the statement of candidacy itself, however, shows that it is precisely in the form (SBE No. P-1A) suggested for use in a non-partisan municipal election, and it otherwise conforms to the requirements of law for the form of a petition in such circumstances. When pressed to point to specific defects in the form, the Objector demurred.

14. The Hearing Examiner will recommend, therefore, that the objection of the Objector's Petition as to the suitability of the form for use in a non-partisan municipal general election be overruled.

Sufficiency of Binding of the Nomination Papers

15. In Paragraph 8 of the Objector's Petition, the Objector charges that, "THE MOST EGREGIOUS FLAW IN THE NOMINATING PETITIONS IS THAT THE PETITIONS ARE NOT BOUND IN BOOK FORM ON THE EDGE IN A SUITABLE MANNER AS REQUIRED BY THE LAW UNDER 10 ILCS 5/7-10(A)."

16. The Candidate responds that her papers "were in order and were appropriately bound...." Candidate's Motion to Strike and Dismiss (Jan. 4, 2007).

17. Section 7-10(a) of the Illinois Election Code, 10 ILCS § 5/7-10(a), as seemingly cited by the Objector, relates to candidacies for statewide office and national nominating conventions, and thus is inapposite to the matter at hand. Section 10-4 of the Illinois Election Code, 10 ILCS § 5/10-4, however, requires that the nomination papers “be neatly fastened together in book form, by placing the sheets in a pile and fastening them together at one edge in a secure and suitable manner....” Binding nomination papers with nothing more secure than paper clips is unusual, and surely a practice that candidates, desiring to ensure the integrity of their papers and to prevent them from becoming disordered, commingled with others, or lost altogether, ought to avoid. Nonetheless, a divided panel of the Illinois Appellate Court for the First District has held that when a candidate’s papers consisted of six to eight pieces of paper which were assembled into a single series of uniform leaves and held together along one edge by a single large paper clip, they were “fastened together” in “book form” and were in compliance — indeed, in “strict”, rather than merely “substantial”, compliance — with the statute. *Bendell v. Education Officers Electoral Board for School District*, 148, 338 Ill.App.3d 458, 788 N.E.2d 173 (1st Dist. 2003). The Objector notes that, at about the same time, the Third District reached a contrary conclusion in another paper clip case, *Girov v. Keith*, 341 Ill.App.3d 902, 793 N.E.2d 935 (3d Dist. 2003), *rev'd on other grounds*, 212 Ill.2d 372, 818 N.E.2d 1232 (2004). The Hearing Examiner is sympathetic with the views of the *Girov* court and with those expressed in dissent by Justice Wolfson in *Bendell*. This Board sits in the First District, however, and, other things being equal, should follow the law as developed in this District. In the instant case, the Candidate’s papers were, indeed, held together in a single, neat, sheaf, and the number of pieces of paper were not so numerous that two large paper clips failed to secure them. Thus, the Hearing Examiner will recommend that, in the event that the Board does not withhold the

Candidate's name from the ballot for other reasons, it should not deny her access to the ballot in circumstances where she employed fully twice as many paper clips as sanctioned by the Appellate Court in *Bendell*.

Compliance with City of Chicago Campaign Financing Ordinance

18. The Objector frames his claim with respect to the putative failure of the Candidate to file a statement disclosing financial interests with the Board of Ethics of the City of Chicago as follows:

THE NOMINATING PETITIONS CANNOT BE ACCEPTED FOR ROSA PRITCHETT ... BECAUSE THE CANDIDATE FAILED TO FOLLOW CHAPTER 2-164 OF THE CITY OF CHICAGO CAMPAIGN FINANCING ORDINANCE OF THE CITY OF CHICAGO MUNICIPAL CODE....

The asserted duty on the part of the Candidate to file such a statement, and the asserted duty of the Electoral Board to enforce a requirement to file such a statement, is thus grounded by the Objector in a municipal ordinance of the City of Chicago. This duty is distinct from the requirement imposed by Section 4A-101(g) of the Illinois Governmental Ethics Act, 5 ILCS § 420/4A-101(g), that a candidate for nomination or election to office in a unit of local government must file a verified written statement of economic interests, as provided in that statute, and the correlated mandates of Section 10-5 of the Illinois Election Code, 10 ILCS § 5/10-5, which provides that the nomination papers of such a candidate "are not valid if the candidate named therein fails to file a statement of economic interests as required by the Illinois Governmental Ethics Act in relation to his candidacy..."; that the statement of economic interests must be filed within a specified time; that a receipt showing timely filing of the statement of economic interests must be filed with the election authority; and that the receipt itself must be thus filed within a specified time.

19. The powers and authorities of an electoral board established under the Illinois Election Code are those which are conferred upon it by the General Assembly. *Kozel v. State Board of Elections*, 126 Ill.2d 58, 533 N.E.2d 796 (1988); *Reyes v. Bloomington Township Electoral Board*, 265 Ill.App.3d 69, 638 N.E.2d 782 (2d Dist. 1994). This Electoral Board derives its powers in this case from Section 10-10 of the Illinois Election Code, 10 ILCS § 5/10-10, and is thus the creature of the General Assembly of the State of Illinois. It is axiomatic that no inferior legislature, including the Common Council of the City of Chicago, may enlarge or diminish this Electoral Board's powers and authorities.

20. It should be even more obvious that this Board is without authority to expand its powers and functions on its own. In that context it must be stated that the undated memorandum of this Board's Executive Director, cited by the Objector, did nothing other than call the attention of candidates to the existence of the Chicago Campaign Financing Ordinance. It states on its face that enforcement of the ordinance is the province of the Chicago Board of Ethics; whether or not that statement is accurate, there is nothing about the Executive Director's memorandum which confers authority on this Board to enforce that Ordinance.

21. The Objector makes no assertion that the asserted failure of the Candidate to effect a filing with the Board of Ethics of the City of Chicago implicates any Illinois statute, let alone a statute enforcement of which is expressly confided by the General Assembly to this Electoral Board. Section 10-5 of the Illinois Election Code specifically cites the Illinois Governmental Ethics Act, and provides an enforcement mechanism for the requirements of that act which does, indeed, assign policing tasks to electoral authorities. Neither Section 10-5 nor any other provision of the Illinois Election Code connects the authority of municipal governments to regulate the ethical standards of

candidates for office with any enforcement powers to be exercised by an electoral board. This Board has previously held that it is without authority to invalidate nomination papers on account of a candidate's failure to comply with a municipal ethics ordinance of the City of Chicago. *Smith v Sherman*, 95-EB-ALD-20 CBEC (Jan. 23, 1995); *Smith v. Tines*, 95-EB-ALD 25 CBEC (Jan. 28, 1995); and *Whitehead v. Golar*, 91-EB-ALD-45 CBEC (Feb. 4, 1991).

22. Upon review of the applicable law, the Hearing Examiner counsels that, under current Illinois statutes, the Electoral Board is without authority to enforce, or conduct proceedings under or relating to, a municipal ethics ordinance. The Hearing Examiner is therefore without authority even to inquire into whether or not a candidate had a duty to comply with such an ordinance, let alone into whether or not the candidate did, in fact, comply with such an ordinance, and the Hearing Examiner has attempted no determination, and offers no recommendation, as to such matters.

Recommended Findings, Conclusions, and Decision

23. On the bases of a facial examination of the nomination papers, of the Objector's Petition and attachments, of the statements and stipulations of the parties, and of all other proceedings held herein, the Hearing Examiner recommends that the Electoral Board enter the following finding of fact:

The nomination papers filed by the Candidate consists of a pile of 33 pieces of paper, assembled together as a single sheaf of leaves and fastened along the top edge by two large paper clips.

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

(a) The nomination papers filed by the Candidate substantially comply with the requirements of law pertaining to the forms required in non-partisan municipal general elections.

(b) The nomination papers filed by the Candidate do strictly comply with the requirement of law that a petition be neatly fastened together in book form, by placing the sheets in a pile and fastening them together at one edge in a secure and suitable manner.

(c) This Electoral Board is without authority to enforce the City of Chicago Campaign Financing Ordinance, Chapter 2-164 of the City of Chicago Municipal Code, or to undertake any proceedings under, or relating to, said ordinance.

(d) The Objector's Petition is not well founded, and the relief sought therein should not be granted.

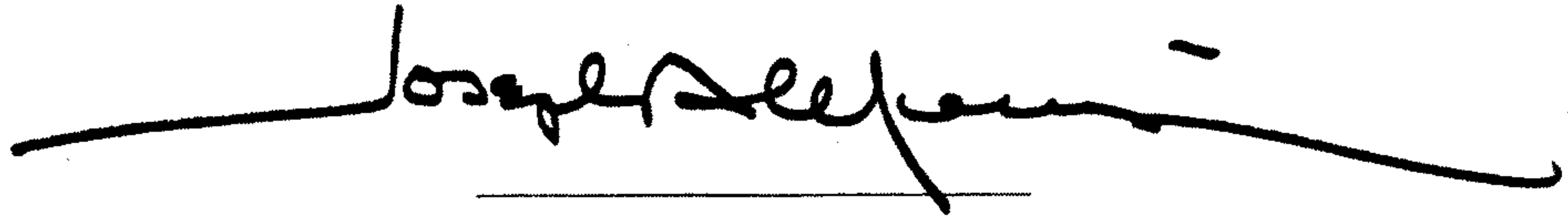
25. Nonetheless, the Hearing Examiner calls the attention of the Electoral Board to a companion matter pending before the Board, *Haynes v. Pritchett*, No. 07-EB-ALD-020, in which the Hearing Examiner recommends that an objection against the nomination papers of the same Candidate, Rosa Pritchett, be sustained on grounds entirely independent of those raised in the instant matter. (The conclusion that the instant objections are not well-founded is buttressed by the facts that, not only did the instant Objector pray in his Objector's Petition that ballot access be denied to a person other than the Candidate whose nomination papers are here in issue, but the Objector wholly omitted to object to those papers on the substantial ground raised by the objector in *Hayes v. Pritchett*.)

26. Accordingly, on the basis of the findings, conclusions, and result recommended in *Haynes v. Pritchett*, No. 07-EB-ALD-020, the Hearing Examiner recommends that the Electoral Board enter the following final administrative decision:

The name of Rosa Pritchett shall not appear and shall not be printed on the ballot for election to the office of Alderman of the 15th Ward of the City of Chicago to be voted for at the Municipal General Election to be held on February 27, 2007.

Dated: January 12, 2007.

Respectfully submitted,

A large, stylized handwritten signature in black ink, appearing to read 'Joseph A. Morris', is written over a horizontal line.

JOSEPH A. MORRIS
Hearing Examiner