

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

Objections of: WAYNE E. STRNAD)
)
)
To the Nomination) **No.: 07-EB-ALD-171**
Papers of: ARIEL E. REBOYRAS)
)
Candidate for the office of)
Alderman of the Thirtieth 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 WAYNE E. STRNAD (“Objector”) to the nomination papers (“Nomination Papers”) of ARIEL E. REBOYRAS, candidate for the office of Alderman of the Thirtieth 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 Terence Flynn 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, WAYNE E. STRNAD, *pro se*; and the Candidate, ARIEL E. REBOYRAS, by counsel, Michael E. Lavelle.

7. The Objections contend that the Candidate's nominating petition sheets are improperly identify the election in question as the "Consolidated Election to be held on February 27, 2007." Objection maintains that the proper title of the election should be the "Consolidated Primary," citing 10 ILCS 5/2A-1.1(b) and 10 ILCS 5/2A-26.

8. In its 2007 Election Calendar and 2007 Election Information Pamphlet, the Board of Election Commissioners for the City of Chicago identifies the election in question as the "Municipal General Election."

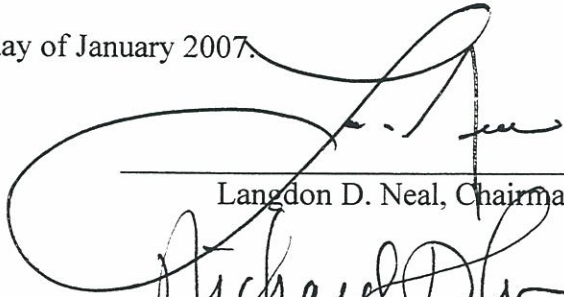
9. The Hearing Examiner has tendered to the Electoral Board his report and recommended decision. The Hearing Examiner recommends that the Objections to the Candidate's Nomination Papers be overruled and that the Nomination Papers be found valid.

10. 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.

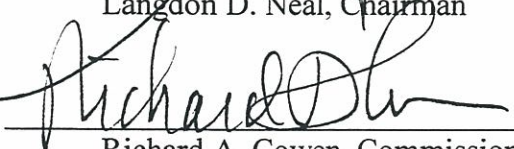
11. For the reasons stated above, the Electoral Board overrules the Objections to the Candidate's Nomination Papers and finds that the Candidate's Nomination Papers are valid.

IT IS THEREFORE ORDERED that the Objections of WAYNE A. STRNAD to the Nomination Papers of ARIEL E. REBOYRAS, candidate for election to the office of Alderman of the Thirtieth Ward of the City of Chicago, are hereby OVERRULED and said Nomination Papers are hereby declared VALID and the name of ARIEL E. REBOYRAS, candidate for election to the office of Alderman of the Thirtieth Ward of the City of Chicago, SHALL be printed on the official ballot for the Municipal General Election to be held on February 27, 2007.

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 DULY CONSTITUTED ELECTORAL BOARD
FOR THE HEARING AND PASSING UPON OBJECTIONS TO
NOMINATION PAPERS OF CANDIDATES FOR ELECTION TO THE
OFFICE OF ALDERMAN OF THE CITY OF CHICAGO

WAYNE A. STRNAD)	
)	
Petitioner-Objector,)	
)	
v.)	07-EB-ALD-171
)	(30 TH WARD)
ARIEL E. REBOYRAS)	
)	
Respondent-Candidate.)	

2007 JAN 10 A 9:56

**REPORT AND RECOMMENDATION
OF HEARING EXAMINER TERENCE E. FLYNN**

I.) Procedural History

This matter was initially called on 1/03/07. The objector appeared pro se; the candidate appeared by counsel. As more fully discussed below, the substance of objector's complaint is a purely legal issue: whether the petition sheets of candidate are "improperly" labeled as for "the Consolidated Election to be held on February 27, 2007". Instead, objector points to election guides and state statutes and says that the proper nomenclature should be "the Consolidated Primary Election", stating further that the election this candidate has filed for is, at best, the April election.

The candidate desired to file a motion to strike so a briefing schedule was ordered. The hearing was set for 1/08/07 for argument.¹

Oral argument proceeded on 1/08/07, after the Hearing Examiner had an opportunity to review the further briefs.²

¹ The Motion to Strike was filed on time. Subsequent briefs were timely exchanged by email between the parties, but were not filed. Therefore, the hearing examiner allowed to be filed on 1/08/07 the objector's response, the candidate's reply, and the objector's surreply (not objected-to by candidate).

II.) The Legal Issue

As summarized above, objector's sole complaint is that candidate's petition sheets should have stated "consolidated primary election" but did not. In support, objector cites the State Board of Elections "Candidate's Guide for 2007" which uses the term "Consolidated Primary Election on February 27, 2007". Further, objector cites in support statutes such as 10 ILCS 5/2A-1.1(b) , which states:

" In odd-numbered years, an election to be known as the consolidated election shall be held on the first Tuesday in April except as provided in Section 2A-1.1a of the Act: and an election to be known as the consolidated primary election shall be held on the last Tuesday in February." (emphases supplied)

Objector then goes on to state in paragraph 4 of his reply that: "Since this coming election occurs in an odd-numbered year, part (b) mentioned above ... applies and it clearly makes a distinction between the two types of election both in name and time."

Objector then compares the prior quoted statute with 10 ILCS 5/2A-26, a statute specifically tailored to aldermanic elections in the City of Chicago, which states:

"Aldermen of the City of Chicago shall be elected at the consolidated primary election in 1979 and at the consolidated primary election every 4 years thereafter. The runoff election where necessary, pursuant to law, for Chicago aldermen shall be held at the consolidated election in 1979, and every 4 years thereafter." (emphasis supplied)

² There were 3 errors in Candidate's briefs: a) The caption had a typo in which both parties were denominated "Objector"; b) the word "office" in paragraph 2 of the Motion to Strike should have been "election"; and c) the Motion to Strike referred to February 17, 2007 instead of February 27, 2007 as the election date. Objector would not agree to a Motion to Correct. Because the Hearing Examiner found these typos irrelevant to the decision, no correction was ordered. None of these typos were in Candidate's papers of candidacy.

Thus objector points to and relies upon the term “primary” in both statutes.

Since the candidate’s petition stated he was running for 30th Ward Alderman in the “Consolidated Election to be held on February 27, 2007”, objector believes that, logically, either the candidate is running in no election or running in April and the candidate’s name should not appear on what the objector believes to be “the Consolidated Primary Election to be held on February 27, 2007”.

In response, the candidate points out that the state election guide itself states that it is not binding. The candidate also cites Lewis v. Dunne 63 Ill. 2d 48(1976) for the proposition that the Statement of Candidacy is to be taken with other candidacy papers (such as the petitions) and that, in essence and combination, they are in proper form. Also, candidate argues that the statutes cited by objector are not penal in nature (no penalty is provided) and if they were penal, they would have to be strictly construed in favor of ballot access.

III.) Discussion

In colloquy with objector on 1/08/07, he was asked whether any voter who read the prefatory language of the petition would be misled about the office sought or the date of the election. That prefatory petition language is as follows:

**“ALDERMANIC
PETITION FOR ELECTION**

We, the undersigned, qualified electors in the 30th Ward of the City of Chicago in the County of Cook, and State of Illinois, do hereby petition that the following named person shall be a candidate for election to the office hereinafter specified, in the political division aforesaid, to be voted for at the Consolidated Election to be held on February 27, 2007.”

It is clear to this hearing examiner that no voter would be misled as to the office sought or date of election. (Further, for informational purposes only, candidate submitted 203 petition sheets, most of which contained 20 signatures each.)

In further colloquy with Objector, it was pointed out that since the enactment of the statutes upon which he relies, Aldermen are no longer subject to a “primary” election, as that term is generally used: meaning a partisan, political party “primary.” (It may be that “primary” could mean “initial,” but there is no statutory history or authority to support that interpretation.) The Hearing Examiner also pointed out that the Chicago Election Board’s own “2007 Election Calendar and Information Pamphlet” does not use the term “primary” anywhere. At the end of the arguments and colloquy, Objector stated that the statutory language is mandatory and “primary” should be included. Candidates, election authorities and, indeed, the legislature should be held to the specific language, says the Objector.

IV.) Bases of Recommendation

First, there is a serious issue whether printing the “name” of the election on the petition sheets is important at all. 10 ILCS 5/10-4 which governs petition sheets does not mandate any particular verbal formulation for the election itself. Stating an incorrect date of the election on such papers does not invalidate the petitions or the candidacy. Ahmiz v. Sheriff, 92 EB-WC-88, CBEC; to same effect, Summers et al. v. Morrow, 04-EB-WC-09. By analogy, to the extent that the election date can be wrong without invalidating the candidacy, certainly the lack of one word (“Primary”) cannot invalidate the papers.

Second, the enactment dates of the statutes cited by Objector pre-date the change from partisan to non-partisan elections in the City of Chicago for aldermen. The word

“primary” which Objector demands to be in the Candidate’s papers would have no meaning, as the word “primary” is normally (even “primarily”) used in the election context.

Third, the voters were not misled as to the office sought, the date of the election or any of the relevant particulars. The petitions sheets conformed to all rules applicable (10 ILCS 5/10-4) and gave the petition signatories all information required.

Fourth, no one uses “primary” to describe the election to be held on February 27, 2007.

Fifth, candidate’s arguments, summarized above, are valid.

Sixth, while we agree with Objector that “loose language” can sink the ships of candidacies, there has to be a relationship between any defect – major or minor – and the integrity of the ballot process. Clearly here, no one would be misled as to the office sought or the date of election. Clearly here, the presumption of ballot access that is integral to the democratic process cannot fall to a crabbed reading of the election laws. Did Objector point out a possible disconnect in one word in certain statutes and the candidacy papers? Perhaps. But that one-word disconnect, if such it be, is insufficient to deny ballot access to someone who properly informed the voters (and petition signatories) of the office sought and the date of the election. As stated above, insertion of the adjective “primary” before the noun “election” would itself be incorrect, or at best, mere surplusage. The word “primary” if used on petition sheets would have been potentially more misleading than its absence. The objection must be dismissed.

V.) Recommendation

For the reasons explained above, and especially because petition signatories were not misled, it is the recommendation of this Hearing Examiner that the objector's petition should be dismissed and that the name Ariel E. Reboyras should appear on the ballot for aldermen of the 30th Ward in the election to be held on February 27, 2007.



Terence E. Flynn
Hearing Examiner

January 10, 2007

ORDER

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

Strued

v.

No. 2007 CUEL 06

Board of Election Commissioners et al

ORDER

This case coming on to be heard, the court having been advised in the premises, Now therefore:

It is hereby ordered:

1. Defendant Rebaque's motion to dismiss for lack of subject matter jurisdiction in this court is granted;
2. The parties ^{may} go hence without day.

Atty. No. : 55311
 Name : M. LAVELLE
 Atty. for : Deft. Rebaque
 Address : 218 N. Jefferson St
 City/State/Zip : Chicago, Ill. 60661
 Telephone : 312.559.6600

ENTERED
 JUDGE MARK BALLARD-1742
 ENTER : FEB 01 2007
 DOROTHY BROWN
 CLERK OF THE CIRCUIT COURT
 OF COOK COUNTY, ILL.
 DEPUTY CLERK Judge No.

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

IN THE CIRCUIT COURT OF COOK COUNTY
COUNTY DEPARTMENT, COUNTY DIVISION

WAYNE A. STRNAD,

Plaintiff,

v.

BOARD OF ELECTION COMMISSIONERS
FOR THE CITY OF CHICAGO

ARIEL E. REBOYRAS.

Defendants.

No. 2007 COEL 6

ORDER

This cause coming on to be heard on Plaintiff Strnad's Motion to Reconsider, the court having been advised in the premises, Now therefore;

It is hereby ordered:

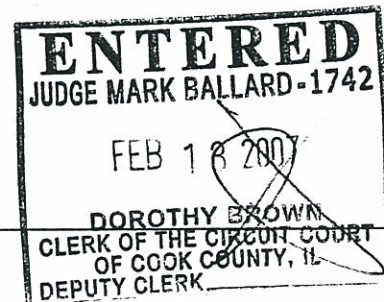
1. For the reasons given in open court on February 1, 2007 for the denial of the petition for judicial review, this court denies Plaintiff Strnad's Motion to Reconsider.

~~2. Defendant Reboyras is awarded his costs.~~ *UC*

3. ² The parties may go hence without delay.

ENTER

Judge



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