

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

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Objections of: Tamra Thornton )  
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To the Nomination ) No.: 11-EB-ALD-004  
Papers of: Michael A. Davis )  
 )  
Candidate for the office of )  
Alderman of the 18th Ward, City of Chicago )

**FINDINGS AND DECISION**

The duly constituted Electoral Board, consisting of Board of Election Commissioners of the City of Chicago Commissioners Langdon D. Neal, Richard A. Cowen, and Marisel A. Hernandez, organized by law in response to a Call issued by Langdon D. Neal, Chairman of said Electoral Board, for the purpose of hearing and passing upon objections (“Objections”) of Tamra Thornton (“Objector”) to the nomination papers (“Nomination Papers”) of Michael A. Davis, candidate for the office of Alderman of the 18th Ward of the City of Chicago (“Candidate”) to be elected at the Municipal General Election to be held on February 22, 2011, having convened on December 6, 2010, at 9:00 a.m., in Room 800, 69 West Washington Street, Chicago, Illinois, and having heard and determined the Objections to the Nomination Papers in the above-entitled matter, finds that:

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

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

4. A public hearing held on these Objections commenced on December 6, 2010 and was continued from time to time.

5. The Electoral Board assigned this matter to Hearing Officer Lynne R. Ostfeld 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, Tamra Thornton, by attorney, Aljonon Coleman; the Candidate, Michael A. Davis, by attorneys Arvin Boddie and Khristian G. Parker.

7. The sole issue presented in the Objector's Petition was whether the candidate was a resident of the ward for one year preceding the February 22, 2011 General Municipal Election.

8. 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.

9. The Electoral Board finds that the Hearing Examiner correctly determined that the Candidate met the residency requirements to run for office at the General Municipal Election to be held on February 22, 2011.

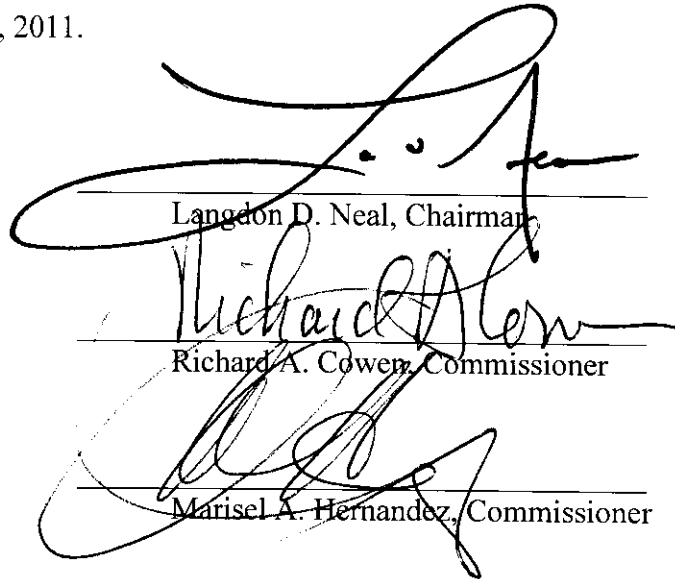
10. The Electoral Board, having reviewed the record of proceedings in this matter and having considered the report and recommendations of the Hearing Officer, as well as all argument and evidence submitted by the parties, hereby adopts the Hearing Officer's

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.

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 Tamra Thornton to the Nomination Papers of Michael A. Davis, candidate for election to the office of Alderman of the 18th Ward of the City of Chicago, are hereby OVERRULED and said Nomination Papers are hereby declared VALID and the name of Michael A. Davis, candidate for election to the office of Alderman of the 18th Ward of the City of Chicago, SHALL be printed on the official ballot for the Municipal General Election to be held on February 22, 2011.

Dated: Chicago, Illinois, on January 7, 2011.



Landon D. Neal, Chairman  
Richard A. Cowen, Commissioner  
Marisel A. Hernandez, Commissioner

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

Objections of: **TAMRA THORNTON,** )  
Petitioner-Objector, )  
 )  
To the Nomination )  
Papers of: **MICHAEL A. DAVIS** )  
 )  
Candidate for the Office of )  
**Alderman of the 18th Ward** )  
in the City of Chicago )

No. **11-EB-ALD-004**  
  
Lynne R. Ostfeld  
Hearing Officer

BOARD OF ELECTIONS  
2011 JAN - 5 A 3

**RECOMMENDED DECISION**

This matter having come before the Chicago Board of Election Commissioners (CBOE) on objections of **TAMRA THORNTON** ("Objector") to the nomination papers of **MICHAEL A. DAVIS** ("Candidate"), and the Candidate having filed a Motion to Strike, Lynne R. Ostfeld, Esq., Hearing Officer, finds and recommends as follows:

**Background**

1. The hearing was begun on December 6, 2010. In attendance at the initial hearing were the Objector, through his attorney Aljonon Coleman, and the Candidate, through his attorneys Arvin Boddie and Khristian G. Parker.
2. The Objector had filed an Objection to Petitions by which she requested that Michael A Davis's name not be printed on the ballot for election to the office of Alderman of the 18<sup>th</sup> Ward, City of Chicago. The objection was based on the claim that the nomination petitions are invalid, pursuant to 65 ILCS 5/3.1-10-5 (c), inasmuch as the Candidate did not live within the 18th Ward for the year prior to the next election. She had included with her Objection the following exhibits: (Exhibit 1) campaign literature by which the Candidate talked about his work as Chief Diversity Officer for the College of Business and Technology at Western Illinois University ("WIU"); (Exhibit 2) the Candidate's registration to vote from 8037 S. California, Chicago, on August 18, 2010.
3. The Parties requested a hearing on the facts, which was scheduled by the Hearing Officer for December 9, 2010. They were instructed to submit their witness lists, documents and legal support by 5:00 p.m. on December 8, 2010. The Candidate filed his Hearing Brief with his list of witnesses and exhibits, on December 8, 2010. The Objector did not file anything.
4. At the hearing, the Candidate, Michael A. Davis, as well as his father, Michael Davis, testified in person, under oath. The Candidate's mother testified via sworn affidavit (Exhibit A of the Candidate's Hearing Brief). The Objector did not present any witnesses, other than the Candidate himself, or documents to be submitted into evidence, other than what was included in her Objection to Petitions.

5. The Candidate stated that he is 25 years old and that he has resided at 8037 S. California for approximately 24 years, from the age of approximately one year through the present date. He attended local schools until he graduated in May, 2003. In August of 2003, he began college at Western Illinois University ("WIU"), in Macomb, Illinois. He obtained a B.A. and an M.B.A. in finance from WIU, completing his studies in May, 2010. During the time that he was at WIU, he lived in Macomb. During that time he also maintained what he considered to be his primary residence at 8037 S. California. He returned there for holidays, summer and semester breaks, and occasionally for weekends each month during the school term. He joined Trinity United Church of Christ, at 400 W. 95th St., in December, 2009. For the seven years prior to August, 2010, he was a full time college student although working part time both in Macomb, during the school year, as well as in Chicago, during the summers. He did not pay his parents rent or share in utility costs, but was financially dependent on them to complete his studies. He also obtained outside financial assistance for this purpose.

6. The Candidate presented the following documents, which were accepted into evidence, to support his contention that he has always resided in Chicago and was only temporarily living in Macomb, in order to attend college:

Ex B - license renewal from the Secretary of State ("SOS") to renew a Ford Taurus 2005, set to expire July 31, 2010. This is his personal vehicle, provided by his father.

Ex C - copy of the receipt and mailing with his vehicle sticker from SOS, sent to him at 8037 S. California Ave.; purchased on July 31, 2010. The sticker was attached; he took it off and put it on his vehicle.

Ex D - the copy of his vehicle registration ID card after purchasing the car. It is dated 2006 and lists his name and address along with his car. He purchased the car on July 17, 2006. It was registered at 8037 S. California, which registration has continued to the present.

Ex E - a copy of his driver's license issued January 3, 2003, his name and his home address 8037 S. California, to expire in 2006. That is a copy of his first driver's license.

Ex F - a copy of his current driver's license issued in July 2006, to expire May 16, 2011.

Ex G - a copy of his vehicle history which he obtained Dec. 1, 2010 from SOS containing his driver's history. His history has always been at 8037 S. California. He has always been registered at 8037 S. California

Ex H - a copy of his vehicle receipt purchased from the City of Chicago clerk. The back of the document is a copy of a statement received from the City Clerk with a receipt for purchasing the sticker which also lists his name and address, 8037 S. California.

Ex I - a copy of a receipt from the City Clerk listing his renewing of the City sticker, with his name and home address at 8037 S. California and the purchase date of July 31, 2010. The second document is a copy of his receipt document, received on Dec. 1, 2010, listing his name and address on 8037 S. California.

**Ex J - W2 wage and statement from WIU for wages received in 2008. He earned this money at Macomb, on the campus at WIU. It was a graduate assistantship given to students obtaining graduate degrees. This was sent to him at 8037 S. California. While getting his BA, he also worked as a resident assistant and desk assistant at WIU. This was his only employment.**

**Ex K - W2 from Marquette Bank in 2008, 63rd and Western. This was a summer job which he held in 2008. He lived at 8037 S. California while working there.**

**Ex L - copy of his US Income Tax return for 2008. It lists his address as 8037 S. California.**

**Ex M - copies of account statements sent from Chicago Patrolmen's Credit Union sent to him and to his father, Michael Davis. This is a shared account. It ranges from 2005 to 2010. It was opened when he left for college in 2003. He and his father opened this jointly so that his father could put money into the account for him to have as living expenses while he was attending WIU. All statements re this account were sent to 8037 S. California.**

**Ex N - a statement of account sent from WIU addressed to him at 8037 S. California listing his expenses. This was sent to him at 8037 S. California.**

**Ex O - A copy of a pay stub from Marquette Bank for pay period ending Aug, 2008, while he was employed there. It has his name, address at 8037 S California, and his hours. While working there he resided at 8037 S. California.**

**Ex P - a copy of a pay stub from WIU for the pay period ending 5/15/07 with his earnings for the pay period, listing his address at 8037 S California.**

**Ex Q - a copy of a pay stub from Fed Ex for the pay date beginning July 8, 2007 and ending July 18, 2007 listing him, Michel A Davis, at 8037 S. California for summer work during 2007. While performing this job he resided at 8037 S. California.**

**Ex R - a billing statement sent from Macomb Medical Associates after an emergency room visit in 2007 for an injury treated in Macomb. He had to provide information and provided that he resided at 8037 S California.**

**Ex S - a copy of the Federal Family Education Loan program after taking out a student loan. It lists his name as Michael A Davis and his address at 8037 S California. This was sent to him at his home and where he received it.**

**Ex T - a copy of mailnet loan info commonly sent to students who have received student loans. It lists his name Michael A Davis, his address at 8037 S California and his loan repayment schedule.**

**Ex U - a copy of a mailnet statement summary at his home listing the lenders and payment summaries for his student loans. It is in his name Michael A Davis sent to and received at 8037 S California.**

**Ex V -a statement of his contributions to his church Trinity United Church of Christ. He became an official member Dec., 2009. He has attended the church since December, 2008. This church is located at 400 W. 95th St.**

**Ex W - a copy of a final determination against him, sent to him Michael A Davis at 8037 S California, for a red light violation on May 19, 2007. He was in Chicago driving his own car. He paid the citation. He paid it to the City of Chicago.**

Ex X - a current picture of his bedroom, his bed and his brother's bed on the left. This pictures the condition of his room from 2003 to the present. This was his bedroom prior to 2003 and since 2003.

7. The Candidate stated that he had voted in the 2004 and 2008 presidential elections in Macomb. He did not vote in any other election there.

8. He stated that he considers 8037 S. California, Chicago, Illinois to be his residence, that he never abandoned it, and that he intends to remain a resident there for the foreseeable future.

9. Michael Davis, the Candidate's father, testified to the same facts as his son. Marie Watkins, the Candidate's mother, submitted a sworn affidavit by which she testified to essentially the same facts, that the Candidate has always resided at 8037 S. California, Chicago, Illinois.

10. The Objector's case was put in through cross-examination of the Candidate. The Candidate testified essentially as he had during direct examination except that he also gave his Macomb addresses and stated that he did not commute to WIU from Chicago on a daily basis. He paid rent and utilities in Macomb.

11. In closing arguments, the Candidate said that he never gave up his residence at 8037 S. California. This was evidenced by his testimony and the documents submitted into evidence.

12. The Objector argued that the Candidate only used his parents' Chicago address to receive and pay his bills, that he was never registered to vote in Chicago until August, 2010, and that his acts did not show an intention to maintain a residence in Chicago. The Candidate resided in Macomb until the summer of 2010, which was less than a year prior to the February, 2011 election. The Objector attempted to argue what the Candidate had sworn to when registering to vote in Macomb and taking ballots there. The Candidate objected and the objection was sustained. Nothing about what the Candidate had sworn to in Macomb had been submitted into evidence during either party's case.

13. The Hearing Officer requested both parties to submit written legal arguments, which they did.

14. The Objector cited numerous cases supporting the contention that the place of voter registration is the place of residence. *Madigan v. Baumgartner*, 291 Ill. App. Dec. 558 (4th Dist. 2005) was cited to support her contention that maintaining voter registration in a site is a seminal factor in determining residency, such that the Candidate in this case is considered a resident in Macomb because he was a voter there. The Objector also cited *Neely v. Board of Election Commissioners*, 371 Ill. App. 3d 694 (1st Dist. 2007) to support the argument that you cannot vote from one Ward and claim to live in another Ward, at least during the year prior to the next election. She argued that the Candidate was not a resident at 8037 S. California until he registered there in August, 2010, or at least not earlier than May, 2010 when the Candidate obtained a graduate degree from WIU and moved away from Macomb.

He is ineligible to run for alderman from the 18th Ward because he has not resided there for one year prior to the February, 2011 election.

15. While referencing certain case law, the Candidate argued that the facts of the case show that he had a continuing fact of residence at 8037 S. California and a continuing intention to reside there, that his time in Macomb was temporary and only to attend college there. He argued that he was not a valid voter in Macomb because that was not his residence. If Macomb was his residence because he had voted there, then he re-established his residence in Chicago at some point in time after that election because he resumed his residence at 8037 S. California.

#### **Findings of Fact and Conclusions of Law**

16. The Candidate seeks election as Alderman of the 18th Ward, City of Chicago.

17. One of the requirements is that he has been a resident of that Ward for at least one year prior to the next election, on February 22, 2011:

(65 ILCS 5/3.1-10-5) (from Ch. 24, par. 3.1-10-5)

Sec. 3.1-10-5. Qualifications; elective office.

(c) A person is not eligible for the office of alderman of a ward unless that person has resided in the ward that the person seeks to represent, ... at least one year next preceding the election or appointment, except as provided in subsection (c) of Section 3.1-20-25, subsection (b) of Section 3.1-25-75, Section 5-2-2, or Section 5-2-11.

18. The Candidate stated that he has resided at 8037 S. California, Chicago for the past 24 years, and only lived in Macomb, Illinois for the seven years that he attended college at Western Illinois University. He stated that his residence was always at 8037 S. California, Chicago, that he did not change his residence, and that he intended this home to be his residence. His testimony and his exhibits supporting his residency at 8037 S. California, were uncontradicted by the Objector, except for a campaign brochure indicating that he had worked in Macomb as a diversity officer and his own statement that he had voted in the 2004 and 2008 presidential elections.

19. Case law supports the Objector's position. Voting from a particular location is an assertion of where a person resides. *Neely v. Board of Election Commissioners of the City of Chicago*, 863 N.E.2d 795 (1st Dist. 2007). Although declarations of intent as to where a person resides are important, acts and surrounding circumstances should be given more weight in determining someone's intent. *Delk v. Board of Election Commissioners of the City of Chicago*, 112 Ill. App. 3d 735, 445 N.E.2d 1232 (1st Dist. 1983). The Candidate stated to live at 8037 S. California and stated to intend that to be his residence, but he voted in Macomb. A person may not have a permanent residence in two places at the same time. *Id.* at 739.

20. However, case law is also supportive of the Candidate's position. For a considerable



period of time Illinois courts have held that "a student in a college town is presumed not to have changed his residence to the town in which he is attending school". *People v. Baumgartner*, 355 Ill. App. 3d 842, 823 N.E.2d 1144 (4th Dist. 2005). The Candidate maintained his residence at his parents' house at 8037 S. California while living in Macomb for the seven years he attended college there, and would have no reason to define it otherwise.

21. In *Neely*, the candidate had voted from the 8th Ward while residing in the 20th Ward during the year preceding the next election. He had voted in the 8th Ward in March, 2006 and wanted to run for alderman of the 20th Ward in the February, 2007 election. This Board found him unqualified for election in the 20th Ward because he had not lived in the 20th Ward for the requisite year. 863 N.E.2d 795.

22. In the instant case, the Candidate wishes to be placed on the ballot in the February, 2011 election. He has not voted anywhere since November, 2008. His argument can be easily accepted that he resumed his residence at 8037 S. California in December, 2008 through his use of it for all matters relevant to his life other than living elsewhere to go to college. (*see*, Exhibits B, H, J, L, N, S, U, V, X). Pursuant to this argument and the *Baumgartner* holding that a college student must himself prove that he lives elsewhere than his parents' home, he has resided in the 18th Ward for at least two years prior to the February, 2011 election.

23. The Objector has not presented any evidence that the Candidate resided in Macomb, Illinois, as that term is used to determine whether a person may run for office from a particular location, from December, 2008 to February, 2011, and that he did not re-establish his residence at 8037 S. California starting in December, 2008. (*see gen'ly*, *Stein v. County Board of School Trustees of DuPage County*, 85 Ill. App. 2d 251, 229 N.E.2d 165 (2nd Dist. 1967). The Objector has not presented case law supporting her implicit argument that only re-registration to vote changes a person's residence.

24. The objection of TAMRA THORNTON to the Nomination Papers of MICHAEL A. DAVIS is overruled.

25. The Hearing Officer recommends that this Board find that the Nomination Papers of MICHAEL A. DAVIS be declared to be VALID for the reasons stated above.

26. The Hearing Officer recommends that this Board order that the name of MICHAEL A. DAVIS BE printed on the ballot for the Aldermanic Election, 18<sup>th</sup> Ward, City of Chicago, to be held on February 22, 2011, for the reasons stated above.

Dated: Chicago, Illinois, this 4th day of January, 2011.

  
Lynne R. Ostfeld, Hearing Officer