

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

Objections of: Roland G. Ley)	
)	
)	
To the Nomination)	No.: 14-EB-CON-06
Papers of: David Earl Williams III)	
)	
Candidate for the nomination of the)	
Republican Party for the office of)	
Representative in Congress for the 9th)	
Congressional District, State of Illinois)	

FINDINGS AND DECISION

The duly constituted Electoral Board, consisting of Board of Election Commissioners for 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 Roland G. Ley (“Objector”) to the nomination papers (“Nomination Papers”) of David Earl Williams III, candidate for the nomination of the Republican Party for the office of Representative in Congress for the 9th Congressional District of the State of Illinois (“Candidate”) at the General Primary Election to be held on March 18, 2014, having convened on December 16, 2013, 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 16, 2013 and was continued from time to time.

5. The Electoral Board assigned this matter to Hearing Officer Christopher Agrella 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, Roland G. Ley, appearing *pro se*; the Candidate, David Earl Williams III, appearing *pro se*.

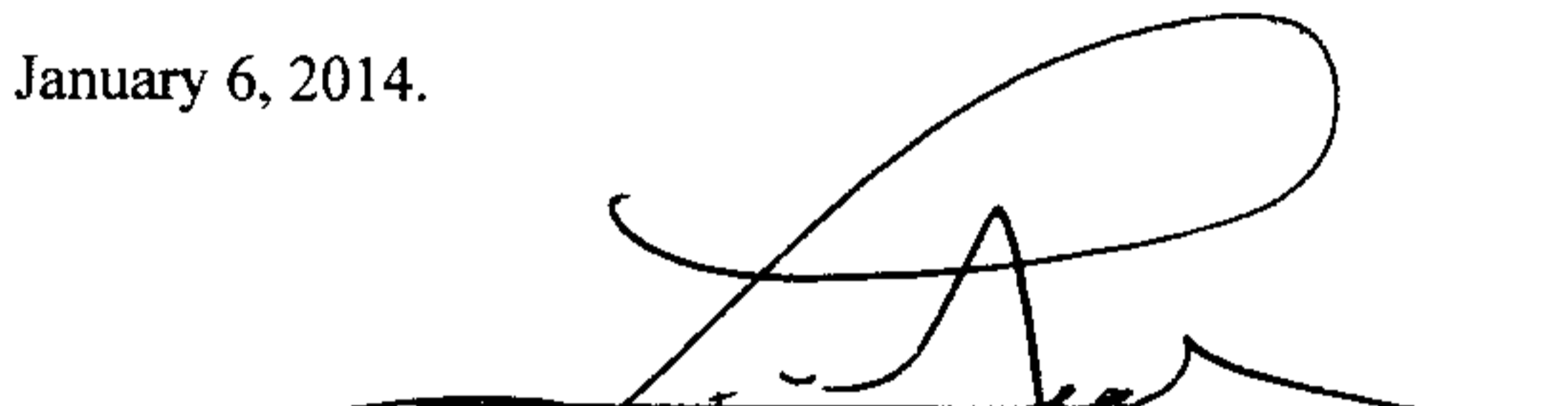
7. The Hearing Officer has tendered to the Electoral Board his report and recommended decision. The Hearing Officer recommends that the Objections to the Candidate's Nomination Papers be overruled and that the Nomination Papers be declared valid.

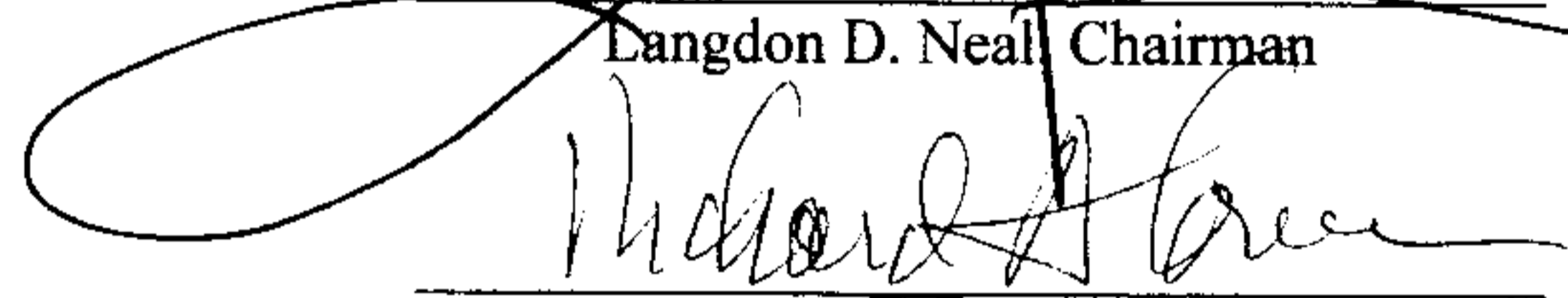
8. The Electoral Board, having reviewed the record of proceedings in this matter and having considered the report and recommendations of the Hearing Officer, as well as all argument and evidence submitted by the parties, hereby adopts the Hearing Officer's recommended findings and conclusions of law.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

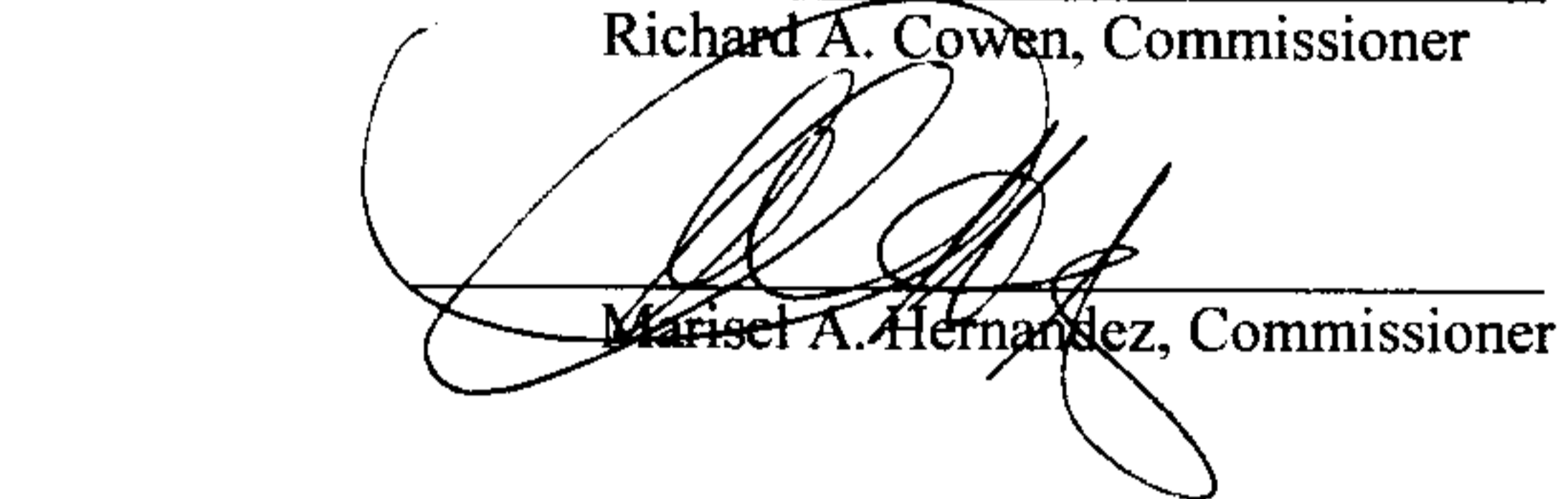
9. For the reasons stated above, the Electoral Board overrules the Objections to the Candidate's Nomination Papers and finds that the Candidate's Nomination Papers are valid.

IT IS THEREFORE ORDERED that the Objections of Roland G. Ley to the Nomination Papers of David Earl Williams III, candidate for the nomination of the Republican Party for the office of Representative in Congress for the 9th Congressional District of the State of Illinois, are hereby OVERRULED and said Nomination Papers are hereby declared VALID and the name of David Earl Williams III, candidate for the nomination of the Republican Party for the office of Representative in Congress for the 9th Congressional District of the State of Illinois, SHALL be printed on the official ballot for the General Primary Election to be held on March 18, 2014.

Dated: Chicago, Illinois, on January 6, 2014.


Langdon 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.

**BEFORE THE DULY CONSTITUTED ELECTORAL BOARD FOR THE HEARING
AND PASSING UPON OF OBJECTIONS TO THE NOMINATION PAPERS OF
CANDIDATES FOR THE MARCH 18, 2014 GENERAL PRIMARY ELECTION
IN THE CITY OF CHICAGO**

ROLAND G. LEY,

Objector

v.

DAVID WILLIAMS, III,

Candidate.

No. 14-EB-CON-06

BOARD OF ELECTIONS
COMMISSIONER

2013 DEC 31 P 1:46

HEARING OFFICER'S REPORT AND RECOMMENDED DECISION

This matter first came before the hearing examiner on December 16, 2013, set on the call for 11:00. At 11:00 the matter was first called for hearing. Both objector and candidate appeared personally. Each filed their appearance.

The file contained the original petition papers of the candidate and the objections of the objector, which were marked as Group Exhibit A and Group Exhibit B, respectively. The proof of service of notice of the call was marked as Group Exhibit C, and the appearances of the objector and candidate were marked as Group Exhibit D. Group Exhibits A through D were accepted into evidence without objection by either side.

The candidate's nomination papers seek nomination to the Republican primary ballot for nomination to the office of U.S. Representative for the Illinois 9th Congressional District in the March 18, 2014, General Primary Election. The candidate filed 1064 signatures within his nomination papers for an office requiring 514 valid signatures.

The objection raised six issues against the candidate's nomination papers:

First, that the candidate's name, inserted in various places on the Statement of

Candidacy, varied to such an extent within the document such that the Statement of Candidacy was legally deficient, requiring the invalidation of the entire nomination petition.

Second, that the candidate's name as set forth in petition sheets 43 and 73 varied to such an extent as compared to the other 78 petition sheets that these two sheets were legally deficient and should be struck and disregarded against the candidate's valid signature totals.

Third, that petition sheets 13 and 64 do not contain a date in the notary jurat of the circulator's affidavit, and as such were legally deficient and each sheet should be struck and disregarded against the candidate's valid signature totals.

Fourth, that the candidate's address as contained in the heading of petition sheet 54 varied to such an extent from the address set forth in the other 79 petition sheets that this sheet should be struck and disregarded against the candidate's valid signature totals.

Fifth, that signature line 'strike outs' on 23 petition sheets were not initialed, nor was a certification filed in relation to these 'strike outs', such that each of the 23 sheets should be struck and disregarded against the candidate's valid signature totals.

Sixth, that the name of the circulator filled in the blank on the circulator's affidavit on 30 of the signature pages varied to such an extent as compared to the circulator's name as contained in the notary jurat as to render the circulator's affidavit deficient, such that each of the 30 sheets should be struck and disregarded against the candidate's valid signature totals.

At this December 16, 2013, initial hearing the parties were each provided a copy of the Board's rules and were informed of the briefing schedule for any preliminary motions, both sides indicating they had no present intent to file such a motion. Hearing on the objection was set down for December 30, 2013, at 10:00 a.m., and both parties were invited by the hearing officer to file such memorandum in support of their respective positions as

they deemed fit, by December 27, 2013. The issues of protection of personally identifiable information and execution of a Non-Disclosure Agreement were also discussed before the matter was adjourned. There being nothing further, the case was adjourned until December 30, 2013, at 10:00 a.m.

On December 23, 2013, candidate filed a document with the Board captioned “Candidate, David Williams III, Response to Objector”.

In sum, the candidate’s December 23, 2013, response was in the nature of a factual argument, asserting that the various name differences in the nomination papers were minor and did not cause confusion in the mind of the voters, that a scrivener’s error occasioned the address problems and failure of the notary to include a date in two circulator affidavits, that the deficiencies in the ‘strike out’ procedure employed were of no effect, and further asserted an improper motive on the part of the objector in filing the objection. Running throughout the candidate’s response was the general theme that there was no intent on the part of the candidate to defraud or confuse the voters.

Accompanying the candidate’s December 23, 2013, response were a number of documents which revealed significant personally identifiable information about the candidate himself. Upon becoming aware of this breach, the hearing officer issued an order placing the Board filed document under seal, further directing both parties to execute a Non-Disclosure Agreement and directing both sides to treat said information in the utmost confidence. Both sides complied in short order, forwarding executed Non-Disclosure agreements to the board.

On December 26, 2013, objector filed a document with the Board captioned “Verified Objector’s Response to Candidate’s Response”. In essence, the candidate’s response was also in the nature of argument, re-affirming the irregularities in the candidate’s name and the

deficiencies in the 'strike out' procedure candidate employed all required the striking of these pages in order to uphold the integrity of the election process. Objector also responded to the candidate's assertion of improper motive.

On December 26, 2013, the candidate also filed another document with the board, captioned "Candidate, David Williams, III Response to Objector Response". Candidate's second filing largely restated his December 23, 2013, response to the objection.

On December 28, 2013, candidate filed a third document with the board, this one captioned "Candidate David Williams, III Motion to Dismiss Objector's Petition". This document, untimely filed, sought to strike the objection, and while there was a significant amount of overlap with the candidate's previous filings, in the nature of factual arguments in opposition to the objector's petition, in this pleading the candidate set forth a number of cases in support of the candidate's arguments.

On December 30, 2013, at 10:00 a.m. this matter was reconvened for further proceedings. Both candidate and objector appeared and answered ready. Objector lodged an objection to the candidate's untimely motion to strike, and said motion was granted insofar as candidate sought to strike the objection. Candidate was not foreclosed from referring to the statements contained therein during the course of the hearing.

No witnesses were called nor any documents proffered, other than those documents attached to the candidate's December 23, 2013, filing. As to those documents, including a passport, driver's license, and birth certificate, all evidenced that the candidate's name was variously set forth as David Earl Williams, III and David E. Williams, III.

The hearing, being essentially a series of legal arguments of undisputed facts, proceeded largely along the lines of the parties' written submissions.

In regard to objector's issues 1, 2, and 6, the objector sought relief relative to the candidate's name variations found within the Statement of Candidacy, (issue 1), the name variation found in the heading on pages 43 and 73 (issue 2) and a circulator's affidavit (issue 6). In all of these objections it was the candidate's own name which was under attack. In regards to issues 1 and 5, the variation objected to was between David Earl Williams, III, and David E. Williams, III. In issue 2, the heading of petition pages 43 and 73 neglected to have the appendage "III" inserted after the candidate's name.

Objector's position regarding the variations in the candidate's name was that the difference was so great that it would confuse the voters and was also deficient to such an extent that it required the striking of the entire petition, as it related to the deficiencies in the Statement of Candidacy, the striking of 30 signature pages, containing 362 signatures, as it relates to the name variations in the circulator's affidavit, and the striking of two pages, containing 28 signatures, as it related to pages 43 and 73.

In response the candidate asserted that the name differences were minor and insufficient, and that far greater name variations in other cases were found to be an insufficient basis for striking anything, citing *Cole v. Ashby*, 99 EB-ALD-046, CBEC, February 2, 1999 and *Baggett v. Dageatt*, 91 EB-ALD-082, CBEC, January 25, 1991 in support.

This hearing officer recommends overruling the objection, as to the variations within the Statement of Candidacy (issue 1), the variations in the candidate's name on pages 43 and 73 (issue 2) and the variations found in the circulator affidavits (issue 5).

The case(s) cited by the candidate supports overruling such an objection, as do other cases, including *Scianna v. Frederickson*, CBEC 94-EB-REP-7, January 24, 1994 and *Garza*

v. Blackmon, 91-EB-ALD-010 CBEC, January 23, 1991.

It is the hearing officer's recommendation that the variation in the candidate's name in these instances should be deemed insufficient to require the striking of the entire petition, or in fact any of the petition sheets. In each instance the name employed fully identifies the candidate as the same person, merely truncating the middle name to an initial in certain instances, save as to the miss "III" on two pages, which should be viewed as a scrivener's error, at most. The hearing examiner also notes that the exhibits tendered by the candidate, his passport, birth certificate, and driver's license, likewise evidence such variations, with some of these official documents spelling out his whole middle name, others merely including it as an initial. Read as a whole the candidate's nomination papers adequately apprise the voters of the candidate's identity.

In regards to issue number 3, that petition sheets 13 and 64 do not contain a date in the notary jurat of the circulator's affidavit, objector argued that the lack of such a date renders the entire notarization event suspect and deficient, requiring these sheets be struck. Candidate argued it was merely a technical error of the notary, insufficient to invalidate the fact that a notarization did take place.

The hearing office recommends overruling the objection. The failure of the notary to properly affix the date of notarization to a petition sheet should be deemed to be a technical violation, which does not invalidate the petition sheet. *Young v. Cook County Officers Electoral Board*, Circuit Court of Cook County, January 24, 1990; *Dendon v. Davis*, 02-EB-SS-10 CBEC, January 31, 2002; *Lenzen v. Orozco*, 01 EB-ALD-04, CBEC, January 23, 2001; *Cottrell v. Pearson*, 99-EB-ALD-157, CBEC, February 2, 1999.

In regards to issue number 4, the objection asserts a deficiency in the candidate's

address on petition page 54, specifically, that the candidate's address in the heading was set forth as 105 W. Granville versus 1055 W. Granville in the balance of the nomination papers, requiring the striking of this page, containing 15 signatures.

While the objector asserted that such a difference, no matter that it is an isolated event, is so large as to require the striking of the page, this hearing officer agrees with the candidate's position, which asserted this variation was nothing more than a technical error done in haste, in essence, a scrivener's error.

This hearing officer recommends overruling the objection, issue number 4, and specifically recommends the Board adopt his findings that the candidate's nomination papers substantially comply with 10-4 of the election code on this issue, in that the correct address can be ascertained when reading the candidate's nomination papers as a whole. In fact, his address, properly set forth, can be found correctly in every other place it is required everywhere in the nomination papers, and no evidence was presented of any voter confusion. See *Mitchell v. Bolden*, 03-EB-ALD-106, CBEC, January 31, 2003; *Lenzen v. Orozco*, 01-EB-ALD-04, CBEC, January 23, 2001; *Tintor v. Ortiz*, 95-EB-ALD-77, CBEC, January 30, 1995.

In regards to issue number 5, objector asserted that that signature line 'strike outs' on 23 petition sheets were not initialed, nor was a certification filed in relation to these 'strike outs', such that each of the 23 sheets should be struck and disregarded against the candidate's valid signature totals.

While objector's factual assertion of these deficiencies is correct, and admitted to by the candidate, objector could not cite to any authority in support of his position that the remedy for such a violation would be the striking of these 23 pages, containing 287

signatures.

In fact, case law indicates the opposite result obtains, that is, the failure to properly revoke signatures in a nomination petition requires their inclusion, not exclusion, for good or ill.

The Election Code provides that “no signatures shall be revoked except by revocation filed in writing with the election authority with whom the petition is required to be filed, and before the filing of such petition.”

In *Lizak v. Zadrozny*, 4 Ill.App.3d 1023, 1027, 283 N.E.2d 252, 255 (1st Dist. 1972) , the court rejected the argument that this requirement is addressed solely to petition-signers and does not preclude candidates from indiscriminately striking signatures from their own petitions. The Court stated: “We believe that this provision was in fact directed primarily at candidates, affording them a simple means of striking undesired signatures from petitions while simultaneously protecting them from fraudulent alterations subsequent to filing. The provision may even have been designed specifically to benefit a candidate who finds himself with signatures in excess of the statutory maximum. While we recognize the seeming inequity of enforcing this provision against the interests of the party it was intended to benefit, we cannot ignore the clear mandate of the statutes. Plaintiff's [*the candidate – ed.*] failure to comply therewith obligated the Board of Election Commissioners to compute all of the filed signatures, including all signatures which had been lined-out.

This hearing officer recommends overruling the objection on this issue number 5 for the above stated reasons.

There being no remaining issues in the objector's petition, with all issues being found and otherwise recommended in favor of the candidate, the hearing officer briefly addressed

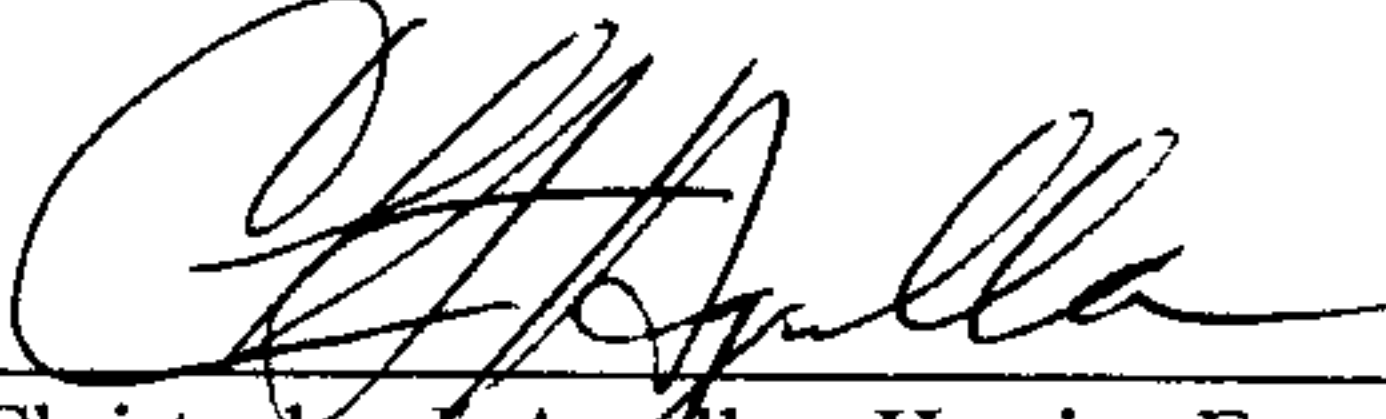
on the record the issue raised by the candidate as to objector's potential 'ulterior motive' in filing the objection, stating the long standing position of the Board that objector's motive in filing an objection is irrelevant to the proceedings, so long as they are otherwise qualified to bring the objection in the first place, citing *Jonas v. Babbitt*, 02-EB-RES-01 CBEC, July 16, 2002 and *Havens v. Miller*, 102 Ill.App.3d 558, 566 (1st. Dist. 1981).

At this juncture the hearing examiner stated on the record that his written recommendation to the Board would be to overrule objector's petition and further declare the candidate's nomination petition valid. There being no other matters at issue, the hearing examiner concluded the case.

It is the recommendation of this hearing examiner that the Board adopt the above findings, decisions and recommendations of the hearing examiner and overrule the objection of Roland G. Ley to the nomination papers of the candidate, David Earl Williams, III, that the candidate's nomination papers be declare valid and sufficient, and that the candidate's name appear on the ballot for the Republican primary ballot for nomination to the office of U.S. Representative for the Illinois 9th Congressional District, to be voted upon at the March 18, 2014, Municipal General Primary Election, in the City of Chicago.

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Respectfully Submitted,



Christopher J. Agrella – Hearing Examiner