

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

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Objections of:	)	
Michael Straughn	)	
	)	
To the Nomination	)	No.: 14-EB-RES-04
Papers of: Joseph Bembynista	)	
	)	
Candidate for the nomination of the	)	
Republican Party for the office of	)	
Representative in the General Assembly for the	)	
19 <sup>th</sup> Representative District, State of Illinois	)	

**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 Michael Straughn to a resolution to fill a vacancy in nomination and the nomination papers (“Nomination Papers”) of Joseph Bembynista, candidate for the nomination of the Republican Party for the office of Representative in the General Assembly for the 19<sup>th</sup> Representative District in the State of Illinois (“Candidate”) to be elected at the General Election to be held on November 4, 2014, having convened on June 13, 2014, 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 June 13, 2014 and was continued from time to time.

5. The Electoral Board assigned this matter to Hearing Officer Linda Crane for further hearings and proceedings. The Hearing Officer has submitted her Recommended Decision to the Board ("Recommended Decision").

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, by his attorney, Michael Kasper, and the Candidate, by his attorney, John Fogarty.

7. The Hearing Officer ordered that an examination of the Board's voter registration records be conducted by clerks and agents under the Board's direction and supervision in accordance with the laws of Illinois and the rules of the Board.

8. The Hearing Officer directed all parties to appear and be present, either personally and/or by their authorized representatives during this records examination.

9. The Candidate and/or his duly authorized representative was present during the examination of the registration records.

10. The Objector and/or his duly authorized representative was present during the examination of the registration records.

11. The Candidate filed a Motion to Strike and Dismiss the allegations set forth in paragraphs 11, 12 and 14 of the Objector's Petition, alleging, respectively, that (i) the Nomination Papers contain petition sheets signed by persons who voted in the March 2014 primary of another political party, (ii) the Nomination Papers contain petition sheets signed by persons who signed nomination papers for another political party for the March 2014 primary and (iii) that the Resolution to fill a vacancy documents was signed by a person or persons without the legal authority to do so.

12. Objector filed a Response on Friday June 20, 2014.

13. A hearing was held June 25, 2014. Legal arguments were made by both sides on the Candidate's motion to strike and dismiss. The motion was taken under advisement pending presentation of evidence in support of the factual allegations therein.

14. The Records Examination was completed on June 23, 2014. The results of the Records Examination, which were read into the record, were that the Candidate's Nomination Papers contained 612 valid signatures, which is 112 more than the minimum required for placement of one's name on the ballot for the November 4, 2014 General Election for the office in question.

15. A Rule 8 hearing was held on July 2, 2014 and neither side presented arguments or evidence for or against the findings of the Record Examination. The Hearing Officer has recommended that the results of the Record Examination as to the objections in paragraphs 6-10 of the Objector's Petition be accepted and the Electoral Board hereby accepts the uncontested results of the Record Examination.

16. The parties agreed that the dispositive issue was the pattern of fraud alleged in paragraph 13 of the Objector's Petition alleging that the circulator's affidavit on each sheet

signed by the Candidate purporting to be the circulator of said sheet is false because the purported circulator did not actually obtain, solicit or witness the affixing of voter's signatures to those sheets. The Objector contends, therefore, that each and every sheet signed by the Candidate as the circulator of said sheet is in violation of the Election Code and that such conduct by the Candidate-circulator demonstrates a pattern of fraud and disregard of the Election Code to such a degree that all petition sheets circulated by the Candidate are invalid.

17. The hearing continued and testimony was heard from the Candidate and 19 individuals who signed the Candidate's petition. The Hearing Officer's Recommended Decision sets forth a summary of the testimony and evidence presented at such hearing.

18. In brief, the Candidate was testified that he was "present" when the sheets "circulated" by him were signed because he was either in his truck on the street, on a motorized scooter on the sidewalk or walking with the person who actually presented his petition to registered voters for signature. The Candidate testified he understood the meaning and significance of signing as the circulator of each petition sheet to mean that he saw the people signing the petition sheet and that is why he signed as the circulator of such sheets and had it notarized.

19. The Candidate further testified that he is 64 years old that he has a bad knee. After two days of circulating petition sheets for himself, his knee swelled up. He asked friends and his wife to assist him in collecting signatures. He testified that the friends agreed to assist him if he accompanied them. He also hired a commercial company to collect signatures for him. With regard to the petition sheets circulated by these assistants, he testified, for example, as to petition sheet 3 that as one of his assistants went door to door, he drove along in his Toyota pickup truck observing him knocking on each door. He testified similarly to several other of the

petition sheets circulated by other of his assistants. On other days, he used his wife's battery operated scooter, traveling on the sidewalk, and on still other days he walked along on the sidewalk. The Candidate generally testified that from the street or sidewalk he observed his assistant going door to door, saw the assistant present the clipboard containing the petition to people for their signature and saw people signing his petition. He generally testified he was directly in front of each house where the petition was being signed; however, he also testified that he was not always in front of the house but sometimes he was by or next to the house when petitions were being signed.

20. Each of the 19 signers testified that they had signed the petition. With the exception of one witness, each of these witnesses was able to recall and describe the person or persons who presented the Candidate's petition to them for signature. The Candidate was seated at a table in the hearing room and each of the witnesses was asked to look at the Candidate and say whether the Candidate was present when they signed his petition. However, none of the witnesses recalled seeing the Candidate with the circulator or in the vicinity of their home when they signed the petition. They also generally testified that if someone else, including the Candidate, had been in the vicinity of their home when they signed the petition they would have been able to see them.

21. Objector also submitted affidavits from nine individuals attesting that they had signed the Candidate's petition but that the Candidate, whose photograph was printed on the affidavit, had not been present when they signed the petition.

22. Candidate submitted 40 affidavits from persons who signed the Candidate's petition and who stated they were certain the Candidate was present when they signed his nominating petition.

23. Candidate submitted two affidavits of those who signed the affidavit presented by the Objector that the Candidate was not present. One of the two individuals even testified that she could not recall who was present when she signed the Candidate's petition.

24. In *Moscardini v. County Officers Electoral Board of DuPage County*, 224 Ill.App.3d 1059, 590 N.E.2d 84 (2nd Dist. 1992), the candidate submitted an affidavit from one of the petition circulators, his wife, stating she did not walk up to the front door of each voter's residence with the petition because she had a degenerative bone disease that made walking painful. Her affidavit stated that her son accompanied her and took the petition to some of the voters at their front doors, and her husband and another woman did so with other sheets. She stated that she saw all of the signatories actually place their signatures on the petitions and that she was never more than 20 feet away from any of them at the time they signed the petitions. The candidate submitted additional affidavits corroborating the circulator's statement. The court held that if the statements in the circulator's affidavit were true, the petition signatures were made in the circulator's "presence" because not only did she have "ample opportunity to see each of the signatories sign her husband's petition, since she was standing no more than 20 feet away from any of them when they did so, but she actually did see each of these individuals sign the petition." 224 Ill.App.3d at 1062. The court held, therefore, that "the signatures were placed on the petition in [the circulator] Geraldine's presence if her affidavit and the supporting affidavits are true." *Id.* The court stated that reading into the Election Code a requirement that the person who signs the circulator's affidavit be the one who physically presents the sheet to each signatory would do nothing to serve the purpose of preventing fraudulent signatures and if the circulator "actually saw each of the signatories sign the petition, there was no violation of section

7-10 even if she did not physically present the petition to some of them.” 224 Ill.App.3d at 1062-1063.

25. In *Ramirez v. Andrade*, 372 Ill.App.3d 68, 865 N.E.2d 508 (1<sup>st</sup> Dist. 2007), the candidate testified that she and two male campaign workers circulated petition sheets, but that she had to take breaks from the freezing cold and sometimes would be in the car to warm up. She testified that she was “always supervising them” and that “she could see the person signing the petition because “[t]hey had the light on from the front. I saw when they came out. When they would open the door, I could see it right away’.” 372 Ill.App.3d at 72. The candidate testified that she was out of the car for most of the signatures. The hearing examiner stated in his written report that the candidate “testified credibly that she was either physically standing at the door when the petition sheet was handed to the signer, or in the car, driving in lockstep with those who physically tendered the documents to the signers.” *Id.* The hearing examiner concluded, and the electoral board agreed, that the objector had failed to meet her burden of proof that the candidate was not “present” when the petitions were signed. The appellate court, in considering the electoral board’s decision, found that the appropriate standard of review for mixed questions of fact and law is the “clearly erroneous” standard. 372 Ill.App.3d at 73-74. The court found that the electoral board’s decision to allow the candidate’s name on the ballot was not clearly erroneous as the board “relied on the *credible* testimony of [the candidate-circulator] to establish the fact that she was present when the contested signatures were obtained.” (*Italics added*) 372 Ill.App.3d at 75.

26. In *Moscardini, supra*, the court said that a decision based solely upon contradictory affidavits “could be nothing but arbitrary, unlike a decision based on conflicting

witness testimony where there is an opportunity to determine which witnesses are more credible by observing their demeanors.” 224 Ill.App.3d at 1063.

27. “It is the responsibility of the trier of fact to assess the credibility of the witnesses and the weight of their testimony, resolve conflicts in the evidence and draw reasonable inferences from the evidence ....” *People v. McCulloch*, 404 Ill.App.3d 125, 131-132, 936 N.E.2d 743 (2<sup>nd</sup> Dist. 2010).

28. In this case, the Hearing Officer heard the personal testimony and weighed the credibility of the petition signers and the credibility of the Candidate. The Hearing Officer found that the Candidate did not testify in a way she found credible that he “actually saw each of the signatories sign the petition” as required by *Moscardini*. (Recommended Decision, ¶ 32) The Hearing Officer did not find the Candidate’s testimony to be persuasive and further found that the Candidate here “did not meet the standard of *Ramirez* insofar he did not testify credibly to “either physically standing at the door when the petition sheet was handed to the signer, or in the car, driving in lockstep with those who physically tendered the documents to the signers.” (Recommended Decision, ¶ 32) The Hearing Officer concluded that no testimony was provided by any witness who ever recalled seeing the Candidate in front of his or her home watching them sign the petition.

29. This case is distinguishable from both the *Ramirez* and *Moscardini* because the Hearing Officer did not find any *credible* testimony that the Candidate actually saw and witnessed every signature being affixed to his petition. Rather, the Hearing Officer seems to have found that the signers of the petition were credible when they testified the Candidate was *not* present near their homes when the petition was signed.



30. Although the Candidate submitted 42 affidavits in support of his contention that he was present when certain petition sheets were signed and the Objector presented 9 affidavits in support of his contention that the Candidate was not present when certain other sheets were signed, they are to be given less weight than the live testimony of the witnesses presented. See *Moscardini*, 224 Ill.App.3d at 1063.

31. Further, while it is possible the Candidate circulated some of the petition sheets in question, the Hearing Officer found that the testimony in this case clearly discloses that certain petition sheets signed by the Candidate as the circulator of those sheets were not, in fact, signed in his "presence" and thus a pattern of fraud, false swearing and a total disregard for the mandatory requirements of the Election Code has been established. (Recommended Decision, ¶ 34) The Hearing Officer concluded that the remedy for a pattern for false swearing to a circulator's oath is to strike all the petition sheets circulated by that person, citing *Fortas v. Dixon*, 122 Ill.App.3d 697, 462 N.E.2d 615 (1st Dist. 1984) and *Canter v. Cook County Officers Electoral Board*, 170 Ill.App.3d 364, 523 N.E.2d 1299 (1<sup>st</sup> Dist. 1988).

32. The Hearing Officer found that the Candidate signed as the circulator of petition sheets 1, 3-15, 26, 29, 39, 94 and 100-109. She concluded that under the principle articulated by *Fortas*, all of these sheets are invalid in their entirety. (Recommended Decision, ¶ 35) Because, however, some of the signatures on those sheets were already stricken as invalid during the records examination, striking the entire sheets results in an additional 150 signatures being invalidated under *Fortas* after subtracting the signatures previously ruled invalid during the records examination. As a result, the Hearing Officer found that instead of having 612 valid signatures, the Candidate now had only 462 valid signatures, below the minimum signature requirement of 500. (Recommended Decision, ¶ 35) The Hearing Officer's recommendation to

the Electoral Board is that the Board should sustain the objections in paragraph 13 of the Objector's Petition and find that the Candidate's Nomination Papers are invalid. (*Id.*)

33. In *People v. McCulloch*, 404 Ill.App.3d 125, 130, 936 N.E. 2d 743, 747 (2nd Dist. 2010), the court stated, "a signature is made in the petition circulator's presence when he or she had ample opportunity to see the signature being made," citing *Moscardini*, 224 Ill.App.3d at 1062. However, in *McCullough* the court held that the person who signed the circulator's oath was not "present" when the signatures were made when he waited in a van while a team of individuals collected signatures on both sides of the street. The court rejected the circulator's contention that, under *Ramirez*, "his act of driving in the street made him present as a matter of law." 404 Ill.App.3d 131. The *McCulloch* court denied that *Ramirez* stands for that proposition. Instead, the court noted, *Ramirez*, applying a "clearly erroneous" standard of review, determined only that "under the specific circumstances of that case," there was *credible* evidence to support an initial finding that the circulator actually saw the signatures being made. *Id.* In contrast, the *McCulloch* court found that "the trial court did not find credible evidence of that fact and instead pointed to evidence that allowed it to reasonably conclude that [the circulator] did not have ample opportunity to see the signatures." *Id.* Thus, the trial court had reasonably concluded that the circulator was not "present" when the signatures were made. *Id.*

34. Here, there the Hearing Officer, who had the duty and the opportunity to assess the credibility of the witnesses and the weight of their testimony, resolve conflicts in the evidence and draw reasonable inferences from the evidence, concluded that there was insufficient *credible* evidence to support Candidate's contentions that he was present when certain sheets, signed by him as the circulator of said sheets, were signed by voter. Indeed, based upon the evidence and testimony, the Hearing Officer could reasonably conclude that clear and

convincing evidence showed that the Candidate was not, in fact, present when these sheets were signed by voters.

35. When a circulator falsely swears that all the signatures were gathered in his or her presence a pattern of fraud, false swearing and a total disregard for the mandatory requirements of the Election Code has been established. When such a pattern is established, all sheets circulated by that individual should be stricken in their entirety. An electoral board "relies on the honesty of the circulator who swears that he witnessed each signature whenever the Board counts the signatures toward the number required for nomination." *Harmon v. Town of Cicero Municipal Officers Electoral Board*, 371 Ill.App.3d 1111, 1116, 864 N.E.2d 996, 1002 (1<sup>st</sup> Dist. 2007). "If the evidence supports a finding that the circulator lied under oath, it further supports a decision to refuse to count any signatures that circulator purportedly witnessed," *Id.*, citing *Fortas v. Dixon*, 122 Ill.App.3d at 701, 462 N.E.2d 615 (1st Dist. 1984) and *Canter v. Cook County Officers Electoral Board*, 170 Ill.App.3d at 369, 523 N.E.2d 1299 (1<sup>st</sup> Dist. 1988).

36. Striking the entirety of petition sheets circulated by the Candidate results in an additional 150 signatures being invalid.

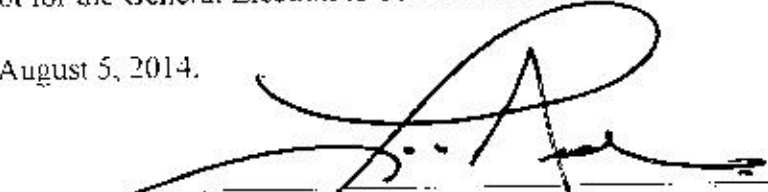
37. The Electoral Board, having considered the evidence and arguments tendered by the parties and the Hearing Officer's report of recommended findings and conclusions of law, hereby adopts the Hearing Officer's recommended findings and conclusions of law. A copy of the Hearing Officer's Recommended Decision is hereby adopted and incorporated herein.

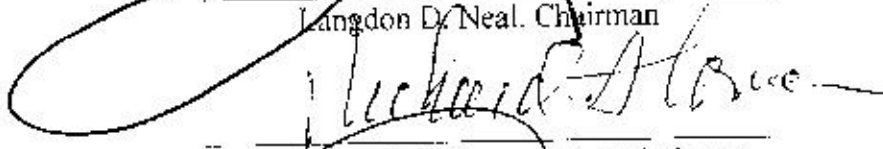
38. The Electoral Board hereby sustains the objections in paragraph 13 of the Objector's Petition and finds that the Candidate has an insufficient number of valid signatures on his Nomination Papers to be placed upon the ballot as a candidate for election to the office of Representative in the General Assembly for the 19<sup>th</sup> Representative District, State of Illinois.

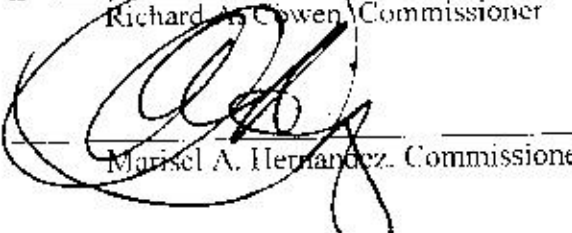
39. For the reasons stated above, the Electoral Board finds that the Candidate's Nomination Papers are invalid.

IT IS THEREFORE ORDERED that the Objections of Michael Straughn to the resolution to fill a vacancy in nomination and the Nomination Papers of Joseph Bembynista, candidate for the nomination of the Republican Party for election to the office of Representative in the for the 19<sup>th</sup> Representative District of the State of Illinois, are hereby SUSTAINED and said Nomination Papers are hereby declared INVALID and the name of Joseph Bembynista, candidate for nomination of the Republican Party for election to the office of Representative in the General Assembly for the 19<sup>th</sup> Representative District of the State of Illinois, SHALL NOT be printed on the official ballot for the General Election to be held on November 4, 2014.

Dated: Chicago, Illinois, on August 5, 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 BOARD OF ELECTION COMMISSIONERS  
SITTING AS THE DULY CONSTITUTED MUNICIPAL OFFICERS  
ELECTORAL BOARD FOR THE CITY OF CHICAGO**

<b>MICHAEL STRAUGHN</b>	)	
	)	
<b>Petitioner-Objector</b>	)	
	)	
	)	
<b>Vs.</b>	)	<b>No. 14-EB-RES-04</b>
	)	<b>Linda R. Crane</b>
	)	<b>Hearing Examiner</b>
	)	
<b>JOSEPH BEMBYNISTA</b>	)	
	)	
<b>Respondent-Candidate</b>	)	

2014 JUL 24 AM 9:11  
OFFICE OF THE CLERK  
ELECTORAL BOARD

**HEARING OFFICER'S RECOMMENDED DECISION**

This matter having come before the Chicago Board of Election Commissioners ("CBOE") on verified objections of **MICHAEL STRAUGHN** ("Objector") to the nomination papers of **JOSEPH BEMBYNISTA**, ("Candidate"), Linda R. Crane, the Hearing Officer, finds and recommends as follows:

1. The candidate, **JOSEPH BEMBYNISTA**, has filed nomination papers in support of his nomination to the office of Representative in the General Assembly for the 19<sup>th</sup> Representative District of the State of Illinois (Office) to place his name on the ballot for the General Election on November 4, 2014 (Election).
2. The objector, **MICHAEL STRAUGHN**, has filed a Verified Objector's Petition objecting to the sufficiency of the Candidate's nomination papers for various reasons stated in Paragraphs 6 through 15 of his Petition.

3. Paragraph 6 of the Objector's Petition alleges that "(the) Nomination Papers contain petition sheets with the names of persons who are not registered voters, or who are not registered voters at the addresses shown ... in violation of the Illinois Election Code."
4. Paragraph 7 of the Objector's Petition alleges that "(t)he Nomination Papers contain petition sheets with the names of persons who did not sign the papers in their own proper persons, and such signatures are not genuine and are forgeries, ... in violation of the Illinois Election Code."
5. Paragraph 8 of the Objector's Petition alleges that "(t)he Nomination Papers contain petition sheets with the names of persons for whom the addresses stated are not in the 19<sup>th</sup> Representative District of the State of Illinois, and such persons are not registered voters in the 19<sup>th</sup> Representative District ... in violation of the Illinois Election Code."
6. Paragraph 9 of the Objector's Petition alleges that "(t)he Nomination Papers contain petition sheets with the names of persons for whom the addresses given are either missing entirely or are incomplete ... in violation of the Illinois Election Code."
7. Paragraph 10 of the Objector's Petition alleges that "(t)he Nomination Papers contain petition sheets with the names of persons who have signed the Nomination Papers more than one time ... in violation of the Illinois Election Code."

8. Paragraph 11 of the Objector's Petition alleges that "(t)he Nomination Papers contain petition sheets with the names of persons whose signatures are invalid because they voted in the primary election of another political party at the March 18, 2014 primary election ... in violation of the Illinois Election Code."
9. Paragraph 12 of the Objector's Petition alleges that "(t)he Nomination Papers contain petition sheets with the names of persons who have signed the Nomination Papers whose signatures are invalid because they signed a nominating petition for another political party for the March 18, 2014 primary election ... in violation of the Illinois Election Code."
10. Paragraph 13 of the Objector's Petition alleges that "(t)he Nomination Papers contain sheets circulated by individuals whose sheets demonstrate a pattern of fraud and disregard of the Election Code to such a degree that every sheet circulated by said individuals is invalid and should be invalidated in order to protect the integrity of the electoral process. Such circulators are: Joseph Bembynista" (the Candidate).
11. Paragraph 14 of the Objector's Petition alleges that "(t)he Nomination Papers are invalid in their entirety because the purported Representative District Committee of the Republican Party for the 19<sup>th</sup> Representative District lacked authority to fill the vacancy in nomination because the people signing the documents purporting to fill the vacancy in nomination are not the people with legal authority to do so because they are not the proper Republican Party Ward Committeeman authorized to constitute a Representative District Committee."

12. Paragraph 15 of the Objector's Petition alleges that "(t)he Nomination Papers contain less than 500 validly collected signatures of qualified and duly registered legal voters of the 19<sup>th</sup> Representative District, signed by such voters in their own proper person with proper addresses, below the number required under Illinois law...."
13. The initial hearing on this matter was held on June 16, 2014, and both parties were represented by counsel. Mr. John Fogerty filed his appearance on behalf of the Candidate. Mr. Michael Kasper filed his appearance on behalf of the Objector.
14. During the initial hearing, the Candidate requested a Record Examination and it was scheduled to commence on June 17, 2014 at 9:30 am.
15. During the initial hearing a schedule was set for the filing of initial motions as follows: Candidate's Motion to Strike and Dismiss due Wednesday, June 18, 2014 at 5:00 pm; Objector's Response due Friday June 20, 2014 at 5:00 pm; Candidate's Reply due Wednesday, June 25, 2014 at 5:00 pm.
16. The next hearing was scheduled for June 25, 2014 at 9:30 am.
17. The Candidate filed a Motion to Strike and Dismiss that addressed the allegations contained in Paragraphs 11, 12, and 14 only of the Objector's Petition.
18. The Record Examination was completed and the results certified on June 23, 2014 and the reported results were as follows:

Number of Signatures Filed	1150
Number of Objections to Signatures	700
Number of Objections Overruled	162
Number of Objections Sustained	538
Number of Valid Signatures	612



Number of Signatures Required	500
Number of Excess Valid Signatures	112

19. The next hearing convened on June 25, 2014 at 9:30 am. During that hearing, the parties requested and received a date for a Rule 8 Hearing after both sides had an opportunity to file their respective Rule 8 Motions. The Rule 8 Hearing was scheduled for July 2, 2014 at 12:15 pm.

Also during the June 25, 2014 hearing, the attorneys for both the Candidate and the Objector presented arguments in furtherance of the Candidate's Motion to Strike and Dismiss paragraphs 11, 12 and 14 of the Objector's Petition. The motion was taken under advisement pending presentation of evidence in support of the factual allegations therein.

20. On July 2, 2014, we convened for the Rule 8 Hearing and a hearing on all remaining legal issues. At end of the Rule 8 Hearing, both parties rested their cases and made final arguments without arguing or presenting evidence for or against the objections and allegations contained in Paragraphs 6-12, and 14 of the Objector's Petition. Because they were not pressed by either of the parties, I recommend that the results of the records examination as to the objections in Paragraphs 6-10 be accepted by the Board and that the objections in Paragraphs 11, 12 and 14 be overruled for want of prosecution by the Objector and lack of factual evidence in support of those objections.

21. At the beginning of the Rule 8 Hearing, I read the results of the Record Examination into the record. (See results in table above) The final certified results of the Record Examination was that the Candidate had filed a total of 612 valid signatures, which was 112 more than the required minimum.
22. The Rule 8 Hearing proceeded, in the main, on the basis of the allegation of a pattern of fraud in Paragraph 13 of the Objector's Petition. The Objector called a total of 20 witnesses, the first of whom was the Candidate, Joseph Bembynista. The remaining 19 witnesses were all voters who reside in the 19<sup>th</sup> Representative District and who signed the Candidate's nominating petition. On direct examination by the Objector, Mr. Bembynista, testified that he recognized his Nominating Papers, including the nominating petitions that he signed certifying that he was the circulator. He also testified that he "was present when they signed," (Transcript, hereinafter "T" at page 10) and that his "understanding of certified means that I acknowledge the information on this sheet to be accurate and true. ... and that there are concomitant penalties if it is not true" (T at 11) Mr. Bembynista, through questioning by Objector, eventually read and confirmed that he certified his signature on the following numbered petition sheets: 11, 13, 26, 29, 39, 102, 103, 105, 14, 94, and 106. There was no cross examination.
23. The Objector next called the following witnesses who signed the Candidate's nominating petition on the sheets and lines indicated:

Name	Sheet	Line
1. Ewolina Dabros	39	1
2. Dorata Warias	39	2

3. Naser Kawash	29	5
4. Abigail Austria	3	1
5. Phil Whitman	3	2
6. Dina Thomas	3	3
7. Cherry Buizing	9	4
8. Chris Carrao	11	5
9. Robert Klocek	11	3
10. Rosaria Dudgeon	13	6
11. Francine Peterson	26	5
12. Irene Mackey	26	10
13. Robert Clark	102	1
14. Susan McCormack	100	4
15. Elizabeth Hernandez	102	5
16. Mac Striker	102	9
17. Jolanta Palkowski	103	1
18. Mariola Laberda	103	3
19. James Foley	105	6

Each of the 19 witnesses testified on direct by the Objector that they recalled signing the Candidate's nominating petitions. All but one signed the petition at their homes.

Each witness was asked to describe the person who asked them to sign the nominating petition and each witness did so, often describing someone who fit the

description that the Candidate later provided of his wife and four friends who helped him to collect the signatures.

Each witness was asked on cross-examination to describe the area around their home near where they were when they signed the petition. Each witness swore that the Candidate was not the circulator. Each of them testified under cross examination that they did not see the Candidate in the company of the "circulator" nor near their home. None of the witnesses recognized the Candidate, who was seated next to the witness chair and who they were asked to identify, if possible.

After the last witness for the Objector was released, the Objector noted for the record that nine of the witnesses who had been subpoenaed (and who had received \$50 as payment to do so) had either not appeared at all or had left before being called to testify. The Objector made a formal request for the CBOE to use its legal authority to enforce the subpoenas. In the alternative, the Objector submitted nine affidavits -- one from each of the additional nine witnesses who had been called but who did not testify -- as evidence in lieu of testimony if the Board declined to enforce the subpoenas. The affidavits attested to the fact that each of the signers signed the Candidate's petitions but that the Candidate was not present when they did so. The affidavits were tendered as Objector's Group Exhibit C. (T at page 137).

24. The Objector recalled the Candidate as a final witness and to ask him one question which was to state his age, which was 64. All of the Objector's witnesses had testified that whichever men they had spoken to and for whom they had signed the Candidate's petitions were between the ages of 30 and 45.
25. The Objector rested.
26. The Candidate was called by his attorney as the only witness during his case in chief. The Candidate answered questions about his family and professional background as well as about his decision to run for State Representative. He stated that he had no prior experience circulating nomination petitions. He also described his experience of gathering signatures for his nominating petitions. He said the he was helped by some volunteers from the alderman's office as well as by some paid circulators who worked for a business that circulated nominating petitions. He explained that he also recruited his wife and four male friends to assist him with the collection of the signatures who he recruited to help him go from house to house to collect the signatures that he needed because he could not do so. The Candidate testified he did not actually go to the front doors of the houses to speak to the signers nor to certify that they were registered voters at the addresses. Instead, he said that while his friends were assisting him by going from house to house gathering the signatures from the homeowners, that he was waiting nearby either on the sidewalk or in a vehicle – sometimes on foot, sometimes in his Toyota truck and sometimes on a motorized scooter – waiting for his friends to complete their assignments of walking up to each house in order to speak to the homeowners and to collect the signatures.

*"What I began to do myself was going north to south or south to north on particular streets in my own neighborhood. I would gather petitions with the signatures on them. After about two days my knee swells up and I have to put a brace back on my knee, my right knee, in order to get around. I didn't realize how hard signatures were going to be. So I then asked friends of mine if they would assist me. They said they would go along with me if I was with them and I told them absolutely I can do that. What I will have to do though is drive along in my vehicle, watch them as they go to the doors and get the signatures. My knee was swelled up so bad for a while I had ice packs on the knee and drove with the left foot." (T at page 141).*

The parties stipulated that the Candidate has a "bad knee" (T on page 143) that made it difficult for him to circulate his own petitions by walking from house to house. The quoted statement contains an admission that the Candidate was trailing his friends in his vehicle(s) while they walked from house to house collecting signatures not because he intended to circulate the petitions for himself with the assistance of his friends (T at page 145); but because his friends asked him to tag along while they circulated his petitions and talked to the homeowners about his candidacy in his stead.

Candidate's attorney showed the Candidate each of the sheets that had been signed by the witnesses who had testified for the Objector, namely: sheets 3, 9, 11, 13, 26, 29, 100, 102, 103, 105, and 106. He testified that he was, in fact,

the circulator of all of the sheets and that he had signed them as such. Several witnesses who were subpoenaed because they had signed the Candidate's petition sheets 14 and 94 did not appear to testify and those sheets were excluded from this testimony by Candidate. The Candidate testified, throughout, that he was always nearby when the signatures were actually being collected by others and, therefore, "present."

On cross-examination by the Objector, the Candidate admitted that he may not have been within the line of vision of many of the signers. The Candidate also admitted that he had no actual knowledge of what was discussed between the voter and his friends before, during, or after they were speaking to his friends and being asked to sign the petitions. He also admitted that he had no actual knowledge that any of the signatures were genuine. The Candidate also stated that he has a hearing problem that would have made it difficult to monitor the conversations between his circulators and the signers. (T at page 162) The Candidate eventually admitted that he did not personally do anything to verify that any of the signatures that were collected by signers of sheets 3, 9, 11, 13, 26, 29, 100, 102, 103, 105, and 106 were signed in his presence and were genuine. (T at pages 166-167, 171-172). On re-direct, the Candidate testified that the signatures were genuine to the best of [his] knowledge. (T at page 172). The Candidate called no other witnesses.

27. There were no questions and no testimony that addressed the issue of why the Candidate chose to sign the affidavits on the bottom of the petitions that were circulated by others instead of simply requiring them to do so because they

actually collected signatures from the voters at their homes. None of the volunteers and none of the paid circulators who had helped the Candidate collect signatures were called as witnesses by either party. None of the notaries were called as witnesses by either party.

28. The Candidate tendered a small number of affidavits stating they

*"are certain that Mr. Bembynista was present when signing his nominating petition. ... a couple of that also signed (Objector's) affidavit and so there are a couple in this set as well that state that they signed an affidavit for the objectors, but they don't -- they do not now recall whether or not Mr. Bembynista was present or not or that they now know that he was present."* (T at pages 174-175)

There was a third group of affidavits that were not admitted because they offered the signers an option but neither option was selected. (T at page 176)

These affidavits were tendered and marked as Candidate Group Exhibit A. The Candidate rested.

29. Both parties made their closing arguments. The Objector argued that if the circulator executes a false circulator affidavit, under *Fortas v. Dixon, Husky* and *Cantor* the remedy should be that not only the petition sheets where there is proof of a false statement, but all of the sheets executed by the person making the false statements are invalid. (T at page 183-184)



30. Both parties declined to make any additional arguments or to present any testimony or evidence in favor of the remaining allegations in the Objector's Petition and said that they would await the Hearing Officer's report and recommendation. Both sides stated their belief that the pattern of fraud objection in Paragraph 13 and the evidence regarding such objection would be determinative of the outcome of the case. (T at page 184)
31. In 2007, the Illinois Appellate Court in *Ramirez v. Andrade*, 372 Ill.App.3d 68, 865 N.E.2d 508 (First Dist. 2007), ruled in favor of candidate finding that the candidate was present when the petitions were signed after she "*testified credibly that she was either physically standing at the door when the petition sheet was handed to the signer, or in the car, driving in lockstep with those who physically tendered the documents to the signers.*" The court cited *Moscardini v. County Officers Electoral Board of DuPage County*, 224 Ill. App.3d 1059, at 1060-61, a case in which the court concluded that Illinois case law did not require that "*the person who signs the circulator's affidavit be the person who physically presented the sheet to each signatory.*" In *Moscardini*, the candidate did not go up to the front door of each voter's house because of a degenerative bone disease that made walking painful and the court ruled that it was not clearly erroneous when the Board concluded that the candidate could have been "present" for purposes of signing the circulator's affidavit on the petitions "(i)f the candidate actually saw each of the signatories sign the petition, there was no violation of the statutory requirements 'even if she did not physically present the petition to some of them.'" (*Ramirez*, 372 Ill.App.3d at 74-75, citing *Moscardini* at 1063)

32. The facts in the present case are distinguishable from both *Ramirez* and *Moscardini* in ways that are meaningful and, I believe, dispositive. In this case, the Candidate did not testify in a way that I found credible that he “actually saw each of the signatories sign the petition” as required by *Moscardini*. In this case, the Candidate did not meet the standard of *Ramirez* insofar he did not testify credibly to “either physically standing at the door when the petition sheet was handed to the signer, or in the car, driving in lockstep with those who physically tendered the documents to the signers.” My interpretation of the spirit of *Ramirez* and *Moscardini* is that the candidate can be present if he used a proxy to collect the signatures but did made every effort to at least visually observe the collection process though from a distance. In the instant case, the Candidate never testified credibly that his purpose for going with the circulator was to be able to observe the signing of the petitions. No testimony was provided by any witness who ever recalled seeing the Candidate in front of his/her home watching them sign the petition. The following testimony appears on page 168 of the Transcript.

*Q. Where were you? Were you on the scooter or in the truck that day?*

*A. I was with him personally.*

*Q. You were personally with him.*

*A. Uh-huh.*

*Q. You walked with him?*

*A. Yes.*

*Q. Okay. And then the scooter, could you describe the scooter to me?*

*A. Absolutely. It's a mobility scooter with a long range battery. It's two-wheel drive. A single front wheel. an*

*extra-large seat because I got the deluxe model. It's got a headlight. It's got a horn. I can take it apart in four pieces and put in the trunk of my Jeep or in the trunk of my Honda.*

*Q. Oh, so it's a riding scooter?*

*A. Correct.*

*Q. And where would you be when you were riding the scooter?*

*A. On the sidewalk.*

*Q. On the sidewalk in front of the houses?*

*A. By them.*

*Q. What does that mean, "By them"?*

*A. Just what it means. If I am in front of an address of 2105, I could be sitting at the edge of 2103 to 2105 sitting next to 2106 waiting to move either way.*

*Q. Okay. So you are not necessarily in front of the house?*

*A. That is correct.*

*Q. You could be in front of the next house?*

*A. Correct.*

*Q. Or even the house after that?*

*A. No.*

*Q. Always one way or the other?*

*A. Yes, sir. Where I can observe my person getting the signatures.*

*Q. And that would exponentially increase the distance between you and your assistant presenting the petition, right? You would be further away?*

*A. No, I would (be) closer than in the truck.*

*Q. You were closer even if you were in front of the neighbor's house?*

*A. Sure.*

I did not find this testimony persuasive. I believe that Mr. Bembynista's testimony was an honest reflection of the fact that he did not understand the rules and purposes beneath the rules governing the collection of the signatures on his nomination papers.

33. What I found more credible was his testimony (cited above) that his true objective when accompanying the circulator was to provide the circulator with a form of companionship. It is a distinction that I think is a dispositive one between this case and either *Ramirez* or *Moscardini*.

34. Because the testimony in this case clearly discloses that certain petition sheets signed by the Candidate as the circulator of those sheets were not, in fact, signed in his "presence," a pattern of fraud, false swearing and a total disregard for the mandatory requirements of the Election Code has been established. When the sheets of a nominating petition submitted by a purported circulator evidence a pattern of fraud, false swearing and a total disregard for the mandatory requirements of the Election, all sheets purportedly circulated by that individual should be stricken in their entirety. *Fortas v. Dixon*, 122 Ill.App.3d 697, 462 N.E.2d 615 (First Dist. 1984); *Canter v. Cook County Officers Electoral Board*, 170 Ill.App.3d 364, 523 N.E.2d 1299 (First Dist. 1988).

35. Here, the Candidate signed as the circulator of petition sheets 1, 3-15, 26, 29, 39, 94, and 100-109. Under the principle supported by *Fortas*, all of these sheets are invalid in their entirety. However, some of the signatures on these sheets were sustained as invalid during the records examination. Striking the entire sheets results in an additional 150 signatures being invalid after subtracting the

signatures previously ruled invalid during the records examination. As a result, instead of having 612 valid signatures following the records examination, the Candidate, after striking all petition sheets signed by him as circulator, now has only 462 valid signatures, below the minimum signature requirement of 500.

36. In conclusion, it is my recommendation, based on all of the foregoing, that the Board should sustain the objections contained in Paragraph 13 of the Objector's Petition and find that the Candidate's Nomination Papers are invalid.

Respectfully submitted,

Date: July 23, 2014

By:   
LINDA R. CRANE, Hearing Officer