

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

Objections of: JAMES SIRCHER)	
)	
)	
To the Nomination)	No.: 15-EB-ALD-072
Papers of: CHARLES M. HUGHES)	
)	
Candidate for the office of)	
Alderman of the 23rd 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 JAMES SIRCHER ("Objector") to the nomination papers ("Nomination Papers") of CHARLES M. HUGHES, candidate for the office of Alderman of the 23rd Ward in the City of Chicago ("Candidate") to be elected at the Municipal General Election to be held on February 24, 2015, having convened on December 8, 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 December 8, 2014 and was continued from time to time.

5. The Electoral Board assigned this matter to Hearing Officer Barbara Goodman for further hearings and proceedings.

6. The Objector and the Candidate were directed by the Electoral Board 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, JAMES SIRCHER, by his, attorneys, Bret Bender and Michael J. Kasper; and the Candidate, CHARLES M. HUGHES, by his attorney, Richard K. Means.

7. The Hearing Officer ordered that an examination of the 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 examination of the registration records was completed and the Electoral Board hereby adopts and incorporates by reference the results of the records examination

conducted by its clerks and agents. The written report of the result of the registration records examination is contained in the Electoral Board's file in this case and a copy has been provided or made available to the parties.

12. The results of the records examination indicate that:

- A. The minimum number of valid signatures required by law for placement on the ballot for the office in question is 473;
- B. The number of purportedly valid signatures appearing on the nominating petition filed by the Candidate total 1,280;
- C. The number of signatures deemed invalid because of objections sustained as a result of the records examination total 697;
- D. The remaining number of signatures deemed valid as a result of the records examination total 583.

13. The Electoral Board finds that the number of valid signatures appearing on the Candidate's nominating petition following completion of the records examination exceeded the minimum number of valid signatures required by law to be placed upon the official ballot as a candidate for election to the office of Alderman of the 23rd Ward of the City of Chicago.

14. The Hearing Officer conducted a hearing to allow the Candidate an opportunity to present evidence in support of his Rule 8 motion objecting to the certain signatures on the Candidate's Nomination Papers of individuals who previously signed another petition for another candidate for the same office at the same election.

15. Section 10-3 of the Election Code (10 ILCS 5/10-3) states in part that a voter may subscribe to one independent nomination petition for each office to be filled, and no more.

16. In *Stone v. Board of Election Commissioners for the City of Chicago*, 750 F.3d 678 (7th Cir. 2014), the court held that it did not believe that the one-voter, one-signature rule acts as a “suffocating restriction[] ... upon the free circulation of nominating petitions” and that the one-voter, one-signature rule is “nothing more than a prohibition against any elector's casting more than one vote in the process of nominating candidates for a particular office.” 750 F.3d at 684.

17. The Electoral Board finds that a voter may sign only one aldermanic petition for the same office in the same election and that the signature executed first in time is the valid one and any subsequent signatures will be stricken. *Sharkey v. Solar*, 99-EB-ALD-072, CBEC (1999); *Arrington v. Jenkins*, 91-EB-ALD-83, CBEC (1991); *Frias v. Campos*, 91-EB-ALD-71 CBEC (1971); *Swain v. Frezados*, 87-EB-ALD-71 CBEC (1987). See also, *Slywczuk v. Powers*, 03-EB-ALD-025, CBEC (2003); *Rice v. Tirado*, 07-EB-ALD-075, CBEC (2007); *Rice v. Diliberto*, 07-EB-ALD-076, CBEC (2007); *Nice v. Popielarczyk*, 11-EB-ALD-202, CBEC (2010), *aff'd*, Circuit Court of Cook County, No. 10 COEL 00017 (2010), *aff'd*, Illinois Appellate Court, No. 1-11-0218 (2010), *leave to appeal den.*, Illinois Supreme Court; *Nice v. Ollry*, 11-EB-ALD-203, CBEC (2010). Therefore, the Electoral Board finds that the signatures of individuals who signed the Candidate's nominating petition after they had earlier signed a petition sheet for another candidate for the same office in the same election are invalid and stricken.

18. The Hearing Officer has tendered to the Electoral Board a report and recommended decision. Based upon the evidence presented, the Hearing Officer found that the Candidate's Nomination Papers contained only 445 valid signatures, which is less than the minimum number of valid signatures required by law to be placed upon the official ballot as a

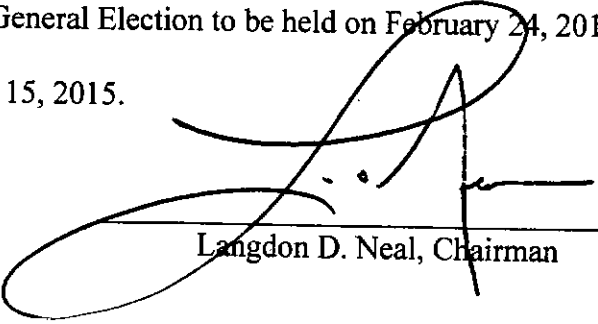
candidate for election to the office of Alderman of the 23rd Ward of the City of Chicago, and that the Candidate's Nomination Papers should be found invalid.

19. 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 report is attached hereto and is incorporated herein and made a part of the Electoral Board's decision in this case.

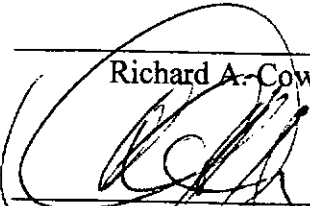
20. For the reasons stated above, the Electoral Board finds that the Candidate has an insufficient number of valid signatures on his nominating petitions and that the Nomination Papers of CHARLES M. HUGHES are, therefore, invalid.

IT IS THEREFORE ORDERED that the Objections of JAMES SIRCHER to the Nomination Papers of CHARLES M. HUGHES, candidate for election to the office of Alderman of the 23rd Ward of the City of Chicago are hereby SUSTAINED and said Nomination Papers are hereby declared INVALID and the name of CHARLES M. HUGHES, candidate for election to the office of Alderman of the 23rd Ward of the City of Chicago, SHALL NOT be printed on the official ballot for the Municipal General Election to be held on February 24, 2015.

Dated: Chicago, Illinois, on January 15, 2015.



Langdon D. Neal, Chairman



Richard A. Cowen, Commissioner



Marisel 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.

**BOARD OF ELECTION COMMISSIONERS OF THE CITY OF CHICAGO
AS THE DULY CONSTITUTED ELECTORAL BOARD FOR THE
HEARING AND PASSING UPON OBJECTIONS TO NOMINATION
PAPERS OF CANDIDATES FOR THE FEBRUARY 24, 2015
GENERAL ELECTION IN THE CITY OF CHICAGO**

JAMES SIRCHER

Objector

-v-

CHARLES M. HUGHES

Candidate

15 EB ALD 072

HEARING EXAMINER'S REPORT AND RECOMMENDED DECISION

This matter first came before this hearing officer on December 9, 2014. The Objector appeared through counsel Bret Bender and Michael Kasper and the candidate first appeared pro se and later in the day, the matter was recalled at the request of the Candidate and an Appearance was filed by counsel Richard M. Means. The parties were given the opportunity to file preliminary motions. The Candidate filed a Motion to Strike and Dismiss the Objector's Petition, the Objector filed a response thereto and the Candidate filed a reply. Candidate also filed a Motion in Limine.

THE CANDIDATE'S MOTION TO STRIKE AND DISMISS OBJECTOR'S PETITION

Candidate raised two issues in his Motion to Strike and Dismiss Objector's Petition. He first alleged that paragraph 10 of the Objector's Petition should be stricken as not being well grounded in law. Paragraph 10 of the Objector's Petition alleges that certain signers previously signed the petition of another candidate for the same office (Michael Zalewski) prior to signing

the petition of Candidate Hughes in the instant case. In his Motion, Candidate argued that there is no prohibition against dual signing for Aldermanic candidates. Citing section 10 ILCS 5/10-3 of the Election Code, Objector argued that such a prohibition in fact exists. Section 10 ILCS 5/10-3 provides in pertinent part as follows: *Each voter signing a nomination paper shall add to his signature his place of residence, and each voter may subscribe to one nomination for such office to be filled, and no more.* Objector argued that this Board and the Courts have enforced this prohibition. In his Reply and at the hearing on the Motion, Candidate conceded that such a prohibition does in fact exist and he abandoned his position as to the dual signing issue.

However, Candidate raised a further issue in his Motion to Strike with respect to the dual signing issue. Specifically, Candidate alleged that because the Objector submitted affidavits for certain signers relative to the dual signing issue and also alleged in his Objector's Petition that certain of these signers' signatures were not genuine, these allegations are mutually exclusive and these mutually exclusive allegations could not and, therefore, were not grounded in fact and serve to establish that the Objector's petition constitutes a bad faith pleading.

Objector argued that the allegations in the Objector's Petition constitute alternative pleading and that there is a long standing practice of allowing alternative pleadings, "even when such arguments are based on inconsistent facts." *Heastie v Roberts*, 226 Ill.2d 515, 557-558, 877 N.E.2d 1064, 1090 (2007).

Objector's arguments are well founded. There is no restriction against alternative pleading and Section 10 ILCS 5/10-3 does, in fact, contain a prohibition against dual signing. Accordingly, Candidate's Motion to Strike and Dismiss was denied.

CANDIDATE'S MOTION IN LIMINE

As indicated above, paragraph 10 of the Objector's Petition addresses the issue of certain

signers signing the petition of Michael Zalewski before they signed Candidate Hughes' Petition. As part of the Objector's Petition, Objector appended 163 affidavits of signers of the Candidate's Petition and the Petition of Michael Zalewski. A sample affidavit is attached hereto for reference. Candidate sought to bar admission of the affidavits in that they were "conclusory, incompetent and unreliable because they do not specify a day or date upon which they signed the petitions" making them violative of Illinois Supreme Court Rule 191. Candidate further contended that because the affidavits purport to revoke, withdraw or dishonor a petition signature, the affidavits are in violation of Section 10-4 of the Election Code.

In response, Objector argued that this Board has already addressed the issue of the validity of the format of the affidavits in the case of *Nice v Popielarczyk*, 11 EB ALD 202 (12/21/10)¹. In *Nice*, this Board adopted the recommendation of the Hearing Officer in which the same affidavit format was used. In *Nice*, the Hearing Officer also denied the Candidate's Motion in Limine and found that Illinois Supreme Court Rule 191 does not apply to these proceedings.

Moreover, regardless of whether the date of signing the Zalewski petition was described by a specific date or by the descriptive words, "*before I signed the nominating papers of Charles M. Hughes*" (see sample affidavit attached hereto), the information contained therein is based upon personal knowledge and is clear as to its meaning. As the Board noted in its decision in *Nice*, there is no requirement that the affidavit must contain signing dates and the affidavits do not constitute revocations. Accordingly, the Candidate's Motion in Limine was denied.

¹ The *Nice* case was affirmed in the circuit court and ultimately affirmed by the Appellate Court in a decision rendered pursuant to Supreme Court Rule 23.

THE RECORDS EXAMINATION AND EVIDENTIARY HEARING

A records examination was ordered and the results of the records examination were as follows:

- A. The minimum number of valid signatures required by law for placement on the ballot for the office in question is 473.
- B. The number of purportedly valid signatures appearing on the nominating petition filed by the Candidate total 1,280.
- C. The number of signatures deemed invalid because of objections sustained in the records examination total 697.
- D. The remaining number of signatures deemed valid as a result of the records examination total 583.

The results of the records examination indicated that the candidate had 110 signatures more than the statutory minimum.

Thereafter, Objector moved to admit 163 original affidavits relative to the dual signing issue and said affidavits were received into evidence. The affidavits established that 163 signers of the instant petitions previously signed the Malewski petitions and, therefore, their signatures in the Hughes nominating petition were deemed invalid which would have reduced the number of valid signatures to 420, said numbering being 53 less than the required minimum.

The Candidate submitted a Second Motion in Limine in which he sought to bar four affidavits which contained the wrong name of the signers for the sheet and line indicated. Objector raised no objection and the Candidate's Second Motion in Limine was granted bringing the total number of valid signatures to 424, said number being 49 less than the required minimum.

The Candidate then proceeded with his Rule 8 Motion and submitted the affidavits of 21 signers which rehabilitated the signatures of those respective signers. No objection was raised by the Objector to the submission of the affidavits. With the submission of the Candidate's affidavits, the total number of valid signatures was raised to 445, said number being 28 less than the required minimum. Objector had previously filed a Motion for Production of Evidence with respect to two signers. The Motion was granted, records were produced by the Board of Election Commissioners but no evidence or argument was presented by the Objector as to the two signers. At the end of the hearing Candidate verbally moved for a continuance, the Objector objected to the motion and the motion was denied.

RECOMMENDATION

In light of the foregoing, it is my recommendation that the objections of James Sircher to the nominating papers of Charles M. Hughes be **sustained** in conformity with the results of the record examination. It is my further recommendation that the nominating papers of James Sircher for the office of Alderman of the 23rd Ward of the City of Chicago be deemed **invalid** and that the name of Charles M. Hughes for said office **not be** printed on the ballot at the February 24, 2015 General Election.

Respectfully submitted,

Barbara Goodman /s/

Barbara Goodman, Hearing Examiner
January 12, 2015

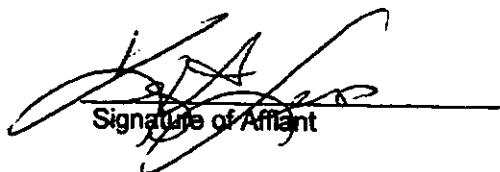
AFFIDAVIT

State of Illinois)
) SS
County of Cook)

I, Kelly A. Lucas, being first duly sworn and placed under oath, hereby depose and state:


1. I am a resident and registered voter of the 23rd Ward of the City of Chicago.
2. My signature appears on the nominating petitions of both Michael R. Zalewski (Sheet 471, Line 1) and Charles M. Hughes (Sheet 18, Line 18) as candidates for election to the office of Alderman of the 23rd Ward of the City of Chicago.
3. I signed the nominating petition of Michael R. Zalewski before I signed the nominating petition of Charles M. Hughes.
4. By signing the nominating petition of Michael R. Zalewski prior to signing the nominating petition of Charles M. Hughes it is my intention that my signature be counted only on behalf of the candidacy of Michael R. Zalewski.

FURTHER AFFIANT SAYETH NOT.


Signature of Affiant

Subscribed and sworn to before me by

KELLY A. LUCAS
on this 24 day of November, 2014.


Notary Public

