

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

Objections of: JANELLE RAU-CLAUSON)	
)	
)	
To the Nomination)	No.: 15-EB-ALD-166
Papers of: JOHN J. CIANCI)	
)	
Candidate for the office of)	
Alderman of the 38th 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 JANELLE RAU-CLAUSON ("Objector") to the nomination papers ("Nomination Papers") of JOHN J. CIANCI, candidate for the office of Alderman of the 38th Ward of 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 Linda R. Crane 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, JANELLE RAU-CLAUSON, by her attorney, Ross D. Secler; and the Candidate, JOHN J. CIANCI, pro se.

7. The Objections alleged that the Candidate filed a Statement of Candidacy that he did not sign.

8. Section 10-5 of The Election Code (10 ILCS 5/10-5) requires that a candidate's nomination papers include a statement of candidacy setting out the name and address of the candidate, the office for which he or she is a candidate, and stating that the candidate is qualified for the office specified and that the candidate has filed (or will file before the end of the filing period) a statement of economic interests as required by the Illinois Governmental Ethics Act. The statement of candidacy shall request that the candidate's name be placed upon the official ballot and shall be in substantially the form set forth in Section 10-5 and shall be subscribed and sworn to by the candidate before some officer authorized to take acknowledgments of deeds in the State of Illinois.

9. 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 did not sign the Statement of Candidacy that was submitted with his Nomination Papers and that such failure rendered his Nomination Papers invalid.

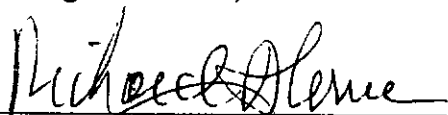
10. The Electoral Board, having considered the evidence and arguments tendered by the parties and the Hearing Officer's report of recommended findings and conclusions of law, hereby adopts the Hearing Officer's recommended findings and conclusions of law. A copy of the Hearing Officer's report is attached hereto and is incorporated herein and made a part of the Electoral Board's decision in this case.

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

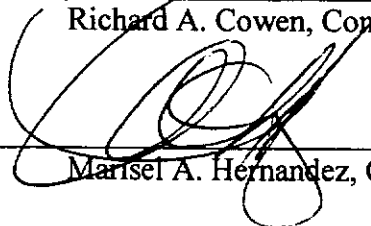
IT IS THEREFORE ORDERED that the Objections of JANELLE RAU-CLAUSON to the Nomination Papers of JOHN J. CIANCI, candidate for election to the office of Alderman of the 38th Ward of the City of Chicago, are hereby SUSTAINED and said Nomination Papers are hereby declared INVALID and the name of JOHN J. CIANCI, candidate for election to the office of Alderman of the 38th 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 5, 2015.

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 CHICAGO BOARD OF ELECTION COMMISSIONERS
SITTING AS THE DULY CONSTITUTED MUNICIPAL OFFICERS
ELECTORAL BOARD FOR THE CITY OF CHICAGO

JANELLE RAU-CLAUSON,

Petitioner-Objector

Vs.

JOHN J. CIANCI,

Respondent-Candidate

15 - EB - ALD - 166

HEARING EXAMINER'S RECOMMENDED DECISION

The Respondent-Candidate, JOHN J. CIANCI, filed Nomination Papers in support of his nomination to the office of Alderman of the 38th Ward in the City of Chicago, Count of Cook, State of Illinois to be voted upon at the primary election on February 24, 2015 (election). The Petitioner-Objector, JANELLE RAU-CLAUSON, filed a Verified Objector's Petition objecting to the sufficiency of the Candidate's Statement of Candidacy for the sole reason stated in Paragraph 7 of the Objector's Petition alleging that *"the Candidate has failed to fulfill the mandatory requirement of 10 ILCS 5/10-5 in that the Statement of Candidacy included with his nomination papers is devoid of his signature and thus failed to sign the sworn Statement of Candidacy under oath."*

This matter was set for an initial trial call on December 10, 2014, at which time the parties appeared the Candidate/Respondent, pro se; and the Objector, through her attorney, Ross Secler. The Hearing Examiner urged the Respondent to retain legal counsel and advice.

The Objector and the Candidate agreed, at the initial hearing, that the only issue in dispute was whether the fact that the Candidate's Statement of Candidacy was unsigned when filed with the Candidate's other Nomination Papers rendered the Statement of Candidacy invalid as a matter of law and invalidated all of the Candidates nomination papers. There was no, Rule 6, Records Examination requested in this matter. The Candidate did not file a Motion to Strike the Objector's Petition nor has he officially withdrawn his candidacy.

During the hearing on December 10, 2014, the Objector reviewed the issues and facts raised by the objections. When asked, Respondent stated that he forgot to sign the Statement of Candidacy that was filed and even notarized! He testified to the fact that he had signed a second Statement of Candidacy (that was also notarized) that he intended to file; but he admitted that the Statement that was filed with all of his nomination papers was the one on which his signature was completely missing. The notary also testified that he notarized two Statements of Candidacy, including one that the Candidate had not yet signed.

A second hearing was scheduled for and was held on December 19, 2014. The Candidate did not appear at the second hearing either on his own behalf or through an attorney.

The controlling statute on this issue is the Illinois Election Code at 10 ILCS 5/10-

5. **Forms for petitions for nomination; ...**, states, in pertinent part that:

Sec. 10-5. ... Such certificate of nomination or nomination papers ... must include a **include a statement of candidacy** for each of the candidates named therein... Each such statement shall set out the address of such candidate, the office for which he is a candidate, shall state that the candidate is qualified for the office specified ... **shall request that the candidate's name be placed upon the official ballot and shall be subscribed and sworn to by such candidate** before some officer authorized to take acknowledgments of deeds in the State ...

As a general rule, failure to swear to or sign a Statement of Candidacy renders the statement void. *Serwinski v. Chicago Board of Election Commissioners*, Ill.App.3d 257 (1987). Because the statute used the word "shall" when requiring that nomination papers include a Statement of Candidacy, Illinois courts have held that, as in other cases, when the word "shall" appears in a statutory provision it is likely to be deemed mandatory. It has, on occasion, however, also been held to be directory. Courts have held the term "shall" to be directory in two scenarios; first where to do so would validate an election after it has taken place without the occurrence of any improper voting, second where the requirement of that provision is not related to content. *Serwinski* at 260.

Serwinski was a very similar case involving a candidate for Alderman of the 38th Ward of the City of Chicago who had given his Statement of Candidacy to a notary, stating that he believed everything was correct, and subsequently it was notarized. *Id.* at 258. However, the candidate failed to actually sign the statement before it notarized filed. *Id.* The candidate argued that failure to sign his statement was not fatal to him being placed on the ballot. *Id.* The Alderman candidate believed that the term "shall" in section 10-5 of the Election Code was directory rather than mandatory. *Id.* at 259. The

Court ruled that the use of the word "shall" in the subscription and oath provision of section 10-5 of the Election Code, referring to a pre-election requirement contained important content, and therefore the requirement that the Statement of Candidacy must be signed is mandatory. *Id.* at 260.

It is therefore the recommendation of this Hearing Examiner that the name of the Respondent-Candidate should not be allowed to appear on the ballot for the election because he has failed to comply with the mandatory legal requirement that the Statement of Candidacy in his nomination papers be signed by the candidate and notarized. Additional support for this interpretation is the fact that the Candidate's failure to sign the Statement of Candidacy was indispensable to his candidacy insofar as without it, the nomination papers contain no signed request to have his name placed on the ballot during the election for the office to which he aspires.

Dated: January 2, 2014


LINDA R. CRANE, Hearing Examiner