

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

Objections of: Rickey Hendon and Cherita Logan)	
)	
)	
To the Nomination Papers of: Anthony V. Clark)	No.: 18-EB-CON-06
)	
)	
Candidate for the nomination of the Democratic Party for the office of Representative in Congress of the 7th 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 Marisel A. Hernandez, William J. Kresse and Jonathan T. Swain, organized by law in response to a Call issued by Marisel A. Hernandez, Chairwoman of said Electoral Board, for the purpose of hearing and passing upon objections (“Objections”) of Rickey Hendon and Cherita Logan (“Objectors”) to the nomination papers (“Nomination Papers”) of Anthony V. Clark, candidate for the nomination of the Democratic Party for the office of Representative in Congress of the 7th Congressional District of the State of Illinois (“Candidate”) at the General Primary Election to be held on Tuesday, March 20, 2018, having convened on Monday, December 18, 2017, 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 Chairwoman of the Electoral Board and served upon the members of the Electoral Board, the Objectors and the Candidate, by registered or certified mail and by Sheriff's service, as provided by statute.

4. A public hearing was held on these Objections commencing on Monday, December 18, 2017 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 Objectors 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 Call. The following persons, among others, were present at or filed appearances during such hearing; the Objectors, Rickey Hendon and Cherita Logan, through their Attorney Andrew Finko; and the Candidate, Anthony V. Clark, through his Attorney Ed Mullen.

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 Objectors and/or their 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 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 1,356.

B. The number of purportedly valid signatures appearing on the nominating petition filed by the Candidate total 2,750.

C. The number of signatures deemed invalid because of objections sustained as a result of the records examination total 909.

D. The remaining number of signatures deemed valid as a result of the records examination total 1,841, which is 485 signatures more than the required minimum.

13. The Electoral Board finds that the number of valid signatures appearing on the Candidate's nominating petition following completion of the records examination exceeds the minimum number of valid signatures required by law to be placed upon the ballot as a candidate for the nomination of the Democratic Party to the office of Representative in Congress for the 7th Congressional District of the State of Illinois.

14. The Hearing Officer conducted a hearing to allow the Objectors an opportunity to present evidence in support of their Rule 8 motion objecting to the Board's clerk's findings during the records examination. The Objectors proceeded only with calling witnesses and

submitting affidavits in support of an alleged pattern of fraud in that certain petition sheets were allegedly not circulated by the purported circulator.

15. 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 Objectors failed to meet their burden of proving by clear and convincing evidence that the Candidate or any of his other circulators engaged in a pattern of fraud. The Electoral Board agrees with the Hearing Officer's legal finding that a petition circulator need not be the person who physically presents the petition to the voters for signature, so long as the circulator was sufficiently present to be able to see the voter sign the petition sheet. See, for example, *Vaitys v. Board of Election Commissioners*, 96-CO-43 (Cir. Ct. of Cook Cty., 1996), and *Kerpsack v. Simmons*, 04-EB-WC-75 (Chicago Electoral Bd., 2004). For the reasons stated in the Hearing Officer's report and recommended decision, the Board also agrees that the weight of the evidence shows the Candidate's petition sheets were circulated lawfully.

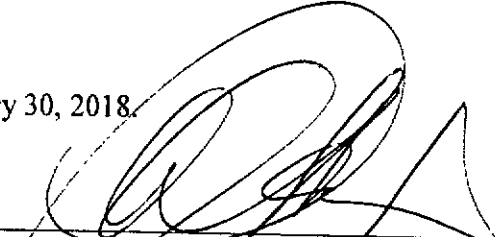
16. The Hearing Officer further found, and the Board agrees, that the Candidate's Nomination Papers contained 1,841 valid signatures, which exceeds the minimum number of valid signatures required by law to be placed upon the ballot as a candidate of the Democratic Party for the office of Representative in Congress for the 7th Congressional District of the State of Illinois, and that the Candidate's Nomination Papers should be found valid.

17. 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 and incorporates them herein by this reference.


18. For the reasons stated above, the Electoral Board finds that the Candidate has a sufficient number of valid signatures on his nominating petitions and that the Nomination Papers of Anthony V. Clark are, therefore, valid.

IT IS THEREFORE ORDERED that the Objections of Rickey Hendon and Cherita Logan to the Nomination Papers of Anthony V. Clark, candidate for nomination of the Democratic Party for the office of Representative in Congress for the 7th Congressional District of the State of Illinois, are hereby OVERRULED and said Nomination Papers are hereby declared VALID and the name of Anthony V. Clark, candidate for nomination of the Democratic Party for the office of Representative in Congress for the 7th Congressional District of the State of Illinois, SHALL be printed on the official ballot for the General Primary Election to be held on Tuesday, March 20, 2018.

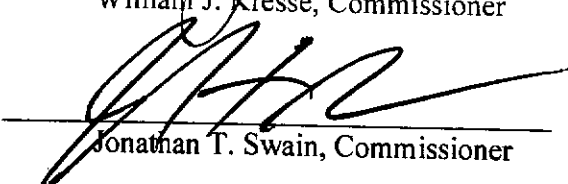
Dated: Chicago, Illinois, on Tuesday, January 30, 2018.



Marisel A. Hernandez, Chairwoman



William J. Kresse, Commissioner



Jonathan T. Swain, 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 PETITIONS OF
CANDIDATES FOR THE MARCH 20, 2018, GENERAL PRIMARY ELECTION**

RICKEY HENDON and CHERITA LOGAN,)
)
Petitioner – Objector,)
)
v.) No. 18 EB CON 06
)
)
ANTHONY V. CLARK,)
)
Respondent – Candidate.)
)

HEARING OFFICER'S RECOMMENDATION

This matter first came before the hearing officer on December 18, 2017. It was set on the call for 1:30 p.m., and at that time the matter was first called for hearing. The objectors appeared through counsel, Mr. Andrew Finko, Esq., and the candidate appeared through counsel, Mr. Ed Mullin, Esq. Each filed their appearances and acknowledged receipt of a copy of the rules.

The official file contained the original petition papers of the candidate and the objections of the objectors, which the hearing examiner 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 parties were marked as Group Exhibit D. Group Exhibits A through D were accepted into evidence without objection.

The candidate seeks nomination as the Democratic candidate for the office of U.S. Representative for the 7th Congressional District of Illinois, to be voted upon at the March 20, 2018, General Primary Election.

The objection, Group Exhibit B, raised a line by line signature allegation or challenge, incorporating a standard index recapitulation sheet exhibit, as well as alleging certain circulator and notarial irregularities, knowingly permitting false and fraudulent signatures, including the name of a deceased person, and that there exists a 'pattern of fraud' in the gathering of these signatures such as to require the invalidation of the entire nomination papers.

The parties were informed at this initial hearing date of the briefing schedule for any preliminary motions, and both sides indicated they probably would not be filing any such motions, and in fact no such motions were ever filed.

The matter was immediately scheduled for a record examination, scheduled to start on December 20, 2017, at 10:00 a.m., and the parties each received notice of the start of the record examination before the initial hearing concluded. The case was set down for further status on December 26, 2017, at 10:30 a.m.

On December 26, 2018, the matter reconvened and both sides appeared through counsel. The Rule 6 Record Examination was still ongoing such that matters were continued to January 3, 2018, at 10:30 a.m. for what was expected to be a review of the final Rule 6 Record Examination results and the scheduling of any final proceedings that may be required.

This matter reconvened on January 3, 2018, at 10:30 a.m., and both sides appeared. As of that time the final record exam results were not yet completed, but was expected to be finished later that day. As such, as a matter of judicial economy and to allow the objectors to properly present a case, without objection from the candidate as to the extension, the hearing

officer extended the timing of any request by objectors for subpoenas until January 5, 2018, and continued the case to January 11, 2018, at 10:00 a.m. to set any hearing date on the objectors' case.

On the afternoon of January 3, 2018, the Final Rule 6 Record Examination Report issued, evidencing that the candidate, at that juncture, was up 485 signatures for an office requiring 1,356 signatures.

Objectors filed a timely Rule 8 motion within which objectors eschewed challenging the line by line Rule 6 record examination and instead sought to proceed upon the circulator and 'pattern of fraud' arguments in paragraphs 13, 14, and 15 of the objection, and directed specifically to the candidate as circulator of pages 90, 99, 247, 103, 244, 247, 251, and 117.

Objectors also filed a timely request for three subpoenas directed to the candidate's mother, alleged to have circulated sheets signed by the candidate, a Ms. McKinney, alleged to have signed a sheet circulated by another but signed as circulator by the candidate, and a Ms. Leah E. Garcia, a notary of the candidate circulated sheets.

Candidate filed an objection to objectors' subpoena request directed to the notary, alleging it was irrelevant and not directed to any allegation in the objection in that notarial fraud had not been alleged.

A review of the objection, specifically including paragraph 13, evidences that that objectors had alleged notarial misconduct in reference to circulator's execution of the circulator's affidavit, such that the candidate's objection to issuance of the subpoenas was overruled, a recommendation to issue was forwarded to the Board, and the subpoenas issued.

On January 11, 2018, at 10:00 a.m. the matter reconvened and both sides appeared

through counsel. The results of the final Rule 6 Record Examination Results was duly marked as Exhibit E and accepted into evidence.

Having been made of record and accepted into evidence, the results of the Rule 6 Record Examination are set forth here, as follows:

Signatures Required:	1,356
Total Pages:	296
Total Signatures Filed by the Candidate:	2,750
Total Objections:	2,127
Total Objections Ruled On:	2,126
Total Remaining to be Ruled On:	0
Total Objections Sustained:	909
Total Objections Overruled:	1,218
Findings Preserved For Review (Candidate):	664
Findings Preserved For Review (Objector):	147
Total Valid Signatures:	1,841
Total Unchallenged Signatures:	623

485 Signatures greater than the required minimum

At this hearing date the final hearing on all issues was set down for an evidentiary hearing on January 18, 2018, at Noon. Document and witness exchange cut-offs were also set. At this hearing objectors made an oral motion for additional subpoenas which was objected to by candidate as untimely and denied by the hearing officer, in that objectors had been granted sufficient time previously in order to request these subpoenas, and the alleged 'new information' upon which this new request was predicated was not persuasive.

The matter reconvened on January 18, 2018, at Noon. Prior thereto each side had exchanged copies of exhibits and witness lists and neither side objected to any submissions based upon timeliness. At that time, in that the candidate was up some 485 petition

signatures over the minimum and which were not in dispute, the objectors' case proceeded first.

Prior to commencement of the case the witnesses that either party intended to call were excluded from the proceeding until called to testify.

As part of objectors' case, objectors sought to introduce into evidence, duly marked and preserved in the official file as Objectors' Group Exhibit 1, several statements in the nature of affidavits, executed variously by a Charquita Phillips and/or Clayton Boyd, within which these individuals, acting in the role of investigators, purportedly interviewed various petition signers and thereafter related the content of these interviews, the sum and substance of which was the allegation(s) that these interviewees asserted the circulator of the petitions were person(s) other than the named circulator, which in each case was the candidate, Anthony V. Clark.

Candidate objected to the introduction of these 'affidavits' on the basis that they were inadmissible double hearsay. Candidate's objection was sustained, and this set of exhibits were not admitted into evidence.

Objectors thereafter called the candidate, Anthony V. Clark, to the stand, and inquired as to the means and methods employed by the candidate to secure petition signers on certain sheets circulated by the candidate, specifically sheets 90, 99, 117, 247, 103, 244, 247 and 251.

The candidate testified to four main methods he personally employed in his circulation efforts, specifically including these enumerated pages. The candidate asserted he started collecting signatures almost as soon as the circulation period began, and as far as his

methodology, he would work with a team of petition page presenters, plus himself, with the testimony indicating there may have been as many as two other clipboards plus his own at any one circulation effort, although the testimony indicated that the predominant method would be himself plus one other person offering the pages to the voters on two separate clipboards.

As to location, the candidate, in relevant part, testified he would variously:

- a) set up a grill at certain main thoroughfare corners on the west side of Chicago wherein he would attract people by cooking burgers and hotdogs for passers-by;
- b) attend farmers markets in the Oak Park area;
- c) present petition sheets inside and outside of a small BBQ restaurant called "Chef Daddy's" located at 5944 W Lake St, Chicago, IL 60644; and
- d) walked the floors door knocking within a large apartment building located at 5870 West Lake Street.

Other individuals the candidate testified to as being petition sheet presenters accompanying him included his mother, his father, Ronald Clark, an individual named Cecelia Horodski, an individual named Arbutus "Beauty" Winfrey, an individual named Sherita Galloway, and an Oak Park / River Forests student over the age of 18, the name he could not recollect.

Regarding the sheets circulated on the street corner, the candidate stated his father would come with to watch in the nature of security, it being a tough area, and that himself, Ms. Horodski and occasionally others would accost people to ask them to sign as they passed by.

The candidate's circulation efforts at the farmers markets were done in the company of high school students, only one of whom actually acted as a petition presenter.

The efforts undertaken at Chef Daddy's were done in the presence of the candidate's mother and father, and that he was present the entire time as the candidate's mother presented petition sheets to voters.

As to the petition sheets circulated in the West Lake Street building, the candidate testified he circulated on every floor with "Beauty", that he was always in the company of "Beauty" on each floor, they would split up and knock on various doors on the same floor and work to get signatures, but that at all time the signatures collected by "Beauty" were collected within his view.

The candidate further testified that all petition sheets were circulated in his presence, he had the ability to and did observe the signings of petition sheets held by others, and that his physical location was anywhere from right alongside the person to as far as 30 feet away, and that he never gave a partial sheet to anyone else to finish. The candidate, in reference to various sheets, recollected a few of the signers on certain sheets as having signed at the time.

When questioned by objectors as to whether the candidate knew of a petition signer on Sheet 90, Line 9 named Willie Upshire, or that this individual was the former pastor of a local church, or that this individual had died in March, 2016, the candidate, while admitting that he personally circulated that sheet (versus being present as one of his team presented it) denied any memory of the signer who signed that sheet and line, as well as denying any knowledge of the existence or demise of anyone named Willie Upshire.

It is the opinion of this hearing officer that the candidate testified credibly and

forthrightly, particularly as to his methods of circulation and his ability to observe other petition sheet presenters in his campaign as they tendered the sheets to the voters.

Objectors called Ms. Kenyon Banks as a witness, who confirmed the information on objectors' Exhibit #2, an affidavit executed in reference to Sheet 244, Line 9, that the candidate, who's picture was attached thereto, was not the person who circulated the sheet, expounding on the affidavit by asserting she did not recognize the candidate from the witness stand (candidate was present throughout the hearing), and that the petition sheet Ms. Banks signed was circulated by an African American man 5'7" and 320 lbs. Objectors' Exhibit #2 was accepted into evidence without objection.

Objectors next called Mr. Gregory Duffie as a witness, who confirmed the information on objectors' Exhibit #3, an affidavit in the same format as Exhibit #2, which Mr. Duffie executed in reference to Sheet 251, Line 7, that the candidate, who's picture was attached thereto, was not the person who circulated the sheet, expounding on the affidavit by asserting he lived at 5870 West Lake, answered a knock on his door, that he did not recognize the candidate from the witness stand, that the petition sheet he signed as he stood at his front door was circulated by an African American woman he knew as "Beauty", accompanied by her husband "Rock" and that Mr. Duffie did not see anyone else in the hallway. Objectors' Exhibit #3 was accepted into evidence without objection. Mr. Duffie was somewhat confused when asked to confirm the details and execution of the affidavit (ex. #3), but was otherwise credible.

Objectors next called Ms. Cherita Logan, who testified she was a notary who accompanied Charquita Phillips and Clayton Boyd as these latter two individuals interviewed

various petition signers and notarized these investigator's affidavit/interview statements (documents marked as Objectors' Group Ex. 1 and deemed inadmissible), as well as notarizing the individual affidavits of:

Ms. Kenyon Banks, Sheet 244 (Obj. Ex. 2);

Mr. Gregory Duffie, Sheet 251 (Obj. Ex. 3);

Mr. Joe McGee Sheet, Sheet 103 (Obj. Ex. 4);

Mr. Will Johnson, Sheet 247 (Obj. Ex. 5);

Ms. Beverly Duffie, Sheet 251 (Obj. Ex. 6);

Mr. Teddy Lucas, Sheet 99 (Obj. Ex. 7);

Mr. Richard Bland, Sheet 251 (Obj. Ex. 8);

Each of these petition signer affidavits were of the same format, fill in the blank style affidavits wherein the affiant asserted, in paragraph 3, that while they did sign the indicated petition sheet, that the enumerated sheet ". . . was not circulated by Anthony V. Clark, himself but by another person on behalf of Anthony V. Clark." Further asserting "I do not know the circulator's name, but I do know that it was not Anthony V. Clark."

Ms. Logan testified that when an affidavit was filled out, she asked for their I.D. and notarized the affidavits. She did not explain to the affiants what the term circulator meant but the affiants understood they were signing affidavits in reference to these petition sheets. Testimony offered by Ms. Logan in reference to conversations she had with various affiants was not admitted as constituting hearsay. Ms. Logan's testimony was credible and forthright.

Objectors' Exhibits 2 through 8 were admitted into evidence without objection.

Objectors' next witness, Charquita Phillips, testified she was one of objectors'

investigators who interviewed these affiants, Exhibits 2 through 8, as to whether they were the person who signed the petition sheets. Ms. Phillips further testified that prior to having the affiants execute the petition sheets she explained to each affiant in Exhibits 2 through 8 that a circulator was “. . . the person who came up to you and asked you to sign the petition. . . .” and further asked the petition signers if the candidate in the affidavit picture was the individual who asked the petition signer to sign the petition sheets and/or handed the petition signer the sheet, and that each one (Exhibits 2 through 8) answered in the negative and duly executed the affidavit. Ms. Phillip’s testimony was credible and forthright.

Objectors introduced the death certificate of Willie L. Upshire as Objectors’ Exhibit 9, which was accepted into evidence without objection. Objectors’ counsel answered in the negative when the hearing officer asked objectors’ counsel if objectors had any additional evidence tending to prove the point that that the Willie Upshire on the petition sheet was intended to be the same Willie Upshire as the deceased, or that the candidate knowingly caused or knew that the person signing the petition sheet was impersonating the deceased Mr. Upshire.

At that juncture, objectors rested.

In rebuttal, the candidate called Ms. Cecelia Horodski to the stand. Ms. Horodski testified, in sum, that she knew the candidate, acted as a circulator for the candidate on approximately 7-8 sheets, maybe a few more, never sought signatures while working on her own, always collected signatures for the candidate accompanied by the candidate and in the presence of the candidate, accompanied the candidate in his ‘street corner grilling’ petition signer efforts as well as elsewhere, that the candidate ranged from being right next to her as

far as half a block away while she sought petition signers, that the campaign group often included the candidate's father, that they stayed pretty close to each other because the neighborhood was "rough", and that even when the candidate was a half block away she would be trying to get people to sign. Ms. Horodski always asked voters if they were registered voters of the 7th Congressional district before presenting the sheet to them for signature, and didn't remember much else from the petition sheets. No testimony was elicited from Ms. Horodski as to the farthest distance she was from the candidate at the time she actually caused a petition signer to sign the petition sheet, and she could not specifically remember which sheet under examination, other than sheet 247, that she actually presented to the petition signers. Ms. Horodski's testimony was credible and forthright.

The candidate next called Ms. Sherita Galloway, who testified that that she knew the candidate, she would present petition sheets to voters on behalf of the candidate during his "street corner grilling" petition signer efforts, maybe caused 5-15 petition sheets to be signed, never circulated sheets by herself, the candidate would always be present, and he would range from right next to her, introducing himself to the voters, to as far as 15 – 20 feet away, and they all tried to stay close together. The candidate's parents had also presented sheets, and that while the candidate could see people signing, from 15-20 feet away he couldn't actually see the signatures themselves nor could he hear everything the voters said from that distance. Ms. Galloway's testimony was credible and forthright.

Candidate's final witness was Mr. Ronald Clark, the candidate's father. He testified that he circulated petition sheets both while in the presence of the candidate and independently, and that if he circulated a sheet he, Ronald Clark, would sign them as

circulator. He testified that he knew Ms. Horodski circulated sheets for the candidate approximately 10 times, and never saw Ms. Horodski more than 30 feet from the candidate during those efforts, that everyone "circulated together". Ronald Clark also testified that Ms. Galloway circulated in excess of 10 times for the candidate and never circulated petition sheets at any time other than when the candidate was present, and that these individuals were always within sight of the candidate. Mr. Ronald Clark's testimony was credible and forthright.

Candidate offered Candidate's Exhibits 1 through 11 into evidence. Exhibit 1 was the affidavit of Ms. Arbutus "Beauty" Winfrey, wherein Ms. Winfrey averred that she knew the candidate, accompanied the candidate to the 5870 West Lake Street building to circulate petition sheets, and that while she did most of the talking to the people that answered the door, the candidate was always physically present at the time the petition sheets were signed. This affidavit was accepted into evidence without objection.

Candidate's Exhibits 2 through 11 are affidavits executed by petition signers that averred on each that they signed the petition sheets at the sheet and line number indicated and that "When I signed the petition, Candidate Anthony Clark was present." No picture of the candidate accompanied the affidavits. These affidavits are:

Exhibit 2 – Tanya Fisher, Sheet 99, Line 3;

Exhibit 3 – Requita Lawrence, Sheet 99, Line 2;

Exhibit 4 – Sherry Robinson, Sheet 99, Line 1;

Exhibit 5 – Isaiah Sims, Sheet 99, Line 9;

Exhibit 6 – Lindsey Cunningham, Sheet 103, Line 5;

Exhibit 7 – Ebony Durr, Sheet 251, Line 4;

Exhibit 8 – Gekeetah Williams, Sheet 251, Line 2;

Exhibit 9 – Beverly E. Johnson, Sheet 251, Line 3;

Exhibit 10 – Cornell Woods, Sheet 247, Line 10; and

Exhibit 11 – Alicia M. Cuevas, Sheet 117, Line 2.

Objectors objected to the admission of these affidavits on the grounds that without a picture they lacked veracity. While that deficiency may affect the weight to be given these affidavits, without more, evidencing these facts have been controverted, the objection was overruled and candidate's Exhibits 2 through 11 were admitted over objectors' objection. However, these affidavits, candidate's Exhibits #2 through 11, were given no weight in this recommendation.

At this juncture the candidate rested his rebuttal case and argument was heard.

Objectors argued, in sum, that the candidate engaged in a misleading candidacy, that there was a pattern of fraud evidenced by the testimony and evidence objectors had produced, and that while there is no strict distance requirement for signing in the presence of the circulator, at a minimum the candidate would have to be able to see the petition signers sign.

When questioned by the hearing officer, objectors acknowledged that a requirement that the circulator be able to see the petition signers sign is not the same as requiring that the circulator be able to read the signatures as they are placed on the page, but further argued that there was significant doubt that the candidate was even present as to the pages under attack, such that the entire nomination must be struck as perjurous and fraudulent.

Candidate argued that the testimony and evidence supported the candidate's contention that the candidate circulated the pages under attacked, that there was no requirement that the candidate physically present the petition to the petition signers, but only that the petition signers sign in the presence of the circulator, in this case the candidate, citing *Ramirez v. Andrade* 372 Ill.App.3d 68, 865 N.E.2d 508 (1st Dist. 2007) as support.

This hearing officer recommends overruling the objection, finding the nomination papers valid, and further declaring that the candidate's name, Anthony V. Clark, appear on the ballot for nomination as the Democratic candidate for the office of U.S. Representative for the 7th Congressional District of Illinois, to be voted upon at the March 20, 2018, General Primary Election.

The candidate, after the Rule 6 Examination, had 485 signatures more than the 1,356 signature requirement, and objectors elected to proceed strictly upon a 'pattern of fraud' claim within which objectors had the burden of proving the 'pattern of fraud' by clear and convincing evidence. *See Durr v. Love*, 03 CO IL 028 (Cir.Ct. Cook County, February 20, 2003). Objectors did not meet their burden.

At the outset, this hearing officer notes that a simple hand count reveals that the candidate, as circulator, circulated and signed some 156 petition sheets.

Relevant to these proceedings, objectors challenged 7 specific sheets, 90, 99, 117, 247, 103, 244, 247 and 251.

Sheet 90, with an alleged deceased signer, had virtually no evidence adduced against the circulation of it. Even assuming the person who signed it was not someone named Willie Upshire, or that someone intended to sign in the name of the deceased person, no evidence

was presented that the candidate-circulator had any knowledge that the signer knowingly forged the name of a deceased person, much less abetted it.

Sheets 117 and 247 had no evidence of any sort presented against their proper circulation, leaving sheets 99, 103, 244, 247, and 251 at issue.

As to these five petition pages, objectors presented two live witnesses, each having also been interviewed by objectors' investigators and executed an affidavit (Ex. #2 & 3) prior to their live testimony, and six additional affidavits, all admitting that they signed the sheet and line indicated, but challenging the candidate's presence at the time of signing.

These two witnesses each testified credibly that they did not see the candidate and that he did not circulate the petition sheet to these signers, but each also corroborated the candidate's position, brought out through several witnesses, regarding the locations where the candidate-circulator claims he was present at the time these sheets were circulated.

While the testimony and affidavits presented by objectors, (Exhibits 2 through 8) constitute evidence that the candidate-circulator was not present at the time these individual signed the petition, the strength of the evidence must also be viewed in light as to what Ms. Cherita Phillips testified.

Each affiant, #2-8, averred that the petition sheet ". . . **was not circulated by Anthony V. Clark, himself but by another person on behalf of Anthony V. Clark.**" Further asserting "**I do not know the circulator's name, but I do know that it was not Anthony V. Clark.**" [emphasis added by hearing officer].

This written statement was expanded upon by the oral testimony of Mr. Duffie (Sheet 251) and Ms. Banks (Sheet 244), each stating they did not see the candidate at the time they

signed.

However, much, if not all of the evidentiary weight of the 8 affidavits offered by objectors is directly undermined by the testimony of Ms. Cherita Phillips, who testified that prior to having the affiants execute the affidavits (including Ms. Banks and Mr. Duffie) Ms. Phillips provided these individuals with her (legally deficient) definition as to what it meant for someone to have circulated a petition sheet, telling each affiant that a circulator was "... the person who came up to you and asked you to sign the petition. ..." further asking the petition signers if the candidate in the affidavit picture was the individual who asked the petition signer to sign.

That is not the legal standard in Illinois. It is not necessary for the circulator to physically present the petition sheet to the signer nor personally ask the person to sign. Under this legally deficient definition, the affiants may very well have been correct, in that the candidate may not have physically handed them the petition sheet nor personally asked them to sign. However, that is not the legal standard a circulator is required to meet. Rather, as set forth in *Ramirez*, cited *supra*, it is sufficient if the petition is signed in the presence of the circulator, without more.

The balance of the testimony of these two witnesses, Banks and Duffie, to-wit, that the candidate was not present at the time they signed, is controverted by equally credible testimony offered by the candidate directly, the witnesses called by the candidate, and candidate's Exhibit 1. This finding of fact is made without reference to the candidate's rather weakly formatted affidavits, Exhibit #2 through 11.

In sum, objectors presented credible evidence that 2 out of 156 sheets circulated by

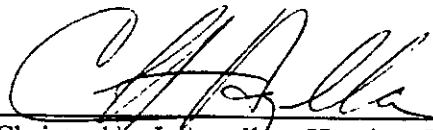
the candidate may not have been signed in the presence of the candidate-circulator against which the candidate presented equally credible rebuttal testimony to the contrary.

It is this hearing officer's findings and recommendation that objectors have failed to prove by clear and convincing evidence that the candidate has engaged in a pattern of fraud, and the further recommendation of the hearing officer is that the objection should be overruled, the nomination papers declared valid and sufficient, and the candidate's name appear on the ballot.

WHEREFORE your hearing officer recommends to this Board that it adopt the above findings, decisions and recommendations of the hearing officer, that the Board overrule the objection of the objectors, that the Board declare the candidate's nomination papers sufficient in law and fact, and that the candidate's name, Anthony V. Clark, appear on the ballot for nomination as the Democratic candidate for the office of U.S. Representative for the 7th Congressional District of Illinois, to be voted upon at the March 20, 2018, General Primary Election

Christopher J. Agrella
Hearing Officer
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Respectfully Submitted,



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