

ANDREW C.M. NELSON, <i>Objector</i> ,	No. 11-EB-MUN-29	)	
LORA A. CHAMBERLAIN,		)	
	<i>Objector</i> ,	No. 11-EB-MUN-31	)
DEVON REID,	<i>Objector</i> ,	No. 11-EB-MUN-37	)
WILLIAM WALLS, III,	<i>Objector</i> ,	No. 11-EB-MUN-39	)
MICHELE C. EVANS-BROCK,		)	
	<i>Objector</i> ,	No. 11-EB-MUN-60	)
and		)	Consolidated
SYLVESTER "JUNEBUG"		)	Hearing Officer Morris
HENDRICKS,	<i>Objector</i> ,	No. 11-EB-MUN-61	)
		)	
		)	
	vs.	)	
		)	
RAHM EMANUEL,	<i>Candidate.</i>	)	

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**REPORT OF THE HEARING OFFICER**

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To the Board of Election Commissioners of the City of Chicago:

Hearing Officer JOSEPH A. MORRIS reports as follows:

Introduction

1. These cases present challenges to the candidacy of Rahm Emanuel, who seeks to be a candidate for Mayor of the City of Chicago in the Municipal General Election to be held on February 22, 2010.

2. (a) The issues of fact and of law that are present in these cases are either identical or overlap substantially. Indeed, the Objectors' Petitions in Nos. MUN-1, MUN-2, MUN-4, MUN-5, MUN-7, MUN-8, MUN-12, MUN-14, MUN-15, MUN-17, MUN-18, MUN-21, MUN-22, MUN-23, MUN-27, MUN-28, MUN-31, MUN-37, and MUN-61 were identical to each other in all material

aspects apart from the identity of the petitioners-objectors, respectively, and the petitions themselves were prepared using a shared printed form on which blanks were left in which the petitioners-objectors wrote in their names and residential information but in which, otherwise, the text is the same from petition to petition. Similarly, the petitions in Nos. MUN-9 and MUN-11 were also identical in all material elements save for the names and residential addresses of the petitioners-objectors, and appear to have been prepared using a common document template. The Objectors in Nos. MUN-10 and MUN-24 were represented by the same counsel; the Objectors in Nos. MUN-1, MUN-8, MUN-27, and MUN-39 were also represented by shared counsel; the Candidate was represented by the same counsel in every case. It served the interests of justice and of economy in the administration of justice to consolidate the 26 cases for all purposes before the Hearing Officer. (A total of 32 timely, verified objectors'-petitions were initially filed against the Candidate, but six of them were disposed of, either by voluntary withdrawal or by dismissal for want of prosecution, before evidentiary hearings commenced. The six petitions that were withdrawn or dismissed did not raise any issues, claims, or theories that were not also raised in at least one of the remaining 26 objectors'-petitions.

(b) The Objectors in Nos. 10 and 24 objected to the consolidation, but, over their objections and in order to promote the interests of justice by avoiding the potential for inconsistent outcomes, conserve the resources of the Board and the parties, avoid the punishing effects of compelling the same witnesses to testify over and over again in a series of separate trials on the same issues, and to expedite proceedings in light of the limited time available before the fixed date for the election, all cases were consolidated.

3. Issues were refined in the course of pre-trial proceedings, and ultimately the parties

agreed that the essential questions presented by the consolidated cases were as follows:

(a) Whether or not the Candidate filed, with his nomination papers, petition sheets that were not the original sheets signed by the voters and by the circulator of each sheet, respectively, but were photocopies or duplicates of such sheets, in violation of Section 10-4 of the Illinois Election Code, 10 ILCS § 5/10-4.

(b) Whether or not the Candidate failed to file a timely Statement of Financial Interests with the Board of Ethics of the City of Chicago, as required by Section 2-164-50 of the Chicago Municipal Code.

(c) Whether or not the Candidate is in arrears in the payment of an indebtedness due to the City of Chicago, in violation of Section 3.1-10-5(b) of the Illinois Municipal Code, 65 ILCS § 5/3.1-10-5(b).

(d) Whether or not the Candidate is a qualified elector of the municipality and will have resided in the City of Chicago at least one year next preceding the election (scheduled for February 22, 2011), as required by Section 3.1-10-5(a) of the Illinois Municipal Code, 65 ILCS § 5/3.1-10-5(a).

#### Preliminary and Pre-Trial Proceedings

4. These cases came before the Hearing Officer, pursuant to notice, for initial hearing on December 6, 2010. The Objectors in Nos. 10 and 24 were present by their counsel, Burton S. Odelson, Matthew M. Welch, and Lauren M. Da Valle, all of Odelson & Sterk, Ltd.; the Objectors in Nos. MUN-1, MUN-8, MUN-27, and MUN-39 were present by their counsel, Andrew Finko; the Objectors in Nos. 7 and 27 were present by their counsel, Russell Stewart; the Objectors in all other

cases were present in their proper persons; and the Candidate, who is the Respondent in all cases, was present by his counsel, Michael J. Kasper, Kevin M. Forde of Kevin M. Forde, Ltd., and Michael K. Forde, of Mayer Brown LLP (who would later be joined by Michael J. Gill, also of Mayer Brown LLP). No issue was raised as to sufficiency or timeliness of notice of the objections or of the hearing.

5. All parties filed written appearances and served them upon each other. The appearances of all parties were entered into the record.

6. Each party stated that he was in possession of the Rules of the Electoral Board.

#### Competence and Impartiality of the Hearing Officer

7. Two written motions for disqualification of the Hearing Officer, in Nos. 21 and 23, were filed with, and decided by the Board. Both motions were denied by the Board at its meeting of December 10, 2010, at 9:00 a.m., prior to the entry of any substantive orders herein by the Hearing Officer. At various times during the proceedings, including during the evidentiary hearings, an Objector orally requested the Hearing Officer to recuse himself from these cases. No specific allegation of prejudice or other ground for recusal was made. The Hearing Officer believed, and believes, in good faith, that he can hear and decide all matters that would come, and did come, before him in these cases, and can make proper recommendations of decisions to the Board, without prejudice or undue influence, including without prejudice or other effect as a result of any of the motions for disqualification or requests for recusal. The Hearing Officer does not intend to recuse himself from the cases, and does not recuse himself from them.

8. No motions directed to the competence and impartiality of the Hearing Officer were

ever filed by any party.

#### Further Proceedings at the Initial Hearing

9. During the initial hearing on December 6, 2010, other, non-substantive, matters were transacted.

10. For the reasons set forth in Paragraph 2(a) of this Report, the Hearing Officer proposed, in accordance with Rules 1(b)(ii) and 2(a) of the Rules of Procedure of the Board of Election Commissioners of the City of Chicago as the Duly Constituted Electoral Board for Hearing and Passing Upon Objections to Nomination Papers and Petitions for Questions of Public Policy and to Section 2-1006 of the Illinois Code of Civil Procedure, 735 ILCS § 5/2-1006, to consolidate the cases for all purposes, including pre-trial proceedings and trial, before the Hearing Order. Over the objections of the Objectors in Nos. 10 and 24, the cases were consolidated accordingly.

11. Without objection, the Candidate's nomination papers and petitions, as filed with the Board, were admitted into evidence as Board Group Exhibit A. The several Verified Objector's Petitions were admitted into the record as Board Group Exhibit B, with each particular Objector's Petition identified as a sub-exhibit by its case number. The proofs and returns of service of the Objectors' Petitions and of the call and notice of initial hearing were admitted into the record as Board Group Exhibit C, with the proofs and returns of service in each particular case again identified as a sub-exhibit by respective numbers of the cases. The written appearances of the parties were received into the record as Board Exhibit D, with the appearances filed in each particular case once again identified as a sub-exhibit by the case number.

12. The parties were directed to file preliminary motions, if any, including any motion

to strike or test the legal sufficiency of a Verified Objector's Petition, on or before Tuesday, December 7, 2010, at the hour of 5:00 p.m.; and to file responses, if any, to such motions, on or before Thursday, December 9, 2010, at the hour of 5:00 p.m.

13. A Second Case Management Conference was scheduled for Friday, December 10, 2010, and the initial hearing was adjourned.

14. An Initial Case Management Order was entered on December 6, 2010, and a copy of it is attached hereto as Appendix 1.

#### Candidate's Motions to Strike Objectors' Petitions

15. The Candidate filed timely motions to strike and dismiss the Verified Objectors' Petitions in No. 10 and in No. 39 and the Objectors filed timely responses.

16. At the Second Case Management Conference held on Friday, December 10, 2010, at 11:00 a.m., the Hearing Officer stated that the motions to strike and dismiss would be taken up with the case-in-chief.

17. On the bases of the proceedings held herein and of this report and the recommendation made herein, the motions to strike and dismiss are now denied as moot.

#### Further Preliminary Proceedings

18. A Second Case Management Conference was held on Friday, December 10, 2010, commencing at 11:00 a.m. Sundry requests for subpoenas were made and were ruled upon. Groundrules were established for the conduct of evidentiary proceedings, which were scheduled. A timetable for the submission of proposed stipulations of fact and exhibits was established. A

further Case Management Conference was scheduled for Monday, December 13, 2010, at 9:00 a.m. A Second Case Management Order was entered on Friday, December 10, 2010, and a copy of it is attached hereto as Appendix 2.

19. A Third Case Management Conference was held on Monday, December 13, 2010, commencing at 9:00 a.m. Further requests for subpoenas were made and were ruled upon. Further arrangements were made for the submission of proposed stipulations of fact and exhibits. Groundrules for the conduct of evidentiary hearings were adjusted and confirmed, and evidentiary proceedings were scheduled to commence on Tuesday, December 14, 2010, at 9:00 a.m. A Third Case Management Order was entered on December 13, 2010, and a copy is attached hereto as Appendix 3.

#### Trial

20. The evidentiary hearing was convened on December 14, 2010 (approximately 12 hours of testimony), and continued on December 15, 2010 (approximately 8 hours of testimony), and December 16, 2010 (approximately 6 hours of testimony). The Objectors were present by counsel or, if *pro se*, in their proper persons. The Candidate appeared in his proper person on December 14, 2010, and at all times by his counsel of record. The hearing was open to the public. A motion to exclude witnesses was made and was granted.

21. Opening statements were not made.

22. Testimony was taken from the following nine witnesses, each of whom duly put upon oath or affirmation to tell the truth, the whole truth, and nothing but the truth:

(a) The Candidate, Rahm Emanuel, called by the Maksym Objectors.

- (b) Lori Halpin, called by the Maksym Objectors.
- (c) James L. Hayes, called by Objector Walls.
- (d) Mee Kim-Chavez, called by the Candidate.
- (e) Donald J. Edwards, called by the Candidate.
- (f) Paul Levy, called by the Candidate.
- (g) Marge Halperin, called by the Candidate.
- (h) James Kane, called by the Candidate.
- (i) Dana S. Douglas, called by the Candidate.

23. Every party had an opportunity to examine each witness on initial examination, for all purposes, and on re-examination.

24. The following exhibits were received into evidence and made part of the record:

- (a) Board Group Exhibit A, consisting of the Candidate's nomination papers, including voter petition sheets.
- (b) Board Group Exhibit B, consisting of the several Objectors' Petitions.
- (c) Board Group Exhibit C, consisting of returns of service of the Objectors' Petitions and of the call and notice of the initial hearing.
- (d) Board Group Exhibit D, consisting of the written appearances filed on behalf of the parties.
- (e) Board Exhibit E, consisting of the Report of James Hayes, the Board's retained expert forensic document examiner.
- (f) Group Exhibit F, consisting of materials submitted by the Candidate.
- (g) Group Exhibit G, consisting of materials submitted by the Maksym

Objectors.

- (h) Exhibit H, a Statement of Organization (Form D-1), filed with the Illinois State Board of Elections on October 6, 2010, relating to the Chicago for Rahm Emanuel committee.
- (i) Exhibit I, a Statement of Financial Interests filed by Rahm Emanuel with the Board of Ethics of the City of Chicago on November 9, 2010.
- (j) Exhibit J, a City of Chicago vehicle sticker, expiring June 30, 2009, and bearing No. P 954592.

25. Every Objector had an opportunity to present a case-in-chief, to call witnesses, and offer exhibits. Cases-in-chief were presented by Objectors in turn and, in due course, each Objector rested. In those cases when an Objector was not present when called upon to present a case-in-chief, the Objector was held to have waived the presentation of a case-in-chief and was deemed to have rested.

26. The Candidate had an opportunity to present a case in chief, to call witnesses, and to offer exhibits. The Candidate presented his case-in-chief and rested.

27. Every party was given an opportunity to call rebuttal witnesses. No rebuttal witnesses were called.

28. The evidentiary record was closed. The evidence will be discussed, *infra*, as each issue is evaluated and discussed.

29. Every party was invited to deliver an oral closing argument. Closing arguments were heard on December 16, 2010.

30. Every party was invited to file a written closing brief, and was instructed to do so on

or before Monday, December 20, 2010, at 12:00 noon. Briefs were filed by the Maksym Objectors in Nos. 10 and 24, Objector Castillo in No. 9, Objector Babbington in No. 14, and Objector Chamberlain in No. 31. The Candidate filed a brief. The Hearing Officer read and considered all of the briefs.

#### Evaluation and Analysis

The Candidate's nomination papers were challenged on four grounds. Each will be considered in turn.

**I. ARE THE CANDIDATE'S NOMINATION PAPERS INVALID BECAUSE THE CANDIDATE FILED PETITION SHEETS THAT WERE NOT THE ORIGINAL SHEETS SIGNED BY THE VOTERS AND BY THE CIRCULATOR OF EACH SHEET, RESPECTIVELY, BUT WERE PHOTOCOPIES OR DUPLICATES OF SUCH SHEETS, IN VIOLATION OF SECTION 10-4 OF THE ILLINOIS ELECTION CODE, 10 ILCS § 5/10-4?**

31. Objector Walls identified more than 200 voter petition signature sheets filed by the Candidate that he alleged were not the original signature pages actually signed by voters, but were, instead, photocopies or duplicates of the original signature pages. Section 10-4 of the Illinois Election Code, 10 ILCS § 5/10-4, expressly commands that only original signature sheets be filed, and expressly prohibits the filing of photocopies or duplicates. Objector Walls further claimed that, if the Candidate had filed hundreds of petition sheets that were not originals, then not only should the Candidate's signature total be reduced accordingly, but that the submission was evidence of an effort by the Candidate to avoid the proper testing of the legitimacy of his petitions and, as such, should be deemed to show fraud and a pattern of fraud so as to invalidate his candidacy papers in their entirety.

32. At the initial hearing held on December 6, 2010, the Hearing Officer referred the

challenged petition signature sheets to James L. Hayes, the Board's retained expert forensic document examiner, for analysis and a report. See INITIAL CASE MANAGEMENT ORDER, ¶ 18 (Dec. 6, 2010). The Hearing Officer then called the attention of the parties to Board Rule 6(h) and stated that the right of any party to appeal from the "decision" of the examiner would be preserved and that a reasonable opportunity to present contrary evidence would be given.

33. On December 12, 2010, Documents Examiner Hayes filed a written report, which was received into the record of these proceedings as Exhibit E. A copy of the Hayes Report is attached hereto as Appendix 4. Copies of the Hayes report were served promptly by the Board upon all parties.

34. Document Examiner Hayes reported, in pertinent part, as follows:

The exhibits were examined visually and microscopically to determine their characteristics. Based upon the examinations conducted I have determined that the signatures examined on the pages listed in the attached list [the Appendix-Recapitulation of challenged signature sheets set forth in Objector Walls's Objector's Petition] are original signatures.

35. Objector Walls and the Candidate stipulated in open proceedings that James Hayes "has testified to [*sic*] numerous occasions on behalf of the City of Chicago Board of Elections as a forensic document examiner. And we trust that he's qualified to do that in this instance." Tr. (Dec. 15, 2010, 3:50 p.m. Sess.) at 126. Objector Walls called Document Examiner Hayes as a witness and both Objector Walls and the Candidate, conducting *voir dire* of the witness, questioned him extensively about his expert credentials. No objection was made to the witness or to his qualification as an expert witness. (Having established the expert credentials of James Hayes across a broad spectrum of fields in the domain of forensic document examination, Objector Walls then sought to elicit testimony from the witness regarding another, completely unrelated document. The inability

of the witness to offer expert testimony on the spot regarding that other document does not affect his expertise, or his credibility, regarding the originalness of the challenged petition sheets.)

36. No evidence, testimonial, documentary, or otherwise, was offered to contradict the expert opinion of Document Examiner Hayes that the challenged petition signature sheets were all, in fact, original. The only evidence in the record regarding the challenged petition signature sheets is the expert opinion of Document Examiner Hayes that the challenged petition signature sheets were all original. That evidence stands unobjected-to, uncontested, and un-rebutted.

37. The finding of fact that the challenged petition signature sheets were original, and were not photocopies or duplications, is thus compelled by the evidence.

38. Inasmuch as the petition signature sheets are found to be genuine, there is no basis to exclude the signatures contained thereon from the total of signatures attributed to the Candidate's filed nomination papers, nor is there any fraud or pattern of fraud to be found connected with the nomination papers.

39. The first asserted ground, then, for invalidation of the Candidate's nomination papers must be rejected.

**II. ARE THE CANDIDATE'S NOMINATION PAPERS INVALID BECAUSE THE CANDIDATE FAILED TO FILE A TIMELY STATEMENT OF FINANCIAL INTERESTS WITH THE BOARD OF ETHICS OF THE CITY OF CHICAGO, AS REQUIRED BY SECTION 2-164-50 OF THE CHICAGO MUNICIPAL CODE?**

40. It is undisputed that Section 10-5 of the Illinois Election Code, 10 ILCS § 5/10-5, requires the written, public disclosure of certain financial interests as a condition of candidacy. That statute provides, in pertinent part, as follows:

Nomination papers filed under this Section are not valid if the candidate named

therein fails to file a statement of economic interests as required by the Illinois Governmental Ethics Act in relation to his candidacy with the appropriate officer by the end of the period for the filing of nomination papers....

41. It is equally undisputed, however, that the Candidate in this instance did, indeed, file the Statement of Economic Interests that is required by the Illinois Ethics in Government Act; that he filed the same seasonably, on November 9, 2010, with the County Clerk of Cook County; and that proof of such timely filing was included in the nomination papers that he filed on November 15, 2010, with this Board. *See* Board Group Ex. A; Group Ex. G, Sub-Ex. 44.

42. Rather, Objectors, and in particular Objector Walls, assert that Section 2-164-50 of the Chicago Municipal Code erects an entirely different duty on the part of a candidate to make public, written disclosure of certain financial interests, and that it is in respect of this duty that the Candidate failed. The cited section of the Chicago Municipal Code provides, in pertinent part, as follows:

Every person who qualifies as a candidate shall thereby become a "reporting individual" for purposes of Chapter 2-156 of this Code, and shall file a statement of financial interests, in the form prescribed by the board of ethics pursuant to said chapter, within five days after qualifying as a candidate.

The ordinance does not define the phrase, "qualifying as a candidate". It does define "candidate", however, as follows:

"Candidate" means any person who seeks nomination for election, election to or retention in any elected office of the government of the city, whether or not such person is elected. A person seeks nomination for election, election or retention if he or she (1) takes the action necessary under the laws of the State of Illinois to attempt to qualify for nomination for election, election to or retention in public office, or (2) receives contributions or makes expenditures, or gives consent for any other person to receive contributions or make expenditures with a view to bringing about his or her nomination for election or election to or retention in such office.

Chi.Mun.Code., § 2-164-10(b). Even so, the term “qualify”, or as broadened in the quoted definition, “attempt to qualify” remains undefined.

43. On November 9, 2010, the Candidate filed a “City of Chicago 2010 Statement of Financial Interests”, further described in printed text on the face of the form as “Form for Candidates to Elected Office of the City of Chicago for the February 2011 Election”, with the Board of Ethics of the City of Chicago. *See* Ex. I.

44. Objector Walls contends that the Candidate had “qualified as a candidate” no later than October 6, 2010, when one David Boul filed a Statement of Organization (Form D-1) with the Illinois State Board of Elections registering a campaign committee called “Chicago for Rahm Emanuel”. *See* Ex. H. It appears from the face of that form that the date on which the committee was created was October 2, 2010; Boul executed the form on October 4, 2010; and “the amount of funds available as of creation date” was \$0. The only witness who testified at the hearing regarding Boul and the Chicago for Rahm Emanuel committee was the Candidate, whose testimony regarding his connection with Boul and the committee was ambiguous, at best. In any event, Objector Walls contends, if the Candidate “qualified as a candidate” during the first few days of October 2010, then his filing with the Board of Ethics on November 9, 2010, did not occur within the prescribed five days thereafter.

45. The Candidate, by contrast, contends that he “qualified as a candidate” or “attempted to qualify” on November 15, 2010, when he filed a valid set of nomination papers with this Board, including his statement of candidacy. If that is the case, it is reasoned, then the Candidate more than satisfied the requirements of the ordinance in that his Statement of Financial Interests was filed even *before*, and not after, he “qualified as a candidate”.

46. If the issue turns on that argument, the Hearing Officer concludes that the Candidate has the better of it. The words chosen by the City Council, to “qualify as a candidate”, are artful and appear to mean a decisive step far removed from informal political activity. To “qualify as a candidate” does not mean “think about” candidacy, “announce” candidacy, set up a “campaign committee” or “exploratory committee”, “raise money toward a candidacy” (even as the raising of money might help define a “candidate”, but a “candidate” with money could still be “unqualified”), or “campaign”. Rather, it surely must denote the taking of formal measures which, if properly and fully executed, require that, as a matter of law, election agencies must put one’s name on the ballot. A mere announcement, the raising of money, a warm send-off by the President of the United States, and the filing of a Statement of Organization with the State Board of Elections, taken singly or all together, will not put one’s name on the ballot. Only a proper filing of valid nomination papers will accomplish that result. To that extent, then, this Hearing Officer would hold that the Candidate “qualified as a candidate”, or at least “attempted to qualify as a candidate”, on November 15, 2010, when he filed his nomination papers with this Board. (Whether or not he succeed in his “attempt to qualify” — that is, if, indeed, he “qualified” — depends, of course, on whether or not those nomination papers were otherwise valid.

47. The inquiry into the meaning of “qualify as a candidate” as used in the ordinance, however, turns out to be unnecessary, however, because the Chicago City Council has put enforcement of the ordinance beyond the authority of this Board. (The Hearing Officer so concludes without prejudice to the question of whether or not the Chicago City Council would have authority, in any event, to put enforcement of the ordinance on the shoulders of this Board, a question which is not reached in this case.) The ordinance, itself, prescribes the penalty for failure to file the

requisite disclosure statement in the following provision:

No elected official shall be allowed to take the oath of office, continue in office or receive compensation from the city unless he has filed the statement of financial interest required by Section 2-164-050....

Chi.Mun.Code., § 2-164-60. The sanctions imposed by the ordinance include bars from taking the oath of office, from continuance in office, and from being made. (It is not clear, by the way, that the prescribed sanctions will be imposed for failure of timely filing or of any filing.) Conspicuously absent from the list of sanctions for failure to file the statement is ejection from the ballot.

48. The omission from the ordinance of sanctions for failure to file the disclosure statement that are enforceable in the setting of an election contest was not inadvertent on the part of the City Council, which, in Sections 2-8-90, 2-8-130, and 2-8-210, *et seq.*, of the Chicago Municipal Code established machinery for the enforcement of the disclosure requirement as against aldermen, including the creation, at Section 2-8-210, of elaborate mechanisms for “election contests” with the City Council itself as “the tribunal before which such contest shall be determined.” Chi.Mun.Code, § 2-8-210. Yet there is no counterpart provision in the municipal code for the settlement of an election contest regarding the office of Mayor.

49. In any event, the City Council, through its ordinances, has made no effort to confer authority on this Board to enforce against a candidate for Mayor (or any other office) to police or enforce its municipal ethical disclosure requirements. Objector Walls suggests that Section 21-22 of the Illinois Cities and Villages Act of 1941 (as amended), 65 ILCS § 20/21-22, bootstraps the provisions of Chicago’s municipal ordinances for election purposes, but the statutory provisions cited by the Objector relate specifically, and only, to elections for alderman,

50. The holding of the Illinois Supreme Court in *Cinkus v. Village of Stickney Municipal*

*Officers Electoral Board*, 228 Ill.2d 200, 836 N.E.2d 1011 (2008), urged by Objector Walls as support for the relief that he seeks here, is unavailing to him. That case is readily distinguished from this one on its facts, in that in *Cinkus* a candidate had been put on clear notice of a transgression (a failure to pay a municipal debt) and had sought, and received, an opportunity to contest and cure the matter and failed to do either. What is more, in *Cinkus* the Supreme Court found an express State statutory predicate for electoral board authority that is utterly missing in this case. The Court read the word “eligible”, as found in Section 3.1-10-5 of the Illinois Municipal Code, 65 ILCS § 5/3.1-10-5, *in pari materia* with another statute, Section 10-5 of the Illinois Election Code, 10 ILCS § 5/10-5. Objectors here are asking the Board, not to read two enactments of the same legislature in such a way so as to harmonize them, but, instead, to read a municipal ordinance, on a limited subject — enforcement of which is explicitly confided to sundry municipal institutions, including the City Council and the Board of Ethics created by the ordinance — *in pari materia* with a State statute governing the conduct of elections in every jurisdiction in the State. The Supreme Court has held before *Cinkus* that provisions of the Illinois Municipal Code and the Illinois Election Code may be considered *in pari materia* for purposes of statutory construction. *United Citizens of Chicago & Illinois v. Coalition to Let the People Decide in 1989*, 125 Ill.2d 332, 531 N.E.2d 802 (1988). It is a far different matter, however, to attribute to the Illinois General Assembly, in adopting the Illinois Election Code, the desire or expectation that the texts it had enacted as Section 10-5 of the Illinois Election Code would be conditioned, stretched, and limited by, so as to be harmonized with, local ordinances.

51. This Board should not invent sanctions when no legislature, State or municipal, has imposed them, and should not assume jurisdiction in the absence of a clear statutory predicate for

the exercise of authority. *Kozel v. Illinois State Board of Elections*, 126 Ill.2d 58, 533 N.E.2d 796 (1988).

52. The established precedent of this Board, never reversed or overruled by a court and held in a consistent line of cases reaching back to 1991, is that the Board does not have authority to invalidate nomination papers for an alleged failure to comply with the City of Chicago's Ethics Ordinance. *Bocanegra v. Sanchez*, No. 07-EB-ALD-107, CBEC (Jan. 9, 2007); *Bednarz v. Doherty*, No. 91-EB-ALD-53, CBEC (Jan. 16, 1991).

53. The second asserted ground, then, for invalidation of the Candidate's nomination papers must be rejected.

**III. MUST THE CANDIDATE BE REMOVED FROM THE BALLOT BECAUSE HE IS IN ARREARS IN THE PAYMENT OF AN INDEBTEDNESS DUE TO THE CITY OF CHICAGO, IN VIOLATION OF SECTION 3.1-10-5(B) OF THE ILLINOIS MUNICIPAL CODE, 65 ILCS § 5/3.1-10-5(B)?**

54. Objectors are on much stronger ground when they invoke *Cinkus v. Village of Stickney Municipal Officers Electoral Board*, *supra*, in support of the proposition — the clear holding of the Illinois Supreme Court in that case — that Section 3.1-10-5(b) of the Illinois Municipal Code, read in conjunction with Section 10-5 of the Election Code, denies the “right to candidacy” to one who was “in arrears of a debt owed” to a municipality at the time he filed his nomination papers.

55. In *Cinkus* the amount of the indebtedness was not extraordinarily large; it was \$100. There was, however, no ambiguity about the existence of the indebtedness or that it was in arrears: The candidate had contested the debt; the debt had gone to judgment; and the judgment remained unpaid.

56. In the instant case, by contrast, it is asserted that, if the candidate was a “resident” of the City of Chicago for 2009, then he should have acquired and paid for municipal vehicle stickers for each of his motor vehicles, wherever they were located, during that interval, and it is asserted that he failed to do so, thus incurring an indebtedness to the city.

57. The Candidate produced evidence of the acquisition of a vehicle sticker for the period ending on June 30, 2009 (after which time, there is no doubt in the record, the vehicle in question was physically relocated by the Candidate’s spouse to Washington, D.C.). See Ex. J.

58. If the indebtedness exists, however, the City of Chicago is unaware of its existence. Over the signature of Christine M. Haynes of the Indebtedness Check Unit in the Accounts Receivable Division of the Department of Revenue of the City of Chicago, an “Indebtedness Statement” was introduced into evidence, without objection, stating,

The Department of Revenue performed a thorough indebtedness investigation at the request of the individual referenced above [Rahm Emanuel] on the date indicated [November 10, 2010] for outstanding debt owed to the City of Chicago.

Please accept this as confirmation that no outstanding debt was found across any of the debt types, Parking, Water, Administrative Hearings, Inspection Fees, Cost Recovery and Tax / Licensing.

Group Ex. F, Sub-Ex. 43A. An identical statement, issued on the same date, was received in evidence regarding the Candidate’s spouse, Amy Rule. Group Ex. F, Sub-Ex. 48.

59. Thus, although the record will show abundant speculation about whether or not the Candidate owes money to the City of Chicago for one or more vehicle stickers for one or more years, the uncontroverted *evidence* in the record shows no indebtedness.

60. In these circumstances, the Candidate has done remarkably well in proving a negative, and should receive, in any event, the benefit of all inferences that can be drawn from the absence of

affirmative evidence of his indebtedness. It is, after all, the burden of the Objectors, to come forward with evidence to prove the existence of the facts that would bar candidacy. But even if the record-keeping of the City's Department of Revenue should be disregarded as suspect, and even if speculation should be entertained about whether or not the Candidate failed to buy one or more vehicle stickers that he was obliged to obtain, it is not at all clear that indebtedness alone is sufficient to compel the invalidation of his nomination papers.

56. The controlling statute, as previously noted, is Section 3.1-10-5(b) of the Illinois Municipal Code, 65 ILCS 5/3.1-10-5(b), which provides as follows:

A person is not eligible for an elective municipal office if that person is in *arrears* in the payment of a tax or other indebtedness due to the municipality or has been convicted in any court located in the United States of any infamous crime, bribery, perjury, or other felony.

*(Emphasis added.)*

57. The statute, by its plain terms, conditions the right to candidacy upon the absence, not of mere indebtedness, but of being in "arrears" in the payment of an indebtedness. Under venerable canons of construction, the insertion of the extra words, shifting the trigger from "indebtedness" to "arrears", may not be dismissed as mere surplusage. *Astoria Federal Savings & Loan Association v. Solimino*, 501 U.S. 104, 112 (1991); *Sprietsma v. Mercury Marine*, 537 U.S. 51, 63 (2003) (interpreting word "law" broadly could render word "regulation" superfluous in preemption clause applicable to a state "law or regulation"). See also *Bailey v. United States*, 516 U.S. 137, 146 (1995) ("we assume that Congress used two terms because it intended each term to have a particular, nonsuperfluous meaning") (rejecting interpretation that would have made "uses" and "carries" redundant in statute penalizing using or carrying a firearm in commission of offense). From the facts of *Cinkus* we know what "arrears" means: It means a mature debt, about which there is no doubt,

the terms of which have been fixed, the payment of which is now manifestly overdue. The indebtedness in *Cinkus* was not a parking ticket issued yesterday, or a charge for some service that the putative debtor did not know had been incurred or for which he was obliged to pay. Rather, it was a fine that the debtor had contested in formal proceedings, and that had gone to judgment, a judgment that was now overripe.

58. The Objectors have not come close to establishing, by a preponderance of the evidence, the existence of an “indebtedness”, let alone that the Candidate is in “arrears” in the payment of it. For this reason, the third ground of objection to the validity of the Candidate’s nomination papers must be rejected.

**IV. IS THE CANDIDATE A QUALIFIED ELECTOR OF THE CITY OF CHICAGO AND WILL HE HAVE RESIDED IN THE CITY OF CHICAGO AT LEAST ONE YEAR NEXT PRECEDING THE ELECTION (SCHEDULED FOR FEBRUARY 22, 2011), AS REQUIRED BY SECTION 3.1-10-5(A) OF THE ILLINOIS MUNICIPAL CODE, 65 ILCS § 5/3.1-10-5(A)?**

59. Nobody denies that, from and after October 1, 2010, Rahm Emanuel has been, and is, a resident of the City of Chicago, “principally present” at 754 North Milwaukee Avenue. 1st Agreed Statement of Facts (Stipulations), ¶ 84 (Dec. 13, 2010).

60. Similarly, nobody denies that Rahm Emanuel was anything other than a citizen and resident of Illinois and a resident of the City of Chicago on January 2, 2009. He began that morning as an elected member of the United States House of Representatives, representing Illinois.<sup>1</sup> He had

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<sup>1</sup> In his testimony and in his written submissions, the Candidate repeatedly asserts that he “represented Chicago” or even “the North Side of Chicago” in Congress. More properly, however, the Candidate represented “Illinois”. Although Illinois elects United States Representatives by district, it is the electors who, under Illinois law, must reside in the district. The qualifications for a Representative are specified in Section 2 of Article I of the United States Constitution, and are both spare and instructive: “No person shall be a Representative who shall not have attained to the Age of twenty five Years, and been seven Years a Citizen of the United States,

first been elected a Representative from the Fifth Congressional District of Illinois on November 5, 2002, (1st Agreed Statement of Facts (Stipulations), ¶ 68 (Dec. 13, 2010), and was reelected by the voters of the same district again in 2004, 2006, and 2008. *Id.* at ¶ 69. On January 2, 2009, he resigned his office as Representative. *Id.* at ¶ 70. The essential question in this case is: Did something happen after January 2, 2009, to deprive the Candidate of his status as a “resident” of Chicago for the period from and including February 22, 2010, to and including September 30, 2010?

61. The question matters because Section 3.1-10-5(a) of the Illinois Municipal Code, 65 ILCS 5/3.1-10-5(a) provides, in pertinent part, as follows:

A person is not eligible for an elective municipal office unless that person is a qualified elector of the municipality and has resided in the municipality at least one year next preceding the election....

62. The Candidate seeks election as Mayor of Chicago in the municipal general election to be held on February 22, 2011, and so the material question is as to whether or not he has resided in Chicago from February 22, 2010. “A permanent abode is necessary to constitute a residence within the meaning of the Election Code. *Walsh v. County Officers Electoral Board of Cook County*, 267 Ill.App.3d 972, 976, 642 N.E.2d 843, 845 (1st Dist. 1994). *See also Anderson v. Pifer*, 315 Ill. 164, 167, 146 N.E.2d 171, 173 (1924) (right of college students to vote in college town depends on evidence, including intent, as to permanent abode); *Stein v. County Board of School Trustees of Du Page County*, 85 Ill.App.3d 251, 255-257, 229 N.E.2d 165, 167-168 (2d Dist. 1967), *affirmed*, 40 Ill.2d 477, 240 N.E.2d 668 (1968) (residence of voter in detachment and annexation election is place of “permanent abode”, determined by “physical presence” and “intention of

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and who shall not, when elected, be an Inhabitant of that State in which he shall be chosen.” There is no indication whatsoever in the record, however, that, at any relevant time, the Candidate was an “inhabitant” of any place in Illinois other than Chicago.

remaining there as a permanent home”). For purposes of election-related questions in Illinois, it is thus well established that “Two elements are necessary to create a residence: physical presence and intent to remain there as a permanent home.” *Delk v. Board of Election Commissioners of the City of Chicago*, 112 Ill.App.3d 735, 738, 445 N.E.2d 1232, 1235 (1st Dist. 1983); *Walsh, supra*, 267 Ill.App.3d at 976, 642 N.E.2d at 845 (quoting *Delk*).

63. The Maksym Objectors argue that

“Residence” has no fixed, exact meaning in the law, but may have a variety of meanings dependent upon the context in connection with which it is employed as well as the subject matter involved and the purposes of such subject matter. *Hughes v. Illinois Public Aid Commission*, 2 Ill.2d 374, 380[, 118 N.E.2d 14, 17] (1954), citing C.J.S. Residence, page 290. Because eligibility to run for office is often closely linked to the ability to vote within a particular jurisdiction, [courts] will often use precedent from voter qualification “residency” cases when examining “residency” issues for candidacy qualification purposes. See *People ex rel. Madigan v. Baumgartner*, 355 Ill.App.3d 842, 847 (4th Dist. 2005); see also *Dillavou v. County Officers Electoral Bd. of Sangamon County*, 260 Ill.App.3d 127, 132-33 (4th Dist. 1994); *Walsh v. County Officers Electoral Bd. of Cook County*, 267 Ill.App.3d 972, 976 (1st Dist. 1994).

In this matter, “residence” means “permanent abode”, the principal dwelling place of a person. *Stein v. County Bd. of School Trustees of Du Page County*, 85 Ill.App.2d 251-255-56 (2nd Dist. 1967); citing *Clark v. Quick*, 377 Ill. 424, 426 (1941). Two elements are required for a residence: (i) physical presence, and (ii) an intent to remain there as a permanent abode. *Dillavou*, 260 Ill.App.3d at 132 \*\*\*\*

MAKSYM OBJECTORS’ MEMORANDUM OF LAW IN SUPPORT OF OBJECTORS’ PETITION, at 8 (Dec. 20, 2010).

64. Citing much of the same case law regarding the meaning of “residence”, the Candidate responds that the Maksym Objectors would wrongly put him to the burden of having to establish his residency in the first place, whereas

Once residence is established, as it indisputably was in the instant case, ... residence is “presumed to continue until the contrary is shown, and the burden of proof is on the person who claims there has been a change.” *Hatcher v. Anders*, 117 Ill.App.3d 236, 239 (2d Dist.

1983) (citing *In re Estate of Jackson*, 48 Ill.App.3d 1035, 1038 (4th Dist. 1977); *Powers v. Kelly*, 83 Ill.App.2d 289, 296-97 (5th Dist. 1967); *In re McCalmont's Estate*, 16 Ill.App.2d 246, 255-56 (2d Dist. 1958)). It is “[o]nly when abandonment has been proven” that “residence is lost.” *Hatcher*, 117 Ill.App.3d at 239 (citing *Stein v. County Bd. of Sch. Trustees of Du Page County*, 40 Ill.2d 477, 479 (Ill. [2d Dist.] 1968)). Proof of abandonment must come in the form of “[a]ffirmative acts.” *Hatcher*, 117 Ill.App.3d at 329 (citing *Hughes v. Public Aid Commission*, 2 Ill.2d 374, 380-81 (Ill. 1954); *Davis v. Davis*, 9 Ill.App.3d 922, 926 (1st Dist. 1973), *leave to appeal denied*).

65. The heart of the question of the Candidate’s residence is not whether the Candidate established residence in Chicago during 2010 but if, at some time prior to, or during, but in any event affecting, the period from and after February 22, 2010, he abandoned it.

66. A careful sifting of the evidence discloses the following facts:

(a) The Candidate was born in Chicago. *See* Certificate of Live Birth, Group Ex. F, Sub-Ex. 27; Tr. (Dec. 14, 2010) 439.

(b) The Candidate and his spouse met in Chicago and were married in Chicago. Tr. (Dec. 14, 2010) 440-441.

(c) On December 1, 1998, the Candidate and his spouse bought a house at 4228 Hermitage Avenue in Chicago (the “Hermitage house”). Tr. (Dec. 14, 2010) at 39; 1st Agreed Statement of Facts (Stipulations), ¶ 6 (Dec. 13, 2010); *see* Deed, Group Ex. F, Sub-Ex. 19A.

(d) The Candidate and his spouse have owned the “Hermitage house” continuously since they purchased it, and own it today. Tr. (Dec. 14, 2010) at 437.

(e) In 1998 the Candidate, his spouse, and their three children moved into the Hermitage house and all lived there continuously until the events of 2009. Tr. (Dec. 14,

2010) at 39-41.

(f) They renovated the Hermitage house in 2008. Tr. (Dec. 14, 2010) at 51; Tr. (Dec. 15, 2010) at 261.

(g) On May 17, 1999, the Candidate and his spouse enlarged their land ownership in Chicago by purchasing part of the lot that adjoins the Hermitage house. 1st Agreed Statement of Facts (Stipulations), ¶ 8 (Dec. 13, 2010); *see* Deed, Group Ex. F, Sub-Ex. 19B.

(h) The Candidate and his spouse have paid real property taxes on the Hermitage house every year since 1998. 1st Agreed Statement of Facts (Stipulation), ¶ (Dec. 13, 2010).

(i) In December 1998 the Candidate obtained an Illinois driver's license that set forth the Hermitage house as his address. Tr. (Dec. 14, 2010) at 167.

(j) The Candidate has maintained an Illinois driver's license ever since 1998. Tr. (Dec. 14, 2010) at 97, 167. Since purchasing the Hermitage house, the Candidate never obtained or held a Washington, D.C., driver's license. *Id.* at 97, 168, 479.

(k) The Candidate's family motor car was registered at the address of the Hermitage house from 1999 through September 2010. Tr. (Dec. 14, 2010) at 66.

(l) The Candidate registered to vote from the Hermitage house in 1999 and has voted consistently from that address in every election from that time until and including February 2010. Tr. (Dec. 14, 2010) at 473-474; 1st Agreed Statement of Facts (Stipulation), ¶¶ 59-60; *see* Voter Registration record, Group Ex. F, Sub-Ex. 3, and Voting Record, Group Ex. F, Sub-Ex. 3. *Ibid.*

(m) With the Hermitage house identified as his address, the Candidate was on the ballot for nomination and election to the United States House of Representatives, and was

elected a United States Representative representing the Fifth Congressional District of Illinois, which lies within the City of Chicago, in the elections of 2002, 2004, 2006, and 2008. Tr. (Dec. 14, 2010) at 41-42; 1st Agreed Statement of Facts (Stipulation), ¶¶ 68-70 (Dec. 13, 2010).

(n) On January 2, 2009, the Candidate resigned his office as a United States Representative from Illinois. Tr. (Dec. 14, 2010) at 420; 1st Agreed Statement of Facts (Stipulation), ¶ 70 (Dec. 13, 2010).

(o) In January 2009, having served informally as the Chief of Staff of the Office of Presidential Transition, based in November and December 2010 in Chicago and thereafter in Washington, D.C., the Candidate accepted employment in Washington, D.C., as Chief of Staff of the Office of Presidential Transition and then, after January 20, 2009, as Chief of Staff to the President of the United States. Tr. (Dec. 14, 2010) 424; 445; 1st Agreed Statement of Facts (Stipulation), ¶¶ 29-31.

(p) The Candidate lived in an “in-law apartment” in Washington, D.C., from January through May 2009, while his spouse and children continued to live during that time in the Hermitage house in Chicago. Tr. (Dec. 14, 2010) at 43.

(q) In June 2009 the Candidate leased a house at 3407 Woodley Road (the “Woodley house”) for a term commencing on June 1, 2009, and ending on August 31, 2010, which lease was subsequently extended to end on June 30, 2011. 1st Agreed Statement of Facts (Stipulation), ¶¶ 34, 36 (Dec. 13, 2010).

(r) In June 2009 the Candidate, his spouse, and their three children moved into the Woodley house. Tr. (Dec. 14, 2010) at 44.

(s) In June 2009 the Candidate and his spouse moved most of their clothes and most of their personal belongings from the Hermitage house to the Woodley house. 1st Agreed Statement of Facts (Stipulations), ¶ 17 (Dec. 13, 2010).

(t) From June 30, 2009, to October 1, 2010, the Candidate and his family have been principally present at the Woodley house. 1st Agreed Statement of Facts (Stipulations), ¶ 40 (Dec. 13, 2010).

(u) The Candidate and his spouse have not paid real property taxes on the Woodley house. 1st Agreed Statement of Facts (Stipulations), ¶ 41 (Dec. 13, 2010).

(v) From June 2009 until October 1, 2010, the Candidate and his spouse received nearly all their mail at the Woodley house, and arranged to have their mail forwarded during that time from the Hermitage house to the Woodley house. 1st Agreed Statement of Facts (Stipulations), ¶ 18.

(w) In 2008, 2009, and 2010 the Candidate and his spouse did their personal banking in Chicago, maintaining a bank account at J.P. Morgan Chase Bank in Chicago and throughout this time have printed the Hermitage address on their personal checks. Tr. (Dec. 14, 2010) at 471; *see* 1st Agreed Statement of Facts (Stipulations), ¶¶ 26-28, (Dec. 13, 2010).

(x) The Candidate and his spouse leased the Hermitage house to Robert and Lori Halpin for an initial term of from September 1, 2009, to August 31, 2010. 1st Agreed Statement of Facts (Stipulations), ¶ 19 (Dec. 13, 2010); *see* Group Ex. F, Sub-Ex. 16A.

(y) The lease was extended to end on June 30, 2011. 1st Agreed Statement of Facts (Stipulations), ¶ 21 (Dec. 13, 2010); *see* Group Ex. F, Sub-Ex. 16B.

(z) The ending date of the extension of the lease to the Halpins of the Hermitage house was timed to coincide with the end of the school year of the Candidate's children. Tr. (Dec. 14, 2010) at 57; Tr. (Dec. 16, 2010) at 21-22.

(aa) In 2009 the Candidate and his spouse left behind in the Hermitage house numerous household items, including their bed, two televisions, a stereo system, and a piano that were not placed in storage but were left in rooms of the Hermitage house to be used and occupied by the Halpins. Tr. (Dec. 14, 2010) at 51.

(bb) In 2009 the Candidate and his spouse also left behind in a crawl space storage area of the Hermitage house numerous other possessions of sentimental value, family heirlooms, china, and books, occupying more than 100 boxes. Tr. (Dec. 14, 2010) at 45-46, 51, 64; Tr. (Dec. 15, 2010) at 179-180; *see* Group Ex. F, Sub-Exs. 56 A-E and G-I).

(cc) Notwithstanding the fact that the Candidate paid income tax to the Government of the District of Columbia earned there in 2009, the Candidate continued to pay State income tax in Illinois, and made quarterly tax payments for each quarter of 2009. Tr. (Dec. 14, 2010) at 70, 471; 1st Agreed Statement of Facts (Stipulation), ¶¶ 49, 51-53 (Dec. 13, 2010); *see* Group Ex. F, Sub-Exs. 13-14.

(dd) Notwithstanding the fact that the Candidate paid income tax to the Government of the District of Columbia earned there in 2010, the Candidate continued to pay State income tax in Illinois, and made quarterly tax payments for each concluded quarter of 2010. Tr. (Dec. 14, 2010) at 472; Agreed Statement of Facts (Stipulation), ¶¶ 54-55 (Dec. 13, 2010); *see* Group Ex. F, Sub-Ex. 15.

(ee) The Candidate never sought or attempted to sell the Hermitage house or to

buy the Woodley house. Tr. (Dec. 16, 2010) at 20, 26.

(ff) The Candidate testified that he considers Chicago to be his true home; that he has never considered living anywhere other than Chicago on a permanent basis; and that he always intended to return to Chicago, and to the Hermitage house, when his service to the President of the United States had ended, service that he expected would last at most from 18 months to two years before he returned to Chicago. Tr. (Dec. 14, 2010) at 219, 442, 446, 281.

(gg) The Candidate made consistent statements to sundry friends regarding his consideration of Chicago as his permanent home and of his intention to serve the President of the United States for no more than 18 months to two years and then returning to Chicago. Tr. (Dec. 14, 2010) at 412; Tr. (Dec. 15, 2010) at 269, 271; Tr. (Dec. 16, 2010) at 336.

(hh) On October 1, 2010, the Candidate resigned the office of Chief of Staff to the President of the United States. Tr. (Dec. 14, 2010) at 106; 1st Agreed Statement of Facts (Stipulations), ¶30 (Dec. 13, 2010).

(ii) On October 1, 2010, the Candidate signed a lease renting an apartment at 754 North Milwaukee Avenue in Chicago for a term commencing on October 1, 2010, and ending on June 30, 2011. 1st Agreed Statement of Facts (Stipulations), ¶ 82 (Dec. 13, 2010).

(jj) Since October 1, 2010, the Candidate has been principally present at 754 North Milwaukee Avenue in Chicago. 1st Agreed Statement of Facts (Stipulations), ¶ 84 (Dec. 13, 2010).

67. The preponderance of this evidence establishes that the Candidate never formed an intention to terminate his residence in Chicago; never formed an intention to establish his residence

in Washington, D.C., or any place other than Chicago; and never formed an intention to change his residence.

68. The preponderance of this evidence further establishes that throughout the relevant period in 2009 and 2010 the Candidate maintained significant contacts in and with the City of Chicago and the State of Illinois, including continuing ownership of real estate; continuing ownership of valuable personal property of kinds that a reasonable person would store at the place he deemed to be his permanent residence and to which he planned to return.

69. The preponderance of this evidence, particularly including the coincidental terms of the leases and extensions of leases of the Hermitage house and the Woodley house compel the inference that the Candidate and his spouse intended to return to occupy the Hermitage house and abide there.

70. The preponderance of this evidence establishes that the Candidate intended his presence in Washington, D.C., solely for the purpose of permitting him to discharge what he perceived to be a duty to serve the United States in the capacity of the Chief of Staff to the President of the United States.

71. The weight of the evidence shows that the Objectors failed to bear their burdens of proof and persuasion that the Candidate intended, in 2009 or 2010, to effect any change in his residence or to be anything other than a resident of Chicago for electoral purposes.

72. Once residence has been established in Illinois, the touchstone of continued residence is the intention of the resident and not the physical fact of "having a place to sleep". *Smith v. People of the State of Illinois ex rel. Frisbie*, 44 Ill. 16 (1867).

73. During the entire time, from February 22, 2010, to October 1, 2010, for which

Objectors contend that the Candidate was not a “resident” of Chicago by reason of his physical presence during that time outside Illinois, the Candidate was employed as the Chief of Staff of the President of the United States. The Board may take administrative notice of the fact that this is a public office of considerable weight and importance in the life of the nation. Although the office of Chief of Staff in the White House is of relatively recent origins in the history of the United States, dating back to the administration of President Eisenhower, it is one whose duties are directly assigned by the President in the discharge of his Constitutional authority as head of the executive branch of the Federal government. John E. Chubb and Paul E. Peterson, *Can the Government Govern?* (Washington: Brookings Inst. Press 1989); S. Kernell and S. L. Popkin, eds., *Chief of Staff: Twenty Five Years of Managing the Presidency* (Berkeley: U.Calif.Press 1986); Congress has acknowledged, and supported, by statute the authority of the President to appoint and pay members of his staff. Thus the President has statutory authority to “appoint and fix the pay of . . . such number of . . . employees as he may determine to be appropriate.” 3 U.S.C. § 105(a)(2)(D).

74. It should not be lost that every citizen and resident of Illinois is also a citizen of the United States. U.S. Const., Amdt. 14, § 1. This “dual citizenship” inheres in the very idea of a federal republic, and the business of the United States is as much the legitimate concern of a citizen of Illinois as is the business of the State or of one of its municipalities. To this end, Illinois law expressly protects the residential status and electoral rights of Illinois citizens who are called to serve the national government. Section 3-2 of the Illinois Election Code, 10 ILCS § 5/3-2 thus provides, in pertinent part:

[N]o elector ... shall be deemed to have lost his or her residence in any precinct or electoral district in this State by reason of his or her absence on business of the United States, or of this State.

74. There is no principled reason to exclude service in the Executive Office of the President or elsewhere in the executive branch from the ambit of “business of the United States” any more than to exclude service in the armed forces, the diplomatic corps, Congress, or the Federal judiciary.

75. The preponderance of the evidence establishes that the sole reason for the Candidate’s absence from Chicago during 2009 and 2010 was by reason of his attendance to business of the United States.

76. It has not been established that the Candidate, a resident of Chicago, abandoned his status as such a resident. In any event, his absence from Illinois during the time in question is excused, for purposes of the safeguarding and retention his status as a resident and elector, by express operation of Illinois law.

77. For this reason, the fourth and final ground of objection to the validity of the Candidate’s nomination papers must be rejected.

#### Recommended Decision

78. On the bases of a facial examination of the nomination papers, of the Objectors’ Petitions, of all the testimony heard and exhibits received at an evidentiary hearing, and of all other proceedings held herein, the Hearing Officer recommends that the Electoral Board enter the following findings of fact:

(a) The Candidate’s petition signature sheets consisted of original sheets and not photocopies or duplicates.

(b) The Candidate did not fail to file a timely Statement of Financial Interests

with the Board of Ethics of the City of Chicago.

(c) The Candidate is not in arrears with respect to an indebtedness to the City of Chicago.

(d) Prior to 2009 the Candidate was a resident of Chicago.

(e) The Candidate in 2009 and 2010 did not abandon his status as a resident of Chicago, and so remained a resident of Chicago.

(f) The Candidate has resided within the City of Chicago for the year preceding the election to be held on February 22, 2011.

(g) From January 2009 until October 1, 2010, the Candidate was largely absent from the City of Chicago, and his absence was occasion by his attention to business of the United States.

79. The Hearing Examiner recommends that the Electoral Board enter the following conclusions of law:

(a) The Candidate satisfies the residency requirement imposed by Section 3.1-10-5(a) of the Illinois Municipal Code, 65 ILCS § 5/3.1-10-5(a), as a qualification for election as the Mayor of Chicago.

(b) The Objectors' Petitions are not well founded, and the relief sought therein should be denied.

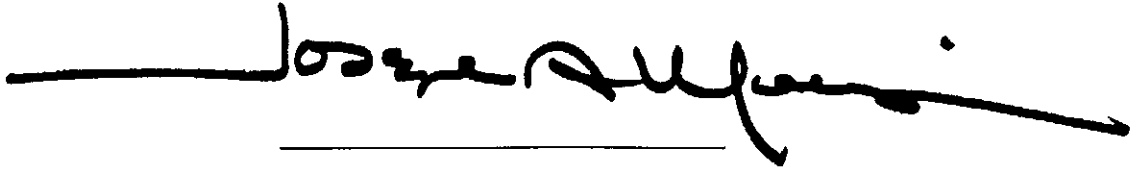
(c) The Candidate's nomination papers are sufficient in law and fact.

80. The Hearing Examiner recommends that the Electoral Board enter the following final administrative decision:

The name of Rahm Emanuel shall appear and shall be printed on the ballot for election to the office of Mayor of the City of Chicago to be voted for at the Municipal General Election to be held on February 22, 2011.

Dated: December 22, 2010.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Joseph A. Morris", written over a horizontal line. The signature is stylized and cursive.

JOSEPH A. MORRIS

## **APPENDIX 1**

BEFORE  
 THE 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 ELECTION TO THE OFFICE  
 OF MAYOR OF THE CITY OF CHICAGO  
 IN THE MUNICIPAL GENERAL ELECTION TO BE HELD  
 ON FEBRUARY 22, 2011

MARIE J. WOHAADLO, *Objector*, No. 11-EB-MUN-1 )  
 PAUL MCKINLEY, *Objector*, No. 11-EB-MUN-2 )  
 QUEEN SISTER )  
     GEORGETTA DELONEY, )  
                                   *Objector*, No. 11-EB-MUN-4 )  
 ERIC GATEWOOD, *Objector*, No. 11-EB-MUN-5 )  
 PATRICK McDONOUGH, *Objector*, No. 11-EB-MUN-7 )  
 MARIE J. WOHAADLO, *Objector*, No. 11-EB-MUN-8 )  
 ALFREDO CASTILLO, *Objector*, No. 11-EB-MUN-9 )  
 WALTER P. MAKSYM, Jr., )  
     and THOMAS L. )  
     McMAHON, *Objectors*, No. 11-EB-MUN-10 )  
 JEFFREY JOSEPH BLACK, )  
                                   *Objector*, No. 11-EB-MUN-11 )  
 DONNA MONTGOMERY, *Objector*, No. 11-EB-MUN-12 )  
 THOMAS J. BABBINGTON, )  
                                   *Objector*, No. 11-EB-MUN-14 )  
 ALICE COFFEY, *Objector*, No. 11-EB-MUN-15 )  
 GARY POZNIAK, *Objector*, No. 11-EB-MUN-17 )  
 JONATHAN STAMPS, *Objector*, No. 11-EB-MUN-18 )  
 GILDA WALKER, *Objector*, No. 11-EB-MUN-21 )  
 ZAKIYYAH S. MUHAMMAD, )  
                                   *Objector*, No. 11-EB-MUN-23 )  
 THOMAS L. McMAHON, *Objector*, No. 11-EB-MUN-24 )  
 SAUL Z. CHARAK, *Objector*, No. 11-EB-MUN-27 )  
 WILLIAM J. KELLY, *Objector*, No. 11-EB-MUN-28 )

Consolidated

Hearing Officer Morris

*Caption continues on next page*

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**INITIAL CASE MANAGEMENT ORDER  
 (EMANUEL CASES)**

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3. Appearances on behalf of the Candidate were filed by Michael Kasper, Kevin M. Forde, and Michael Forde. Copies of the appearances on behalf of the Candidate were served in the open proceedings upon all appearing Objectors and counsel for Objectors.

4. All parties were given copies of the Rules of Procedure adopted by the Board and were advised that, whether or not a party is represented by counsel, each party is required to know and to follow the Rules.

5. The parties were informed that all proceedings before the Hearing Officer are open to the public, including the press and other news media, and that a written transcript of the proceedings will be prepared by a certified court reporter. The parties were informed how to obtain copies of the transcript, if desired. The parties were instructed that the only proper ways to communicate with the Hearing Officer regarding the case are (a) on the open record of a hearing; (b) through written filings made with the Board; and through inquiries and other necessary communications addressed to the Hearing Officer's clerk. The Clerk, Odell Stirling, was introduced and his contact information was given to all parties.

6. The Objector's Petition was withdrawn in *Montgomery v. Emanuel*, No. 11-EB-MUN-3, and that case has been addressed by the Hearing Officer in a separate Report (and recommended decision).

7. Upon the call of the following cases, the Candidate appeared by the above-named counsel, but no one appeared on behalf of the respective Objectors: *Wilson v. Emanuel*, No. 11-EB-MUN-13; *Douglas v. Emanuel*, No. 11-EB-MUN-19; *Gibson v. Emanuel*, No. 11-EB-MUN-20; *Gilbert v. Emanuel*, No. 11-EB-MUN-22. Examination of the Sheriff's returns of service in each case disclosed that, in each case, the Sheriff reported that the party was not found and that service was not effected. In separate orders the Hearing Officer directed that a further attempt at service upon the Objector be made in each case.

8. Upon the call of the following case, the Candidate appeared by the above-named counsel, and no one appeared on behalf of the Objector: *Paul Diguída*, No. 11-EB-MUN-16. The case was passed and was called again at about 12:00 noon. Again, no one appeared on behalf of the Objector. The case was passed and was called again at about 12:40 p.m., nearly one and three-quarter hours after the scheduled starting time of the hearing. The Hearing Officer thereupon stated that he would enter an recommended decision that *Diguída v. Emanuel*, No. 11-EB-MUN-16 be dismissed for want of prosecution. A separate Report (and recommended decision) to that effect was entered.

9. The Hearing Officer received from the Board the referral of a motion in *Maksym v. Emanuel*, No. 11-EB-MUN-10, to disqualify a member of the Board, Chairman Neal. In a separate order the Hearing Officer gave leave to Chairman Neal to respond to the submissions of the parties on or before December 8, 2010, at 5:00 p.m.; gave leave to the parties to file their respective responses, if any, to the submission, if any, of Chairman Neal on or before December 9, 2010; and

set the motion down for a status hearing and, if possible, for a ruling on December 10, 2010, at 11:00 a.m. without further notice.

10. Two Objectors stated that they wished to object to the assignment to the Hearing Officer of the cases arising from their respective Objector's Petitions. The Hearing Officer stated that he found no ground upon which to recuse himself and would not do so. The Hearing Officer directed any party wishing to object to the assignment to the Hearing Officer of the party's case to do so in writing, by motion filed with the Board, no later than this day, December 6, 2010.

11. Counsel for the Candidate stated that they intend to file motions to strike and dismiss various Objector's Petitions. The Candidate was given leave to file a motion to strike and dismiss any appearing Objector's Petition on or before December 7, 2010, at 5:00 p.m.; each Objector against whose Objector's Petition a motion to strike and dismiss is filed shall respond to such motion on or before December 9, 2010, at 5:00 p.m.; and a status hearing on the motions, if any, to strike and dismiss shall be held on December 10, 2010, at 11:00 a.m. without further notice.

12. A general discussion was held of the issues presented by the Objectors' Petitions filed by the several Objectors and of commonalities and overlap among them. The Hearing Officer stated that, from his initial review of the faces of the several Objector's Petitions, the following four questions appear:

- (a) Whether or not the Candidate has satisfied applicable residency requirements, a question that is common to all pending Objector's Petitions;
- (b) Whether or not the Candidate is in arrears on indebtedness to the City of Chicago, and whether or not it is within the authority of the Board to impose sanctions for any such arrearage on indebtedness, a question that is presented by some Objector's Petitions;
- (c) Whether or not the Candidate failed seasonably to file a Municipal Statement of Financial Interests, and whether or not it is within the authority of the Board to impose sanctions for any such failure, a question that is presented by some Objectors' Petitions; and
- (d) Whether or not the Candidate's candidacy papers contain petition signature pages that consist, not of the original signatures of registered voters but, at best, photocopies of signatures or entirely photocopied pages of signatures and, if so, whether or not, if all such signatures are invalid, the candidate has nonetheless filed a sufficient number of valid signatures to qualify for the ballot and, regardless of the numerical sufficiency of the remaining signatures, whether or not the submission by the Candidate of photocopies of signatures evidences fraud or a pattern of fraud so as to invalidate the

Candidate's candidacy papers in their entirety, a question that is presented by some Objector's Petitions.

The Hearing Officer invited any and all Objectors to identify any additional issues that are stated on the faces of the several Objector's Petitions of appearing Objectors that will require hearing and that may require the taking of evidence. None were identified.

13. The Hearing Officer stated that it is his intention to conduct proceedings in these cases with the greatest expedition possible, particularly so as to provide ample time, if necessary, for administrative and judicial review. To that end, the Hearing Officer encouraged the parties to cooperate to the fullest possible extent with each other to simplify proceedings, avoid duplication in the presentation of evidence and arguments, and agree upon, or stipulate to, as many relevant facts as possible so as to avoid time-consuming processes of taking evidence on questions of fact that are not genuinely in dispute.

14. Over the objection of the Objectors in *Maksym v. Emanuel*, No. 11-EB-MUN-10, the cases identified in the caption of this order were consolidated.

15. The Hearing Officer stated that witnesses will not be compelled to attend hearings and give evidence on questions of fact to which the parties can readily stipulate or which they can prove in some more reasonable and economical way and that the same witness will not be compelled to testify over and over again to the same facts in multiple and repetitive hearings but, rather, each material witness, if any, will be called only once, and each Objector and the Candidate will have a full and fair opportunity to question the witness, but will also be instructed to avoid duplicative, immaterial, and irrelevant interrogation.

16. In the spirit of the Hearing Officer's encouragement of the parties to consider the maximum use of stipulations of fact, counsel for the Objectors in *Maksym v. Emanuel*, No. 11-EB-MUN-10, and counsel for the Candidate volunteered to draft a proposed joint stipulation of facts. They were instructed to file same on or before December 7, 2010, at 5:00 p.m. Copies of the same will then be served by the Board upon all appearing Objectors by e-mail, by fax, or otherwise in accordance with the contact information given in their respective written appearances. Any Objector who, for any reason, has not received a copy of the proposed joint stipulations of fact by the morning of December 8, 2010, was instructed to contact the Board and, in particular, the Hearing Officer's clerk, Odell Stirling, to make arrangements to obtain such a copy as speedily as possible. All other parties desirous of proposing stipulations of fact in addition to those proposed by the Objectors in *Maksym v. Emanuel* and the Candidate shall submit their proposed additional stipulations of fact, if any, in writing on or before December 9, 2010. The proposed stipulations of fact will be addressed at the status hearing that will be held on December 10, 2010, at 11:00 a.m.

17. The Hearing Officer asked the parties how many witnesses they expected to call at an evidentiary hearing. Counsel for the Objectors in *Maksym v. Emanuel*, No. 11-EB-MUN-10, and counsel for the Candidate stated numbers between four and nine each but did not know whether or

not their respective witness lists contained duplicate names. Nonetheless, counsel for the Objectors in *Maksym v. Emanuel* and for the Candidate each stated that they would have a number of witnesses ready to appear and to testify, voluntarily, without subpoenas, on December 13, 2010. The following schedule for the disclosure of witnesses and other evidence, and for requests for subpoenas, was thereupon established:

- (a) Counsel for the Objectors in *Maksym v. Emanuel*, No. 11-EB-MUN-10, and for the Candidate shall file and exchange their witness lists and their requests for subpoenas on or before December 7, 2010, at 5:00 p.m. The Board will serve copies of the witness lists and the requests for subpoenas upon all other parties in the same manner as it will serve upon them copies of the proposed joint stipulations of fact to be filed by the Objectors in *Maksym v. Emanuel* and the Candidate.
- (b) Counsel for the Objectors in *Maksym v. Emanuel*, No. 11-EB-MUN-10, and for the Candidate shall file any lists of additional witnesses, and any additional requests for subpoenas, on or before December 9, 2010, at 5:00 p.m.
- (c) All other Objectors shall file their respective witness lists and requests for subpoenas on or before December 9, 2010, at 5:00 p.m.
- (d) The witnesses which shall be listed and the subpoenas which shall be requested on the foregoing schedule shall pertain to all questions of fact that a party wishes to address in an evidentiary hearing, including all questions of fact pertaining to the issue of residency and all questions of fact pertaining to any other issue. Thus, any forensic or expert witness to be called with respect to whether or not petition signature pages in the Candidate's nomination papers are genuine or are photocopies shall be listed.
- (e) Witness lists and subpoena requests shall be addressed at the status hearing that will be held on December 10, 2010, at 11:00 a.m.
- (f) Every party intending to offer into evidence any documents or other tangible evidence shall produce and mark the same for inspection and copying by all other parties at the status hearing that will be held on December 10, 2010, at 11:00 a.m.

18. The Hearing Officer referred the signature sheets contained in the Candidate's nominating papers to the Board's Handwriting Expert for analysis and for the return of a report on the questions of (a) whether or not the sheets identified in the recapitulation sheets of the Objector's Petition in *Walls v. Emanuel*, No. 11-EB-MUN-39 are original signatures or are photocopies, and (b) in the event that the Expert's answer to the first question is, in whole or in part, in the affirmative, then whether or not he finds evidence that the submission of photocopies instead of original signatures was intentional and whether or not he finds evidence of a pattern of fraud in the submission. The Hearing Officer called the attention of the parties to Rule 6(h) of the Rules of


Procedure of the Board and said that, consistent with that rule, the right of any party to appeal from the "decision" of the Board's Expert would be preserved and a reasonable opportunity to present contrary evidence would be given.

19. An evidentiary hearing shall be held on December 13, 2010, commencing at 12:00 noon without further notice. The Objectors in *Maksym v. Emanuel*, No. 11-EB-MUN-10, should be prepared to call witnesses and will be given the first opportunity to conduct direct examination of each witness they call. The Hearing Officer will be prepared to sit until 12:00 midnight, if necessary, to permit the direct examinations, cross-examinations, and re-direct and re-cross examinations of all such witnesses to be completed that day.

20. The Objectors are encouraged to discuss whether or not it would be convenient and advisable to organize a committee of managers, perhaps led by experienced counsel such as Mr. Odelson, Mr. Finco, and Mr. Stewart, with perhaps one or two representatives of the *pro se* Objectors, to guide and simplify the conduct of the Objectors' cases, to divide labor, and to avoid duplication. The question of the establishment of such a committee of managers will be addressed at the status hearing that will be held on December 10, 2010, at 11:00 a.m.

Dated: December 6, 2010.

Enter:

A handwritten signature in black ink, appearing to read "Joseph A. Morris", written over a horizontal line.

JOSEPH A. MORRIS  
Hearing Officer

## **APPENDIX 2**

BEFORE  
 THE 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 ELECTION TO THE OFFICE  
 OF MAYOR OF THE CITY OF CHICAGO  
 IN THE MUNICIPAL GENERAL ELECTION TO BE HELD  
 ON FEBRUARY 22, 2011

2010 DEC 11 A 8:55

MARIE J. WOHADELO, *Objector*, No. 11-EB-MUN-1 )  
 PAUL MCKINLEY, *Objector*, No. 11-EB-MUN-2 )  
 QUEEN SISTER )  
     GEORGETTA DELONEY, )  
                                   *Objector*, No. 11-EB-MUN-4 )  
 ERIC GATEWOOD, *Objector*, No. 11-EB-MUN-5 )  
 PATRICK McDONOUGH, *Objector*, No. 11-EB-MUN-7 )  
 MARIE J. WOHADELO, *Objector*, No. 11-EB-MUN-8 )  
 ALFREDO CASTILLO, *Objector*, No. 11-EB-MUN-9 )  
 WALTER P. MAKSYM, Jr., )  
     and THOMAS L. )  
     McMAHON, *Objectors*, No. 11-EB-MUN-10 )  
 JEFFREY JOSEPH BLACK, )  
                                   *Objector*, No. 11-EB-MUN-11 )  
 DONNA MONTGOMERY, *Objector*, No. 11-EB-MUN-12 )  
 THOMAS J. BABBINGTON, )  
                                   *Objector*, No. 11-EB-MUN-14 )  
 ALICE COFFEY, *Objector*, No. 11-EB-MUN-15 )  
 GARY POZNIAK, *Objector*, No. 11-EB-MUN-17 )  
 JONATHAN STAMPS, *Objector*, No. 11-EB-MUN-18 )  
 GILDA WALKER, *Objector*, No. 11-EB-MUN-21 )  
 DENIS GILBERT, *Objector*, No. 11-EB-MUN-22 )  
 ZAKIYYAH S. MUHAMMAD, )  
                                   *Objector*, No. 11-EB-MUN-23 )  
 THOMAS L. McMAHON, *Objector*, No. 11-EB-MUN-24 )  
 SAUL Z. CHARAK, *Objector*, No. 11-EB-MUN-27 )  
 WILLIAM J. KELLY, *Objector*, No. 11-EB-MUN-28 )

Consolidated  
 Hearing Officer Morris

*Caption continues on next page*

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**SECOND CASE MANAGEMENT ORDER  
 ( EMANUEL CASES )**

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ANDREW C.M. NELSON, <i>Objector</i> , No. 11-EB-MUN-29	)	
LORA A. CHAMBERLAIN,	)	
	)	<i>Objector</i> , No. 11-EB-MUN-31
DEVON REID,	)	<i>Objector</i> , No. 11-EB-MUN-37
WILLIAM WALLS, III,	)	<i>Objector</i> , No. 11-EB-MUN-39
MICHELE C. EVANS-BROCK,	)	
	)	<i>Objector</i> , No. 11-EB-MUN-60
and	)	
SYLVESTER "JUNEBUG"	)	
HENDRICKS,	)	<i>Objector</i> , No. 11-EB-MUN-61
	)	
	)	
	)	vs.
	)	
RAHM EMANUEL,	)	<i>Candidate</i> .

Consolidated

Hearing Officer Morris

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**SECOND CASE MANAGEMENT ORDER  
( EMANUEL CASES )**

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This matter coming on to be heard for a status hearing and case management conference on December 20, 2010, and the Hearing Officer being fully advised in the premises,

IT IS HEREBY REPORTED AND ORDERED AS FOLLOWS:

1. Pursuant to proper notice, this matter came on to be heard for a status hearing on December 10, 2010.

2. All Objectors named in the caption of this order were present, either by counsel or in their proper persons or both, with the exceptions of the following: No. 4, Queen Sister Georzetta Deloney; No. 37, Devon Reid; No. 60, Michele C. Evans-Bock; and No. 61, Sylvester "Junebug" Hendricks. Objectors Maksym and McMahon, Nos. 10 and 24, were present by counsel, Burton S. Odelson and Matthew Welch. Objector Wohadlo, Nos. 1 and 8, was present by counsel, Andrew Finko. Objector Walls, No. 39, was present by counsel, Andrew Finko, and in his proper person.

3. The following cases, having been carried over from the initial call on December 6, 2010, at which time no one appeared on behalf of the Objector, while counsel had appeared on behalf of the Candidate, and the Sheriff's returns of service showed that service of notice of these

proceedings and of the initial call had not been effected upon them, were called: *Wilson v. Emanuel*, No. 11-EB-MUN-13; *Douglas v. Emanuel*, No. 11-EB-MUN-19; *Gibson v. Emanuel*, No. 11-EB-MUN-20; *Gilbert v. Emanuel*, No. 11-EB-MUN-22. Examination of the Sheriff's returns of service in each case disclosed that, in each case, the Sheriff reported that the party was not found and that service was not effected or the Sheriff made no return or report regarding any effort to effect service on or after the initial hearing on December 6, 2010. No orders regarding further attempts were entered. The Hearing Officer stated that these cases will be called again at the next status hearing, on Monday, December 13, 2010, at 9:00 a.m., and that if an Objector does not then appear the Hearing Officer, *sua sponte*, may enter an order of dismissal for want of prosecution respecting any such case.

4. The Candidate was present by counsel, Michael Kasper, Kevin M. Forde, and Michael Forde.

5. Denise Gilbert, the Objector in *Gilbert v. Emanuel*, No. 11-EB-MUN-22, appeared in her proper person notwithstanding prior failures of the Sheriff to serve notice upon her, waived notice, and entered a written appearance, *pro se*. She tendered a copy of her appearance in open proceedings to counsel for the Candidate. The case of *Gilbert v. Emanuel*, No. 11-EB-MUN-22, is consolidated herein.

6. The Hearing Officer reported that, in a telephone conference held on December 9, 2010, among Burton Odelson, Counsel for Objectors Maksym and McMahon, Michael Kasper, counsel for the Candidate, and the Hearing Officer, Mr. Odelson indicated that Objectors Maksym and McMahon intended to move to continue the commencement of the evidentiary hearing herein from Monday, December 13, 2010, to Tuesday, December 14, 2010, because it appears that more time is needed by the parties to prepare adequately and properly for the evidentiary hearing. The Hearing Officer, noting that Objectors Maksym and McMahon were also the movants of the Motion for Expedited Hearing in this matter, is inclined to grant such a motion, depending on the extent of preparation evident at the conclusion of the instant status hearing.

7. The Hearing Officer noted that the Candidate has seasonably filed a Motion to Strike, in part, the Objectors' Petition of Objectors Maksym and McMahon, in No. 10, and that a timely response thereto has been filed. The Hearing Officer said that the Motion to Strike will be taken up with the case-in-chief, and that the parties should prepare to make their record on the issues raised in the entirety of the Objector's Petition in *Maksym v. Emanuel*, No. 10, as well as in the entireties of all other Objector's Petitions.

8. The Hearing Officer then noted that the Candidate had seasonably filed a Motion to Strike and Dismiss, in part, the Objector's Petition of Objector Walls, in No. 39, and asked whether or not a response had been filed by Objector Walls. Mr. Finko produced a file-stamped copy of such a response, on which the file stamp indicated that the filing had been timely. The clerk then located the original of the response in the Board's file. It appeared that the copies of the response that were filed with the Board and served upon the Candidate omitted two exhibits. Without Objection by the

Candidate, leave was granted to Objector Walls to submit the two exhibits, which were received as filed and as part of the response. The Hearing Officer said that the Motion to Strike and Dismiss would be decided with the case-in-chief, and that the parties should prepare to make their evidentiary record on the issues raised in the entirety of the Objector's Petition in *Walls v. Emanuel*, No. 39, as well as in the entireties of all other Objector's Petitions.

9. A general discussion of witnesses, exhibits, and management of the evidentiary hearing followed, during which the Hearing Officer heard the views of all Objectors desiring to be heard.

10. Counsel for the Candidate agreed to produce the Candidate voluntarily, in lieu of a subpoena, for examination by all Objectors. By agreement of the parties, the Candidate is ordered to appear for examination by all parties, from the time of the scheduled commencement of the evidentiary hearing herein until the examination, including all direct, cross, redirect, and re-cross examination of the Candidate has been concluded.

11. The Hearing Officer announced that, on December 9, 2010, by a separate order, the Requests of Objectors Maksym and McMahon for subpoenas were ruled upon as follows (with a separate Order, dated December 10, 2010, entered regarding all subpoenas that were granted):

- (a) Charlotte Newberger. Granted.
- (b) Midwest Realty Ventures, LLC, d/b/a Prudential Rubloff Properties. Granted.
- (c) Langdon Neal. Denied. The request for this subpoena was taken together with the Request of Objector Kelly for a subpoena to the same witness and with the Motion of Objectors Maksym and McMahon to Disqualify a Member of the Electoral Board, and will be addressed in a separate order and written opinion, to follow.
- (d) Paul Levy. Granted.
- (e) Urban Real Estate, LLC. Granted.

12. Sundry additional Requests for Subpoenas were presented, and the Hearing Officer considered them, heard arguments on each of them, and ruled as follows:

- (a) Requests by Objectors Maksym and McMahon:
  - (I) Amy Rule. Provisionally granted over the objections of the Candidate. The Hearing Officer, *sua sponte*, enters and continues a motion to quash the subpoena for hearing at the next status hearing in this matter, on Monday, December 13, 2010, at 9:00 a.m. The subpoena addressed to Amy Rule will be quashed in the event that the stipulations of fact entered into by the parties

and the documents produced and exchanged by the parties in advance of the evidentiary hearing, taken as a whole and in light of the other witnesses whom the parties will call at the evidentiary hearing, reasonably establish that the parties will have reasonable opportunities to obtain from other witnesses and evidence all relevant, material, and admissible evidence that could be deduced from Amy Rule through her testimony. Nothing herein prohibits Amy Rule from testifying voluntarily on behalf of any party.

- (ii) Robert "Rob" Halpin. Granted.
- (iii) Lori Halpin. Granted.
- (iv) Chicago Board of Election Commissioners. Granted.
  - (A) The Board shall designate one or more witnesses to testify on behalf of the institution regarding the matters, generally relating to voter registration, purges of voter lists, reinstatement of purged voters, and the voter registrations of the Candidate and of Amy Rule, all as set forth in the body of the subpoena or in a rider appended thereto.
  - (B) The Board shall produce, in response to a subpoena *duces tecum*, the records of the Board generally relating to the same subjects, all as set forth in the body of the subpoena or in a rider appended thereto. Compliance with a pending request of the Objectors pursuant to the Illinois Freedom of Information Act may be made in lieu of compliance with the subpoena *duces tecum*, to the extent that such compliance satisfies the terms of the subpoena.
- (b) Requests by Objector Walls:
  - (i) A subpoena *duces tecum* to Miguel Del Valle, not individually but as City Clerk of Chicago, for records relating to the filing or failure to file by the Candidate of a municipal statement of financial interests and to the payment or failure to pay by the Candidate for municipal vehicle stickers for the periods specified in the request for subpoena.
  - (ii) A subpoena *duces tecum* to the Department of Revenue of the City of Chicago, for records relating to the payment or failure to pay by the Candidate for municipal vehicle stickers for the periods specified in the request for subpoena.
- (c) Requests by Objector McDonough. Alexander Vroustouris, Eileen Geary, William Unterschultz, Andre Watson, Saul Charak, James Taggart, Tracy Buckley, Michael

Guilfoyle, Joseph M. Ferguson, and Paul Bacarella. Denied. The witnesses are, variously, the current and a former Inspector General of the City of Chicago; an attorney on the staff of the Law Department of the City of Chicago; and several former employees of the City of Chicago whose employment was terminated because they were found to have violated municipal requirements that they reside in the city of Chicago as a condition of holding city employment. The Inspectors General were described as responsible for investigating failures by city workers to comply with residency requirements. The attorney in the City's Law Department was described as a person responsible for litigating, when necessary, to achieve the terminations of employment of City workers found not to be Chicago residents. These witnesses appear to have nothing to offer in this setting by way of evidence probative of the Candidate's residence. What's more, the legal tests of residence about which these witnesses concern themselves derive from legal sources (*i.e.*, Chicago municipal ordinances) that are entirely different from the laws at issue here (*i.e.*, the Illinois Election Code), and, so, they seem unlikely to be germane to the instant case. But even if the legal standards overlap, and even if valid legal arguments can be made here in the parties' closing oral and written submissions that the legal standards applicable in one set of circumstances shed light on, and inform, the proper understanding of legal standards in the other setting, nothing prevents a party from making any such legal arguments. The proposed witnesses, by contrast, offer nothing by way of evidence of facts that are relevant to the case at bar.

(d) Requests by Objector Castillo:

- (i) Rahm Emanuel. Denied. The request is satisfied by relief granted elsewhere in this order.
- (ii) Amy Rule. Denied. The request is satisfied by relief granted elsewhere in this order.
- (iii) Carol Mosley Braun. Denied. The Board takes administrative notice of the fact that this witness is, herself, a candidate for the same office for which Candidate seeks to be on the ballot. The Objector's stated reason for wishing to call this witness — that she knows important people and probably has personal knowledge as to where the Candidate has resided in the last year — is impermissibly speculative. Even if the witness possessed such knowledge, it is likely that the burdens associated with compliance with the subpoena would outweigh the probative value of the testimony elicited. In any event, in light of the other witnesses and evidence available, any relevant evidence obtained from this witness is likely to be merely cumulative.
- (iv) Gery Chico. Denied. The Board takes administrative notice of the fact that this witness is, himself, a candidate for the same office for which Candidate

seeks to be on the ballot. The Objector's stated reason for wishing to call this witness — that he knows important people and probably has personal knowledge as to where the Candidate has resided in the last year — is impermissibly speculative. Even if the witness possessed such knowledge, it is likely that the burdens associated with compliance with the subpoena would outweigh the probative value of the testimony elicited. In any event, in light of the other witnesses and evidence available, any relevant evidence obtained from this witness is likely to be merely cumulative.

- (v) Robert "Rob" Halpin. Denied. The request is satisfied by relief granted elsewhere in this order.
- (vi) William Walls III. Denied. The Board takes administrative notice of the fact that this witness is, himself, a candidate for the same office for which Candidate seeks to be on the ballot and also an Objector in the instant proceeding. The Objector's stated reason for wishing to call this witness — that he knows important people and probably has personal knowledge as to where the Candidate has resided in the last year — is impermissibly speculative. In any event, in light of the other witnesses and evidence available, any relevant evidence obtained from this witness is likely to be merely cumulative. Nothing herein prohibits Objector Walls from calling himself as a witness (and thus subjecting himself to examination by the Candidate and the other Objectors) if he possesses personal knowledge of facts that are germane and relevant to this case.
- (vii) Joseph "Joe" Berrios. Granted. Administrative notice is taken that the witness is the Assessor of Cook County, Illinois. During the status hearing the Hearing Officer denied the subpoena. It appeared to the Hearing Officer that the Objector, a *pro se* litigant, was unable to articulate a reason for the subpoena. Upon reconsideration, however, the Hearing Officer, *sua sponte*, reverses himself, now grasping that the Objector indicated the evidence sought from this witness consists of records, or the fact of the absence of records, showing that, during the last year, the Candidate did or did not claim that, for purposes of the real estate tax system, real estate situated in Cook County, Illinois, was his principal residence during the last year. A subpoena *duces tecum* shall issue to Joseph "Joe" Berrios, not individually but as the Assessor of Cook County, Illinois, for records as described hereinabove. In the event that the Assessor is permitted or required by law to charge fees for copies of such records or for the certification thereof, then the Objector shall pay such fees.
- (viii) Eugene "Gene" Moore. Denied. Administrative notice is taken that the witness is the Recorder of Deeds of Cook County. The records that the

Objector stated that he seeks from this witness are public records, copies of which are available, upon payment of fees imposed by law, to any person requesting the same, and are produced by the office of the Recorder in the ordinary course of its daily business with minimal formalities and with reasonable dispatch. Any such records possessed by the Assessor may readily be certified and thus made subject to being administratively noticed by the Board.

- (ix) Property Occupants at 4226 North Hermitage Avenue, Chicago, Illinois, 60613. Denied. Objector explains that these unnamed neighbors of certain real estate in Chicago, Illinois, are likely to have personal knowledge of the coming and going of the Candidate and his family. The Objector's stated reason for wishing to call these witness, of unknown identities and in unknown numbers, is impermissibly speculative. Even if the witnesses possessed such knowledge, it is likely that the burdens associated with compliance with the subpoena would outweigh the probative value of the testimony elicited. In addition, in light of the other witnesses and evidence available, any relevant evidence obtained from these witnesses is likely to be merely cumulative. In any event, the request fails to identify the person or persons to be made subject to the writ (and subject to penalties for failure to comply with it) with sufficient specificity to allow a subpoena to be served and to be enforced.
- (x) Property Occupants at 4230 North Hermitage Avenue, Chicago, Illinois, 60613. Denied. Objector explains that these unnamed neighbors of certain real estate in Chicago, Illinois, are likely to have personal knowledge of the coming and going of the Candidate and his family. The Objector's stated reason for wishing to call these witness, of unknown identities and in unknown numbers, is impermissibly speculative. Even if the witnesses possessed such knowledge, it is likely that the burdens associated with compliance with the subpoena would outweigh the probative value of the testimony elicited. In addition, in light of the other witnesses and evidence available, any relevant evidence obtained from these witnesses is likely to be merely cumulative. In any event, the request fails to identify the person or persons to be made subject to the writ (and subject to penalties for failure to comply with it) with sufficient specificity to allow a subpoena to be served and to be enforced.
- (xi) Terri L. Mascherin. Denied. The Objector was unable to articulate a reason for the requested subpoena, and asked that Objector Jeffrey Joseph Black speak on behalf of the request. Objector Black gave two alternative grounds for the desired subpoena. First, he explained that the witness is the President of the Chicago Bar Association, and her testimony is sought for the purpose

of identifying the "three former Presidents of the Chicago Bar Association" to whom, the Objectors assert, reference is made, without naming them, on a campaign website of the Candidate where it is claimed that, in the opinions of these three persons, the Candidate qualifies as a "resident" for purposes of ballot access in the instant proceeding. The subpoena is denied because it seems unlikely to lead to relevant and material evidence probative of any issue of fact relevant to this proceeding. Even if the witness were able to identify the three former Presidents of the Chicago Bar Association, and even if those luminaries were successfully located and called to testify, their opinions regarding the applicable law would be probative of no specified fact, and nothing prevents the Objector or any other party from setting forth the legal reasoning and analyses of these persons, whether or not ascribed to them, in oral and written closing arguments. Second, Objector Black asserted that, if Rahm Emanuel is a member of the Chicago Bar Association, then the witness might have access to records showing the various residential addresses that he has claimed over time. Conspicuously, Objector Black omitted to allege or contend that the Candidate is even a lawyer, let alone a member of the Chicago Bar Association, such that the said association would have occasion to maintain any records of his residential address. The application for a subpoena addressed to this witness is, at best, a fishing expedition without any articulable basis for believing that its issuance would lead to the discovery of any admissible evidence.

- (xii) Miguel del Valle. Denied. The request is satisfied by relief granted elsewhere in this order.
- (xiii) Robert D. Grant, Special Agent in Charge of the Chicago Field Office of the Federal Bureau of Investigation. Denied. Again, Objector Castillo deferred to Objector Black, who offered as his justification for this request the proposition that "everybody knows that the FBI has a file on the Candidate" and that the "FBI and the Secret Service are required to keep an accurate, official record of everyone's home address" and that, in addition, the FBI and the Secret Service surely kept records as to the addresses of the Candidate once the President of the United States declared his intention to appoint the Candidate as his Chief of Staff. But this is a ballot access case, not a criminal prosecution or a national security investigation. The Chicago Board of Election Commissioners is required by Illinois law to maintain its own system of voter registration records to provide a starting point for such

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The quotation marks indicate the Hearing Officer's recollection of statements of Objector Black and the texts within those marks are certainly faithful to the gist of Objector Black's averments. The exact words spoken by Objector Black will be found in the transcript of the hearing, which had not yet been prepared by the time of the entry of this Case Management Order.

election-related inquiries. There are many reasons why election records, on the one hand, and criminal and national security files, on the other, are, and ought to be, kept separate. They are maintained by different governments, and within the same government, by different agencies, for vastly different reasons and under significantly varying rules. The vision advanced by Objector Black of the FBI as an authoritative and dispositive source of the address history of every voter, which ought to control electoral decisions and resolve electoral controversies, smacks of the nightmarish qualities of a police state. The burdens upon law enforcement and national security interests that resort by the Board of Elections to the FBI for voter registration information on a routine basis, in the course of ordinary ballot access litigation, such as the case at bar, would be utterly unwarranted, with no guarantees even that the agency would be able to produce useful, let alone admissible, evidence. It also seems likely that, more often than not, an agency such as the FBI would not want its files and systems of records compromised and exposed by subpoenas such as that sought here by Objector Castillo and advocated by Objector Black, and that, with reason, it would resist the Board's efforts at enforcement of any such subpoena in collateral litigation that would multiply the costs of ballot access litigation and generate a potential for enormous delays in reaching electoral board decisions. In any event, no matter how thorough police dossiers may be — and at what price in tyranny such thoroughness might come — and no matter how trustworthy or reliable the investigative agency in question may be, resort to law enforcement investigative files or to national security files should not be required to ascertain the residence of a registered voter in Chicago, Illinois, for purposes of determining the sufficiency of that registered voter's qualifications for access to the ballot as a candidate. There are many other tools of determining and proving residence for that purpose, and the parties to this case are already making full use of many of them.

(g) Requests by Objector Kelly:

- (i) Rahm Emanuel. Denied. The request is satisfied by relief granted elsewhere in this order.
- (ii) Langdon Neal. Denied. The request for this subpoena was taken together with the Request of Objectors Maksym and McMahon for a subpoena to the same witness and with the Motion of Objectors Maksym and McMahon to Disqualify a Member of the Electoral Board and will be addressed in a separate order and written opinion, to follow.

(h) Requests by Objector Chamberlain:

- (i) Subpoena *duces tecum* directed to the Chicago Board of Elections seeking "all electronic, handwritten, and paper requests and / or authorizations at the Chicago Board of Election for voter status changes or updates for Rahm Emanuel and Amy Rule from November 3, 2008, through December 6, 2008." Granted.
- (ii) A subpoena *duces tecum* directed to the Chicago Board of Elections seeking "all voter registration documents, ballot applications, poll sheets, voter histories, absentee ballot applications, absentee voter lists, provisional voter lists, and election affidavits which include the name of Rahm Emanuel for the March 2009 Democratic Party Primary Election (and / or the March 2009 Special Democratic Party Primary Election), the April 2009 Special Election, the February 2010 Democratic Party Primary Election, and the November 2010 General Election." Granted.

13. (a) On or before this day, Friday, December 10, 2010, at 4:00 p.m., the Candidate shall file with the Board copies of all documents that are in his possession and control that are responsive to the Requests of Objectors Maksym and McMahon for Production of Documents and to the production of which the Candidate does not object. The Clerk of the Board shall receive said documents and shall serve copies of them upon all other parties.

(b) On or before Saturday, December 11, 2010, at 5:00 p.m., the Candidate shall file with the Board his written statement of objections, if any, to the Requests of Objectors Maksym and McMahon for Production of Documents and his certificate of completeness of his response, subject to those objections (that is, his representation that, where documents have not been produced and objection has not been made to their production, then either such documents do not exist or are not in the possession or under the control of the Candidate). The Clerk of the Board shall receive said documents and shall serve copies of them upon all other parties.

(c) On or before Monday, December 13, 2010, at 8:30 a.m., Objectors Maksym and McMahon and any other Objector shall file their respective objections, if any, to the sufficiency or completeness of Candidate's responses to the Requests of Objectors Maksym and McMahon for Production of Documents. The Clerk of the Board shall receive said documents and shall serve copies of them upon all other parties.

14. On or before Saturday, December 11, 2010, at 5:00 p.m. Objectors Maksym and McMahon and the Candidate shall file their proposed Joint Stipulation of Facts. The Clerk of the Board shall receive said documents and shall serve copies of them upon all other parties.

15. On or before Monday, December 13, 2010, at 8:30 a.m., all other Objectors shall file their proposed additional stipulations of fact, if any.

16. On or before Monday, December 13, 2010, at 8:30 a.m., any party may file additional Requests for Subpoenas provided that, for each such request, a written showing is made that (a) the witness can competently testify to some material fact relevant to a genuine issue in the case and (b) that the party learned of the existence of the witness, the materiality of the fact, or of the genuineness of the issue by surprise in the course of reviewing the documents, objections, and certificate of completeness filed by the Candidate in response to the Requests of Objectors Maksym and McMahon for Production of Documents and / or in the course of reviewing the proposed Joint Stipulations of Fact.

17. Without objection, the oral motion of Objectors Maksym and McMahon to continue the evidentiary hearing is granted. The evidentiary hearing heretofore scheduled for Monday, December 13, 2010, at 12:00 noon is hereby stricken from the call. The evidentiary hearing herein shall commence on Tuesday, December 14, 2010, at 9:00 a.m.

18. Witnesses shall be called by Objectors in the following order: First, those Objectors represented by Mr. Odelson and Mr. Welch; second, those Objectors represented by Mr. Finko; third, those Objectors represented by Mr. Stewart; and then each *pro se* Objector in the numerical order of the filing of their respective Objector's Petitions. Each witness shall be examined by the Objectors in the same order, except that the party calling the witness shall conduct the initial examination of the witness. Each witness shall then be examined by counsel for the Candidate. Re-examination of each witness by the Objectors shall then proceed in the same order as for the initial examination of the witness. The Candidate shall then have an opportunity to re-examine the witness.

19. After the Objectors have concluded calling their witnesses, the Candidate shall call any of his witnesses not already called. The Objectors shall then examine each witness in the order already established; the witness shall be re-examined by the Candidate; and the witness shall then be re-examined by the Objectors.

20. The Board, having referred a matter to its forensic expert for analysis and a report, may call the forensic expert as a witness. Any party may also call the Board's forensic expert, in which case the Board will not call him. The written report of the Board's forensic expert will be filed, and a copy served upon every party, at a reasonable time prior to any testimony by him.

21. A witness, when called, is called for all purposes. In examining a witness on initial examination, no party shall be required to limit the scope of his examination to the questioning of prior examiners. In re-examination, however, questioning by all parties will be limited to the scope of prior questioning.

22. A witness once called shall not be re-called by any party without leave of the Hearing Officer. Such leave will be granted only upon a showing of need to call the witness as a rebuttal witness.

23. No party is required to examine any witness, except that, in accordance with the agreement of the parties, Objectors Maksym and McMahon shall call and examine the Candidate as their first witness and, thus, as the first witness at the evidentiary hearing.

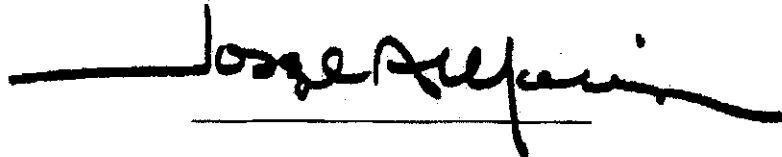
24. All parties are instructed to avoid questioning of any witness that is irrelevant or repetitive. All parties are further reminded that the purpose of the evidentiary hearing is to ascertain facts relevant to, and probative of, the issues raised on the pleadings in the case, and that the process of interrogating witnesses is no occasion for speeches, political or otherwise.

25. With regard to the conduct of proceedings in general, and to the rules of evidence, in particular, the attention of the parties is called to the Rules of the Board and, in particular, to Rule 10.

26. All pending matters are entered and continued for a further Status Hearing and Case Management Conference to be held on Monday, December 13, 2010, at 9:00 a.m. without further notice.

Dated: December 10, 2010.

Enter:

A handwritten signature in black ink, appearing to read "Joseph A. Morris", written over a horizontal line.

JOSEPH A. MORRIS  
Hearing Officer

## **APPENDIX 3**

BEFORE  
THE 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 ELECTION TO THE OFFICE  
OF MAYOR OF THE CITY OF CHICAGO  
IN THE MUNICIPAL GENERAL ELECTION TO BE HELD  
ON FEBRUARY 22, 2011

MARIE J. WOHADLO,	<i>Objector</i> ,	No. 11-EB-MUN-1	)	
PAUL MCKINLEY,	<i>Objector</i> ,	No. 11-EB-MUN-2	)	
QUEEN SISTER			)	
GEORGETTA DELONEY,			)	
	<i>Objector</i> ,	No. 11-EB-MUN-4	)	
ERIC GATEWOOD,	<i>Objector</i> ,	No. 11-EB-MUN-5	)	
PATRICK McDONOUGH,	<i>Objector</i> ,	No. 11-EB-MUN-7	)	
MARIE J. WOHADLO,	<i>Objector</i> ,	No. 11-EB-MUN-8	)	
ALFREDO CASTILLO,	<i>Objector</i> ,	No. 11-EB-MUN-9	)	
WALTER P. MAKSYM, Jr.,			)	
and THOMAS L.			)	
McMAHON,	<i>Objectors</i> ,	No. 11-EB-MUN-10	)	Consolidated
JEFFREY JOSEPH BLACK,			)	Hearing Officer Morris
	<i>Objector</i> ,	No. 11-EB-MUN-11	)	
DONNA MONTGOMERY,	<i>Objector</i> ,	No. 11-EB-MUN-12	)	
THOMAS J. BABBINGTON,			)	
	<i>Objector</i> ,	No. 11-EB-MUN-14	)	
ALICE COFFEY,	<i>Objector</i> ,	No. 11-EB-MUN-15	)	
GARY POZNIAK,	<i>Objector</i> ,	No. 11-EB-MUN-17	)	
JONATHAN STAMPS,	<i>Objector</i> ,	No. 11-EB-MUN-18	)	
GILDA WALKER,	<i>Objector</i> ,	No. 11-EB-MUN-21	)	
DENIS GILBERT,	<i>Objector</i> ,	No. 11-EB-MUN-22	)	
ZAKIYYAH S. MUHAMMAD,			)	
	<i>Objector</i> ,	No. 11-EB-MUN-23	)	
THOMAS L. McMAHON,	<i>Objector</i> ,	No. 11-EB-MUN-24	)	
SAUL Z. CHARAK,	<i>Objector</i> ,	No. 11-EB-MUN-27	)	
WILLIAM J. KELLY,	<i>Objector</i> ,	No. 11-EB-MUN-28	)	

*Caption continues on next page*

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**THIRD CASE MANAGEMENT ORDER  
(EMANUEL CASES)**

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3. The following cases, having been carried over from the initial call on December 6, 2010, and from the Second Call, on December 10, 2010, at which time no one appeared on behalf of the Objector, while counsel had appeared on behalf of the Candidate, and no Sheriff's return of service showing that service of notice of these proceedings and of the initial call or of the subsequent call had been effected upon them, were called: *Wilson v. Emanuel*, No. 11-EB-MUN-13; *Douglas v. Emanuel*, No. 11-EB-MUN-19; and *Gibson v. Emanuel*, No. 11-EB-MUN-20. Examination of the Sheriff's returns of service in each case disclosed that, in each case, the Sheriff had not reported that the party was found and that service was effected or the Sheriff made no return or report regarding any effort to effect service on or after the initial hearing on December 6, 2010. A recommended decision of dismissal for want of prosecution will be entered in each of these three cases.

4. The Candidate was present by counsel, Michael Kasper, Kevin M. Forde, and Michael Forde.

5. The Hearing Officer announced decisions on Requests for Subpoenas submitted by Objectors Chamberlain (addressed to the United States Postal Service, granted), Maksym and McMahon (addressed to certain operational personnel of the Chicago Board of Election Commissioners, granted), and McDonough (addressed to Alexander Vroustouris, Eileen Geary, William Unterschultz, Andre Watson, Saul Charak, James Taggart, Tracy Buckley, Michael Guilfoyle, Joseph M. Ferguson, and Paul Bacarella, all denied), all of which were addressed in separate written orders.

6. The time within which Objectors Maksym and McMahon and the Candidate shall file their proposed Joint Stipulation of Facts shall be, and hereby is, enlarged to December 13, 2010, at 12:00 noon. The Clerk of the Board shall receive said documents and shall serve copies of them upon all other parties.

7. On or before Monday, December 13, 2010, at 2:00 p.m., all other Objectors shall file their proposed additional stipulations of fact, if any.

8. On or before Monday, December 13, 2010, at 2:00 p.m., any party may file additional Requests for Subpoenas provided that, for each such request, a written showing is made that (a) the witness can competently testify to some material fact relevant to a genuine issue in the case and (b) that the party learned of the existence of the witness, the materiality of the fact, or of the genuineness of the issue by surprise in the course of reviewing the documents, objections, and certificate of completeness filed by the Candidate in response to the Requests of Objectors Maksym and McMahon for Production of Documents and / or in the course of reviewing the proposed Joint Stipulations of Fact.

9. All pending matters, including the motion to quash subpoena addressed to Amy Rule, are entered and continued for a further Status Hearing and Case Management Conference to be held on Monday, December 13, 2010, at 2:00 p.m. without further notice.

Dated: December 13, 2010.

Enter:

A handwritten signature in black ink, appearing to read "Joseph A. Morris". The signature is written in a cursive style with a long horizontal line extending from the left side.

JOSEPH A. MORRIS  
Hearing Officer

## **APPENDIX 4**

*James L. Hayes & Associates*  
*Forensic Document Examiners*



CERTIFIED DIPLOMATES  
JAMES L. HAYES  
DAVID J. PURTELL

6353 W. ESTES AVENUE  
CHICAGO, ILLINOIS 60646  
FAX (773) 774-1438  
TELEPHONE (312) 236-5186  
EMAIL JAMES@HAYESFDE.COM



SCIENTIFIC EXAMINATION  
OF QUESTIONED HANDWRITING,  
TYPEWRITING AND RELATED PROBLEMS

December 12, 2010

Mr. Joseph A. Morris  
Hearing Officer  
Chicago Board of Election  
69 W. Washington Street  
Chicago, IL 60602

Re: Forensic Document Examination Services  
William Walls, Objector v. Rahm Emanuel, Candidate.  
**11 EB MUN 039**

2010 DEC 12 P 3:41

Dear Mr. Morris:

The attached list, APPENDIX – RECAPITULATION, contains the pages that were examined based upon your request to determine whether or not the signatures contained on those pages are original signatures or were produced by a photocopying or any machine generated process.

The exhibits were examined visually and microscopically to determine their characteristics. Based upon the examinations conducted I have determined that the signatures examined on the pages listed in the attached list, APPENDIX – RECAPITULATION are original signatures.

Respectfully submitted,

*James Hayes*  
James Hayes  
Forensic Document Examiner

**APPENDIX-RECAPITULATION**

<b>CANDIDATE</b>	<b>OFFICE</b>
<b>RAHM EMANUEL</b>	<b>MAYOR</b>
<b>PAGE NUMBER</b>	<b>ALLEGATION</b>
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**APPENDIX-RECAPITULATION**

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<b>RAHM EMANUEL</b>	<b>MAYOR</b>
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**APPENDIX-RECAPITULATION**

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**APPENDIX-RECAPITULATION****APPENDIX-RECAPITULATION**

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**APPENDIX-RECAPITULATION**

APPENDIX-RECAPITULATION	
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2835, 2931-32, 2430,	Not Original

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OC

REC