

1                   THE COURT: We are back on the record. As I  
2 indicated a moment ago, the hearing on a petition such  
3 as this is to be heard within thirty days, and the Court  
4 is to rule promptly after the hearing, and that is what  
5 the Court is prepared to do at this time. It's also  
6 clear, I think everyone is in agreement, that the, this  
7 Court's review of the Bloomington Municipal Officer's  
8 Electoral, Electoral Board is confined to the record  
9 that has been filed, and it was filed here on December  
10 twentieth by the Electoral Board. One of the first  
11 questions that the Court has to decide is what is this  
12 Court's standard of review, and the parties have  
13 suggested different opposing standards of review. If  
14 there's a question of fact and the standard is whether  
15 the findings of the board are against the manifest  
16 weight of the evidence, if the Court is considering  
17 questions of law, then the board's decision is reviewed  
18 de novo, but if it's a mixed question of law and fact,  
19 then I have to decide whether the board's decision was  
20 clearly erroneous. Mr. Koettters has suggested that the  
21 Court use that standard, and Mr. Mueller in his papers,  
22 I think, has suggested that the Court use the question  
23 of law standard, the de novo standard, and it's -- the  
24 cases seem to go both ways on this, but the, the Cinkus

1 case that we've been referring to quite a bit here  
2 today--that was an 08 Illinois Supreme Court case -- and  
3 they did hold that an examination of the legal effect of  
4 a given state of facts involves a mixed question of law  
5 and facts, so that the standard of review is clearly  
6 erroneous, and the definition of clearly erroneous is  
7 when the reviewing Court is left with a definite and  
8 firm conviction that a mistake has been committed, so  
9 that will be the standard that this Court will use in  
10 its ruling here today.

11 First of all, regarding the, the due process  
12 arguments that have been put forth here today, Miss  
13 McDade argues that the hearing held before the board  
14 violated her, her right to due process under the  
15 Illinois and the United States Constitution, and  
16 Mr. Koettters has argued that if there were any  
17 violations, and they were not objected to at the  
18 hearing, and therefore, they are procedurally defaulted  
19 or, or waived, is another word for that. The Court does  
20 find that the due process arguments made here today by  
21 Mr. Mueller and Mr. Countryman are not procedurally  
22 defaulted as the board did fail to adopt any rules of  
23 procedure as required clearly by Section 1010 of the  
24 Election Code. Now, it is true that the proposed rules

1 were sent out on Friday, but they were never adopted by  
2 the board, and additionally, Miss McDade did object to  
3 them in a written response, and it's true that she  
4 didn't make another oral objection at the time, but  
5 those rules were never adopted as required under Section  
6 1010. And as Mr. Mueller pointed out a little while  
7 ago, there was a decision to, to sustain Mr. Koetter's  
8 objection as to evidence of other petitions that had  
9 been filed by other candidates for mayor and city  
10 council, and, and there was a decision that, that that  
11 was not relevant, but as Mr. Mueller pointed out, what  
12 was that based upon? There were no rules that had been  
13 adopted to, to make, to make those findings.

14 And so therefore, the Court does find that  
15 there were due process violations that have not been  
16 waived, including violation of the Open Meetings Act.  
17 Since the board is a, a quasi adjudicated body, they are  
18 required to comply with the Open Meetings Act. On the  
19 other hand, Electoral Boards are specifically set apart  
20 in the act, is not excluded from the act, and so under  
21 that Powell case, which gives this Court authority to,  
22 to find the results of a violation of an Open Meetings  
23 Act null and void, that this Court will do that today,  
24 including the failure to take a vote in open session,

1 the failure to close the meeting in violation of the  
2 act, having no record of the closed session, failing to  
3 post a notice of the meeting, failing to set an agenda.

4 The Court does not find that allowing Mr. Peterson to be  
5 present was a violation, but it does for those other  
6 reasons.

7 Miss McDade has also argued that there was a  
8 due process violation in that the findings of the  
9 board's written decision were not sufficient, however, I  
10 agree with Mr. Day that Section 1010 only says that it  
11 must state its findings, and the Court does find that it  
12 did that, but that the meeting itself was in violation  
13 of the Open Meetings Act, and for that reason, the Court  
14 will find the results null and void. Additionally, even  
15 if all of the due process arguments were waived, the  
16 Court in its discretion can review issues that otherwise  
17 might be waived according to this Cinkus case, and that  
18 is what this Court will do and find that her due process  
19 rights were violated. Now, even if the Court found that  
20 there were no due process violations, or if the Court  
21 found that all of those violations were procedurally  
22 defaulted, the Court also agrees with Miss McDade's  
23 argument that the board's decision regarding the office  
24 of Alderman argument and the date of election decisions

1 are also clearly erroneous, although they are certainly  
2 much closer calls, and certainly Mr., Mr. Koettters has  
3 made arguments -- both sides have made excellent  
4 arguments on the issues -- but the Court does find that  
5 once again those decisions were clearly erroneous.

6           According to that Lewis versus Dunn case,  
7 which is the 1976 Illinois Supreme Court case, in  
8 determining whether a candidate substantially complies  
9 with the Election Code requirements, that are two  
10 requirements, number one, that the nominating papers as  
11 a whole must not create a basis for confusion as to the  
12 office sought, and Mr. Koettters is correct, it's not was  
13 there actual confusion, but would it create a basis for  
14 the confusion. Number two, the purpose of the  
15 nominating papers that contains the incorrect office  
16 must not have been frustrated because of the errors.  
17 Now, because Miss McDade argues all of the cases cited  
18 by Mr. Koettters do have a common theme of confusion,  
19 there were multiple vacancies and different terms, and,  
20 one, no office was even listed at all, and so that is a  
21 different situation than what we have here. Here, the  
22 only thing that can be argued as far as confusion is  
23 that the petitions state Alderman, but on all of the  
24 other papers, it does state Alderman Fifth Ward. There

1 was only one Alderman to be elected from the Fifth Ward  
2 in the upcoming election. It is true that there were  
3 other wards that were electing Aldermen, but it is clear  
4 from the address on the petitions, that Miss McDade was  
5 a resident of the Fifth Ward, and so for those reasons,  
6 the Court finds that the nominating papers as a whole  
7 did not create a basis for confusion as to the office  
8 sought, and once again, that the board's decision is  
9 clearly erroneous.

10 As to the date of the election, there's a  
11 couple of issues once again involved there. The board  
12 found that omitting Ward Five was not in substantial  
13 compliance, but only found that the date issue to be  
14 defective, so I -- I think I agree with Mr. Mueller,  
15 that it is unclear if they also found the date not to be  
16 in substantial compliance, and so the Court finds that  
17 the only issue that the board found to have not been in  
18 substantial compliance was the Alderman Ward Five issue  
19 and not really the date, and so the Court doesn't even  
20 feel that it's necessary to address that issue, but I  
21 will anyway. Miss McDade raises the question as to  
22 whether a petition under Article Ten instead of Article  
23 Seven, that Mr. Koettters had suggested, even requires an  
24 election date. That's certainly an issue. It doesn't

1 set forth that in the, in the actual statute, but as  
2 Mr. Koettters pointed out, there's a form that does  
3 contain the date. As Mr. Mueller has then pointed out,  
4 well, that was just for a new political party, so it is  
5 unclear if even a date is required in this election, but  
6 assuming there was a date required, the date that was  
7 used, April the 9th of 2013, is and will be the date of  
8 the election. It was possible that there could have  
9 been a primary election on February 26th, 2013, but  
10 there will not be one now. The actual date of the  
11 election will be April the 9th, 2013. The case cited by  
12 Mr. Koettters, the Girot case, the G-I-R-O-T case, in  
13 that case, there was a wrong date used, and, and an  
14 Electoral Board throughout those petitions, but as  
15 Mr. Mueller had mentioned, the case was then decided on  
16 other issues dealing with the issue of -- there's a  
17 conflict of interest as I recall, and then the failure  
18 to staple or attach the documents -- and so the  
19 Appellate Court never had an, a chance to deal with that  
20 issue, and the Supreme Court reversed on other issues as  
21 well, so that issue never came up except at the board  
22 level.

23 And so for those reasons, the Court does  
24 find that Miss McDade has substantially complied with

1 the Election Code regarding the date issue as well, and  
2 that their decision calling the date defective, which I  
3 don't think is proper, but even if that was considered  
4 to be a finding of not substantial compliance, the Court  
5 feels that their decision once again was clearly  
6 erroneous. And so for those reasons, the Court will  
7 enter an order reversing the decision of the board,  
8 order that Jennifer McDade be placed on the ballot as a  
9 Candidate for Alderman of the Fifth Ward at the  
10 consolidated election for the Bloomington, Illinois City  
11 Council on April 9th, 2013. And once again, I  
12 appreciate the briefings made by all the parties. They  
13 were excellent and assisted the Court very much in its  
14 decision, and I thank all of you for that. Mr. Mueller,  
15 if you could put together an order, the Court would go  
16 ahead and enter it.

17 MR. MUELLER: I would be glad to. I'd ask  
18 if the Court Reporter would type up your ruling, and,  
19 because I'd like to attach it as an exhibit to the  
20 order, but I will, I will -- I will draft up an order,  
21 and as soon as she has that, she can let me know, and  
22 we'll get copies to everyone and get one to you.

23 THE COURT: All right. Is that agreeable?

24 MR. KOETTERS: Yes, Your Honor.

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MR. MUELLER: Do we need to do that just informally, or do you want to set a time to enter the order?

MR. KOETTERS: I don't think formal is needed.

THE COURT: Just whenever you can get it to me. Thanks everybody.

MR. MUELLER: Thanks very much, judge.

(WHICH WERE ALL MATTERS HEARD AND RECEIVED IN THE HEARING OF THE ABOVE-ENTITLED CAUSE.)