

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

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Objections of: LEAH FRIED, DANIEL )  
SHEEHAN )  
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To the Nomination ) No.: 15-EB-ALD-144  
Papers of: PATRICK O'CONNOR )  
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Candidate for the office of )  
Alderman of the 40th Ward, City of Chicago )

**FINDINGS AND DECISION**

The duly constituted Electoral Board, consisting of Board of Election Commissioners of the City of Chicago Commissioners Langdon D. Neal, Richard A. Cowen, and Marisel A. Hernandez, organized by law in response to a Call issued by Langdon D. Neal, Chairman of said Electoral Board, for the purpose of hearing and passing upon objections (“Objections”) of LEAH FRIED and DANIEL SHEEHAN (“Objectors”) to the nomination papers (“Nomination Papers”) of PATRICK O'CONNOR, candidate for the office of Alderman of the 40th Ward of the City of Chicago (“Candidate”) to be elected at the Municipal General Election to be held on February 24, 2015, having convened on December 8, 2014, at 9:00 a.m., in Room 800, 69 West Washington Street, Chicago, Illinois, and having heard and determined the Objections to the Nomination Papers in the above-entitled matter, finds that:

1. Objections to the Nomination Papers of the Candidate herein were duly and timely filed.
2. The said Electoral Board has been legally constituted according to the laws of the State of Illinois.

3. A Call to the hearing on said Objections was duly issued by the Chairman of the Electoral Board and served upon the members of the Electoral Board, the Objectors and the Candidate, by registered or certified mail and by Sheriff's service, as provided by statute.

4. A public hearing held on these Objections commenced on December 8, 2014 and was continued from time to time.

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

6. The Objectors and the Candidate were directed by the Electoral Board's Call served upon them to appear before the Hearing Officer on the date and at the time designated in the Hearing Schedule. The following persons, among others, were present at such hearing: the Objectors, LEAH FRIED and DANIEL SHEEHAN, by their attorney Andrew Finko; the Candidate, PATRICK O'CONNOR, by his attorney, James P. Nally.

7. As their part of their objections, Objectors allege that the Candidate is ineligible for elective municipal office because he is in arrears in the payment of a tax or other indebtedness to the City of Chicago, in violation of Section 3.1-10-5 of the Illinois Municipal Code (65 ILCS 5/3.1-10-5).

8. Section 3.1-10-5 of the Municipal Code (65 ILCS 5/3.1-10-5), as amended by P.A. 98-115, effective July 29, 2013, now provides:

*"(b) A person is not eligible to take the oath of office for a municipal office if that person is, at the time required for taking the oath of office, 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.*

*(b-5) A person is not eligible to hold a municipal office, if that person is, at any time during the term of office, 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.*

9. Section 3.1-10-5(b) of the Municipal Code, as written prior to P.A. 98-115, provided, in part, that 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.” In *Cinkus v. Village of Stickney Municipal Officers Electoral Board*, 228 Ill.2d 200, 886 N.E.2d 1011 (2008), the Illinois Supreme Court held that Section 3.1-10-5(b), as then written, precluded someone from running for municipal office if such person was, at the time he or she filed nomination papers, in arrears in the payment of a tax or other indebtedness due to the municipality. In *Cinkus*, a candidate for municipal office had been fined for violating a municipal ordinance. When the fine remained unpaid, the municipality sought and obtained a judgment against the candidate. The judgment was unpaid when the candidate filed his statement of candidacy. The Illinois Supreme Court held that the candidate is ineligible for elective municipal office if he or she is in arrears in the payment of a tax or other indebtedness due to the municipality and the candidate fails to remedy such situation prior to filing a statement of candidacy. *Cinkus* overruled *People v. Hamilton*, 24 Ill.App. 609 (1887), which held that the arrearage provision of a statutory predecessor to section 3.1-10-5(b) prescribed disqualification as to the office and not the election. The Court in *Cinkus* found that *Hamilton* was not persuasive because: (1) it was decided prior to 1935 and, consequently, has no precedential value; (2) *Hamilton* was not an election case, and could not consider the current election scheme, which is very different from that in 1887; and (3) the predecessor statute in 1887 was different from section 3.1-10-5(b). Also impliedly overruled were prior decisions of the Chicago Board of Election Commissioners as an electoral board holding that objections claiming a disqualification for public office arising from an arrearage in accounts by the candidate with the municipality applies solely to the office and

not to the election and will be overruled. See, *Moore v. Powers*, 99-EB-ALD-120, CBEC, January 19, 1999; *Batson v. Shaw*, 83-EB-ALD-35, CBEC, January 23, 1983.

10. The “historical evolution” of the indebtedness restriction is “illustrative,” according to one election law expert. See, Thomas A. Jaconetty, “Ballot Access,” *Election Law (IICLE, 2012)*, Ch. 1 § 1.36. As the author explains, “For many years, the Chicago Electoral Board endorsed the view of the appellate court in *People v. Hamilton*, [citation], that these statutory provisions effect a bar to the holding, not the seeking, of office.” After citing historical cases upholding this view, the author noted, “The sea change occurred when the Stickney Electoral board removed a candidate for his failure to satisfy a \$100 municipal fine for disorderly conduct.” *Id.* The author continued, “The Supreme Court granted review in *Cinkus v. Village of Stickney Municipal Officers Electoral Board* [citation], squarely addressed the issues and adopted the reasoning of the appellate court rejecting the *Hamilton* defense.” *Id.*

11. After *Cinkus* was decided in 2008 and a series of electoral board decisions and court cases decided in 2011 (see Jaconetty, “Ballot Access,” *supra*), the legislature amended Section 3.1-10-5 in 2013 to provide that indebtedness to the municipality acts to disqualify someone only “at the time required for taking the oath of office” (sub-section (b)) or “at any time during the term of office” (sub-section (b-5)). While there is no written legislative history on the change, presumably, the legislature intended to change the indebtedness prescription and the interpretation of the statute back to what it was post-*Hamilton* and pre-*Cinkus*. Otherwise, why would the legislature have chosen to amend the very text of the statute establishing the indebtedness prescription.

12. When legislature has made a material amendment to statute after judicial interpretation of statute, it is presumed that legislature intended to effect a change in law. *Benno v. Central Lake County Joint Action Water Agency*, 242 Ill.App.3d 306, 609 N.E.2d 1056 (1993).

13. It has been contended that if the legislature really intended to reverse the effects of *Cinkus*, it was necessary that the legislature change the statutory form of the statement of candidacy in the Election Code to truly effectuate the change, for the Supreme Court in *Cinkus* relied upon the statement to candidacy's present-tense language whereby the candidate declares, "that I am legally qualified to hold such office." See, 10 ILCS 5/10-5.

14. There may be several qualifications for holding office. However, it is clear that the legislature no longer wanted to make indebtedness to the municipality a bar to election for the office. As the court in *Hamilton* concluded, "We are satisfied that if the paragraph ("no person shall be eligible to the office of Alderman unless he is a qualified elector and resident in the ward for which is he elected, nor shall he be eligible if in arrears for any tax or other liability ....") is applicable to the case of Village Trustees the disqualification is as to the office and not the election – *that the payment of the tax before assuming the office met the requirement of the law and therefore that as to Hamilton the plea disclosed a perfect defense.*" 24 Ill.App. at 612. This is the so-called "*Hamilton* defense" that *Cinkus* rejected and which the legislature presumably sought to re-instate.

15. But even assuming, arguendo, that the legislature could have used other means or should have also amended the statement of candidacy provisions in the Election Code to overcome *Cinkus*, as is has been urged, "a legislature traditionally has been allowed to take reform 'one step at a time, addressing itself to the phase of the problem which seems most acute to the legislative mind.' *McDonald v. Board of Election Com'rs of Chicago*, 394 U.S. 802, 809,

89 S.Ct. 1404, 1409 (1969). “A legislature need not run the risk of losing an entire remedial scheme simply because it failed, through inadvertence or otherwise, to cover every evil that might conceivably have been attacked.” *Id.* The fact that the legislature “has not gone still further, as perhaps it might, should not render void its remedial legislation, which need not, as we have stated before, ‘strike at all evils at the same time.’ 394 U.S. at 811. *Accord, Lizak v. Zadrozny*, 4 Ill.App.3d 1023, 1027, 283 N.E.2d 252, 254 – 255 (1972) (“It has been recognized that legislatures are often limited to achieving reforms piecemeal, proceeding by compromise a step at a time toward a desired comprehensive solution” and that “[a] statutory scheme is not constitutionally infirm merely because it fails to apply its remedies wherever they may reach.”).

16. For the reasons above and for the reasons set forth in the Hearing Officer’s report, the Electoral Board finds that Section 3.1-10-5 of the Illinois Municipal Code does not bar a candidate from the ballot if, at the time of filing his nomination papers, he was indebted to the municipality. The Objections should, therefore, be dismissed.

17. Even assuming, however, that Section 3.1-10-5 still bars a candidate from the ballot if, at the time of filing his nomination papers, he was indebted to the municipality, the Objector here has not presented any evidence of any judgment against the Candidate personally or that the Candidate is personally indebted to the City of Chicago. The evidence proffered by the Objector as part of his Rule 20 motion to address the Electoral Board alleges, at best, that the Lincoln Avenue Terraces Condominiums or builders, contractors, developers or vendors associated with the Lincoln Avenue Terraces Condominiums are indebted to the City of Chicago. None of these judgments can be imputed to the individual Candidate. *See, Burke v. Electoral Board of the Village of Bradley*, 2013 IL App (3d) 130141, 990 N.E.2d 393 (a corporation is a legal entity separate and distinct from its shareholders, directors and officers and alleged debt

owed to village by limited liability company (LLC) owned by the candidate was not, by imputation, a debt of the candidate, as would render the candidate ineligible from office as LLC was a legal entity separate from candidate); *Watson v. Electoral Board of Village of Bradley*, 2013 IL App (3d) 130142, 990 N.E.2d 401 (alleged debt owed to village by corporation, of which candidate was president, was not, by imputation, a debt of candidate, as would render candidate ineligible for office as corporation was a separate legal entity distinct from candidate).

18. There are insufficient allegations in the Objections that the Candidate is personally indebted to the City of Chicago.

19. The Hearing Officer has tendered to the Electoral Board her report and recommended decision. The Hearing Officer recommends that the Objections to the Candidate's Nomination Papers be dismissed and that the Nomination Papers be declared valid.

20. The Electoral Board, having reviewed the record of proceedings in this matter and having considered the report and recommendations of the Hearing Officer, as well as all argument and evidence submitted by the parties, hereby adopts the Hearing Officer's recommended findings and conclusions of law. A copy of the Hearing Officer report and recommendations is attached hereto and is incorporated herein as part of the decision of the Electoral Board.

21. For the reasons stated above, the Electoral Board dismisses the Objections to the Candidate's Nomination Papers and finds that the Candidate's Nomination Papers are valid.

IT IS THEREFORE ORDERED that the Objections of LEAH FRIED and DANIEL SHEEHAN to the Nomination Papers of PATRICK O'CONNOR, candidate for election to the office of Alderman of the 40th Ward of the City of Chicago, are hereby DISMISSED and said Nomination Papers are hereby declared VALID and the name of PATRICK O'CONNOR,

candidate for election to the office of Alderman of the 40th Ward of the City of Chicago,  
SHALL be printed on the official ballot for the Municipal General Election to be held on  
February 24, 2015.

Dated: Chicago, Illinois, on January 5, 2015.

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Langdon D. Neal, Chairman



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Richard A. Cowen, Commissioner



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Marisel A. Hernandez, Commissioner

**NOTICE:** Pursuant to Section 10-10.1 of the Election Code (10 ILCS 5/10-10.1) a party aggrieved of this decision and seeking judicial review of this decision must file a petition for judicial review with the Clerk of the Circuit Court of Cook County within 5 days after service of the decision of the Electoral Board.





*Statement of Candidacy in violation of the Election Code* because he could not be a duly qualified candidate for election to the office of Alderman of the 40<sup>th</sup> Ward. (Paragraph 14 of the Objectors' Petition).

In his Motion to Strike and Dismiss, Candidate correctly points out that Objectors mistakenly relied upon an old version of 65 ILCS 5/3.1-10-5 which read in pertinent part as follows: *A person is not eligible for elective municipal office if that person is in arrears in the payment of a tax or other indebtedness due to the municipality...*" Prior to its amendment, the statute was interpreted to mean that an individual could not run for municipal office if he was in debt to the municipality at the time his nomination papers were filed. See *Cinkus v the Village of Stickney Municipal Officers Electoral Board*, 228 Ill.2d 200, 886 N.E.2d 1011 (2008). In what could only be deemed a direct response to *Cinkus* and its progeny, the legislature amended 65 ILCS 5/3.1-10-5 on July 29, 2013. The statute now reads, in pertinent part, as follows: *A person is not eligible to take the oath of office for municipal office if that person is, at the time required for taking the oath of office, in arrears in the payment of a tax or other indebtedness due to the municipality...*"

As Candidate argues, the Objectors' claim of any indebtedness existing at this time or at the time the Candidate filed his nomination papers or at the time he signed his Statement of Candidacy is wholly irrelevant under the newly amended statute. Indeed, a simple reading of the current version of 65 ILCS 5/2.1-10-5 clearly and unequivocally establishes that the relevant time for any inquiry regarding a candidate's indebtedness to the municipality in which he is seeking office **is at the time the candidate takes the oath of office**. Any debt currently owed by the Candidate to the City of Chicago does not serve as a bar to ballot access and, for this

reason, Candidate's Motion to Strike and Dismiss paragraphs 5-14 should be granted. <sup>1</sup>

Paragraphs 15 -17 of the Objectors' Petition address the second issue raised by the Objectors. Specifically, Objectors allege that the Candidate failed to file a "*complete and correct receipt from the Cook County Clerk*" (paragraph 15 of the Objectors' Petition) because he "*filed a portion of a handwritten page, which does not bear his signature, the date of signature, nor any information that is required to be disclosed by Candidate in the Cook County Clerk's Statement of Economic Interests. As such, Candidate did not submit the receipt provided to him by the Cook County Clerk (which consists of two pages) for filing a Statement of Economic Interests, and it is unclear what the document that was submitted purports to be. Clearly Candidate is seeking to conceal information from the public and thwart the full disclosure goals of the Election Code's provisions regarding a Statement of Economic Interests.*" (Paragraph 16 of the Objectors' Petition).

Candidate correctly points out that the Election Code requires only that a receipt for the filing of the Economic Interests and not the full statement be filed with nominating papers. 10 ILCS 5/10-5. A review of the nominating papers in the instant matter indicates that a receipt for the filing of the statement of economic interests was included in the nominating papers.

Appended to the nominating appears is a receipt with a time stamp from the County Clerk establishing that the candidate timely filed a statement of economic interests in relation to the office sought. This document fully complies with the requirements of 10 ILCS 5/10-5 of the Election Code. Objectors' unsupported allegation that the Election Code requires more is simply a misstatement of the law. Moreover, Objectors' contention that Candidate's failure to file the

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<sup>1</sup> Candidate's Motion to Strike and Dismiss alleges that the Objectors' Petition is also factually wrong as there is no arrearage. Regardless of whether any debt is actually owed, it is of no import at this time under the current statute. Therefore, it was not necessary to confirm the existence or nature of any purported arrearage for purposes of this recommended decision.

full statement constitutes “*an attempt to conceal information from the public and thwart the full disclosure goals of the Election Code*” is wholly contradicted by the fact that the receipt puts the public on notice not only to the fact that a statement of economic interests was filed but also as to where the full statement can be obtained. For these reasons, Candidate’s Motion to Strike and Dismiss paragraphs 15-17 of the Objectors’ Petition should be granted.

**RECOMMENDATION**

In light of the foregoing, it is my recommendation that the Objections of Leah Fried and Daniel Sheehan to the nominating papers of Patrick O’Connor be stricken and dismissed in their entirety. It is my further recommendation that the nominating papers of Patrick O’Connor for the office of Alderman of the 40<sup>th</sup> Ward of the City of Chicago be deemed valid and that the name of Patrick O’Connor as a candidate for said office appear on the ballot at the General Election to be held on February 24, 2015.

Respectfully submitted,

Barbara Goodman /s/

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Barbara Goodman, Hearing Examiner  
December 25, 2014