

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

Objections of: DAVID TIRADO)
)
To the Nomination) **No.: 07-EB-ALD-168**
Papers of: WILLIAM J. P. BANKS)
)
Candidate for the office of)
Alderman of the Thirty-sixth 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 and Richard A. Cowen, 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 DAVID TIRADO (“Objector”) to the nomination papers (“Nomination Papers”) of WILLIAM J. P. BANKS, candidate for the office of Alderman of the Thirty-sixth Ward of the City of Chicago (“Candidate”) to be elected at the Municipal General Election to be held on February 27, 2007, having convened on January 2, 2007, at 10:00 a.m., in Room 800, 69 West Washington Street, Chicago, Illinois, and having heard and determined the Objections to the Nomination Papers in the above-entitled matter, finds that:

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

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

4. A public hearing held on these Objections commenced on January 2, 2007 and was continued from time to time.

5. The Electoral Board assigned this matter to Hearing Examiner John Ashenden for further hearings and proceedings.

6. The Objector and the Candidate were directed by the Electoral Board's Call served upon them to appear before the Hearing Examiner on the date and at the time designated in the Call. The following persons, among others, were present at such hearing; the Objector, DAVID TIRADO, pro se; and the Candidate, WILLIAM J.P. BANKS, by counsel, Michael Kasper and Elias Mosses.

7. The Objector alleges that there is a maximum signature requirement for the office of Alderman in the City of Chicago, citing section 10-3 of the Election Code, and that the Candidate's nominating petition sheets contain far more than the maximum number of signatures permitted. As a result, the Objector alleges that the Candidate is in violation and disregard of the law.

8. The Hearing Examiner has tendered to the Electoral Board his report and recommended decision. The Hearing Examiner recommends that the Objections to the Candidate's Nomination Papers be overruled and that the Nomination Papers be found valid.

9. Section 10-3.1 of the Election Code (10 ILCS 5/10-3.1) provides that petitions for nomination of nonpartisan candidates for municipal office where the statute creating the municipality or providing for the form of government thereof requires election to such office on

a nonpartisan basis and does not permit political party nominations shall be in conformity with any requirements as to contents and number of signatures specified in such statute or ordinance. Thus, the Election Code defers to statutes creating or providing the form of government in a municipality where those statutes provide for content and signature requirements for nonpartisan nominating petitions.

10. Article 21 of the Revised Cities and Villages Act of 1941 (65 ILCS 20/21-1 *et seq.*) sets out the requirements for elections for municipal officers for the City of Chicago. Included in these requirements are that elections for such officers are to be nonpartisan (65 ILCS 20/21-5) and that party designations are prohibited on the ballot (65 ILCS 20/21-22). Therefore, the requirements as to the contents and number of signatures on nonpartisan nominating petitions for candidates for municipal office in the City of Chicago are governed by Article 21 of the Revised Cities and Villages Act of 1941.

11. Section 21-28 of the Revised Cities and Villages Act requires that the petitions for nomination of candidates for alderman be signed by such number of legal voters of the ward as will aggregate not less than 2% of the total number of votes cast for alderman in the ward at the last preceding general election, except for the election following a redistricting of wards petitions shall be signed by not less than 2% of the total number of votes cast for Mayor at the last preceding municipal election, divided by the number of wards. 65 ILCS 20/21-28. While Section 21-28 establishes a minimum number of petition signatures for the office of Alderman, it does not establish a maximum number.

12. Section 21-28 also states that “[A]ll such petitions, and procedures with respect thereto, shall conform *in other respects* to the provisions of the election and ballot laws then in force in the city of Chicago concerning the nomination of independent candidates for public

office by petition.” This section further states that “[T]he method of nomination herein provided is exclusive of and replaces all other methods heretofore provided by law.” Id. This language expresses a clear legislative intent that where Article 21 of the Revised Cities and Villages Act sets out requirements for nominating petitions for candidates for elective municipal office in the City of Chicago, those requirements are exclusive and preempt all other requirements found elsewhere in the Election Code or in any other election and ballot laws.

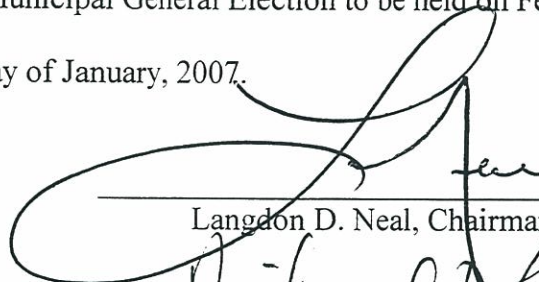
13. Therefore, while there are minimum signature requirements for candidates for the office of Alderman in the City of Chicago, there are no maximum signature requirements as argued by Objector.

14. Even assuming there were a maximum signature requirement, the case of *Richards v. Lavelle*, 620 F.2d 144 (7th Cir. 1980) clearly stands for the proposition that a candidate cannot be removed from the ballot for having signatures on a nominating petition that exceed the statutory maximum signature requirement. Containing signatures over the maximum requirement does not nullify the entire petition. *Delay v. Simms-Johnson*, 00-EB-WC-12, CBEC, January 28, 2000; *Hollander v. Khan*, 00-EB-WC-028, CBEC, January 28, 2000; *Chapa v. Frias*, 92-EB-WC-76, CBEC, January 29, 1992.

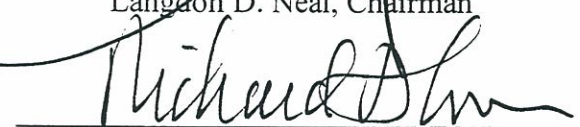
15. The Electoral Board, having reviewed the record of proceedings in this matter and having considered the report and recommendations of the Hearing Examiner, as well as all argument and evidence submitted by the parties, hereby adopts the Hearing Examiner’s recommended findings and conclusions of law.

16. For the reasons stated above, the Electoral Board overrules the Objections and finds that the Candidate’s Nomination Papers are valid.

IT IS THEREFORE ORDERED that the Objections of DAVID TIRADO to the Nomination Papers of WILLIAM J. P. BANKS, candidate for election to the office of Alderman of the Thirty-sixth Ward of the City of Chicago, are hereby OVERRULED and said Nomination Papers are hereby declared VALID and the name of WILLIAM J. P. BANKS, candidate for election to the office of Alderman of the Thirty-sixth Ward of the City of Chicago, SHALL be printed on the official ballot for the Municipal General Election to be held on February 27, 2007.
Dated: Chicago, Illinois, this 23rd day of January, 2007.



Langdon D. Neal, Chairman



Richard A. Cowen, 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 10 days after the decision of the Electoral Board.

BEFORE THE DULY CONSTITUTED ELECTORAL BOARD FOR THE HEARING AND PASSING UPON OBJECTIONS TO NOMINATION PAPERS OF CANDIDATES FOR THE FEBRUARY 27, 2007 MUNICIPAL GENERAL ELECTION FOR THE OFFICE OF ALDERMAN OF THE THIRTY-SIXTH (36TH) WARD OF THE CITY OF CHICAGO

DAVID TIRADO,)	
)	
Petitioner-Objector,)	
)	
v.)	07-EB-ALD-168
)	
WILLIAM J.P. BANKS,)	
)	
Respondent-Candidate.)	
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HEARING EXAMINER'S RECOMMENDED DECISION

The Respondent-Candidate, WILLIAM J.P. BANKS, filed Nomination Papers for the Office of Alderman of the 36th Ward, City of Chicago, Cook County, Illinois, to be voted upon at the Municipal General Election to be held on February 27, 2007. On December, 26, 2006, the Petitioner-Objector, DAVID TIRADO, filed a petition objecting to the Nomination Papers of the Candidate. The minimum number of required signatures for the office of 36th Ward Alderman is 204. The Candidate's Nomination Papers contain approximately 12,000 voter signatures. The Objector's Petition contained an objection to the Candidate's Nomination Papers on the grounds that there is a statutory maximum number of signatures that may be included on petition sheets, and that the Nomination Papers are invalid because the Candidate filed signatures in excess of the maximum.

On January 2, 2007, this matter appeared on the initial trial call. The Objector appeared *pro se*. The Candidate was represented by Michael Kasper and Elias Mossos. On January 3,

2007, the Candidate filed a Motion to Dismiss the Objector's Petition. The Objector filed his response on January 4, 2007. A hearing on the Candidate's Motion to Dismiss was scheduled at the initial trial call for January 6, 2007.

The primary issue raised in the briefs and at the hearing on January 6, 2007 was whether there is a statutory maximum of signatures that may be included on a candidate's petition sheets. The Objector argued that based on interpretation of Section 10-3 of the Election Code and Section 21-28(a) of the Revised Cities and Villages Act of 1941, there is a maximum signature requirement imposed on aldermanic candidates. He further argued that some penalty should be imposed in order to enforce this maximum, and requested that the Candidate's name be removed from the ballot. Objector's Petition, p. 6. The Candidate argued for dismissal of the Objector's Petition on the grounds that the existence of a maximum requirement is not supported by the statutory language. Candidate's Motion to Dismiss, Paragraph 1. In addition, the Candidate argued that even if such a maximum did exist, it cannot be enforced by removal of a candidate from the ballot. Candidate's Motion to Dismiss, Paragraph B.

The hearing examiner makes the following recommended findings:

1. **The Candidate's Motion to Dismiss should be granted because there is no statutory maximum which limits the number of signatures that a candidate may file.**

The Election Code provides that independent candidates may be nominated for public office by obtaining signatures of "not less than 5%, nor more than 8%" of the number of people that voted in the preceding election. 10 ILCS 5/10-3. However, this statute was modified by the Revised Cities and Villages Act of 1941 to provide that the minimum number of signatures needed by an independent candidate is now 2% of the number of voters in the previous election

instead of 5%. 65 ILCS 20/21-28(a). This section of the Revised Cities and Villages Act mentions only the minimum requirement and is silent on the issue of the maximum requirement. It is therefore the Objector's contention that while the minimum is governed by the Revised Cities and Villages Act, Section 10-3 of the Election Code still governs the maximum requirement. Objector's Petition, Paragraph 9.

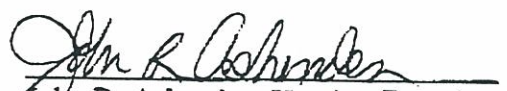
Under the Candidate's interpretation of the statutes discussed in the preceding paragraph, the Revised Cities and Villages Act alone controls the signature requirements for aldermanic candidates. Candidate's Motion to Dismiss, Paragraph 1; Hearing Transcript, 4: 10-16 (January 6, 2007). The statute provides that "[t]he method of nomination herein provided is exclusive of and replaces all other methods heretofore provided by law." 65 ILCS 20/21-28(c). This interpretation is supported by Section 10-3.1 of the Election Code, which governs petitions of nonpartisan candidates including those for aldermen of the City of Chicago. Section 10-3.1 states that requirements of other provisions of the Election Code "relating to independent candidate petition requirements shall apply to nonpartisan petitions to the extent they are not inconsistent with requirements of such other statutes or ordinances." 10 ILCS 5/10-3.1. Since the Revised Cities and Villages Act does not establish a maximum, the 8% maximum requirement of Section 10-3 of the Election Code appears to be inconsistent and should not be enforced.

The Objector's only grounds for objection to the Candidate's Nomination Papers is the violation of the maximum signature requirement. Based on the hearing examiner's recommended finding that no such maximum exists, the Objector has failed to state sufficient grounds to support his objections and the Candidate's Motion to Strike and Dismiss should therefore be granted.

2. Even if there were a statutory maximum, the sanctions suggested by the Objector are inappropriate.

As a sanction for violating the purported maximum signature requirement, the Objector requested relief in the form of removal of the Candidate from the ballot. First, if a maximum signature requirement were to be enforced in this jurisdiction, removal of the candidate from the ballot has previously been held to be inappropriate as a sanction. *Richards v. Lavelle*, 620 F.2d 144, 148 (7th Cir. 1980). Other less drastic solutions have been proposed, such as disregarding those signatures in excess of the maximum. *Id.* at 148. Furthermore, there is established precedent in this jurisdiction that petitions are not nullified merely because the candidate files more than the maximum number of signatures. *Anthony v. Butler*, 166 Ill.App.3d 575 (1st Dist. 1988); *Delay v. Simms-Johnson*, 00-EB-WC-12, CBEC, January 28, 2000; *Hollander v. Khan*, 00-EB-WC-028, CBEC, January 28, 2000.

The hearing examiner recommends that the Candidate's Motion to Dismiss be granted. It is further recommended that Candidate William J.P. Banks's name be placed on the ballot for the February 27, 2007 Municipal General Election for Alderman of the 36th Ward.


John R. Ashenden, Hearing Examiner

Dated: January 20, 2007