NBCON-ALD

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

Objections of: PETER ZELCHENKO	)	
	)	
To the Nomination	)	**No.: 07-EB-ALD-191**
Papers of: TIM EGAN	)	
	)	
Candidate for the office of	)	
Alderman of the Forty-third 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 PETER ZELCHENKO ("Objector") to the nomination papers ("Nomination Papers") of TIM EGAN, candidate for the office of Alderman of the Forty-third 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, PETER ZELCHENKO, pro se; and the Candidate, TIM EGAN, by counsel, Andrew Raucci.

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 PETER ZELCHENKO to the Nomination Papers of TIM EGAN, candidate for election to the office of Alderman of the Forty-

third Ward of the City of Chicago, are hereby OVERRULED and said Nomination Papers are hereby declared VALID and the name of TIM EGAN, candidate for election to the office of Alderman of the Forty-third 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.