STATE OF ILLINOIS)
) ss.
COUNTY OF COOK)

BCC

ELECTORAL BOARD
FOR THE HEARING AND PASSING UPON OF OBJECTIONS TO NOMINATING PETITIONS FOR THE OFFICES OF WARD COMMITTEEMAN OF THE CITY OF CHICAGO FOR THE MARCH 17, 1992 PRIMARY ELECTIONS.

IN RE: Objection of: Gus Saltouris	)	
	)	
To the	)	
Nominating Petition of: Kalim A. Khan	)	
	)	
	)	**NO: 92-EB-WC-33**
Candidate for the Office of Ward Committee-	)	(Rel: 92-EB-WC-61)
man of the 50th Ward, Republican Party.	)	

DECISION

The duly constituted Electoral Board, consisting of MICHAEL J. HAMBLET, ARNETTE R. HUBBARD and CHRISTOPHER ROBLING, organized by law in response to a Call issued by MICHAEL J. HAMBLET, Chairman of said Electoral Board, for the purpose of hearing and passing upon Objections to Nominating Petitions for the Office of Ward Committeeman of the City of Chicago, having convened on December 30th, 1991 at 10:00 a.m. in the City Council Chambers, City Hall, Chicago, Illinois; and having heard and determined the objections to the petition in the above entitled matter find that:

1. The said Electoral Board has been legally constituted according to the laws of the State of Illinois;

2. Objections to the nominating petition of the candidate herein were duly filed;

3. A call to the hearing on said objections was duly issued and was served upon the members of the Electoral Board, the Objector and the Candidate by mail and by personal service as provided by statute;

4. A public hearing was held on these objections commencing on December 30th, 1991;

5. The following persons, among others, were present at such hearings: the members of the Electoral Board, the Objector by counsel, and the Candidate by counsel;

6. The Board having heard and considered all evidence and arguments tendered by those appearing at the hearing;

7. The Board having ordered an examination of the precinct binders to be conducted by its clerks and agents under the Board's direction and supervision, in accordance with the laws of Illinois and the rules of the Board;

8. During examination of the precinct binders, the Board directed all parties to appear and be present, either personally and/or by their authorized representatives, duly appointed and authorized by said parties;

9. The Candidate and/or his duly authorized representatives having been present during the examination of the binders at all times;

10. The Objector and/or his duly authorized representatives having been present during the examination of the binders at all times;

11. Examination of the precinct binders was completed;

12. The Board finds that:

    a. The statutory minimum of signatures required for placement on the ballot is 62;

    b. The number of signatures filed by the candidate total 131;

    c. The number of signatures deemed invalid because of objections sustained total 95;

    d. The remaining number of signatures deemed valid total 36;

    The written report of the Board's finding sustaining signature objections are contained in the Board's file in this cause and is available upon request of a party.

The Board further finds that 28 petition signatures were printed and do not match with the signatures on the voters' registration cards and are therefore in violation of Section 7-10 of the Election Code.

IT IS THEREFORE ORDERED that the objections of Gus Saltouris to the nominating petition of Kalim A. Khan, candidate for election to the office of Ward Committeeman of the 50th Ward, Republican Party, are hereby sustained and said petition is hereby declared invalid and the name of Kalim A. Khan, candidate for election to the office of Ward Committeeman of the 50th Ward, Republican Party, shall not be printed on the ballot for the Primary Elections to be held on March 17th, 1992.

Dated: Chicago, Illinois, this 3rd day of February, 1992.

Michael J. Hamblet

MICHAEL J. HAMBLET, CHAIRMAN

ARNETTE R. HUBBARD, COMMISSIONER

Christopher Fitz-Henry Robling

CHRISTOPHER ROBLING, COMMISSIONER

STATE OF ILLINOIS)
) ss.
COUNTY OF COOK)

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, COUNTY DIVISION

KALIM A. KHAN Petitioner, vs. THE MUNICIPAL OFFICERS ELECTORAL BOARD FOR THE CITY OF CHICAGO, and the CHICAGO BOARD OF ELECTION COMMISSIONERS and their members MICHAEL J. HAMBLET, ARNETTE HUBBARD and CHRISTOPHER ROBLING, and GUS SALTOUROS AND JEROME BERG, Respondents.	)	No. 92 Co 58

MEMORANDUM DECISION AND ORDER

I.

On February 13, 1992, Petitioner filed a two count complaint against the Municipal Officers Electoral Board and its members "Electoral Board". Petitioner sought to overturn the February 3, 1992, decision of the Electoral Board which sustained the objections of Gus Saltouros to the nomination papers of Petitioner, Kalim A. Khan, and thereby removed Petitioner's name from the ballot.

Count I of the compliant sought judicial review of the Electoral Board decision pursuant to section 10-10.1 of the Illinois Election Code (Ill. Rev. Stat. ch. 46 (1991)). Count II

of the complaint alleged a violation of Title 42 U.S.C. section 1983, stating that the Electoral Board's decision violated Petitioner's First and Fourteenth Amendment rights and the Due Process clause of the United States Constitution in that:

> ...the CBOE (Electoral Board) cannot automatically exclude printed signatures correlating to script-signed registration cards, or to construe section 7-10 of the Election Code so narrowly as to prohibit such petition signatures without prior notice to candidates like the petitioner, and no such notice was given. (page 4 of complaint, para. 16).

During the course of this litigation, the parties and the Court agreed that Count I (the Judicial Review count) would be resolved prior to adjudicating Count II (the Civil Rights count). However, on February 18, 1992, Petitioner served Respondent with a Request to Admit Facts and Interrogatories relative to Count II. Respondents, relying upon the prior procedural agreement, never responded to said request.

On June 9, 1992, Petitioner filed a motion for summary judgment on Count II of the complaint. Said motion was premised on the record of the Electoral Board proceedings and "the facts deemed admitted by the Board's failure to respond to the petitioner's Request to Admit Facts..."

On June 19, 1992, the Court entered and continued Petitioner's motion for summary judgment. On July 14, 1992, this Court affirmed the decision of the Electoral Board and dismissed Count I of the complaint. Respondent submitted its

cross-motion for summary judgment; response to Petitioner's motion for summary judgment; and memorandum in support thereof. In his Request to Admit Facts regarding Count II, Petitioner states:

> "At these hearings, there was no evidence adduced to support the proposition that the signatures in question were not signed by the voters in their own proper persons other than that from the Board's witness, James Hayes." (page 3, para. 8).

Either the admission or denial of these and similar discovery requests of Petitioner would, in effect, supplant the record not only to the prejudice of the Electoral Board, but also to the Objector's as well (who are also parties to the judicial review action). Moreover, the consequences of allowing discovery in the context of a judicial review action (through the mode of adding a civil rights count which attacks the legitimacy of an electoral board decision) would be far reaching and constitute a significant alteration in the court's processing of such actions.

As shown in the instant case, discovery tools can be used by a party as a means to augment and slant a judicial review case beyond the confines of the record. However, the legislature, in choosing the phrase "judicial review" for the Election Code, manifested an intent that review of Electoral Board decisions not exceed the record made before that Board. Wiseman v. Elward, 5 Ill. App. 3d 249, 254 (1972). If Petitioner can serve interrogatories upon an Electoral Board, then Defendant (either candidate or objector), would be induced to serve interrogatories

on the Electoral Board in an attempt to similarly bolster his or her position. Consequently, the Court would be drawn into a legal quagmire and judicial review of Electoral Board decisions would no longer be limited to the Electoral Board's record.

For the above stated reasons, the Electoral Board's failure to respond to Petitioner's discovery request during the pendency of the judicial review action (Count I) should be upheld. Additionally, such failure would not support a motion for summary judgment, particularly when the Electoral Board's decision has been affirmed.

II.

Title 42 U.S.C section 1983, enacted by Congress pursuant to section 5 of the Fourteenth Amendment, creates an action for damages and injunctive relief against individuals and local government bodies who deprive a Petitioner of rights, privileges, or immunities "secured by the Constitution and laws." In order to establish a prima facia section 1983 action based upon an alleged constitutional violation, Petitioner must allege and prove that Respondents caused Petitioner's alleged constitutional deprivation.

The crux of Petitioner's civil rights claim is that:

> "...the CBOE (Election Board) cannot automatically exclude printed signatures correlating to script-signed registration cards, or to construe section 7-10 of the Election Code so narrowly as to prohibit such petition signatures without prior notice to candidates like the petitioner, and no such notice was given." (page 4 of the complaint, para. 16).

In this regard, it is important to note that the Electoral Board was responding to an objector's petition challenging the legitimacy of Petitioner's nomination papers. In so doing, sufficient signatures were deemed by the Electoral Board as not being "...in their own proper persons..." (in addition to other grounds such as lack of registration) so as to constitute insufficient signatures for ballot placement (Ill. Rev. Stat. ch. 46, section 7-10 (1991)). This quasi-judicial action of the Electoral Board sustaining signature objections does not rise to the level of a constitutional violation.

Simply stated, Respondent's argument that to exclude printed signatures on nomination papers when such signatures are objected to and do not match the binder card signatures does not rise to the level of a constitutional violation. The issue of whether "printed signatures" conform to the pertinent provisions of the Election Code was resolved in the judicial review count (Count I) in the Election Board's favor.

It is incongruous for Petitioner to maintain that even though the Election Board's action was deemed proper by the state courts, that such action nevertheless rises to the level of a constitutional violation. In Archie v. City of Racine, 847 F.2d 1211 (7th Cir. 1988), the court held that since state law provided an adequate remedy for negligent rescue efforts, that a mere violation of state law does not infringe the federal Constitution. Id.

Indeed, in the instant case, there is no evidence of any infringement of state law. Just as the Archie court noted that superimposing constitutional principles on state tort laws would inhibit the states, the same holds true with Petitioner's attempts to superimpose constitutional principles on state election law. Simply stated, Petitioner's attempt to convert a judicial review action into a civil rights action should not be countenanced by this court.

A section 1983 Petitioner must plead more than the existence of a single wrongful act allegedly perpetrated by a governmental agency in order to properly state a claim for relief against a municipality or government entity. In addition to pleading the singular allegedly unconstitutional act, the complaint must also contain allegations that envision proof of a pattern of similar incidents of wrongdoing that might evidence the existence of a bonafide policy, custom, or practice unofficially sanctioned by the Respondent.

Indeed, the complaint fails to make allegations of any policy, custom or practice and does not even come close to satisfying the requirements set forth in Monell v. Department of Social Services, 436 U.S. 658 (1978) to establish an unconstitutional act by a government entity.

A municipal entity can be held liable under section 1983 only for constitutional violations caused by its official policies or customs and allegations of a municipal policy are needed to state a claim for municipal liability. Strauss v. City

of Chicago, 760 F.2d 765, 767 (7th Cir. 1985); see also Jones v. City of Chicago, 787 F.2d 200, 204-05 (7th Cir. 1986). "Alleging one specific incident or policy will not be adequate; the plaintiff must allege a specific pattern or series of incidents that support the general allegation." Hossman v. Blunk, 784 F.2d 793, 797 (7th Cir. 1986).

Petitioner never states particularized facts demonstrating a constitutional deprivation necessary to sustain a cause of action under Title 42 U.S.C. section 1983. Cohen v. Illinois Institute of Technology, 581 F.2d 658 (7th Cir. 1978), cert. den. 439 U.S. 1135 (1979). In Rivera v. Farrell, 538 F. Supp. 291 (N.D. Ill. 1982), the court held that a complaint alleging an isolated instance of misconduct broken down into several component elements did not sufficiently state a section 1983 cause of action.

In addition, assuming arguendo that Petitioner's Count II states a cause of action, the Electoral Board has absolute immunity from liability for damages. While many Election Board duties are administrative in nature, when its Commissioners sit as an electoral board they function in a quasi-judicial manner. In Pierson v. Ray, 386 U.S. 547 (1967), the Supreme Court provided judges with absolute judicial immunity from section 1983 damages claims. Accord, Mineles v. Waco, 112 S.Ct. 286 (1991).

In Butz v. Economou, 98 S.Ct. 2894 (1978), the Supreme Court adopted a functional approach to absolute judicial immunity which increased the number of quasi-judicial officials given absolute

immunity protection. Butz holds that persons performing adjudicatory functions within federal agencies are entitled to absolute immunity from damages liability for their judicial acts. Cok v. Cosentino, 876 F.2d 1 (1st Cir. 1989); Austin v. Chicago Board of Options Exchange, 898 F.2d 882 (2d Cir. 1990).

The Butz rationale should equally apply to municipal agencies exercising adjudicatory functions such as an electoral board. In other words, a Commissioner's role as an electoral board member is analogous to that of an administrative law judge. As such, Petitioner's claim for damages must fail and if the claim for damages fails, then, at this juncture, so must the complaint.

For the above-stated reasons, Petitioner's Motion for Summary Judgment is denied and Respondent's Cross-Motion for Summary Judgment is granted.

ENTER:

JUDGE C[illegible]S HEASTON

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Judge

Date: