NBCOFF-ALD

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

Objections of: DANIEL A. THOMPSON	)	
	)	
To the Nomination	)	
Papers of: JESSE J. EVANS	)	No.: 03-EB-ALD-162
	)	
Candidate for the office of	)	
Alderman of the Twenty-first 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, Theresa M. Petrone, 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 DANIEL A. THOMPSON ("Objector") to the nomination papers ("Nomination Papers") of JESSE J. EVANS, candidate for the office of Alderman of the Twenty-first Ward of the City of Chicago ("Candidate") to be elected at the Municipal General Election to be held on February 25, 2003, having convened on December 30, 2002, 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 December 30, 2002 and was continued from time to time.

5. The Electoral Board assigned this matter to Hearing Examiner FRANK A. TEDESSO 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 Trial Call. The following persons, among others, were present at such hearing; the

Objector, DANIEL A. THOMPSON, by counsel; and the Candidate, JESSE J. EVANS, by counsel.

7. The principal objections raised by the Objector's Petition are that (a) the Candidate fails to qualify as a candidate for Alderman in that he has been convicted in a court located in the United States of an infamous crime, bribery, perjury or other felony, citing 65 ILCS 5/3.1-10-5 (Objections, ¶3A); (b) the Candidate does not meet the 2-year residency requirement in that he has not resided in the ward he seeks to represent at least 2 years before the election date because he is currently on mandatory supervised mandatory release and is thus still legally in the custody of the Federal Bureau of Prisons (Objections, ¶3B); and (c) the Candidate is indebted to the City of Chicago for restitution owed from the felony he committed, citing 65 ILCS 5/3.1-10-5 (Objections, ¶3B).

8. The Candidate has acknowledged that he was found guilty in the United State District Court for the Northern District of Illinois of nine felony counts in 1997 and that he was sentenced to be imprisoned for a term of 41 months for such offenses. He also acknowledges that upon release from imprisonment, he was to be on supervised release for a term of 2 year.

9. The Objector submitted a certified copy of a docket entry in the United States District Court for the Northern District of Illinois, dated 7/10/2001, stating that "Pursuant to probation officer's request for modifying the conditions or terms of supervision with consent of the offender, the term of supervised release is extended to a total of three years, to November 14, 2003." The Objector also submitted certified copies of two subsequent docket entries by that court dated 11/14/2001 and 9/11/2002 which denied the Candidate's motion to terminate the term of supervision. Thus, the evidence submitted by the Objector establishes that the Candidate is still serving under a term of supervised release and will continue to so serve until November 14, 2003.

10. The Candidate argues that 65 ILCS 5/3.1-10-5(b) is unconstitutional as it applies to municipal elective office, citing *Coles v. Ryan,* 91 Ill.App.3d 382, 414 N.E.2d 932 (2nd Dist. 1980); *Medrano v. Chicago Electoral Board*, 02 CH 1978 (Cook Cty. Cir. Ct. 2002); *Cory v. Watts,* 99 CH 10306 (Cook Cty. Cir. Ct. 1999); and *Devine v. Luster,* 01 CE 044 (Cook Cty. Cir. Ct. 2001). The Candidate further argues that although he currently is on supervised release until November 14, 2003, he has completed his sentence and he is restored to eligibility to hold municipal office.

11. The Electoral Board finds that nothing in the cases cited by the Candidate (assuming for argument purposes that the Board is bound by such cases) suggest that a person is eligible for elective municipal office if he has not completed his or her sentence for the offenses committed. For example, in the *Medrano* case the court held that "65 ILCS 5/3.1-10-5(b) is unconstitutional to the extent that it does not restore eligibility to hold a legislatively created office to a person convicted of a felony or other infamous crime *upon completion of the sentence.*" (Italics added). Statutes restoring the right to hold constitutional office, for example, provide that such right is restored only if pardoned or upon completion of

one's sentence. See Ill. Const. Art. XIII, §1; 730 ILCS 5/5-5-5(b); 10 ILCS 5/29-15. Therefore, the Candidate here does not stand in the same place as the candidates in the cases cited by the Candidate.

12. The Candidate argues that he has completed his sentence and that his right to hold elective municipal office is restored. However, 18 U.S.C. §3583 clearly provides that a court, when imposing a sentence of imprisonment for a felony offense, may include "as part of the sentence" a requirement that the defendant be placed on a term of supervised release after imprisonment. Here, it is clear that the Candidate was placed on a term of supervised release following his imprisonment and that such supervision was and is a "part of the sentence."

13. The Electoral Board finds that the Candidate has not completed his sentence for the offenses committed and that he is not qualified to hold the elective office of Alderman of the Twenty-first Ward of the City of Chicago. Therefore, his Statement of Candidacy is invalid and paragraph 3A of the Objections is sustained and the Candidate's Nomination Papers are invalid.

14. At the hearing on January 22, 2003, the Candidate produced a Release of Judgment Lien evidencing payment of restitution. Therefore, paragraph 3C of the Objections is overruled.

15. The Objector presented no specific allegations of fact in regard to the Candidate's residency in the Ward other than the Candidate's supervised release. Therefore, the Objections in paragraph 3B overruled.

IT IS THEREFORE ORDERED that the Objections of DANIEL A. THOMPSON to the Nomination Papers of JESSE J. EVANS, candidate for election to the office of Alderman of the Twenty-first Ward of the City of Chicago are hereby SUSTAINED and said Nomination Papers are hereby declared INVALID and the name of JESSE J. EVANS, candidate for election to the office of Alderman of the Twenty-first Ward of the City of Chicago, SHALL NOT be printed on the official ballot for the Municipal General Election to be held on February 25, 2003.

Dated: Chicago, Illinois, this Fifth day of February, 2003.

Langdon D. Neal, Chairman

Theresa M. Petrone, Commissioner

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.

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

JESSE J. EVANS
Petitioner-Candidate,
v.
DANIEL A. THOMPSON, ET. AL.,
Respondents.

No. 03 CO EL 20

ORDER

THIS MATTER coming on to be heard on the Court's call for hearing on the Petition for Judicial Review, upon due notice and the Court hearing oral argument and reviewing the Memorandum of Law and being duly advised in the premises;

THE COURT FINDS that 65 ILCS 5/3.1-10-5 is constitutional on its face.

IT IS HEREBY ORDERED:

(1) The Petitioner is still serving his sentence and is not qualified to seek office therefore the decision of the Board of Elections is affirmed.

(2) There is no just reason for delay in the enforcement of or appeal from this order.

Atty. No.: 32446
Name: THADDEUS L. WILSON
Atty. for: DANIEL A. THOMPSON
Address: 11 E. ADAMS ST. SUITE 902
City/State/Zip: CHICAGO, IL 60603
Telephone: 312-360-0888

CIRCUIT COURT OF COOK COUNTY
ENTERED
FEB 14 2003

ENTER:

JUDGE
MICHAEL J. MURPHY-0808

Judge Judge's No.

No. 1-03-0376
IN THE APPELLATE COURT OF ILLINOIS,
FIRST JUDICIAL DISTRICT

JESSE J. EVANS,

Petitioner-Candidate-Appellant,

vs.

DANIEL A. THOMPSON, the MUNICIPAL OFFICERS ELECTORAL BOARD FOR THE CITY OF CHICAGO and its members, LANGDON NEAL, THERESE PETRONE and PHILLIP COWAN,

Defendants-Respondents-Appellees.

) Appeal from the Circuit Court
) of Cook County, Illinois, County
) Department, County Division
)
) No. 03 CO EL 20
)
)
)
)
)
)
) The Honorable
) Michael Murphy,
) Judge Presiding.

ORDER

This matter being considered on motion of appellant to expedite said appeal, and on the Court's own motion relating to matters as to the forthcoming Chicago municipal elections scheduled for February 25, 2003, and appellant also seeking relief to set aside the ruling of the circuit court of Cook County, and this Court being advised in the premises and having considered the brief of appellant and the record herein,

IT IS HEREBY ORDERED that the relief as prayed by appellant is ~~ALLOWED~~/DENIED and an expanded Supreme Court Rule 23 Order or opinion will issue at a later date.

ORDER ENTERED
FEB 21 2003
APPELLATE COURT, FIRST DISTRICT

JUSTICE

JUSTICE

JUSTICE