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

Objections of: ZINA J. MURRAY	)	
	)	
To the Nomination	)	**No.: 07-EB-ALD-008**
Papers of: ESTEBAN BURGOA	)	
	)	
Candidate for the office of	)	
Alderman of the Thirty-fifth 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 ZINA J. MURRAY ("Objector") to the nomination papers ("Nomination Papers") of ESTEBAN BURGOA, candidate for the office of Alderman of the Thirty-fifth Ward in 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 Thaddeus Wilson for further hearings and proceedings.

6. The Objector and the Candidate were directed by the Electoral Board to appear before the Hearing Examiner on the date and at the time designated in the Hearing Schedule. The following persons, among others, were present at such hearing: the Objector, ZINA J. MURRAY, by counsel, Mathias Delort; and the Candidate, ESTEBAN BURGOA, pro se.

7. The Hearing Examiner ordered that an examination of the registration records 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. The Hearing Examiner directed all parties to appear and be present, either personally and/or by their authorized representatives during this records examination.

9. The Candidate and/or his duly authorized representative was present during the examination of the registration records.

10. The Objector and/or her duly authorized representative was present during the examination of the registration records.

11. The examination of the registration records was completed and the Electoral Board hereby adopts and incorporates by reference the results of the records examination conducted by its clerks and agents. The written report of the result of the registration records

examination is contained in the Electoral Board's file in this case and a copy has been provided to the parties.

12. The Electoral Board has considered all evidence and arguments tendered by the parties and the Hearing Examiner's report of recommended findings and conclusions of law.

13. The results of the records examination indicate that:

A. The minimum number of valid signatures required by law for placement on the ballot for the office in question is 186;

B. The number of purportedly valid signatures appearing on the nominating petition filed by the Candidate total 390;

C. The number of signatures deemed invalid because of objections sustained as a result of the records examination total 224;

D. The remaining number of signatures deemed valid as a result of the records examination total 166.

14. The Electoral Board finds that the number of valid signatures appearing on the Candidate's nominating petition following completion of the records examination is less that the minimum number of valid signatures required by law to be placed upon the official ballot as a candidate for election to the office of Alderman of the Thirty-fifth Ward of the City of Chicago.

15. The Hearing Examiner then allowed the parties an opportunity to file Rule 8 motions addressing the results of the records examination set a hearing for January 18, 2007 on the Rule 8 motions. At such hearing the Hearing Examiner overruled 10 rulings at the records examination, leaving the Candidate 10 signatures under the minimum signature requirement. The hearing was continued to January 19, 2007 to present additional evidence.

16. At the January 19 hearing, the Candidate submitted documents and affidavits in an attempt to rehabilitate 10 additional signatures for which objections had been properly preserved at the records examination. Upon completion of the hearing, the Hearing Examiner found that the Candidate was then 7 valid signatures short of the required minimum of 179 valid signatures.

17. The Hearing Examiner then proceeded to address additional objections raised by the Objector, including:

A. Objections arguing that the Candidate's Statement of Candidacy and the petition signature sheets are invalid because it refers to the Candidate as seeking election as an independent partisan candidate. The Hearing Examiner overruled this objection.

B. Objections arguing that the petition signature sheets are invalid because the Candidate did not properly designate the office for which he is seeking election and the unit of government. The Hearing Examiner overruled this objection.

18. Based upon the evidence presented, the Hearing Examiner found that the Candidate's Nomination Papers contained only 179 valid signatures and that the Candidate's Nomination Papers should be found invalid.

19. 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 sustained and that the Nomination Papers be found invalid.

20. 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. A copy of the Hearing Examiner's Report and Recommended Decision 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 sustains the Objections to the Candidate's Nomination Papers and finds that the Candidate's Nomination Papers are invalid.

IT IS THEREFORE ORDERED that the Objections of ZINA J. MURRAY to the Nomination Papers of ESTEBAN BURGOA, candidate for election to the office of Alderman of the Thirty-fifth Ward of the City of Chicago, are hereby SUSTAINED and said Nomination Papers are hereby declared INVALID and the name of ESTEBAN BURGOA, candidate for election to the office of Alderman of the Thirty-fifth Ward of the City of Chicago, SHALL NOT be printed on the official ballot for the Municipal General Election to be held on February 27, 2007.

Dated: Chicago, Illinois, this 28th 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.

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

BOARD OF ELECTION COMMISSIONERS OF THE CITY OF CHICAGO
AS 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 MAYOR, CLERK, TREASURER, AND ALDERMAN
IN THE CITY OF CHICAGO

ZINA J. MURRAY,	)	
	)	
Objector,	)	
	)	
-VS-	)	Case No. 07-EB-ALD-008
	)	
ESTEBAN BURGOA,	)	
	)	
Candidate.	)	

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Hearing Examiner's Report and Recommended Decision

This matter first came before the hearing examiner on January 2, 2007. The Objector, ZINA J. MURRAY, was represented in these proceedings by attorneys Mathias W. Delort and Sara M. Gadola. The Candidate, ESTEBAN BURGOA, was represented in these proceedings by attorney Michael W. Burmeister. The parties identified matters that were to be resolved by a records examination and those to be resolved on purely legal grounds. The hearing examiner scheduled a records examination and made preliminary rulings with respect to the legal issues and set a briefing schedule with respect to all legal issues.

I. Objections Presented.

The Objector argues in her verified petition that (as numbered by the hearing examiner): (1)

the Statement of Candidacy is invalid because it refers to the candidate as seeking election as an independent partisan candidate; (2) the petition signature sheets are invalid because they refer to the candidate as seeking election as an independent partisan candidate; (3) the petition signature sheets are invalid because the candidate failed to state the ward for whose aldermanic seat the candidate seeks; (4) the petition signature sheets are invalid because the designation of office does not state the unit of government; and (5) the nomination papers are invalid because they contain less than the required 186 signatures.

II. Findings of Facts.

On January 11, 2007, a records examination was completed by Board personnel. Attorney Burmeister appeared personally at the records examination and represented the Candidate. There were findings and rulings made at the records examination. Both sides made objections and properly preserved certain of the rulings for further consideration pursuant to Board written, printed and widely available rules. Thus, presumably where no objection was preserved by either side, it was because there was no disagreement with the finding. The records examination results showed: the Candidate had 390 signatures on his petition, 90 objections were overruled, 224 objections were sustained, 0 signatures were invalid because of circulator, there were 166 valid signatures, and that for the 35th Ward there was a minimum requirement of 186 signatures.

On January 16, 2007, the parties appeared and the hearing examiner overruled objections K through N of the Objector's petition (objections 1 through 4, as identified above) for the reasons more fully set forth below and stated on the record. Thus, the legal issues had no effect on the Candidate's signature total which at that time remained at 166 valid signatures. Without more, the

candidate would be 20 valid signatures short of the number necessary to be placed on the ballot. The hearing examiner allowed the parties time to file Rule 8 motions to the results of the records examination. The case was continued to January 18, 2007 for hearing on the Rule 8 motions. Both sides filed Rule 8 motions. The hearing examiner went through the Candidate's Rule 8 motion and supporting documentation. Based upon the hearing examiner's review of the evidence presented to rehabilitate signatures, the hearing examiner overruled 10 rulings of the records examination. Thus, the Candidate was then 10 valid signatures short. Because the Candidate did not have sufficient time to review and respond to the Objector's Rule 8 motion, the hearing examiner continued that case until January 19, 2007. The hearing examiner also ruled that he would allow both sides to submit additional evidence and documents addressing issues previously raised and preserved but not ruled upon by the hearing examiner.

On January 19, 2007, the parties appeared before the hearing examiner and presented evidence and testimony, including the testimony of the Candidate and the testimony of Board employee Robert Sawicki. The Candidate also had documents and affidavits with which he attempted to rehabilitate 10 additional signatures for which objections were properly preserved at the records examination. Upon completion, the hearing examiner found that the Candidate was then 7 valid signatures short of the required minimum signatures (a total of 179 valid signatures).[1]

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[1]At the conclusion of the hearing, counsel for the Objector argued that the Candidate should be allowed to submit affidavits that he had obtained to rehabilitate signatures to which he did not properly preserve an objection to at the records examination. Counsel argued that the Rule 3, subsection l of the Board Rules allows the hearing examiner to waive strict compliance with the rules when required in the interest of fairness and substantial justice. Counsel moved that the hearing examiner consider the additional affidavits in his possession despite the fact that a proper objection was not preserved at the records examination. To the extent that the hearing examiner has such authority, the hearing examiner does not believe that this is a situation that screams for equity and fairness. The Candidate was represented at the records examination by

III. Findings of Law and Legal Analysis.

With respect to issue 1 above (¶ K of the Objector's Petition) and issue 2 above (¶ L of the Objector's Petition), the Objector argues that the Statement of Candidacy and the Petition Signature Sheets respectively are invalid because it refers to the Candidate as seeking election as an independent partisan candidate. The hearing examiner overrules this objection. While the Statement of Candidacy is on a form that appears to have been intended for a partisan election, there is no likelihood of confusion for the voters. Although the Petition Signature Sheets are more problematic, this hearing examiner does not find the references to independent candidate to likely confuse the voters or disrupt the election process. Chicago aldermanic elections are non-partisan but that does not mean that the candidates are not partisan and it does not mean that the voters are not partisan and would want to know the party affiliation of those they support. However, the reverse is not true, at least in the mind of this hearing examiner. Leaving out the party affiliation or misstating the party affiliation in a partisan election would be confusing to the voters and inject fraud into the election

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counsel. The rules with respect to preserving records examination objections were published in writing and available to all involved. Under the Candidate's scenario, the hearing examiner should accept additional until the Candidate has enough valid signatures to be on the ballot. Should the hearing examiner then allow the Objector to file additional recapitulation sheets to contest additional signatures. The rules are in place to assist in orderly and timely proceedings. While ballot access is a substantial right and not lightly to be denied, the rules of the Board are not overly burdensome or difficult understand or comply with. The hearing examiner gave the Candidate additional time to go out and obtain additional documents and affidavits to rehabilitate signatures for which there were proper objections at the records examination and the Candidate came back with only 10. Thus, the hearing examiner overrules the request to consider the additional affidavits. Nevertheless, in order to have a complete record should the Candidate make the same plea to the Board, the hearing examiner and the parties went through each of the additional 15 affidavits so as to indicate what the ruling would have been. After completion of that process, it was determined that the Candidate would have had 2 signatures more than the required minimum signatures (188 valid signatures). To the extent that the Board excepts the Candidate's argument, the hearing examiner would find that the Candidate had 188 valid signatures.

process.

The Objector cites to the 2003 Board decision of Dix v. Terry in support of its argument. In Dix, the Candidate indicated that she was seeking the nomination of the "Democratic Party". However, ALL candidates for aldermanic office are considered independent candidates and therefore the statement "Independent Candidate" is accurate. To the extent that the Election Code requires aldermanic petitions to conform with the provisions relating to "nomination of independent candidates for public office by petition, then the Candidate here has complied. Furthermore, Independent does not designate a particular party in Illinois, unlike the names "Harold Washington Party" or "Green Party" or "Libertarian Party."

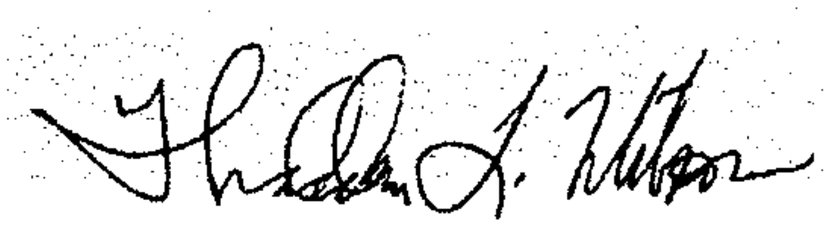
As to argument 1 above (¶ M of the Objector's Petition) and argument 2 above (¶ N of the Objector's Petition, the Objector argues that the petition signature sheets are invalid because the Candidate did not properly designate the for which he is seeking office and the unit of government, respectively. These objections will also be overruled. The Candidate clearly indicated the office and unit of government in his Statement of Candidacy and the preamble to his petition signature sheets states that the signers are qualified voters in the 35th Ward of the City of Chicago. There would be no need to be qualified voters in the 35th Ward of the City of Chicago if the race did not relate to the 35th Ward, City of Chicago. Nomination papers must specify the office to which the candidate seeks. However, the failure to properly designate the office the candidate is seeking does not render the nomination papers invalid if it can be determined by looking elsewhere in the nomination papers. Lewis v. Dunne, 63 Ill. 2d 48 (1976). Viewing the statement of candidacy and the nominating petitions as being part of the nomination papers there is no basis for confusion if the information is contained either of the documents. Id. In the case before us, the Candidate has

substantially complied with the requirements of the Election Code. See Stevenson v. County Officers Electoral Board of DuPage County, 58 Ill. App. 3d 24 (3rd Dist. 1978).

Based upon the factual and legal findings outlined and discussed above, the Objector's petition should be sustained and the Candidate's name should not appear on the ballot because the Candidate only has 179 valid signatures when a minimum of 186 valid signatures was required.

IV. Recommendation.

In light of the above factual findings and legal analysis and for the reasons stated on the record, it is the recommendation of this hearing examiner that the objections of the Objector, ZINA J. MURRAY, be sustained, that the nomination papers of the Candidate, ESTEBAN BURGOA, be declared insufficient as a matter of law and of fact, and that the name of the Candidate, ESTEBAN BURGOA, not appear and not be printed on the ballot for election to the Office of Alderman of the 35th Ward of the City of Chicago to be voted upon at the February 27, 2007 Municipal General Election.



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