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

Objections of: HAZEL HAYNES	)	
	)	
	)	
To the Nomination	)	**No.: 07-EB-ALD-019**
Papers of: ALFREDO CASTILLO	)	
	)	
Candidate for the office of	)	
Alderman of the Fifteenth 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 HAZEL HAYNES ("Objector") to the nomination papers ("Nomination Papers") of ALFREDO CASTILLO, candidate for the office of Alderman of the Fifteenth 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 William Jones for further hearings and proceedings.

6. The Objector(s) 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(s), HAZEL HAYNES, by counsel, Michael Kreloff; and the Candidate, ALFREDO CASTILLO, pro se.

7. The Objector's Petition alleges that the Candidate failed to file a Statement of Economic Interests with the Cook County Clerk and failed to file a receipt evidencing the filing of an Economic Interests Statement with the Chicago Board of Election Commissioners.

8. During the hearing in this case, the Candidate, under oath, admitted that he had failed to file a Statement of Economic Interest with the Cook County Clerk. It is also evident from an inspection of the Candidate's Nomination Papers that he did not file a receipt with his Nomination Papers evidencing the fact that he had filed a Statement of Economic Interest with the Cook County Clerk.

9. Article XIII, Section 2 of the Illinois Constitution provides that the General Assembly by law may impose a requirement upon candidates for, or holders of, offices in units of local government and school districts to file a verified statement of their economic interests.

Failure to file a statement within the time prescribed shall result in ineligibility for, or forfeiture of, office.

10. Section 10-5 of the Election Code (10 ILCS 5/10-5) provides that nomination papers are not valid if the candidate fails to file a statement of economic interests as required by the Illinois Governmental Ethics Act in relation to his candidacy with the appropriate officer by the end of the period for the filing of nomination papers unless he has filed a statement of economic interests in relation to the same governmental unit with that officer during the same calendar year as the year in which such nomination papers were filed. If the nomination papers of the candidate and the statement of economic interests of the candidate are not required to be filed with the same officer, the candidate must file with the officer with whom the nomination papers are filed a receipt from the officer with whom the statement of economic interests is filed showing the date on which such statement was filed. Such receipt shall be so filed not later than the last day on which nomination papers may be filed.

11. The Illinois Governmental Ethics Act requires that persons who are candidates for nomination or election to office in a unit of local government to file their statements of economic interests with the county clerk of the county in which the principal office of the unit of local government is located. (5 ILCS 420/4A-101(g), 4A-106) Therefore, candidates for nomination or election to office in the City of Chicago are required to file their statements of economic interests with the Cook County Clerk.

12. Because statements of economic interests of candidates for nomination or election to the office of Alderman in the City of Chicago are required to be filed with the Cook County Clerk and the nomination papers of those candidates are required to be filed with the Chicago Board of Election Commissioners, a candidate for the office of Alderman in the City of Chicago

is required by Section 10-5 of The Election Code to file with the Chicago Board of Election Commissioners a receipt from the Cook County Clerk showing the date on which the candidate's statement of economic interests was filed. Such receipt was required to be filed with the Chicago Board of Election Commissioners not later than the last day on which nomination papers were permitted to be filed, or December 18, 2006.

13. The Electoral Board finds that the Candidate here failed to file with the Chicago Board of Election Commissioners not later than December 18, 2006, a receipt from the Cook County Clerk showing the date on which the Candidate's statement of economic interests was filed.

14. The Electoral Board finds that the Candidate failed to file a statement of economic interests in relation to his candidacy with the Cook County Clerk on or before December 18, 2006.

15. The Electoral Board finds that the failure to file with the Chicago Board of Election Commissioners a receipt showing that the Candidate filed a statement of economic interests with the Cook County Clerk invalidates the Candidate's Nomination Papers. *Kellogg v. Cook County Illinois Officers Electoral Board*, 347 Ill.App.3d 666, 807 N.E.2d 1161 (First Dist. 2004); *Bolger v. Electoral Board of City of McHenry*, 210 Ill.App.3d 958, 569 N.E.2d 628 (Second Dist. 1991); *Mobley v. Beard*, CBEC, 95-EB-MUN-7 (January 23, 1995); *Geiren v. Norris*, CBEC, 95-EB-ALD-44 (January 17, 1995); *Jackson v. Washington*, CBEC, 95-EB-ALD-85 (January 23, 1995); *Williams v. Brown*, CBEC, 95-EB-ALD-131 (January 27, 1995); *Robinson v. Nalls*, CBEC, 95-EB-ALD-181, (January 28, 1995).

16. The Objector further alleges that the Candidate's Nomination Papers were not bound in any fashion in violation of 10 ILCS 5/10-4.

17. Board Exhibit E, consisting of a photograph depicting that the Nomination Papers were not bound in any fashion at the time of filing, was admitted. Also, the Board's Receipt for Nomination Papers also indicates that these papers were not bound.

18. The Hearing Examiner found as a matter of fact that the Candidate's Nomination Papers were not securely bound or fastened in any fashion and concluded, as a matter of law, that 10 ILCS 5/10-4 was violated.

19. Section 10-4 provide that petition sheets shall be neatly fastened together in book form, by placing the sheets in a pile and fastening them together at one edge in a secure and suitable manner, and the sheets shall then be numbered consecutively. Section 10-4 further provides that noncompliance with its provisions "shall" invalidate the signatures on a nominating petition. Specifically, the Code states: "No signature shall be valid or be counted in considering the validity or sufficiency of such petition unless the requirements of this Section are complied with." Based upon that language which imposes sanctions in the event the provisions of the Code are not complied with, coupled with the use of the word "shall," the requirements of section 10-4 are mandatory rather than directory. *Bendell v. Education Officers Electoral Board for School Dist. 148*, 338 Ill.App.3d 458, 463, 788 N.E.2d 173 (1st Dist. 2003). "Inasmuch as section 10-4 is mandatory, compliance with its provisions must be strict rather than substantial." (*Id.*)

20. In *Girot v. Keith*, 341 Ill.App.3d 902, 904, 793 N.E.2d 935, 937 (3rd Dist. 2003), reversed on other grounds, 212 Ill.2d 372, 818 N.E.2d 1232 (2004), the Third District found. "The purpose of requiring candidates to securely bind and number the petitions is to prevent tampering, thereby preserving not only the integrity of the petitions submitted, but also the election process in general," citing *Jones v. Dodendorf*, 190 Ill.App.3d 557, 562, 546 N.E.2d 92

(1989). The court found that these provisions are mandatory, and that failing to comply with even one of them will result in the petitions' invalidation. The court found that the candidate had made no effort to securely bind the pages of his petition in a way that would prevent tampering, stating that "Fastening the pages with a paper clip could not meet the purposes of the statute's requirements." Therefore, the candidate's actions did not constitute substantial compliance with the statute. The *Girot* court also rejected the candidate's argument that there was no need to fasten all of the pages together, since one page of signatures would have been sufficient to meet the requirements to be placed on the ballot. The court reasoned that because the statute prohibits any petition that has been filed from being withdrawn, altered, or added to, were the court to allow the candidate to base his candidacy on only one of the several pages he filed with the city clerk, the petition would be impermissibly altered.

21. In *Jakstas v. Koske*, 352 Ill.App.3d 861, 817 N.E.2d 200 (2nd Dist. 2004), the court held that the Election Code provision, regarding signature sheets for public question referendum petitions being bound securely and numbered consecutively, is mandatory; provision imposes requirements by using "shall" and contains an express statement voiding the petition if the requirements are not fulfilled.

22. 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.

23. 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.

24. 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.

25. The Electoral Board further finds that there were two other objections filed against the Candidate's Nomination Papers in cases 07-EB-ALD-141 and 07-EB-ALD-144. The objections in 07-EB-ALD-141 were withdrawn. The objections in 07-EB-ALD-144 were sustained and the Board found that the Candidate's Nomination Papers were invalid.

IT IS THEREFORE ORDERED that the Objections of HAZEL HAYNES to the Nomination Papers of ALFREDO CASTILLO, candidate for election to the office of Alderman of the Fifteenth Ward of the City of Chicago, are hereby SUSTAINED and said Nomination Papers are hereby declared INVALID and the name of ALFREDO CASTILLO, candidate for election to the office of Alderman of the Fifteenth 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 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.

SERVICED ATTACHED

BEFORE THE CHICAGO BOARD OF ELECTION COMMISSIONERS

Hazel Haynes Hearing Examiner's Report

Hazel Haynes,	)	
	)	
Objector,	)	
	)	No. 07-EB-ALD-019
vs.	)	
	)	(Related to Nos. 07-EB-ALD-141, ALD-144)
Alfredo Castillo,	)	
	)	
Candidate.	)	

1. This matter was called for hearing on January 2, 2007 at 2:30 p.m. The Candidate appeared *pro* se. The Objector appeared through legal counsel. Board Group Exhibits A through E were marked and admitted.

2. This matter was continued for further hearing upon the Objector's Petition for January 10, 2007 at 10:00 a.m.

3. On January 10, 2007 a hearing was conducted. The Candidate was sworn in. Board Exhibit E, a photograph of the Candidate's Papers, was marked and admitted as Exhibit E.

4. Paragraphs 1 through 3 of the Objector's Petition alleged that the Candidate failed to file a Statement of Economic Interests with the Cook County Clerk and failed to file a receipt of filing with the Chicago Board of Election Commissioners. During the hearing, the Candidate, under oath, admitted that he had failed to file his Statement of Economic Interests with the Cook County Clerk. This fact is corroborated by Board Group Exhibit A.

5. Paragraphs 4 and 5 of the Objector's Petition allege that the Nomination Papers were not bound in any fashion in violation of 10 ILCS 5/10-4. Board Exhibit E establishes that no bindings secured the Nomination Sheets. Also, the Board Receipt for Nomination Papers,

part of Board Group Exhibit A, indicates the Papers were not bound. Therefore, the Hearing Examiner finds as a matter of fact that the Nomination Papers were not bound in any manner.

6. The Hearing Examiner concludes as a matter of law that 10 ILCS 5/10-4 was violated. As a matter of law, the requirement to securely bind the Nomination Papers is mandatory. *Bendell v. Education Officers Electoral Bd.*, 338 Ill.App. 458, 788 N.E.2d 173 (lst Dist. 2003).

7. Further, as a matter of law, the opinion of *Wilson v. Rowans*, 03-EB-ALD-122 (CEBC, 01/14/03) stands for the proposition that if the papers have no binding, all the Nomination Papers are invalidated.

8. Therefore the Hearing Examiner, for all the above reasons, concludes that the Candidate's Papers are invalid and recommends that the name of Alfredo Castillo not appear on the ballot as a Candidate for the office of 15th Ward Alderman.

9. The related case of *Jones v. Castillo*, ALD-144 went to hearing at 11:00 a.m. on January 10, 2007 and is subject to a separate written opinion.

10. The related case of *Silva v. Castillo*, ALD-141 is schedule for hearing on January 12, 2007 at 1:00 p.m.

Date: January 11, 2007

Hearing Examiner
William P. Jones