NBCON-MUN

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

Objections of: Thomas L. McMahon	)	
	)	
	)	No. 11-EB-MUN-024
To the Nomination Papers of:	)	
Rahm Emanuel	)	Related Cases: 11-EB-MUN-001 thru -023,
	)	-027 thru -029, -031, -037, -039, -060, -061
Candidate for the Office of	)	
Mayor of the 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, Richard A. Cowen and Marisel A. Hernandez, 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 Thomas L. McMahon ("Objector") to the nomination papers ("Nomination Papers") of Rahm Emanuel, candidate for the office of Mayor of the City of Chicago ("Candidate") to be elected at the Municipal General Election to be held on February 22, 2011, having convened on December 6, 2010, at 9:00 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 6, 2010 and was continued from time to time.

5. The Electoral Board assigned this matter to Hearing Officer Joseph A. Morris 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 Officer on the date and at the time designated in the Hearing Schedule. The following persons, among others, were present at such hearing: the Objector, Thomas L. McMahon, by attorney, Burton S. Odelson; and the Candidate, Rahm Emanuel, by attorney, Michael J. Kasper, Kevin M. Forde, And Michael K. Forde.

7. The Objector avers that the Illinois Municipal Code, at 65 ILCS 5/3.2-10-5, requires a candidate for Mayor of the City of Chicago to be a registered voter who has resided in the City of Chicago at least one year before the next preceding election, which is for purposes of the Objection the Municipal General Election to be held on February 22, 2011.

8. The Objector alleges that the Candidate's Nomination Papers are insufficient in fact and in law because (a) the Candidate is not a registered voter at the address identified on his Nomination Papers, and (b) the Candidate has not resided in the City of Chicago for at least one year prior to the February 22, 2011 Municipal General Election as required by law. The Objector further alleges that because the Candidate was not a duly qualified, legally registered voter and resident of the City of Chicago for at least one year prior to the February 22, 2011

Municipal General Election as required by law, the Candidate's Nomination Papers are false and perjurious.

9. Objector also alleges that the Candidate is ineligible for elective municipal office because he is in arrears in the payment of a tax or other indebtedness to the City of Chicago, in violation of Section 3.1-10-5(b) of the Illinois Municipal Code (65 ILCS 5/3.1-10-5), which states: "A person is not eligible for an elective municipal office if that person is in arrears in the payment of a tax or other indebtedness due to the municipality...." Objector claims that the Candidate was under an obligation to but did not purchase vehicle stickers from the City of Chicago in 2007, 2008, 2009 and 2010 as required by City of Chicago ordinances. According to Objector, the Candidate thus owes the City of Chicago monies for the vehicle stickers and any penalties accrued because of the non-payment of the vehicle stickers and is thereby indebted to the City of Chicago and not legally qualified to hold office, citing *Cinkus v. Village of Stickney Municipal Officers' Electoral Board*, 228 Ill.2d 200, 886 N.E.2d 1011 (2008).

10. Objector further alleges that the Statement of Candidacy provisions of the Election Code requires the Candidate to swear or affirm, under oath, that he or she is legally qualified to hold the office they seek at the time they sign the Statement of Candidacy. Here, the Objector claims that the Candidate's Statement of Candidacy stating that he is legally qualified to hold the office of Mayor is false and perjurious.

11. On the date of the initial hearing for case management on December 6, 2010, the Hearing Officer, over the objection of the Objectors in *Makysm v. Emanuel*, No. 11-EB-MUN-010, consolidated for purposes of further hearings the objection cases filed against Candidate Emanuel, with the exception of those cases where the objector failed to appear at the December 6 hearing.

12. Following the initial case management conference, the Hearing Officer scheduled and conducted further case management and evidentiary hearings in these matters.

13. The Hearing Officer has tendered to the Electoral Board his report and recommended decision. The Hearing Officer recommends that the Objections to the Candidate's Nomination Papers be overruled and that the Nomination Papers be declared valid.

14. Having reviewed the record of proceedings in this matter, as well as all argument and evidence submitted by the parties, and having considered the report and recommendations of the Hearing Officer, the Electoral Board hereby adopts the Hearing Officer's recommended findings and conclusions of law. A copy of the Hearing Officer report and recommendations is attached hereto and is incorporated herein as part of the decision of the Electoral Board.

15. For the reasons stated above, the Electoral Board overrules the Objections to the Candidate's Nomination Papers and finds that the Candidate's Nomination Papers are valid.

IT IS THEREFORE ORDERED that the Objections of Thomas L. McMahon to the Nomination Papers of Rahm Emanuel, candidate for election to the office of Mayor of the City of Chicago, are hereby OVERRULED and said Nomination Papers are hereby declared VALID and the name of Rahm Emanuel, candidate for election to the office of Mayor of the City of Chicago, SHALL be printed on the official ballot for the Municipal General Election to be held on February 22, 2011.

Dated: Chicago, Illinois, on December 23, 2010.

Langdon D. Neal, Chairman

Richard A. Cowen, Commissioner

Marisel A. Hernandez, 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 5 days after service of the decision of the Electoral Board.