NBCON-ALD

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

Objections of: Terrence Patrick Fowler	)	
	)	
	)	
To the Nomination	)	No.: 11-EB-ALD-055
Papers of: Mary Anne "Molly" Phelan	)	
	)	Related Case: 11-EB-ALD-081
Candidate for the office of	)	
Alderman of the 46th 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, 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 Terrence Patrick Fowler ("Objector") to the nomination papers ("Nomination Papers") of Mary Anne "Molly" Phelan, candidate for the office of Alderman of the 46th Ward 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 William J. Cadigan 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, Terrence Patrick Fowler, by attorney, Anthony Jacob; the Candidate, Mary Anne "Molly" Phelan, by attorney Dan Johnson-Weinberger.

7. 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.

8. The Electoral Board, having reviewed the record of proceedings in this matter and having considered the report and recommendations of the Hearing Officer, as well as all argument and evidence submitted by the parties, 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.

9. For the reasons stated above, the Electoral Board overrules the Objections to the Candidate's Nomination Papers. The Electoral Board further finds that objections in Related Case 11-EB-ALD-081 also determined that the Candidate's Nomination Papers are valid.

IT IS THEREFORE ORDERED that the Objections of Terrence Patrick Fowler to the Nomination Papers of Mary Anne "Molly" Phelan, candidate for election to the office of Alderman of the 46th Ward of the City of Chicago, are hereby OVERRULED and said Nomination Papers are hereby declared VALID and the name of Mary Anne "Molly" Phelan, candidate for election to the office of Alderman of the 46th Ward 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 January 3, 2011.

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.

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

Objections of: Terrence Patrick Fowler	)	
	)	
To the Nomination of Papers of:	)	
Mary Anne "Molly" Phelan	)	
	)	No. 11-EB-ALD-055
Candidate for Alderman	)	
Of the 46th Ward	)	

BOARD OF ELECTION
ROLLING PLACE DEPT
2010 DEC 22 A 8:07

HEARING OFFICER'S REPORT AND RECOMMENDATION

This matter coming before the duly constituted Electoral Board, consisting of Chicago Board of Election Commissioners, and before the undersigned Hearing Officer, the Hearing Officer hereby makes the following Report and Recommendation that the Objection be DENIED based on the factual and legal findings set forth below:

1. The Candidate filed Nomination Papers as a Candidate for Alderman of the 46th Ward. Such Nomination Papers consisted of: a) Statement of Candidacy; and b) a Nomination Petition Sheets.

2. The Objector's Petition to the Nomination Papers of the Candidate was timely filed on November 30, 2010.

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.

4. On December 6, 2010, this matter was heard on the Initial Status Call. Due to confusion during the Call on December 6th Call, an order of Default was mistakenly entered against the Objector. That order was subsequently vacated and the matter set for an Initial Status hearing on December 10, 2010. The Initial Status was subsequently continued until December 13, 2010.

5. At the December 13th hearing, the Objector was represented by counsel, Anthony Jacob. The Candidate was represented by counsel, Dan Johnson-Weinberger.

6. At the Initial Status, counsel for the Objector summarized the legal and factual issues presented in the Objection. The sum and substance of the allegations in the Objection was that: a) Candidate improperly used a nickname on her Nominating Papers; and b) that the signature which appears on the Candidate's Statement of Candidacy was not actually the Candidate's signature; and c) that the Candidate's Nominating Petition Sheets are not numbered consecutively and some are not numbered at all.

7. Counsel for the Candidate stated he would file a Motion to Dismiss. A briefing schedule on the Motion to Dismiss was entered. The parties further stipulated that the Candidate would provide the Objector with additional documents demonstrating that the signature which appears on the Candidate's Statement of Candidacy was indeed the Candidate's signature. The matter was set for argument on the Candidate's Motion to Dismiss on December 20, 2010.

8. On December 15, 2010 counsel for the Candidate provided copies of documents to the Hearing Officer and counsel for the Objector in support of the position that the signature which appears on the Candidate's Statement of Candidacy was indeed the Candidate's signature.

9. On December 16, 2010 counsel for the Objector notified the Hearing Officer and counsel for the Candidate that he would not be filing a written Response to the Candidate's Motion to Strike.

10. Counsel for both parties were present at the December 20th hearing. Based on the Objection, the Candidate's Motion to Dismiss, arguments presented by counsel, and the Hearing Officer's review of the relevant documents, the following findings are made:

a. Candidate's Use of a Nickname on Nominating Papers.

The Objection alleges that the Candidate's use of a nickname and various forms of her first, middle and surname on the Nominating Papers renders them invalid under the Illinois Election Code.

As argued in the Candidate's Motion to Dismiss, the Illinois Election Code specifically authorizes candidates to use nicknames in the designation of their names. In relevant part, the Illinois Election Code states that "the designation of the name of a candidate on a certification of nomination or nomination papers, the candidate's given name or names, initial or initials, a nickname by which the candidate is commonly known, or a combination thereof, may be used in addition to the candidate's surname." 10 ILCS 5/10-5.1.

Furthermore, it is well settled that variations in the candidate's name on the several documents that make up Nominating Papers is not a basis to deny access to the ballot. *Delay v. Simms-Johnson*, No, 00-EB-WC-12 and *Garza v. Blackmon*, 91-EB-ALD-010.

Therefore, the allegations raised in the Objection relating to the designation of the Candidate's name should be denied based on the relevant provisions of the Illinois Election Code and precedent of the Electoral Board.

b. Authenticity of Candidate's Signature on Statement of Candidacy.

The Hearing Officer compared the signature on the Statement of Candidacy to the Candidate's signatures on other documents in the Nominating Papers, as well as other documents presented by counsel for the Candidate, and finds that the signature on the Statement of Candidacy is genuine and that of the Candidate.

The Hearing Officer compared the signature on the Statement of Candidacy to the Candidate's signatures on other documents in the Nominating Papers, as well as other documents

presented by counsel for the Candidate, and finds that the signature on the Statement of Candidacy is genuine and that of the Candidate.

c. Page Numbering of Candidate's Nominating Petition Sheets

The next issue presented in the Objection relates to the page numbering of the Candidate's Nominating Petitions. In support of this allegation, Paragraph 6 of the Objection states as follows: "The Candidate's Nominating Papers are invalid in their entirety because they are not numbered consecutively in violation of the Illinois Election Code. Because there are nominating petition pages that are completely un-numbered (not merely mis-numbered), the Nomination Papers are in valid in their entirety".

The Candidate's Motion to Dismiss requests that this portion of the Objection be stricken on the grounds that the general nature of the allegations fails to comply with Section 10-8 of the Illinois Election Code's requirement that objectors' petitions "state fully" the nature of objections to a candidate's nominating petitions. While the Hearing Officer finds merit in the Candidate's position on this issue, a review of the relevant documents, statute and Electoral Board precedent also dictate that this portion of the Objection be denied.

First, during the hearing on the Motion to strike, counsel for the Objector noted that the page number on the first page of the petition sheets appeared to bear the number "10" and not the number "1". After reviewing the document, the Hearing Officer finds that the page number on the first petition bears the number "1" and an oval shaped scratch mark, not the number "10".

During the hearing on the Motion to Strike, counsel for the Objector also noted that certain pages among the Candidate's Nominating Petitions were not numbered. The Objection did not specify which pages were not numbered and Objector's counsel did not identify them during argument on the Motion to Dismiss.

Following the hearing on the Motion to Dismiss, the Hearing Officer independently reviewed the 88 Nominating Petitions filed by the Candidate. One page located between numbered pages 54 and 55 does not have a page number on it. Each other page of the Nominating Petitions bears a page number and, with the exception of the one page, are numbered consecutively.

This Electoral Board has previously held that a candidate's failure to provide a page number for one petition among 48 filed did not invalidate all of the candidate's petitions. Prince v. Douyon, 06-EB-RGA-10. Similarly, in this case, the Hearing Officer finds that the Candidate's page numbering of the Nominating Petitions filed substantially complies with the requirements of the Illinois Election Code Sections 7-10 and 10-4.

11. Based on the foregoing, the Hearing Officer recommends that the name of the Candidate be printed on the ballot for election to the office of Alderman of the 46th Ward in the City of Chicago, County of Cook, State of Illinois for the Municipal General Election to be conducted on February 22, 2011 and that the Objection be DENIED.

Date: December 21, 2011

By: */s/ William J. Cadigan*
William J. Cadigan
Hearing Officer