NBCON-ALD

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

Objections of: Wallace Davis, Jr. and Carmelita P. Earls	)	
To the Nomination Papers of: Jason C. Ervin	)	No.: 11-EB-ALD-109
Candidate for the office of Alderman of the 28th 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 Wallace Davis, Jr. and Carmelita P. Earls ("Objectors") to the nomination papers ("Nomination Papers") of Jason C. Ervin, candidate for the office of Alderman of the 28th 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 Objectors 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 Mario Correa for further hearings and proceedings.

6. The Objectors 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 Objectors, Wallace Davis, Jr. and Carmelita P. Earls, pro se; the Candidate, Jason C. Ervin, by attorney James P. Nally.

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 and finds that the Candidate's Nomination Papers are valid.

IT IS THEREFORE ORDERED that the Objections of Wallace Davis, Jr. and Carmelita P. Earls to the Nomination Papers of Jason C. Ervin, candidate for election to the office of Alderman of the 28th Ward of the City of Chicago, are hereby OVERRULED and said Nomination Papers are hereby declared VALID and the name of Jason C. Ervin, candidate for election to the office of Alderman of the 28th 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 December 29, 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.

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

BOARD OF ELECTION
POLLING PLACE DEPT
2010 DEC 20 A 8:26

Objection of: WALLACE DAVIS, JR. & CARMELITA P. EARLS	)	
	)	No. 11-EB-ALD-109
To the Nomination Papers of: JASON C. ERVIN	)	
	)	Mario Correa
Candidate for the office of Alderman for the 28th Ward of the City of Chicago	)	Hearing Officer

HEARING OFFICER'S REPORT
AND RECOMMENDED DECISION

I, hearing officer, MARIO CORREA ("Hearing Officer") hereby state and recommend that the Board of Election DENY the objection of WALLACE DAVIS JR. and CARMELITA P. EARNS (the "Objectors") to the nominating papers of JASON C. ERVIN (the "Candidate") for the following reasons and based on the following evidence:

1. On December 6, 2010, the hearing was first called and the Candidate appeared through his attorney James P. Nally and the Objector Carmelita Earls appeared pro se. The Objectors Petition, Service, and Appearances were entered into the record without objection. Hearing on the Motion to Strike was scheduled for December 9, 2010.

2. On December 9, 2010, the same parties appeared and the other Objector Wallace Davis appeared. The Nominating Papers were admitted into evidence as Group Exhibit A without objection. The Candidate withdrew his Motion to Strike. The Candidate indicated that he was ready to proceed on the issue raised in paragraph 4. The Hearing Officer asked if the

Objector was ready to proceed and the Objector indicated that she was not and that she may get an attorney. The Hearing Officer informed the Objector that there would be no continuances and to tell the attorney to be ready to present evidence at the next hearing date. A hearing date of December 11, 2010, was agreed upon to hear evidence on paragraph 4 of the Objector's Petition. A record examination was also ordered by the Hearing Officer.

3. On December 11, 2010, the Objector appeared personally and through her attorney Randy Crumpton. Attorney Crumpton requested an extension of the hearing. The Hearing Officer denied the request.

4. The issue raised by paragraph 4 of the Objector's Petition was whether the Statement of Candidacy was properly notarized since two notary seals were affixed with only one notary signature.

5. Attorney Crumpton presented his case-in-chief. He called James P. Nally, one of the notaries, as a witness. Attorney Nally testified that on the morning the Candidate's nominating papers were to be filed, prior to their filing, he informed the Candidate that the Candidate needed to pay some debts. The Candidate went to the Department of Revenue, paid said debts, and returned to the line for filing the nominating papers at the Chicago Board of Elections. While in line, attorney Nally testified that he had the Candidate re-sign the Statement of Candidacy at which time attorney Nally affixed his notary seal and signed his name. Attorney Nally explained he took these steps out of an abundance of caution in order to avoid the result in the Cinkus case (a reference to Cinkus v. Village of Stickney Officers Election Board, 228 Ill.2d 200 (2008)). Attorney Nally explained that while Cinkus applied to debts existing at the time of filing the Statement of Candidacy, one may argue it applies even earlier to the point of signing

the Statement of Candidacy. To avoid this argument, attorney Nally had the Candidate re-sign the Statement of Candidacy and notarized same. No other evidence was presented.

6. The Objector raised issues as to the credibility of attorney Nally's testimony. The Hearing Officer found the testimony credible.

7. The parties were given leave to file written closing arguments. The evidence, including an inspection of the original nominating papers (Board Group Exhibit A) established that the Statement of Candidacy was signed twice and notarized twice.

8. Section 10-5 of the Election Code (10 ILCS 5/10-5) provides that the Statement of Candidacy "shall be subscribed and sworn to by such candidate before some officer authorized to take acknowledgments of deeds in this state...".

9. However, a review of Section 10-5, reveals that there is no prohibition against a candidate signing and notarizing the Statement of Candidacy twice. Neither party has presented any legal authority prohibiting dual notarization. Therefore, the Hearing Officer finds that signing of the Statement of Candidacy proper.

10. On December 15, 2010, the Hearing Officer had a previously scheduled a status/hearing date for purposes of admitting the record examination findings. On said date, both parties appeared through their respective attorneys of record. The Hearing Officer read into the record the Office Memorandum dated December 13, 2010, from Charles Holiday. Said memorandum provided that there was no objection to 300 signatures. The minimum signature requirement to get on the ballot was 152. Therefore, if the Board where to find in favor of the Objector on every objection, the Candidate would still have sufficient signatures to be placed on the ballot.

As a result of the foregoing, the Hearing Officers recommends that the Board DENY the objection of WALLACE DAVIS JR. and CARMELITA P. EARNS to the nominating papers of JASON C. ERVIN.

Respectfully Submitted,

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Mario Correa, Esq.
Hearing Officer