NBCON-ALD

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

Objections of: Henry Moss	)	
	)	
	)	
To the Nomination	)	No.: 11-EB-ALD-185
Papers of: Carrie M. Austin	)	
	)	
Candidate for the office of	)	
Alderman of the 34th 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 Henry Moss ("Objector") to the nomination papers ("Nomination Papers") of Carrie M. Austin, candidate for the office of Alderman of the 34th 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 Richard E. Zulkey 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, Henry Moss, by attorney, Peter Cleary; the Candidate, Carrie M. Austin, by attorney, Thomas A. Jaconetty.

7. The Objections allege that the Candidate's Nomination Papers were not securely bound as required by Section 10-4 of the Election Code.

8. 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."

9. Illinois courts have found that the page-numbering requirement of Section 10-4 aids in the identification and description of each petition and prevents tampering, thereby

preserving the integrity of the petition and the election process in general. See, *Jones v. Dodendorf*, 190 Ill.App.3d 557, 562, 546 N.E.2d 92 (1989). Courts have also said that in view of the language of the statute that imposes sanctions in the event the provisions of the Code are not complied with, coupled with the use of the word "shall," and the two underlying purposes described in *Jones*, the fastening requirements of section 10-4 are also 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.*) In *Bendell*, the evidence was that candidate's 6 to 8 nominating papers were fastened together along one edge by a large paper clip and formed a single series of uniform leaves. While the court acknowledged that Section 10-4 of the Code does not explain what is meant by "book form," it stated that "it is universally known that a book is a collection of written sheets fastened together along with one edge and usually trimmed at the other edges to form a single series of uniform leaves," citing *Webster's Third New International Dictionary*. The court concluded that candidate's nominating papers in *Bendell* were in "book form," and, therefore, in strict compliance with the Code.

> "The uncontroverted evidence is that they were securely fastened because a member of the Board was unable to pull them apart without removing the paper clip. This is a fact-specific case. Obviously, if the record established that the nominating papers were not securely fastened or if they had consisted of 500 pages, for example, and were held together by a single, large paper clip, our decision would be different. However, given the fact that there were only 6 to 8 pages which could not be separated without removing the paper clip, and given the fact that this particular binding did not interfere with preserving the integrity of the petitions and the election process generally, plaintiff's nominating petitions strictly complied with section 10-4.

Bendell, 338 Ill.App.3d at 464.

10. 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, explaining that the provision imposes requirements by using "shall" and contains an express statement voiding the petition if the requirements are not fulfilled. However, the court held that only substantial compliance is needed. The court further held that the public question referendum petition for village's general election did not substantially comply with Election Code's requirement that signature sheets be bound securely, where 12 of 60 pages were not bound in any manner when presented to village clerk for filing. The other sheets were organized by circulator and fastened by paper clip. The court found that the Election Code required signature sheets for public question referendum petition for village's general election to be bound securely before petition was filed with village clerk, and thus, the requirement was not satisfied where village clerk, post-filing, put large binder clip on unbound sheets after stamping and photocopying them. Even if using paper clips is considered substantial compliance, a petition in which 20% of the pages are not bound in any manner cannot be in substantial compliance with the statute's requirement that the petition be securely bound.

11. This Electoral Board has once before addressed objections to nomination papers that were bound not in a single set of nominating petition sheets, but in volumes. In *Barnes v. Smith*, No. 95-EB-MUN-015, January 19, 1995, this Electoral Board ruled that the candidate's nominating papers fastened together in two volumes and filed together at the same time did not comply with fastening requirement in Section 7-10 of the Election Code, which is identical to the provision in Section 10-4 applicable here. On appeal, the circuit court held that the fastening requirement in Section 7-10 was "directory only and did not have the effect of removing the candidate from the ballot." *Smith v. Barnes*, Cir. Ct. Cook Cty., No. 95 CO 22, February 15,

1995. But subsequent decisions in *Bendell* and *Jakstas* have taught us that the fastening requirements of the Election Code are indeed mandatory, not directory.

12. In this case, the evidence in unclear whether the Candidate filed her nomination papers in one or two set. However, at hearing it appeared that the Candidate's nominating petition papers were in two bound sets. The first set is bound at the top with a metal clip and contains the Candidate's Statement of Candidacy and nominating petition sheets numbered consecutively 1 through and including 87. Each nominating petition sheet has 20 lines for voter's signatures, and each line on each sheet appears to contain a signature, for a total of 1,740 signatures. The second set of papers is also bound at the top with a metal clip and contains nomination petitions sheets of the Candidates numbered consecutively 88 through and including 312. Sheet 1 and Sheet 312 are both time-stamped by the Board indicating they were filed as of 9:00 a.m. on November 15, 2010. A "Receipt for Nomination Papers" was completed and signed by a Board employee indicating that the Nomination Papers were bound by a "metal clip + rubber band," and the number of the last page of the petition is listed as 312. The Receipt indicates a filing time of 9:00 a.m. on November 15.

13. *Bendell* concluded that a book is a collection of sheets fastened together along one edge "to form a *single* series of uniform leaves." 338 Ill.App.3d at 464. Applying that meaning of the term "book" here, at best the Candidate's nomination papers consisted of two separate books.

14. Consistent with its earlier decision and precedent in *Barnes v. Smith*, *supra*, this Electoral Board will consider only one of the Candidate's two books or sets of papers – the book comprising nominating petition sheets numbered 1 through and including 87 and containing on

their face 1,740 signatures. The minimum signature requirement for candidates seeking election to the office of Alderman in the 34th Ward is 245.

15. The Objections filed in this case do not object to any of the individual signatures on the Candidate's nominating petition sheets. Presumably, therefore, there are a total of 1,740 valid signatures on the Candidate's first book of nominating petition sheets, well in excess of the minimum signature requirement of 245.

16. The Objector also alleges that the Candidate neglected to place a date next to her signature on the Statement of Economic Interests filed with the Cook County Clerk.

17. Section 10-5 provides in relevant part:

> "Nomination papers filed under this Section are not valid if the candidate named therein fails to file a statement of economic interests *as required in 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 * * *." 10 ILCS 5/10-5.

18. Our supreme court has interpreted the "as required" language above not as a reference to the substantive requirements of the Ethics Act, but merely a reference to the fact that the Ethics Act, and not the Election Code, requires the filing of statements of economic *1078 interests. *Welch v. Johnson,* 147 Ill.2d 40, 53, 167, 588 N.E.2d 1119 (1992). Moreover, section 10-5 refers to and is applicable only where there is a *complete* failure to file such a statement. It does not refer to the filing of a statement which is untrue, incorrect or incomplete. *Welch v. Johnson,* 147 Ill.2d at 53-54, 588 N.E.2d 1119. Thus, section 10-5 of the Election Code provides no authority for the court to order the removal of a candidate's name from the ballot under the circumstances alleged here. *Crudup v. Sims*, 292 Ill.App.3d 1075, 1077-1078, 686 N.E.2d 714, 71, 226 (First Dist., 1997); accord, *Requena v. Cook County Officers Electoral Bd.*, 295 Ill.App.3d 728, 733, 692 N.E.2d 1217, 1220 (First Dist., 1998)

19. 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.

20. 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 to the extent consistent with this Decision.

21. 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 Henry Moss to the Nomination Papers of Carrie M. Austin, candidate for election to the office of Alderman of the 34th Ward of the City of Chicago, are hereby OVERRULED and said Nomination Papers are hereby declared VALID and the name of Carrie M. Austin, candidate for election to the office of Alderman of the 34th 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 11, 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.