BCTOFF-ALD

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

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| Objections of: Henry Moses | ) | |
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| To the Nomination | ) | No.: 11-EB-ALD-192 |
| Papers of: Charles R. Thomas, Sr. | ) | |
| | ) | Related Case: 11-EB-ALD-312 |
| Candidate for the office of | ) | |
| Alderman of the 34thWard, 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 Moses ("Objector") to the nomination papers ("Nomination Papers") of Charles R. Thomas, Sr., 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 hearings; the Objector, Henry Moses, by attorney, Peter Cleary; and the Candidate, Charles R. Thomas, Sr., by attorney Kenneth W. Grzymek.

7. The Hearing Officer ordered that an examination of the Board's voter registration records be conducted by clerks and agents under the Board's direction and supervision, in accordance with the laws of Illinois and the rules of the Board.

8. The Hearing Officer directed all parties to appear and be present, either personally and/or by their authorized representatives during this records examination.

9. The Candidate and/or his duly authorized representative was present during the examination of the registration records.

10. The Objector and/or his duly authorized representative was present during the examination of the registration records.

11. The examination of the registration records of the Board was terminated after it was determined that even if all of the remaining objections to individual signatures were

overruled in the Candidate's favor, the Candidate's nominating petition would have a sufficient number of valid signatures to qualify for a place on the ballot as a candidate for the office of Alderman, 34th Ward, City of Chicago.

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

13. 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."

14. 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.

15. 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.

16. 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.

17. In this case, the evidence shows that the Candidate filed his nomination papers on November 22, 2010 in five folders, each of which has three clasps inside that can be used to fasten papers that have been punched on the left hand side with three holes. Four of the folders are red; one folder is orange in color. One of the red folders contains the Candidate's Statement of Candidacy, which is securely fastened on the left-hand side by three clasps. The Statement of Candidacy is time-stamped as having been filed with the Board of Election Commissioners on November 22, 2010 at 3:16 p.m. A second red folder contains 20 nominating petition sheets numbered consecutively 1 through and including 20. These sheets are securely fastened on the

left-hand side by three clasps and are time-stamped by the Board has having been filed on November 22 at 3:17 p.m. A third red folder contains 20 nominating petition sheets numbered consecutively 21 through 21 through and including 40. These sheets are securely fastened on the left-hand side by three clasps and are time-stamped by the Board has having been filed on November 22 at 3:18 p.m. A fourth red folder contains 20 nominating petition sheets numbered consecutively 41 through and including 60. These sheets are securely fastened on the left-hand side by three clasps. However, these sheets do not bear any time stamp of the Board indicating when they were filed. Finally, there is an orange-colored folder containing petition sheets numbered consecutively 61 through and including 66. These sheets are securely fastened on the left-hand side by three clasps and are time-stamped by the Board has having been filed on November 22 at 3:18 p.m.

18. The Board file contains three documents titled "Receipt for Nomination Papers" relating the candidate Charles R. Thomas, Sr. One receipt, time-stamped at 3:18 on November 22, indicates the filing of "4 paper folders" containing nominating papers. The number on the last page of the petition is listed as 66. A second receipt, time-stamped at 3:25 on November 22, indicates the filing of a Statement of Candidacy, next to which is written "Red Folder." A third receipt, time-stamped at 3:51 on November 22, indicates the filing of a Receipt for Statement of Economic Interests. This last receipt was completed and signed by a different Board employee than the first two.

19. *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 five separate books.

20. Consistent with its earlier decision and precedent in *Barnes v. Smith, supra*, this Electoral Board will consider only one of the Candidate's five books and we look to the book that is most helpful to the Candidate – the book comprising nominating petition sheets numbered 1 through and including 20, which, on their face, contain 295 signatures. The minimum signature requirement for candidates seeking election to the office of Alderman in the 34th Ward is 245. The Objections filed in this case alleged that certain signatures on the Candidate's nominating petition sheets were invalid. The results of the records examination in this case indicate that there are only 208 valid signatures on the first 20 petition sheets of the Candidate's Nomination Papers. The Candidate appealed only 4 of the adverse findings sustaining objections to his petition, meaning at best that the Candidate could seek to rehabilitate only 4 signatures. Assuming every one of those four were reversed in the Candidate's favor, he would be left with only 212 valid signatures, which is below the minimum signature requirement of 245.

21. The Hearing Officer in this case recommends a finding that the Candidate's Nomination Papers, if they did not perfectly comply with the statutory standard, they did so to a degree that the Board and the courts have found to have qualified to meet the standard.

22. The Electoral Board, having considered the evidence and arguments tendered by the parties and the Hearing Officer's report of recommended findings and conclusions of law, hereby declines to accept the Hearing Officer's recommended findings and conclusions of law in this case.

23. For the reasons stated above, the Electoral Board finds that the Candidate has an insufficient number of valid signatures on his Nomination Papers to be placed upon the ballot as a candidate for election to the office of Alderman of the 34th Ward for the City of Chicago.

24. The Electoral Board further finds that the Candidate's Nomination Papers are invalid.

25. The Electoral Board has made a similar finding in 11-EB-ALD-312.

IT IS THEREFORE ORDERED that the Objections of Henry Moses to the Nomination Papers of Charles R. Thomas, Sr., candidate for election to the office of Alderman of the 34th Ward of the City of Chicago, are hereby SUSTAINED and said Nomination Papers are hereby declared INVALID and the name of Charles R. Thomas, Sr., candidate for election to the office of Alderman of the 34th of the City of Chicago, SHALL NOT 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.**