NBCON-ALD

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

Objections of: Tom Jacks	)	
	)	
	)	
To the Nomination	)	No.: 11-EB-ALD-344
Papers of: Tom O'Donnell	)	
	)	Related Case: 11-EB-ALD-223
Candidate for the office of	)	
Alderman of the 47th 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 Tom Jacks ("Objector") to the nomination papers ("Nomination Papers") of Tom O'Donnell, candidate for the office of Alderman of the 47th 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 Mario Correa 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, Tom Jacks, pro se; the Candidate, Tom O'Donnell, by attorney, James P. Nally.

7. The Hearing Officer has tendered to the Electoral Board a report and recommended decision. Based upon the evidence presented, the Hearing Officer recommends that the Objections be overruled and the Candidate's Nomination Papers be declared valid.

8. 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 adopts the Hearing Officer's recommended findings and conclusions of law. A copy of the Hearing Examiner's Report and Recommended Decision is attached hereto and is incorporated herein as part of the decision of the Electoral Board.

9. The Electoral Board overrules the Objections filed herein.

10. For the reasons stated above, the Electoral Board finds that the Candidate's Nomination Papers are valid.

IT IS THEREFORE ORDERED that the Objections of Tom Jacks to the Nomination Papers of Tom O'Donnell, candidate for election to the office of Alderman of the 47th Ward of the City of Chicago, are hereby OVERRULED and said Nomination Papers are hereby declared VALID and the name of Tom O'Donnell, candidate for election to the office of Alderman of the 47th 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 17, 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.

BEFORE THE BOARD OF ELECTION COMMISSIONERS
FOR THE CITY OF CHICAGO

In Matter of	)	
	)	
TOM O'DONNELL,	)	
Candidate,	)	
	)	No. 11-EB-ALD-344
and	)	
	)	
TOM JACKS,	)	
Objector.	)	

BOARD OF ELECTION
POLLING PLACE DEPT
2010 DEC 13 P 3:32

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 TOM JACKS (the "Objector") to the nominating papers of TOM O'DONNELL (the "Candidate") for the following reasons and based on the following evidence:

1. On December 6, 2010, the hearing was first called. The Candidate appeared pro se and the Objector appeared through her attorney. Group Exhibits A thru D were entered into the record and consisted of the following: (A) Nominating Papers, (B) Objector's Petition, (C) Proof of Service, and (D) Appearances. The Candidate asked leave to file a Motion to Strike and a briefing schedule was set with a hearing date on December 11, 2010.

2. On December 11, 2010, the hearing was held. The Objector raised the following three issues, the last two of which were found not be dispositive:

> Issue I: Whether the Candidate circulating another candidate's petition sheet for the same office constitutes grounds for removal from the ballot. *See Objector's Petition paragraphs 3 and 4.*
>
> Issue II: Whether a circulator used by a competing candidate was disqualified from circulating the Candidate's Petition Sheets and thereby

causing all such Petition Sheets to be defective and thereby be stricken from the Nominating Papers.
See Objector's Petition paragraphs 5 thru 10.

Issue III: Whether the signature of two voters in the Candidate's Petition Sheets should be stricken because those same voters signed a competing candidate's petition sheet.
See Objector's Petition paragraphs 11 thru 14.

3. On December 11, 2010, a hearing was held. The Candidate raised the fact even if the Board ruled in the Candidate's favor on issues 2 and 3 above, the Candidate would still have more than enough signatures to meet the minimum signature requirement of 185. A hearing was held, *sua sponte*, on this assertion.

4. Assuming, *arguendo*, the Objector prevailed on Issue II, listed above, then a total of no more than 165 signatures would be disqualified. The following is a summary of said hearing. The Objector identified five petition sheet circulators who were allegedly disqualified. The Hearing Officer tendered the Nominating Papers (Group Exhibit A) to the Objector and had the Objector identify which Petition Sheets should be stricken. The Objector listed a total of 11 Petition Sheets to which he was objecting. Each Petition Sheet contained 15 signature lines, and therefore, a maximum number of signatures per Petition Sheet was 15. The maximum number of signatures disqualified pursuant to Issue II was 165 signatures (computed: 11 petition sheets multiplied by 15 signatures per petition sheet).

5. Assuming, *arguendo*, that the Objector prevailed on Issue III, listed above, then a total of two signatures would be disqualified.

6. The parties stipulated for purposes of the Motion to Strike that the Candidate had filed approximately 685 signatures. Accordingly, even if the Objector prevailed on Issues II and III, then of the 685 signatures there would be 165 disqualifed under Issue II and 2 disqualified under Issue III, leaving 518 valid signatures. As the Candidate only needed 185

signatures to place on the ballot, Issues II and III will be unable to cause the Candidate's removal from the ballot.

7. Issue II also fails as a matter of law since duel-circulators for the same aldermanic officer is permissible. *See* McGuire v. Nogaj, 146 Ill.App.3d 280 (1st Dist., 1986).

8. The remaining issue, Issue I, concerns whether a candidate is disqualified by his act of circulating the petition of a competing candidate. In support of his position the Candidate cites Section 10-4 of the Election Code, wherein it provides that "no person shall circulate or certify petitions for candidates of more than one political party, or for an independent candidate or candidates in addition to one political party..." However, as previously stated dual circulators are permitted in aldermanic elections for the same office. See McGuire v. Nogaj, 146 Ill.App.3d 280 (1st Dist., 1986).

9. More generally, the Objector explains that the Candidate committed wrongdoing or deceit in circulating the nominating papers of a competing candidate and then seeking office. Such an argument has two deficiencies as presented. First, there was no allegation of fraud in the Objector's Petition. This does not appear to be a case based on testimony, and one is not alleged, that a candidate intentionally circulated invalid petition sheets of a competing candidate in an attempt to have a competing candidate removed from the ballot. Thus, based on the allegation, it appears that the Candidate assisted a competing candidate with his nominating papers. Helping a competing candidate get elected, while uncommon, is not prohibited.

10. Second, and more importantly, even if such fraud had been alleged, there is no authority for removal of a candidate from the ballot as a remedy for alleged wrongful acts in a competing Candidate's nomination. In Mitchell v. Cook County Officers Electoral, 399 Ill.App.3d 18 (1st Dist., 2010), the following proposition of law was set forth, "in the absence of

evidence that the nominating papers were invalid or the presence of sufficient objections to warrant termination of the candidacy [there] is no legal basis authorizing the [election board] to terminate a candidacy." Id. at 24. Put another way, when a candidate's nominating papers are in order and there are a sufficient number of signatures, the Board has no legal authority to remove a candidate for alleged wrongdoing to another competing candidate. This is not the venue to adjudicate wrongful acts unrelated to the Candidate's nominating papers.

As a result of the foregoing, the Hearing Officers recommends that the Board DENY the objection of TOM JACKS to the nominating papers of TOM O'DONNELL.

Respectfully Submitted,

Mario Correa, Esq.
Hearing Officer