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

Objections of: DODIE ANDERSON-BARDEN and ERIKA GUTIERREZ	)	
To the Nomination Papers of: PROCO "JOE" MORENO	)	No.: 23-EB-ALD-018
Candidate for the office of Alderperson of the 1st Ward, City of Chicago	)	

FINDINGS AND DECISION

The duly constituted Electoral Board, consisting of the Board of Election Commissioners for the City of Chicago, Commissioners Marisel A. Hernandez, William J. Kresse and June A. Brown, organized by law in response to a Call issued by Marisel A. Hernandez, Chair of said Electoral Board, for the purpose of hearing and passing upon objections ("Objections") of DODIE ANDERSON-BARDEN and ERIKA GUTIERREZ ("Objectors") to the nomination papers ("Nomination Papers") of PROCO "JOE" MORENO, candidate for the office of Alderperson of the 1st Ward ("Candidate") at the Municipal General and Alderperson Elections to be held on Tuesday, February 28, 2023, having convened on December 9, 2022 at 4:00 p.m. 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 were duly and timely filed.

2. The Electoral Board was legally constituted under the laws of the State of Illinois.

3. A Call to the hearing on said Objections was duly issued by the Chair 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 or service was waived.

4. A public hearing was held on these Objections commencing on December 9, 2022 and was continued from time to time. The Electoral Board assigned this matter to Hearing Officer Barbara Goodman for further hearings and proceedings.

5. The Objectors and the Candidate were directed by the Electoral Board to appear before the Hearing Officer on the date and at the time designated in the Call. The following persons, among others, were present at or filed appearances during such hearing; the Objectors, DODIE ANDERSON-BARDEN and ERIKA GUTIERREZ, through their attorneys, SEAN MCGRATH, ROSS D SECLER and BURTON S ODELSON; and the Candidate, PROCO "JOE" MORENO, through his Attorney, PERICLES ABBASI.

6. The Hearing Officer ordered that an examination of the 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.

7. The Hearing Officer directed all parties to appear and be present, either personally and/or by their authorized representatives during this records examination. The Candidate and/or his duly authorized representative was present during the examination of the registration records. The Objectors and/or their duly authorized representative was present during the examination of the registration records.

8. The examination of the registration records was completed and the Electoral Board hereby adopts and incorporates by reference the results of the records examination conducted by its clerks and agents. The written report of the result of the registration records

examination is contained in the Board's file in this case and a copy has been provided or made available to the parties.

9. The results of the records examination indicate that:

A. The minimum number of valid signatures required by law for placement on the ballot for the office in question is 473.

B. The number of purportedly valid signatures appearing on the nominating petition filed by the Candidate total 1,653.

C. The remaining number of signatures deemed valid as a result of the records examination total 630.

10. The Electoral Board finds that the number of valid signatures appearing on the Candidate's nominating petition following completion of the records examination exceeds the minimum number of valid signatures required by law to be placed upon the ballot as a candidate for the office of Alderperson for the 1st Ward.

11. No motions were filed pursuant to Rule 8 of the Board's Rules of Procedure.

12. The Hearing Officer has tendered to the Electoral Board a report and recommended decision. Based upon the evidence presented, the Hearing Officer found that the Candidate's Nomination Papers contained 630 valid signatures, which exceeds the minimum number of valid signatures required by law to be placed upon the ballot as a candidate for the office of Alderperson for the 1st Ward.

13. The Hearing Officer also heard arguments about whether the Candidate is eligible to seek and hold the office of alderperson due to having been previously found guilty of criminal charges. The Hearing Officer recommends that the Objections to the Candidate's Nomination Papers be overruled and that the Nomination Papers be declared valid.

14. 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 and additional arguments made at a Rule 20 hearing, hereby adopts the Hearing Officer's recommended findings and conclusions of law and incorporates them herein. 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.

15. 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.

[Continued on next page.]

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

DODIE ANDERSON-BARDEN and ERIKA GUTIERREZ	)	
Objectors	)	23 EB ALD 18
-v-	)	
PROCO "JOE" MORENO	)	
Candidate	)	

HEARING OFFICER'S REPORT AND RECOMMENDED DECISION

This matter was first heard on December 12, 2022. The Objector was represented by counsel Burton S. Odelson and Ross D. Secler of the firm of Odelson, Sterk, Murphey, Frazier & McGrath, Ltd. and the Candidate was represented by counsel Pericles Abbasi. The parties were given an opportunity to file preliminary motions. The Candidate filed *Candidate's Rule 5 Motion to Strike and Rule 1(B)(XVI) Motion for Objector to Show Allegations are Pled in Good Faith* (Candidate's Motion). The Objector filed *Objector's Response to Candidate's Rule 5 Motion to strike and Rule 1(B)(XVI) Motion for Objector to Show Allegations are Pled in Good Faith.* Candidate also filed *Candidate's Rule 7 Reply and Rule 1(B)(XVI) Motion for Objector to Show Allegations are pled in Good Faith.* The Objector also filed a *Motion for Entry of Order Issuing and Authorizing Subpoenas.* The Candidate *filed Candidate's Response in Objection to Subpoena Requests* and a recommendation was made by this Hearing Officer to grant, in part, and deny, in part, the Objector's Motion relative to subpoenas.

A hearing was held on the Candidate's Motion. The motion was taken under advisement and a records examination was conducted.

THE RECORDS EXAMINATION

The final results of the records examination were as follows:

A. The minimum number of valid signatures required by law for placement on the ballot for the office in question is 473.

B. The number of purportedly valid signatures appearing on the nominating petition filed by the Candidate total 1,653.

C. The number of signatures deemed invalid because of objections sustained in the records examination total 1,023.

D. The remaining number of signatures deemed valid because of objections sustained in the records examination total 630.

The results of the records examination indicated that the candidate had 157 signatures above the statutory minimum. No motions were filed pursuant to Rule 8 of the Board's Rules of Procedure and in a subsequent status hearing, Objector's counsel indicated that he did not intend to present any further evidence regarding a pattern of fraud or regarding the notary and circulator issues that were raised in the Objector's Petition. Accordingly, the records examination established that the Candidate submitted sufficient signatures for placement on the ballot.

CANDIDATE'S MOTION AND OBJECTOR'S SUBPOENA REQUEST

In his Motion, Candidate alleged that certain of Objector's objections were pled in bad faith and should be stricken. In the alternative, Candidate argued that Objector should prove that certain paragraphs were, in fact, pled in good faith. In light of the fact that Objector indicated he would not be proceeding on the paragraphs at issue, the motion as to these issues was moot. Likewise, because the Objector indicated he would not be proceeding on any pattern of fraud

arguments or any issues related to the notaries or circulators, Objector's Request for Subpoenas related to these issues was rendered moot.

The sole issue remaining after the records examination was whether the Candidate's guilty plea in two felony cases made the Candidate ineligible to seek or hold the office at issue here rendering his Statement of Candidacy false (Paragraphs 17-19 of the Objector's Petition). In a status hearing on December 29, 2022, it was agreed that the parties would submit affidavits or other supporting documentation in support of their cases by January 3, 2023, that rebuttal affidavits would be due on January 4, 2023 and no further hearing would be held. Pursuant to the foregoing agreement, Candidate filed *Candidate's Memorandum on the Issue of Qualifications* and the Objector filed *Objector's Supplemental Memorandum of Law in Clarification of Objection.*

DISCUSSION

Prior to Candidate's filing of his nominating papers, Candidate pled guilty to two felonies. As a result of the guilty pleas, the court ordered Second Chance Probation. While the end date for the period of probation was originally July 16, 2023, the period of probation was terminated early on August 17, 2022. These facts are not in dispute. What is in dispute is whether the Candidate's guilty pleas and the subsequent imposition of Second Chance Probation constituted a conviction making the Candidate ineligible for seeking or holding the office of Alderman in the City of Chicago pursuant to 65 ILCS 5/3.1-10-5(b).

65 ILCS 5/3.1-10-5(b) provides as follows:

> *A person is not eligible to take the oath of office for a municipal office if that person is, at the time required for taking the oath of office, in arrears in the payment of a tax or other indebtedness due to the municipality or has been convicted in any court located in the United States of any infamous crime, bribery, perjury, or other felony, unless such person is again restored to his or her rights of citizenship that may have been forfeited under Illinois law as a result of a conviction, which includes eligibility to hold elected municipal*

office, by the terms of a pardon for the offense, has received a restoration of rights by the Governor, or otherwise according to law. Any time after a judgment of conviction is rendered, a person convicted of an infamous crime, bribery, perjury, or other felony may petition the Governor for a restoration of rights.

It is the Candidate's position that where, as here, a person receives and successfully completes Second Chance Probation, there is no conviction. Rather, when an individual has fulfilled the terms and condition of his Second Chance Probation, he is discharged and the proceedings are dismissed. Candidate's Memorandum provides several statutes that serve as a helpful guide in understanding Second Chance Probation. The two provisions most relevant in this matter are 730 ILCS 5/5-6-3.4(f) and (g).

Section 730 ILCS 5/5-6-3.4(f) provides as follows:

f) Upon fulfillment of the terms and conditions of probation, the court shall discharge the person and dismiss the proceedings against the person.

Section 730 ILCS 5/5-6-3.4(g) provides as follows:

(g) disposition of probation is considered to be a conviction for the purposes of imposing the conditions of probation and for appeal; however, ***a discharge and dismissal under this Section is not a conviction for purposes of this Code or for purposes of disqualifications or disabilities imposed by law upon conviction of a crime****.(emphasis added)*

The language of the foregoing statute is clear and unambiguous. For purposes of the question of disqualification to seek or hold the position of Alderman, there has not been a conviction.

Objector argued that while the probation was terminated early, the case was not discharged or dismissed. There is no evidence in the record to support the Objector's argument. Indeed, once the period of probation was terminated, there was nothing left to discharge or dismiss.

Additionally, despite the clear and unambiguous language of the Statute, Objector urged that Candidate's guilty pleas should nonetheless disqualify the Candidate for seeking or holding

office. In support of this argument, Objector cited Section 3.1-10-51(c)(2) of the Municipal Code which relates to events causing a vacancy in office in municipalities with the population over 500,000.

Section 3.1-10-51(c)(2) provides as follows:

> *(2) An admission of guilt of a criminal offense that would, upon conviction, disqualify the municipal officer from holding that office, in the form of a written agreement with State or federal prosecutors to plead guilty to a felony, bribery, perjury, or other infamous crime under State of federal law, shall constitute a resignation from that office, effective at the time the please agreement is made. For purposes of this Section, a conviction for an offense that disqualifies the municipal officer from holding that office occurs on the date of the return of a guilty verdict or, in the case of a trial by the court, the entry of a finding of guilt.*
>
> 65 ILCS 3.1-10-51(c)(2)

Candidate argued that because there is no evidence that a written agreement with prosecutors was entered into, because the statute deals with current office holders, not candidates, and because there was never a resulting conviction in this matter, the foregoing statute is inapplicable. Candidate's arguments are persuasive and the foregoing statute fails to assist the Objector in any way in the instant case.

As the Candidate correctly pointed out, the applicable statute here, 65 ILCS 3.1-10-5, contains no reference to the "admission of guilt" language of 65 ILCS 3.1-10-51(c)(2). It is the Candidate's contention, and this Hearing Officer agrees, that the fact that the language is contained in one statute but not in the other is evidence that the legislature intentionally omitted the "admission of guilt" language in 65 ILCS 3.1-10-5.

Accordingly, it is clear that a felony **conviction** is required in order to render a Candidate ineligible to seek or hold the office of Alderman and a discharge and dismissal (in a case involving Second Chance Probation) is "***not*** *a conviction ... for purposes of disqualifications or disabilities imposed by law upon conviction of a crime.*(emphasis added) 730 ILCS 5/5-6-3.4(g)

Moreover, Objector's claim that Section 65 ILCS 3.1-10-5 requires that Candidate receive a Gubernatorial pardon or other restoration of results in order to run for office appears to be based upon a misunderstanding of the facts in the instant case and of Second Chance Probation, in general. Second Chance Probation is not simply probation. It is probation that when successfully completed results in **no conviction** and, therefore, there is nothing to be restored or pardoned.

Having failed to establish that Candidate was, in fact, **convicted** of a felony, the Objector's allegations regarding Candidate's inability to seek or hold the office of Alderman in the City of Chicago should be overruled.

CONCLUSION

In light of the foregoing, it is my recommendation that the objections of Dodie Anderson-Barden and Erika Gutierrez to the nominating papers of Proco "Joe" Moreno be **overruled,** that the nominating papers of Proco "Joe" Moreno for the office of Alderman of the 1st Ward of the City of Chicago, Illinois be deemed **valid** and that the name of Proco "Joe" Moreno for said office **be** printed on the ballot at the Municipal General and Alderpersons Elections to be held on February 28, 2023.

Respectfully submitted,



Barbara Goodman, Hearing Officer
1/11/22

IT IS THEREFORE ORDERED that the Objections of DODIE ANDERSON-BARDEN and ERIKA GUTIERREZ to the Nomination Papers of PROCO "JOE" MORENO candidate for the office of Alderperson for the 1st Ward, are hereby OVERRULED and said Nomination Papers are hereby declared VALID and the name of PROCO "JOE" MORENO, candidate for the office of Alderperson for the 1st Ward, SHALL be printed on the official ballot for the Municipal General and Alderperson Elections to be held on Tuesday, February 28, 2023.

Dated: Chicago, Illinois, on Friday, January 13, 2023.

Marisel A. Hernandez, Chair

William J. Kresse, Commissioner

June A. Brown, 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.