

**BEFORE THE MUNICIPAL OFFICERS ELECTORAL BOARD  
OF THE CITY OF EVANSTON**

Jeffrey P. Smith,	)	
Petitioner-Objector,	)	
	)	
vs.	)	No. 17-MOEB (Mayor)-EV-04;
	)	EV-05; EV-06; EV-07
Mark Tendam,	)	
Respondent-Candidate;	)	
	)	
Steve Hagerty,	)	
Respondent-Candidate;	)	
	)	
Gary Gaspard,	)	
Respondent-Candidate;	)	
	)	
Brian Miller,	)	
Respondent-Candidate	)	
	)	

**ELECTORAL BOARD FINDINGS AND ORDER**

The candidates specified above filed nomination papers to run for the office of Mayor, City of Evanston, in the 2017 Municipal Election. The objector, Jeff Smith (“Smith”), filed objections to those nomination papers alleging that they were invalid. The filed objections collectively alleged the same bases relative to each individual’s nomination papers.

The findings and Order set forth below are entered on a consolidated basis and apply equally to case nos. 17-MOEB (Mayor) –EV-04; EV-05; EV-06 and EV-07.

**Procedural History**

Pursuant to notice, the Municipal Officers Electoral Board of the City of Evanston (hereafter “MOEB”), convened a public hearing to consider the objections filed by the objector. Due notice of the hearings were given pursuant to the Illinois Open Meetings Act and the Illinois Election Code. An initial hearing was conducted on January 9, 2017. All parties were present in person or through counsel.

The Board recessed the January 9<sup>th</sup> hearing and was continued to January 11, 2017.

The hearing was transcribed by a certified court reporter.

**Findings**

1. At the January 9<sup>th</sup> hearing, certain exhibits were marked and moved as evidence

into the Record. The exhibits include:

- The call and agenda for the January 9<sup>th</sup> hearing;
  - The Verified Objector's Petitions for the 4 above captioned cases;
  - The Nomination Papers filed by the candidates for the 4 above captioned cases;
  - Appearances by the objector and candidates/candidate's counsel; and
  - The Rules of Procedure of the MOEB.
2. All of these exhibits were admitted into evidence by agreement of all parties. Notice of the hearings were proper and all parties consented to jurisdiction of the MOEB.
  3. The MOEB took notice of the relevant provisions of the Illinois Election Code. The MOEB reviewed all documents filed in these cases by the parties in considering the issues of fact and law presented.
  4. The MOEB judged the credibility of all who presented the cases of the respective parties, weighed the evidence, considered applicable law, and could draw the appropriate inferences from all presentations.
  5. Upon conclusion of the January 11<sup>th</sup> hearing, the MOEB issued this Order.

#### **Applicable Law**

6. The Illinois Election Code vests the MOEB with the power to hear and decide objections to nomination papers. 10 ILCS 5/10-1 – 10.1. An electoral board “will only consider written objections and the written specifications of such objections to the original petitions, as set forth in the objector's petition.” A Board cannot raise its own objections to nominating petitions *sua sponte*. *Samuelson v. Cook County Officers Electoral Board*, 2012 IL App (1st) 120581.
7. Objector's arguments in support of the objections to Tendam, Hagerty, Gaspard, and Miller were the following:
  - (a) “[T]he Candidate[s] did not properly identify [their] status as independent candidate[s] of a political party, or otherwise”;
  - (b) “[T]he Candidate[s] did not file [their] petition[s] during [their] statutorily required filing periods for independent candidates for the April 4, 2017 election”;
  - (c) “[I]f meant as a petition for nomination at a February nonpartisan primary, it is an improper petition for a nonexistent election because Evanston has no ordinance requiring nonpartisan election.”
  - (d) “[I]f meant as a petition for nomination at a February nonpartisan primary, the Candidate[s]’ petition[s] fail to state that the candidate[s] seek such nomination at the Feb. 28, 2017 primary”; and
  - (e) “[I]f meant to be a petition for nomination at a primary but for direct placement on a consolidated general election ballot, the Candidate[s] did not file [them] during the correct statutory filing period.”

8. The MOEB identified the following 10 City of Chicago Electoral Board decisions which stand for the proposition that designating the wrong election or referring to an incorrect election date, are insufficient grounds to invalidate nomination papers:

*Campos v. Rangel*, 95-EB-ALD-79 (Chicago Electoral Board 1995);  
*Anderson v. Levi*, 07-EB-ALD-35 (Chicago Electoral Board 2007);  
*Brown v. Mercado*, 07-EB-ALD-120 (Chicago Electoral Board 2007);  
*Strnad v. Reboyras*, 07-EB-ALD-171 (Chicago Electoral Board 2007);  
*Williams v. Thomas*, 08-EB-WC-17 (Chicago Electoral Board 2007);  
*Ahimaz v. Sherriff*, 92-EB-WC-88 (Chicago Electoral Board 1992);  
*Gordon v. Pellett*, 92-EB-WC-93 (Chicago Electoral Board 1992);  
*Burgees v. Mitchell*, 11-EB-ALD-41 (Chicago Electoral Board 2011);  
*Stamps v. Lomax*, 15-EB-ALD-140 (Chicago Electoral Board 2015); and  
*Summers v. Morrow*, 04-EB-WC-09 (Chicago Electoral Board 2004);

The facts presented in those electoral board decisions are not dissimilar to the facts presented in the 4 cases before the MOEB. Each candidate had the opportunity to individually respond to Smith's objection.

9. The Illinois Supreme Court stated that substantial compliance by a candidate with the Election Code is a sufficient basis to overrule objections where there is no **adequate** chance for voter confusion regarding the office a candidate seeks. *Lewis v. Dunne*, 344 NE2d 443 (1976). The doctrine of "substantial compliance" is black letter law followed by dozens of appellate decisions and electoral board decisions. Access to a position on the ballot is a substantial right which should not be lightly denied. *Welch v. Johnson*, 147 Ill.2d 40 (1992). See also *Lyons MVP Party v. Lyons MOEB*, 407 Ill.App.3d 1004, (1<sup>st</sup> Dist. 2011), and *Atkinson v. Schelling*, 2013 Ill.App.2d 130140 (2<sup>nd</sup> Dist. 2013) (Court would not read a remedy into a statute that fails to provide for one, particularly a drastic remedy that deprives a citizen of the right to run for office).
10. The 4 mayoral candidates that Smith objects to each filed petitions containing the signatures of hundreds of individuals. None of those signatures were challenged. It is undisputed that those 4 candidates demonstrated at least a minimal appeal to voters.
11. It is undisputed that the matters implicated by this objection, and the circumstances surrounding the issue of the timing of nomination petition filing, are unprecedented in Evanston. This is not a situation where you can simply open a book and point to what is right, and reasonable people may disagree on what the proper resolution of the objections should be. It is undisputed that the April 4, 2017 Consolidated Municipal Election is the terminal election of this municipal election cycle. Smith fails to show sufficient purported confusion exists for voters regarding issues of party affiliation that somehow impacts the voter franchise for City electors. He therefore fails to overcome the *Lewis v. Dunne* standard to sustain his objections.
12. We note the facts and issues presented in the 2015 Village of Oswego electoral board matters, case no. 2015 MR15, Circuit Court of the 23<sup>rd</sup> Judicial Circuit, Kendall County. The court in that case entered an order ensuring all candidates

who filed nomination papers during 2 different petition filing periods were entitled to remain on the ballot.

13. Consideration of over a quarter century of custom and practice relative to past City elections, and the purported invalidity of the wording or implementation of a 1992 referendum approved by City electors, exceeds the scope of our jurisdictional authority. This Board cannot opine as to whether what occurred in past nomination filing periods or past municipal elections is correct or incorrect. Because we overrule the objections on the basis of ballot access and equity, we need not consider the extraneous issues raised by Smith, and decline to exceed our statutory authority by issuing a purely advisory opinion on matters of purported constitutional law. This is particularly appropriate given the expedited timeline of the municipal election cycle.
14. We acknowledge, along with Smith, the confusion over the nomination paper filing periods for the 2017 municipal election. However, with ballot access, voter enfranchisement, and equity in mind, we choose to be in the position of defending a position that is fair and equitable to everyone, rather than taking a position that favors one faction over another.
15. If at a subsequent proceeding, a court is able to fashion a fairer and more equitable way to handle these matters, then those court order(s) will be given appropriate effect.
16. Under the precedent cited above, there is substantial compliance by all 4 candidates with respect to their nomination papers.
17. The Corporation Counsel, **properly**, did not issue an advisory statement prior to candidate filing regarding the issues implicated in these objections. Any such advise would violate his ethical obligations to the City, to certain currently serving Aldermen filing nomination papers for Mayor, and to other Mayoral candidates. Any such advise would be an impermissible conflict of interest. Furthermore, the Corporation Counsel declined to infringe upon the statutory jurisdiction or duties of the City's statutorily designated local election official (the City Clerk) under the Illinois Election Code. 10 ILCS 5/1-3. Lastly, the City's Law Department has no role, authority, or responsibility to give legal advice to municipal election candidates.


### Order

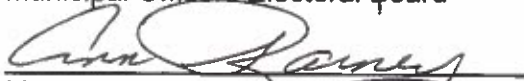
18. For purposes of this Order, the Record is incorporated and referenced hereto, as if fully set forth herein. For the reasons set forth in the Record and also cited in this Order, the MOEB HEREBY ORDERS that:

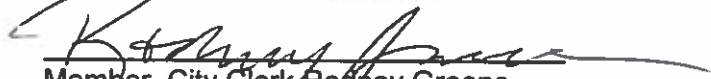
The Board **overrules** all objections filed by Jeff Smith in case nos. 17-MOEB (Mayor) – EV-04; EV-05; EV-06; and EV-07.

19. This **FINAL** Order and Decision is personally served upon the objector/counsel for objector and candidates/counsel for candidates at the date listed below, pursuant to 10 ILCS 5/10-10. It is a final administrative decision pursuant to 5 ILCS 5/10-10.1.

Dated: January 11, 2017

  
Chairman, Elizabeth Tisdahl  
Municipal Officers Electoral Board

  
Member, Ald. Ann Rainey  
Municipal Officers Electoral Board

  
Member, City Clerk Rodney Greene  
Municipal Officers Electoral Board