

STATE OF ILLINOIS)
) ss.
COUNTY OF COOK)

IN THE MATTER OF THE OBJECTIONS)
OF JEFFREY P. SMITH TO THE NOMINATING)
PETITION OF GARY GASPARD, AS A CANDIDATE)
FOR ELECTION TO THE OFFICE OF MAYOR OF)
THE CITY OF EVANSTON, TO BE VOTED ON)
AT THE APRIL 4, 2017, ELECTION.)



OBJECTION TO NOMINATING PETITION

Jeffrey P. Smith (hereinafter, the "Objector"), respectfully represents that Objector resides at 2724 Harrison Street in the City of Evanston, County of Cook, State of Illinois; that Objector is a duly qualified, registered, and legal voter at that address; that Objector's interest in filing the following objections is that of a citizen desirous of seeing that the laws governing the filing of nominating petitions for election to the office of Mayor are properly complied with and that only the names of candidates who have done so appear on the ballot for that office, and that the interests of Evanston voters are protected from the holding of improper elections; and therefore your Objector makes objections to the nominating petition of Gary Gaspard (herein, "the Candidate") as a candidate for election to the office of Mayor of the City of Evanston, and files the same herewith, and states that the Candidate's petition is contrary to law for the following reasons: (a) if meant as a petition for nomination at a February nonpartisan primary, the Candidate's petition fails to state that that candidate seeks such nomination at the Feb. 28, 2017 primary; and (b) if meant to be a petition not for nomination at a primary but for direct placement on the consolidated general election ballot, the Candidate did not file it during the correct statutory filing period. In support, Objector states the following.

A. Failure to State Date of "Primary Election" For Which Ballot Placement Is Sought

1. Illinois for over two decades has observed a "consolidated" election schedule for most local elections, eliminating the former system's odd-year fall elections. 10 ILCS 5/2A-1.2.

2. The current Illinois consolidated primary, with respect to city officers, is held in February and is for three election purposes only: (a) nomination of candidates of established political parties (except where they are nominated by caucus), (b) nomination of municipal officers "in municipalities in which pursuant to law candidates for such office are not permitted to be candidates of political parties," and (c) election of candidates subject to runoff, in the City of Chicago and in managerial-form municipalities that have opted to elect aldermen at-large or from a combination of districts and at-large, or in some non-home-rule municipalities. 10 ILCS 5/2A-1.2(c)(1), 10 ILCS 5/2A-1.2(d), 65 ILCS 5/5-2-1, 65 ILCS 5/5-2-13, 65 ILCS 5/5-2-18 through 5/5-2-18.7. The City of Evanston in 2017 fits into none of these three categories.

3. To be valid, a petition for nomination for office must state clearly to electors signing the petition the correct date of the election at which the candidate seeks to have his or her name appear upon the ballot. 10 ILCS 5/7-10; 10 ILCS 5/10-4. The Candidate's petitions here all state that the Candidate seeks "nomination" at the "Consolidated Primary" to be held on April 4, 2017.

4. No such election exists. The consolidated primary election will be held on February 28, 2017 in municipalities that require same. Evanston has no codified ordinance requiring same and, on information and belief, no ordinance of any kind requiring same. The Candidate's petitions, on their face, misstate to the voters, intentionally or not, the date of the election and the

nature of the election that will be held on that date.

5. Wherefore your objector states, in summary, that the Candidate did not file nominating papers properly identifying the date of the election at which the Candidate seeks nomination, but instead filed via an incorrect combination of consolidated primary and consolidated election references and paperwork that does not conform to Evanston's law with respect to conduct of elections, is confusing to voters, and is not in a form cognizable under the Illinois Election Code.

B. Petitions Not Properly Filed During the Statutory Filing Period

6. Your Objector here incorporates the allegations of ¶¶1-5, above, and further states that, assuming for the sake of argument that the Candidate meant to file for *election* at the April 4 date, it is correct that independent candidates and candidates of new political parties gain direct access to the ballot, without a primary, by such petitions. However, the period in which to file a petition for direct placement on the ballot for the April 4, 2017 Consolidated Election was 106-113 days before that election, or from December 12-19, 2016. 10 ILCS 5/10-6(2). The Candidate filed his nominating papers on November 28, 2016, well outside that period.

7. The City Clerk of Evanston does not have discretion to certify for placement on the ballot, over objection, a candidate who does not file nominating petitions for the election stated on his petitions within the statutorily prescribed time for filing petitions for such election. The Election Code has primacy over all other Illinois legislation with respect to elections, including the Cities and Villages Act and municipal ordinances, stating "No . . . person [may] be nominated for public office or elected to public or political party office in this State except

pursuant to this Code, notwithstanding the provisions of any other statute or municipal charter." 10 ILCS 5/2A-1(a). Further down in the same section, the law uses mandatory language in reiterating that "candidates shall be elected to office, nominated for election thereto or placed on the ballot as otherwise required by this Code". The Evanston Municipal Code, meanwhile, refers to and incorporates the Illinois Election Code: "Municipal elections . . . in the City of Evanston shall be held in accordance with the Illinois Election Code, 10 ILCS 5/1-1 et seq." Evanston Code Ord. §1-31-1. The Illinois Municipal Code echoes this by stating that the general election law governs election of municipal officers. 65 ILCS 5/3.1-10-10.

8. Section 2A-1's primacy has been upheld as reasonable because there is "unfairness inherent" in shifting elections from one date to another or in allowing the consideration of an election question at one election if the petitions that were circulated specified a different date; *Korte-Reinheimer v. City Council of Palos Hills*, 94 Ill. App. 3d 219, 226 (1st Dist. 1981). Having predictable uniformity in elections provides "for greater participation in the electoral process by citizens," *id.*, and "helps eliminate surprise and confusion among potential candidates and thereby lowers one of the inherent barriers to effective ballot access." *Lynch v. Ill. State Bd. of Elections*, 682 F.2d 93, 97 (7th Cir. 1982).

9. Wherefore your Objector states that the Candidate did not file his nominating petition, for the only election date stated on his petitions, during the statutory filing period for that election.

10. This objection is timely because it is filed within 5 business days after the last day for filing the nomination papers. 10 ILCS 5/10-8; see ¶6, above.

Relief Requested. WHEREFORE, for the reasons set forth in Sections A and B above, your Objector asks this honorable Electoral Board to issue the following relief:

A. To declare that the purported nomination papers of GARY GASPARD as a candidate for election to the office of Mayor of the City of Evanston do not comport with the laws of the State of Illinois by virtue of failing to designate a proper election, and/or were untimely filed, contrary to the consolidated election schedule, and that the name of GARY GASPARD as a candidate for election to the office of Mayor of the City of Evanston be stricken from and not printed on the official ballot for the Consolidated Election to be held on April 4, 2017;

B. To declare that there is no record of a lawful and constitutional ordinance adopted by the City of Evanston requiring nonpartisan municipal elections or otherwise barring candidates for mayor from being candidates of political parties, and that no primary election (or election subject to runoff), nonpartisan or otherwise, for the office of mayor shall take place on either April 4, 2017 or on February 28, 2017; and

C. To direct the Evanston City Clerk to certify to the County Clerk of Cook County, Illinois, including by amended or supplemental certification if necessary, that the objection to the candidacy of GARY GASPARD has been sustained.

Respectfully submitted,



Jeffrey A. Smith
OBJECTOR

Address:

2724 Harrison St.
EVANSTON, IL 60201