

STATE OF ILLINOIS)
) ss.
COUNTY OF COOK)

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IN THE MATTER OF THE OBJECTIONS)
OF JEFFREY P. SMITH TO THE NOMINATING)
PETITION OF STEVE HAGERTY, 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 interests of Evanston voters are protected from the holding of improper elections, 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 therefore your Objector makes and files objections to the nominating petition of Steve Hagerty (herein, "the Candidate") as a candidate for election to the office of Mayor of the City of Evanston, because 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, it is a petition for a nonexistent election because Evanston has no ordinance requiring nonpartisan elections; (b) even if Evanston required nonpartisan elections, the petition fails to state that the Candidate seeks nomination at the Feb. 28, 2017 primary; and (c) 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 properly file it during the statutory filing period. In support, Objector states the following.

A. Improper Petition For A Nonexistent Nonpartisan Election

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 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 /5-2-18.7. The City of Evanston in 2017 fits into none of these three categories.

3. The Election Code makes clear that the default Illinois election, including for municipal officers in cities of over 5,000 persons, permits partisan and/or independent candidates. 10 ILCS 5/7-1. *See Rudd v. Lake County Electoral Board*, 2016 IL App (2d) 160649 (Aug. 31, 2016) ("in Illinois, a candidate may run for office with an established political party, with a newly formed political party, as an independent, or as a write-in"). Thus, the Election Code lays out a scheme in which the principal purpose of the consolidated primary in an odd-numbered year is for "candidates of political parties [to] be nominated for those offices to be filled at the consolidated election in that year." 10 ILCS 5/2A-1.2(d). Similarly, in the default "Article 3.1" form of Illinois municipal government, 65 ILCS 5/3.1-5-5 et seq., candidates are permitted to run as candidates

of established parties (if there are any in municipal elections), as candidates of new (or "minor") parties, as independent candidates, or as write-in candidates.

4. By contrast, there is only a nonpartisan election or primary on the consolidated primary date, or a nonpartisan election (runoff or otherwise) on the consolidated election date, "where required by law" or where municipal officer candidates "are not permitted by law to be candidates of political parties." 10 ILCS 5/2A-1.2(d); 10 ILCS 5/2A-1.2(c)(1). Those are exceptions. Other exceptions include school district and community college boards, fire and tuberculosis district trustees, park districts, the Springfield expo authority district trustees, and special districts for which the governing law does not permit candidates of political parties.

5. Thus, Section 2A of the Election Code, and the consolidated election schedule, applies to cities generally, 10 ILCS 5/2A-27, and limits nonpartisan municipal elections to the following:

a. **General primary, even-numbered years:** municipalities that provide for annual elections to elect municipal officers pursuant to Section 6(f) or Section 7 of Article VII of the Constitution, pursuant to the Illinois Municipal Code or pursuant to the municipal charter, and where the municipal election is required by the Illinois Municipal Code to be nonpartisan. 10 ILCS 5/2A-1.2(b)(3).

b. **Consolidated primary, odd-numbered years:** election subject to runoff, or nomination, in municipalities in which pursuant to law candidates are not permitted to be candidates of political parties. 10 ILCS 5/2A-1.2(d).

c. **Consolidated election, odd-numbered years:** the runoff election (if required by law) or nonpartisan election in municipalities in which candidates for alderman or other

municipal office are not permitted by law to be candidates of political parties. 10 ILCS 5/2A-1.2(c)(1).

6. The City of Evanston was not, from its inception, a city that required nonpartisan elections under any of the foregoing. Evanston incorporated as a "city" under general Illinois law in 1892 and has operated ever since with a mayor, plus aldermen elected from wards, the default Article 3.1 norm of governance for cities of Evanston's size. Since a 1952 referendum, Evanston has also had a city manager, and so has operated as a managerial form of government that retained a mayor-aldermanic structure, as contemplated by Article 3.1. The words "nonpartisan" or "party" don't appear anywhere in the Evanston municipal code sections relating to government or elections, nor in the text of the Evanston 1952 referendum adopting a managerial form of government, nor in Article 5, the Illinois Municipal Code section outlining managerial form.

7. Both the Statement of Candidacy of the Candidate and each and every one of his petition sheets fail to properly state a valid means of access to the ballot, in that the heading of the petitions and the candidate's Statement of Candidacy each represent that the Candidate is running as a "nonpartisan candidate," but Evanston has neither an ordinance requirement of nonpartisan elections nor any known ordinance barring persons from running for municipal office as candidates of political parties. The "nonpartisan" candidate status under which the Candidate procured the signatures on his petitions is not only nonexistent but, in this case, at minimum confusing to voters, in that the Candidate, simultaneous with his petitions, circulated campaign flyers, often passed out to voters while soliciting signatures, identifying him as a Democrat.

B. Failure to Declare Election at Which Candidate Seeks Nomination

8. Your Objector here incorporates the allegations of ¶¶1-7, above, and, in the alternative, states that even if Evanston did require nonpartisan candidacies, none of the Candidate's petition sheets informed the electors to whom the petitions were circulated that the Candidate seeks ballot placement for the consolidated *primary* at which nonpartisan candidates must be nominated.

9. The Illinois Election Code requires that each sheet contain "above the space for signature, an appropriate heading, giving ... such other information or wording as required to make same valid." 10 ILCS 5/10-4. To be valid, a petition for nomination for office must state clearly to electors signing the petition that the candidate seeks "nomination" for the office specified, and must also state the date of the election (primary and/or general and/or runoff) for which the petitions are being circulated, and at which the candidate seeks to have his or her name appear upon the ballot. 10 ILCS 5/7-10. The Candidate's petitions did neither.

10. The Candidate's Statement of Candidacy varies from the petitions by adding reference to the February 28, 2017 consolidated primary that was lacking from the petitions themselves. While a minor deviation in the candidacy statement from the petition language is not fatal, the issue is not the inconsistency, but that the correct date and election were absent from the petitions presented to voters. The purpose of the requirement in the Code to name the election at which nomination is being sought is to ensure voters are not confused or misled. Trying to repair nominating papers by after-added information, that no voter saw when signing, doesn't work. In fact, the circulation of petitions to thousands of voters, stating a "nonpartisan" election that does not exist, has contributed, in Evanston, to voter confusion that the Code seeks to avoid.

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

C. Petitions Not Properly Filed During the Statutory Filing Period

12. Your Objector here incorporates the allegations of ¶¶8-11, above, and further states that the Candidate's nominating petitions state that the Candidate seeks election at the April 4, 2017 consolidated election.

13. 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, 2018. 10 ILCS 5/10-6(2).

14. 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 within the statutorily prescribed time. 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) (emphasis supplied). 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" (emphasis supplied). Cf. 1985 Op. Atty. Gen. (85-017) (nominations must be made according to the Election Code "**and not otherwise**") (emphasis in original Attorney General opinion). 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.

15. 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).

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

17. 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 ¶13, above.


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

A. To declare that the purported nomination papers of Steve Hagerty as a candidate for election to the office of Mayor of the City of Evanston are contrary to the laws of the State of Illinois and were filed contrary to the consolidated election schedule, and that the name of Steve Hagerty 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 nonpartisan primary election (or nonpartisan election subject to runoff) for the office of mayor shall take place 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 Steve Hagerty has been sustained.

Respectfully submitted,



Jeffrey P. Smith
OBJECTOR

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