STATE OF ILLINOIS   )
) ss.
COUNTY OF COOK   )

IN THE MATTER OF THE OBJECTIONS   )
OF JEFFREY P. SMITH TO THE NOMINATING   )
PETITION OF MARK TENDAM, 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 objections to the nominating petition of Mark Tendam (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) the Candidate did not properly identify his status as an independent candidate or candidate of

a political party, or otherwise, and (b) the Candidate did not file his petition during the statutorily

required filing period for independent candidates for the April 4, 2017 election, and (c) if 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 elections. In

support, Objector states the following.

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A. Failure to Declare Status By Which Candidate Seeks Nomination

1.   None of the Candidate's petition sheets informed the electors to whom the petitions were circulated of the party status by which the Candidate seeks ballot placement.

2.   The Illinois Election Code requires that each sheet inform the voter of the candidate's party. 10 ILCS 5/10-4. The requirements of §10-4 extend to all candidates seeking election pursuant to Article 10, which includes both independent and nonpartisan candidates. The Candidate's petitions in contravention of §10-4 do not inform the electorate whether he seeks election as a candidate of a party, or as an independent. The unidentified status under which the Candidate procured the signatures on his petitions is at variance with law and confusing to voters.

3.   Wherefore your objector states, in summary, that the Candidate did not file nominating papers properly identifying the status which the Candidate seeks nomination, and filed, at most, nominating papers inferring a nonpartisan status 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 (see §C, below).

B. Petitions Not Properly Filed During the Statutory Filing Period for Independents

4.   Your Objector here incorporates the allegations of ¶¶1-3, above, and further states that the Candidate's nominating petitions state that, in the event no primary is required, that the Candidate seeks election at the consolidated election. Contrary to 10 ILCS 5/7-10, no date for that consolidated election is stated on the Candidate's petitions.

5.   It is correct that *independent* candidates and candidates of *new political parties* gain direct access to the consolidated election ballot (or, in the general election cycle, to the general election ballot), without a primary, by such petitions. However, as noted, the Candidate did not assert independent status; moreover, 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).

6.   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 and consolidated scheme 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". *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.

7.   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).

8.   Wherefore, the Candidate did not file a proper nominating petition for the April 4, 2017 consolidated election during the statutory filing period for that election.

C. Improper Petition For A Nonexistent Nonpartisan Election (in the alternative)

9.   Your Objector here incorporates the allegations of ¶¶4-8, above, and further states that the only construction under which the Candidate's nominating papers might be permissible presumes a system of nonpartisan election in the City of Evanston that does not legally exist.

10.   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. A chief reason for the enactment of the consolidated election scheme in Illinois was to "lessen voter confusion, increase voter participation, and provide uniformity in elections administration." *United Citizens v. Coalition to Let People Decide*, 125 Ill. 2d 332, 339 (1988). As discussed in ¶7 above, predictable uniformity in elections provides for greater ballot access.

11.   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.

12.   The Election Code makes clear that the default Illinois election, including for municipal officers in cities of over 5,000 persons, anticipates and 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.

13.   By contrast, there is only a nonpartisan election or primary on the consolidated primary

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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).

14.   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 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); and

c.   **Consolidated election, odd-numbered years**: 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).

15.   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.

16.   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 both omit date of consolidated election and refer only to a nonexistent primary that cannot occur in Illinois except within a party or in a city that requires nonpartisan elections. An inference of a nonpartisan primary is impermissible and solicitation of signatures for a nonpartisan election misleading because 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.

17.   Any suggestion that a certain 1992 referendum can be interpreted and implemented as a nonpartisan consolidated primary election scheme must be rejected. The referendum did not in 1992 inform Evanston voters that it was imposing a requirement of nonpartisan elections, or that it was forbidding future candidates from running as candidates of parties or as independents. A referendum cannot be interpreted as including provisions that were not presented to and approved by voters through the referendum, else it runs afoul of the power reserved to the electorate under Art. VII §6(f). *Henyard v. Village of Dolton*, 2016 IL App (1st) 153374, ¶19, 400 Ill. Dec. 271, 276. Moreover, the 1992 referendum is unworkable because of the lack of a complete, self-executing system or any implementing ordinance. It creates potential for multiple filing periods for one primary and the possibility that a candidate and voters might face an unexpected and confusing primary election in a very short time frame, with scarcely enough time to resolve ballot objections before early voting starts.

18.   Evanston did not employ the 1992 runoff scheme in 2009 when four candidates filed for mayor, and while the reason is unknown to Objector, the decision was correct. No current candidate for mayor, including the Candidate here objected to, circulated petitions advising voters that he was running for *election* at the February 28 consolidated primary, subject to a runoff, which is what the 1992 scheme entails.

19.   Wherefore your Objector states that the Candidate did not file a proper nominating petition for a February 28, 2017 consolidated primary or the April 4, 2017 consolidated election.

20.   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* ¶5, 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 Mark Tendam 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 Mark Tendam 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 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 Mark Tendam has been sustained; and

D. To direct the Evanston City Clerk to in no event certify to the County Clerk of Cook County that Mark Tendam is entitled to ballot position above candidates who have properly and timely filed for placement on the ballot for the April 4, 2017 consolidated election.

Respectfully submited,

Jeffrey R. Smith
OBJECTOR

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