

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

Objections of: LESTER S. CIOCH and ANTHONY)
 J. BERAN)
)
 To the Nomination) No.: 03-EB-ALD-084
 Papers of: MANUEL "MANNY" FLORES)
)
 Candidate for the office of)
 Alderman of the First Ward, City of Chicago)

FINDINGS AND DECISION

The duly constituted Electoral Board, consisting of Board of Election Commissioners of the City of Chicago Commissioners Langdon D. Neal, Theresa M. Petrone, and Richard A. Cowen, organized by law in response to a Call issued by Langdon D. Neal, Chairman of said Electoral Board, for the purpose of hearing and passing upon objections ("Objections") of LESTER S. CIOCH and ANTHONY J. BERAN ("Objectors") to the nomination papers ("Nomination Papers") of MANUEL "MANNY" FLORES, candidate for the office of Alderman of the First Ward of the City of Chicago ("Candidate") to be elected at the Municipal General Election to be held on February 25, 2003, having convened on December 30, 2002, at 10:00 a.m., in Room 800, 69 West Washington Street, Chicago, Illinois, 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 herein were duly and timely filed.
2. The said Electoral Board has been legally constituted according to the laws of the State of Illinois.
3. A Call to the hearing on said Objections was duly issued by the Chairman 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.
4. A public hearing held on these Objections commenced on December 30, 2002 and was continued from time to time.
5. The Electoral Board originally assigned this matter to Hearing Examiner JOAN T. AGNEW for further hearings and proceedings but was subsequently re-assigned to Hearing Examiner ROBERT S. ANDREW prior to the first hearing in this matter.

6. The Objectors and the Candidate were directed by the Electoral Board to appear before the Hearing Examiner on the date and at the time designated in the Trial Call. The following persons, among others, were present at such hearing; the Objectors, LESTER S. CIOCH and ANTHONY J. BERAN, by counsel; and the Candidate, MANUEL "MANNY" FLORES, by counsel.
7. Paragraph 2 of the Objections states in part that pursuant to 65 ILCS 5/3.1-10-5 and 65 ILCS 20/21-14(a), a candidate for Alderman of the First Ward of the City of Chicago must be a "qualified elector" who has resided in the First Ward of the City of Chicago for at least two years before the date of the election, or has resided in any ward containing a part of the ward in which he has resided for the two years before the date of the election. Paragraph 2 of the Objections alleges in part that the Candidate has failed to fulfill the statutory residency requirements in that he has not resided at an address which is now in the First Ward of the City of Chicago for at least two years prior to the February 25, 2003 election.
8. The Candidate filed a motion to strike and dismiss the Objections, stating in part that he resides at 1701 North Campbell, Unit 2 Rear, Chicago, Illinois 60647, and that he has resided at this address since February 1, 2002. Respondent's Motion to Strike and Dismiss, ¶5. Prior to February 1, 2002, the Candidate states that he resided in Bensenville, Illinois. Respondent's Motion to Strike and Dismiss, ¶11. However, the Candidate argues that the two year residency requirement imposed by 65 ILCS 20/21-14(a) is unconstitutional on its face and as applied to the Candidate and that the objections to his qualifications for Alderman of the First Ward based on these requirements should be dismissed. Respondent's Motion to Strike and Dismiss, ¶3.
9. At the January 10, 2003 hearing conducted in this matter, the Objectors withdrew paragraphs 3-8 of their Objections.
10. At the same hearing, the Candidate conceded that he does not satisfy the residency requirements of 65 ILCS 20/21-14(a), but Candidate continues to argue that these residency requirements are unconstitutional and cannot be applied to bar him from the ballot for the February 25, 2003 election.
11. The Hearing Examiner has recommended that paragraphs 2(g) and 2(h) of the Objections be sustained based upon the Candidate's admission that he does not meet the two year residency requirement of 65 ILCS 21-14(a).
12. The Electoral Board has considered the applicable law, the evidence and argument presented by the parties and the recommended findings and conclusions of law of the Hearing Examiner, and finds that:
 - A. Section 21-14(a) of the Revised Cities and Villages Act of 1941 (65 ILCS 20/21-14(a)) applies to members of the City Council of the City of Chicago and provides that:

No member may be elected or appointed to the city council after the effective date of this amendatory Act of the 91st General Assembly unless he or she has resided in the ward he or she seeks to represent at least 2 years before the date of the election or appointment. In the election following redistricting, a candidate for alderman may be elected from any ward containing a part of the ward in which he or she resided for the 2 years before the election that follows the redistricting and may be reelected from the new ward he or she represents if he or she resides in that ward for 18 months before the reelection.

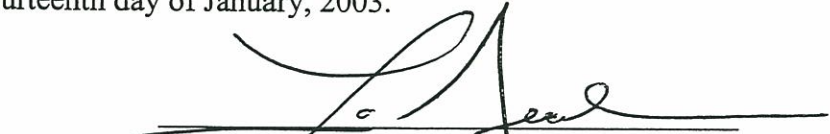
B. The Candidate admits that he has not resided in the First Ward or in any ward part of which is now in the First Ward in the City of Chicago for 2 years before the date of the February 25, 2003 election and that he does not meet the 2-year residency requirement of Section 21-14(a) of the Revised Cities and Villages Act of 1941.

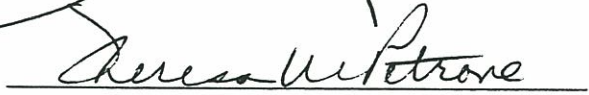
C. The Electoral Board finds, therefore, that the Candidate has failed to meet the residency requirements of Section 21-14(a) of the Revised Cities and Villages Act of 1941 and may not be elected to the office of Alderman of the First Ward of the City of Chicago.

13. The Candidate has argued that the 2-year residency requirement in Section 21-14(a) is unconstitutional on its face and as applied to him. A statute is presumed constitutional, and the party challenging the statute bears the burden of demonstrating its invalidity. *People v. Devenny*, 199 Ill.2d 398, 400, 769 N.E.2d 942 (2002). The legislature, however, did not intend that an electoral board entertain and decide constitutional challenges. *Tobin v. Illinois State Board of Elections*, 105 F. Supp.2d 882, 886 (N.D. Ill. 2000), *aff'd*, 268 F.3d 517 (7th Cir. 2001); *Phelan v. County Officers Electoral Board*, 240 Ill.App.3d 368, 372-373, 608 N.E.2d 215, 217 (First Dist. 1992); *Wiseman v. Elward*, 5 Ill.App.3d 249, 382 N.E.2d 282, (First Dist. 1972). An administrative agency must accept as constitutional the statute over which it has jurisdiction. *Board of Education of Rich Township High School v. Brown*, 311 Ill.App.3d 478, 490, 724 N.E.2d 956, 966 (1st Dist. 2000). An administrative agency lacks the authority to invalidate a statute on constitutional grounds or even to question its validity. *Texaco-Cities Service Pipeline Company v. McGaw*, 182 Ill.2d 262, 278, 695 N.E.2d 481, 489 (1998). Therefore, the Electoral Board will presume that the 2-year residency requirement in Section 21-14(a) of the Revised Cities and Villages Act of 1941 is constitutional and will apply it here to the Candidate's Nomination Papers.
14. For the reasons stated above, the Electoral Board finds that paragraphs 2(g) and 2(h) of the Objections will be sustained to the extent that they allege that the Candidate is statutorily disqualified from seeking and holding the office of Alderman of the First Ward of the City of Chicago by operation of Section 21-14(a) of the Revised Cities and Villages Act of 1941. Accordingly, the Electoral Board further finds that the Candidate's Nomination Papers are invalid.

IT IS THEREFORE ORDERED that the Objections of LESTER S. CIOCH AND ANTHONY J. BERAN to the Nomination Papers of MANUEL "MANNY" FLORES, candidate for election to the office of Alderman of the First Ward of the City of Chicago are hereby SUSTAINED in part as described above and said Nomination Papers are hereby declared INVALID and the name of MANUEL "MANNY" FLORES, candidate for election to the office of Alderman of the First Ward of the City of Chicago, SHALL NOT be printed on the official ballot for the Municipal General Election to be held on February 25, 2003.

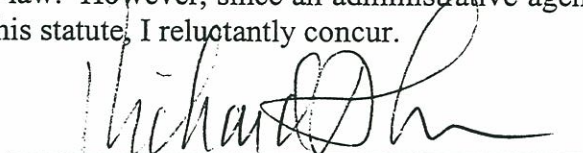
Dated: Chicago, Illinois, this Fourteenth day of January, 2003.


Langdon D. Neal, Chairman


Theresa M. Petrone, Commissioner

Commissioner Cowen concurring:

I do not believe there is either a compelling state interest or a rational basis for requiring a two year residency for candidates for alderman when candidates for city-wide office need only a one year residency. If we were to apply the same legal precedence and judicial reasoning as in the cases striking down the bar to ex-felons seeking municipal office, the two-year residency requirement violates equal protection of the law. However, since an administrative agency does not have authority to overturn or disregard this statute, I reluctantly concur.


Richard A. Cowen, 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 10 days after the decision of the Electoral Board.

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, COUNTY DIVISION

MANUEL FLORES, PEDRO BORRERO and)
ESMERALDO BORRERO)

Plaintiffs,)

v.)

CHICAGO BOARD OF ELECTION)
COMMISSIONERS, LANGDON D. NEAL, in)
his official and authorized capacity as Chairman of)
the Chicago Board of Election Commissioners,)
RICHARD A. COWEN, Commissioner,)
THERESA M. Petrone, Commissioner/Secretary,)
LANCE GOUGH, Executive Director, ROBERT)
J. SAWICKI, Assistant Executive Director; THE)
ILLINOIS STATE BOARD OF ELECTIONS,)
ELAINE ROUPOS, in her official and authorized)
capacity as Chairman of the Illinois State Board of)
Elections, WANDA L. RENOUR, Vice-Chairman,)
DAVID E. MURRAY, JOHN R KEITH, PHILLIP)
R. O'CONNOR, WILLIAM M. McGUFFAGE,)
JESSE SMART, ALBERT PORTER, in their)
official capacities; LESTER CIOCH and)
ANTHONY J. BERAN)

Defendants.)

No. 02 CH 22176
(Transferred to County Division)

Hon. Nathaniel R. Howse
Judge Presiding

MEMORANDUM DECISION

Plaintiff, Manuel Flores, (Flores) is a resident of the First Ward in Chicago who is seeking elective office as that Ward's alderman at the election to be held on February 25, 2003. Plaintiffs Pedro Borrero and Esmaralda Borrero, (the Borreros) are registered voters in the First Ward who are supportive of Flores' candidacy and want to vote for him at the election. Defendant Chicago Board of Election Commissioners (CBEC) is the agency which by law

administers elections in Chicago.

To fulfill one of the requirements to appear on the ballot in the February 2003 election, Flores filed a nomination petition with the defendants, CBEC. Candidates for election to the office of Alderman of the 1st ward were required to file a nomination petition that contained the signatures of at least 240 registered voters of the 1st Ward. Flores filed a petition that contained the signatures of over 3600 registered voters of the 1st Ward.

Defendants, Lester S. Cioch and Anthony J. Beran, (the objectors) are registered voters residing in the 1st ward. The objectors filed a petition with the CBEC challenging the candidacy of Flores. The objectors alleged that Flores did not meet the durational residency requirement of the law. In 1999, the Illinois Legislature passed Public Act 91-558. This Act revised the durational residency requirements for Alderman in the City of Chicago. See 65 ILCS 20/21-14(a). Prior to passage of the Act in 1999, Chicago Aldermen were required only to live in the municipality for one year prior to their election or appointment to office as well as be a registered voter in the Ward at the time they filed nomination papers to appear on the ballot. See 65 ILCS 5/3.1-10-5; 10 ILCS 5/10-5. After passage of the Act, Chicago Alderman were required to be residents of the Ward they seek to represent for two years prior to their election or appointment to office.

On January 14, 2003, the CBEC entered an order sustaining the objection to Flores' candidacy. The CBEC made a finding that Flores became a resident of the 1st ward on February 2002, which is only one year prior to the election, therefore Flores is ineligible to be a candidate for election to the office of Alderman of the 1st ward, and ordered that his name not appear on the ballot at the election to be held on February 25, 2003.

Plaintiffs have filed a Complaint for Declaratory Judgment, Injunctive Relief, and Mandamus, questioning the constitutionality of 65 ILCS 20/21-14(a) and request an injunction to prevent the defendants from enforcing the statute. The Complaint requests this Court to declare 65 ILCS 20/21-14 to be unconstitutional, to enjoin Defendant Chicago Board of Elections from enforcing that statute to bar him from being placed on the ballot for the position of First Ward alderman, and to direct the CBEC to place Plaintiff's name on the ballot if he meets all other nomination requirements.

In the complaint Flores alleges that he is a long-time resident of the First Ward of Chicago and that for years he has been extensively involved in First Ward civic and political activities. He has worked in political campaigns for candidates running in the First Ward and participates in the "CAPS" Chicago Alternative Policing Strategy program. He was employed by the Congressman of the Four Congressional District as a congressional aide for a year. The Fourth District includes the First Ward. Flores moved to Washington D.C. to attend law School from August 1997 to May 2000. After attending law school he moved back to Illinois where he has resided at various addresses and worked as an Assistant States Attorney.

Flores has resided in the First Ward continuously since February 1, 2002. Plaintiff meets the durational residency requirements for Chicago Aldermen that existed prior to passage of Public Act 91-558.

Equal Protection Claims

Flores alleges that his Equal Protection rights are violated by 65 ILCS 20/21-14(a). The statute restricts his right to be a candidate for Alderman of the First Ward by imposing a two-year residency requirement on candidates for the office of Alderman in the City of Chicago, while the

durational residency requirement for the offices of Mayor, City Treasurer and City Clerk of Chicago is only one-year. Under Illinois law, Flores meets the residency requirement to be Mayor of Chicago, but falls one-year short of the durational requirements to be a Chicago Alderman.

The objectors maintain that the State has a compelling interest in imposing the two-year residency requirements on Aldermanic Candidates. The two-year requirement assures that Aldermanic candidates are familiar with the communities and constituents they seek to represent and the requirement prevents "carpetbagging". The objectors maintain that a longer two-year residency requirement for Aldermanic Candidates is justified because Aldermen are legislators while the Mayor of Chicago, City Treasurer and City Clerk are "merely executive officers". Neither the State of Illinois or the Illinois State Board of Elections has advanced an argument in defense of the Statute. The State Board of elections has asked to be dismissed from this case because they do not administer Chicago elections.

Restrictions on access to the ballot burdens the right of qualified voters, regardless of their political persuasion to cast their votes effectively. Williams v. Rhodes, 393 U.S. 23, 30 (1968). Access restrictions also implicate the right to vote because, absent referendums, "voters can assert their preferences only through candidates or parties or both." Lubin v. Panish, 415 U.S. 709, 716 (1974) Because voting is a fundamental right, strict scrutiny is the proper standard of review. Williams v. Rhodes, 393 U.S. 23, 31 (1968). As such, the State must demonstrate 1.) a compelling state interest as to why aldermanic offices should have a longer residency requirement than candidates for other Municipal offices; and 2.) that the imposition of the longer residency is the least restrictive means of achieve or advance the State interest. John W. Moore Party v. Board

of Election Commissioners of Chicago, 794 F2d 1245.

The reasons advanced by the objectors do not persuade this court that the State has a compelling interest in imposing a two-year durational residency requirement on City of Chicago Aldermanic candidates. Certainly the State has an interest in having candidates who are familiar with the community they represent. This interest extends to both Aldermanic candidates as well as to candidates for executive offices. However, the State of Illinois has imposed a one-year durational residency requirement for candidates for the office of Chicago Mayor, City Clerk and Treasurer, which the State has determined is sufficient to advance State interests that are achieved by durational residency requirements.

The fact that Aldermen have a legislative function and the Mayor, Clerk and Treasurer have executive functions is not a rational basis to require a greater than durational residency requirements for candidates for the office of Alderman. The Mayor, City Clerk and City Treasurer are elected by all the voters throughout the City and not by just the voters in one Ward as is the case with Aldermanic candidates. As a result, the executive officers have to be familiar with and wage election campaigns in all 50 Wards of Chicago rather than just one. In their day-to-day work duties, executive officers of the City of Chicago serve the entire City and its 50 Wards and necessarily have larger staffs working for them than Aldermen do to enable them to fulfill their job responsibilities. The court takes notice that the salary paid to the Mayor of Chicago is more than double than the salary paid to Aldermen. Considering the above factors, a rational argument may well be made that durational requirements for Mayor should be higher than the requirements for Alderman.

The two-year durational residency requirement imposed on Chicago Aldermanic

Candidates is twice as long as any durational residency requirement that Illinois imposes on any other candidate for election to municipal office in the entire State. See 65 ILCS 5/3.1-10-5

There is no rational basis to require Chicago Aldermanic candidates to have a two-year durational residency requirement when a one-year residency requirement for Chicago executive officers is demonstrated to advance the State's interest achieved by durational residency requirements.

There is no showing that the two-year durational residency requirement is the least restrictive way to advance the states's interest, particularly since this interest is adequately advanced by a one-year residency requirement in the case of candidates for the offices of Chicago Mayor, Clerk and Treasurer.

For these reasons, this court holds that the Illinois Statute, 65 ILCS 20/21-14(a) is unconstitutional insofar as it requires candidates for election the office of Alderman of the City of Chicago to reside in the Ward in which they seek election for more than one year prior to the date of the election.¹ An appropriate order will be entered.

CIRCUIT COURT OF COOK COUNTY
ENTERED

JAN 31 2003

JUDGE NATHANIEL R. HOWSE, JR. 772

ENTER:

CIRCUIT COURT OF COOK COUNTY
ENTERED

2003

JUDGE NATH.

Judge Nathaniel R. Howse, Jr.

HOWSE JR. 772

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Flores has demonstrated that he has extensive political and civic ties with the First Ward. He alleges that the two-year residency requirement is unconstitutional because it violates his right to travel. Since I have found the Statute unconstitutional on other grounds, no analysis of that issue is necessary to resolve this case and none will be made here.

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, COUNTY DIVISION

MANUEL FLORES, PEDRO BORRERO and
ESMERALDO BORRERO

Plaintiffs,

v.

CHICAGO BOARD OF ELECTION
COMMISSIONERS, LANGDON D. NEAL, in
his official and authorized capacity as Chairman of
the Chicago Board of Election Commissioners,
RICHARD A. COWEN, Commissioner,
THERESA M. Petrone, Commissioner/Secretary,
LANCE GOUGH, Executive Director, ROBERT
J. SAWICKI, Assistant Executive Director; THE
ILLINOIS STATE BOARD OF ELECTIONS,
ELAINE ROUPOS, in her official and authorized
capacity as Chairman of the Illinois State Board of
Elections, WANDA L. RENOUR, Vice-Chairman,
DAVID E. MURRAY, JOHN R. KEITH, PHILLIP
R. O'CONNOR, WILLIAM M. McGUFFAGE,
JESSE SMART, ALBERT PORTER, in their
official capacities; LESTER CIOCH and
ANTHONY J. BERAN

Defendants.

No. 02 CH 22176
(Transferred to County Division)

Hon. Nathaniel R. Howse
Judge Presiding

ORDER

The cause having coming on to be heard by the court on January 29, 2003, and all parties being present and represented by their respective attorneys; and the court having heard the oral argument of the parties in this matter and the court having taken this matter under advisement; and the Court having jurisdiction of the parties and the subject matter of the case; the court

Finds:

That 65 ILCS 20/21-14(a) is unconstitutional because it violates the equal

protection rights of the plaintiff; Therefore it is hereby **ORDERED**:

1. That judgment is entered in favor of the Plaintiffs in Counts I and II of the Complaint;
2. That the Defendants, Chicago Board of Election Commissioners are enjoined and restrained from enforcing 65 ILCS 20/21-14(a) to the extent that it requires Aldermanic Candidates to reside in their Ward for more than one-year.
3. That Defendants Chicago Board of Election Commissioners shall cause the name of the Plaintiff, Manuel Flores, to appear on the ballot at the First Ward Election to be held on February 25, 2003.
4. That Count III of the complaint is dismissed;
5. The motion of defendant, Illinois State Board of Elections to be dismissed is allowed;
6. Defendants motion to deny injunctive relief due to lack of verification is denied;
7. This is a final judgment and there is no just cause to delay the enforcement or appeal of this order.

ENTER: CIRCUIT COURT OF COOK COUNTY
ENTERED

JAN 31 2003

JUDGE NATHANIEL R. HOWSE, JR. 772

Judge Nathaniel R. Howse, Jr.