

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

Objections of: STEVEN SALTZMAN and)
TERRY A. FEINGOLD)
)
To the Nomination) No.: 19-EB-ALD-008
Papers of: BILL MORTON)
) Rel.: 19-EB-ALD-056
Candidate for the office of)
Alderman of the 49th Ward of the City of)
Chicago)
)

FINDINGS AND DECISION

The duly constituted Electoral Board, consisting of the Board of Election Commissioners for the City of Chicago, Commissioners Marisel A. Hernandez, William J. Kresse and Jonathan T. Swain, organized by law in response to a Call issued by Marisel A. Hernandez, Chair of said Electoral Board, for the purpose of hearing and passing upon objections (“Objections”) of STEVEN SALTZMAN and TERRY A. FEINGOLD (“Objectors”) to the nomination papers (“Nomination Papers”) of BILL MORTON, for the office of Alderman of the 49th Ward of the City of Chicago (“Candidate”) at the General Municipal Election to be held on Tuesday, February 26, 2019, having convened on Monday, December 10, 2018 at 8:30 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 were duly and timely filed.
2. The Electoral Board was legally constituted under the laws of the State of Illinois.

3. A Call to the hearing on said Objections was duly issued by the Chair 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 Monday, December 10, 2018 and was continued from time to time. The Electoral Board assigned this matter to Hearing Officer Joseph Morris for further hearings and proceedings.

5. The Objectors and the Candidate were directed by the Electoral Board to appear before the Hearing Officer on the date and at the time designated in the Hearing Schedule. The following persons, among others, were present at such hearing: the Objectors, STEVEN SALTZMAN and TERRY A. FEINGOLD, and/or their Attorney, SCOTT B ERDMAN; and the Candidate, BILL MORTON, and/or his attorney, FRUNK AVILA.

6. The Hearing Officer ordered that an examination of the voter registration records be conducted by clerks and agents under the Board's direction and supervision, in accordance with the laws of Illinois and the rules of the Board.

7. The Hearing Officer directed all parties to appear and be present, either personally and/or by their authorized representatives, during this records examination.

8. The Candidate and/or his duly authorized representative was present during the examination of the registration records. The Objectors and/or their duly authorized representative was present during the examination of the registration records.

9. The examination of the registration records was completed and the Electoral Board hereby adopts and incorporates by reference the results of the records examination conducted by its clerks and agents. The written report of the result of the registration records

examination is contained in the Electoral Board's file in this case and a copy has been provided or made available to the parties.

10. The results of the records examination indicate that:

A. The minimum number of valid signatures required by law for placement on the ballot for the office in question is 473;

B. The remaining number of signatures deemed valid as a result of the records examination total 321.

11. The Electoral Board finds that the number of valid signatures appearing on the Candidate's nominating petition following completion of the records examination was less than the minimum number of valid signatures required by law to be placed upon the official ballot as a candidate for the office of Alderman of the 49th Ward of the City of Chicago.

12. The Hearing Officer conducted a hearing to allow the Candidate an opportunity to present evidence in support of his Rule 8 motion objecting to the Board's clerk's findings during the records examination.

13. The Hearing Officer has tendered to the Electoral Board a report and recommended decision. Based upon the evidence presented, the Hearing Officer found that the Candidate's Nomination Papers contained only 321 valid signatures, which is less than the minimum number of valid signatures required by law to be placed upon the official ballot as a candidate for the office of Alderman for the 49th Ward of the City of Chicago, and that the Candidate's Nomination Papers should be found invalid.

14. The Electoral Board, having considered the evidence and arguments tendered by the parties and the Hearing Officer's report of recommended findings and conclusions of law, hereby adopts the Hearing Officer's recommended findings and conclusions of law.


15. For the reasons stated above, the Electoral Board finds that the Candidate has an insufficient number of valid signatures on his nominating petitions and that the Nomination Papers of BILL MORTON are, therefore, invalid.

IT IS THEREFORE ORDERED that the Objections of STEVEN SALTZMAN and TERRY A. FEINGOLD to the Nomination Papers of BILL MORTON, candidate for election to the office of Alderman of the 49th Ward of the City of Chicago, are hereby SUSTAINED and said Nomination Papers are hereby declared INVALID and the name of BILL MORTON, candidate for the office of Alderman for the 49th Ward of the City of Chicago, SHALL NOT be printed on the official ballot for the General Municipal Election to be held on Tuesday, February 26, 2019.

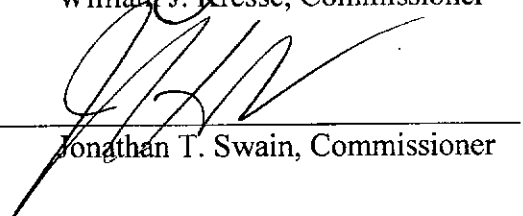
Dated: Chicago, Illinois, on Friday, January 18, 2019.



Marisel A. Hernandez, Chair



William J. Kresse, Commissioner



Jonathan T. Swain, 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 5 days after service of the decision of the Electoral Board.

receiving evidence and hearing argument on the Rule 8 motion. No evidence was proffered and none was received. Without objection the record was closed. The results of the records examination, uncontroverted by the Candidate, justify the sustaining of the Objector's Petition.

Procedural Background

2. An Initial Hearing was held herein on December 10, 2018. Scott Erdman appeared on behalf of the Objector. Frank Avila appeared on behalf of the Candidate, who also attended in his proper person. Appearances of the parties were entered and exchanged and counsel on both sides submitted e-mail addresses from and through which they agreed to file and serve papers and otherwise communicate with the Electoral Board, the Hearing Officer, and each other. Confidentiality and Non-Disclosure Agreements were properly executed and filed. The Candidate's Nomination Papers were marked as Board Exhibit A and received into the record. The Objectors' Petition was marked as Board Exhibit B and received into the record. The Notice of Call and the parties' waivers of service of summonses were marked as Board Group Exhibit C and received into the record. The parties' written appearances and confidentiality and non-disclosure agreements were marked as Board Group Exhibit D and received into the record.

3. It was evident on the face of the Objector's Petition that a records examination was required and, at the Initial Hearing, a directive for a records examination was entered.

4. A series of status hearings was held while the parties awaited the results of the records examination.

5. On December 28, 2018, the final report of the records examination was filed. It disclosed that the Candidate's Nomination Papers contained a total of 504 signatures, against 257 of which no objection was made; the Objector had lodged 262 objections; 188 objections were

sustained and 74 objections were overruled; and in the final reckoning only 321 valid signatures were found (including the 257 signatures which were unchallenged). The Candidate preserved appeals from 175 decisions by records examiners sustaining objections.

6. On December 31, 2018, the Candidate filed a timely motion under Rule 8 of the Rules of the Electoral Board seeking review of records examination rulings sustaining objections to signatures supporting the Nomination Papers.

7. On January 4, 2019, the Hearing Officer entered a Case Management Order scheduling an evidentiary hearing on the Rule 8 motion for January 9, 2019, and directing the parties to exchange exhibits, affidavits, and witness lists on or before January 8, 2019, at 2:00 p.m.

8. In the event, the parties filed and exchanged no exhibits, affidavits, and witness lists.

9. An evidentiary hearing on Candidate's Rule 8 motion convened on January 9, 2019. By agreement of all parties, it was held jointly with the evidentiary hearing on the Candidate's Rule 8 motion in a companion case, *Peterson v. Morton*, No. 19-EB-ALD-056. At the hearing the Candidate stated that his efforts to find evidence on the basis of which to prosecute his Rule 8 motion were unsuccessful. The Hearing Officer invited the Candidate to move to continue the evidentiary hearing and to enlarge the time in which exhibits, affidavits, and witness lists might be filed and served. The Candidate declined so to move. Without objection, the record was closed. Argument by the Candidate was heard. Argument by the Objector was waived. The case was taken under advisement for decision.

Analysis and Evaluation

10. To be placed on the ballot for election as Alderman of the 49th Ward of the City of Chicago, the Candidate was required to submit Nomination Papers supported by valid signatures of at least 473 qualified electors in the ward. The records examination showed that, of 510 signatures contained in Candidate's Nomination Papers, only 321 were valid. The Candidate fell short of the required minimum by 152 signatures. There are no other issues in the case.

11. At the direction of this Hearing Officer, a records evaluation was also conducted in the companion case, *Peterson v. Morton*, No. 19-EB-ALD-056, and the report of that records examination was filed at or about the same time as was the report in the instant case. Although the records examinations in the two cases were conducted in response to separate and distinct Objectors' Petitions, they examined the very same set of Nomination Papers. The findings of the reports in the two cases were substantially the same, in that in each case the Nomination Papers were found to have been supported by far fewer than the minimum number of valid signatures of qualified electors. Some anomalies and inconsistencies appear in the two reports, however, beginning with the fact that, in the report in *Peterson v. Morton*, No. 19-EB-ALD-056, the Nomination Papers were said to have contained a total of 510 signatures (whether or not valid), whereas in the report in *Saltzman v. Morton*, No. 19-EB-ALD-008, the very same set of Nomination Papers was said to have contained a total of 504 signatures (whether or not valid). Inasmuch as both reports refer to the same Nomination Papers, the two starting figures should have been identical. (Ultimately, of course, two records examinations performed on the same set of Nomination Papers but triggered by separate Objector's Petitions may well lead to differing results, if only because the objectors may not have challenged the same individual signatures or, if challenging the same individual signatures, may have

challenged them on one or more divergent grounds.) The Candidate called attention to these anomalies and disparities, but did not show them to have a significance such that they affected the outcome of the records examination and, thus, the outcome of the case. Acting *sua sponte*, the Hearing Officer has also explored these anomalies and inconsistencies and reports that he finds no evidence that they are of such a significance, mathematically or otherwise, to have affected the outcome of the case. Principles of due process do not require perfection in the adjudication of signature challenges, nor do they require that the Electoral Board achieve a complete harmonization of the results of different records examinations undertaken with respect to the same Nomination Papers. See, generally, *United States v. Lutwak*, 344 U.S. 604, 619 (1953): “A defendant is entitled to a fair trial but not a perfect one.” Rather, due process principles here require that the records examination be undertaken by neutral adjudicators accompanied by reasonable opportunities for an aggrieved party to have his appeals from adjudicative decisions reviewed by a neutral arbiter. Those safeguards were amply accorded to the parties here. In the end, there is no evidence that error or inconsistencies in the conduct of the two records examinations affected their outcomes; and their outcomes are reinforced by the fact that the two records examinations, although involving an unexplained, though small, difference in starting numbers, and naturally involving different objections to different signatures, arrived at substantially the same bottom line: The Nomination Papers are not supported by enough valid signatures.

Recommended Decision

12. On the bases of an examination of the face of the Nomination Papers, of the Objector's Petition, of all the submissions of the parties, of the report of the records examination, and of all other proceedings held herein, the Hearing Officer recommends that the Electoral Board enter the following finding of fact: The Nomination Papers of the Candidate are supported by valid signatures of 321 electors of the 49th Ward of Chicago.

13. The Hearing Officer recommends that the Electoral Board enter the following conclusions of law:

(a) The Nomination Papers of the Candidate are supported by an insufficient number of valid signatures of electors of the 49th Ward of Chicago, with 473 such signatures being required by law but only 321 such signatures having been obtained.

(b) The Objector's Petition is well founded, and the relief sought therein should be granted.

(c) The Candidate's Nomination Papers are insufficient in law and fact.

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14. The Hearing Officer recommends that the Electoral Board enter the following final administrative decision:

The name of BILL MORTON shall not appear and shall not be printed on the ballot for election to the office of Alderman of the 49th Ward of the City of Chicago to be voted for at the Municipal General Election to be held on February 26, 2019.

Enter:

/s/ JOSEPH A. MORRIS

JOSEPH A. MORRIS
Hearing Officer

Dated: January 11, 2019.