

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

Objections of: GINA ZUCCARO and)
EMMA JEAN ROBINSON)
)
To the Nomination) No.: 19-EB-ALD-128
Papers of: BEVERLY MILES)
)
Candidate for the office of)
Alderman of the 28th 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 GINA ZUCCARO and EMMA JEAN ROBINSON (“Objectors”) to the nomination papers (“Nomination Papers”) of BEVERLY MILES, candidate for the office of Alderman of the 28th 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 was held on these Objections commencing on Monday, December 10, 2018 and was continued from time to time.

5. The Electoral Board assigned this matter to Hearing Officer Terence Flynn for further hearings and proceedings.

6. 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 Call. The following persons, among others, were present at or filed appearances during such hearing; the Objectors, GINA ZUCCARO and EMMA JEAN ROBINSON, and/or their Attorney, JAMES P. NALLY; and the Candidate, BEVERLY MILES, and/or her Attorneys, PERICLES ABBASI and ANDREW FINKO.

7. 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.

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

9. The Candidate and/or her duly authorized representative was present during the examination of the registration records.

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

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

12. 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 478.

13. The Electoral Board finds that the number of valid signatures appearing on the Candidate's nominating petition following completion of the records examination exceeds the minimum number of valid signatures required by law to be placed upon the ballot as a candidate for the office of Alderman for the 28th Ward of the City of Chicago.

14. The Hearing Officer conducted a hearing to allow the parties an opportunity to present evidence in support of their Rule 8 motions objecting to the Board's clerk's findings during the records examination. Following an evidentiary hearing, the Hearing Officer found that the Candidate obtained a net gain of 12 valid signatures.

15. 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 490 valid signatures, which exceeds the minimum number of valid signatures required by law to be placed upon the ballot as a candidate for the

office of Alderman for the 28th Ward of the City of Chicago, and that the Candidate's Nomination Papers should be found valid.

16. 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.


17. For the reasons stated above, the Electoral Board finds that the Candidate has a sufficient number of valid signatures on her nominating petitions and that the Nomination Papers of BEVERLY MILES are, therefore, valid.

IT IS THEREFORE ORDERED that the Objections of GINA ZUCCARO and EMMA JEAN ROBINSON to the Nomination Papers of BEVERLY MILES, candidate for the office of Alderman for the 28th Ward of the City of Chicago, are hereby OVERRULED and said Nomination Papers are hereby declared VALID and the name of BEVERLY MILES, candidate for the office of Alderman for the 28th Ward of the City of Chicago, SHALL be printed on the official ballot for the General Municipal Election to be held on Tuesday, February 26, 2019.

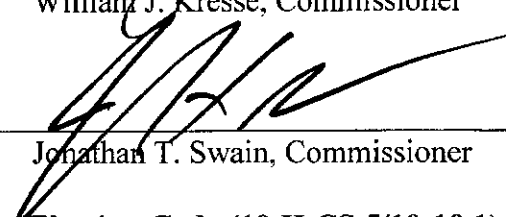
Dated: Chicago, Illinois, on Friday, January 25, 2019.



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.

BEFORE THE DULY CONSTITUTED ELECTORAL BOARD FOR THE HEARING AND PASSING UPON OF OBJECTIONS TO NOMINATION PAPERS OF CANDIDATES FOR ELECTION TO THE OFFICE OF ALDERMAN OF THE 28TH WARD, CITY OF CHICAGO, ILLINOIS, TO BE VOTED UPON AT THE FEBRUARY 26, 2019 MUNICIPAL GENERAL ELECTION

Gina Zuccaro and Emma Jean Robinson,)	
)	
Petitioners – Objectors)	
)	
v.)	19 – EB – ALD – 128
)	
Beverly Miles,)	Summary of findings: After Rules 6 and
)	8 processes, Candidate has exceeded the
Respondent – Candidate)	signature requirement of 437 by 17.

Report and Recommendation

- 1) This matter was assigned to Hearing Officer Terence Flynn. At the initial hearing, on 12/10/18, Attorney Pericles Abbasi appeared on behalf of the Candidate and Attorney James Nally appeared on behalf of the Objectors. The Objection mainly was a traditional signature challenge and therefore a Rule 6 Directive was issued. Also, a briefing schedule was set for Candidate to challenge certain, non-dispositive aspects of the Objection, such as notarial objections. However, the Rule 6 exam certainly took precedence.
- 2) There were subsequent statuses of 12/17/18, 12/27/18 and 1/3/19 while attempting to determine when the Rule 6 findings would be finalized.
- 3) The 1/14/19 status was changed from in-person to telephone given the incomplete Rule 6 exam, not yet at handwriting analysis, apparently. Court reporter was to be notified and canceled.
- 4) Telephone and/or email status conferences between all counsel and this Hearing Officer were held on 1/14, 1/15 and 1/16. On 1/17, the final Rule 6 results were available, and on 1/18 both

parties filed Rule 8 motions. A final hearing on the Rule 8 motions was set for 1/22/19, the first date available.

- 5) The Rule 6 results showed the Candidate 5 signatures above the minimum signature requirement of 473, also showing 2540 total signatures, 2062 sustained line objections, 238 overruled line objections, Candidate preserving 805 objections and Objectors preserving 317 objections for Rule 8 reviews.
- 6) On 1/22/19 the final hearing took place. With the Candidate 5 signatures up, the Objectors had the burden to proceed and began the proceedings. As more detailed below, a) Objector led off with affidavits stating that a purported petition signer hadn't signed Candidate's petitions at all; and b) proffered affidavits that the affiant had signed another candidate's petition sheets *before* signing this Candidate's nomination papers; and c) objections regarding circulator and/or notary defects. The Candidate proffered a) photos and other documents of "common entrances/with different addresses" re certain of the "not registered" findings and b) affidavits to rehabilitate signatures found invalid by the Rule 6 process.
- 7) Objectors' case:
 - a) "Affidavits stating 'I didn't sign the petition'" – Objectors proffered 17 affidavits from purported signers of Candidate's nomination papers that stated they did not – at any time – sign petition sheets for this Candidate (Objectors' Exhibits 1-17). Candidate filed a written motion objecting to these affidavits on 3 grounds: a) stating that the particular language of Rule 10(c) allows for affidavits to rehabilitate from Rule 6 but not to deny signing; b) suggesting that precedent of the Board does not allow such affidavits as *prima facie evidence*; and c) that to allow such affidavits would be unconstitutional. Objectors' counsel correctly rebutted the third argument regarding constitutionality by correctly observing that Electoral Board (and certainly its delegated Hearing Officer) does not decide constitutional challenges. With regard to the first argument – regarding the language of Rule

10(c) – it was observed that the first sentence allows affidavits for *any* appropriate evidentiary purpose and that the second sentence, historically, stems from the requirement of notarized affidavits. With regard to the second argument regarding Board precedent, Objectors' counsel agreed that the 17 proffered affidavits would be subject to the traditional comparison test – looking, at a minimum, at the affidavits' printed and cursive names and the signatures (both cursive and printed) on the petition sheets for points of similarity or dis-similarity.

The problem for Objectors that then occurred was that the signatures, both printed and cursive, on the affidavits actually conformed to the signatures, both printed and cursive, on the sheet and line numbers involved. Candidate had argued that, in this election, with multiple candidates running, perhaps one might forget who one signed-for, that argument going to the weight to be given the affidavits. But these affidavits contained in each instance solid evidence – in the comparison of the signatures from affidavit to petition sheet – that the affiant had in fact signed the petition sheet. The signatures in each of the 17 affidavits were matches. There was no argument, much less evidence, of extrinsic factors – one could think of but must reject “round tabling” or somehow tracing or some other fraudulent conduct. That would have meant that the campaign could have “forged” the signatures so correctly on the petition sheets that they matched the *subsequently* executed affidavits, documents solely in the control of the Objectors. As said, the argument was not made and, of course, would be non-sensical given the chronology. As such, given that the “I didn't sign affidavits” signatures actually matched the petition sheets, there were no deductions to Candidate's total from that aspect of the evidentiary hearing. The Candidate remained 5 signatures above the minimum.

b) Affidavits stating “I signed another candidate's petition first” – The parties agreed that Section 10-4 mandates that there is no multiple signing in these non-partisan aldermanic elections and therefore evidence of prior signing can and will negate subsequent signing.

Objectors submitted a number of such affidavits, and again, the comparison test was used,

agreed to by the parties. This Hearing Officer reviewed each affidavit and then the corresponding petition sheets and line numbers on both this Candidate's sheets and also on the other candidates' sheets. This Hearing Officer also reviewed the notarization dates on both petition sheets. The notarization dates are not conclusive, as such, as a signature *might* have been obtained well prior to the notarization, but a large disparity – such as early September versus late November (as some were) – is at the least *indicative* of collection dates. The full analysis is available in the Transcript. Suffice to say that at the conclusion of the analysis of Objectors' Exhibits 18-34, 12 signatures on the Candidate's petitions were conclusively found to have been executed subsequent to another candidate's petitions: Candidate was now 7 signatures below the minimum signature requirement.

That concluded Objectors' evidence regarding the Rule 8 and ¶ 7 of the Objection (multiple signings). Subject to argument on certain circulator/notary issues, discussed below at ¶ 8(d), Objector rested.

8) Candidate's case:

a) Candidate filed an affidavit (Candidate's Ex. 1) and gave oral testimony attempting to cast doubt on the propriety of the affidavit-gathering of Objectors. Given, however, that the persons identified were not involved in any of the exhibits or affidavits proffered by Objectors, the affidavit and testimony were deemed irrelevant.

b) Candidate offered Exhibits 2-20 regarding addresses and registration issues in the Rule 6. They ranged from “common entrances” or “buildings with multiple addresses” (taken under advisement and not ruled upon at the hearing: Candidate's 2, 4, 5 and 8) to requests to look at addresses construed by the Board caller in the Rule 6 one way and requesting a second look. Again, the details of the analysis are contained in the Transcript. In many instances the originals of the petition sheets showed numbers that were clearly consistent with, or very likely consistent with, the Registration addresses, and in many of those instances, Objectors' counsel agreed to changing the

result. At the conclusion of this part of the analysis, 7 signatures were added back to Candidate's total, leaving her exactly at 473, the minimum signature requirement. This Hearing Officer took under advisement 4 of the contested signers regarding "common entrances". (A subsequent survey of Board case law does not reveal precedent that an incorrect Registration address, contrary to that in the Board's records, can be absolved because it is a common entrance with multiple addresses. No case was found where "substantial compliance" or any deviation in the Registration address from that in the Board's records was excused. Nor did counsel provide any. Thus the ruling on Candidate's 2, 4, 5 and 8 is against the Candidate and does not result in any addition, nor any deduction, to the Candidate's total.)

c) Finally, with regard to evidentiary submissions, Candidate offered Exhibits 21 -46. These were traditional rehabilitation affidavits: where the Board in Rule 6, whether by the "caller" or by the forensic document examiner, had disqualified a signature on a petition sheet, these affidavits were offered to say "I did sign the petition for the Candidate at that line and sheet number". Again, the traditional comparison test and analysis was utilized: looking at the print and cursive signatures on both the affidavits and on the petitions. Seven of the affidavits were found insufficient in the comparative analysis and one was withdrawn. Again, the particulars of the process are of Record in the Transcript of Proceedings. The result was that 17 further signatures were credited to the Candidate, putting her 17 above the minimum signature requirement.

d) Candidate also moved to strike certain objections based upon alleged defects in the notary jurat or circulator identification. (See, Candidate's Rule 5 Motion to Strike.) The defects alleged were "technical" in nature, a date missing from the notary, a county of residence missing from a circulator on one sheet but supplied on another sheet. Argument was heard; Objectors stood on their papers and made no further argument. Candidate properly relied upon, *inter alia*, *Schumann v. Kumarich*, 430 N.E.2d 99 (1st Dist. 1981); and *Hendon v. Davis*, 02-EB-SS-10 (2002). The Motion to Strike was granted in all respects, neither adding nor deducting signatures from the Candidate's total.

9) Both sides rested.

10) In summary, at the conclusion of all evidence and argument, the Candidate was 17 signatures above the minimum requirement of 473, for a total of 490.

Recommendation:

This Hearing Officer recommends that the name Beverly Miles *should* appear on the ballot for the Office of Alderman of the 28th Ward of the City of Chicago in the February 26, 2019 Municipal General Election.

Dated: 1/22/19

s/ Terence Flynn
Hearing Officer