

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

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Objections of: SEAN COARI	)	
	)	
	)	
To the Nomination	)	No.: 19-EB-MUN-026
Papers of: MELISSA CONYEARS-ERVIN	)	
	)	
Candidate for the office of City Treasurer for	)	
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 SEAN COARI (“Objector”) to the nomination papers (“Nomination Papers”) of MELISSA CONYEARS-ERVIN, candidate for the office of City Treasurer for 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 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 Chair of the Electoral Board and served upon the members of the Electoral Board, the Objector 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.

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

6. The Objector and the Candidate were directed by the Electoral Board's Call served upon them 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 Objector, SEAN COARI, by attorney PERICLES ABBASI; the Candidate, MELISSA CONYEARS-ERVIN, by attorney JAMES P. NALLY.

7. The Hearing Officer has tendered to the Electoral Board his report and recommended decision. The Hearing Officer recommends that the Objections to the Candidate's Nomination Papers be overruled and that the Nomination Papers be declared valid.

8. The Electoral Board, having reviewed the record of proceedings in this matter and having considered the report and recommendations of the Hearing Officer, as well as all argument and evidence submitted by the parties, hereby adopts the Hearing Officer's recommended findings and conclusions of law. A copy of the Hearing Officer Report and Recommendations is attached hereto and is incorporated herein as part of the decision of the Electoral Board.

9. The Electoral Board agrees with the Hearing Officer that even if the allegations are taken as true that a pattern of fraud and false swearing was found in the process of crossing

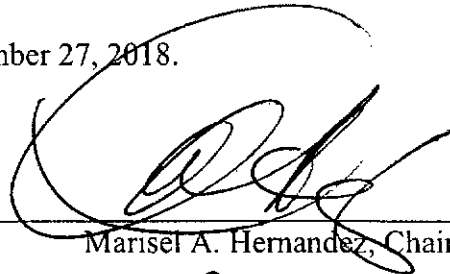
out and replacing signers' addresses on the Candidate's petitions, the proper remedy may involve invalidating entire petition sheets, but it does not invalidate the Candidate's entire set of Nomination papers unless the fraud is found to have touched "the entire universe" of the Nomination Papers. In this case, however, these address-lined-out objections only affect some 3,711 signature lines, found on 54% of the Nomination Papers and comprising only 8.8% of the total number of petition signatures submitted. Even if the signatures on each of those sheets were deemed invalid, and even if 100% of all other objections raised were ruled in favor of the Objector, the Candidate would still be left with some 15,264 unchallenged and valid signatures, which would be 2,764 signatures above the required minimum.

10. For the reasons stated above, the Electoral Board overrules the Objections to the Candidate's Nomination Papers, denies the Objector's subpoena request as moot, and finds that the Candidate's Nomination Papers are valid in fact and law.

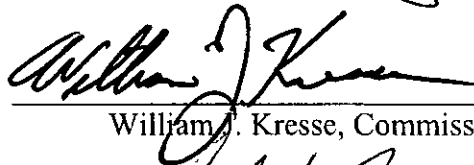
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IT IS THEREFORE ORDERED that the Objections of SEAN COARI to the Nomination Papers of MELISSA CONYEARS-ERVIN, candidate for the office of City Treasurer for the City of Chicago, are hereby OVERRULED and said Nomination Papers are hereby declared VALID and the name of MELISSA CONYEARS-ERVIN, candidate for the office of City Treasurer for the City of Chicago, SHALL be printed on the official ballot for the General Municipal Election to be held on Tuesday, February 26, 2019.

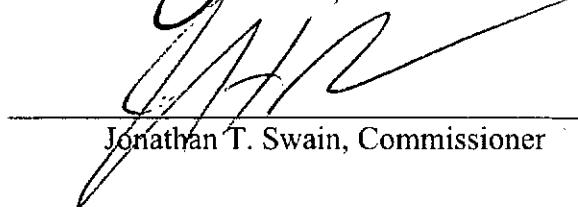
Dated: Chicago, Illinois, on Thursday, December 27, 2018.



Marisel A. Hernandez, Chairwoman



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 THE NOMINATION PETITIONS OF CANDIDATES FOR THE FEBRUARY 26, 2019, MUNICIPAL GENERAL ELECTION FOR MAYOR, CLERK, TREASURER AND ALDERMAN IN THE CITY OF CHICAGO**

SEAN COARI, )  
 )  
 Petitioner(s) – Objector(s) )  
 ) 19 EB MUN 026  
 )  
 MELISSA CONYEARS-ERVIN, )  
 ) Hearing Officer: Christopher J. Agrella  
 Respondent – Candidate. )  
 )

**HEARING OFFICER’S REPORT AND RECOMMENDED DECISION**

This matter first came before the hearing officer on December 10, 2018, set on the Call for 9:45 a.m. The candidate is seeking to appear on the ballot for election to the office of Treasurer of the City of Chicago, to be voted upon in the February 26, 2019, Municipal General Election.

At 9:55 a.m. the first call of the case took place, at which time Mr. Pericles Abbasi, Esq., appeared on behalf of the objector and Mr. James Nally, Esq. appeared on behalf of the candidate. Both sides filed their appearances and as well as tendering an executed non-disclosure agreement.

At this juncture the hearing officer marked the nomination petition of the candidate as Exhibit A, the objection as Exhibit B, the proof of service of the Call upon objector as Exhibit C, and the appearances of the parties as Exhibit D. All were accepted into evidence without objection by either side.

The objection, with an attached recap exhibit, asserted several grounds for invalidating the candidate’s nomination papers: a) within the 2800 petition sheet pages, containing some 40,000 plus petition signers, 3,711 signature lines on 1,113 petition sheets had their addresses lined out and changed; b) line by line recap style objections to individual signatures; c) circulator and notarization issues; d) “second in time” dual signers that had previously signed for other

candidate(s); and e) a “pattern of fraud” allegation as it relates to the line-out issue as well as being pleaded generally. In support of his challenge to the line-out signatures objecter’s objection cited *Featherston v. Kowalski McDonald*, 17 COEB CC 03 and *Kowalski McDonald v. Cook County Officers Electoral Board*, 2018 COEL 018, aff’d 2018 Ill.App. (1<sup>st</sup>) 180479 (unpublished).

Based on the preliminary Petition Summary Report generated by the Board personnel, the candidate filed 2,800 petition pages containing 40,096 petition signatures for an office requiring 12,500 valid petition signatures and that the objection’s line by line objection challenged 3,413 signature lines with 4,789 total signer objections, leaving 36,683 purportedly valid petition signatures.

A review of the actual objection itself revealed that none of the objection’s circulator or notarization issues were detailed or supported in the recap sheets, likewise for the “second in time” dual signer allegation.

In short, the objection would succeed or fail predicated upon the challenge to 3,711 signature lines on the petition sheets that had their addresses lined out and changed, coupled with the “pattern of fraud” overlay. (In the course of the hearing on the candidate’s motion to strike objecter would clarify the number of pages at issue consisted of 1,664 pages).

At this initial December 10, 2018, hearing date counsel for both parties acknowledged receipt of a copy of the Board rules and the timing for motions and subpoenas.

Objecter indicated an intent to file a motion to strike certain allegations and a hearing date of December 16, 2018, at 10:00 a.m. was set down for hearing on the motion and further proceedings.

Given the status of the case the hearing officer held off on requesting the Board conduct a Rule 6 record examination pending the outcome of the motion to strike.

Objecter timely filed a motion to strike with supporting documentation/spreadsheet,

candidate timely filed a response, objector timely filed a reply.

On December 16, 2018, at 10:00 a.m. the matter was recalled. Attorneys for both sides appeared and argued the candidate's motion to strike.

Candidate argued, first, that no notary, circulator, or 'second in time' allegations were supported on the recap sheets such that they should be struck and disregarded.

The candidate is correct, as set forth *supra*, and it is the recommendation of this hearing officer that candidate's motion to strike be granted as to those portions of the objection referencing these issues.

The candidate then argued that even if the remaining balance of the objection were taken as true regarding the signatures under attack, it could not possibly bring the total valid signatures on the candidate's nomination petition below the 12,500 minimum threshold. Alleging the candidate submitted 42,226 signatures in total (2,130 greater than the preliminary Board count of 40,096 - ed) the candidate argued, first, that if each line out and line by line objection was granted it would only strike 7,154 signatures in total, leaving the candidate with 35,072 valid signatures (32,942 based on the Board count - ed), tens of thousands over the 12,500 minimum; second, while not necessarily conceding the validity of such an action, candidate argued that even if the Board struck all sheets upon which a line out objection was found (and after removing the duplication of any line by line objection contained on any such sheets), and the objector also prevailed on 100% of the remaining line by line objections on sheets where no line out was found (2,621 additional), the candidate would still possess some 15,264 signatures, thousands over the minimum required.

The candidate also took issue with objector's interpretation of the holdings in the *Kowalski McDonald* cases, arguing that these cases did not stand for the wider proposition that whole sheets be struck, much less that a finding of a "pattern of fraud", if found upon such conduct, would

necessitate the invalidation of the candidate's entire nomination papers if the candidate still possessed sufficient otherwise valid/unchallenged signatures.

In response, objector did not contest the candidate's math and in general accord with the candidate's figures objector produced a simple chart during the course of the hearing which indicated the candidate would, in fact, possess thousands more valid signatures than the candidate required even if, as aforesaid, the Board struck entire sheets where any line out was found and the objector also prevailed on 100% of the remaining line by line objections on sheets where no line out was found.

Objector also acknowledged that, while the Board in the *Kowalski McDonald* matter found it appropriate to strike entire pages where the evidence proved the line outs were done in a significantly fraudulent fashion, to-wit, after the circulator had signed the affidavits, the *Kowalski McDonald* decision did not reach so far as to require the striking of the entire nomination petition even under those troubling circumstances. However, it was objector's position that such a holding was indicated by the Board's reasoning, further asserting that the Board did not need to go that far because the candidate's signature total was already below the minimum required.

In reply, the candidate advanced the "pattern of fraud" case of *Mitchell v. Cook County Officers Electoral Board*, 399 Ill.App.3d 18, 924 N.E.2d 585 (1<sup>st</sup> Dist. 2010) [Bonnie McGrath judicial candidacy] for the proposition that striking the candidate's entire nomination petition isn't even appropriate where a "pattern of fraud" was shown as to the candidate herself fraudulently causing petition sheet notarizations to be performed when the circulator wasn't even present, so long as sufficient valid signatures remain after striking the offending pages.

Objector addressed the *Mitchell* Court's holding by referencing its statement that striking the entire set of nomination papers might be appropriate where the "... pattern was shown as to the entire universe of the nomination petitions" (*Mitchell* at 924 N.E.2d 591), thereupon arguing



that this candidate's line-out replacements on 54% of the candidate's sheets constituted "the entire universe".

*Kowalski McDonald* and *Mitchell* each stopped short of striking the entire nomination petition as a consequence of the wrongful conduct uncovered. Contrary to objector's argument, no inference is detected in either case that the decision not to invalidate the entire nomination petition was predicated upon the (then) status of the candidate's signature total. One candidate was left with insufficient signatures (*Kowalski McDonald*), the other (*McGrath*) had enough.

In point of fact, the *Mitchell* candidate (*McGrath*) herself was found to have personally engaged in an extensive, intentional pattern of fraud and false swearing, yet the Court refused to strike the entire nomination petition, leaving the "bad actor" candidate on the ballot in that she had sufficient other good signatures. As to the *Kowalski McDonald* case, again, there was no indication in the opinion that the refusal to go so far was because it was unnecessary/mooted by the fact that the candidate was already below the minimum.

Assuming for purposes of this recommendation that the *Mitchell* Court's pronouncement was actually the Court's holding (and not simply *dicta*) that it would be appropriate to strike the entire nomination papers if a "... pattern was shown as to the entire universe of the nomination petitions" (*Mitchell* at 924 N.E.2d 591), under the facts as alleged here and all reasonable inferences thereof, all taken as true for the purposes of this motion, as a matter of law it cannot be said that the strike outs on 3,711 signature lines, found on 54% of the nomination papers and comprising 8.8% of the total number of signatures collected constitutes a "pattern of fraud" as to the entire universe of the candidate's nomination petitions.

Going further, objector reads the cited passage in *Mitchell* too narrowly to the point it is employed in a somewhat out of context fashion. The entire paragraph reads:

"The clear teaching of these cases [*Husky v. Municipal Officers*

*Electoral Board*, 509 N.E.2d 555 (1<sup>st</sup> Dist. 1987); *Fortas v. Dixon*, 462 N.E.2d 615 (1<sup>st</sup> Dist. 1984) *Cantor v. Cook County Officers Electoral Board*, 523 N.E.2d 1299 (1<sup>st</sup> Dist. 1988) – ed] is in harmony with the action taken by the Board as to McGrath's candidacy. **Contrary to Mitchell's contention, nothing in the record compels the conclusion that the Board was somehow required to terminate McGrath's candidacy.** While the record demonstrates a pattern of irregularities related directly to McGrath and Browning, no such pattern was shown as to the entire universe of the nominating petitions. Moreover, Mitchell has not offered a basis in the Board's enabling statutes or in the law for such a requirement. As noted, the function of the Board is to determine whether the nominating papers are valid and if the objections ought to be sustained. See 10 ILCS 5/10-10 (West 2008). **In the absence of evidence that the nominating papers were invalid or the presence of sufficient objections to warrant termination of the candidacy, we discern no legal basis authorizing the Board to terminate a candidacy. In the present case, the sustained objections, while significant, nonetheless left McGrath with a sufficient number of signatures to support her candidacy. Moreover, we agree with the Board's observation that McGrath's presence on a ticket with other candidates presented a unique situation. Her candidacy was, in fact, supported by signatures gathered by countless other people who were not accused of wrongdoing.** [Emphasis added]

Similar to the situation confronted by the *Mitchell* Court, in the matter *sub judice* even if 100% of the line by line objections were sustained and 100% of the line by line address strike out objections were sustained, and even if the objector's evidence at trial proved sufficient fraudulent conduct such as to mandate the striking of each sheet upon which an address strike out took place, this candidate, at the end of the day, would have signatures "gathered by countless other people who were not accused of wrongdoing" that would leave the candidate with thousands of valid signatures in excess of the statutory minimum of 12,500.

Based on the foregoing this hearing officer recommends that the candidate's motion to strike be granted and that the objection be struck and dismissed as insufficient in law and fact, that the nomination papers of the candidate, Melissa Conyears-Ervin, be declared sufficient in law and fact, and the name of the candidate, Melissa Conyears-Ervin, appear on the ballot for election to

the office of Treasurer of the City of Chicago, to be voted upon in the February 26, 2019, Municipal General Election.

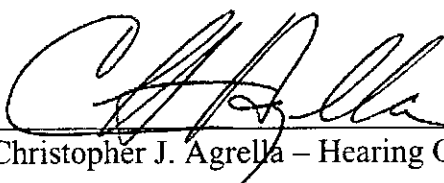
To one other matter. Objector, during the interval while the candidate's motion was being briefed, in a timely fashion filed a request for some 215 subpoenas, directed to the candidate, the candidate's campaign employee, and 213 circulators of the various strike out sheets. Candidate filed a timely objection, asserting mootness, relevancy and unduly burdensome and harassing.

It is the recommendation of the hearing officer to deny the objector's subpoena request as moot.

WHEREFORE your hearing officer recommends to this Board that it adopt the above findings, decisions and recommendations of the hearing officer and that the Board strike and dismiss the objection of the objector, that the Board declare the candidate's nomination papers sufficient in law and fact, and that the candidate's name, Melissa Conyears-Ervin, appear on the ballot for election to the office of Treasurer of the City of Chicago, to be voted upon in the February 26, 2019, Municipal General Election.

Christopher J. Agrella  
Hearing Officer  
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Respectfully Submitted,

  
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Christopher J. Agrella – Hearing Officer