

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

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Objections of: KEVIN BAILEY )  
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)  
To the Nomination ) No.: 19-EB-ALD-149  
Papers of: NICOLE J. JOHNSON )  
)  
Candidate for the office of Alderman for the )  
20th 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 KEVIN BAILEY (“Objector”) to the nomination papers (“Nomination Papers”) of NICOLE J. JOHNSON, candidate for the office of Alderman for the 20th 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 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 Yamil E. Colón 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, KEVIN BAILEY, pro se; the Candidate, NICOLE J. JOHNSON, and/or her Attorney ANDREW FINKO.

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.

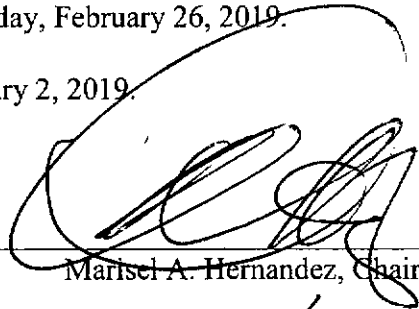
9. The Hearing Officer finds that the Objector failed to make a reasonable good-faith inquiry of the facts and Board records as part of preparing his Objector's Petition. Among other

things, the Objector's appendix recapitulation sheets frequently show two or three columns of objections to every signature on the sheet as not registered, not genuine and others, including for corresponding petition sheets and lines that do not contain a signature. The Hearing Officer therefore called for a 10% random sampling per the Board's Rule 6(1). Following that partial exam, the results showed that only 17.6% of the objections were sustained (82.4% were overruled). The Hearing Officer found no good faith in such a high number of registration objections being overruled from appendix-recap sheets that appeared, on their face, to be suspect. The Hearing Officer cited to prior Board decisions in which a high percentage of overruled objections supports an argument that the objections were not made in good faith. See, for example, *Arafat v. Shaw*, 91-EB-ALD-81 (CBEC 1991), where 75% overruled objections were sufficient to dismiss the objector's petition. Beyond that, the Hearing Officer found no evidence of any reasonable inquiry or investigation to support the objections

10. For the reasons stated above, the Electoral Board overrules the Objections to the Candidate's Nomination Papers and finds that the Candidate's Nomination Papers are valid.

IT IS THEREFORE ORDERED that the Objections of KEVIN BAILEY to the  
Nomination Papers of NICOLE J. JOHNSON, candidate for the office of Alderman for the 20th  
Ward of the City of Chicago, are hereby OVERRULED and said Nomination Papers are hereby  
declared VALID and the name of NICOLE J. JOHNSON, candidate for the office of Alderman  
for the 20th 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.

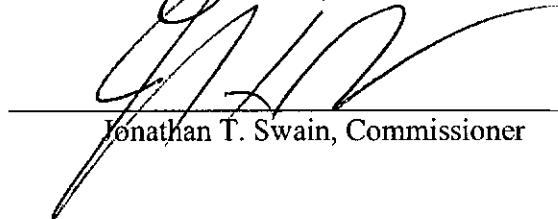
Dated: Chicago, Illinois, on Wednesday, January 2, 2019.



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.

**BOARD OF ELECTION COMMISSIONER OF THE CITY OF CHICAGO AS THE  
DULY CONSITUTED ELECTORAL BOARD FOR THE HEARING AND PASSING  
UPON OF OBJECTIONS TO THE NOMINATNG PAPERS OF CANDIDATES  
FOR THE FEBRUARY 26, 2019 MUNICIPAL ELECTION FOR ALDERMAN OF  
THE 20<sup>th</sup> WARD, CITY OF CHICAGO, ILLINOIS**

KEVIN BAILEY,	)	
	)	
Petitioner-Objector,	)	
	)	
v.	)	NO. 19 EB-ALD-149
	)	
NICOLE JOHNSON,,	)	
	)	
Respondent- Candidate.	)	

**HEARING OFFICER’S REPORT AND  
RECOMMENDATION ON CANDIDATE’S RULE 5 MOTION**

This matter came to be heard initially on December 10, 2018. The Objector, Kevin Bailey”, appeared in his own proper person, having previously filed a *pro se* appearance. The Candidate appeared with counsel, Mr. Andrew Finko, who had filed an appearance for the candidate.

Counsel for the Candidate expressed intention to file a Rule 5 Motion to Strike Objector’s Petition. A briefing schedule was set by the Hearing Officer with a hearing set for December 14, 2018. The Candidate filed a Rule 5 Motion to Strike and Dismiss, and the Objector filed a Response.

**ISSUES RAISED BY THE MOTION AND PROCEDURE**

On December 14, 2018, both Mr. Bailey and Mr. Finko appeared prepared to present and argue the Rule 5 Motion to Strike.

The Candidate’s Motion to Strike makes the argument that the Objector did not conduct a good faith reasonable inquiry of the electoral board records prior to filing his objection petition. Specifically, the Candidate’s motion contends that there is a pattern of objections showing two (or three) columns of “X”s on numerous petition sheet signatures claiming

the voter not residing at the address shown; and not genuine signatures. The remaining motion argues that allegations are unsupported conclusions and not valid objections.

The Objector's Response was not a direct response to the substance of the motion to dismiss, but rather a technical argument under Rule 5 (b) (i) that the Candidate had failed to file and serve his Motion to Dismiss on the day it was due, December 11, 2018, 5:00 p.m.

Prior to the hearing of December 14, 2018 on the motion to dismiss, this Hearing Officer had received and reviewed various email exchanges between the parties on the issue of timely filing and receiving service of the motion.

It appears that after the Objector filed and served his response to the motion to dismiss claiming no timely filing and service, Mr. Finko then sent an email to Mr. Baily on December 12, 2018, at 5:27 p.m. It stated that he filed the motion on December 11, 2018 at 4:12 p.m. In addition, he attached a copy of the motion to his email. This fact is confirmed by the Hearing Officer's review of the email he received from Finko, and from the Board case file.

Mr. Bailey pressed forward with the argument that he was not served with the motion on the date that it was due, and therefore the Candidate's motion should be stricken. In response, Mr. Finko stated that he sent the email service to the Objector at the email of "[20thwarddemocrats@gmail.com](mailto:20thwarddemocrats@gmail.com)". He said that he did not receive the email returned undelivered or any other indication that it was not received. Therefore, he had no way of knowing that Mr. Bailey had not been served. Mr. Finko than stated that it looked as if the email he had first sent Mr. Bailey, was misaddressed by one "d" missing in the words "warddemocrats". The correct email address is [20thwarddemocrats@gmail.com](mailto:20thwarddemocrats@gmail.com)

This Hearing Officer was faced with the harsh ruling of dismissing the Candidate's Motion to Dismiss on the basis that the motion, although timely filed, was not timely served because of a one letter misdirected email; but was served within a 24-hour period.

Such an outcome would not be in the best interest of the general public, who is most benefitted by the rules and procedures in place intended to protect the integrity of the electoral process.

Under these circumstances, this Hearing Officer chose to exercise discretion within the bounds of Rule 1 (b), (xiv), which states that the Electoral Board may “Waive strict compliance with these Rules when required in the interests of fairness, equity and substantial justice;”. This decision to deny the dismissal of the Rule 5 motion was communicated to the parties immediately at the hearing.

The Objector was then granted an additional two days, until December 16, 2018, to file a response to the Candidate’ Rule 5 Motion to Dismiss. A reply, if any, was due on December 17, 2018. The case was then continued to December 19, 2018 for hearing on the motion.

The Objector’s second Response to the Motion to Dismiss essentially denied the allegations contained in the motion; re-asserted the Rule 5 argument to strike the motion; asserted that records inquiries were conducted; and re-alleged items already pled in his petition. In addition, the Objector filed a Motion to Reconsider the Hearing Officer’s denial of his motion to dismiss the Candidates’ Rule 5 motion for un-timely service.

#### **ARGUMENTS PRESENTED BY THE PARTIES**

At the December 19, 2018 hearing, the parties argued their respective position relative to the Candidate’s Motion to Dismiss. Mr. Finko maintained that the objections raised in the Objector’s petition were not made in good faith. He stated that a preliminary review by the candidate of the sheets alleged to be defective showed that the voter did reside were indicated on the sheets, and that the signatures were genuine. (See Exhibits to Candidate’s Reply in Support of Motion to Dismiss.) He argued that given the repeated type and numerous objections made, there appeared to be a pattern of ‘shotgun’ objections.

He concluded that there was no reasonable inquiry made by the Objector to verify his allegations about the many voter objections, and that the Objector's petition should be stricken.

The Objector began with his Motion to Reconsider and renewing his previous argument that the Candidate's motion should not go forward, because he did not receive timely notice of the motion.

It was again explained to the Objector that a ruling denying his attempt to dismiss the Candidate's motion on a notice technicality did not serve the ends of justice and fair play. On inquiry by the Hearing Officer, Mr. Bailey admitted that he did not search the Board's case file to determine if the Candidate had in fact filed a Rule 5 Motion. He was informed again that there was evidence that the Candidate's counsel had filed the motion timely; and that he made a good faith effort to serve the motion timely, as evidenced by his email correspondence. Mr. Baily was also informed, that the timely email sent to him carrying the notice was not delivered due to a scrivener's error of one letter in the email address. He was also informed that it was not in the best interest of justice to strike the motion under these circumstances. Therefore, the Motion to Reconsider was denied.

Thereafter, Mr. Bailey was asked to present his argument against the Candidate's Motion to Strike. His argument consisted of denials of the issues raised by the motion to strike. It was followed by repetitions that Mr. Bailey had made the required due inquiry of electoral records. In his Response to the motion to dismiss, Mr. Bailey repeatedly stated that he had made an "extensive examination and extraordinary inquiry" and that it "clearly revealed" the defects which he objected to in his Objection Petition. He added in his response that his inquiry detailed the results complained of, and which he set forth in the appendixes of his petition. Mr. Bailey insisted that an examination of the records would prove his allegations.



When asked if he personally searched all the sheets/records to find these defects, he responded in the affirmative. When pressed further on this issue by the Hearing Officer, he then admitted that he had helpers. He stated that he had somewhere between 10 to 20 people helping him conduct these searches.

After hearing rebuttal arguments from both parties, the hearing was suspended by the Hearing Officer. He then informed the parties that a partial records examination under Rule 6 (l) would be appropriate and expeditious in this case. Mr. Charles Holiday (a Records Examination Official) was invited to the hearing to explain to the parties the purpose of the partial record examination.

A partial records exam directive was issued for 10% of the alleged objection defects. The parties were informed that the decision on the motion would be taken under advisement pending the results of the record examination sampling.

The Objector then sought a decision on his request for subpoenas which were attached to his Motion to Reconsider. The request was to subpoena the handwriting expert used by the Chicago Electoral Board; and for Electoral Board records. The motion was denied as improper and not in compliance with Rule 19. The matter was then continued until December 26, 2018 for a status report.

In the interim between the date of the December 19, 2018 hearing and the status date of December 26, 2018, the parties filed and served various supplemental, objecting and responsive documents.

On December 20, 2018, the Objector filed an "Objection to Limited and Cherry Picked Records Examination". In this document, the Objector demonstrated his failure to understand the procedure for conducting the electoral hearing process; and characterized himself as a victim of an "impartial" Hearing Officer. His complaints were that the rules

were not strictly applied and that the record examination was not conducted according to his preference.

In response to the above filing by the Objector, the Hearing Officer directed an email to Mr. Bailey with copies to all. It stated that a hearing was not going to be conducted on his "Cherry Picked Records Examination" Objection. The email additionally informed Mr. Bailey that the record examination was being conducted pursuant to the authority of Rule 6 (l). This subsection of the rule reads as follows:

**Partial or sample examination. The Electoral Board or a hearing officer may, in their discretion, order that a partial or sample records examination be conducted in order to test the validity of certain objections in the objector's petition when it appears possible, viewing the face of the objections or upon other known facts, that the objections may not have been made as the result of a reasonable inquiry or investigation of the facts or were not made in good faith. The weight to be given to the results of such partial or sample records examination shall be within the discretion of the Electoral Board or the hearing officer, as the case may be"**

In the email, Mr. Baily was also assured by the Hearing Officer that he was applying the rules and the concepts of fair play and equal participation to both sides without bias.

On December 21, 2018, the Candidate filed a Supplement to her Motion to Strike the Objector's Petition. The supplement relied on an alleged "preliminary report" prepared by the board. This report, it is argued, supports the Candidate's motion to strike in that it confirms that approximately 83% of the objections made by the Objector were not supported by review of the Board's voter records.

On December 21, 2018, Mr. Bailey filed "Objector's Analysis to Limited Records Examination". In this document, Mr. Bailey offers his analysis of the preliminary limited records examination. His computations and findings are alleged to support his objections to the signature of the Candidate/Circulator on petition sheets; duplicate signatures; and first in time signatures.

In Mr. Bailey's analysis, 33 sheets with 332 signatures were examined. He stated that a) 99 signatures were sustained comprising 30.7% of the total signatures; b) that 47 signatures objected to on the basis of first in time were not ruled upon; c) that 16 sheets containing 145 signatures or 45% of the 322 signatures sampled were challenged on the basis of non-genuine signature of the circulator; and d) that 23 signatures were challenged on 33 sheets. Mr. Bailey then concludes that the 99 sustained signatures plus the 47 challenges equal 146 or 45.3% of the 322 sheets. This analysis was not persuasive

On December 22, 2018, Mr. Bailey filed a Response to Respondent's Supplement to Motion to Strike. It argued that various of the sheets complained of in Objector's petition, were not reviewed for authenticity of the circulator's signature during the partial record examination. In addition, the response contained complaints that no examination was made for first in time signatures and duplicate signatures.

On December 26, 2018, all concerned appeared for the status of the partial records examination. The Hearing Officer had received the Petition Summary Report of the exam and read the results into the record. The Candidate needed 473 valid signatures. The total number of sheets submitted by the Candidate were 333, which contained 2727 signatures. In addition, the Summary reported 5343 objections, but only 631 were ruled upon. There were 111 objections sustained and 520 overruled. Expressed in percentages, only approximately 17.6% of the objections were sustained. While approximately 82.4% were overruled.

### **ANALYSIS AND FINDINGS**

Random unverified objections are not favored, and they are deemed to be made in bad faith without any reasonable inquiry of electoral records. The allegations made by this Candidate, that of a "shotgun" objection has been made by the Objector has legs.

In reviewing the 334 Appendix Recapitulation sheets attached to Mr. Bailey's objection, it was noted that there was a pattern of numerous predominant objections to the voter not registered at the address, and that the voter signature was not genuine.

The Candidate attached exhibits to her filed Reply in support of her motion to dismiss. They were recapitulation sheets of the Objector, which were paired with board records showing that many voters challenged based on residence were in fact registered voters at the address on the petition sheets.

The partial record examination evidences that more than 82% percent of the objections made by Mr. Bailey were overruled. Numerous objections with a great percentage being overruled after a partial record exam have been found to be shotgun objections, and not based in law or in fact. See *Barton v. Coleman*, 95-EB-ALD-144 (Chicago Electoral Board 1995), and *Arafat v. Shaw*, 91-EB-ALD-81 (Chicago Electoral Board 1991), where 75% of overruled objections were enough to dismiss objector's petition.

Mr. Bailey did not show evidence of the efforts he made to conduct a reasonable inquiry or investigation to support objections based on voter residence and genuineness of signature. He insisted that he made the inquiry, but he made no such showing of these objections. He stated that inquiry was made by his workers. In addition, Mr. Bailey relied significantly on disqualifying the candidate on technical grounds; claims of false circulator signatures by the candidate; first in time and duplicate signatures.

Mr. Bailey did not meet his burden of showing due diligence and inquiry. The objection petition appears to have been conceived in fraud, false pleading and bad faith.

For the reasons stated above, the Candidate's Motion to Strike is granted. There is no need to conduct a full records examination. The Objector's Petition should be stricken in its entirety.

**CONCLUSIONS AND RECOMMENDATION**

The Candidate's Motion to Strike should be granted, and the Objector's Petition should be stricken in whole and held for naught. The Candidate's name may be placed on the February 26, 2019 ballot for Alderman of the 20<sup>th</sup> ward, Chicago, Illinois.

Respectfully Submitted,

S/ Yamil E. Colón

Hearing Officer  
December 30, 2018