

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

Objections of: RONISHA DOBINE and)
NINA STONER)
)
To the Nomination) No.: 19-EB-MUN-012
Papers of: NEAL SÁLES-GRIFFIN)
)
Candidate for the office of)
Mayor 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 RONISHA DOBINE and NINA STONER (“Objectors”) to the nomination papers (“Nomination Papers”) of NEAL SÁLES-GRIFFIN, for the office of Mayor 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.

5. The Electoral Board assigned this matter to Hearing Officer Christopher Agrella 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 Hearing Schedule. The following persons, among others, were present at such hearing: the Objectors, RONISHA DOBINE and NINA STONER, and/or their Attorneys, ANDREW FINKO, PERICLES ABBASI and FRANK AVILA; and the Candidate, NEAL SALES-GRIFFIN, and or his Attorney, ED MULLEN.

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 his 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 Electoral 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 12,500;
- B. The number of purportedly valid signatures appearing on the nominating petition filed by the Candidate total 18,229;
- C. The number of signatures deemed invalid because of objections sustained as a result of the records examination total 8,071;
- D. The remaining number of signatures deemed valid as a result of the records examination total 10,158.

13. 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 Mayor of the City of Chicago.

14. 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. At the Rule 8 hearing, the Candidate offered evidence in the form of rehabilitative affidavits that could possibly reverse only a substantially smaller number of petition signatures than needed to bring the total back above the statutory minimum requirement.

15. After final completion of the Rule 6 records examination, including final inspection by the Electoral Board's certified handwriting experts, and upon the commencement of an evidentiary hearing as requested by the Candidate's Rule 8 Motion, The Objectors filed a motion seeking leave to withdraw all objections contained within their Objectors' Petition.

16. The Hearing Officer has tendered to the Electoral Board a report and recommended decision. Based upon the evidence generated in response to the objections raised in the Objectors' Petition, said evidence having been presented to and accepted by the Hearing Officer under the Electoral Board's common and customary practices and procedures, the Hearing Officer found that the Candidate's Nomination Papers contained only 10,158 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 Mayor for the City of Chicago, and that the Candidate's Nomination Papers should be found invalid.

17. The Hearing Officer also found that under Rule 13(b), the Electoral Board has the sole discretion to grant or deny a motion to withdraw an objector's petition. Faced with a literal mountain of duly admissible and customarily reliable evidence generated by these Objectors proving to a legal certainty that the Candidate's Nomination Papers are legally invalid, the Hearing Officer found that he could not in good faith recommend that the Electoral Board ignore the evidence and grant the Objectors' request for permission to withdraw their Objectors' Petition. The Electoral Board finds that the Hearing Officer's recommendation to deny the withdrawal motion was well grounded in fact and law and was a good-faith effort to uphold the election laws of the State of Illinois and to fulfill the Hearing Officer's duty to the Electoral Board and his sworn oath as a licensed attorney to provide equal justice under law.

18. The Candidate and Objectors then jointly filed a Rule 20 Motion in opposition to the Hearing Officer's recommended decision, and they were provided an opportunity to present additional argument directly to the Electoral Board during a Rule 20 hearing on January 22, 2019. In the joint Rule 20 Motion and related arguments, the parties asserted several unpersuasive angles of attack against the Hearing Officer's recommendation to deny the withdrawal motion.

19. For example, the parties asserted that the Electoral Board's powers are limited by statute. The Electoral Board agrees its powers are limited in scope, but such powers do expressly include the authority to "adopt rules of procedure for the introduction of evidence and the presentation of arguments and may, in its discretion, provide for the filing of briefs. ... The electoral board shall take up the question as to whether or not the certificate of nomination or nomination papers or petitions are in proper form, and whether or not they were filed within the time and under the conditions required by law." 10 ILCS 5/10-10. Thus, it was fully within the Board's authority to adopt Rule 13(b) of its Rules of Procedure, reserving to itself the sole discretion to grant or deny an objector's motion to withdraw.

20. Furthermore, the Objectors' authority is also limited in scope by the authorizing statutes, and nothing in the Election Code grants them the authority to withdraw their Objectors' Petition. See 10 ILCS 5/10-8 through 10 ILCS 5/10-10.1. While the Objectors may have an inherent constitutional right to seek leave to withdraw *themselves* as parties to this action, nothing in the Election Code authorizes them to withdraw *their Objectors' Petition*. *Id.* Only the Electoral Board's Rule 13(b) allows for objector withdrawals, and those withdrawals are only granted at the Board's discretion.

21. The parties allege the Electoral Board cannot raise its own objections *sua sponte*, and they are correct. But in the case at hand, the only objections considered by the Electoral Board are those that were raised by the Objectors in their duly filed Objectors' Petition. Thus, with objections that were not raised *sua sponte*, but which are contained within a duly lodged Objectors' Petition, the Electoral Board has not only the express statutory authority, but also a statutory *duty* to "take up the question as to whether or not the certificate of nomination or nomination papers or petitions are in proper form, and whether or not they were filed within the time and under the conditions required by law." 10 ILCS 5/10-10.

22. Therefore, the Electoral Board finds that whether or not it grants an objector's request to withdraw from a case under Rule 13(b), it retains the discretionary statutory authority to adjudicate the duly lodged objections when, in the Board's discretion, it finds that the interests of justice so require.

23. However, this Electoral Board also has an established history of summarily dismissing Objectors' Petitions that are filed or prosecuted in bad faith. See, for example, a case from this same election cycle in which the Objectors' Petition was compiled, filed and prosecuted in bad faith by the same team of objection preparers, *Carriel, et al., v. Ford*, 19-EB-MUN-021 (CEBC 2019), and numerous other bad-faith objection cases as summarized in the Index of Electoral Board Decisions published by this Board online at:

<https://app.chicagoelections.com/documents/general/IndexOfElectoralBoardDecisions.pdf>.

24. As a result of the arguments made during the Rule 20 hearing, the Electoral Board finds that the Objectors' Petition in the case at hand was not brought in good faith. The result of the Objectors' conduct here is in direct conflict with the content of their own Objectors' Petition. These Objectors swore under oath in their verifications to their Objectors' Petitions that "the

objections alleged in the Objectors' Petition are made in good faith based upon such review, and the factual statements in the Objector's Petition are true and correct to the best of [their] knowledge and belief." (Obj. Pet., Verification, pp. 4 and 5.)

25. Among the factual statements contained in the Objectors' Petition that the Objectors swore under oath are true and correct is Paragraph 2, which states in its entirety: "The Objectors' interest in filing this objection is that of citizens and voters desirous of seeing to it that the election laws of Illinois and the City of Chicago are properly complied with, and that only duly qualified candidates appear on the ballot for this office at the municipal general election to be held on February 26, 2019." (Obj. Pet., p. 1, ¶2.) While the Electoral Board may be precluded forcing the Objectors to prove their standing in regards to the requirement in 10 ILCS 5/10-8 that they "shall state the interest of the objector" in their Objectors' Petition, the record of this case now makes it abundantly clear that the Objectors have acted in bad faith with the filing and prosecution of their Petition.

26. The Objectors' request to withdraw their Objectors' Petition only after they generated a mountain of evidence proving that the Candidate's nomination papers are legally invalid, at great expense to the tax payers and at great burden to the Electoral Board and the voters, is a direct violation of their sworn pleadings that they sought to require proper compliance with election laws and that only duly qualified candidates appear on the ballot. They falsely subscribed to the sworn statements verifying the content of Paragraph 2 and, therefore, they filed and prosecuted this Objectors' Petition in bad faith.

27. In accord with the Electoral Board's past precedent, customs and practices, it shall not allow a bad-faith Objectors' Petition to be the basis for removing a candidate from the ballot, no matter how many signatures may have been invalidated during the records exam for that case.

When the Electoral Board is presented with an Objectors' Petition that was compiled in bad faith, or that was sworn to and verified in bad faith, it summarily dismisses the objections.

28. Therefore, 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 to the extent that the Electoral Board hereby denies the Objectors' Motion to Withdraw their Objectors' Petition, as the Board is authorized to do under its Rule 13(b). The Electoral Board further adopts the Hearing Officer's recommended findings and conclusions of law in relation to the results of the records examination, Rule 8 hearing, and other legal issues raised and argued by the parties.

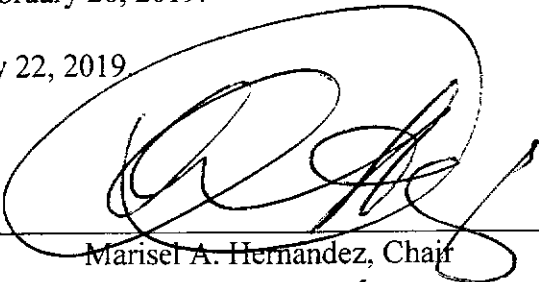
29. However, the Electoral Board does not adopt that portion of the Hearing Officer's recommendation that it enter a final decision that the Candidate's Nomination Papers are invalid. Because this Objectors' Petition was filed and prosecuted in bad faith as explained above, the Electoral Board finds that the Objectors' Petition should be dismissed in its entirety, with prejudice. The Electoral Board further finds that if the circuit court ever obtains subject matter jurisdiction over this action, it should consider imposing sanctions against these Objectors and in favor of the tax payers of the City of Chicago for a frivolous prosecution and waste of public resources, as may be warranted under Supreme Court Rule 137 and other laws.

30. For the reasons stated above, and in consideration of the fact that the Candidate's Nomination Papers pass the apparent-conformity test under 10 ILCS 5/10-8, the Electoral Board finds that the Nomination Papers of NEAL SALES-GRIFFIN are valid.

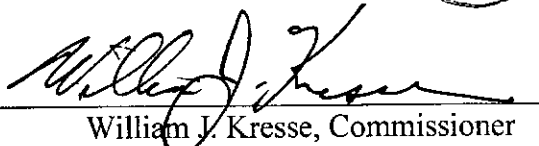
IT IS THEREFORE ORDERED that the Objections of RONISHA DOBINE and NINA STONER to the Nomination Papers of NEAL SALES-GRIFFIN, candidate for election to the

office of Mayor of the City of Chicago, are hereby DISMISSED and said Nomination Papers are hereby declared VALID and the name of NEAL SALES-GRIFFIN, candidate for the office of Mayor 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.

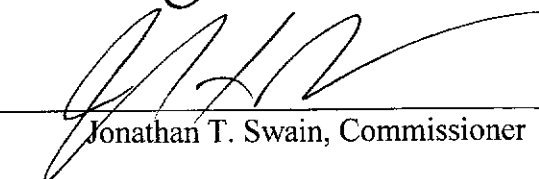
Dated: Chicago, Illinois, on Tuesday, January 22, 2019



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

RONISHA DOBINE and NINA STONER,)	
)	
Petitioner – Objector,)	
)	
v.)	No. 19 EB MUN 012
)	
NEAL SALES GRIFFIN,)	
)	
Respondent – Candidate.)	
)	

HEARING OFFICER'S RECOMMENDATION

This matter first came before the hearing officer on December 10, 2018. It was set on the call for 9:30 a.m., and at that time the matter was first called for hearing. The objector appeared through counsel, Mr. Andrew Finko, Esq., and the candidate appeared through counsel, Mr. Edward Mullin, Esq. Each filed their appearances, executed non-disclosure/confidentiality agreement and acknowledged receipt of a copy of the rules.

The official file contained the original nomination papers of the candidate and the objections of the objector, which the hearing officer marked as Group Exhibit A and Group Exhibit B, respectively. The proof of service of notice of the call was marked as Group Exhibit C, and the appearances of the parties were marked as Group Exhibit D. Group Exhibits A through D were accepted into evidence without objection.

The candidate seeks election to the office of Mayor of the City of Chicago, to be voted upon at the February 26, 2019, Municipal General Election.

The objection, Group Exhibit B, raised a line by line signature allegation or challenge,

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incorporating a standard index recapitulation sheet exhibit. In addition, the objection asserted that certain pages, numbered 1368, 1369, 1370, 1371, 1372, 1374, 1375, 1376 and 1377 were all duplicates of previously like numbered pages inserted after the first page 1377, and that each signature on these duplicatively numbered pages be struck and not counted against the candidate's signature totals.

The hearing officer notes for clarity that these challenged pages are original, different petition pages from the like numbered pages bound previously in the nomination papers, and not photocopies of the prior duplicate numbered pages.

The parties were informed at this initial hearing date of the briefing schedule for any preliminary motions, and candidate indicated an intent to file a motion to strike certain portions of the objection.

With candidate's stated intention in mind the hearing officer set this matter down for December 13, 2018, at 11:00 a.m. for hearing on the anticipated motion. Prior to the conclusion of the initial hearing the hearing officer informed both sides on the record that the Rule 6 Record Examination was set to start on December 11, 2018, at 9:45 a.m.

Candidate filed a timely motion to strike, and objector filed a timely response.

On December 13, 2018, at 11:00 a.m. this matter was recalled and both sides appeared and argument was heard on the candidate's motion to strike.

Candidate sought to strike the portions of the objection regarding the mis-numbering of the petition pages, asserting the 10 pages at issue comprise less than .5% of the total number of pages submitted and that the nomination papers in this regard substantially complied with the mandatory provisions of the Election Code.

Objector, in sum, asserted that this duplicate numbering issue rendered the nomination papers sufficiently ambiguous and incapable of proper tabulation that these pages and the signatures thereon engender confusion, frustrated a meaningful review, and must be struck and disregarded.

The hearing officer stated on the record that it was his recommendation to grant the candidate's motion to strike. The challenged pages, 10 out of 1,925 total petition pages, contained 76 total signatures. The candidate is correct that these misnumbered pages comprise less than .5% of the pages submitted and some 4% of the petition signers. They are found together, bound in one location, and as such the candidate should be deemed to have substantially complied with the mandatory consecutive page numbering requirement of the Election Code. *Durr v. Chandler*, 013 EB ALD 096 (CBOE, February 3, 2003); *Martin v. Olivier-Harris*, 03 EB ALD 034 (CBEC, January 28, 2003).

The Rule 6 Record Exam continuing apace, this matter was then continued to December 19, 2018, at 11:00 a.m. for status and case management.

On December 19, 2018, at 11:00 a.m. the case was recalled and both sides appeared through counsel. The record exam still ongoing, the case was continued to December 26, 2018, at 10:00 a.m. for further status and case management.

On December 26, 2018, at 10:00 a.m. the case was again recalled and both sides appeared through counsel. The record exam was nearing completion but still ongoing. In that the results would still be reviewed by the Board's handwriting expert(s), the case was continued generally to a TBD date upon the receipt of the Final Petition Summary Report.

On January 7, 2019, at 6:51 p.m. the Rule 6 Record Exam completed. The Final

Petition Summary Report issued and the parties served with the results.

At the conclusion of the Rule 6 examination the candidate's nomination papers contained 10,158 otherwise valid signatures, such that the candidate's nomination papers contained 2,342 signatures less than the 12,500 minimum signature requirement.

Candidate filed a timely Rule 8 Motion seeking to reverse some 2,661 decisions of the Board's Rule 6 record examination personnel. Objector did not file any Rule 8 Motion.

The hearing officer recalled the case on January 11, 2019, at 12:00 Noon to set it down for further proceedings in light of the candidate's Rule 8 Motion. Both sides appeared through counsel.

At that time the results of the Final Rule 6 Record Exam Results were duly marked as Exhibit E and accepted into evidence without objection of either party.

Having been made of record and accepted into evidence, the results of the Rule 6 Record Examination were read into the record and are set forth here, as follows:

Signatures Required:	12,500
Total Pages:	1,925
Total Signatures Filed by the Candidate:	18,229
Total Objections:	27,210
Total Objections Ruled On:	27,210
Total Remaining to be Ruled On:	0
Total Objections Sustained:	8,071
Total Objections Overruled:	5,587
Findings Preserved For Review (Candidate):	4,374
Findings Preserved For Review (Objector):	1,973
Total Valid Signatures:	10,158
Total Unchallenged Signatures:	4,571

2,342 Signatures fewer than the required minimum

The only matter remaining in the objection being the line by line contest, now focused upon the candidate's Rule 8 Motion and his efforts to rehabilitate sufficient signatures, the hearing officer set down a document and witness disclosure/exchange cut-off of January 16, 2019, at 5:00 p.m. Hearing on the candidate's Rule 8 Motion was set down to start on January 17, 2019, at 10:00 a.m.

The hearing officer noted on the record that the candidate's Rule 8 Motion, containing only some 2,661 sheet and line numbers for rehabilitation purposes, necessitated the candidate being successful in some 88% of the rehabilitation efforts to reach the 12,500 signature threshold, which the candidate's side acknowledged was on its face a somewhat daunting task. Given the reality of such an effort, the hearing officer stated it was his intent that the Rule 8 hearing would proceed on a day to day basis from 10:00 a.m. until 6:00 p.m. and that at some point the hearing officer may conclude/halt the candidate's Rule 8 presentation without reaching all the candidate's evidence if it became apparent the candidate could not rehabilitate sufficient signatures with the remaining evidence.

On January 16, 2019, by 5:00 p.m. the candidate timely served objector with certain documents the candidate indicated an intent to present at the Rule 8 hearing as well as a potential witness list. Objector served the candidate with no such proposed evidence.

On January 17, 2019, at 10:00 a.m. this matter reconvened. Both sides appeared through counsel. The candidate also appeared. At this juncture objectors' counsel presented a Motion to Withdraw Objectors' Petition.

The hearing officer stated on the record that it was his recommendation to the Board to deny the motion and to proceed with the hearing on the candidate's Rule 8 Motion.

An objector cannot demand to withdraw an objection as a matter of right. Rather, it is discretionary upon the Board as to whether such a motion should be granted in light of all the facts and circumstances of the case. *See CBOE Rules of Procedure 13(b)*. In this matter the facts and circumstances mitigate against granting such a motion.

This hearing officer fully understands that the Board expended considerable expense and resources in this matter, in particular the period spanning December 11, 2018, through January 7, 2019, when the Board conducted the Rule 6 Record Examination.

However, while somewhat problematic (and noted on the record by the hearing officer) this expenditure did not form part of the hearing officer's consideration underpinning this recommendation. Nor was the candidate's "apparent conformity" argument persuasive.

While the apparent conformity of the candidate's nomination papers typically suffices to find the candidate's nomination papers valid when reviewed in a first pass and without more, that is not the posture this case found itself in when objectors presented their motion.

Rather, objectors presented their motion well after the conclusion of the Rule 6 Record Examination, out of which the evidence before this hearing officer, specifically Exhibit E, conclusively (at that point) evidenced that the candidate's nomination papers contained 2,342 valid signatures less than the minimum legal number of valid signatures required for the office sought.

While there is no allegation in this matter that the candidate or his team did anything in any way fraudulent or underhanded, nor by this recommendation does the hearing officer intend such an inference be made, at least one case involving those questions has rendered a holding that clearly bears upon this issue. As stated succinctly in *Fortas v. Dixon*, 122 Ill.

App. 3d 697, 462 N.E.2d 615 (1st Dist. 1984) the Board “cannot close its eyes and ears if evidence is relevant to the protection of the electoral process.”

The evidence in this case at the time objectors presented their withdrawal motion, evidence brought to light by the specific objections of the objector, (as compared to evidence that otherwise came to light *de hors* the objection in *Fortas*) clearly demonstrated that this candidate’s nomination papers were deficient in law and in fact by a very significant margin. This Board, in order to protect the electoral process, simply cannot close its eyes and ears to such evidence, especially when, unlike the situation in *Fortas*, the evidence was produced in direct response to the objection lodged.

With this recommendation made on the record, the hearing officer requested the candidate proceed with the presentation of the candidate’s Rule 8 rehabilitation effort. At this juncture candidate’s counsel acknowledged the candidate possessed significantly less evidence than was needed to enable the candidate to rehabilitate the 2,342 signatures at issue, and rested on candidate’s argument previously referenced regarding the propriety of granting objectors’ motion to withdraw the objection. Objector’s motion at this point to continue the hearing in order to permit the candidate additional time to gather evidence was denied as untimely.

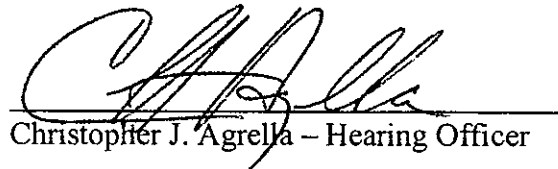
There being nothing further, and after a brief disturbance in the proceedings occasioned by a non-party who had to be removed by security, the hearing officer placed on the record his recommendation to the Board that it deny the objectors’ motion to withdraw the objection, sustain the objection to the candidate’s nomination papers and that the candidate’s name not appear on the ballot. At that juncture the case concluded.

It is this hearing officer's findings and recommendation that the objection of objectors Ronisha Dobine and Nina Stoner be sustained, that the candidate's nomination papers be deemed invalid in law and fact, and that the name of the candidate, Neal Sales Griffin not appear on the ballot for election to the office of Mayor of the City of Chicago, to be voted upon at the February 26, 2019, Municipal General Election.

WHEREFORE your hearing officer recommends to this Board that it adopt the above findings, decisions and recommendations of the hearing officer, that the Board sustain the objection of the objector, that the Board declare the candidate's nomination papers insufficient in law and fact, and that the candidate's name, Neal Sales Griffin, not appear on the ballot for election to the office of Mayor of the City of Chicago, to be voted upon at the February 26, 2019, Municipal General Election.

Christopher J. Agrella
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Respectfully Submitted,


Christopher J. Agrella – Hearing Officer