

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

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Objections of: REINALDO HERNANDEZ	)	
	)	
	)	
	)	
To the Nomination	)	No. 08-EB-WC-07
Papers of: JOSEPH BERRIOS	)	
	)	
	)	
Candidate for the office of Ward	)	
Committeeman for the 31st Ward of the	)	
City of Chicago, Democratic Party	)	

**FINDINGS AND DECISION**

The duly constituted Electoral Board, consisting of Chicago Board of Election Commissioners Langdon D. Neal, Richard A. Cowen, and Marisel A. Hernandez, organized by law in response to a Call issued by Langdon D. Neal, Chairman of said Electoral Board, for the purpose of hearing and passing upon objections ("Objections") of REINALDO HERNANDEZ ("Objector") to the nomination papers ("Nomination Papers") of JOSEPH BERRIOS, candidate for election to the office of Ward Committeeman for the 31st Ward of the City of Chicago, Democratic Party ("Candidate"), having convened on November 20, 2007, at 10:00 a.m., at 69 W. Washington Street, 8<sup>th</sup> Floor Conference Room, 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 herein 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 Chairman 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 November 20, 2007 and was continued from time to time.

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

6. The Objector and the Candidate were directed by the Electoral Board to appear before the Hearing Examiner for a hearing on the date and at the time designated on the Electoral Board's docket. The following persons, among others, were present at such hearing: the Objector, REINALDO HERNANDEZ, appearing pro se; and the Candidate, JOSEPH BERRIOS, appearing by counsel, Thomas A. Jaconetty.

7. The Hearing Examiner ordered that an examination of the 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 Examiner directed all parties to appear and be present, either personally and/or by their authorized representatives during the records examination.

9. The Candidate or his duly authorized representative(s) was present during the examination of the registration records.

10. The Objector or his duly authorized representative(s) 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 results of the registration records examination is contained in the Electoral Board's file in this case and is available for inspection upon request of a party.

12. The results of the records examination conducted in this matter indicate that:

A. The minimum number of valid signatures required by law for placement on the ballot for the office in question is 172;

B. The number of purportedly valid signatures appearing on the nominating petition filed by the Candidate total 547;

C. The number of signatures deemed invalid because of objections sustained total 217;

D. The remaining number of signatures deemed valid total 330.

13. The Objector did not file any motion nor did he request any opportunity under Rule 8 of the Electoral Board's rules to appeal adverse rulings made during the Rule 6 records examination.

14. The Candidate did file a motion pursuant to Rule 8 requesting the opportunity to attempt to appeal 132 adverse ruling made during the Rule 6 records examination. The Candidate filed 91 affidavits as evidence in support of his appeal. However, because the Objector did not attempt to appeal Rule 6 rulings adverse to the

Objector and the Candidate had more than the minimum number of valid signatures on his petition after all of the Hearing Examiner's rulings, it was not necessary for the Hearing Examiner to rule on these affidavits.

15. The Candidate also filed a motion to strike and dismiss the Objector's petition, attacking the legal sufficiency of the pleadings therein. The Hearing Examiner conducted hearings on three separate dates to address the Candidate's motion to strike and dismiss.

16. The Hearing Examiner also allowed the Objector to file any responses or other pleadings or motions. The Objector did file a motion pursuant to Rule 18 seeking the issuance of subpoenas and other relief. The Hearing Examiner denied this motion, finding that the Objector failed to supply any reason why the records sought were relevant to the issue of whether the Candidate's Nomination Papers and/or that the Objector's request lacked any good faith basis demonstrating the need for the records or persons sought.

17. The Hearing Examiner concluded that the only well-taken paragraphs of the Objector's Petition were those in paragraphs 1-3, which alleged that the circulator of 3 of the Candidate's 24 petition sheets also circulated petition sheets on behalf of a candidate of the Republican Party for Ward Committeeman for the 31<sup>st</sup> Ward. The Hearing Examiner concluded that this constituted a violation of Section 10-4 of the Election Code, thus invalidating those 3 petition sheets for a loss of 55 signatures.

18. The Hearing Examiner granted the Candidate's motion to strike and dismiss or overruled all of the other remaining paragraphs in the Objector's Petition,

finding that the Objector presented no relevant evidence or no evidence at all to support those claims.

19. Even after sustaining paragraphs 1-3 of the Objector's Petition related to "dual circulation" of petition sheets for candidate of both the Democratic and Republican Parties, the Hearing Examiner found that the Candidate still had 275 valid signatures, well over the minimum signature requirement of 172.

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

21. The Electoral Board, having reviewed the record of proceedings in this matter and having considered the report and recommendations of the Hearing Examiner, as well as all argument and evidence submitted by the parties, hereby adopts the Hearing Examiner's recommended findings and conclusions of law, except as to his findings and conclusions of law as to the "dual circulation" issue raised in paragraphs 1-3 of the Objector's Petition. A copy of the Hearing Examiner's Report and Recommended Decision is attached hereto and is incorporated herein as part of the decision of the Electoral Board.

22. Section 10-4 of the Election Code (10 ILCS 5/10-4) states in part, "no person shall circulate or certify petitions for candidates of more than one political party or for an independent candidate or candidates in addition to one political party, to be voted upon at the next primary or general election, or for such candidates and parties with respect to the same political subdivision at the next consolidated election."



23. The Electoral Board finds that Section 10-4 of the Election has no application to the Candidate's Nomination Papers here.

24. The first sentence of Section 10-4 states, "All petitions for nomination under this Article 10 for candidates for public office in this State, shall in addition to other requirements provided by law, be as follows ...." Article 10 of the Code, which is titled, "Making of Nominations in Certain Other Cases," does not apply to nominations made by established political parties. The first section of Article 10, section 10-1, states: "No nominations may be made under this Article 10, however, by any established political party which, at the general election next preceding, polled more than 5% of the entire vote case in the State, district or unit of local government for which the nomination is made."

25. The Candidate here is seeking to be nominated as a Ward Committeeman of the Democratic Party. Without question, the Democratic Party is an "established political party."

26. Article 7 of the Election Code governs the making of nominations of established political parties. Section 7-1 of the Code provides in part, "Except as otherwise provided in this Article, the nomination of all candidates for all elective State, congressional, judicial, and county officers \*\*\* [and] precinct, township, *ward*, and State central committeeman \*\*\* by all political parties, as defined in Section 7-2 of this Article, shall be made in the manner provided in this Article 7 *and not otherwise.*"

27. Article 7 does not contain a prohibition similar to the prohibition in Section 10-4 against circulating petition sheets for more than one political party.

28. Courts have construed Section 10-4 as prohibiting someone from circulating petitions for a new political party candidate in addition to an established political party. See, e.g., *Citizens for John W. Moore Party v. Board of Election Commissioners for the City of Chicago*, 794 F.2d 1254, 1263 (7<sup>th</sup> Cir. 1986); *Schrober v. Young*, 322 Ill.App.3d 996, 751 N.E.2d 610 (4<sup>th</sup> Dist. 2001). The court has also construed Section 10-4 as not prohibiting someone from circulating petitions on behalf of two independent candidates for the same office. *McGuire v. Nogaj*, 146 Ill.App.3d 280, 496 N.E.2d 1037 (1<sup>st</sup> Dist. 1986). However, no Illinois court has not yet applied Section 10-4 in a manner that would prohibit a person from circulating nominating petitions for more than one established political party. Cf., *Citizens for John W. Moore Party v. Board of Election Commissioners for the City of Chicago*, 794 F.2d 1254, 1263 (7<sup>th</sup> Cir. 1986) (rejecting plaintiff's argument that a circulator may carry petitions for the two major parties in the same season but may not do so for a major party and a minor party and concluding that all political parties are treated alike under § 10-4). Indeed, the only court to date to directly address the issue as it relates to the circulation of petitions for more than one established political party held that Section 10-4 did not apply. In *Walsh v. Connors*, 90 CO 31 (Circuit Court of Cook County, Feb. 15, 1990), the circuit court held that Section 10-4's prohibition against circulating petitions for more than one political party did not apply to a candidate seeking the nomination of the Republican Party for the office of State Senator. One of the candidate's circulators had also circulated a petition sheet for the candidate of the Democratic Party at the same election. The court found that the nomination of candidates for legislative office was governed by Article 8 of the

Election Code and that Section 10-4 had no application to the candidate's nomination papers. The court said:

If the legislature intended certain provisions concerning circulation set forth in 10-4 to be applicable to Article 8, it could specifically have so provided for the interaction of such Articles. The absence of such a provision together with the specific language of 8-8 clearly reflects a legislative intent that this section be applicable to the signing and circulation of petitions for the General Assembly, and no Section 10-4 with its prohibition of circulation for candidates of more than one political party. In the absence of statutory language to the contrary neither legislative history, an overall policy opposition to inter party meddling, nor the doctrine of 'extensive' statutory construction and 'in paria materia' can provide a basis to vary or add to the plain and ordinary meaning of the Election Code as expressly stated by the legislature."

29. This Electoral Board has followed *Walsh v. Connor* and held that "a review of Sections 7-10 and 8-8 of the Election Code establishes that there is no prohibition against circulators for legislative candidates circulating for more than one established party." *Hendon v. Davis*, 02-EB-SS-10, CBEC, January 31, 2002. But see, an earlier decision of this Electoral Board in *Raether v. Shlifka*, 88-EB-WD-62, CBEC, January 26, 1988, finding that the prohibition against circulating petitions for more than one political party in 10-4 of the Election Code is applicable to Democratic and Republican political party candidates.

30. Just as Article 8 exclusively governs the nomination of legislative candidates, so too does Article 7 govern the nomination of candidates for the office of Ward Committeeman. As noted previously, there is no prohibition in Article 7 against circulating nominating petition sheets on behalf of more than one established political party.



31. Our courts have said, “It is basic that Illinois courts view the right of a citizen to hold political office is a valuable one” and that “The exercise of this right is not to be prohibited or curtailed except by *plain provisions of the law.*” *McGuire v. Nogaj, supra*, 146 Ill.App.3d at 282. Here, there is no “plain” provision of the law banning the circulation of petitions for more than one established political party.

32. For the reasons stated above, the Electoral Board declines to accept the Hearing Examiner’s recommended conclusions of law as to the “dual circulation” issue and instead finds that the 3 petitions sheets circulated by a person who also circulated a petition on behalf of a Republican candidate for the February 5, 2008 election are not invalidated by operation of Section 10-4 of the Election Code.

33. The Electoral Board further finds that the number of valid signatures appearing on the Candidate's nominating petition exceeds the minimum number of valid signatures required by law to be placed upon the official ballot as a candidate for election to the office of Ward Committeeman for the 31st Ward of the City of Chicago, Democratic Party. This would continue to be true even if the 3 petitions circulated by a circulator who also circulated petitions for a Republican candidate were invalidated.

34. For the reasons stated above, the Electoral Board finds that the Objections are overruled and that the Candidate’s Nomination Papers are valid.

IT IS THEREFORE ORDERED that the Objections of REINALDO HERNANDEZ to the Nomination Papers of JOSEPH BERRIOS, candidate for election to the office of Ward Committeeman for the 31st Ward of the City of Chicago, Democratic Party, are hereby OVERRULED and said Nomination Papers are hereby declared VALID and the name of JOSEPH BERRIOS, candidate for election to the office

of Ward Committeeman for the 31st Ward of the City of Chicago, Democratic Party,  
SHALL be printed on the official ballot for the General Primary Election to be held on  
February 5, 2008.

Dated: Chicago, Illinois, this 14th day of December, 2007.



\_\_\_\_\_  
Langdon D. Neal, Chairman



\_\_\_\_\_  
Richard A. Cowen, Commissioner



\_\_\_\_\_  
Marisel A. Hernandez, 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 10 days after the decision of the Electoral Board.

BEFORE THE DULY CONSTITUTED ELECTORAL BOARD  
 FOR THE HEARING AND PASSING UPON OBJECTIONS TO  
 NOMINATION PAPERS OF CANDIDATES IN THE FEBRUARY 5, 2008 GENERAL  
 PRIMARY ELECTION

REINALDO HERNANDEZ	)	
	)	
Petitioner-Objector,	)	08-EB-WC-07
	)	
v.	)	<b>Office sought: 31<sup>st</sup> Ward</b>
	)	Democratic Committeeman
JOSEPH BERRIOS	)	<b>Minimum signature requirement:</b>
	)	172
Respondent-Candidate.	)	<b>Signatures after Rule 6 exam:</b>
	)	330
	)	<b>Signatures after all hearings:</b>
	)	275

EC-9 A 9:33

**REPORT AND RECOMMENDATION  
OF HEARING EXAMINER TERENCE E. FLYNN**

**FINDINGS OF FACT:**

1. The objection was timely filed.
2. The matter was first called on 11/20/07 and the objector appeared pro se and the candidate by his attorney, Thomas Jaconetty.
3. At that hearing, a briefing schedule was ordered on a Motion to Strike and a Rule 6 examination was ordered. Briefs were filed on the Motion to Strike.

4. The Rule 6 examination results were received and made part of the Record on 11/30/07.

The results were the following:

Total signatures: 547

Total number of objections sustained: 217

Signatures after Rule 6: 330

Minimum signature requirement: 172

The objector also had circulation objections not treated in the Rule 6 examination. However, the objector did not file a Rule 8 Motion at any time to preserve appeals from the Rule 6 examination. (Candidate did file a Rule 8 motion concerning 132 of the Board's "calls" on Rule 6, and subsequently filed 91 affidavits as an evidence-preserving motion, which he did not in fact need.)

5. Arguments were held on specific paragraphs of the objection on 11/27/07, 11/30 /07 and 12/05/07. It was necessary to go through the objection paragraph-by-paragraph.
6. Objector's petition contained 32 paragraphs. Over the three hearings, they were considered and in the main, rejected.
7. Paragraphs 1-3 alleged and proved dual circulation for both Democratic and Republican Ward Committeeman for the 31<sup>st</sup> Ward on three of candidate's 24 signature sheets. Application of the sanction of striking deducts, for violation of Sec. 10-4, 55 signatures. Striking the sheets is the appropriate sanction for 10-4 violations on sheets 7, 16, and 19. However, the candidate himself was not the circulator. Thus after the deduction of 55 signatures pursuant to paragraphs 1-3, the candidate still has 275 signatures, well over the signature requirement of 172.
8. None of the other paragraphs involved any deductions, mainly because objector admitted on the Record that he had only "suspicions", not evidence to present, culminating in the denial of his Rule 18 request for irrelevance (discussed below in paragraph 11).

9. Thus paragraphs 6-13 of the objector's petition involved signature challenges that were part and parcel of the Rule 6 examination and no Rule 8 motion was filed by the objector to preserve any of the Rule 6 rulings (though one was filed by the candidate).
10. Circulator and notary objections, including a number of technical objections to jurat or other forms, were the subject-matter of paragraphs 14-28. The problem was that there were not even technical problems with the papers. The paragraphs were basically boilerplate objections without a scintilla of proof offered at hearing beyond naked "suspicion". Objector provided no extrinsic evidence regarding same.
- Thus on 11/27/07 the Motion to Strike was granted on paragraphs 18, 19, 21, 22, 23, 30. (See transcript of 11/27/07 on pages 31-33 for a summary of these rulings).
- And on 11/30/07 further motions were granted regarding other paragraphs, reserving ruling on paragraph 12, paragraphs 28 and 29.
- On 11/30/07, pursuant to the Rules, the Hearing Examiner ordered objector to provide a written submission outlining the evidence he believed was relevant and necessary to decision, with subpoenas he would request, and his theories of the case. That was filed on December 3<sup>rd</sup> and candidate filed a written response on December 4<sup>th</sup>.
- The final hearing was held on 12/5/07.
11. The Rule 18 written request of objector was in 9 paragraphs. They can be divided into two groups: a) paragraphs 1-5, involving election judges and b) paragraphs 6-9 involving circulation.
- a) Election Judges: Objector's theory is that a Democrat (the incumbent ward committeeman) is appointing non-Republicans as Republican election judges and are otherwise problematic as well. This claim is simply not relevant to any issue before the Board, nor could it ever be.
- b) Circulators: the only articulated basis for his claim against circulators and notaries is: that the "process" is "suspicious"



because all petitions were notarized on the same day. There is nothing about that process that is suspicious. It is not abnormal. Paragraphs 6-9 of the Rule 18 motion are nothing but a “fishing expedition” that is unauthorized. The transcript is replete with examples of the Hearing Examiner asking objector for any evidentiary basis and the answer was always unsupported “suspicions”. That was especially true at the 12/5 hearing.

### **CONCLUSIONS OF LAW:**

- A) Thus, paragraphs 28 and 29 (an attempt to allege pattern of fraud) are dismissed for failure to provide any evidence supporting the allegation .
- B) Objector’s written Rule 18 request for subpoenas must be denied for failure to state a relevant basis for the requests, and for those other grounds stated in the transcript (as well as candidate’s excellent written response to the Rule 18 request).
- C) Paragraph 12 will result in no deduction of signatures not already made in the Rule 6 examination. Similarly, all other paragraphs fail for lack of evidentiary bases, whether under Rule 6, the waiver of Rule 8, and/or the failure to provide relevant grounds for subpoenas under Rule 18. (See Findings of Fact # 7, 8, 9 and 10.)
- D) Petitioner’s objection is dismissed; candidate has at least 275 signatures, 100 plus over the minimum requirement. The only well-taken paragraphs of objector’s petition were those involving dual circulation. However, the number was insufficient to bring the candidate below the minimum signature requirement; and the candidacy is not

impaired because the candidate himself did not circulate any of the affected sheets.

**RECOMMENDATION:**

The name Joseph Berrios should appear on the ballot in the February 5, 2008 election for the office of Democratic Committeeman for the 31<sup>st</sup> Ward.

A handwritten signature in black ink, appearing to read "Terence E. Flynn", written over a horizontal line.

Terence E. Flynn  
Hearing Examiner

December 9, 2007