

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

Objections of: Rory Perry)
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)
To the Nomination) No.: 12-EB-RGA-18
Papers of: Preston Brown, Jr.)
)
Candidate for the nomination of the)
Democratic Party for the office of)
Representative in the General Assembly of the)
27th Representative District, State of Illinois)

FINDINGS AND DECISION

The duly constituted Electoral Board, consisting of Board of Election Commissioners for the City of Chicago 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 Rory Perry (“Objector”) to the nomination papers (“Nomination Papers”) of Preston Brown, Jr., candidate for the nomination of the Democratic Party for the office of Representative in the General Assembly of the 27th Representative District of the State of Illinois (“Candidate”) at the General Primary Election to be held on March 20, 2012, having convened on December 19, 2011, at 8:30 AM, 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 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 was held on these Objections commencing on December 19, 2011 and was continued from time to time.

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

6. The Objector and the Candidate were directed by the Electoral Board to appear before the Hearing Officer on the date and at the time designated in the Call. The following persons, among others, were present at such hearing; the Objector, Rory Perry by attorney, Michael J. Kasper through Robert Shannon; and the Candidate, Preston Brown, Jr., pro se.

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 Objector and/or his duly authorized representative was present during the examination of the registration records.

11. The examination of the registration records was completed and the Electoral Board hereby adopts and incorporates by reference the results of the records examination conducted by its clerks and agents. The written report of the result of the registration records

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

12. The results of the records examination indicate that:

A. The minimum number of valid signatures required by law for placement on the ballot for the office in question is 500.

B. The number of purportedly valid signatures appearing on the nominating petition filed by the Candidate total 842.

C. The number of signatures deemed invalid because of objections sustained as a result of the records examination total 393.

D. The remaining number of signatures deemed valid as a result of the records examination total 449.

13. The Electoral Board finds that the number of valid signatures appearing on the Candidate's nominating petition following completion of the records examination is less than the minimum number of valid signatures required by law to be placed upon the ballot as a candidate for the nomination of Democratic Party to the office of Representative in the General Assembly for the 27th Representative District of the State of Illinois.

14. The Hearing Officer conducted a hearing to allow the Candidate and the Objector an opportunity to present evidence in support of their respective Rule 8 motions objecting to the Board's clerk's findings during the records examination.

15. The Hearing Officer has tendered to the Electoral Board a report and recommended decision. Based upon the evidence presented, the Hearing Officer found that the Candidate's Nomination Papers contained 505 valid signatures, which exceeds the minimum number of valid signatures required by law to be placed upon the ballot as a candidate of the

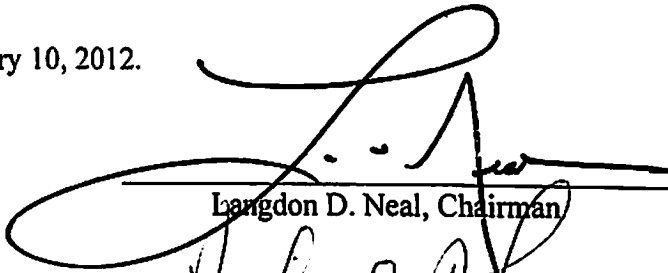
Democratic Party for the office of Representative in the General Assembly for the 27th Representative District of the State of Illinois, and that the Candidate's Nomination Papers should be found valid.

16. The Electoral Board, having considered the evidence and arguments tendered by the parties and the Hearing Officer's report of recommended findings and conclusions of law, hereby adopts the Hearing Officer's recommended findings and conclusions of law. A copy of the Hearing Officer's report is attached hereto and is incorporated herein and made a part of the Electoral Board's decision in this case.

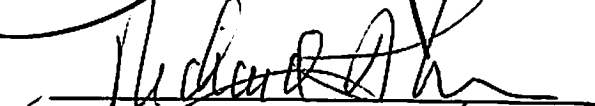
17. For the reasons stated above, the Electoral Board finds that the Candidate has a sufficient number of valid signatures on his nominating petitions and that the Nomination Papers of Preston Brown, Jr. are, therefore, valid.

IT IS THEREFORE ORDERED that the Objections of Rory Perry to the Nomination Papers of Preston Brown, Jr., candidate for nomination of the Democratic Party for the office of Representative in the General Assembly for the 27th Representative District of the City of State of Illinois, are hereby OVERRULED and said Nomination Papers are hereby declared VALID and the name of Preston Brown, Jr., candidate for nomination of the Democratic Party for the office of Representative in the General Assembly for the 27th Representative District of the City of State of Illinois, SHALL be printed on the official ballot for the General Primary Election to be held on March 20, 2012.

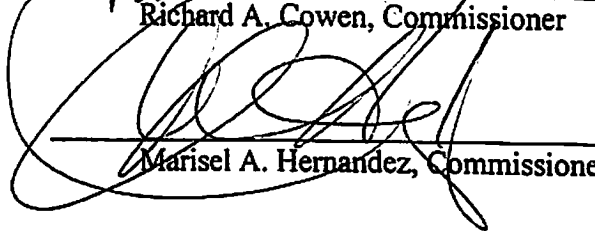
Dated: Chicago, Illinois, on January 10, 2012.



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 5 days after service of the decision of the Electoral Board.

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BEFORE THE CHICAGO BOARD OF ELECTION COMMISSIONERS

Hearing Officer's Report

RORY PERRY,

Objector,

vs.

PRESTON BROWN, JR.,

Candidate.

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No. 12-EB-RGA-18

BOARD OF ELECTIONS COMMISSIONER

2012 JAN - 6 P 12:00

HEARING OFFICER'S FINDINGS AND RECOMMENDATIONS

1. The initial hearing commenced at 1:00 p.m., December 19, 2011. The Candidate appeared pro se. The Objector appeared through legal counsel, Robert Shannon. Board Exhibits A through D were marked and admitted as Candidate's Papers, Objector's Petition, Service Documents, and Party Appearances, respectively.

2. No motions were to be filed and thus a directive for a Record Examination was prepared by the hearing officer. The matter was scheduled for further hearing at 10:00 a.m., December 23, 2011, for purposes of status of the results of the Record Examination.

3. Further hearing occurred on December 23, 2011, and it was determined that the Record Examination had not been completed and the matter was re-scheduled for December 29, 2011.

4. On December 29, 2011, the parties appeared for hearing. The results of the Record Examination, the "Petition Summary Report" and the "Final Petition Detail" were marked and admitted as Board Exhibit E and F, respectively. The Record Examination results

established that the Candidate had a total of 449 valid signatures; therefore, being 51 signatures fewer than the required minimum of 500 valid signatures.

5. By agreement of the parties, the evidentiary hearing was scheduled for January 4, 2012, at 10:30 a.m. Pursuant to pre-trial order the parties would exchange such items as witness lists, Affidavits, other documents by January 2, 2012 at 5:00 p.m. Also, the parties were offered the opportunity to file motions in limine. At the time of this hearing the Objector filed a request upon the Board to produce documents. Subsequently, the Objector prepared and filed a Non-Disclosure Agreement.

6. On January 4, 2012, the evidentiary hearing was commenced and completed. The updated Petition Summary Report and the updated Detail Summary were marked and admitted as Board Exhibits G and H, respectively. The Candidate presented three (3) motions in limine. Candidate's Motion in Limine #1 requested that the Objector's case be limited to the 130 objections contained in Objector's Rule 8 motion. Because this motion essentially re-iterated the Board Rules, the Motion was granted. Candidate's Motion in Limine #2 pertained to the name of the signator/voter on Sheet 16, Line 3. This motion was granted to the extent an Affidavit could be offered by the Candidate, but that the admission and consideration of the Affidavit would be addressed at the time of the evidentiary hearing and subject to the decision of the hearing officer. Candidate's Motion in Limine #3 sought to exclude any evidence offered by the Objector as the result of Objector's request upon the Board to produce documents. Candidate argued that the documents were produced late. This motion was denied by the hearing officer. It was noted that the Candidate did not establish prejudice and that the later production came as the direct result of a later production by the Board.

7. Because the results of the Record Examination established that the Candidate was 51 signatures short of the required minimum of 500 signatures, the burden of going forward lay with the Candidate.

CANDIDATE'S CASE

The Candidate offered for admission one hundred fourteen (114) documents, all entitled "Nomination Petition Signer's Affidavit" ("Certifications"). All but five (5) of these documents were in the form of Section 1-109 Certifications, 735 ILCS 5/1-109. The remaining five (5) carried the certification form and also carried the notarization (affidavit) form. These documents were marked as Candidate's Group Exhibit 1 and over Objector's objections, to be addressed, were admitted and found to be probative as writing exemplars that can be tested with the signatures contained within Candidate's Nomination Papers.

The following is a listing of the 114 Certifications:

<u>Sheet</u>	<u>Line</u>	<u>Sheet</u>	<u>Line</u>	<u>Sheet</u>	<u>Line</u>
1	9	25	4	41	12
1	12	25	5	42	2
1	14	27	1	42	9
5	1	27	8	42	12
5	6	27	10	42	15
6	1	28	9	43	2
7	13	32	7	43	15
7	15	33	1	45	7
9	8	33	6	46	6
11	2	33	12	46	13
12	15	34	1	47	15
13	13	34	2	48	2
14	7	34	3	48	3
14	12	35	2	48	6
14	13	35	6	48	10
15	4	35	10	48	12
15	6	35	12	49	11
15	10	35	13	50	6
16	3	36	2	50	7
16	9	36	4	51	1

16	13	36	6	51	6
16	14	37	1	53	1
17	12	37	4	53	11
18	2	37	11	54	3
19	1	38	11	55	6
19	4	39	5	56	3
19	9	39	10	57	3
19	10	39	12	57	4
20	1	39	14	57	5
20	3	40	4	57	12
21	11	40	5	58	3
21	14	40	7	58	5
22	2	40	13	58	6
22	3	40	15	59	3
23	6	41	3	59	7
23	10	41	4	61	4
24	1	41	5	61	9
24	4	41	11	62	3

The Objector raised form and substance objections. These objections as to all the Certifications included hearsay; that the Candidate's documents were not dated as to the time of signatures; that the documents which were Affidavits (Sheet 25/Line 4, Sheet 32/Line 7, Sheet 42/Line 2, Sheet 42/Line 12, and Sheet 43/Line 15) did not comply with the Illinois Notary Public Act in that the notarial did not include the jurisdiction and date of the execution and notarization of the document, 5 ILCS 312/6-105. Objector further argued that the Candidate's documents were not sufficient Affidavits, citing among other cases, People v. Smith, 222 Ill.App.3d 377 and People v. Gray, 2011 IL App (1st) 091689. To these objections, the Candidate cited to Hazard v. Carbol, 04-EB-WC-22 (1/30/04) for the proposition that even if the 5 Affidavits did not comply with the Notary statute, these same 5 documents contained all the requisite components of a Section 1-109 Certificate and therefore, are independently admissible.

OBJECTOR'S CASE

As a preliminary statement, Objector asserted that the Certifications tendered by the Candidate were all legally insufficient without the proffering of the Board's record "signature clips" and further little weight, if any, must be given to the 114 Certifications contained within Candidate's Group Exhibit 1. After making specific objections to each Certification, Objector's Exhibits 1 through 4 were marked and admitted, comprising the documents produced by the

Board in response to Objector's Request (Exhibits 2, 3 & 4) and Objector's Exhibit 1, a Board document which established, among other things, the total signatures per sheet the Board counted.

FINDINGS AND RECOMMENDATIONS

1. The minimum number of valid signatures required by law for placement on the ballot for the office in question is 500.

2. The number of purportedly valid signatures appearing on the nominating petition filed by the Candidate after the Record Examination total 449.

3. The number of signatures fewer than the required minimum after the Record Examination is 51. (See attached Petition Summary Sheet and New Rulings.)

4. The objections as to the admissibility of the 114 Certifications are overruled in that each of the 109 Certifications comply with the Illinois statutes, comply with the Board's decision in Hazard v. Carbol, 04-EB-WC-22 (1/30/04) and by interpretation, comply with Rule 10, Rules of Procedure for the Board of Election Commissioners of the City of Chicago, etc.

5. Additionally, Candidate's Certifications each contain the language found within Section 1-109 of the Code of Civil Procedure and this Section does not contain an express requirement that an execution date be included.

6. With respect to the portion of Candidate's Group Exhibit 1 that comprise the five (5) Affidavits, the hearing officer finds that each Affidavit does in fact contain a date of execution (12/26/11), and further finds that each Affidavit document contains a statement of jurisdiction, i.e. State of Illinois / County of Cook. The hearing officer holds that the legal authorities cited by the Objector are inapposite and do not vitiate either the Section 1-109 Certificates or the Affidavits. For example, the "Affidavit" within the facts of People of the State of Illinois v. Gray, 2011 IL App (1st) 091689, neither contained a date nor a statement that the statement was made under oath. In the instant matter, the Affidavits do contain the date of execution and do contain the statement that the Affiant "Certifies that the statements set forth in this instrument are true and correct . . ." pursuant to the penalties provided by Section 1-109 of the Code of Civil Procedure. Moreover, the Affidavits substantially comply with the Illinois Notary Act. Alternatively, these 5 Affidavits (listed above) are independently admissible pursuant to Section 1-109 of the Code of Civil Procedure, 735 ILCS 5/1-109, as appropriate substitutions for affidavits, and pursuant to Hazard v. Carbol, *supra*.

7. Additionally, the objection that the entirety of the 114 Certifications (Candidate's Group Exhibit 1) are legally insufficient because of a failure to support these documents with the Board's "signature clips" is overruled in that these documents operate to provide handwriting exemplars that can be appropriately tested in comparison/contrast with the signatures on the Candidate's Nomination Papers.

8. With respect to specific objections, the following Certifications contained in Candidate's Group Exhibit 1 fail to rehabilitate invalid signatures or fail to add valid signatures: :

- (a) Sheet 19/4, Sheet 22/3, Sheet 27/1, Sheet 48/6 have already been found to be valid and therefore, have already been counted in Candidate's favor.
- (b) Sheet 14/12, Sheet 14/13, Sheet 19/10, Sheet 21/11, Sheet 21/14, Sheet 24/11, Sheet 33/12, Sheet 39/12 were invalidated for lack of registration and because any signature exemplar document fails to rebut this finding, these signatures have been not rehabilitated.
- (c) Based upon the preponderance of the evidence, the objections are sustained and the following signatures are found not rehabilitated:

<u>Sheet</u>	<u>Line</u>	<u>Sheet</u>	<u>Line</u>	<u>Sheet</u>	<u>Line</u>
1	14	34	2	40	15
7	13	34	3	41	3
9	8	35	2	41	4
12	15	35	6	42	9
13	3	35	12	42	12
14	7	35	13	45	7
15	10	36	4	48	10
19	9	36	6	50	6
20	1	39	5	50	7
25	5	39	14	53	11
27	8	40	4	57	3
27	10	40	5	57	5
32	7	40	7	57	12
34	1	40	13	59	7
				61	9
				62	3

- (d) Signature for Sheet 46/13 is not rehabilitated because the Candidate's Certificate misidentifies the Sheet and Line (should be Sheet 47/4) and Candidate did not include Sheet 47/4 in his Rule 8 Motion.

- (e) By agreement the signature for Sheet 18/13 is invalidated pursuant to the evidence contained within Objector's Exhibit #1.
- (f) With respect to the objections to three (3) signatures Sheet 47/10, Sheet 48/13, and Sheet 57/7 contained with Objector's Exhibits 2, 3 and 4, these objections are overruled.

9. The hearing officer finds that the remaining Certifications contained in Candidate's Group Exhibit 1 rehabilitate the particular signatures contained within Candidate's Nomination Papers and are consequently found to be valid.

10. Recapitulation:

A. Candidate's Group Exhibit 1 – 114 Certifications

- 1. Paragraph 8(a) removes 4 signatures;
- 2. Paragraph 8(b) removes 8 signatures;
- 3. Paragraph 8(c) removes 44 signatures;
- 4. Paragraph 8(d) removes 1 signature;
- 5. Total signatures stricken as not rehabilitating: 57 signatures
- 6. Remainder: 57 valid signatures rehabilitated

B. Objector's Exhibit #1 removes 1 signature

C. Total Valid Signatures: $449 + 56 = 505$ valid signatures. Required minimum valid signatures: 500.

11. Therefore, as a result of the foregoing, the Hearing Officer recommends that the name of PRESTON BROWN, JR. appear on the ballot as a Candidate for the Office of Representative in the General Assembly for the 27th Representative District of the State of Illinois.

Date: January 6, 2012



Hearing Officer
William P. Jones

Petition Summary Report

Petition: 12-EB-RGA-18
Election: 082012
Objector Name: rory perry
Candidate Name: PRESTON BROWN

Candidate Contact:
Phone:
Fax:

Objector Contact: rory perry
Phone:
Fax:

Signature Required: 500
27th Representative District

Total Pages: 62
Total Signatures: 842
Total Objections: 633
Total Ruled On: 633
Total Remaining: 0
Total Sustained: 393
Total Overruled: 240
For Review (Candidate): 162
For Review (Objector): 167
Total Valid Signatures: 449
Total Unchallenged Sigs: 209

51 Signatures fewer than the required minimum

I acknowledge the completion of the records examination at 1/2/2012 8:51:51 AM

Candidate Representative

Objector Representative

County / City Representative

*Board
Elected
G*

PETITION: 12-EB-RGA-18

CANDIDATE NAME: PRESTON BROWN

Page#	Line#	Original Ruling	New Ruling	Signature Expert
11	2	O	S	REVERSED
12	4	O	S	REVERSED
13	1	O	S	REVERSED
13	13	O	S	REVERSED
14	7	O	S	REVERSED
15	15	O	S	REVERSED
17	12	O	S	REVERSED
27	10	O	S	REVERSED
34	3	O	S	REVERSED
36	4	O	S	REVERSED
40	8	O	S	REVERSED
42	9	O	S	REVERSED
57	12	O	S	REVERSED
60	9	O	S	REVERSED
61	4	O	S	REVERSED
62	2	O	S	REVERSED