

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

Objections of: Bruce E. Crosby)
)
)
To the Nomination) No.: 12-EB-WC-21
Papers of: Howard B. Brookins, Jr.)
)
Candidate for the office of Democratic Party)
Ward Committeeman for the 21st Ward, City)
of Chicago)

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 Bruce E. Crosby (“Objector”) to the nomination papers (“Nominating Papers”) of Howard B. Brookins, Jr., candidate for the office of Democratic Party Ward Committeeman for the 21st Ward of the City of Chicago (“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 Terence Flynn 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, Bruce E. Crosby, pro se; and the Candidate, Howard B. Brookins, Jr., by attorney Burton S. Odelson.

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 939.

B. The number of purportedly valid signatures appearing on the nominating petition filed by the Candidate total 1,379.

C. The number of signatures deemed invalid because of objections sustained as a result of the records examination total 543.

D. The remaining number of signatures deemed valid as a result of the records examination total 836.

13. The number of valid signatures appearing on the Candidate's nominating petition following completion of the records examination was 103 fewer than the minimum number of valid signatures required by law to be placed upon the ballot as a candidate for election to the office of Democratic Party Ward Committeeman for the 21st Ward of the City of Chicago.

14. The Hearing Officer conducted a hearing to allow both 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 947 valid signatures, which exceeds the minimum number of valid signatures required by law to be placed upon the ballot as a candidate for the

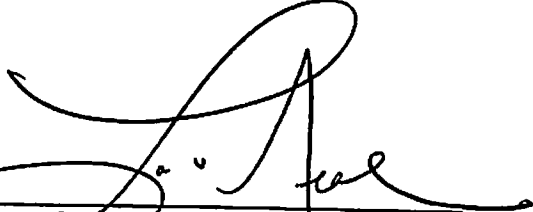
office of Democratic Party Ward Committeeman for the 21st Ward of the City of Chicago, and recommends that the Candidate's Nomination Papers be found valid.

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.

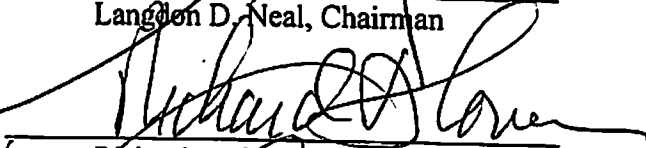
17. For the reasons stated above, the Electoral Board finds that the Candidate has a sufficient number of valid signatures on his nominating petitions and that the Nomination Papers of Howard B. Brookins, Jr. are, therefore, valid.

IT IS THEREFORE ORDERED that the Objections of Bruce E. Crosby to the Nomination Papers of Howard B. Brookins, Jr., candidate for the office of Democratic Party Ward Committeeman for the 21st Ward of the City of Chicago, are hereby OVERRULED and said Nomination Papers are hereby declared VALID and the name of Howard B. Brookins, Jr., candidate for the office of Democratic Party Ward Committeeman for the 21st Ward of the City of Chicago, SHALL be printed on the official ballot for the General Primary Election to be held on March 20, 2012.

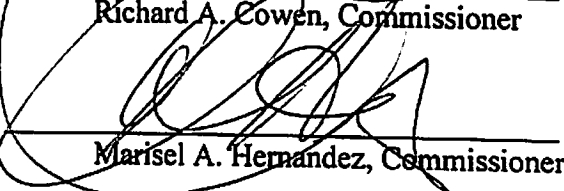
Dated: Chicago, Illinois, on January 23, 2012.



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.

**BOARD OF ELECTION COMMISSIONERS OF THE CITY OF CHICAGO
AS THE DULY CONSTITUTED ELECTORAL BOARD FOR THE
HEARING AND PASSING UPON OBJECTIONS TO NOMINATION PAPERS OF
CANDIDATES FOR THE MARCH 20, 2012 GENERAL PRIMARY ELECTION IN THE
CITY OF CHICAGO**

2012 JAN 19 A 9 37
BOARD OF ELECTIONS
COMMISSIONER

Bruce E. Crosby,)	
Objector)	
vs.)	12-EB-WC-21
)	21st Ward
Howard B. Brookins, Jr.,)	Recommendation: candidate on ballot
Candidate)	
)	

**Report and Recommendation of Hearing Officer
Terence E. Flynn**

Summary: After conclusion of the Rule 6 examination and all reviews by the Board's signature expert, the candidate was 103 below the minimum signature requirement of 939, with 836 valid signatures. At the Rule 8 hearing, the candidate rehabilitated 111 signatures by affidavit submittal. The objector did not submit any evidence at the Rule 8 hearing but argued that not finding a registration card at the Rule 6 on a signature (print or non-genuine) objection (but not a not-registered objection) should disqualify the signature. That argument was rejected and the candidate's total was 947 signatures, 8 more than the minimum signature requirement.

Procedural Matters:

- 1) **Initial Hearing:** At the initial hearing on this matter, objector appeared pro se and the candidate appeared by his attorney. The Exhibits were appropriately identified and marked. Candidate filed a Motion to Strike Objector's Petition and a briefing schedule was set. The matter was continued to 12/22/11 on the Motion to Strike. Because the Motion contained a "shotgun" objection allegation, a Rule 6 exam was not ordered at that time, pending ruling on the motion.

- 2) **Second Hearing:** Between the initial hearing and the second, there were numerous filings, including Motions to Bar Response (for Late filing), a supplement to that motion and a variety of replies. On 12/22/11, argument was heard: the Motion to Bar Response for late filing was denied. Further, two paragraphs of the objector's petition (paragraph 8 regarding "signing in

Header Box” and paragraph 10 regarding pages 9 and “9a”) were stricken, but the “shotgun” argument to dismiss the entire objection was denied and a Rule 6 exam was ordered. The matter was continued to 12/27/11. (Regarding the issue of page “9a” of a copy versus sheet 89 of Board Group Exhibit A, see below, Motion for Evidentiary Hearing on 1/6/12.)

- 3) **Third Hearing:** As of the 12/27/11 hearing, the Rule 6 exam ordered five days previously had not yet begun. The matter was continued to 1/3/12 for status on the Rule 6 exam and other matters.
- 4) **Fourth Hearing:** On 1/3/12 the Rule 6 exam was not finalized. Both parties indicated that they intended to file Rule 8 motions and a contingent briefing schedule was ordered with the caveat that the parties investigative and evidence-gathering work on the Rule 8 should commence immediately because the hearing could commence soon. The matter was continued to 1/6/12 for a pre-trial hearing and argument, if any, on motions regarding Rule 8.
- 5) **Fifth Hearing:** On Friday, 1/6/12 the next hearing was held. In the interim, the objector had filed a Motion for Evidentiary Hearing regarding alleged non-conformity between the Nomination Papers (Board Group Ex. A) and the copy of same that objector, or his representative, purchased from the the Cook County Clerk's office. That issue was referenced above and has to do with the sheet 9 – sheet 89 allegation. It was obvious to this Hearing Officer that the small pen marks on the numeral “8” of Sheet 89 on the original sheet 89 of the Nomination papers had been increased on the page of the copy, blurring the numeral “8” of the number “89”: thus, it appeared that there was an alteration, but it was on the copy purchased from the Clerk's Office, not on the original. For that reason, as well as for the reason that the kind of “investigation” requested by the objector – subpoenaing Board, Cook County Clerk employees and numerous other to determine the copy problem – besides irrelevant, was outside the jurisdiction of this Hearing Officer, I denied the motion for evidentiary hearing. The original Nomination papers (Board Group Ex. A) were not impugned; the copy purchased from the Clerk's office was.

A major issue in this matter was the proper interpretation of paragraph 7 of objector's petition. The paragraph purported to object to printed signatures and to their genuineness as well.

The paragraph stated in full:

“The nomination Papers contain petition sheets with signature of persons which are not signed but rather are printed and said are not genuine signatures, as is set forth specifically in the Appendix-Recapitulation attached and incorporated herein, under the heading, Column F ‘Signers Signature Printed and Not Written’, in violation of the Illinois Election Code.” (Emphasis supplied)

Thus paragraph 7, by its own terms, contained two bases for objection: that the signature was printed and that it was not genuine and by checking the box in Column F, both objections were preserved. The candidate moved to strike the objections (and paragraph 7), citing case law and this Board's precedent that an objection as to printed signatures alone would be stricken. However, that was not my interpretation of paragraph 7 of the Petition: it spoke to both printed and genuineness objections and the failure of the objector to check the genuineness box (which also went to paragraph 2 of the Petition) each and every time did not prejudice the candidate. The candidate's citations (all contained in his written motion) were distinguished because those cases did not involve dual objections of both genuineness and printed. The candidate should have been put on notice by paragraph 7 and certainly by my provisional rulings, as early as the motion to strike. The Rule 6 reviews were in full accord with this interpretation and the Board's duties, responsibilities and jurisdiction with regard to the integrity of the ballot.

Both parties filed Rule 8 motions, both before they had to do so. The Rule 6 results from 1/5/12 were received and entered into the Record. A briefing schedule was ordered on the duelling Rule 8's, and this Hearing Officer specifically requested the parties to comment upon the issue raised about printed signatures. I set another hearing immediately upon conclusion of the briefing, for Monday, 1/9/12.

- 6) Over the intervening weekend, this Hearing Officer had been informed by the Board that a problem in computer retrieval of signatures for review had necessitated a further review by the Board's signature expert. Thus the Rule 6 “Final” examination results, previously published and served upon the parties by the Board on 1/5/12, were not in fact final, and Rule 8 timing requirements were not yet triggered (though both parties had filed Rule 8 motions by this time). A new date of 1/12/12 was set (subsequently changed to 1/13/12 on the telephone motion of the candidate and agreement of the objector).**
- 7) Before the 1/13/12 hearing, candidate filed a written motion for continuance. The essential ground for that motion was that the “final, final” Rule 6 examination results, published and served on 1/11/12 had revised the numbers yet again and further time was needed. That motion**

was granted and a final Rule 8 hearing date was set for 1/18/12, with requirements on the parties to serve each other in the interim with evidentiary material to be introduced.

8) At the 1/18/12 Rule 8 hearing the following occurred:

a) The 1/11/12 Rule 6 results were read into the Record. In pertinent part, they showed the candidate with 836 valid signatures, 103 fewer than the minimum signature requirement of 939.

b) At this Hearing Officer's request, Mr. James Hayes, the Board's independent handwriting expert, testified as to his review process in this case. This was ordered in an attempt to clarify the reason for multiple reviews resulting in multiple Rule 6 results and to ensure that the Record was clear regarding the scope of his review. Mr. Hayes testified that he had been requested by the Board to make a further review of signatures the objection to which had been "printed -- invalid" because computer retrieval had failed to preserve and recapture certain signatures for his review. He identified his own notes made on the "Final Petition Detail Report" of 1/5/12, markings made on those sheets in red ink, and explained the meaning of those marks. The 1/5/12 "Final Petition Detail Report" reviewed by Mr. Hayes was marked as Hearing Officer Exhibit 1. The parties also examined Mr. Hayes.

c) The candidate repeated his objection and argument regarding review of printed signatures and made both due process and extra-jurisdictional arguments. Again, I explained the different perspectives between his argument and my ruling: his argument proceeded from the Appendix-Recapitulation sheets -- only what's on there controls -- my interpretation gave full effect to paragraph 7 of the Petition and allowed for a full review of the genuineness of signatures to protect the integrity of the ballot. In my view, the review of genuineness both in the Rule 6 examination and by the handwriting expert were in full accord with and in full execution of the Board's duties and responsibilities and in conformance with the proper interpretation of paragraph 7. (See above, #5, 1/6/12 Hearing regarding a fuller discussion of the paragraph 7 issue.)

d) The objector made several pre-hearing motions. First, he made a motion to strike the affidavits because they were not notarized did not contain the addresses and did not state affirmatively that the affiant was a registered voter. Because the affidavits were certified under

Section 1-109, the notarial objection was overruled. The affidavits went, in the main, to the printed signature being the genuine signature of the affiant and gave sheet and line number (which contains addresses) and made the appropriate rehabilitating statement; therefore, the other objections were also overruled. Next, the objector sought subpoenas for each and every affiant, over 100 people. (In this context, it is worth noting that pursuant to my scheduling order, objector had received the vast majority of the affidavits from candidate's attorney on 1/13/12, and thus had 5 days to conduct his own investigation regarding those affidavits.) This request was rejected for, among other reasons, there was no particularized showing of objective good faith in the request: it was a "fishing expedition" based upon mere, unverified suspicion. Even if the timing were not crucial – which it is and was – the request did not provide any good faith basis. Further, the objector requested subpoenas for 5 circulators and notaries. Again, beyond the timing problem, and that candidate's Rule 8 motion was filed 14 days earlier allowing ample time for investigation, the Objector's Petition did not make or preserve any objection to the Nomination papers (Group Ex. A) on the basis of circulation or notarial defect. Therefore, those subpoena requests were denied. Finally, objector wished to subpoena a County Clerk employee (Mr. Ballanoff) and three Board employees (Messrs. Gough and Scanlon and a Rule 6 examiner). The asserted bases were the non-conformity of the copy of the Nomination papers purchased from the Clerk's office (see above, discussion of Motion for Evidentiary Hearing on 1/6/12) and the Board policy on printed signatures. The request was denied for lack of relevance. Also, at this time, regarding the "page 9 a – sheet 89" issue, the objector stated that neither he nor any representative had reviewed the original nomination papers prior to filing the objector's petition, but relied solely on the purchased copy.

e) With all that as background, the evidence commenced. The candidate proffered over 111 affidavits, over objector's continuing objection as to form (previously ruled upon). The process was to review the "Final Petition Detail Report" dated 1/11/12 to ensure that the objection was sustained and the sustained objection affirmed and not in the candidate's column and also that an appeal had been preserved for review; I also reviewed the candidate's Rule 8 Motion to ensure that the issue was preserved therein, and then, consulting the sheet and line of Group Exhibit A, to review the affidavit. By this process, 111 affidavits were received into evidence and marked as Candidate's Group Ex.1 (A – ggggg). A number of affidavits proffered were withdrawn when they did not meet the requirements of the process outlined above, such as an objection sustained on other grounds (such as not registered) or if the ruling had actually been

in the candidate's favor, or if no appeal had been taken. The result, however was the admission of 111 affidavits. Candidate's Ex.2 was an Illinois Power of Attorney form, offered to rehabilitate the signature of a person whose wife purportedly signed for him, pursuant to that power. That was denied because there was no affidavit from the wife attesting to the fact that she signed the sheet for him. Candidate's Exhibits 3 and 4 were offered solely if a rebuttal was required and therefore were not ruled upon.

The candidate rested with a presumptive total of 947 valid signatures, 8 above the minimum signature requirement of 939.

f) The objector's Rule 8 case: The objector did not present evidence per se. However, he did preserve the following argument: When, in the course of the Rule 6 examination, if the examiner is assessing a signature genuineness objection and a registration card cannot be found, why is the objection overruled? Does that not allow a "loophole" by which unregistered voters can print their names and still be counted in the candidate's total?

Of course, one answer to this question is that without finding a card, there can be no comparison. The further answer to this question is that if the objection had been unregistered voter, as did happen here on occasion, then the objection would be sustained when no registration card was found. Though the objector did not put it in these exact words, he is asking the Board "can we shut our eyes and ears" to the possibility that unregistered voters are being counted in a candidate's totals because the Appendix-Recapitulation sheets do not check the box for unregistered voter? In this aspect of the matter, the Appendix-Recapitulation sheets do control because there was nothing to put the candidate on notice of an objection as to registration; in paragraph 7, he was deemed to have been put on notice that both printing and genuineness were in contest. Thus there is no conflict in the analyses. The parties stipulated that where in the "Final Detail Report" (printed 1/11/12) there is either "notinsys" or a blank for address, no registration card was found. That number would clearly place the candidate below the minimum signature requirement. However, the candidate would still have rebuttal ability to rehabilitate more signatures: thus if there would be a reversal there would have to be a remand.

With that argument, the objector rested and the evidentiary record was closed.

9) In summary, after the Rule 8 examination, the candidate was 8 signatures over the minimum requirement, with a total of 947 valid signatures.

Recommendation: It is the recommendation of this Hearing Officer that the name Howard B. Brookins, Jr., should appear on the ballot in the March, 2012 election for Ward Committeeman, Democratic party, for the 21st Ward.

Dated: January 19, 2012

s/ Terence E. Flynn
Hearing Officer