

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

Objections of: William J. Kelly)
)
)
To the Nomination) No.: 12-EB-WC-36
Papers of: Tom Smithburg)
)
Candidate for the office of Republican Party)
Ward Committeeman of the 42nd 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 William J. Kelly (“Objector”) to the nomination papers (“Nominating Papers”) of Tom Smithburg, candidate for the office of Republican Party Ward Committeeman for the 42nd 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 Yamil Colon 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, William J. Kelly, by attorney Andrew Finko; and the Candidate, Tom Smithburg, by attorney John G. Fogarty, Jr.

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 142.

B. The number of purportedly valid signatures appearing on the nominating petition filed by the Candidate total 405.

C. The number of signatures deemed invalid because of objections sustained as a result of the records examination total 158.

D. The remaining number of signatures deemed valid as a result of the records examination total 247.

13. The Electoral Board finds that the number of valid signatures appearing on the Candidate's nominating petition following completion of the records examination exceeds the minimum number of valid signatures required by law to be placed upon the ballot as a candidate for election to the office of Republican Party Ward Committeeman for the 42nd Ward of the City of Chicago.

14. Neither party filed a Rule 8 motion objecting to the Board's clerk's findings during the records examination.

15. Objector further objected to the Candidate's Nomination Papers alleging that the Candidate had signed the nominating petitions of another candidate seeking election as Republican Ward Committeeman for the 42nd Ward, citing *Rosenzweig v. Illinois State Board of Elections*, 946 N.E.2d 1113 (1st Dist. 2011).

16. The Electoral Board finds that Section 7-10 of the Election Code (10 ILCS 5/7-10), which governs the nomination papers of candidates for Ward Committeeman, requires that such papers be signed by “qualified primary electors” of the political party with which the candidate is affiliated and provides, “A ‘qualified primary elector’ of a party may not sign petitions for or be a candidate in the primary of more than one party.”

17. *Rosenzweig*, which construed similar language found in Section 8-8 of the Code, found that a candidate could not sign the nomination papers of a candidate of a different political party at the same election.

18. The Electoral Board finds that here, the Candidate did not sign the petition of a candidate of a different political party at the same election; rather, he signed a petition for a candidate of the same political party. The Electoral Board further finds that there is no prohibition in Section 7-10 of the Code against signing a petition of another candidate of the same political party at a primary election. The Electoral Board, therefore, overrules this objection.


19. 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 247 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 Republican Party Ward Committeeman for the 42nd Ward of the City of Chicago, and recommends that the Candidate’s Nomination Papers be found valid.

20. 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.

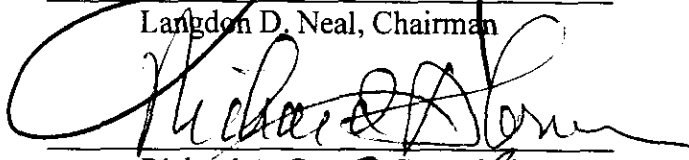
21. For the reasons stated above, the Electoral Board finds that the Candidate has a sufficient number of valid signatures on his nominating petitions and that the Nomination Papers of Tom Smithburg are, therefore, valid.

IT IS THEREFORE ORDERED that the Objections of William J. Kelly to the Nomination Papers of Tom Smithburg, candidate for the office of Republican Party Ward Committeeman for the 42nd Ward of the City of Chicago, are hereby OVERRULED and said Nomination Papers are hereby declared VALID and the name of Tom Smithburg, candidate for the office of Republican Party Ward Committeeman for the 42nd 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.

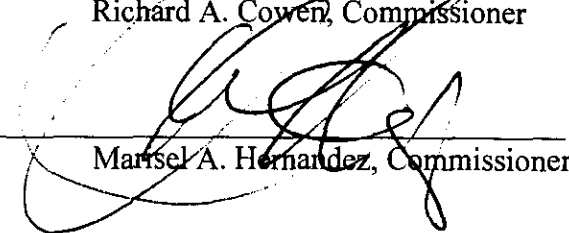
Dated: Chicago, Illinois, on January 17, 2012.



Langdon D. Neal, Chairman



Richard A. Cowen, Commissioner



Marsel 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.