

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

Objections of: ELAINE HINES)
)
)
To the Nomination) No. 08-EB-RES-05
Papers of: ANGEL GARCIA)
)
)
Candidate for the office of Representative)
in the General Assembly, 6th)
Representative District, State of Illinois,)
Republican 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 ELAINE HINES ("Objector") to the nomination papers ("Nomination Papers") of ANGEL GARCIA, candidate for nomination of the Republican Party to the office of Representative in the General Assembly for the 6th Representative District, State of Illinois ("Candidate"), having convened on April 22, 2008, at 69 W. Washington Street, 8th 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 April 22, 2008 and was continued from time to time.

5. The Electoral Board assigned this matter to Hearing Examiner GERALD MULLIN 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, ELAINE HINES, appearing by counsel, MICHAEL J. KASPER. The Candidate, ANGEL GARCIA, was not present nor did anyone appear on his behalf. The Hearing Examiner found that the Electoral Board's file did not contain proof of service of the Call on the Candidate, so the matter was continued to May 8, 2008 at 2:30 p.m. to allow additional time to serve the Candidate.

7. At the continued hearing on May 8, the Objector was present by and through her counsel, Michael J. Kasper. The Candidate also appeared through counsel, Tim Sprague. Lori Yokoyama subsequently filed an additional appearance on behalf of the Candidate.

8. The Candidate was appointed to fill a vacancy in nomination for the Republican Party for the office of Representative in the General Assembly for the 6th Representative District, State of Illinois, pursuant to a resolution to fill such vacancy that was filed with the Illinois State Board of Elections. Such appointment was purportedly made by the Republican Party's Representative Committee for the 6th Representative District.

9. The Objector objects to the purported nomination of the Candidate to fill a vacancy in nomination alleging that the Representative Committee of the Republican Party for the Sixth District never filed a certificate of organization with the State Board of Elections indicating that it was organized as required by the Election Code. Specifically, the Objector claims that Section 8-5 on the Election Code requires that a representative committee meet and organize to elect a Chairman and a Secretary and then "immediately upon completion of the such organization," the chairman must forward to the State Board of Elections the names and addresses of the chairman and secretary of the committee. The Objector alleges that the Representative Committee for the Sixth Representative District for the Republican Party failed to fulfill the requirements of Section 8-5 of the Code.

10. Section 8-5 on the Election Code (10 I LCS 5/8-5) provides in relevant part:

"Within 180 days after the primary of each other even-numbered year, each legislative committee and representative committee shall meet and proceed to organize by electing from its own number a chairman, and either from its own number or otherwise such other officers as each committee may deem necessary or expedient. Immediately upon completion of organization, the chairman shall forward to the State Board of Elections, the names and addresses of the chairman and secretary."

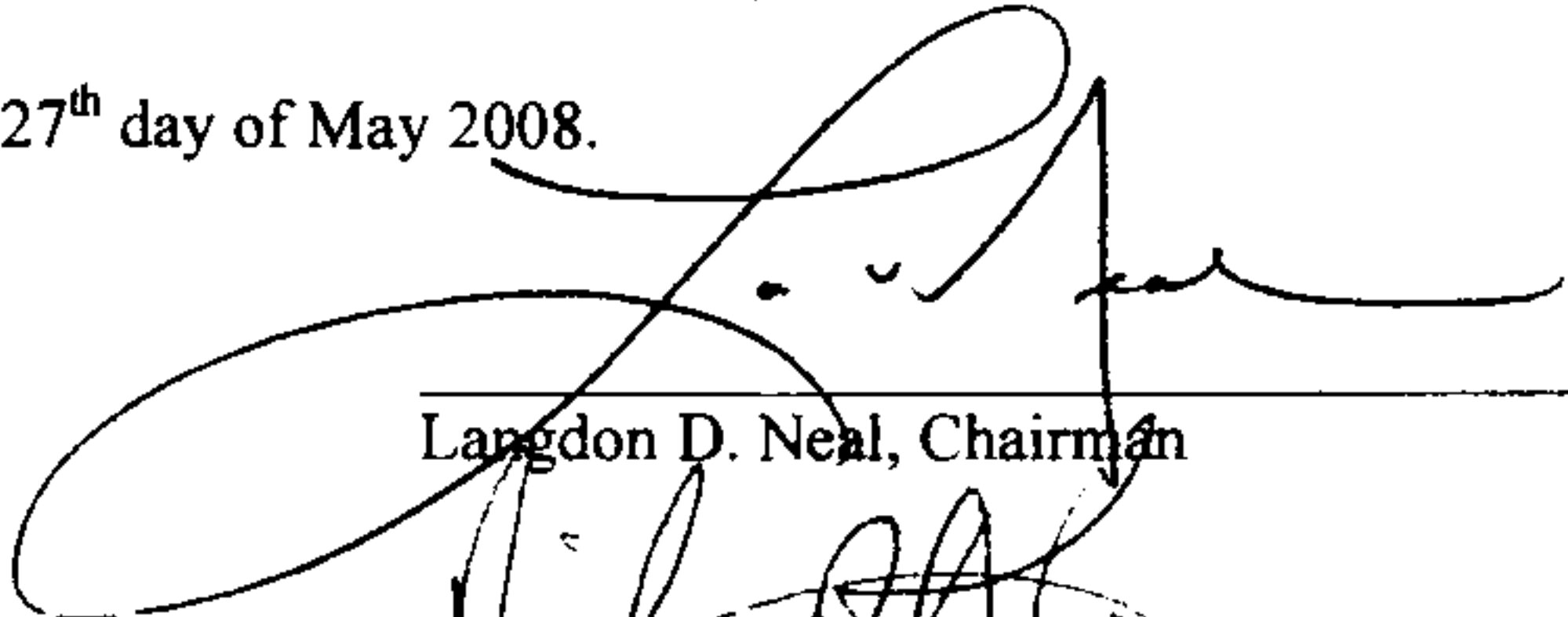
11. The facts and the legal issues in this case are substantially the same as in the case of *Flavio Gonzalez, Objector v. Janet A. Delich, Candidate*, case number 08-EB-RES-03, heard by the same hearing examiner, Gerald Mullin, except that the Candidate here is seeking nomination in the Sixth Representative District, not the Second District, and the Candidate here was nominated on April 15, 2008, instead of April 14 as in 08-EB-RES-03. In fact, the parties here stipulated and agreed that the arguments and findings in case number 08-EB-RES-03 would be applicable in their entirety to this case.

12. The Electoral Board hereby adopts the recommended order submitted by Hearing Examiner Mullin, along with his recommended order submitted in case number 08-EB-RES-03, both of which are attached and incorporated herein.

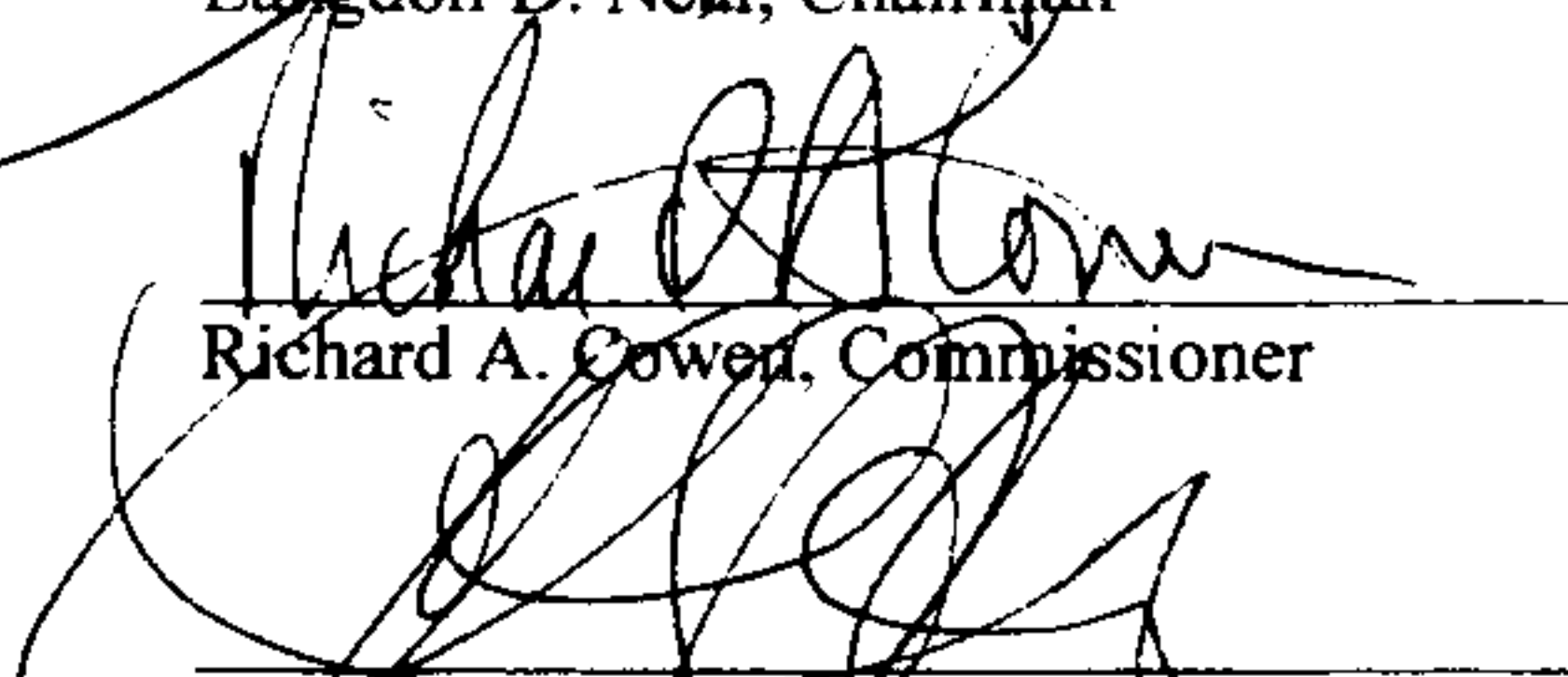
13. For the reasons above, the Electoral Board find that the Candidate's motion to dismiss the Objections is denied, the Objections are sustained and the Candidate's Nomination Papers are, therefore, invalid.

IT IS THEREFORE ORDERED that the Objections of ELAINE HINES to the Nomination papers of ANGEL GARCIA, candidate for nomination of the Republican Party to the office of Representative in the General Assembly for the 6th Representative District, State of Illinois, are hereby SUSTAINED and said Nomination Papers are hereby declared INVALID and the name of ANGEL GARCIA, candidate for nomination of the Republican Party to the office of Representative in the General Assembly for the 6th Representative District, State of Illinois, SHALL NOT be printed on the official ballot for the General Election to be held on November 4, 2008.

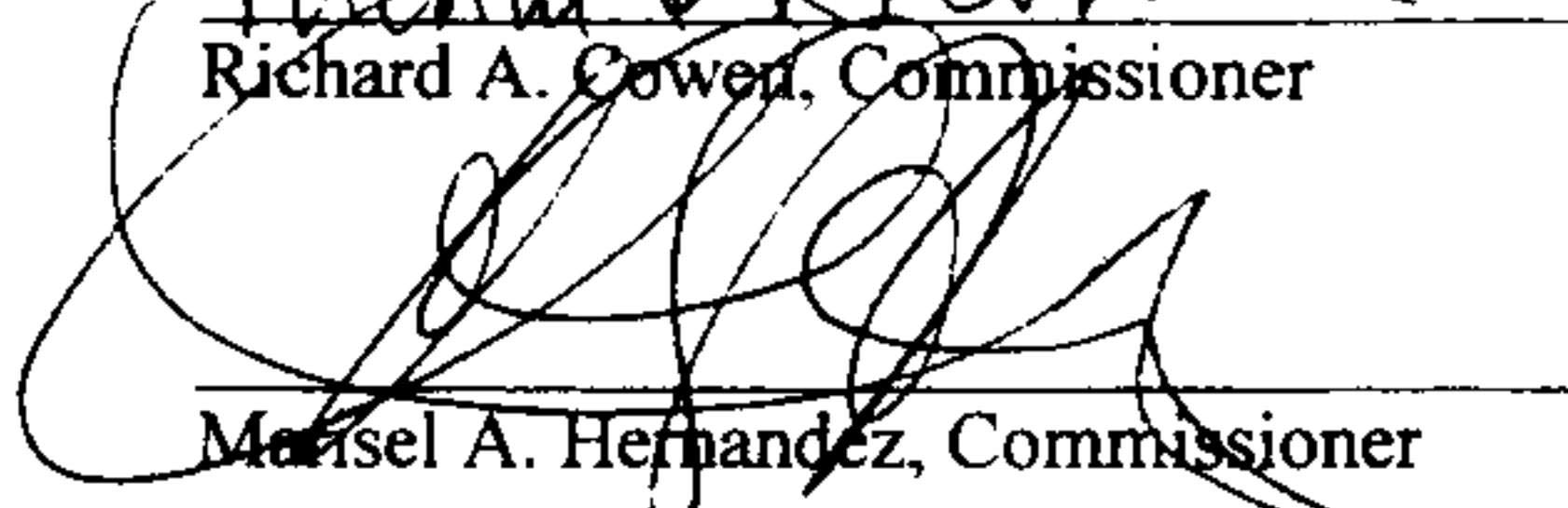
Dated: Chicago, Illinois, this 27th day of May 2008.



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 NOMINATION OBJECTIONS TO THE OFFICE OF REPRESENTATIVE IN THE GENERAL ASSEMBLY FOR THE SIXTH REPRESENTATIVE DISTRICT OF THE STATE OF ILLINOIS

Elaine Hines)
Petitioner -Objector)
v.)
Angel Garcia ,)
Respondent Candidate)

08-EB-RES-05

2008 MAY 13 P 12:08

RECOMMENDED ORDER

On May 2, 2008, in the matter of Flavio Gonzalez, Objector v. Janet A. Delich, Respondent Candidate, No 08-EB-RES-03, the Hearing Examiner filed a recommended order, a copy of which is attached, recommending to the Board that the Candidate-Respondent's motion to dismiss the Objection filed by Petitioner, be denied, based upon a finding the Section 8-5 of the Election Code requiring the names and addresses of the chairman and secretary be submitted to the State Board of Election immediately upon completion of organization was mandatory and not merely directory. The hearing Examiner requested the objector and the respondent to provide evidence by May 8, 2008 as to whether the names and addresses had been filed with the State Board of Elections.

The parties stipulated and agreed that the arguments and findings in No 08-EB-RES-03 shall be applicable in their entirety to 08-EB-RES-05. Accordingly, the following arguments and findings are adopted pursuant to stipulation

On May 8, 2008 Objector filed a certificate under oath dated May 6, 2008 from the State Board of Elections, by Mark Mossman, director of the Election Information Division of the Illinois State Board of Elections. That document was admitted as Objector's exhibit 1. The exhibit certified that as of May 6, 2008, there was not on file with the State Board of Elections "any document from the Chairman of the Republican Party's 6th Representative District Representative Committee so as to provide the names and addresses of the chairman and secretary of said committee."

Respondent-Candidate, subsequent to the completion of the hearing on May 8, 2008, filed a document bearing a time stamp of May 8, 2008 (the day of the continued hearing) entitled "Certificate of Representative Committee Organization" for the 6th Representative District Representative Committee containing the names and addresses of the chairman and secretary of the committee. At the hearing on May 8, 2008, Respondent-Candidate contended that the filing of the Certificate of Representative Committee Organization on May 8, 2008 satisfied Section 8-5 of the Election Code because the signatures of the Chairman and Secretary on the Resolution to Fill a Vacancy (Respondent's Exhibit 2) dated April 4, 2008, but containing no addresses of the Chairman and Secretary was a substantial compliance with the provision of the Election Code, and that so long as the signatures were provided, no addresses were necessary. It was stipulated (and so indicated on the Statement of Candidacy that the nomination of Angel Garcia for the office of State Representative occurred in a meeting on April 5, 2008.

Objector contended that the filing of the addresses on May 8, 2008 was not in conformity with Section 8-5 and that the filing of the addresses was essential, and the attempted cure by filing the addresses on May 8, 2008 did not cure the defect. Essentially, Objector's argument is that absent an address, it cannot be determined whether or not the elected chairman and secretary in fact resided in the Representative District, and therefore the ability to make an objection based upon residency cannot be made within the time allotted by the Code for objection. Objector cited *Pockie v The Cook County Officers Electoral Board*, 289 Ill. App. 3d 585, 682 N. E. 2d 258. (Ill. App. 1st Dist 1997) as authority for the proposition that the addresses are essential

The candidate filed a memorandum applicable to 08-EB-RES-03. (but by stipulation equally applicable to this matter) on May 12, 2008 contending that (1) since the committeemen are public officials it is relatively easy to determine whether or not they reside in the district (2) the Election Code does not mandate that the names and addresses be submitted within the period of time mandated to fill a vacancy; (3) the submission of the addresses of the chairman and secretary within the 180 days permitted to fill a vacancy complies with the only time requirement and consequently the Objector seeks to have the Board speculate about the intent of the Code; (4) no precedent or authority exists as to whether the addresses must be provided.

DISCUSSION

As noted above, it was stipulated (and so provided on Respondent's Exhibit 2) that the nomination of Angel Garcia for the office of State Representative occurred in a meeting on April 5, 2008. It follows that the completion of organization of the committee would necessarily have occurred before the

nomination of Angel Garcia and therefore, on April 5, 2008 or on some date before April 5, 2008. The words in issue of Section 8-5 of the Election Code provides: "Immediately upon completion of organization, the chairman shall forward to the State Board of Elections the *names and addresses* of the chairman and secretary. (emphasis supplied)

It is clear that a residence address is essential to establish whether or not such person resides in the district. *Pochie*, cited by Objector, while relating to the requirement of Section 10-8 of the Code, establishes that, absent an address, a candidate whose nominating petitions are being challenged cannot readily determine that the objector resides in the district. Extending the logic of *Pochie*, it becomes clear that the residence requirement for an objector's petition should be equally applicable to a filing under Section 8-5 of the Code, since absent an address, the objector cannot readily determine whether the Chairman and the Secretary reside in the district. Insofar as whether a filing containing the names and addresses of the Chairman and the Secretary made more than a month after the nomination of the candidate satisfies the provision of Section 8-5, the word's ordinary meaning indicates:

Webster's New World Dictionary of the English Language, Second Edition, The World Publishing Co., 1970: "Immediately: without delay, at once, instantly, at the very moment that.."

It appears that the document filed on May 8, 2008 was not filed "without delay, at once, instantly" but was an attempt to correct a fatal error *nunc pro tunc*.

Based upon the foregoing, the Hearing Examiner recommends to the Board that the Objection be sustained and enter a finding that the Nominating Papers for Angel Garcia are invalid.

Respectfully submitted,



Gerald B. Mullin

May 13, 2008