

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

Objections of: RODOLFO LOZANO, JR.)
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To the Nomination) No. 08-EB-WC-22
Papers of: JOSE M. GUTIERREZ)
)
)
Candidate for the office of)
Ward Committeeman for the 22nd 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 RODOLFO LOZANO, JR. ("Objector") to the nomination papers ("Nomination Papers") of JOSE M. GUTIERREZ, candidate for election to the office of Ward Committeeman for the 22nd Ward of the City of Chicago, Democratic Party ("Candidate"), having convened on November 26, 2007, at 10:00 a.m., 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 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 26, 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(s), RODOLFO LOZANO, JR., appearing by counsel, Richard K. Means; and the Candidate, JOSE M. GUTIERREZ, appearing pro se.

7. The Objector raised several objections to the Candidate's Nomination Papers, including the allegation against the validity of individual signatures identifying them by sheet and line and that the Candidate's petition did not contain a sufficient number of valid signatures to meet the minimum signature requirement for the office sought.

8. 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.

9. The Hearing Examiner directed all parties to appear and be present, either personally and/or by their authorized representatives during this records examination.

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

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

12. 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.

13. The results of the records examination conducted in this case indicate that:

A. The minimum number of valid signatures required by law for placement on the ballot for the office in question is 150;

B. The number of purportedly valid signatures appearing on the nominating petition filed by the Candidate total 281;

C. The number of signatures deemed invalid because of objections sustained during the records examination total 163;

D. The remaining number of signatures deemed valid total 118.

14. The Hearing Examiner conducted an evidentiary hearing at which the Candidate attempted to rehabilitate 32 signatures. Five were denied by the Hearing Examiner, leaving the Candidate with 5 fewer signatures than he needed.

15. 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 sustained and that the Nomination Papers be found invalid.

16. 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. 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.

17. The Electoral Board finds that the Candidate has an insufficient number of valid signatures on his Nomination Papers to be placed upon the official ballot as a candidate for election to the office of Ward Committeeman for the 22nd Ward of the City of Chicago, Democratic Party.

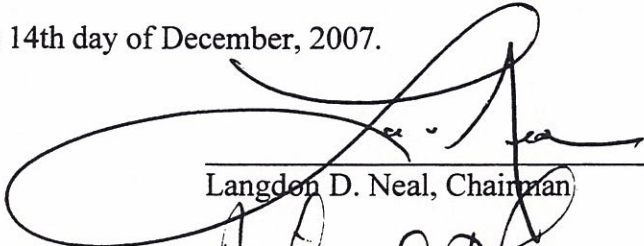
18. The Electoral Board finds, therefore, that the objections to signatures listed on certain sheets and lines of the Objector's Petition are sustained in part and overruled in part as more fully indicated in the results of the records examination.

19. For the reasons stated above, the Electoral Board sustains the Objections to the Candidate's Nomination Papers and finds that the Nomination Papers of JOSE M. GUTIERREZ are not valid.

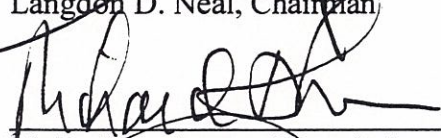
IT IS THEREFORE ORDERED that the Objections of RODOLFO LOZANO, JR. to the Nomination Papers of JOSE M. GUTIERREZ, candidate for election to the office of Ward Committeeman for the 22nd Ward of the City of Chicago, Democratic Party, are hereby SUSTAINED and said Nomination Papers are hereby declared INVALID and the name of JOSE M. GUTIERREZ, candidate for election to the office of

Ward Committeeman for the 22nd Ward of the City of Chicago, Democratic Party,
SHALL NOT be printed on the official ballot for the General Primary Election to be held
on February 5, 2008.

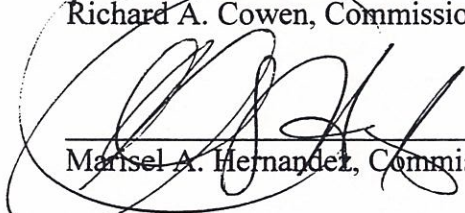
Dated: Chicago, Illinois, this 14th day of December, 2007.



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.

3. The case was next called on November 30, 2007. The Rule 6 results were not available at that time. The case was continued.
4. The case was next called on December 5, 2007. At that time the following occurred:
 - a. The candidate's attorney filed his appearance, without objection;
 - b. Both parties filed Rule 7 and Rule 8 motions, without objection;
 - c. The results of the Rule 6 examination, completed on December 2, 2007, were read into the Record. They showed the candidate with 118 valid signatures, 32 below the minimum signature requirement.
 - d. The candidate had gathered a number of affidavits, which were transmitted to objector's counsel.
 - e. Hearing on the candidate's Rule 8 motion was set for Sunday, December 9th, with a hearing on objector's motions set for Monday, December 10th, if necessary.
5. At the Rule 8 hearing, certain registration cards were requested and delivered by Board employees. Particulars of that hearing are summarized below in the "Rulings" section. Simply put, the candidate presented 32 rehabilitation requests. Five were denied, leaving the candidate 5 below the minimum. After the rulings the candidate rested. Of course, objector preserved certain Rule 8 appeals as well, but there was no need to hear them. The Hearing Examiner gave his oral recommendation on the record that the candidate's name not appear on the ballot.

6. Rulings Against the Candidate

Five proffered Rule 8 attempts to rehabilitate signatures by the candidate were refused by the Hearing Examiner.

- A) Sheet 4, Line 14: Maria Gonzales signed the petition. Candidate proffered a voter registration card (candidate Exs. 3 and 4) that a Marion G Garza was a registered voter at the same address as in the petition, and requested the assumption or inference (or

speculation) that this was a name change. No affidavit or other extrinsic evidence was proffered to support the claim. An affidavit regarding marital status and name change may support such a claim. However, none was offered. No evidentiary basis exists for rehabilitation.

- B) Sheet 6, Line 5: there are two Mario Comachos at the address written in the petition, with different middle initials. The affidavit proffered had an alteration on the middle initial. Since that was a critical issue, the affidavit (in candidate's Group Ex. 6) was rejected, with the Hearing Examiner stating that other extrinsic methods of proof were available.
- C) Sheet 16, Line 7: With regard to Ms. Mandujana, who signed on this line, two affidavits were offered with radically different signatures, for comparison with the registration card. (Candidate's Ex.6 versus objector's Ex.1) Both had been gathered by candidate. Even if for benign reasons, the two affidavits cancelled each other out.
- D) Sheet 5, Line 7: On a Rule 7 presentation, candidate claimed a "scrivener's error" in that the street address was an ordinal off. While again, that could be rehabilitated by an affidavit, no affidavit was presented. Thus we were left to mere speculation as to why the difference in address existed. The candidate failed to carry the burden of proof and persuasion.
- E) Sheet 11, Line 6: The candidate wished to challenge the Board's call on no registration without a signature card or an affidavit from the signor. Again, the candidate failed to carry his burdens of proof and persuasion.

7. Rulings for the Candidate


As shown above, the candidate was 32 signatures below the minimum signature requirement at the conclusion of the Rule 6 exam. Twenty-seven (27) signatures were rehabilitated in the Rule 8 hearing.

- A) Though objector preserved his form objection to affidavits under 1-109, he did not otherwise object to 17 affidavits and the Hearing Examiner accepted them, provisionally crediting the Candidate with 17 signatures, subject to rebuttal.
- B) Ten more affidavits on "not proper person" calls that were contested by objector were provisionally accepted and credited to the candidate.

8. At the conclusion of the rule 8 hearing, candidate's counsel was asked if he had anything further to present. The answer was no. Candidate's counsel was asked if he rested. The answer was yes. (See end of transcript of 12/09/07 hearing, unavailable at time of this written report.)

Recommendation:

The name Jose Guitierrez should not appear on the February 5, 2008 ballot for Democratic Ward Committeeman for the 22nd Ward .



Terence E. Flynn
Hearing Examiner

Dated: December 11, 2007