

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

Objections of: Kevin Wunder and David)
Miranda)
)
To the Nomination) No.: 12-EB-RGA-14
Papers of: Elizabeth "Lisa" Hernandez)
)
Candidate for the nomination of the)
Democratic Party for the office of)
Representative in the General Assembly for the)
24th 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 Kevin Wunder and David Miranda (“Objectors”) to the nomination papers (“Nomination Papers”) of Elizabeth "Lisa" Hernandez, candidate for the nomination of the Democratic Party for the office of Representative in the General Assembly for the 24th 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 Objectors 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 December 19, 2011 and was continued from time to time.

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

6. The Objectors and the Candidate were directed by the Electoral Board's Call served upon them to appear before the Hearing Officer on the date and at the time designated in the Hearing Schedule. The following persons, among others, were present at such hearing: the Objectors, Kevin Wunder and David Miranda, pro se; the Candidate, Elizabeth "Lisa" Hernandez, by attorney Michael Kasper, through Owen Brue.

7. The Candidate filed a motion to strike and dismiss the Objectors' petition on the grounds that neither of the Objectors resided in or were registered voters in the 24th Representative District, the district in which the Candidate is seeking nomination, as required by Section 10-8 of the Election Code.

8. The Hearing Officer found that neither of the Objectors actually resided in the 24th Representative District and, therefore, they lack standing under Section 10-8 of the Code to bring an objection to the Candidate's Nomination Papers. The Hearing Officer recommends, therefore, that the Candidate's motion to strike and dismiss the Objectors' Petition be granted and that said Objectors' Petition be dismissed for lack of standing.

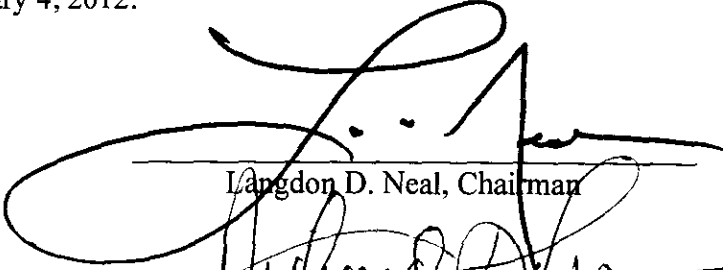
9. The Hearing Officer has tendered to the Electoral Board her report and recommended decision. The Hearing Officer recommends that the Objections to the Candidate's Nomination Papers be dismissed and that the Nomination Papers be declared valid.

10. The Electoral Board, having reviewed the record of proceedings in this matter and having considered the report and recommendations of the Hearing Officer, as well as all argument and evidence submitted by the parties, hereby adopts the Hearing Officer's recommended findings and conclusions of law. A copy of the Hearing Officer report and recommendations is attached hereto and is incorporated herein as part of the decision of the Electoral Board.

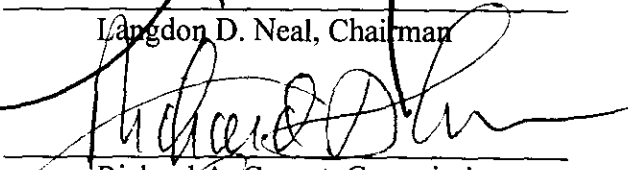
11. For the reasons stated above, the Electoral Board dismisses the Objections to the Candidate's Nomination Papers on the grounds that the Objectors lacked standing to file objections to the Candidate's Nomination Papers and finds that the Candidate's Nomination Papers are valid.

IT IS THEREFORE ORDERED that the Objections of Kevin Wunder and David Miranda to the Nomination Papers of Elizabeth "Lisa" Hernandez, candidate for the nomination of the Democratic Party for the office of Representative in the General Assembly for the 24th Representative District of the State of Illinois, are hereby DISMISSED and said Nomination Papers are hereby declared VALID and the name of Elizabeth "Lisa" Hernandez, candidate for the nomination of the Democratic Party for the office of Representative in the General Assembly for the 24th Representative District of the State of Illinois, SHALL be printed on the official ballot for the General Primary Election to be held on March 20, 2012.

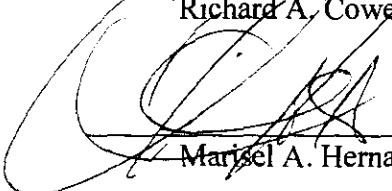
Dated: Chicago, Illinois, on January 4, 2012.



Langdon D. Neal, Chairman



Richard A. Cowen, Commissioner



Marijel 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.

STATE OF ILLINOIS)
)
COUNTY OF COOK) SS

**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 PRIMARY ELECTIONS**

2011 DEC 30 P 3:21
BOARD OF ELECTIONS
COMMISSIONER

KEVIN WUNDER & DAVID MIRANDA,)
 Objector(s),)
)
 -VS-)
)
ELIZABETH "LISA" HERNANDEZ)
 Candidate.)

Case No: 12-EB-RGA-014

HEARING EXAMINER'S REPORT AND RECOMMENDED DECISION

Pursuant to section 10-10 of the Illinois Election Code (10 ILCS 5/10-10) , the Rules and Regulations of the Board of Election Commissioners, and official appointment by the Chicago Board of Election (CBOE) to act in the above-designated mater, the Hearing Officer convened a hearing on December 22, 2010 at 10:18a.m. at the Offices of the Chicago Board of Elections at 69 W. Washington, Lower Level Conference Room, to hear testimony and receive documents concerning the **MOTION TO STRIKE AND DISMISS** the Objection(s) of **KEVIN WUNDER & DAVID MIRANDA** to the candidacy of **ELIZABETH "LISA" HERNANDEZ** for State Representative 24th District, State of Illinois in the March 20, 2012 Primary Elections.

I. INDIVIDUALS PRESENT

June A. Brown	Hearing Officer
Geneva Morris	Clerk, CBOE
Daniel Berkovitz	Observer (friend of Objector(s))
Michael Kasper	Counsel for Elizabeth "Lisa" Hernandez, <i>Candidate for State Representative 24th District, State of Illinois.</i>

II. FINDING OF FACT

1. This matter first came before the hearing examiner on December 19, 2011. The case was called on or about 1:30 p.m and set for this hearing date of December 23, 2011 at 10:00a.m. The December 23, 2011 hearing for the MOTION TO STRIKE AND DISMISS was called to order on or about 10:18 a.m.
2. The Candidate, **ELIZABETH "LISA" HERNANDEZ**, appeared by Counsel, Owen Brue, (*for Atty. Michael Kasper*) on December 19, 2011 and by Counsel, Atty. Michael Kasper on December 23, 2011 for the MOTION TO DISMISS hearing.
3. The Objector(s), **KEVIN WUNDER AND DAVID MIRANDA**, appeared Pro Se at the initial hearing on December 19, 2011, but neither objector appeared for the December 23, 2011, MOTION TO DISMISS hearing. For the record, the Objector(s) were told that they would have to either be present or have *legal counsel represent them at the December 23, 2011 hearing. Neither the Objectors nor legal counsel appeared for the hearing. A non-legal representative, Daniel Berkovitz, did attend the hearing and stated that he understood that he could not represent the interest of the Objector(s), KEVIN WUNDER AND DAVID MIRANDA.* The matter presented with Michael Kasper, legal counsel for Candidate, **ELIZABETH "LISA" HERNANDEZ**.

4. The legal counsel for the Candidate, **ELIZABETH "LISA" HERNANDEZ, Michael Kasper**, proceeded with his presentation of the written motion that the Objector(s), **KEVIN WUNDER AND DAVID MIRANDA**, lacked the requisite standing to Object to the Candidacy of **ELIZABETH "LISA" HERNANDEZ**, because neither Objector was a resident of the 24th District.
5. The written motion was provided to the parties and Hearing Officer via email and there was no response to the Motion from the Objector(s) **KEVIN WUNDER AND DAVID MIRANDA** and the information is not **CONTESTED**.
6. The written motion referenced and the Hearing Officer reviewed the addresses of the Objectors from the NOTICE OF OBJECTION, dated December 12, 2011 as follows:

Kevin Wunder, 2238 W. 21st Street Apt. 1-F, Chicago, IL 60608

David Miranda, 200 N. Dearborn Ave., Apt. 2802, Chicago, IL 60601
7. The MOTION TO STRIKE AND DISMISS, reviewed by the Hearing Officer provides Chicago Board of Election Voter Registration Records dated December 20, 2011, which show

Kevin Wunder, Objector, as a resident of ***Representative District 2***,

David Miranda, Objector, as a resident of ***Representative District 6***.

III. CONCLUSIONS

The Hearing Officer reviewed the Objection of **KEVIN WUNDER AND DAVID MIRANDA** to the Candidacy of Elizabeth "Lisa" Hernandez *for State Representative 24th District, State of Illinois* and the subsequent Motion to Strike and Dismiss as proffered by the candidate's Legal Counsel, Michael Kasper and heard as Case 12-EB-RGA-014. The Objection clearly states that the address of Kevin Wunder is 2238 W. 21st Street Apt. 1-F, Chicago, Il 60608, ***geographically located in Representative District 2***; David Miranda, 200 N. Dearborn Ave., Apt. 2802, Chicago, Il 60601, ***geographically located in Representative District 6***, which are both, **IN FACT, outside of the 24th Representative District involving the Candidate, ELIZABETH "LISA" HERNANDEZ.** The Election Code requires that the Objector(s) satisfy certain residency requirement to possess **STANDING** to bring an Objection. Specifically, Section 10 ILCS 5/10-8 states, in relevant part, *An Objector must be a: "...a legal voter of the political subdivision or district in which the Candidate ... is to be voted on"* Where objector's petition states objector's residence at an Evanston address that is not within the district in which the candidate is running and objector admits living there, he lacked standing to file objection. *Cobb v. Colvin*, 08-EB-RGA-32, CBEC, December 7, 2007. Where objector challenges the nomination papers for a candidate for ward committeeman in the 9th Ward of the city of Chicago but lists his residence address in Berwyn, Illinois, he lacks the requisite residency qualifications to file objections in that section 10-8 of the Election Code requires that an objector be a "legal voter of the political subdivision or district in which the candidate ... is to be voted on" *Mayers v. Holmes*, 08-EB-WC-01, CBEC, November 25, 2007.

The Hearing Officer would have considered the matter and adjusted as appropriate. However, with no notification of the Objector being present, the candidate having waited and been involved in a second case AND because there was AMPLE opportunity to at least file an Appearance in the Case: 12-EB-RGA-014, while the candidate, **ELIZABETH "LISA" HERNANDEZ** was still present, to do less than DEFAULT in this matter would not be fair and in the best interest of justice.

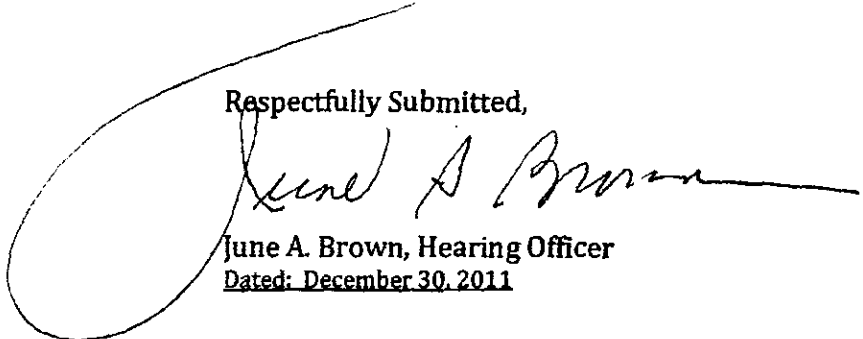
The Electoral Board's scope of authority is limited to determining whether a challenged nominating petition complies with the provisions of the Election Code and where the language of the statute is plain, and electoral board is without authority to decide constitutional issues. *Oberg v. Schreiner*, 96-EB-NPP-1, CBEC, September 10, 1996; *Oberg v. Haring*, 96-EB-NPP-2, CBEC, September 10, 1996; *Crawley v. Haring*, 96-EB-NPP-3, CBEC, September 10, 1996; *Slywczuk v. Travis*, 96-EB-NPP-5, CBEC, September 10, 1996; *Waldron v. Jacobson*, 96-EB-NPP-6, CBEC, September 10, 1996; *Hernandez v. Shober*, 96-EB-NPP-7, CBEC, September 10, 1996; *Harry v. Ray*, 96-EB-NPP-8, CBEC, September 10, 1996. Furthermore, the law is settled that the Hearing Officer is only authorized to act within the scope of authority granted by the Electoral Board and is strictly limited to reporting findings of fact and making recommendations as to whether a Nominating Petition and/or an Objection to said Nominating Petition complies with the statutory provisions of the Election Code.

Upon a review of the official record, all proffered documents and presentations, and after affording all parties the opportunity to fully participate in this matter, the Hearing Officer stated on the Record that it would be her recommendation to the Electoral Board that it grant the MOTION to STRIKE and DISMISS the Objection of Kevin Wunder and David Miranda. Further she stated that the Objector(s) FAILED to comply with the Election Code, Section 10-8, in that BOTH Objectors lacked the requisite STANDING to bring the Objection, because BOTH Objectors "lacked the required RESIDENCY" in the 24th Representative District. There are no other matters at issue in Case: 12-EB-RGA-014 and the Hearing Officer concluded the case.

IV. RECOMMENDATION

For the foregoing reasons, the Hearing Officer recommends to the Chicago Board of Elections that it adopts the above findings, decisions and recommendations, specifically, the Candidate's Motion to Strike the Objections of **KEVIN WUNDER & DAVID MIRANDA**, because the Objector(s) *lacked the requisite standing due to a lack of residency as required by Section 10-8 of the Illinois Election Code*. It is also recommended that the name of the Candidate, **ELIZABETH "LISA" HERNANDEZ**, appear and be printed on the ballot for the election to the office of State Representative 24th District, State of Illinois, to be voted upon in the March 20, 2012 Primary Elections.

Respectfully Submitted,



June A. Brown, Hearing Officer

Dated: December 30, 2011