

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

Objections of: Felix Cardona and Luis G. Collazo)
Collazo)
)
To the Nomination) No.: 14-EB-CON-01
Papers of: Jorge Gerardo Zavala)
)
Candidate for the nomination of the)
Democratic Party for the office of)
Representative in Congress of the 4th)
Congressional 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 Felix Cardona and Luis G. Collazo (“Objectors”) to the nomination papers (“Nomination Papers”) of Jorge Gerardo Zavala, candidate for the nomination of the Democratic Party for the office of Representative in Congress of the 4th Congressional District of the State of Illinois (“Candidate”) at the General Primary Election to be held on March 18, 2014, having convened on December 16, 2013, at 9:00 a.m., 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 was held on these Objections commencing on December 16, 2013 and was continued from time to time.

5. The Electoral Board assigned this matter to Hearing Officer Kelly McClosky Cherf for further hearings and proceedings.

6. The Objectors 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 Objectors, Felix Cardona and Luis G. Collazo by their attorney, Thomas A. Jaconetty; and the Candidate, Jorge Gerardo Zavala, by his attorney, Andrew Finko.

7. The Candidate filed a motion to strike and dismiss all or parts of the Objector's Petition. Upon consideration of the briefs and arguments of the parties, the Hearing Officer granted in part and denied in part the Candidate's motion to strike and dismiss.

8. 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.

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

10. The Candidate and/or his duly authorized representative was present during the examination of the registration records.

11. The Objectors and/or their duly authorized representative were 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 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.

13. 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 686.

B. The number of purportedly valid signatures appearing on the nominating petition filed by the Candidate total 1,439.

C. The number of signatures deemed invalid because of objections sustained as a result of the records examination total 597.

D. The remaining number of signatures deemed valid as a result of the records examination total 842.

14. 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 the nomination of Democratic Party to the office of Representative in Congress for the 4th Congressional District of the State of Illinois.

15. Following the completion of the records examination, the Objectors did not file any motion under Rule 8 of the Board's Rules of Procedure appealing the findings made at the records examination.

16. 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 842 valid signatures, which exceeds the minimum number of valid signatures required by law to be placed upon the ballot as a candidate of the Democratic Party for the office of Representative in Congress for the 4th Congressional District of the State of Illinois, and that the Candidate's Nomination Papers should be found valid.


17. 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. A copy of the Hearing Officer's Report and Recommendation is attached hereto and incorporated herein.

18. 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 Jorge Gerardo Zavala are, therefore, valid.

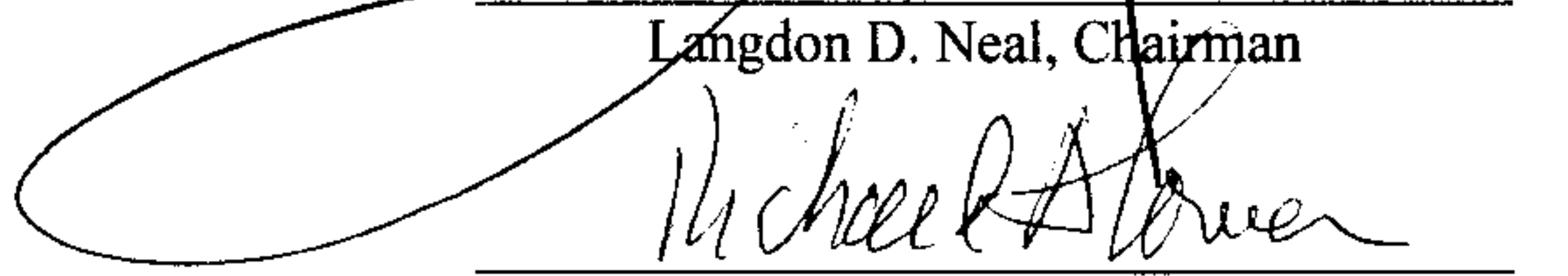
IT IS THEREFORE ORDERED that the Objections of Felix Cardona and Luis G. Collazo to the Nomination Papers of Jorge Gerardo Zavala, candidate for nomination of the Democratic Party for the office of Representative in Congress for the 4th Congressional District of the City of State of Illinois, are hereby OVERRULED and said Nomination Papers are hereby declared VALID and the name of Jorge Gerardo Zavala, candidate for nomination of the Democratic Party for the office of Representative in Congress for the 4th Congressional District

of the City of State of Illinois, SHALL be printed on the official ballot for the General Primary Election to be held on March 18, 2014.

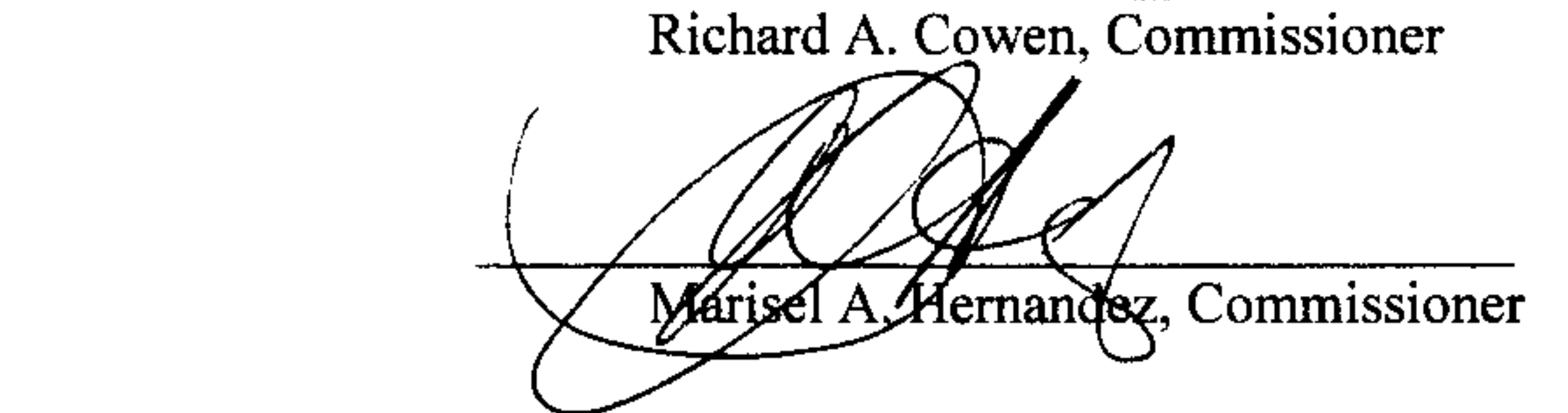
Dated: Chicago, Illinois, on January 6, 2014.



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**

Objections of: Felix Cardona)
and Luis G. Collazo)
)
To the Nomination Papers of:)
Jorge Gerardo Zavala)
) No. 14 EB-CON-01
Candidate for Nomination for the)
Democratic Party for U.S. Representative)
In Congress for the 4th Congressional)
District of the State of Illinois)

BOARD OF ELECTIONS
COMMISSIONER

2013 DEC 26 A 11: 26

HEARING EXAMINER'S REPORT AND RECOMMENDATION

This matter coming before the duly constituted Electoral Board, consisting of the Chicago Board of Election Commissioners, and before the undersigned Hearing Examiner, the Hearing Examiner hereby makes the following Report and Recommendation:

PRELIMINARY FACTS

1. The Candidate timely filed Nomination Papers as a Candidate for Nomination for the Democratic Party for U.S. Representative in Congress for the 4th Congressional District of the State of Illinois. Such Nomination Papers consist of: a) Statement of Candidacy; b) Statement of Economic Interests; c) Loyalty Oath; and d) Nomination Petition Sheets.

2. The Objectors' Petition to the Nomination Papers of the Candidate was timely filed on December 9, 2013. In the Petition, the Objectors attach an Appendix-Recapitulation and allege that the petition pages contain: a) names of persons who are not registered voters at the address shown opposite their names; b) name of persons who are not located within the boundaries of the 4th Congressional District; c) signatures which are not genuine; d) names of persons who signed the petition papers more than once; and e) "other" deficiencies which Objector claims is described in the Appendix-Recapitulation (although none of the objections marked as "other" set forth any reasons in the Appendix-Recapitulation). The Objectors make the following additional allegations regarding the circulator's affidavits: a) the name of the circulator does not appear in the notarization of various circulator affidavits; and b) all of the circulator affidavits fail to contain a statement or certification that the signers of the petition were voters of the 4th Congressional District 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 certified mail or by Sheriff's service, as provided by statute.

4. The initial hearing on these Objections was called on December 16, 2013. Andrew Finko appeared on behalf of the Candidate. Thomas Jaconetty appeared on behalf of the Objectors.

5. Board exhibits were marked as follows: a) Group Exhibit A consists of the Statement of Candidacy, Statement of Economic Interests, Loyalty Oath and Nominating Petition sheets numbered 1 - 96; b) Group Exhibit B consists of Objectors' Petition and the Appendix-Recapitulation sheets numbered 1 - 96; c) Group Exhibit C consists of the proof of service of the Call to the Objectors and the Candidate; and d) Group Exhibit D consists of the Appearance forms filed by the Objectors and the Candidate.

6. At the hearing, the Candidate requested the opportunity to file a Motion to Strike Objectors' Petition. A briefing schedule was set pursuant to the Rules of Procedure for the Board of Election Commissioners of the City of Chicago. Oral argument on the Motion to Strike was set for December 20, 2013.

CANDIDATE'S MOTION TO STRIKE

The Parties' Arguments

7. For his Motion to Strike, the Candidate argues that the Objection does not fully state the nature of the objection pursuant to 10 ILCS §5/10-8 in that: a) the Appendix-Recapitulation sheets do not identify the Candidate; b) the Appendix-Recapitulation sheets do not reference the columns by letters (*i.e.*, "(A), (B), (C), (D)") as referenced in the Petition; c) the "Signer not proper person and not genuine" objection does not state the nature of the objection; d) the Appendix-Recapitulation sheets do not identify the location at which signer "signed petition twice;" d) the "other" column in the Appendix-Recapitulation sheets do not identify the specific reason for the objection; f) there are objection marks in an unidentified column of the Appendix-Recapitulation sheets; and g) the Appendix-Recapitulation sheets fail to identify specific page numbers for the circulator affidavit objection and the objection regarding the failure to name the circulator in the notarization. The Candidate also argues that the language used for the circulator's affidavit which does not identify the district does comply with 10 ILCS §5/7-10. Finally, the Candidate contends that there is objector fraud because the address listed for Mr. Cardona on the instant Petition is different that the address listed in another objector's petition.

8. For his Response, the Objector argues: a) the objections set forth in the Petition and the Appendix-Recapitulation apprise the Candidate of the nature of the objections and to the extent the election authority clerks are unable to understand the allegation, the allegation will be overruled; and b) there is no objector fraud in that there are two Felix Cardona's (a father and son) who live at two different addresses and who are objectors in two different cases. The Objector does not refute the Candidate's

argument regarding the circulator's affidavit and its substantial compliance with 10 ILCS §5/7-10.

9. For his Reply, the Candidate argues that the Objectors "concede most points." The Candidate also argues (for the first time) that the Election Board adopts a liberal construction of notary requirements and there is no requirement in 10 ILCS §5/7-10 that the name of the circulator appear on the notary block.¹

Recommendations on the Candidate's Motion to Strike

With the Exception of Four (4) Objections, The Objectors' Petition States the Nature of the Objection.

10. Section 10-8 of the Election Code provides in relevant part that the objector's petition "shall state fully the nature of the objections to the . . . nomination papers or petitions in question . . ." 10 ILCS §5/10-8. Under the Election Code, an objection petition must adequately and sufficiently apprise the candidate of the specificity of each objection making an evaluation possible. *See Elysee v. Patterson*, 04-EB-RGA-14, January 20, 2004.

11. With the exception of four (4) objections, the objections set forth in the Petition satisfy 10 ILCS §5/10-8. The Appendix-Recapitulation sheets are attached to the Petition so it is clear that they address the nomination sheets of the Candidate. The columns identified in the Appendix-Recapitulation clearly identify the objection, notwithstanding the missing letter designations. The "signer not proper person and not genuine" objection, which is identified in the third column of the Appendix-Recapitulation is clearly explained in paragraph 5 of the Petition as "the names of . . . persons who did not sign the said nomination papers in their own proper persons and . . . said signatures are not genuine." Therefore I recommend that Motion to Strike with regard to the foregoing objections be denied.²

12. The Candidate is correct that the certain objections do not satisfy 10 ILCS §5/10-8 for the following reasons: a) the Appendix Recapitulation sheets do not identify the location at which signer "signed petition twice;" b) the "other" column in the Appendix Recapitulation sheets do not identify the specific reason for the objection; c) there are objection marks in an unidentified column of the Appendix-Recapitulation

¹ In his motion to strike, the Candidate does not address the viability of the objection that the circulator's name does not appear in the notarization. Instead, the Candidate argues that the objection does not comply with 10 ILCS §5/10-8 because Objectors fail to specify the page numbers for this objection. Since the Candidate is correct that the objection should be stricken because the Petition and the attached Appendix-Recapitulation sheets fail to specify the nomination pages for this objection (*infra* at ¶12), I will not address the substantive argument regarding this objection.

² The Candidate also argues that the objection regarding the defective circulator affidavit fails to comply with 10 ILCS §5/10-8 since Objectors fail to identify the specific sheets. The Objectors do identify the specific sheets as their Petition states: "on each and every petition signature [sheet] . . ." (Objectors' Petition at ¶ 9). However, as set forth below, this objection should be stricken for other reasons. (*infra* at ¶¶13-17)

sheets; and d) the Appendix Recapitulation sheets fail to identify specific page numbers for the objection regarding the failure to name the circulator in the notarization. However, as pointed out by the Objectors, with regard to the foregoing non-circulator objections, the board of election clerks will most likely not rule on said objections or overrule the objections at the records examination. With regard to the failure to name the circulator in the notarization objection (Objectors' Petition at ¶ 8), I recommend that it be stricken on the grounds that the Objectors fail to identify the nomination sheets for this objection.

The Election Code Does Not Require That The Circulator Affidavit Includes a Statement that the Signers of the Petition Were Voters of the 4th Congressional District.

13. 10 ILCS §5/7-10 sets forth the following requirement for the circulator's affidavit: "At the bottom of each sheet of such petition shall be added a circulator statement . . . certifying that to the best of his or her knowledge and belief the persons so signing were at the time of signing the petitions qualified voters of the political party for which a nomination is sought." 10 ILCS §5/7-10. 10 ILCS §5/7-10 also states that the nomination petitions shall include the following statement by the circulator in substantially the following form:

I,, do hereby certify that I reside at No. street, in the of, county of, and State of, that I am 18 years of age or older, that I am a citizen of the United States, and that the signatures on this sheet were signed in my presence, and are genuine, and that to the best of my knowledge and belief the persons so signing were at the time of signing the petitions qualified voters of the Party, and that their respective residences are correctly stated, as above set forth.

14. All of the circulators' affidavits on the Candidate's nomination sheets include the following statement:

I, [Circulator's name] do hereby certify that I am 18 years of age or older and am a citizen of the United States, that I reside at [address], that I am 18 years of age or older, that I am a citizen of the United States, and that the signatures on this sheet were signed in my presence and are genuine, and that to the best of my knowledge and belief, the persons so signing were, at the time of the signing the petition, duly qualified and registered voters of the DEMOCRATIC PARTY in the County of Cook and State of Illinois, and that their respective residences are correctly stated as above set forth. I further certify that none of the signatures on this sheet were signed more than 90 days preceding the last day for the filing of this petition.

15. The statement in each one of the circulator's affidavits is nearly identical to the form provided for in the Election Code.

16. In their Response, the Objectors “make no further answer regarding [this objection] in light of the Candidate’s argument of ‘substantial compliance.’” See Response at p. 5.

17. Accordingly, I recommend that the Candidate’s Motion to Strike be granted with regard to the objection that the circulator’s affidavit must include language that the signers of the petition were voters of the 4th Congressional District. (Objectors’ Petition at ¶ 9).

There is No Objector Fraud

18. An objector who provides a different address on two different Objector Petitions does not on its own support an allegation of “objector fraud.” Moreover, as pointed out by the Objectors, there are two Felix Cardona’s – a father and a son – who have two different addresses and who are the objectors in the two different cases. At the hearing on December 20, 2013, the Candidate did not provide any additional evidence on this issue.

19. I recommend that the Candidate’s Motion to Strike be denied with regard to the Objector fraud allegation.

RECORDS EXAMINATION

20. The Records Examination commenced on December 17, 2013 and was completed on December 22, 2013. Notice of the record examination results was served on both parties on December 22, 2013.

21. The Candidate needed 686 signatures to be on the ballot. The Candidate submitted 1,439 signatures. There were Objections to 861 signatures. 597 objections were sustained leaving 842 valid signatures which is 156 signatures greater than the required signatures. The Candidate appealed 551 findings, and the Objectors appealed 310 findings.

22. The Objectors did not file a Rule 8 Motion.

CONCLUSION

23. The hearing examiner recommends the following: a) the Candidate’s Motion to Strike be granted with regard to the circulator affidavit objection; b) the Candidate’s Motion to Strike be denied with regard to the objection fraud argument; c) the Candidate’s Motion to Strike be granted in part and denied in part with regard to the failure to state the nature of the objection argument for the reasons set forth herein; and d) that the name of Jorge Gerardo Zavala be printed on the ballot for nomination for the Democratic Party for United States in Congress for the Fourth (4th) Congressional District of the State of Illinois.

Date: December 26, 2013



Kelly McCloskey Cherf
Hearing Officer