

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

Objections of: Guadalupe Silva)
and Jennifer Reft)
)
To the Nomination) No.: 14-EB-CON-03
Papers of: Luis V. Gutierrez)
)
Candidate for the nomination of the)
Democratic Party for the office of)
Representative in Congress for 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 Guadalupe Silva and Jennifer Reft (“Objectors”) to the nomination papers (“Nomination Papers”) of Luis V. Gutierrez, candidate for the nomination of the Democratic Party for the office of Representative in Congress for 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 held on these Objections commenced 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'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, Guadalupe Silva and Jennifer Reft, by their attorney Andrew Finko; the Candidate, Luis V. Gutierrez, by his attorney, Thomas A. Jaconetty.

7. The Candidate filed a motion to strike and dismiss the Objector's Petition.

8. The Hearing Officer denied the Candidate's motion to strike the Objector's Petition contending that Objectors lacked standing to file objections. The Hearing Officer, however, granted the Candidate's motion to strike regarding the contention that the Candidate failed to state a valid office in his Nomination Papers.


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 overruled 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.

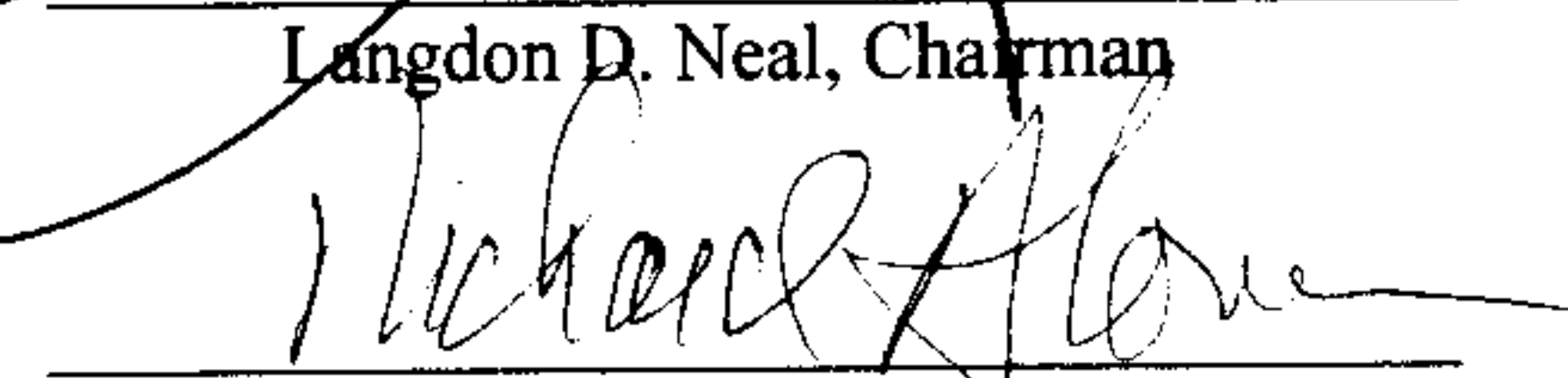
11. For the reasons stated above, the Electoral Board overrules and dismisses the Objections to the Candidate's Nomination Papers and finds that the Candidate's Nomination Papers are valid.

IT IS THEREFORE ORDERED that the Objections of Guadalupe Silva and Jennifer Reft to the Nomination Papers of Luis V. Gutierrez, candidate for the nomination of the Democratic Party for the office of Representative in Congress for the 4th Congressional District of the State of Illinois, are hereby OVERRULED and DISMISSED and said Nomination Papers are hereby declared VALID and the name of Luis V. Gutierrez, candidate for the nomination of the Democratic Party for the office of Representative in Congress for the 4th Congressional District of the State of Illinois, SHALL be printed on the official ballot for the General Primary Election to be held on March 18, 2014.

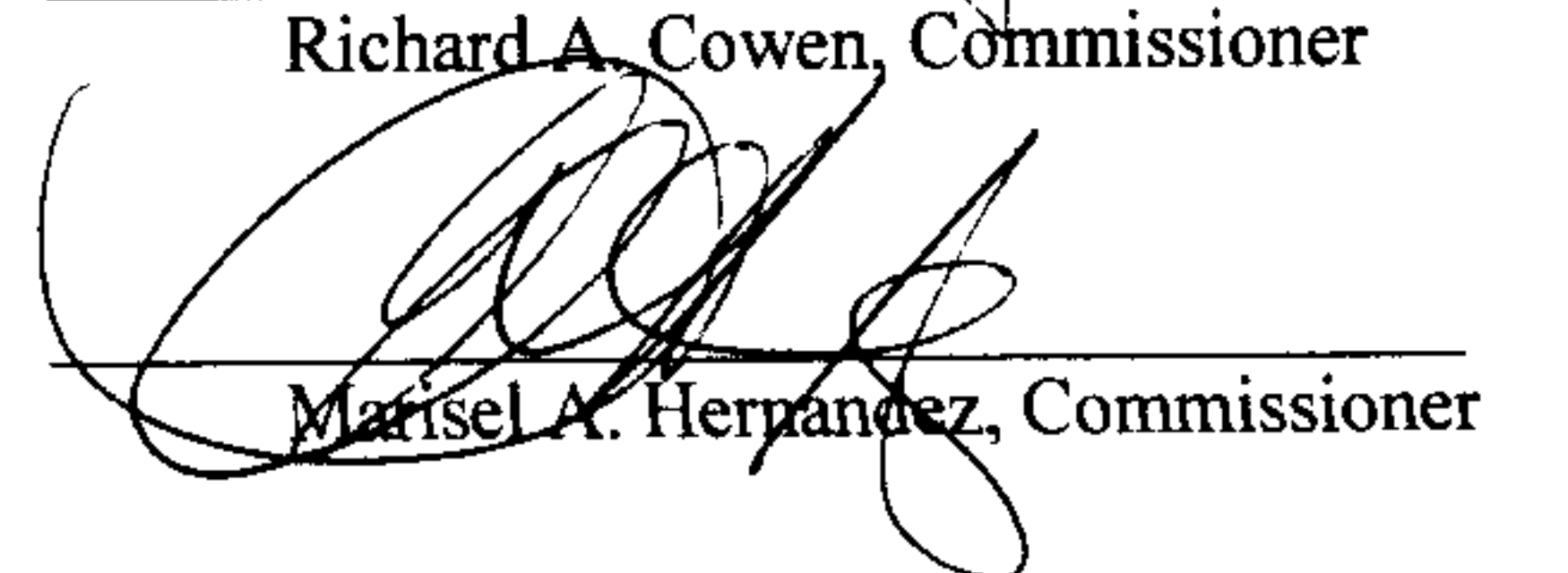
Dated: Chicago, Illinois, on January 6, 2014.



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: Gaudalupe Silva)
and Jennifer Reft)
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To the Nomination Papers of:)
Luis V. Gutierrez)
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Candidate for Nomination for the)
Democratic Party for U.S. Representative)
In Congress for the 4th Congressional)
District of the State of Illinois)

No. 14 EB-CON-03

BOARD OF ELECTIONS
COMMISSIONER

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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) Loyalty Oath; and c) 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 allege that the Candidate's Nomination Papers do not comply with 10 ILCS §5/7-10 because they do not state a valid office that is to be voted upon at the March 18, 2014 primary election. The Objectors argue that the Nomination Papers state that the Candidate is seeking nomination to the office of "Representative of the Congress of the State of Illinois for the 4th Congressional District" which the Objectors contend is not a defined office. The Objectors point out that "there are similar offices that are currently up for nomination of candidates . . . including Representatives in the Illinois General Assembly, which many people believe is the 'Congress of the State of Illinois' and also has a 4th District in Illinois . . . and is currently held by Rep. Cynthia Soto." Objectors' Petition at ¶ 3.

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. Thomas Jaconetty appeared on behalf of the Candidate. Andrew Finko appeared on behalf of the Objectors.

5. Board exhibits were marked as follows: a) Group Exhibit A consists of the Statement of Candidacy, Loyalty Oath and Nominating Petition Sheets numbered 1 - 96; b) Group Exhibit B consists of Objectors' Petition; 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 served the Objectors with 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.

THE CANDIDATE'S MOTION TO STRIKE

The Parties' Arguments

7. For his Motion to Strike, the Candidate initially argues that the Objectors' Petition should be dismissed for lack of standing under 10 ILCS §5/10-10 because: a) Guadalupe Silva is not a registered voter at the address identified in the Objectors' Petition; and b) Jennifer Reft, the other Objector, did not sign or verify the Objectors' Petition. The Candidate further argues that the Objectors' substantive allegations fail since the description of the Candidate's office in the Candidate's Nomination Papers is legally sufficient under 10 ILCS §5/7-10 and does state a valid office to be voted upon at the primary election. The Candidate points out that the office described in the Nomination Papers is "Representative in Congress for the State of Illinois for the Fourth (4th) Congressional District" and not "Representative in *the* Congress for the State of Illinois for the Fourth (4th) Congressional District," as the Objectors contend. The Candidate, citing to various Articles and Sections of the U.S. Constitution, argues that a designation to Congress, or "the Congress," is reflected throughout the text of the U.S. Constitution. The Candidate also cites to various provisions of the Illinois Election Code for references to "Congress" or "congressional."

8. For their Response, the Objectors attach the voter registration card of Guadalupe Silva which includes the same address identified in the Objectors' Petition. The Objectors also argue that there is no requirement in 10 ILCS §5/10-8 that an objector needs to sign the objector's petition or verify its content. For the failure to state a valid office argument, the Objectors argue that the Candidate's Nomination Papers indicate that he was running for state office (i.e. "the Congress of the State of Illinois) and not running for U.S. Representative (i.e., "the Congress of the United States") and that the Candidate's choice of wording for the description of the office that he is seeking is confusing to voters and is in violation of the Election Code's requirement to state the office sought (10 ILCS §5/7-10).

9. For his Reply, the Candidate does not provide any additional evidence or argument on the standing issue. For the failure to state a proper office issue, the Candidate lists the various names of what the states call their legislative bodies (i.e., “Legislature,” “General Assembly,” “State Legislature,” “Legislative Assembly,” “General Court”) to demonstrate that no state designates its legislative body as “Congress” or “the Congress.”

Recommendations on the Candidate’s Motion to Strike

The Objectors Have Standing to Bring the Objectors’ Petition.

10. In his Motion to Strike, the Candidate raises as an affirmative defense that the Objectors do not have standing under the Election Code to bring the Objectors’ Petition. The standing argument fails in the first instance because even if Guadalupe Silva does not have standing, the Candidate concedes that the second objector, Jennifer Reft, does have standing. The Candidate’s only argument with regard to Ms. Reft is that she did not sign or verify the Petition. However, as correctly pointed out by the Objectors in their Response, there is no requirement in 10 ILCS §5/10-8 that an objector needs to sign the objector’s petition or verify its content. *See Davis v. Reed*, 04-EB-WC-81, February 6, 2004. Accordingly, I recommend that the Candidate’s Motion to Strike with regard to the standing argument be denied.¹

The Candidate’s Nomination Papers Do Properly State a Valid Office

11. The Objectors contend that the Candidate failed to properly designate the office of U.S. Representative in Congress because the Nomination Papers, and specifically, the first paragraph on each nomination sheet, references the office as “Representative in Congress of the State of Illinois for the Fourth (4th) Congressional District.”

12. In his Motion to Strike memoranda, the Candidate cites to authority (*i.e.* the U.S. Constitution and the Election Code) which demonstrates that the term “Congress” or “the Congress” is recognized as the legislative body for the United States. The Candidate specifically points out that throughout the text of the U.S. Constitution, the legislative body for the United States is referred to as Congress. *See generally*, Article 1, Section 4 (elections); Article 1, Section 8 (powers granted); Article I, Section 9 (powers denied); Article 1, Section 10 (import and export duties); Article II, Section 3

¹ With regard to Ms. Silva, the Candidate’s argument is that Ms. Silva “signed a false verification in that she is not a registered voter” at the address listed in the Objectors’ Petition, and as sole support for this argument, contends that a “computer inquiry of the website for the Board of Election Commissioners of the City of Chicago on Saturday, December 14, 2013 at approximately 3:00-3:10 p.m.” disclosed that Ms. Silva was not listed as a registered voter at the address listed in the Petition. *See* Motion to Strike at p. 1. In their Response, the Objectors provide a copy of Ms. Silva’s voter registration card which shows that Ms. Silva is a registered voter at the address identified in the Objectors’ Petition. The certified copy of Ms. Silva’s voter registration was marked as Exhibit 1 and entered into evidence at the December 20, 2013 hearing. No additional evidence was provided by the Candidate. Therefore, I also recommend that the Motion to Strike with regard to Ms. Silva’s standing be denied.

(annual presidential address); Article IV, Section 1 (full faith and credit); Article IV, Section 3 (admission of new states); Article V (amendment). *See* Candidate's Motion to Strike at p. 3. The Candidate also identifies the names of the legislative body for various states – none of which are identified as "Congress" but instead, are identified as "Legislature," "General Assembly," "State Legislature," "Legislative Assembly" and "General Court." *See* Candidate's Reply at p. 2.

13. The Objectors do not refute these citations and do not cite to any authority that references Illinois' legislative body as Congress or "the Congress." Moreover, the Objectors have not submitted any evidence that demonstrates voter confusion regarding the description of Candidate's office in his Nomination Papers. The Objectors simply argue that "many people believe" the "Illinois General Assembly" to be the "Congress of the State of Illinois."

14. The Candidate's description in the first paragraph of the nomination sheets and the statement of candidacy refers to "Congress" and the "Fourth (4th) Congressional District." Given the authority provided by the Candidate and the lack of any authority or evidence to support the Objectors' argument that "Congress" may also refer to Illinois' legislative body, I believe that the "Representative in Congress of the State of Illinois for the Fourth (4th) Congressional District" accurately describes the office for which the Candidate is seeking office.

15. Notwithstanding the foregoing, it also is noteworthy that above the first paragraph and at the top of each one of the Candidate's petition papers is the following language: **"UNITED STATES REPRESENTATIVE IN CONGRESS"**

16. When asked about this **"UNITED STATES REPRESENTATIVE IN CONGRESS"** language at the oral argument on December 20, 2013, the Objectors argued that the language was superfluous and that the first paragraph on the nomination sheets is the only language the Election Board should review for purposes of determining whether the office was properly described.

17. I disagree. Section 7-10 of the Election Code states that the petition for nomination shall be "in substantially the following form." Following the form, Section 7-10 states: "Each sheet of the petition other than the statement of candidacy and candidate's statement . . . shall contain above the space for signatures, an appropriate heading giving the information as to name of candidate or candidates, in whose behalf such petition is signed; the office, the political party represented and place of residence . . ." 10 ILCS 5/7-10.

18. Since **"UNITED STATES REPRESENTATIVE IN CONGRESS"** is part of the "heading" and also "above the space for signatures," it should be included in the board's review in determining whether the Candidate's Nomination Papers state a valid office in accordance with 10 ILCS §5/7-10. This all caps, all bold language clearly

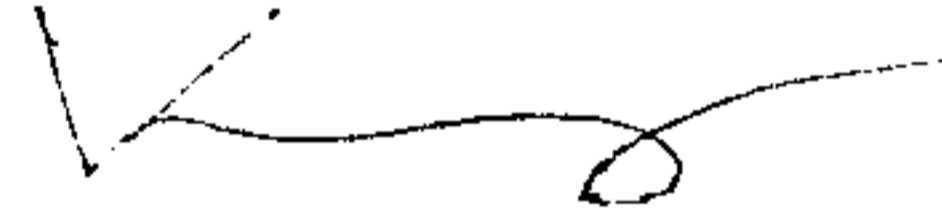
specifies that the Candidate is seeking nomination for United States Representative in Congress.²

19. For the foregoing reasons, I recommend that the Motion to Strike the objection for failure to designate a valid office be granted and the Objectors' Petition be dismissed in its entirety.

CONCLUSION

20. I recommend the following: a) the Candidate's Motion to Strike the Objectors' Petition should be denied with regard to the standing argument; b) the Candidate's Motion to Strike the Objectors' Petition should be granted with regard to the argument that the Candidate failed to state a valid office in his Nomination Papers; c) the Objectors' Petition should be dismissed in its entirety; and d) the name of Louis V. Gutierrez be printed on the ballot for nomination for the Democratic Party for United States Representative in Congress for the Fourth (4th) Congressional District of the State of Illinois.

Date: December 21, 2013



Kelly McCloskey Cherf
Hearing Officer

² At oral argument, the Objectors argued that the "UNITED STATES REPRESENTATIVE IN CONGRESS" language at the top of each petition page most likely was covered up by the clip of the clipboard that most people use in gathering signatures. However, no evidence was offered to support this argument.