NBCON

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

Objections of: Laura Harney	)	
	)	
	)	
To the Nomination	)	No.: 12-EB-RES-14
Papers of: Ricardo A. Fernandez	)	
	)	
Candidate for the nomination of the	)	
Republican Party for the office of	)	
Representative in the General Assembly for the	)	
35th 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 Laura Harney ("Objector") to the nomination papers ("Nomination Papers") of Ricardo A. Fernandez, candidate for the nomination of the Republican Party for the office of Representative in the General Assembly for the 35th Representative District of the State of Illinois ("Candidate") at the General Election to be held on November 6, 2012, having convened on September 4, 2012, 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 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 September 4, 2012 and was continued from time to time.

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

6. The Objector 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 Objector, Laura Harney, by attorney Courtney Nottage; the Candidate, Ricardo A. Fernandez, appeared pro se. Subsequently, Michael Kasper filed an appearance on behalf of the Objector and David Ratowitz filed an appearance on behalf of the Candidate.

7. The Hearing Officer has tendered to the Electoral Board his report and recommended decision ("Report"). The Hearing Officer recommends that the Objections to the Candidate's Nomination Papers be overruled and that the Nomination Papers be declared valid.

8. The Hearing Officer notes that the facts in this case, which are thoroughly set forth in paragraph 10 of the Report, are undisputed. The Electoral Board adopts the Hearing Officer's recommended findings of fact as set forth in his Report and will not repeat them in detail here except as they may affect any conclusions of law. In relevant part, the undisputed facts are:

A. After the March 20, 2012 general primary, a vacancy occurred in the nomination of the Republican Party for the office of Representative in the General Assembly for the 35th Representative Committee;

B. The Representative Committee responsible for filling the vacancy in nomination consisted of the Ward Committeemen for the 19th and 21st Wards in the City of Chicago and the Township Committeemen for Orland, Palos and Worth Townships;

C. On August 20, 2012, a meeting of the Representative Committee was scheduled to be held at the Palos County Club, Orland Park, Illinois for the purpose of filling the vacancy in nomination;

D. Notice of the August 20, 2012 meeting was properly given to all members of the Representative Committee;

E. Attending the August 20 meeting were the Township Committeemen for Palos Township (Sean Morrison) and Worth Township (Shaun Murphy), the Candidate and Brent Woods, the "Deputy Committeeman" for Orland Township;

F. Mr. Woods, purporting to act on behalf of the Orland Township Committeeman who was not present at the Meeting, cast a weighted vote of 3,994 votes (or 45% of the total weighted vote for all members of the Committee) for the Candidate;

G. The Palos and Worth Township Committeemen, who together held 30% of the total weighted vote, also cast their votes for the Candidate;

H. Of the votes cast at the August 20 meeting, the Candidate received 75% of the total weighted vote for all members of the Committee; however, if the votes

cast on behalf of the Orland Township Committeeman are deducted, the Candidate would have received only 30%, or less than half, of the total weighted votes.

9. The Objector alleges that (a) the Representative Committee did not have a quorum of the weighted vote present to conduct business, and (b) the Candidate did not receive more than 50% of the Committee's total weighted vote. Objector's Petition, ¶ 10. Because the Committee did not have a quorum present, Objector contends, it could not properly organize pursuant to the Election Code, and because the Candidate received less than 50% of the Committee's total weighted vote, he was not properly selected to fill the vacancy in nomination. Objector's Petition, ¶ 11.

10. The Candidate argues, correctly, that the Election Code contains no specific provision establishing what constitutes a "quorum" for purpose of a representative committee's proceedings. Candidate's Response, ¶ 5.

11. The Candidate also argues, again correctly, that while the Election Code does confer upon each member of a representative committee a weighted vote equal to one vote for each ballot voted in that portion of the member's township or ward, the Code does not contain an express requirement that a candidate selected to fill a vacancy in nomination receive more than 50% of the Committee's total weighted vote in order to be selected. Candidate's Response, ¶ 6.

12. The Candidate contends that, in the absence of any statutory provision, a political party may fill a vacancy in nomination according to the rules and practices of the political party, citing an earlier decision of this Electoral Board in *Rothenberg v. Quirk*, 08-EB-RES-09. Candidate's Response, ¶ 7.

13. The Candidate contends that the 35th Representative District Committee was properly convened, those present voted their shares of the weighted vote and the Candidate received more than 50% of the votes cast. Candidate's Response, ¶ 8.

14. The Hearing Officer suggests (at Report, ¶ 18) that there is no need to decide:

A. Whether or not a physical meeting of the Representative Committee was required to act on the nomination;

B. Whether a "quorum" should be measured by numbers of individual members of the Committee or by their respective weighted votes, or otherwise;

C. What the minimum number or persons or weighted votes to establish a quorum would be; or

D. What, if any, powers or authority a "deputy committeeman" might exercise under these circumstances.

15. The Hearing Officer correctly observes that none of the issues addressed in the preceding paragraph are expressly prescribed or prohibited by the Election Code.

16. The Hearing Officer notes that all of the members of the Representative Committee had notice of the August 20 meeting to nominate a candidate, that they acted upon that nomination (presumably by either attending or not attending, as the case may be), and that their actions (or inactions, as the case may be) were "regularly and sufficiently memorialized in writing by persons where unquestionably members of the District Committee." The Hearing Officer further concluded that, in the absence of any evidence of lack of due notice or other irregularity, the Electoral Board has no authority to go behind the written certifications and resolutions of the Committee. In the Hearing Officer's opinion, "those certifications and resolutions, on this record, establish the sufficiency of the nomination of the Candidate." Report,

¶ 19. The Hearing Officer recommends that the Electoral Board find that the Candidate's nomination papers are sufficient in law and fact.

17. It appears that the Hearing Officer infers, from the absence of express and specific provisions in the Election Code to the contrary, that the Representative Committee here was not required to physically meet and that evidence that the members of the Committee "had channels of communication with each other, and exercised those channels of communication, in sundry ways in addition to, and without regard to, the physical meeting that was held on August 20, 2012" was enough to show that the Committee took proper and sufficient action. Report, ¶ 15. Since the Hearing Officer believes that no physical meeting of the Committee members was required, he concludes that issues regarding "quorum" and proxy voting are immaterial.

18. Perhaps the Hearing Officer is correct. The Electoral Board, however, believes that the legislature, in enacting Sections 8-5, 8-6, 8-17 and 7-61 of the Election Code, contemplated that there be a physical *meeting* of representative committee members to select nominees much like the meeting that is expressly required by Section 8-5 when the representative committee organizes itself. If there was no meeting requirement, why else would the court in *Graham v. State Officers Electoral Board*, 269 Ill.App.3d 609, 646 N.E.2d 1357 (4th Dist. 1995) superimpose a requirement for "notice" to the committee members when no such requirement was expressly provided in the statute. Indeed, the *Graham* court held that "the right to vote, either as a citizen or as a representative of a political organization, is abridged if a person does not have prior notice of a proceeding at which he is entitle to vote, and which affects his or her interests, is to take place" and that the voters of the district represented by the person who "failed to receive any notice the meeting to organize the committee and fill the nomination was going to take place" were "plainly disenfranchised." *Graham*, 269 Ill.App.3d at 612.

19. However, even if a physical meeting is required to fill vacancies in nomination, the Electoral Board finds the Election Code sets no requirement and gives no guidance regarding whether a quorum is necessary and, if so, what might constitute a quorum.

20. Ordinarily, in the absence of a statutory requirement or where the statute is ambiguous, one may resort to the common law. See, e.g., *Village of Oak Park v. Village of Oak Park Firefighters Pension Board*, 362 Ill.App.3d 357, 367, 839 N.E.2d 558 (1st Dist. 2005). "A 'quorum' is the number of assembled members that is necessary for a decision-making body to be legally competent to transact business." *Village of Oak Park*, 362 Ill.App.3d at 367, citing 59 Am.Jur.2d *Parliamentary Law* §9 (2002). "Under common law – a majority of a body constitutes a quorum [citation] and, if a quorum is in attendance, a vote of a majority of those present is sufficient for valid action [citations]." "This common-law rule has been followed in Illinois in the absence of clear statutory expression abrogating it." *Id.*

21. However, the court in the *Village of Oak Park* case applied these common law rules to public, governmental bodies. What distinguishes this case from the *Oak Park* case is that here we are dealing with a political body, not a public body, to which statutes providing rules of governance may not apply. Indeed, we learn from our courts that the right of political parties to make nominations is not a right enumerated in the Constitution, but a political privilege that may be regulated by the legislature, and that "in the absence of such regulation, is exercised in accordance with the will of members of the political party concerned, as that will is expressed through the rules, customs, conventions, or caucuses of such political organizations." *People ex rel. Kell v Kramer*, 328 Ill. 512, 519, 160 N.E. 60, 65 (1928). Indeed, the provisions now found in Sections 7-8(i) and 7-9 of the Code providing that each political committee and its officers shall have the powers usually exercised by such committees and officers not inconsistent with

the Election Code "demonstrate that it was not the intention of the Legislature to take over and regulate all inherent rights and powers existing in political parties, but that, on the other hand, the parties are left to the exercise of those privileges not expressly regulated by the law." 328 Ill. at 520. See also, *Totten v. State Board of Elections*, 79 Ill.2d 288, 293-294, 403 N.E.2d 225 (1980) (a political party possesses certain inherent rights which pertain to the party's internal management and these may be exercised so long as there is no violation of statutory limitations or the constitutional rights of voters).

22. Neither the Objector nor the Candidate has pointed to any statute, party rule or custom that defines in this instance what constitutes a quorum for conducting the business of the representative committee. In the absence of such a statute, party rule or custom it would seem that the 35th District Representative Committee could decide for itself whether it had a sufficient number of members to conduct its business.

23. Assuming, however, that the common law rules articulated in the *Oak Park* case did apply in this instance, the presence of at least three of the five members of the 35th District Representative Committee would have been required to constitute a quorum.

24. There is no dispute that Mr. Murphy and Mr. Morrison, the Township Committeemen of the Palos and Worth Townships, respectively, were members of the 35th District Representative Committee and were present at the August 20 meeting of the Committee. In dispute, however, was the presence and role of Brent Woods.

25. This Electoral Board has previously found that members of a political committee designated by the Election Code to fill vacancies in nomination may vote by proxy. In *Barton v. Evans*, 12-EB-RES-08 (July 10, 2012), this Board held that "the Election Code is silent regarding the methods of voting to be employed by representative and legislative committees in

filling vacancies in nomination under Section 7-61 [of the Code] and in the absence of an express prohibition, the use of proxy voting in such proceedings is nor prohibited nor is it inconsistent with the powers such committees and officers have under Article 7 of the Code."

26. Here, the Republican Organization of Orland Township By-Laws, introduced as Candidate Exhibit 1, specifically provide for the position of "Deputy Committeeman," occupied by Mr. Woods, and states that one of the duties of that position is to "[R]epresent the Committeeman and the Organization at all official meetings, conferences, conventions and other such gatherings, including, but not limited to meetings of the Cook County Central Committee, Illinois State Conventions, meetings of the Illinois Republican Central Committee and regional meetings of Republican Organizations or groups, in the absence of or at the request of the Committeeman." This document seemingly gives the Deputy Committeeman a standing and permanent (at least for the duration of the By-Laws) proxy to represent the Committeeman at all functions at which the Committeeman is authorized to attend but for which the Committeeman is either absent or requests the Deputy Committeeman to act on her behalf.

27. Objector contends that the above-referenced By-Laws do not specifically refer to meetings of the 35th Representative Committee and that while the other types of meetings referred to the By-Laws are "political" gatherings, representative committees do not serve political functions but rather exercise a "public duty" – i.e., filling vacancies in office. The Electoral Board finds that the By-Laws were not limited to just the gatherings or functions enumerate therein, but instead applied to "at all official meetings, conferences, conventions and other such gatherings, including, but not limited to" the meetings enumerated therein. Thus, the By-Laws should be construed broadly. And while the representative committee performs an important function that benefits voters, the committeemen constituting the representative

committee are not public officers; they perform quintessentially political functions. See, *People ex rel. Kell v Kramer*, 328 Ill. 512, 519, 160 N.E. 60, 65 (1928).

28. Here, Woods attended the August 20 meeting of the Representative Committee and testified that in his capacity as Deputy Committeeman for the Orland Township Republican Organization and, in the absence of the Committeeman, he cast the Committeeman's weighted vote in favor of the Candidate. He did so without objection by the Committeeman

29. Because Woods was authorized by the Organization's By-Laws to represent the Committeeman at the August 20 meeting, his presence at such meeting must count toward a quorum. His presence, along with the presence of the Palos and Worth Township Committeemen, met the quorum requirements under common law, assuming such common law requirements apply in this instance.

30. Objector further argues that the measurement of a quorum should be linked to the total weighted vote of the members of the Representative Committee, noting that the two Township Committeeman who did attend the August 29 meeting in person were entitled to only 29.9% of the weighted vote. Objector's Post Hearing Memorandum, p. 6.

31. Indeed, Section 8-6 of the Election Code says that each member of the representative committee shall in its proceedings be entitled to one vote for each ballot voted in that portion of his township or ward in the representative district by primary electors of his party at the last primary at which committeemen were elected. Nothing in these provisions, however, refers to using the members' weighted vote entitlements in establishing a quorum.

32. The Objector has presented no authority to support her contention that a quorum requirement must be predicated upon the weighted vote to which the members of the Representative Committee are entitled under the Election Code.

33. For the foregoing reasons, the Electoral Board overrules the objection that the 35th District Representative Committee did not have a quorum present and that it could not properly organize and conduct business pursuant to the Election Code.

34. Next, the Objector's contends that the Candidate was not elected because he did not receive a majority of the weighted vote of the Representative Committee, after discounting Mr. Woods' vote on the nomination premised upon Objector's argument that Woods had no voting rights because he was not a Committeeman.

35. As noted above, Section 8-6 of the Election Code says that each member of the representative committee shall in its proceedings be entitled to one vote for each ballot voted in that portion of his township or ward in the representative district by primary electors of his party at the last primary at which committeemen were elected. While this statute prescribes how many votes each member of the committee is entitled to cast, it says nothing about how many votes a candidate must receive to earn the nomination. Indeed, for a committee where one or two of the committeeman command the majority of weighted votes, those minority members could effectively frustrate a majority of the committee by not attending or by not voting if the nomination was predicated upon receiving a majority of the weighted vote.

36. In the absence of statutory direction, one could again resort to the common law, as discussed in the *Oak Park* case. In that event, if a quorum is in attendance, a vote of a majority of those present is sufficient for valid action. Here, that would mean that if the Candidate received the vote of a majority of those present, he would win the nomination even if the total number of votes received was less than a majority of the weighted vote. Here, the Candidate received *all* votes cast.

37. Accordingly, the Electoral Board overrules the objection that the Candidate did not win the nomination because he allegedly failed to receive a majority of the total weighted vote of the Representative Committee members.

38. During the proceedings before the Electoral Board, Objector raised an additional objection not originally raised in her petition, arguing that Brent Woods notarized the Candidate's nomination papers in violation of the Illinois Notary Act because he had an interest in the documents he notarized. However, as the Hearing Officer correctly noted, this objection was not in her original Objector's Petition and she was precluded from raising new objections or amending her original petition, citing *Delay v. Board of Election Commissioners*, 312 Ill.App.3d 206, 726 N.E.2d 755 (1st Dist. 2000) and *Reyes v. Bloomingdale Township Electoral Board*, 265 Ill.App.3d 69, 638 N.E.2d 782 (2nd Dist. 1994).

39. The Electoral Board adopts paragraph 13 of the Hearing Officer's Report recommending that this objection may not now be considered.

40. 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 of fact and his recommendation that the Candidate's nomination papers be declared valid; the Hearing Officer's conclusions of law are adopted only to the extent they are not inconsistent with the Electoral Board's Findings and Decision herein. 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.

41. For the reasons stated above, the Electoral Board overrules 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 Laura Harney to the Nomination Papers of Ricardo A. Fernandez, candidate for the nomination of the Republican Party for the office of Representative in the General Assembly for the 35th Representative District of the State of Illinois, are hereby OVERRULED and said Nomination Papers are hereby declared VALID and the name of Ricardo A. Fernandez, candidate for the nomination of the Republican Party for the office of Representative in the General Assembly for the 35th Representative District of the State of Illinois, SHALL be printed on the official ballot for the General Election to be held on November 6, 2012.

Dated: Chicago, Illinois, on September 20, 2012.

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.

BEFORE
THE BOARD OF ELECTION COMMISSIONERS OF THE CITY OF CHICAGO
AS THE DULY CONSTITUTED ELECTORAL BOARD
FOR THE HEARING AND PASSING UPON OBJECTIONS
TO RESOLUTIONS AND NOMINATION PAPERS
OF CANDIDATES FOR ELECTION
TO THE OFFICE
OF STATE REPRESENTATIVE
IN THE THIRTY-FIFTH REPRESENTATIVE DISTRICT
OF THE STATE OF ILLINOIS
IN THE GENERAL ELECTION TO BE HELD
ON NOVEMBER 6, 2012

BOARD OF ELECTIONS
COMMISSIONER
2012 SEP 19 A 9:22

LAURA HARNEY,	)	
	)	
Objector,	)	
	)	No. 12-EB-RES-14
vs.	)	
	)	Hearing Officer Morris
RICARDO A. FERNANDEZ,	)	
	)	
Candidate.	)	

REPORT OF THE HEARING OFFICER

To the Board of Election Commissioners of the City of Chicago:

Hearing Officer JOSEPH A. MORRIS reports as follows:

1. This case presents an objection to the candidacy papers of Ricardo A. Fernandez, who was nominated by the Republican District Committee for the 35th Representative District (hereinafter, "District Committee") to fill a vacancy in nomination arising when the candidate nominated at the 2012 general primary election withdrew from the ballot. The gravamen of the objection is that, when the District Committee acted to nominate the candidate, a quorum of the District Committee was lacking and fewer than a majority of the weighted votes of the District Committee were voted in favor of the nomination.

2. The Objector's Petition was filed with the Illinois State Board of Elections on August 27, 2012, which body referred the matter to this Board for hearing and administrative decision. No issue has been raised as to the timeliness or formal sufficiency of the Objector's Petition.

3. The case came on the call of the Board on September 4, 2012, and was assigned to Hearing Officer Morris for an initial hearing on the same day, which was convened. At that initial hearing the Objector was present by counsel, Courtney Nottage, and the Candidate was present in his proper person. The Candidate requested time in which to engage counsel. That request was granted and the initial hearing was continued to September 6, 2012.

4. The initial hearing herein was held on September 6, 2012. The Objector was present by counsel, Courtney Nottage, and the Candidate was present in his proper person and by counsel, David Ratowitz. The instrument by which the Executive Director of the Illinois State Board of Elections transmitted to this Board both the Candidate's nomination papers and the Objector's Petition was admitted, without objection, into the record of this proceeding as Board Group Exhibit A. The Candidate's nomination papers were admitted, without objection, into the record of this proceeding as Board Group Exhibit A-1. The Objector's Petition was admitted, without objection, into the record of this proceeding as Board Group Exhibit B. The returns of service made by the Sheriff of Cook County, Illinois, upon the Objector and upon the Candidate, and this Board's log of mailings of notices to the parties, were admitted, without objection, into the record of this proceeding as Board Group Exhibit C. Mr. Nottage filed his written appearance, and that of Michael Kasper, as counsel for the Objector and, in open proceedings, served copies thereof upon counsel for the Candidate; Mr. Ratowitz filed his written appearance as counsel for the Candidate and, in open proceedings, served a copy thereof upon counsel for the Objector; and copies of all said written

appearances were admitted, without objection, into the record of this proceeding as Board Group Exhibit D. The Candidate indicated that he wished to file a motion to strike and dismiss the Objector's Petition and a briefing schedule on such motion was established, with the motion to be taken up for decision with the case-in-chief; in the end, however, no motion directed to the Objector's Petition was filed. No issue was raised as to service of process or as to the timeliness and sufficiency of notice to either party of the proceedings.

5. A status hearing was held on September 7, 2012, at which the parties exchanged witness lists; subpoenas *duces tecum* to witnesses were requested by the Objector, approved, and issued; a subpoena was requested by the Candidate, approved, and issued; and a schedule of proceedings culminating in a trial-type hearing to be held on September 14, 2012, was established.

6. Subsequent to the status hearing held on September 7, 2012, and prior to the final pre-trial status hearing that was held on September 12, 2012, the Objector requested the issuance of an additional subpoena *duces tecum*. Notice of the request was duly served upon the Candidate. The Candidate did not object to the issuance of the subpoena *duces tecum*. The subpoena *duces tecum* was approved and issued.

7. A final pre-trial status hearing was held on September 12, 2012. The parties exchanged their respective final lists of witnesses and exchanged exhibits that they intended to use at the trial, save for documents to be brought to the trial by witnesses in response to the parties' subpoenas *duces tecum*, which documents the parties agreed they would discover and inspect for the first time at the trial.

8. An evidentiary hearing was held on September 14, 2012. Both parties were present by counsel: Mr. Kasper and Mr. Nottage for the Objector and Mr. Ratowitz for the Candidate. The

Objector called the following witnesses: Elizabeth Doody Gorman, Sean Morrison, James Parrilli, Shaun Murphy, and Brent Woods. The Objector sought, and was granted, leave to examine each witness as an adverse witness. Each witness was subjected to examination by each party and by the Hearing Officer and to cross-examination and re-examination by each party. The Objector rested. The Candidate called no witnesses and rested. The Objector moved the admission of no exhibits into evidence. The Candidate moved the admission into evidence of Objector's Exhibit No. 2 (purported minutes of the District Committee meeting of August 20, 2012); the Objector objected; and the motion was denied on the ground that an inadequate foundation had been laid for the admission of the exhibit. The Candidate moved the admission into evidence of Candidate's Exhibit No. 1 ("Republican Organization of Orland Township By-Laws, Committeeman Elizabeth Doody Gorman") which motion was granted over the objection of the Objector. The evidentiary record was closed. Oral arguments were heard from both parties. The Candidate submitted a written argument. Both parties were granted leave to file written post-hearing briefs, if desired, by 4:30 p.m. on Saturday, September 15, 2012. The evidentiary hearing ended.

9. On September 15, 2012, the Objector filed a written post-hearing brief. The Candidate elected to file no written post-hearing brief. The case was taken under advisement by the Hearing Officer.

10. The facts are essentially undisputed and the material testimony of each witness was credible and was not inconsistent with, and was uncontradicted by, the testimony of each other witness. Based on the totality of the evidence, including the testimony of the witnesses and the exhibits, the Hearing Officer finds the facts of the case as follows:

a. The 35th Representative District consists of all or parts of the following wards

(of the City of Chicago) and townships, all in Cook County, Illinois:

(1) 19th Ward;
(2) 21st Ward;
(3) Orland Township;
(4) Palos Township; and
(5) Worth Township.

b. At all relevant times, the Republican District Committee consisted, and consists, of the following Committeemen of the wards and townships as shown, who possess, and have the authority to cast, their respective weighted votes as here set forth:

(1) James Parrilli; 19th Ward; 2,227 votes;
(2) Charles Seavers; 21st Ward; 21 votes;
(3) Elizabeth Doody Gorman; Orland Township; 3,994 votes;
(4) Sean Morrison; Palos Township; 1,682 votes; and
(5) Shaun Murphy; Worth Township; 990 votes.

c. The total number of weighted votes possessed by the members of the District Committee is 8,914, and the respective percentages of the total weighted vote that each Committeeman's vote constitutes, rounded to the nearest whole number, is as follows:

(1)	Parrilli	19th Ward	2,227	25%
(2)	Seavers	21st Ward	21	0%
(3)	Gorman	Orland Township	3,994	45%
(4)	Morrison	Palos Township	1,682	19%
(5)	Murphy	Worth Township	990	11%
	Totals:		8,914	100%

d. Brent Woods (hereinafter, "Woods") is a resident of Palos Township. At all relevant times he was and is, the Deputy Committeeman of Palos Township and was appointed to that position by, and serves in that position at the pleasure of, Sean Morrison, the Committeeman of Palos Township. At all relevant times he was, and is, also the Deputy Committeeman of Orland Township and was appointed to that position by, and serves in that

position at the pleasure of, Elizabeth Doody Gorman, the Committeeman of Orland Township.

e. At all relevant times there existed, and there exists, the Republican Organization of Orland Township. It was established by Elizabeth Doody Gorman, the Committeeman of Orland Township. It has by-laws, which were drafted by Woods. The by-laws were adopted by Elizabeth Doody Gorman on June 15, 2006; they were subsequently amended in 2007 and 2009, and the amendments were also approved by Elizabeth Doody Gorman. The by-laws were received into evidence as Candidate Exhibit 1.

f. On July 16, 2012, Steven Williams, the duly nominated Republican candidate for State Representative in the 35th Representative District withdrew his candidacy for such office, creating a vacancy in the nomination of the Republican Party therefor.

g. At some time prior to August 20, 2012, Sean Morrison gave notice by e-mail to each member of the District Committee that a meeting of the District Committee would be held on August 20, 2012, at the Palos Country Club for the purpose of nominating a candidate, *vice* Steven Williams, for State Representative in the 35th Representative District.

h. Elizabeth Doody Gorman intended to attend the meeting of the District Committee to be held on August 20, 2012, but a family emergency involving her parents prevented her from doing so. On or about the day of the meeting she sent an e-mail message (sending a "reply-all" message) to Sean Morrison and everyone else who received Mr. Morrison's notice of the meeting asking that the meeting be rescheduled, but the meeting was not rescheduled. She was aware that Brent Woods, her Deputy Committeeman, attended the meeting and that Mr. Woods took minutes of the meeting.

i. On August 20, 2012, a meeting of the District Committee was convened at the Palos Country Club in Orland Park, Illinois. Present at that meeting were Sean Morrison, Shaun Murphy, Brent Woods, and the Candidate. When the roll was called, Sean Morrison was "present" for Palos Township (1,682 votes); Shaun Murphy was "present" for Worth Township; and Brent Woods answered "present" for Orland Township (3994 votes). Shaun Murphy acted as chairman of the meeting and Sean Morrison acted as its secretary; Brent Woods took minutes of the meeting and was the scrivener who prepared most or all of the documents that were executed at the meeting. No other members of the District Committee and no other persons were in attendance at the meeting.

j. At the meeting, those present adopted a certificate of organization of the District Committee, designating Shaun Murphy as its chairman and Sean Morrison as its secretary and then adopted a resolution nominating the Candidate for State Representative in the 35th Representative District of Illinois. Shaun Murphy signed each instrument as chairman of the District Committee, Sean Morrison signed each instrument as secretary of the District Committee, and Brent Woods, who was and is a notary public, acknowledged the signatures of Messrs. Murphy and Morrison on each instrument.

k. Also on August 20, 2012, the Candidate executed a Declaration of Candidacy and acknowledged his act before Brent Woods as notary public.

l. On August 21, 2012, the District Committee's certificate of organization, its resolution of nomination, and the Candidate's Declaration of Candidacy were all filed in the principal office of the Illinois State Board of Elections.

11. This objection to the candidacy followed.

12. The Objector has asserted three challenges to the candidacy papers: (a) That a quorum was lacking at the District Committee meeting held on August 20, 2012; (b) that the resolution of nomination that was purportedly adopted by the District Committee on August 20, 2012, was supported by fewer than an absolute majority of the weighted votes represented in the entire District Committee; and (c) that the certificate of organization of the District Committee and the resolution of nomination were acknowledged before a notary public was interested in the proceedings and was therefore disqualified from either participating in the meeting or acting as a notary in connection with the instruments resulting from the meeting.

13. The Objector's third challenge — that relating to the disqualification of Brent Woods from acting as both a participant in the meeting of the District Committee and as a notary public — was raised by the Objector for the first time only in oral argument after the close of the evidence and in the Objector's post-hearing brief. That ground of objection was not set forth in the Objector's Petition. The Election Code does not allow permit an Objector to amend her objector's petition and its does not authorize an electoral board, *sua sponte*, to raise an objection to nominating papers. *Delay v. Board of Election Commissioners*, 312 Ill.App.3d 206, 726 N.E.2d 755 (Ill.App. 1 Dist. 2000), citing *Reyes v. Bloomingdale Township Electoral Board*, 265 Ill.App.3d 69, 638 N.E.2d 782 (1994). Because the Objector's third challenge was not set forth in her Objector's Petition it may not now be considered.

14. On their faces, the District Committee's certificate of organization and resolution of nomination appear to be regular and sufficient in both form and substance. The burden of proof of their irregularity and insufficiency must be borne by the Objector.

15. What the record in this case does not disclose is if the decision to nominate the

Candidate was made by the District Committee at its purported meeting of August 20, 2012, or if that meeting served merely to provide the occasion for the memorialization of that decision. The Objector herself concedes, in her post-hearing brief, that the requirements of a meeting, a quorum, or a vote do not appear anywhere in the Election Code; rather, the touchstone of sufficiency for action by the District Committee in circumstances such as these is due notice to, and an opportunity to act by, each member of the District Committee. *Graham v. State Officers Electoral Board*, 269 Ill.App.3d 609, 646 N.E.2d 1357 (4th Dist. 1995). In the instant case it is undisputed that every member of the District Committee — Ms. Gorman and Messrs. Parrilli, Seavers, Morrison, and Murphy — had notice that the District Committee would act on the vacant nomination. The evidence further discloses that the members of the District Committee had channels of communication with each other, and exercised those channels of communication, in sundry ways in addition to, and without regard to, the physical meeting that was held on August 20, 2012. The evidence shows that electronic technology including e-mail and Brent Woods furnished some, but only some, of those channels of communication among the members of the District Committee.

16. Shaun Murphy and Sean Morrison were and are, without dispute, members of the District Committee. They have certified, in facially proper form, that the District Committee acted and that it nominated the Candidate.

17. No evidence has been brought forward that establishes, or that even suggests, that due notice was not given to every member of the District Committee; that any member of the District Committee was prevented, or even failed, to act on the proposed nomination of the Candidate; or that the certificate of organization and resolution of nomination that were executed on behalf of the District Committee on August 20, 2012, were in any way unsupported by the members of the District

Committee, or any individual among them, or were otherwise *ultra vires*. To the contrary, the evidence suggests that all members of the District Committee were aware of the proceedings and that no member of the District Committee registered dissent from them in any form. For example, the member of the District Committee with the largest weighted vote, Elizabeth Doody Gorman of Orland Township, testified expressly that she was aware of the proceedings even though she was unable to attend the physical meeting convened on August 20, 2012. She further testified that she knew that her Deputy Committeeman, Brent Woods, was in attendance at that meeting and had kept records of it.

18. Accordingly, there is no need to decide whether or not a physical meeting of the District Committee was required to act on the nomination, or whether or not a quorum was required for a meeting of the District Committee, or whether such a quorum should be measured by numbers of individual members of the District Committee or by their respective weighted votes or otherwise, or what the minimum number of persons or weighted votes to establish a quorum would be, or what, if any, powers or authority a "deputy committeeman" might exercise under such circumstances, none of which is expressly prescribed or prohibited by the Election Code.

19. Instead, the uncontroverted evidence makes it clear that all of the members of the District Committee had due notice of the proposal to act on the nomination of the Candidate and that they acted on that nomination; and that their actions were regularly and sufficiently memorialized in writing by persons who were unquestionably members of the District Committee. In the absence of any evidence of lack of due notice or other irregularity, the Electoral Board has no authority to go behind the written certifications and resolutions of the District Committee. Those certifications and resolutions, on this record, establish the sufficiency of the nomination of the Candidate.

20. Accordingly, the Hearing Officer respectfully recommends that the Chicago Board of Election Commissioners, sitting herein as the Electoral Board for the 35th Representative District of the State of Illinois, do enter the following findings, conclusions, and decisions:

(a) The Board finds the following material facts: Due notice was given to all members of the District Committee of a proposal to nominate a candidate for State Representative; all members of the District Committee had an opportunity to act on the nomination; that the District Committee decided to nominate the Candidate; and that the District Committee's decision to nominate the Candidate was memorialized in writing on August 20, 2012, and was lodged with the Illinois State Board of Elections on August 21, 2012.

(b) The Board concludes as follows: The papers setting forth the nomination of the Candidate are sufficient in law and in fact.

(c) The final administrative decision of the Board should be that the name of Ricardo A. Fernandez shall appear on the ballot as the nominee of the Republican Party for election as State Representative for the 35th Representative District of Illinois at the general election to be held on November 6, 2012.

Dated: September 19, 2012.

Respectfully submitted,

/s/ JOSEPH A. MORRIS

JOSEPH A. MORRIS
Hearing Officer

BOARD OF ELECTIONS
COMMISSIONER
2012 SEP 19 A 9:22

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

Laura Harney

v.

Chicago Board of Elections, Et. Al.

No. 2012 COEL 0024

ORDER

This issue having come before the Court and all parties represented by Counsel, the Court finds that:

- The Court agrees with the Chicago Board of Elections' (CBOE) finding that the ~~and~~ By laws apply
- The Court upholds the CBOE's decision.

Pattern Denied, this is a final appealable ruling.

Atty. No.: 45219

Name: David Rotantz

Atty. for: Respondent

Address: 721 W. Lake #106

City/State/Zip: Addison, IL 60101

Telephone: 312-798-9308

ENTERED: ENTERED JUDGE JAMES A. ZAFIRATOS-1919 OCT 11 2012 DOROTHY BROWN CLERK OF THE CIRCUIT COURT OF COOK COUNTY, IL DEPUTY CLERK

Dated: _____

Judge

Judge's No

DOROTHY BROWN, CLERK OF THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS