

**BEFORE THE STATE ELECTION BOARD OF THE
STATE OF OKLAHOMA**

IN THE MATTER OF CONTEST OF THE)
CANDIDACY OF **OSCAR LOZA HOYOS**)
FOR THE OFFICE OF STATE) CAUSE NO. 2018-14
REPRESENTATIVE, DISTRICT 94.)

FINDINGS AND ORDER

The above-styled cause was heard by the Election Board of the State of Oklahoma on April 23, 2018, meeting pursuant to lawful notice.

The following members of the State Election Board ("Board") were present: Steve Curry, Chair; Tom Montgomery, Vice-Chair; and Dr. Tim Mauldin, Member. Also present were Paul Ziriach, Secretary; and counsel for the State Election Board, Lyn Martin-Diehl, Assistant Attorney General; and Rachel Rogers, Assistant Attorney General. Also present, but not participating were Jerry Buchanan, Alternate Member; and Debi Thompson, Alternate Member.

Petitioner Andy Fugate was not present, but was represented by counsel, Emily Virgin. Contestee Oscar Loza Hoyos appeared *pro se*.

The Petition was filed and Notice of Hearing issued on April 17, 2018, at 4:59 p.m. The Board received proof of personal service made on Contestee by the Oklahoma County Sheriff on April 18, 2018, at 9:30 a.m., within 24 hours of setting the Petition for hearing, as required by 26 O.S. § 5-124.

Contestee submitted a cashier's or certified check in the amount of \$250.00, as required by 26 O.S. § 5-129.

The Board made the following findings of fact and conclusions of law:

1. Mr. Fugate filed with the Board a Declaration of Candidacy for the office of State Representative, District 94, during the filing period of April 11-13, 2018.
2. Mr. Loza Hoyos filed with the Board a Declaration of Candidacy for the office of State Representative, District 94, during the filing period of April 11-13, 2018.
3. The Board received proof of personal service made on Contestee within 24 hours of setting the Petition for hearing, as required by 26 O.S. § 5-124.
4. Title 26 O.S. § 5-105(A) provides in pertinent part:

To file as a candidate for nomination by a political party to any state or county office, a person must have been a registered voter of that party for the six-month period immediately preceding the first day of the filing period prescribed by law and, under oath, so state.

5. Mr. Fugate's Petition alleges, as a basis for the contest, that Mr. Loza Hoyos was not a registered member of the Democratic Party six months immediately preceding the filing period.
6. The filing period began on April 11, 2018 pursuant to 26 O.S. § 5-110. Consequently, Mr. Loza Hoyos was required to have been a registered Democrat to run as a registered voter of that party on or before October 10, 2017.
7. Title 26 O.S. § 5-130 provides: "The burden of proof shall be upon the petitioner to sustain the allegations in his petition.
8. Documents from the State Election Board, Exhibits 1-4, showed Mr. Loza Hoyos changed his party affiliation via form notification to the election board by U.S. Mail, postmarked October 13, 2017.
9. Mr. Loza Hoyos contends that he mailed his change of party notice form on October 5, 2017, but does not have a receipt showing date of mailing.
10. The language of 26 O.S. § 5-105(A) requires of a candidate who wishes to file as a candidate for nomination by a political party to have been a registered voter of that party for the six-month period *immediately preceding the first day* of the filing period prescribed by law. The State Election Board has long interpreted the clause *immediately preceding the first day of the filing period* in related election statutes to mean just that. *See, e.g. In the Matter of the Contest of Candidacy of Daniel Arnett for the Office of State Representative, District 16, Cause 2012-08 (14 O.S. § 108 requires candidates to be registered voters in and a resident residing in their particular voting district for six months immediately preceding the filing period prescribed; Board held candidate was required to live in District 16 on or before 10/10/11 for 4/11 to 4/13/12 filing period); In the Matter of the Contest of Candidacy of Mark Faulk for the Office of State Representative, District 88, Cause 2012-06 (14 O.S. § 108 requires a candidate to be a registered voter in and a resident in their particular district for six months immediately preceding the filing period prescribed; Board held candidate was required to live in District 88 on or before 10/10/11 for 4/11/12 to 4/13/12 filing period).*
11. It appears Mr. Loza Hoyos filed as a candidate for State Representative, House District 96 in good faith. Unfortunately, the only available evidence

of filing shows a postmark of October 13, 2018 which is subsequent to the six months *immediately preceding the first day of the filing period* prescribed.

12. Mr. Fugate has, therefore, sustained his burden of proof in showing Mr. Loza Hoyos has not been a registered voter of the relevant political party for the six (6) months immediately preceding the filing period, as required by 26 O.S. § 5-105.
13. The Board finds the factual allegations of the Petition constitute appropriate grounds for disqualification of Contestee's candidacy.
14. Mr. Fugate's Petition is sustained, pursuant to 26 O.S. § 5-130, and Mr. Loza Hoyos' name will not appear on the ballot as a candidate for the office of State Representative, District 94.

Done this 23rd day of April, 2018, by a unanimous vote of the Election Board of the State of Oklahoma.

OKLAHOMA STATE ELECTION BOARD



STEVE CURRY, Chairman

