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**The Senate of
The State of Texas**

**PRESIDENT PRO TEM
OF THE TEXAS SENATE**

COMMITTEES

Jurisprudence, Chairman
Administration
Infrastructure Development and Security
Intergovernmental Relations

**COUNTIES IN
SENATE DISTRICT 25**

Bexar (north)	Hays
Comal	Kendall
Guadalupe	Travis (south)

December 4, 2004

In the Matter of Susan Delgado vs. Mario V. Gallegos, Jr.

**To: Nathan H. Gordon, Esquire
Attorney for Contestant Susan Delgado
(713)224-6473
(713)224-0909 (Fax)**

**Doug W. Ray, Esquire
Attorney for Contestee Mario V. Gallegos, Jr.
(512)328-8877
(512)328-1156 (Fax)**

I am faxing herewith copies of my letter to Senator Robert Duncan, Chairman of the Senate Committee on State Affairs; my Report as the Master of Discovery in the above-referenced matter; and my Order in this matter.

Respectfully,

A handwritten signature in black ink that reads "Jeff Wentworth".

**Jeff Wentworth
President Pro Tem
Master of Discovery**



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**The Senate of
The State of Texas**

December 3, 2004

**PRESIDENT PRO TEM
OF THE TEXAS SENATE**

COMMITTEES

**Jurisprudence, Chairman
Administration
Infrastructure Development and Security
Intergovernmental Relations**

**COUNTIES IN
SENATE DISTRICT 25**

Bexar (north)	Hays
Comal	Kendall
Guadalupe	Travis (south)

The Honorable Robert Duncan
Chairman
Senate Committee on State Affairs
Texas State Capitol, Room 3E.12
Austin, Texas 78711

Re: Contest of the election for state senator, District 6, between Susan Delgado, Contestant, and Mario Gallegos, Jr., Contestee

Dear Chairman Duncan:

Pursuant to Texas Election Code §§241.009 and 241.0091, I submit to you the enclosed Report of the Master of Discovery to the Senate Committee on State Affairs and the enclosed Order.

Sincerely,

A handwritten signature in black ink that reads "Jeff Wentworth".

Jeff Wentworth
Master of Discovery

JW/kh

Enclosures



REPORT OF THE
MASTER OF DISCOVERY
TO THE
SENATE COMMITTEE ON STATE AFFAIRS

As the master of discovery appointed by Lieutenant Governor David Dewhurst in the matter of the contest of election for state senator, District 6, between Susan Delgado, Contestant, and Mario Gallegos, Jr., Contestee, I submit the following report to the Senate Committee on State Affairs:

To invoke the exclusive jurisdiction of the Senate over a contest of an election for the office of state senator, Texas Election Code Section 241.003 states that “[t]he contestant must state the grounds for the contest in a petition in the same manner as a petition in an election contest in the district court.”

Election Code Section 221.003 provides the proper scope of an election contest. That section states that “[t]he tribunal hearing an election contest shall attempt to ascertain whether the outcome of the contested election, as shown by the final canvass, is not the true outcome because: (1) illegal votes were counted; or (2) an election officer or other person officially involved in the administration of the election: (A) prevented eligible voters from voting; (B) failed to count legal votes; or (C) engaged in other fraud or illegal conduct or made a mistake.”

In her Original Petition To Contest Election (“Petition”) filed with the Secretary of State’s office, the Contestant failed to cite any portion of §221.003 as grounds for the contest. Instead, Contestant stated as the sole basis for the contest violations of the residency requirements in Election Code Section 141.001, which sets out the eligibility requirements for public office.


Specifically, the Contestant's Petition alleged that Contestee failed to comply with the residence requirements of Election Code §141.001(a)(5)(B). However, Section 141.001(c) states that the eligibility requirements for public office contained in subsection (a) do not apply to an office for which the state constitution prescribes exclusive eligibility requirements. Article III, Section 6 of the Texas Constitution prescribes the exclusive eligibility requirements for state senators. Contestant has not alleged a failure to meet the qualifications for state senator prescribed in the Texas Constitution.

Further, Election Code §141.001(a)(5)(B), the subsection cited in the Petition as grounds for the contest, applies only to “independent candidates,” defined in Election Code §1.005 as “a candidate in a nonpartisan election or a candidate in a partisan election who is not the nominee of a political party.” Because the election at issue was not a

nonpartisan election and the Contestee was the nominee of the Democratic Party, the Contestee was not an independent candidate. Thus, even if the failure to meet the eligibility requirements in Section 141.001 was a proper ground for an election contest under Chapter 241, the Contestant has cited an inapplicable subsection of Section 141.001 as the basis for the contest.

For the foregoing reasons, I have determined that the Contestant's Petition does not state the grounds necessary to maintain the contest, and recommend to the Senate Committee on State Affairs that it refuse to hear testimony or other evidence presented in person by the parties pursuant to Election Code Section 241.011(c).

SIGNED this 3rd day of December, 2004.



JEFF WENTWORTH
MASTER OF DISCOVERY

SUSAN DELGADO,
Contestant

v.

MARIO GALLEGOS, JR.,
Contestee

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SENATE

OF THE

STATE OF TEXAS

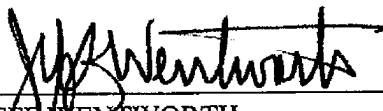
ORDER

On this the 3rd day of December, 2004, came on for consideration the matter of discovery proceedings in this election contest.

The master of discovery, having considered the pleadings and the contestant's statement of legal grounds, is of the opinion that the contestant's petition does not state the grounds necessary to maintain the contest.

Pursuant to the master's authority under Election Code §241.0091, it is therefore ORDERED that discovery not proceed in this contest.

SIGNED this 3rd day of December, 2004.


JEFF WENTWORTH
MASTER OF DISCOVERY