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

Objections of: CYNTHIA SANTOS	)
	)
To the Nomination	)
Papers of: LONNIE LEDFORD	)
	) No. 06-EB-RES-01
Candidate for the office of Representative in the	)
General Assembly, 40th Representative District,	)
State of Illinois, Republican Party	)

FINDINGS AND DECISION

The duly constituted Electoral Board, consisting of Chicago Board of Election Commissioners Langdon D. Neal, Theresa M. Petrone, and Richard A. Cowen, 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 CYNTHIA SANTOS ("Objector") to the nomination papers ("Nomination Papers") of LONNIE LEDFORD, candidate for nomination of the Republican Party to the office of Representative in the General Assembly for the 40th Representative District, State of Illinois ("Candidate"), having convened on June 6, 2006, at 9:00 a.m., in Room 800, Conference Room, 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, as well as a Second Call, 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 June 6, 2006 at 9:00 a.m. and was continued from time to time. In attendance were the Langdon Neal, Chairman of the Electoral Board, Richard Cowen, Member of the Electoral Board, and Michael Casper and Michael Kreloff, the attorneys for the Objector, Cynthia Santos. Electoral Board Member Theresa M. Petrone was absent due to illness. The Candidate, Lonnie Ledford, was not present, nor was anyone present on his behalf. The Electoral Board's file did not contain evidence that the Candidate was served with a copy of the

Electoral Board's Call or with a copy of the Objector's Petition. The Electoral Board then issued a Second Call that was successfully served upon the Candidate.

5. The Electoral Board assigned this matter to the Board's General Counsel for a Case Management Conference pursuant to Rule 3 of the Electoral Board's Rules of Procedure. This Conference was held on Monday, June 12, 2006 at 9 a.m. Present and chairing the Case Management Conference was the Board's General Counsel, James M. Scanlon. Also present were Michael Casper and Michael Kreloff, the attorneys for the Objector, Cynthia Santos, and Christine Svenson, attorney for the Candidate, Lonnie Ledford. Also present was Tom Swiss, Executive Director for the Cook County Republican Party. At the Case Management Conference, the following matters were addressed:

A. The Candidate's attorney acknowledged service upon the Candidate on January 8, 2006 of the Electoral Board's Second Call, along with copies of the Objector's Petition and a copy of the Electoral Board's Rules of Procedure.

B. No objections were raised to the Electoral Board's jurisdiction to proceed to hear and decide this matter.

C. A written appearance was filed by the Candidate's attorney and copies of all written appearances by the parties' attorneys were exchanged.

D. The following documents were marked as Electoral Board exhibits and admitted into evidence without objection by the parties:

Board Exhibit #1 -- Candidate's Nomination Papers, consisting of (a) the Candidate's Statement of Candidacy, (b) a May 19, 2006 letter from the Index Department of the Office of the Secretary of State addressed to the Candidate, dated May 19, 2006; (c) a Resolution to Fill a Vacancy in Nomination Occurring After Primary Election signed by Chester R. Hornowski, Chairman, and Jonathan Blessing, Secretary, Representative District Committee of the Republican Party in and for the 40th Representative District in the State of Illinois; (d) a Certificate of Legislative or Representative Committee Organization signed by Chester R. Hornowski, Chairman, Representative Committee of the Republican Party of the 40th Representative District, all of which papers contain a date stamp affixed by the State Board of Elections dated May 22, 2006 at 1:33 p.m.

Board Exhibit #2 – Verified Objector's Petition filed by Cynthia Santos to the nomination papers of Lonnie Ledford as a candidate to fill the Republican Party vacancy in nomination to the office of Representative in the General Assembly of the State of Illinois for the 40th Representative District to be voted upon at the November 7, 2006 General Election, which contains a date stamp affixed by the State Board of Elections dated May 30, 2006 at 3:53 p.m.

Board Exhibit #3 – 6/1/2006 letter from Daniel W. White, Executive Director, State Board of Elections, State of Illinois, to Lance Gough, City of Chicago Board of Election Commissioners, transmitting a copy of an Objector's Petition filed with the State Board of Elections objecting to the nomination papers of Lonnie Ledford, candidate for Representative in the General Assembly, 40th Representative District, Republican Party.

Board Exhibit #4 -- Calls issued by the Electoral Board to the members of the Electoral Board and to the Candidate and the Objector, along with all attachments thereto and returns evidencing service thereof on the parties.

E. The parties entered into the following stipulations:

i. The Representative District Committee of the Republican Party in and for Illinois' 40th Representative District met on May 11, 2006 and on that date nominated the Candidate for the office of State Representative in the General Assembly for the November 7, 2006 election, as alleged in paragraph 2 of the Verified Objector's Petition.

ii. The Candidate's Nomination Papers, as contained in Board Exhibit #1, were not filed with the State Board of Elections until May 22, 2006, as alleged in paragraph 3 of the Verified Objector's Petition.

iii. There are no disputed or contested material facts in this case. The only issues to be decided by the Electoral Board in the case are contested issues of law, i.e., whether the requirements of 10 ILCS 5/7-61 apply to the Candidate's Nomination Papers and whether the failure of the appropriate committee to file with the appropriate certifying officers or board within three days of the action by which the vacancy in nomination was filled renders such Nomination Papers invalid.

6. The Verified Objector's Petition alleges that the Candidate's Nomination Papers show, on their face, that the Representative District Committee of the Republican Party in and for the 40th Representative District in the State Of Illinois met on May 11, 2006 and on that date nominated the Candidate for the office of State Representative in the General Assembly for the November 7, 2006 election. It is further alleged that the Candidate's Nomination Papers, including the resolution of the Representative District Committee of the Republican Party for the 40th Representative District, were not filed with the State Board of Elections until May 22, 2006. These facts have been stipulated to by both the Candidate and the Objector.

7. In addition, the Objector alleges that Section 7-61 of the Illinois Election Code (10 ILCS 5/7-61) requires that a political party district committee meeting to nominate a candidate to fill a vacancy in nomination must file a copy of its resolution filling the vacancy in nomination, accompanied by all prescribed nomination papers, with

the appropriate certifying board no later than three days after taking its action to fill the vacancy in nomination. Objector claims that this three-day deadline for transmitting the resolution and certificate of nomination is mandatory, citing *Forcade-Osborn v. Madison County Electoral Board*, 334 Ill.App.3d 756, 778 N.E.2d 768 (5th Dist. 2002). Objector contends, therefore, that the failure of the Representative District Committee of the Republican Party in and for the 40th Representative District of the State of Illinois to file its resolution filling a vacancy in nomination for said office within the three-day deadline prescribed by Section 7-61 renders the Candidate's Nomination Papers insufficient and void.

8. Section 7-61 states in relevant part:

> "Any vacancy in nomination under the provisions of this Article 7 occurring on or after the primary and prior to certification of candidates by the certifying board or officer, must be filled prior to the date of certification. Any vacancy in nomination occurring after the certification but prior to 15 days before the general election shall be filled within 8 days after the event creating the vacancy. The resolution filling the vacancy shall be sent by U.S. mail or personal delivery to the certifying officer or board; provided, if such resolution is sent by mail and the U.S. postmark on the envelope containing such resolution is dated prior to the expiration of such 3 day limit, the resolution shall be deemed filed within such 3 day limit. Failure to so transmit the resolution time specified in this Section shall authorize the certifying officer or board to certify the original candidate. Vacancies shall be filled by the officers of a local municipal a township political party as specified in subsection (h) of Section 7-8, other than a statewide political party, that is established only within the municipality or township and the managing committee (or legislative committee in case of a candidate for State Senator or representative committee in the case of a candidate for State Representative in the General Assembly or State central committee in the case of a candidate for statewide office, including but not limited to the office of United States Senator) of the respective political party for the territorial area in which such vacancy occurs."

Section 7-61 further provides:

> "If the name of no established political party candidate was printed on the general primary ballot for a particular office and if no person was nominated as a write-in candidate for such office, a vacancy in nomination shall be created, but no candidate of the party for the office and shall be listed on the ballot at the general election unless such vacancy is filled in accordance with the requirements of this Section within 60 days after the date of the general primary."

9. To address the contested legal issues in this case, the Candidate filed a motion to dismiss the Verified Objector's Petition. In his motion to dismiss, the

Candidate argues that the three-day period for filing a Representative Committee's resolution filling a vacancy in nomination should not be applied to nominations that merely fill a vacancy created by reason of a lack of a candidate on the primary ballot. The Candidate argues that the paragraph within Section 7-61 addressing vacancies in nomination created because the name of no established political party candidate was printed on the general primary ballot creates its own deadline for action, i.e. within 60 days after the date of the general primary, and that had the Legislature intended that nominations to fill such vacancies should be subject to both the 60-day filing period and the 3-day filing period, such an intention could easily have been stated. The Candidate also argues that the context and position of the three-day requirement in Section 7-61 indicates that it is intended to apply to situation in which a vacancy arises in the period *after* certification. Finally, the Candidate argues that the 3-day filing makes excellent sense within the context of nominations *after* certification and the 15 day "blackout" period before a general election. The Candidate argues that in that time period, time is of the essence in that the ballots in other election records must be altered to reflect the new candidate. The Candidate argues, however, that no such necessity is found with regard to nominations to fill empty the primary slots, as those nominations must be filed within 60 days of the primary, thereby giving election authorities a period of several months in which to add the candidate to ballots and other materials.

In his reply brief in support of his motion, Candidate adds that the legislative history of Section 7-61 must be considered. He notes that Section 7-61 was amended in 1977 in part to install the three day rule. He also notes that in the prior version of the statute provided that in the event that the nomination papers were filed more than three days after the nominating committee meeting, the certifying officer or board was authorized to "certify the office without any name to fill said vacancy," language which would, in Candidate's view, be more consistent to the Objector's interpretation of the statute. Pointing out that this language is no longer in the statute, Candidate argues that this provides "incontestable evidence that the legislature intends that the three day rule apply [sic] does not apply to vacancies from the primary." The Candidate also relies upon portions of the legislative debate, arguing that the present language was inserted to address a situation occurring in Peoria County in which a candidate for recorder of deeds died just thirteen days before the election.

10. In *Forcade-Osborn*, a case cited by the Objector and referenced above, the Illinois Appellate Court, Fifth District, rejected arguments similar to those raised by the Candidate here. In that case, the plaintiff was slated by the Republican Party to fill a vacancy for the office of county treasurer in Madison County when no one was nominated in the March primary to serve as that party's candidate. The applicable nominating committee was formed to select a person to fill a vacancy in nomination and met for that purpose on May 13, 2002. On May 20, 2002 the candidate filed her certificate of nomination, her certificate of candidacy and her statement of economic interests, as well as her loyalty oath. An objection was filed to the candidate's nomination papers on the grounds that they were not properly and timely filed. The electoral board found that the language of section 7-61 of the Election Code required the nominating committee to have filed or mailed the certificate of nomination within three

days of its May 13 meeting and that the appropriate sanction for waiting until the last day to file a vacancy in nomination was to strike the candidate's name from the ballot.

Before reaching the merits of the appeal, the appellate court first addressed a jurisdictional issue that neither party had argued, namely, whether the court had subject matter jurisdiction because the petitioner prematurely filed a petition for review. The appellate court concluded that the circuit court was without jurisdiction to hear the appeal from the electoral board. However, the appellate court held that even if jurisdiction were properly conferred upon the circuit court, the result would be no different in that the determination of the electoral board would have to be affirmed on the merits. The appellate court reviewed the language of Section 7-61 and concluded that the statute "clearly imposes a deadline for the transmission of a certification of nomination by the nominating authorities to the certifying officer." 334 Ill.App.3d at 759. "That deadline is three days from the date the action was taken to fill a vacancy in nomination." Id. The appellate court concluded that because the deadline was not met, the candidate lost the right to have her name placed on the election ballot as a candidate. Rejecting the candidate's various arguments, the appellate court concluded that "[H]ad the Legislature intended for the three-day deadline to apply only to vacancies occurring after certification, as petitioner argues, the Legislature could have expressed its intention to that effect by using specific language and so limiting the provision." Id.

11. The issue presented here is identical to the issue ruled upon by the appellate court in *Forcade-Osborn*. The Candidate argues, however, that because *Forcade-Osborn* was decided upon a jurisdictional issue, the discussion of the three-day rule contained within the opinion is *obiter dicta* and therefore not a part of the court's actual ruling. Citing *Cates v. Cates*, 156 Ill.2d 76, 80, 619 N.E.2d 715 (1993), the Candidate argues that *obiter dicta* are remarks or opinions "uttered by the way" and are not binding as authority or precedent within the rule of *stare decisis.* Unfortunately for the Candidate, however, *Cates* also states that, "[O]n the other hand, an expression of opinion upon a point in a case argued by counsel and deliberately passed upon by the court, though not essential to the disposition of the cause, if *dictum,* is a judicial *dictum"* and not mere *obiter dictum*. Id. The court added, "And further, a judicial *dictum* is entitled to much weight, and should be followed unless found to be erroneous." Judicial dictum has the force of a determination by a reviewing court and should receive dispositive weight in an inferior court. *Hawkes v. Luhr Bros., Inc.*, 212 Ill.2d 93, 816 N.E.2d 345 (2004).

12. The Electoral Board finds that the Illinois Appellate Court's holding with regard to the 3-day limit for filing the nominating committee's resolution and accompanying papers in *Forcade-Osborn* constitutes judicial *dictum*, which has the force of a determination by a reviewing court and should receive dispositive weight.

13. The Electoral Board finds that *Forcade-Osborn* is dispositive of the case here. Accordingly, the Electoral Board finds that the resolution adopted and executed by the Representative Committee of the Republic Party for the 40th Representative District of the State of Illinois on May 11, 2006 nominating Candidate as a candidate of the Republican Party for the office of Representative in the General Assembly for the 40th

Representative District was not filed with the State Board of Elections within 3 days of that date as required by Section 7-61 of the Election Code and, as a result, the Candidate's Nomination Papers are void and he is not entitled to have his name certified and printed on the November 7, 2006 general election ballot. The Candidate's Motion to Dismiss is denied and the Objections are sustained.

IT IS THEREFORE ORDERED that the Objections of CYNTHIA SANTOS to the Nomination papers of LONNIE LEDFORD, candidate for nomination of the Republican Party to the office of Representative in the General Assembly for the 40th Representative District, State of Illinois, are hereby SUSTAINED and said Nomination Papers are hereby declared INVALID and the name of CYNTHIA SANTOS, candidate for nomination of the Republican Party to the office of Representative in the General Assembly for the 40th Representative District, State of Illinois, SHALL NOT be printed on the official ballot for the General Election to be held on November 7, 2006.

Dated: Chicago, Illinois, this 27th day of June, 2006.

Langdon D. Neal, Chairman

Theresa M. Petrone, Commissioner

Richard A. Cowen, 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 10 days after the decision of the Electoral Board.