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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-02
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 August 15, 2006, at 10:00 a.m., in the Conference Room, 8th Floor, 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 August 15, 2006 and was continued from time to time.

5. The Electoral Board assigned this matter to the Board's General Counsel for the purpose of conducting a Case Management Conference with the parties pursuant to Rule 3 of the Electoral Board's Rules of Procedure.

6. Pursuant to the Electoral Board's order, the Board's General Counsel conducted Case Management Conferences by telephone with both the Candidate and with the Objector's attorney. The following were among the items were discussed:

A. The Candidate, Lonnie Ledford, acknowledged receipt on August 14, 2006 of the Objector's petition, the Electoral Board's Call to the meeting on August 15, and the Electoral Board's Rules of Procedure.

B. The parties agreed that the material facts are not in dispute and that the Objector's petition presents questions of law.

C. A briefing schedule was set and methods of service by fax and/or email were agreed upon.

D. A date for hearing and decision before the Electoral Board was set for Tuesday, August 29, 2006 at 10 a.m.

7. The following relevant facts, all of which appear from records on file with the Board of Election Commissioners for the City of Chicago, are not in dispute:

A. On March 21, 2006, a primary election for the Republican Party was conducted in the city of Chicago, including in the 40th Representative District of the state of Illinois.

B. No one was nominated as a candidate of the Republican Party for the office of Representative in the General Assembly for the 40th Representative District of the State of Illinois at that primary election.

C. 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 in this case, Lonnie Ledford, for the office of State Representative in the General Assembly for the November 7, 2006 election.

D. The Candidate's Nomination Papers were not filed with the State Board of Elections until May 22, 2006.

E. Objections were filed by the same objector in this case, Cynthia Santos, objecting to the Candidate's nomination papers.

F. On June 27, 2006, this Electoral Board sustained the objections to the Candidate's nomination papers, finding 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. As a result, the

Electoral Board issued a written decision finding that the Candidate's nomination papers were void and that he was not entitled to have his name certified and printed on the November 7, 2006 general election ballot. See *Santos v. Ledford*, 06 EB-RES-01, June 27, 2006.

G. The Candidate did not file a petition for judicial review with the Circuit Court of Cook County within the time afforded by Section 10-10.1 of the Election Code (10 ILCS 5/10-10.1).

H. On July 18, 2006 the Representative District Committee of the Republican Party in and for Illinois' 40th Representative District met again and again nominated the Candidate, Lonnie Ledford, to fill a vacancy in nomination for the office in question purportedly "created by the Vacancy [sic] created by electoral board.

I. On July 26, 2006, a resolution to fill a vacancy in nomination, along with accompanying statement of candidacy and statement of economic interest were filed on behalf of Lonnie Ledford with the Illinois State Board of Elections.

J. On August 7, 2006, the Objector here, Cynthia Santos, filed objections with the State Board of Elections objecting to the nomination papers filed on behalf of Lonnie Ledford.

K. The Objections contend that the Republican Party's prior invalid attempt to fill a vacancy in nomination does not create a new or second vacancy in nomination, citing *Maske v. Kane County Officers Electoral Board*, 234 Ill.App.3d 508, 600 N.E.2d 513 (2nd Dist. 1992). In the alternative, the Objector alleges that the Nomination Papers are invalid in their entirety because there is not currently a vacancy in nomination, arguing that as of August 7, 2006, the State Board of Elections had taken no action to remove the Candidate from the ballot.

8. Section 7-61 of the Illinois Election Code (10 ILCS 5/7-61) requires that "[I]f 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. According to the terms of Section 7-61, the Republican Party was required to fill any vacancy in nomination within 60 days after the general primary when a Republican candidate neither ran for the office in question nor was nominated as a write-in candidate. See, e.g., *Maske v. Kane County Officers Electoral Board*, 234 Ill.App.3d 508, 511, 600 N.E.2d 513 (2nd Dist. 1992).

10. The Candidate accuses the Objector of making a faulty assumption that either the Republican Party must correctly nominate someone before the 60-day deadline or forever forfeit the right to nominate a candidate. The Candidate also contends that Section 7-61 of the Election Code does not prohibit the successive re-nomination of a candidate after his or her nomination papers have been previously declared invalid or he or she is removed from the ballot by a decision of the electoral board which was not appealed under judicial review. The Candidate claims that no such requirement is found in the statute nor is there any binding case law.

11. The Candidate, however, is mistaken in claiming that there is no binding case law which prohibits successive attempts by the same political party to nominate a candidate after his or her nomination papers have been previously declared invalid and the candidate removed from the ballot by a decision of the electoral board which was not appealed under judicial review. In *Maske*, *supra*, the Illinois Appellate Court specifically rejected such an argument, concluding that to accept such an argument "would render the 60-day requirement of section 7-61 a nullity." 234 Ill. App.3d at 517. The court found that a vacancy did not occur when the electoral board the invalidated an earlier petition as untimely. According to the express and unambiguous terms of section 7-61 of the Election Code, a vacancy occurred when no candidate ran for the party's nomination and no candidate was nominated as a write-in, which required such vacancy to be filled within 60 days of the general primary election. The court held that the candidate could not "attempt to circumvent the clear and unambiguous language and time limits set forth in section 7-61 by filing successive nominating petitions under the same party which had been previously denied." Id. The court noted that if the candidate did not agree with the electoral board's first decision denying his petition, the recourse should have been to seek judicial review of that order.

12. The Candidate argues that *Maske*, a decision of the Second District of the Illinois Appellate Court, is not binding precedent in Cook County, which is in the First District of the Appellate Court. Instead, the Candidate argues that this case is governed by a decision of the First District in *McCarthy v. Streit*, 182 Ill.App.3d 1026, 538 N.E.2d 873 (1st Dist. 1989).

13. In Illinois, the decisions of an appellate court are binding precedent on all circuit courts throughout the State, although not binding upon and other appellate districts. *State Farm Fire and Cas. Co. v. Yapejian*, 152 Ill.2d 533, 605 N.E.2d 539 (1992). When conflicts arise among appellate districts, a circuit court is bound by the decisions of the appellate court of the district in which it sits. *Aleckson v. Village of Round Lake Park*, 176 Ill.2d 82, 679 N.E.2d 1224 (1997). Absent an Illinois Supreme Court decision directly on point, a circuit court should follow the precedent of the appellate court in its district, if such precedent exists; if no precedent exists within the district, the circuit court is to follow the precedent of other districts. *Sidwell v. Griggsville Community School Dist.4*, 208 Ill.App.3d 296, 566 N.E.2d 838 (4th Dist. 1991), aff'd, 146 Ill.2d 467, 588 N.E.2d 1185 (1992). These principles apply equally to administrative bodies such as electoral boards.

14. For the reasons stated in *Maske*, the Electoral Board finds that the *McCarthy* case is factually distinguishable from the present case. 234 Ill.App.3d at 517. In *McCarthy*, the candidates were found ineligible by the electoral board but were allowed to reorganize under a new party name and declared eligible to fill a vacancy created by the electoral board's denial of their first nomination. Unlike the candidates in *McCarthy*, the Candidate here did not seek to file under a new party name. Rather, the successive petitions sought to twice nominate the Candidate as a candidate of the same party – the Republican Party. In addition, the *McCarthy* case dealt with a township election which did not involve a general primary election and did not construe the 60-day requirement of Section 7-61.

15. Therefore, even though *Maske* case is a Second District case, it serves as binding precedent in the First District in this case because it is directly on point with the facts of this case and there is no conflict between the *Maske* and *McCarthy* decisions because they were decided upon different facts.

16. Accordingly, the Electoral Board finds that the outcome in this case is determined by Appellate Court precedent in *Maske*. Therefore, the Electoral Board sustains the Objections in this case and finds that the Candidate's Nomination Papers objected to here are invalid.

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 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 , SHALL NOT be printed on the official ballot for the General Election to be held on November 7, 2006.

Dated: Chicago, Illinois, this 29th day of August, 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.