NBCON-ALD

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

Objections of: NICOLAS J. DELGADO, MARIA R. GODINEZ and DIANE G. GARCIA	)	
To the Nomination Papers of: AMBROSIO MEDRANO	)	**No.: 07-EB-ALD-002**
Candidate for the office of Alderman of the Twenty-fifth Ward, City of Chicago	)	

FINDINGS AND DECISION

The duly constituted Electoral Board, consisting of Board of Election Commissioners of the City of Chicago Commissioners Langdon D. Neal 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 NICOLAS J. DELGADO, MARIA R. GODINEZ and DIANE G. GARCIA ("Objectors") to the nomination papers ("Nomination Papers") of AMBROSIO MEDRANO, candidate for the office of Alderman of the Twenty-fifth Ward of the City of Chicago ("Candidate") to be elected at the Municipal General Election to be held on February 27, 2007, having convened on January 2, 2007, at 10:00 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 Objectors 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 January 2, 2007 and was continued from time to time.

5. The Electoral Board assigned this matter to Hearing Examiner Thaddeus Wilson for further hearings and proceedings.

6. The Objectors and the Candidate were directed by the Electoral Board's Call served upon them to appear before the Hearing Examiner on the date and at the time designated in the Call. The following persons, among others, were present at such hearing; the Objectors, NICOLAS J. DELGADO, MARIA R. GODINEZ and DIANE G. GARCIA, by counsel, Homero Tristan and Ronald McDermott; and the Candidate, AMBROSIO MEDRANO, by counsel, Leo T. McGonigal.

7. The Objections allege that the Candidate has been convicted of a felony and that, as a result of such conviction, the Candidate is prohibited under Illinois law, including 65 ILCS 5/3.1-10-5(b), from holding the office of Alderman in the City of Chicago. Consequently, Objections contend, the Candidate's Statement of Candidacy is false to the extent it claims that the Candidate is legally qualified to hold the office of Alderman in the City of Chicago.

8. The Candidate does not contest the fact that he has been convicted of a felony, but additionally asserts that he has completed his sentence for such conviction. Thus, the only issue remaining is whether, as a matter of law, the Candidate is prohibited under Illinois from holding, and therefore seeking election to, the office of Alderman in the City of Chicago.

9. Section 3.1-10-5(b) of the Illinois Municipal Code (65 ILCS 5/3.1-10-5(b)) provides, "A person is not eligible for an elective municipal office if that person **** has been convicted in any court located in the United States of any infamous crime, bribery, perjury, or other felony. (65 ILCS 5/3.1-10-5(b))

10. Under the Illinois Constitution, citizens who are convicted of a felony forfeit certain rights, including the right to vote and hold public office. "A person convicted of a felony, or otherwise under sentence in a correctional institution or jail, shall lose the right to vote, which shall be restored not later than upon completion of his sentence." Ill. Const., art. III, §2. "A person convicted of a felony, bribery, perjury or other infamous crime shall be ineligible to hold an office created by this Constitution. Eligibility may be restored as provided by law." Ill. Const., art. XIII, §1. The Governor has the authority to grant reprieves, commutations and pardons, subject to the authority of the legislature to establish the manner of doing so. Ill. Const., art. V, §12.

11. Other statutes containing prohibitions against felons holding elective public office include Section 29-15 of the Election Code, which provides that "[A]ny person convicted of an infamous crime as such term is defined in Section 124-1 of the Code of Criminal Procedure of 1963, as amended, shall thereafter be prohibited from holding any office of honor, trust, or profit, unless such person is again restored to such rights by the terms of a pardon for the offense, or otherwise according to law" (10 ILCS 5/29-15) and Section 5-5-5(b) of the Unified Code of Corrections, which states that a person convicted of a felony is ineligible to hold a constitutional office until the completion of his sentence. 730 ILCS 5/5-5-5(b).

12. The Hearing Examiner has submitted his Report and Recommended Decision in this matter finding that, pursuant to 10 ILCS 5/3.1-10-5(b) and Illinois case law decisions, the

Objections should be sustained and the Candidate's Nomination Papers should be ruled invalid. A copy of the Hearing Examiner's report and recommended decision detailing his findings and conclusions of law is attached hereto and made a part hereof.

13. For the reasons below, the Electoral Board respectfully declines to adopt the Hearing Examiner's recommended findings and conclusions filed in this matter.

14. The Electoral Board is an entity created by statute and the legislature did not intend that an electoral board entertain constitutional challenges. *Tobin v. Illinois State Board of Elections*, 105 F.Supp.2d 882, 886 (N.D. 2000), aff'd, 268 F.3d 517 (7th Cir. 2001); *Wiseman v. Elward*, 5 Ill.App.3d 249, 382 N.E.2d 282 (First Dist. 1972).

15. However, the Electoral Board can implement and enforce existing precedent of the Board as well as of the courts.

16. Specifically, the Electoral Board makes note of this Board's decision in *Rosales v. Hendrix*, 95-EB-ALD-55 (1995) (holding that a candidate convicted of a felony and having served his sentence is not prohibited from being a candidate for the office of alderman); the decision of the Circuit Court of Cook County in *Medrano v. Chicago Board of Election Commissioners*, 02 CH 19784 (2002) (holding that 65 ILCS 5/3.1-10-5(b) is unconstitutional to the extent that it does not restore eligibility to hold a legislatively created office to a person convicted of a felony or other infamous crime upon completion of the sentence and that the Chicago Board of Election Commissioners was enjoined and restrained from invoking or relying upon that statute to bar the plaintiff, Ambrosio Medrano, from seeking election to municipal office or to remove him from the ballot because of his conviction); *Pappas v. Calumet City Municipal Officers' Electoral Board*, 288 Ill.App.3d. 787, 681 N.E.2d 589, (First Dist. 1997) (holding that under 10 ILCS 5/3.1-10-5(b) a person convicted of a felony is barred from access

to the ballot for municipal office, but declining to rule on the statute's constitutionality because that issue was not properly appealed); *Coles v. Ryan*, 91 Ill.App.3d 382, 414 N.E.2d 932 (Second Dist. 1980) (holding that the plaintiff, a convicted felon seeking re-election to the office of township supervisor, was not barred from holding township office by operation of Section 29-15 of the Election Code because the statute violated the equal protection clause); and *People v. Hofer*, 363 Ill.App.3d 719, 843 N.E.2d 460 (Fifth Dist. 2006) (holding that Section 3.1-10-5(b) of the Illinois Municipal Code did not violate the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution).

17. Balancing all case precedent and the injunction issued in *Medrano, supra*, the Electoral Board finds that Illinois law barring persons convicted of felonies from holding or seeking election to elective municipal office, including 10 ILCS 5/3.1-10-5(b), while at the same time permitting such persons to hold and seek election to offices created by the Illinois Constitution, is unconstitutional and unenforceable as a violation of Equal Protection.

18. Therefore, the Electoral Board overrules the Objector's petition and finds that the Candidate's Nomination Papers are valid.

IT IS THEREFORE ORDERED that the Objections of NICOLAS J. DELGADO, MARIA R. GODINEZ and DIANE G. GARCIA to the Nomination Papers of AMBROSIO MEDRANO, candidate for election to the office of Alderman of the Twenty-fifth Ward of the City of Chicago, are hereby OVERRULED and said Nomination Papers are hereby declared VALID and the name of AMBROSIO MEDRANO, candidate for election to the office of Alderman of the Twenty-fifth Ward of the City of Chicago, SHALL be printed on the official ballot for the Municipal General Election to be held on February 27, 2007.

Dated: Chicago, Illinois, this 12th day of January 2007.

Langdon D. Neal, Chairman

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.

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

BOARD OF ELECTION COMMISSIONERS OF THE CITY OF CHICAGO
AS THE DULY CONSTITUTED ELECTORAL BOARD
FOR THE HEARING AND PASSING UPON OBJECTIONS
TO NOMINATION PAPERS OF CANDIDATES
FOR THE FEBRUARY 27, 2007 MUNICIPAL GENERAL ELECTION

NICHOLAS J. DELGADO, MARIA R. GODINEZ and DIANE G. GARCIA, Objectors,	)	
-VS-	)	Case No. 07-EB-ALD-002
AMBROSIO MEDRANO, Candidate.	)	

Hearing Examiner's Report and Recommended Decision

This matter came before the hearing examiner on January 2, 2007. The case was called at or about 10:55 a.m. The Objector appeared through attorney Homero Tristan and attorney Ronald McDermott. The Candidate appeared personally and through attorney Leo T. McGonigal. The hearing examiner inquired with respect to the issues presented, whether there were any procedural motions and whether a records examination would be required. It was agreed by the parties that the case presented one single issue to be decided. The hearing examiner set a briefing schedule to consider the merits of the case. The case has been fully briefed and the hearing examiner has determined that oral argument would not be necessary to resolving the case and thus the January 16, 2007 hearing is stricken.

I. Objection Presented.

The Objectors assert as and for their sole objection that pursuant to 10 ILCS 5/29-15 of the Illinois Election Code and other laws[1], the Candidate, Ambrosio Medrano, is ineligible and unqualified to seek election to the office of Alderman of the 25th Ward of the City of Chicago because he is a convicted felon and said conviction has neither been expunged nor pardoned.

II. Findings of Fact.

In the case United States of America v. Medrano, 96 CR 17 (N.D. Ill.), the Candidate pleaded guilty to and was convicted of the felony offense/infamous crime of extortion under color of official right, 18 U.S.C.A. §1951. The Candidate was sentenced on July 3, 1996, inter alia, to a term of 30 months imprisonment, restitution and 3 years supervised release. The Candidate has since served his sentence, his supervised release and completed the required restitution to the satisfaction of the federal authorities and court system. The Candidate has not had said conviction expunged from his record. The Candidate has not been pardoned for said crime. On November 27, 2002, the Candidate obtained a permanent injunction against the Chicago Board of Elections in the Circuit Court of Cook County, Illinois in case number 02 CH 19784. The final order entered in that case on November 27, 2002 found 65 ILCS 5/3.1-10-5(b) of the Illinois Municipal Code to be unconstitutional to the extent that it does not restore eligibility to hold a legislatively created office to a person convicted of a felony or other infamous crime upon completion of the sentence and enjoined and restrained the Chicago Board of Elections from invoking or relying upon 65 ILCS

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[1]The hearing examiner interprets the phrase "and other laws" and paragraphs 7 and 8 of the Objectors' petition to refer to the Illinois Municipal Code (65 ILCS 5/3.1-10-5(b)).

5/3.1-10-5(b) to bar the Plaintiff therein, Ambrosio Medrano, from seeking election to municipal office and from removing him from the ballot. That Circuit Court case was an independent proceeding not related to any particular election. The injunction entered in that case has not been vacated or otherwise dissolved.

III. Findings of Law and Legal Analysis.

Much argument and legal analysis by the parties have been placed on constitutionality, constitutional scrutiny, precedent, and stare decisis. The Chicago Board of Election Commissioners lacks jurisdictional authority to determine the constitutionality of a statue, law or ordinance. Phelan v. County officers Electoral Board, 240 Ill. App. 3d 368, 373 (1st Dist. 1992), citing Weisman v. Elward, 5 Ill. App. 3d 249, 257 (1st Dist. 1972). The electoral board's function is limited to determining whether a challenged nominating petition complies with the provisions of the Election Code and where the language of the statute is plain and unambiguous, the electoral board is without authority to decide constitutional issues. Oberg v. Schreiner, 96-EB-NPP-1 CBEC, September 10, 1996. An electoral board may be bound by its own established custom and practice as well as by its formal regulations. Briscoe v. Kusper, 435 F. 2d 1046 (1970).

The hearing examiner requested that the parties address the merits of the case in their briefs and to specifically address amongst the issues the status of the law as it pertains to this Board with respect to the Illinois Appellate Court cases of Coles v. Ryan, 91 Ill. App. 3d 382 (2nd Dist. 1980) and People v. Hofer, 363 Ill. App. 3d 719 (5th Dist. 2006). Additionally, the hearing examiner requested the parties to address the effects of the Cook County Circuit Court decision in Medrano v. Chicago Board of Elections (02 CH 19784). While the briefs cover a lot of legal territory, the issues before me are quite preliminary and basic. The issue before the Board is one of precedent and

procedure.

Many consider Coles v. Ryan and People v. Hofer to be in direct conflict with respect to the same point of the law. To the extent that they are in conflict with respect to the same point of law, it is incumbent upon the Board to note that the Board sits in the 1st Appellate District of Illinois; that Coles v. Ryan was decided by the 2nd Appellate District of Illinois; and that People v. Hofer was decided by the 5th Appellate District of Illinois. Those facts are important as a precursor to a decision of this case because in Illinois "when conflicts arise amongst the appellate districts, the circuit court is bound by the decisions of the appellate court of the district in which its sits.[2] Aleckson v. Village of Round Lake Park, 176 Ill. 2d 82, 92 (1997), citing State Farm Fire & Casualty Co. v. Yapejian, 152 Ill. 2d 533, 539-40 (1992). A decision of the appellate court, though not binding on other appellate districts, is binding on the circuit courts throughout the State. State Farm Fire & Casualty Co. v. Yapejian, 152 Ill. 2d 533, 539-40 (1992), citing People v. Harris, 123 Ill. 2d 113, 128 (1988); Knapp v. Palos Community Hospital, 176 Ill. App. 3d 1012, 1018 (1988). A circuit court is faced with conflicting decisions from the various appellate districts and, in the absence of controlling authority from its home district, would be free to choose between the decisions of the other appellate districts. Id., citing People v. Thorpe, 52 Ill. App. 3d 576, 579 (1977); Garcia v. Hynes & Howes Real Estate, Inc., 29 Ill. App. 3d 479, 482 (1975).

Thus, under Illinois Supreme Court precedent, to the extent that Coles v. Ryan and People v. Hofer are in conflict on the same point of law, this Board would be free to choose which of the two cases it wished to follow because there is no case from the First Appellate District addressing the constitutionality issue. However, this hearing examiner asserts that the two cases are not in

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[2] For purposes of these proceedings, the Board is analogous to a circuit court.

direct conflict with respect to the same point of law, at least not with respect to the statutory sections specifically cited in the two opinions. In Coles v. Ryan, the Second District Appellate Court only cited to Section 29-15 of the Election Code and Section 5-5-5 of the Unified Code of Corrections. However, the Fifth District Appellate Court in People v. Hofer, specifically addresses the Illinois Municipal Code and specifically finds that Section 3.1-10-5 of the Illinois Municipal Code is constitutional. Thus, under Supreme Court precedent, this Board would be required to follow People v. Hofer and disqualify the Candidate Ambrosio Medrano.

There is a minority view on the Illinois Supreme Court that Illinois has but one appellate court divided into five judicial districts and because there is only one appellate court, a decision by any division of that court is binding precedent on all circuit courts throughout the state, regardless of locale. Aleckson v. Village of Round Lake Park, 176 Ill. 2d 82, 94-95 (1997) Further under this minority view, circuit courts should follow the most recent appellate court decision on point, even if the decision conflicts with a prior decision of an appellate court division located within the circuit court's particular district. Id. However, even under the minority Illinois Supreme Court "last in time" view, this Board would still be bound to follow People v. Hofer and disqualify the Candidate Ambrosio Medrano, because it was decided in the year 2006 and Coles v. Ryan was decided in 1980.

Regarding the circuit court injunction, the hearing examiner does not have occasion to address that issue, at least not under the confines of this particular case, with these particular particulars. By way of argument, the Candidate seeks to have the hearing examiner enforce the injunction. This is the wrong forum for that purpose. That is a question between the Candidate, the Board and the Circuit Court of Cook County. The question presented here addresses only the status

of the law as it relates to the qualifications of the Candidate and the sufficiency of the Candidate's nominating papers. There can be no doubt that with the People v. Hofer decision, the status of the law has changed since the Circuit Court entered the injunction. It is also clear to the hearing examiner that the injunction is now patently invalid, at least with respect to the law of the case. If the Board accepts this recommendation, whether or not they can or will thereafter enforce it is yet another question. Consequently, it is the recommendation of this hearing examiner that because of the facts and the law outlined herein, the Objectors' petition should be sustained and that the Candidate, Ambrosio Medrano's name should not appear on the ballot.

IV. Recommendation.

In light of the above factual findings and legal analysis, it is the recommendation of this hearing examiner that the Board adopt the findings, decisions and recommendations herein, and that the objections of the Objectors, NICHOLAS J. DELGADO, MARIA R. GODINEZ and DIANE G. GARCIA, be SUSTAINED, that the nomination papers of the Candidate, AMBROSIO MEDRANO, be declared insufficient as a matter of law and of fact, and declare that the name of the Candidate, AMBROSIO MEDRANO, not appear and not be printed on the ballot for election to the Office of Alderman of the 25th Ward of the City of Chicago to be voted upon at the February 27, 2007 Municipal General Election.

Thaddeus L. Wilson
Hearing Examiner

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IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, COUNTY DIVISION

NICHOLAS J. DELGADO, *et al.*,	)
	)
Petitioners-Objectors	)
vs.	) Case No. 07 COEL 000002
	) Hon. Nathaniel R. Howse, Jr.
CHICAGO BOARD OF ELECTION COMMISSIONERS, *et al.*	) Judge Presiding
	)
	)
Respondents-Candidate.	)

ORDER

This Cause coming to be heard on Respondent-Candidate Ambrosio Medrano's Motion To Amend The Order Entered January 26, 2007 To Conform To Illinois Supreme Court Rule 18, due notice served, and the Court having considered the arguments of counsel and being fully advised in the premises, the Court finds

1. That the Order entered January 26, 2007 affirming the decision of the Chicago Board of Election Commissioners and denying the Petition for administrative Review should be modified to assure compliance with Illinois Supreme Court Rule 18, and

It is hereby ordered:

1. The provisions of 65 ILCS 5/3.1-10-5(b) which disqualifies persons who have been convicted of a felony and completed the sentence imposed by the court from holding a municipal office, but allowing them to run for a constitutional office is an arbitrary classification and is unconstitutional (as applied in this case) ~~(on its face) (or both)~~ as violative of the Equal Protection clause of the Fourteenth Amendment to the United States Constitution,
2. The Appellate Court decisions in Coles v. Ryan, (2nd Dist., 1980) and People v. Hofer, (5th Dist., 2006) are in conflict.

3. Coles v. Ryan, id., was the better reasoned of the two Appellate decisions, and had been relied upon by the Board and by Judges Jaffe, Jagielski and Bertucci of this Court in finding 65 ILCS 5/3.1-10-5(b) unconstitutional.
4. That the statute, ordinance, regulation or other law being held unconstitutional cannot reasonably be construed in a manner that would preserve its validity.
5. That the finding of unconstitutionality is necessary to the decision or judgment rendered, and that such decision or judgment cannot rest upon an alternative ground.
6. That the notice required by Rule 19 has been served on the Illinois Attorney General and all parties to this cause, and that those served with such notice have been given adequate time and opportunity under the circumstances to defend the statute, ordinance, regulation or other law challenged.
7. That the decision of the Chicago Board of Election Commissioners is hereby affirmed and the Petition for Administrative Review is denied, nunc pro tunc to January 26, 2007.

Enter:

ENTERED
JUDGE NATHANIEL R. HOWSE, JR. - 0772
JAN 29 2007
DOROTHY BROWN
CLERK OF THE CIRCUIT COURT
OF COOK COUNTY, IL
DEPUTY CLERK

Judge Nathaniel R. Howse, Jr.

Prepared by:
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[07-EB-ALD-002]

No. 104112

IN THE

SUPREME COURT OF ILLINOIS

NICHOLAS J. DELGADO, *et al.*,	)	Direct Appeal from the Circuit Court
	)	of Cook County, Illinois
Appellants,	)	
	)	
vs.	)	No. 07 COEL 02
	)	
THE BOARD OF ELECTION COMMISSIONERS OF THE CITY OF CHICAGO, *et al.*,	)	Hon. Nathaniel R. Howse, Jr.
	)	Judge Presiding
Appellees.	)	

ORDER

Appellants, Nicholas J. Delgado, Maria R. Godinez, and Diane G. Garcia, have appealed directly to our court pursuant to Supreme Court Rule 302(a)(1) (134 Ill.2d R. 304(a)(1)) from a judgment of the Circuit Court of Cook County which affirmed, on administrative review, an order of the Board of Election Commissioners of the City of Chicago (the Election Board) rejecting their challenge to nomination papers filed by Ambrosio Medrano for election to the office of alderman for the 25th Ward of the City of Chicago in the February 27, 2007, municipal election. The Attorney General of the State of Illinois has been granted leave to intervene as an additional appellant. Because the election to which this challenge pertains is imminent, we allowed a motion by appellants for expedited briefing and determined, on our own motion, that the matter would be submitted and decided without oral argument.

The court has now had the opportunity to read the parties' briefs and review the record of the proceedings below. Based on the record, the applicable statutes and rules of court and the arguments

of the parties, the court has determined that this litigation is properly disposed of through supervisory order rather than a direct appeal to our court. For the reasons that follow, we shall therefore dismiss the appeal. In the exercise of our supervisory authority, the judgment of the circuit court shall be vacated and the cause shall be remanded to the circuit court with instructions to enter judgment vacating the Election Board's decision and directing it to: (1) declare that Mr. Medrano is ineligible to run for the office of alderman pursuant to section 3.1-10-5(b) of the Illinois Municipal Code (65 ILCS 5/3.1-10-5(b)(West 2004)), (2) reject his nomination papers, and (3) remove his name from the ballot for the upcoming election. The court's judgment shall further provide that if removal of Mr. Medrano's name from the ballot cannot be accomplished prior to election day, the Election Board shall disregard any votes cast for him in determining the winner of the election.

Background and Analysis

Ambrosio Medrano is a former Chicago alderman. In July of 1996, he was convicted in federal court of felony extortion arising out of misconduct in office. For that offense he was sentenced to 30 months in prison followed by 3 years of supervised released. Section 3.1-10-5(b) of the Municipal Code expressly provides that a person who "has been convicted in any court located in the United States of any infamous crime, bribery, perjury or other felony" is "not eligible for an elective municipal office." 65 ILCS 5/3.1-10-5 (West 2004). This bar is not necessarily permanent. Under the Election Code (10 ILCS 5/1-1, *et seq.* (West 2004)), convicted felons may recover their right to run for office through "the terms of a pardon for the offense or otherwise according to law." 10 ILCS 5/29-15 (West 2004). Although Medrano has completed his sentence, there is no dispute that he has received no pardon nor otherwise had his right to hold office restored. Medrano is therefore ineligible to hold elective municipal office in this State.

Despite his lack of eligibility, Medrano filed nomination papers to run for the office of alderman for the 25th Ward of the City of Chicago, an "elective municipal office" within the meaning of the prohibition contained in section 3.1-10-5(b) of the Municipal Code (65 ILCS 5/3.1-10-5 (b) (West 2004)). The record shows that Medrano had done that previously. In connection with that earlier effort, Medrano succeeded in obtaining a temporary restraining order from the circuit court of Cook County which permitted Medrano's name to appear on the ballot for the 2003 aldermanic election. A temporary restraining order is an emergency remedy issued to maintain the status quo while the court is hearing evidence to determine whether a preliminary injunction should issue. *Stocker Hinge Mfg. Co. v. Darnel Industries, Inc.*, 94 Ill.2d 535, 545 (1983). As a TRO, the order in Medrano's previous case was therefore necessarily limited in duration and interlocutory in nature. See *Bradford v. Wynford Prop.Owners' Assoc.*, 355 Ill.App.3d 736, 740 (2005) (TRO is inherently brief). Medrano lost the election for which the TRO was sought, and pursued the matter no further. The TRO was never superceded by a preliminary or permanent injunction, nor was it reviewed on appeal. Having served its purpose, it became *functus officio*. *Stocker Hinge Mfg. Co. v. Darnel Industries, Inc.*, 94 Ill.2d at 545.

As noted at the outset of this order, Medrano's nomination papers for the upcoming election were duly challenged by the appellants in this case. Appellants' challenge, which was timely and procedurally proper, was assigned by the Election Board to a hearing examiner who issued findings of fact and conclusions of law. Based on the evidence presented, arguments of counsel and the applicable law, the hearing examiner concluded that because Medrano was a convicted felon whose right to hold municipal office had not been restored, he was ineligible to hold elective municipal office, including the office of alderman in the City of Chicago. The hearing examiner therefore

recommended to the Election Board that the objections to Medrano's nomination papers be sustained and that Medrano's name not appear on the ballot for election to the office of alderman at the February 27, 2007, municipal election.

The Election Board rejected the hearing examiner's recommendation. Based on its analysis of various court cases, including the proceedings related to the TRO issued in connection with Medrano's failed 2003 election bid, the Election Board concluded that section 3.1-10-5(b) of the Municipal Code (65 ILCS 5/3.1-10-5(b)(West 2004)) is "unconstitutional and unenforceable as a violation of equal protection." It therefore overruled appellants' objection to Medrano's nomination papers, concluded that those papers were valid, and ordered that Medrano's name be printed on the ballot as a candidate for alderman for Chicago's 25th Ward.

In issuing its decision to permit Medrano's candidacy, the Election Board made no claim that the TRO issued in connection with the 2003 election remained in effect and precluded it from rejecting Medrano's nomination papers in this case. The TRO from the earlier cases was simply one of the legal authorities the Election Board weighed in assessing the constitutionality of section 3.1-10-5(b) of the Municipal Code (65 ILCS 5/3.1-10-5(b)(West 2004)).

As a creature of statute, the Election Board possesses only those powers conferred upon it by law. Any power or authority it exercises must find its source within the law pursuant to which it was created. Under section 10-10 of the Election Code (10 ILCS 5/10-10 (West 2004)), an election board's scope of inquiry with respect to objections to nomination papers is limited to ascertaining whether those papers comply with the provisions of the Election Code governing such papers. See *Nader v. Illinois State Board of Elections*, 354 Ill.App.3d 335, 340 (2004). Administrative agencies such as the Election Board have no authority to declare a statute unconstitutional or even to question

its validity. *Texaco-Cities Service Pipeline Co. v. McGaw*, 182 Ill.2d 263, 278 (1998); see *Wiseman v. Elward*, 5 Ill.App.3d 249, 257 (1972). In ruling as it did, the Election Board therefore clearly exceeded its authority.

Any action or decision taken by an administrative agency in excess of or contrary to its authority is void. *Alvarado v. Industrial Commission*, 216 Ill.2d 547, 553-54 (2005); see *Citizens to Elect Collins v. Illinois State Board of Elections*, 366 Ill.App.3 993, 998 (2006). Because the constitutionality of section 3.1-10-5(b) of the Municipal Code (65 ILCS 5/3.1-10-5(b)(West 2004)) was the sole basis for the Election Board's determination that Medrano was eligible to hold office as a Chicago alderman notwithstanding that he had never been pardoned for his felony convictions, and because the Board's ruling on the constitutionality of the law is void and therefore a nullity, the Election Board's rejection of appellants' challenge to Medrano's nomination papers has no lawful basis.

Appellants promptly filed a complaint in the Circuit Court of Cook County pursuant to the Administrative Review Law (735 ILCS 5/3-101, *et seq.* (West 2004)) to obtain judicial review of the Election Board's decision. Because the Election Board's decision was premised exclusively on a legal determination it had no authority to make and directly contravened provisions of the Municipal and Election Codes which the Election Board was required to follow, the circuit court should have vacated the Board's decision and remanded with instructions for it to resolve appellants' challenge to Medrano's candidacy in accordance with the governing statutory requirements. Although this defect in the Election Board's decision was not directly raised in appellants' complaint, Illinois law provides that courts have an independent duty to vacate void orders and may *sua sponte* declare an order void. See *People v. Thompson*, 209 Ill. 2d 19, 27 (2004). Had the circuit court done that

here, it would have had no need to address the merits of the Election Board's constitutional analysis. Without a ruling on the constitutionality of the statute, there would, in turn, have been no basis for seeking direct review by our court under Rule 302(a).

The circuit court's resolution of this case is fatally infirm for two additional reasons. First, where, as here, a circuit court can decide a case without reaching the constitutionality of a statute, it is required to do so. Constitutional questions should only be reached as a last resort. *In re E.H.*, No. 100202, slip op. at 4 (Dec. 21, 2006). So important is this principle that before a circuit court takes the extraordinary step of declaring legislation unconstitutional, our rules now require that the circuit court state in writing that the finding of unconstitutionality is necessary to the decision or judgment rendered and that such decision or judgment cannot rest upon an alternate ground. 210 Ill.2d R. 18(c)(4). A circuit court judgment which fails to adhere to this requirement may be summarily vacated and remanded. *In re E.H.*, No. 100202, slip op. at 4 (Dec. 21, 2006). This is such a case. In affirming the Electoral Board's decision, the circuit court purported to comply with the formalities of Supreme Court Rule 18, but did not properly implement the substantive principles underlying that rule. The non-constitutional flaw in the Election Board's decision, which would have been dispositive of the litigation, went unmentioned..

Second, even if the circuit court had some justification for reaching the constitutionality of section 3.1-10-5(b) of the Municipal Code, it had no proper basis for holding that the statute violates the equal protection guarantees of the United States and Illinois Constitutions. To the contrary, the circuit court was able to find the law unconstitutional only by rejecting the appellate court's decision in *People v. Hofer*, 363 Ill.App.3d 719 (2006). This it was not permitted to do. *Hofer* specifically considered and specifically rejected the identical equal protection challenge to section 3.1-10-5(b) of

the Municipal Code at issue in this case. No other decision by the appellate court or this court conflicts with that precedent.

Coles v. Ryan, 91 Ill.App. 3d 382 (1980), an older decision from the Second Distict, has been cited as justification for the circuit court's rejection of *Hofer*. That opinion, however, did not involve section 3.1-10-5(b) of the Illinois Municipal Code (65 ILCS 5/3.1-10-5(b)(West 2004)), the statute at issue in this case and upheld by *Hofer*. Morever, in marked contrast to *Hofer*, the State in *Coles* suggested no rational basis on which the law challenged in that case could be defended against an equal protection challenge. *Coles* was therefore clearly distinguishable as the court in *Hofer* unanimously recognized. The appellate court's ruling in *Hofer* that *Coles* was not dispositive of the constitutionality of section 3.1-10-5(b) was controlling on the circuit court, just as any other aspect of an appellate court's ruling would be.

Although *Hofer* was decided by a panel of the appellate court from the Fifth District, not the First District, where the Circuit Court of Cook County is located, that is of no consequence. Nearly two decades ago, we recognized that it is "fundamental in Illinois that the decisions of an appellate court are binding on all circuit courts regardless of locale." *People v.* Harris, 123 Ill.2d 113, 128 (1988). The notion that circuit courts are bound only by the appellate court decisions from their own district is a relic of the pre-1964 Illinois Constitution of 1870 and has been expressly disavowed by our court. See *People v. Layhew*, 139 Ill. 2d 476, 489 (1990). Until this court says otherwise, an appellate court's decision must therefore be followed regardless of the appellate court's district. See *People v. Harris*, 123 Ill. 2d at 129.

The record contains references to past cases which indicate that the Circuit Court of Cook County has, through the years, agreed with the Election Board in other cases that section 3.1-10-5(b)

of the Illinois Municipal Code (65 ILCS 5/3.1-10-5(b)(West 2004)) is unconstitutional and cannot serve as a bar to the candidacy of convicted felons. Among these is a declaratory judgment issued in connection with Medrano's failed 2003 run for office. None of those decisions, however, are binding on other circuit judges in other cases, including this case. Under Illinois law, the decisions of circuit courts have no precedential value (see *Kennedy Brothers v. Property Tax Appeal Board*, 158 Ill.App.3d 154, 165 (1987); *Village of Northbrook v. Cannon*, 61 Ill.App.3d 315, 322 (1978)) and cannot trump decisions of the appellate court.

In *People ex rel. Birkett v. Bakalis*, 196 Ill.2d 510, 513 (2001), our court observed that:

> "[b]eyond our leave to appeal docket, supervisory orders are disfavored. As a general rule, we will not issue a supervisory order unless the normal appellate process will not afford adequate relief and the dispute involves a matter important to the administration of justice [citation] or intervention is necessary to keep an inferior tribunal from acting beyond the scope of its authority [citation]."

In this case, however, we believe that such considerations are present. Although the circuit court acted within its jurisdiction, the manner in which this case was handled presents important issues regarding the administration of justice, and direct and immediate action is necessary to insure that the Election Board adheres to the law and that any challenge to its decision in the circuit court comports with controlling principles of judicial review.

Conclusion

For the foregoing reasons, this appeal is dismissed. In the exercise of our supervisory authority,

IT IS HEREBY ORDERED that this cause is remanded to the circuit court with

instructions to enter judgment vacating the Election Board's decision and directing it to: (1) declare that Mr. Medrano is ineligible to run for the office of alderman pursuant to section 3.1-10-5(b) of the Illinois Municipal Code (65 ILCS 5/3.1-10-5(b)(West 2004)), (2) reject his nomination papers, and (3) remove his name from the ballot for the upcoming election. The court's judgment shall further provide that if removal of Mr. Medrano's name from the ballot cannot be accomplished prior to election day, the Election Board shall be required to disregard any votes cast for him in determining the winner of the election.

IT IS FURTHER ORDERED that the circuit court shall enter its judgment as herein directed within 24 hours of this supervisory order, which is to be filed by the Clerk of the Supreme Court immediately. The circuit court's judgment shall not be subject to stay by the circuit court or the appellate court.

IT IS FURTHER ORDERED that after the Election Board complies with the circuit court's judgment, administrative review of its decision may be taken to the circuit court as provided by law.

IT IS FURTHER ORDER that the mandate of this court shall issue forthwith.

Order entered by the court.

Chief Justice Thomas and Justices Freeman and Burke, N.P.

ORDER

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

NICHOLAS J. DELGADO, et al.
/

v.

The Board of Electn Commr's of the City of Chicago

No. 07 COEL 02

ORDER

This matter coming to be heard with all due emergency ^ Notice to the parties, it is ORDERED, pursuant to the order of the Supreme Court of Illinois, dated February 23, 2007:

The decision of the Election Board is vacated.

The Board is ordered to:

1) Declare that Mr. Nedrano is ineligible to run for the office of alderman pursuant to 65 ILCS § 5/3.1-10-5(b);
2) Reject his nomination papers;
3) Remove his name from the ballot for the upcoming election;
4) and [redacted], if removal of Nedrano's name from the ballot cannot be accomplished prior to Election day, the Board [redacted] is required to disregard any votes for him in determining the winner of the election.

Atty. No.: 29143
Name: Sheri Thornton-Pierce
Atty. for: Petitioner
Address: Shefsky & Froelich, Ltd 111 E. Wacker Ste 2800
City/State/Zip: Chicago IL 60601
Telephone: 312 836-4159

ENTERED
JUDGE NATHANIEL R. HOWSE, JR. - 0772
FEB 23 2007
DOROTHY BROWN
CLERK OF THE CIRCUIT COURT
OF COOK COUNTY, IL
DEPUTY CLERK

ENTER:

Judge

Judge's No.

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

CCG N002-200M-4/23/02 (23350095)

ORIGINAL – COURT FILE

No. 104112

IN THE SUPREME COURT OF ILLINOIS

Nicholas J. Delgado, et al.,	)
	)
Petitioners/Appellants	)
	)
v.	) Direct Appeal from the Circuit
	) Court of Cook County, Illinois
Chicago Board of Election Commissioners and Ambrosio Medrano,	) County Department, County Division
	)
Respondents/Appellees	) Case No. 07 COEL 000002
	)
	) Hon. Nathaniel R. Howse, Jr.
	) Judge Presiding
Lisa Madigan, Intervenor/Appellant	)
	)

ORDER

This cause heard on respondent/appellee Ambrosio Medrano's motion for reconsideration of the order entered February 23, 2007, due notice having been served, and the Court duly advised in the premises;

It is ordered that respondent/appellee Ambrosio Medrano's motion is denied.

Order entered by the Court.

Thomas, C.J., and Freeman and Burke, JJ., took no part.

FILED

MAR 5 - 2007

SUPREME COURT CLERK

ORDER

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

Nicholas Salgado et al.

v.

The Board of Election Commissioners of the City of Chicago et al.

No. 07 COL 402

ORDER

This cause coming on to be heard on the Emergency Petition to Intervene, all parties present and the Court hearing argument, IT IS ORDERED AS FOLLOWS:

(1) The Supreme Court is the proper Court to reconsider or alter its Order;

(2) The case before this Court is over;

(3) The Petition to Intervene is denied.

Atty. No. : 29103

Name : Thomas Geoghegan

Atty. for : Pro Se

Address : [illegible]

City/State/Zip : [illegible]

Telephone : [illegible]

ENTERED
JUDGE NATHANIEL R. HOWSE, JR. -0772
MAR 13 2007
DOROTHY BROWN
CLERK OF THE CIRCUIT COURT
OF COOK COUNTY, IL
DEPUTY CLERK

ENTER :

Judge

Judge's No.