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

Objections of: JOHN J LYDON	)	
	)	
	)	
To the Nomination	)	No.: 22-EB-RES-001
Papers of: MARC JAMES	)	
	)	
Candidate of the Republican Party for the	)	
office of Representative in the General	)	
Assembly, 11th Representative District, State	)	
of Illinois	)	

FINDINGS AND DECISION

The duly constituted Electoral Board, consisting of the Board of Election Commissioners for the City of Chicago, Commissioners Marisel A. Hernandez, William J. Kresse, and June A. Brown, organized by law in response to a Call issued by Marisel A. Hernandez, Chair of said Electoral Board, for the purpose of hearing and passing upon objections ("Objections") of JOHN J. LYDON ("Objector") to the nomination papers ("Nomination Papers") of MARC JAMES, REPUBLICAN PARTY candidate for the office of Representative in the General Assembly for the 11th Representative District of the State of Illinois ("Candidate") at the General Election to be held on Tuesday, November 8, 2022, having convened on July 26, 2022, at 10:00 a.m., and having heard and determined the Objections to the Nomination Papers in the above-entitled matter, finds that:

1. Objections to the Candidate's Nomination Papers were duly and timely filed.

2. The Electoral Board was constituted according to the laws of the State of Illinois.

3. A Call to the hearing on said Objections was duly issued by the Chair 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 or service was waived.

4. A public hearing held on these Objections commenced on August 9, 2022 and was continued from time to time. The Electoral Board assigned this matter to Hearing Officer Barbara Goodman for further hearings and proceedings.

5. The Objector and the Candidate were directed by the Electoral Board's Call served upon them to appear before the Hearing Officer on August 9, 2022 at the time designated in the Hearing Schedule. The following persons, among others, were present at such hearing: the Objector, JOHN J LYDON, by Attorney ROSS D SECLER; the Candidate, MARC JAMES, by Attorney JOHN FOGARTY.

6. The Hearing Officer has tendered to the Electoral Board a report and recommended decision. The Hearing Officer recommends that the Objections to the Candidate's Nomination Papers be overruled and that the Nomination Papers be declared valid.

7. The Electoral Board, having reviewed the record of proceedings in this matter and having considered the report and recommendations of the Hearing Officer, as well as all argument and evidence submitted by the parties, hereby adopts the Hearing Officer's recommended findings and conclusions of law. A copy of the Hearing Officer Report and Recommendations is attached hereto and is incorporated herein as part of the decision of the Electoral Board.

8. Most notably, the Electoral Board finds that proclamation of the final official results of the June 28, 2022, Republican Party primary election by the Illinois State Board of Elections was not a condition precedent for the creation of a vacancy in nomination under 10 ILCS 5/7-61 when no Republican Party candidate's name was printed upon the ballot and when

no person filed a declaration of intent to be a write-in candidate for that office in the Republican Party primary election.

9. For the reasons stated above and in the Hearing Officer's Report and Recommendations, the Electoral Board overrules the Objections to the Candidate's Nomination Papers and finds that the Candidate's Nomination Papers are valid.

IT IS THEREFORE ORDERED that the Objections of JOHN J. LYDON to the Nomination Papers of MARC JAMES, REPUBLICAN Party candidate for the office of Representative in the General Assembly for the 11th Representative District of the State of Illinois, are hereby OVERRULED and said Nomination Papers are hereby declared VALID and the name of MARC JAMES, REPUBLICAN Party candidate for the office of Representative in the General Assembly for the 11th Representative District of the State of Illinois, SHALL be printed on the official ballot for the General Election to be held on Tuesday, November 8, 2022.

Dated: Chicago, Illinois, on Friday, September 9, 2022.

Marisel A. Hernandez, Chair

William J. Kresse, Commissioner

June A. Brown, 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 5 days after service of the decision of the Electoral Board.

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

JOHN J. LYDON	)	
	)	
Objector	)	
-v-	)	22 EB RES 001
	)	
MARC JAMES	)	
	)	
Candidate	)	

HEARING OFFICER'S REPORT AND RECOMMENDED DECISION

This matter was first heard on August 9, 2022. The Objector appeared through counsel Ross Secler of Odelson, Sterk, Murphey, Frazier and McGrath, Ltd. and the Candidate appeared through counsel John Fogarty. The parties were given an opportunity to file preliminary motions. The Candidate filed a Motion to Strike Objector's Petition ("Motion"). The Objector filed Objector's Memorandum of Law in Support of Objector's Petition and Response to Candidate's Motion to Strike Objector's Petition ("Objector's Memo"). The Candidate filed a Reply in Support of Motion to Dismiss ("Reply"). Additionally, Objector filed a Notice to Produce Board Records related to Candidate's voting record. In particular, Objector requested Candidate's voting record from the last general primary held on June 28, 2022. The matter was set for further hearing.

BACKGROUND

The facts are not in dispute. No candidate of the Republican party for the office of Representative in the General Assembly for the 11th Representative District appeared on the ballot at the June 28, 2022 General Primary Election. No write-in candidate timely filed an Intent to be a Write-In Candidate for said office. Therefore, prior to the primary, there was no

possibility that there could be a successful candidate of the Republican Party for the office in question. On July 5, 2022, the Republican Representative Committee for the 11th Representative District ("the Committee") met to fill the vacancy at issue here. On July 25, 2022, the Candidate timely filed his nominating papers pursuant to Section 2A-1.1(b)(l) of the Election Code. On July 29, 2022, the State Board of Elections completed its official canvass in relation to the instant office, among others and proclaimed the results. There is no dispute about the number of signatures required or that the Candidate's nominating papers contained sufficient signatures.

DISCUSSION

It was agreed by the parties that the Motion to Dismiss, if granted, would be dispositive of the case. The Objector's Petition presented three issues. One of the issues, as alleged at paragraph 16 of the Objector's Petition, was that the Candidate was not a qualified primary voter of the Republican Party in that the Candidate voted in Democratic primaries in every primary in which he voted since 2006. At the request of the Objector pursuant to his Notice to Produce, the voting record of the Candidate was produced by the Chicago Board of Election Commissioners in which it was established that the Candidate voted in the Republican Primary at the General Primary Election held on June 28, 2022, said primary being part of the relevant election cycle. No evidence to support the Objector's allegation in paragraph 16 was presented. The voting record of the Candidate clearly established that he voted in the Republican primary on June 28, 2022 and paragraph 16 of the Objector's Petition was overruled.

Additionally, the Objector's Petition at Paragraph 13 alleged certain defects in the Representative Committee's meeting procedures. At the hearing on the Motion, the Objector withdrew Paragraph 13.

The remaining allegations relate to the following issue, to wit: Whether or not a canvassing board's proclamation is a condition precedent to a determination that a vacancy in nomination exists.

The parties agree that the manner in which vacancies are filled is governed by Section 7-61 of the Election Code which states, in pertinent part, as follows:

> If the name of no established political party candidate was printed on the consolidated 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 which may be filled in accordance with the requirements of this Section. Except as otherwise provided in this Code, 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 filled only by a person designated by the appropriate committee of the political party and only if that designated person files nominating petitions with the number of signatures required for an established party candidate for that office within 75 days after the day of the general primary. The circulation period for those petitions begins on the day the appropriate committee designates that person. The person shall file his or her nominating petitions, statements of candidacy, notice of appointment by the appropriate committee, and receipt of filing his or her statement of economic interests together. These documents shall be filed at the same location as provided in Section 7-12. The electoral boards having jurisdiction under Section 10-9 to hear and pass upon objections to nominating petitions also shall hear and pass upon objections to nomination petitions filed by candidates under this paragraph.
> **10 ILCS 5/7-61**

It is further agreed by the parties that the filing date was modified by enacting Section 2A-1.1(b)(l) to require the filing of nominating papers on July 25,2022.

Objector alleges that an additional requirement be read into the statute. Specifically, Objector argues that the canvassing board must proclaim the results in order for a vacancy to exist. Candidate argues that a plain reading of Section 7-61 contains no such requirement and none should be read into the statute. Candidate points out that there are only two requirements in Section 7-61 that must be met: (1) The candidate must be designated by the appropriate

committee, and (2) the nominating papers much be circulated within the statutory timeframe and timely filed. There is no question and no dispute that these conditions have been met.

Nonetheless, despite the unambiguous language of Section 7-61 and Candidate's compliance with the statute, Objector argues that without the completion of the official canvass, there can be no vacancy. Objector's argument is neither supported by caselaw nor statute. While Objector cites a number of cases that are inapposite to the instant case, Objector relies heavily on the case of *Jones v Municipal Officers Electoral Board for City of Calumet City, 2021 IL 126974* which was decided by the Illinois Supreme Court on March 11, 2021. In that case, a referendum was placed on the ballot to determine certain qualifications for mayoral candidates. Prior to the certification of results by the canvassing board, a candidate filed for the office of mayor and a suit was filed in which an attempt was made to remove the candidate from the ballot. The *Jones* court determined that the results of the referendum had to be certified by the canvassing board in order to concluded that the mayoral candidate could not be on the ballot.

Most notably about the *Jones* case is the fact that there were votes relating to an issue **on the ballot** that required counting before the applicability of the eligibility requirements could be applied to the mayoral candidate. This case does not assist the Objector. Rather, it establishes that where a count is required because there is a candidate or issue on the ballot, the final determination is made by the canvassing board. In this case, the vacancy existed prior to the primary and, precisely to the point, there was nothing on the ballot that required counting and no determination that needed to be officially made to establish the vacancy.

Most compelling and as the Candidate correctly points out, if the Objector's position was correct, no vacancy in nomination at the primary held on June 28, 202 could be filled

because the filing deadline (July 25, 2022) preceded the proclamation date by the State Board of Elections (July 29, 2022). Nonetheless and inexplicably, the Objector seems to argue that such an absurd result is required here. Indeed, in Objector's Memo, Objector begins his argument as follows:

> This case may be a unique outcome of the unprecedented circumstances requiring the General Assembly to modify the 2022 election cycle timeline and, in particular, the date of the General Primary Election, as a result of the COVID-19 Pandemic and the delayed 2020 Federal Decennial Census results. (Objector's Memo at page 6)

However, there is no directive in Section 7-61 that a vacancy can only exist after the official canvass by the appropriate canvassing board. There is no directive that a committee may not act prior to the official canvass. There is no directive of any kind in Section 7-61 to the canvassing board's certification.

According to the Objector, notwithstanding the plain language of the statute **and** the legislature's change in the filing dates for the filling of vacancies **and** the legislature's determination not to change the official canvassing dates, one must conclude that the change in the circulation and filing dates for candidate's designated to fill a vacancy at this election were for naught and of no legal effect whatsoever. Such a conclusion is legally untenable and, at a minimum, contrary to the basic tenants of statutory construction.

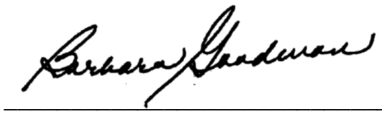
The Objector also alleges without support that the Chicago Board's canvass results can be used to declare the vacancy and that said canvass was concluded before the filing date which apparently would make the statutory scheme and filing deadline less onerous to the Candidate. Candidate correctly argues that the State Board of Elections is the correct canvassing board to declare the results of the office in question. Although it is the opinion of this Hearing Officer that the issue of the correct canvassing board is immaterial to the ultimate result here as the vacancy existed prior to the time of the official canvass, it should be noted that Objector's

position that the Chicago Board is the correct canvassing board here is contrary to Section 22-7 of the Election Code. 10 ILCS 5/22-7.

RECOMMENDATION

In light of the foregoing and having found no valid support for the Objector's objections, it is my recommendation that the objections of **JOHN LYDON** to the nominating papers of **MARC JAMES** be overruled and that the nominating papers of **JOHN LYDON**, Candidate for the Office of Representative in the General Assembly for the 11th Legislative District of the State of Illinois be deemed **valid.** It is my further recommendation that the name of **MARC JAMES** for said office **be** printed on the ballot at the November 8, General Election.

Respectfully submitted,



Barbara Goodman, Hearing Officer
9/7/22