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

Objections of: TERRY BUTTS	)	
	)	
	)	
To the Nomination	)	No.: 24-EB-RGA-017
Papers of: CARL R. KUNZ	)	
	)	
Republican Party Candidate for the office of	)	
Representative in the General Assembly, 31st	)	
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 TERRY BUTTS ("Objector") to the nomination papers ("Nomination Papers") of CARL R. KUNZ, Republican Party candidate for the office of Representative in the General Assembly, 31st Representative District , State of Illinois ("Candidate") at the General Election to be held on Tuesday, November 5, 2024, having convened on Monday, June 17, 2024, 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 Nomination Papers of the Candidate were duly and timely filed.

2. The Electoral Board was constituted under 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 and service by email was authorized.

4. A public hearing held on these Objections commenced on Monday, June 17, 2024 and was continued from time to time. The Electoral Board assigned this matter to Hearing Officer Linda R. Crane 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 the date and at the time designated in the Hearing Schedule. The following persons, among others, were present at such hearing: the Objector, TERRY BUTTS, and/or his Attorney KEVIN MORPHEW; the Candidate, CARL R. KUNZ, and/or his Attorney JOHN FOGARTY JR.

6. The sole issue in the case involved whether the Electoral Board had the authority to enforce Public Act 103-586, which would have rendered the nominating papers invalid. In recognizing that a lower court entered a declaratory judgment against enforcing the Public Act against candidates in the present election cycle, and enjoined the enforcement of the Act by the Illinois State Board of Elections, the Hearing Officer determined that the Electoral Board here may also be without authority to invalidate the nominating papers pursuant to P.A. 103-586.

7. The Electoral Board finds that at the time of the submission of the Hearing Officer's report and recommended decision, the issue of the constitutionality and enforceability of the Act was on direct appeal to the Illinois Supreme Court in the case of *Collazo, et. al. v Illinois State Board of Elections, et al.* 2024 IL 130769. Subsequent to the Hearing Officer's submission, the Illinois Supreme Court rendered its opinion in which it dismissed the appeal for lack of a concurrence of four judges. The Supreme Court expressly noted that the effect of its dismissal "is the same as an affirmance by an equally divided court of the decision under review

but is of no precedential value." *Id.* Thus, the declaratory judgement entered in by the Sangamon County Circuit Court case cited above remains undisturbed by the Illinois Supreme Court.

8. 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.

9. In support of the Hearing Officer's recommendations, the Electoral Board reiterates that the declaratory judgment entered by the Sangamon County Circuit Court in *Collazo* is persuasive legal authority, even if it is not binding. The Electoral Board further finds that no conflicting judgements from the Circuit Court of Cook County have been cited in these proceedings, nor is the Electoral Board aware of any other relevant rulings by the local circuit court. Thus, in the absence of any binding judicial guidance, this Electoral Board will enter its final decision here in accord with the Sangamon County decision in *Collazo.*

10. Furthermore, this Electoral Board acknowledges that it may not be authorized to enter rulings on constitutional questions. Nonetheless, it takes judicial notice of the fact that, in accord with the declaratory judgement and the injunction issued against it by the *Collazo* court, the Illinois State Board of Elections has certified several similarly situated candidates to the ballot for the office of state representative. Article 3, Section 3, of the Illinois Constitution of 1970 states that "All elections shall be free and equal." (Emphasis added.) Without passing judgment on this constitutional issue, the Electoral Board does raise a concern that it might be an unconstitutional violation of this "equal" elections requirement were it to remove candidates

from the ballot by enforcing Public Act 103-586, when other similarly-situated candidates have been granted ballot access jointly by the Sangamon County Circuit Court and the Illinois State Officers Electoral Board.

11. For the reasons stated above, 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 TERRY BUTTS to the Nomination Papers of CARL R. KUNZ, candidate for the office of Representative in the General Assembly, 31st Representative District, State of Illinois, are hereby OVERRULED and said Nomination Papers are hereby declared VALID and the name of CARL R. KUNZ SHALL be printed on the official ballot for the General Election to be held on Tuesday, November 5, 2024.

Dated: Chicago, Illinois, on Tuesday, August 27, 2024.

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 DULY CONSTITUTED ELECTORAL BOARD FOR THE HEARING AND PASSING UPON OF NOMINATION OBJECTIONS TO THE NOMINATION PAPERS OF CANDIDATES FOR ELECTION TO THE OFFICE OF REPRESENTATIVE IN THE GENERAL ASSEMBLY FOR THE 31st REPRESENTATIVE DISTRICT OF THE STATE OF ILLINOIS

IN THE MATTER OF		
TERRY BUTTS	)	
	)	
Petitioner-Objector	)	
	)	**Case No. 24-ED-RGA-017**
vs.	)	
	)	
CARL R. KUNZ	)	
	)	
Respondent-Candidate	)	

HEARING OFFICER'S REPORT AND RECOMMENDATIONS

The Respondent Candidate, **CARL R. KUNZ,** has filed Nomination Papers in support of his nomination for the office of Representative in the General Assembly for the 31st Representative District of the State of Illinois to be voted upon during the upcoming General Election on November 5, 2024 (Election). The Petitioner-Objector, **TERRY BUTTS**, filed a Verified Objector's Petition Objecting to the sufficiency of the Candidate's nomination papers for various reasons stated in Paragraphs 5 of his Petition. The initial hearing on the matter was held on June 17, 2024. The Objector's attorney, Kevin Morphew, was present and filed his Appearance. The Candidate's, attorney, John Fogarty was present and filed his Appearance.

At the outset of the Hearing, the contents of the file were assembled and marked as Board Exhibits A-D. The attorneys for both of the Parties requested permission to forego filing Motions to Strike or Dismiss because of the uniqueness of one of the Objections, which was before the

Illinois Supreme Court on direct appeal of a case in Sangamon County *(Collazo et al., v. Illinois State Board of Elections, et. al.*, 2024 CH 32 (2024), in which the Candidate here was a named party, which had ruled that recent legislation passed by the Illinois General Assembly eliminating the slating provision upon which the Candidate relied when filing his Nomination Papers was unconstitutional, saying: **[NOTE: ALL TRANSCRIPT CITATIONS ARE TO THE TRANSCRIPTION OF THE HEARINGS HELD FOR 24-EB-RGA-015 WHICH IS WHERE THE FULL PROCEEDINGS ON THE JOINT ISSUES FOR 24-EB-RGA-015, 016, AND 017 WERE CONSOLIDATED BY AGREEMENT OF ALL OF THE PARTIES AND THE BOARD.]**

> "MR. MORPHEW: *Yes. The Candidate is seeking to appear on the ballot via the slating provision that was eliminated by the General Assembly via a public act that has been signed by the governor. We are aware of the challenge to that law, and that the Circuit Court has determined that it is unconstitutional.*
> *That matter is on direct appeal to the Supreme Court, and the briefing schedule has been set. As you may or may not be aware, I'll just go forward with it, but the briefing schedule has been set. The parties have waived replies and oral argument. Essentially the Supreme Court will have both parties' arguments before them by July 8th.The motion to expedite has been granted by the Supreme Court, and that decision will be forthcoming shortly after. It is expected shortly after July 8th. We can offer that in other instances where this matter has been considered by ancillary Electoral Boards, we have decided, by agreement of the parties, to continue the case until sometime during the week of July 8th. We believe that the decision by the Supreme Court in that matter will be dispositive of this case..."*
> (Transcript for at pp 4-5)

The joint request of the opposing counsels to postpone the normal briefing schedule pending a decision by the Illinois Supreme Court was granted. The next hearing date was scheduled for June 24, 2024 at 11:30 a.m. to review the results of the RE.

On June 19, 2024 at 10:34 p.m., this Hearing Officer sent the following message to the Parties via email:

> *It is my understanding that you do intend to file dispositive Motions on the remaining legal issue. That said, I am setting the briefing schedule now in lieu of waiting until Monday, as stated below. I accelerating the timeline, however.*
>
> *Briefing schedule for 24-EB-RGA-016:*
>
> 1. *Candidates Motions to Dismiss/Strike Due before 5 pm on Tuesday, June 25th, 2024;*
> 2. *Objector's Response Due before 5 pm on Wednesday, June 26th, 2024; and*
> 3. *Candidate's Reply, if any, Due before 5 pm on Thursday, June 27th, 2024."*

On June 24, 2024, the 2nd hearing convened at 11:30 via Zoom and without a court reporter. The hearing was requested by the attorneys for the Parties for the purpose of persuading the Hearing Officer to request an extension of the briefing schedule to a date that would await the pending ruling by the Illinois Supreme Court, which everyone, including the H.O. believed was imminent.

The request was granted and the following new briefing schedule was set:

1. Candidate's Motions to Dismiss/Strike due on Monday, July 15, 2024 before 5 p.m.
2. Objector's Response due on Tuesday, July 16, 2024 before 5 p.m.
3. Candidate's Reply, if any, due on Wednesday, July 17, 2024 before 5 p.m.

The attorneys were timely with their compliance with the briefing schedule beginning July 15th.

The next hearing date was set for Monday, July 22, 2024 at 11:00 a.m. and the substance of the hearing was as follows:

HEARING OFFICER CRANE:

... "I've received (the) pleadings from the attorneys and I have reviewed them. And I don't know if it is worth going through what the arguments are in the pleadings, because I have spoken to General Counsel for the Board, Adam Lasker, about the timeline (It)does seem as though the Supreme Court decision

still has not been published. I found both sets of pleadings persuasive. I know I would benefit from the Supreme Court decision. And I told that to Adam Lasker. He agrees that, especially since -- even though these cases are much older than the current cases that are being reviewed by the Commissioners and in our way of looking at the world are growing whiskers. But the Candidates involved or parties involved would all be or not be on the same ballot as the ballot for the more recent cases. So even though these are older, the Board still has some time before our opportunities are exhausted to have a timely decision made about whether or not these Candidates for the General Assembly ... (can appear on the) ballot... So that having been said, I think the only thing we are here to do right now is to create a record that we are here and ... have a status update to a certain extent, but also to continue this until after the Supreme Court decision comes down, assuming that it does come down in time for us to rely on it rather than to sort of get ahead of it and then suffer whatever consequences are caused by that. And so, we're going to take it, I think, a week at a time."

A tentative date for the next hearing was scheduled for Wednesday, July 31, 2024 at 11:00 a.m. (instead of Monday, July 29th at 10:00 am), at the request of John Powell, who asked us to, if possible, select a date that allowed for a reasonable opportunity to cancel the court reporter and avoid the cost of not doing so within 24 hours of the scheduled time. The July 31st hearing was canceled because the Supreme Court had not published its opinion in the Sangamon County case. To date, we have not had a hearing since July 22nd for the same reason.

Without the benefit of the Illinois Supreme Court's analysis and opinion, I am preparing this report and my recommendations to the Commissioner based on the best resources available to me without it, the briefs of the parties, applicable case law, established policies and practices of the Chicago Board of Elections and the CBOE.

At issue is whether the Sangamon County case, which specifically limits its scope ("as applied") to the named parties in the case, is binding on the Chicago Board of Elections and its Commissioners prior to being affirmed by the Illinois Supreme Court?

The Candidate is attempting to impose the ruling against a 3rd party who is not within the jurisdiction of the Sangamon County court system. Of course, the Board is an administrative

agency and has no power to declare a statute constitutional or unconstitutional. *Cinkus v. Stickney Mun. Officers Elec. Bd.*, 228 Ill.2d 200, 214 (2008).

The Objector makes several points that I find persuasive. Among them is the fact that the only basis offered by the Candidate to dismiss the Objector's Petition is a Sangamon County circuit court decision. It is well-established under Illinois law that "the decisions of circuit courts have no precedential value." *Delgado v. Bd. of Election Comm'rs*, 224 Ill.2d 481, 488 (2007). That decision, however, has no precedential effect pursuant to the Supreme Court's decision in Delgado, where the Supreme Court reversed this Board's decision for improperly relying on a Cook County Circuit Court decision. (Objector's Response to Motion to Strike at p 3). Here, the circuit court decision the Candidate puts forward is not even the same circuit, an even more tenuous reliance than the one soundly rejected by the Supreme Court in Delgado.

Whether required to do so or not, however, the Chicago Board of Elections should be cautious and continue its long-standing policy of erring on the side of inclusion and ballot access. *Wisnasky-Bettorf v. Pierce*, 2012 IL 111253; *Hossfeld v. Illinois State Board of Elections*, 398 Ill.App.3d 737 (2010). Courts view the right of citizens to run for and hold political offices a valuable one. *McGuire v. Nogaj*, 146 Ill.App.3d 280 (1st Dist. 1986). "Ballot access is a substantial right and not lightly to be denied." *Reyes v. Bloomingdale Township Electoral Board*, 265 Ill.App.3d 69, 71, 638 N.E.2d 782 (2nd Dist. 1994), citing *Welch v. Johnson*, 147 Ill.2d 40, 56, 588 N.E.2d 1119 (1992).

Moreover, Article III, Section III, of the Illinois Constitution requires that "All elections shall be free and equal." It seems unwise and, inherently unequal, and potentially chaotic, for the Chicago Board of Elections to refuse to allow ballot access to Candidates who are identical in every particular to other Candidates who have been determined by a court looking at the issue before us to have a right to appear on the same ballot for the same office at the same time and in the same election and for which the State Board of Elections is required to include them while awaiting much-anticipated and overdue clarification by the Illinois Supreme Court. In the absence of direction from the Supreme Court and in the spirit of its long-standing bias favoring inclusion, the Chicago Board should not totally dismiss the thoughtful analysis contained in Judge Noll's ruling in the Sangamon County case. Citing *Storer v. Brown*, 415 U. S. 724, 730

(1974) that court invoked the U. S. Supreme Court's admonishment that, "as a practical matter, there must be a substantial regulation of elections if they are to be **fair** and honest and in some sort of order, rather than chao(tic)." (at page 5). (emphasis added) The Board has an opportunity to prevent an unnecessarily chaotic result.

Finally, in *Collazo v State of Illinois Board of Elections*, the Judge Noll also entered a Declaratory Judgment that the new state law cannot be enforced for this 2024 general election and that the applicable candidates, therefore, should be allowed to have their names on the ballot for this election. While its arguable that the declaratory judgement is not binding on an administrative agency such as the Chicago Board of Elections, I am also aware of the following two factors:

1. That the language of 705 ILCS 35/26 (from Ch. 37, par. 72.26) Arguably encompasses administrative agencies, such as the CBOE, to enforce a declaratory judgement entered by a circuit court from a county other than the county in which the agency is located –and particularly when the agency was not a party to the applicable lawsuit. To wit:

   Sec. 26. ***The respective courts and the several judges thereof shall have the power to award throughout the state,*** *and returnable in the proper county,* ***relief*** *by injunction, ne exeat, habeas corpus, quo warranto,* ***and all other processes that may be necessary to the due execution of the powers with which they are or may be vested.*** *(Source: P.A. 83-346) (emphasis* added*);* and

2. That there is no controlling or conflicting or alternative available court opinion from the Circuit Court of Cook County nor from the Illinois Supreme Court. Consequently, the decision from Sangamon County case is at least instructive and even a reasonable basis for resolving the dispute currently before the Chicago Board.

Based on the foregoing and in consultation with the General Counsel, Adam Lasker, I hereby submit these findings and recommendations to the Commissioners for their consideration:

1. That Candidate's nomination papers were filed was after the May 3, 2024 effective date of Public Act 103-586 under which it may appear the nomination papers are invalid.
2. That under the injunction currently in effect, however, the Board may not have the authority to sustain the Objections based on the slating process which put the name of the Candidate forth for inclusion on the ballot for the upcoming Election.
3. Accordingly, the Hearing Officer recommends that the Board overrule Objection to the candidacy based on the now illegal process unless or until it receives guidance on the issue from the Illinois Supreme Court.
4. That the name of the Candidate be allowed to appear on the ballot for to the November 5, 2024 Election.

Respectfully Submitted,

Date: August 23, 2024

By: Linda R. Crane

Linda R. Crane, Hearing Officer