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

Objections of: READONIA BRYANT	)	
	)	
	)	
	)	
To the Nomination Papers of: VIRGIL E. JONES	)	**No.: 07-EB-ALD-006**
	)	
Candidate for the office of Alderman of the Fifteenth 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 READONIA BRYANT ("Objector") to the nomination papers ("Nomination Papers") of VIRGIL E. JONES, candidate for the office of Alderman of the Fifteenth 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 Joseph Morris 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, READONIA BRYANT, by counsel, Chester Slaughter; and the Candidate, VIRGIL E. JONES, by pro se.

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.

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

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 READONIA BRYANT, MARIA R. GODINEZ and DIANE G. GARCIA to the Nomination Papers of VIRGIL E. JONES, candidate for election to the office of Alderman of the Fifteenth Ward of the City of Chicago, are hereby OVERRULED and said Nomination Papers are hereby declared VALID and the name of VIRGIL E. JONES, candidate for election to the office of Alderman of the Fifteenth 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.

BEFORE
THE 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
FOR MAYOR, CLERK, TREASURER, AND ALDERMAN
IN THE CITY OF CHICAGO

READONIA BRYANT,)
)
Objector,)
) No. 07-EB-ALD-006
vs.)
) Hearing Examiner Morris
VIRGIL E. JONES,)
)
Candidate.)

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REPORT OF THE HEARING EXAMINER

To the Board of Election Commissioners of the City of Chicago:

Hearing Examiner JOSEPH A. MORRIS reports as follows:

1. This matter came before the Hearing Examiner, pursuant to notice, for initial hearing on January 2, 2007. The Objector was present by counsel. The Candidate was present *pro se*. No issue was raised as to sufficiency or timeliness of notice of the objection or of the hearing. Both parties filed written appearances.

2. Without objection, the Candidate's nomination papers for the office of Alderman of the 15th Ward of the City of Chicago were admitted into the record as Group Exhibit A; the Objector's Petition and attachments were admitted into the record as Group Exhibit B; the returns of service of process by the Sheriff of Cook County, Illinois, and written waivers were admitted into the record as Group Exhibit C; and the parties' written appearances were admitted into the record as Group Exhibit D.

3. Each party stated that he was in possession of the Rules of the Electoral Board. The Candidate stated that he intended to file a motion to strike and dismiss the objection. A filing, briefing, and hearing schedule was established for the motion to strike and dismiss, under which such a motion was to be filed on or before January 3, 2007, at 5:00 p.m., and a hearing on the motion was set for January 8, 2007. The parties agreed that there was no issue as the number or sufficiency of petition signatures, and that no records examination was required.

<u>The Claims of the Objector's Petition</u>

4. The Objector's Petition, filed on December 22, 2006, asserted in substance as follows:

(a) On January 28, 1999, in a case pending in the United States District Court for the Northern District of Illinois, and there known as *United States v. Jones* and numbered as No. 97 CR 821, a judgment of guilty was entered against the Candidate on (1) three counts of violating 18 U.S.C. § 1951, which punishes as a felon any person who "obstructs, delays, or affects commerce or the movement of any article or commodity in commerce, by robbery or extortion or attempts or conspires so to do, or commits or threatens physical violence to any person or property in furtherance of a plan or purpose to do anything in violation of this section", or who, within the meaning of 18 U.S.C. §2, aids and abets those who do so; and (2) two counts of violating 26 U.S.C. § 7206, which punishes as a felon any person who "[w]illfully makes and subscribes any [tax] return, statement, or other document, which contains or is verified by a written declaration that it is made under the penalties of perjury, and which he does not believe to be true and correct as to every material matter".

(b) On June 11, 1999, in that Federal criminal proceeding, the Candidate was sentenced to terms of 41 months of imprisonment on each of the first three counts and to terms of 12 months of imprisonment on each of the latter two counts, all terms to be served concurrently, and to a further term of two years of supervised release following his release from prison.

(c) The President of the United States has not pardoned the Candidate for the crimes for which the Candidate was convicted, and the Candidate has not otherwise, by appeal or any other channel of relief, been relieved of his status as a convicted felon with respect to those crimes.

(d) Accordingly, pursuant to Section 3.1-10-5(b) of the Illinois Municipal Code, 65 ILCS § 5/3.1-10-5(b), the Candidate is ineligible to an elective municipal office including the office of Alderman of the 15th Ward of the City of Chicago which he now seeks.

5. The Candidate admitted that he is the same Virgil Jones who was charged with felonies in the case described in the Objector's Petition and that he was, indeed convicted of those crimes. Tr. (January 8, 2007) at 21-22. The Candidate does not contend that he was pardoned for those crimes or otherwise relieved of those convictions.

6. The Objector admitted that, as of the time that the Candidate filed his candidacy papers, the Candidate had served the entirety of his sentences in the criminal matter and the criminal matter was entirely closed. Tr. (January 8, 2007) at 13.

Proceedings on the Objector's Petition

7. On January 3, 2007, the Candidate filed a timely motion to strike and dismiss the Objector's Petition which asserted, in substance, as follows:

(a) The strictures of Section 3.1-10-5(b) of the Illinois Municipal Code, 65 ILCS § 5/3.1-

10-5(b), making the Candidate ineligible to an elective municipal office, violate rights secured to him under the Fourteenth and Fifteen Amendments of the United States Constitution, in that (1) the statute makes an arbitrary distinction between offices created by the Illinois Constitution and other offices, including municipal offices, established by statute, thus violating the Candidate's right, secured by the Fourteenth Amendment, to the equal protection of the laws, and (2) the statute abridges the right of the voters, and of the Candidate himself, to vote for the Candidate on account of the Candidate's "previous condition of servitude", thus offending the Fifteenth Amendment.

(b) The Objector does not have the right to object to the Candidate's nomination papers without first asking the Attorney General of Illinois or the State's Attorney to bring a *quo warranto* petition before a court.

8. On January 6, 2007, the Candidate lodged with the Board a document styled "Supplemental Memorandum to Motion to Strike and Dismiss Nominating Petitions of Virgil E. Jones", which asserted, in substance, that the Objector's Petition which had been filed in this matter in the name of Readonia Bryant was not signed by the Objector himself, but was signed only by his attorney. Although this document was submitted following the close of the briefing schedule established by the Hearing Examiner for the motion to strike and dismiss, the Hearing Examiner received and considered the document.

9. At the hearing held on January 8, 2007, the Objector lodged with the Board, in the person of the Hearing Examiner, a copy of the Objector's Petition, as file-stamped by the Board on December 22, 2006, now bearing the original signature of the Objector. For the reasons set forth *infra*, the Hearing Examiner received the document and granted leave for it to be filed.

10. On January 9, 2007, the Objector lodged with the clerk of the Board a further

Supplemental Memorandum to Motion to Strike and Dismiss Nominating Petitions of Virgil E. Jones. Although the document was submitted following the close of the record in this proceeding and was lodged with the clerk without leave of the Board or of the Hearing Examiner, the document consisted of argument and was received and considered by the Hearing Examiner.

Questions Presented

11. As thus submitted to the Board, this case presents three questions:

(a) Should the Objector's Petition be dismissed on account of the failure of the Objector, in his proper person, to sign it prior to its filing?

(b) Should the Objector's Petition be dismissed on account of the failure of the Objector, as a preliminary matter, to ask the Attorney General or the State's Attorney to bring an action in *quo warranto*?

(c) In the event that the Objector's Petition is not dismissed on one or both of the grounds stated in the two foregoing questions, then, do the provisions of Section 3.1-10-5(b) of the Illinois Municipal Code, 65 ILCS § 5/3.1-10-5(b), abridge rights secured to the Candidate (or the voters) by (1) the Fourteenth Amendment and (2) the Fifteenth Amendment of the United States Constitution?

The parties agreed that no other questions are raised in the case, and there are no factual issues in dispute which would require an evidentiary hearing. In the event that Questions (c)(1) and (c)(2), *supra*, are reached and decided, the parties agree that, if the statute is constitutional, then the name of the Candidate must be stricken from the ballot; and if the statute is unconstitutional, then the name of the Candidate must be printed on the ballot.

Signing of the Objector's Petition

12. The Illinois Election Code in general, and Section 10-8 in particular, contains no requirement that an Objector's Petition be signed.

13. The Board itself has adopted a rule, Rule 13 of the Rules of Procedure for the Board of Election Commissioners of the City of Chicago as the Duly Constituted Electoral Board for Hearing and Passing Upon Objections to Nomination Papers and Petitions for Questions of Public Policy, which provides:

> For matters not covered herein, the Electoral Board will generally follow rules of evidence and practice which prevail in the Circuit Court of Cook County, Illinois, including the Code of Civil Procedure and the Rules of the Illinois Supreme Court, but because of the nature of these proceedings, the Electoral Board shall not be bound by such rules in all particulars.

14. The Board thus generally embraces and follows the provisions of Rule 137 of the Rules of the Illinois Supreme Court, which provides, in pertinent part, as follows:

> Every pleading, motion and other paper of a party represented by an attorney shall be signed by at least one attorney of record in his individual name, whose address shall be stated. A party who is not represented by an attorney shall sign his pleading, motion, or other paper and state his address. Except when otherwise specifically provided by rule or statute, pleadings need not be verified or accompanied by affidavit. The signature of an attorney or party constitutes a certificate by him that he has read the pleading, motion or other paper; that to the best of his knowledge, information, and belief formed after reasonable inquiry it is well grounded in fact and is warranted by existing law or a good-faith argument for the extension, modification, or reversal of existing law, and that it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation. If a pleading, motion, or other paper is not signed, it shall be stricken unless it is signed promptly after the omission is called to the attention of the pleader or movant.

15. Rule 137 expressly permits papers to be signed by an attorney when a party, as in the case of the Objector in this proceeding, is represented by an attorney. Even assuming, however, that

the signature of the Objector himself were required, Rule 137 provides for the striking of a paper only if it *not* "signed promptly after the omission is called to the attention of the pleader...."

16. This Board, specifically invoking Supreme Court Rule 137, has held that the failure of an objector to sign his objector's petition did not invalidate it when the objector affixed his signature promptly when the omission was called to his attention. *Powell v. Lang*, 95-EB-ALD-183, CBEC (Jan. 28, 1995).

17. In the instant case, the Candidate first raised the issue of the absence of the Objector's signature on Saturday, January 6, 2007. He did so in a document which, though styled a "supplemental memorandum", was, in truth, a fresh statement of a new ground for striking and dismissing the Objection, and which was lodged with the Board three days after the deadline for the filing of motions to strike and dismiss. The Objector, in turn, in his proper person signed the Objector's Petition on Monday, January 8, 2007, and tendered it to the Board at the hearing held that day. The omission, if any, was thus called to the Objector's attention by a document lodged, and presumably served, on a Saturday, and the omission, if any, was cured at the first opportunity on the following Monday. That is surely prompt compliance with Rule 137.

18. In the end, there is no statutory requirement that an objector's petition be signed at all. But if Board Rule 13, by bootstrapping Supreme Court Rule 137, requires a signature, then an attorney's signature will suffice. But even if the signature of an objector himself, as opposed to his attorney, is required, then Rule 137 permits such a signature to be supplied if done promptly after the omission is called to the objector's attention. In the present case the Objector's Petition has borne, *ab initio*, the signature of the Objector's attorney, and it now bears, as well, the signature of the Objector himself, furnished promptly when the Candidate flagged its absence. With this

abundance of timely signatures, there is no basis for striking the Objector's Petition on the ground that it is unsigned.

<u>The Necessity for an Application in *Quo Warranto*</u>

19. *Quo warranto* is a remedy both extraordinary and ancient. It was originally a writ of right for the crown against one who claimed or usurped any office, franchise, or liberty, to challenge the authority underlying that assertion of the right, and it evolved into a means for review of claims, *inter alia*, of entitlement to exercise governmental power. *People ex rel. Hansen v. Phelan*, 158 Ill. 2d 445, 634 N.E.2d 739 (1994). The rules governing *quo warranto* proceedings are now codified at Sections 18-101 *et seq.* of the Illinois Code of Civil Procedure, 735 ILCS §§ 5/18-101 *et seq.* They may be brought by private parties under special circumstances as set forth in Section 18-802, which do, indeed, involve requests of, and notices to, the Attorney General and the relevant State's Attorney:

> The proceeding shall be brought in the name of the People of the State of Illinois by the Attorney General or State's Attorney of the proper county, either of his or her own accord or at the instance of any individual relator; or by any citizen having an interest in the question on his or her own relation, when he or she has requested the Attorney General and State's Attorney to bring the same, and the Attorney General and State's Attorney have refused or failed to do so, and when, after notice to the Attorney General and State's Attorney, and to the adverse party, of the intended application, leave has been granted by the circuit court.

Section 18-801 specifies the grounds on which an action in *quo warranto* may be brought, as follows:

> A proceeding in quo warranto may be brought in case:
>
> (1) Any person usurps, intrudes into, or unlawfully holds or executes any office, or franchise, or any office in any corporation created by authority of this State;

(2) Any person holds or claims to hold or exercise any privilege, exemption or license which has been improperly or without warrant of law issued or granted by any officer, board, commissioner, court, or other person or persons authorized or empowered by law to grant or issue such privilege, exemption or license;

(3) Any public officer has done, or allowed any act which by the provisions of law, works a forfeiture of his or her office;

(4) Any association or number of persons act within this State as a corporation without being legally incorporated;

(5) Any corporation does or omits to do any act which amounts to a surrender or forfeiture of its rights and privileges as a corporation, or exercises powers not conferred by law;

(6) Any railroad company doing business in this State charges an extortionate rate for the transportation of any freight or passenger, or makes any unjust discrimination in the rate of freight or passenger tariff over or upon its railroad.

20. As the Candidate points out in his Motion to Strike and Dismiss, Illinois courts will entertain *quo warranto* actions which challenge the eligibility for municipal public office of persons on various grounds, including assertions that, as convicted felons, they are barred from election by Section 3.1-10-5(b) of the Illinois Municipal Code, 65 ILCS § 5/3.1-10-5(b). Thus, in *People v. Hofer*, 363 Ill.App.3d 719, 843 N.E.2d 460 (5th Dist. 2006), a trustee of the Village of Sorento, Illinois, was removed from office in *quo warranto* proceedings, and was barred from taking office as the President of that village, because of two separate convictions for the offense of driving while his license was revoked, a Class 4 felony under 625 ILCS §§ 5/6-303(a) and 5/6-303(d). In *Coles v. Ryan*, 91 Ill. App. 3d 382, 414 N.E.2d 932 (2d Dist.1980), and *People ex rel. Ryan v. Coles*, 64 Ill. App. 3d 807, 381 N.E.2d 990 (2d Dist. 1978), *quo warranto* actions were brought (more than once, both before and after completion of the felon's probation and thus of his sentence) to oust a

man convicted of extortion in violation of 18 U.S.C. § 1851 from office as supervisor of Lake Villa Township, Illinois. Ouster was ultimately denied. In *People ex rel. Cory v. Watts*, Cir. Ct., Cook Cty., Ill., No. 99 CH 10306 (Dec. 1, 1999) (Jaffe, J.), application was made for leave to file a complaint in *quo warranto* seeking ouster of an alderman of the City of Country Club Hills, Illinois, on the ground that, some 20 years before his election, he was convicted of armed robbery (although in that case the application was ultimately denied, in part because of the failure of the relator first to request the Attorney General and the State's Attorney to bring the action). Section 3.1-10-5(b) of the Illinois Municipal Code was invoked in each of those cases.

21. In each case, however, the convicted felon whose ouster was sought already occupied a public office. Pre-election activity, the elections themselves, and any post-election proceedings had already been held and concluded, and the felon had entered upon his elective office. At such a point no electoral board had any authority in the matter; the role of election authorities ended when the felon's election was certified. Claims raised thereafter went, not to the right of the felon to a place on a ballot, but to his right to hold and exercise the powers of an office he already claimed. Under such circumstances, the question was precisely whether or not the officeholder was a "person [who] usurps, intrudes into, or unlawfully holds or executes any office...," one of the six categories of usurpations made actionable in *quo warranto* by Section 18-801 of the Illinois Code of Civil Procedure.

22. A careful consideration of Section 18-801 suggests that the position of candidate for public office, or of place-holder on an election ballot, does *not* fit into any of the classifications of usurpations for which relief in *quo warranto* is intended. Perhaps the closest category is that set forth in Section 18-801(2), pertaining to a "person holds or claims to hold or exercise any privilege

... which has been improperly ... granted by any officer, board, commissioner, court, or other person or persons authorized or empowered by law to grant or issue such privilege...." The notion that a place on a ballot is a "privilege", however, is troubling, for the "right" to run for public office, although not "absolute" or "fundamental", has nonetheless historically and consistently been recognized under the United States and Illinois Constitutions as a "right" rather than a "privilege". *See, e.g., United States Civil Service Commission v. National Association of Letter Carriers*, 413 U.S. 548 (1973); *Trafelet v. Thompson*, 594 F.2d 623 (7th Cir.), *cert. denied*, 444 U.S. 902 (1979); *Hoskins v. Walker*, 57 Ill.2d 503, 315 N.E.2d 25 (1974). A search (conceded to be quick and non-exhaustive) turned up no Illinois, other American, or English precedents for permitting *quo warranto* actions to be brought to challenge the right of access to the ballot, and certainly none *requiring* the prosecution of *quo warranto* actions for that purpose.

23. Nothing in the Illinois Election Code requires that an objector's petition be brought in the nature, or under the forms, of an application for a writ of *quo warranto*, nor does any provision of the Code condition a ballot-access challenge on a prior request to the Attorney General or a State's Attorney. It appears that the Candidate has confused Judge Jaffe's action in *People ex rel. Cory v. Watts, supra*, where he denied a petition for leave to file a complaint in *quo warranto* for failure to invite the Attorney General of the State's Attorney to act first, with the action that he urges be taken by the Board in the case at bar to deny the Objector's Petition. In any event, the Objector in the instant case had no duty to seek prior intervention by the Attorney General or the State's Attorney before filing the Objector's Petition now pending, and the Candidate's motion to strike and dismiss the Objector's Petition on that ground should be denied.

Constitutionality of Section 3.1-10-5(b) of the Illinois Municipal Code

24. In his motion to strike and dismiss the Objector's Petition, the Candidate urges that the Board conclude that Section 3.1-10-5(b) of the Illinois Municipal Code, 65 ILCS § 3.1-10-5(b), unconstitutionally abridges rights secured to him by the Equal Protection Clause of the Fourteenth Amendment and by the Previous Condition of Servitude Clause of the Fifteenth Amendment.

25. Section 3.1-10-5(b) of the Illinois Municipal Code provides as follows:

> A person is not eligible for an elective municipal office if that person is in arrears in the payment of a tax or other indebtedness due to the municipality or has been convicted in any court located in the United States of any infamous crime, bribery, perjury, or other felony.

26. There is no doubt that the crimes of which the Candidate was convicted implicate Section 3.1-10-5(b), and the Candidate does not contend otherwise. Two counts directly involved a species of perjury, and all were "infamous" within the meaning of the statute. *See, e.g., People ex rel. City of Kankakee v. Morris*, 126 Ill.App.3d 722, 467 N.E.2d 589 (3d Dist. 1984) ("a felony is infamous when it is inconsistent with commonly accepted principles of honesty and decency, or involves moral turpitude").

27. Section 1 of the Fourteenth Amendment of the United States Constitution provides, in pertinent part, as follows:

> No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

28. Section 1 of the Fifteen Amendment of the United States Constitution provides as follows:

> The right of citizens of the United States to vote shall not be denied or abridged by

the United States or by any state on account of race, color, or previous condition of servitude.

Fourteenth Amendment — Equal Protection of the Laws

29. The Candidate relies on several prior Court and Board decisions in support of his contention that denial of ballot access to him under Section 3.1-10-5(b) of the Illinois Municipal Code would deny him the equal protection of the laws.

(a) The Candidate invokes the decision in *Coles v. Ryan*, 91 Ill. App. 3d 382, 414 N.E.2d 932 (2d Dist. 1980). There the Illinois Appellate Court for the Second District considered equal protection challenges to Illinois law (*not* including Section 3.1-10-5(b) of the Illinois Municipal Code) barring convicted felons from seeking office, and laid a groundwork for its analysis that is useful to set forth here:

> Consideration of the constitutional and statutory provisions governing the effect of a criminal conviction on one's qualifications to hold a public office is necessary to evaluate plaintiff's present contention he is being denied equal protection of the law.
>
> Under Article XIII, section 1 of the Constitution of 1970, persons convicted of certain offenses are ineligible to hold constitutional office:
>
>> "A person convicted of a felony, bribery, perjury or other infamous crimes shall be ineligible to hold an office created by this Constitution. Eligibility may be restored as provided by law."
>
> By section 29-15 of the Election Code (Ill.Rev.Stat.1977, ch. 46, par. 29-15) the legislature has provided for restoration of eligibility to hold office in these terms: "Any 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."
>
> Sections 5-5-5(a), (b) and (c) of the Unified Code of Corrections (Ill. Rev.Stat.1977, ch. 38, par. 1005-5-5(a), (b) and (c)), also refer to the effect of a conviction upon a person's qualification to hold office:

"(a) Conviction and disposition shall not entail the loss by the defendant of any civil rights, except under this Section.

(b) A person convicted of a felony shall be ineligible to hold an office *created by the Constitution of this State* until the completion of his sentence.

(c) A person sentenced to imprisonment shall lose his right to vote until release from imprisonment."

(*Emphasis added.*)

In our earlier opinion we held that the office of township supervisor is not an office created by the constitution, but rather is a creation of legislative enactment (*People ex rel. Ryan v. Coles* (1978), 64 Ill.App.3d 807, 811, 21 Ill.Dec. 543, 546, 381 N.E.2d 990, 993; see Ill.Const.1970, Art. VII § 5; Ill.Rev.Stat.1975, ch. 139, par. 60). It is apparent, therefore, neither Article XIII § 1 of the 1970 constitution, nor § 5-5-5(b) of the Unified Code of Corrections, operate to disqualify plaintiff from now holding office or to restore his eligibility for such office. Coles' conviction under 18 U.S.C. § 1951 for an "infamous crime" (*People ex rel. Ryan v. Coles*), however, disqualifies him pursuant to section 29-15 of the Election Code from holding office unless he is again "restored to such rights by the terms of a pardon for the offense or otherwise according to law."

Since Coles was still serving his sentence at the time of those appeals, we were not presented with the issue of the effect completion of his sentence might have upon restoration of his eligibility to hold office.

It appears there are two statutory standards governing restoration of eligibility of persons convicted of infamous crimes to hold office in this state: eligibility to hold a constitutional office is restored by operation of law by section 5-5-5(b) of the Unified Code of Corrections on completion of sentence, while eligibility to hold an office created by the legislature is not restored, even after completion of sentence unless the person has been pardoned for the offense and the terms of the pardon provide for such restoration. Section 29-15 of the Election Code also provides that eligibility to hold office may be restored "otherwise according to law" (Ill.Rev.Stat.1979, ch. 46, par. 29-15), however, this provision can refer only to section 5-5-5(b) which applies only to office created by the constitution.

Prior to 1973, Illinois had only one statutory standard governing restoration of rights following a criminal conviction. Under section 124-2 of the Code of Criminal Procedure of 1963 (Ill.Rev.Stat.1967, ch. 38, par. 124-2), only the terms of a pardon could restore eligibility to hold office to one convicted of an infamous crime. (*People ex rel. Symonds v. Gualano* (1970), 124 Ill.App.2d 208, 260 N.E.2d 284.) Section 124-2 was repealed by P.A. 77-2097, § 8-5-1, and § 5-5-5 of the Unified Code of Corrections (Ill.Rev.Stat.1977, ch. 38, par. 1005-5-5) was enacted in its place. Section 124-2 was re-enacted with minor

modifications as § 29-15 of the Election Code by P.A. 78-887, § 1.

> The constitutional and statutory scheme thus leads to the anomalous result that Coles is eligible to hold such constitutional offices as governor, judge or attorney general upon completion of his sentence but, until pardoned, he remains ineligible to hold the office of township supervisor or any other office created by the legislature.

91 Ill. App. 3d at 383-385, 414 N.E.2d at 934-935. The court then turned to the question of "whether the statutes in question are to be considered under traditional equal protection principles or by the more rigorous analysis applicable to legislative classifications affecting fundamental rights", 91 Ill.App. 3d at 385, 414 N.E.2d at 935, and, invoking *United States Civil Service Commission v. National Association of Letter Carriers, supra,* for the proposition that running for office is not a "fundamental" right, opted to apply traditional equal protection analysis rather than strict scrutiny, 91 Ill.App. 3d at 385, 414 N.E.2d at 936. The court clearly was not troubled by disqualification, *per se*, of convicted felons from holding elective office:

> It is clear that disqualification of those persons convicted of infamous crimes from holding either a legislatively created or constitutionally created office is a reasonable means of furthering the legitimate State interest in safeguarding the honesty and integrity of those who exercise governmental power. (See *People ex rel. Ryan v. Coles* (1978), 64 Ill.App.3d 807, 21 Ill.Dec. 543, 381 N.E.2d 990.)

91 Ill.App.3d at 386, 414 N.E.2d at 936. But, as noted above, the court had identified within the array of statutes imposing bars against service by convicted felons in public office, a suspect classification that it had to evaluate:

> [A] statutory distinction has been drawn between persons convicted of an infamous crime who seek to hold an office created by the legislature and those convicted of an infamous crime who seek to hold a constitutionally created office.

91 Ill.App.3d at 385-386, 414 N.E.2d at 936. Having given the State the benefit of the doubt by its conclusion that strict scrutiny of this classification was not warranted, the court was nonetheless

vexed by what it perceived to be the lack of a justification for it:

> Other than arguing generally that this subject is within the province of the legislature, defendant has not suggested a rational basis in support of the requirement that to hold an office created by the legislature such a person must obtain a pardon to be restored to eligibility while those who would hold a constitutional office are eligible upon completion of their sentence.

91 Ill.App.3d at 386, 414 N.E.2d at 936. And the *Coles* court could not discern a rational basis on its own:

> There is no rational basis apparent to us ... for distinguishing between these offices for purposes of restoration of eligibility. Placing more burdensome requirements on restoration of eligibility for an office created by the legislature is an arbitrary classification and does not rationally further any legitimate State interest. (See *Fashing v. Moore* (D.C.Tex.1980), 489 F.Supp. 471, 475.)

Ibid. The court's ultimate determination, then, came as no surprise: "We conclude plaintiff has been denied equal protection of the laws in violation of the Fourteenth Amendment to the United States Constitution." *Ibid.*

(b) The Candidate notes that, in *Simms-Johnson v. Delay*, No. 00-EB-WC-041, CBEC (Feb. 1, 2000), another case *not* involving Section 3.1-10-5(b) of the Illinois Municipal Code, this Board's dicta made favorable mention of *Coles v. Ryan* ("The Electoral Board further finds that even if Section 29-15 of the Election Code did apply to the office of ward committeeman, the case of *Coles v. Ryan* [citation omitted] is controlling and Section 29-15 cannot be applied to bar persons from holding or seeking to hold legislatively created offices, such as ward committeeman", *Simms-Johnson v. Delay, supra*, at ¶ 22) on its way to holding the candidate in that case ineligible for election as a ward committeeman because he had already pleaded, and been adjudged, guilty of a felony for which he was scheduled to be sentenced in a Federal court between the date of the Board's decision and the election (*id.* at ¶¶ 19 and 24); that is, he was not a convicted felon whose disability

was behind him; rather, he was a convicted felon who had not yet begun, let along completed, the service of his sentence.

(c) The Candidate calls the attention of the Board to its decision in *Rosales v. Hendrix*, No. 95-EB-ALD-055, CBEC (Jan. 24, 1995). In that case a candidate for alderman had been convicted on several Federal charges of witness intimidation and violent denial of civil rights (including an attempt to arrange a murder), and had been sentenced to four years of imprisonment and five years of probation, all of which had been served. An objection to the candidacy was filed and Section 3.1-10-5(b) of the Illinois Municipal Code was clearly implicated. The Board, informed by the decision of the Illinois Appellate Court in *Coles v. Ryan, supra*, noted the relevance of another statute which, the Board said, "also governs the eligibility of persons convicted of infamous crimes to hold public office." *Rosales v. Hendrix, supra*, at ¶ 10. That statute was Section 29-15 of the Illinois Election Code, 10 ILCS § 5/29-15, which, provided then, as it does now:

> Any 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.

The Board observed that the Illinois Supreme Court has taught in *United Citizens of Chicago & Illinois v. Coalition to Let the People Decide in 1989*, 125 Ill. 2d 332, 531 N.E.2d 802 (1988), that the Illinois Election Code and the Illinois Municipal Code are to be considered *in pari materia* when construing their provisions, *Rosales v. Hendrix, supra*, at ¶ 13, and that "[w]here there is an alleged conflict between two legislative enactments, there is a duty to construe those statutes in a manner which avoids inconsistency and gives effect to both enactments, where such a construction is reasonably possible," *id.* at ¶ 14, citing *Lily Lake Road Defenders v. County of McHenry*, 156 Ill.2d

1, 619 N.E.2d 137 (1993). With those principles in mind, the Board then considered the two statutes together, noting the distinctions between them, but finding them to have similar aims. The Board noted that Section 3.1-10-5 of the Municipal Code was the broader and more recent enactment (although adopted as part of a recodification of municipal law and not, it seemed, as a substantive change in law), while Section 29-15 of the Election Code spoke more clearly to the question of the duration of a bar on a convicted felon's political activity:

> Section 29-15 of the Election Code ... provides ... that a person disqualified from holding any public office may again be restored such right "by the terms of a pardon for the offense or *otherwise according to law.*" While Section 3.1-10-5 serves to bar from elective municipal office persons convicted of certain offenses, there is nothing in that section which suggests that the legislature intended such prohibition to be permanent or that the legislature intended to repeal or limit, either expressly or impliedly, the provisions of Section 29-15 allowing for the restoration of the right to hold office under conditions provided by law.

Id. at ¶ 18 *(emphasis original).* The Board in this way reasoned that "Section 29-15 of the Election Code and Section 3.1-10-5 of the Municipal Code can be construed harmoniously to give effect to both enactments", id. at ¶ 19, and it thereupon found "that a person convicted of an offense which serves to disqualify such person from holding office under either Section 3.1-10-5 or Section 29-15, or both, may again be restored such right by the terms of a pardon for the offense or otherwise according to law", *id.* at ¶ 20. Having thus read into Section 3.1-10-5 an implied provision for the restoration of political rights, by pardon or "otherwise according to law", the Board then wrestled with the question of the content of the phrase, "otherwise according to law." Here the Board took note of the Illinois Appellate Court's decision in *Coles v. Ryan, supra*, characterized the holding of that case to be that "a person may be restored to his or her right to hold public office upon completion of his or her sentence", and determined that this holding counted among "the rules of decision established by judicial decisions of state courts [which] are 'laws' as well as those

prescribed by statute", citing *West v. American Telephone & Telegraph Co.*, 311 U.S. 223, 235 (1940) for the last proposition. Id. at ¶¶ 21-23. With judge-made law now embraced within the meaning of the phrase, "otherwise according to law" as found in Section 29-15, the Board applied the judge-made law of *Coles v. Ryan* to the case before it and held:

> The Board finds that a person may again be restored to his or her right to hold public office under Section 29-15 of the Election Code "as otherwise provided by law" as decided in *Coles v. Ryan*. Therefore, the Board concludes and finds that the Candidate in this case, by virtue of the completion of his sentence for the offenses committed, has been restored his right to hold the office of Alderman if elected.

Id. at ¶ 24. Inasmuch as the objection to the candidate's nomination papers had been founded on Section 3.1-10-5 of the Municipal Code, the Board, *sub silentio*, read the restorative provision of Section 29-15 of the Election Code, now invested with the judge-made law of *Coles v. Ryan*, into Section 3.1-10-5, as well. The decision was reached by a divided Electoral Board, with Chairman Hamblet and Commissioner Cowen in the majority, and Commissioner Hubbard dissenting from the decision just described. (The objectors' petition in *Rosales v. Hendrix* contained eight paragraphs of objections, of which the decision just described resolved but one. The Electoral Board was unanimous in disposing of the remaining seven objections, none of which is relevant here, all in manners favorable to the candidate.)

(d) To his credit, the Candidate also lays before the Board the decision of a divided panel of the Illinois Appellate Court for the First District in *Pappas v. Calumet City Municipal Officers Electoral Board*, 288 Ill.App.3d 787, 681 N.E.2d 589 (1st Dist. 1997). There, Justice Theis, writing for the court's majority, conducted virtually the same *in pari materia* analysis of Section 29-15 of the Illinois Election Code and Section 3.1-10-5(b) of the Illinois Municipal Code and, after carefully noting that in this case the candidate had not properly put the constitutionality of Section 3.1-10-5(b)

into issue, came to a holding exactly the opposite of the one reached by this Board two years earlier in *Rosales v. Hendrix*:

> Pappas argues that this court should read the Municipal Code in pari materia with the Election Code and the Uniform Code of Corrections. In pari materia is a tool of statutory construction courts utilize in ascertaining the legislative intent of statutes concerning the same matter. *Buckellew v. Board of Education of Georgetown-Ridge Farm Community Unit School Dist. No. 4*, 215 Ill.App.3d 506, 575 N.E.2d 556 (1991). The Illinois Supreme Court has stated that:
>
> > "[I]t is clear that sections in pari materia should be considered with reference to one another so that both sections may be given harmonious effect. *** Even when in apparent conflict, statutes, insofar as is reasonably possible, must be construed in harmony with one another." *United Citizens of Chicago and Illinois v. Coalition to Let the People Decide in 1989*, 125 Ill. 2d 332, 339, 531 N.E.2d 802, 804 (1988), quoting *People v. Maya*, 105 Ill. 2d 281, 286-87, 473 N.E.2d 1287, 1290 (1985).
>
> Such an interpretation, Pappas claims, will restore his right to run for municipal office. A review of these provisions leads this court to a contrary conclusion.
>
> Section 29-15 of the Election Code provides:
>
> > "Any 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." (Emphasis added.) 10 ILCS 5/29-15 (West 1994).
>
> Pappas directs this court's attention to section 5-5-5(b) of the Uniform Code of Corrections to interpret the phrase "otherwise according to law." See 730 ILCS 5/5-5-5(b) (West 1994). Section 5-5-5(b) provides that "[a] person convicted of a felony shall be ineligible to hold an office created by the Constitution of this State until the completion of his sentence." 730 ILCS 5/5-5-5(b) (West 1994). While acknowledging that he is not running for an office created by the Illinois Constitution, Pappas claims that "otherwise according to law" must be interpreted as permitting one convicted of an infamous crime to run for any elective office upon completion of his sentence.
>
> Pappas correctly notes that the Illinois Supreme Court, when faced with provisions which appeared to be ambiguous and conflicting, held that the Illinois Municipal Code and the Election Code could be construed in pari materia. *United Citizens of Chicago and Illinois v. Coalition to Let the People Decide in 1989*, 125 Ill. 2d 332, 531 N.E.2d 802

(1988). However, we have found no ambiguity in the clear language of section 3.1-10-5 prohibiting felons from seeking municipal office.

In addition, we find no conflict between the referenced provisions. Section 29-15 of the Election Code states that the legislature has the power to restore those convicted of infamous crimes the right to run for election "according to law." 10 ILCS 5/29-15 (West 1994). In enacting section 5-5-5(b), the legislature saw fit to allow felons to run for constitutional office upon completion of sentence or if pardoned. Section 5-5-5(b), however, has no application to the municipal office Pappas seeks. The legislature addressed the limitations on eligibility for municipal office when amending section 3.1-10-5 of the Municipal Code in 1992. While the legislature had the opportunity to add a restoring clause, the legislature failed to do so. Accordingly, we will:

> "[C]onstrue the statute as it is and *** not, under the guise of construction, supply omissions, remedy defects, annex new provisions, substitute different provisions, add exceptions, limitations, or conditions, or otherwise change the law so as to depart from the plain meaning of the language employed in the statute." *Buckellew v. Board of Education of Georgetown-Ridge Farm Community Unit School Dist. No. 4*, 215 Ill.App.3d 506, 511, 575 N.E.2d 556, 559 (1991).

Therefore, we find that the plain language of section 3.1-10-5 of the Municipal Code bars Pappas' access to the municipal ballot.

288 Ill.App.3d. at 789-790, 681 N.E.2d at 591-592. The outcome in *Pappas* might be tantamount to an overruling of the Board's holding in *Rosales*, save that the *Pappas* court explicitly said that it was declining to address constitutional questions. The Candidate prefers the dissent in *Pappas* filed by Justice Zwick, who found the constitutional question inescapable and would have decided it by following *Coles v. Ryan.*

(e) The Candidate's motion to strike and dismiss also make passing reference, without discussion, to the decision of the Circuit Court of Cook County in *Medrano v. Chicago Board of Election Commissioners*, Cir. Ct., Cook Cty., Ill., No. 02 CH 19784 (2002) (Bertucci, J.), in which the trial court held that Section 3.1-10-5(b) is unconstitutional to the extent to which it does not restore eligibility for a legislatively-created office to a convicted felon who has served the entirety

of his sentence. No appellate review was had of this decision, and the efficacy of its holding, beyond immediate application to the controversy that it decided, is unclear in light of the holding of the Appellate Court for the First District in *Pappas*, *supra*, and that reached more recently by the Fifth District in *People v. Hofer*, noted, *supra*, in the discussion of *quo warranto* actions, and explored more amply, *infra*. (The same may be said of the continuing vitality of another unreviewed decision of the Circuit Court of Cook County, that reached in *People ex rel. Cory v. Watts*, Cir. Ct., Cook Cty., Ill., No. 99 CH 10306 (Dec. 1, 1999) (Jaffe, J.), a *quo warranto* case, discussed *supra*. There the trial judge — having disposed of the case by concluding that an application for leave to file a complaint in *quo warranto* must be denied for failure on the part of the plaintiff to comply with statutory prerequisites for the bringing of such an action — offered as apparent dictum his negative view of the constitutionality of Section 3.1-10-5(b).)

30. The Objector relies chiefly on the decision of the Illinois Appellate Court for the Fifth District in *People v. Hofer*, 363 Ill.App.3d 719, 843 N.E.2d 460 (5th Dist. 2006). *Hofer*, it will be recalled from the discussion in ¶ 20, *supra*, was a *quo warranto* case in which Section 3.1-10-5(b) of the Illinois Municipal Code was invoked to remove a sitting municipal official who had previously been convicted of felony driving offenses (and who had fully completed his sentences, which were terms of probation). A unanimous panel of the Fifth District upheld the official's ouster from office after squarely considering the official's contention that Section 3.1-10-5(b) violates the Equal Protection Clause. As did the Second District in *Coles v. Ryan*, the Fifth District in *Hofer* adopted the "traditional", "rational basis", or "deferential" level of examining the statute, rather than subjecting it to "strict scrutiny". 363 Ill.App.3d at 722, 843 N.E.2d at 463. The court then proceeded to undertake a detailed equal protection analysis, this time with a difference: Whereas

in *Coles*, "defendant" — the State — "has not suggested a rational basis in support of the requirement that to hold an office created by the legislature such a person must obtain a pardon to be restored to eligibility while those who would hold a constitutional office are eligible upon completion of their sentence," 91 Ill.App.3d at 386, 414 N.E.2d at 936, in *Hofer* the State advanced its rational bases for such a distinction, the trial court reviewed and approved them, and the Appellate Court affirmed. The court marched through its analysis as follows:

> Under the Illinois Constitution, Illinois citizens who are convicted of a felony forfeit certain rights, including the right to vote (Ill. Const.1970, art. III, § 2) and the right to run for and hold a constitutional office (Ill. Const.1970, art. XIII, § 1). Section 2 of article III of the Illinois Constitution provides that a convicted felon's eligibility to vote shall be restored no later than the completion of his sentence. Section 1 of article XIII does not contain the same provision. Under section 1 of article XIII, a convicted felon's eligibility to run for a constitutional office "may be restored as provided by law." Ill. Const.1970, art. XIII, § 1. Another constitutional provision grants to the Governor the authority to grant reprieves, commutations, and pardons, subject to the legislature's authority to establish the manner of application. Ill. Const.1970, art. V, § 12. Under the Illinois Constitution, aside from a gubernatorial pardon, the state legislature has the authority to enact statutes that dictate whether and under what circumstances a convicted felon's eligibility to serve in a constitutional office may be restored.
>
> The Illinois Constitution also grants to the legislature the authority to create units of local government. Ill. Const.1970, art. VII, § 12. When a municipal office is created by statute, the legislature has the discretionary authority to specify the qualifications required to hold that office so long as the qualifications are reasonably related to the specialized demands of the office. See *East St. Louis Federation of Teachers, Local 1220 v. East St. Louis School District No. 189 Financial Oversight Panel*, 178 Ill.2d 399, 418, 227 Ill.Dec. 568, 687 N.E.2d 1050, 1061 (1997); *Hoskins*, 57 Ill.2d at 509, 315 N.E.2d at 28.
>
> In accordance with the authority granted by the Illinois Constitution, the state legislature has enacted statutory provisions that set forth the qualifications and the eligibility requirements for persons seeking elective office. Section 29-15 of the Election Code prohibits any person convicted of an infamous crime "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 (West 2002). Section 5-5-5(b) of the Unified Code of Corrections 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) (West 2002). Finally, section 3.1-10-5(b) of the Illinois Municipal Code provides as follows: "A person

is not eligible for an elective municipal office if that person is in arrears in the payment of a tax or other indebtedness due to the municipality or 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) (West 2002).

It is clear that the aforementioned constitutional and statutory provisions were established to ensure public confidence in the honesty and integrity of those serving in state and local offices. *People ex rel. Ryan v. Coles*, 64 Ill.App.3d 807, 811-12, 21 Ill.Dec. 543, 381 N.E.2d 990, 994 (1978). The question is whether the legislature's decision to establish a different requirement for the restoration of eligibility for a statutorily created office is rationally related to a legitimate state interest. It appears from our research and that of the parties that *Coles v. Ryan* is the only reported Illinois decision in which this issue has been considered. *Coles v. Ryan*, 91 Ill.App.3d 382, 46 Ill.Dec. 879, 414 N.E.2d 932 (1980). In *Coles*, our colleagues in the Second District found that there was no rational basis apparent from the record for distinguishing between statutorily created and constitutionally created offices for purposes of the restoration of eligibility. In reaching that decision, the court specifically noted that the State's Attorney argued generally that the subject was within the province of the legislature and that he did not suggest a rational basis to support the differing classifications. *Coles*, 91 Ill.App.3d at 386, 46 Ill.Dec. 879, 414 N.E.2d at 936.

After reviewing the *Coles* decision and the bases therefor, we have determined that it is distinguishable from the case at bar. In contrast to the facts in *Coles*, the State's Attorney in this case explained that the legislative scheme was rationally related to the legitimate state interest in maintaining the public trust in local elective offices, and the circuit court found that reasoning to be valid. The court found legitimate differences between the environments in which candidates for municipal offices and candidates for statutory offices run and serve. The court specifically noted that the opportunities and the means to scrutinize candidates for municipal offices and to oversee the activities of those elected are significantly less than the opportunities for scrutiny and oversight of those who run for and serve in constitutional offices. Based on the aforementioned considerations and the fact that the elected officials make important fiscal and policy decisions which directly impact the residents of the municipality, we conclude that the legislature's decision to require a convicted felon to present some evidence of rehabilitation beyond the mere service of his sentence in order to regain his eligibility to hold a municipal office is a reasonable means to further the State's interest in safeguarding the integrity of and the public trust in municipal government. In our view, the provision requiring a convicted felon who wants to run for a statutorily created office to establish to the Governor's satisfaction that he has rehabilitated himself and is worthy of the public trust is neither arbitrary nor irrational.

Hofer, supra, 363 Ill.App.3d at 722-724, 843 N.E.2d at 463-465.

31. (a) A venerable rule of statutory construction, binding upon courts and

administrative agencies alike, is that a statute should be construed in such a way, if possible, to render it constitutional on its face and in application. Both this Board in *Rosales* and the Appellate Court in *Hofer* attempted to do exactly that, albeit working in very different ways and arriving at diametrically opposing results. In the view of the Hearing Examiner, the decision of the Equal Protection Clause issue presented in this case comes down to choosing, on as principled a basis as possible, between the analytical approaches of these two cases.

(b) In offering guidance for the decision of the case at bar, *Rosales* has two conspicuous strengths. First, it is a decision of this Board, which, when possible, rightly should seek to stand on its precedents and defend them. Second, *Rosales*, as is the matter at hand, is a ballot access case, rather than a case arising in *quo warranto* or in some other context at a remove from electoral proceedings. But, at the same time, this Board should not be blind to the weaknesses of its decision in *Rosales*. In *Rosales*, as explained above in detail, this Board upheld the constitutionality of Section 3.1-10-5 of the Illinois Municipal Code by a three-step process of constructively amending it. First, the Board read into Section 3.1-10-5 a phrase borrowed from Section 29-15 of the Illinois Election Code, permitting political rights to be restored "otherwise according to law"; then it interpreted the word "law", reading "judge-made law" (or "decisional law") into that term; then it embraced the holding of *Coles v. Ryan* as relevant decisional law, and concluded that Section 3.1-10-5 would henceforth incorporate an implied term which would fully and automatically restore political rights to a convicted felon seeking or holding municipal office upon the completion of the service of his sentence. Ingenious as this concatenation of logic may be, in the end it can be no stronger than its weakest links, and in this chain of reasoning there are two links which are very weak, indeed. First is its crucial embrace of the decision in *Coles v. Ryan*, in which the question of the

constitutionality of a statute was decided by default. The Second District prepared to decide the case via a traditional mode of analysis without heightened scrutiny, and invited the State to lay out the rational bases — a rational basis — *any* rational basis — which underlay it. If the State had offered justifications of the statute which were flawed and insufficient, and which failed to satisfy even the deferential level of scrutiny that the court signaled it would apply, then the outcome in *Coles* would have to be seen in a different light. But the State failed utterly to defend the statute, and in reaching its judgment the Second District candidly acknowledged that fact. Second is the fact that Section 3.1-10-5, the statute which was at issue in *Rosales* and, which is the statute whose constitutionality is challenged in the case at bar, was not among the statutes involved, or scrutinized, in *Coles*. The analysis in *Coles* touched on various provisions of the Election Code, the Criminal Code, the Code of Criminal Procedure, and the Uniform Code of Corrections, but nary a reference to the Illinois Municipal Code. We are left, in effect, to imagine how an appellate court attempting to interpret Section 3.1-10-5 of the Municipal Code would read it in pari materia with Section 29-15 of the Election Code. That is thin gruel for a constitutional inquiry, particularly one which shades very close to holding a statute, in its plain meaning unadorned with novel and implied terms, unconstitutional.

(c) One strength of the decision in *Hofer*, by contrast, is precisely that it is construing and testing the constitutionality of Section 3.01-10-5. We do not have to wonder, after *Hofer*, how a court would interpret that statute, or whether or not the different treatment that Illinois law gives convicted felons who seek constitutional office as opposed to those who seek municipal office under that statute would pass constitutional muster. Now we know. The weakness of *Hofer*, for present purposes, is that it is a case which originated in a *quo warranto* action, rather than in a challenge to

ballot access. But the context is close; the distinction is one of timing; he who was once an ineligible candidate is now an ineligible office-holder; the same law, delayed in its application, is now catching up with him. Indeed, it is instructive to compare the situation of an incumbent, who holds office by virtue of the express mandate of the voters, and whose possession of office is intinct with protectible liberty and property interests, with that of a mere ballot-petitioner, not yet even a certified candidate, whose claims to office are utterly imperfect and totally speculative. If the statute is constitutional when applied to the former, then, *a fortiori*, it is constitutional when applied to the latter. Another strength of *Hofer*, of course, is the reverse of the crucial defect in *Coles*. In *Hofer* an equal protection analysis of the statute was undertaken and rational bases were found to support it — construed as written, without the necessity of implied terms to save it. Finally, the supreme strength of the decision in *Hofer* is that it is the pronouncement, on the very statute that was at issue in Rosales and that is at issue now, by a court rather than by an administrative agency. Justifiably proud as this Board may be of the high quality of its work, including its administrative adjudication, and properly zealous as it should be for the vindication of its precedents, nonetheless the Board must yield when the question is the construction of a statute and a court has spoken: "It is emphatically the province and duty of the judicial department to say what the law is." *Marbury v. Madison*, 1 Cranch 137, 178 (1803) (Marshall, C.J.).

(d) The Candidate having relied on no arguments or authorities beyond those discussed here, and the Candidate bearing the burden of showing the unconstitutionality of the statute that he attacks, the Hearing Officer must therefore recommend that the Board overrule its holding in *Rosales* and, until the decision of a higher or closer court supersedes it, embrace the holding of *Hofer* in its construction and application of Section 3.1-10-5(b) of the Illinois Municipal Code. The statute is

constitutional on its face and in its application to the Candidate.

Fifteenth Amendment — Involuntary Servitude

32. (a) The Candidate's Fifteenth Amendment is imaginative, and it is not unsupported by a certain logic. The Candidate points out that Section 1 of the Thirteenth Amendment commands that "Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.". From that he quite rightly posits that the term "servitude", as found in Section 1 of the Fifteenth Amendment, comprehends within its grasp "servitude" which has been imposed as "punishment for crime whereof the party shall have been duly convicted." He suggests, further, that the right to vote is "fundamental" and that, as the Illinois Supreme Court has observed in cases such as *Anderson v. Schneider*, 67 Ill.2d 165, 365 N.E.2d 900 (1977), the right to vote is hard to separate from the right to be voted for. His argument is thus, superficially, at least, a selfless one; what is at stake under the Fifteenth Amendment, he asserts, is not the right of the Candidate to a place on the ballot; it is, rather, that "[t]he right of citizens of the United States *to vote* shall not be denied or abridged by ... any state on account of ... previous condition of servitude." *(Emphasis added.)*

The showing he does not make, however, is whose "previous condition of servitude" the framers of the Fifteenth Amendment had in mind. The plain language of the constitutional text prohibits denial of the right to vote on account of the previous condition of the voter, not of the candidate or of anyone else. Nothing in the leading Fifteenth Amendment precedents reviewed by the Hearing Examiner — *Mobile v. Bolden*, 446 U.S. 55 (1980), *Gomillion v. Lightfoot*, 364 U.S.

339 (1960), *Smith v. Allwright*, 321 U.S. 649 (1944), *Guinn v. United States*, 238 U.S. 347 (1915), and *United States v. Cruikshank*, 92 U.S. 542 (1875) — suggests anything to the contrary. The Candidate offered no authority in support of his theory, and it is his burden, after all, to establish convincingly that a statute is invalid. That burden has not been met.

Recommended Findings, Conclusions, and Decision

33. On the bases of a facial examination of the nomination papers, of the Objector's Petition and attachments, of the statements of the parties, and of all other proceedings held herein, the Hearing Examiner recommends that the Electoral Board enter the following findings of fact:

(a) On January 28, 1999, in a case pending in the United States District Court for the Northern District of Illinois, and there known as *United States v. Jones* and numbered as No. 97 CR 821, a judgment of guilty was entered against the Candidate on (1) three counts of violating 18 U.S.C. § 1951, which punishes as a felon any person who "obstructs, delays, or affects commerce or the movement of any article or commodity in commerce, by robbery or extortion or attempts or conspires so to do, or commits or threatens physical violence to any person or property in furtherance of a plan or purpose to do anything in violation of this section", or who, within the meaning of 18 U.S.C. §2, aids and abets those who do so; and (2) two counts of violating 26 U.S.C. § 7206, which punishes as a felon any person who "[w]illfully makes and subscribes any [tax] return, statement, or other document, which contains or is verified by a written declaration that it is made under the penalties of perjury, and which he does not believe to be true and correct as to every material matter".

(b) On June 11, 1999, in that Federal criminal proceeding, the Candidate was sentenced to terms of 41 months of imprisonment on each of the first three counts and to terms of 12 months of imprisonment on each of the latter two counts, all terms to be served concurrently, and to a further term of two years of supervised release following his release from prison.

(c) The President of the United States has not pardoned the Candidate for the crimes for which the Candidate was convicted, and the Candidate has not otherwise, by appeal or any other channel of relief, been relieved of his status as a convicted felon with respect to those crimes.

34. The Hearing Examiner recommends that the Electoral Board enter the following conclusions of law:

(a) The crimes of which the Candidate was convicted were all felonious and infamous and otherwise implicated in Section 3.1-10-5(b) of the Illinois Municipal Code, 65 ILCS § 5/3.1-10-5(b).

(b) Accordingly, pursuant to Section 3.1-10-5(b) of the Illinois Municipal Code, 65 ILCS § 5/3.1-10-5(b), the Candidate is ineligible to an elective municipal office including the office of Alderman of the 15th Ward of the City of Chicago.

(c) In light of the decision of the Illinois Appellate Court in *People v. Hofer*, 363 Ill.App.3d 719, 843 N.E.2d 460 (5th Dist. 2006), Section 3.1-10-5(b) of the Illinois Municipal Code, 65 ILCS § 5/3.1-10-5(b), is constitutional on its face and as applied to the Candidate.

(d) The Objector's Petition is well founded, and the relief sought therein should be granted.

(e) The Candidate's nomination papers are insufficient in law and fact.

35. The Hearing Examiner recommends that the Electoral Board enter the following final administrative decision:

The name of Virgil E. Jones shall not appear and shall not be printed on the ballot for election to the office of Alderman of the 15th Ward of the City of Chicago to be voted for at the Municipal General Election to be held on February 27, 2007.

Dated: January 11, 2007.

Respectfully submitted,

JOSEPH A. MORRIS
Hearing Examiner

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

Readonia Bryant Petitioners, v. The Board of Election Commissioners of the City of Chicago, serving as The Municipal Officers Election Board and its members, Langdon D. Neal and Richard A. Cowen; and Virgil E. Jones Respondents.	)	No. 07 COEL 05 Election Case

ORDER

This matter came to be heard on Petitioner's **Petition for Judicial Review and Declaration of an Election Board Decision** with due notice provided to all parties, fully briefed, and a hearing on the matter. Accordingly, IT IS HEREBY ORDERED:

1) The Petitioner's Petition to reverse the Election Board's Decision regarding Virgil E. Jones to be a candidate for the office of Alderman of the 15th Ward in the City of Chicago, at the February 27, 2007, Municipal Election, is denied for the reasons stated on the record. The Court finds 65 ILCS 5/3.1-10-5(b), 730 ILCS 5/5-5-5(b), and 10 ILCS 5/29-15 unconstitutional as a violation of the equal protection clause under the 14th Amendment to the U.S. Constitution and Illinois Constitution (Article 1, Section 2).

2) Pursuant to Illinois Supreme Court Rule 18 the Court makes the following findings:

(a) the court's finding is made by oral statement on the record that is transcribed;

(b) the court identifies 65 ILCS 5/3.1-10-5(b), 730 ILCS 5/5-5-5(b), and 10 ILCS 5/29-15 as unconstitutional;

(c) 65 ILCS 5/3.1-10-5(b), 730 ILCS 5/5-5-5(b), and 10 ILCS 5/29-15 are held unconstitutional on the specific ground that under the rational basis test, the provisions create an unconstitutional violation of equal protection:

(1) The provisions are unconstitutional under the 14th Amendment of the U.S. Constitution and Illinois Constitution (Article 1, Section 2),

(2) The provisions are unconstitutional on their face,

(3) The statutes being held unconstitutional cannot reasonably be construed in a manner that would preserve its validity,

(4) The finding of unconstitutionality is necessary to the decision or judgment rendered, and that such decision or judgment cannot rest upon an alternative ground, and

(5) Notice required by Rule 19 has been served, and 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.

ENTERED: ______________________
Hon. Judge Alfred Paul

ENTERED
JUDGE ALFRED J. PAUL -0230
JAN 29 2007
DOROTHY BROWN
CLERK OF THE CIRCUIT COURT
OF COOK COUNTY, IL
DEPUTY CLERK ______

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No. 104105

IN THE

SUPREME COURT OF ILLINOIS

READONIA BRYANT, Appellant,	)	Direct Appeal from the Circuit Court of Cook County, Illinois
vs.	)	No. 07 COEL 00005
THE BOARD OF ELECTION COMMISSIONERS OF THE CITY OF CHICAGO, *et al.*, Appellees.	)	Hon. Alfred Paul Judge Presiding

ORDER

Appellant, Readonia Bryant, has appealed directly to our court pursuant to Supreme Court Rule 302(a)(1) (134 Ill.2d R. 302(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 his challenge to nomination papers filed by Virgil Jones for election to the office of aldmerman for the 15th 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 appellant 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. Jones 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. Jones' 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

Virgil E. Jones is a former Chicago alderman. In January of 1999, he was convicted in federal court of various felonies arising out of misconduct in office and sentenced to 41 months in prison followed by 2 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 Jones has completed his sentence, there is no dispute that he has received no pardon nor otherwise had his right to hold office restored. Jones is therefore ineligible to hold elective municipal office in this State.

Despite his lack of eligibility, Jones filed nomination papers to run for the office of alderman for the 15th 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)). As noted at the outset of this order, Jones' nomination papers were duly challenged by Readonia Bryant. Bryant's 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 Jones 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 Jones' nomination papers be sustained and that Jones' name not appear on the ballot for election to the office of alderman at the upcoming municipal election to be held February 27, 2007.

The Election Board rejected the hearing examiner's recommendation. Based on its analysis of various court cases, 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 Bryant's objection to Jones' nomination papers, concluded that those papers were valid, and ordered that Jones' name be printed on the ballot as a candidate for alderman for Chicago's 15th Ward.

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 Jones 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 Bryant's challenge to Jones' nomination papers has no lawful basis.

Bryant 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. That complaint directly challenged the Election Board's authority to assess the constitutionality of State statutes. 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

Bryant's challenge to Jones' candidacy in accordance with the governing statutory requirements. Indeed, under established principles of Illinois law, the court had a duty to take such action See *People v. Thompson*, 209 Ill. 2d 19, 27 (2004) (courts have an independent duty to vacate void orders and may *sua sponte* declare an order void). Had the 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.

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. Jones 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. Jones' 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 ORDERED 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 CCG N002-300M-2/28/05(43480658)

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

Readonia Bryant

v.

The Board of Election Comm. of the City of Chicago, et al

No. 07 COEL 05

ORDER

This matter coming to be heard with all due notice, is Ordered, pursuant to the order of the Supreme Court of Illinois, dated 2/23/07:

The decision of the Election Board is vacated.
The Board is ordered to:

1) declare that Mr. Jones is ineligible to run for the office of alderman pursuant to 65 ILCS 3.1-10-5(b),
2) reject his nominating papers,
3) remove his name from the ballot for the upcoming election
4) and disregard any votes for him in determining the winner of the election.

Atty. No.: 91198
Name: Ken Goldstein / Clint Krislov
Atty. for: Plaintiff
Address: Krislov & Asso. Ltd
20 N. Wacker Drive #1350
City/State/Zip: Chicago IL 60606
Telephone: 312-606-0500

ENTERED:

ENTERED
JUDGE ALFRED J. PAUL -0230
FEB 23 2007
DOROTHY BROWN
CLERK OF THE CIRCUIT COURT OF COOK COUNTY, IL
DEPUTY CLERK

Dated:

Judge Judge's No.

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

United States District Court, Northern District of Illinois

Name of Assigned Judge or Magistrate Judge	Ronald A. Guzman	Sitting Judge if Other than Assigned Judge	
CASE NUMBER	07 C 1099	DATE	2/27/2007
CASE TITLE	Jones vs. Madigan and Bryant		

DOCKET ENTRY TEXT

The Court construes plaintiff's "complaint" as an emergency motion for preliminary injunction. The motion is denied for the reasons stated in open court, including but not limited to the fact that the relief requested can not be satisfied by either of the two named defendants, the relief requested would require the court to overturn the Illinois Supreme Court decision in *Bryant v. Board of Election Commissioners of the City of Chicago*, No. 07 COEL 00005 (Ill. Feb. 23, 2007), the Court lacks subject matter jurisdiction over the exercise of the supervisory powers of the Illinois Supreme Court, the matter was not properly removed to the federal court, and plaintiff has failed to establish a likelihood of success on the merits. This case is hereby dismissed without prejudice.

Docketing to mail notices.

	Courtroom Deputy Initials	LC/G

ORDER

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

[illegible]

v.

Jones

No. [illegible]

ORDER

This Cause Coming to be Heard on Board of Election Commissioners, Neal and Clark's Motion to Dismiss pursuant to 2-619(a)(1) and 5/2-619(a)(9) and Illinois Attorney General's Motion to Intervene;

IT IS HEREBY ORDERED:

1) Board's, Neal & Clark's 2-619(a)(1) and 2-619(a)(9) motions are granted for the reasons stated on the record.

2) The Illinois AG's motion to Intervene is granted pursuant to 2-408(a)(1) and Illinois Supreme Court Rule 19(c).

3) Jones' Petition for Administrative Review is denied.

Atty. No.: 39536

Name: John T. Adams

Atty. for: Board, Clark, Neal & Clark

Address: [illegible]

City/State/Zip: [illegible] IL [illegible]03

Telephone: (312) 7[illegible]2-8163

ENTER:

ENTERED
JUDGE ALFRED J. PAUL-0230
MAR 27 2007
DOROTHY BROWN
CLERK OF THE CIRCUIT COURT
OF COOK COUNTY, IL
DEPUTY CLERK

Judge — Judge's No.

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

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