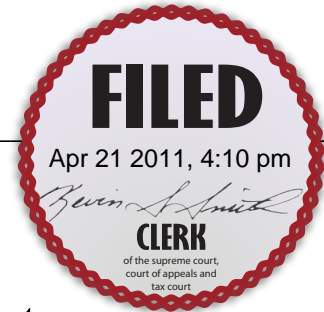


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In the
Indiana Supreme Court

No. 45S00-1104-MI-228

GEORGE T. JANIEC,

Appellant (Plaintiff below),

v.

LAKE COUNTY BOARD OF
ELECTION AND REGISTRATION,

Appellee (Defendant below).

Appeal from the Lake Superior Court,
No. 45D12-1103-MI-00014
Honorable Jesse M. Villalpando, Special Judge

On Petition To Transfer from the Indiana Court of Appeals, No. 45A05-1103-MI-155

April 21, 2011

Per Curiam.

This matter comes to us on a Verified Petition for Emergency Transfer under Appellate Rule 56(A). Appellant George T. Janiec, a Republican Party candidate for the office of Mayor of the City of Hammond and an incumbent member of the Hammond School Board, was removed from the May 3, 2011 primary election ballot by Appellee Lake County Board of

Election and Registration (“the Board”). Janiec challenged the Board’s decision in the Lake Superior Court, requesting judicial review and injunctive relief. The trial court found in favor of the Board. Janiec appealed the trial court’s decision and sought immediate transfer of the appeal to this Court. Both parties have filed principal appellate briefs in support of their respective positions.

The Board and Lake Superior Court held that Janiec’s candidacy was inconsistent with the ethical policies applicable to members of the Hammond School Board. The Court finds no basis in statute or law for disqualifying Janiec on this basis. *See* Burke v. Bennett, 907 N.E.2d 529, 532 (Ind. 2009) (disqualification statute to be construed “consistent with the longstanding respect for the right of the people to free and equal elections”). Accordingly, the Court hereby GRANTS the Verified Petition for Emergency Transfer and REVERSES the Lake Superior Court’s “Judgment Order” issued on March 30, 2011. The Board and its members are ENJOINED from removing Janiec’s name from the ballot as a Republican candidate for Mayor of Hammond in the May 2011 primary election.

In addition, based on the representations made by the parties in their respective filings, the Court FURTHER ORDERS AS FOLLOWS:

- 1) Any absentee ballot or early vote that has already been cast in the May 3, 2011 Republican primary election as of 4 p.m. on April 21, 2011, shall not be considered invalid because it does not include Janiec’s name;
- 2) The Board shall reprogram the voting machines being used for the May 3, 2011 Republican primary election to include Janiec’s candidacy for the office of Mayor of Hammond;
- 3) With regard to absentee ballots already distributed but which have not been returned, the parties shall immediately agree on a mechanism for absentee voters who have not yet cast their ballots to vote for Janiec if they so choose;
- 4) With regard to early voters who have not yet cast their ballots, the parties shall immediately agree on a mechanism to give those early voters an opportunity to vote for Janiec if they so choose;

- 5) With regard to any other issues upon which the parties are in disagreement that have not been covered by this order, the parties shall immediately work to reach agreement on those issues; and
- 6) The parties shall notify this Court, **no later than 12:00 p.m. EDST on Monday, April 25, 2011**, of the agreements they have reached with regard to the matters discussed in numbered paragraphs 3-5 above, at which time the Court shall resolve any disputes with regard to those items that the parties themselves have been unable to resolve. The parties shall do so by way of a Notice containing the caption of this case and signed by attorneys for both parties, that is both mailed to the Clerk of this Court (217 State House, 200 West Washington St., Indianapolis, IN 46204) and e-mailed as a .pdf attachment to this Court's Administrator at KSmith@courts.state.in.us.

The Clerk of this Court is directed to assign this appeal a Supreme Court cause number and transfer the chronological case summary from the current Court of Appeals cause number to the new cause number.

Shepard, C.J., and Dickson, Sullivan, Rucker and David, JJ., concur.