

STATE OF INDIANA)
) ss:
COUNTY OF MARION)

IN THE MARION SUPERIOR COURT
CIVIL DIVISION, ROOM NO. D07
CAUSE NO: 49D071009PL040006

WILLIAM I. FINE,)
)
Plaintiff/Petitioner,)
-vs-)

DANIEL A. DUMEZICH , in his)
official capacity as Chair of the)
Indiana Election Commission;)
S. ANTHONY LONG, in his official)
capacity as Vice-Chair of the Indiana)
Election Commission; JONATHAN J.)
MYERS and SARAH STEELE RIORDAN,)
in their official capacity as members of the)
Indiana Election Commission; The)
Indiana Election Division; and)
MICHAEL J. LAMBERT)
)
Defendants/Respondents)

FILED

(189) SEP 13 2010

Elizabeth J. White

TEMPORARY RESTRAINING ORDER

Comes now Plaintiff/Petitioner, William Fine, by counsel, having filed his Verified Petition For Review Of Final Agency Action, And For Injunctive And Declaratory Relief & Request For Issuance Of A TRO, and the Defendant/Respondent, Michael J. Lambert, having filed his Response thereto, and the Court being duly advised in the premises, now finds that Plaintiff's request is meritorious and should be granted.

In support of this Temporary Restraining Order ("TRO") the Court finds and enters the following:

1. Generally, parties seeking a preliminary injunction must establish four elements by a preponderance of the evidence: (1) that their remedies at law are inadequate, thus causing irreparable harm pending resolution of the substantive action; (2) that they had at least a reasonable likelihood of success on the merits; (3) that the threatened injury to the movants

outweighs any potential harm to the non-movants from the grant of the injunction; and (4) that the public interest is not disserved by issuance of the injunction. Tilley v. Roberson, 725 N.E.2d 150, 153-54 (Ind. App.2000); Curley v. Lake County Board Of Elections, 896 N.E.2d 24, 32-3 (Ind. App. 2008).

2. Immediate and expedited action by the Court is needed and warranted since absentee and early ballots for the aforesaid election must be in the possession of the local election board by September 13, 2010 and mailed by September 18, 2010.

3. Actual voting will commence on October 5, 2010.

4. Petitioner has no adequate remedy at law because ballots will be printed before a likely hearing on the merits. Furthermore, Petitioner runs the risk of not being on the ballot at the start of voting.

5. Petitioner has a reasonable likelihood of success on the merits in that he took all legally required steps to become a candidate.

6. There is no basis in law to interpret state party rules in a way to override a statute.

7. Nor does the Indiana Election Commission ("IEC") have subject matter jurisdiction to enforce state party rules, let alone at the expense of a statutory grant of power to a county chair.

8. The injury to Petitioner in removing his name from the ballot in violation of Indiana and Federal law outweighs the potential harm to the IEC or Lambert resulting from the granting of a temporary restraining order and a preliminary injunction.

9. The public interest would be served by the granting of a temporary restraining order and a preliminary injunction.

10. The Indiana Supreme Court has long encouraged democracy through the electoral process:

Our system of government favors an informed electorate choosing from a range of qualified candidates. It works best on the basis of maximum rather than minimum participation in democracy.

State Election Board v. Bayh, 521 N.E.2d 1313, 1316.

11. Petitioner requests that this Court enter a temporary restraining order and preliminary injunction to enjoin the IEC from taking any actions to prevent Petitioner from being on the ballot.

12. Petitioner requests that this Court enter a temporary restraining order and preliminary injunction to enjoin the Indiana Election Division from revoking or modifying in any way its Certification of Petitioner and to withdraw any amendments thereto which would have any effect of preventing Petitioner from appearing on the ballot.

13. Delay in resolution of the issues presented will prevent the Petitioner from being on the ballot and will prevent the electorate of Lake County from having a choice as to whom they want to fill the office of the Judge of the Lake Circuit Court with no corresponding harm or prejudice to any other party or the voters of Lake County.

IT IS THEREFORE, ORDERED, ADJUDGED AND DECREED that the Indiana Election Commission is hereby enjoined from taking any actions to prevent William Fine from being on the ballot and further from interpreting and/or enforcing the rules of either party in the administration of its powers and duties. The Indiana Election Division is enjoined from revoking or modifying in any way its Certification of Petitioner and to withdraw any amendments thereto which would have any effect of preventing Fine from appearing on the ballot.

Court orders the Petitioner, William Fine, pursuant to Trial Rule 65(C), to post a one thousand dollar (\$1,000.00) surety bond with the Clerk of the Court.

IT IS FURTHER ORDERED that a consolidated hearing on Petitioner's request for injunctive and declaratory relief shall be held on Thursday, September 23, 2010 at 2:30 p.m.

Dated: 9-13-10

Michael D. Keele
Judge, Marion Superior Court
Civil Division, Room No. D07

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