

IN THE
COURT OF APPEALS OF INDIANA

PATRICIA MANSARD,)
DEAN MYERS, and TOM LOREY,)
in their Official Capacities as)
Members of the Vigo County Election)
Board, INDIANA STATE)
DEMOCRATIC CENTRAL)
COMMITTEE, DORA MAY ABEL, and)
KRISTI ROBERTSON,)
Co-Director of the)
Indiana Election Division,)

Appellants (Defendants)
and Intervenor Below),)

vs.)

CAUSE NO. 49A02-0410-CV-873

STATE OF INDIANA ex rel. INDIANA)
STATE REPUBLICAN CENTRAL)
COMMITTEE,)

Appellee-Plaintiff.)

ORDER

The Appellants, by counsel, have filed a Verified Motion to Stay Enforcement of Judgment, a Certificate of Counsel in Support of Verified Motion to Stay Enforcement of Judgment, and an Affidavit of Counsel in Support of Verified Motion to Stay Enforcement of Judgment. The Appellee, by counsel, has filed a Verified Objection to Motion to Stay and has filed a Brief in Support of Objection. The Appellee has also filed a Motion to Reconsider Order Granting Appellants' Motion to Expedite.

The Appellants' Verified Motion to Stay asks the Court to stay enforcement of the trial court's October 21, 2004 ruling, as modified by an October 24, 2004 nunc pro tunc

entry (the "Order of Mandate"). This ruling: 1) ordered Appellant Kristi Robertson, Co-Director of the Indiana Election Division, to certify R. Brooks LaPlante as the Republican House District 46 candidate, 2) ordered the Clay, Monroe, Owen and Vigo County Election Boards to remove Jeff Lee's name from the ballot and to place R. Brooks LaPlante on the ballot as the Republican candidate for House District 46 and to provide ballots to voters with R. Brooks LaPlante on the ballot, 3) ordered the same Election Boards to immediately send notice and replacement ballots to all absentee voters who have been provided absentee ballots, advising them that their previously completed ballots are void as to the House District 46 election and will not be counted for that election, and 4) ordered the Appellants to pay costs.

Having reviewed the matter, the Court FINDS AND ORDERS AS FOLLOWS:

1) The Appellants' Verified Motion to Stay Enforcement of Judgment is DENIED IN PART as to paragraphs one (1), two (2), and four (4) of the Order of Mandate, and such paragraphs shall remain in force and effect.

2) The Appellants' Verified Motion to Stay Enforcement of Judgment is GRANTED IN PART as to paragraph three (3) of the Order of Mandate, which provides as follows: "In addition, the Defendant County Election Boards are hereby mandated to immediately send notice and replacement ballots to all absentee voters, who have been provided absentee ballots with Jeff Lee's name on them, advising them that their previously cast vote in the House District 46 race is void and will not be counted, that if they would like to vote for a candidate in the House District 46 race, they will need to send in the replacement ballot as if voting for the first time. However, if the voter

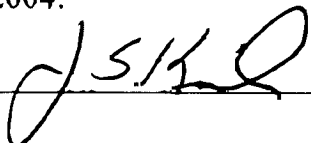
chooses not to utilize the replacement ballot his or her previously cast ballot will be counted in all races (whether local, state, or federal) except for the House District 46 race." The provisions of the foregoing paragraph are hereby stayed pending further order of this Court.

3) The Appellee's Motion to Reconsider Order Granting Appellants' Motion to Expedite is GRANTED, and the Order granting Appellants' Motion to Expedite is hereby set aside.

4) The Clerk of this Court is directed to send certified copies of this order by certified mail and facsimile *instanter* to the following: all parties of record, the Honorable Gary L. Miller, Judge of the Marion Superior Court, Room 5, and the Honorable Doris Anne Sadler, Clerk of the Marion Circuit and Superior Courts.

5) Doris Anne Sadler is directed to file a copy of this order under trial cause number 49D05-0410-MI-001912 and cause the same to be spread of record.

ORDERED this 26 day of October, 2004.



Chief Judge

Kirsch, C.J., Baker, Crone, J.J., concur.