

NOTICE

This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

2015 IL App (4th) 140273-U

NO. 4-14-0273

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED

January 23, 2015

Carla Bender

4th District Appellate

Court, IL

ROBERT KENT GRAY, JR.,)	Appeal from
Plaintiff-Appellant,)	Circuit Court of
v.)	Sangamon County
THE STATE OFFICERS ELECTORAL BOARD;)	No. 14MR28
JESSE R. SMART, CHARLES W. SCHOLZ,)	
WILLIAM M. McGUFFAGE, BRIAN A.)	
SCHNEIDER, HAROLD D. BYERS, BETTY J.)	
COFFRIN, CASANDRA B. WATSON, and ERNEST)	
L. GOWEN, in Their Official Capacities as Members)	Honorable
of The State Officers Electoral Board; and JOHN)	Dan L. Flannel,
"MO" MADONIA,)	Judge Presiding.
Defendants-Appellees.		

JUSTICE KNECHT delivered the judgment of the court.
Justices Turner and Steigmann concurred in the judgment.

ORDER

¶ 1 *Held:* The appeal is dismissed as moot because the election cycle has concluded and we cannot grant effectual relief.

¶ 2 Defendant, John "Mo" Madonia, filed nomination papers seeking the Republican Party's nomination for the office of circuit judge for the Seventh Judicial Circuit, to fill the vacancy of the Honorable Leo J. Zappa, Jr. (Zappa vacancy). Plaintiff, Robert Kent Gray, Jr., who also sought the Republican nomination for the Zappa vacancy, filed an objector's petition requesting Madonia's name be removed from the March 18, 2014, primary ballot. The Illinois State Board of Elections (Board) overruled Gray's objections and ordered Madonia's name be printed on the March 18 ballot. Gray filed a petition for judicial review and the trial court

affirmed the Board's decision. On March 18, 2014, Madonia won the Republican Party's nomination. On April 3, 2014, Gray filed a notice of appeal, arguing Madonia's nominating papers do not substantially comply with the Election Code, and he asks this court to remove Madonia's name from the November 4, 2014, general election ballot.

¶ 3 While this appeal was pending, Madonia won the November 4, 2014, general election and took office December 1, 2014. Since we cannot remove Madonia's name from the November 4 ballot or grant effectual relief, we dismiss this appeal as moot.

¶ 4 I. BACKGROUND

¶ 5 The pertinent facts are undisputed. On November 25, 2013, Madonia filed a statement of candidacy, nominating petitions, loyalty oath, and statement of economic interest for the office of circuit judge for the Zappa vacancy. The statement of candidacy was in the following form and included the following sworn statements:

"If required pursuant to 10 ILCS 5/7-10.2, 8-8.1 or 10-5.1, complete the following (this information will appear on the ballot) formerly known as _____ (List all names during last 3 years) until name changed on _____ (List date of each name change)

* * *

I, JOHN "MO" MADONIA (Name of Candidate) being first duly sworn (or affirmed), say that I reside at 2024 GREENBRIAR, in the CITY, Village, Unincorporated Area (circle one) of SPRINGFIELD (if unincorporated, list municipality that provides postal service) Zip Code 62704, in the County of SANGAMON, State of Illinois; that I am a qualified voter therein

and am a qualified Primary voter of the REPUBLICAN Party; that I am a candidate for Nomination/Election to the office of CIRCUIT JUDGE in the 7TH JUDICIAL District, to be voted upon at the primary election to be held on MARCH 18, 2014 (date of election) and that I am legally qualified (including being the holder of any license that may be an eligibility requirement for the office to which I seek the nomination) to hold such office and that I have filed (or I will file before the close of the petition filing period) a Statement of Economic Interests as required by the Illinois Governmental Ethics Act and I hereby request that my name be printed upon the official REPUBLICAN (Name of Party) Primary ballot for Nomination/Election for such office."

The statement was signed by Madonia and notarized. At the top of the statement are boxes for the candidate's name, address, office, district, and party. Madonia stated his address as "2024 Greenbriar, Springfield, IL 62704," the office as "Circuit Judge," and the district as "7th Judicial District."

¶ 6 The nominating petitions were signed by qualified electors of the Republican Party and requested "the named person shall be a candidate of the Republican Party for the nomination for the office hereinafter specified, to be voted for at the primary election to be held on March 18, 2014." Each nominating petition was entitled "Circuit Court Judge" and stated: "John 'Mo' Madonia[,] who resides at 2024 Greenbriar, Springfield, IL 62704[,] shall be a candidate for the office of Circuit Judge, of the State of Illinois, for the 7th Judicial Circuit, to fill the vacancy of the Honorable Leo J. Zappa." The bottom of each petition contained a circulator's

affidavit, in which the circulator certifies the signatures are genuine and provides their address. (On some petitions, the circulator failed to indicate whether they reside in a city, village, or unincorporated area.) Each petition contained space for 10 signatures, as well as uniform page headings and signature lines. Petition sheet No. 113, however, contained oversized headings and signature lines, and the circulator's certificate was attached as a second page.

¶ 7 On December 9, 2013, Gray, who also sought the Republican's party's nomination for the Zappa vacancy, objected to Madonia's candidacy pursuant to section 10-8 of the Election Code (10 ILCS 5/10-8 (West 2012)). See 10 ILCS 5/7-12.1 (West 2012). In a verified objector's petition, Gray asserted 19 alleged violations stemming from the form and substance of Madonia's nominating papers and requested Madonia's name be removed from the March 18, 2014, primary election ballot.

¶ 8 Gray's primary objection concerns Madonia's place of residence. Gray alleges Madonia's street address of 2024 Greenbriar is located within the corporate boundaries of Leland Grove, not Springfield. Gray further asserts Madonia failed to adequately describe the office and vacancy for which he was running and this failure rendered the nominating papers invalid. In particular, the statement of candidacy described the office as "Circuit Judge in the 7th Judicial District," while the nominating petitions described the office as "Circuit Judge, of the State of Illinois, for the 7th Judicial Circuit, to fill the vacancy of the Honorable Leo J. Zappa." Gray's remaining objections are as follows: (1) Madonia's statement of candidacy (a) fails to state whether his name changed; (b) fails to state the specific vacancy for which he seeks nomination; (c) fails to state whether he seeks nomination or election; (d) fails to request his name be printed on the ballot for nomination; (e) describes the office as "district" instead of "circuit"; (2) Madonia's nominating petitions (a) omit "Jr." from Leo J. Zappa; (b) describe the office as both

"Circuit Court Judge" and "Circuit Judge"; (c) fail to include Madonia's county of residence; (d) include a petition sheet (No. 113) that is not uniformly sized; (e) include circulator affidavits that fail to identify whether the circulator resides in a city, village, or unincorporated area; (3) Madonia's statement of economic interest fails to describe the office; and (4) these violations, in their aggregate, constitute a "pattern of fraud and false swearing."

¶ 9 On December 19, 2013, Madonia filed a "Motion to Strike and Dismiss Objector's Petition." In support of his motion, Madonia attached as exhibits copies of his driver's license, voter identification card, utility and real estate tax bills, and mail. He also attached voter registration records for Gray and 15 random Leland Grove residents, which all show a Springfield address, and a printout from Illini Country Club's website and Google search results for Illini Country Club, which show both Springfield and Leland Grove addresses.

¶ 10 On December 23, 2013, Gray filed a response to Madonia's motion to strike and dismiss. He attached as exhibits Madonia's property tax records showing Springfield as the "mailing address" and Leland Grove as the "property location." Gray also introduced several pieces of self-addressed mail, which included his correct street address, but incorrect city. For example, one letter was addressed to "Kent Gray, 2116 Illini Road, Chicago, IL 62704." No return address was provided. (Apparently, the post office was not confused and correctly delivered the mail to Gray's residence.)

¶ 11 The Board assigned the matter to a hearing officer and a hearing was held on January 2, 2014. After hearing arguments and considering the evidence, the hearing officer found Madonia resided at the street address shown in his nomination papers and Leland Grove and Springfield are merely different descriptions of the same address. The hearing officer also determined Madonia's nominating papers adequately described the office for which he sought

nomination, and there was no basis for confusion among the electorate. The hearing officer found petition sheet No. 113 was not uniformly sized and recommended the Board strike that page from the nomination petition, leaving 112 pages of valid signatures. The hearing officer concluded Gray's remaining objections lacked merit and Madonia's nominating papers substantially complied with section 7-10 of the Election Code (10 ILCS 5/7-10 (West 2012)). The hearing officer recommended the Board overrule the Gray's objections and print Madonia's name on the March 18, 2014, Republican primary ballot. (The Board's general counsel concurred with the hearing officer's findings and recommendation.)

¶ 12 On January 16, 2014, the Board voted unanimously to adopt the hearing officer's recommendation and ordered Madonia's name be printed on the March 18 ballot. Gray petitioned for judicial review. See 10 ILCS 5/10-10.1 (West 2012). On March 4, 2014, the circuit court entered an order affirming the Board's decision.

¶ 13 On March 18, 2014, the primary election proceeded as scheduled and Madonia won the Republican Party's nomination.

¶ 14 On April 3, 2014, Gray filed a notice of appeal. (He did not request this court to grant expedited consideration of his appeal.) In August 2014, Madonia moved for an extension of time to file an appellee brief. Without objection from Gray, Madonia's motion was granted. Following briefing, in September 2013, Gray filed a written request for oral argument, which we granted, and the cause was scheduled for oral argument on January 21, 2015. Gray's brief and notice of appeal prays this court reverse the Board's decision and remove Madonia's name from the November 4, 2014, general election ballot. While his appeal was pending, the election process went forward and Madonia ran unopposed in the November 4, 2014, general election and took office December 1, 2014.

¶ 15

II. ANALYSIS

¶ 16 Initially on appeal, we address Madonia's argument that Gray's appeal should be dismissed as moot. Madonia contends this court cannot grant effectual relief because both the primary and general elections have passed and the vacancy has been filled. Gray did not file a reply brief addressing whether his appeal is moot.

¶ 17 A case must remain a legal controversy from the time it is filed in the appellate court until the moment of disposition. Generally, a reviewing court will not decide moot questions and a case that is moot will be dismissed on appeal. *In re Alfred H.H.*, 233 Ill. 2d 345, 351, 910 N.E.2d 74, 78 (2009). "A case on appeal becomes moot where the issues presented in the trial court no longer exist because events subsequent to the filing of the appeal render it impossible for the reviewing court to grant the complaining party effectual relief." *Bettis v. Marsaglia*, 2014 IL 117050, ¶ 8, ___ N.E.3d ___. The conclusion of an election cycle normally renders an election contest moot. *Id.*; see also *Jackson v. Board of Election Commissioners*, 2012 IL 111928, ¶¶ 36, 43, 975 N.E.2d 583 ("It is well established under Illinois law that the conclusion of an election cycle normally moots an election contest."); *Richardson v. Rock Island County Officers Electoral Board*, 179 Ill. 2d 252, 256, 688 N.E.2d 633, 635 (1997). "Even if the case is pending on appeal when the events that render an issue moot occur, as a reviewing court, we generally will not issue an advisory opinion." *Davis v. City of Country Club Hills*, 2013 IL App (1st) 123634, ¶ 10, 997 N.E.2d 943.

¶ 18 Here, we agree Gray's appeal is moot. As described above, the March 4, 2014, primary election proceeded as scheduled and Madonia won the Republican nomination. Following the primary election, Gray filed a notice of appeal, praying "this [c]ourt enter an [o]rder instructing the election authorities that *** Madonia's, name be not printed on the

November 4, 2014 ballot." Although Gray's notice of appeal was filed seven months before the November 4 general election, Gray never moved for expedited consideration of his appeal, nor did he object to Madonia's motion for an extension of time. Gray himself contributed to the delay on appeal by requesting oral argument, which we granted. The November 4 general election proceeded as scheduled and it is now impossible for us to grant effectual relief. Indeed, removing Madonia's name from the ballot would require a useless and impossible act. *Daniels v. Cavner*, 404 Ill. 372, 374, 88 N.E.2d 823, 824 (1949) (where the issue on appeal involves an official's refusal to certify names for an election and the election has passed, the question is moot). Gray does not request a special election and such relief is not properly before us. *Jackson*, 2012 IL 111928, ¶ 43, 975 N.E.2d 583 (appellant's request for a special election was forfeited where she failed to include the request in her petition for leave to appeal).

¶ 19 Finally, Gray fails to argue any exception to the mootness doctrine applies. With no established exception to the mootness doctrine, review is meaningless and would result in this court rendering an advisory opinion—an act we are to avoid. *Edwardsville School Service Personnel Ass'n v. Illinois Educational Labor Relations Board*, 235 Ill. App. 3d 954, 958, 600 N.E.2d 910, 914 (1992).

¶ 20 III. CONCLUSION

¶ 21 In the absence of a continuing legal controversy and finding no reason for any exception to the mootness doctrine to apply, we dismiss this appeal.

¶ 22 Appeal dismissed.