Recent Developments: Lamone v. Lewin

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LAMONE v. LEWIN: THE STATE BOARD OF ELECTIONS MUST ADHERE TO THE STATUTORY DIRECTIVES CONCERNING THE CONTENT OF THE PRIMARY ELECTION BALLOT.

By: Erin Cullinan

The Court of Appeals of Maryland held that, pursuant to Md. Code, Election Law Article (“ELA”) §§ 5-504(b) and 5-601, the State Board does not have discretion to remove otherwise disqualified candidates from the ballot after the statutory deadlines. Lamone v. Lewin, 460 Md. 450, 479, 190 A.3d 376, 392 (2018). The court found that the plain language of the statute, read in context and confirmed by its legislative history, reveals the deadlines set forth in the election laws were intended to be mandatory. Id. at 474, 190 A.3d at 389. The court further held that adherence to the directives did not violate the Federal and State Constitutions as applied. Id. at 479, 190 A.3d at 392.

In early 2017, longtime State legislator Nathaniel Oaks (“Oaks”) was appointed to fill a vacancy in the State Senate for Legislative District 41. After a few months in office, Oaks was charged with wire fraud in federal court. A federal grand jury later returned an indictment comprised of nine felony counts, all relating to a bribery scheme Oaks was believed to be a part of while in office. Despite the pending charges, Oaks filed a timely certificate of candidacy to keep his State Senate seat and for a position on his party’s central committee for the 2018 primary election. After the deadlines for withdrawal of candidacy, but before the primary election took place, Oaks pled guilty to two felonies in federal court. The maximum penalty for both offenses was twenty years imprisonment. While a plea of guilty itself did not disqualify Oaks from potentially holding either office, pursuant to the election laws he would become disqualified, however, if and when he was sentenced to imprisonment as a result of his plea. Despite this possibility, Oaks did not withdraw his candidacy by the requisite deadline, and thus the State Board certified the primary election ballots with Oaks’ name still on them.

Six days after the primary election ballots were certified, Appellees Nancy Lewin (“Lewin”), Elinor Mitchell (“Mitchell”), and Christopher Ervin (“Ervin”) – two of whom were rival candidates of Oaks’- filed suit against the State Administrator of Elections, Linda Lamone (“Lamone”), in her official capacity to have Oaks’ name removed from the ballot. Lewin, Mitchell, and Ervin filed a motion for a preliminary injunction in an attempt to compel the State Board to remove Oaks’ name from the ballot. Because it was uncertain whether Oaks would receive a prison sentence, the Circuit Court for Anne
Arundel County denied preliminary injunctive relief holding future disqualification was not a basis for granting a preliminary injunction.

Soon after, Oaks gave up his voter registration which, pursuant to the election laws, automatically disqualified him from running for office. Although ballot printing had already begun, the circuit court reconsidered Lewin’s request for preliminary relief, and ordered the State Board to immediately remove Oaks’ name from the ballot. The State Board filed a petition for writ of certiorari, which the Court of Appeals of Maryland granted.

The court began by reviewing the procedures and deadlines concerning withdraw and disqualification of candidates for primary election ballots set forth in the ELA. Lamone, 460 Md. at 457, 190 A.3d at 379-80. In the case at hand, Oaks filed a timely certificate of candidacy. Id. at 459, 190 A.3d at 381. He also did not file to withdraw his candidacy by the requisite deadline, which would’ve removed his name from the election ballot. Id. The ELA further provides that if a person filed a timely certificate of candidacy, but the State Board learns, within 10 days after the deadline for filing the certificate for candidacy, that the person has died or has become disqualified, then the individual’s name is not to appear on the ballot. Id. at 457, 190 A.3d at 379. Further, the ELA mandates that a candidate who filed a timely certificate of candidacy, did not withdraw by the deadline, and neither became deceased or disqualified by the relevant deadline “shall appear” and “shall remain” on the ballot to be submitted to voters. Id. at 457, 190 A.3d at 379-80. In the case at hand, Oaks was not disqualified for office by the 10th day after the deadline for filing a certificate of candidacy, and thus the State Board certified the primary election ballots in accordance with the statute, with his name included for candidacy. Id. at 460, 190 A.3d at 381.

The main question before the Court of Appeals of Maryland was whether the circuit court abused its discretion in granting the motion for a preliminary injunction. Lamone, 460 Md. at 466, 190 A.3d at 384. There are four factors to consider when deciding whether to grant a preliminary injunction: (1) the likelihood that the plaintiff will succeed on the merits; (2) the “balance of convenience;” (3) whether the plaintiff will suffer irreparable injury; and (4) whether an injunction serves the public interest. Id. at 466, 190 A.3d at 384. (citing Ehrlick v. Perez, 394 Md. 691, 708, 908 A.2d 1220 (2006)). While all four factors must be considered when deciding whether to grant a preliminary injunction, the first of the four factors – whether the Appellees will succeed on the merits – was the most crucial to the court’s analysis. Lamone, 460 Md. at 466, 190 A.3d at 385.

Here, the Court of Appeals of Maryland found that there was no likelihood that Lewin, Mitchell, and Ervin would be able to establish the first element of their claim because the State Board acted consistently with the ELA in their decision to keep Oaks’ name on the ballot. Lamone, 460 Md. at 467, 190 A.3d at 385. The court explained that the text of the ELA regarding withdraw of candidacy was unambiguous, and the use of “shall” generally represents a mandatory obligation. Id. at 468, 190 A.3d at 386. Additionally, the court found that in examining the statute’s legislative history, ELA §5-504(b) and
§5-601 do not give any discretion to the State Board to remove names from
the ballot after the deadlines have passed. *Id.* at 469-70, 190 A.3d at 388. The
court’s historical examination revealed that even after being revised a handful
of times, the statutes remained with the intent that the withdraw deadlines be
considered mandatory. *Id.* at 473, 190 A.3d at 388.

Next, the court addressed Lewin, Mitchell, and Ervin’s arguments that
construing the ELA provisions as mandatory renders them unconstitutional.
*Lamone*, 460 Md. at 467, 190 A.3d at 385. Specifically, they argued that
retaining Oaks’ name on the ballot in accordance with the statute was
unconstitutional in that it could lead to the disenfranchisement of voters who
voted for Oaks, thus violating a voter’s freedom of association, due process
rights, and right of suffrage. *Id.* at 475, 190 A.3d at 390. The Court of Appeals
of Maryland rejected this argument, finding the withdraw provisions imposed
a minimal burden on voters’ rights. *Id.* at 477, 190 A.3d at 391. The court
applied a rational basis review finding the provisions were nondiscriminatory
and justified by the State’s interest in regulating elections. *Id.* The court
explained these provisions apply equally to all candidates and ensure the State
Board can adequately prepare and print the ballots in time to accommodate the
various requirements of State and federal law necessary to conduct a free and
fair election. *Id.* at 477-78, 190 A.3d at 391-92. Moreover, the provisions did
not prevent any voter from voting for another candidate of his or her choice
who appeared on the ballot. *Id.*

The dissent argued that leaving Oaks’ name on the ballot harmed the voters
by confusing who was truly a valid candidate for office, and thus effected the
integrity of the election. *Lamone*, 460 Md. at 487, 190 A.3d at 397 (Watts, J.,
dissenting). Specifically, the dissent argued that votes casts for Oaks could
have potentially changed the outcome of the election if cast for another
qualified candidate. *Id.* at 487-88, 190 A.3d at 397. The dissent concluded
that the claim was brought appropriately under the ELA, and that keeping a
disqualified candidate’s name on the ballot was not in line with the Article’s
plain language. *Id.* at 487-90, A.3d at 397-99.

In *Lamone*, the Court of Appeals of Maryland held that even when faced
with a potential question of constitutionality, the State Board does not have
discretion when applying Maryland Election Law as it applies to deadlines for
candidacy and withdrawal for primary elections. This holding signals the
court’s advocacy and support of the democratic process of our elections and
the regulations that accompany them. Although the votes that were cast for
Oaks would not have affected the outcome of the election in this case, the State
Board should adopt procedures for notifying voters of a candidate’s late
disqualification at the voting polls to avoid voter confusion and potentially
“wasted” votes.