

BEFORE THE DULY CONSTITUTED ELECTORAL BOARD
FOR THE HEARING AND PASSING UPON OF NOMINATION OBJECTIONS TO
NOMINATION PAPERS OF CANDIDATES FOR NOMINATION TO THE
OFFICE OF REPRESENTATIVE IN THE GENERAL ASSEMBLY FOR THE 103rd
REPRESENTATIVE DISTRICT OF THE STATE OF ILLINOIS

Devaney,)
)
Petitioner-Objector,)
)
v.)
)
Calabrese,)
)
Respondent-Candidate.)

**OBJECTOR’S RESPONSE TO MOTION TO STRIKE
AND DISMISS THE OBJECTOR’S PETITION**

NOW COMES, Objector, by and through his attorneys, and in Response to the Motion to Strike the Objector’s Petition states as follows:

A. The Electoral Board has Jurisdiction Over this Matter.

In his Motion to Strike, the Candidate appears to challenge the Electoral Board’s jurisdiction to hear this Objector’s Petition. Specifically, the Candidate claims that the Electoral Board does not have jurisdiction over this matter because it involves the process of filling a vacancy in nomination created when no candidate appeared on the ballot at the primary election. The Candidate’s Motion should be denied because his contention is legally incorrect, and is directly contrary to both the statute and several published opinions of the Illinois Appellate Court.

The Candidate is correct that the Electoral Board is a creature of statute. 10 ILCS 5/10-9. As such, the Electoral Board’s powers are limited to those granted by its enabling legislation. *Kozel v. State Board of Elections*, 126 Ill.2d 58 (1998); *Wiseman v.*

Elward, 5 Ill.App.3d 249, 283 N.E.2d 282 (1st Dist. 1972). The Electoral Board's powers are enunciated in Section 10-10 of the Election Code, which provides:

The electoral board shall take up the question as to whether or not the certificate of nomination or nomination papers or petitions are in proper form, and whether or not they were filed within the time and under the conditions required by law, and whether or not they are the genuine certificate of nomination or nomination papers or petitions which they purport to be, and whether or not in the case of the certificate of nomination in question it represents accurately the decision of the caucus or convention issuing it, and in general shall decide whether or not the certificate of nomination or nominating papers or petitions on file are valid or whether the objections thereto should be sustained and the decision of a majority of the electoral board shall be final subject to judicial review as provided in Section 10-10.1.

10 ILCS 5/10-10. In this case, the Objector's Petition asks the Electoral Board to take up the question of whether the nomination papers were filed "under conditions provided by law" and whether "the nominating papers are valid." The Objector simply requests a ruling that the nomination papers are invalid because they were not file under the conditions provided by law.

Because this case involves a vacancy in nomination, it is governed by Section 7-61 of the Election Code. 10 ILCS 5/7-61.¹ Section 7-61 specifically addresses the Electoral Board's role in reviewing attempts to fill vacancies in nomination:

The provisions of Section 10-8 through 10-10.1 relating to objections to certificates of nomination and nomination papers,

¹ Although Article 8 of the Election Code governs nominations to the Illinois General Assembly, Section 7-61 is specifically adopted by Section 8-17 ("Vacancies in nomination occurring under this Article shall be filled by the appropriate legislative or representative committee in accordance with the provisions of Section 7-61 of this Code."). 10 ILVS 5/8-17.

hearings on objections, and judicial review, shall apply to and govern objections to resolutions for filling a vacancy in nomination.

10 ILCS 5/7-61. Thus, the Election Code specifically contemplates that the Electoral Board will adjudicate objections to nominations arising from the filling of vacancies in nomination.

The Objector's Motion seems to claim that the Electoral Board's inquiry is limited to the Resolution to fill a vacancy in nomination. For this incorrect proposition, Objector cites no authority – and indeed there is none. On the contrary, Objector's Petition is contrary to several reported decisions.

First, in *Carnell v. Madison County Elec. Bd.*, 299 Ill.App.3d 419, 701 N.E.2d 548 (5th Dist. 1998), the Court affirmed an electoral board decision invalidating a representative committee's attempt to fill a vacancy in nomination where the committee did not properly organize as required by Section 8-5 of the Election Code. In *Carnell*, the Court held that the organizational provisions of Section 8-5 were mandatory and the committee's failure to adhere to those provisions rendered its later attempt to fill a vacancy in nomination pursuant to Section 7-61 invalid. *Id.* at 552-553.

This case is virtually the same as *Carnell*. In both cases, the committee failed to comply with the mandatory organizational procedures of Section 8-5, but nonetheless attempted to fill a vacancy in nomination pursuant to Section 7-61. In *Carnell*, the Appellate Court ruled that the failure to comply with Section 8-5 rendered its action under Section 7-61 invalid.

In addition, the Fourth District Appellate Court invalidated the action of a Representative Committee in filling a vacancy in nomination because one of the

Committee members was not notified of the meeting at which the vacancy was filled. *Graham v. State Officers Elec. Bd.*, 269 Ill.App.3d 609, 646 N.E.2d 1357 (4th Dist. 1995)

Thus, it is well settled that electoral boards have jurisdiction over matters involving the organization and procedures followed by representative committees in filling vacancies in nomination. The Candidate's unsupported argument that this Board's authority is limited to the resolution filling the vacancy in nomination has no legal support, either statutory or judicial, and should be rejected.

B. The Late Filing of the Certificate of Organization Does Not Render The Objector's Petition Moot.

The Candidate attempts to demonstrate that the violation of Section 8-5 has been rendered "moot" because the Certificate of Organization was filed on April 18, 2008. This is legally incorrect. The Election Code provides a schedule for all matters regarding the filling of vacancies in nomination. If no candidate appears on the ballot at a primary election, then a vacancy in nomination must be filled within 60 days. 10 ILCS 5/7-61. The nomination papers reflecting the filling of the vacancy in nomination must be filed with the election authority within three days. *Id.* Objections to the filling of the vacancy must be filed within five business days from the last day for filing the petition. *Id.*, see also 10 ILCS 5/10-8.

The purpose of this schedule is to ensure that election authorities have sufficient time to resolve disputes and finalize ballots in time for election day. While Section 8-5 does not provide a firm deadline for filing the name and addresses of the committee members, it does provide that such information must be filed "immediately upon completion of organization." 10 ILCS 5/8-5.

Here, the Committee did not, under any circumstances, file the names and addresses of the committee officers “immediately upon completion of organization.” The certificate of organization was apparently executed on April 7, but was not filed until April 18. In this case, the while the delay of eleven days alone demonstrates that the filing was not immediate, the fact that it was during these eleven days that the entire period for filing an objection arose and expired, heightens the non-compliance with the statute.


The paperwork filling the vacancy in nomination was filed on April 7. As a result, the last day for filing an objection to this candidate was five business days later, April 14. By waiting until April 18 to file, the committee deprived the public of any relevant information regarding the committee’s officers during the only period that someone could challenge their actions or eligibility.

If the Candidate is correct, then the provision requiring representative committees to file the names and addresses of it officers with the State Board of Elections is completely meaningless. If “immediately” allows a committee to wait until after the expiration of the objection period expires, then there is no point in making the filing at all because by the time the information is filed, it will be too late for anyone to do anything about it.

Moreover, it is well settled that election related documents that are filed late are invalid. *See Daniels v. Cavner*, 404 Ill. 372, 88 N.E.2d 823, 829 (1949).

WHEREFORE, for the foregoing reasons, Objector respectfully prays that the Motion to Strike and Dismissed be denied.

Respectfully submitted,
Respondent-Candidate

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