

**SUMMARY OF CHAMPAIGN COUNTY ELECTORAL OFFICERS BOARD
HEARINGS OF
PAT DEVANEY VS. FRANK CALABRESE**

Mark Shelden, Chair, called the Hearing of the Champaign County Electoral Officers Board to order at 9:35 A.M., Friday, May 2, 2008, in Courtroom K of the Champaign County Courthouse, in the case of Pat Devaney vs. Frank Calabrese.

ROLL CALL

Roll call showed the following members present: Mark Shelden, County Clerk; Fred Wilkinson in replacement of Linda Frank, Circuit Clerk; and Steve Ziegler in replacement of Julia Reitz, State's Attorney.

ENTRIES OF APPEARANCE

An Entry of Appearance was made by Robert Uhe, counsel for the objector; Pat Devaney, objector; John Maloney, counsel for the respondent; and Frank Calabrese, respondent.

Chair Shelden called the meeting to order. Mr. Shelden discussed the Respondent's objection to the jurisdiction of the Electoral Board and motion to strike. Chair Shelden asked Mr. Maloney and Mr. Uhe for a response or additional thoughts regarding the matter.

Mr. Uhe had no comment. Mr. Maloney attempted to submit documents into evidence stating the documents deal with the issue of mootness in the case. Mr. Uhe objected to the submission of the documents as he was unsure of the relevance they bear to the case.

Mr. Uhe asked Chair Shelden if the official documents forwarded by the State Board of Elections had officially been entered into evidence. Mr. Uhe moved that those documents be entered into evidence. Mr. Ziegler questioned both parties about the documents in question. Without objection the documents were entered into evidence.

Chair Shelden requested the respondent, Mr. Maloney present his arguments on the objection and motion to strike.

Mr. Maloney stated that the objections had been mooted by Mr. Calabrese when he furnished all the documents requested by the objector. Mr. Maloney also contended that this objection does not concern itself with the fight between the objector and Mr. Calabrese, because Mr. Calabrese under the statutes is not required to furnish a copy of the Certificate of Organization to the committee. Mr. Maloney maintained that it was the responsibility of the Republican Party.

Mr. Maloney further stated that the Electoral Board has no jurisdiction to decide questions of fact concerning statutory directives that are not the responsibility of the candidate. He maintained that since the certificate in question, is not filed by the

candidate with the nominating papers, it would be the committee's responsibility to file under the statute. Mr. Maloney suggested that this case might be the responsibility of another forum, because the Electoral Board, except as provided in the statute, cannot expand its authority beyond what is provided by the statute and what is mentioned in the objection. Mr. Maloney maintained that the only objection is to the Republican Party's alleged failure to file.

Chair Shelden responded to Mr. Maloney by stating that any objection to nomination papers reside with any single individual voter within any particular district. He stated that there is statutory authority for Mr. Devaney to file this objection.

Mr. Uhe stated that he understood this hearing was going to involve discussion and argument over the jurisdiction of the Board. He felt that most of Mr. Maloney's argument went beyond that and focused more on the merits of the case.

Mr. Uhe stated he felt the jurisdictional question was very clear. Mr. Uhe quoted excerpts of Section 10-9 of the Election Code, stating the County Electoral Officers Board has the power to hear and pass upon objections to nominations of candidates for legislative offices of a district that's contained entirely within one county. He stated that the objector's petition alleges an objection to the nominating papers and that it alleges that the nominating papers are invalid because certain mandatory provisions of the Election Code were not complied with and that provisions in Section 8-5 require certain procedures and processes relative to the formation and notification to the public of the organizing of the committee.

Mr. Ziegler stated that he based his opinions on Article 8 of the Election Code which governs only the nomination of candidates to the General Assembly. He stated that the Election Code specifically states in Section 8-1 that if a person is not nominated under the provisions of Article 8, then their name cannot appear on the ballot.

Mr. Uhe stated that in addition to the Election Code, there are some cases that clearly hold that an Electoral Board has jurisdiction to consider objections that go beyond the documents themselves that are filed with the Board of Elections. Mr. Uhe cited that the Board has proper jurisdiction to hear a properly filed objection to nominating papers when the objection alleges that the papers are invalid because certain mandatory requirements of the Election Code have not been met.

Chair Shelden commented that if the motion is denied, they would have to take a look at the objection itself and really stick to that objection and discuss whether or not some of the points brought up in the motion are valid. Chair Shelden stated he had concerns about any motion that relies on some technicality and that more investigation into the legitimacy of the assorted cases stated by Mr. Uhe of the underlining actions by that Board and the creative actions of those legislative committees are valid for discussion. Chair Shelden felt the Electoral Board has jurisdiction.

Mr. Wilkinson interjected that the Electoral Board approaches with great reluctance the removal of any candidate from any ballot, but that there are rules. Mr. Wilkinson agreed with the Chair and stated the Board has the jurisdiction.

Mr. Ziegler stated that in connection to the merits of the petition there were things that would need to be addressed and dealt with, such as questions of mandatory vs. directory, strict compliance versus whether strict compliance is required and that he expected these to be dealt with at a later date.

Mr. Ziegler reminded all parties that the question today is whether Mr. Calabrese is the appropriate party and does the Board have jurisdiction. Mr. Ziegler stated it was his opinion that the ground case clearly indicates that even though the political entity is responsible for selecting the potential candidate, it is the candidate who is the appropriate party even though it is the political entity who may have taken the incorrect actions; Mr. Calabrese is the appropriate party. Mr. Ziegler upheld his belief that the Board has proper jurisdiction.

Mr. Ziegler stated that Section 10-10, indicates whether or not they, meaning the petitions and nomination papers and certificates of nomination are filed within, not only the time but under the conditions required by law and whether or not the certificate of nomination or nomination papers or petitions on file are valid or whether the objections thereto should be sustained. Mr. Ziegler stated that he thought it was the clear intention of the Election Code in matters such as this that the Electoral Board does have the initial jurisdiction. Mr. Ziegler maintained that the certificate was furnished and the parties agreed that the Certification of the Representative Committee Organization was furnished and filed with the State Board of Elections on April 18, 2008 and therefore he did not believe it makes the issue moot and stated two reasons. His first reason concerned the interpretation of the word "immediately" used in the statute and whether or not it is directory or mandatory or whether strict compliance is required. He also maintained that even though names were provided, the statute requires addresses which do not appear on the face of the document. His second reason concerned whether the objector's petition continues to be valid. He suggested that the objections raised by Mr. Maloney should be dealt with and must be contained in the petition. Mr. Ziegler stated that he believes that the wording of the petition is such that it does take in the question of whether these papers were filed, as required by the Election Code. He further stated that at a pleading stage that is broad enough to take in the question of whether or not this hearing should continue or whether the pleadings take in the ultimate issue discussed. For those various reasons, it was his opinion that the Board has jurisdiction, Mr. Calabrese is the appropriate party, that the pleading at this point is sufficient; and that the objection to jurisdiction and the argument on entity be denied.

Chair Shelden stated for the record on the objection to jurisdiction of the Electoral Board and motion to strike; Mr. Wilkinson, Mr. Ziegler, and Chair Shelden all denied the objection and motion.

Chair Shelden granted a five minute recess to allow Mr. Maloney time to discuss a date for hearing with his client. Discussion followed concerning a convenient date for all parties.

Chair Shelden recessed the Hearing at 11:00 A.M. to reconvene at 9:30 A.M. on May 16, 2008, in a courtroom to be determined.