

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

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

OBJECTION TO JURISDICTION OF ELECTORAL BOARD AND MOTION TO STRIKE

Candidate Frank Calabrese objects to the jurisdiction of this Electoral Board to hear objections to the filings of the nominating Representative Committee, formed to nominate the Candidate. As there is no objection to the nominating papers, the Respondent-Candidate moves to strike the Objection.

Authority of the Electoral Board is created in the Illinois Election Code at 10 ILCS 5/10 -10 and states in relevant part:

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. The electoral board must state its findings in writing and must state in writing which objections, if any, it has sustained. (Underlining added)

Objector's Petition raises no objection to the certificate of nomination, the nomination papers, or any petitions. It also does not challenge the authenticity or accuracy of the nominating papers. The Objector's Petition properly states that the Representative District Committee is the appropriate group to fill the vacancy (Objector's Petition Par. 5). The Objector's Petition then refers to the Candidates Nominating Papers contained a nomination from the Representative District Committee, but objects only to the Representative District Committee filing a Certificate of Organization (Objector's Petition Par. 7).

Reviewing objections to the Certificate of Organization is not listed in the enumerated powers of the Electoral Board. As an administrative board created by the Illinois Electoral Code, the Electoral Board can only have those powers granted to it in the statute. Sullivan v. County Officers Electoral Board, 225 Ill. App. 3d 691, 693 (1992), attached, citing Kozel v. State Board of Elections, 126 Ill.2d 58, 68, 127 Ill.Dec. 714, 533 N.E.2d 796. For this board to expand its review into other matters, including the Representative District Committee filing their Certificate of Organization, would be beyond its statutory authority and would be unable to grant the requested relief of removing the candidate from the ballot.

In reviewing the proper matters before this Electoral Board, the Candidates Nominating Papers correctly included a nomination from the Representative District Committee using State Board of Elections Form P-3B, "RESOLUTION TO FILL A VACANCY IN NOMINATION OCCURRING AFTER PRIMARY ELECTION", signed by the Chairman and Secretary of the Representative District Committee. The nomination of the candidate and the formation of the committee were not objected to in the Objector's Petition.

That Representative District Committee has since filed their Certificate of Representative Committee Organization with the Illinois State Board of Elections, a copy of which is attached and dated the same day as the Resolution. The Illinois Election Code at 10 ILCS 5/8-5 gives no deadline to file the document, nor does it describe any sanction against a candidate if it is not filed.

As the Objector's Petition only objects to the Certificate of Organization, there is nothing that the Electoral Board has to review under its statutory authority and the objection should be dismissed. The objection is also moot because of the subsequent filing of the Certificate of Organization by the Representative District Committee. Respondent-Candidate asks that the Objection be dismissed and/or stricken.

Respectfully submitted,

s/ John E. Maloney

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on behalf of Candidate Frank Calabrese

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