

**TRANSCRIPT OF CHAMPAIGN COUNTY ELECTORAL OFFICERS - HEARINGS OF  
PAT DEVANEY VS. FRANK CALABRESE  
May 2, 2008 AT 9:35 A.M.**

1 CHAIR SHELDEN: We're going to call this meeting of the Champaign County  
2 Officers Electoral Board to order in the case of Devaney versus Calabrese. And . . . any  
3 of . . . in front of us . . . a motion to . . . objection to the jurisdiction Electoral Board,  
4 motion to strike. And a response to such . . . is there . . . is there any additional thoughts  
5 that you guys wanna give me?

6 MR. UHE: Nothing further from us your Honor.

7 MR. MALONEY: I just . . . some documents that . . . rather than . . . and I think  
8 they're all . . . basically . . . they're . . . they're all . . . should be well known to the  
9 committee but in case they aren't (approaches Chair Shelden at the bench) I've brought  
10 some additional copies. One is a . . . the first one is a resolute . . . part of a nominating  
11 petition is a resolution to fill a vacancy and I have three copies of that.

12 CHAIR SHELDEN: Okay.

13 MR. MALONEY: I have . . . this, this is gonna be dealing with the issue of, of  
14 mootness which I am going to argue. There's three copies of . . . so . . . information

15 MR. UHE: May . . . may I have a copy of that? I don't know what you're handing  
16 to . . .

17 MR. MALONEY: Oh, I'm sorry.

18 CHAIR SHELDEN: This is . . . yeah . . .

19 MR. MALONEY: Yeah, this is what I handed to you before the last hearing. This  
20 is the . . . this is the document . . . that, that, the documents . . .

21 MR. UHE: Well I, I, I guess, I guess I . . . to the extent that you intend to enter

22 this into the record, I, I think I'll have to object. I'm not sure what relevance this bears on  
23 the . . .

24 MR. MALONEY: I . . . I can, I can enter it through a, a, a witness if that's . . . I'll  
25 enter it properly. This is also part of, part of the filing.

26 MR. UHE: May I . . . this may not be a good time to ask. Have the documents  
27 that were forwarded by the State Board of Elections been entered into evidence . . . in  
28 the record?

29 CHAIR SHELDEN: Not, not officially. So . . .

30 MR. UHE: Could I . . . move that, that those documents be entered into evidence  
31 and the record?

32 CHAIR SHELDEN: Yeah.

33 MR. MALONEY: I would . . . I think maybe the way to say this . . . I would have  
34 no objection to this panel taking judicial notice of those documents . . .

35 CHAIR SHELDEN: Okay.

36 MR. MALONEY: and records that are on file . . . file or have been on file.

37 CHAIR SHELDEN: Okay. Great

38 MR. MALONEY: with Board of Elections . . .

39 CHAIR SHELDEN: Yeah. Alright. So, so is there something . . .

40 MR. MALONEY: Yes. Subject to, subject to your objection I'm gonna, I'm gonna  
41 hand them this . . .

42 CHAIR SHELDEN: What? What is this?

43 MR. MALONEY: What this, what this is, is, is a . . . information that was given it  
44 would moot. This was information that was furnished very shortly after the objection was

45 filed that would moot, in our opinion, some of the, some of the claimed objections and  
46 that will, will moot the, will moot the controversy.

47 CHAIR SHELDEN: Okay. I guess I got, I got a, I got your objection to jurisdiction.

48 MR. MALONEY: Right.

49 CHAIR SHELDEN: And I think you gave me a case with this. I think you gave us  
50 a case with this.

51 MR. MALONEY: Right.

52 CHAIR SHELDEN: And you gave the . . . a copy of the State Board of Elections  
53 filing from I think the eighteenth of April. Is this . . . this is not a case, this is just  
54 evidence of some sort?

55 MR. MALONEY: This is evidence.

56 CHAIR SHELDEN: Okay.

57 MR. MALONEY: This is evidence.

58 CHAIR SHELDEN: Alright. Well . . . and you're, you're . . .

59 MR. MALONEY: And I can enter it . . .

60 CHAIR SHELDEN: desiring to enter it into evidence?

61 MR. MALONEY: I'm desiring to enter it into evidence.

62 CHAIR SHELDEN: So now I've gotta, now I've gotta make a evidentiary ruling  
63 here. Is that where . . . kinda where we're at?

64 MR. MALONEY: I'll introduce it through a witness if you'd like.

65 MR. WILKINSON: Yeah, yeah. He needs to do that.

66 CHAIR SHELDEN: Okay.

67 MR. UHE: Your Honor? If you wish to choose to accept that into the record I, I

68 would just like the opportunity to point out what it is and what, what I believe it is not . . .  
69 and how it does not, in my opinion, relate to the merits of the case.

70 CHAIR SHELDEN: Okay. Well, first of all, we're not talking about the merits of  
71 the case, we're talking about the merits of the motion. Right?

72 MR. MALONEY: Right.

73 CHAIR SHELDEN: Okay. So . . .

74 MR. MALONEY: and the, and the motion is about mootness. . .

75 CHAIR SHELDEN: we're gonna try to keep our arguments as narrow . . .

76 MR. MALONEY: Right. And the motion is about . . . our motion is . . . in part  
77 about mootness . . .

78 CHAIR SHELDEN; Okay.

79 MR. MALONEY: jurisdiction. Those are all a part of mootness and this evidence  
80 speaks to that mootness.

81 CHAIR SHELDEN: Okay. Why don't we give you a chance to introduce evidence  
82 then? Is that maybe the best . . .

83 MR. MALONEY: I can do it. I'll do it during the argument, how's that?

84 CHAIR SHELDEN: Okay. Alright.

85 MR. MALONEY: So they get . . .

86 CHAIR SHELDEN: Alright. So this is . . .

87 MR. MALONEY: So they get tied together.

88 CHAIR SHELDEN: Alright. Sorry, we're getting into, a little bit out of . . . outside  
89 of my pay period here when we start doing this stuff, but . . . alright then.

90 MR. ZIEGLER: Since this keeps coming up, the question of what has been filed

91 with the Electoral Board issue and what's not and one of the things we were furnished  
92 with today was a copy of the Resolution to Fill a Vacancy in Nomination. Now, there's  
93 actually a copy of that attached to the original petition. There's a difference. The one  
94 attached to the original petition has the State Board of Elections file stamp on it.

95 MR. MALONEY: Okay.

96 MR. ZIEGLER: And so I assumed that both parties are accepting that this is the  
97 certificate.

98 MR. MALONEY: Simplification . . .

99 MR. ZIEGLER: Excuse me, I assume that both parties are acknowledging that  
100 this is the Resolution to Fill Vacancy of Nomination which was filed with the State Board  
101 of Elections . . .

102 MR. MALONEY: I have no . . .

103 MR. ZIEGLER: stamped by them on . . .

104 MR. UHE: Yes, on behalf of the objector, I, I, I accept that the, that the  
105 documents you have received from the Board of Elections reflect a resolution as  
106 received by the Board of Elections.

107 CHAIR SHELDEN: Okay.

108 MR. MALONEY: Do they also . . . also . . . are they, are they recent? Do they  
109 also reflect this?

110 MR. ZIEGLER: Well, that's gonna be my next question.

111 CHAIR SHELDEN: Right. This one I have not received. I do not . . . we have not  
112 received this from the State Board of Elections.

113 MR. ZIEGLER: You received this from the State Board of Elections. That is going

114 to be one of my next questions. It is actually attached to the objection to jurisdiction.  
115 And it's referenced in the response to that motion, and that is a document titled,  
116 Certification of Representative Committee Organization which bears a State Board,  
117 purports to bears a State Board of Elections file stamp of April 18, 2008. I'm curious at  
118 this point because it's attached to the objection and referenced in the response and  
119 because of the way it's referenced, my question is, is either party challenging whether  
120 that is a document in fact, that was filed on that date with the State Board of Elections?

121 MR. UHE: No, no your Honor. And, and I think at a point we are going to reach  
122 very soon, I'd like to speak to what we're prepared to stipulate with respect to that  
123 document. I, I have a question on how we are going to proceed. Whether we are going  
124 to proceed on jurisdiction or the merits?

125 MR MALONEY: Jurisdiction.

126 MR. ZIEGLER: Jurisdiction.

127 MR. UHE: Oh, okay.

128 MR. MALONEY: Jurisdiction only.

129 CHAIR SHELDEN: I think this . . .

130 MR. ZIEGLER: And that's why I asked the question about those documents  
131 because they were referenced in both.

132 CHAIR SHELDEN: Your, your first time here . . . sometimes, at least me, I give  
133 maybe a little more latitude than, than somebody else might . . . but at the same time  
134 we're all trying to get to a . . .

135 MR. UHE: And I understand.

136 CHAIR SHELDEN: a good resolution and I . . . don't . . . So, now, that being the

137 case and I appreciate Mr. Ziegler getting to the nub of this, which . . . we don't . . . we  
138 don't really . . . you've got aspects of this that you're agreeing . . . that you would agree  
139 to stipulate to. But, but, we're not . . . I, I think that in whole and just . . . you're not . . .  
140 like just oh yeah that's, everything's fine there. You've got questions about this  
141 particular filing.

142 MR. UHE: Yes, yes, your Honor.

143 CHAIR SHELDEN: Okay. So . . . let's . . . that being the case . . . the . . .  
144 respondent . . . to the objection and motion to strike. Right? Is that where we can do?  
145 Why don't you go ahead and present your argument?

146 MR. MALONEY: If I may do it, if I may do it while I'm sitting.

147 CHAIR SHELDEN: Yeah. However you want.

148 MR. MALONEY: First of all I wanted the panel to understand as, as I do it and I, I  
149 apologize that this is my very first time ever arguing a election case. My name's John  
150 Maloney. I'm an attorney with Maloney, Parkinson, and Berns here in Urbana, Illinois. I,  
151 I have, acted as an administrative judge . . . not an administrative judge, an  
152 administrative hearing officer before. I've been a, I've been a bankruptcy panel trustee  
153 from 1974 through 2006 so . . . I have some experience with, I believe, what are the  
154 intent or that I've read from the, from the rules that are outlined of administrative law  
155 and the rules governing administrative proceedings. So I hope I'm gonna comport to, to  
156 those if, if I'm out of bounds in, in this particular area, I apologize in advance. It's just  
157 that I'm . . . this is, this is all new to me.

158 As I understand, this hearing, it's not on the merits. It concerns itself with the  
159 question of what the objections here have been mooted by furnishing by Mr. Calabrese,

160 to the objector, or the candidate for the objector, to the objector's council, a, a, a  
161 Certificate of Organization. These were furnished in a timely manner and we believe  
162 that our first argument is that the furnishing of all the documents that were requested  
163 inside the . . . that were requested in the objection have mooted the controversy. We  
164 also contend that the, this objection does not concern itself with the fight between the  
165 objector and Mr. Frank Calabrese, the, the candidate, because Mr. Frank Calabrese,  
166 under the statutes is not required to furnish a copy of the Certificate of Organization to  
167 the committee. The, the, the brief of the, of the objector acknowledges this fact and  
168 acknowledges the, the . . . correctly quotes the statute about the immediacy of this. But  
169 it's not Mr. Calabrese's problem. It's not Mr. Calabrese that, it's . . . it's a fight with  
170 perhaps with the Republican party. This is a hearing on the preliminary, preliminary motion  
171 to strike the objection. I'm quoting the electrical, electoral, your, your rules, rule five. The  
172 Electoral Board will only consider objections and specifications of such objections as set  
173 forth in the objector's petition and the written specifications of such objections and will  
174 generally conduct the proceedings according to recognized principles of administrative  
175 law and these rules. That's rule nine of your rules. All arguments of council and  
176 evidence must be confined to the points raised by the objection and specification, that's  
177 rule ten. It is necessary that I point this out because the brief of petitioner is not a  
178 response to this motion but it appears to be a brief similar to other briefs that may have  
179 been filed by the, by the . . . by, by Mr. Ubay in other cases. The only objection to the  
180 petition to Mr. Calabrese's is contained in Paragraph 7, that the Representative  
181 Committee of the Republican Party for the 103<sup>rd</sup> District has never filed a Certificate of  
182 Organization or any other documentation indicating that it has organized as required by

183 the election code. It is this failure to file he suggests that makes it difficult to ask, to  
184 assert whether Mr. Calabrese has been validly nominated, and we're going to get into  
185 that. It is this failure he suggests in Paragraph 10, which makes invalid Mr. Calabrese's  
186 petition in its, in its entirety. In support of this, I think rather lame assertion, he quotes  
187 the case of *Daniels versus Cavener, 404 Illinois 372 88 NE 2nd 823*. That case involves  
188 the failure to timely file a nominating petition presumably within the time limitation. It  
189 might have been 60 days back in 1949, I'm not sure. But it has, but it's not the issue in  
190 this case. Mr. Calabrese timely filed. So the first issue I want to address is the  
191 mootness. Mr. Jakobsson . . . Ms. Jakobsson, who I like very much. We're a member of  
192 Urbana Rotary together; Mr. Calabrese's primary opponent was immediately given a  
193 copy of the Certificate of Organization. The objector's attorney, Mr. Ubay was given a  
194 copy of this letter prior to the last hearing. It is my understanding as mentioned by Mr.  
195 Ubay in his brief that the Board of Elections has now shown this to be on file. And I think  
196 we all agree that apparently it was filed on the eighteenth or the . . . or they . . . the  
197 mails were delivered to the Board of Election on the eighteenth, or the Board of Election  
198 got around to file marking it on the eighteenth. I, I, I submit, I submitted a copy of the  
199 letter to the, to the court previously. Mr. Devaney in his brief takes exception to the fact  
200 that the certificate was not filed immediately upon completion of organization. But, Frank  
201 Calabrese certainly does not know anything about that nomination . . . about that. His  
202 nomination which was on file was signed, his nomination, which I gave an extra copy  
203 there which we since found is signed by John Farney as Chairman of the Legislative  
204 Representative Committee and by Christine Williamson who also signs as the Secretary  
205 of the Legislative Reference Committee. And I might add, that that document is sworn to

206 and notarized and on file within the sixty days. The statute seems to permit facsimile . . .  
207 facsimiles to be filed at any event and whether or not that document constitutes a, a  
208 reasonable substitute for the Certificate of Organization which Mr. Ubay complains  
209 about. I guess, is a, is one of the questions that you're going to have to answer in this,  
210 in this motion of, of, of . . . in this hearing. We think it could qualify as a certificate which  
211 would make, which would make these proceedings moot or certainly would make these  
212 proceedings so de minimis that, that to spend the time and effort and judicial using of  
213 court rooms and legal time to argue it seems to be counter-productive to what were,  
214 what the spirit and purpose of the Election Code is all about. As of the time of the filing  
215 Mr. Ubay's brief, he has not shown nor demonstrated anything more than a slight  
216 inconvenience in being able to locate a copy of the actual certificate. I'm saying locate  
217 because after it's mailed it's . . . certainly the candidate does not have any idea of, of . .  
218 . it's not the candidate's responsibility. If this case is about mail delays or clerks putting  
219 papers in wrong files or Mr. Devaney looking in the wrong files, I don't know. Who  
220 knows? Obviously, if this case were allowed to proceed, there would be a lot of  
221 collateral questions and a lot of collateral evidence and a lot of subpoenas that would  
222 have to be issued by this panel to perhaps the entire . . . it'd be a lot of subpoenas, it'd  
223 be a lot of cost over, over, over something that's, that's, that's really, really, not our fault.  
224 There, there obviously wasn't any attempt on our part to do anything to give Mr.  
225 Calabrese an unfair advantage in this race, and isn't that what elections are all about?  
226 Whether one candidate or another is unfairly prejudiced by this. This matter has been  
227 mooted by the timely production of the certificate since there was no filing delay. So, my  
228 first point is, this is moot. Now . . . if I'm going to, I'm going to show and I'm going to

229 introduce into evidence, this letter and this Certificate and additional copies of the  
230 information that, that, that was sent by myself and, and under the rules I believe of  
231 attorneys testifying, I, I, I would have an opportunity to testify myself that it was sent, but  
232 since Mr. Calabrese was here when I sent that and has knowledge that that was sent,  
233 and what he did, I can either do it two ways. I can, I can say it's been sent and testify it's  
234 been sent and that's what it was that was sent or we can put on Mr. Calabrese on. I'll  
235 leave that up to Mr. Uby, which ever he would prefer. I can do it either way or both  
236 ways or neither way.

237 MR UHE: Why?

238 MR. ZIEGLER: That's, that's putting opposing council on the spot.

239 MR. MALONEY: Okay, I don't mean to do that . . . swear me.

240 CHAIR SHELDEN: I, I'm, I'm trying, trying to, trying to get to what you want to  
241 introduce into evidence. What particular letter it is.

242 MR. MALONEY: Yes. Which I think moots the issue.

243 CHAIR SHELDEN: Okay. Alright.

244 MR. ZIEGLER: Does opposing council have that letter?

245 MR. MALONEY: I gave it Mr. . . . opposing council . . .

246 MR. ZIEGLER: He's here, let him answer for himself. Did you happen, have you  
247 had a chance to review it?

248 MR. UHE: I, I, I have what I believe may be the document that council is referring  
249 to, if this is it?

250 CHAIR SHELDEN: From Maloney, Parkinson and Berns to Naomi Jakobsson.

251 MR. UHE: Yes, and I received this the morning of our last appearance before

252 you.

253 MR. ZIEGLER: Do you have an objection to it being received into evidence?

254 MR. UHE: I, I have no objection to, to the Electoral Board . . .

255 MR. ZIEGLER: Obviously, you would be able to make argument as to its weight  
256 or significance if any and all I'm asking is . . .

257 MR. UHE: Thank you.

258 MR. ZIEGLER: do you have an objection to us receiving it?

259 MR. UHE: I have no challenge to the authenticity of it or to your receipt of it. I  
260 would like to make some points that, that bear unto relevance. Thank you.

261 CHAIR SHELDEN: Okay.

262 MR. MALONEY: Thank you. That's fair enough.

263 CHAIR SHELDEN: So, so, is this now part of the evidence? We're not taking  
264 testimony to grade it as evidence, it just is?

265 MR. MALONEY: Yes. The weight is to be determined by the, by the. . . panel.

266 MR. UHE: Just for the record, just so the record's clear, can, can, can the record  
267 reflect that the document that council submitted with his letter, attached to his letter,  
268 which, which purports to be, and I will accept as a, a document signed by individuals  
269 entitled Cert, Certific . . . Certification of Representative Committee Organization. I, I just  
270 want to point out that that document is not file stamped by the State Board of Elections  
271 as having been received by the Board of Elections at any time. There may be another  
272 document with another date stamp, but this is not that document.

273 MR. MALONEY: I, I, I would stipulate to that. The document I believe would  
274 speak for itself as they would say in the vernacular.

275 MR. UHE: Thank you.

276 MR. ZIEGLER: Mr. Maloney is this, this document we've just received which is . .

277 . MR. MALONEY: It's a true and authentic copy of the letter that I sent with its  
278 attachments . . .

279 MR. ZIEGLER: It's dated Thursday, Sept . . . Thursday, April 17, 2008, directed  
280 to Naomi Jakobsson at 206 N Randolph, Suite 120, Champaign, IL, and indicates sent  
281 by yourself. My question is this now going to bear on the rest of your argument?

282 MR. MALONEY: Yes.

283 MR. ZIEGLER: In that case I'd like to give a moment to review it.

284 CHAIR SHELDEN: Okay, go ahead Mr. Maloney.

285 MR. MALONEY: The Electoral Board has no jurisdiction to decide questions of  
286 fact concerning statutory directives that are not the responsibility of the candidate. The  
287 certificate in question, the certification, this, this . . . is, is not filed by the candidate with  
288 the nominating papers. At best, that's optional. It's marked as optional on all, on all the  
289 check lists. And certainly the candidate wouldn't have any reason to file it with the  
290 nominating papers. It would be the committee's responsibility to do under the statute,  
291 not the candidate's. And better practice would be that the, that the, that the party would  
292 mail it. Certainly they would, they would, certainly they would want to mail it to make  
293 sure the candidate didn't . . . wasn't something they didn't want. So, so that, they, they  
294 could be accused of by the candidate of having done something to deliberately derail  
295 his candidacy. Do something that, that, that the party itself would . . . has traditionally  
296 . . . I believe the statute requires the party to do.

297 It is Republican Party's responsibility to mail it, not Frank's. It is the US Postal

298 Service's responsibility to deliver it, not Frank's and it is the Board of Elections'  
299 responsibility in Springfield to produce it, not Frank Calabrese. In fact, and I, and I'm,  
300 and I'm troubled whether or not I should waste the time to go and to put Mr. Calabrese  
301 on the stand and indicate his, his efforts after he found this out to drive to Springfield in  
302 attempt to, to, to attempt to file what was the committee's responsibility to file . . . and I  
303 will . . . I . . . if this becomes a question of Mr. Calabrese's bona fides in this regard, or,  
304 or, or my bona fides in this regard, to get the information that the objector requested  
305 then we'll put him on the stand and, and indicate that he did the extra mile and he took  
306 an extra copy down to Springfield as an offer of proof and the Board of Elections either  
307 said it was, said it was not needed, not necessary, or, or, or what, or said something to  
308 him, but refused to take a copy of the same document that appears as attached to this,  
309 this letter that's sent to Naomi Jakobsson.

310 The Board has no authority except as provided in the statute. It cannot expand  
311 the authority beyond what is provided for the statute and what is mentioned in the  
312 objection. The only objection is to the Republican Party's alleged failure to file. So, if it is  
313 their failure to file, this case may have to be gone to another forum. There is something  
314 that they're alleging, some violation of some unfair practice of Federal Civil Reco action  
315 or something like that, they can pitch it in Federal Court if they wish. The Election Code  
316 in Section 10-10 provides the, the brief that was, the brief written response, correctly  
317 states the *Cosal and Wissman, Wiseman* case on page 2, correctly states, Section 10-  
318 10 of the Election Code. It says, "The Election Board shall take up the question as to  
319 whether or not the nominating papers were filed within the time under the conditions  
320 required by law." They were. "The Electoral board will can take up the questions

321 whether there are . . . whether the nomination . . . whether the question of whether there  
322 are genuine nomina, nomination petitions. There's not been assertive if they're not. "The  
323 Electoral Board can take up the question of whether the nomination question accular,  
324 accurately represents the decision of the caucus or the convention." And after he's  
325 gotten the filing of it, and after he checks the resolution on file, he see's that they're . . .  
326 that they both mention a committee was formed. So they accurately represent the, the  
327 decision to nominate Mr. Calabrese. That's number three. And then the Electoral Board  
328 can take up the question of whether or not the nominating papers are valid. Well, this  
329 isn't one of the nominating papers. So, for that reason . . . there's no jurisdiction.  
330 There's also a third good reason why this case must end now. Little . . . and, and, and,  
331 and I find this ironic that I quoted from Mr. Ubay brief. That was Mr. Ubay case, that was  
332 299, the one he sites, the one he sites is 299 Illinois Appellate 3<sup>rd</sup>, references *Pullen*  
333 *versus Mulligan*, which is 138 Illinois 2<sup>nd</sup> 21, which is . . . so his appellate court case that  
334 he argued . . . and is quoted . . . the appellate court cited the supreme court in 138  
335 Illinois 2<sup>nd</sup> and said, "Literal compliance with directory provisions will not be required if it  
336 appears that the spirit of the law has not been violated." If technical objections involving  
337 third parties were allowed to proceed in this case, there would be no end to litigation.  
338 Subpoenas would issue for every employee that handled every record in the Board of  
339 Elections. The postmasters of various jurisdictions would be called in . . . would have  
340 no end to the litigation. Every non-directory provision would involve expensive litigation.  
341 This would have a chilling effect on whether legitimate candidates would run. In fact,  
342 these same tendencies on the part of the real party in interest who we now understand  
343 are the Chicago politicians would keep legitimate candidates from ever running. All they

344 could do, is they could blow them off, blow them out of the water with unending  
345 expensive litigation, with expensive amounts of, massive amounts of money spent. That  
346 would have a chilling effect, and, and I think it raises some issues of constitutional  
347 questions or other issues that I don't believe at this stage and this candidacy and this  
348 race . . . I, I, I use my billy goat . . . Billy Goat Gruff. Do you all remember Billy Goat  
349 Gruff? Ya, know? We're just a little billy goat. We're just . . . wait for the big billy goat in  
350 this case. Ya, know, but . . . it's actually worse than this. Ya, know . . . Mr. Madigan, Mr.  
351 Stroeger, Mr. Emil Jones, and Mr. Ron Blagovich uses power to force their will on the  
352 people of the 103<sup>rd</sup> District and deprive of them of their right to vote. Naomi Jakobsson  
353 wasn't even, didn't even know this petition was filed. What kind of, what kind of a case  
354 is that where the candidate doesn't even know and has no power to withdraw something  
355 that effects her race. Who is representing this district? This district is currently  
356 represented by Naomi Jakobsson and these Chicago politicians are treating her like  
357 that?

358 MR. UHE: Your Honor? I . . .

359 CHAIR SHELDEN: Yeah.

360 MR. UHE: I have to object.

361 CHAIR SHELDEN: Let's try to hone this down to the merits of your motion and  
362 steer clear from arguments to the merits of the objection itself.

363 MR. MALONEY: Well, well, well, well my point, okay, my point is, that the  
364 objector, the real party in interest, it's not, is not the candidate. The real party in interest,  
365 it, it goes back to . . . it, it goes back to principle and agency law. The, the . . . after, after  
366 a candidate is put on the ballot the Democratic Party is her agent . . . has a duty to

367 notify her of things. That, that's, it's hard book 101 principle and agency law. They  
368 proceeded without any authority on their own . . .

369 CHAIR SHELDEN: Let's just, I'm not trying, because I think it's pretty clear the  
370 authority in the statute to object to . . . any nomination papers resides with any single  
371 individual voter within any particular district. So, in terms of the authority there is  
372 statutory authority for Mr. Devaney to file this. So . . .

373 MR. MALONEY: Well, if this . . .

374 CHAIR SHELDEN: if you had other . . .

375 MR. MALONEY: If this goes, if this possibly . . . I'm making a record here . . .

376 CHAIR SHELDEN: Okay.

377 MR. MALONEY: If this, I, I, I want to argue this because if this, if this proceeds  
378 further, that is going to become, it is going to become an issue and we haven't issued  
379 subpoenas so we haven't gotten to the facts of this case. I'm basically arguing this is de  
380 minimis. But I'm arguing that, I'm arguing the, the fact that, that this panel has the  
381 authority to have settlement conferences, has the pow, has the power to, to, to stop  
382 this right now. This, is, is, isn't the election process all about fairness to the candidates  
383 and whether or not there can be a fair election? Isn't that what we're here about? We're  
384 not, we're not here about . . .

385 CHAIR SHELDEN: I think, I think, right now, we're here about the objection to  
386 jurisdiction of Electoral Board and motion to strike. And if it goes beyond today's hearing  
387 we'll be to other things. At some point we'll talk about the entirety of the Election Code  
388 and all the case law around it and who's got a stake in that. Right now we're at the  
389 objection to jurisdiction of Electoral Board and motion to strike.

390 MR. MALONEY: Oh, okay. That, that's fine. I'll, I'll end it, I'll end it briefly. But I  
391 do want to say this. I, I am no way am accusing my friend, Naomi Jakobsson of having  
392 done anything wrong, a member of Rotary Club. I'm absolutely in, in favor . . . of, of  
393 doing anything wrong. What this is about, what this is about is, is, is things like, it's like  
394 the health facilities planning board issuing fifty thousand dollar fines against the nursing  
395 home by, by Chicago politicians that have come in and inundated this, this, this county  
396 and it, it's, it's about . . .

397 MR. UHE: Your Honor, I represent Mr. Delaney and not . . .

398 CHAIR SHELDEN: Correct.

399 MR. UHE: and not the individuals he's referring to.

400 CHAIR SHELDEN: Devaney by the way. But . . .

401 MR. UHE: Devaney. I'm sorry. But, but the, but the fact is that it's just  
402 inflammatory.

403 CHAIR SHELDEN: Yeah. If it's, let's try to . . . there's plenty of media here that  
404 will be, I'm sure willing to talk to you after the hearing if you've got other arguments like  
405 that but . . . about there?

406 MR. MALONEY: That's done. Thank you. Thank you.

407 CHAIR SHELDEN: Alright.

408 MR. MALONEY: I just urge you not to make a farce of these proceedings here.

409 CHAIR SHELDEN: Okay and we're, we've never done that before and I don't  
410 think we'll start today. The . . . I think what we've generally done without objection of the  
411 Board, is we've given the other guy, whoever it is in this instance, a chance to respond,  
412 make, and then we'll ask questions of either party at that point. So, Mr. Uhe?

413 MR. UHE: Uhe, thank you, yes. My name is Rob Uhe and I represent the  
414 objector in this case. And, and, and, I guess where I'd like to begin is, is, is to, to note  
415 that it was my understanding that this, this hearing was going to involve a discussion, an  
416 argument over the jurisdiction of the Board. And, and I will try to limit my comments to  
417 that. Although a lot of the argument we've heard I think, goes beyond that and gets into  
418 some of the merits.

419 CHAIR SHELDEN: Right. I think there's some gray area there. So, that's why I  
420 kinda allowed some latitude.

421 MR. UHE: Right.

422 CHAIR SHELDEN: You've got that same latitude. That, that, at times your gonna  
423 have to maybe touch on some of those other things in order to get to this motion. So . .

424 MR. UHE: Understood.

425 CHAIR SHELDEN: I won't cut you off . . .

426 MR. UHE: Thank you.

427 CHAIR SHELDEN: just like I didn't cut Mr. Maloney off.

428 MR. UHE: Thank you very much for that. With, with respect to the jurisdictional  
429 question, I, I really think it's actually very, very clear. The Election Code itself states In  
430 Section 10-9 that the County Officers Electoral Board has the power to hear and pass  
431 upon objections to nominations of candidates for legislative offices of a district that's  
432 contained entirely within one county. I'm paraphrasing a bit but, but that's the essence  
433 of it. You constitute the duly appointed Electoral Board and, and this is a, an objection  
434 duly filed under the laws of the state to the nomination of a candidate. I think that what  
435 the objector's petition says, what it actually alleges is an objection to the nominating

436 papers and the allegation is that the nominating papers are invalid because certain  
437 mandatory provisions of the Election Code were not complied with. Namely provisions in  
438 Section 8-5 that require certain procedures and processes relative to the formation and,  
439 and notification to the public of the organizing of the Committee. Article 8 of the Election  
440 Code which governs only the nomination of candidates to the General Assembly  
441 specifically says in Section 8-1 that if a person is not nominated under the provisions of  
442 Article 8 then their name cannot appear on the ballot. And that, that is language unique  
443 to Article 8 and has been interpreted by courts to give more weight to the mandatory  
444 nature of the provisions requiring a person to be placed on the ballot. In, in, in Article 8-  
445 5 the statute there says that, that a few things must happen in order for a properly  
446 organized committee to appoint a candidate to fill a vacancy in nomination and briefly,  
447 there, there are four things. One, is that they must provide notice to members of the  
448 committee that they are going to meet. There must be a, an election, in this case, the  
449 committee is formed by the County Central Committee initially electing two members  
450 from its own and then those two members along with the County Board Chair, I'm sorry,  
451 the County Central Committee Chair, comprise the committee. The next thing that that  
452 committee must do to organize is to elect a chairman and secretary and then finally the  
453 Election Code expressly provides, "must forward the names and address of the  
454 chairman and secretary to the Board of Elections." And, and, that's really, now I'm  
455 getting a little bit into what I think are the merits. But, but, but that's, that's the essence  
456 of the mandatory nature of the requirements. Now, back to the jurisdiction question. In  
457 addition to the literal language of the Election Code, there's some cases, which we've  
458 cited one of them, particularly the *Graham* case, that, that, that clearly hold that an

459 Electoral Board has jurisdiction to consider objections that, that go actually beyond the  
460 four corners of the documents themselves that were filed with, with the Board of  
461 Elections. So in *Graham*, just briefly, as you may know it was a case involving notice to  
462 the, to the members of the representative district committee in that case it was alleged  
463 that notice was not given to all the people who constituted the committee therefore they  
464 did not have an opportunity to participate in the nomination of the candidate. And, and  
465 evidence was taken in that case and, and heard relative to whether notice was given or  
466 not. In that case, by the way, interestingly going to the de minimis argument, in that  
467 case, the notice that was given was, it was a failure to notify a person whose, whose  
468 weighted vote on that committee was, was five percent or so and so that person did not  
469 have control over the outcome of the committee. But nonetheless the failure to notify that  
470 individual was deemed to be fatal to the nomination papers that were filed in that case.  
471 And so that's the connection. The connection then is that the Board clearly has  
472 jurisdiction to hear a properly filed objection to nominating papers where the allegation  
473 is that they are invalid because certain mandatory requirements of the Election Code  
474 have not been filed. There's more I'd like to say about what I consider the merits of the  
475 case in terms of what, what I think is really the issue in the case and that is what is the  
476 meaning of immediately. Is that a mandatory provision? And I, I'd like to reserve time to  
477 discuss that. But, but, if you could just . . .

478 CHAIR SHELDEN: And, and, and I think you're right. I, my personal opinion  
479 again is that is . . . yeah, that speaks to the merits of it. So, are, are there any questions  
480 from anybody here for either of the parties?

481 I'm going to make some, make some, some comments here. You know if we

482 move forward, if this motion is denied and we move forward in this case, you know a  
483 couple things would become apparent. We'd have to really take a look at the objection  
484 itself and, and, and stick to that objection and, and that'll be something we'll have to talk  
485 about as to whether or not some of these points that are brought up here in this motion .  
486 . . you know I think we're gonna have to look at the objection and make sure that we're  
487 sticking to the, to the, to the objection. Although I don't want to get . . . you know . . . I  
488 have concerns about . . . I have a concern about any motion that maybe relies on some  
489 technicality. I agree with Mr. Uhe that *Graham* and assorted other cases . . . the, the  
490 legitimacy of the underlying actions by that board . . . the creative actions of these  
491 legislative committees are, are valid for us to discuss. So, I think maybe there's a  
492 question as to whether or not and it certainly could be argued as to whether or not that's  
493 contained in the objection and we're not there right now. But, clearly, those underlying  
494 actions about how this committee was created are right for us to discuss. So . . . I . . .  
495 you, you talked about all the evidence and all that other kind of things, and things that,  
496 expense, etc. There's, there's a couple things here . . . we can certainly try to subpoena  
497 postal clerks. I mean if you want to subpoena postal clerks, I, I suppose we can  
498 entertain that. I don't know if it certainly would be entertaining if we actually did it. But, I,  
499 you know, if there are some factual issues here that support, that support the claim that  
500 this was done in a so called media fashion, then we can do that. I'm not scared of  
501 moving forward because they're extra costs and extra time and extra inconveniences for  
502 people because we have to gather evidence. Part of what we do is gather evidence. It's  
503 in our rules, so we have methods, mechanisms to gather evidence. In some ways there  
504 could be potentially things that could be stipulated to. There are things that potentially,

505 you can have affidavits . . . that you might want to go beyond that. But if you got  
506 affidavits from somebody that support some contention on your part then, then we will  
507 certainly take those and they may not even be objected to. There's lots of things that we  
508 can do that don't necessarily have to be timely, costly, and, and so I'm, I am prepared  
509 to, to deny this motion and to go forward in this case with both parties acting in goodwill  
510 to get to the facts of the case. That's one thing that has to be, potentially has to be  
511 ascertained. I think we'll probably take the facts in, because I think those facts, even if  
512 they maybe aren't important to this panel, the majority on this panel, it may be important  
513 to a reviewing court and so I think the facts are probably a good idea. I'm not sure how  
514 far we have to go but it's something we can talk about. But, but I'm prepared to go  
515 forward because I think the issues raised . . . I, I do think we have jurisdiction over this. I  
516 think that we have to take this all as one piece and consider all this one piece and the  
517 questions as to what the . . . who's responsibility it was to do what and the implications  
518 of the failure of any of the particular parties in this case especially the ones that aren't  
519 Mr. Calabrese to do what they were supposed to do. I think it's something we have to  
520 discuss. It may be irrelevant. I mean . . . Mr., Mr. Uhe says if the candidates are correct  
521 then the provision required representative committees to file the names is completely  
522 meaningless. Well, there's some chance it's completely meaningless. We have those  
523 things in the Election Law. They wrote it and then somebody decided it was completely  
524 meaningless. It may be that we go so far as to, to say that or there a wide range of, of  
525 places that a panel can fall in in terms of meaningless and strict letter and all sorts of  
526 places in between and that's something that we can, we can discuss I think at a, at a . .  
527 .

528 MR. MALONEY: May I, may I . . .

529 CHAIR SHELDEN: further hearings.

530 MR. MALONEY: May I make a comment?

531 CHAIR SHELDEN: Please.

532 MR. MALONEY: Here's, here's, here's my problem. I, I represent Mr. Calabrese.

533 If the, if the, if the petition is, is, is allowed in the final hearing . . . final . . . if there is . . .

534 as I understand the election law this is going to require his removal and the question is

535 going to be what candidate if any will the Republican Party, who is not present here, at

536 these proceedings, or represented here . . . what will they do as far as their ability to put

537 forth another candidate to fill the ballot spot. The, the, the concern is the expense of the

538 litigation on an issue that doesn't affect Mr. Calabrese but affects the Republican Party.

539 The same issue, the same issue of it's not, apparently it's not Naomi's fight, apparently

540 it's not Mr. Calabrese's fight, apparently what we have here is a fight between the voice

541 of the Republican Party and the voice of the Democratic Party and, and, and . . .

542 CHAIR SHELDEN: Okay. Let's just, let's just . . . here's where were at. Here . . .

543 no, no. Okay, here's where were at. We're right now at *Devaney versus Calabrese* and

544 that is the so called issue before us. Not necessarily fights, it really doesn't have to be a

545 fight. And so, what we're suggesting is we're gonna go get, to get to the merits of the

546 case of the objection that is before us. Right now we're getting to the merits of your

547 objection to our jurisdiction. I've just stated my view. And politics ain't beanbag, I think

548 somebody said that one time and it ain't beanbag. And so, I don't, I don't certainly have

549 any desire to see candidates from President all the way down to School Board Member

550 involved in, in battles. But I also have to oversee the Election Code and to rule on the

551 code that's put before me. It's past by the statute and ruled on by courts for a hundred  
552 and fifty years. So, that's where we're gonna get to. And I just don't think that we have  
553 to have. . . it's not that we don't have to . . . How about this? We're no longer going to  
554 have any discussions about who's bad and who's good. Okay. We're not going to have  
555 any discussion about he did this or he did this or this person's motive is this. We don't  
556 need to get to motives. We don't need to get to . . . we just need to get to the law and  
557 what the law says and how we're going to interpret it. The motives, I suppose, that, that  
558 the code has, and the judges have ruled is, we shouldn't take this lightly, we shouldn't  
559 kick people of the ballot on, on whims or anything like that. So, we're gonna take a look  
560 at the whole body of law and we're gonna make a good ruling and we're gonna leave  
561 out the personalities and the, you know, the, the various people that we may or may not  
562 like. So, if you got something on the merits of your motion . . . I'm willing to hear it.

563 MR. MALONEY: The merits of the motion is, is, is, is the fact that the Republican  
564 Party is not represented here today and how does Mr. Calabrese pay for the continued  
565 legal proceedings that are affecting him as a student candidate not yet . . .

566 CHAIR SHELDEN: Gotcha. Gotcha. I understand. He's gonna have to deal with .  
567 . . apparently . . . paying for these so called issues or whatever. But that isn't our, you  
568 know when you file a small claims case you gotta pay a fee. Everything comes with a  
569 fee. I think I'm . . . maybe he didn't, he didn't, they didn't have to file a fee to file this  
570 case. But I'm just saying that that's just not . . . it's unfortunate . . . and if you want, you  
571 know, if you wanna support legislation that allows public defenders for candidates who  
572 can't afford defense attorneys when they get objected to, go and call your legislator and  
573 ask them do that.

574 MR. MALONEY: I already have.

575 CHAIR SHELDEN: But that's where we were at. We're at the merits of this case and  
576 we are not going to talk about these other things.

577 MR. WILKINSON: Let me, let me just say that this panel approaches a great  
578 reluctance the removal of any candidate from any ballot. Historically, we have been  
579 hesitant to remove candidates. We firmly believe that it's every citizen's right to stand up  
580 and go. But there's rules. Right here, on this jurisdictional matter, I am with the Chair  
581 here. I believe we have the authority to investigate this. Though again, keeping in mind  
582 that every citizen has the right to get on the ballot and there has to be real cause to  
583 remove them. But as far as jurisdiction, that is what we do. I think it's in the law, I think  
584 that's what we're here for.

585 CHAIR SHELDEN: Mr. Ziegler, you have some thoughts?

586 MR ZIEGLER: Thank you. First, and let me say here in the case of position on  
587 the merits of the petition. Second, I understand some of the points that Mr. Maloney is  
588 making and I think as to the merits of the petition they are things that are going to have  
589 to be addressed and going to have to be dealt with. He's raising questions of mandatory  
590 versus directory strict compliance as to opposed whether strict compliance is required  
591 and I think those are all extremely valid points as to the merits of the objection and they  
592 are things that I expect to be dealt with at a later date. Now by saying that, obviously I'm  
593 giving away my particular position on the objection to jurisdiction. Having said that, this  
594 is not about a question of time. The three of us are by statute required to do this. This is  
595 part of what we do. This is part of our job. This is part of the time the State of Illinois  
596 elects to spend in order to secure the integrity of its electoral process. Our time is not an

597 issue. I understand there is an issue of expense and I understand that if we felt that the  
598 whole issue was entirely moot for some reason or that we did not have jurisdiction, that  
599 perhaps at this junction the proper thing to do would be to take some action on the  
600 petition in order to save unnecessary expense to the parties involved. Nevertheless, if  
601 there is a . . . if there is, I think frankly, any viable argument that this body has  
602 jurisdiction and that the issue is not moot, that any time expense spent thereafter is not  
603 unwarranted, it is rather warranted. I understand the argument that it can be an  
604 expensive process, that it can be a time consuming process. I understand that it is  
605 always the option of any party in civil litigation to pull up their tent and withdrawal if they  
606 feel it is not worth their time and expense. Unfortunately or fortunately, however you like  
607 to look at it, when we choose to become involved in these matters, whether it is filing  
608 candidacy or filing objections to candidacy we know, if we know anything about the law,  
609 that this type of proceeding is a possibility. Now either we are going to deal with that or  
610 we are simply not going to hear it because one party simply chooses to withdrawal. My  
611 opinion and my conviction is that this Board will not simply throw up it's hands and say,  
612 well it's getting too expensive, we're simply not going to do it. We will do what we  
613 believe we are required to do by the law. As I have said, without indicating any position  
614 on the ultimate issue I believe Mr. Maloney has raised a series of extremely significant  
615 points as to the ultimate outcome of this matter. Nevertheless, I believe the issue here  
616 today is simply the question of is Mr. Calabrese the appropriate party and does this  
617 body have jurisdiction? As to the question of whether we are dealing with the  
618 appropriate parties? It is my opinion, in fact, that we are and the ground case clearly  
619 indicates that even though the political entity is responsible for selecting the potential

620 candidate, it is the candidate who is the appropriate party and that of course is the case  
621 wherein the Democratic Party, one party chair was left out and even though they had a  
622 de minimis number of votes, I believe in that case they had five percent of the weighted  
623 votes as to who would be selected for a particular office the Appellate Court said well  
624 you have to follow the procedure. The procedure is of such importance that you must  
625 follow it. It must be done correctly. What I get out of that case however is primarily that,  
626 yes, it is the candidate who is the appropriate party even though it is the political entity  
627 who may have taken the incorrect actions, so for that reason I believe that Mr.  
628 Calabrese is the appropriate party. Does this body have jurisdiction? Yes, I believe it  
629 does and this I agree with Mr. Uhe, that we must view the Election Code as a whole and  
630 I believe, frankly that the issue is primarily taken in under 10-10 and the portion of 10-10  
631 that indicates whether or not they, meaning the petitions and nomination papers and  
632 certificates of nomination are filed within, not only the time but under the conditions  
633 required by law and further down in that statute whether or not the certificate of  
634 nomination or nominating papers or petition on file are valid or whether the objections  
635 thereto should be sustained. I think it is the clear intention of the Election Code in  
636 matters such as this that the Electoral Board does have the initial jurisdiction. I think that  
637 the fact that the certificate was furnished and the parties apparently agreed that the  
638 Certification of the Representative Committee Organization was furnished and filed with  
639 the State Board of Elections on April the eighteenth, 2008. I don't believe though that  
640 necessarily makes the issue moot at this point for two reasons. One, the interpretation  
641 of the word "immediately" which I think is going to be an issue at a later hearing and  
642 whether or not that is directory or mandatory or whether strict compliance is required

643 and also the fact that even though there are names here, the statute requires more than  
644 that or requires addresses which clearly do not appear on the face of the document and  
645 I think that's another point that simply is going to have to be argued as to whether they  
646 are really required or are they not really required. The final issue was raised, was as to  
647 whether the objectors petition continues to be valid. I do agree to some extent with Mr.  
648 Maloney that, the, the objections to be dealt with must be contained in that petition. But,  
649 I believe that the wording of the petition is such that it does take in the question of  
650 whether these papers were filed, "as required by the Election Code." and frankly I  
651 believe at a pleading stage that is broad enough to take in the question of whether or  
652 not this hearing should continue or whether the pleadings take in the ultimate issue  
653 we've been discussing. For those various reasons, it is my opinion that this body has  
654 jurisdiction, Mr. Calabrese is the appropriate party, that the pleading at this point is  
655 sufficient and that basically the objection to jurisdiction and the argument on entity  
656 should be denied.

657 MR. MALONEY: Thank you for the ruling. But I will need some time to confer  
658 with. . .

659 CHAIR SHELDEN: Let's, let's . . . I'm just gonna put this on the record. Okay. On  
660 the motion to . . . on the objection to jurisdiction of the Electoral Board and motion to  
661 strike . . . I guess the question would be, Mr. Wilkinson do you deny or allow that?

662 MR. WILKINSON: Deny it.

663 CHAIR SHELDEN: Mr. Ziegler, deny or allow?

664 MR. ZIEGLER: Deny.

665 CHAIR SHELDEN: And as Chairman I would deny it. So that the objection and

666 motion are both denied. And now we get to . . . the arguments and various things along  
667 those lines and a time for a hearing on this.

668 MR. MALONEY: Well, I, I for one am going to have to involve the, the true party  
669 and interest here. The, the Republican Party. It may be necessary to sometime in the  
670 future to replace Mr. Cala, potentially replace Mr. Calabrese with another candidate. So  
671 I think the Republican Party is the party in interest. I need to contact the . . . whoever I  
672 need to contact in the Republican Party to see if they're willing to help come in and,  
673 and, and help me with the, with the, with the arguments that, that, that basically affect  
674 them. So I am going to need some time to be able to talk with the Republican Party and  
675 see if I can get them to come in and help me with this, with this proceeding.

676 CHAIR SHELDEN: Well, I mean . . . they're not, they're not a party to this case  
677 and they're not gonna become a party to this case. If . . . if . . . so, so I guess . . .

678 MR. MALONEY: Well . . .

679 CHAIR SHELDEN: if there's some evidence that you need from the Republican  
680 Party I think we . . . you can, you can compel somebody to come and testify if that's  
681 what you want to do. You can, I mean I'm not sure . . .

682 MR. MALONEY: All I'm asking for is some times to confer with potentially other  
683 council that may wish to contribute to, to the arguments that are made here. This is my  
684 very first election case and I feel very uncomfortable and without having some, some  
685 wise, learned council from . . .

686 CHAIR SHELDEN: Okay. I, I'm not gonna . . . I, I certainly can kind of understand  
687 that. I also . . . they're some timeliness aspects here that are, are important. One, is for  
688 Mr. Calabrese. But you're his attorney and if he wants to wait and not know whether or

689 not. . . you understand this thing, whatever our decision we render can be objected to  
690 and objected to again and this can end up in the Supreme Court . . .

691 MR. MALONEY: Right.

692 CHAIR SHELDEN: and Mr. Calabrese can have an answer on October twenty-  
693 eighth. And that's not gonna do a whole lot for his candidacy. So . . .

694 MR. MALONEY: I, well, I, I understand that. But, but I don't know at this juncture  
695 whether or not who . . . whether I should issue subpoenas, whether how, how, how,  
696 whether I should issue subpoenas to, to I mean . . . if, if, if in fact the certificate was  
697 mailed and if in fact the, the, there's are some how shenanigans or some other things . .  
698 . errors that happened or misfilings that happened which happens occasionally . . .

699 CHAIR SHELDEN: Okay. Okay. I, I understand where you're coming from. But  
700 Mr. Maloney, you're an attorney . . . you've got some rules . . .

701 MR. MALONEY: It doesn't make me smart.

702 CHAIR SHELDEN: I certainly understand that too. But, if you, if you, if you have,  
703 if you have some rules in front of you . . . I mean . . . if it was me . . . if Mr. Calabrese  
704 was, was representing himself okay? On a pro se case I might say okay I'm gonna give  
705 you a little bit more latitude. I don't know how to do a subpoena. I'm sure you know how  
706 to do a subpoena. Okay. So, if that's what you need, let's look at the rules and do a  
707 subpoena. If that's what you need. If you need to do an affidavit, if, if . . . if you two need  
708 to get together and stipulate to some facts whatever it might be . . .

709 MR. MALONEY: The, there, there are provisions in your rules that you handed  
710 me for settlement conferences and the fact that you're controlling the settlement and  
711 procedures and witnesses and stipulations and, and all I'm asking is some, some, some

712 time with Mr., maybe Mr. Ubay and, and, and other attorneys that I might have help me,  
713 help me with the case to get to and, and go and discuss these . . .

714 CHAIR SHELDEN: Mr. Ziegler has a comment here. (Board confers at bench.)

715 CHAIR SHELDEN: Mr. . . . On the merits, which is where we're gonna get to.

716 MR. MALONEY: Okay.

717 CHAIR SHELDEN: Okay. When do you want to have a hearing?

718 MR. MALONEY: I would like an opportunity to con, to confer with, with some  
719 settlement conference prior to going through the . . .

720 CHAIR SHELDEN: No. We're going to set a date for a hearing today. And it's  
721 either going to be with your blessing or not. But we're going to have a date for a hearing  
722 today. And I think we made that clear the last time.

723 MR. MALONEY: May I have five minutes? I'm gonna talk to my, to one of my  
724 attorney's in my, my firm. Can I have a five minute break?

725 CHAIR SHELDEN: I don't object to a five minute break. We're . . . we're  
726 recessed for five minutes until a quarter till eleven.

727 MR. MALONEY: In response to your question. Next week or the following week,  
728 any, any day is fine. I asked council and he said we'd talk about it. So . . .

729 CHAIR SHELDEN: Okay. Well, that's good. That seems timely and good to me.  
730 So . . . seemed like somebody on the . . .

731 MR. ZIEGLER: I got problems the week of the twelfth.

732 CHAIR SHELDEN: You got problems the week of the twelfth.

733 MR ZIEGLER: I'll be backed up until the sixteenth.

734 CHAIR SHELDEN: And then what are your issues then? Well . . . how does the,

735 the week of the nineteenth strike people? Gives us just slightly over two weeks.

736 MR. UHE: Would the sixteenth be okay. Which is a Friday.

737 CHAIR SHELDEN: Well he may or may not be here.

738 MR. ZIEGLER: Well, I have a hearing with Judge Ladd the morning of the  
739 sixteenth. So I pretty much have to be back in town the sixteenth.

740 CHAIR SHELDEN: Okay. And you're gonna be, be prepared for your hearing  
741 with Judge Ladd?

742 MR. ZIEGLER: Oh, I've been prepared for it for a month.

743 CHAIR SHELDEN: Okay. Alright. I just don't want you to hamper the other  
744 instances.

745 MR. ZIEGLER: No, it's just a routine hearing motion.

746 CHAIR SHELDEN: Well, the sixteenth is two weeks and that hopefully gives us  
747 especially since . . . I, I presume both parties have thought . . . about the . . . merits

748 MR. MALONEY: I, I tried to refer with council and he said he'd wait til, til you, you  
749 said something.

750 CHAIR SHELDEN: Yeah. Yeah. Sixteenth? That's, sixteenth good?

751 MR. MALONEY: May sixteenth?

752 CHAIR SHELDEN: Yeah. May sixteenth, courtroom to be, to be decided . . . and  
753 . . . and then with the idea that if, if something doesn't work out right here and I can't get  
754 a courtroom on the sixteenth we'll all communicate and figure it out through e-mails to  
755 try, to try and come, come up with . . . we're kinda at the mercy of the court here. So . . .  
756 let's do nine-thirty. It seems like because nine o'clock sometimes, depending on what's  
757 happening can be busy at the front.

758 MR. UHE: May I offer a, a suggestion or a thought?

759 CHAIR SHELDEN: Sure, that'd be great.

760 MR. UHE: You know, I don't know if council was contemplating subpoenaing  
761 other witnesses or evidence but I, I'm prepared to stipulate to I think a, a number of  
762 facts that we should be able to remove from contention. And I, I, I agree with, with Mr.  
763 Ziegler to the extent that I mean the issues I think are going to be the matter of law,  
764 what, what does the word "immediate" mean in that Section 8-5? And, and what, what  
765 about the fact that we believe the addresses of the individuals on the committee were  
766 not forwarded to the Board of Elections immediately. So, so as it was a matter of law  
767 what does that mean? And to the extent that council was thinking of entering into  
768 evidence facts that Mr. Calabrese drove to Springfield one day, attempted to file but  
769 was turned away, a fact that later on on April eighteenth, that a document, a Certificate  
770 of Organization was filed. I'm prepared to stipulate to, to those facts. I don't know about  
771 his trav, Mr. Calabrese's travels but would stipulate that, that, that in any event it  
772 occurred after the deadline for filing objections to the petitions.

773 CHAIR SHELDEN: I'm sorry what was that last thing you just said?

774 MR UHE: That, that, that his travels, I believe from what I understand, to  
775 Springfield occurred after the deadline for filing objections to his petitions.

776 CHAIR SHELDEN: Alright. Here, here's the thing. I, I, because I don't wanna, I  
777 don't wanna . . . I could, I could throw together all sorts of things that maybe could be  
778 stipulated to, people I'd think I'd like to hear because . . . there . . . what they did and  
779 said and how they acted at certain points of time would be important. But I don't wanna  
780 tip the hand so to speak. If you've got things that you feel like . . . how, how can we get

781 just stipulation on some facts . . .

782 MR. MALONEY: I would suggest . . . I, I'm familiar with this procedure because I,  
783 I do a lot of Federal litigation which is bankruptcy filing and I would suggest that we use  
784 basically the . . . how the federal rules would do this. Which would require the council to  
785 confer with this and to see if, if as much. . . get as much of this stipulated to as we can.  
786 I, I, I think Mr. Ubay is a reasonable person. I, I know that, that I . . . don't, don't want to  
787 have this be a very long and expensive process. I know we just want to get it over with.  
788 So I think we won't have any trouble doing it. So if you just set the sixteenth I'll be happy  
789 to confer with you any time. I'd be happy to come to Chicago or Springfield and confer  
790 with you or, or any place.

791 CHAIR SHELDEN: You guy's got each other's numbers, right?

792 MR. UHE: Yes.

793 CHAIR SHELDEN: Okay. Now . . .

794 MR. MALONEY: Is that fair enough?

795 CHAIR SHELDEN: Right. Are we going, are you going to be asking people . . .  
796 you don't know whether or not you're gonna be asking people to testify. Is there a time  
797 at which it's . . . we should know who is gonna testify? Do we have a deadline on that?

798 MR. MALONEY: I, I, I will, I will get, get with him and absolutely make myself  
799 available anytime in the next two weeks to get this done as quickly as we can. So if  
800 you're available I'll be happy to meet with you any place in the state.

801 MR. UHE: How about by e-mail?

802 MR. MALONEY: My, my, my daughter's from Chicago. She . . .

803 MR. UHE: Okay.

804 CHAIR SHELDEN: I want to make sure we're all clear on the rules in terms of if  
805 you want to subpoena anybody. Okay. So we're gonna process or the Circuit Clerk will  
806 process the subpoena . . . can we . . . submitted to me in writing, this is in nine . . . Can  
807 we come up with a reasonable time by which that would have to be . . .

808 MR. MALONEY: I, I, I think we'll. . . my suggestion is we attempt to confer  
809 anytime next week and get our, whatever stipulations we can stipulate to done and then  
810 any, any, any subpoenas that are necessarily I'll go over with him. He can . . . we'll try to  
811 settle as much as we can by, by stipulation and then if, if, we can have the subpoenas  
812 issued, I think it . . . I think they're required three or five days by statute ahead of time.  
813 To . . .

814 CHAIR SHELDEN: To like . . . so like Friday, next Friday?

815 MR. MALONEY: Yeah.

816 CHAIR SHELDEN: We'll arrive . . . we'll figure out . . . you'll get me the subpoena  
817 by Friday of next week so we can . . .

818 MR. MALONEY: Yes.

819 CHAIR SHELDEN: take care of it? Okay.

820 MR. MALONEY: Yes. Would that be . . .

821 MR. ZIEGLER: Don't short yourself time to have it served, depending on where it  
822 is you're sending it and to whom you're sending it.

823 MR. MALONEY: Right. So, but, is that by, by . . .

824 CHAIR SHELDEN: Yeah, written request to me by Friday. Written request for  
825 subpoena by Friday and if you've got . . . do we have any just normal subpoena forms  
826 down there. Rena, are there any subpoena forms?

827 MR. MALONEY: Duces tecum . . . and, and, and, and service fees and things like  
828 that are. . . are . . . are they . . . are tho . . . I know the filing fees are waived in these  
829 cases. I don't know whether or not the, the twenty-five dollar . . . maybe you can tell  
830 me?

831 CHAIR SHELDEN: No, I don't think . . . it's not our jurisdiction to work with. You  
832 gotta pay it to whoever . . .

833 MR. MALONEY: To the Clerk?

834 MR. WILKINSON: The Circuit Clerk.

835 MR. MALONEY: Would you, would you waive it for me?

836 MR WILKINSON: I can't guarantee that now.

837 MR. MALONEY: Okay.

838 CHAIR SHELDEN: Yeah, my, my guess would be that those fees still apply.

839 MR. ZIEGLER: Witness fees or service fees?

840 MR. WILKINSON: Service fees.

841 MR. ZIEGLER: Service fees have to be, have to be paid by the party serving  
842 them.

843 CHAIR SHELDEN: Obviously, the best thing is just to have . . .

844 MR. MALONEY: The best solution is to get here someone that knows what  
845 they're doing.

846 CHAIR SHELDEN: Alright.

847 MR. UHE: May I ask another question?

848 CHAIR SHELDEN: Yes, please.

849 MR. UHE: Would your Honors intend to ask for a briefing on the, on the question

850 of the . . . if there is a question?

851 CHAIR SHELDEN: Yeah, I'm sorry, that's the other thing. Okay, we've got some .  
852 . . we're taking care of kinda the evidentiary aspects. Absolutely. Let's have some . . .  
853 Mr. Maloney is yet to respond to your objection. So, if you can respond to the objection  
854 by Friday as well and then . . .

855 MR. UHE: and, and, and . . .

856 CHAIR SHELDEN: and then you can respond to his response by Tuesday? And  
857 then we'll have evidence followed by arguments on Friday.

858 MR. UHE: Yes, that, that's fine.

859 MR. MALONEY: One stipulation I would, I would, I would like, is the evidence  
860 that was . . . and I'm, I'm just clarifying it, I think the things that were admitted into  
861 evidence today are . . . carried over . . . and continued . . . carried over . . .

862 CHAIR SHELDEN: Yeah. Yeah.

863 MR. MALONEY: Did we say nine-thirty . . .

864 CHAIR SHELDEN: Yeah.

865 MR. MALONEY: on the sixteenth? Is that okay with you?

866 MR. CALABRESE: On the sixteenth I would like to go home.

867 MR. MALONEY: Stand up and . . . go ahead and tell . . .

868 CHAIR SHELDEN: What, what was that?

869 MR. CALABRESE: I'd like to go home.

870 MR. MALONEY: Is that not convenient for you?

871 MR. CALABRESE: Well, it's the week after finals and I haven't been home since  
872 Christmas. I didn't go home at spring break. I'd like to do it earlier, earliest, early. . .

873 CHAIR SHELDEN: I think that, I think we're gonna have a tough time getting . . .

874 MR. WILKINSON: Faster?

875 CHAIR SHELDEN: . . . we could do it faster but to be honest with you I think  
876 then we start to talk about, are we really getting everything we need to do to get a good  
877 resolution of this case. And . . . my . . . because I like good resolutions that don't get  
878 complicated down the road and everything it's got plenty of time to happen. I, I think two  
879 weeks is kinda a minimum. So . . .

880 MR. ZIEGLER: Gentleman, if, if I may, on the question that I believe Mr. Maloney  
881 raised about the documents. There are . . . If I'm . . . and I'm thinking mostly for record  
882 not the record for us but the record for somebody who comes later potentially, there are  
883 attached to the objector's petition, I believe, following verification, a series of  
884 documents; one of which is Statement of Candidacy to Fill Vacancy in Nomination which  
885 purports to be filed stamped by the Board of Elections on April seventh, 2008. The  
886 Loyalty Oath which purports to be signed on the same date. There is, from the office of  
887 the Secretary of State, Jesse White, communication to the candidate dated April  
888 seventh 2008, indicating that he's a candidate for Illinois Representative to the General  
889 Assembly, also file stamped April seventh, 2008. Resolution to Fill Vacancy in  
890 Nomination Occurring After Primary Election which is again stamped April seventh,  
891 2008 by State Board of Elections. Those I believe are all of the attachments to the  
892 objector's petition. I assume those are some of the documents that you are referring to?

893 MR. MALONEY: Yes.

894 MR. ZIEGLER: I, I suppose the question being asked then is, are the parties  
895 willing to stipulate that those documents are genuine and were filed and received in the

896 condition in which they appear attached on the date indicated on those documents.

897 MR. MALONEY: Yes.

898 MR. UHE: Yes, your Honor.

899 MR. MALONEY: On the, on those documents, yes.

900 MR. ZIEGLER: And they are as, as attached to the objector's petition. We're  
901 getting affirmative from both Mr. Maloney and Mr. Uhe?

902 MR UHE: Yes.

903 MR. ZIEGLER: Also, there is a Certificate Of Representative Committee  
904 Organization which purports to be file stamped by the State Board of Elections on April  
905 the eighteenth, 2008, indicating in its body, that the Representative Committee, the  
906 Republican Party 103<sup>rd</sup> Representative District, met on the seventh day of April, 2008 in  
907 the City of Urbana, Champaign County Illinois, and organized by electing the following  
908 officers in conformity with the Election Laws of this State. That's another one of the  
909 documents that you'd like? To have stipulated to?

910 MR. MALONEY: Excuse me. We'll stipulate that, that, that, that document was,  
911 the one that filed, shows file marked on the eighteenth?

912 MR. ZIEGLER: Yes.

913 MR. MALONEY: We'll, we'll stipulate that it , that it, that document was shown  
914 filed marked on the eighteenth. We're not going to stipulate as to when that document  
915 arrived at the Board of Elections.

916 MR. ZIEGLER: But that this is the document that was filed stamped by the Board  
917 of Elections on that date?

918 MR. MALONEY: Yes.

919 MR. ZIEGLER: I understand you may want to introduce other evidence as to  
920 when it may have been received or may have been attempted to be delivered? Is that  
921 correct?

922 MR. MALONEY: Yes. We're reserving that right . . .

923 MR. UHE: I, I, I have no objection to that.

924 CHAIR SHELDEN: Hmm, mmm.

925 MR. ZIEGLER: And I'd like to have somebody . . . because the others were  
926 attached to the objection I don't, there's a question of what they are in the record.  
927 Because this is not, I'd prefer to have somebody mark that as Exhibit A or one and I  
928 assume the third document we're talking about is your letter, is Mr. Maloney's letter to  
929 Naomi Jakobsson which I, I assume you're requesting a stipulation subject to the earlier  
930 stated conditions?

931 MR. MALONEY: Yes.

932 CHAIR SHELDEN: Do we have any little exhibit things around here?

933 MR. ZIEGLER: They're down in front actually.

934 CHAIR SHELDEN: Stickers.

935 MR. MALONEY: Whatever it was before. Subject to whatever way it was . . .

936 MR. ZIEGLER: Basically the document mailed to Naomi Jakobsson. The  
937 question of weight is obviously something for argument.

938 MR. UHE: Yes, yes your Honor.

939 CHAIR SHELDEN: We have Defendant and Respondent . . .

940 MS. ANDERSON: Here's these.

941 CHAIR SHELDEN: Petitioner's Exhibit, Defender's Exhibit.

942 MR. ZIEGLER: It really doesn't much matter. I'd prefer to just use Petitioner's  
943 one and two if that's acceptable to everyone. Just in case it comes up later for a  
944 question of record what documents are we talking about.

945 CHAIR SHELDEN: Okay.

946 MR. ZIEGLER: I don't want a Circuit Judge to say I don't know what we're talking  
947 about.

948 MR. MALONEY: Right.

949 CHAIR SHELDEN: Alright. So the . . . the . . . Representative Committee of  
950 Organization certification is one?

951 MR. ZIEGLER: One.

952 CHAIR SHELDEN: This is the other one? The other one is two? Okay. Right.  
953 Alright. So, so here's where we stand. You gentlemen are going to get together and try  
954 to stipulate to everything you can stipulate to. We're gonna have . . . all of us will receive  
955 a response to the objection by May . . . Friday, May ninth at four-thirty which is the close  
956 of County business, And . . . and then at the close of County business, on Tuesday the  
957 thirteenth we will get an answer to that response or whatever we might want to call it  
958 from Mr. Uhe. And then at nine-thirty on Friday morning we will have a hearing which . .  
959 . I guess first we pick up any motions that might exist and we'll take up any evidence  
960 that people have. And then we will hear arguments and then we will be prepared  
961 hopefully, you can never really tell, but the goal will be to render a decision the  
962 sixteenth.

963 MR. ZIEGLER: One last . . . just for clarification. Everyone agreed last time that  
964 the various documents could be sent by e-mail. I have no objection to that being done.

965 CHAIR SHELDEN: That's great.

966 MR. ZIEGLER: In terms of the, the, the written arguments, responses, etc. they  
967 may want to make, I don't know how you want to handle the requests, the written  
968 requests for subpoenas issued, would you want that by e-mail or in person?

969 CHAIR SHELDEN: You know the e-mail would be great on, great on that as well.

970 MR UHE: Thank you.

971 CHAIR SHELDEN: And then also . . . and why don't you send it to everyone not  
972 just to me. Yeah, why don't you send it to everyone. Also, I note, Mr. Berns, you would,  
973 you've entered an appearance on this. You want to be involved on those e-mails as well  
974 and Mr. Kasper as well.

975 MR. MALONEY: He, he's gonna have to. Because he's the e-mail expert in the  
976 firm.

977 CHAIR SHELDEN: Well, I didn't want to . . . that's kinda of why I said that,  
978 because I just maybe guessed a little bit that might may be the case. But . . . I wasn't  
979 going to say that John. So . . . the . . . are there . . . other matters?

980 MR. MALONEY: No, your Honor.

981 MR. UHE: Thanks, your Honor.

982 CHAIR SHELDEN: And . . . none of you have to call me your Honor. Mr. Shelden  
983 would be the appropriate thing to call me. So, great, we're adjourned until the sixteenth.  
984 Thank you.

985 MR. UHE: Thank you.