

IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT,  
CHAMPAIGN COUNTY, ILLINOIS

PAT DEVANEY,	)	
	)	
Petitioner,	)	
	)	
v.	)	No.
	)	
CHAMPAIGN COUNTY OFFICERS ELECTORAL	)	
BOARD and its members, MARK SHELDON,	)	
FRED WILKINSON, STEVEN D. ZIEGLER, MARK	)	
SHELDON, in his capacity as Champaign County Clerk,	)	
and FRANK CALABRESE,	)	
	)	
Respondents.	)	

PETITION FOR EXPEDITED JUDICIAL REVIEW  
OF THE DECISION OF THE CHAMPAIGN  
COUNTY OFFICERS ELECTORAL BOARD

NOW COMES, Petitioner-Objector, Pat Devaney, by and through his attorneys,  
and hereby petitions for judicial review of the decision of the Respondent Champaign  
County Officers Electoral Board, and in support thereof states as follows:

A. Introduction.

1. This is a Petition for Judicial Review of the Champaign County Officers Electoral  
Board, which ruled that the Representative Committee of the Republican Party for the  
103<sup>rd</sup> Representative District's nomination of Respondent Calabrese as a candidate for  
election to the Illinois General Assembly was proper despite its failure to comply with the  
provisions of Section 8-5 of the Election Code. 10 ILCS 5/8-5.

B. Jurisdiction.

2. This Court has jurisdiction over this matter pursuant to Section 10-10.1 of the Illinois Election Code because it is a petition for judicial review of an Electoral Board decision. 10ILCS 5/10-10.1

C. Parties.

3. Petitioner brings this Petition because he was the Objector in the proceedings before the Electoral Board and is aggrieved by the Board's decision.

4. The Champaign County Officers Electoral Board is named as a Respondent because the Petitioner is seeking judicial review of its decision. Respondents Sheldon, Wilkinson, and Ziegler are named as members of the Electoral Board.

5. Respondent Sheldon is also named in his capacity as Champaign County Clerk because he is responsible for preparation of ballots for the November, 2008 election and will, therefore, be affected by any ruling of this Court.

6. Respondent Calabrese is named because he was the Respondent in the proceedings before the Electoral Board, and his candidacy will be affected by any ruling of this Court.

D. Basis for Reversal.

7. The Electoral Board's decision should be reversed because the Committee failed to comply with the simple, yet mandatory, organizational requirements of the Illinois Election Code.

8. No candidate ran for the Republican Party nomination for the office of Representative in the General Assembly for the 103<sup>rd</sup> Representative District in the February, 2008 Primary Election. As a result, a vacancy in nomination was created that

could be filled by the Republican Party Representative Committee. The deadline for filling that vacancy in nomination was April 7, 2008. 10 ILCS 5/7-61.

9. Representative Committees must organize after the primary election by electing a chairperson and other officers. The procedural requirements imposed on these Committees are set forth in Section 8-5 of the Election Code. 10 ILCS 5/8-5. One of these requirements is that after organization, the Committee must “immediately” forward the name and address of the Committee officers to the Illinois State Board of Elections. *Id.*

10. In this case, the Committee organized, nominated Respondent Calabrese, and filed a Resolution filling a Vacancy in Nomination with the State Board of Elections, all on April 7, 2008, the last day permitted by law to do so. 10 ILCS 5/7-61. The Committee did not, at the time, file the names and addresses of the Committee officers with the State Board of Elections.

11. Any registered voter in the appropriate district may file an Objector’s Petition contesting the sufficiency of a nomination made to fill a vacancy in nomination. *Id.* Petitioner filed his Objector’ Petition on April 14, 2008, the last date permitted by law do so. *See* 10 ILCS 5/10-8. The Objector’s Petition claimed that the nomination was invalid because the Committee failed to file the names and addresses of the Committee’s officers with the State Board of Elections as required by Section 8-5.

12. Four days later, on April 18, 2008, the Committee filed a “Certificate of Representative Committee Organization” with the State Board of Elections. The Certificate listed the names of the Committee officers, but not their addresses. Attached to the Certificate, was a page listing a number of precinct committeemen’s names and

addresses, including the Committee's officers.

13. The Electoral Board overruled the Objector's Petition on the theory that, although the provisions of Section 8-5 are mandatory, the April 18, 2008 filing of the Certificate of Organization "substantially complied" with the requirement to "immediately" file the names and addresses of the Committee officers with the State Board. A copy of the Board's decision is attached.

14. The Board's decision was incorrect and should be reversed because the April 18, 2008 filing came after the deadline for filing an objector's petition:

April 7: Nomination Deadline.

April 14: Objection Deadline.

April 18: Names and addresses filed with State Board of Elections.

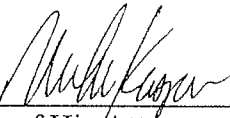
As a result, the Committee did not file the mandatory information until after the deadline by which the public could bring an objection to the nomination.

15. The Electoral Board's decision should be reversed because it effectively allows a committee to preclude an objection to its nominations by simply withholding the mandatory information until after the objection deadline. Such a result renders the objection process meaningless and effectively writes these proceedings out of the Election Code.

16. The Electoral Board's decision should also be reversed because it is contrary to every other electoral board decision addressing this issue, all of which have rendered nominations made under identical circumstances invalid.

WHEREFORE, for the foregoing reasons, and the reasons set forth in the Memorandum of Law in Support of this Petition for Judicial Review, the Petitioner respectfully prays that this Court grant his Petition for Judicial Review, reverse the decision of the Electoral Board and grant relief requested in his Objector's Petition.

Respectfully submitted,  
Pat Devaney,

By:   
One of His Attorneys

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**CHAMPAIGN COUNTY OFFICIALS ELECTORAL BOARD  
AS THE DULY CONSTITUTED ELECTORAL BOARD**

PAT DEVANEY, )  
Petitioner-Objector, )  
 )  
-v- )  
 )  
FRANK CALABRESE, )  
Respondent-Candidate. )

**FILED**  
JUN 02 2008  
*Mark Sheldon*  
CHAMPAIGN COUNTY CLERK

**FINDING AND ORDER OF THE BOARD**

The duly constituted Officials Electoral Board of Champaign County, Illinois consisting of Chairman Mark Sheldon (Champaign County Clerk), Fred Wilkinson (Chief Deputy Circuit Clerk of Champaign County) and Steven Ziegler (First Assistant State's Attorney for Champaign County) organized by law in response to a Call issued by Mark Sheldon, Chairman, for the purpose of passing upon the Objections of PAT DEVANEY (Petitioner-Objector) to the nomination of FRANK CALABRESE (Respondent-Candidate) as a candidate for the Republican Party for the office of Representative in the General Assembly for the 103<sup>rd</sup> Representative District of the State of Illinois, having met on May 30, 2008 in Courtroom "H" of the Champaign County Courthouse, 101 E. Main Street, Urbana, Illinois, and having heard the evidence and arguments of the parties on the Objector's Petition, find as follows:

1. The Objector's Petition herein was duly and timely filed on April 14, 2008.
2. A Call for the hearing on said Objector's Petition was duly issued by the Chairman of the Electoral Board and served upon the Petitioner-Objector, the Respondent-Candidate and the statutory members of the Electoral Board.
3. Public hearings on the Objector's Petition were commenced on April 22, 2008 and continued from time to time up to and including the final hearing on May 30, 2008.
4. No candidate the office of Representative in the General Assembly for the 103<sup>rd</sup> Representative District appeared on the Republican Party primary ballot for the Primary Election held on February 5, 2008.
5. On April 7, 2008, the Republican Party Representative Committee for the 103<sup>rd</sup> District, composed of members as authorized under 10 ILCS 5/8-5 of the Election Code, met, organized and nominated the Respondent-Candidate, FRANK CALABRESE, as the Republican candidate for said office.

6. On April 7, 2008, the Respondent-Candidate, FRANK CALABRESE, filed his Statement of Candidacy, Loyalty Oath, and the Resolution to Fill Vacancy in Nomination with the Illinois State Board of Elections.
7. The Petitioner-Objector has not challenged the composition of the Representative Committee or the means, method or timing of their selection of the Respondent-Candidate, nor has the Petitioner-Objector raised any issues related to compliance with 10 ILCS 5/7-61.
8. The Representative Committee filed the Certificate of Organization, bearing the names and signatures of the Chairman and Secretary of the Committee, with the Illinois State Board of Elections on April 18, 2008. The addresses of the Chairman and the Secretary do not appear on the face of the Certificate of Organization, but their names and addresses are included in a partial list of Republican precinct committeemen for Champaign County which the parties stipulated was attached to the Certificate of Organization.
9. The filing of the Certificate of Organization with the Illinois State Board of Elections occurred after the filing of the Objector's Petition herein and occurred after the deadline for the filing of such an objection in this matter, which deadline was met by the Petitioner-Objector.
10. The Petitioner-Objector alleges that the Representative Committee failed to comply with the requirement of 10 ILCS 5/8-5 that, "Immediately upon completion of organization, the chairman shall forward to the State Board of Elections, the names and addresses of the chairman and secretary" and that be reason of that alleged failure to comply with the statutory requirement, the Respondent-Candidate's name should be stricken from the General Election ballot. The Petitioner-Objector argues that this provision of 10 ILCS 5/8-5 is mandatory, that the Certificate of Organization does not contain the addresses of the chairman and that the filing of the Certificate of Organization was not done "immediately".
11. The Respondent-Candidate argued that this requirement of 10 ILCS 5/8-5 is directory, rather than mandatory, and that the filing of the Certificate of Organization on April 18, 2008 fulfilled the requirements of 10 ILCS 5/8-5.
12. At the conclusion of the hearing on May 30, 2008, the Electoral Board voted 3-0 to deny the Objector's Petition. The Board finds the requirements of 10 ILCS 5/8-5 to be mandatory, but believed that they could be satisfied by substantial compliance. The Board relies, in part, on the recent decision of the Appellate Court for the Fourth District in Reynolds v. Champaign County Electoral Board (No.4-08-0020, filed Jan. 24, 2008), which held that another mandatory section of the Election Code (10 ILCS 5/7-10) could be satisfied by substantial compliance, "...when the invalidating charge concerns a technical violation of the statute that does not affect the legislative intent to guarantee a fair and honest election." The Board finds that the term "immediately" is not specifically defined in the Election Code and that the Representative Committee did "immediately" file the names and addresses of the chairman and secretary

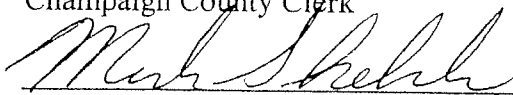
with the State Board of Election by filing the Certificate of Organization on April 18, 2008, with those names set forth on its face and their addresses included in the attachment. More specifically, the Board finds that the Respondent-Candidate and the Representative Committee substantially complied with the requirements of 10 ILCS 5/8-5 taken as a whole as well as substantially complying with the particular requirement to "immediately" file the names and addresses of the chairman and secretary of the Representative Committee with the State Board of Elections.

13. The Board disagreed on only one relevant point. Mr. Shelden stated his belief that, as the Representative Committee was duly constituted and acted in accordance with the statutory requirements for nominating the Respondent-Candidate at their meeting of April 7, 2008, that action could not be later invalidated by the Representative Committee's later failure to file the names and addresses of the chairman and secretary with the State Board of Elections. Mr. Ziegler disagreed, stating his belief that an complete failure to file either the names or addresses of the chairman and secretary with the State Board of Elections would invalidate the authority of the Representative Committee and the candidacy. In this case, however, he believed that the filing of that information with the State Board of Elections on April 18, 2008 was sufficient to substantially comply with the requirement of the statute.

THEREFORE, the Champaign County Officials Electoral Board finds, for the reasons set forth above, that the Objection should be DENIED and that the name of FRANK CALABRESE should appear on the ballot for the General Election of November 4, 2008 as the Republican candidate for the office of Representative in the General Assembly for the 103<sup>rd</sup> Representative District.

So ruled this 2nd day of June, 2008.

Champaign County Clerk




Mark Shelden, Electoral Board Chair

Champaign County Circuit Clerk

By:   
Fred Wilkinson, Chief Deputy Circuit Clerk

Champaign County State's Attorney

By:   
Steven D. Ziegler, First Assistant State's Attorney