



intending to run as a candidate for the Republican Party in the November, 2008 general election. The record also establishes, and judicial notice might otherwise be taken, that no candidate of that party stood for election to that office in the primary election held on February 5, 2008.

The Board further found that respondent's party formed a representative committee pursuant to section 8-5 of the Election Code (10 ILCS 5/8-5) on April 7, 2008 and that the committee subsequently designated respondent as the Republican candidate in the upcoming general election. That same day respondent filed his statement of candidacy and other requisite documents with the Illinois State Board of Elections. (See 10 ILCS 5/7-61.)

The Board further found that the representative committee filed the certificate of organization contemplated by section 8-5 on April 18, 2008. The certificate of organization contained the names of the committee members but omitted the addresses of two members. The addresses of those two members nonetheless appeared on a list of local party officials that was attached to the certificate.

The record further reveals that on April 14, 2008 Devancy (hereinafter petitioner) filed a timely objection to respondent's proposed placement on the November general election ballot. In substance, petitioner asserted before the Board that respondent's name could not be placed on the ballot due to the failure of the committee to "immediately" forward the names and addresses of the committee members to the Illinois State Board of Elections as required by the section 8-5. The pertinent language of section 8-5 provides that "[i]mmediately upon completion of organization [of the committee], the chairman shall forward to the State Board of Elections, the names and addresses of the chairman and secretary of the committee."

The Board held a hearing on petitioner's objection on April 22, 2008 and May 30, 2008. In a written ruling rendered on June 2, 2008 the Board unanimously rejected petitioner's claims and ruled that respondent's name be placed on the November general election ballot. This action for judicial review then followed.

### Analysis

The court believes that it is essential in the first instance that the language of the statute at issue be set forth in context. Section 8-5 of the Election Code provides in pertinent part as follows:

§ 8-5. There shall be constituted one legislative committee for each political party in each legislative district and one representative committee for each political party in each representative district. Legislative and representative committees shall be composed as follows:

[T]he legislative or representative committee of a political party shall consist of the chairman of each county central committee of such party, any portion of which county is included within such legislative or representative district; but if a legislative or representative district comprises only one county, or part of a county, its legislative or representative committee shall consist of the chairman of the county central committee and 2 members of the county central committee who reside in the legislative or representative district, as the case may be, elected by the county central committee.

\* \* \*

Within 180 days after the primary . . . , each legislative committee and representative committee shall meet and proceed to organize by electing from among its own number a chairman, and either from its own number or otherwise, such other officers as each committee may deem necessary or expedient. *Immediately upon completion of organization, the chairman shall forward to the State Board of Elections, the names and addresses of the chairman and secretary of the committee.* The outgoing chairman of such committee shall notify the members of the time and place (which shall be in the limits of such district) of such meeting. A vacancy shall occur when a member dies, resigns, or ceases to reside in the county, township or ward, which he represented.

\* \* \*

10 ILCS 5/8-5 (emphasis added).

The substance of petitioner's claim is that what might be called the "immediate forwarding" provision of section 8-5 is mandatory and that, contrary to the ruling of the Board, the committee did not forward the information in "substantial compliance" with section 8-5. In this respect petitioner claims, and the record establishes, that the statutory deadline for respondent's nomination was April 7 and that the statutory deadline for filing objections thereto was April 14. Petitioner thus concludes that the tender of the complete list of names and addresses to the State Board of Elections on April 18 – four

days after the deadline for filing objections to the nomination – cannot be deemed to have been in substantial compliance with section 8-5.

It is to be noted at this point that neither party has addressed at length or in depth the question of what the word “immediately” means in the context of section 8-5. It is apparent that both parties instead have somewhat blithely assumed that “immediately” is to be construed in its temporal sense. Yet even a casual tour of a dictionary and the reported cases suggests that the word “immediate” and its derivatives are not invariably to be so understood. Indeed,

[i]n its plain and ordinary sense, “immediate” means “acting or being without the intervention of another object, cause, or agency” or, when applied to persons, “having no individual intervening; being next in line or relation.”

*Office of Lake County State's Attorney v. Illinois Human Rights Commission*, 235 Ill.App.3d 1036, 1048 (1992), quoting *Webster's Third New International Dictionary* 1129 (1986). The parties thus fail to address the question of whether the immediate forwarding provision of section 8-5 defines not a *timeline* but, instead, a *process*. If the language of the statute defines a process, then petitioner certainly has no claim for the simple reason that the committee forwarded the names and addresses directly to the State Board of Elections without the oversight or intervention of any other agency. In that sense, at the very least, the names and addresses were forwarded “immediately.” Moreover, if the language defines a process then such a construction might well undermine petitioner’s premise that the provision is mandatory rather than directory.

The court has chosen only to identify this question and declines further to pursue it where, as here, the question has been raised by neither party. The court will instead proceed to resolve the case on the premise of the parties that section 8-5 defines a timeline for the submission of the names and addresses to the State Board of Elections.

The centerpiece of petitioner’s claim is *Carnell v. Madison County Officers Electoral Board*, 299 Ill.App.3d 419 (1998). In *Carnell*, the Appellate Court held that the committee-selection provision of section 8-5 is mandatory and that the failure of a political party to select committee members by the statutorily mandated method rendered

a subsequent nomination invalid. Petitioner thus asserts that, because the provision of section 8-5 at issue in this case is also mandatory, the failure of the committee to comply with that provision must also invalidate the candidacy of respondent. As petitioner puts it, “the [c]ommittee likewise failed to comply with [s]ection 8-5 by failing to ‘immediately’ notify the State Board of Elections, and thus the public, of the names and addresses of the [c]ommittee’s officers. As a result of this violation, just as in *Carnell (sic)*, the sanction of section 8-1 requires invalidation of the nomination.” (Petitioner’s memorandum of law in support of petition for judicial review, filed June 12, 2008, at 5.)

The court notes at this juncture that the *Carnell* court itself observed that

[t]he Election Code is a comprehensive scheme which regulates the manner in which elections shall be carried out. Strict compliance with all applicable provisions in the Election Code is not necessary, however, to sustain a particular ballot. Rather, our courts draw a distinction between violations of ‘mandatory’ provisions and violations of ‘directory’ provisions. Failure to comply with a mandatory provision renders the affected ballots void, whereas technical violations of directory provisions do not affect the validity of the affected ballots.

There is no universal formula for distinguishing between mandatory and directory provisions. Rather, whether a particular statutory provision is mandatory or directory depends upon the intent of the legislature, which is ascertained by examining the nature and object of the statute and the consequences which would result from any given construction. Of course, the language of the statute is often the most reliable evidence of the legislature’s intent. Thus, where a statute, in prescribing the duties of the election officials, expressly states that failure to act in the manner set out in the statute will void the ballot, that statute will generally be given a mandatory construction.

However, if the statute simply prescribes the performance of certain acts in a specific manner, and does not expressly state that compliance is essential to the validity of the ballot, then the statute generally will be given a directory construction.

\* \* \*

We do not mean to suggest, of course, that election officials may simply ignore directory provisions of the Election Code. All of the provisions of the Election Code are mandatory in the sense that election officials are obligated to comply with their terms. It does not follow, however, that every failure to comply should invalidate the ballot in question. Literal compliance with directory provisions will not be required if it appears that the spirit of the law has not been violated and the result of the election has been fairly ascertained.

299 Ill.App.3d at 424, quoting *Pullen v. Mulligan*, 138 Ill.2d 21, 46-47 (1990), internal citations and quotation marks omitted.

Of central importance here are the rules of the *Pullen-Carnell* line of cases that 1) “it does not follow . . . that every failure to comply [with a directory provision of the Code] should invalidate the ballot in question” and 2) “[l]iteral compliance with directory provisions [of the Election Code] will not be required if it appears that the spirit of the law has not been violated. . . .” The instant case involves a variation on that theme: the Board ruled that the Election Code permits “substantial compliance” with even mandatory provisions, citing *Reynolds v. Champaign County Officers Electoral Board*, 379 Ill.App.3d 423 (2008).

*Reynolds* teaches that even mandatory provisions of the Election Code are not to be applied in an inflexible manner, heedless of factual context. The *Reynolds* court was presented with a claim that a candidate should not be permitted a place on a ballot for failing to consecutively number a four-page nominating petition, in violation of section 7-10 of the Code (10 ILCS 5/7-10). The *Reynolds* court held that the consecutive page-numbering requirement was mandatory rather than directory. Yet the *Reynolds* court further observed that “substantial compliance with the Code is acceptable 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.” 379 Ill.App.3d at 425.

After review of the record and the submissions of the parties the court has reached the conclusion that the provision of section 8-5 at issue, even if interpreted to be mandatory, is subject to the “substantial compliance” rule of *Reynolds*. The court is of the view that the forbearance of the committee “immediately” to forward the names and addresses of its members did not meaningfully run afoul of the Election Code. Borrowing from the text of the *Reynolds* opinion, the record establishes that the forbearance of the committee “neither posed an actual or perceived threat to the electoral process nor remotely presented any question of voter or challenger confusion or fraud. . . .” 379 Ill.App.3d at 424. More importantly, however, the court holds that the decision of the Board to that effect was not clearly erroneous and must therefore be upheld on review.

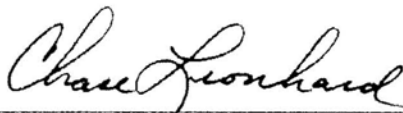
The court therefore holds that even if, as posited by petitioner, the provision of section 8-5 presently at issue is mandatory, the record in any event establishes substantial compliance with the provision. In so holding, the court is mindful of the fact that although a perceived threat to the electoral process has been suggested by petitioner, he has presented no claim of such a threat other than in the abstract.

The court further notes that petitioner's claim – and the mere fact that he brought it – in great measure refutes his submission that the failure of the committee to forward the names and addresses before April 18 presented an impediment to the statutory objection process. The record establishes that respondent's nomination was otherwise in full compliance with the Election Code and petitioner made no claim before the Board other than that the names and addresses of the committee members were not "immediately" forwarded. Petitioner certainly was able to file a timely objection on that ground notwithstanding the allegedly material omission of the committee and he pursued no claim beyond that. The record thus suggests that petitioner's claim is fatally fraught with circularity. The court holds in the present context that an objector cannot be heard to decry an alleged deprivation of statutory legal recourse when he has availed himself of that very legal recourse and presents nothing of substance beyond that very claim.

For the foregoing reasons the court holds that the decision on review is in compliance with the law as measured by the applicable standard of judicial review.<sup>1</sup> The decision of the Board is accordingly AFFIRMED.

DATE: JUL 28 2008

ENTER:

  
 Chase Leonhard  
 Associate Judge

<sup>1</sup> Respondent submits in his written argument that "substantial compliance" with the Illinois Election Code is a question of fact" and that the "manifest weight of the evidence" standard governs this action on review. (Respondent's response to petitioner's petition for judicial review, filed July 8, 2008, at 2.) Petitioner's threshold written argument is silent with regard to the standard of review. In his reply memorandum, filed July 11, 2008, petitioner belatedly posits that "review should be *de novo*."

(Reply memorandum, at 2) The court is of the opinion that the question of substantial compliance on the present record is a mixed question of law and fact governed by the "clearly erroneous" standard of review. See *Cardona v. Board of Elections Commissioners of the City of Chicago*, 346 Ill.App.3d 342, 343 (2004). The court notes in any event that it would reach the same result in the instant case under either of the standards of review posited by the parties.