STATE BOARD OF ELECTIONS
STATE OF ILLINOIS

1020 South Spring Street, P.O. Box 4187
Springfield, Illinois 62708
217/782-4141 TTY: 217/782-1518
Fax: 217/782-5959

James R. Thompson Center
100 West Randolph, Suite 14-100
Chicago, Illinois 60601
312/814-6440 TTY: 312/814-6431
Fax: 312/814-6485

BOARD MEMBERS
Albert S. Porter, Chairman
Bryan A. Schneider, Vice Chairman
Patrick A. Brady
John R. Keith
William M. McGuffage
Wanda L. Rednour
Jesse R. Smart
Robert J. Walters

EXECUTIVE DIRECTOR
Daniel W. White

AGENDA

State Board of Elections
Sitting as the Duly Authorized
State Officers Electoral Board
Meeting by videoconference call
Tuesday, July 8, 2008
10:00 a.m.

Springfield:
1020 South Spring Street
or
Chicago:
James R. Thompson Center
Suite 14-100

1. Call State Board of Elections to order.

2. Recess State Board of Elections and convene as the State Officers Electoral Board .

3. Approval of the minutes from the June 9 SOEB meeting. (pgs.1-5)

4. Consideration of objections to resolutions to fill vacancies in nomination for the General Election – carryover from June;
   a. *Gronewold v. Shrier,* 08SOEBGE100; (pgs.6-24)
   b. *Gooch v. Garling,* 08SOEBGE503; (pgs.25-71)
   c. *Karmel v. Shabo,* 08SOEBGE504; (pgs.72-128)
   d. *Schultz v. Sugrue,* 08SOEBGE505. (pgs.129-159)

5. Call cases and accept appearances – objections to petitions from the independent and new party candidate filing period; (pg.160)
   a. *Carter v. Denzler,* 08SOEBGE102;
   b. *Ferguson v. Boltz,* 08SOEBGE507;
   c. *Stevo v. LeBeau,* 08SOEBGE508;
   d. *Druck v. Haase,* 08SOEBGE509.

6. Approve the Rules of Procedure for the State Officers Electoral Board. (sent under separate cover)

7. Authorize the General Counsel to appoint Hearing Examiners as required. (sent under separate cover)

8. Recess State Officers Electoral Board until July 21, 2008 at 10:30 a.m. and reconvene as the State Board of Elections.

9. Report of the Executive Director
   a. EAC Election Data Collection Grant program update. (pg.161)

10. Report of the General Counsel
   a. Campaign Disclosure;
   Appeal of campaign disclosure fines – new appeal – hearing officer recommendation appeal be denied
   1) *SBE v. Stout for Senate Committee,* S9696, 08AG023; (pgs.162-167)
   Complaint following closed hearing – carryover from June (separate packet)
   2) *IL Campaign for Political Reform and Redfield v. Friends of Annazette R. Collins;* 08CD002.

11. Other business.

12. Adjournment until July 21, 2008 at 10:30 a.m. or until the call of the Chairman, whichever occurs first.

STATE OFFICERS ELECTORAL BOARD MEETING

Monday, June 9, 2008

MINUTES

PRESENT:	Albert S. Porter, Chairman Bryan A. Schneider, Vice Chairman Patrick A. Brady, Member John R. Keith, Member William M. McGuffage, Member Jesse R. Smart, Member
VIA TELEPHONE:	Wanda L. Rednour, Member
ABSENT:	Robert J. Walters, Member
ALSO PRESENT:	Daniel W. White, Executive Director Steve Sandvoss, General Counsel Darlene Gervase, Administrative Specialist II

The proceedings commenced at 10:33 a.m. with six members present. Mr. Walters was absent and Mr. Brady arrived at 10:37 a.m. Member Smart held Mr. Walters' proxy.

The General Counsel indicated that four cases were not ripe for disposition and asked the Board to set a date to hear these cases prior to the next regularly scheduled meeting on July 21st. He said that the Board may want to meet at an earlier time to give the parties a chance to take decisions to the circuit court and give county clerks time to have the candidates certified, print ballots and prepare for the election. By motion of the Chairman, July 8th was unanimously agreed as the date to meet and hear *Gronewold v. Shrier,* 08SOEBGE100; *Gooch v. Garling,* 08SOEBGE503; *Karmel v. Shabo*, 08SOEBGE504; and *Schultz v. Sugrue*, 08SOEBGE505 via videoconference call.

The matter of *Doyle v. Dennis,* 08SOEB101 was continued to later in the morning to accommodate Mr. Michael Kasper who was present in the Board's office on another matter.

Mr. Sandvoss called the *Guenthle v. Hill*, 08SOEB500 case and recognized Mr. James Nally for the Objector and Messrs. Scott K. Summers and Andrew Finko for the candidate. He indicated that the hearing officer's recommendation was to deny the Candidate's Motion to Dismiss, to sustain the objection and not print the name of Candidate Robert Hill on the ballot. The General Counsel agrees, but added that the portion of the reply brief challenging the qualification of the candidate on the basis of him requesting a ballot of a different political party at the preceding primary election, should be stricken as having not been properly pled in the original objection. He further recommended that the hearing officer's recommendation be adopted by the Board, the Objection be sustained and the candidate's name should not appear on the ballot. Mr. Nally agreed that the hearing officer's recommendation should be adopted because the Green Party is an established political party and has

certain mandatory responsibilities in filling vacancies in nomination. In the case of the 14th Congressional District race, no one ran as a candidate of the Green Party in the primary election. The resolution was signed by two people who were not county chairmen and the only person that was a county chair and eligible to vote abstained; therefore under the case of *Carnell v. Madison County,* if the if the mandatory provisions of the Election Code dealing with filling vacancies in nomination are not complied with, any action taken by the managing committee is void. Mr. Finko argued that the hearing officer did not find any evidence of fraud in the nominating process. He also argued that the intent of the Green Party was to nominate Robert Hill as evidenced by the nominating papers and as such, the party has greater leeway to appoint nonpublic office positions that are accountable only to the party rather than the public at large. He said that the vote taken by the committee was properly weighted and that proper nominating papers were filed proving the intent of the Green Party, and therefore the Board should honor that nomination. Mr. Finko concluded by arguing that the objector did not meet his burden of proof. After questions were directed to both parties and discussion was had by the Board, Member Smart moved to accept the recommendation of the hearing officer and general counsel to sustain the objection and the name of Robert Hill not be certified to the ballot for the 14th Congressional District race for the Green Party. Member Keith asked Member Smart for clarification that where the general counsel's recommendation is in conflict with that of the hearing officer, if his motion would adopt the General Counsel's recommendation. Member Smart answered yes and Member Keith said where it's a conflict, I would second that. The motion passed 8-0 by roll call vote.

The General Counsel summarized *Maurice Dole v. Troy Dennis*, 08SOEBGE101and indicated that the basis of the objection was that the resolution of the managing committee was not properly executed, proper notice was not given, that the persons that were entitled to attend did not attend, and proper procedures for conducting the meeting were not followed. The objection also alleged that the resolution was not timely filed with the SBE. The hearing officer recommended the Motion to Dismiss be denied but that the objection be sustained as to the allegation that the meeting was not properly conducted, and the name of Troy Dennis not be printed on the ballot for Congressman from the 17th District for the Green Party. Mr. Michael Kasper was present for the objector and said that this case was substantially similar to the case already heard and the fact pattern was virtually identical. He adopted the arguments of Mr. Nally and offered to answer any questions. Messrs. Summers and Finko were present for the candidate and Mr. Finko said that the objector did not meet his burden of proof and that there was no evidence of fraud. Mr. Summers added that the Green Party has not had autonomy extended to them and there was no evidence that the proceedings of the managing committee were tainted, as everyone who attended the meeting was the appropriate party to attend and there was nothing done that was contrary to case law. Mr. Sandvoss's recommendation was to accept the finding of the hearing officer that the managing committee consisted of an unauthorized person and to sustain the objection. Member Smart moved to adopt the recommendation of the hearing officer and general counsel and to not certify the name of Troy Dennis to the ballot. Member McGuffage seconded the motion which passed unanimously by roll call vote.

Mr. Sandvoss called the case of *Kreloff v. Kalbfleisch, 08SOEBGE501.* Messrs Finko and Summers were present for the candidate and Michael Kasper was present on behalf of the Objector. Mr. Kasper stated that the fact pattern in this case was virtually identical to the prior two cases. He further stated that this case involved two counties, Cook and Lake. Lake County does not have a Green Party chairman. The only person who voted at the meeting of the managing committee was a township committeeman from Cook County (who was not authorized to do so), not the county chairman and for that reason the hearing examiner ruled that the nomination was invalid and Mr. Kasper concurred with that. Mr. Finko adopted the argument set forth in the previous two matters and added that the objector did not meet his burden of proof as there was no evidence that proper notice of the meeting was not given and he argued that the committeemen met and voted unanimously to nominate the candidate. He conceded that although there was some conflicting evidence regarding the conduct and proceedings of the meeting, it did not meet the burden of proof needed to invalidate the Resolution that was executed at the meeting. He added that the Green Party is being attacked by some objector who is not a member of the Green Party and there should be deference given to the actions of the Green Party and this nomination should be considered valid. Mr. Sandvoss recommended accepting the recommendation of the hearing officer on the basis that the meeting was not appropriately conducted and unauthorized persons participated in the meeting and requested a ballot of a different political party at the primary election executed the resolution. Member Smart moved and Member McGuffage seconded the motion to accept the recommendation of the Hearing Officer and General Counsel and to not certify the name of David Kalbfleisch to the ballot. The motion passed 8-0.

The General Counsel next called *Ferrito v. Abernathy*, 08SOEBGE502 and stated that this case was similar to the previous three objections but with an additional objection to the qualifications of the candidate as he filed nominating papers and signed a statement of candidacy as a candidate of a different political party for the preceding primary election. Matthew Flamm was present for the objector and asked leave to incorporate the arguments made by Mr. Nally and Mr. Kasper in the three previous cases as if he made them in this case. He added that the 8th Congressional district is 54% in Lake County and the person who purported to act as the county chair of Lake County was not an elected precinct committeeman. Mr. Finko, who was present for the respondent, stated that the objector did not meet his burden of proof as the candidate was qualified and he filed the necessary nominating papers. The Chairman asked for the General Counsel's recommendation. Mr. Sandvoss recommended sustaining the objection as to the issue of the candidate declaring himself as a primary elector of more than one established party. He was also in agreement with the hearing officer that the managing committee had the participation of an unauthorized person who constituted 1/3 of the vote. Further, the hearing officer's recommendation was that this person was improperly appointed and that voting by that person tainted the decision of the managing committee thereby rendering it invalid. The General Counsel stated that he concurred with the recommendation of the Hearing Officer that the objection should be sustained on the basis that the managing committee was improperly constituted and that the resulting Resolution was therefore invalid but he disagreed with the Hearing Officer as to the issue of the qualification of the candidate. The Chairman asked the General Counsel if it was necessary for the SOEB

to address the issue of the qualification of the candidate. Mr. Sandvoss replied that if the SOEB did not make a ruling on this issue and if this case were to go up on appeal, there would be the unresolved issue of the qualifications of the candidate that may be remanded back to the Board for a decision on that issue. Member Smart moved to accept the recommendation of the hearing officer and general counsel and to not certify the name of Ian Abernathy to the ballot for the Green Party. Member McGuffage seconded the motion which passed 7-1. Member Keith said that with the two issues being combined he voted no. Both counsel for the objector and candidate complimented the professionalism of Ken Menzel, the hearing officer.

Mr. Sandvoss called the last case, *Alexander v. Gray*, 08SOEBGE506. He noted that no one was present and suggested passing it until later in the meeting.

Vice Chairman Schneider moved to adopt the minutes of the April 21, 2008 meeting of the State Officers Electoral Board. Member Smart seconded the motion which passed unanimously.

At 11:38 a.m., Member Keith moved to recess as the State Officers Electoral Board until July 8, 2008 at 10:00 a.m. or the call of the Chairman whichever occurs first, indicating that as to 08SOEBGE506 the SOEB may need to reconvene later today. Vice Chairman Schneider seconded the motion which passed unanimously by 8 ayes in unison.

The State Officers Electoral Board reconvened at 11:58 a.m. with 7 members present to hear the matter of *Alexander v. Gray,* 08SOEBGE506. Member Smart held Member Walters' proxy.

Member Smart moved to accept the recommendation of the general counsel and his report as given to the SOEB in writing and in person. Mr. John Countryman stated the position of Mr. Odelson, attorney for the candidate, is that he concurs with the hearing officer's recommendation and the general counsel's report and asked the Board to adopt it. Michael Kasper stated that he was told by Courtney Nottage, attorney for the objector, that he had no objection to the recommendation of the Hearing Officer in this matter. Member Keith seconded Member Smart's motion and the motion passed unanimously by roll call vote.

There being no further business before the State Officers Electoral Board, Vice Chairman Schneider moved to recess until July 8, 2008 or the call of the chairman, whichever occurs first. Member Keith

seconded the motion which passed unanimously.

The meeting of the State Officers Electoral Board recessed at 12:01 Noon.

Dated: June 20, 2008

Respectfully submitted,

Daniel W. White, Executive Director

Darlene Gervase, Administrative Specialist II

08 SOEB GE 100

Candidate: Tom Shrier

Office: State Representativ; 106th District

Party: Democratic

Objector: Donald Gronewold

Attorney For Objector: John W. Countryman and John G. Fogarty

Attorney For Candidate: Michael J. Kasper

Basis of Objection: The Resolution filed by the candidate was filed with the State Board of Elections more than 3 days following the meeting of the managing committee at which the candidate was chosen to fill the vacancy in nomination, contrary to the provisions of Section 5/7-61 of the Election Code.

Is the Objection Verified: Yes

Hearing Officer: Barb Goodman

Hearing Officer Findings and Recommendation: The candidate's Motion to Strike and Dismiss the Objector's Petition on the grounds that such Petition was not timely filed should be denied. The portion of the candidate's Motion addressing the timeliness of the filing of the nominating papers should be granted, such papers should be deemed valid and Tom Shrier should appear on the ballot for the 2008 General Election.

Recommendation of the General Counsel: I concur with the recommendation of the Hearing Officer for the reasons set forth in her Report.

BEFORE THE DULY CONSTITUTED ELECTORAL BOARD
FOR THE HEARING AND PASSING UPON OF OBJECTIONS
TO NOMINATION PAPERS OF CANDIDATES FOR NOMINATION TO
THE OFFICE OF REPRESENTATIVE IN THE GENERAL ASSEMBLY

Donald Gronewald	)	
	)	
	)	
Objector	)	
	)	
-v-	)	08-SOEB-GE100
	)	
Tom Shrier	)	
	)	
Candidate	)	

HEARING EXAMINER'S REPORT AND RECOMMENDED DECISION

This matter was first heard on April 21, 2008. Objectors appeared through their attorneys John Fogarty and John Countryman and candidate appeared through his attorney Michael Kasper. The parties were given an opportunity to submit preliminary motions. The candidate timely submitted a Motion to Dismiss and the Objector timely submitted a Response to Motion to Dismiss Objection.

The sole issue presented in the Objector's Petition was whether the Certificate of Organization was timely filed with the State Board of Elections. The facts are uncontroverted. The Resolution filling the vacancy was filed four calendar days after the committee acted. The Committee met on Friday, March 14, 2008 and the Resolution was filed the following Tuesday, March 18, 2008.

Section 7-61 requires that:

> The resolution filling the vacancy shall be sent by U. S. mail or personal delivery to the certifying officer or board within 3 days of the action by which the vacancy was filled. 10 ILCS 5/7-61

According to the Objector, because the Resolution was not filed within three

days by which the vacancy was filled, it is invalid.

Although Candidate cites the statute on statutes to provide assistance in calculating the time in which the resolution had to be filed, Candidate correctly points out that Section 1-6 of the Election Code is controlling here. Section 1-6 provides:

> Computing dates of various acts; Saturday, Sunday, and holidays.
>
> (a) If the first or last day fixed by law to do any act required or allowed by this Code falls on a State holiday or a Saturday or a Sunday, the period shall extend through the first business day next following the day otherwise fixed as the first or last day, irrespective of whether any election authority or local election official conducts business on the State holiday, Saturday, or Sunday. 10 ILCS 5/1-6

In the instant case, because the committee acted on a Friday, the first day to file would have been Saturday. However, pursuant to Section 1-6, because the first day was a Saturday, it must be extended to Monday. Under this interpretation, the filing on Tuesday complied with the committee's statutory obligation to file within 3 days.

Candidate further argued that the objector failed to file the objector's petition within the time required by Section 10-8 of the Election Code and therefore the electoral board is without jurisdiction to hear the matter. The Candidate asserts that because the Representative Committee met and executed his nomination papers on March 14, 2008, the Committee would have had three days to file and the Objector's petition should have been filed within five business days after said date.

The Candidate's interpretation is without support in the law. Section 10-8 clearly states that objections must be filed 5 business days after the deadline for filling vacancies in nomination. Section 10-8 provides:

> Certificates of nomination and nomination papers, and petitions to submit

> public questions to a referendum, being filed as required by this Code, and being in apparent conformity with the provisions of this Act, shall be deemed to be valid unless objection thereto is duly made in writing **within 5 business days after the last day for filing** the certificate of nomination or nomination papers or petition for a public question, with the following exceptions. . . (emphasis added) 10 ILCS 5/10-8

As the Objector correctly notes, the last day to fill a vacancy in nomination and the last day for the filing of the nomination papers was April 7, 2008. The objector's petition was filed on April 14, 2008, which is within the 5 business day objection period.

The candidate's assertion that the objection period applies to each committee and is tied to the last day each committee files its nomination papers is simply without support in the law and is contrary to the plain language of the statute. Indeed, to adopt such an interpretation would be to conclude that the objection filing period and electoral board hearings are fluid and on-going from after the primary through April 7, 2008. Such an interpretation is simply contrary to the plain language of the statute. Furthermore, such an interpretation would create a chaotic and untenable electoral scheme.

Inasmuch as the Objector's Petition was timely filed, the Motion to Strike and Dismiss was denied. Further, because the nominating papers were timely filed pursuant to Section 7-61 and therefore in accordance with Section 7-61 the Election Code, the Motion to Strike and Dismiss was granted as to this issue.

In light of the foregoing, it is my recommendation that the nominating papers be deemed valid and that the name of candidate Tom Shrier for the Democratic nomination to the office of Representative in the General Assembly in the 106th Representative District appear on the ballot at the November 4, 2008 General Election.

Respectfully submitted,

Barbara Goodman
Hearing Examiner
June 22, 2008

BEFORE THE DULY CONSTITUTED ELECTORAL BOARD FOR THE HEARING AND PASSING UPON OF OBJECTIONS TO NOMINATION PAPERS OF CANDIDATES FOR NOMINATION TO THE OFFICE OF REPRESENTATIVE IN THE GENERAL ASSEMBLY, 106th DISTRICT

Donald Gronewold,	)
	)
Petitioner-Objector,	)
	)
vs	)
	)
TOM SHRIER,	)
	)
Respondent-Candidate.	)

08 APR 11 PM 12:35 STATE BOARD OF ELECTIONS SPRINGFIELD, ILLINOIS

OBJECTOR'S PETITION

Donald Gronewold, hereinafter sometimes referred to as the "Objector", states as follows:

The Objector resides at 1006 Kingsbury Road, Washington, Illinois, 61571, in the County of Tazewell, State of Illinois, and is a duly qualified, legal and registered voter at that address

The Objector's interest in filing this Petition is that of a voter desirous that the laws governing the filing of nomination papers for the office of Representative in the General Assembly 106th District of the State of Illinois are followed so that only qualified candidates appear on the ballot for said office.

OBJECTION

The Objector makes the following objection to the purported nomination papers ("Nomination Papers") of Tom Shrier, as the Democratic candidate for the office of Representative in the General Assembly 106th District of the State of Illinois ("Office") to be voted for at the General Election on November 4, 2008 ("Election"). The Objector states that the Nomination Papers are insufficient in fact and law for the following reasons.

1. Pursuant to the Illinois Code of Elections (**10 ILCS 5/7-61**), nomination papers to fill a vacancy in nomination for an Office that was voted upon in the February 5, 2008 Primary Election must be filed within 60 days after the date of the general primary. That date was April 7, 2008.

2 Pursuant to the Illinois Code of Elections (**10 ILCS 5/7-61**), the resolution of the management committee filling the vacancy in nomination must be filed with the certifying officer within 3 days of the action by which the vacancy was filled.

3. That the meeting of the Representative Committee of the Democratic Party for this district occurred on March 14, 2008 and was not filed with the Illinois State Board of Elections until March 18, 2008, which is more than three days after which the committee meeting was held.

4. That as result of the late filing this objection should be sustained and the nomination of the Democratic Party for the office of Representative in the General Assembly for the 106th District should be declared vacant.

WHEREFORE, The Objector requests:

a) A hearing on the objections set forth herein;

b) An examination by the aforesaid Electoral Board of the official records relating to filling the vacancy in nomination for the 106th Representative District, to the extent that such examination is pertinent to any of the matters alleged herein;

c) A ruling that the resolutions and other documents filed are insufficient in law and fact, and do not properly fill the vacancy in nomination of the Democratic Party for the 106th Representative District;

d) A ruling that the name of Tom Shrier shall not appear and not be printed on the ballot for nomination to the office of Representative in the General Assembly of the 106th Representative District of the State of Illinois, to be voted for at the General Election to be held November 4, 2008.

Donald R. Gronewold

Donald Gronewold, Objector
1006 Kingsbury Road
Washington, IL 61571

VERIFICATION

STATE OF ILLINOIS)
) SS.
COUNTY OF Tazewell)

The undersigned, being first duly sworn upon oath, depose and state that I have read the above and foregoing OBJECTOR'S PETITION, and that the matters and facts contained therein are true and correct to the best of my knowledge and belief.

Donald R Gronewold

Donald R. Gronewold
Print Name

Subscribed and sworn to before me
By Donald R. Gronewold
This 11th day of April, 2008.

Carol A. Madden
Notary Public

"OFFICIAL SEAL"
CAROL A. MADDEN
Notary Public, State of Illinois
My Commission Expires 12/1/2010

John W. Countryman
Attorney for Objector
The Foster & Buick Law Group LLC
2040 Aberdeen Ct.
Sycamore, IL 60178
815-758-6616
Fax 815-756-9506
E-Mail JWCBO@AOL.COM
Cell 815-761-3806

John G. Fogarty, Jr.
Attorney for the Objector
Burke, Warren, MacKay & Serritella, P.C.
330 N. Wabash, Suite 2200
Chicago, IL 60611
312-840-7087 Fax 312- 840-7900
E-Mail jfogarty@ burkelaw.com

BEFORE THE DULY CONSTITUTED ELECTORAL BOARD
FOR THE HEARING AND PASSING UPON OF NOMINATION OBJECTIONS TO
NOMINATION PAPERS OF CANDIDATES FOR ELECTION TO THE
OFFICE OF REPRESENTATIVE IN THE GENERAL ASSEMBLY FOR THE 106th
REPRESENTATIVE DISTRICT OF THE STATE OF ILLINOIS

Gronewald,	)	
	)	
Petitioner-Objector,	)	
	)	
v.	)	08 SOEB GE 100
	)	
	)	
Shrier,	)	
	)	
Respondent-Candidate.	)	

MOTION TO STRIKE AND DISMISS
THE OBJECTOR'S PETITION

NOW COMES Respondent-Candidate by and through his attorney, and moves to strike and dismiss the Objector's Petition and in support thereof states as follows:

I. Factual Background.

No candidate of the Democratic Party appeared on the ballot at the February 5, 2008 primary election for nomination for the office of Representative in the General Assembly for the 106th Representative District. As a result, a vacancy in nomination was created. The Democratic Representative Committee met and filled the vacancy in nomination on Friday, March 14, 2008. The Resolution filling the vacancy in nomination, and other paperwork associated with the nomination, were filed with State Board of Elections on Tuesday, March 18, 2008.

On April 14, 2008, the Objector filed this Objector's Petition, in which he claims that the Candidate's nomination papers are invalid because the Resolution filling the vacancy in nomination was not filed within three days of the date the Committee met and filled the vacancy.

II. The Resolution was Filed in Full Compliance with the Statute.

There is no dispute that the Resolution filling the vacancy in nomination was filed four calendar days after the Committee acted. The Committee met on Friday, March 14, 2008 and the Resolution was filed the following Tuesday, March 18, 2008. The Objector is wrong, however, to assert that the Resolution was filed in the violation of the statute.

Section 7-61 of the Election Code, which governs the filling of this vacancy in nomination, does provide that "the resolution filling the vacancy shall be sent ...within three days of the action by which the vacancy was filled." 10 ILCS 5/7-61. Filing the resolution in compliance with the Election Code is mandatory, and noncompliance invalidates the committee's action. *Forcade-Osborn v. Madison County Elec. Bd.*, 334 Ill.App.3d 756, 778 N.E.2d 768 (5th Dist. 2002). Objector incorrectly claims that the resolution was filed "late" because March 18 is four days after March 14, and Section 7-61 provides for three days.

The Objector is incorrect because he wrongly concludes that Section 7-61 is the end of the inquiry, but it is really only the beginning.

Plainly, Section 7-61 provides for "three days", but that does not necessarily mean that all days are included in calculating those three days. In fact, the Section 1-6 of the Election Code directs how days are to be computed:

> If the *first* day or last day fixed by law to do any act required or allowed by this Code falls on a State holiday or a *Saturday* or a Sunday, the period shall extend through the first business day next following the day otherwise fixed as the first or last day...

10 ILCS 5/1-6 (emphasis added). As a result, if the first day for the filing of this Resolution was a Saturday, Sunday or holiday, the final day would "extend" through the next business day.

The issue then comes down to whether the "first" day in calculating compliance with Section 7-61 is the day the Committee met (Friday, March 14) or the next day thereafter

(Saturday, March 15). While the Election Code is silent on that question, the Statute on Statutes provides the answer. Section 1.11 of the Statute on Statutes provides:

> The time within which an act provided by law is to be done shall be computed by *excluding the first day* and including the last, unless the last is Saturday or Sunday or holiday... and the it shall also be excluded.

5 ILCS 70/1.11 (emphasis added). Pursuant to this statute, the date on which the action is taken (here, Friday, March 14) is excluded from the calculation.

As a result of reading all three statutory provisions together, the permitted timeline becomes clear:

Date	Action	Calculation
March 14	Friday-Comm. Meets	Excluded (5 ILCS 70/1.11)
March 15	Saturday	Extended (10 ILCS 5/1-6)
March 16	Sunday	Day 1
March 17	Monday	Day 2
March 18	Tuesday	Day 3[1]

While it is interesting that the Statute on Statutes provides a general exclusion of only the last day for Saturdays, Sundays, and holidays, whereas the Election Code provides the exclusion of both the *first* and *last* days, it cannot be seriously argued that the general provision controls the more specific Election Code provision. *See Moore v. Green*, 219 Ill.2d 470, 480, 848 N.E.2d 1015 (2006) ("Where a general statutory provision and a more specific statutory provision relate to the same subject, we will presume that the legislature intended the more specific provision to

[1] Because the weekend/holiday extension provision applies to Saturday, March 15, the Resolution was filed within three properly calculated days, there is, therefore, no need to reach the question of whether the extension provision of 10 ILCS 5/1-6 further extends to Sunday, March 16.

govern.").

Indeed, if the General Assembly had intended to limit the weekend /holiday exclusion to the last day, it would not have enacted Section 1-6 of the Election Code at all, but simply relied upon the provisions of the Statute on Statutes to govern election related activities. Instead, the legislature, by specifically including the words "first day" regarding the weekend/holiday exclusion intended a different result than applies in other situations.

The Resolution was filed in full compliance with Section 7-61. The Objector's Petition should be stricken and dismissed.

III. The Electoral Board Lacks Jurisdiction to Hear this Objector's Petition.

The Electoral Board has no jurisdiction to hear this Objector's Petition because it was not timely filed. Section 10-8 provides that an objector's petition must be filed within "5 business days after the last day for the filing of the certificate of nomination or nomination papers..." 10 ILCS 5/10-8.

In this case, while the Democratic Representative Committee could have waited up to 60 days after the primary election to fill the vacancy in nomination (*See* 10 ILCS 5/7-61), they did not do so. Instead, the Committee, as discussed above, met and nominated this Candidate on March 14, 2008. As the Objector has pointed out, once the Committee took that step, they had only three days (however calculated) to file the Resolution (which are the "nomination papers" for purposes of Section 10-8). If the last day to file the nomination papers is three days after the Committee met, then the last day to file an objector's petition must be five business days after that.

The Objector wants to have his cake and eat it, too. He claims that the Resolution must be filed within three days of the filling of the vacancy in nomination. If so, then the third day

after the meeting is the "last day" for the filing of the "nomination papers." As a result, the last day to file an objector's petition is the fifth business day thereafter.

In this case, as discussed above, there are only three possibilities:

Meeting	Filing Deadline	Reason	Objection Deadline
March 14	March 17	Sat. & Sun. included	March 24
March 14	March 18	Sat. excluded	March 25
March 14	March 19	Sat. & Sun. excluded	March 26

Under no interpretation of the statue can this Objector's Petition, which was filed on April 14, 2008 be compliant with Section 10-8. Because the Objector's Petition was not filed within 5 business days of the last day for filing the nomination papers, this Electoral Board lacks subject matter jurisdiction over the matter. *Thomas v. Powell*, 289 Ill.App.3d 143, 681 N.E.2d 145 (1st Dist. 1997).

IV. Conclusion.

For the reasons set forth above, Respondent-Candidate respectfully prays that the Motion to Strike and Dismiss be granted.

Respectfully submitted,
Respondent-Candidate

By: _____
One of his attorneys

Michael J. Kasper
222 N. LaSalle, Suite 300
Chicago, IL 60601
312.704.3292
312.368.4944 (fax)

BEFORE THE DULY CONSTITUTED ELECTORAL BOARD FOR THE HEARING AND PASSING UPON OF OBJECTIONS TO NOMINATION PAPERS OF A CANDIDATE FOR ELECTION TO THE OFFICE OF REPRESENTATIVE IN THE GENERAL ASSEMBLY FOR THE 106th REPRESENTATIVE DISTRICT OF THE STATE OF ILLINOIS

Gronewold,	)	
	)	
Petitioner-Objector,	)	
	)	**No. 08 SOEB GE 100**
v.	)	
	)	
Shrier,	)	
	)	
Respondent-Candidate.	)	
	)	

OBJECTOR'S RESPONSE TO MOTION TO STRIKE AND DISMISS

Now comes Donald Gronewold, (hereinafter referred to as the "Objector"), by and through his attorneys, and for his Response to the Respondent-Candidate's Motion to Strike and Dismiss, states as follows:

Background

No candidate appeared on the Democratic Primary ballot on February 5, 2008, for the office of Representative in the General Assembly from the 106th Representative District. As a result, a vacancy in nomination was created. The Democratic Representative Committee met and purported to fill that vacancy in nomination on Friday, March 14, 2008. The resolution filling the vacancy in nomination was filed with the State Board of Elections on Tuesday, March 18, 2008.

The Objector has filed a Petition objecting to the Candidate's nominating papers on the grounds that the Committee's resolution was not sent within three days to the State Board of Elections in violation of Section 7/61 of the Election Code. The Candidate has now moved to dismiss the Petition, arguing that (1) the Resolution filling the vacancy was timely filed by virtue

of a creative reading of Section 1-6 of the Election Code, and (2) that the Objector's Petition was not timely filed, and therefore, this Board has no authority to review that Objection. However, the Candidate's contentions are without merit. The Resolution to Fill a Vacancy in Nomination was not timely-filed in accordance with the three-day rule contained in Section 7-61; and the Objector's Petition was timely filed, in accordance with Section 10-8.

Argument

A. The Candidate Has Not Filed His Nominating Papers In Accordance With Section 7-61, And Therefore, They Are Invalid.

The Election Code provides 60 days for a political party to fill a vacancy in nomination where no candidate of that party appeared on the primary election ballot. 10 ILCS 5/7-61. Section 7-61 also requires that "the resolution filling the vacancy shall be sent . . . within three days of the action by which the vacancy was filled." 10 ILCS 5/7-61. This so-called 3-day rule is a mandatory provision of the Election Code and non-compliance invalidates the purported nomination. *Forcade-Osborn v. Madison County Electoral Board*, 334 Ill. App. 3d 756, 778 N.E.2d 768 (5th Dist. 2002). Because the resolution purporting to fill the vacancy in nomination was filed four days after it was executed, rather than three, the vacancy was not correctly filled and the Candidates' nominating papers are therefore fatally flawed.

While a post-primary vacancy in nomination may be filled pursuant to Section 7-61 of the Election Code, if the provisions of that Section are not met, no candidate appears on the primary ballot. Section 7-61 provides, in pertinent part:

> "no candidate of the party for the office shall be listed on the ballot at the general election unless such vacancy is filled in accordance with the requirements of this Section within 60 days after the date of the general primary."

10 ILCS 5/7-61.

Here, the vacancy in nomination was not filled in accordance with Section 7-61 within the 60 days after the primary, and therefore, no candidate should be listed on the ballot at the general election.

The Candidate, though, makes the novel argument that his nominating papers are not really late, but rather, are timely filed pursuant to Section 1-6 of the Election Code. However, the Candidate is mistaken, because Section 1-6 does not come into play in this situation. Section 1-6 of the Election Code states, in pertinent part:

> "If the first day or last day fixed by law to do any act required or allowed by this Code falls on a state holiday or a Saturday or a Sunday the period shall extend through the first business day next following the day otherwise fixed as the first or last day, irrespective of whether any election authority or local election official conducts business on the state holiday, Saturday, or Sunday."

10 ILCS 5/1-6(a).

The purpose of Section 1-6 is to advise when the first or last day of a filing period, for instance, falls on a Saturday, Sunday or holiday, that first or last day is then extended to the next business day. Section 1-6 does not apply in this case, in which the Representative Committee purports to fill a vacancy in nomination after no one ran for an office in the primary. In this case, the "first day" that the Representative Committee would be "allowed by this Code" to fill that vacancy created on Tuesday, February 5, 2008, would be Wednesday, February 6, 2008, therefore Section 1-6 would not apply.

Moreover, using Section 1-6 to govern how days for notice and mailing are counted would lead to unpredictable, varied, and arbitrary results. Courts must construe the meaning of a statute so that it is consistent with other statutes addressing the same subject matter. *MQ Construction Co. v. Intercargo Ins. Co.*, 318 Ill.App.3d 673, 742 N.E.2d 820 (2nd Dist. 2000). A

court should avoid statutory interpretations that lead to absurd results. *In re: D.D.*, 196 Ill.2d 405, 752 N.E.2d 1112 (2001).

As the Candidate correctly notes, that the Statute on Statutes applies here, and governs how days are counted in connection with the three day rule in Section 7/61. Section 1.11 of the Statute on Statutes provides:

> "The time within which an act provided by law is to be done shall be computed by excluding the first day and including the last, unless the last is Saturday, Sunday or holiday . . . and then it shall also be excluded."

5 ILCS 70/1.11

Here, to count the three days under the method prescribed by the Statute on Statutes, the first day (Friday, March 14, 2008) is excluded; and Saturday (Day 1), Sunday (Day 2), and Monday, March 17, 2008 (Day 3), are included.

B. The Board Is Empowered To Evaluate The Sufficiency Of The Nominating Papers Filed By The Candidate.

Contrary to the Candidate's assertion, the Board is empowered to review the Candidate's nominating papers because the Objector's Petition was timely filed. Section 10-8 of the Election Code provides that an Objector's Petition must be filed within "5 business days after the last day *for the filing* of the certificate of nomination or nomination papers . . ." 10 ILCS 5/10-8 (emphasis added). Because the primary election was on February 5, 2008, the last day for the filing of the nomination papers to fill a vacancy in nomination after the primary was April 7, 2008. The Objector's Petition was filed on April 14, 2008, which is within 5 business days of April 7, 2008.

The Candidate asserts that because the Representative Committee met and executed his nomination on March 14, 2008, and the Committee would have had three days after that to file or mail its Resolution, then the Objector should have filed his Petition within five days after that

event. The Candidate, however, has no basis and no rationale for this creative reading of the statute. The Candidate essentially wants to read the three-day rule into Section 10-8, however, given the difficulty in discerning the three day rule, such a construction is unwise, unwieldy, and would result in filing deadlines that were highly varied and dependent on facts that may not be known to the Objector. Further, Section 10-8 applies to much more than the filling of vacancies in nomination under Section 7-61, thus, to make the date of filing Objections under Section 10-8 dependent on a provision of Section 7-61 is improper.

Rather, the plain language of Section 10-8 makes clear that the deadline for filing objections follows, by 5 business days, the deadline for filling vacancies in nomination. Thus, the Objector's Petition in this case was timely and correctly filed.

Accordingly, the Candidate's Motion to Strike and Dismiss should be denied, and the Objector's objections to the Candidates Nominating Papers sustained.

Respectfully submitted,

Donald Gronewold
Petitioner-Objector

By: One of his Attorneys

John W. Countryman
The Foster & Buick Law Group LLC
2040 Aberdeen Ct.
Sycamore, IL 60178
815-758-6616 Fax 815-756-9506
E-Mail JWCBO@AOL.COM Cell 815-761-3806

John G. Fogarty, Jr.
Burke, Warren, MacKay & Serritella, P.C.
330 N. Wabash, Suite 2200
Chicago, IL 60611
312-840-7087 Fax 312- 840-7900
E-Mail jfogarty@ burkelaw.com

CERTIFICATE OF SERVICE

I, John G. Fogarty, Jr., an attorney, state that I caused copies of the Objector's Response to the Candidate's Motion to Strike and Dismiss The Objector's Petition to be served upon:

Barbara Goodman
Barbara B. Goodman & Associates
400 Skokie Boulevard, Suite 380
Northbrook, Illinois 60062
goodmanlaw1@aol.com

State Board of Elections
Office of the General Counsel
1020 South Spring Street
Springfield, Illinois 62708
Fax: (217) 782-5959

Michael J. Kasper
222 N. LaSalle, Suite 300
Chicago, Illinois 60601
Fax: (312) 368-4944

by e-mail and fax from 330 N. Wabash Avenue, Chicago, Illinois 60611, before the hour of 5:00 p.m. on April 30, 2008.

John G. Fogarty, Jr.

08 SOEB GE 503

Candidate: Rich Garling

Office: State Representative; 52nd District

Party: Democratic

Objector: Thomas W. Gooch III

Attorney For Objector: John W. Countryman and John G. Fogarty

Attorney For Candidate: Michael J. Kasper

Basis of Objection: A Resolution to fill the vacancy in nomination was filed by Mr. Garling on March 26. The meeting of the Representative Committee at which Mr. Garling was chosen occurred on February 23, in violation of Section 7-61 of the Election Code. Section 7-61 provides that a Resolution to fill a vacancy in nomination must be filed with the State Board of Elections not more than 3 days following the meeting of the managing committee at which the candidate was chosen to fill the vacancy in nomination. On April 6, the Representative Committee met again and selected Mr. Garling as the nominee to fill the vacancy in nomination. No vacancy existed on April 6, therefore any action to fill such "vacancy" is null and void. On April 7, nomination papers and a withdrawal of the March 26 Resolution were submitted to the State Board of Elections. As such, the vacancy was not properly filled since no vacancy existed on April 6.

Is the Objection Verified: Yes

Hearing Officer: Barb Goodman

Hearing Officer Findings and Recommendation: Both counts of the Objector's Petition should be sustained. The first count alleged that the original submission of the Resolution to Fill a Vacancy in Nomination was not timely filed and the second count alleged that the subsequent appointment of the same person to fill the vacancy in nomination occurred before there was a vacancy to be filled. The candidate Rich Garling's nominating papers should be deemed invalid, and his name should not be certified to appear on the ballot at the 2008 General Election.

Recommendation of the General Counsel: I concur with the recommendation of the Hearing Officer for the reasons set forth in her Report.

BEFORE THE DULY CONSTITUTED ELECTORAL BOARD
FOR THE HEARING AND PASSING UPON OF OBJECTIONS
TO NOMINATION PAPERS OF CANDIDATES FOR NOMINATION TO
THE OFFICE OF REPRESENTATIVE IN THE GENERAL ASSEMBLY

THOMAS W. GOOCH	)	
	)	
	)	
Objector	)	
	)	
-v-	)	08-SOEB-GE 503
	)	
RICH GARLING	)	
	)	
Candidate	)	

HEARING EXAMINER'S REPORT AND RECOMMENDED DECISION

This matter was first heard on April 21, 2008. Objectors appeared through their attorneys John Fogarty and John Countryman and candidate appeared through his attorney Michael Kasper. The parties were given an opportunity to submit preliminary motions. The candidate timely submitted a Motion to Dismiss and the Objector timely submitted a Response to Motion to Dismiss Objection.

The issue presented in the Objector's petition was whether a vacancy existed at the time the Resolution to Fill a Vacancy was filed.

The facts in this case are not at issue. The Representative Committee originally met on February 23, 2008 to nominate the candidate herein. The nominating papers for candidate Garling were filed on March 26, 2008. At some time on April 6, 2008, the candidate executed a Withdrawal of Candidacy. Thereafter on April 6, 2008, the Representative committee met again to nominate the same candidate. On April 7, 2008 at 3:02 p.m., the candidate filed a written withdrawal of candidacy with the State Board of Elections. At 3:09 p.m. on April 7, 2008, the Resolution to nominate Garling and his other nominating papers were also filed.

The Objector's Petition alleges that the first Resolution and nominating papers filed on behalf of the candidate were invalid as they did not meet the filing requirements set forth in Section 7-61 of the Election Code. Objector's contention is correct as to the first set of nominating papers in that Section 7-61 requires that the resolution and nominating papers be filed within three days of the date upon which the committee takes action. In this case, the resolution and nominating papers were filed more than one month from the date upon which the committee took action. Accordingly, the first set of nominating papers are invalid.

The Candidate contends in his Motion to Strike and Dismiss that the candidate effectively created a vacancy in nomination when he executed his Withdrawal of Candidacy on April 6, 2008 and tendered it to the committee. Said purported vacancy then created the opportunity for the Committee to once again fill the vacancy.

Candidate's position is simply not supported by case law. The Election Code provides the manner in which a candidate must withdraw his candidacy, thus creating a vacancy.. Until the withdrawal is effective no such vacancy can exist. Section 7-12(9)provides:

> Any person for whom a petition for nomination, or for committeeman or for delegate or alternate delegate to a national nominating convention has been filed may cause his name to be withdrawn by request in writing, signed by him and duly acknowledged before an officer qualified to take acknowledgments of deeds, **and filed in the principal or permanent branch office of the State Board of Elections** or with the appropriate election authority or local election official, not later than the date of certification of candidates for the consolidated primary or general primary ballot..
> (emphasis added) 10 ILCS 5/7-12(9).

Thus, contrary to candidate's contention, a withdrawal of candidacy is not effective upon execution or tender to any other body except the State Board of Elections. Rather, it is effective upon filing with the State Board of Elections. In this

case, the Withdrawal was filed **after** the committee attempted to fill a vacancy that had not yet occurred. Despite the plain language regarding withdrawals of candidacy, Candidate contends that a vacancy occurs when the committee knows that the candidate intends to withdraw. However, nothing in the Election Code supports such a position.

In his Motion, Candidate cites the case of DuPage County Election Commission v State Board of Elections, 345 Ill. App. 3d 200, 800 N.E.2d 1278 (2nd Dist. 2004). Candidate relies on the DuPage case to establish that a candidate has a right to withdraw his candidacy at any time because a candidate cannot be forced to take office. Candidate is correct in his understanding of the DuPage case but nothing in the DuPage case serves to advance the candidate's case. There is no issue that the candidate had the absolute right to withdraw. No one has questioned that right. Rather, the date upon which the candidate withdrew, thus creating a vacancy, is the sole issue here.

Additionally, Candidate relies on McCarthy v Streit, 182 Ill. App. 3d 1026, 538 N.E.2d 873 (1st Dist. 1989) to establish that the committee is empowered to nominate the same candidate to fill the vacancy in nomination. Again, candidate has addressed an issue not alleged in the objections. The power of the committee to nominate the same candidate twice is not the issue. Whether a vacancy existed for the committee to fill with whatever candidate of their choosing is the issue presented. Accordingly, as with the DuPage case, the McCarthy case does nothing to advance the candidate's position.

Therefore, it is the opinion of this hearing officer that when the nominating committee met on April 6, 2008 to fill a vacancy in nomination, no such vacancy yet

occurred. Accordingly, the committee was without authority to fill such vacancy and its attempt to do so was void, thus rendering the subsequent filing of the candidate's 2nd set of nominating papers invalid. The candidate's Motion to Strike and Dismiss is therefore denied and the objections are sustained in conformity herewith.

In light of the foregoing, it is my recommendation that the nominating papers of Rich Garling be deemed invalid and that the name of candidate Rich Garling for the Democratic nomination to the office of Representative in the General Assembly in the 52nd Representative District not appear on the ballot at the November 4, 2008 General Election.

Respectfully submitted,

Barbara Goodman

Hearing Examiner

June 22, 2008

BEFORE THE DULY CONSTITUTED ELECTORAL BOARD
FOR THE HEARING AND PASSING UPON OF
NOMINATION OBJECTIONS TO
NOMINATION PAPERS OF CANDIDATES
FOR NOMINATION TO THE OFFICE OF REPRESENTATIVE IN THE GENERAL ASSEMBLY, 52nd DISTRICT

Thomas W. Gooch III,	)
	)
Petitioner-Objector,	)
	)
vs	)
	)
Rich Garling,	)
	)
Respondent-Candidate.	)

CHICAGO
08 APR 14 PM 3:47
STATE BOARD OF ELECTIONS

OBJECTOR'S PETITION TO NOMINATION PAPERS FILED APRIL 9, 2008

Thomas W. Gooch III, hereinafter sometimes referred to as the "Objector", states as follows:

The Objector resides at, 23559 N. Old Barrington Road, Lake Barrington, Illinois 60010 in the County of Lake, State of Illinois, and is a duly qualified, legal and registered voter at that address.

The Objector's interest in filing this Petition is that of a voter desirous that the laws governing the filing of nomination papers for the Democratic Party for the office of Representative in the General Assembly 52nd District of the State of Illinois are followed so that only qualified candidates appear on the ballot for said office.

OBJECTION

The Objector makes the following objection to the purported nomination papers filed April 7, 2008 ("Nomination Papers") of Rich Garling, as a candidate for the office of Representative in the General Assembly 52nd District of the State of Illinois ("Office") to be voted for at the General Election on November 4, 2008 ("Election"). The Objector states that the Nomination Papers are insufficient in fact and law for the following reasons.

1. Pursuant to the Illinois Code of Elections (**10 ILCS 5/7-61**), all nominating documents to fill a vacancy in nomination for an Office to which no one was nominated to a major party that was voted upon in the February 5, 2008 Primary Election must be filed within 60 days after the date of the general primary. That date was April 7, 2008.

2. Pursuant to the Illinois Code of Elections (**10 ILCS 5/7-61**), a resolution of a representative committee filling the vacancy in nomination must be filed with the certifying officer within 3 days of the action by which the vacancy was filled.

3. That on March 26, 2008 nominating papers were filed by Rich Garling for the Democratic Party nomination for Representative in the General Assembly for the 52nd District. Those nomination papers were defective in that the Representative Committee met on February 23, 2008 and failed to file until March 26, 2008.

4. That as result of the filing of the Resolution of March 26, 2008 were invalid because they were not within the proper time and this objection should be sustained and the nomination of the Democratic Party for the office of Representative in the General Assembly for the 52nd District should be declared vacant.

5. That on April 6, 2008 the Democratic Party Representative Committee for vacancies in nomination for the 52nd District met and prepared new Nominating Papers to fill a vacancy that on April 6, 2008 did not exist. On April 7, 2008 someone filed with the Illinois State Board of Elections nomination papers a withdrawal of the candidacy of Rich Garling and until that time no vacancy existed. Thus, the vacancy was not properly filled and the Resolution filed by the Representative Committee of the Democratic Party for the 52nd District and all other documents filed with it should be declared void.

6. That as result of the filing of the Resolution of April 7, 2008 filling a vacancy that did not exist, this objection should be sustained and the nomination of the Democratic Party for the office of Representative in the General Assembly for the 52nd District should be declared vacant.

7. That prior to a vacancy being created the Representative Committee of the 52nd District met on April 6, 2008 and purported to fill a vacancy in nomination to the Democratic Nomination for the Office of Representative in the General Assembly for the 52nd District. That a vacancy in nomination for that office did not occur until a withdrawal was filed with the Illinois State Board of Elections on April 7, 2008. The Nomination Papers to which this objection is made were then filed on April 7, 2008. Thus the documents filed are void and the nomination should be declared vacant.

3. The vacancy in nomination was not properly filled on April 7, 2008 and thus new Nomination can not occur because the original vacancy in nomination was not properly filled prior to the deadline required by the Illinois Code of Elections on April 7, 2008. **10 ILCS 5/7-61**

WHEREFORE, The Objector requests:

a) A hearing on the objections set forth herein;

b) An examination by the aforesaid Electoral Board of the official records relating to filling the vacancy in nomination for the 52nd Representative District, to the extent that such examination is pertinent to any of the matters alleged herein;

c) A ruling that the resolutions and other documents filed are insufficient in law and fact, and did not properly fill the vacancy in nomination of the Democratic Party for the 52nd Representative District;

d) A ruling that the name of Rich Garling as a candidate for the Democratic Party shall not appear and not be printed on the ballot for election to the office of Representative in the General Assembly of the 52nd Representative District of the State of Illinois, to be voted for at the General Election to be held November 4, 2008.

Thomas W. Gooch III
23559 N. Old Barrington Road
Lake Barrington, Illinois 60010

VERIFICATION

STATE OF ILLINOIS)
) SS.
COUNTY OF Lake)

The undersigned, being first duly sworn upon oath, depose and state that I have read the above and foregoing OBJECTOR'S PETITION, and that the matters and facts contained therein are true and correct to the best of my knowledge and belief.

Thomas W. Gooch III

Subscribed and sworn to before me,
By Thomas W. Gooch III
This 13 day of April, 2008.

Notary Public

"OFFICIAL SEAL"
Patricia Tichnor
Notary Public, State of Illinois
My Commission Exp. 12/11/2008

John W. Countryman
Attorney for Objector
The Foster & Buick Law Group LLC
2040 Aberdeen Ct.
Sycamore, IL 60178
815-758-6616 Fax 815-756-9506
E-Mail JWCBO@AOL.COM Cell 815-761-3806

John G. Fogarty, Jr.
Attorney for the Objector
Burke, Warren, MacKay & Serritella, P.C.
330 N. Wabash, Suite 2200
Chicago, IL 60611
312-840-7087 Fax 312- 840-7900
E-Mail jfogarty@ burkelaw.com

BEFORE THE DULY CONSTITUTED ELECTORAL BOARD
FOR THE HEARING AND PASSING UPON OF NOMINATION OBJECTIONS TO NOMINATION PAPERS OF CANDIDATES FOR NOMINATION TO THE OFFICE OF REPRESENTATIVE IN THE GENERAL ASSEMBLY FOR THE 52nd REPRESENTATIVE DISTRICT OF THE STATE OF ILLINOIS

GOOCH, III,	)	
	)	
Petitioner-Objector,	)	
	)	
v.	)	08 SOEB GE 503
	)	
GARLING,	)	
	)	
Respondent-Candidate.	)	

CANDIDATE'S MOTION TO STRIKE AND DISMISS THE OBJECTOR'S PETITION

NOW COMES, Respondent-Candidate, by and through his attorneys, and moves to strike and dismiss the Objector's Petition and in support thereof states as follows:

A. Factual Background.

No candidate of the Democratic Party appeared on the ballot in the February 5, 2008 primary election for nomination to the office of Representative in the General Assembly from the 52nd Representative District. As a result, a vacancy in nomination was created. 10 ILCS 5/7-61. On February 23, 2008, the Democratic Representative Committee met, organized, and filled the vacancy in nomination by nominating the Candidate pursuant to Sections 8-5 and 7-61 of the Election Code. The documents reflecting that action were filed with the State Board of Elections on March 26, 2008.

On Sunday, April 6, 2008, the Candidate executed a "Withdrawal of Candidacy" form, thereby terminating his candidacy for the office.

Later on April 6, 2008, the Democratic Representative Committee met and filled the vacancy created by the Candidate's earlier withdrawal by appointing the same Candidate to fill the new vacancy in nomination.

The following day, Monday, April 7, 2008, the Candidate's withdrawal of candidacy was filed with the State Board of Elections at 3:02 pm. *See* Exhibit A, attached hereto. Later that same day at 3:09 p.m., the Resolution filling the vacancy in nomination, Statement of Candidacy and Receipt for the Statement of Economic Interests were filed with State Board of Elections reflecting the Committee's actions to fill the new vacancy in nomination. *See*, Exhibit B, attached hereto.

The Objector filed this Objector's Petition challenging the sufficiency of, apparently, both nominations.

B. The Board Lacks Jurisdiction to Rule Upon the Sufficiency of the First Nomination Because the Candidate has Withdrawn.

In Paragraph 4 of his Petition, the Objector states that because "the filing of the [first] Resolution of March 26, 2008 were invalid because they were not within the proper time and this objection should be sustained..." This paragraph must be stricken because the Electoral Board lacks jurisdiction to rule upon the sufficiency of nomination papers for candidates that have withdrawn.

The Electoral Board is a creature of statute. 10 ILCS 5/10-9. As such, the Electoral Board's powers are limited to those granted by its enabling legislation. *Kozel v. State Board of Elections*, 126 Ill.2d 58 (1998); *Wiseman v. Elward*, 5 Ill.App.3d 249, 283 N.E.2d 282 (1st Dist. 1972). The Electoral Board's powers are enunciated in Section 10-10 of the Election Code, which provides:

> The electoral board shall take up the question as to whether or not the certificate of nomination or nomination papers or petitions are in proper form, and whether or not they were filed within the time and under the conditions required by law, and whether or not they are the genuine certificate of nomination or nomination papers or petitions which they purport to be, and whether or not in the case of the certificate of nomination in question it represents accurately the decision of the caucus or convention issuing it, and in general shall decide whether or not the certificate of nomination or nominating papers or petitions on file are valid or whether the objections thereto should be sustained and the decision of a majority of the electoral board shall be final subject to judicial review as provided in Section 10-10.1.

10 ILCS 5/10-10.

Indeed, in his prayer for relief, the Objector seeks relief that this Electoral Board cannot provide him. He specifically asks that the Candidate's name "not appear and not be printed on the ballot." With regard to the first nomination, the Board can only order the name of a candidate not to appear on the ballot, if the candidate is on the ballot in the first place. Because the Candidate withdrew, his name will already "not appear and not be printed on the ballot."

Because the Candidate has already withdrawn from the first nomination, the Objector's Petition, to the extent it attempts to challenge its sufficiency, is moot and Paragraph 4 of the Complaint should be stricken.

C. The Second Nomination is Valid Because the Withdrawal Created A Vacancy in Nomination.

1. The Committee Properly Filled the Vacancy in Nomination.

The remainder of the Objector's Petition should likewise be stricken and dismissed because it fails to allege a violation of Section of the Election Code that would render the nominating papers invalid.

The gist of the Objector's Petition relates to the following timeline of events:

a. April 6, 2008: Candidate executes withdrawal of candidacy.

b. April 6, 2008: Committee meets and fills vacancy created by withdrawal.

c. April 7, 2008, 3:02 pm: Withdrawal filed.

d. April 7, 2008, 3:09 pm: Resolution filling vacancy filed.

The Objector claims, in Paragraph 6, that although the Candidate executed the Withdrawal of Candidacy before a Notary Public on April 6, 2008, the vacancy in nomination did not exist until the Withdrawal of Candidacy was filed the following day, Monday, April 7, 2008.

In short, the Objector contends that the vacancy in nomination did not occur until the Withdrawal of Candidacy was filed with the State Board of Elections at 3:02 p.m. on April 7, 2008, even though the Withdrawal was signed and executed the previous day. In other words, a vacancy in nomination does not occur when someone actually resigns, but instead occurs only when the paperwork is filed.

The problem with the Objector's Petition is that it is completely unsupported by the statute. Indeed, a plain reading of the applicable sections of the Election Code leads unmistakably to the opposite conclusion. Because this is a legislative office, the filling of vacancies in nomination is governed by Section 8-17 of the Code. 10 ILCS 5/8-17. In turn, that Section provides that vacancies in nomination for legislative offices are to filled "in accordance with the provisions of Section 7-61" of the Code. *Id.*

Section 7-61 sets forth the requirements of a Resolution to Fill a Vacancy in Nomination. In addition to the Candidate's name and address, Section 7-61 specifically

requires the Committee to include "the date on which the vacancy occurred." 10 ILCS 5/7-61. According to the Objector, that date can only be the date that the Resolution is filed with State Board of Elections. If that were true, why would the statute require the committee to include the date the vacancy occurred on the face of the Resolution? The State Board already knows the date it receives the Resolution, but by requiring inclusion of the date the vacancy occurred, the statute recognizes that the two dates are not necessarily the same.

2. The Withdrawal Empowered the Committee to Fill the Vacancy In Nomination.

There can be no dispute that the Candidate has a right to withdraw his candidacy at any time prior to the certification of the ballot for the general election:

> Any person for whom a petition for nomination...has been filed may cause his name to be withdrawn by request in writing, signed by him and duly acknowledged before an officer qualified to take acknowledgments of deeds, and filed in the principal or permanent branch office of the State Board of Elections... not later than the date of certification of candidates for the consolidated primary or general primary ballot. No names so withdrawn shall be certified or printed on the primary ballot." 10 ILCS 5/7-12(9).

In fact, "a candidate who no longer wishes to be a candidate cannot be forced to take office and, therefore, can always withdraw from the election process." *DuPage County Election Comm'rs v. State Bd. of Elections*, 345 Ill.app.3d 200, 800 N.E.2d 1278 (2nd Dist. 2003). In this case, the Candidate merely exercised his absolute right to withdraw his candidacy. There likewise can be no dispute that the Committee was empowered to nominate the same candidate to fill the vacancy in nomination. *McCarthy v. Streit*, 182 Ill.App.3d 1026, 538 N.E.2d 873 (1st Dist. 1989).

A candidate's withdrawal triggers two separate events: (1) the appropriate committee of the political party can meet and fill the vacancy in nomination; and (2) the election authority must remove the candidate's name from the ballot. Needless to say, a committee cannot fill a vacancy in nomination until it knows it exists, and likewise, an election authority cannot remove a candidate's name until it knows that the candidate has withdrawn.

Objector argues that once a Committee knows that a vacancy in nomination exists, it is powerless to exercise its statutory duties to fill the vacancy until after the State Board of Elections has been notified to remove the first candidate's name from the ballot. The Committee's statutory authority to fill the vacancy, however, is in no way dependent on the State Board's being notified of the withdrawal. In fact nothing requires the State Board to do anything other than remove the withdrawn candidate from the ballot. If the Committee's authority to act arose only upon the State Board's receipt of the withdrawal, the statute would undoubtedly impose some duty on the State Board to notify the Committee so that it could act to fill the vacancy. This is especially true due to the strict deadlines for Committee action required by Section 7-61.

D. The Voters are Entitled to an Election for the Office of Representative in In the General Assembly.

In Illinois, there is an overriding interest in ballot access, which allows the district's voters to choose the officials who will govern them. See *Bryant v. Cook County Officers' Electoral Board*, 553 N.E.2d 25 (1st Dist. 1985). In additon, Illinois Courts zealously protect the right to ballot access. *Briscoe v. Kusper*, 435 F.2d 1046 (7th Cir. 1971)("Access to official election ballots represents an integral element in effective exercise and implementation of [freedoms of speech and association]"); *Bacon v.*

Holtzman, 264 F.Supp. 120 (N.D. Ill. 1967)(Illinois Election Code provisions should be interpreted liberally to permit candidates to qualify); *Sullivan v. County Officers Electoral Bd. of DuPage County*, 225 Ill.App. 3d 691, 588 N.E.2d 475 (2d Dist. 1992)(access to position on the ballot is a substantial right which should not lightly be denied).

In this case, the Objector would like to deprive the voters of 52nd Representative District not just a meaningful choice, but *any* choice at the election. Here, the Democratic Representative Committee filled a vacancy in nomination in a manner fully consistent with provisions of the Election Code. Accordingly, the Objector's Petition should be denied.

WHEREFORE, for the foregoing reasons, the Respondent-Candidate respectfully prays that the Motion to Strike and Dismissed be granted.

Respectfully submitted,
Respondent-Candidate

By: _____
One of his Attorneys

Michael J. Kasper
222 N. LaSalle, Suite 300
Chicago, IL 60601
312.704.3292
312.368.4944 (fax)

10 ILCS 5/7-12, 10-7

Suggested
Revised July, 2004
SBE No. P-25

WITHDRAWAL OF CANDIDACY

I, Rich Garling (Name of Candidate) being first duly sworn, say that I reside at 3310 Greenwich Ln. in the City/Village of Island Lake, County of McHenry and State of Illinois; that I am the same person whose name is subscribed hereto in whose behalf nomination papers were filed for the office of Representative in the General Assembly, 52nd district, Democratic Party, and I hereby withdraw as a candidate for said office and respectfully request that my name **NOT** be printed upon the official ballot as a candidate for the General Election to be held on November 4, 2008 (date of election).

SIGNATURE OF CANDIDATE

08 APR -7 PM 3:02

STATE OF Illinois)
) SS.
COUNTY OF McHenry)

I, NANCY SHEPHERDSON, a Notary Public, in and for said County and State aforesaid, do hereby certify that RICH GARLING personally known to me to be the same person whose name is subscribed to in the foregoing withdrawal, appeared before me in person this day and acknowledged that he/she signed the said instrument as his free and voluntary act of his/her own will and accord.

Signed and sworn to (or affirmed) by RICH GARLING before me on
(Name of Candidate)

4/6/08.
(insert month, day, year)

(SEAL)

Nancy Shepherdson
(Notary Public's Signature)

Withdrawal is filed with the office where original nominating petition or certificate of nomination was filed. Upon receipt, the local election official must issue amended certification to each election authority who prepares ballots for the political subdivision.

"OFFICIAL SEAL"
NANCY SHEPHERDSON
NOTARY PUBLIC STATE OF ILLINOIS
COMMISSION EXPIRES 10/22/09

STATE OF ILLINOIS
STATE BOARD OF ELECTIONS

This receipt is an unofficial document intended for informational purposes only. If there are any inconsistencies between this receipt and the documents filed, the documents filed will take precedence.

Receipt is hereby acknowledged of the following documents received in the office of the State Board of Elections:

Statement of Candidacy

Receipt for Statement of Economic Interest

Nominating Petition

For the following candidate:

Name:	RICH GARLING
Address:	3310 GREENWICH LANE ISLAND LAKE, IL 60042
Party:	DEMOCRATIC
Office:	REPRESENTATIVE IN THE GENERAL ASSEMBLY FIFTY-SECOND REPRESENTATIVE DISTRICT
Date/Time Filed:	4/7/2008 at 3:09 PM

Filing Receipt

Printed: 4/7/2008 3:11 PM

BEFORE THE DULY CONSTITUTED ELECTORAL BOARD FOR THE HEARING AND PASSING UPON OF OBJECTIONS TO NOMINATION PAPERS OF A CANDIDATE FOR ELECTION TO THE OFFICE OF REPRESENTATIVE IN THE GENERAL ASSEMBLY FOR THE 52nd REPRESENTATIVE DISTRICT OF THE STATE OF ILLINOIS

Gooch, III,	)	
	)	
Petitioner-Objector,	)	
	)	**No. 08 SOEB 503**
v.	)	
	)	
Garling,	)	
	)	
Respondent-Candidate.	)	
	)	

OBJECTOR'S RESPONSE TO MOTION TO STRIKE AND DISMISS

Now comes Thomas Gooch, III, (hereinafter referred to as the "Objector"), by and through his attorneys, and for his Response to the Respondent-Candidate's Motion to Strike and Dismiss, states as follows:

Background

No candidate appeared on the Democratic Primary ballot on February 5, 2008, for the office of Representative in the General Assembly from the 52nd Representative District. The Election Code provides 60 days for a political party to fill a vacancy in nomination where no candidate of that party appeared on the primary election ballot. 10 ILCS 5/7-61. Thus, the representative committee for the 52nd representative district had until April 7, 2008 to make a valid appointment to fill that vacancy in nomination. The representative committee for the 52nd district did purport to meet, organize, and fill that vacancy by nominating the Candidate on February 23, 2008. However, the Candidate's nominating papers were not filed for over one month, not until March 26, 2008.

On April 6, 2008, the Candidate apparently realizing that his nominating papers were filed improperly, executed a "Withdrawal of Candidacy," and then set about re-executing all of his nominating papers. Immediately afterwards, the 52nd district representative committee purports to have then met again on April 6, 2008 to fill this new "vacancy," and re-executed a new Resolution To Fill A Vacancy In Nomination for the Candidate. On Monday, April 7, 2008, at 3:02 p.m., the Candidate's Withdrawal of Candidacy was filed with the State Board of Elections. The Candidate's other re-executed nominating papers were then filed at 3:09 on April 7, 2008.

The Objector has filed this Objector's Petition, alleging that both the original nominating papers, which were filed on March 26, 2008, and the re-executed nominating papers, filed on April 7, 2008, are improper. The Candidate has moved to dismiss this Petition. The Candidate makes the following arguments in his motion to dismiss: (1) that because the Candidate withdrew the original nominating papers, the issue of the sufficiency of the original nominating papers is moot, and this Board has no power to review them; (2) that the Candidate's execution of his withdrawal -- as opposed to its filing -- effectively created a new vacancy in nomination, and (3) the representative committee properly filled that new vacancy.

However, none of the Candidate's contentions have merit. The issue of the sufficiency of the Candidate's original nominating papers and his re-filed papers is well within the jurisdiction of this Board, and the relief sought by the Objector is certainly not moot, as the Candidate continues to desire his name be printed on the General Election ballot. Further, even if the Candidate's initial nomination papers had been proper, which they were not, the Candidate's purported Withdrawal of Candidacy was not effective until it was filed with the State Board on the afternoon of April 7, 2008. Therefore, the representative committee's second resolution to

fill a vacancy in nomination, which was executed on April 6, 2008, was materially inaccurate and therefore invalid.

Argument

A. The Candidate Has Not Filed Her Nominating Papers In Accordance With Section 7-61, And Therefore, They Are Invalid.

The Candidate's initial nomination papers are obviously improper, in violation of the "3 day rule" contained in Section 7-61, which states that "the resolution filling the vacancy shall be sent . . . within three days of the action by which the vacancy was filled." 10 ILCS 5/7-61. The Candidate's initial papers were executed on February 23, 2008, and not filed until March 26, 2008. Realizing that his nominating papers were not in accord with the "3 day rule," the Candidate then attempted to utilize a sham "Withdrawal of Candidacy" to try to meet the 60-day limitation of Section 7-61.

While a post-primary vacancy in nomination may be filled pursuant to Section 7-61 of the Election Code, if the provisions of that Section are not met, no candidate shall appear on the general election ballot. Section 7-61 states, in pertinent part,

> "no candidate of the party for the office shall be listed on the ballot at the general election unless such vacancy is filled in accordance with the requirements of this Section within 60 days after the date of the general primary."

10 ILCS 5/7-61.

Here, the vacancy in nomination was not filled in accordance with Section 7-61 within 60 days after the primary, and therefore, no candidate should be listed on the ballot at the general election. The Candidate's original nominating papers were not sent within three days of the committee's action, and therefore are obviously invalid.

Further, the Committee's second Resolution to Fill a Vacancy in Nomination, executed on April 6, 2008, is also incorrect, because, at the time of execution, no vacancy in nomination

existed. The Candidate's withdrawal of his candidacy was not effective until it was filed with the State Board of Elections on the afternoon of April 7, 2008. At that point -- and not before -- a vacancy existed. Therefore, the purported Resolution to fill a Vacancy in Nomination executed by the Committee on April 6, 2008 was materially incorrect, because the vacancy did not yet exist. In sum, because no valid nominating papers were filed to fill this vacancy within 60 days of the primary election, no candidate for the Democratic Party should appear for this office on the general election ballot.

B. The Board Is Empowered To Evaluate The Sufficiency Of All Of The Nominating Papers Filed By The Candidate.

Contrary to the Candidate's assertion, the Board is empowered to review all of the Candidate's nominating papers, whether filed on March 26, 2008 or on April 7, 2008. Pursuant to Section 10-10 of the Election Code, this Board "in general shall decide whether or not the certificate of nomination or nominating papers or petitions on file are valid . . ." 10 ILCS 5/10-10. In this situation, the Candidate has filed two sets of nominating petitions that are relevant to the validity of the Candidate's candidacy. The fact that the Candidate purported to withdraw his candidacy, which was formalized through his earlier-filed nominating papers does not serve to void those nominating papers. They remain on file at the State Board of Elections, and are therefore obviously and plainly within the ambit of this Board, as they are the purported nomination papers filed within the 60-day limit set forth in Section 7-61.

Moreover, the Candidate argues that because the Candidate executed a "Withdrawal of Candidacy" the relief sought by the Objector -- that the Candidate's name not appear on the general election ballot -- is moot. Obviously, however, because the Candidate who filed March 26, 2008 is the same Candidate who filed on April 7, 2008, such relief is not moot.

C. Assuming For The Sake Of Argument The Candidate's Withdrawal Is Said To Be Effective, The Committee's Second Resolution To Fill A Vacancy In Nomination Is Inaccurate, Because It Was Executed Before The Purported Vacancy In Nomination Existed.

In her motion to dismiss, the Candidate argues that a vacancy in nomination existed as soon as the Candidate executed his Withdrawal of Candidacy, rather than when the document was filed. The Candidate provides no statutory authority for the position, but rather, posits that because a resolution under Section 7-61 requires the date of vacancy to be listed, it must follow that the mere execution of a withdrawal, without its filing, can create a vacancy. The Candidate's position, however, flies in the face of statute and logic. Clearly, a vacancy can be created in situations that do not involve a Withdrawal of Candidacy, so the Candidate's premise is flawed. Further, given the time requirements contained in Section 7-61, recitation of the date on which a vacancy occurred is obviously essential information.

Further, under the Candidate's logic, other documents, such as a Resolution to Fill a Vacancy, would only need to be executed, rather than filed within 60 days, in order to be valid. This, of course, would be problematic for a number of reasons. The filing requirement is important so that statutory compliance can be shown, just the same as in all areas of the law where the date of the doing an action is critical. Transparency demands that documents such as a Withdrawal of Candidacy be filed in order to be effective.

Other relevant provisions in the Election Code require a withdrawal be filed in order to be effective. Notably, in order for a candidate for Representative in the General Assembly to validly withdraw his or her candidacy in advance of the primary election, that candidate must file his or her withdrawal paperwork with the State Board of Elections. Section 8-9(3) states that for a withdrawal to be effective the candidate must "request in writing, signed by him, duly acknowledged before an officer qualified to take acknowledgments of deeds, ***and filed in the***

principal or permanent branch office of the State Board of Elections . . ." 10 ILCS 5/8-9(3)(emphasis added). This pre-primary filing requirement is mirrored by Section 7-12(9) of the Election Code.

Courts must construe the meaning of a statute so that it is consistent with other statutes addressing the same subject matter. *MQ Construction Co. v. Intercargo Ins. Co.*, 318 Ill.App.3d 673, 742 N.E.2d 820 (2nd Dist. 2000). A court should avoid statutory interpretations that lead to absurd results. *In re: D.D.*, 196 Ill.2d 405, 752 N.E.2d 1112 (2001). To construe 7-61 as not requiring a withdrawal to be filed to be effective, whereas filing of a withdrawal is required under Sections 8-9(3) and 7-12(9) would be an absurd, nonsensical interpretation of the statute, further making clear that the Candidate here must have actually filed a Certificate of Withdrawal in order for a vacancy to exist.

In his motion, the Candidate cites the case of *DuPage County Election Commission v. State Board of Elections*, 345 Ill.App.3d 200, 800 N.E.2d 1278 (2nd Dist. 2004) for the proposition that a candidate has an absolute right to withdraw from the election process. However, no one disputes that candidate is free to withdraw from the election process, and there is no dispute that the Candidate has a right to withdraw if she likes. The real issue is compliance with Section7-61, which the Candidate's authority does not address. Similarly, the Candidate cites to the case of *McCarthy v. Streit*, 182 Ill.App.3d 1026, 538 N.E.2d 873 (1st Dist. 1989) for the idea that a committee is empowered to re-nominate the same candidate to fill a vacancy. *McCarthy*, however, addressed nominations to a political office, not a public office, therefore that case is not relevant to the situation here, where a nomination to a public office is at issue.

D. Because The Candidate Seeks To Appear On The General Election By Filling This Post-Primary Vacancy In Nomination, The Candidate's Nominating Papers Must Strictly Comply With Section 7-61 To Ensure The Integrity Of The Ballot.

While it is true that Illinois courts favor ballot access for candidates who wish to run for office, mandatory requirements of the Election Code cannot be circumvented. *Zerante v. Bloom Township Electoral Board*, 287 Ill.App.3d 976 (1st Dist. 1997); *In re: McSparrin*, 352 Ill.App.3d 352 (5th Dist. 2004). The requirements for filling a vacancy in nomination are construed strictly in order to ensure the integrity of the ballot. The Court in *Forcade-Osborn v. Madison County Electoral Board*, 334 Ill.App.3d 756 (5th Dist. 2002) makes clear that the requirements for filling vacancies in nomination must be construed strictly, and provides the rationale for the strict construction. There, the Court stated:

> "Petitioner had three different statutory mechanisms for gaining access to the ballot. Petitioner chose not to subject herself to two of those options, both of which required a showing of 'grass roots' support. Petitioner's nomination was made by just three individuals. Under those circumstances, we cannot fault the legislature for being very specific on the manner in which one's name is placed on the ballot when one has chosen not to follow the 'customary' procedures for nomination. . . . The rules are not hypertechnical as petitioner suggests but are designed to ensure the integrity of the election process in general." *Forcade-Osborn*, 335 Ill.App.3d at 760.

Here, the Candidate is choosing to attempt to be placed on the General Election ballot without a showing of "grass roots" support. Accordingly, the procedures for ballot access must be construed strictly. The Candidate, however, has not filed nomination papers that are merely technically flawed. The only nominating papers on file for the Candidate at the end of business are (1) papers executed on February 23, 2008, but not filed until March 26, 2008, well outside of the three days allowed under 7/61; and (2) papers executed on April 6, 2008 that purport to re-nominate the Candidate to a vacancy that did not exist until April 7, 2008. The Candidate's

failure to meet the fundamental, mandatory requirements of Section 7-61 renders these purported nomination papers legally insufficient.

Accordingly, the Candidate's Motion to Strike and Dismiss should be denied, and the Objector's objections to the Candidates Nominating Papers sustained.

Respectfully submitted,

Thomas W. Gooch, III
Petitioner-Objector

By: One of his Attorneys

John W. Countryman
The Foster & Buick Law Group LLC
2040 Aberdeen Ct.
Sycamore, IL 60178
815-758-6616 Fax 815-756-9506
E-Mail JWCBO@AOL.COM Cell 815-761-3806

John G. Fogarty, Jr.
Burke, Warren, MacKay & Serritella, P.C.
330 N. Wabash, Suite 2200
Chicago, IL 60611
312-840-7087 Fax 312- 840-7900
E-Mail jfogarty@ burkelaw.com

CERTIFICATE OF SERVICE

I, John G. Fogarty, Jr., an attorney, state that I caused copies of the Objector's Response to the Candidate's Motion to Strike and Dismiss The Objector's Petition to be served upon:

Barbara Goodman
Barbara B. Goodman & Associates
400 Skokie Boulevard, Suite 380
Northbrook, Illinois 60062
goodmanlaw1@aol.com

State Board of Elections
Office of the General Counsel
1020 South Spring Street
Springfield, Illinois 62708
Fax: (217) 782-5959

Michael J. Kasper
222 N. LaSalle, Suite 300
Chicago, Illinois 60601
Fax: (312) 368-4944

by e-mail and fax from 330 N. Wabash Avenue, Chicago, Illinois 60611, before the hour of 5:00 p.m. on April 30, 2008.

John G. Fogarty, Jr.

BEFORE THE DULY CONSTITUTED ELECTORAL BOARD FOR THE HEARING AND PASSING UPON OF OBJECTIONS TO THE NOMINATION PAPERS OF CANDIDATES FOR THE OFFICE OF REPRESENTATIVE IN THE GENERAL ASSEMBLY, 52nd REPRESENTATIVE DISTRICT OF THE STATE OF ILLINOIS

Gooch, III,	)	
	)	
Petitioner-Objector,	)	
	)	**No. 08 SOEB 503**
v.	)	
	)	
Garling,	)	
	)	
Respondent-Candidate.	)	
	)	

MOTION FOR LEAVE TO CITE SUPPLEMENTAL AUTHORITY

Now comes the Objector, by and through his attorneys, and moves for leave to cite additional supplemental authority, and in support thereof, states as follows:

1. On Friday, April 25, 2008, the Candidate moved to dismiss the Objector's Petition, and the Objector responded on Wednesday, April 20, 2008.

2. The Hearing Examiner heard argument on Friday, May 2, 2008, regarding the legal issues presented in the motion, and took the matter under advisement.

3. The principal legal issue presented by this case is whether the Representative Committee for the 52nd District may act to fill a vacancy in nomination before the candidate has actually withdrawn, by filing a Certificate of Withdrawal with the proper election authority.

4. This identical issue was argued in the matter of *Powers v. Hall*, Case Nos. 2008 LCEB 12 and 13, before the Lake County Officers Electoral Board. On May 12, 2008, the Lake County Officers Electoral Board issued its Findings and Order in the *Powers v. Hall* case, finding conclusively that a candidate must file a Certificate of Withdrawal with the proper election authority in order to validly withdraw his or her candidacy, and thereby create a vacancy

in nomination. Until that vacancy is created, no action by the representative committee can purport to fill that vacancy.

5. The Lake County Officers Electoral Board's findings and order in the *Powers v. Hall* matter is offered here as additional persuasive authority in this matter.

WHEREFORE, for the foregoing reasons, Objector respectfully prays that the Motion for Leave to Cite Supplemental Authority be granted.

Respectfully submitted,

The Objector

By:_____
One of His Attorneys

John W. Countryman
The Foster & Buick Law Group LLC
2040 Aberdeen Ct.
Sycamore, IL 60178
815-758-6616 Fax 815-756-9506
E-Mail JWCBO@AOL.COM Cell 815-761-3806

John G. Fogarty, Jr.
Burke, Warren, MacKay & Serritella, P.C.
330 N. Wabash, Suite 2200
Chicago, IL 60611
(312) 840-7087
(312) 840-7900 (fax)
jfogarty@burkelaw.com

STATE OF ILLINOIS)
)
COUNTY OF LAKE)

BEFORE THE LAKE COUNTY OFFICERS ELECTORAL BOARD

ROBERT POWERS, Objector	)	
vs.	)	2008 LCEB 12 & 13
TERRY HALL, Democratic Candidate For the Office State Representative- 62nd District. To Be Voted On at the November 4, 2008 General Election	)	

FINDINGS AND ORDER

The Lake County Electoral Board (hereinafter, the "Board"), comprised of Willard R. Helander, Lake County Clerk, acting as Chairperson; Sally D. Coffelt, Lake County Circuit Clerk and Margaret A. Marcouiller, Chief Deputy State's Attorney, Civil Division, sitting by designation of Michael J. Waller, Lake County State's Attorney, as members thereon, convened at 1:00 p.m. on Thursday, April 24, 2008, for the purpose of hearing the objection of ROBERT POWERS (hereinafter, the "Objector"), to the nominating resolution of TERRY HALL, Democratic Candidate for the Office of State Representative for the 62nd District (hereinafter, the "Candidate"), County of Lake, State of Illinois, scheduled to be voted on at the November 4, 2008 General Election. Following distribution of the Lake County Electoral Board Rules of Procedure, a hearing on said objection was begun. The following preliminary maters were noted by the Board.

1. The Candidate's Nomination Papers and the subsequent Objection Petitions were filed with the Office of the State Board of Elections because Candidate HALL is seeking the nomination for a State Representative Office, however, the hearing on the objections is to be

conducted by the Lake County Electoral Board as the 62nd Legislative District falls wholly within Lake County;

2. The Objections to the Nominating Resolutions of TERRY HALL were filed at the Office of the State Board of Elections on April 14, 2008;

3. The appropriate notices of objection and hearing were sent by the Lake County Clerk's Office and served by the Lake County Sheriff's Office pursuant to the Illinois Election Code;

4. The Objector, ROBERT POWERS, was present and was represented by attorney, John Fogarty, who was present;

5. The Candidate, TERRY HALL, was present and was represented by attorney, Philip Baron, who was present.

PRELIMINARY MOTIONS

When the cases were called, the Candidate requested leave to file a written Motion to Strike and Dismiss for each of the two Objection Petitions. Leave to file the motions was granted. The Objector then made an oral Motion to Continue the hearing so that he would have an opportunity to review the Candidate's motions and to file a written response to each motion. Objector's Motion to Continue was granted. The Board agreed to continue the hearing until Wednesday, April 30, 2008, at 10:00 a.m. in the Lake County Building, 6th Floor Conference Room, with the Objector's response to be filed with the Board and sent to the Candidate on Tuesday morning, April 29, 2008.

The Board then recessed the hearing and reconvened on April 30, 2008, at 10:00 a.m. in the Lake County Building 6th Floor Conference Room. Objector POWERS was, again, present as was his attorney, John Fogarty. The Candidate was not present but her attorney, Philip Baron,

was present. The members of the Board and the Candidate acknowledged receipt of the Objector's written responses to the Candidate's Motions to Strike and Dismiss.

The Candidate asked for leave to make an oral motion to challenge the Board's jurisdiction to entertain a hearing on both Objection Petitions. Leave was granted.

The Candidate stated that the Board had no jurisdiction to conduct a hearing on the Objector's two petitions unless it could be established that notice had been provided in compliance with the notice provisions in Section 5/10-8 of the Illinois Election Code. In particular, she noted that Section 5/10-8 states in pertinent part:

> [i]n the case of nomination papers or certificates of nomination, the State Board of Elections, election authority or local election official shall note the day and hour upon which such objector's petition is filed, and shall, not later than 12:00 noon on the second business day after receipt of the petition, transmit by registered mail or receipted personal delivery the certificate of nomination or nomination papers and the original objector's petition to the chairman of the proper electoral board...

10 ILCS 5/10-8.

The Candidate then drew attention to the State Board of Election's cover letters to Lake County Clerk Helander (as the Chairman of the proper electoral board) that accompanied the two respective Objection Petitions, both of which were admitted in evidence as Candidate's Group Exhibit 1. She stated that the cover letters do not "note the day and hour" on which the objections were filed as is required by the statute. She acknowledged that the first page of each Objection Petition contains the date and time stamp, "08 APR 14 PM 3:47." She argued, however, that the word "note" in the statute requires that the day and hour must be included in the cover letter and that the file stamp on the petitions was mere "surplusage."

The Candidate also stated that the documents lacked any indication that they had been mailed "no later than 12:00 noon on the second business day" after the petitions were filed in the State Board of Elections Office. She argued that it must be shown in the cover letters that the Objection Petitions were mailed to the Lake County Clerk no later than 12:00 noon on April 16, 2008. Absent this documentation, there was improper notice which defeated the Board's jurisdiction to hear both Objection Petitions.

The Objector first challenged the Candidate's ability to raise jurisdictional issues at this point in the hearing process. He maintained that this jurisdictional question should have properly been included in the Candidate's written Motion to Strike and Dismiss. Since it was not raised in the written Motion to Strike and Dismiss, it should not be considered by the Board.

Without waiving his timeliness objection, however, the Objector argued in the alternative that the file stamp on the first page of each Objection Petition is adequate to meet the requirement in the statute. He stated that it is not necessary to "note" the day and hour of filing in the State Board of Election cover letters in addition to the stamp on the petitions themselves. He argued that it is, in fact, more appropriate to have the stamp on the petition. Therefore, the Candidate's challenge to the Board's jurisdiction should be dismissed.

The Board determined that it was important to recess briefly to allow the Chairman's assistant an opportunity to retrieve some additional records from the office to determine whether they reflect the time of transmittal by the State Board. Since neither the Objector nor the Board had had the opportunity to prepare for this newly-raised issue, it merited further investigation before final deliberation. Following approximately 20 minutes of recess, the hearing was reconvened.

Present in the hearing room was Ms. Suzanne Denlinger, Executive Assistant in the Elections Department of the Lake County Clerk's Office. In response to a request by Board Chairman Helander, Ms. Denlinger presented the envelope in which the Objection Petitions had been mailed to the Lake County Clerk's Office along with the tracking information. This was admitted as General Exhibit 2. The Board took notice that the only information tracked by the registered mail procedure was that the petitions had arrived in the Lake County Clerk's Office on April 21, 2008 at 11:23 a.m.

Also presented at this time at the request of the Board were copies of the case, Shipley v. Stephenson County Electoral Board, 130 Ill.App.3d 900, 903 (2nd Dist. 1985), in which the Appellate Court determined that the electoral board had jurisdiction to decide an objection where the petitioner received actual notice of the objection and participated in the hearing despite less than strict compliance with the statutory notice requirements. Both the Candidate and Objector were given an opportunity to read the case, after which the hearing resumed.

The Objector stated that, based on the court's ruling in Shipley, it is clear that the notice requirements are directory rather than mandatory and are meant to increase the likelihood of attendance at the hearing. Consequently, even if it could not be shown that the petitions in the instant case were mailed by the State Board of Elections at or before 12:00 noon on April 16, 2008, the Board had jurisdiction to hear the objections.

In response, it was reported that the Candidate did not receive service of the objection petitions until approximately 11:00 p.m. on April 23, 2008, the night before the hearing, when she returned home to find the documents on her doorstep. She also reported that she had received the documents by facsimile from the Lake County Clerk's Office, but there were only

22 pages while the cover page had advised that it was a 23-page document. It was also reported that the Candidate only knew about the existence of the Objection Petitions through "scuttlebutt." She asserted that this was unacceptable notice and service.

The Candidate also stated that the Shipley case involves a tax levy question and does not cite Section 10-8 of the Illinois Election Code and, consequently, is not applicable to the instant situation. Therefore, for all of the above reasons the Candidate argued the Board lacked jurisdiction to hear these petitions.

Following these arguments, Chairman Helander requested Ms. Denlinger to respond to questions from the Board and either of the parties. The witness was sworn and reported on the procedures she implemented after she received the Objection Petition packets from the State Board of Elections on April 21, 2008. She advised that she made copies of the objections for the Board, the Candidate and the Objector. She also responded that, as a courtesy, she called Candidate HALL and informed her by telephone about the petitions. Ms Denlinger also testified that the Candidate requested that Ms. Denlinger mail a copy of the objections to her Mailbox and that the Candidate also requested that a copy of the objections be transmitted to her by facsimile. Witness Denlinger testified that she advised the Candidate that, in addition to mail and facsimile, and pursuant to the statute, the Lake County Sheriff's Office would also be serving a copy of the documents at her residence. Further, Ms. Denlinger said that when she sent the documents by facsimile, she inserted a note on the cover page indicating that if the Candidate did not receive all of the pages, she should notify Ms. Denlinger immediately and the facsimile would be resent. Ms. Denlinger reported that the Candidate never contacted her about any missing pages until

April 24, 2008, the first day of the hearing on the petitions. There were no further questions from the Board or from Objector or Candidate.

PRELIMINARY FINDINGS

Based upon the evidence and the arguments, the Board finds that it does have jurisdiction to hear the objections to the Nominating Resolutions of Candidate HALL:

1. Jurisdictional concerns may be raised at any time during the pendency of a case. Therefore, the Candidate did not waive her ability to challenge the Board's jurisdiction.

2. Section 5/10-8 of the Illinois Election Code requires that the "...State Board of Elections...shall note the day and hour upon which such objector's petition is filed..." 10 ILCS 5/10-8. It is uncontroverted that each of the two Objector's petitions have a date and time stamp on the first page of the Objection Petition affirming that they were filed on April 14, 2008 at 3:47 p.m. Neither of the cover letters from the State Board of Elections accompanying each Objection Petition contain the day and hour that the petitions were filed within the body of the letter, however, the statute does not require that the time and date information be transmitted in a separate cover letter. The date and time stamp on the front page of each of the Objection Petitions satisfies the requirement of Section 5/10-8, that the State Board note the day and hour of the filing of the Objection.

3. Section 5/10-8 of the Illinois Election Code also requires that the State Board of Elections transmit the objection petitions and the nomination papers to the proper election officials by 12:00 noon on the second business day after they have been filed via registered mail or receipted personal delivery. 10 ILCS 5/10-8. It is uncontroverted that the Objector's Petitions and the Candidate's nomination papers were sent to the Lake County Clerk's Office from the

State Board of Elections by registered mail and were received in that office on April 21, 2008 at 11:23 a.m. There was no evidence presented to verify the exact date and time that the documents were mailed by the State Board of Elections.

4. Contrary to the Candidate's contention, Shipley v. Stephenson did involve a challenge to jurisdiction based on the electoral board's failure to give the Candidate notice required under Section 10-8 of the Election Code. Shipley v. Stephenson, 130 Ill.App3d 900 (2nd Dist. 1985) In Shipley, the court found that, while some notice is mandatory under the election statute, "...the manner and method of service prescribed therein is merely directory." Id., at 903. In the instant case, the Candidate received a courtesy phone call; the documents were mailed to her mailbox at her request; she received a copy by facsimile and she received a copy delivered to her residence on April 23rd. She received actual notice. She was present at the first hearing date and filed a Motion to Strike and Dismiss the Objector's Petitions, and she is participating at this continued hearing through her attorney. These facts show substantial compliance with the notice requirement in section 10-8.

Therefore, for the above reasons, the Motion to Dismiss for Lack of Jurisdiction is denied. After denying this relief, the Board indicated that the hearing would proceed and the Board would consider the Motions to Strike and Dismiss on both Objection Petitions together.

The Candidate contended that the Objection Petitions should not be considered together. She explained that the Objector's Petition in 2008 LCEB 12 is in response to the Candidate's nomination papers filed on April 7, 2008 which she then officially withdrew on April 9, 2008. She argued that, as a matter of Black Letter Law, Candidates are permitted to withdraw their nominations and cannot be forced to remain candidates as held in DuPage County Election

Commissioners v. State Board of Elections, 345 Ill.App.3d 200 (2nd Dist. 2003). As a result, once the Candidate withdrew her name, her nomination papers became nonexistent and could no longer be considered by this Board. She further argued that Section 10-10 of the Election Code recites specifically what powers the Board has and consideration of a nomination that has been withdrawn is not included in those enumerated powers. Consequently, she argued that any issues associated with this set of nomination papers are moot and the Board had no authority to rule on the related Objection Petition.

The Objector responded that the first nomination resolution and his associated Objection Petition can and should be considered by the Board. He explained that both sets of nomination papers and the respective objection petitions involve the same individual who filed one set of papers, withdrew them and then filed another set of nomination papers, slightly altered, for the same office. Because both sets of documents involve the same individual seeking the same office, the relief sought by the Candidate is not moot, so the Board could hear both petitions and they should be considered together.

The Board considered these arguments and made further findings as follows:

1. It is uncontroverted that the Candidate filed one set of nomination papers to fill the vacancy in nomination for the Office of 62nd Legislative District Representative with the State Board of Elections on April 7, 2008. She withdrew those papers on April 9, 2008, and, at the same time, filed another set of nomination papers for herself for the same office.

2. Objector POWERS filed Objection Petitions in response to both sets of nomination papers and both Objections were certified to the Board by the State Board of Elections.

Candidate now claims that the objection to her first set of nomination papers which were withdrawn and the Objection to those papers is moot.

3. It is well established that a case is "moot" if no actual controversy exists between the parties or where because of the happening of certain events the court can no longer grant effectual relief. Schumann v. Fleming, 261 Ill.App.3d 1062 (2nd Dist. 1994). Stephens v. Educational Officers Electoral Board, Community College District No. 504, 23 Ill.App.3d 159 (1st Dist. 1992).

4. Here, there is an actual controversy between the parties because, although Candidate HALL withdrew her first set of nominating papers, she subsequently filed another set of nominations papers for the same office. It is uncontroverted that, although she withdrew her nomination at one point in time, she continues to seek nomination to the same office.

5. Even if a reviewing court were to determine that the challenge to the April 7th nominating papers is "technically moot," the court could apply one of two exceptions to the mootness doctrine because either (1) the controversy is capable of repetition yet evading review or (2) the public interest exception suggests that the question is likely to recur and an authoritative determination is desirable for the guidance of public officers.

6. There continues to be a controversy between the parties that is capable of repetition. The controversy between the parties involves issues associated with the Candidate's nomination for the office. It is clearly in the public interest to address these issues and they cannot be resolved reasonably without reviewing both sets of nomination documents and objection petitions.

Therefore, the withdrawn nomination papers and the associated Objection Petition (2008 LCEB 12) are not moot and will be considered together with the subsequently filed nomination documents and the associated Objection Petition (2008 LCEB 13).

SUMMARY OF PROCEEDINGS

After denying the aforementioned oral motion to dismiss alleging that 2008 LCEB 12 is moot, the hearing continued to consider, together, both 2008 LCEB 12 and 13, including the Objection Petitions and the Candidate's remaining Motions to Strike and Dismiss. Both parties stipulated that the rendition of date and times for the Candidate's nomination activities found in the Candidate's Motion to Strike and Dismiss, LCEB 13, are correct as follows:

1. April 2, 2008, 9:05 a.m: Candidate executes withdrawal of candidacy.
2. April 9, 2008, 9:25 a.m: The 62nd Representative District Committee meets and fills vacancy created by withdrawal.
3. April 9, 2008. 4:14 p.m: Candidate's withdrawal filed with the State Board of Elections.
4. April 9, 2008, 4:19 p.m: Candidate filed her nominating papers to fill the vacancy in nomination created by her withdrawal.

Candidate further stipulated that her residence address is "5815 Oxford Circle, Gurnee" and that she maintains a mailbox at "5250 Grand Avenue, # 14, Gurnee."

The Candidate continued to contend that the Board has no authority to rule on the case, 2008 LCEB 12, as the Candidate withdrew her nomination but argued, in the alternative, that the applicable provisions in the Illinois Election Code should be interpreted liberally. She added that there is overriding interest in Illinois in ballot access to allow voters to choose their own public officials.

The Candidate called as a witness William Holland, 535 Monaville Road, Lake Villa, who was present at both meetings involving her selection to fill the vacancy in nomination for the 62nd Legislative District Office. The witness, Holland, was sworn and stated (through direct testimony and cross examination) that he was originally appointed to the selection committee by the Democratic County Central Committee Chairman at the county convention and that he is an elected Democratic Precinct Committeeman. He stated that he attended the second such selection meeting along with Candidate TERRY HALL, Fred Barnett (the other member of the selection committee) and the notary. He continued that they had notice and convened the second selection meeting at about 9:00 a.m. on Monday, April 9, 2008, at the Lake Villa Public Library. He said that Candidate HALL explained to them "the problem" with her first nominating resolution papers. He also stated that they discussed "the logical thing to do" to resolve this "anomaly" in her papers. As a result they accepted Candidate HALL'S withdrawal and then they agreed to re-nominate the Candidate to fill the vacancy. They completed the new paperwork and adjourned by 10:00 a.m.

The Candidate claimed that the language in Section 7-61 of the Code shows that the legislature intended that vacancies can occur at times other than when the withdrawal is filed with the appropriate office. She explained this by pointing to statutory requirements for a resolution to fill a vacancy that state:

> [t]he resolution to fill a vacancy in nomination...shall include, upon its face, the following information: (a) the name of the original nominee and the office vacated; (b) the date on which the vacancy occurred; (c) the name and address of the nominee selected to fill the vacancy and the date of selection.

10 ILCS 5/7-61. She opined that this language supports her argument that the Democratic vacancy in nomination for the 62nd Legislative District occurred when she executed her withdrawal at 9:05 a.m. – not when she filed her withdrawal papers at 4:14 p.m. with the State Board of Elections.

She further maintained that because her withdrawal actually occurred at 9:05 on April 9, 2008 – and not at 4:14 p.m. on that same day -- the Committee was able to meet at 9:25 a.m. to fill the vacancy created by her withdrawal. The Candidate also cited DuPage County Election Commissioners v. State Board of Elections, 345 Ill.App.3d 200 (2nd Dist. 2003) to show that, "...a candidate who no longer wishes to be a candidate cannot be forced to take office and, therefore, can always withdraw from the election process."

The Candidate also supported the selection committee's ability to re-nominate her to fill the vacancy created by her withdrawal of her nomination resolution by citing to McCarthy v. Streit, 182 Ill.App.3rd 1026 (1st Dist. 1989). In McCarthy, the court ruled that an unsuccessful slate of established party caucus candidates could be reinstated as a third party slate. Id., at 1035.

She argued that the Objector is trying to deprive the voters of the 62nd Legislative District from having any choice at the General Election so his Objection Petition should be denied.

The Objector agreed that a Candidate has the right to withdraw his or her nomination but disagreed that the court's ruling in DuPage stands for the proposition that a candidate may withdraw her nomination papers and fix any deficiencies and then resubmit corrected nominating papers–which is exactly what Candidate HALL did in the instant case. She submitted her first nominating resolution papers which contained a mailbox address (5250 Grand Ave., #14, Gurnee) rather than her residence address which is required by Section 5/7-61 of the Code as

detailed in the paragraphs above. This lack of residence address was a fatal deficiency and it rendered her original nominating papers invalid. She then withdrew those papers, added her correct home address (5815 Oxford Circle, Gurnee) and resubmitted her nominating resolution. The Objector contended that this was nothing but an impermissible attempt to circumvent the statutory requirements to fill vacancies in nomination.

The Objector stated that a vacancy did not occur until Candidate HALL filed her official withdrawal with the State Board of Elections. The Objector argued that "execution" of a withdrawal does not constitute withdrawal–it must be filed before it takes effect. In the instant case, the selection committee met to fill a vacancy before the vacancy was created. Even if the committee was authorized to fill Candidate HALL'S vacancy by re-nominating HALL (which it was not) the committee would have had to wait until after the official withdrawal was filed with the State Board of Elections at 4:14 p.m. The Objector argued that Candidate HALL may not be re-nominated to fill her own vacancy. The case that the Candidate cites to support this contention (McCarthy) involves a candidate of a political caucus rather than a public office candidate.

Objector POWERS agreed that Section 5/7-61 of the Illinois Election Code is the applicable statute for determining the procedures to fill vacancies in nomination. 10 ILCS 5/7-61. He added, however, that there are different provisions and deadlines for different vacancy situations. Section 5/7-61 establishes the deadlines for the facts in the instant situation as follows:

> [i]f the name of no established political party candidate was printed on the general primary ballot for a particular office and if no person was nominated as a write-in candidate for such office, a vacancy in

> nomination shall be created, but no candidate of the party for the office shall be listed on the ballot at the general election unless such vacancy is filled in accordance with the requirements of this Section within 60 days after the date of the general primary.

10 ILCS 5/7-61. The language is clear that no candidate may be listed to fill a vacancy in nomination unless the nomination is filed "within 60 days of the general primary election." Even if Candidate HALL were authorized to resubmit her nominating papers (which she was not) she had to have filed her papers within 60 days of the February 5, 2008 General Primary election – or, April 7, 2008. Her second Nominating Resolution was filed on April 9, 2008, which is two days after the deadline. This is in direct contravention of the statutory deadline. The language in the statute referring to the "date of vacancy" contemplates situations such as vacancy because of death or because a candidate is not able or willing to be a candidate and withdraws. In the instant case, it is clear that Candidate HALL does not want to withdraw. She has attempted to re-file her papers because she wants to be a candidate.

For these numerous reasons, the Objector argued that his Objection Petitions should be sustained and Candidate HALL'S name should not appear on the General Election ballot.

FINDINGS

Based upon hearing the testimony and viewing the evidence, the Lake County Electoral Board makes the following findings:

1. Applicable provisions of the Illinois Election Code are found in Sections 5/7-10; 5/7-61 and 5/10-7.

2. In Section 5/7-61, the statute requires that the resolution to fill a vacancy in office,

> shall include on its face...(c) the name and address of the nominee selected to fill the vacancy..." and that it, "...shall be accompanied by a Statement of Candidacy as prescribed in Section 7-10.

10 ILCS 5/7-10. The sworn Statement of Candidacy, shall disclose the residence of the candidate. 10 ILCS 5/7-10. It is uncontroverted that Candidate HALL submitted her first nomination with a sworn Statement of Candidacy that said she resided at a mailbox business address (5250 Grand Ave., #14, Gurnee), rather than her home address. This was a fatal flaw which rendered her first set of nominating papers legally insufficient.

3. It is uncontroverted that Candidate HALL withdrew her candidacy and then filed nominating papers that disclosed her residence address: 5815 Oxford Circle, Gurnee. Because of these facts and the testimony of Witness Holland, it is clear that Candidate HALL withdrew her original – and timely-filed – nomination papers for the purpose of correcting a fatal defect in her address and not because she intended to withdraw completely from her candidacy. She then re-filed her papers with the correct residence address.

4. Section 5/10-7 of the Code governs the withdrawal of candidacies are states in pertinent part:

> [a]ny person whose name has been presented as a candidate may cause his name to be withdrawn from any such nomination by his request in writing ...No name so withdrawn shall be printed upon the ballots under the party appellation or title from which the candidate has withdrawn his name.

10 ILCS 5/10-7. This statutory language clarifies that once a candidate has duly withdrawn his or her name from candidacy he or she is ineligible to be listed on the ballot. Once Candidate HALL officially withdrew her name as a Democratic candidate for the 62nd Legislative District she became ineligible to be listed on the November General Election ballot.

5. The Candidate's second set of nomination papers are invalid because the selection committee met and re-nominated the Candidate before there was a vacancy to fill. The committee met and selected Candidate HALL to fill the vacancy at 9:25 am on April 9, 2008, but HALL did not file her Withdrawal of Candidacy until 4:14 p.m. on April 9, 2008. Section 5/10 provides that a candidate may cause his name to be withdrawn from nomination by his signed and notarized written request "presented to the principal office or permanent branch office of the Board, the election authority or local election official, as the case may be ..." The selection committee had no authority to act before there was an official withdrawal filed with the State Board of Elections so its effort to re-nominate the Candidate was ineffective.

5. Section 5/7-61 of the Election Code also requires that in the case of a vacancy in nomination,

> no candidate of the party for the office shall be listed on the ballot at the general election, unless such vacancy is filled in accordance with the requirements of this Section within 60 days after the date of the general primary.

10 ILCS 5/7-61. The statute clearly states that if the requirements in this section are not met within 60 days, the candidate's name shall not be listed on the general election ballot. It is uncontroverted that Candidate HALL'S second set of nominating papers was filed on April 9, 2008, two days after the 60-day deadline so her second nomination was time-barred.

6. The case cited by Candidate HALL to support her ability to be re-nominated after she withdrew her candidacy, McCarthy v. Streit, 182 Ill.App.3d 1026 (1st Dist. 1989), is not controlling. In McCarthy, the court ruled that a slate of candidates that had not participated in a party caucus election could be reinstated as a third party slate because they had never participated

in the caucus nor had they ever become official nominees or candidates for public office. Id., at 1035. In the instant case, Candidate HALL was selected and filed her nominating papers to become the Democratic candidate for the 62nd State Legislative District. This case does not support negation of the statutory prohibition against refiling nomination papers for the same vacancy after official withdrawal.

Therefore, the Board finds that both of Candidate HALL'S nominating papers, those filed on April 7th and those filed on April 9th, are invalid. The objections in both 2008 LCEB 12 and 2008 LCEB 13 are therefore sustained.

IT IS FURTHER ORDERED that this is a final administrative order with no just reason to delay either its enforcement or appeal.

THE PARTIES ARE FURTHER ADVISED THAT A CANDIDATE OR OBJECTOR AGGRIEVED BY THE DECISION OF THIS BOARD MAY SECURE JUDICIAL REVIEW OF SUCH DECISION IN CIRCUIT COURT. THE PARTY SEEKING JUDICIAL REVIEW MUST FILE A PETITION WITH THE CLERK OF THE COURT WITHIN 10 DAYS OF THE DATE OF THIS DECISION.

WILLARD R. HELANDER
Lake County Clerk
Chairman, Lake County Electoral Board

SALLY D. COFFELT
Circuit Court Clerk
Member, Lake County Electoral Board

MARGARET A. MARCOULLER
Chief Deputy State's Attorney
Member, Lake County Electoral Board

DATED: MAY 12 2008

08 SOEB GE 504

Candidate: Miriam Shabo

Office: State Representative; 80th District

Party: Republican

Objector: Jonathan Karmel

Attorney For Objector: Michael J. Kasper

Attorney For Candidate: John W. Countryman and John G. Fogarty Jr.

Basis of Objection: The Representative Committee (the Committee) failed to file a Certificate of Organization or similar documentation indicating that it was organized as required by the Election Code. The failure to file such Certificate deprives the election authority and the pubic of the necessary evidence that the action taken by the Committee was authorized and lawful. The Certificate of Organization if filed, would have provided the identity and addresses of the Committee officers so that one could verify that the vacancy was filled by authorized officials.

Is the Objection Verified: Yes

Hearing Officer: Barb Goodman

Hearing Officer Findings and Recommendation: The Candidate's Motion to Strike the Objector's Petition on the grounds that the SOEB lacked subject matter jurisdiction to rule on the issue of the Representative Committee's failure to file the Certificate of Organization should be denied. The Objection based on such failure to file should be sustained, the nominating papers should be deemed invalid and Miriam Shabo should not appear on the ballot at the 2008 General Election.

Recommendation of the General Counsel: I concur with the recommendation of the Hearing Officer for the reasons set forth in her Report.

BEFORE THE DULY CONSTITUTED ELECTORAL BOARD
FOR THE HEARING AND PASSING UPON OF OBJECTIONS
TO NOMINATION PAPERS OF CANDIDATES FOR NOMINATION TO
THE OFFICE OF REPRESENTATIVE IN THE GENERAL ASSEMBLY

JONATHON KARMEL	)	
	)	
	)	
	)	
Objector	)	
	)	
-v-	)	08-SOEB-GE 504
	)	
MIRIAM SHABO	)	
	)	
Candidate	)	

HEARING EXAMINER'S REPORT AND RECOMMENDED DECISION

This matter was first heard on April 21, 2008. Objectors appeared through their attorney Michael Kasper and candidate appeared through his attorneys John Fogarty and John Countryman. The parties were given an opportunity to submit preliminary motions. The candidate timely submitted a Motion to Dismiss and the Objector timely submitted a Response to Motion to Dismiss Objection. A hearing was held on the Motion which was dispositive of the issues presented. After the close of the hearing, the

The objector's petition raised one issue. Specifically, the issue presented was whether the failure of the representative Committee to file a Certificate of Organization rendered the resolution to nominate the candidate and the nominating papers invalid.

The facts of the case are not in dispute. On April 7, 2008, a Resolution to Fill a Vacancy in Nomination Occurring after Primary Election was filed with the State Board of Elections. Prior and subsequent thereto, no Statement of Organization was filed with the State Board of Elections.

Candidate moved to strike the objections, alleging that the Electoral Board lacked subject matter jurisdiction to consider an objection for failure to file a certificate of organization. According to Candidate, the Electoral Board's only powers are those set forth in Section 10-10 of the Election Code. In Candidate's view because there was no mandate to review Certificates of Organization, the electoral board lacked the ability to consider them.

Indeed, Section 10-10 sets forth, in pertinent part, the obligation and the scope of authority of an electoral board:

> The electoral board shall take up the question as to whether or not the certificate of nomination or nomination papers or petitions are in proper form, and **whether or not they were filed within the time and under the conditions required by law**, and whether or not they are the genuine certificate of nomination or nomination papers or petitions which they purport to be, and whether or not in the case of the certificate of nomination in question it represents accurately the decision of the caucus or convention issuing it, and in general shall decide whether or not the certificate of nomination or nominating papers or petitions on file are valid or whether the objections thereto should be sustained and the decision of a majority of the electoral board shall be final subject to judicial review as provided in Section 10 -10.1. The electoral board must state its findings in writing and must state in writing which objections, if any, it has sustained.
> 10 ILCS 5/10-10

As the Objector correctly pointed out in his Response to the motion, the Objector's Petition requested that the electoral board determine whether the certificate of nomination was in fact filed under the conditions required by law. Such inquiry is wholly within the scope of the electoral board's authority and candidate's argument that the electoral board lacked subject matter jurisdiction is without merit.

Therefore, the sole issue to resolve was whether the failure to file a certificate of organization is fatal to the subsequent filing of a resolution to nominate a candidate.

The obligation to file a certificate of organization is set forth in Section 8-5 of the Election Code:

> Within 180 days after the primary of each other even-numbered year, each legislative committee and representative committee shall meet and proceed to organize by electing from its own number a chairman, and either from its own number or otherwise such other officers as each committee may deemed necessary or expedient. **Immediately upon competion of organization, the chairman shall forward to the State Board of Elections the names and addresses of the chairman and secretary.** 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. (Emphasis added)

To determine the effect of the failure to file a certificate of organization , a full reading of Article 8 is instructive in determining whether Section 8-5 is mandatory or directory. Of particular importance is Section 8-1 which provides:

> The name of no person nominated by a party required hereunder to make nominations of candidates for members of the general Assembly shall be placed upon the official ballot to be voted at a general election as a candidate unless such person shall have been nominated for such office under the provisions of this Article.

In interpreting Section 8-1 and its relevance to Section 8-5, the court in Carnell v Madison County Officers Election Board, et. al. 299 Ill. App. 3d 419, 701 N.E.2d 548 (5th Appl Dist. 1998) held:

> The Election Code must be read in its entirety and one provision cannot be read in a manner that renders another section meaningless or superfluous.

Thus, as the Carnell court instructs, Section 8-1 and Section 8-5 must be read together to give meaning to both. To require the immediate filing of a Certificate of Organization without consequence for its failure is to ignore the plain meaning of Section 8-1. Conversely, to provide a consequence in Section 8-1 without applying it to Section 8-5 is to wholly ignore Section 8-5. As indicated in Carnell , where

Section 8-5 is violated, Section 8-1 dictates that the nominating papers be rendered invalid.

After the close of the hearing, each party filed motions to cite supplemental authority. Candidate cited Champaign County Electoral Board decisions, copies of which are attached hereto for the proposition that strict compliance with 8-5 is not required. To the extent that these electoral board cases indicate that the filing of a Statement of Organization is not a mandatory prerequisite to the filing of a valid resolution to nominate a candidate, it is the opinion of this hearing examiner that such decision is contrary to law and not controlling here.

Objector filed cited a Recommended Order in the case of Gonzales v Delich issued by Gerald Mullin, hearing officer for the Chicago Board of Elections. Objector further offered the cases of Lyons v Anderson 08 RGA 02 and Flanagan v Shelstrom 08 COEB 55 01 issued by the Cook County Officers Electoral Board. These cases establish that the filing of a Certificate of Organization is a condition precedent to a valid resolution to nominate a candidate.

Accordingly, the motion to dismiss the objections was denied and the objection as to the failure to file a Certificate of Organization was granted.

In light of the foregoing, it is my recommendation that the nominating papers be deemed invalid and that the name of candidate Marion Shabo for the Republican nomination to the office of Representative in the General Assembly in the 80th Representative District not appear on the ballot at the November 4, 2008 General Election.

Respectfully submitted,

Barbara Goodman
Hearing Examiner
June 22, 2008

BEFORE THE DULY CONSTITUTED ELECTORAL BOARD
FOR THE HEARING AND PASSING UPON OF NOMINATION OBJECTIONS TO
NOMINATION PAPERS OF CANDIDATES FOR ELECTION TO THE
OFFICE OF REPRESENTATIVE IN THE GENERAL ASSEMBLY FOR THE 80th
REPRESENTATIVE DISTRICT OF THE STATE OF ILLINOIS

Jonathan Karmel,	)
	)
Petitioner-Objector,	)
	)
v.	)
	)
Miriam Shabo,	)
	)
Respondent-Candidate.	)

CHICAGO
08 APR 14 PM 4:07
STATE BOARD OF ELECTIONS

OBJECTOR'S PETITION

INTRODUCTION

Jonathan Karmel, hereinafter sometimes referred to as the Objector, states as follows:

1. The Objector resides at 132 Graymoor Lane, Olympia Fields, Illinois, 60461, in the 80th Representative District of the State of Illinois, and is a duly qualified, legal and registered voter at that address.

2. The Objector's interest in filing this Petition is that of a voter desirous that the laws governing the filing of nomination papers for the office of Representative in the General Assembly for the 80th Representative District of the State of Illinois are properly complied with, and that only qualified candidates appear on the ballot for said office.

OBJECTIONS

3. The Objector makes the following objections to the purported nomination papers ("Nomination Papers") of Miriam Shabo as a candidate for the office of Representative in the General Assembly for the 80th Representative District of the State of Illinois ("Office") to be voted for at the General Election on November 4, 2008 ("Election"). The Objector states that the Nomination Papers are insufficient in fact and law for the following reasons:

4. Pursuant to State law, political parties, as defined in Section 8-2 of the Illinois Election Code, nominate candidates for the Illinois General Assembly at the Primary Election. In the event that no candidate is nominated by such a political party at the Primary Election, a vacancy in nomination is created that may be filled within 60 days of the Primary Election pursuant to Sections 8-17 and 7-61 of the Election Code.

5. A vacancy in nomination may be filled by the appropriate Representative District Committee of the political party, consisting of the committeemen from the wards and townships with territory in the district (in Cook County) and the County Chairmen of counties with territory in the district (for all other counties).

6. Pursuant to Section 8-5 of the Code, a Representative Committee must meet and organize to elect a Chairmen and Secretary. "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." *Id.*

7. The purported Nomination Papers assert that the Candidate is nominated to fill a vacancy in nomination arising from the failure of the Republican Party to nominate a candidate at the Primary Election. However, the Representative Committee of the Republican Party for the 80th District has never filed a "Certificate of Organization" (or any other documentation) indicating that it has organized as required by the Illinois Election Code.

8. The failure to file a Certificate of Organization, or any other documentation demonstrating that the committee has properly organized, has deprived both the election authorities and the public of any information necessary to determine if the committee's purported action in filling the vacancy was authorized or otherwise permissible.

9. The Certificate of Organization or other evidence of organization is necessary because it provides election authorities and the public the information necessary to identify the names and addresses of the committee's officers, and allows verification that the vacancy was filled by the appropriate officials.

10. Due to the foregoing failure to file a Certificate of Organization, or other evidence of organization, the Nomination Papers are invalid in their entirety.

WHEREFORE, the Objector requests: a) a hearing on the objections set forth herein; b) an examination by the aforesaid Electoral Board of the official records relating to voters in the 80th Representative District, to the extent that such examination is pertinent to any of the matters alleged herein; c) a ruling that the Nomination Papers are insufficient in law and fact, and d) a ruling that the name of Miriam Shabo shall not appear and not be printed on the ballot for election to the office Representative in the General Assembly for the 80th Representative District of the State of Illinois, to be voted for at the General Election to be held November 4, 2008.

OBJECTOR

Address:

Jonathan Karmel
132 Graymoor Lane
Olympia Fields, IL 60461

VERIFICATION

STATE OF ILLINOIS)
) SS.
COUNTY OF Cook)

I, Jonathan Karmel, being first duly sworn upon oath, depose and state that I have read the above and foregoing OBJECTOR'S PETITION, and that the matters and facts contained therein are true and correct to the best of my knowledge and belief.

Subscribed and sworn to before me
by Jonathan Karmel
this 14th day of April, 2008.

Notary Public

Official Seal
Dorene M Egan
Notary Public State of Illinois
My Commission Expires 06/16/08

BEFORE THE DULY CONSTITUTED ELECTORAL BOARD FOR THE HEARING AND PASSING UPON OF OBJECTIONS TO NOMINATION PAPERS OF CANDIDATES FOR NOMINATION TO THE OFFICE OF REPRESENTATIVE IN THE GENERAL ASSEMBLY, 80th DISTRICT

Jonathan Karmel,	)	
	)	
Petitioner-Objector,	)	
	)	**08 SOEBGE 504**
v.	)	
	)	
Miriam Shabo,	)	
	)	
Respondent-Candidate.	)	

Candidate's Motion to Strike and Dismiss The Objector's Petition

Now Comes the Respondent-Candidate, Miriam Shabo, by and through her attorneys John W. Countryman and John G. Fogarty, Jr., and moves to strike and dismiss the Objector's Petition filed herein for the following reasons:

1. The only claim contained in the Objector's Petition is that the Representative Committee for the 80th District failed to file a Certificate of Organization. The Objector takes no issue with the Candidate's Statement of Candidacy, Resolution to Fill a Vacancy in Nomination, or any other nominating paper.

2. However, this Board lacks subject matter jurisdiction to consider an objection for the failure to file a certificate of organization of the Representative Committee of the 80th District. The Electoral Board is a creature of statute. 10 ILCS 5/10-9. Accordingly, the Electoral Board has only the limited powers granted it by statute. *Kozel v. State Board of Elections*, 126 Ill.2d 58 (1998). The Electoral Board's powers are set forth in Section 10-10 of the Election Code, which provides, in pertinent part:

> The electoral board shall take up the question as to whether or not the certificate of nomination or nomination papers or petitions are in proper form, and whether or not they were filed within the time and under the conditions required by law, and whether or not they are the genuine certificate of nomination or nomination papers or petitions which they purport to be, and whether or not in the case of the certificate of nomination in question it represents accurately the decision of the caucus or convention issuing it, and in general shall decide whether or not the certificate of nomination or nominating papers or petitions on file are valid or whether the objections thereto should be sustained and the decision of a majority of the electoral board shall be final subject to judicial review as provided in Section 10- 10.1. The electoral board must state its findings in writing and must state in writing which objections, if any, it has sustained.

10 ILCS 5/10-10.

The electoral board's mandate does not include review of the Certificate of Organization of a Representative Committee.

3. Even if the Electoral Board did have jurisdiction to review the Certificate of Organization of a Representative Committee, that Committee's failure to timely file a Certificate of Organization does not invalidate a Candidate's nominating papers. A vacancy in nomination that exists under Section 5/7-61 of the Election Code -- which is the operative Code provision here -- must be filled according to the requisites of Section 5/7-61, which sets forth the only criteria for filling a vacancy in nomination. Notably, Section 5/7-61 contains no requirement that a Certificate of Organization must be filed in order for a Candidate's nomination papers to be valid.

4. Rather, the general requirement that a Representative Committee file a Certificate of Organization is found in Section 5/8-5 of the Election Code, and merely requires the Chairman of the Committee to forward the names and addresses of the Chairman and Secretary of the Representative Committee to the State Board of Elections. 10 ILCS 5/8-5. This requirement is directory, rather than mandatory. The Illinois Supreme Court has held that, before a provision in the Election Code will be found to be mandatory, rather than directory, it

must "contribute substantially to the integrity of the election process." *Craig v. Peterson*, 39 Ill.2d 191, 196 (1968). The fact that there is no separate document on file listing the names and addresses of the Chairman and Secretary of the Representative Committee for the 80th District in no way impairs the ability of the voting public to see all of the relevant information associated with the Candidate's bid to fill the vacancy in nomination under Section 7-61. Accordingly, a Certificate of Organization does not "contribute substantially to the integrity of the election process," and the requirement that one be filed must be seen as directory, not mandatory.

5. Further evidence that the Certificate of Organization requirement is merely directory is the fact that a Representative Committee is not even required to organize until 180 days after the primary, which, this year, occurred on February 5, 2008.

6. Similarly, the alleged failure of a political party official to forward a list of names to the State Board of Elections is not sufficient grounds to deny a candidate access to the ballot under the Constitution of the United States and the Constitution of the State of Illinois.

7. For all of these reasons, the Objector's Petition fails to state a legal or cognizable basis to invalidate the Candidate's nomination papers. The Candidate respectfully requests this Motion to Strike and Dismiss be granted.

Respectfully submitted,

Respondent-Candidate

By: _____
One of her Attorneys

John W. Countryman
The Foster & Buick Law Group LLC
2040 Aberdeen Ct.
Sycamore, IL 60178
815-758-6616 Fax 815-756-9506
E-Mail JWCBO@AOL.COM Cell 815-761-3806

John G. Fogarty, Jr.
Burke, Warren, MacKay & Serritella, P.C.
330 N. Wabash, Suite 2200
Chicago, IL 60611
312-840-7087 Fax 312- 840-7900
E-Mail jfogarty@ burkelaw.com

CERTIFICATE OF SERVICE

I, John G. Fogarty, Jr., an attorney, state that I caused copies of the Candidate's Motion to Strike and Dismiss The Objector's Petition to be served upon:

Barbara Goodman
Barbara B. Goodman & Associates
400 Skokie Boulevard, Suite 380
Northbrook, Illinois 60062
goodmanlaw1@aol.com

State Board of Elections
Office of the General Counsel
1020 South Spring Street
Springfield, Illinois 62708
Fax: (217) 782-5959

Michael J. Kasper
222 N. LaSalle, Suite 300
Chicago, Illinois 60601
Fax: (312) 368-4944

by e-mail and fax from 330 N. Wabash Avenue, Chicago, Illinois 60611, before the hour of 5:00 p.m. on April 25, 2008.

John G. Fogarty, Jr.

BEFORE THE DULY CONSTITUTED ELECTORAL BOARD
FOR THE HEARING AND PASSING UPON OF NOMINATION OBJECTIONS TO
NOMINATION PAPERS OF CANDIDATES FOR ELECTION TO THE
OFFICE OF REPRESENTATIVE IN THE GENERAL ASSEMBLY FOR THE 80th
REPRESENTATIVE DISTRICT OF THE STATE OF ILLINOIS

Jonathon Karmel,	)	
	)	
Petitioner-Objector,	)	
	)	
v.	)	08-SOEB-GE 504
	)	
Miriam Shabo,	)	
	)	
Respondent-Candidate.	)	

RESPONSE TO MOTION TO DISMISS

NOW COMES Objector, Jonathon Karmel, and in response to the Motion to Dismiss the Objector's Petition states as follows:

A. The Electoral Board has Authority to Rule Upon Compliance with the Mandatory Provisions of Section 8-5 of the Election Code.

The Candidate's Motion to Strike and Dismiss the Objector's Petition makes two false assertions. First, the Candidate claims that the Electoral Board has no authority to determine compliance with Section 8-5 of the Election Code. 10 ILCS 5/8-5. Second, the Candidate contends that, even if the Electoral Board does have jurisdiction, the provisions of Section 8-5 are directory, and not mandatory. Because both of these assertions are incorrect, the Motion to Strike and Dismiss should be denied.

B. The Electoral Board has Jurisdiction to Determine Compliance with Section 8-5.

In her Motion to Strike, the Candidate challenges the Electoral Board's jurisdiction to hear this Objector's Petition. Specifically, the Candidate claims that the

Electoral Board does not have jurisdiction over this matter because it involves the process of filling a vacancy in nomination created when no candidate appeared on the ballot at the primary election. The Candidate's Motion should be denied because his contention is legally incorrect, and is directly contrary to both the statute and several published opinions of the Illinois Appellate Court.

The Candidate is correct that the Electoral Board is a creature of statute. 10 ILCS 5/10-9. As such, the Electoral Board's powers are limited to those granted by its enabling legislation. *Kozel v. State Board of Elections*, 126 Ill.2d 58 (1998); *Wiseman v. Elward*, 5 Ill.App.3d 249, 283 N.E.2d 282 (1st Dist. 1972). The Electoral Board's powers are enunciated in Section 10-10 of the Election Code, which provides:

> The electoral board shall take up the question as to whether or not the certificate of nomination or nomination papers or petitions are in proper form, and whether or not they were filed within the time and under the conditions required by law, and whether or not they are the genuine certificate of nomination or nomination papers or petitions which they purport to be, and whether or not in the case of the certificate of nomination in question it represents accurately the decision of the caucus or convention issuing it, and in general shall decide whether or not the certificate of nomination or nominating papers or petitions on file are valid or whether the objections thereto should be sustained and the decision of a majority of the electoral board shall be final subject to judicial review as provided in Section 10-10.1.

10 ILCS 5/10-10. In this case, the Objector's Petition asks the Electoral Board to take up the question of whether the nomination papers were filed "under conditions provided by law" and whether "the nominating papers are valid." The Objector simply requests a

ruling that the nomination papers are invalid because they were not file under the conditions provided by law.

Because this case involves a vacancy in nomination, it is governed by Section 7-61 of the Election Code. 10 ILCS 5/7-61.1 Section 7-61 specifically addresses the Electoral Board's role in reviewing attempts to fill vacancies in nomination:

> The provisions of Section 10-8 through 10-10.1 relating to objections to certificates of nomination and nomination papers, hearings on objections, and judicial review, shall apply to and govern objections to resolutions for filling a vacancy in nomination.

10 ILCS 5/7-61. Thus, the Election Code specifically contemplates that the Electoral Board will adjudicate objections to nominations arising from the filling of vacancies in nomination.

The Candidate's Motion claims that the Electoral Board's inquiry is limited to the Resolution to fill a vacancy in nomination. For this incorrect proposition, Objector cites no authority – and indeed there is none. On the contrary, Objector's Petition is contrary to several reported decisions.

First, in *Carnell v. Madison County Elec. Bd.*, 299 Ill.App.3d 419, 701 N.E.2d 548 (5th Dist. 1998), the Court affirmed an electoral board decision invalidating a representative committee's attempt to fill a vacancy in nomination where the committee did not properly organize as required by Section 8-5 of the Election Code. In *Carnell*, the Court held that the organizational provisions of Section 8-5 were mandatory and the

committee's failure to adhere to those provisions rendered its later attempt to fill a vacancy in nomination pursuant to Section 7-61 invalid. *Id.* at 552-553.

This case is virtually the same as *Carnell*. In both cases, the committee failed to comply with the mandatory organizational procedures of Section 8-5, but nonetheless attempted to fill a vacancy in nomination pursuant to Section 7-61. In *Carnell*, the Appellate Court ruled that the failure to comply with Section 8-5 rendered its action under Section 7-61 invalid.

In addition, the Fourth District Appellate Court invalidated the action of a representative committee in filling a vacancy in nomination because one of the Committee members was not notified of the meeting at which the committee organized and then filled a vacancy in nomination. *Graham v. State Officers Elec. Bd.*, 269 ill.App.3d 609, 646 N.E.2d 1357 (4th Dist. 1995)

Thus, it is well settled that electoral boards have jurisdiction over matters involving the organization and procedures followed by representative committees in filling vacancies in nomination. The Candidate's unsupported argument that this Board's authority is limited to the resolution filling the vacancy in nomination has no legal support, either statutory or judicial, and should be rejected.

C. The Provisions of Section 8-5 are Mandatory.

The Candidate incorrectly claims that the provisions of Section 8-5 are directory, and not mandatory. Section 8-5 of the Election Code governs the membership, organization and procedures that legislative and representative district committees must follow in order to conduct their business. 10 ILCS 5/8-5. The statute sets forth the

membership of each committee: In Cook County, the political party's elected Ward and Township committeeman with territory in the appropriate legislative or representative district; and outside of Cook County the committee consists of the County chairman, and two additional members of the county central committee of the applicable political party. *Id.*

After the primary election (where the members of the committee are elected), the Committee must take a few simple steps to organize to begin conducting business. First, the Committee must meet (the outgoing chairman of the committee notifies the members of the time and place of the meeting) and select a chairman and other officers. *Id.* The chairman of the committee must be one of the committee members, but any additional officers do not need to be committee members. *Id.*

Once the committee has elected its officers it must "immediately" forward the names and addresses of the committee's chairman and secretary to the State Board of Elections. *Id.* The format of this required information is popularly referred to as a "Statement of Organization." In this case, the purported Committee did not properly organize because it never forwarded to the State Board of Elections the names and addresses of the chairman and secretary, through a Statement of Organization or any other method, as required by Section 8-5. *Id.* As a result, the Committee never properly completed the necessary steps to organize. Because the Committee did not properly organize, it had no authority to conduct business and any purported actions it claims to have taken are invalid.

There is no dispute that a properly organized committee has the authority to fill vacancies in nomination pursuant to Section 7-61. *See* 10 ILCS 5/8-17 ("Vacancies in nomination occurring under this article shall be filled by the appropriate legislative or representative committee in accordance with the provisions of Section 7-61 of this code."). However, when committee fails to satisfy the simple organizational procedures of Section 8-5, any attempts to fill a vacancy in nomination pursuant to Section 7-61 are invalid. *Carnell v. Madison County Officers Elec. Bd.*, 299 Ill.App.3d 419, 701 N.E.2d 548 (5th Dist. 1998).

In *Carnell*, the Court affirmed the decision of the Electoral Board invalidating an attempt by a representative committee to fill a vacancy in nomination where the committee was not constituted in the manner provided by Section 8-5 (the same section at issue in this case) of the Election Code. *Id.* at 551. The Chairman of the Madison County Republican Party appointed two individuals to serve with him on the Representative District Committee without selection by the County Central Committee in violation of Section 8-5. *Id.* The Court concluded that the provisions of Section 8-5 are mandatory, and that failure to comply with those provisions invalidated Representative District Committee's attempt to fill a vacancy in nomination. *Id.* at 552-553.

Election Code provisions are deemed mandatory when: (1) the Election Code provides a sanction for noncompliance; and (2) they protect the integrity of the election process. *Id.* at 552. As the Court found in *Carnell*, Section 8-5 plainly has a sanction for noncompliance. *Id.* Section 8-1, provides:

> The nomination of all candidates for members of the General Assembly by all political parties ... shall be made

> in the manner provided in this Article 8 and not otherwise. The name of no person ... shall be placed upon the official ballot to be voted at the general election as a candidate unless such person shall have been nominated for such office under the provisions of this Article 8.

10 ILCS 5/8-1. In *Carnell*, the Court found that because the committee members were not properly selected, the nomination was not made in accordance with Section 8-5. As a result of the violation of Section 8-5, the Court concluded that the sanction of Section 8-1 required invalidation of the nomination. *Id.* at 552-553.

Here, the Committee likewise failed to comply with Section 8-5 by failing to notify the State Board of Elections, and thus the public, of the names and addresses of the Committee's officers. As a result of this violation, just as in *Carnell*, the sanction of Section 8-1 requires invalidation of the nomination.

Not only must the nomination fail because of the sanction of Section 8-1, but the notification provisions of Section 8-5 are important in protecting the integrity of the election process. In this instance, the importance of forwarding the names and addresses of the committee's officers to the State Board of Elections to the protection of the election process is readily apparent. The disclosure of the names and addresses of the committee's officers is the only public disclosure of the identity of the committee officers. Without such disclosure, the public has absolutely no ability to determine if the actions taken by the committee were made by those individuals authorized to do so.

For example, if the committee is not required to publicly disclose the names and addresses of its officers, there can be no way for the public to know if the actions taken by a committee were legally authorized. In this case, the Committee purported to fill a

vacancy in nomination for the office of Representative in the General Assembly pursuant to Section 7-61 of the Election Code. If the resolution were signed by "Smith" and "Jones" there would be no way for anyone to know whether that action were taken by the appropriate officials.

The fact that some signatures appear on the Resolution to Fill the Vacancy in Nomination is of no moment. A resolution to appoint someone to the ballot signed by Smith and Jones does not adequately inform the public that the action was appropriate. Without the addresses, the public has no way of knowing that the Smith and Jones who signed the resolution were authorized officers of the committee and not Smith and Jones from a rival political organization who live across town, or for that matter, across the country.

In addition, the Committee's purported action is not merely a ministerial or administrative act. Here, the Committee attempted to nominate a candidate to appear on the General Election ballot for an office created by the Illinois Constitution. That ballot will be presented to tens of thousands of voters in a State administered election. Recognizing the significance of this action, the General Assembly provided a mechanism, through Section 8-5, empowering the public to know whether that action was legal and taken only by individuals authorized to do so.

Indeed, the General Assembly not only called for this public disclosure, but also specifically empowered the public to take action against unauthorized actions by making this nomination process subject to the objection process of Section 10-8. *See* 10 ILCS 5/7-61; 10-8. Here, it makes no sense that the public would be empowered to file an

objector's petition against this nomination process if committee were to be excused from providing the public with the information necessary to determine whether a basis for such an objection exists. *See Carnell*, 701 N.E.2d at 552 ("The Election Code must be read in its entirety, and one provision cannot be read in a manner that renders another section meaningless or superfluous.").

In addition, *Peoples Independent Party v. Petroff*, 191 Ill.App.3d 706, 548 N.E.2d 145 (5th Dist. 1989), does not support the Candidate's position. Not only, does *Petroff* involve a different Article of the Election Code, but it is also factually distinguishable.

In *Petroff*, the Court addressed the provision of Article 10 provision that a new political party, which was created by a petition, file the names and addresses of party officers authorized to fill vacancies in nomination with election authority. In *Petroff*, the Court properly concluded that the officer's names and addresses provision was directory because that provision related to the authority to fill *future* vacancies. In other words, because the new party nominees were submitted with the petition, the officers had not taken any action at all, but were simply empowered to do so in case a vacancy in nomination arose at a later date.

In this case, in contrast, the purported committee has already acted. The officers of this committee are not merely empowered to take future action, but they have already purported to do so. If this provision is directory, as Section 10-5 was in *Petroff*, the public will have no way to determine if the committee's action was authorized and proper. With that distinction in mind, it is easy to understand why the *Carnell* Court held that the organizational provisions of Section 8-5 are mandatory.

This case is virtually the same as *Carnell*. In both cases, the committee failed to comply with the mandatory organizational procedures of Section 8-5, but nonetheless attempted to fill a vacancy in nomination pursuant to Section 7-61. In *Carnell*, the Appellate Court ruled that the failure to comply with Section 8-5 rendered its action under Section 7-61 invalid.

WHEREFORE, for the foregoing reasons, Objector respectfully prays that the Motion to Dismiss be denied.

Respectfully submitted,
Objector

By: _____
One of Objector's Attorneys

Michael J. Kasper
222 N. LaSalle, Suite 300
Chicago, IL 60601
312.704.3292
312.368.4944 (fax)

BEFORE THE DULY CONSTITUTED ELECTORAL BOARD
FOR THE HEARING AND PASSING UPON OF NOMINATION OBJECTIONS TO
NOMINATION PAPERS OF CANDIDATES FOR ELECTION TO THE
OFFICE OF REPRESENTATIVE IN THE GENERAL ASSEMBLY FOR THE 80th
REPRESENTATIVE DISTRICT OF THE STATE OF ILLINOIS

Jonathon Karmel,	)	
	)	
Petitioner-Objector,	)	
	)	
v.	)	08-SOEB-GE 504
	)	
Miriam Shabo,	)	
	)	
Respondent-Candidate.	)	

MOTION FOR LEAVE TO FILE SUPPLEMENTAL AUTHORITY

NOW COMES Objector, by and through her attorneys, and moves for leave to file additional supplemental authority, and in support thereof, states as follows:

1. On Friday, April 25, 2008, the Candidate moved to dismiss the Objector's Petition, and the Objector responded on Wednesday, April 30, 2008.

2. The Hearing Examiner heard argument on Friday, May 2, regarding the legal issues presented in the Motion, and took the matter under advisement.

3. Also on May 2, 2008, Chicago Officers Electoral Board Hearing Examiner Gerald Mullin issued a Recommended Order in a related matter, *Gonzales v. Delich*, 08 EB-RES-03, ruling upon the same legal issues as presented in this matter.

4. Hearing Examiner Mullin's ruling was not published at the time the Objector filed her Response to the Motion to Dismiss, and Objector's counsel was unaware of the Recommended Order at the time of oral argument on May 2.

5. The Recommended Order, attached hereto, in *Gonzales v. Delich* is offered as additional persuasive authority in this matter.

Wherefore, for the foregoing reasons, Objector respectfully prays that the Motion for Leave to File Supplemental Authority be granted.

Respectfully submitted,
Objector

By: _____
One of her attorneys

Michael J. Kasper
222 N. LaSalle, Suite 300
Chicago, IL 60601
312.704.3292
312.368.4944 (fax)

ATTACHMENT

BEFORE THE DULY CONSTITUTED ELECTORAL BOARD FOR THE HEARING AND PASSING UPON NOMINATION OBJEVTIONS TO THE OFFICE OF REPRESENTATIVE IN THE GENERAL ASSEMBLY FOR THE SECOND REPRESENTATIVE DISTRICT OF THE STATE OF ILLINOIS

Flavi Gonzales, Petitioner –Objector	)	
v.	)	08-EB-RES-03
Janet A. Delich, Respondent Candidate	)	

RECOMMENDED ORDER

This contest involves a construction of whether a provision of 10 ILCS 5/8-5 is mandatory, or merely directory in its requirement that the chairman of a committee elected from a political party legislative and representative committee in filling a vacancy for nomination of a Representative to the General assembly shall "[I]mmediately notify the State Board of Elections, the names and addresses of the chairman and secretary." Article 8 of the Election Code, in its entirety, [10 ILCS 5/8-1 et seq.,] provides the structure for the nomination of all candidates for the General Assembly by all political parties. That section of the Election Code further provides,

> The name of no person nominated by a party required hereunder to make nominations of candidates for members of the General Assembly shall be placed upon the official ballot to be voted at general election as a candidate unless such person shall have been nominated for such office under the provisions of this article 8.

Section 8.5 [10 ILCS 5/8-5] provides the plan by which legislative or representatives committees must be organized. Insofar as relevant to the present controversy, the portion of that Section 8.5 provides:

> Within 180 days after the primary of each other even-numbered year, each legislative committee and representative committee shall meet and proceed to organize by electing from 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.* 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. (*emphasis supplied*)

The present controversy arises from an objection to the nomination of Janet A. Delich for Republican candidate for the office of Representative from the Second Representative District in the General Assembly, brought by Flavio Gonzales on April 14, 2008. Apparently, although not unambiguously alleged in the objection, Janet A. Delich was nominated to fill a vacancy. The relevant provision of the Election Code [10 ILCS 5/9-17] which supplies the requirements in the event of the death of a nominated candidate, also provides:

> ....should the nomination *for any other reason* become vacant, the legislative or representative committee of such party for such district shall nominate a candidate of such party to fill such vacancy. (*emphasis supplied*)

The objection, in relevant part, asserts that

> 7...the Representative Committee of the Republican Party for the 2nd District never filed a "Certificate Of Organization" (or any other documentation) indicating it has organized as required by the Illinois Electoral Code.
>
> 8. The failure to file a Certificate of Organization, or any other documentation demonstrating that the committee has properly organized, has deprived both the election authorities and the public of any information indicating that it has organized as required by the Illinois Election Code.

> 9. The Certificate of Organization or other evidence of organization is necessary because it provides election authorities and the public with the information necessary to identify the names and addresses of the committee's officers, and allows verification that the vacancy was filed by appropriate officials.

The Respondent-Candidate Janet A. Delich, on April 25, 2008 filed a motion to dismiss the objection, asserting:

> (1) that the objection is premised upon a duty that does not exist in the Election Code in that "Nowhere in the objection....does objector ever "specifically raise" the ground that the committee in question failed to inform the Board of the names and addresses as required under Section 5-8."; (2) "In paragraph 10, Objector finally raises a specific ground of objection: "Due to the foregoing failure to file a Certificate of Organization or other evidence of organization, the Nomination Papers are invalid in their entirety." (*underlining in original*); (3) assuming, *arguendo*, the objection asserts a claim based upon the purported failure of the Committee in question to tender the names and addresses of the Committee Chairman and Secretary under Section 8-5 of the Election Code, that duty is merely "directory" and cannot be a ground for striking the Candidate from the ballot.

In the motion, the Candidate-Respondent asserts that the use of the word "shall" in the phrase,

Immediately upon completion of organization, the chairman *shall* forward to the State Board of Elections, the names and addresses of the chairman and secretary. (*emphasis supplied*)

can be mandatory resulting in a void nomination, or merely directory, for which non-compliance does not create a void nomination. Candidate-Respondent argues that the use of the word "shall" in Section 5-8 should be construed as merely directory, citing *Peoples Independent Party v. Petroff* 191 Ill. App 3d 706, 548 N.E. 2d 145, 138 IL Dec. 915 (Ill. App. 5th Dist., 1989). That opinion construed Section 10-5 [10 ILCS 5/10-5] of the Election Code, and held that the failure to attach to nominating petitions a certificate

stating the names and addresses of the party officers authorized to nominate or fill vacancies as required by Section 10-5 did not preclude that candidate's from being placed on the ballot. Accordingly, Candidate–Respondent argues;

> Section 8-5 is, if anything even more "directory" than Section 10-5 because the tender of committee information under Section 8-5 is completely independent of the filing of a nominating petition. Unlike Section 10-5, under Section 8-5 the tender of information is not required to be attached to the nominating petition and no objective deadline is even set for compliance; since the Code requires only the tender "immediately" Under *Petroff*, as matter of law [sic] the failure to provide the names and addresses does not threaten the integrity of an election. No specific penalty for a committee's non compliance with Section 8-5 exits in the Code, and certainly the Code does not mandate the voiding of nominations.

On April 30, 2008, Objector filed a response to the motion to dismiss. In the Objector's Response, he argued:

> (1) The purpose of the pleading requirement of Section 10-8 is to afford the Candidate an adequate opportunity to prepare a defense; after claiming the issue was not specifically raised, the Candidate was nonetheless able to defend the allegation in Section B of his motion; (2) that when the committee fails to satisfy the organizational procedure of Section 8-5, any attempts to fill a vacancy in nomination pursuant to Section 7-61 are invalid, citing *Carnell v. Madison County Officers Elec. Bd.*, 299 Ill. App 3d. 419, 701 N.E. 2d 548 (5tyh Dist., 1998)

Objector apparently does not contest that the use of the word "shall" in the Election Code can at times be mandatory resulting in a void nomination, or merely directory for which non-compliance does not create a void nomination, but argues that the requirement of Section 8-5 is mandatory because Section 8-1 provides a penalty for noncompliance ("The name of no person ...shall be placed upon the official ballot to be voted at the general election as a candidate unless such person shall have been nominated for such office under the provisions of this Article 8.) The Objector notes that in *Carnell*, the court affirmed the decision of the Electoral Board invalidating an attempt to fill a

vacancy because two of the members of the representative committee who should have been elected pursuant to Section 8-5 were not so elected but were appointed by the Chairman of the County Central Committee. Objector argues that disclosure of the names and addresses of the committee's officers is the only public disclosure, and without such disclosure, the public has no ability to determine if the actions taken by the committee were made by those individuals authorized to do so. Objector further argues that "it makes no sense that the public would be empowered to file an objector's petition against this nomination process if committee were to be excused from providing the public with the information necessary to determine whether a basis for such an objection exists."

DISCUSSION

The objection appears to be sufficiently clear so as to afford the Candidate-Respondent an adequate opportunity to prepare and assert a defense, and the pleading requirement of Section 10-8 has been met, although as the Candidate-Respondent notes, the objection could have been stated in better form. Respondent-Candidate does not suggest that the names and addresses of the chairman and secretary were, in fact "immediately" (or ever) forwarded to the Board of Elections. That assertion, if it were established that the names and addresses were forwarded to the Board, would end the controversy and avoid the extended discussion of the issues. Accordingly, evidence that the names and addresses of the chairman and the secretary of the committee were or were not forwarded to the Board of Elections, becomes an essential issue for the ultimate disposition of this objection.

A review cases involving the question of whether a provision in the Election Code is mandatory or directory is somewhat helpful, but by no means entirely uniform, see, e.g., *Graham v. State Officers Electoral Board*, 269 Ill. App. 3d 609, (app. 4th Dist., 1995) ("if the conduct is prescribed in order to safeguard a person's rights, which may be injuriously affected by a failure to act, the statute is mandatory") *Bergman v. Orr* 347 Ill App. 3d 339 (First Dist., 2004) ("Substantial Compliance can satisfy even a mandatory provision of the Illinois Election Code") *Brennan v. Illinois State Board of Elections*, 336 Ill. App. 3d 749 (First Dist., 2002) ("When a statute prescribes the performance of an act by a public official, the question of whether it is mandatory or directory depends on its purpose") *Brennan v. Kolman* 335 Ill. App. 3d 716 (First Dist., 2003) ("the statute is directory if it merely provides certain procedures and does not declare the performance is essential to the validity of the proceeding") See also: *Wollan v. Jacoby*, 274b Ill. App. 2d 388 (First Dist., 1995) *Board of Library Trustees v. Mercer Carnegie Public Library Dist.* 237 Ill. App. 3d 836 (Third Dist., 1992) A comprehensive discussion of the issue can also be found in *Pullen v. Mulligan*, 138 Ill. 2d 21 (Ill. Sup. Ct., 1990)

The purpose of the provision in question Section 8-5 requiring the names and addresses of the chairman and secretary "immediately" to be forwarded to the Board of Elections, appears to be designed to allow the general public a method by which to promptly determine whether a person nominated as a Representative to the General Assembly has been so nominated in accordance with the Election Code. The notice to the Board of Elections is required in order to safeguard the rights of the public in determining whether the nominationwas ain accordance with the Election Code. The hearing examiner is

persuaded by the argument made by Objector that, "it makes no sense that the public would be empowered to file an objector's petition against this nomination process if committee were to be excused from providing the public with the information necessary to determine whether a basis for such an objection exists." The opinion in *Carnell v. Madison County Officers Elec. Bd.*, 299 Ill. App 3d. 419, 701 N.E. 2d 548 (5tyh Dist., 1998) cited by Objector is also persuasive, in that the court there construed Section 8-5, albeit not the identical provision as in issue here. The opinion in *Peoples Independent Party v. Petroff* 191 Ill. App 3d 706, 548 N.E. 2d 145, 138 IL Dec. 915 (Ill. App. 5th Dist., 1989) is inapposite in that it construes Section 10-5 of the Election Code. Substantial rights are involved here under Section 8-5 based upon the need to provide the public with the information necessary to determine whether a basis for objection exists, and accordingly the provision of Section 8-5:

> Immediately upon completion of organization, the chairman *shall* forward to the State Board of Elections, the names and addresses of the chairman and secretary. (*emphasis supplied*)

should be deemed mandatory and not merely directory, and the failure to comply with the mandatory requirement operates to void the nomination.

It is therefore recommended to the Board that the Candidate-Respondent's motion to dismiss the objections be **DENIED**

The Hearing Examiner directs the Candidate-Respondent prior to the next hearing date of May 8, 2008 to provide any evidence that the names and addresses of the chairman and secretary were, in fact, forwarded to the Board of Elections or in the alternative to

stipulate that the names and addresses of the chairman and secretary were, in fact, not forwarded to the Board of Elections.

The Hearing Examiner directs the Objector prior to the next hearing date of May 8, 2008 to produce such evidence which may be available tending to establish that the names and addresses of the chairman and secretary were, in fact, not forwarded to the Board of Elections.

Respectfully submitted, May 2, 2008

_____

Gerald B. Mullin

BEFORE THE DULY CONSTITUTED ELECTORAL BOARD
FOR THE HEARING AND PASSING UPON OF NOMINATION OBJECTIONS TO
NOMINATION PAPERS OF CANDIDATES FOR ELECTION TO THE
OFFICE OF REPRESENTATIVE IN THE GENERAL ASSEMBLY FOR THE 80th
REPRESENTATIVE DISTRICT OF THE STATE OF ILLINOIS

Jonathon Karmel,	)	
	)	
Petitioner-Objector,	)	
	)	
v.	)	08-SOEB-GE 504
	)	
Miriam Shabo,	)	
	)	
Respondent-Candidate.	)	

OBJECTOR'S SECOND MOTION FOR LEAVE TO FILE SUPPLEMENTAL AUTHORITY

NOW COMES Objector, by and through her attorneys, and moves for leave to file additional supplemental authority, and in support thereof, states as follows:

1. On Friday, April 25, 2008, the Candidate moved to dismiss the Objector's Petition, and the Objector responded on Wednesday, April 30, 2008.

2. The Hearing Examiner heard argument on Friday, May 2, regarding the legal issues presented in the Motion, and took the matter under advisement.

3. On June 3, 2008, Cook County Officers Electoral Board issued a decision in two related matters, *Lyons v. Anderson, 08 COEB RGA 02; and Flanagan v. Shelstrom, 08 COEB 55 01*, ruling upon the same legal issues as presented in this matter.

4. The Cook County Board's ruling was not published at the time the Objector filed his Response to the Motion to Dismiss.

5. The Decisions, attached hereto, are offered as additional persuasive authority in this matter.

Wherefore, for the foregoing reasons, Objector respectfully prays that the Motion for Leave to File Supplemental Authority be granted.

Respectfully submitted,
Objector

By: _____
One of her attorneys

Michael J. Kasper
222 N. LaSalle, Suite 300
Chicago, IL 60601
312.704.3292
312.368.4944 (fax)

STATE OF ILLINOIS)
) SS
COUNTY OF C O O K)

BEFORE THE COUNTY OFFICERS ELECTORAL BOARD
FOR THE HEARING AND PASSING UPON OF OBJECTIONS
TO THE NOMINATION PAPERS OF CANDIDATES FOR
OFFICES FROM DISTRICTS OR DIVISIONS
WHICH ARE COTERMINOUS WITH OR LESS THAN THE
COUNTY OF COOK AND STATE OF ILLINOIS

OBJECTION OF:	)	
	)	
Joseph M. Lyons to the filing for the office of Representative in the General Assembly, 19th Representative District for candidate David J. Anderson, to be voted upon at the November 4, 2008 General Election.	)	08 COEB RGA 02

DECISION

The duly constituted COUNTY OFFICERS ELECTORAL BOARD, consisting of the HONORABLE DAVID ORR, by Daniel P. Madden, HONORABLE RICHARD A. DEVINE, by Michael Prinzi, and HONORABLE DOROTHY BROWN, by Mary Melchor, organized by law in response to a Call issued by the HONORABLE DAVID ORR, Chairman of said Electoral Board, for the purpose of hearing and passing upon of objections to the nomination papers of candidates to offices which are coterminous with or less than the County of Cook having convened on Monday, April 28, 2008, in Room 500 of the George W. Dunne Cook County Office Building, in the City of Chicago, County of Cook and State of Illinois, and having heard and determined the objections to the petitions in the above entitled matter, finds that:

1. The said Electoral Board has been legally constituted according to the laws of the State of Illinois;

2. Objections to the nomination papers of the candidate herein were duly and timely filed;

3. A Call to the hearing on said objections was duly issued and was caused to be served upon the members of the Electoral Board, the objector and the candidate, by mail and by personal service as provided by Statute;

4. An initial public hearing was held on these objections on Monday, April 28, 2008;

5. There were present at such hearings the following persons, among others:

   a) Honorable David Orr, by Daniel P. Madden, Honorable Richard A. Devine, by Michael Prinzi, and Honorable Dorothy Brown, by Suzi Choi and Mary Melchor;

   b) Objector, by Counsel

   c) Candidate by Counsel

6. All evidence, if any, that was tendered by those appearing at the hearing was heard and considered by the Board;

7. All arguments, if any, that were made at the hearing were considered by the Board;

8. The Board having heard oral argument and having considered all evidence, if any, HEREBY MAKES THE FOLLOWING FINDINGS:

This case rests on the effect of a failure of a Representative Committee to file a Certificate of Organization (the "Certificate"), as arguably mandated by §8-5 of the Election Code, 10 ILCS 5/8-5, before it attempts to fill a vacancy in nomination created by the failure to nominate a candidate at the General Primary.

Objector asserts that the failure of the Committee to file its Certificate (or some equivalent document) by the time it had acted to pass the resolution of nomination rendered the resolution "invalid." (Candidate did tender the Board a copy of its Certificate, received a his Exhibit No. 1, but it bore the State Board of Elections' filing stamp of May 9, 2008, more than a full month after the Candidate filed his nominating papers on April 7, 2008. Conversely, Objector introduced his Exhibit No. 1, from the State Board of Elections, certifying that no Certificate had been filed as of May 6, 2008.) The Candidate maintains that there is no nexus between the filing of the Certificate and the power of the Committee to fill the vacancy in nomination.

Ordinarily, candidates are nominated by petition and/or election. But when an established political party, which is entitled to run a candidate for office in a district, does not nominate one through the primary election process, the Election Code provides a limited right for the party to nominate a candidate, despite having failed to do so "normally." The right is "limited" most obviously by having to be done within 60 days of the primary election or be forfeited. As § 8-17 provides,

> no candidate of that party for that office may be listed on the ballot at the general election, unless

> the legislative or representative committee of the party nominates a candidate to fill the vacancy in nomination within 60 days after the date of the general primary election. 10 ILCS 5/8-17.

See, *Maske v. Kane County Officers Electoral Bd.*, 234 Ill.App.3d 508 (2nd Dist. 1992). This limitation is chronological, but there are also formal limitations, such as the mandatory requirement to place the date of nomination in the resolution nominating the candidate, *Zerante v. Bloom Township Electoral Board*, 287 Ill.App.3d 976 (1st Dist. 1997); *Bittle v. Saline County Electoral Bd. (In re McSparin)*, 352 Ill.App.3d 352 (5th Dist. 2004), or to file the resolution filling the vacancy within 3 days. *Forcade-Osborn v. Madison County Electoral Bd.*, 334 Ill.App.3d 756 (5th Dist. 2002)(judicial dicta). [These are not cases involving legislative vacancies, but the provisions of §7-61 of the Election Code are made applicable to filling legislative nomination vacancies by §8-17 of the Code. 10 ILCS 5/ 7-61, 8-17.]

The *Forcade-Osborn* court offered this explanation as to why it is proper to hold candidates nominated to the ballot by party committees to such precise standards.

> Petitioner had three different statutory mechanisms for gaining access to the ballot. Petitioner chose not to subject herself to two of those options, both of which required a showing of "grass roots" support. Petitioner's nomination was made by just three individuals. Under those circumstances, we cannot fault the legislature for being very specific on the manner in which one's name is placed on the ballot when one has chosen not to follow the "customary" procedures for nomination. It is the conduct of petitioner's representatives ... that serves to deny petitioner access to the ballot for the November 2002 election. The rules are not hypertechnical as petitioner suggests, but are designed to ensure the integrity of the election process in general. 334 Ill.App.3d at 771-2.

Although not precisely parallel, the analysis of *Kluk v. Lang*, 125 Ill.2d 306 (1988), is instructive. In *Kluk*, the right of a Representative Committee to fill a vacancy in office was challenged as an unconstitutional delegation of state power to private individuals. The Supreme Court, in rejecting this argument, noted that

> the statute in the present case does itself impose *a set of duties ... that arguably confer indicia of public agency* ... when they are performing their duties under the statute. 125 Ill.2d at 326. [emphasis added.]

This suggests that when a party committee, which is not a public body, is performing a public function, such as nominating a candidate, its legitimacy rests, at least in part, on its satisfying the duties imposed on it by the relevant statute. Here, under §8-5, those duties are (1) to organize, and (2) to "immediately forward to the State Board of Election the names and addresses of the chairman and secretary...." 10 ILCS 5/8-5. When, as is the case here, the committee does not do this either before or contemporaneously with nominating a candidate, it is missing the "indicia of public agency" cited by the court in *Kluk*.

[This case has a number of points in common with another matter on our current docket, *Flanagan v. Shelstrom*, 08 COEB SS 01, and the foregoing analysis was useful in both cases.]

In his Motion to Strike, Candidate offers two responses. First, that there is no legal duty to file a Statement, asserting that "nowhere in the Illinois Election Code is such a duty to make a showing of proper organization created, or a duty to file a 'certificate of organization' even mentioned." Candidate's Motion to Dismiss Objection, p. 2. This argument appears to be erroneous, given §8-5's provisions and Candidate's own tender of

his Exhibit No. 1, captioned "Certificate of Representative Committee Organization." To be sure, §8-5 does not give the document a name or prescribe a form, but the duty to "immediately forward the names" is clearly set forth. Next, Candidate argues that there is no nexus between filing the Certificate and the power to nominate a candidate, maintaining that any such requirement is merely directory. To advance this argument, he cites *Peoples Independent Party v. Petroff*, 191 Ill.App.3d 706 (5th Dist. 1989). However, the *Petroff* court found the requirement at issue in that case – filing "a certificate stating the names and addresses of the party officers authorized to fill vacancies in nomination" – to be directory only as to keeping the party on the ballot. When it came to filling possible vacancies in nomination, the court opined,

> Petitioners' failure to file a certificate stating the names and addresses of the party's officers authorized to fill vacancies in nomination fostered no fraud; petitioners' failure to file the certificate did not harm the integrity of the election. The appropriate sanction for the failure to comply with the statutory provision would be *to prohibit the new political party from nominating anyone to fill any vacancies* that may occur....
> 191 Ill.App.3d at 710. [emphasis added.]

This is similar to what we have in the instant case, for when the Committee acted it had not filed a Certificate. We conclude that the courts would hold that the filing of the names and addresses of the committee's chairman and secretary to be mandatory. Since the Certificate bearing that information was not filed until after the deadline for filing objections, thereby thwarting any timely public scrutiny of the information, we conclude that there was not substantial compliance with this requirement. In light of the above, we deny Candidate's Motion to Dismiss Objection, and, based on the arguments in the briefs and as heard by us in session, we sustain the objection set forth in ¶¶ 7 through 10 of the Objector's Petition.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the objections of Joseph M. Lyons, to the nomination papers of David J. Anderson, candidate for Representative in the General Assembly, 19th District, located in the County of Cook, State of Illinois are hereby sustained in conformity with the findings in paragraph 8. The said nomination papers are hereby declared invalid, and the name of David J. Anderson, candidate for the Representative in the General Assembly, 19th Representative District, shall not be printed on the ballot for the General Election to be held on Tuesday, November 4, 2008.

DATED, at Chicago, Illinois this 2nd day of June, 2008

DAVID ORR, Chairman

by:

Daniel P. Madden

RICHARD A. DEVINE, Member

by:

Michael Prinzi

DOROTHY BROWN, Member

by:

Mary Melchor

STATE OF ILLINOIS)
) SS
COUNTY OF C O O K)

BEFORE THE COUNTY OFFICERS ELECTORAL BOARD
FOR THE HEARING AND PASSING UPON OF OBJECTIONS
TO THE NOMINATION PAPERS OF CANDIDATES FOR
OFFICES FROM DISTRICTS OR DIVISIONS
WHICH ARE COTERMINOUS WITH OR LESS THAN THE
COUNTY OF COOK AND STATE OF ILLINOIS

OBJECTION OF: James Flanagan to the filing for the office of State Senator, 18th Legislative District for candidate Bob Shelstrom, to be voted upon at the November 4, 2008 General Election.	)	08 COEB SS 01

DECISION

The duly constituted COUNTY OFFICERS ELECTORAL BOARD, consisting of the HONORABLE DAVID ORR, by Daniel P. Madden, HONORABLE RICHARD A. DEVINE, by Michael Prinzi, and HONORABLE DOROTHY BROWN, by Mary Melchor, organized by law in response to a Call issued by the HONORABLE DAVID ORR, Chairman of said Electoral Board, for the purpose of hearing and passing upon of objections to the nomination papers of candidates to offices which are coterminous with or less than the County of Cook having convened on Monday, April 28, 2008, in Room 500 of the George W. Dunne Cook County Office Building, in the City of Chicago, County of Cook and State of Illinois, and having heard and determined the objections to the petitions in the above entitled matter, finds that:

1. The said Electoral Board has been legally constituted according to the laws of the State of Illinois;

2. Objections to the nomination papers of the candidate herein were duly and timely filed;

3. A Call to the hearing on said objections was duly issued and was caused to be served upon the members of the Electoral Board, the objector and the candidate, by mail and by personal service as provided by Statute;

4. An initial public hearing was held on these objections on Monday, April 28, 2008;

5. There were present at such hearings the following persons, among others:

   a) Honorable David Orr, by Daniel P. Madden, Honorable Richard A. Devine, by Michael Prinzi, and Honorable Dorothy Brown, by Suzi Choi and Mary Melchor;

   b) Objector, by Counsel

   c) Candidate, in person and by Counsel

6. All evidence, if any, that was tendered by those appearing at the hearing was heard and considered by the Board;

7. All arguments, if any, that were made at the hearing were considered by the Board;

8. The Board having heard oral argument and having considered all evidence, if any, HEREBY MAKES THE FOLLOWING FINDINGS:

This case turns on the effect of a failure of a Legislative Committee to file a Certificate of Organization (the "Certificate"), as arguably mandated by §8-5 of the Election Code, 10 ILCS 5/8-5, before it attempts to fill a vacancy in nomination created by the failure to nominate a candidate at the General Primary.

Objector asserts that the failure of the Committee to file its Certificate (or some equivalent document) by the time it had acted to pass the resolution of nomination rendered the resolution "invalid." (Candidate did tender the Board a copy of its Certificate, but it bore the State Board of Elections' filing stamp of April 23, 2008, well after the Candidate filed his nominating papers on April 7, 2008, and even after the Objection herein was filed on April 14, 2008.) The Candidate maintains that the requirement of filing of any Certificate is only directory and is not necessary for the Committee to validly fill the vacancy in nomination.

Candidate attacks the Objector's Petition in his Motion to Strike and Dismiss. Initially, he alleges that the Board has no jurisdiction to hear this Objection, because it is based on a failure to file a Certificate, and Certificates are not mentioned in §10-10 of the Election Code. 10 ILCS 5/10-10. This misconstrues the nature of an objection to jurisdiction. By virtue of §7-61 of the Election Code, made applicable to legislative nomination vacancies by §8-17, electoral boards get jurisdiction over objections to resolutions to fill nomination vacancies. 10 ILCS 5/7-61, 8-17. An objection may well contain a claim that cannot be the basis of relief, such as a constitutional claim. But that determination must be made by an electoral board, and is properly within its ken. An electoral board is "competent" to make that determination only if it has jurisdiction over the controversy. In respect to

adjudicating objections over the filling of legislative vacancies, the courts have had not a problem affirming electoral board decisions doing just that. *Carnell v. Madison County Officers Electoral Bd.*, 299 Ill.App.3d 419 (5th Dist. 1998).

Next, Candidate argues that there is no nexus between filing the Certificate and the power to nominate a candidate, maintaining that any such requirement is merely directory. Moreover, the Resolution nominating the Candidate contained the names of the Chairman and Secretary, so that all that was missing was the addresses of the two. That, he maintains, does not contribute to the integrity of the election process, and therefore should not be construed as a mandatory requirement, and even if it is, it was substantially complied with by virtue of the April 23, 2008 filing of a Certificate of Organization for the Committee. In response, Objector cites *Pochie v. Cook County Officers Electoral Bd.*, 289 Ill.App.3d 585 (1st Dist. 1997), to suggest that addresses are indispensable in identifying parties in Election Code-related proceedings. Candidate is technically correct to suggest that there is nothing, in effect, "magic" about the form of the Committee's filing. To be sure, §8-5 does not give the document a name or prescribe a form, but the duty to "immediately forward the names and addresses" is clearly set forth therein. Objector, to his credit, does not call for a specific form either, for, as he puts it in his Objector's Petition, the Committee's obligation is to file "a 'Certificate of Organization' (or any other documentation)" with the requisite information. Since there is no unsettled material factual question, the Board must resolve the issue of the legal effect, if any, of the Committee acting - by adopting, then filing its Resolution with the State Board of Elections - without providing the Board, and through it, the public, the information specified in §8-5 of the Election Code.

[This case has a number of salient points in common with another matter on our current docket, *Lyons v. Anderson*, 08 COEB RGA 02, and the following analysis was useful in both cases.]

Ordinarily, candidates are nominated by petition and/or election. But when an established political party, which is entitled to run a candidate for office in a district, does not nominate one through the primary election process, the Election Code provides a limited right for the party to nominate a candidate, despite having failed to do so "normally." The right is "limited" most obviously by having to be done within 60 days of the primary election or be forfeited. As § 8-17 provides,

> no candidate of that party for that office may be listed on the ballot at the general election, unless the legislative or representative committee of the party nominates a candidate to fill the vacancy in nomination within 60 days after the date of the general primary election. 10 ILCS 5/8-17.

See, *Maske v. Kane County Officers Electoral Bd.*, 234 Ill.App.3d 508 (2nd Dist. 1992). This limitation is chronological, but there are also formal limitations, such as the mandatory requirement to place the date of nomination in the resolution nominating the candidate, *Zerante v. Bloom Township Electoral Board*, 287 Ill.App.3d 976 (1st Dist. 1997); *Bittle v. Saline County Electoral Bd. (In re McSparin)*, 352 Ill.App.3d 352 (5th Dist. 2004), or to file the resolution filling the vacancy within 3 days. *Forcade-Osborn v. Madison County Electoral Bd.*, 334 Ill.App.3d 756 (5th Dist. 2002)(judicial dicta). [These are not cases involving legislative vacancies, but the provisions of §7-61 of the Election Code are made applicable to filling legislative nomination vacancies by §8-17 of the Code. 10 ILCS 5/ 7-61, 8-17.]

The *Forcade-Osborn* court offered this explanation as to why it is proper to hold candidates nominated to the ballot by party committees to such precise standards.

> Petitioner had three different statutory mechanisms for gaining access to the ballot. Petitioner

> chose not to subject herself to two of those options, both of which required a showing of "grass roots" support. Petitioner's nomination was made by just three individuals. Under those circumstances, we cannot fault the legislature for being very specific on the manner in which one's name is placed on the ballot when one has chosen not to follow the "customary" procedures for nomination. It is the conduct of petitioner's representatives ... that serves to deny petitioner access to the ballot for the November 2002 election. The rules are not hypertechnical as petitioner suggests, but are designed to ensure the integrity of the election process in general.
> 334 Ill.App.3d at 771-2.

Although not precisely parallel, the analysis of *Kluk v. Lang*, 125 Ill.2d 306 (1988), is instructive. In *Kluk*, the right of a Representative Committee to fill a vacancy in office was challenged as an unconstitutional delegation of state power to private individuals. The Supreme Court, in rejecting this argument, noted that

> the statute in the present case does itself impose *a set of duties ... that arguably confer indicia of public agency* ... when they are performing their duties under the statute.
> 125 Ill.2d at 326. [emphasis added.]

This suggests that when a party committee, which is not a public body, is performing a public function, such as nominating a candidate, its legitimacy rests, at least in part, on its satisfying the duties imposed on it by the relevant statute. Here, under §8-5, those duties are (1) to organize, and (2) to "immediately forward to the State Board of Election the names and addresses of the chairman and secretary...." 10 ILCS 5/8-5. When, as is the case here, the committee does not do this either before or contemporaneously with nominating a candidate, it is missing the "indicia of public agency" cited by the court in *Kluk*.

To advance his side of the argument, Objector cites *Peoples Independent Party v. Petroff*, 191 Ill.App.3d 706 (5th Dist. 1989). The *Petroff* court found the requirement at issue in that case – filing a certificate stating the names and addresses of the party officers authorized to fill vacancies in nomination – to be directory, but only as to keeping the party on the ballot. When it came to filling possible vacancies in nomination, the court opined,

> Petitioners' failure to file a certificate stating the names and addresses of the party's officers authorized to fill vacancies in nomination fostered no fraud; petitioners' failure to file the certificate did not harm the integrity of the election. The appropriate sanction for the failure to comply with the statutory provision would be *to prohibit the new political party from nominating anyone to fill any vacancies* that may occur....
> 191 Ill.App.3d at 710. [emphasis added.]

This is similar to what we have in the instant case, for when the Committee acted it had not filed a Certificate. We conclude that the courts would hold that the filing of the names and addresses of the committee's chairman and secretary to be mandatory. Since the Certificate bearing that information was not filed until after the deadline for filing objections, thereby thwarting any timely public scrutiny of the information, we conclude that there was not substantial compliance with this requirement. In light of the above, we deny Candidate's Motion to Strike and Dismiss the Objector's Petition, and, based on the arguments in the briefs and as heard by us in session, we sustain the objection set forth in ¶¶ 7 through 10 of the Objector's Petition.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the objections of James Flanagan, to the nomination papers of Bob Shelstrom, candidate for State Senator, 18th Legislative District, located in the County of Cook, State of Illinois are hereby sustained in conformity with the findings in paragraph 8. The said nomination papers are hereby declared invalid, and the name of Bob Shelstrom, candidate for State Senator, 18th Legislative District, shall not be printed on the ballot for the General Election to be held on Tuesday, November 4, 2008.

DATED, at Chicago, Illinois this 2nd day of June, 2008

DAVID ORR, Chairman

by:

Daniel P. Madden

RICHARD A. DEVINE, Member

by:

Michael Prinzi

DOROTHY BROWN, Member

by:

Mary Melchor

BEFORE THE DULY CONSTITUTED ELECTORAL BOARD FOR THE HEARING AND PASSING UPON OF OBJECTIONS TO NOMINATION PAPERS OF CANDIDATES FOR NOMINATION TO THE OFFICE OF REPRESENTATIVE IN THE GENERAL ASSEMBLY, 80th DISTRICT

Jonathan Karmel,	)	
	)	
Petitioner-Objector,	)	
	)	**08 SOEBGE 504**
v.	)	
	)	
Miriam Shabo,	)	
	)	
Respondent-Candidate.	)	

Candidate's Response to Motion for Leave to File Supplemental Authority

Now Comes the Respondent-Candidate, Miriam Shabo, by and through her attorneys John W. Countryman and John G. Fogarty, Jr., and for her response to the Objector's Motion for Leave to File Supplemental Authority, states as follows:

1. On May 8, 2008, the Objector filed a Motion for Leave to File Supplemental Authority.

2. In his motion, the Objector asks for leave to cite to an unpublished, non-final Recommended Order drafted by Hearing Examiner Gerald Mullin of the Chicago Officers Electoral Board in the matter of *Gonzales v. Delich*, 08 EB-RES-03.

3. The Candidate objects to citation to the Recommended Order of Examiner Mullin because that Recommended Order is non-final, and has not been approved or issued by the Chicago Officers Electoral Board. Therefore, the Recommended Order is of no weight, persuasive or otherwise, in any case, even in the *Gonzales v. Delich* case. Accordingly, the Candidate objects to citation to the Recommended Order as authority for any legal proposition in the instant case.

4. Wherefore, for the foregoing reasons, the Candidate respectfully requests that Objector's Motion for Leave to File Supplemental Authority be denied.

Respectfully submitted,

Respondent-Candidate

By: _____
One of her Attorneys

John W. Countryman
The Foster & Buick Law Group LLC
2040 Aberdeen Ct.
Sycamore, IL 60178
815-758-6616 Fax 815-756-9506
E-Mail JWCBO@AOL.COM Cell 815-761-3806

John G. Fogarty, Jr.
Burke, Warren, MacKay & Serritella, P.C.
330 N. Wabash, Suite 2200
Chicago, IL 60611
312-840-7087 Fax 312- 840-7900
E-Mail jfogarty@ burkelaw.com

CERTIFICATE OF SERVICE

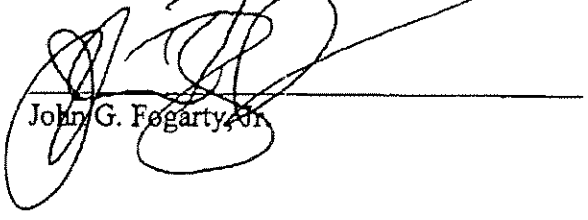
I, John G. Fogarty, Jr., an attorney, state that I caused copies of the Candidate's Response to Motion to File Supplemental Authority to be served upon:

Barbara Goodman
Barbara B. Goodman & Associates
400 Skokie Boulevard, Suite 380
Northbrook, Illinois 60062
goodmanlaw1@aol.com

State Board of Elections
Office of the General Counsel
1020 South Spring Street
Springfield, Illinois 62708
Fax: (217) 782-5959

Michael J. Kasper
222 N. LaSalle, Suite 300
Chicago, Illinois 60601
Fax: (312) 368-4944

by e-mail and fax from 330 N. Wabash Avenue, Chicago, Illinois 60611, before the hour of 5:00 p.m. on May 21, 2008.



John G. Fogarty, Jr.

BEFORE THE DULY CONSTITUTED ELECTORAL BOARD FOR THE HEARING AND PASSING UPON OF OBJECTIONS TO NOMINATION PAPERS OF CANDIDATES FOR NOMINATION TO THE OFFICE OF REPRESENTATIVE IN THE GENERAL ASSEMBLY, 80th DISTRICT

Jonathan Karmel,	)	
	)	
Petitioner-Objector,	)	
	)	**08 SOEBGE 504**
v.	)	
	)	
Miriam Shabo,	)	
	)	
Respondent-Candidate.	)	

Candidate's Motion for Leave to Cite Supplemental Authority

Now Comes the Respondent-Candidate, Miriam Shabo, by and through her attorneys John W. Countryman and John G. Fogarty, Jr., and for her Motion for Leave to File Supplemental Authority, states as follows:

1. On Friday, April 25, 2008, the Candidate moved to dismiss the Objector's Petition, and the Objector responded on Wednesday, April 20, 2008.

2. The Hearing Examiner heard argument on Friday, May 2, 2008, regarding the legal issues presented in the motion, and took the matter under advisement.

3. The principal legal issue presented by this case is the construction of Section 5/8-5 of the Election Code, and particularly the filing of the Certificate of Organization for the Representative Committee for the 80th District.

4. This same issue was argued in the matter of *Devaney v. Calabrese*, before the Champaign County Officers Electoral Board. On June 2, 2008, the Champaign County Officers Electoral Board issued its Finding and Order of the Board in the *Devaney v. Calabrese* case,

finding that the requirements of Section 5/8-5 are mandatory but may be satisfied by substantial compliance.

5. The Champaign County Officers Electoral Board's findings and order in the *Devaney v. Calabrese* matter is offered here as additional persuasive authority in this matter.

WHEREFORE, for the foregoing reasons, Objector respectfully prays that the Motion for Leave to Cite Supplemental Authority be granted.

Respectfully submitted,

Respondent-Candidate

By: _____
One of her Attorneys

John W. Countryman
The Foster & Buick Law Group LLC
2040 Aberdeen Ct.
Sycamore, IL 60178
815-758-6616 Fax 815-756-9506
E-Mail JWCBO@AOL.COM Cell 815-761-3806

John G. Fogarty, Jr.
Burke, Warren, MacKay & Serritella, P.C.
330 N. Wabash, Suite 2200
Chicago, IL 60611
312-840-7087 Fax 312- 840-7900
E-Mail jfogarty@ burkelaw.com

CERTIFICATE OF SERVICE

I, John G. Fogarty, Jr., an attorney, state that I caused copies of the Candidate's Motion to File Supplemental Authority to be served upon:

Barbara Goodman
Barbara B. Goodman & Associates
400 Skokie Boulevard, Suite 380
Northbrook, Illinois 60062
goodmanlaw1@aol.com

State Board of Elections
Office of the General Counsel
1020 South Spring Street
Springfield, Illinois 62708
Fax: (217) 782-5959

Michael J. Kasper
222 N. LaSalle, Suite 300
Chicago, Illinois 60601
Fax: (312) 368-4944

by e-mail and fax from 330 N. Wabash Avenue, Chicago, Illinois 60611, before the hour of 5:00 p.m. on June 3, 2008.

John G. Fogarty, Jr.

CHAMPAIGN COUNTY OFFICIALS ELECTORAL BOARD
AS THE DULY CONSTITUTED ELECTORAL BOARD

PAT DEVANEY,
Petitioner-Objector,

-v-

FRANK CALABRESE,
Respondent-Candidate.

FINDING AND ORDER OF THE BOARD

The duly constituted Officials Electoral Board of Champaign County, Illinois consisting of Chairman Mark Shelden (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 103rd 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 103rd 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 103rd 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 103rd 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

08 SOEB GE 505

Candidate: Dan Sugrue

Office: State Representative; 59th District

Party: Republican

Objector: Sheila Shultz

Attorney For Objector: Michael J. Kasper

Attorney For Candidate: John W. Countryman and John G. Fogarty, Jr.

Basis of Objection: On information and belief, the purported officers of the Representative Committee (the Committee) met in three separate locations on the same day to nominate candidates for two separate offices. These purported meetings are inconsistent with the oath set forth in the candidate's nominating papers.

The organizational meeting of the Committee took place in Libertyville Illinois, no part of which is located in the 59th Representative District, contrary to the requirement set forth in 5/8-5 of the Election Code requiring such organizational meeting to take place within the limits of such District. As a result, the Committee was not properly organized and any action taken to fill the vacancy are invalid and void.

Is the Objection Verified: Yes

Hearing Officer: Barb Goodman

Hearing Officer Findings and Recommendation: The Candidate's Motion to Strike and Dismiss the Objector's Petition should be denied, as the SOEB does have subject matter jurisdiction to rule on an alleged defect in the Representative Committee's Certificate of Organization and the Motion to Dismiss attempted to resolve issues of disputed fact with hearsay evidence in the form of an affidavit; inappropriate for a Motion to Dismiss. Candidate's Motion for Directed Finding should be granted, as the meeting took place within the 59th Representative District and the Certificate of Organization was not defective by stating that the meeting took place in Libertyville. The nominating papers should be deemed valid, and Dan Sugrue should appear on the ballot at the 2008 General Election.

Recommendation of the General Counsel: I concur with the recommendation of the Hearing Officer for the reasons set forth in her Report.

BEFORE THE DULY CONSTITUTED ELECTORAL BOARD
FOR THE HEARING AND PASSING UPON OF OBJECTIONS
TO NOMINATION PAPERS OF CANDIDATES FOR NOMINATION TO
THE OFFICE OF REPRESENTATIVE IN THE GENERAL ASSEMBLY

SHEILA SCHULTZ	)	
	)	
	)	
Objector	)	
	)	
-v-	)	08-SOEB-GE 505
	)	
DAN SUGRUE	)	
	)	
	)	
Candidate	)	

HEARING EXAMINER'S REPORT AND RECOMMENDED DECISION

This matter was first heard on April 21, 2008. Objectors appeared through their attorneys John Fogarty and John Countryman and candidate appeared through his attorney Michael Kasper. The parties were given an opportunity to submit preliminary motions. The candidate timely submitted a Motion to Dismiss and the Objector timely submitted a Response to Motion to Dismiss Objection.

The sole issue presented in the Objector's petition was whether the Certificate of Organization was fatally defective as a result of the name of the city indicated thereon. Specifically, the Certificate indicated that the committee "met on April 1, 2008 in the **City of Libertyville**, County of Lake and organized by electing the following officers in conformity with the Election Laws of the State..." (Emphasis added) Objector argued that because the city of Libertyville is not located within the 59th representative district, the committee failed to meet within the district as required and the certificate was therefore invalid.

Candidate's Motion to Dismiss raised several bases for dismissal. The motion alleged that the Objector's allegations regarding where and when the organizational meeting took place were factually incorrect. Specifically, candidate argued that despite objector's allegations to the contrary, there was only one meeting to organize and nominate the candidate and that the meeting in fact took place at the candidate's house in the 59th Representative District. In support thereof candidate offered an Affidavit setting forth the facts surrounding the meeting.

Candidate's motion further argued that regardless of what the Certificate of Organization stated and regardless of whether it contained the wrong city name, it could not invalidate the nominating papers. Candidate further argued that even if there was a defect in the Certificate of Organization, the board lacked subject matter jurisdiction to consider the matter because reviewing the validity of a Certificate of Organization was beyond the electoral Board's authority.

With respect to the issue of subject matter jurisdiction, Objector correctly noted that the electoral Board did, in fact, have jurisdiction to determine the validity of the Certificate because it is integral to determining whether the resolution and other nominating papers are valid. As both the Objector and candidate agreed, the scope of authority of an electoral board is set forth in Section10-10:

> The electoral board shall take up the question as to whether or not the certificate of nomination or nomination papers or petitions are in proper form, and **whether or not they were filed within the time and under the conditions required by law**, and whether or not they are the genuine certificate of nomination or nomination papers or petitions which they purport to be, and whether or not in the case of the certificate of nomination in question it represents accurately the decision of the caucus or convention issuing it, and in general shall decide whether or not the certificate of nomination or nominating papers or petitions on file are valid

> or whether the objections thereto should be sustained and the decision of a majority of the electoral board shall be final subject to judicial review as provided in Section 10 -10.1. The electoral board must state its findings in writing and must state in writing which objections, if any, it has sustained. 10 ILCS 5/10-10

As the Objector correctly pointed out in his Response to the motion, the Objector's Petition requests that the electoral board determine whether the certificate of nomination was in fact filed under the condition required by law. Such inquiry is wholly within the scope of the electoral board's authority and candidate's argument that the electoral board lacked subject matter jurisdiction is without merit.

Additionally, Objector correctly noted that the Motion to Dismiss attempted to resolve issues of disputed fact with hearsay evidence inappropriate for a Motion to Dismiss.

The Motion to Strike and Dismiss was therefore denied.

An evidentiary hearing was then held to determine the facts and circumstances surrounding the meeting.

TESTIMONY OF CANDIDATE DAN SUGRUE

Objector first called candidate Dan Sugrue ("Sugrue") to testify. Sugrue testified that he resided at 281 Crescent Road in Green Oaks. He further testified that the meeting took place at his home. He did not recall everyone that was present but he did recall that Dan Venturi, Keith Gray, Larry Fable and Ruth O'Connell were present. After subtle prompting by his lawyer, he further recalled that Ryan Cudvey may also have been present. Ryan Cudvey was the individual who notarized the nominating papers. At the meeting, the committee voted to organize and to nominate Sugrue. He then

signed nominating papers. Sugrue recalled that some of the addresses on some of the papers contained the city of "Libertyville" rather than "Green Oaks". He thought he corrected all of them.

With Respect to the Village of Green Oaks, candidate testified that regardless of whether mail contains the address of Green Oaks or Libertyville, the mail arrives at his home. The two villages have the same zip code and use the same post office. Green Oaks has no separate municipal service. Several pieces of mail were introduced to establish that Green Oaks and Libertyville are interchangeable and that when the candidate's street name is included, it can reflect either Green Oaks or Libertyville.

Candidate's Exhibit 1: Google maps - The village of Libertyville was reflected with the candidate's street address.

Candidate's Exhibit 2: Candidate's Voter identification contains the village of Green Oaks.

Candidate's Exhibit 3: Candidate's Certification contains the village of Green Oaks.

Candidate's Exhibit 4(1): Candidates' Com Ed bill contains the village of Libertyville.

Candidate's Exhibit 4(2): Candidate's Sprint bill contains the village of Libertyville.

Candidate's Exhibit 4(3): Candidate's mail from Cook Memorial Public Library District contains the village of Green Oaks.

TESTIMONY OF RUTH O'CONNELL

The next witness called was Ruth O'Connell who testified that she was on the representative committee and that the meeting to organize and nominate Dan Sugrue

took place at Sugrue's home. She further testified that only one meeting took place.

TESTIMONY OF DANIEL VENTURI

The next witness called was Daniel Venturi. He testified that he was on the representative committee, that he completed the Certificate of Organization and that while the other documents required a specific address he believed that the Certificate of Organization required only the general vicinity of the meeting.

After the close of the Objector's case, candidate moved for a directed finding. Candidate argued that the testimony and evidence established that the meeting did in fact take place in the 59th representative district at Dan Sugrue's house and that the inclusion of the village of Libertyville on the Certificate of Organization was not fatal in that Green Oaks and Libertyville for mail purposes were interchangeable and that Libertyville was in fact the township in which the meeting occurred.

After the final hearing, the candidate filed a motion to cite supplemental authority. Specifically, candidate offered the case of Geraldi v Lake County Officers Electoral Board, et al. In that case, the candidate used the village address of Russell, Illinois on some documents and failed to specify the village on other documents. The election authority, for administrative reasons, changed the address on her voter's registration records to the Village of Wadsworth. Although they each had the same zip code, candidate testified that if she used Wadsworth in her address, no mail would reach her. The facts in this case are inapposite and the Geraldi decision does nothing to advance either of the parties' case. Here, regardless of whether the Village of Green Oaks or the Village of Libertyville is used on a piece of mail, the mail would arrive at the candidate's correct address.

Contrary to the Objector's assertions, the evidence clearly established that there was only one meeting of the nominating committee and that the meeting occurred at the candidate's house in the 59th representative district.

With respect to the use of the Village "Libertyville" on the Certificate of Organization, it is true that the village of Green Oaks is separate from the village of Libertyville. However, for purposes of mail and for purposes of locating the street address and identifying the candidate's residence, Libertyville and Green Oaks are, in fact, interchangeable.

Accordingly, because the two villages are interchangeable, Objector was unable to establish that the Certificate of Organization factually failed to describe the correct location of the meeting. Therefore, the certificate of organization was not defective and did not render the subsequent nominating papers invalid. Candidate's Motion for directed finding is therefore granted and the objections contained in the objector's petition are overruled.

In light of the foregoing, it is my recommendation that the nominating papers be deemed valid and that the name of candidate Daniel Sugrue for the Republican nomination to the office of Representative in the General Assembly in the 59th Representative District appear on the ballot at the November 4, 2008 General Election.

Respectfully submitted,

Barbara Goodman
Hearing Examiner
June 22, 2008

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

Sheila Schultz,	)
	)
Petitioner-Objector,	)
	)
v.	)
	)
Dan Sugrue,	)
	)
Respondent-Candidate.	)

CHICAGO
08 APR 14 PM 4:09
STATE BOARD OF ELECTIONS

OBJECTOR'S PETITION

INTRODUCTION

Sheila Schultz, hereinafter sometimes referred to as the Objector, states as follows:

1. The Objector resides at 393 South Meadowbrook Lane, Wheeling, Illinois, 60090, in the 59th Representative District of the State of Illinois, and is a duly qualified, legal and registered voter at that address.

2. The Objector's interest in filing this Petition is that of a voter desirous that the laws governing the filing of nomination papers for the office of Representative in the General Assembly for the 59th Representative District of the State of Illinois are properly complied with, and that only qualified candidates appear on the ballot for said office.

OBJECTIONS

3. The Objector makes the following objections to the purported nomination papers ("Nomination Papers") of Dan Sugrue as a candidate for the office of Representative in the General Assembly for the 59th Representative District of the State of Illinois ("Office") to be voted for at the General Election on November 4, 2008 ("Election"). The Objector states that the Nomination Papers are insufficient because the purported officers of the Committee purport to have met in three separate locations, on a single day, to nominate Candidates for two separate offices, indicating, on information and belief, that the purported meetings are inconsistent with the oaths set forth in the Resolutions and Certifications filed with the Board of Elections.

4. Pursuant to State law, political parties, as defined in Section 8-2 of the Illinois Election Code, nominate candidates for the Illinois General Assembly at the Primary Election. In the event that no candidate is nominated by such a political party at the Primary Election, a vacancy in nomination is created that may be filled within 60 days of the Primary Election pursuant to

Sections 8-17 and 7-61 of the Election Code.

5. A vacancy in nomination may be filled by the appropriate Representative District Committee of the political party, consisting of the committeemen from the wards and townships with territory in the district (in Cook County) and the County Chairmen of counties with territory in the district (for all other counties).

6. Pursuant to Section 8-5 of the Code, a Representative Committee must meet and organize to elect a Chairmen and Secretary. "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." *Id.*

7. The organizational meeting must occur within the confines of the 59th Representative District.

8. The Certificate of Organization filed by this Committee with the State Board of Elections indicates that the organizational meeting occurred in "Libertyville, Illinois", none of which is located in the 59th Representative District.

9. Because the organizational meeting occurred outside the 59th Representative District, the committee was not properly organized and any purported actions in filling a vacancy in nomination are invalid and void.

WHEREFORE, the Objector requests: a) a hearing on the objections set forth herein; b) an examination by the aforesaid Electoral Board of the official records relating to voters in the 59th Representative District, to the extent that such examination is pertinent to any of the matters alleged herein; c) a ruling that the Nomination Papers are insufficient in law and fact, and d) a ruling that the name of Dan Sugrue shall not appear and not be printed on the ballot for election to the office Representative in the General Assembly for the 59th Representative District of the State of Illinois, to be voted for at the General Election to be held November 4, 2008.

Sheila Schultz

OBJECTOR

Address:

Sheila Schultz
393 South Meadowbrook Lane
Wheeling, IL 60090

6307153v1 747293

VERIFICATION

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

I, Shelia Schultz, being first duly sworn upon oath, depose and state that I have read the above and foregoing OBJECTOR'S PETITION, and that the matters and facts contained therein are true and correct to the best of my knowledge and belief.

Shelia Schultz

Subscribed and sworn to before me
by Sheila Schultz
this 14th day of April, 2008.

Dorene M. Egan

Notary Public

Official Seal
Dorene M Egan
Notary Public State of Illinois
My Commission Expires 08/16/08

6307153v1 747293

BEFORE THE DULY CONSTITUTED ELECTORAL BOARD FOR THE HEARING AND PASSING UPON OF OBJECTIONS TO NOMINATION PAPERS OF CANDIDATES FOR NOMINATION TO THE OFFICE OF REPRESENTATIVE IN THE GENERAL ASSEMBLY, 59th DISTRICT

Sheila Schultz,	)	
	)	
Petitioner-Objector,	)	
	)	**08 SOEBGE 505**
v.	)	
	)	
Dan Sugrue,	)	
	)	
Respondent-Candidate.	)	

Candidate's Motion to Strike and Dismiss The Objector's Petition

Now Comes the Respondent-Candidate, Dan Sugrue, by and through his attorneys, John W. Countryman and John G. Fogarty, Jr., and moves to strike and dismiss the Objector's Petition filed herein for the following reasons:

The Objector claims the Candidate's nominating papers are insufficient because (1) the members of the Representative Committee for the 59th District "met in three separate locations, on a single day, to nominate Candidates for two separate offices," which, the Objector asserts, is inconsistent with the oaths set forth on the nominating papers; and (2) that the Certificate of Organization for the Representative Committee for the 59th District states that the organizational meeting for that committee occurred outside of the 59th District. Neither contention has merit, and the Objector's Petition must be dismissed pursuant to both 2-615 and 2-619(a)(9) of the Illinois Code of Civil Procedure. This Motion to Strike and Dismiss therefore is made pursuant to 735 ILCS 2-619.1

A. The Objector's Claim That The Representative Committee For The 59th District Did Not Properly Nominate The Candidate Is Completely Unfounded.

In his Petition, the Objector baldly asserts that because the members of the Representative Committee for the 59th Representative District purported to meet in "three separate locations" on a single day, the oaths set forth on the Resolution to Fill a Vacancy in Nomination must not be valid. The Objector has no basis for this claim whatsoever.

As amply set forth in the Affidavit of Daniel Venturi, the Chairman of the Representative Committee for the 59th District, the proceedings undertaken to make the Candidate's nomination were entirely appropriate, and consistent with the oaths set forth on the nominating papers. (See Venturi Affidavit attached hereto as Exhibit A.) Very simply, the Representative Committee for the 59th District met on the afternoon of April 1, 2008 at the home of the Candidate, 281 Crescent Knoll Drive, Green Oakes, Illinois, which is within the 59th Representative District. Venturi Aff. ¶¶ 12-14. At that meeting, Venturi was duly elected Chairman and Ruth O'Connell Secretary of the committee. Venturi Aff. ¶ 16. The Committee thereafter voted unanimously to nominate Dan Sugrue for the office of Representative in the General Assembly in and for the 59th District, to be voted upon in the November 2008 General Election. Venturi Aff. ¶¶ 18-19.

Immediately prior to meeting at the home of the Candidate, the members of the Representative Committee for the 59th District had previously attended a meeting at 9 N. County Street, in Waukegan, Illinois. Venturi Aff. ¶¶ 4-7. The Candidate's home is less than 10 miles from 9 N. County Street in Waukegan. It is not a stretch to believe that meetings took place in these two locations on a single afternoon.

B. The Organizational Meeting For The Representative Committee for the 59th District Took Place Within The 59th District.

The Objector asserts that the organizational meeting for the Representative Committee for the 59th District occurred outside of the 59th District because the Certificate of Organization filed by the Committee with the State Board of Elections indicates that the meeting took place in "Libertyville, Illinois," none of which is within the 59th District. Section 8-5 states that the organizational meeting for a representative district "shall be in the limits of such district." 10 ILCS 5/8-5. However, as set forth in Venturi's Affidavit, the meeting actually did take place within the 59th District, at the Candidate's house, thereby satisfying Section 8-5's in-district requirement. Venturi Aff. ¶¶ 12-15.

Involuntary dismissal of a claim is warranted pursuant to Section 2-619(a)(9) of the Illinois Code of Civil Procedure when "the claim asserted against the defendant is barred by other affirmative matter avoiding the legal effect of or defeating the claim." 735 ILCS 5/2-619(a)(9). Because Venturi's Affidavit affirmatively defeats the Objector's claims as to the timing and location of the meeting of the Representative Committee for the 59th District, the Objector's claims as to timing and location should be dismissed pursuant to Section 2-619(a)(9).

C. The Certificate of Organization Is Not Incorrect, And Regardless, Would Not Invalidate The Candidate's Nominating Papers.

Contrary to the Objector's assertion, the Certificate of Organization is not incorrect. The location of the organizational meeting, the Candidate's house, is within the corporate limits of Green Oaks, which is in Libertyville Township, and is serviced by the Libertyville Post Office, zip code 60048. Venturi Aff. ¶ 20. Regardless, even if a statement on a certificate of organization was considered to be an error, such an error does not rise to the level of invalidating the Candidate's nominating papers. A vacancy in nomination that exists under Section 5/7-61 of

the Election Code -- which is the operative Code provision here -- must be filled according to the requisites of Section 5/7-61, which sets forth the only criteria for filling a vacancy in nomination. Notably, Section 5/7-61 contains no requirement that a Certificate of Organization even be filed in order for a Candidate's nomination papers to be valid.

Rather, the responsibility for filing a Certificate of Organization is wholly set forth in Section 8-5 of the Election Code, and merely requires the chairman "to forward to the State Board of Elections, the names and addresses of the chairman and secretary of the committee." 10 ILCS 5/8-5. The Chairman of the Representative Committee for the 59th District has done just that, and has therefore satisfied the requisites of Section 8-5.

Further still, the filing requirement for a Representative Committee is a directory requirement, not a mandatory one. The Illinois Supreme Court has held that, before a provision in the Election Code will be found to be mandatory, rather than directory, it must "contribute substantially to the integrity of the election process." *Craig v. Peterson*, 39 Ill.2d 191, 196 (1968). The inclusion of the location of the meeting on the certificate of organization is not even required under Section 8-5; therefore, it cannot be seen to be mandatory, but a directory requirement at best. Regardless, the Certificate of Organization duly filed by the Chairman of the Representative Committee for the 59th District in no way impairs the ability of the voting public to see all of the relevant information associated with the Candidate's bid to fill the vacancy in nomination under Section 7-61.

D. This Board Lacks Subject Matter Jurisdiction To Consider An Objection Related To The Certificate Of Organization.

Finally, this Board lacks subject matter jurisdiction to even consider an objection as to the certificate of organization filed by the Representative Committee for the 59th District. The Electoral Board is a creature of statute. 10 ILCS 5/10-9. Accordingly, the Electoral Board has

only the limited powers granted it by statute. *Kozel v. State Board of Elections*, 126 Ill.2d 58 (1998). The Electoral Board's powers are set forth in Section 10-10 of the Election Code, which provides, in pertinent part:

> The electoral board shall take up the question as to whether or not the certificate of nomination or nomination papers or petitions are in proper form, and whether or not they were filed within the time and under the conditions required by law, and whether or not they are the genuine certificate of nomination or nomination papers or petitions which they purport to be, and whether or not in the case of the certificate of nomination in question it represents accurately the decision of the caucus or convention issuing it, and in general shall decide whether or not the certificate of nomination or nominating papers or petitions on file are valid or whether the objections thereto should be sustained and the decision of a majority of the electoral board shall be final subject to judicial review as provided in Section 10- 10.1. The electoral board must state its findings in writing and must state in writing which objections, if any, it has sustained.

10 ILCS 5/10-10.

The electoral board's mandate does not include review of the Certificate of Organization of a Representative Committee. Similarly, the information contained on the face of the Certificate of Organization filed with the State Board of Elections is not sufficient grounds to deny a candidate access to the ballot under the Constitution of the United States and the Constitution of the State of Illinois.

Accordingly, insofar as the Objector claims that the Certificate of Organization filed by the Representative Committee for the 59th District invalidates the Candidate's nominating papers, the Candidate fails to state a claim upon which relief can be granted, and dismissal is appropriate pursuant to Section 2-615 of the Illinois Code of Civil Procedure.

Wherefore, for all of these reasons, the Objector's Petition fails to state a cognizable basis to invalidate the Candidate's nomination papers, or is defeated by Venturi's Affidavit. Accordingly, the Candidate respectfully requests this Motion to Strike and Dismiss be granted.

Respectfully submitted,

Respondent-Candidate

By: _____
One of her Attorneys

John W. Countryman
The Foster & Buick Law Group LLC
2040 Aberdeen Ct.
Sycamore, IL 60178
815-758-6616 Fax 815-756-9506
E-Mail JWCBO@AOL.COM Cell 815-761-3806

John G. Fogarty, Jr.
Burke, Warren, MacKay & Serritella, P.C.
330 N. Wabash, Suite 2200
Chicago, IL 60611
312-840-7087 Fax 312- 840-7900
E-Mail jfogarty@ burkelaw.com

BEFORE THE DULY CONSTITUTED ELECTORAL BOARD

SHEILA SCHULTZ,	)	
	)	
Objector,	)	
	)	
vs.	)	No.
	)	
DAN SUGRUE,	)	
	)	
Candidate.	)	

Affidavit

The undersigned, being duly sworn, is and states that the following statements are true to the best of the undersigned knowledge and belief.

1. My name is Daniel B. Venturi I reside at 25 041 Megan Ct., Lake Villa, IL 60046.
2. I am an attorney licensed to practice in the State of Illinois.
3. I am the Chairman of the Lake County Republican Central Committee.
4. Tuesday, April 1, 2008 at approximately 3:00 p.m. I attended a meeting at the Law office of Bill Anderson at 9 North County St., Waukegan, Illinois.
5. 9 N. County St., Waukegan, Illinois, is within the 30th legislative District and the 60th Representative District of the State of Illinois.
6. The purpose of the meeting was to nominate candidates for the 30th legislative District and the 60th Representative District in the State of Illinois after the respective committees were organized.
7. In attendance at the meeting was myself, Ruth O'Connell, June O'Donahue, Keith Gray, Bill Anderson Roy Czajkowki, David Pfeifer, Ryan Cudney, Bryan Winter and Larry Falbe.
8. At that meeting a vote was taken to elect me as chairman and Ruth O'Connell as secretary of the legislative committee for the 30th District.
9. The vote was unanimous with all those quallfied to vote,I voting in favor.
10. The legislative committee for the 30th District next voted to nominate Keith Gray as the Republican candidate for the 30th legislative district.

EXHIBIT A

11. The vote was unanimous with all those qualified to vote, voting in favor.

12. After the conclusion of business in Waukegan, I drove to the residence of Dan Sugrue at 281 Crescent Knoll Drive, Green Oaks, IL 60048.

13. 281 Crescent Knoll Drive Green Oakes, IL is in Libertyville Township, Precinct 178 within the 59th Representative District of the State of Illinois.

14. The purpose of the meeting in Green Oaks was to establish the Representative Committee, elect officers and nominate a candidate for the 59th Representative District in the State of Illinois.

15. In attendance at the meeting was myself, Ruth O'Connell, June O'Donahue, Dan Sugrue, Ryan Cudney, and Larry Falbe.

16. At the meeting a vote was taken to elect me as chairman and Ruth O'Connell as secretary of the representative committee for the 59th District.

17. The vote was unanimous with all those qualified to vote, voting in favor.

18. The representative committee for the 59th District next voted to nominate Dan Sugrue as the Republican candidate for the 59th Representative district.

19. The vote was unanimous with all those qualified to vote, voting in favor.

20. Daniel Sugrue lives in the corporate limits of Green Oaks, in Libertyville Township Precinct 178 and is serviced by the Libertyville Post Office ZIP code 60048.

21. Further Affiant sayeth not.

Under penalty of perjury I hereby swear upon oath, depose and state that I have read the above and that the matters and facts contained therein are true and correct to the best of my knowledge and belief.

Daniel B. Venturi

Subscribe and sworn to before me
By Daniel B. Venturi
This 17 day of April, 2008.

Notary Public

"OFFICIAL SEAL"
BARBARA J VENTURI
NOTARY PUBLIC STATE OF ILLINOIS
COMMISSION EXPIRES 03/26/09

CERTIFICATE OF SERVICE

I, John G. Fogarty, Jr., an attorney, state that I caused copies of the Candidate's Motion to Strike and Dismiss The Objector's Petition to be served upon:

Barbara Goodman
Barbara B. Goodman & Associates
400 Skokie Boulevard, Suite 380
Northbrook, Illinois 60062
goodmanlaw1@aol.com

State Board of Elections
Office of the General Counsel
1020 South Spring Street
Springfield, Illinois 62708
Fax: (217) 782-5959

Michael J. Kasper
222 N. LaSalle, Suite 300
Chicago, Illinois 60601
Fax: (312) 368-4944

by e-mail and fax from 330 N. Wabash Avenue, Chicago, Illinois 60611, before the hour of 5:00 p.m. on April 25, 2008.

John G. Fogarty, Jr.

BEFORE THE DULY CONSTITUTED ELECTORAL BOARD
FOR THE HEARING AND PASSING UPON OF NOMINATION OBJECTIONS TO
NOMINATION PAPERS OF CANDIDATES FOR ELECTION TO THE
OFFICE OF REPRESENTATIVE IN THE GENERAL ASSEMBLY FOR THE 59th
REPRESENTATIVE DISTRICT OF THE STATE OF ILLINOIS

Sheila Schultz,	)	
	)	
Petitioner-Objector,	)	
	)	
v.	)	08-SOEB-GE 505
	)	
Dan Sugrue,	)	
	)	
Respondent-Candidate.	)	

RESPONSE TO MOTION TO DISMISS

NOW COMES Objector, Sheila Schultz, and in response to the Motion to Dismiss the Objector's Petition states as follows:

A. The Electoral Board has Authority to Rule Upon Compliance with the Mandatory Provisions of Section 8-5 of the Election Code.

In Sections C and D of his Motion to Strike and Dismiss the Objector's Petition, the Candidate makes two false assertions. First, the Candidate claims that the Electoral Board has no authority to determine compliance with Section 8-5 of the Election Code. 10 ILCS 5/8-5. Second, the Candidate contends that, even if the Electoral Board does have jurisdiction, the provisions of Section 8-5 are directory, and not mandatory. Because both of these assertions are incorrect, the Motion to Strike and Dismiss should be denied. Additionally, in Sections A and B of his Motion to Strike and Dismiss, the Candidate attempts to resolve disputed factual issues with hearsay evidence inappropriate for a Motion to Dismiss. Accordingly, the Motion should be denied.

B. The Electoral Board has Jurisdiction to Determine Compliance with Section 8-5.

In her Motion to Strike, the Candidate challenges the Electoral Board's jurisdiction to hear this Objector's Petition. Specifically, the Candidate claims that the Electoral Board does not have jurisdiction over this matter because it involves the process of filling a vacancy in nomination created when no candidate appeared on the ballot at the primary election. The Candidate's Motion should be denied because his contention is legally incorrect, and is directly contrary to both the statute and several published opinions of the Illinois Appellate Court.

The Candidate is correct that the Electoral Board is a creature of statute. 10 ILCS 5/10-9. As such, the Electoral Board's powers are limited to those granted by its enabling legislation. *Kozel v. State Board of Elections*, 126 Ill.2d 58 (1998); *Wiseman v. Elward*, 5 Ill.App.3d 249, 283 N.E.2d 282 (1st Dist. 1972). The Electoral Board's powers are enunciated in Section 10-10 of the Election Code, which provides:

> The electoral board shall take up the question as to whether or not the certificate of nomination or nomination papers or petitions are in proper form, and whether or not they were filed within the time and under the conditions required by law, and whether or not they are the genuine certificate of nomination or nomination papers or petitions which they purport to be, and whether or not in the case of the certificate of nomination in question it represents accurately the decision of the caucus or convention issuing it, and in general shall decide whether or not the certificate of nomination or nominating papers or petitions on file are valid or whether the objections thereto should be sustained and the decision of a majority of the electoral board shall be final subject to judicial review as provided in Section 10-10.1.

10 ILCS 5/10-10. In this case, the Objector's Petition asks the Electoral Board to take up the question of whether the nomination papers were filed "under conditions provided by law" and whether "the nominating papers are valid." The Objector simply requests a ruling that the nomination papers are invalid because they were not file under the conditions provided by law.

Because this case involves a vacancy in nomination, it is governed by Section 7-61 of the Election Code. 10 ILCS 5/7-61.1 Section 7-61 specifically addresses the Electoral Board's role in reviewing attempts to fill vacancies in nomination:

> The provisions of Section 10-8 through 10-10.1 relating to objections to certificates of nomination and nomination papers, hearings on objections, and judicial review, shall apply to and govern objections to resolutions for filling a vacancy in nomination.

10 ILCS 5/7-61. Thus, the Election Code specifically contemplates that the Electoral Board will adjudicate objections to nominations arising from the filling of vacancies in nomination.

The Candidate's Motion claims that the Electoral Board's inquiry is limited to the Resolution to fill a vacancy in nomination. For this incorrect proposition, Objector cites no authority – and indeed there is none. On the contrary, Objector's Petition is contrary to several reported decisions.

First, in *Carnell v. Madison County Elec. Bd.*, 299 Ill.App.3d 419, 701 N.E.2d 548 (5th Dist. 1998), the Court affirmed an electoral board decision invalidating a representative committee's attempt to fill a vacancy in nomination where the committee

did not properly organize as required by Section 8-5 of the Election Code. In *Carnell*, the Court held that the organizational provisions of Section 8-5 were mandatory and the committee's failure to adhere to those provisions rendered its later attempt to fill a vacancy in nomination pursuant to Section 7-61 invalid. *Id.* at 552-553.

This case is virtually the same as *Carnell*. In both cases, the committee failed to comply with the mandatory organizational procedures of Section 8-5, but nonetheless attempted to fill a vacancy in nomination pursuant to Section 7-61. In *Carnell*, the Appellate Court ruled that the failure to comply with Section 8-5 rendered its action under Section 7-61 invalid.

In addition, the Fourth District Appellate Court invalidated the action of a representative committee in filling a vacancy in nomination because one of the Committee members was not notified of the meeting at which the committee organized and then filled a vacancy in nomination. *Graham v. State Officers Elec. Bd.*, 269 ill.App.3d 609, 646 N.E.2d 1357 (4th Dist. 1995)

Thus, it is well settled that electoral boards have jurisdiction over matters involving the organization and procedures followed by representative committees in filling vacancies in nomination. The Candidate's unsupported argument that this Board's authority is limited to the resolution filling the vacancy in nomination has no legal support, either statutory or judicial, and should be rejected.

C. The Provisions of Section 8-5 are Mandatory.

The Candidate incorrectly claims that the provisions of Section 8-5 are directory, and not mandatory. Section 8-5 of the Election Code governs the membership,

organization and procedures that legislative and representative district committees must follow in order to conduct their business. 10 ILCS 5/8-5. The statute sets forth the membership of each committee: In Cook County, the political party's elected Ward and Township committeeman with territory in the appropriate legislative or representative district; and outside of Cook County the committee consists of the County chairman, and two additional members of the county central committee of the applicable political party. *Id.*

After the primary election (where the members of the committee are elected), the Committee must take a few simple steps to organize to begin conducting business. First, the Committee must meet (the outgoing chairman of the committee notifies the members of the time and place of the meeting) and select a chairman and other officers. *Id.* The chairman of the committee must be one of the committee members, but any additional officers do not need to be committee members. *Id.*

Once the committee has elected its officers it must "immediately" forward the names and addresses of the committee's chairman and secretary to the State Board of Elections. *Id.* The format of this required information is popularly referred to as a "Statement of Organization." In this case, the purported Committee did not properly organize because it never forwarded to the State Board of Elections the names and addresses of the chairman and secretary, through a Statement of Organization or any other method, as required by Section 8-5. *Id.* As a result, the Committee never properly completed the necessary steps to organize. Because the Committee did not properly

organize, it had no authority to conduct business and any purported actions it claims to have taken are invalid.

There is no dispute that a properly organized committee has the authority to fill vacancies in nomination pursuant to Section 7-61. *See* 10 ILCS 5/8-17 ("Vacancies in nomination occurring under this article shall be filled by the appropriate legislative or representative committee in accordance with the provisions of Section 7-61 of this code."). However, when committee fails to satisfy the simple organizational procedures of Section 8-5, any attempts to fill a vacancy in nomination pursuant to Section 7-61 are invalid. *Carnell v. Madison County Officers Elec. Bd.*, 299 Ill.App.3d 419, 701 N.E.2d 548 (5th Dist. 1998).

In *Carnell*, the Court affirmed the decision of the Electoral Board invalidating an attempt by a representative committee to fill a vacancy in nomination where the committee was not constituted in the manner provided by Section 8-5 (the same section at issue in this case) of the Election Code. *Id.* at 551. The Chairman of the Madison County Republican Party appointed two individuals to serve with him on the Representative District Committee without selection by the County Central Committee in violation of Section 8-5. *Id.* The Court concluded that the provisions of Section 8-5 are mandatory, and that failure to comply with those provisions invalidated Representative District Committee's attempt to fill a vacancy in nomination. *Id.* at 552-553.

Election Code provisions are deemed mandatory when: (1) the Election Code provides a sanction for noncompliance; and (2) they protect the integrity of the election

process. *Id.* at 552. As the Court found in *Carnell*, Section 8-5 plainly has a sanction for noncompliance. *Id.* Section 8-1, provides:

> The nomination of all candidates for members of the General Assembly by all political parties ... shall be made in the manner provided in this Article 8 and not otherwise. The name of no person ... shall be placed upon the official ballot to be voted at the general election as a candidate unless such person shall have been nominated for such office under the provisions of this Article 8.

10 ILCS 5/8-1. In *Carnell*, the Court found that because the committee members were not properly selected, the nomination was not made in accordance with Section 8-5. As a result of the violation of Section 8-5, the Court concluded that the sanction of Section 8-1 required invalidation of the nomination. *Id.* at 552-553.

Here, the Committee likewise failed to comply with Section 8-5 by failing to notify the State Board of Elections, and thus the public, of the names and addresses of the Committee's officers. As a result of this violation, just as in *Carnell*, the sanction of Section 8-1 requires invalidation of the nomination.

Not only must the nomination fail because of the sanction of Section 8-1, but the notification provisions of Section 8-5 are important in protecting the integrity of the election process. In this instance, the importance of forwarding the names and addresses of the committee's officers to the State Board of Elections to the protection of the election process is readily apparent. The disclosure of the names and addresses of the committee's officers is the only public disclosure of the identity of the committee officers. Without such disclosure, the public has absolutely no ability to determine if the actions taken by the committee were made by those individuals authorized to do so.

For example, if the committee is not required to publicly disclose the names and addresses of its officers, there can be no way for the public to know if the actions taken by a committee were legally authorized. In this case, the Committee purported to fill a vacancy in nomination for the office of Representative in the General Assembly pursuant to Section 7-61 of the Election Code. If the resolution were signed by "Smith" and "Jones" there would be no way for anyone to know whether that action were taken by the appropriate officials.

The fact that some signatures appear on the Resolution to Fill the Vacancy in Nomination is of no moment. A resolution to appoint someone to the ballot signed by Smith and Jones does not adequately inform the public that the action was appropriate. Without the addresses, the public has no way of knowing that the Smith and Jones who signed the resolution were authorized officers of the committee and not Smith and Jones from a rival political organization who live across town, or for that matter, across the country.

In addition, the Committee's purported action is not merely a ministerial or administrative act. Here, the Committee attempted to nominate a candidate to appear on the General Election ballot for an office created by the Illinois Constitution. That ballot will be presented to tens of thousands of voters in a State administered election. Recognizing the significance of this action, the General Assembly provided a mechanism, through Section 8-5, empowering the public to know whether that action was legal and taken only by individuals authorized to do so.

Indeed, the General Assembly not only called for this public disclosure, but also specifically empowered the public to take action against unauthorized actions by making this nomination process subject to the objection process of Section 10-8. *See* 10 ILCS 5/7-61; 10-8. Here, it makes no sense that the public would be empowered to file an objector's petition against this nomination process if committee were to be excused from providing the public with the information necessary to determine whether a basis for such an objection exists. *See Carnell*, 701 N.E.2d at 552 ("The Election Code must be read in its entirety, and one provision cannot be read in a manner that renders another section meaningless or superfluous.").

In addition, *Peoples Independent Party v. Petroff*, 191 Ill.App.3d 706, 548 N.E.2d 145 (5th Dist. 1989), does not support the Candidate's position. Not only, does *Petroff* involve a different Article of the Election Code, but it is also factually distinguishable.

In *Petroff*, the Court addressed the provision of Article 10 provision that a new political party, which was created by a petition, file the names and addresses of party officers authorized to fill vacancies in nomination with election authority. In *Petroff*, the Court properly concluded that the officer's names and addresses provision was directory because that provision related to the authority to fill *future* vacancies. In other words, because the new party nominees were submitted with the petition, the officers had not taken any action at all, but were simply empowered to do so in case a vacancy in nomination arose at a later date.

In this case, in contrast, the purported committee has already acted. The officers of this committee are not merely empowered to take future action, but they have already

purported to do so. If this provision is directory, as Section 10-5 was in *Petroff*, the public will have no way to determine if the committee's action was authorized and proper. With that distinction in mind, it is easy to understand why the *Carnell* Court held that the organizational provisions of Section 8-5 are mandatory.

This case is virtually the same as *Carnell*. In both cases, the committee failed to comply with the mandatory organizational procedures of Section 8-5, but nonetheless attempted to fill a vacancy in nomination pursuant to Section 7-61. In *Carnell*, the Appellate Court ruled that the failure to comply with Section 8-5 rendered its action under Section 7-61 invalid.

D. A Motion to Dismiss Cannot Resolve the Disputed Factual Issues.

A Motion to Dismiss attacks the legal sufficiency of the pleading. Here, the Candidate appropriately (but incorrectly) attempted the Electoral Board's subject matter jurisdiction and the legal sufficiency of the Objector's Petition in Sections C and D of his Motion. However, in Sections A and B, the Candidate does not attack the *legal* sufficiency of the pleadings, but instead alleges, under Section 2-619 of the Code of Civil Procedure, that the Objector's Petition should be denied because the *facts* it alleges are incorrect. The Motion should be denied because a Motion to Dismiss is inappropriate to resolve disputed factual questions.

A motion under section 2-619 of the Code admits the legal sufficiency of the well-pleaded factual allegations of a complaint. *Neppl v. Murphy*, 316 Ill.App.3d 581, 584 (2000). The purpose of a motion to dismiss under section 2-619 of the Code of Civil Procedure is to "afford litigants a means to dispose of issues of law and easily proved

issues of fact at the outset of a case", reserving disputed questions. *Zedella v. Gibson*, 165 Ill.2d 181, 185 (1995).

When proceeding under a Section 2-619 motion, the movant concedes all well-pleaded facts set forth in the complaint but does not admit conclusions of law. *Employers Mutual Cos. v. Skilling*, 256 Ill.App.3d 567, 569, 629 N.E.2d 1145 (1994). A Section 2-619 motion should be granted only when it raises an affirmative matter, which negates the plaintiff's cause of action completely or refutes critical conclusions of law or conclusions of material, but unsupported fact. The court must deny the motion if there is a material and genuine disputed question of fact. 735 ILCS 5/2-619(c); *Samansky v. Rush-Presbyterian-St. Luke's Medical Center*, 208 Ill.App.3d 377, 383, 567 N.E.2d 386 (1990).

In this case, the Motion to Dismiss attempts to resolve the disputed factual question, namely whether the Representative District Committee met in compliance with the mandatory provisions of Sections 8-5 and 7-61 of the Election Code. The Objector's Petition asserts that the Committee did not do so, and the Motion with its attachments, claims that the Committee did. This is a genuine fact dispute. As a result, it must be resolved through an evidentiary hearing, and not through a Motion to Dismiss. As a result, the Motion should be denied.

WHEREFORE, for the foregoing reasons, Objector respectfully prays that the Motion to Dismiss be denied.

Respectfully submitted,
Objector

By: _____
One of Objector's Attorneys

Michael J. Kasper
222 N. LaSalle, Suite 300
Chicago, IL 60601
312.704.3292
312.368.4944 (fax)

Objection Report

Objection Information	Office and Party	Hearing Information
08SOEBGE507 PENDING Filed:06/30/2008 02:47 PM		07/08/2008 10:00 AM SBE
Candidate(s) : ERIC FERGUSON 1127 GRANDVIEW AVENUE LOCKPORT, IL 60441	**13TH CONGRESS** LIBERTARIAN	
Objector(s) : GREGORY A. BOLTZ 1912 BRIGHTON STREET DOWNERS GROVE, IL 60516		
08SOEBGE102 PENDING Filed:06/30/2008 03:25 PM		07/08/2008 10:00 AM SBE
Candidate(s) : BRADLEY K. CARTER 2709 NORTH PEORIA PEORIA, IL 61603	**18TH CONGRESS** CONSTITUTION PARTY OF ILLINOIS	
Objector(s) : JEFFREY S. DENZLER 143 EAST EAST STREET ARGENTA, IL 62501		
08SOEBGE508 PENDING Filed:06/30/2008 03:31 PM		07/08/2008 10:00 AM SBE
Candidate(s) : ALLAN STEVO 128 SOUTH CENTRAL AVENUE HIGHWOOD, IL 60040	**10TH CONGRESS** INDEPENDENT	
Objector(s) : PATRICK LeBEAU 1130 KYLEMORE COURT DES PLAINES, IL 60016		
08SOEBGE509 PENDING Filed:06/30/2008 04:38 PM		07/08/2008 10:00 AM SBE
Candidate(s) : DAN DRUCK 41W171 CHERYL COURT HUNTLEY, IL 60142	**14TH CONGRESS** LIBERTARIAN	
Objector(s) : BRETT HAASE 2811 PROVIDENCE LANE MONTGOMERY, IL 60538		

STATE BOARD OF ELECTIONS

MEMORANDUM

From the desk of:
Daniel W. White, Executive Director

TO: Members of the Board

SUBJECT: EAC Election Data Collection Grant Program Update

DATE: July 1, 2008

This is to update the Board of our progress to implement the $2 million EAC Data Collection Grant.

Good news! On Friday June 20, we posted in the State Procurement Bulletin, Notice of our intent to proceed with the Sole Source Request. The Procurement Policy Board reviewed our request and on Monday, June 23 waived their right to request additional information, thereby indicating the process can move forward.

Posting in the State Procurement Bulletin initiates a 14 day objection period, during which prospective vendors can submit objections in writing. The objection period ends July 4. As of this writing no objections have been received.

If no qualifying objections are received by July 4, we are free to proceed with the sole source contract with Catalyst, assuming that the legislature has approved State spending authority.

In the meantime, we are proceeding with development and review of contract documentation, disclosures and certifications.

STATE OF ILLINOIS
COUNTY OF COOK

BEFORE THE STATE BOARD OF ELECTIONS
STATE OF ILLINOIS

Illinois State Board of Elections
Complainant

v. **08 AG 023**

Stout for Senate Committee S9696
Respondent

REPORT OF HEARING EXAMINER
Appeal of Civil Penalty Assessment for the Delinquent Filing of a
Schedule A-1 in conjunction with the 2008 General Primary Election

According to the political committee's Schedule A-1, filed February 1st, 2008, it received two (2) contributions from (1) the Illinois Federation of Teachers, dated 1/24/08, in the amount of $2,000.00, reported four (4) days late, and, (2) the American Federation of Teachers Local 606, dated 1/28/08, in the amount of $5,000.00, reported two (2) days late. The political committee is being assessed a total penalty of $7,000.00.

Ms. Constance Tunget, Treasurer, filed a Request for Hearing and Appeal Affidavit, on May 13th, 2008, indicating in part: "The Committee, in its first endeavor in seeking public office, did its best in complying with campaign disclosure requirements; that these contributions were indeed disclosed; that the contributions were disclosed prior to the election; other contributions were disclosed on A-1 forms by the Committee in a timely manner; not disclosing the two contributions within the proper time frame was certainly not intentional, but an inadvertent mistake, and the Committee intends to take training in campaign disclosure requirements to alleviate any future problems".

Hearing in this matter was set for Tuesday, June 3rd, 2008, to be conducted at the Chicago Board office, 100 W. Randolph, 14-100, at 12:30 p.m.

Mr. Steve Stout, Candidate, and Mr. Courtney C. Nottage, counsel appeared on behalf of the Respondent(s). The Respondent indicated that the date of the contributions as reported on the Schedule A-1, are the actual date of receipt. It is the asking of the Respondent that as a first offense, the Board consider a waiver of the penalty.

Based upon a review of the documents/statements submitted in this matter, it is the opinion of the Hearing Examiner that no reasonable grounds exist for the late reporting of Schedule A-1 contributions. Therefore, it is the recommendation of the Hearing Examiner that the appeal be denied in this matter, but as a first delinquent Schedule A-1 filing, the assessed civil penalty be reduced 10% or $700.00, and be due and owing.

Tony Morgando Jr – Hearing Examiner
June 6th, 2008

STATE BOARD OF ELECTIONS
STATE OF ILLINOIS

1020 South Spring Street, P.O. Box 4187
Springfield, Illinois 62708
217/782-4141
Fax: 217/782-5959

James R. Thompson Center
100 West Randolph, Suite 14-100
Chicago Illinois 60601
312/814-6440
Fax: 312/814-6485

BOARD MEMBERS
Albert Porter, Chairman
Bryan Schneider, Vice Chairman
Patrick Brady
John Keith
William McGuffage
Wanda Rednour
Jesse Smart
Robert Walters

EXECUTIVE DIRECTOR
Daniel W. White

April 14, 2008

Stout for Senate Committee
1301 5th Street
LaSalle, IL 61301

S9696

Dear Stout for Senate Committee;

This committee has failed to file the following Schedule A-1's, Report of Campaign contributions of more than $500.00, within 2 business days of receipt as required by the Illinois Campaign Disclosure Act:

Contributed By	Date of Contribution	Fine Assessed	Amount of Contribution	Date A-1 Received	Days Late
Il Federation of Teachers	1/24/08	$2000.00	$2000.00	2/1/08	4
American Federation of Teachers Loc 606	1/28/08	$5000.00	$5000.00	2/1/08	2

The committee is fined a **total** of $7000.00 for delinquently filing Schedule A-1 reports as required by the Illinois Campaign Disclosure Act. This total ***does not*** reflect any previously assessed fines.

Based upon this committee's failure to comply with the provision of 10 ILCS 5/9-10(b-5) of the Election Code, the Board may impose fines for violations not to exceed 100% of the total amount of the contributions that were untimely reported, but in no case when a fine is imposed shall it be less than 10% of the total amount of the contributions that were untimely reported.

Since this is the first delinquent Schedule A-1 filing by your committee, the civil penalty will be automatically reduced to $700.00, (10% of the total amount reflected above) if you do not choose to file an appeal under the Board's present policy. The total amount due will be imposed with the issuance of a Final Board Order after the 30-day appeal period had expired. This amount must be paid (including any previously assessed fines), within 30 days of the issuance of the Order.

Enclosed please find Section 125.425 Civil Penalty Assessments and the forms with which you may appeal the assessed fines if you believe the civil penalties have been assessed in error. ***If you have a legitimate reason for your delinquent filing, it would behoove you to send in the appeal form since the Board has the discretion to take extenuating and other circumstances into account in determining the amount of your penalty.*** Notice of Appeal must be filed within 30 days of the mailing of this assessment for it to be considered.

If you have any questions regarding the appeal procedure, please call Sue McArthur at 217/782-1543.

Sincerely,

Rupert T. Borgsmiller
Director, Division of Campaign Disclosure

RTB:sm
cc: Officer(s), Candidate(s)

* This contribution was reported on the December 2007 Semi-annual Report but should have been reported on a Schedule A-1 Report of Campaign Contributions of more than $500.00, within 2 business days of receipt.

** This contribution did not, by itself, necessitate filing of a Schedule A-1. No fine was assessed for this contribution – it is listed for informational purposes only. A subsequent contribution, when aggregated with this contribution, exceeded the "more than $500.00" threshold and was used as the basis for the fine assessment.

STATE BOARD OF ELECTIONS
08 MAY 13 AM 8:56

State of Illinois)
)
County of La Salle)

BEFORE THE STATE BOARD OF ELECTIONS
OF THE STATE OF ILLINOIS

IN THE MATTER OF:	)	
	)	
ILLINOIS STATE BOARD OF ELECTIONS,	)	
	)	
Complainant,	)	
	)	
vs.	)	Case No. 08 AG 023
	)	
STOUT FOR SENATE COMMITTEE,	)	
	)	
Respondent.	)	

APPEAL AFFIDAVIT

I, Constance Tunget, Treasurer for the Stout for Senate Committee ("Committee"), first being duly sworn depose and state that I represent that the said Committee can offer a good reason or defense to the assessment of a civil penalty in this matter, and that such reasons and defenses are:

1. The Committee, in its first endeavor in seeking public office, did its best in complying with campaign disclosure requirements.

2. At issue are two contributions (one for $2,000 and the other for $5,000) that were disclosed on A-1 forms, but were disclosed two and four days late respectively. What is meaningful besides the fact that these contributions were indeed disclosed, is that the contributions were disclosed prior to the election, enabling the public to know just who was contributing to the Committee prior to Election Day.

3. It should be noted that other contributions were disclosed on A-1 forms by the

Committee in a timely manner, and it is the intent of the Committee to always comply with the campaign disclosure laws of Illinois. The Committee's not disclosing the two contributions within the proper time frame was certainly not intentional, but an inadvertent mistake. And, this was the Committee's first violation.

4. The Committee intends to take training in campaign disclosure requirements to alleviate any future problems.

WHEREFORE, Respondent, Stout for Senate Committee, respectfully requests that the State Board of Elections reverse the imposition of the fine in total.

Respectfully Submitted,

Constance Tunget

Constance Tunget, Treasurer – Stout for Senate Committee

Signed and sworn to by:

Constance Tunget

(Print name of Constance Tunget)

before me this 5th day of May, 2008.

Connie A Credi

Notary Public

"OFFICIAL SEAL"
CONNIE A CREDI
NOTARY PUBLIC, STATE OF ILLINOIS
MY COMMISSION EXPIRES 9/17/2011

STATE BOARD OF ELECTIONS
08 MAY -7 PM 4:10

59696

BEFORE THE STATE BOARD OF ELECTIONS
OF THE STATE OF ILLINOIS

IN THE MATTER OF:	)	
	)	
ILLINOIS STATE BOARD OF ELECTIONS,	)	
	)	
Complainant,	)	
	)	
vs.	)	Case No.
	)	
STOUT FOR SENATE COMMITTEE,	)	
	)	
Respondent.	)	

REQUEST FOR A HEARING

I, Constance Tunget, Treasurer for the Stout for Senate Committee ("Committee"), appeals on behalf of the Committee the assessment of the civil penalty proposed in this matter, and submits in support of that appeal the accompanying affidavit. The Committee requests a public hearing at which it will appear to offer reasons and defenses why the proposed assessment should not be imposed.

Respectfully Submitted,

Constance Tunget

Constance Tunget, Treasurer – Stout for Senate Committee

Courtney C. Nottage
111 West Washington Street, Suite 1100
Chicago, Illinois 60602
847 894 8807
312 641 2455 Fax

Attorney for Respondent