

FORM 2
OHIO TWELFTH DISTRICT COURT OF APPEALS
CIVIL DOCKET STATEMENT
FILED
COURT OF APPEALS

Revised 05/01/2001

SEP 12 2008

APPEAL NUMBER CA 200809000

TRIAL COURT NO. CVH-2008-0566

TINA M. MERANDA
BROWN COUNTY CLERK OF COURTS

TRIAL COURT JUDGE D. Wilson

Parties:

Counsel:*

State of Ohio, ex rel

Thomas G. Eagle (0034492)

(Name & Supreme Court Registration No.)

Dennis J. Varnau

3386 N. State Rte. 123

(Address)

Lebanon, Ohio 45036

(937) 743-2545

(Telephone No.)

☐ Filing appeal but not representing party on appeal

Plaintiff-Appellant/Appellee

(Circle designation)

vs.

vs.

Brown County Board

Mary McMullen (0066589)

(Name & Supreme Court Registration No.)

of Elections

200 East Cherry Street

(Address)

Georgetown, Ohio 45121

(937) 378-4151

(Telephone No.)

☐ Filing appeal but not representing party on appeal

Defendant-Appellant/Appellee

(Circle designation)

1. This appeal should be assigned to:

- ☐ A. The **Regular Calendar** with Full Briefing
- ☐ Transcript is more than 100 pages
- ☐ Brief in excess of 15 pages is necessary to argue the issues adequately, or more than 15 days will be required to file the brief
- ☐ Appeal concerns unique issues of law which will be of substantial precedential value in determination of similar cases
- ☐ Other: _____

* Please list at least one counsel for each party to the appeal. If a party will be represented by more than one counsel, designate which counsel is to be primarily responsible for prosecuting the appeal and receiving notices and pleadings from the court and all other parties. See Loc.R. 9(A).

☒ B. The **Accelerated Calendar**

- ☒ No transcript required
- ☐ Transcript consists of less than 100 pages, or is of such length that preparation time will not be a source of delay
- ☐ Agreed statement will be submitted in lieu of record within 20 days
- ☐ Record was made in an administrative hearing and was filed with the trial court
- ☐ All parties to the appeal agree to an assignment to the accelerated calendar and agree to comply with filing requirements of Loc.R. 6
- ☒ Other: Record is complete; appeal includes elective issue on

Nov. 4 Ballot.

2. Indicate General Nature of Case:
- | | |
|----------------------------|-------------------------------------|
| Insurance | <input type="checkbox"/> |
| Administrative | <input type="checkbox"/> |
| Juvenile/Permanent Custody | <input type="checkbox"/> |
| Contractual | <input type="checkbox"/> |
| Personal Injury | <input type="checkbox"/> |
| Declaratory Judgment | <input type="checkbox"/> |
| Probate | <input type="checkbox"/> |
| Domestic Relations | <input type="checkbox"/> |
| Other (Specify below) | <input checked="" type="checkbox"/> |

Specify: Appeal of 12(B)(6) dismissal of mandamus action.

3. Probable issues for review: Equal protection violation by disallowing challenge by independent candidate against party affiliated candidate.

YES NO

4. Does this appeal involve the adoption of a minor child or termination of parental rights?
If so, see Appellate Rule 11.2. ☐ YES ☒ NO

5. Does this appeal turn on the interpretation of a particular case, statute or rule? ☒ YES ☐ NO

If yes, list the case, statute or rule: R.C. 3513.05

6. Does Civil Rule 54(B) apply? Yes: ☐ No: ☒

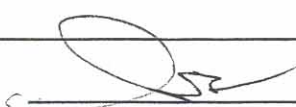
7. Type of record to be filed:

- ☐ Complete transcript of proceedings Estimated length of transcript as ordered: _____
- ☐ Partial transcript of proceedings Specify parts ordered: _____
- Estimated length of transcript as ordered: _____
- ☐ Statement of record pursuant to App.R. 9(C) or (D)
- ☒ No transcript of proceedings or App.R. 9(C) or (D) statement to be filed or transcript or App.R. 9. statement is presently part of the record. **If this box is checked, the court will consider this to be a Loc.R. 5 notice for purposes of completing the record on appeal.**

8. Time needed to complete transcript: N/A

9. Time needed to file brief after record is complete (not to exceed 15 days for accelerated calendar cases): 15 Days

10. List all related or pending appeals: None known.


Counsel's Signature

FILED
CLERK OF COURTS
2008 SEP 12 PM 2:28
CA 20080906

IN THE COMMON PLEAS COURT
BROWN COUNTY, OHIO

STATE OF OHIO, ex rel
DENNIS J. VARNAU,

Relator/Appellant,

-VS-

BROWN COUNTY BOARD OF
ELECTIONS,

Respondent/Appellee.

CASE NO. CVH-2008-0566
Judge Wilson (by assignment)

NOTICE OF APPEAL
FILED
COURT OF APPEALS

SEP 12 2008

TINA M. MERANDA
BROWN COUNTY CLERK OF COURTS

Now comes THE STATE OF OHIO, EX REL. DENNIS J. VARNAU, Relator/Appellant, by and through counsel, and hereby gives notice to the above party of the her intent to and he does hereby appeal to the Twelfth District Court of Appeals for Brown County, Ohio, the Judgment Entry Granting Respondent's Motion to Set Aside Magistrate's Order and Granting Amended Motion to Dismiss, filed in this matter, dated September 9, 2008, and any and all interlocutory orders made final by that Judgment Entry.


THOMAS G. EAGLE CO., L.P.A.



Thomas G. Eagle (#0034492)
Appellate Counsel for Appellant
3386 North State Route 123
Lebanon, Ohio 45036
Phone: (937) 743-2545
Fax: (937) 704-9826
E-mail: eaglelawoffice@cs.com

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing was served upon Mary McMullen, Attorney for Respondent/Appellee, 200 East Cherry Street, Georgetown, Ohio, 45121, and Julie D. Steddom, Trial Attorney for Relator, 7 Main St., Suite 2, Ripley, Ohio, 45167, by ordinary U.S. mail this 12th day of September 2008.



Thomas G. Eagle (#0034492)

IN THE COURT OF COMMON PLEAS
BROWN COUNTY, OHIO

FILED

08 SEP -9 AM 10:59

THOMAS A. HARRIS
CLERK OF COURTS

STATE OF OHIO, ex rel
DENNIS J. VARNAU

Relator

vs.

BROWN COUNTY BOARD
OF ELECTIONS

Respondent

Case No. CVH 2008-0506

JUDGMENT ENTRY GRANTING
RESPONDENT'S MOTION TO SET
ASIDE MAGISTRATE'S ORDER
AND GRANTING AMENDED
MOTION TO DISMISS

This matter was before the court on September 8, 2008, for a decision on the Respondent's Motion to Set Aside Magistrate's Order. Julie D. Steddom, Attorney for Relator Dennis J. Varnau, and Mary McMullen, Attorney for Respondent, Brown County Board of Elections, were present.

On May 23, 2008, Relator Varnau filed a Petition for a Writ of Mandamus against the Brown County Board of Elections. On June 23, 2008, Respondent Board of Elections filed an Amended Motion to Dismiss. On August 11, 2008, Magistrate Nathan A. Thompson filed a Journal Entry of Order Denying Respondent's Amended Motion to Dismiss Mandamus Action Pursuant to Civil Rule 12(B) and (D) and Local Rule 9(C)(1)(a) and (3). On August 18, 2008, Respondent filed a timely Motion to Set Aside Magistrate's Order. Also on August 18, 2008, the Respondent filed Respondent's Proposed Statement of Proceedings. Because no response was filed to the Proposed Statement of Proceedings, the court accepts the proposed statement as accurate.

The court carefully reviewed all filings in the case, arguments made on behalf of both parties, and the applicable law. For the reasons stated on the record, this court finds that the arguments made by Respondent in its Motion to Set Aside Magistrate's Order and the Amended Motion to Dismiss are well taken, including that the extraordinary remedy of mandamus is not appropriate in that there is a legal remedy at law through a quo warranto action. Additionally, the court finds that Relator's protest was not timely filed nor was it filed by a "qualified elector who is a member of the same political party as the candidate and who is eligible to vote at the primary election for the candidate whose declaration of candidacy the elector objects to," pursuant to R.C.

3513.05.

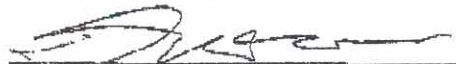
The court hereby orders that the Motion to Set Aside Magistrate's Order is granted.

The court further orders that the Amended Motion to Dismiss is granted.


The September 11, 2008 non-oral hearing on the merits is vacated.


This matter is hereby dismissed. Costs to Relator.

SO ORDERED.


David Deuce Wilson, Judge

Have seen:


Julie D. Steddom
Attorney for Relator Dennis J. Varnau


Mary McMullen
Assistant Prosecuting Attorney
Attorney for Brown County Board of Elections