IN THE COURT OF COMMON PLEAS BROWN COUNTY, OHIO

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FILED

STATE OF OHIO, ex rel	Case No. CVH 2008-0566 COURTS
DENNIS J. VARNAU	pag set options entrances agreeat the
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	: JUDGMENT ENTRY GRANTING
vs.	: RESPONDENT'S MOTION TO SET
	: ASIDE MAGISTRATE'S ORDER
BROWN COUNTY BOARD	: AND GRANTING AMENDED
OF ELECTIONS	: MOTION TO DISMISS
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Respondent	:

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

MMcMuller

Mary Mc**M**ullen Assistant Prosecuting Attorney Attorney for Brown County Board of Elections

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