

IN THE TWELFTH DISTRICT COURT OF APPEALS  
BROWN COUNTY, OHIO

STATE OF OHIO, ex rel  
DENNIS J. VARNAU,

Relator/Petitioner,

-vs-

DWAYNE WENNINGER,

Respondent/Defendant.

FILED  
COURT OF APPEALS

AUG 20 2010

CASE NO. CA2009-02-10

RELATOR'S MOTION TO  
CERTIFY CONFLICT

TINA M. MERANDA  
BROWN COUNTY CLERK OF COURTS

Now comes the Appellant, by and through counsel, pursuant to Art. IV, Sec. 3(B)(4) of the Ohio Constitution, and Ohio R. App. P. 25, and moves this Court to certify to the Ohio Supreme Court the following issues, which appear to be in conflict with other courts of appeals in the State:

To the extent this Court's Decision gives any precedential, preclusive, or conclusive effect on the issue of a candidate's qualifications to hold office, as opposed to run for the office, by a Board of Elections placing a candidate on a ballot, it is in conflict with:

1. State ex rel. Wolfe v. Lorain County Bd. of Elections (1978), 59 Ohio App.2d 257, 258, confirming the proposition that a board of elections placement on a ballot means nothing for the candidate's eligibility to *hold* the office.
2. Foster vs. Cuyahoga Cty. Board of Elections (1977), 53 Ohio App.2d 213, 222-223, where the Court expressly rejected the similar argument, that "by virtue of his acceptance by the board of elections as a write-in candidate, [he] must have been found to possess the qualifications of an elector . . . ."

It is therefore requested that the Court certify this case as a conflict with the above cases as to these issues, if it does not grant the Motion to Vacate in a manner rendering these issues moot.

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

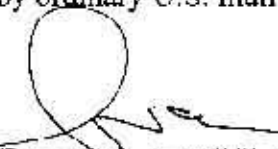


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**CERTIFICATE OF SERVICE**

I hereby certify that a true copy of the foregoing was served upon Gary A. Rosenhoffer, 302 E. Main St., Batavia, OH 45103, and Patrick L. Gregory, 717 W. Plane, Bethel, OH 45106, Attorneys for Respondent, by ordinary U.S. mail this 20th day of August 2010.



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**Thomas G. Eagle** (#0034492)