

IN THE TWELFTH DISTRICT COURT OF APPEALS
BROWN COUNTY, OHIO

State ex rel. Varnau

Relator-Plaintiff

FILED
COURT OF APPEALS

Case No. CA2009-02-10

JUL 12 2011

Vs

:

MOTION TO DISMISS

TINA M. MERANDA
BROWN COUNTY CLERK OF COURTS

Wenninger

:

Respondent-Defendant

:

Now comes Respondent Wenninger (Wenninger), through counsel, and moves to dismiss the complaint of Relator Varnau (Varnau) as Varnau lacks standing to bring a complaint in quo warranto.

Wenninger incorporates herein by reference the memorandum set forth below.



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Counsel for Respondent Wenninger

MEMORANDUM

The general rule is that votes cast for a deceased, disqualified, or ineligible person, although ineffective to elect such person to office, are not to be treated as thrown away, but are to be counted in determining the result of an election as regards the other candidates. *133 ALR 319*. A person who finishes second in an election has no standing to bring an action in quo warranto. *People ex rel.*

Duncan v. Beach (1976), 294 N.C. 713, 242 S.E. 2d 796 (N.C. Sup. Ct.); *State ex rel. Quick-Ruben v. Verharen* (1998), 136 Wn. 2d 888, 969 P.2d 64 (Wn. Sup. Ct.); See also, *State ex rel. Sheets v. Speidel* (1900), 62 Ohio St. 156 (second highest vote recipient not allowed to assume the office of Clermont County sheriff when winning candidate died).

Varnau lacks standing to bring a complaint in quo warranto. This matter should be dismissed and Varnau should be taxed with costs and attorney fees.



Patrick L. Gregory

Respectfully submitted,



Gary A. Rosenhoffer

CERTIFICATE OF SERVICE

I certify that on July 12, 2011, a copy of this motion was served by ordinary mail, postage prepaid on Thomas G. Eagle, 3386 N. State Route 123, Lebanon, Ohio 45036.



Gary A. Rosenhoffer