

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. TINA M. MERANDA

BROWN COUNTY CLERK OF COURTS

CASE NO. CA2009-02-10

FILED
COURT OF APPEALS

AUG 31 2010

RELATOR'S REPLY TO
RESPONDENT'S
MEMORANDUM IN
OPPOSITION TO
RELATOR'S MOTION TO
CERTIFY CONFLICT

Now comes the Appellant, and as his Reply to Respondent's Memorandum in Opposition to Relator's Motion to Certify Conflict, hereby submits the following Memorandum.

Both cited cases include, even if only by implication, the rule of law that a board of elections' action placing a *candidate* on a *ballot*, is irrelevant to any subsequent action challenging an *elected official* actually *holding* the office. That is the only proposition of law decided by this Court, and decided just the opposite; that a board of elections' action placing a *candidate* on a *ballot*, is *preclusive* of any subsequent action challenging an *elected official* actually *holding* the office.

That is the conflict which should be certified: "What is the legal effect of a board of elections' action placing a *candidate* on a *ballot*, to any subsequent action challenging an *elected official* actually *holding* the office?"

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 31st day of August 2010.



Thomas G. Eagle (#0034492)