Filed: 5/3/2024 9:57 AM

IN THE

COURT OF APPEALS OF INDIANA

Case No. 24A-MI-251

ROSS G. THOMAS
APPELLANT
(Plaintiff)

vs.

JOSEPH FOYST
APPELLEE
(Defendant below)

FROM THE BARTHOLOMEW CIRCUIT COURT

Case No. 03C01-2309-MI-4658

BEFORE THE HONORABLE
MARK K. LLOYD
SPECIAL JUDGE

BRIEF OF APPELLEE

David W. Stone IV #1670-48
STONE Law Office & Legal Research
26 West 8th Street, P.O. Box 1322
Anderson, IN 46015-1322
765.644.0331
765.644.2629 fax
dstone@stone-law.net

George Hoffman, III,
HOFFMAN & NEWCOMB
250 East Jefferson Street
Franklin, IN 46131
T: (317) 736-1982
F: (317) 736-6979
george.hoffman@hanlawfirm.com

Attorneys for Appellee

Brief of Appellee Joseph Foyst

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES:

STATUTES and RULES:

OTHER AUTHORITIES:

BRIEF OF APPELLEE

STATEMENT OF THE ISSUE

The issue on this appeal is did the trial court properly hold that Mr. Foyst was not ineligible to be a candidate for the Columbus City Council District Six.

STATEMENT OF THE CASE

A. Nature of the Case

This appeal is an attempt by Mr. Thomas the chairman of the Bartholomew County Democrat party to disenfranchise the 454 voters who voted for Mr. Foyst to represent them as their councilman.

B. Course of Proceedings

The statement of the case of appellant is acceptable with the following additions.

Mr. Foyst and the County Election Board filed their respective motions to dismiss on October 2nd primarily because the county chairman failed to verify his initial complaint for preliminary injunction in violation of Ind. Code § 34-26-1-7. (Appellant's App. Vol. 2 pp. 52-55, 66-73).

The Election Board on October 11th filed a motion to dismiss the amended complaint because the county chairman failed to obtain permission to file an amended complaint (Appellant's App. Vol. 2 pp. 86-8). Mr Foyst filed a motion to dismiss the amended complaint on October 16th in which he incorporated the motion of the Election Board (Appellant's App. Vol. 2 pp. 94-5).

C. Judgment

The judgment being appealed is at Appellant's App. Vol. 2 pages 168-72.

Brief of Appellee Joseph Foyst

STATEMENT OF THE FACTS

The Plaintiff, Ross Thomas, is the county chairman of the Bartholomew County Democratic party (Appellant's App. Vol. 2 p. 27 ¶2).

The Bartholomew County Election Board, on August 18, 2023, conducted a hearing on the party chairman's candidate filing challenge and granted his candidate challenge to Mr. Foyst. It did not specifically determine the validity of the candidacy (Exh. Vol. pp. 11-2).

At the August 18th hearing, where all parties to this lawsuit were present, Josh Burnett the Republican Party County Vice Chair announced and put all parties on notice that they intended to fill the empty slot with Mr. Foyst (Tr. p. 94, 130, 134). Mr. Foyst, on August 24, 2023, put the democratic county chairman and all voters in Bartholomew County on notice of his candidacy when he filed his Declaration of Candidacy and Written Consent to Fill a Ballot Vacancy for a City or Town Office in 2023 the "CAN-48" form with the Bartholomew County Clerk (Exh. Vol. p. 9).

On August 30, 2023 he filed his Certificate of Candidate Selection to Fill an Early Ballot Vacancy for a City or Town Office in 2023 the "CAN-49" form (Exh. Vol. p. 13). The filing also showed that he was selected by a duly called meeting of the Republican Party Committee on August 29, 2023.

Mr. Foyst won the election for Council District 6 by 454 votes to 309 votes for the opposing candidate (Exh. Vol. p. 19)

SUMMARY OF THE ARGUMENT

The county chairman stipulated that Mr. Foyst was a candidate. That stipulation precludes him from claiming that Mr. Foyst was not a candidate for the seat on the Columbus City Council for District 6.

When questioned by the trial judge the county chairman was unable to point out any statutory provision which would permit the candidacy of Mr. Foyst or his election to be

challenged. The statutes in force at the time of the decisions on which he relies have been repeatedly amended. Such amendments show a desire to change the law and diminish and at times destroy any value of those decisions decided under them as precedent.

This state has a long history of declining to disenfranchise voters after an election has taken place. The voters in Council District 6 of Columbus, Indiana chose Mr. Foyst to represent them. Granting the county chairmen the relief he seeks would have the effect of nullifying those votes. This must not be done.

ARGUMENT

ISSUE

Trial Court Properly Held That Mr. Foyst Was Not Ineligible to Be a Candidate for Columbus City Council District Six

A. Defects of Appellant's Appendix and Brief

Before addressing the issue the County Chairman has sought to raise, the multiple violations of the Rules of Appellate Procedure in his brief and appendix must be pointed out.

The table of contents of the appendix of the county chairman does not contain the dates on which the pleadings were filed as required by Ind. Appellate Rule 50(C).

It does not include the decision being appealed after the CCS but instead has buried it at the rear of his appendix contrary to Ind. Appellate Rule 51(B) and Ind. Appellate Rule 50(A)(2)(b). (Appellant's App. Vol. 2 p. 157). He has included 15 pages of exhibits in his appendix (Appellant's App. Vol. 2 pp. 11-26). Such material should be included in an addendum to a brief, not the appendix. Ind. Appellate Rule 46(H). Many of those pages do not bear exhibit stickers (Appellant's App. Vol. 2 pp. 12-9, 21-2). He has omitted Exhibits A-D that were attachments to the Election Board's Motion to Dismiss Answer (Appellant's App. Vol. 2 pp. 70, 73-4).

His reference to the judgment being appealed contains no citation to the appendix where it is located (Appellant's brief p. 6).

In the first paragraph of page 7 of his brief, the county chairman purports to give his reason for filing the challenge. It is well settled that factual statements in a brief are limited to matters in the record. In *Schaefer v. Kumar*, 804 N.E.2d 184 (Ind. Ct. App. 2004), *trans. denied*, in footnote 3 this Court said:

> Kumar moved to strike statements contained in Schaefer's appellate brief that are based on evidence not submitted to the trial court and not contained in Schaefer's appendix. It is well settled that matters outside the record cannot be considered by this court on appeal. Rothschild v. Devos, 757 N.E.2d 219, 221 n. 2 (Ind. Ct. App.2001). We must decide the case on the record before us and cannot speculate as to the actual facts of a case. . . .Accordingly, we grant Kumar's motion to strike. 804 N.E.2d 187.

The Appellant's mental processes are not part of the record.

The first sentence of the next paragraph of page 7 of his statement of facts is pure argument. The statement of facts is not to be argumentative. *Ramsey v. Rev. Bd. of Ind. Dep't of Workforce Dev.*, 789 N.E.2d 486, 488 (Ind. Ct. App. 2003). The last two paragraphs of page 8 of his brief contain no citations to the record. The paragraph of his brief that starts on page 10 and runs over to page 11 also contains no citations to the record to support his statements which are required by Ind. Appellate Rule 46(A)(6)(a).

The county chairman does not give the standard of review in his brief which is required by Ind. Appellate Rule 46(A)(8)(b). (Appellant's Brief p. 9)

Although the county chairman is proceeding *pro se* this does not relieve him of the obligation to follow all appellate rules. *Basic v. Amouri*, 58 N.E.3d 980, 986 (Ind. Ct. App. 2016). Furthermore, the county chairman is an attorney and the online docket at mycase.IN.gov lists over 70 appeals under his name. There can be no excuse for his multiple violations of the appellate rules.

B. Standard of Review

In denying the county chairman's case the trial court said:

> This case involves turns on matters mostly undisputed facts, and ultimately the legal conclusion of the statutory interpretation. The legislature is presumed to act intentionally, and the analysis is nonpartisan. Plaintiff's request to declare the Defendant ineligible as a candidate for the Columbus City Common Council, District 6, is DENIED. (Appellant's App. Vol. 2 p. 171).

"Matters of statutory interpretation are reviewed de novo." *City of New Albany v. Bd. of Commissioners of Cty. of Floyd*, 141 N.E.3d 1220, 1223 (Ind. 2020).

C. Mr. Foyst was Properly Named as Candidate and Properly Elected

The chairman's claim is that Mr. Foyst's filling for a candidate vacancy was invalid because his prior candidacy had been rejected by the County Election Board. He is wrong.

In *Wyatt v. Wheeler*, 936 N.E.2d 232 (Ind. Ct. App. 2010) the plaintiff sought a preliminary injunction and declaratory judgment challenging the winner of a primary election. This court made these introductory observations:

> Although Wyatt filed his petition with the Marion Superior Court before the primary election, the election has been held and Ellspermann won. Thus, if we were to determine that Wyatt's challenge to Ellspermann's candidacy has merit and that Wyatt is entitled to injunctive relief, we would effectively nullify the primary election results. 936 N.E.2d at 239.

In this case the county chairman wants this court to nullify the results of the general election by granting a declaratory judgment.

This Court went on to say:

> Our Supreme Court has long held that the law favors the franchise and enfranchisement. " 'The purpose of [election] law and the efforts of the court are to secure to the elector an opportunity to freely and fairly cast his ballot, and to uphold the will of the electorate and prevent disenfranchisement. . " " 'To disfranchise [voters] because of a mere irregularity or a mistaken construction of the law by a party committee or election commissioner would defeat the very purpose of all election laws. "Consequently, our Supreme Court has stated:
>
> > . . . after the election commissioners have acted and placed a name upon the ballot, and after the election, the provisions of the statute are considered directory only, and the names of candidates will be treated as having been legally placed upon the ballot by the election board, "unless

> an essential element of the election is affected, or there is an express declaration in the statute that the act is essential to a valid election, or that its omission will render the election void."
>
> In this case, the statute at issue, Indiana Code section 3–8–2–7, does not provide that compliance with its provisions is essential to a valid election. (Internal citations omitted) 936 N.E.2d at 239-40.

The statute on which the county chairman relies also does not expressly provide that compliance is essential to a valid candidacy.

After affirming the denial of the request for a preliminary injunction this court then said:

> Turning to Wyatt's request for declaratory relief, the same concerns regarding disenfranchisement remain applicable. In the context of declaratory relief, we have previously stated, " '[i]n the absence of fraud, election statutes generally will be liberally construed to guarantee to the elector an opportunity to freely cast his ballot, to prevent his disenfranchisement, and to uphold the will of the electorate.' " Again, if we were to determine that the IEC and the Marion Superior Court misapplied Indiana Code section 3–8–2–7 and other relevant election statutes, then by necessity Ellspermann's victory in the primary election would be invalid. Such an outcome would violate the purpose of election laws, which is to protect enfranchisement. Consequently, Wyatt has not established that the court's denial of his request for declaratory relief was contrary to law. 936 N.E. 2d at 240-1.

The same reasoning applies to the general election in this case which Mr. Foyst won. The county chairman is attempting to overturn the will of the majority in the council election for District 6. His wish must be rejected.

3 *McQuillin Municipal Corporations*. § 12:27 (3d ed.) in discussing municipal elections says:

> But whether or not the provisions are mandatory or directory, the rule usually applied is that informalities or irregularities in an election which do not affect the result will not invalidate it,1[1] for the courts prefer to give effect to the popular will whenever possible.

This state has repeatedly followed that rule.

---

[1]The online versions of the treatises cited in the brief do not give page references. Footnote numbers have been left in the quotations as the best available substitute for a pin point citation.

Brief of Appellee Joseph Foyst

In *Cave v. Conrad*, 216 Ind. 304, 24 N.E.2d 1010, 1011 (1940) a candidate for township trustee filed a declaration of intention to be candidate that was signed by 13 people, 3 of whom were not registered voters at the time they signed the declaration but later registered and voted in the general election. The challenger made the same claims that statutory provisions were mandatory made by the county chairman on this appeal.

> The appellant contends that the provisions of the statute are mandatory, and, unless the petition is signed by the required number and in the manner prescribed, the petitioner, contestee, is not entitled to have his name placed upon the ballot at the general election, and the question may be raised by a complaint to contest after the general election. . . .
>
> . . .
>
> That decision further holds, in substance, that the provisions for the nomination of candidates and the filing of the nomination papers are binding upon the officers for whose guidance they are intended, but will be disregarded in determining the validity of a subsequent election if it plainly appears that the will of the majority of the electors is fairly expressed by the ballot. The statute controlling elections in this state does not by express terms declare such irregularities to void the election. If it did there would be reason for appellant's contention that the provisions are mandatory. The statute simply provides a certain thing shall be done within a particular time and in a particular manner, and does not declare that their performance shall be essential to the validity of an election. They are regarded as mandatory where they affect the merits of the election and are directory only if they do not.
>
> . . .
>
> There is nothing in the case at bar to indicate that the election was not fairly and properly conducted, and all the voters of the township were privileged to cast their ballots for the candidate of their choice. When this is done minor irregularities and defects in the procedure which brought about the election are insufficient to avoid the result.
>
> . . .
>
> When a legal voter receives from the election board an official ballot and enters the booth to mark the same, he has the right to presume that the ballot was duly and legally prepared. He is not called upon to inquire into the regularity of the primary or the acts of the members of the board of election commissioners. He cannot be disqualified in this manner. (Internal citations omitted) 24 N.E.2d at, 1011–13.

That reasoning should be followed in this appeal and the decision affirmed.

> Ind. Code § 3-5-2-6 says in part:
>
> (a) Except as provided in subsections (b) and (c), “candidate” means an individual who:

> (1) has taken the action necessary to qualify under Indiana law for listing on the ballot at an election or to become a write-in candidate;
> (2) has publicly announced or declared candidacy for an elected office; or
> (3) otherwise seeks nomination for or election to an elected office, regardless of whether the individual wins election to the office.
> (b) As used in IC 3-9, an individual becomes a "candidate" when the individual, the candidate's committee, or a person acting with the consent of the individual:
> (1) receives more than one hundred dollars ($100) in contributions; or
> (2) makes more than one hundred dollars ($100) in expenditures.
>
> During Mr. Foyst's testimony the country chairman said:
>
> > Your Honor, if I may, I am more than willing to stipulate that Mr. Foyst declared his candidacy publicly, that he ran for office openly and that he campaigned and put himself out to the public as a candidate. I think we've already established, from our perspective that, I don't know that that makes any difference to the argument here, but we certainly don't have any dispute that Mr. Foyst was publicly declared himself a candidate and that he campaigned as such. (Tr. p. 96).

The following then occurred:

> Court:
> Do you accept?
> Mr. Hoffman:
> I think that's both a stipulation and a judicial admission all at the same time, so yeah, that's fine, it will save us a little bit of time.
> Court:
> Alright. So stipulated. (Tr. pp. 96-7).

The county chairman's unconditional admission that Jay Foyst was a candidate is both a stipulation and a judicial admission.

A stipulation of fact binds the parties and the court if not set aside or withdrawn. *Ehle v. Ehle*, 737 N.E.2d 429, 433-434 (Ind. Ct. App. 2000). An attorney's clear and unequivocal admission of a fact is a judicial admission which binds the client. *Saylor v. State*, 55 N.E.3d 354, 363 (Ind. Ct. App. 2016). Additionally, a judicial admission in a pleading or made during the course of trial and is conclusive upon the party making it and relieves the opposing party of any duty to present evidence on that issue. *Weinberger v. Boyer*, 956 N.E.2d 1095, 1105 (Ind. Ct. App. 2011), *trans. denied*. Finally under the judicial admission doctrine, such an admission is conclusive and no evidence may be offered to contradict it. *Id*. citing *Lutz v. Erie Ins. Exch*., 848

N.E.2d 675, 678 (Ind. 2006). The county chairman may not properly be allowed to now argue that Mr. Foyst was not candidate in the general election for the council seat for District 6.

The county chairman cites *Higgins v. Hale*, 476 N.E.2d 95 (Ind. 1985) and *Wilhite v. Mohr*, 485 N.E.2d 131 (Ind. Ct. App. 1985) for his sole argument that the candidacy of Mr. Foyst was null and void (Appellant's brief pp. 13-4).

The statute that was in effect when Higgins was decided was set out in the *Higgins* opinion. It said in part:

> (b) A candidate vacancy that exists on a primary election ballot:
> (1) Because one person filed as a candidate for nomination for an office; or
> . . .
> may not be filled for the primary election. The resulting vacancy in the following general, city, or town election may be filled in the manner provided by this section, but such a vacancy may not be filled after noon on September 1.
> (C) When a political party has no candidate for an office, the vacancy shall be filled by the political party in the following manner:
> (1) Vacancies for county, township, city, and town offices shall be filled by the precinct committeemen and precinct vice committeemen who constitute the county committee established under IC 3-1-2-1.
> . . .
> (d) Within seven [7] days after the occurrence of a candidate vacancy covered by subsection (c)(1), (c)(2), or (c)(3), a meeting of the appropriate committee shall be called to fill the vacancy. The meeting shall be called and chaired by:
> . . .
> The meeting must be held within fourteen [14] days after the occurrence of the candidate vacancy.

The statute has since been amended multiple times and broken down into multiple sections. The amendment history given by Lexis for the statute gives citations for the amendments:

> P.L.5-1986, § 9; P.L.3-1987, § 416; P.L.10-1988, § 183; P.L.4-1991, § 125; P.L.1-1993, § 14; P.L.176-1999, § 113; P.L.260-2001, § 7; P.L.193-2021, § 99, effective July 1, 2021; P.L.153-2024, § 22, effective March 13, 2024

The 2021 amendment to Ind. Code § 3-13-1-7 changed it to read in part:

> (a) Except as provided in subsection (b), action to fill a candidate vacancy must be taken:

> (1) not later than noon July 3 after the primary election if the vacancy exists on a general or municipal election ballot; and
> . . .
> (b) This subsection applies to a candidate vacancy that exists before the thirtieth day before a general, municipal, or special election and that is due to any of the following:
> (1) The death of a candidate.
> (2) The withdrawal of a candidate.
> (3) The disqualification of a candidate under IC 3-8-1-5.
> (4) A court order issued under IC 3-8-7-29(d).
> (5) The successful challenge of a candidate nominated by a state, county, or town convention of a political party.
> (6) The successful challenge of candidate under IC 3-8-8.
> (7) The successful challenge of a candidate under sections 16.5 and 20.5 of this chapter.
> . . .
> Action to fill a candidate vacancy under section 3, 4, 5, or 6 of this chapter for reasons permitted under this subsection must be taken within thirty (30) days after the occurrence of the vacancy.

The vacancy in this case was due to none of the conditions covered by sections 3, 4, 5, or 6. Therefore the 30 day time period did not apply The General Assembly has shown it is not concerned about when a candidate vacancy is filled in some circumstances. Ind. Code § 3-13-2-1(b) allows "Action to fill a candidate vacancy under this chapter must be taken not later than 6 a.m. on election day."

The trial court in the decision discussed the statutory amendments:

> 12. Indiana Code 3-13-1-16.5(b) provides that a candidate challenge must be filed with the county election board no later than election seventy-four (74) days before the general or municipal election. In this case that deadline would have been August 25, 2023.
> . . .
> 14. The Court notes that Indiana Code §3-13-2-11 provides a mechanism to challenge the validity of late candidate vacancies by filing a statement questioning a candidate's validity with the election board, not later than noon, fourteen (14) days before the general election. However, this chapter applies to late vacancies due to: death of a candidate; withdraw of a candidate; disqualification a candidate; or due to court order. Indiana Code §3-13-2 1 and Indiana Code §3-5-2 26.1.
> 15. Thus, while the application provisions in Indiana Code §3-13- 2-1 originally mirrored those application provisions of Indiana §3-l 3-1- 7(b), the 2021 legislative amendments to Indiana Code §3-13-1-7 were not carried over or mimicked in Indiana Code §3-l3-2-1. (Appellant's App. Vol. 2 p. 171).

[W]e presume that when our legislature amends a statute, it is aware of the history of the statute, including court decisions construing it." *Rogers Grp., Inc. v. Tippecanoe Cnty.*, 52 N.E.3d 848, 853 (Ind. Ct. App. 2016), *trans. denied*. The Supreme Court in *Woodruff v. Indiana Family & Soc. Servs. Admin*., 964 N.E.2d 784, 795 (Ind. 2012) said:

> Under most circumstances, "an amendment changing a prior statute indicates a legislative intention that the meaning of the statute has changed." We presume, therefore, "that the legislature intended to change the law unless it clearly appears that the amendment was passed in order to express the original intent more clearly." (Internal citations omitted) 964 N.E.2d at 795.

The changes to the statutes precludes the cases relied on by the county chairman being controlling precedent since the provisions on which they were based have been amended. "Cases construing a statute do not control an interpretation of the statute as amended." 20 Am. Jur. 2d Courts § 136

The county chairman expends much verbiage claiming that the vacancy could not be filled by Mr Foyst because his original candidacy filing was a day late. The obvious question is why not? There was a vacancy. There is no claim he did not meet the qualifications for the post. At the hearing the county chairman spent much time on the necessity of following the rules (Tr. pp. 113, 114, 126-7, 138). The failures to comply with the Rules of Appellate Procedure in his appeal have already been pointed out. He also violated the Trial Rules in the trial court. His complaint for preliminary injunction injunctive relief was not verified as required by Ind. Code § 34-26-1-7 (Appellant's App. Vol. 2 pp. 27, 33). He filed an amended complaint on October 4th, without having obtained permission to do so as required under Ind. Trial Rule 15(A). (Appellant's App. Vol. 2 pp. 4-5).

Wright and Miller, 6 Federal Practice & Procedure Civil § 1484 (3d ed.) in discussing amendments without permission under Fed. R. Civ. P. 15 (A)says:

> In general, if an amendment that cannot be made as of right is served without obtaining the court's leave or the opposing party's consent, it is without legal

> effect17 and any new matter it contains will not be considered unless the amendment is resubmitted for the court's approval.

Crossroads Serv. Ctr., Inc. v. Coley, 842 N.E.2d 822, 825 (Ind. Ct. App. 2005) noted that "because the Indiana Trial Rules are based on the federal rules, it is appropriate to look to federal decisions for guidance" regarding Indiana Trial Rule 15). There is nothing new about the requirement of permission being required to file an amended complaint. That was a requirement long before the Indiana Trial Rules were adopted. See for example *Beckman v. Beckman State Bank of Ferdinand*, 73 Ind. App. 112, 126 N.E. 486, 486 (1920).

When the trial court questioned the county chairman about what statutory authority he relied on, the following occurred:

> Court:
> Okay, but I'm gonna stop you there because you, you emphasize several times, strict following of the rules. Where in that rule does it allow the Election Board to remove a candidate or for there to be a challenge filed? That's the statute I'm looking for. If we're not using 16.5, which one are we using? Because that one doesn't allow it. Anywhere. (Tr. pp. 146-7)
> . . .
> Court:
> Okay, so which statute allows then, the Election Board to remove him as a candidate? If it's not 16.5, which one is it?
> Mr. Thomas:
> . . .So the question is, the ultimate question, which I think the Court sees, is when, when they seek to replace him, on the ballot, is he a candidate who has been removed? And our argument is that he is not. So even if we use 16.5 as the apparatus, he is still not a candidate who's been removed. He is a person who should not have been a candidate, as the case law says, null and void.
> Court:
> Okay. Court notes that you were unable to answer my question. Very good. Now let's move on to the next one then. The, as we know and walk me through this, 3-13-1-7 applies to a candidate on the ballot as of July 3rd, if I understand your points correctly? Is that right? (Tr. pp. 147-8)
>
> Court:
> Okay, yeah. Alright, so if you have a candidate that's placed on the ballot after July 5, what statutory procedure allows that candidate to be challenged?
> Mr. Thomas:
> I don't know that there is one Judge. (Tr.p. 148).
> Court:
> I understand that, but you just indicated that the only way to challenge that after July 5, is by way of a lawsuit. Correct?

> Mr. Thomas:
> I don't see any application to CAN-1 as it relates to the circumstance we have here.
> Court:
> I take that as a no. (Tr. pp. 150-1)

Neither the defeated candidate in District 6 nor the county chairman filed a challenge to Mr. Foyst being elected to the District 6 seat (Tr. p. 69). A declaratory judgment action may not be used to circumvent the failure to employ available remedies before they are time barred. See 22A Am. Jur. 2d *Declaratory Judgments* § 182 and 26 C.J.S. *Declaratory Judgments* § 120.

3 *Sutherland Statutory Construction* § 57:20 (8th ed.) has a discussion which is highly relevant to the disposition of the County Chairman's appeal:

> Election statutes seek generally to help realize the majority's will and to avoid disfranchising legal voters. Consequently, they usually are mandatory where the failure to comply might influence an election's outcome, as when, for instance, their purpose is to secure a complete and enlightened 1vote, or to prevent fraud. The obverse is true, as well, and they normally are directory when it comes to inconsequential deviations that do not affect election results, such as deviations from provisions intended primarily to secure timely and orderly conduct. In light of these essential policy goals, the timing of an action to enforce compliance with an election law may affect the answer about mandatory or directory effect. Alaska explained that. . .
> The same kind of law may be directory in one instance where a different result would thwart the electorate's will, and mandatory in another where it requires an individual to act to secure his own rights. Because the question about mandatory or directory effect is driven by policies designed to promote and preserve the franchise, courts simply may have to determine on the merits of each case whether an election's results actually were affected by a failure to follow statutory directions, 6 in order to decide whether to invalidate the outcome.

The County Chairman's argument if accepted would serve only to thwart the will of the 454 voters who chose Mr. Foyst to represent them on the Columbus City County. The result of the election was fair and the decision of the trial court declining to overturn it should be affirmed.

CONCLUSION

The county chairman has failed to establish any proper basis for superseding the will of the electorate in the election at issue. The decision of the trial court should be affirmed.

Respectfully submitted,

/s/ David W. Stone IV
David W. Stone IV
STONE Law Office & Legal Research
26 W. 8th St., P.O. Box 1322
Anderson, Indiana 46015
765.644.0331

George Hoffman, III,
Hoffman & Newcomb
250 East Jefferson Street
Franklin, IN 46131
T: (317) 736-1982
F: (317) 736-6979
george.hoffman@hanlawfirm.com

Attorneys for Appellee

CERTIFICATE OF FILING AND OF SERVICE

I hereby certify that on May 3, 2024 I electronically filed the foregoing Brief of Appellee using the Indiana Electronic Filing System (IEFS).

I also certify that on May 3, 2024 the foregoing document was served on the following person, Appellant, via IEFS:

Ross Thomas

/s/ David W. Stone IV
David W. Stone IV