

**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, COUNTY DIVISION**

M. ROMNEY,)	
)	
Petitioner,)	
v.)	No.
)	
B. O'BAMA and DAVID ORR,)	
as Cook County Clerk,)	
)	
Respondent.)	

VERIFIED PETITION FOR ELECTION CONTEST

The Petitioner herein M. Romney ("Petitioner"), by and through his attorneys, Odelson & Sterk, Ltd., brings this action pursuant to 10 ILCS 5/23-19, 23-20, 5-21,5-22,5-23 et al., and the election laws of the State of Illinois, against B. O'Bama and David Orr, Cook County Clerk and respectfully requests that the Court declare that Petitioner was the legally elected Member of the Board of Education of District 100 for a four-year term ("office") and received more valid votes than the declared winner, B. O'Bama ("O'Bama"). Petitioner hereby contests the purported election of O'Bama, Respondent herein, as the duly elected candidate for the office at the consolidated election held April 5, 2011. The Petitioner requests, pursuant to the Illinois Election Code and law, that this Court declare that the Respondent O'Bama was not the duly elected candidate for the office, and that the Petitioner was elected to the office. In support of this contest and prayer for relief, the Petitioner states as follows:

I.

GENERAL FACTS

1. The consolidated election held April 5, 2011 in Cook County, Illinois for the office of Member of Board of Education of High School District 100 for a 4 year term, resulted in the Cook County Clerk, acting as the official Canvassing Board, certifying and proclaiming that candidate O'Bama received 989 votes and candidate Romney received 968 votes. No other

candidates ran in this election. This canvass and certification by the Cook County Clerk was held April 26, 2011.

2. The election of O'Bama is contested by this Verified Petition for Election Contest by Candidate Romney upon the face of the returns shown on Exhibit A attached hereto and incorporated herein by this reference. Said Exhibit A states that Candidate Romney received 21 votes less in number to the number purportedly received by the successful candidate, O'Bama.

3. Candidate Romney participated in said election as a candidate and voter and believes numerous mistakes or errors have been committed in the precincts specified herein, in the casting, counting or return of the votes by a person or persons known and specified, or unknown, resulting in incorrect vote totals returned for all precincts in High School District 100, Cook County, Illinois.

4. Candidate Romney is a registered voter and resides at 100 Avenue O, Oak Lawn, Illinois, within High School District 100 and voted at the April 5, 2011 consolidated Election .

5. Candidate O'Bama resides at 100 Avenue B, Oak Lawn, Illinois and was a candidate.

6. David Orr is the duly elected Cook County Clerk and the local election official responsible for the conduct of the election and returns of the votes in the District consisting of 14 precincts, and responsible for certifying the official results.

7. The ballots in this election were cast, counted and certified pursuant to the Illinois Election Code provisions relating to electronic voting systems. The votes were cast using a ballot card which is voted by means of the voter darkening a line next to the name of the candidate of their choice which is optically scanned to record the vote. Votes are also cast by means of using a touchscreen voting device which is voted by means of the voter touching the name of the candidate which appears on a computer screen and submitting the ballot to be tallied electronically. Each candidate is assigned a ballot position. Additionally, voters are required to properly complete a ballot application in order to validly vote.

8. Candidate Romney was assigned position number 141 and Candidate O'Bama was assigned position number 142.

9. The ballots are counted in each precinct by a computer, programmed to count the ballots in accordance with the requirements of the Illinois Election Code. The optic scan precinct ballot counter counts the ballots by "reading" the position wherein a line has been darkened next to the candidate's name. Touchscreen votes are recorded based on the voter touching the name of the candidate displayed on a computer screen. The total votes cast by all voters are tabulated and conveyed by computer modem.

10. The returns of such election are made to the Cook County Clerk, initially canvassed by the Cook County Clerk, and officially canvassed and proclaimed and certified by the Cook County Clerk, who is named as a Respondent.

11. Candidate Romney pursuant to the Illinois Election Code, filed a petition for discovery recount in which the ballots and 4 precincts of the 14 total precincts were recounted and examined under the direction of the employees of the Cook County Clerk. Additionally, ballot applications and other election materials were examined in 7 of the 14 of the precincts in the District under the direction of the employees of the Cook County Clerk.

12. The grounds of contest set forth herein with respect to the count of the vote for the reported in the returns of the judges of election and with respect to ballots not initialed by a precinct judge of election, and not marked defective, and counted on election night, and with respect to ballots which were marked for Romney and not counted by reason of a defective ballot counter or the ballot counter not being able to read the clear intent of the voter, and with respect to other errors or irregularities contrary to the Election Code as specified herein, including defects in the ballot application process, were obtained by Candidate Romney by his own efforts or through his agents at the discovery recount, and through investigation of the election day procedures followed in the various precincts involved or in the procedures for the handling and casting of absentee ballots by voters or others or in other procedures followed in the preparation

of election materials and the handling and casting of ballots and in making the returns of the count thereof.

13. The judges of election incorrectly issued ballots without verifying the identity of the voter or the registration status of the voter in certain precincts within the district as specified herein, or relating to absentee voters. This resulted in improper voting by identified and unidentified persons in violation of the Illinois Election Code and the law. Since these irregularities cannot be traced to a particular ballot, a proportional deduction should be made from each candidate's total according to the percentage of votes each received in the respective precinct. The calculations which follow in this election contest are based on the total votes cast for both candidates in each of the specified precincts.

14. Improper ballots were cast from addresses which were not their residences and/or by affidavit that was improperly completed. Voters also voted whose signatures on ballot applications were not properly verified, or whose names do not match the registered voter indicated on the ballot application, or without proper identification as required, or without the ballot application being properly acknowledged by the judge of election, all of which did not comply with the mandatory requirements of the Election Code and law, which now must be deducted in whole or proportionally deducted.

15. The errors and irregularities contained herein and found at the recounts have resulted in votes having been counted incorrectly for O'Bama and in votes not having been correctly counted for Romney. Further, since proportional deduction must be used where improper voters have cast ballots and it cannot be ascertained how the vote was cast, each candidate has lost proportional votes in the precincts hereinafter specified.

16. Based on the facts alleged in this petition, setting forth the specific allegations of mistakes in ballots, and the discovery recounts conducted under the supervision of the election authorities, there has been a change in the results of the election as proclaimed by the Canvassing Board, with Candidate Romney being the winner having received substantially more legally cast ballots than Candidate O'Bama.

17. When the votes incorrectly counted for O’Bama are discounted and when the votes not correctly counted or not counted at all on election night or in the canvass, are correctly counted, Romney will be shown to have received the majority of the votes in said election for the office and entitled to a declaration by a judgment of this Court that he is the duly elected candidate for this office, in that his total vote after said adjustment by this Court is significantly greater than the O’Bama total vote.

18. This petition is brought pursuant to the provisions of Section 10 ILCS 5/23-19 *et seq.* and other applicable provisions of the Illinois Election Code.

II.

ELECTION IRREGULARITIES

19. In precinct 41 of Worth Township, the certified total showed O’Bama with the canvass total of 28 votes and Romney with a canvass total of 25 votes. In the review of ballot applications a total of 3 ballot application signatures do not appear to be genuine. Applying proportionate reduction, O’Bama would lose 1.585 votes and Romney would lose 1.415 votes; this results in a net difference of .17 votes in favor of Romney.

20. In precinct 56 of Worth Township, the certified total showed O’Bama with a canvass total of 134 votes and Romney the canvass total of 163 votes. The discovery recount showed 11 ballots marked showing an intent to vote for Romney but not correctly tallied, and 2 ballots marked for O’Bama which bear distinguishing marks contrary to the Election Code, which ballots should be disqualified, for a gain of 11 whole votes for Romney and a loss of 2 whole votes for O’Bama, for a net gain of 13 votes for Romney.

21. In precinct 61 of Worth Township, certified total showed O’Bama with a canvass total of 141 votes and Romney with a canvass total of 91 votes. The discovery recount showed a total of 2 ballots which bear distinguishing marks and should be disqualified on the Election Code for O’Bama. Review of the ballot applications show 40 ballot applications where the signature does not appear to be genuine, and 4 ballot applications where the signed name on the application does not match the registered voters name on the application. Applying proportionate

reduction; this results in a net difference of 10.44 votes in favor of Romney, and a loss of 2 whole votes for O'Bama.

22. In precinct 70 of Worth Township, the certified results show a canvass total of 176 votes for O'Bama and 89 votes for Romney. The discovery recount showed one ballot voted for O'Bama which bears a distinguishing mark and should be disqualified under the Election Code. Review the ballot applications show 27 ballot applications where the signature does not appear to be genuine, 9 ballot applications lacking judges initials, 3 ballot applications where insufficient identification is required by law was presented and 2 ballot applications which were spoiled and should not have resulted in allowing the voter to vote. Applying proportionate reduction, this results in a net gain of 13.13 votes for Romney.

23. In precinct 75 of Worth Township, the certified results show a canvass total of 53 votes for O'Bama and 34 votes for Romney. Review of the ballot applications show a total of 21 ballot applications where the signature does not appear to be genuine; applying proportionate reduction, this results in a net gain of 4.58 votes for Romney.

24. In precinct 83 of Worth Township, the certified results show a canvass total of 111 votes for O'Bama and 72 votes for Romney. The discovery recount shows a total of 6 ballots with an intent to vote for Romney which were not counted, and a total of 1 vote for O'Bama bearing a distinguishing mark which should be disqualified under the Election Code. A review of the ballot applications show 20 ballot applications where the voter's signature does not appear to be genuine, one ballot application where the signature does not match the voter's name on the ballot application, one ballot application which does not bear a judges initials, and two ballot applications for the voter failed to supply sufficient identification is required; applying proportionate reduction, this results in a net gain of 5.96 votes for Romney, and a gain of 6 whole votes for Romney and a loss of 1 whole vote for O'Bama.

25. In precinct 84 Worth Township, the certified result shows a canvass total of 47 votes for O'Bama and 37 votes for Romney. A review of the ballot applications shows 21 ballot

applications where the signature of the voter does not appear to be genuine; applying proportionate reduction, this results in a net gain of 2.5 votes for Romney.

26. Accordingly, the results of the election are incorrect and the outcome of the election would be different if all legal ballots were properly counted and all improper ballots were discounted.

27. Petitioner's investigations continue and the results thereof will be used to amend the above with additional facts and greater specificity from time to time during the pendency of this proceeding.

II.

CONCLUSION

28. That based on the foregoing, the Petitioner will gain at least 17 whole votes when added to the 968 votes proclaimed by the County Clerk, and would lose 61.60 votes based upon proportionate reduction, for a total of 923.4 votes for Romney. Respondent O'Bama will lose at least 6 whole votes from his total of 989 votes proclaimed by the County Clerk, and would lose 98.40 votes based upon proportionate reduction, for a total vote of 884.60 votes for O'Bama.

29. That the Petitioner would prevail by 38.80 votes based on facts alleged in this petition, which will change the results of the election.

30. That this Petition is verified and under oath and the allegations made result in a change in the vote totals and the Petitioner receiving more votes than the Respondent. The burden required under the law has been met for purposes of election contest.

WHEREFORE, Petitioner Candidate M. Romney respectfully request this Honorable Court grant the relief set forth in this Petition, and proceed in accordance with the Illinois Election Code:

- A. Ascertain and declare by a judgment entered of record, the result of the April 5, 2011 consolidated election finding petitioner M. Romney the duly elected candidate for the office of member of the Board of Education for

High School District 100 and Respondent B. O'Bama not the validly elected candidate.

- B. Cause a certified copy of said judgment to forthwith be made by the Clerk of the Court and transmitted to the Cook County Clerk;
- C. Order and direct that the Petitioner immediately, upon entry of an appropriate Order, assume the position for this office;
- D. For whatever other relief this Court deems equitable and just.

Attorney for Petitioner

Burton S. Odelson
O DELSON & STERK, LTD.
3318 W. 95th Street
Evergreen Park, IL 60805
(708) 424-5678

VERIFICATION BY CERTIFICATION

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument including the Verified Complaint for Election Contest and any exhibits thereto are true and correct, except as to matters therein stated to be on information and belief, and as to such matters, the undersigned certifies as aforesaid that he verily believes the same to be true and correct.

M. Romney