No. 125386

IN THE
SUPREME COURT OF ILLINOIS

DAVID W. COOKE, *Complainant-Appellee,* v. *COMMITTEE FOR FRANK J. MAUTINO,* *Respondent-Appellant.* *ILLINOIS STATE BOARD OF ELECTIONS; WILLIAM J. CADIGAN, in his capacity as chairman; JOHN R. KEITH, in his capacity as vice chairman; WILLIAM M. McGUFFAGE, in his capacity as member; ANDREW K. CARRUTHERS, in his capacity as member; CHARLES W. SCHOLZ, in his capacity as member; IAN K. LINNABARY, in his capacity as member; KATHERINE S. O'BRIEN, in her capacity as member; and CASANDRA B. WATSON, in her capacity as member,* *Respondents.*	Rule 315 Petition for Leave to Appeal from the Appellate Court of Illinois, Fourth District, No. 4-18-0502; There Heard on appeal on Petition for Review of the Order of the Illinois State Board of Elections, No. 16 CD 093

REPLY BRIEF OF APPELLANT COMMITTEE FOR FRANK J. MAUTINO

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Cooke's brief demonstrates why the Fourth District below incorrectly interpreted Section 9-8.10(a) of the Illinois Election Code. 10 ILCS 5/9-8.10(a). If affirmed by this Court, the Election Code would now impose requirements on committees organized under the Code that would be nearly impossible to meet. The legislature did not intend for the Election Code to be interpreted as narrowly as the Fourth District's interpreted it. This Court should reject the Fourth District's narrow interpretation, and instead interpret the Election Code to apply its fullest possible meaning.

ARGUMENT

I. Cooke and the Fourth District interpret Section 9-8.10(a)(9) too narrowly because they do not interpret this subsection in context with the whole of Section 9-8.10(a).

Cooke's brief argues "[a] plain reading of section 9-8.10(a)(9) does not authorize a committee to make expenditures to a third party for gas and repairs of a personal vehicle for campaign purposes or the performance of governmental duties." Cooke. Br. pg. 19, citing *Cooke v. Illinois State Board of Elections*, 2019 IL App (4th) 180502. ¶ 67 ("Op.") This is a far too narrow, and therefore incorrect, interpretation of subsection 9. Read in context with all of Section 9-8.10(a), subsection 9 is limited to two concerns: (1) whether a committee may purchase and lease a car; and (2) whether a committee may pay mileage reimbursements. Subsection 9 does not, as Cooke argues, limit vehicle-related expenditures to only those mentioned in subsection 9.

A. Statutes are to be interpreted to give them the fullest possible meaning.

This Court recently stated that when courts interpret statutes, the statutes are to be given the "fullest, rather than narrowest, possible meaning to which it is susceptible." *State ex rel. Leibowitz v. Family Vision Care*, LLC, 2020 IL 124754, ¶ 35. Cooke and the Fourth District interpret subsection 9 by taking sentences out of context of the entirety of Section 9-8.10(a) to create a narrow interpretation—and interpretation that will greatly restrict the ability of political committees to purchase goods and services. This Court should reject Cooke's arguments, and interpret Section 9-8.10(a) in its "fullest, rather than narrowest, possible meaning[.]" *Id*.

A review of section 9-8.10(a) in its whole demonstrates that the legislature included section (a) to put limits on certain types of purchases, not to regulate whole areas of expenditures.

B. Section 9-8.10(a) prohibits committees from purchasing certain goods and services for candidates, but provides exceptions to those prohibitions.

Section 9-8.10(a) states that committees "shall not make expenditures" and then provides 11 subsections that prohibit specific expenditures. Subsection 1 prohibits expenditures that violate state or federal law; subsection 2 prohibits purchases clearly in excess of fair market value; subsection 3 prohibits the repayment of personal loans; subsection 4 prohibits funds from being used for

personal residence expenses, or as collateral for a mortgage; subsection 5 prohibits clothing and laundry purchases; subsection 6 prohibits payment for personal travel expenses; subsection 7 prohibits payment for membership fees or club dues; subsection 8 prohibits repayment for anything the State has already reimbursed; subsection 10 prohibits payment for tuition expenses; and subsection 11 prohibits payment to a candidate's family member except for work actually performed. 10 ILCS 5/9-8.10(a).

Each subsection, however, provides an exception that allows the committee to purchase items prohibited by the subsection if made under the proper circumstances. For example, subsection 5 prohibits committees from spending money on clothing, but provides that "committees may purchase costumes, novelty items, or other accessories worn primarily to advertise the candidacy." 10 ILCS 5/9-8.10(a). Consequently, while the Committee could not buy Mr. Mautino a new coat or walking shoes, the Committee was free to purchase T-shirts with the Committee's logo to be worn in parades or walking door-to-door. Likewise, subsection 10 prohibits payment "for an individual's tuition or other educational expenses[.]" 10 ILCS 5/9-8.10(a)(10). This prohibited the Committee from paying Mr. Mautino's children's college tuition. But subsection 10 provides an exception if the tuition is "for governmental or political purposes directly related to a candidate's or public official's duties and

responsibilities." *Id*. As a result, the Committee could have paid tuition for Mr. Mautino to attend courses taught by the National Conference of State Legislators.

C. In context with the whole of Section 9-8.10(a), subsection 9 does not restrict expenditures on vehicles not owned or leased by a committee.

Neither Cooke nor the Fourth District interprets subsection 9 in context with the whole of Section 9-8.10(a)(9). Instead, they focus solely on specific phrases in subsection 9 to read it not as a limitation on a committee purchasing or leasing vehicles, but as providing the exclusive means for payment of automobile expenses. But this reads subsection 9 too narrowly.

Subsection 9 prohibits expenditures:

> For the purchase of or installment payment for a motor vehicle unless the political committee can demonstrate that purchase of a motor vehicle is more cost-effective than leasing a motor vehicle as permitted under this item (9). A political committee may lease or purchase and insure, maintain, and repair a motor vehicle if the vehicle will be used primarily for campaign purposes or for the performance of governmental duties. A committee shall not make expenditures for use of the vehicle for non-campaign or non-governmental purposes. Persons using vehicles not purchased or leased by a political committee may be reimbursed for actual mileage for the use of the vehicle for campaign purposes or for the performance of governmental duties. The mileage reimbursements shall be made at a rate not to exceed the standard mileage rate method for computation of business expenses under the Internal Revenue Code.

10 ILCS 5/9-8.10(a)(9).

Cooke adopts the Fourth District's interpretation of subsection 9 as allowing a committee to do only the following:

> (1) lease a vehicle used primarily for campaign purposes or for the performance of governmental duties;
>
> (2) purchase a vehicle for campaign purposes or for the performance of governmental duties if it can prove doing so is more cost effective than leasing;
>
> (3) insure, maintain, and repair a leased or purchased vehicle; and
>
> (4) reimburse individuals who use a vehicle not leased or owned by the committee for actual mileage used for campaign purposes or for the performance of governmental duties at a rate not to exceed the standard mileage rate method for computation of business expenses.

Cooke Br. pg. 18-19, citing Op. ¶ 67.

Cooke cites the Fourth District, which found "[a] plain reading of section 9-8.10(a)(9) does not authorize a committee to make expenditures to a third party for gas and repairs of a personal vehicle for campaign purposes or the performance of governmental duties." Cooke. Br. pg. 19, citing Op. ¶ 67.

The focus of subsection 9, however, is on whether a committee may purchase or lease a vehicle. Just as the legislature does not want a committee paying a candidate's mortgage or buying a candidate new clothes, subsection 9 prohibits a committee from purchasing or leasing a car for a candidate. But, like the section related to clothing, subsection 9 provides an exception to the general rule that committees may not purchase or lease a vehicle, stating a committee

"may lease or purchase and insure, maintain, and repair a motor vehicle if the vehicle will be used primarily for campaign purposes or for the performance of governmental duties." 10 ILCS 9-8.10(a)(9).

Cooke and the Fourth District interpret the phrase "maintain, and repair a motor vehicle" to mandate that expenditures for maintenance and repairs may only be made on a vehicle purchased or leased by the committee. But read in whole with the rest of Section (a), subsection 9 is stating that a committee cannot purchase or lease a vehicle *unless* the vehicle will be used primarily for campaign purposes or governmental duties. If a committee purchases a vehicle, it is permitted to also maintain and insure it. Cooke's interpretation that a committee may only pay for repairs or maintenance of a car the committee leases or purchases reads subsection 9 too narrowly because the focus of this sentence in subsection 9 is on what the committee may do with a purchased or leased vehicle only.

Cooke uses the next sentence in subsection 9 for support to his interpretation, but, again, Cooke reads subsection 9 too narrowly. Cooke Br. pg. 20. Subsection 9's next sentence states "[a] committee shall not make expenditures for use of the vehicle for non-campaign or non-governmental purposes." 10 ILCS 9-8.10(a)(9). The use of "the vehicle" means the vehicle the committee leased or purchased as permitted by the exception in the sentence

prior. The "shall not" in the next sentence simply closes a potential loophole the exception sentence could have created when it states a committee may buy or lease a car if the car "will be used *primarily* for campaign purposes or non-government purposes." *Id*. (emphasis added). By using "primarily" the legislature did not preclude *any* personal use of the vehicle. But it clarified that if the vehicle is used for personal use, then the committee shall not make expenditures for that use. Thus, for example, a candidate could use the committee's car for a personal weekend trip every once in a while, but the committee could not pay for gasoline for those trips.

Next, subsection 9 discusses vehicles not purchased or leased by the committee. It states "[p]ersons using vehicles not purchased or leased by a political committee *may* be reimbursed for actual mileage for the use of the vehicle for campaign purposes or for the performance of governmental duties." *Id*. (emphasis added) Cooke and the Fourth District read this sentence as mandating that reimbursement for mileage is the only method of providing gas or repairs to vehicles not owned by the committee. But by using the word "may" the legislature only provided it is permissive to pay mileage reimbursements. If the legislature wanted to mandate mileage reimbursement as the only method of payment, it would have said the use of vehicles "may only" be reimbursed, or "shall" be reimbursed by mileage reimbursements. By

using "may" alone, the legislature merely permitted mileage reimbursements—it did not prohibit direct payment for gasoline or repairs.

Cooke and the Fourth District fixate on the reimbursement provision. The Fourth District found "[t]he fact the legislature authorized only mileage reimbursement for a committee's use of a personal vehicle makes sense. Mileage reimbursement (1) assures the individual is only compensated for fuel and associated wear and tear from the use of personal vehicles for a campaign or governmental purposes and (2) creates transparent and detailed records of the committee's funds." Op. ¶ 67. Cooke argues "it is virtually certain that at least some of the gas paid for at Happy's was used for personal purposes because it would be difficult, if not impossible, for the individuals to use a whole tank of gas exclusively for campaign or governmental purposes even if they wanted to." Cooke Br. pg. 35.

But what neither Cooke nor the Fourth District recognize is that mileage reimbursements are not a measurement of actual expenses, but are instead an *estimate* of the cost of travel that is permitted to by paid under federal tax laws without creating a taxable event. *See, e.g., Hatmaker v. PJ Ohio, LLC*, No. 3:17-cv-146, 2019 U.S. Dist. LEXIS 191790, at *21 (S.D. Ohio Nov. 5, 2019) (granting summary judgment to a class of delivery drivers for minimum wage violations, holding "[a]s a matter of law, that the proper measure of minimum wage

compliance for pizza delivery drivers is to either (1) track and pay delivery drivers' *actual expenses* or (2) pay the mileage reimbursement rate set by the Internal Revenue Service." (emphasis added)).

Subsection 9 permits mileage reimbursement up to the IRS limit. 10 ILCS 5/9-8.10(a)(9). For 2021, the IRS limit is $0.56 per mile.[1] But $0.56 is not the actual cost per mile to operate every non-campaign vehicle. Gas prices change daily, and gas prices differ in regions throughout Illinois. Some cars are expensive, others affordable, some long since paid off. Some cars run without ever needing anything but the minimal maintenance. Some cars guzzle gas, others are electric vehicles that use no gas. Some cars are lemons that are constantly being repaired. Every car has a different cost per mile, and that cost changes over time. As a result, the mileage reimbursement rate does not pay the actual expense to the non-campaign vehicle. It is the federal government's estimate of the cost per mile of operating a vehicle. Undoubtedly, someone receiving a mileage reimbursement will be paid an amount that "exceed[s] the fair market value of what the Committee received in return" (Cooke Br. pg. 35) because the actual cost of operating that vehicle will be below the reimbursement rate. Therefore, by permitting mileage reimbursements, the legislature was allowing

[1] https://www.irs.gov/pub/irs-drop/n-21-02.pdf

a committee to pay the standard accepted *estimate* of actual costs. It was not, as the Fourth District and Cooke suggest, requiring the committee to pay only actual expenses. To the contrary, the legislature was permitting a possible excess payment Cooke claims is utterly impermissible.

Furthermore, requiring a committee to only provide mileage could increase costs to the committee, and at the same time weaken the committee's ability to attract volunteers. For example, at the current IRS rate of $0.56, the committee could pay up to $56 for 100 miles of travel. But if the committee provided 10 gallons of gasoline to a volunteer, at $3 per gallon [2] the committee would spend $30. While the vehicle may get more fuel than needed to drive 100 miles, the cost to the committee is less, and it guarantees the volunteer or staffer can complete the work they are traveling to perform without running out of fuel. This cost analysis also undermines Cooke's complaint that the Committee spent $225,000 in gasoline and repairs at Happy's from 1999-2015. Cooke Br. pg. 3. If the Committee had paid the IRS reimbursement rate over those years, the cost could have been much higher.

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[2] $3.00 per gallon is near the price of a gallon of gasoline around Illinois at the time this brief was filed. *See*, https://www.fueleconomy.gov/feg/gasprices/states/IL.shtml

Additionally, a mileage reimbursement only requirement could harm the committee's ability to do its work. If a volunteer, for example, blew a tire while putting up yard signs, under Cooke and the Fourth District's interpretation, the committee could not pay to have the tire fixed. Instead, the volunteer would only be able to receive payment for the miles that car had been driven prior to the tire damage. But the committee may need that volunteer and her car back on the road delivering yard signs. Under Cooke and the Fourth District's analysis, the committee could not pay to fix the tire because it would eventually be used for personal use. While that would be true, the committee will get no further assistance from the volunteer until the tire is repaired. So, to the committee, the cost of repairing the tire is solely a campaign purpose, despite the fact some later personal use may occur.

Finally, the interpretation that a committee may only pay for gas and repairs for a vehicle the committee owns or leases would create an incentive opposite of the legislature's intention in enacting subsection 9. Subsection 9 *discourages* a committee from purchasing or leasing a vehicle. It only permits it in the limited circumstance that the vehicle will be used primarily for campaign or governmental purposes.

But by finding the Committee violated the Act by paying for gas and repairs to non-campaign owned or leased vehicles, Cooke would have this

Court establish an interpretation that *encourages* a Committee to purchase or lease a vehicle. In fact, the Fourth District stated that, "had the Committee made expenditures for personal vehicle use in the manner authorized by section 9-8.10(a)(9), the Committee would have likely avoided any violations of section 9-8.10(a)(2), as reimbursements at a rate not to exceed the standard mileage rate method for computation of business expenses under the Internal Revenue Code effectively serves as a fair-market-value protection." Op. ¶ 84. Under the Fourth District's analysis, the Committee violated subsection 9 solely because it did not purchase or lease a vehicle for Mr. Mautino. If this Court were to accept this interpretation, it would encourage committees to lease or purchase vehicles to avoid subsection 9 claims. This is the opposite of what the legislature sought by enacting subsection 9. This Court should not accept an interpretation of subsection 9 that encourages the very thing subsection 9 attempts to discourage.

D. The Fourth District erred in finding the Committee violated subsection 9.

Based on the Fourth District's narrow interpretation of subsection 9, the court reversed the Board's 4-4 decision finding the Committee did not violate subsection 9.[3] The court held the "evidence was clearly sufficient to establish by

[3] To find a violation requires "the affirmative vote of at least 5 of [the Board's] members." 10 ILCS 5/9-8.10(b).

a preponderance of the evidence the Committee made expenditures to a third party for gas and repairs to personal vehicles in violation of section 9-8.10(a)(9). The Board's decision to the contrary is clearly erroneous." Op. ¶ 80. The Fourth District's ruling on this issue is entirely dependent on its interpretation of subsection 9. Because that interpretation was incorrect, this Court should reverse.

II. Cooke and the Fourth District also misinterpret subsection 2 by reading a "purpose" requirement that the legislature did not provide.

As discussed, subsection 9 should be interpreted to cover only whether a committee may purchase or lease a vehicle, what expenditures can be made on the car if the committee does, and whether the committee may reimburse by mileage. Subsection 9 does not discuss the purchase of fuel or repairs for vehicles not owned by a committee. That silence, however, does not preclude these expenditures. Instead, they are governed by subsection 2, and 6.

Subsection 6 says that committees cannot pay for a person's travel expenses "unless the travel is necessary for fulfillment of political, governmental, or public policy duties, activities, or purposes." 10 ILCS 9-8.10(a)(6). Gasoline purchased for political purposes would certainly be permitted by this section.

Additionally, subsection 2 states committees may not make expenditures "[c]learly in excess of the fair market value of the services, materials, facilities,

or other things of value received in exchange." 10 ILCS 9-8.10(a)(2). Cooke, adopting the Fourth District's analysis, argues subsection 2 regulates not only the amount of the expenditure, but the *purpose* of the expenditure as well. Cooke Br. pg. 16, citing Op. ¶ 73. The Fourth District held as follows:

> An expenditure for a particular item or service used for an improper purpose would be an expenditure clearly in excess of the fair market value of what the committee received in exchange, which would be nothing. This interpretation makes sense. It prohibits the committee from paying market value for a particular item or service and then allowing that item or service to be used for a purpose unrelated to campaign or governmental duties.

Op. ¶ 73.

Cooke argues the Fourth District's interpretation makes sense because "[b]y paying for goods or services a committee cannot use, the committee is overpaying, and unjustly enriching a third party who actually will use the goods and services." Cooke Br. pg. 33. Cooke makes his argument in the context of claiming, without evidence, there was excess gasoline or repairs purchased. But applying this interpretation to all committee expenditures would subject almost any committee to charges of violating subsection 2.

Campaigns are dynamic, often chaotic affairs. Decisions on purchases take place without perfect knowledge of need. For example, if a committee hosts a fundraiser and purchases food, the committee estimates how much food is needed. If fewer people show up than expected, there may be leftover food after

the event. If volunteers, supporters, or staff take the food home, then, under Cooke's interpretation, the committee just violated subsection 2 because the committee "over[paid], and unjustly enrich[ed] a third party who will actually will use the goods or services." Cooke Br. pg. 33.

The same concern would apply to office supplies or stamps left over after a campaign ends, unless they are saved for the next campaign. And in all contested campaigns, for at least one committee there will likely be no future campaigns. Additionally, committees buy yard signs, buttons, bumper sticker, T-shirts, koozies, hats, mail pieces, and palm cards, to name a few items. Under Cooke's interpretation, if any of these items are left unused then the committee violated subsection 2 because the committee overpaid and unjustly enriched the vendor who produced the material.

This interpretation would weaponize subsection 2 to allow any rival to challenge any expenditure made in excess of the committee's use. Leftover gasoline is challenged in this case. Perhaps leftover pizza will be next, if the Fourth District is affirmed. That may sound like an absurd suggestion, but there are probably no expenses too trivial to challenge if a political rival can claim an opponent violated the law.

The Election Code, however, does not intend this narrow interpretation. Section 5/9-1.5(A)(1) defines "expenditure" in relevant part as "a payment,

distribution, purchase, loan, advance, deposit, gift of money, or anything of value, in connection with the nomination for election, election, or retention of any person to or in public office or in connection with any question of public policy[.]" 10 ILCS 5/9-1.5(A)(1). Read in conjunction with subsection 2, this definition provides a committee with latitude that Cooke's interpretation does not. For example, in the tire example made above, the committee needs the tire fixed because it needs the signs delivered. If the volunteer cannot afford the tire, the committee's expenditure would be "in connection with the" election, regardless whether the volunteer would benefit from the new tire after the election. The same is true with fuel. If a committee purchases fuel to ensure the necessary travel is completed, the fact that an extra gallon may go unused should not be a violation of subsection 2. The committee got the benefit it sought: completed travel for campaign work.

To be clear, this interpretation does not mean that section 9-8.10(a) does not prohibit expenditures for improper purposes. Subsections 3-11, of course, prohibit specific types of expenditures, albeit with exceptions. But the Code also prohibits expenses for improper purposes in subsection 1. Subsection 1 states that expenditures are prohibited if they are "[i]n violation of any law of the United States or of this State." 10 ILCS 5/9-8.10(a)(2). And subsection 4 states

expenditure are prohibited "for the payment of any expenses relating to a personal residence." 10 ILCS 5/9-8.10(a)(4).

Whereas subsection 2 only regulates the amount a committee may spend on a good or service, subsection 1 would prohibit those purchases if they violate state or federal law. For example, if a committee is paying for all of a candidate's gasoline, regardless of the use, then the committee may be violating federal tax laws. If the gasoline is purchased at market price, subsection 2 is not violated. But subsection 1 may be if the purchase is in violation of state or federal tax law.[4] Furthermore, the Board could determine a gasoline expenditure was not made for campaign purposes, but rather to defray personal residential costs. But so long as the gasoline was purchased at market value, subsection 2 is not violated.

Cooke and the Fourth District are thus incorrect to read a "purpose" provision into subsection 2. Subsection 2 only prohibits purchases "clearly in excess of the fair market value[.]" 10 ILCS 5/9-8.10(a)(2). Subsection 2 is only concerned with the price paid for goods and services. And in this case, there was no evidence anything was purchased in excess of market price—much less, "clearly in excess of fair market price." 10 ILCS 9-8.10(a)(2).

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[4] This is why Mr. Mautino kept a separate personal use account at Happy's. (Sup. E. 117-18)

The Fourth District applied its "purpose" analysis to find the Committee violated subsection 2 by purchasing gas and repairs at Happy's because "[b]y making expenditures for gas and repairs for personal purposes, the Committee made expenditures in excess of the fair market value for what it received in exchange, which was nothing." Op. ¶ 84. This Court should reverse this ruling because there was no evidence the Committee paid anything but market value for the gas and repairs purchased.

III. Even accepting the Fourth District and Cooke's incorrect interpretation of subsection (2), the Court below erred by reversing the Board's finding on expenditures to the Bank for travel expenses.

As stated, Cooke and the Fourth District incorrectly interpret section 9-8.10(a)(2), and (a)(9). However, even if their interpretation were correct, the court below still committed reversable error by reversing the Board's finding that expenditures to the Bank for travel expenses were not used for personal purposes.

The Board split 4-4 on whether Committee funds were used for personal purposes for Mr. Mautino's travel. The Fourth District quoted the Board's hearing to explain the disagreement within the board.

As the Fourth District discussed:

> At one point during the discussion, Member Linnabary posed the following question:

> "[I]f Representative Mautino took a disbursement from the [Committee] for $200 and then spent $170 on reimbursable expenses, so, therefore, took more money than he had expenses and didn't refund that money to the [C]ommittee, can we all agree that that would be an expenditure to Representative Mautino in excess of the fair market value?"
>
> Vice Chairman Keith answered Member Linnabary's question in the negative, stating:
>
> "I can't agree with that because we don't know what happened to that $30. It could be—I mean, we're all just speculating. That's the problem. Because Chicago may have been $170, and on the way home, he may have stopped *** [and] met with a county chairman and picked up the tab for $30. We don't know."

Op. ¶ 35.

The Board split 4-4 under this reasoning. The Fourth District, however, reversed, accepting Cooke's argument, and finding "the manner in which the Committee paid for travel expenses over a 15-year period *inevitably* led to at least some portion of the cash being used for personal purposes." Op. ¶ 85 (emphasis added). The court thus reversed, finding "the Board's decision to be clearly erroneous." *Id*.

This Court has defined the "clearly erroneous" standard of review of agency decisions to require the reviewing court to affirm on the entire record, unless the court is "left with the definite and firm conviction that a mistake has been committed." *AFM Messenger Service v. Department of Employment Security*, 198 Ill. 2d 380, 395, 763 N.E.2d 272, 282 (2001), quoting, *United States v. United*

States Gypsum Co., 333 U.S. 364, 395 (1948). There was no evidence, however, to justify reversing the Board under this standard. As Vice Chairman Keith said, the Board was speculating about what happened with the money. The Fourth District ignored the fact that the Committee did not have records for all expenditures because most of the records had been disposed of when the Committee dissolved prior to Cooke's filing his petition. A disposal that occurred in consultation with the Board.

The Fourth District cited the following "evidence" to argue "inevitably" some money was used for personal reasons:

> (1) the cash was obtained prior to travel by Mautino;
>
> (2) the cash was obtained in whole dollar amounts;
>
> (3) Mautino would sometimes not return receipts after traveling;
>
> (4) the Committee's treasurer did not recall an instance where Mautino deposited cash with the Bank when he returned from travel with receipts for expenses totaling an amount less than the amount of cash previously obtained from the Bank;
>
> (5) Mautino did not seek additional cash for unexpected traveling expenses; and
>
> (6) Mautino did not disclose any contributions relating to his personal payment of unexpected traveling expenses.

Op. ¶ 85.

This is insufficient to establish any funds were used for a personal purpose. First, the fact Mr. Mautino did not deposit cash is not evidence the

funds were used for personal purposes. There is no actual evidence to suggest all of the money was not properly spent. The amount of money at issue ($150, $200, $250)[5], suggests most, if not all, of the expenditures fell below the Election Code's $150 dollar threshold for itemized disclosures. 10 ILCS 5/9-11(a)(12). Expenditures under $150 do not have to be disclosed. But records need to be maintained for two years and be available for the Board to audit. 10 ILCS 5/9-7 and 10 ILCS 5/9-13. If Mr. Mautino had leftover cash following a trip to Chicago, for instance, there is no requirement in the Code he deposit the leftover cash. He could use the remaining funds for a trip to Springfield the next day. The Committee was required to keep records of the spending and report the total nonitemized expenses. There is no requirement he return cash so long as it was used for campaign or governmental expenses. As a result, the fact no cash was deposited following a trip is not evidence cash was converted to personal use. And the Board's finding Cooke failed to meet his burden of proof was certainly not clearly erroneous.

The Fourth District next found Mr. Mautino did not seek additional cash and did not "disclose contributions" related to travel. Once again, the Fourth District's reasoning depends on a requirement that does not exist. Cooke

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[5] Op. ¶ $150.

explains this reasoning, arguing "Mautino did not disclose any expenditures on his own behalf as contributions to his campaign, as he would be required to by 10 ILCS 5/9-7 if he spent more cash than what he withdrew." Cooke Br. pg. 39.

But Cooke's argument is false, and if accepted would have disastrous consequences for candidates and committees. Section 9-7 simply sets forth the requirements related to records and accounts. It states as follows:

> (1) Except as provided in subsection (2), the treasurer of a political committee shall keep a detailed and exact account of-
>
> (a) the total of all contributions made to or for the committee;
>
> (b) the full name and mailing address of every person making a contribution and the date and amount thereof;
>
> (c) the total of all expenditures made by or on behalf of the committee;
>
> (d) the full name and mailing address of every person to whom any expenditure is made, and the date and amount thereof;
>
> (e) proof of payment, stating the particulars, for every expenditure made by or on behalf of the committee.

10 ILCS 5/9-7.

Cooke is arguing that any expense made by a candidate that is related to campaign activities is a contribution to the committee. That would mean if a candidate drove to a fundraiser in her own car with gas she paid for, and the committee did not report it, that would be a violation of Section 9-7. If a candidate paid with his own money for dinner with a political party's county

chairman to discuss election day planning and the committee failed to report that, it would be a Section 9-7 violation. Unreported cups of coffee, drinks, meals, gifts paid for by candidates' own funds will all lead to Section 9-7 violations under Cooke's interpretation. Candidates and committees would be left having to report nearly all of the candidates' personal expenses lest the committee be charged with a Section 9-7 violation.

Of course, the Election Code does not require this. It defines "contribution" as "a gift, subscription, donation, dues, loan, advance, deposit of money, or anything of value, knowingly *received* in connection" with an election. 10 ILCS 5/9-1.4(A)(1) (emphasis added). An expense by a candidate is not something "received" by the committee. The candidate can spend his or her own money as he or she sees fit without having to report the expense under Section 9-7. All that Section 9-7 requires is the committee report any contribution it receives.

As a result, the Fourth District was wrong to conclude Committee funds were used for personal purposes because Mr. Mautino did not seek additional reimbursement and the Committee did not report his own personal expenses. The Code did not require that.

Vice Chairman Keith was correct when he said the discussion on this subject was speculation. Absent the records, it is impossible to know what the

money was spent on. That is why the Board fined the Committee the maximum amount for failure to keep records (despite the fact the records were disposed of in consultation with the Board). Yet, the Fourth District reversed, accepting Cooke's argument that "inevitably" some money was used for personal use. But that was a factual determination to be made by the Board. To affirm the Fourth District's ruling would leave the clearly erroneous standard of review intact in name only. In practice it would be a *de novo* standard that allows courts to substitute their own factual determination for that of the Board's. This Court should therefore reverse the Fourth District's opinion.

CONCLUSION

For all of the foregoing reasons, Respondent-Appellant Committee for Frank J. Mautino, respectfully requests that this Court reverse the decision of the appellate court.

Respectfully submitted,

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CERTIFICATION OF COMPLIANCE

I certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of the brief, excluding the pages containing the Rule 341(d) cover, the Rule 341(h)(1) statement of points and authorities, the Rule 341(c) certificate of compliance, the certificate of service, and those matters to be appended to the brief under Rule 342(a) is 5,487 words.

/s/Adam R. Vaught

No. 125386

IN THE
SUPREME COURT OF ILLINOIS

DAVID W. COOK, *Complainant-Appellee,* v. *COMMITTEE FOR FRANK J. MAUTINO,* *Respondent-Appellant.* *ILLINOIS STATE BOARD OF ELECTIONS; WILLIAM J. CADIGAN, in his capacity as chairman; JOHN R. KEITH, in his capacity as vice chairman; WILLIAM M. McGUFFAGE, in his capacity as member; ANDREW K. CARRUTHERS, in his capacity as member; CHARLES W. SCHOLZ, in his capacity as member; IAN K. LINNABARY, in his capacity as member; KATHERINE S. O'BRIEN, in her capacity as member; and CASANDRA B. WATSON, in her capacity as member,* *Respondents.*	Rule 315 Petition for Leave to Appeal from the Appellate Court of Illinois, Fourth District, No. 4-18-0502; There Heard on appeal on Petition for Review of the Order of the Illinois State Board of Elections, No. 16 CD 093

NOTICE OF FILING

TO:

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PLEASE TAKE NOTICE that on March 2, 2021, we electronically filed via Odyssey EfileIL the foregoing Reply Brief of Appellant Committee for Frank J. Mautino, with the Clerk of the Supreme Court of Illinois, a copy of which is hereby served upon you.

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By:/s/Adam R. Vaught
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Carolyn Taft Grosboll
SUPREME COURT CLERK

STATE OF ILLINOIS)
)
COUNTY OF COOK)

CERTIFICATE OF SERVICE

I, Adam R. Vaught, one of the attorneys for Respondent-Appellant, Committee for Frank J. Mautino, certify that I electronically filed with Odyssey EfileIL the foregoing Reply Brief of Respondent-Appellant Committee for Frank J. Mautino, with the Clerk of the Supreme Court of Illinois on March 2, 2021.

The undersigned further certifies that on March 2, 2021, an electronic copy of the foregoing reply brief is being served through Odyssey EfileIL.

In addition, I have served counsel of record by sending a copy thereof by email on the March 2, 2021, before 8:00 p.m.

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Under penalties as provided by law pursuant to § 1-109 of the Code of Civil Procedure (735 ILCS 5/1-109), the undersigned certifies that the statements set forth in this instrument are true and correct.

By: */s/Adam R. Vaught*

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