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; and WILLIAM M. MCGUFFAGE, ANDREW K. CARRUTHERS, CHARLES W. SCHOLZ, IAN K. LINNABARY, KATHERINE S. O'BRIEN, AND CASANDRA B. WATSON, in their official capacity as members. *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

Brief of Appellee David W. Cooke

Jeffrey M. Schwab
James J. McQuaid
jschwab@libertyjusticecenter.org
jmcquaid@libertyjusticecenter.org

Liberty Justice Center
208 S. LaSalle St., Ste. 1690
Chicago, IL 60604
312-637-2280

Attorneys for Complainant-Appellee

Oral Argument Requested

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NATURE OF THE CASE

Complainant-Appellee David W. Cooke alleges that the Committee for Frank J. Mautino ("Committee") violated the Illinois Election Code, 10 ILCS 5/9-8.10(a)(9), by making improper expenditures for gas and repairs at Happy's Super Service Station ("Happy's") and violated 10 ILCS 5/9-8.10(a)(2), by making expenditures in excess of fair market value at both Happy's and the Spring Valley City Bank ("Bank"). On July 10, 2018, in compliance with the Appellate Court's May 2018 opinion, the Board held a hearing on the merits of the complaint, and on July 16, 2018 entered a final order, on a split four-to-four vote, failing to find that the Committee violated 10 ILCS 5/9-8.10(a)(2) and (a)(9), as alleged in the complaint.

Cooke timely filed an appeal to the Fourth District. The Appellate Court reversed the Board's decision to the extent it ruled Cooke failed to establish violations of section 9-8.10(a)(2) based on the Committee's expenditures to the Bank for traveling expenses and to Happy's for gas and repairs of personal vehicles. The Appellate Court also reversed the Board's decision to the extent it ruled Cooke failed to establish violations of section 9-8.10(a)(9) based on the Committee's expenditures to Happy's for gas and repairs of personal vehicles. But the Appellate Court did affirm the Board's decision to the extent it ruled Cooke failed to establish a violation of section 9-8.10(a)(2) based on the Committee's expenditures to the Bank for election-day expenses.

The Committee filed a timely appeal to this Court.

ISSUES PRESENTED FOR REVIEW

(1) Does 10 ILCS 5/9-8.10(a)(9) prohibit a committee from making any expenditure to a third party for gas and repairs of vehicles neither owned nor leased by a committee? And if so, did the evidence Cooke provided showing that the Committee made expenditures for the repair and maintenance of motor vehicles it neither owned or leased at Happy's violate 10 ILCS 5/9-8.10(a)(9)?

(2) Does 10 ILCS 5/9-8.10(a)(2) both prohibit a committee from paying more than fair market value for a good or service used for a proper purpose and from paying fair market value for a good or service used for an improper purpose, such as for the benefit of a third party? And if so, did the evidence Cooke provided clearly show that the Committee violated 10 ILCS 5/9-8.10(a)(2) by making expenditures for goods or services used for an improper purpose — the benefit of a third party — by: (1) making expenditures for gas and repairs of personal vehicles at Happy's, rather than reimbursing individuals based on the mileage driven for campaign or government purposes, and (2) withdrawing funds from the Bank in whole dollar amounts that were purportedly used for traveling expenses to undisclosed third parties, while not returning any of the withdrawn cash?

STATEMENT OF FACTS

This case concerns alleged improper expenditures by the Committee for Frank J. Mautino ("Committee"), which is a candidate campaign committee

ostensibly created to support the election of Frank J. Mautino to the Illinois House of Representatives, of which he was a member from 1991 through 2015. In October 2015, Mautino became the Auditor General of Illinois, and he remains in that position.

I. Procedural History

On February 16, 2016, David W. Cooke filed a complaint with the Illinois State Board of Elections ("the Board"), alleging that the Committee made expenditures to Happy's Super Service Station in Spring Valley, Illinois ("Happy's") and Spring Valley City Bank (the "Bank") in violation of the Illinois Election Code, 10 ILCS 5/1-1, *et seq*. (the "Code"). C. 004–125.

The complaint alleged that the Committee: (1) reported making expenditures directly to the Bank for types of services the Bank did not offer; (2) from 1999 to 2015, paid Happy's more than $225,000, an amount that, on its face, exceeds reasonable costs of fuel and repair for vehicles for campaigning during that time period; and (3) reported that a majority of its expenditures paid to the Bank and Happy's were in whole dollar amounts, which is highly implausible. C. 004–007.

The complaint alleged violations of the Code, including but not limited to violations of 10 ILCS 5/9-7 for failure to keep detailed accounts and records of the full name and address of every person to whom each expenditure was made, as well as the date, amount, and proof of payment for each expenditure; and violations of 10 ILCS 5/9-8.10 for expenditures in excess of

fair market value of the services, materials, facilities, and other things of value received. C. 004–007.

A. The Appellate Court found that the Board improperly failed to address the merits of Cooke's claims in the Board's initial proceedings.

The Board held a closed preliminary hearing on March 1, 2016. R. 002. On March 31, 2016, the Committee filed a motion to strike and dismiss, C. 130–149, which the Board denied on May 18, 2016, finding that the complaint was filed on justifiable grounds C. 298–299. The Board also issued an order on May 18, 2016 directing the Committee to amend its campaign disclosure reports, no later than July 1, 2016, to: (1) provide an accurate breakdown between gas and repairs expenditures reportedly made at Happy's; (2) indicate whether the vehicles involved in each itemized expenditure to Happy's were owned or leased by the Committee or privately owned; and (3) identify the actual recipient and purpose of each itemized expenditure reported as a payment to the Bank. C. 298–299.

On June 1, 2016, the Committee asked the Board to stay the proceedings on the basis of a reported federal investigation into the Committee's expenditures. C. 300–320. On June 15, 2016, the Board issued an order continuing the hearing on the Committee's motion until July 11, 2016, and extending the Committee's deadline to file its amended reports to that date. C. 322. On July 13, 2016 the Board issued an order denying the Committee's

motion and extending the Committee's deadline to file its amended reports to July 25, 2016. C. 328–329.

The Committee ignored the July 25 deadline — it never produced any amended reports or otherwise attempted to comply with the Board's May 18, 2016 order. C. 416–418. Instead, the Committee filed a second motion to stay, virtually identical to the first, on September 6, 2016. C. 330–351. The Board denied the second motion on September 21, 2016. C. 357–358. The Committee then appealed that denial to the First District Appellate Court, No. 16-2530, which dismissed it for lack of jurisdiction. C. 394–395.

Cooke issued discovery requests, and he sought subpoenas to obtain documents from Frank J. Mautino, Committee treasurer Patricia Maunu, Happy's, and the Bank. C. 395. Cooke also sought subpoenas for depositions of Mautino and Maunu. Mautino submitted a declaration stating that, if subpoenaed to testify at a deposition, he would assert his Fifth Amendment privilege to any and all questions asked. *Id*. In response, the Hearing Examiner recommended, and the General Counsel of the Board agreed, over Cooke's objection, that the subpoena for deposition to Mautino should not be issued. *Id*. The Board did issue a subpoena to Maunu, who was then deposed. Supp. E 0095–0128.

On April 20, 2017, the Hearing Examiner held a public hearing. R. 121–212. At the beginning of the hearing, the Hearing Examiner stated that the only issue to be determined at the hearing was whether the Committee was

justified in not complying with the Board's May 18, 2016 order requiring the Committee to file amended reports — not the merits of Cooke's complaint. R. 128–132. Counsel for Cooke objected to limiting the Public Hearing to this narrow issue. R. 132. Notwithstanding the Hearing Examiner's statement, the parties provided evidence, testimony, and argument at the public hearing related to both the narrow issue and the merits of the substantive issues in the complaint. R. 121–212.

On May 5, 2017, the Hearing Officer issued his recommendations following the public hearing. C. 392–409. The Hearing Officer recommended that the Board find: (1) with respect to the records prior to 2014, the Committee had not willfully violated the Board's May 18, 2016 order because those records were lawfully destroyed; (2) with respect to the Board's order seeking information on whether the Committee owned or leased any vehicles, that the Committee had not willfully violated the Board's May 18, 2016 order because Treasurer Patricia Maunu testified in a deposition — taken in response to a subpoena issued by Cooke on March 21, 2017 — that the Committee never owned or leased any vehicles; and (3) that the Committee had willfully violated the Board's May 18, 2016 order with respect to expenditures in 2014 and 2015. C. 408–409.

The Board considered the Hearing Officer's recommendation at its meeting of May 15, 2017. R. 213–287. The Board adopted the Hearing Officer's first and third recommended findings but rejected the second,

concluding that the Committee *did* willfully fail to comply with the part of the order requiring it to state whether the Committee owned or leased any vehicles. C. 416-418. At that Board meeting, before the Board made its findings, Cooke's counsel requested that the Board address the merits of the complaint's substantive allegations — specifically that the Committee made prohibited expenditures under 10 ILCS 5/9.8-10(a)(2) and (a)(9) and failed to properly record and report those expenditures under 10 ILCS 5/9-7(1) and 9-11(a). R. 216–221. But the Board did not do so.

On May 24, 2017, Cooke filed a motion asking the Board to reconsider its order because the Board never addressed the merits of Cooke's complaint — specifically, it did not address the complaint's allegations that the Committee made prohibited expenditures by paying for gas and repairs of vehicles not owned or leased by the Committee and making expenditures in excess of fair market value. C. 419–428. The Board held a hearing on Cooke's motion on June 20, 2017, R. 288–312, and issued a final order on June 22, 2017 denying Cooke's motion by a vote of four to four, stating that the May 18, 2017 final order remained in effect, C. 437–438.

Cooke filed a petition for review with the Appellate Court on June 28, 2017. On May 22, 2018, the Appellate Court issued an opinion remanding this matter to the Board to address and issue rulings on the merits of Cooke's § 9-8.10(a)(2) and (a)(9) claims. *Cooke v. Illinois State Bd. of Elections*, 2018 IL App (4th) 170470. That opinion also directed the Board to amend its May

18, 2017 order to show that the Committee violated §§ 9-7 and 9-11 of the Election Code. *Id*. at ¶ 95. On June 27, 2018 the Clerk of the Appellate Court issued the mandate.

B. Proceedings before the Board after the Appellate Court's opinion ordering the Board to address the merits of Cooke's claims.

On July 5, Cooke and the Committee each filed briefs with the Board on the issue of the merits of Cooke's §§ 9-8.10(a)(2) and (a)(9) claims. C. 446–463; 464–470. On July 10, 2018, the Board held on a special meeting of the Board to conduct a hearing on the complaint's §§ 9-8.10(a)(2) and (a)(9) claims. R. 313–405. At the beginning of that meeting, the Board adopted a Nunc Pro Tunc Order correcting its May 18, 2017 order, pursuant to the Appellate Court's opinion, finding that the evidence presented established that the Committee violation §§ 9-7 and 9-11 of the Illinois Code. C. 476–477; R. 316–318.

At the end of the hearing on July 10, 2018, the Board voted on two motions. First, the Board split four to four on the motion that:

> complainant has met its burden of proof by the preponderance of the evidence and that the Committee to Elect Frank Mautino violated Section [9-]8.10(a)(9) by making expenditures for the maintenance and repair and gas of motor vehicles that were neither owned nor leased by the committee . . . .

R. 386. Because the vote was tied, four-to-four, the motion failed to pass. The members of the Board explained the reasons they voted for or against the motion as follows:

Member Cadigan, who voted in favor of the motion, explained that "I do believe that the complainant has met their burden of proof under a preponderance of the evidence that violations of (a)(9) occurred." R. 388. Member Carruthers, who made the motion, explained he that voted in favor of the motion because the "complainant has met its burden and that any expenditure at all for gas, repairs, maintenance of vehicles neither owned nor leased by the committee are violations of (a)(9)." R. 388. Member Linnabary and Member O'Brien stated that they agree with Member Carruthers.

Vice Chairman Keith, who voted against the motion explained that "I do not believe that the burden of proof has been met by the complainant and that there was a knowing violation of the article based upon the record before us." R. 388. Member McGuffage agreed. R. 389. Member Scholz explained that in order "to make that determination with specificity, we would need the adequate reports. The reports [filed by the Committee] were inadequate. . . . But to fine specifically, I need to see those reports, and they weren't filed. So I want to reiterate what Vice Chairman Keith said." R. 389. Member Watson stated that "the complainant has failed to meet its burden by a preponderance of the evidence based on the evidence presented and the existing record as well." R. 390.

The Board also split four to four on the second motion:

> the complainant has met its burden of proof by a preponderance of the evidence and that the Committee for Frank Mautino violated Section [9-]8.10(a)(2) by making expenditures clearly in excess of fair market value for the goods and services received by

> the committee, by making expenditures for gas and repairs for personal vehicles rather than reimbursing them on the mileage rate, and by withdrawing funds from the bank in whole dollar amounts that were purportedly used for campaign expenses without returning any cash.

R. 390. Because the vote was tied, four to four, the motion failed to pass. The members of the Board explained the reasons they voted for or against the second motion as follows:

Member Carruthers, who made the motion, explained:

> I believe . . . the amount paid was certainly in excess of the value received considering that the gas and repairs were made on personal vehicles. . . . I also believe that this section has been violated through the numerous expenditures by the committee to Spring Valley City Bank in whole dollar amounts purportedly for cash or walking-around money for Representative Mautino when he was traveling that were not properly documented, and it is not plausible for the committee to suggest that all of the money was used and none was left over, and we know that none was returned from these expenditures by Representative Mautino to the committee.

R. 391–393. Chairman Cadigan agreed with Member Carruthers and stated that he also relied on the adverse inference drawn from Mr. Mautino's refusal to testify. R. 393. Member Carruthers stated that he too relied on that adverse inference. R. 393. Members Linnabary and O'Brien stated that they "share the sentiments expressed by Members Cadigan and Carruthers." R. 393.

Vice Chairman Keith, who voted against the motion, stated:

> I adopt the explanation I gave on the previous vote, plus while I agree with the Chairman that the case cited permits an adverse inference to be drawn, it does not require an adverse inference,

> and I do not find an adverse inference sufficient with the press of the evidence to meet the burden of proof.

R. 393–394. Member McGuffage stated that he adopted the argument of Mr. Keith and "that the plaintiff has not met its burden. There's no evidence to conclusively show that fair market value was clearly exceeded. All we got is the record, and the record does not prove that the violation of the section has actually occurred. We don't have the amended reports, the D-2 reports we need to make that determination." R. 394. Member Scholz stated that he agreed with Member McGuffage and Vice Chairman Keith. R. 394. Member Watson also adopted the arguments of Vice Chairman Keith and Member McGuffage and that she believed that "the complainant has failed to meet its burden by a preponderance of the evidence based on the evidence presented. R. 394.

On July 16, 2018, the Board entered a final order failing to find that the Committee made prohibited expenditures in violation of § 9-8.10(a)(9) and expenditures in excess of fair market value in violation of § 9-8.10(a)(2) of the Illinois Election Code. C. 478. Cooke timely filed his petition for review with the Appellate Court on July 20, 2018, appealing the Board's July 16, 2018 order.

C. The Appellate Court reversed the Board's decision that Cooke failed to establish violations of Section 9-8.10(a)(2) and (a)(9).

The Fourth District entered its Opinion on August 19, 2019. The Appellate Court found that the Board erroneously interpreted § 9-8.10(a)(2)

and § 9-8.10(a)(9). The Fourth District found that § 9-8.10(a)(9) is the exclusive provision regulating campaign expenditures on vehicles and effectively prohibits any expenditure to a third party for gas and repairs of vehicles neither owned nor leased by a committee. (Op. ¶ 68). Contrary to Appellant's Statement of Facts, (Appellant's Br. 16), the Fourth District specifically rejected the argument, based on § 9-8.10(c), that a committee may make expenditures directly for gas and repairs of a personal vehicles if the personal vehicle is used for governmental and public service functions so long as that reimbursement does not exceed the standard reimbursement rate, because it would render language in § 9-8.10(a)(9) as superfluous. (Op. ¶ 66).

Further, the Fourth District held that § 9-8.10(a)(2) regulates not only the amount but also the purpose for which an expenditure is used. (Op. ¶ 73). Thus, § 9-8.10(a)(2) prohibits expenditures in excess of fair market value of services, materials, facilities, or other things of value received in exchange, but also prohibits paying market value for an item or service used for an improper purpose unrelated to campaign or governmental duties. (Op. ¶ 72).

The Fourth District found that the Board's decision could not be sustained under the proper interpretation of § 9-8.10(a)(9) based on the evidence presented. The Fourth District held that the evidence presented at the public hearing that the Committee did not own or lease any vehicles and made expenditures to Happy's for gas and vehicle repairs was clearly sufficient to establish by a preponderance of the evidence that the Committee made

expenditures to a third party for gas and repairs of personal vehicles in violation of § 9-8.10(a)(9). (Op. ¶ 80). The Fourth District reversed the Board's decision to the extent it ruled Cooke failed to establish violations of § 9-8.10(a)(9) based on the expenditures for gas and repairs of personal vehicles at Happy's. (Op. ¶ 80).

The Fourth District affirmed the Board's decision to the extent it ruled Cooke failed to establish a violation of § 9-8.10(a)(2) based on the expenditures reported to the Bank for election-day expenses[1]. (Op. ¶ 83).

The Fourth District reverse the Board's decision to the extent it ruled Cooke failed to establish violations of § 9-8.10(a)(2) based on the expenditures to the Bank for travel expenses. (Op. ¶ 85). The Court found that 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). By making expenditures to withdraw cash used for personal purposes, the Committee made expenditures in excess of the fair market value for what it received in exchange, which was nothing. (Op. ¶ 85).

The Fourth District reversed the Board's decision to the extent it ruled Cooke failed to establish violations of § 9-8.10(a)(2) based on the expenditures to Happy's. The Court found that the evidence established the Committee

[1] As the Fourth District noted, Cooke did not specifically address the expenditures for election-day expenses in his brief. (Op. ¶ 83). However, Cooke did not contest the Board's ruling concerning the election-day expenses, and Cooke also does not contest that ruling before this Court.

made expenditures to Happy's for gas and repairs of personal vehicles over a 15-year period. (Op. ¶84). And by 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).

II. Evidence of the Committee's Expenditures to Happy's

Cooke presented the following evidence to the Board of the Committee's improper expenditures to Happy's.

From 1999 to 2015, the Committee paid Happy's a total of $225,109.19, Supp. E 0136-0138, purportedly for gas and vehicle repairs, Supp. E 0100. But, in fact, the Committee never owned or leased any vehicles that could have been repaired. Supp. E 0100 at 21:13-15.

The Committee had a charge account at Happy's, Supp. E 0099, which Mautino's family and associates — including his wife, daughter, son, niece, nephew, and secretary, plus Maunu and her husband and son — used for gasoline for their personal vehicles, Supp. E 0100, 0103–04, 0107–09. The Committee also paid for the gas and repairs for Mautino's four personal vehicles. Supp. E 0100. The Committee never reimbursed anyone for actual mileage for the use of their personal vehicles for campaign purposes or for the performance of governmental duties. *Id*.

The Committee filed reports with the Board, showing that the Committee paid Happy's for repairs and gasoline. (Supp. E 1041, 1059, 1084, 1117, 1143, 1162, 1184, 1199. Further, invoices from Happy's, Supp. E 0135–0139, and

receipts from Happy's, Supp. E 0140–0150, 0228–0787, revealing that the Committee paid for gas and repairs or vehicles at Happy's.

In the quarterly reports for its last two years of operation, 2014 and 2015, the Committee reported expenditures in the amount of $38,649.54 at Happy's for two purposes: (1) gasoline; and (2) "camp vehicle repair & gasoline" or "gasoline/camp vehicle repair,"[2] *see* Supp. E 1026–1203, even though the Committee neither owned nor leased a campaign vehicle. Supp. E 0100. Of the total reported in 2014 and 2015, $33,859.25 was for "gasoline/camp vehicle repair" and $4,790.29 was for "gasoline." See Supp. E 1026–1203. The reports provide no other information about whose vehicles received the gas and repairs or the expenditures' relationship to any campaign or governmental purpose.

III. Evidence of the Committee's Expenditures to the Bank

Cooke presented the following evidence to the Board of the Committee's improper expenditures purportedly to the Bank.

The Committee reported expenditures of $159,028.00 to the Bank from 2000 to 2015 for services or goods that the Bank did not offer, and not for the purpose of reimbursing expenses incurred by the Bank on behalf of the Committee.[3] Supp. E 0008–0044.

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[2] "Camp vehicle" presumably means "campaign vehicle."

[3] This number is the sum of all the Committee's reported expenditures to the Bank from 2000 to 2015, excluding any loan principal or interest payments and purchases of new checks.

These "expenditures" to the Bank were actually just checks written to withdraw cash, which was then spent on (unreported) expenditures to other vendors. Either Mautino or Maunu (or the previous treasurer, Sophie Lewis, Maunu's mother) would write a check from the Committee to the Bank — usually in a whole dollar amount and in an increment of $100 — and then sign it, go to the bank, cash it (with funds coming out of the Committee's checking account), and leave with the cash. Supp. E 0109. This would take place entirely before the Committee actually incurred any expense. *Id*. Then Mautino would use the cash for some purpose unrelated to the Bank. Sometimes he would return with receipts for the expenditures he made with the cash, but not always. Supp. E 0111. Mautino never returned any cash not used for the withdrawal's purported purpose. *Id*. And Mautino did not disclose any expenditures on his own behalf as contributions to his campaign, as he would be required to do by 10 ILCS 5/9-7 if he kept the spent more cash than what he withdrew. Supp. E 1026–1203.

All of the purported "expenditures" to the Bank the Committee reported in its 2014 and 2015 quarterly reports were in whole dollar amounts. Supp. E 0788–1203. The Committee reported thirteen of the "expenditures" as being for Chicago or Springfield meetings or travel expenses, *id*. — even though there is no evidence that Mautino knew or could have known the exact amounts of his travel expenses for these meetings in advance, nor is there any evidence explaining how Mautino's expenses could have consistently

been in whole dollar amounts. The Committee reported most of the remaining "expenditures" to the Bank as being for poll watchers, precinct walkers, or phone callers. *Id*. But the reports do not indicate who actually received this money, and the Committee has not provided any documentation to show that these payments to third parties were actually made.

ARGUMENT

I. The Fourth District Court of Appeals applied the correct standard of review.

The Fourth District applied the correct standard of review to the Board's decision denying Cooke's claims. As the Appellate Court noted, this appeal involves both the Board's interpretation and application of the Election Code. (Op. ¶ 52).

First, the Board's interpretation of the relevant provisions of the Election Code are reviewed *de novo*. *Cook County Republican Party v. Ill. State Bd. of Elections*, 232 Ill. 2d 231, 243 (2009); (Op. ¶ 52). The Fourth District acknowledged that although it reviewed the Board's interpretation of the Code *de novo*, it gave the Board's interpretations substantial weight and deference where possible. (Op. ¶ 52, citing *Hartney Fuel Oil Co. v. Hamer*, 2013 IL 115130, ¶ 16).

Next, the Board's application of the relevant sections of the Election Code to the established facts are to be reviewed for clear error. (Op. ¶ 52, citing *Cook County Republican Party*, 232 Ill. 2d at 243–44). In order to be deemed clearly erroneous, the Board's order must provide the court with a definite

and firm conviction that a mistake has been committed. (Op. ¶ 52, citing *Cook County Republican Party*, 232 Ill. 2d at 244).

II. The Fourth District correctly interpreted § 9-8.10(a)(9) and correctly found that the Board clearly erred in failing to find that Cooke presented sufficient evidence to show that the Committee violated § 9-8.10(a)(9).

Section 9-8.10(a)(9) provides:

> (a) A political committee shall not make expenditures:
>
> * * *
>
> (9) 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 noncampaign 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.

Id. § 9-8.10(a)(9).

A. The Fourth District correctly interpreted § 9-8.10(a)(9).

The Fourth District held that a plain reading of § 9-8.10(a)(9) authorizes a committee to:

> (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.

(Op. ¶ 67).

Further, the Fourth District also held that "[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 used for campaign purposes or for the performance of governmental duties." (Op. ¶ 67). Thus, the Fourth District agreed with Cooke's interpretation of § 9-8.10(a)(9) as "prohibit[ing] committees from making expenditures for gas and repairs of a vehicle unless the vehicle is owned or leased by the committee and used primarily for campaign purposes or the performance of governmental duties." (Op. ¶ 67).

The Fourth District stated that the fact the legislature authorized only mileage reimbursement for a committee's use of a personal vehicle makes sense because mileage reimbursement (1) assures an individual is only compensated for fuel and associated wear and tear from the use of a personal vehicle for campaign or governmental purposes and (2) creates transparent and detailed records of use of committee funds. (Op. ¶67). Cooke makes a similar argument: Once someone's gas tank is filled, there is no way to ensure that the gas will only be used for permissible purposes.

Reimbursements for actual mileage eliminate this problem. Also, paying a service station directly for a tank of gas for someone's personal vehicle and reporting the service station as the recipient of the expenditure masks the fact that the individual — whose name is not reported — is the one receiving the benefit of the tank of gas.

The Committee asserts that § 9-8.10(a)(9) "only prohibits 'expenditures for use of the vehicle for non-campaign or non-governmental *purposes*.'" Appellant's Br. 39 (quoting 10 ILCS 5/9-8.10(a)(9) (emphasis added by Appellant)). But the Committee misrepresents the Fourth District's and Cooke's interpretation of § 9-8.10(a)(9). According to the Committee, the Fourth District's and Cooke interpret § 9-8.10(a)(9) as "prohibit[ing] all expenditures on vehicles owned by individuals working for the campaign." Appellant's Br. 39 (similarly asserting "[c]ontrary to the Fourth District's interpretation, section 9-8.10(a)(9) ('prohibition on using vehicles for personal purposes') does not prohibit expenditures on personal vehicles.") But neither the Fourth District nor Cooke interpreted § 9-8.10(a)(9) as prohibiting expenditures on personal vehicles. Indeed, as stated above, the Fourth District held that "[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* used for campaign purposes or for the performance of governmental duties." (Op. ¶ 67) (emphasis added). And the Fourth District held that § 9-8.10(a)(9) specifically authorizes a committee to "reimburse

individuals who use a vehicle not leased or owned by the committee [i.e. a personal vehicle] 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." (Op. ¶ 67). Thus, the Committee mischaracterizes the Fourth District's and Cooke's interpretation of § 9-8.10(a)(9).

Further, the Committee failed to respond to the Fourth District's explanation of why the Committee's interpretation of § 9-8.10(a)(9) is incorrect. The Committee quotes a portion of § 9-8.10(a)(9) in interpreting that Section, stating that "it only prohibits 'expenditures for use of the vehicle for non-campaign or non-governmental *purposes*.'" Appellant's Br. 39 (quoting 10 ILCS 5/9-8.10(a)(9)). As the Fourth District's opinion points out, the sentence the Committee cites refers to "the vehicle" not "a vehicle." As the Fourth District explains:

> The sentence comes directly after the sentence explaining a committee may purchase or lease a vehicle and make expenditures to insure, maintain, and repair its leased or purchased vehicle. In context, the sentence prohibits a committee from making expenditures for its purchased or leased vehicle when it is used for noncampaign or nongovernmental purposes. It does not allow a committee to make expenditures for personal vehicles so long as they are used for campaign purposes or for the performance of governmental duties.

(Op. ¶ 67); see also Reply Br. of Appellant David W. Cooke, *Cooke v. Illinois State Board of Elections,* 2019 IL App (4th) 180502, No. 4-18-0502 ("Appellate Reply Br.") at 3–4. The Committee's brief fails to acknowledge or respond to

this argument at all. Further, the Committee's interpretation would allow a committee to make any expenditures on a vehicle as long as the expenditures are for campaign or governmental purposes. That interpretation would contradict the very first sentence of § 9-8.10(a)(9) which prohibits expenditures to purchase a vehicle unless doing so is more cost-effective than leasing.

The Committee additionally erroneously asserts that "[t]he court did not discuss the impact of section 9-8.10(c), which provides that section 9-8.10 shall not be construed to prohibit expenditures in furtherance of government or public service functions, on its interpretation of section 9-8.10(a)(9)." Appellant's Br. 39. Again, the Committee fails to acknowledge that the Fourth District's opinion not only discusses the impact of § 9-8.10(c) but rejects the argument that that § 9-8.10(c) somehow changes the language of § 9-8.10(a)(9). As the Fourth District found, applying § 9-8.10(c) to interpret § 9-8.10(a)(9) to only prohibit expenditures for use of the vehicle for non-campaign or non-governmental purposes cannot be correct because it would render certain language in § 9-8.10(a)(9) superfluous. (Op. ¶66). For example, § 9-8.10(a)(9) authorizes a committee to "insure, maintain, and repair" a vehicle if it is owned or leased by a committee. And § 9-8.10(a)(9) also provides a specific manner whereby a committee may make expenditures to an individual who seeks compensation for the use of his or her personal vehicle for campaign or governmental purposes — reimbursement for actual

mileage at a rate not to exceed the standard mileage rate method for computation of business expenses under the Internal Revenue Code. If § 9-8.10(c) rendered the interpretation of § 9-8.10(a)(9) to only prohibit expenditures for use of the vehicle for non-campaign or non-governmental purposes, then these provisions in section 9-8.10(a)(9) are superfluous. (Op. ¶ 66); Appellate Reply Br. at 7.

The mileage reimbursement rule of in § 9-8.10(a)(9) makes sense in the broader scheme of campaign regulation because it prevents the conversion of campaign funds for personal benefit. But the Committee's interpretation that a committee may make any expenditure for the use of a personal vehicle as long as it was used for campaign or governmental purposes makes it impossible to evaluate whether an expenditure was used only for campaign or governmental purposes. If a committee can fill up a gas tank or make repairs on a personal vehicle, as the Committee asserts, there is no way to ensure that those campaign funds are only used for campaign or governmental purposes. Once a personal vehicle's gas tank is filled up, there's no way to mandate and enforce that every gallon of gas the committee paid for that personal vehicle is only used for campaign or governmental purposes. And if a committee spends money to repair a personal vehicle, how could that repair only be used for campaign or governmental purposes? The Committee's interpretation of § 9-8.10(a)(9) would inevitably lead to campaign funds being used for personal benefit.

Broad language in a statute cannot read out a more specific prohibition. *People v. Singleton*, 103 Ill. 2d 339, 345 (1984) ("settled principles of statutory construction call for the specific to control over the general" and "statutes should be construed so that language is not rendered meaningless or superfluous"). Under the Committee's interpretation of subsection (c), the first sentence of subsection (a)(9), which prohibits the purchase of a vehicle unless the committee can show that the purchasing the vehicle is more cost-effective than leasing, could be ignored.

There's no reason to interpret subsection (c) as being at odds with subsection (a)(9). By following the requirements of subsection (a)(9) a committee can still "defray the customary and reasonable expenses of an officeholder in connection with the performance of governmental and public service functions." There's nothing stopping the Committee from paying for reasonable expenses in connection with the performance of governmental and public service functions by following the requirements of subsection (a)(9).

The Committee's brief at best mischaracterizes, and at worst, completely ignores, the Fourth District's and Cooke's interpretation of § 9-8.10(a)(9). The Committee also falsely claims that the Fourth District's opinion failed to address arguments, when in fact the Fourth District's opinion did address those arguments. And by ignoring the actual interpretation of § 9-8.10(a)(9) made by the Fourth District, and the Fourth District's response to the Committee's arguments, the Committee actually fails to address to the

Fourth District's findings with respect to interpreting § 9-8.10(a)(9) entirely. The Committee has therefore waived its ability to respond to the Fourth District's and Cooke's actual interpretation of § 9-8.10(a)(9) and the reasons supporting that interpretation. "Points not argued are waived and shall not be raised in the reply brief, in oral argument, or on petition for rehearing." Ill. Sup. Ct., R 341(h)(7).

B. The Committee's expenditures for gas and repairs for vehicles it did not own or lease from 1999 to 2015 violated § 9-8.10(a)(9).

The evidence established that the Committee's expenditures at Happy's violated 10 ILCS 5/9-8.10(a)(9), and the Appellate Court agreed.

There is no dispute that Cooke's burden in this case is a preponderance of the evidence. R. 330, 332. By a preponderance of the evidence it is meant the greater weight of the evidence, not necessarily in numbers of witnesses, but in merit and worth that which has more evidence for it than against it is said to be proven by a preponderance. Preponderance of the evidence is sufficient if it inclines an impartial and reasonable mind to one side rather than the other. *Moss-American, Inc. v. Fair Emp't Practices Com.*, 22 Ill. App. 3d 248, 259 (1974). A proposition proved by a preponderance of the evidence is one that has been found to be more probably true than not. *In re Estate of Ragen*, 79 Ill. App. 3d 8, 13 (1979). In this case, the preponderance of the evidence clearly supports a finding that the Committee violated § 9-8.10(a)(9).

The Fourth District correctly held that § 9-8.10(a)(9) prohibits committees from making expenditures for gas and repairs of a vehicle unless the vehicle is owned or leased by the committee and used primarily for campaign purposes or the performance of governmental duties. "Neither the Committee nor the Board suggests the Board's decision may be sustained under the proper interpretation of section 9-8.10(a)(9) based on the evidence presented." (Op. ¶ 80). The evidence Cooke presented at the public hearing showed the Committee (1) did not own or lease any vehicles and (2) made expenditures to Happy's for gas and vehicle repairs. As the Fourth District found, "[t]his evidence was clearly sufficient to establish by a preponderance of the evidence the Committee made expenditures to a third party for gas and repairs of 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 correctly reversed the Board's decision to the extent it ruled Cooke failed to establish violations of § 9-8.10(a)(9) based on the expenditures for gas and repairs of personal vehicles at Happy's.

The Committee's argument to the contrary simply assumes that the Fourth District and Cooke's legal interpretation is wrong. The Committee does not argue that under the Fourth District's interpretation of § 9-8.10(a)(9), that the conclusion that the Committee violated that section by making expenditures to a third party for gas and repairs of personal vehicles, was erroneous. Therefore, that argument is waived. Ill. Sup. Ct., R 341(h)(7).

The facts are not in dispute. The undisputed testimony of the Committee's own treasurer was that the Committee did not own or lease any vehicles. Supp. E 0100. Further, the expenditures reported by the Committee and listed on the Board's website disclose no expenditures for the purchase or lease of a vehicle. Testimony from the Committee's treasurer indicated that the Committee had a charge account at Happy's, Supp. E 0099, which Mautino's family and associates — including his wife, daughter, son, niece, nephew, and secretary, plus Ms. Maunu and her husband and son — used for gasoline for their personal vehicles, Supp. E 0100, 0103-04, 0107-09; that the Committee also paid for the gas and repairs for Mautino's four personal vehicles, Supp. E 0100; and that the Committee never reimbursed anyone for actual mileage for the use of their personal vehicles for campaign purposes or for the performance of governmental duties. *Id*. And the Committee's reports filed with the Board indicate that the Committee paid Happy's for repairs and gasoline, which the Committee was not permitted to pay for if it did not own or lease any vehicles primarily for campaign purposes, which it did not. Supp. E 1041, 1059, 1084, 1117, 1143, 1162, 1184, 1199. Finally, the evidence also included invoices from Happy's, Supp. E 0135-0139, and receipts from Happy's, Supp. E 0140-0150, 0228-0787. The evidence overwhelmingly shows that the Committee did not own or lease any vehicles and that the Committee paid for gas and repairs for vehicles which it did not own. Indeed, the Committee doesn't even dispute this. See C. 468-469. Thus, the

preponderance of the evidence overwhelmingly shows that the Committee makes expenditures for gas and repairs of vehicles which it did not own or lease. Any finding to the contrary is clearly erroneous.

Any claim that in order for Cooke to meet his burden he needed to provide adequate reports filed by the Committee is also clearly erroneous. The reports filed by the Committee with the Board indicate that the Committee made expenditures on gas or repairs. And the Committee's own treasurer testified that the Committee did not own or lease any vehicles, and the Committee never filed any reports with the Board indicated that it made expenditures on the purchase or lease of vehicles. Adequately filed reports with the Board would not have provided any additional information that was not already before the Board.[4] Therefore, any finding that Cooke failed to provide his claim by a preponderance of the evidence because the evidence did not include adequate reported filed by the Committee is clearly erroneous.

The preponderance of the evidence clearly shows that the Committee violated § 9-8.10(a)(9) by paying for gas and repairs of vehicles it did not own or lease. And by paying Happy's directly for gas and repairs of the personal

[4] Further, a requirement that adequate reports be filed by a committee in order for the Board to find that the Committee made improper spending would simply incentivize a committee that made improper spending to not file adequate reports, since then the Board could not find them liable for the improper spending. Such a requirement would actually thwart the goals of the Election Code.

vehicles of these family members and associates while filing reports disclosing Happy's, not the individuals who received the gas and repairs of their personal vehicles, the Committee masked the actual recipients, and ultimate beneficiaries, of its expenditures. Anyone who read the Committee's reports would know that the Committee paid Happy's for gas and repairs of vehicles, but would not know the identities of the owners of those vehicles. The Committee therefore violated the Code's restrictions on vehicle-related expenditures in 10 ILCS 5/9-8.10(a)(9).

III. The Fourth District correctly interpreted § 9-8.10(a)(2) and correctly found that the Board clearly erred in failing to find that Cooke presented sufficient evidence to show that the Committee violated § 9-8.10(a)(2).

Section 9-8.10(a)(2) of the Election Code provides:

> (a) A political committee shall not make expenditures:
>
> ***
>
> (2) Clearly in excess of the fair market value of the services, materials, facilities, or other things of value received in exchange.

A. The Fourth District correctly interpreted Section 9-8.10(a)(2).

The Fourth District found that § 9-8.10(a)(2) regulates not only the amount but also the purpose for which an expenditure is used. (Op. ¶ 73). The Fourth District notes that it appears that the Board, during its special meeting addressing Cooke's claims on the merits, agreed that § 9-8.10(a)(2) regulates not only the *amount* but also the *purpose* for which an expenditure

is used. (Op. ¶ 71, citing Board member comments). Nonetheless, the Fourth District notes that the Committee and the Board argued before that Court that § 9-8.10(a)(2) regulates only the amount of a specific expenditure, not its purpose. (Op. ¶ 72).

But the Court found this argument unpersuasive. "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." (Op. ¶ 72). This interpretation makes sense because it prohibits committees 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.

The Committee asserts that the Fourth District's finding is inconsistent with the plain language and intent of the law. Appellant's Br. 31. According to the Committee, the Fourth District's interpretation of § 9-8.10(a)(2) "conflicts with the well-established meaning of 'fair market value' and creates absurd results. Appellant's Br. 32. But the Fourth District's (and Cooke's) interpretation § 9-8.10(a)(2) to regulate the purpose for which an expenditure is used (in addition to the amount) does not depend solely on the definition of "fair market value" in the statute. Rather, the interpretation of § 9-8.10(a)(2) to include regulating the purpose for which an expenditure is used incorporates the entire phrase: a committee may not make expenditures

clearly in excess of the fair market value of the services, materials, facilities, or other things of value received in exchange. As the Fourth District points out: "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." (Op. ¶ 72). For example, if a committee paid for a service that was for an individual's personal use, rather than for a campaign or governmental use, the amount that the committee paid for that service would be clearly in excess of the fair market value of what the committee received in exchange, which was nothing. It was the individual, not the committee, who received something of value in exchange for the committee's payment. When a committee spends money for an improper purpose, the committee is paying more than fair market value for what it received in exchange because it is receiving nothing in exchange.

The Committee doesn't address this argument. Rather, it explains that the common law definition of "fair market value" means "the price a willing buyer would pay a willing seller for goods, services, or property." Appellant's Br. 32–33. But this argument ignores the fact that because the committee is paying for "goods, services, or property" for an improper purpose, the committee is not getting the use of the goods, services, property. It's getting nothing. The price a willing buyer would pay a willing seller for goods, services, or property that the buyer cannot legally use, is obviously zero. And

the price a willing buyer would pay a willing seller for goods, services, and property that the buyer can legally use is obviously more than zero. Thus, purpose is an obvious requirement in conducting a fair market value analysis.

In addition, the Committee's reliance on legislative history does not show that the Fourth District and Cooke's interpretation of § 9-8.10(a)(2) is incorrect. Appellant's Br. 36–37. That legislative history shows that § 9-8.10(a)(2) regulates the amount a committee can spent but it does not show that § 9-8.10(a)(2) specifically excludes the purpose for which an expenditure is used.

The Committee claims that "the Fourth District's decision confused the Code's regulation of *expenditures* with the Code's regulation of *recordkeeping* and *disclosures*." Appellant's Br. 37 (emphasis in original). But the Committee doesn't actually cite any instances of the Fourth District or Cooke confusing expenditures with recordkeeping and disclosures. The Committee makes no argument that the Fourth District's finding that *amount* and *purpose* are important in interpreting the § 9-8.10(a)(2) based on recordkeeping and disclosures. And the Committee doesn't explain how the finding that purpose matters in interpreting § 9-8.10(a)(2). Again, the Committee appears to misattribute and argument or finding to Cooke or the Fourth District that it cannot substantiate with a citation.

The Election Code's fair-market-value provision has two purposes. First, it ensures that a committee does not underreport its contributions by purchasing goods and services at less than their fair market value, as the difference between the low purchase price and the higher fair-market value is a contribution to the committee. *See State ex rel. Pub. Disclosure Comm'n v. Permanent Offense*, 136 Wash. App. 277, 290, 150 P.3d 568, 574 (2006) (discussing Revised Code of Wash. 42.17.020(15)(c), which is Washington's cognate fair-market-value provision in its campaign finance statute). Second, the fair-market-value provision ensures a committee does not underreport its expenditures by overpaying for things, such that a vendor is unjustly enriched or a campaign associate illicitly pockets the difference and converts it to personal use. *See Tex. Ethics Comm'n v. Goodman*, No. 2-09-094-CV, 2010 Tex. App. LEXIS 607, at *3 (Tex. App. Jan. 28, 2010) (quoting Tex. Ethics Comm'n Advisory Opinion 319, which requires fair-market-valuation for use of campaign funds in dealing with a candidate's family members to prevent conversion of campaign funds to personal benefit).

It is the second purpose of the fair-market-value provision in the Election Code that is shows why the fair-market-value provision in the Election Code has contains a purpose requirement. By 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.

B. The Committee's expenditures for gas and repairs for personal vehicles it did not own or lease exceeded the fair market value of any services received in exchange.

The Fourth District held that the evidence established the Committee made expenditures to Happy's for gas and repairs of personal vehicles over a 15-year period. (Op. ¶ 84). The Fourth District found that it would be inevitable at least some portion of the gas and repairs were for personal use. (Op. ¶ 84). Thus, the Fourth District found that Cooke established it is more probably true than not that the Committee made expenditures for gas and repairs for personal purposes. (Op. ¶ 84). "By 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). The Fourth District found the Board's decision to the contrary clearly erroneous. (Op. ¶ 84). The Fourth District noted that had the Committee made expenditures for personal vehicle use in the manner authorized by § 9-8.10(a)(9), the Committee would have likely avoided any violations of § 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).

The evidence shows that those expenditures at Happy's clearly were in excess of fair market value of the things of value received in exchange. This illegal method resulted in two benefits to private parties that they would not have received if the Committee had followed the law. First, the individuals

received the benefit of having their entire gas tanks filled without any way to ensure that the gas would only be used only for campaign or government purposes rather than personal purposes. And 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 government purposes even if they wanted to. The Committee, thus, received gas and repairs for vehicles used for campaign and governmental purposes, but inevitably it was paying for gas and repairs also used for personal purposes of these individuals, meaning that the amount it paid exceeded the fair market value of what the Committee received in return — the gas and repairs used only for campaign or governmental purposes.

Second, because the Committee was paying for gas and repairs for personal purposes in addition to campaign and government purposes, the Committee was paying Happy's more than it would have if it had simply reimbursed the owners of the vehicles based on the mileage used for campaign and government purposes. As a result, Happy's received the benefit of guaranteed business from people who otherwise presumably would have patronized a variety of gas stations. Both of these benefits show that the Committee's expenditures at Happy's exceeded the fair market value of the benefits the Committee received in return.

Cooke's argument (and the Fourth District's holding) is not, as the Committee asserts, that "the Committee spent too much on gas and repairs, in total, over a 16-year period," Appellant's Br. 21–22, and "gas prices were in whole dollar amounts." Appellant's Br. 27. Rather, Cooke argued, and the Fourth District concluded, that the Committee made expenditures at Happy's that went to personal purposes, which inevitably meant that the value for campaign and governmental purposes that the Committee received in return was less than what it paid. Despite the fact that this has been Cooke's consistent argument since this case was before the Board, and the Fourth District's opinion clearly explains its conclusion (Op. ¶ 84), the Committee does not address it at all in its brief. Rather, the Committee pretends that Cooke and the Fourth District found a violation of § 9-8.10(a)(9) because it spent too much for gas and repairs over a period of 16 years. Appellant's Br. 21–22; 32. The Committee, by making up an argument that it attributes to Cooke and the Appellate Court, also fails to address the Cooke's actual argument and the Fourth District's actual conclusion. Therefore, the Committee has waived any argument to the contrary. Ill. Sup. Ct., R 341(h)(7).

C. The Committee's expenditures for travel expenses to the Bank clearly exceeded the fair market value of any services received in exchange.

As an initial matter, the Fourth District affirmed the Board's decision to the extent it ruled Cooke failed to establish a violation of § 9-8.10(a)(2) based on the expenditures reported to the Bank for election-day expenses. (Op. ¶

83). Cooke, however, did not make this argument before the Fourth District and does not make it before this Court. Cooke, therefore, does not object to this holding of the Appellate Court. The Committee, for its part, fails to address it altogether.

The Fourth District did, however, agree with Cooke that Cooke established violations of § 9-8.10(a)(2) based on the expenditures to the Bank for travel expenses. (Op. ¶ 85). The Fourth District Court found that the evidence shows that:

> (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).

The Fourth District found that 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). "By making expenditures to withdraw cash used for personal purposes, the Committee

made expenditures in excess of the fair market value for what it received in exchange, which was nothing." (Op. ¶ 85).

The Committee made expenditures in excess of fair market value for the services or things received in return when Mautino withdrew cash in whole dollars amounts for travel purposes, prior to incurring such expenses and then not returning any unused cash because it is implausible that Mautino could have known in advance exactly what his travel expenses would be and that his travel expenses would have been in whole dollar amounts.

For example, the Committee reported $200 in expenditures to the Bank for "Traveling expenses" on June 28, 2014. Supp. E 0152. From Maunu's testimony, we know that this meant that a check was written to withdraw cash from the Bank for $200 and then Mautino took that $200 and supposedly used it for traveling expenses, although no receipts were tendered, and Mautino never returned any unused cash. Supp. E 0111. It is implausible that Mautino could have known in advance that his travel expenses would have been exactly $200. It is also unlikely that whatever traveling expenses Mautino incurred amounted to exactly $200. The result is that the Committee reported that it spent $200 for traveling expenses that inevitably cost less than $200. The Committee reported thirteen of the "expenditures" as being for Chicago or Springfield meetings or travel expenses that were in whole dollar amounts, Supp. E 0788-1203, and from which Mautino never returned unused cash, Supp. E 0111, — even though

there is no evidence that Mautino knew or could have known the exact amounts of his travel expenses for these meetings in advance, nor is there any evidence explaining how Mautino's expenses could have consistently been in whole dollar amounts. And Mautino did not disclose any expenditures on his own behalf as contributions to his campaign, as he would be required to do by 10 ILCS 5/9-7 if he spent more cash than what he withdrew. Supp. E 1026-1203. Thus, the Committee paid for travel expenses in an amount that inevitably was more than when it actually cost.

The Committee does not address Cooke's or the Fourth District's application of the Committee's traveling expenses to § 9-8.10(a)(2) at all. Again, the Committee has waived any argument to the contrary. Ill. Sup. Ct., R 341(h)(7).

Instead, the Committee argues that its spending reported to the Bank cannot be found to be in excess of fair market value because Cooke did not identify any goods and services purchased with money withdrawn from the Bank that clearly exceeded fair market value. Appellant's Br. 24. The Committee notes that Cooke could not have identify any goods and services purchased with money withdrawn from the Bank that clearly exceeded fair market value because there were no reports that indicated what those goods and services were. In the first place, the reason that Cooke or anyone else is unable to specifically indicate where and what expenditures purportedly made to the Bank actually were is because for years the Committee reported

expenditures for goods and services as if they were to the Bank, rather than the actual person or business that they paid for the goods and services. The Committee's failure to properly report its expenditures is hardly a defense to a claim that those expenditures exceeded fair market value, if that had been the argument that Cook made, and the conclusion that the Fourth District came to. But, of course, as explained, Cooke's argument and the Fourth District's finding was that by withdrawing cash for purposes of spending for travel before such travel incurred and by not returning any money that went unspent, the Committee was inevitably using money for personal purposes and therefore in excess of fair market value, because it would be impossible to know how much money one would incur each time before actually incurring the expense. Again, the Committee ignores this argument.

The Committee claims that the Fourth District simply assumed that there was excess cash without any evidence to support that determination. Appellant's Br. 26. But the Fourth District didn't assume anything. The Committee does not dispute the Fourth District's evidentiary findings, which inevitably led to at least some portion of the cash Mautino withdrew being used for personal purposes. (Op. ¶85). This clearly meets the preponderance of the evidence standard. See *In re Estate of Ragen*, 79 Ill. App. 3d at 13 ("A proposition proved by a preponderance of the evidence is one that has been found to be more probably true than not.")

In addition, in weighing the evidence, the Court should not allow the Committee to benefit from his incomplete reporting, almost as if a version of the fruit of the poisonous tree doctrine should apply. *See Dongguan Sunrise Furniture Co., Ltd. v. United States*, 904 F. Supp. 2d 1359, 1364 n.6 (Ct. Int'l Trade 2013) (a bad actor should not benefit from failure to report instead of full cooperation). The Committee should especially not be able to benefit where, as here, the consequences for not producing the reports and documentation that would necessarily prove the Committee's conduct are less severe than the consequences that would result if those reports and documents were produced and did in fact prove that the Committee took such illegal actions. Third, just as the Board may draw a negative inference from Mautino's exercise of his Fifth Amendment rights, the Board may also draw a negative inference from the consistent, persistent, insistent refusal to file complete, transparent reports that accurately reflect the final recipient of campaign donors' dollars. *See United States v. Stierhoff*, 549 F.3d 19, 26 (1st Cir. 2008) (courts may draw negative inferences from persistent failure to file required reports).

Finally, the Committee claims that the "Fourth District also ignored the evidence showing that the Committee spent the money on legitimate campaign expenses." Appellant Br. 26. But the Fourth District's conclusion that the way in which the Committee withdrew money for in whole dollar amounts for travel expenses it had not yet incurred, leads to the conclusion

that the Committee spent some expenditures on illegitimate expenses, not that the Committee never spent money on legitimate campaign expenses. The fact that the Committee spent some money on legitimate campaign expenses does not negate the possibility that the Committee made some illegitimate expenditures.

IV. The Fourth District correctly remanded the issue of whether the Committee knowingly made expenditures in violation of § 9-8.10 because that is a determination concerning the imposition of fines.

A. The Board may fine knowing violators of § 9-8.10.

The Board has the authority to investigate violations of § 9-8.10 and may levy a fine on any person who knowingly makes expenditures in violation of § 9-8.10. 10 ILCS 5/9-8.10(b). The Fourth District stated that it need not address Cooke's argument for why the Committee's violations were made knowingly, and that a determination of whether a person knowingly made expenditures in violation of § 9-8.10 is a determination concerning the imposition of fines that is made only after a determination of whether a violation occurred. (Op. ¶ 87). Therefore, the Fourth District, having found violations of §§ 9-8.10(a)(2) and (a)(9) remanded the issue of whether the Committee knowingly violated those sections and therefore whether to impose a fine. The Committee, as they did before the Appellate Court (Op. ¶ 87), fails to address the Fourth District's finding that a knowing requirement applies when determining whether fines are appropriate and therefore, should be addressed by the Board on remand. Therefore, the Committee has

waived their right to argue to the contrary in this appeal. Ill. Sup. Ct., R 341(h)(7).

For his part, Cooke agrees with the Fourth District that the knowing requirement set forth in 10 ILCS 5/9-8.10(b) is a determination concerning the imposition of fines that only applies after a determination of that a violation of § 9.8-10 has occurred. (Op. ¶ 87). Notwithstanding Cooke's agreement with the Fourth District, to ensure Cooke does not waive his argument that the Committee knowingly made expenditures in violation of §§ 9-8.10(a)(2) and (a)(9).

B. The evidence demonstrates that the Committee knowingly violated § 9-8.10.

Here, statements from Maunu show that the Committee knowingly made expenditures in violation of §§ 9-8.10(a)(2) and (a)(9).

"A person knows, or acts knowingly or with knowledge of *** [t]he nature or attendant circumstances of his or her conduct, described by the statute defining the offense, when he or she is consciously aware that his or her conduct is of that nature or that those circumstances exist. Knowledge of a material fact includes awareness of the substantial probability that the fact exists." *People v. Rodriguez*, 2014 IL App (2d) 130148, ¶ 53. Whether the defendant acts knowingly may be inferred from circumstantial evidence. *Id.* at ¶ 56. Here, in order to satisfy the knowledge requirement, Cooke must prove that the Committee knew that it did not own or lease vehicles and that the Committee paid for gas and repairs of vehicles it did not own or lease.

Cooke has proved both of those facts with the statements of Maunu, who testified that the Committee did not own or lease vehicles and that the Committee paid for gas and repairs of vehicles it did not own or lease. Supp. E 0100. Similarly, Cooke must prove that the Committee knew that it was making expenditures in excess of the fair market value for what it received in exchange, which was nothing, at both Happy's and through its travel withdrawals from the Bank. Cooke has proved both of those facts with the statements of Maunu, who testified that the Committee paid for gas and repairs of vehicles it did not own or lease, Supp. E 0100, and that the Committee withdrew money for travel expenses in whole dollar amounts prior to incurring those expenses and then never returned any unused cash to the Committee. Supp. E 0111.

The knowledge requirement does not mean, as the Committee — and some members of the Board — seem to imply, C. 468-469, that the Committee's officers must have known what the law required of them.[5] Further, the fact that the Board never objected to the Committee's filings, C. 386, 468, is irrelevant to the knowledge requirement. The fact that a

[5] The Committee has maintained before the Board and previously before the Appellate Court that Patricia Maunu was ignorant or confused by the requirements in the Election Code. And while ignorance of the law is irrelevant to determine whether a Code violation occurred, this assertion ignores the fact that Frank Mautino was also an officer of the Committee. As a state legislator for over two decades, who had occasion to vote on amendments to the Election Code, as well as being subject to it in many elections over those years, any assertion that Mautino was ignorant of the Election Code is either implausible or concerning.

government fails to enforce a law has no bearing on one's mental state. Thus, the Committee knowingly failed to comply with § 9-8.10(a).

CONCLUSION

The judgment of the Appellate Court should be upheld.

Dated: February 4, 2021

/s/ Jeffrey M. Schwab

Jeffrey M. Schwab (#6290710)
James J. McQuaid (#6321108)
Liberty Justice Center
208 S. LaSalle St., Ste. 1690
Chicago, IL 60604
312-637-2280
jschwab@libertyjusticecenter.org
jmcquaid@libertyjusticecenter.org

Attorneys for Appellee David W. Cooke

CERTIFICATE OF COMPLIANCE

I certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the pages or words contained in the Rule 341(d) cover, the Rule 341(h)(1) table of contents and 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 45 pages.

/s/ Jeffrey M. Schwab

CERTIFICATE OF SERVICE

I, Jeffrey M. Schwab, an attorney, certify that on February 4, 2021, I electronically filed with FileTime IL the foregoing Brief of Appellee David W. Cooke, with the Clerk of the Supreme Court of Illinois.

The undersigned further certifies that on February 4, 2021, an electronic copy of the foregoing Brief of Appellee David W. Cooke is being served through FileTime IL.

In addition, I have caused the foregoing Appellant's Brief to be served via electronic mail on all attorneys on the attached service list.

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 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.

/s/ Jeffrey M. Schwab

SERVICE LIST

Aaron T. Dozeman
Assistant Attorney General
100 West Randolph Street
12th Floor
Chicago, Illinois 60601
adozeman@atg.state.il.us

Adam R. Vaught
J. William Roberts
Anthony J. Jacob
Lari A. Dierks
Hinshaw & Culbertson LLP
151 N. Franklin Street, Ste. 2500
Chicago, IL 60606
broberts@hinshawlaw.com
avaught@hinshawlaw.com
ajacob@hinshawlaw.com
ldierks@hinshawlaw.com