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Joseph B. Roesch
7th Judicial Circuit
Sangamon County, IL
2024CH000032

IN THE CIRCUIT COURT OF THE SEVENTH JUDICIAL CIRCUIT
SANGAMON COUNTY, ILLINOIS

LESLIE COLLAZO, *et al*.,	)	
	)	
Plaintiffs,	)	
	)	Case No. 24 CH 32
v.	)	
	)	Hon. Gail Noll
ILLINOIS STATE BOARD OF ELECTIONS, *et al*.,	)	
	)	
	)	
Defendants.	)	
	)	

DEFENDANT ATTORNEY GENERAL
KWAME RAOUL'S MOTION FOR SUMMARY JUDGMENT

INTRODUCTION

Plaintiffs bring an as-applied challenge to a recent amendment to the Election Code that repeals language providing for a post-primary procedure to slate candidates for established political parties. On May 3, 2024, the Governor signed Public Act 103-0586 (the "Act"), which has three main parts. The only portion that is at issue here is the third main part, which amends Section 8-17 of the Election Code. The prior version of Section 8-17 provided that when an established political party has a vacancy on the ballot following the primary because no one ran in the primary, the legislative or representative committee of the party may nominate a candidate to fill the vacancy. 10 ILCS 5/8-17 (2023). The nominee would then need to gather sufficient signatures in accordance with Section 7-61 of the Election Code (which is fewer than if they sought to run as independent or third-party candidates) and file the proper papers with the Illinois State Board of Elections (the "Board") within 75 days of the primary (in this case, by June 3, 2024). *Id.* The Act removes the language from Section 8-17 providing for this procedure.

Plaintiffs are individuals who were nominated by the Republican Party following the primary and who wish to use Section 8-17's old procedure for filling ballot vacancies. They challenge the Act's removal of Section 8-17's post-primary slating procedure for ballot vacancies for established parties. Plaintiffs claim that the Act as amended—and as applied specifically to them—violates Article III, section 1 of the Illinois Constitution because it was enacted and went into effect during the 75-day signature process. And so they seek to enjoin the Board from denying the Plaintiffs' nominating petitions for the November 2024 general election based on the Act.

On May 23, 2024, the Court entered a preliminary injunction in this matter, finding that Plaintiffs have presented a fair question as to whether the Act is unconstitutional as applied to them. Defendant AG Raoul agrees that the underlying facts are not in dispute and therefore the

only question is whether Plaintiffs or Defendants are entitled to judgment as a matter of law. And while the Court found that there is fair question that Plaintiffs would prevail on their claims, as a matter of law they should not. As discussed in Defendant AG Raoul's response to Plaintiff's motion for a preliminary injunction, the Act should be analyzed under the *Anderson-Burdick* test, not strict scrutiny. The Act passes the *Anderson-Burdick* test because it is a reasonable and non-discriminatory legislative enactment. Additionally, an injunction in this case would violate the public interest because courts should not prevent the General Assembly from repealing its own laws and then order the General Assembly to reinsert the repealed language back into the statute. Consequently, Defendant AG Raoul is entitled to judgment as a matter of law.

BACKGROUND

On May 3, 2024, the Governor signed the Act into law, which became effective immediately.[1] Relevant here, the Act amended Section 8-17 of the Election Code, removing language that had provided a process under which, when an established political party has a vacancy on the ballot following the primary because no one ran in the primary, the legislative or representative committee of the party could nominate a candidate to fill the vacancy.[2] 10 ILCS 5/8-17 (2023). Governor Pritzker and fellow Democrats framed the Act as an ethics measure that would take "backroom deals" out of the equation when choosing candidates.[3] Governor Pritzker

[1] Bill Status of SB2412, 103rd General Assembly, ILLINOIS GENERAL ASSEMBLY, *available at* https://ilga.gov/legislation/billstatus.asp?DocNum=2412&GAID=17&GA=103&DocTypeID=SB&LegID=147311&SessionID=112&SpecSess= (last visited May 28, 2024).

[2] *See* Public Act 103-0586, ILLINOIS GENERAL ASSEMBLY, *available at* https://ilga.gov/legislation/publicacts/fulltext.asp?Name=103-0586 (last visited May 28, 2024).

[3] Sfondeles, Tina, *Pritzker signs bill requiring legislative candidates to run in primaries – Republicans call it 'stealing an election'*, CHICAGO SUN TIMES (May 3, 2024 2:28 CDT) *available at* https://chicago.suntimes.com/elections/2024/05/03/pritzker-signs-slating-election-bill-candidates-primaries-republicans-stealing-election (last visited May 24, 2024).

also noted that the Act increases transparency by making sure some small group of people in a smoke-filled room are not making the choice of who goes on the ballot.[4]

Plaintiffs are individuals who were nominated by the Republican Party following the primary and who wish to use Section 8-17's old procedure for filling ballot vacancies. Leslie Collazo is a prospective candidate for the 8th Representative District. (Compl. ¶ 5). The 8th Representative District is located in Chicago and entirely within Cook County.[5] Daniel Behr is a prospective candidate for the 57th Representative District. (Compl. ¶ 6). The 57th Representative District is located within both Lake and Cook Counties.[6] James Kirchner is a prospective candidate for the 13th Legislative District. (Compl. ¶ 7). The 13th Legislative District is located in Chicago and entirely within Cook County.[7] Carl Kunz is a prospective candidate for the 31st Representative District. (Compl. ¶ 8). The 31st Representative District is located in Chicago and entirely within Cook County.[8] According to the 2020 census, Cook County's population exceeds 5 million people.[9] All four plaintiffs have been designated by either the Republican Representative Committee or the Republican Legislative Committee to fill vacancies in nomination for their respective Representative or Legislative Districts following the primary. (Compl. ¶ 9).

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[4] Hancock, Peter & Meisel, Hannah, *Illinois ends post-primary candidate slating*, MUDDY RIVER NEWS (May 7, 2024) *available at* https://muddyrivernews.com/politics/illinois-ends-post-primary-candidate-slating/20240507094559/ (last visited May 24, 2024).

[5] *See* 2021-2022 Illinois Blue Book at 58, ILLINOIS SECRETARY OF STATE *available at* https://www.ilsos.gov/publications/illinois_bluebook/legdistrictmaps.pdf (last visited May 28, 2024); *see also Legislative Maps*, CHICAGO BOARD OF ELECTION COMMISSIONERS *available at* https://chicagoelections.gov/districts-maps/legislative-maps (last visited May 29, 2024) (listing the General Assembly Districts within the Chicago Board of Elections' jurisdiction).

[6] *Id.*

[7] *Id.*

[8] *Id.*

[9] Cook County, Illinois, U.S. CENSUS BURUEA, *available at* https://data.census.gov/profile/Cook_County,_Illinois?g=050XX00US17031 (last visited May 28, 2024).

LEGAL STANDARD

Illinois law provides that summary judgment shall be rendered without delay if the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. 735 ILCS 5/2-1005(c); *Petrovich v. Share Health Plan of Illinois, Inc.*, 188 Ill. 2d 17, 30-31 (1999); *Cramer v. Insurance Exchange Agency*, 174 Ill. 2d 513, 530 (1996); *Purtill v. Hess*, 111 Ill. 2d 229, 240-44 (1986). A defendant may move for summary judgment "at any time," even before filing an answer. 735 ILCS 5/2-1005(b); *Y-Not Project, Ltd. v. Fox Waterway Agency*, 2016 IL App (2d) 150502 ¶ 55.

In determining whether to grant summary judgment, the court must consider all of the presented evidence and construe it strictly against the movant and liberally in favor of the nonmovant. *Largosa v. Ford Motor Co.*, 303 Ill. App. 3d 751, 753 (1st Dist. 1999); *Boldini v. Owens Corning*, 318 Ill. App. 3d 1167, 1170 (4th Dist. 2001). "The mere existence of some alleged factual dispute will not defeat an otherwise properly supported motion[;] there must be no genuine issue of material fact." *Continental Cas. Co. v. Coregis Ins. Co.*, 316 Ill. App. 3d 1052, 1062 (1st Dist. 2000).

ARGUMENT

Summary judgment is appropriate here because the material facts are not in dispute and Defendant AG Raoul is entitled to a judgment as a matter of law. There is no dispute that the General Assembly passed the Act and that the Governor signed it into law on May 3, 2024. The Act, in part, amends Section 8-17 of the Election Code. There is also no dispute that Plaintiffs were designated by either the Republican Representative Committee or the Republican Legislative Committee to fill vacancies for the Republican Party on the ballot in their respective districts under the then-existing version of Section 8-17 and are currently seeking placement on the ballot under

the now-repealed procedure set out in Section 8-17. Finally, the locations of the districts at issue are a matter of public record that the Court may therefore take judicial notice of. *See Metzger v. Brotman*, 2021 IL App (1st) 201218, ¶ 29. These are the only material facts in this case.

Consequently, this case only presents legal issues and there is no reason to delay entering judgment as a matter of law. This motion for summary judgment contains five parts. Part I explains that the relief Plaintiffs seek is a mandatory injunction and that the Court should analyze Plaintiffs' claims with this framework in mind. Part II explains that the proper standard to apply in this case is the *Anderson-Burdick* test, not strict scrutiny. Part III explains why the Act satisfies the *Anderson-Burdick* test. Part IV explains that entering an injunction in this case, which is the only relief sought, is against the public interest. Part V explains that Plaintiffs Collazo, Kirchner, and Kunz are not entitled to injunctive relief because they have not named a necessary party. Finally, Part VI explains that even if an injunction is entered, it should not be entered against the Attorney General because the Attorney General does not certify ballots or otherwise determine what candidates appear on the ballot.

I. Plaintiffs seek a mandatory injunction.

While Plaintiffs frame their requested relief as a negative injunction, it is really a mandatory injunction. Plaintiffs frame their requested relief as the Court enjoining the Board from "applying P.A. 103-0586's revisions to 10 ILCS 5/8-14 to Plaintiffs with respect to the November 2024 general election." (Compl. at 9). However, the Act does not require anything of the Board that the Court can stop it from doing. The Act deleted language from the Election Code, removing a procedure that Plaintiffs wish to access. Thus, Plaintiffs request that the Court *reinsert* the deleted language from the Election Code and require the Board to use a now-defunct procedure. As discussed below, this would be improper. Further, Plaintiffs essentially request that the Court force the Board to place them on the ballot contrary to the Act's amendment to the Election Code,

provided there is not a separate reason that they do not qualify to be slated. This is a mandatory, not a negative, injunction.

Mandatory injunctions are extraordinary remedies and not favored by the courts. *Town of Cicero v. Metro. Water Reclamation Dist. of Greater Chicago*, 2012 IL App (1st) 112161 ¶ 40. A mandatory injunction "will be issued only in cases of extreme, serious, great or urgent necessity." *Id.* at ¶ 46 (quoting 43A C.J.S. *Injunctions* § 13 (2004)). Moreover, statutes enjoy a strong presumption of constitutionality. *Rowe v. Raoul*, 2023 IL 129248 ¶ 20. "A party challenging the constitutionality of a statute bears the heavy burden of clearly establishing a constitutional violation." *Id.* Plaintiffs' requested relief should be analyzed with this framework in mind.

II. Plaintiffs' as-applied challenge warrants less than strict scrutiny under either *Tully* or *Anderson-Burdick*.

Plaintiffs claim that the Court should apply strict scrutiny to their as-applied challenge. In their motion for preliminary injunction and at oral argument on that motion, Plaintiffs primarily relied on *Tully v. Edgar*, 171 Ill. 2d 297 (1996), wherein the Illinois Supreme Court stated that legislation that affects any stage of the election process implicates the right to vote. *Id.* at 307. However, *Tully* does not hold that *any* law that implicates the right to vote is subject to strict scrutiny. Instead, our Supreme Court applied strict scrutiny in *Tully* because the law at issue did not simply impair the right to vote—it "obliterate[d] its effect." *Id.*

Indeed, one year after *Tully*, our Supreme Court explained that a critical fact influencing its analysis in *Tully* was that the law in question was enacted *after* the election, *i.e.*, after the trustee plaintiffs were elected, and removed them from office. *East St. Louis Fed'n of Teachers, Local 1220 v. East St. Lous Sch. Dist. No. 189 Fin. Oversight Panel*, 178 Ill. 2d 399, 414 (1997) (discussing *Tully*, 171 Ill. 2d at 312). And in so doing, the Court in *East St. Louis* found that a

legislative scheme that was enacted *before* the relevant election did not violate the fundamental right to vote. *Id.* at 415.

At oral argument for the preliminary injunction, Plaintiffs seemed to agree that *Tully* does not stand for the proposition that any restriction that implicates the right to vote calls for strict scrutiny. Instead, they allege that strict scrutiny is applicable in this case specifically. While the Court agreed with Plaintiffs for the purpose of entering a preliminary injunction, there is a lack of authority to support this proposition. This case is far more like *East St. Louis* than *Tully*. In *Tully*, the rules were not changed "in the middle of the game": the game had already been played and the outcome determined when the rules were changed. *See East St. Louis Fed'n of Teachers, Local 1220*, 178 Ill. 2d at 414 (1997) (discussing *Tully*, 171 Ill. 2d at 312). This is why the right to vote was considered "obliterated" and why strict scrutiny applied. Not so here. Plaintiffs' ability to access the ballot has not been obliterated. They all could have run in their respective primaries. The declarations they provided in support of their motion for preliminary injunction provide no explanation as to why they decided not to do so. Seemingly, they attempted to perform an end-run around their primary voters to use the post-primary slating procedure without any scrutiny from those voters. But there is no right to the continuation of an existing law. *New Hights Recovery & Power, LLC v. Bowers*, 347 Ill. App. 3d 89, 96 (1st Dist. 2004). "Our supreme court has held there is no vested right in the mere continuation of a law and the legislature has an ongoing right to amend a statute." *Id.* (citing *Premier Prop. Mgmt. Inc. v. Chavez*, 191 Ill. 2d 101, 109 (2000)).

Moreover, as the United States Supreme Court has reiterated, not every law that implicates the right to vote is subject to strict scrutiny. Federal courts subject regulations of the electoral process to a "flexible standard," *Libertarian Party of Illinois v. Rednour*, 108 F.3d 768, 773 (7th Cir. 1997), known as the *Anderson-Burdick* standard. *See Burdick v. Takushi*, 504 U.S. 428 (1992),

and *Anderson v. Celebrezze*, 460 U.S. 789 (1983); *see also Crawford v. Marion Cty. Election Bd.*, 553 U.S. 181, 190, 202-03 (2008) (opinion of Stevens, J.) (applying *Anderson-Burdick* standard to regulation of voting procedures); *id.* at 204-05 (Scalia, J., concurring in the judgment) (same).

Under the *Anderson-Burdick* standard, courts must weigh the "'character and magnitude of the asserted injury to the rights protected by the First and Fourteenth Amendments…' against 'the precise interests put forward by the State as justifications for the burden imposed by its rule.'" *Burdick*, 504 U.S. at 434 (quoting *Anderson*, 460 U.S. 789 (1983)). If an electoral regulation imposes a "severe" restriction on First or Fourteenth Amendment rights, strict scrutiny applies. *Timmons v. Twin Cities Area New Party*, 520 U.S. 351, 358 (1997). If, on the other hand, the State has imposed "reasonable, nondiscriminatory restrictions on these rights…the [S]tate's important regulatory interests will generally be sufficient to justify the regulations." *Libertarian Party*, 108 F.3d at 773 (citing *Burdick*, 504 U.S. at 434); *see also Timmons*, 520 U.S. at 358.

Illinois courts routinely apply federal standards in election cases. *Rudd v. Lake Cnty. Electoral Bd.*, 2016 IL App (2d) 160649 ¶ 13. In the years following *Tully*, Illinois courts have continued to apply the *Anderson-Burdick* test in election cases. *See, e.g.*, *Oettle v. Guthrie*, 2020 IL App (5th) 190306 ¶¶ 11-14; *Qualkinbush v. Skubisz*, 357 Ill. App. 3d 594, 604-05 (1st Dist. 2005); *Green Party v. Henrichs*, 355 Ill. App. 3d 445, 447 (3d Dist. 2005). While each of these cases were brought under different constitutional provisions than the present case, each one arguably implicated the right to vote. It is therefore telling that none of these cases cited *Tully* or applied strict scrutiny. Instead, they applied the *Anderson-Burdick* test. In any event, *Tully* is consistent with the *Anderson-Burdick* test because strict scrutiny still would have applied in *Tully* under it in light of the right to vote being "obliterated." *See Tully*, 171 Ill. 2d at 307.

If strict scrutiny applies simply because the right to vote is implicated, then almost every provision of the Election Code could be subject to strict scrutiny. That could in turn lead to unending challenges to the constitutionality of multiple provisions of the Election Code. For instance, any election law requiring a minimum number of signatures to gain ballot access could be challenged because fewer signatures would arguably be a less restrictive means of ensuring that citizens within a given ward or municipality endorse a given candidate for office. Of course, this extreme result should not come to pass. While the burden on the right to vote is not minimal in this case, it is also not obliterated or otherwise nullified. Moreover, the Act is nondiscriminatory because it applies equally to all established parties and to all candidates who have not filed their paperwork with the Board after the Act was passed. Therefore, the Court should follow the *Anderson-Burdick* framework to determine the proper level of scrutiny.

III. The Act survives constitutional scrutiny here because it is substantially related to an important regulatory interest.

Under the *Anderson-Burdick* framework, if the State has imposed "reasonable, nondiscriminatory restrictions on these rights… the [S]tate's important regulatory interests will generally be sufficient to justify the regulations." *Libertarian Party*, 108 F.3d at 773 (citing *Burdick*, 504 U.S. at 434). This is similar to intermediate scrutiny. "To withstand intermediate scrutiny, the legislative enactment must be substantially related to an important governmental interest." *Napleton v. Vill. of Hinsdale*, 229 Ill. 2d 296, 208 (2008). Here, the important governmental interest is to prevent political insiders from having control over which candidates are slated and to ensure that the voters—and only the voters—make this determination.[10] The Act is clearly substantially related to that important interest. More importantly, it reasonably achieves

[10] *See supra* notes 3 & 4.

that goal and, as discussed above, is nondiscriminatory; it applies equally to all established parties and to all candidates who have not filed their paperwork with the Board after the Act was passed.

There is little doubt that the General Assembly has the power to repeal the post-primary slating procedure at issue here. Plaintiffs bring an as-applied, not a facial, challenge, tacitly admitting that their problem is not with the substance of the Act, but with its timing. Indeed, they admitted as much at oral argument for their motion for preliminary injunction.

If the post-primary slating procedure from Section 8-17 had been repealed in December of this year instead of May, then its constitutionality would be unquestionable. Indeed, it is "axiomatic that one legislature cannot bind a future legislature." *A.B.A.T.E. of Ill. V. Quinn*, 2011 IL 110611, ¶ 34. The policies enacted by the General Assembly "are inherently subject to revision and repeal." *Jones v. Mun. Emples. Annuity & Ben. Fund of Chi.*, 2016 IL 119618 ¶ 39 (internal quotation marks omitted). Because the Act merely repealed a provision of the Election Code and did not implement any new requirements for candidates, there is no question that this is well within the power of the legislature.

Plaintiffs' only real argument against the Act is its timing, *i.e.*, that it was enacted in the middle of an election cycle. But Plaintiffs do not cite any authority indicating that the timing of an amendment to the Election Code is determinative. As discussed, the rules in *Tully* were not changed in the middle of an election cycle, but instead after the election, effectively overriding the will of the voters. *Tully*, 171 Ill. 2d at 312.

The closest Plaintiffs come is their citation to *Graves v. Cook Cty. Republican Party*, 2020 IL App (1st) 181516, in their motion for preliminary injunction. But *Graves* dealt with a change to political party bylaws, *id.* at ¶ 6, not a change to the Election Code. The plaintiff in *Graves* had already submitted his nomination papers to the Chicago Board of Elections and then prevailed in

the subsequent election. *Id.* at ¶¶ 5, 7. However, a change to the party bylaws threatened to disqualify him from office. *Id.* at ¶ 8. Most importantly, the change in bylaws would have effectively given the political party a veto over the voters' choice—a power they lack under the Election Code. *Id.* at ¶ 77. Here, the change to the Election Code at issue does not serve to override the will of the voters. Quite the opposite, it ensures that the voters select the candidates through a primary election. *Graves* is entirely distinguishable.

Moreover, the Act did not stop any of the Plaintiffs from running for office or otherwise disqualify someone already chosen by the voters. Each Plaintiff could have run in their respective primaries, and their declarations provide no explanation as to why they did not. That they did not do so does not mean that they are entitled to a process where political insiders hand-select them to be their party's nominees after the primary has passed and do so while gathering less signatures than independent or third-party candidates. The Act is constitutional as a matter of law, and the Court should therefore enter judgment in favor of Defendants and dismiss Plaintiffs' claim.

IV. The balance of hardships favors denying injunctive relief.

The Court should also enter judgment in favor of Defendants because the potential harm of the only relief sought in this case—a permanent injunction—to the Defendants here outweighs any benefit of granting an injunction. Before an injunction can issue, courts must balance the hardships of the parties and consider the public interests involved. *JL Props. Grp., LLC v. Pritzker*, 2021 IL Ap (3d) 200305, ¶ 57. This test requires the court to determine the relative inconvenience to the parties and whether the burden upon the requesting party if an injunction does not issue outweighs the burden to the opposing party if an injunction does issue. *Guns Save Life, Inc. v. Raoul*, 2019 IL App (4th) 190334, ¶ 64. In other words, "Plaintiffs are…required to show in the

trial court that they would suffer more harm without an injunction than defendants will suffer with it." *Id.* Courts also consider the effect of the injunction on the public. *Id.*

Here, an injunction would run counter to the public interest because it would require this Court to tell the General Assembly that it is not allowed to repeal its own laws. But as discussed, it is "axiomatic that one legislature cannot bind a future legislature." *A.B.A.T.E.*, 2011 IL 110611, ¶ 34. The policies enacted by the General Assembly "are inherently subject to revision and repeal." *Jones*, 2016 IL 119618 ¶ 39.

As for the Plaintiffs' hardship, while they frame this case as an effort to protect the right to vote, this is not actually the case. In reality, Plaintiffs are trying to create a right to the continuation of the now-defunct version of Section 8-17, whereby candidates could gain access to the ballot as an established party candidate without running in a primary election or obtaining enough signatures to run as an independent or third-party candidate. But as previously discussed, there is no right to the continuation of an existing law. *New Hights Recovery & Power, LLC v.*, 347 Ill. App. 3d at 96. "Our supreme court has held there is no vested right in the mere continuation of a law and the legislature has an ongoing right to amend a statute." *Id.* (citing *Premier Prop. Mgmt. Inc. v.*, 191 Ill. 2d at 109). Moreover, as discussed, the Plaintiffs could have run in the primary. The balance of hardships and the public interest clearly favor declining to enter permanent injunctive relief and instead favor entering judgment in favor of Defendants.

V. The Court lacks jurisdiction to enter an injunction in favor of Plaintiffs Collazo, Kirchner, and Kunz because they have not joined the Chicago Board of Elections, which is a necessary party to their claims.

Plaintiffs Collazo, Kirchner, and Kunz are not entitled to an injunction because they have not joined all indispensable parties to this action. The failure to join a necessary party may be raised at any time. *Victor Twp. Drainage Dist. 1 v. Lundeen Family Farm P'ship*, 2014 IL App (2d) 140009 ¶ 39. "This is so because due process requires the joinder of all indispensable parties

to an action; as a result an order entered without jurisdiction over a necessary party is void." *Id.* (citations omitted). A necessary party is one whose presence in a lawsuit is required for any of three reasons: (1) to protect an interest which the absentee has in the subject matter which would be materially affected by a judgment entered in his absence; (2) to reach a decision to protect the interests of those who are before the court; or (3) to enable the court to make a complete determination of the controversy. *Id.*

Here, the necessary party is the Chicago Board of Elections. This is because the Election Code provides that challenges to the candidacies for the General Assembly in districts located entirely counties with a population of 3,000,000 or more must be heard by the local county election board, unless the district is wholly or partially within the jurisdiction of a municipal election board, in which case the municipal election board hears the challenge. 10 ILCS 5/10-9(2.5). As previously discussed, the districts that Collazo, Kirchner, and Kunz are running in all are located at least partially within the municipality of Chicago and are entirely within Cook County – a county with a population of more than 3,000,000 residents. Any challenge to their candidacies therefore would be heard by the Chicago Board of Elections, making this an entity that would need to be enjoined (should Plaintiffs prevail) for the Court to make a complete determination of the controversy.[11] It is also not clear that Sangamon County would be the proper venue to hear a case wherein the

[11] Defendant Raoul is also aware that Plaintiffs may seek leave to amend their complaint to add additional plaintiffs. Based on counsel's representation about the districts each of the new plaintiffs is running for office in, each of these Plaintiffs would have the same issue because their districts are either in Chicago or suburban Cook County, meaning that pursuant to 10 ILCS 5/10-9(2.5) either the Chicago Board of Elections or the Cook County Board of Elections is a necessary party to adjudicate their claims.

Chicago Board of Elections is a named defendant. Plaintiffs Collazo, Kirchner, and Kunz have therefore not joined a necessary party to this action and are not entitled to injunctive relief.

VI. Even if an injunction issues, it should not be entered against the Attorney General.

Finally, to the extent that the Court enters a permanent injunction in this matter, it should not be entered against the Attorney General. Defendant AG Raoul does not dispute that he is an appropriate party to this lawsuit given his statutory duty to enforce the Election Code under the Attorney General Act. 15 ILCS 205/4. Nor does he dispute that he is an appropriate party in this litigation given the State Board of Elections' neutrality in this matter and his role in defending the constitutionality of statutes he believes are not constitutionality unfirm. *See* S. Ct. R. 19.

However, the Attorney General's status as an appropriate defendant does not mean that it is appropriate to enter an injunction against the Attorney General in this matter. The Attorney General does not determine who appears on a ballot for the General Assembly; nominating petitions are submitted to the Board. 10 ILCS 5/8-9. As Plaintiffs acknowledge in their Complaint, the State Board of Elections is responsible for determining whether a candidate has met the qualifications for appearing on the ballot. (Compl. at ¶ 13). Specifically, Section 10-14 of the Election Code provides that the Board certifies the name of each candidate whose nomination papers have been filed with it and then directs local county clerks to place those candidates' names on the official ballots for the general election. 10 ILCS 5/10-14. And as discussed, the Section 10-9(2.5) of Election Code provides that the Chicago Board of Elections that would hear challenges to Collazo, Kirchner, and Kunz's nomination papers. Because Section 10-14 of the Election Code gives the Board this power, the Board therefore also has the power to prevent a candidate's name

from being placed on the ballot if the nomination papers are not valid. *Druck v. Ill. State Bd. Of Elections*, 387 Ill. App. 3d 144, 155 (1st Dist. 2008).

Neither the Election Code nor the Attorney General Act authorizes the Attorney General to certify a candidate's name for the ballot or prevent a candidate from appearing on the ballot. Indeed, at no point do Plaintiffs allege that the Attorney General has this power; they only allege that he was named as a defendant because he is generally tasked with enforcing the laws of the State. (Compl. at ¶ 14). Accordingly, an injunction against the Attorney General is neither necessary nor appropriate in this case. Therefore, to the extent that the Court enters an injunction in this case, the Attorney General respectfully requests that injunction only be applied to the parties that the Election Code empowers to determine which candidates appear on the ballot.

CONCLUSION

P.A. 103-0586 easily satisfies the *Anderson-Burdick* test because it is a reasonable, nondiscriminatory legislative enactment substantially related to the important state interest of ensuring that the voters, not political insiders, choose nominees for the general election. Therefore, P.A. 103-0586 is constitutional. Moreover, granting Plaintiffs relief in this case would require a mandatory injunction reinserting repealed language into the Election Code. This would violate the public interest because the General Assembly undoubtedly may repeal its own laws. Additionally, Plaintiffs Collazo, Kirchner, and Kunz are not entitled to injunctive relieve because they have not named the Chicago Board of Elections as a party, which is a necessary party to this action. Finally, even if an injunction is issued in this case, there is no basis to enter an injunction against Attorney General Raoul.

WHEREFORE, the Defendant Attorney General Raoul respectfully requests that this Honorable Court enter summary judgment in his favor and against Plaintiffs.

Respectfully Submitted,

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/s/ Hal Dworkin

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