

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

LESLIE COLLAZO, DANIEL BEHR, JAMES
KIRCHNER, *and* CARL KUNZ,

Plaintiffs,

v.

THE ILLINOIS STATE BOARD OF
ELECTIONS; CASANDRA B. WATSON, *in*
her official capacity as Chair of the
Illinois State Board of Elections; LAURA
K. DONAHUE, *in her official capacity as*
Vice Chair of the Illinois State Board of
Elections; JENNIFER M. BALLARD CROFT,
CRISTINA D. CRAY, TONYA L. GENOVESE,
CATHERINE S. MCCRORY, RICK S.
TERVEN, SR., *and* JACK VRETT, *in their*
official capacities as Members of the
Illinois State Board of Elections; *and*
KWAME RAOUL, *in his official capacity*
as Attorney General of the State of
Illinois,

Defendants.

Case No. 2024CH000032

**Complaint for Declaratory and
Injunctive Relief**

Introduction

1. This complaint seeks to prevent enforcement of provisions of P.A. 103-0586 as applied to Plaintiffs in the November 2024 general election.
2. P.A. 103-0586 changes the rules for filling vacancies on the ballot in the general election for a political party's candidate in a race for General Assembly. It purports to be effective immediately, thus eliminating a process of filling vacancies on the 2024 general election ballot while that process is ongoing.

3. Plaintiffs are prospective candidates for office who seek to file petitions to appear on the ballot for the November 2024 general election. P.A. 103-0586 prevents them from appearing on the November ballot even though they began that process prior to the enactment of P.A. 103-0586, and the deadline to complete that process has not expired.

4. The elimination of the process for filling vacancies on the ballot in the general election for a political party's candidate in a race for General Assembly set forth in P.A. 103-0586, as applied to Plaintiffs seeking to fill vacancies for General Assembly races on the November 2024 general election ballot, is an unconstitutional violation of their right to gain access to the ballot.

Parties

5. Plaintiff Collazo is a prospective candidate for the 8th Representative District. She resides in Chicago, Illinois.

6. Plaintiff Behr is a prospective candidate for the 57th Representative District. He resides in Northbrook, Illinois.

7. Plaintiff Kirchner is a prospective candidate for the 13th Legislative District. He resides in Chicago, Illinois.

8. Plaintiff Kunz is a prospective candidate for the 31st Representative District. He resides in Hickory Hills, Illinois.

9. All Plaintiffs have been designated by either the Republican Representative Committee (Collazo, Behr, Kunz) or the Republican Legislative Committee

(Kirchner) to fill vacancies in nomination for their respective Representative or Legislative Districts.

10. Defendant Watson is the Chair of the Illinois State Board of Elections. She is sued in her official capacity.

11. Defendant Donahue is the Vice Chair of the Illinois State Board of Elections. She is sued in her official capacity.

12. Defendants Ballard Croft, Cray, Genovese, McCrory, Terven, and Vrett are members of the Illinois State Board of Elections. They are sued in their official capacity.

13. Defendant Illinois State Board of Elections and Defendants Watson, Donahue, Ballard Croft, Cray, Genovese, McCrory, Terven, and Vrett, as Chair, Vice Chair, and Members of the Illinois State Board of Elections respectively, are tasked with certifying the results of primary and general elections in the State, and determining whether each candidate has met the qualifications for appearing on the ballot. The Board of Elections maintains an office in Springfield, Illinois.

14. Defendant Raoul is the Attorney General of the State of Illinois. As Attorney General, he is tasked with enforcing the laws of the State. He is sued in his official capacity. He maintains an office in Springfield, Illinois.

Jurisdiction and Venue

15. This Court has subject matter jurisdiction because this matter challenges a provision of the Illinois Election Code under the Illinois Constitution.

16. This Court has personal jurisdiction over Defendants because they maintain offices in the State of Illinois.

17. This “action is brought against the State or any of its officers, employees, or agents acting in an official capacity . . . seeking declaratory or injunctive relief against a[] State statute . . . based on an alleged violation of the Constitution of the State of Illinois,” and as such venue is proper in the County of Sangamon. 735 ILCS 5/2-101.5.

18. Venue is further proper in the County of Sangamon because all Defendants maintain offices there. 735 ILCS 5/2-101.

Facts

19. Until last week, the Illinois Election Code provided that “if there was no candidate for the nomination of the party in the primary,” the “legislative or representative committee of the party” could “nominate[] a candidate to fill the vacancy in nomination within 75 days after the date of the general primary election,” following the process outlined in Section 7-61 of the Election Code. 10 ILCS 5/8-17 (2023).

20. Section 7-61 states that, where a political party did not nominate any candidate for a particular office in the primary election, and no person was nominated as a write-in candidate for such office, “a vacancy in nomination shall be filled only by a person designated by the appropriate committee of the political party and only if that designated person files nominating petitions with the number

of signatures required for an established party candidate for that office within 75 days after the day of the general primary.” 10 ILCS 5/7-61.

21. The 2024 Illinois primary election was held on March 19, 2024. June 3, 2024, is 75 days from March 19, 2024. Thus, Section 7-61 of the Election Code gave a potential candidate seeking to fill a vacancy on the November 2024 general election ballot by being designated by the appropriate committee of a political party from March 19, 2024, to June 3, 2024, to complete that process.

22. At the time P.A. 103-0586 was enacted on May 3, 2024, at least a dozen people, including Plaintiffs, were pursuing candidacy under the process set forth in Section 7-61 of the Election Code.

23. Plaintiff Collazo was designated to fill the vacancy in nomination by the Republican Representative Committee for the 8th Representative District on April 7, 2024.

24. Plaintiff Behr was designated to fill the vacancy in nomination by the Republican Representative Committee for the 57th Representative District on March 19, 2024.

25. Plaintiff Kirchner was designated to fill the vacancy in nomination by the Republican Legislative Committee for the 13th Legislative District on April 18, 2024.

26. Plaintiff Kunz was designated to fill the vacancy in nomination by the Republican Representative Committee for the 31st Representative District on April 7, 2024.

27. In each Legislative or Representative District in which Plaintiffs seek to fill a vacancy, the name of no Republican Party candidate was printed on the general primary ballot, and no person was nominated as a write-in candidate for such office.

28. Illinois Senate Bill 2412 was enacted on May 3, 2024, as P.A. 103-0586 and purports to be effectively immediately.

29. P.A. 103-0586, among other things, strikes the provision in 10 ILCS 5/8-17 allowing the party committees to nominate a candidate to fill a vacancy as outlined in 10 ILCS 5/7-61. 10 ILCS 5/8-17 now reads in relevant part, “if there was no candidate for the nomination of the party in the primary, no candidate of that party for that office may be listed on the ballot at the general election.”

30. SB 2412 was a dormant bill seeking to amend the Children and Family Services Act, when on May 1, 2024, its entire text was removed and replaced, and it was passed by the House; on May 2, 2024, it was passed by the Senate; and on May 3, 2024, it was signed by the governor.

31. Thus, two thirds of the way through Section 7-61’s 75-day process to fill vacancies on the general election ballot, the State, in a matter of hours, amended the Election Code by enacting P.A. 103-0586, and prohibited Plaintiffs from using that process to place their names on the November 2024 general election ballot.

32. Plaintiff Behr attempted to file his nomination petition on May 2, 2024, one day prior to Governor Pritzker’s signing of P.A. 103-0586 into law on May 3, 2024. Although the Board was required to stay open until 5:00 PM on the last day for filing, per 10 ILCS 5/1-4—which, because of the enactment of P.A. 103-0586, would

have been May 2—the Board closed at 4:30 PM. Plaintiff Behr’s petition was filed at 8:41 AM the following morning.

33. Plaintiffs Collazo, Kirchner, and Kunz have not yet filed their petitions for candidacy with the Board of Elections.

34. Plaintiffs will not be able to fill the vacancies on the November 2024 general election ballot solely because of the enactment of P.A. 103-0586.

35. At least one candidate who was designated to fill a vacancy in nomination by a political party’s representative committee and who filed their nomination petition prior to the enactment of P.A. 103-0586 on May 3, 2024, will appear on the November 2024 general election ballot.

Count I
P.A. 103-0586 violates Plaintiffs’ right to vote set forth in
Article III, section 1, of the 1970 Illinois Constitution.

36. The allegations contained in all the preceding paragraphs are realleged as though set forth fully herein.

37. Article III, section 1, of the 1970 Illinois Constitution guarantees the right to vote to every United States citizen of at least 18 years of age who has been a permanent resident of Illinois for at least 30 days preceding any election.

38. “Legislation that affects *any* stage of the election process implicates the right to vote.” *Tully v. Edgar*, 171 Ill. 2d 297, 307 (1996) (emphasis in original). Thus, “the right to vote is implicated by legislation that restricts a candidate’s effort to gain access to the ballot.” *Id.*, citing *Anderson v. Schneider*, 67 Ill. 2d 165, 172-73 (1977).

39. But for P.A. 103-0586, Plaintiffs would comport with the provisions of 10 ILCS 5/8-17 (2023) and 10 ILCS 5/7-61 and stand as candidates for office in the November election.

40. Plaintiffs were all designated to fill the vacancies in nomination by their respective Representative or Legislative Committees prior to the enactment of P.A. 103-0586.

41. P.A. 103-0586 removed the provisions of 10 ILCS 5/8-17 that would allow Plaintiffs to gain access to the ballot, after that process had already begun.

42. P.A. 103-0586 impairs the rights of suffrage exercised by Plaintiffs and others in the 2024 general election by restricting Plaintiffs' efforts to gain access to the ballot by changing the rules in the middle of that process.

43. "When the means used by a legislature to achieve a legislative goal impinge upon a fundamental right, the court will examine the statute under the strict scrutiny standard." *Tully*, 171 Ill. 2d at 304.

44. The Illinois Supreme Court has recognized that the right to vote is a fundamental constitutional right, essential to our system of government. *Fumarolo v. Chicago Board of Education*, 142 Ill. 2d 54, 74 (1990).

45. The elimination of the process of filling ballot vacancies used by Plaintiffs set forth in P.A. 103-0586 does not advance a compelling state interest in preventing Plaintiffs from accessing the ballot in the November 2024 general election.

46. The provision of P.A. 103-0586 eliminating the process of filling ballot vacancies used by Plaintiffs is not necessary to achieve the legislation's goal.

47. Nor are the provision of P.A. 103-0586 eliminating the process of filling ballot vacancies used by Plaintiffs the least restrictive means available to attain the legislation's goal.

48. The fact that P.A. 103-0586 would prohibit Plaintiffs from accessing the November 2024 general election ballot using the process set forth in Section 7-61 of the Election Code as it existed prior to the enactment of P.A. 103-0586, but would permit other candidates to be listed on the November 2024 general election ballot who completed the process set forth in Section 7-61 of the Election Code prior to P.A. 103-0586's enactment is sufficient to show that P.A. 103-0586, as applied to Plaintiffs, fails strict scrutiny.

49. P.A. 103-0586, as applied to Plaintiffs, fails strict scrutiny analysis and, thus, unconstitutionally restricts Plaintiffs' fundamental rights to suffrage by negating their efforts to gain access to the ballot.

50. Plaintiffs need immediate relief from the revisions to 10 ILCS 5/8-17 in order to lawfully comply with the June 3, 2024, deadline to file their nomination petitions with the Illinois State Board of Elections.

Request For Relief

WHEREFORE, Plaintiffs respectfully request that this Court:

A. Issue a temporary restraining order and preliminary injunction, later to be made a permanent injunction, restraining and enjoining Attorney General Raoul and the Illinois State Board of Elections from applying P.A. 103-0586's revisions to 10 ILCS 5/8-17 to Plaintiffs with respect to the November 2024 general election;

B. Issue a temporary restraining order and preliminary injunction prohibiting the Illinois State Board of Elections from denying Plaintiffs' nomination petitions for the November 2024 general election based on P.A. 103-0586's revisions to 10 ILCS 5/8-17;

C. Enter a declaratory judgment that P.A. 103-0586's revisions to 10 ILCS 5/8-17 are void as applied to Plaintiffs' efforts to appear on the ballot in the November 2024 general election;

D. Award Plaintiffs their costs and attorneys' fees; and

E. Grant such further relief this Court deems just, proper, and equitable.

May 10, 2024

Respectfully submitted,

/s/ Jeffrey M. Schwab
Jeffrey M. Schwab (#6290710)
Jacob H. Huebert (#6305339)
James J. McQuaid (#6321108)
Liberty Justice Center
440 N. Wells Street, Suite 200
Chicago, Illinois 60654
312-637-2280 telephone
jschwab@libertyjusticecenter.org
jhuebert@libertyjusticecenter.org
jmcquaid@libertyjusticecenter.org

Attorneys for Plaintiffs