

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. 2024-CH-000032

**Emergency Motion for
Temporary Restraining Order
and Preliminary Injunction**

Plaintiffs Leslie Collazo, Daniel Behr, James Kirchner, and Carl Kunz seek an emergency temporary restraining order and preliminary injunction prohibiting Defendants, the Attorney General and the Illinois State Board of Elections, from enforcing P.A. 103-0586 against Plaintiffs and from denying Plaintiffs' nomination petitions for the November 2024 general election based on P.A. 103-0586. They seek this motion on an emergency basis to give them time to obtain signatures and submit their nomination petitions before the June 3, 2024, deadline set forth in 10 ILCS 5/7-61.

Facts

Until May 3, 2024, the Election Code provided a means for the state’s political parties to fill a vacancy on the general election ballot if no candidate had run for a General Assembly seat up for election during the primary election (a process generally known as “slating”). Section 8-17 of the Election Code (2023) provided that “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,” using the procedures outlined in Section 7-61 of the Election Code. 10 ILCS 5/8-17 (2023). These procedures required the prospective candidates to gather ballot signatures on nomination petitions and submit them to the Illinois State Board of Elections, just like any other would-be candidates. 10 ILCS 5/7-61.

The 2024 Illinois primary election was held on March 19, 2024. So the 75-day process to fill vacancies in nomination using the slating process began on March 19, 2024, and was to end on June 3, 2024. Compl. ¶ 21.

And multiple such slating processes were underway when Public Act 103-0586 was signed into law. Compl. ¶ 22. No Republican had filed to run for the March primary for the 8th, 31st, or 57th Representative Districts, or for the 13th Legislative District, by the March 19 primary, and no person was nominated as a write-in candidate for those offices, so the respective Republican Representative and Legislative Committees designated Plaintiffs to fill those vacancies. Compl. ¶ 27.

Plaintiff Collazo was designated to fill the vacancy in nomination by the Republican Representative Committee for the 8th Representative District on April 7, 2024. Compl. ¶ 23. Plaintiff Behr was designated to fill the vacancy in nomination by the Republican Representative Committee for the 57th Representative District on March 19, 2024. Compl. ¶ 24. Plaintiff Kirchner was designated to fill the vacancy in nomination by the Republican Legislative Committee for the 13th Legislative District on April 18, 2024. Compl. ¶ 25. Plaintiff Kunz was designated to fill the vacancy in nomination by the Republican Representative Committee for the 31st Representative District on April 7, 2024. Compl. ¶ 26. Each candidate then began canvassing for the necessary petition signatures to obtain ballot access in the November 2024 election, under the then-existing law.

But on May 3, 2024—long after the process had started but well before the June 3, 2024, deadline for filing nominating petitions under 10 ILCS 5/8-17—the law was abruptly amended when Illinois Senate Bill 2412 was enacted as P.A. 103-0586, which purports to be effective immediately. Compl. ¶ 28. That new legislation, 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 provides, in relevant part, that “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.”

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. Compl. ¶ 30; *Bill Status of SB2412*, Illinois General Assembly.¹

Plaintiff Behr filed his nomination petition on May 3, 2024, at 8:41 AM, the same day P.A. 103-0586 was enacted into law. Compl. ¶ 32. Plaintiffs Collazo, Kirchner, and Kunz have not yet filed their petitions for candidacy with the Board of Elections. Compl. ¶ 33. 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. Compl. ¶ 35. Plaintiffs, however, 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. Compl. ¶ 34.

Plaintiffs brought this lawsuit challenging the revision to 10 ILCS 5/8-17 as unconstitutional as applied to them, seeking to prohibit Defendants from relying on P.A. 103-0586 to keep them off the November 2024 general election ballot. Compl. ¶¶ 1, 4, 50.

¹ <https://ilga.gov/legislation/billstatus.asp?DocNum=2412&GAID=17&GA=103&DocTypeID=SB&LegID=147311&SessionID=112&SpecSess=> (last visited May 10, 2024)

Legal Standard

To obtain a temporary restraining order and preliminary injunction, a plaintiff:

must establish that he possesses: (1) a certain and clearly ascertainable right which needs protection; (2) he will suffer irreparable injury without the protection of the injunction; (3) there is no adequate remedy at law for the injury; and (4) plaintiff is likely to be successful on the merits. (Citation omitted.) The fourth element need not be satisfied if the subject of the injunction is property which may be destroyed or if the plaintiff seeks only to preserve the status quo until the ultimate issue is decided.

People ex rel. Stony Island Church of Christ v. Mannings, 156 Ill. App. 3d 356, 361 (1st Dist. 1987); *cf. Rhoads v. Village of Bolingbrook*, 130 Ill. App. 3d 981, 983 (3rd Dist. 1985); *Blue Cross Association v. 666 North Lake Shore Drive Associates*, 100 Ill. App. 3d 647, 650-51 (1st Dist. 1981).

Argument

A. Plaintiffs have a certain and clearly ascertainable right that needs protection.

Plaintiffs have a certain and clearly ascertainable right that needs protection. Plaintiffs sought to be listed as candidates on the November 2024 general election ballot through the slating process set forth in 10 ILCS 5/8-17.

Their efforts implicate the right to vote, which Article III, section 1, of the 1970 Illinois Constitution guarantees 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. 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). “Legislation that affects *any* stage of the election process implicates the right to vote.” 307. 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). "[B]allot access is a substantial right and not likely to be denied." *Nolan v. Cook County Officers Electoral Board*, 329 Ill. App. 3d 52, 55 (1st Dist. 2002) (quote and citation omitted).

After the Illinois primary election on March 19, 2024, Plaintiffs each sought to be listed on the November 2024 general election ballot through the slating process set forth in 10 ILCS 5/8-17. Plaintiffs were entitled to use the process under Section 8-17 because in each Legislative or Representative District in which they 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. And prior to the enactment of P.A. 103-0586, Plaintiffs were each designated to fill the vacancies in nomination by their respective Representative or Legislative Committees.

Illinois Senate Bill 2412 was enacted on May 3, 2024, as P.A. 103-0586 and purports to be effective immediately. 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. Section 8-17 now states in relevant part: "[I]f 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." 10 ILCS 5/8-17 (2024). When P.A. 103-0586 was enacted, Plaintiffs had not yet submitted their nomination papers to the Board of Elections because they

were in the process of gathering the required signatures. Thus, P.A. 103-0586 will prohibit Plaintiffs from using the slating process set forth in 10 ILCS 5/8-17 (2023) and 10 ILCS 5/7-61 to place their names on the November 2024 general election ballot.

B. Plaintiffs will suffer irreparable injury without the protection of the injunction.

Without a temporary restraining order and preliminary injunction, Plaintiffs will suffer an irreparable injury because 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. Article III, section 1, of the 1970 Illinois Constitution protects a candidate's right to gain access to the ballot.

C. Plaintiffs have no adequate remedy at law for their injuries.

There is no adequate remedy at law for the injury Plaintiffs will suffer by being unable to appear on the November 2024 general election ballot. Monetary damages are inadequate to compensate Plaintiffs for the loss of the ability to appear as candidates on the November 2024 general election ballot. Once the election passes, Plaintiff's opportunity to appear as candidates for the November 2024 election is gone forever.

D. Plaintiffs have a likelihood of success on the merits of their case.

Plaintiffs are likely to win on the merits of this case because P.A. 103-0586 strips them of their fundamental right to gain access to the November 2024 general election ballot and the legislation cannot overcome the appropriate constitutional scrutiny to do so.

The right to vote is a fundamental constitutional right. *Fumarolo*, 142 Ill. 2d at 74, that is implicated by legislation that restricts a candidate’s effort to gain access to the ballot, *Tully*, 171 Ill. at 307. “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.

Thus, P.A. 103-0586, as applied to Plaintiffs’ efforts to gain access to the November 2024 general election ballot as candidates, is subject to strict scrutiny.

To satisfy strict scrutiny, legislation must: (1) advance a compelling state interest; (2) be necessary to achieve the legislation’s asserted goal; and (3) be the least restrictive means available to attain the legislation’s goal. *Tully*, 171 Ill. 2d at 311 (citing *Fumarolo*, 142 Ill. 2d at 90). P.A. 103-0586, as applied to Plaintiffs, fails on all three counts.

First, eliminating the process of filling ballot vacancies by slating to prevent Plaintiffs from accessing the ballot as candidates in the November 2024 general election does not advance a compelling state interest. The state has an interest in providing free and fair elections, and enacting legislation in the middle of a well-established process for candidates to appear on the ballot, allowing some candidates to access the ballot and prohibiting others, is clearly contrary to the interest in providing free and fair elections. Indeed, to the extent that keeping *any* candidate off the ballot is a legitimate governmental interest—i.e., “to reduce the electoral process to manageable proportions by confining ballot positions to a relatively small number of candidates”—that interest is served by the signature requirement

Plaintiffs are in the process of satisfying. *Heabler v. Municipal Officers Electoral Board of the Village of Lakemoor*, 338 Ill. App. 3d 1059, 1062 (2nd Dist. 2003).

Second, the provision of P.A. 103-0586 eliminating the process of filling ballot vacancies by slating in the November 2024 general election is not necessary to achieve the legislation's goal. The slating process had already started for the November 2024 general election at the time P.A. 103-0586 went into effect.

Whatever P.A. 103-0586's goal, it certainly cannot be met by eliminating a process for candidates to appear on the ballot in the middle of that process, prohibiting some candidates from accessing the ballot while allowing others.

Third, the provision of P.A. 103-0586 eliminating the slating process is not the least restrictive means available to attain the legislation's goal. Eliminating the slating process for the November 2024 general election *after* that process has already started is not the least restrictive means to obtain P.A. 103-0586. Indeed, because P.A. 103-0586 purports to go into effect in the middle of that slating process for the November 2024 general election, the law inadequately and unequally eliminates that process because it would permit any candidate using the slating process for the November 2024 general election who had submitted their nomination papers to the Board of Elections prior to the law's enactment to appear on the ballot, while prohibiting any candidates, such as Plaintiffs, who had begun the process but had not yet submitted the nomination papers to the Board of Elections at the time P.A. 103-0586 went into effect. *See Graves v. Cook Cty. Republican Party*, 2020 IL App (1st) 181516, P62 (holding that a political party by-

law, enacted during a primary election, was not necessary or narrowly tailored). The legislature's goal could have been achieved in a manner that would not impinge on the fundamental right to vote by enacting it to apply to elections after the November 2024 general election, rather than enacting P.A. 103-0586 to go into effect in the middle of the slating process.

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.

Granting Plaintiffs' motion for a temporary restraining order and preliminary injunction would only preserve the status quo—allowing Plaintiffs to complete the slating process to be listed as candidates on the November 2024 general election ballot—by prohibiting Defendants from enforcing P.A. 103-0586's elimination of the slating process for November 2024 general election ballot and prohibiting Defendants from using P.A. 103-0586 as a basis for denying Plaintiffs the ability to appear on the November 2024 general election ballot.

Plaintiffs, therefore, meet the four required steps to obtain a temporary restraining order and preliminary injunction.

WHEREFORE, Plaintiffs respectfully request that this Court enter the following relief:

A. Issue a temporary restraining order and preliminary 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. Grant such further relief this Court deems just, proper, and equitable.

May 13, 2024

Respectfully submitted,

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