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

IN THE CIRCUIT COURT FOR THE SEVENTH JUDICIAL CIRCUIT
SANGAMON COUNTY, ILLINOIS CHANCERY DIVISION

LESLIE COLLAZO, et al.	)	
	)	
Plaintiffs,	)	
	)	
v.	)	No. 2024 CH 0032
	)	
THE ILLINOIS STATE BOARD OF ELECTIONS, et al.	)	Hon. Gail Noll, presiding.
	)	
Defendants.	)	

INTERVENING DEFENDANT WELCH 'S SECTION 2-619.1 MOTION TO DISMISS

Intervening Defendant Emanuel "Christopher" Welch, respectfully moves to dismiss the Plaintiffs' Complaint pursuant to Section 2-619.1 of the Illinois Code of Civil Procedure (735 ILCS 5/2-619.1) submits arguments for dismissal pursuant to Section 2-619(a)(1) and Section 2-615 of the Illinois Code of Civil Procedure (735 ILCS 5/2-619(a)(1); 615). In support thereof, he states as follows:

Introduction

Public Act 103-586 repealed an Election Code process allowing local political party officials (county, township and ward committeepersons) to choose a candidate to run in the General Election where no one sought the party's nomination for a seat in the General Assembly in the primary election. P.A. 103-586; 10 ILCS 5/8-17. This year, no candidate sought the Democratic Party's nomination in 21 House districts and 4 Senate districts, and no candidate sought the Republican Party's nomination in 45 House and 8 Senate Districts, which would have permitted local party leaders to choose their party's candidate in 78 of the 138 (56%) legislative elections this year.

Plaintiffs are four (of the potential 78) candidates who chose not to run in their party's primary election, but instead have been chosen by their political party bosses to appear on the general election ballot, effectively bypassing voters in the primary election. Comp. ¶ 5-8. Plaintiffs filed a single count Complaint alleging that the Act violates their right to vote (although no Plaintiff alleged that he or she is a voter) provided for in Article III, Section 1 of the Illinois Constitution. Comp. ¶ 45-49. Intervenor-Defendant Welch moves to dismiss the Complaint.

Argument

A. Motion to Dismiss Standards.

The standards of review on a motion to dismiss are well established. A section 2-615 motion to dismiss tests the legal sufficiency of a complaint. *Vitro v. Mihelcic*, 209 Ill. 2d 76, 81 (2004). "In other words, the defendant in such a motion is saying, 'So what? The facts the plaintiff has pleaded do not state a cause of action against me.'" *Winters v. Wangler*, 386 Ill. App. 3d 788, 792 (2008). Under section 2-615, a court must determine "whether the allegations in the complaint, viewed in the light most favorable to the plaintiff, are sufficient to state a cause of action upon which relief may be granted." *Doe-3 v. McLean County Unit District No. 5 Board of Directors*, 2012 IL 112479, ¶ 16. To survive a section 2-615 motion to dismiss, a "plaintiff must allege facts sufficient to bring a claim within a legally recognized cause of action." *Tedrick v. Community Resource Center, Inc.*, 235 Ill. 2d 155, 161 (2009). "In ruling on a section 2-615 motion, the court only considers (1) those facts apparent from the face of the pleadings, (2) matters subject to judicial notice, and (3) judicial admissions in the record." *Reynolds v. Jimmy John's Enterprises*, LLC, 2013 IL App (4th) 120139, ¶ 25.

A section 2-619 motion to dismiss admits the sufficiency of the complaint but asserts a defense outside the complaint that defeats it. *King v. First Capital Financial Services Corp.*, 215

Ill. 2d 1, 12 (2005). "Section 2–619(a)(1) permits a trial court to dismiss a claim for lack of subject-matter jurisdiction." *R.L. Vollintine Const., Inc. v. Illinois Capital Dev. Bd.*, 2014 IL App (4th) 130824, ¶ 23.

When ruling on motions under section 2-615 and section 2-619, a court must accept as true all well-pleaded facts, as well as any reasonable inferences that may arise from them. *Doe ex rel. Ortega-Piron v. Chicago Board of Education*, 213 Ill. 2d 19, 28 (2004). Nevertheless, a court cannot rely on mere conclusions unsupported by specific facts. *Pooh-Bah Enterprises, Inc. v. County of Cook*, 232 Ill. 2d 463, 473 (2009). Because Defendant Welch's Section 2-619 argument addresses this Court's subject matter jurisdiction, this motion will address that argument first.

B. Plaintiffs' Complaint Should be Dismissed Pursuant to Section 2-619(a)(1) of the Code of Civil Procedure Because this Court Lacks Subject Matter Jurisdiction.

For well over one-hundred years, the Supreme Court has dictated that "[a] circuit court does not have original jurisdiction over objections to nomination papers." *Cinkus v. Stickney Mun. Officers Elec. Bd.*, 228 Ill.2d 200, 209 (2008); *Dilcher v. Schorik,* 207 Ill. 528, 529 (1904). Instead, "the legislature has vested the electoral boards, and not the courts, with original jurisdiction to hear such disputes." *Cinkus*, 228 Ill.2d at 209; citing *Geer v. Kadera*, 173 Ill. 2d 398, 407 (1996); 10 ILCS 5/10-9 (designating electoral boards "for the purpose of hearing and passing upon the objector's petition").

Article VI, Section 9 of the Illinois Constitution provides that "Circuit Courts shall have original jurisdiction of all justiciable matters except … Circuit Courts shall have such power to *review* administrative action as provided by law." Ill. Const. 1970, art. VI, § 9 (emphasis added). The Constitution "does not, however, confer any right to judicial review of final administrative decisions. The courts of this state are only empowered to review administrative actions 'as

provided by law.'" *People ex rel. Madigan v. Illinois Commerce Comm'n*, 2014 IL 116642, ¶ 9, quoting, Ill. Const. 1970, art. VI, § 6 (appellate court), § 9 (circuit court). The Illinois Supreme Court "views an electoral board as an administrative agency." *Cooke v. Illinois State Bd. of Elections*, 2021 IL 125386, ¶ 49. The Supreme Court has stated a circuit court's jurisdiction of an administrative decision is dependent upon strict compliance with procedures provided by the legislature.

> When the legislature has, through law, prescribed procedures for obtaining judicial review of an administrative decision, a court is said to exercise "special statutory jurisdiction" when it reviews an administrative decision pursuant to the statutory scheme. Special statutory jurisdiction is limited to the language of the act conferring it. A court has no powers from any other source. A party seeking to invoke a court's special statutory jurisdiction must therefore comply strictly with the procedures prescribed by the statute. If the mode of procedure prescribed by statute is not strictly pursued, no jurisdiction is conferred on the court to review it. *Illinois Commerce Comm'n*, 2014 IL 116642, ¶ 9 (internal citations omitted)

The Constitution provides "[a] State Board of Elections shall have general supervision over the administration of the registration and election laws throughout the State. The General Assembly by law shall determine the size, manner of selection and compensation of the Board. Ill. Const. (1970), art III, § 5; *Cooke*, 2021 IL 125386, ¶ 48. The Constitution also provides "the General Assembly by law shall define permanent residence for voting purposes, insure secrecy of voting and the integrity of the election process, and facilitate registration and voting by all qualified persons." *Id*. § 6.

Electoral Boards are administrative bodies created by the General Assembly in the Election Code for the sole purpose of conducting "administrative proceedings" regarding whether or not candidates' nomination papers are valid, and whether their names should appear on the ballot. 10 ILCS 5/10-9; 10. The Code provides:

> The electoral board shall take up the question as to whether or not the . . . nomination papers or petitions are in proper form, and whether or not they

> were filed within the time and under the conditions required by law,. . .and in general shall decide whether or not the certificate of nomination or nominating papers or petitions on file are valid or whether the objections thereto should be sustained.

10 ILCS 5/10-10.

This Court should dismiss the Complaint for lack of subject matter jurisdiction because although the Complaint is styled as an "as applied" constitutional challenge to the recent legislative amendment to Section 8-17 of the Election Code, it is really an order seeking to pre-empt Plaintiffs' expected objections to their nomination papers. "An 'as-applied' challenge requires a party to show that the statute violates the constitution as the statute applies to him." *People by Foxx v. Agpawa*, 2018 IL App (1st) 171976, ¶ 32. The statute, however, has not yet been applied to any Plaintiff. Plaintiffs are all potential legislative candidates who have either filed, or express an intention to file, nomination papers with the Defendant Board to appear on the ballot in the November general election. The Defendant Board has already accepted, and counsel for the Board has stated that it will continue to accept any other, nomination papers filed on or before the June 3, 2024 deadline. And Plaintiffs Collazo, Koons and Krichner have yet to even file nomination papers as of the date of the filing of this motion. Plaintiffs are thus bringing an "as applied" challenge to a law that has not been applied to them.

Once Plaintiffs have filed their nomination papers, they become subject to the objection process set forth in Section 10-8 of the Election Code. 10 ILCS 5/10-8. In their prayer for relief, Plaintiffs seek an order from this Court "prohibiting" the Board from "denying" their petitions on the basis of the Act. In other words, Plaintiffs are asking this Court to prospectively order the Board to overrule any objections to their' nomination papers even before they are filed. Granting this relief would violate the Supreme Court's repeated directive that it is electoral boards, and not the circuit court, that has original jurisdiction to pass upon the validity of candidate nomination papers. Moreover, for reasons stated in greater detail below, it is not even within the Board's

power to grant the relief to three of the four Plaintiffs (Collazo, Kirchner, Koons) because the Board is not the electoral board that would determine the validity of their nomination papers.

An additional jurisdictional problem with this purported "as applied" challenge are further demonstrated by the fact that other candidates (not plaintiffs here) may still file nomination papers before the June 3 deadline. What then is the Board to do with objections to those candidates? It is axiomatic that any relief from this Court would apply only to these plaintiffs:

> If a plaintiff prevails in an as-applied claim, he may enjoin the objectionable enforcement of the enactment only against himself, while a successful facial attack voids the enactment in its entirety and in all applications. *Napleton v. Village of Hinsdale*, 229 Ill.2d 296, 306 (2008).

If Plaintiffs prevail in this Court, then the Board will be in a situation where it will be forced to overrule any objection over which it had jurisdiction to any of Plaintiffs' nomination papers. What then becomes of the objector's right to seek judicial review of the Board's decision under Section 10-10.1 of the Election Code? The objector, whomever that may be, is not a party to this case and is statutorily entitled to the Board's resolution of his or her objector's petition and the right to seek judicial review.

Still more complicating is the fact that, because plaintiffs bring an "as applied" challenge instead of facial challenge, the objection process will apply, unfettered, to any other candidates who file pursuant to this process before the June 3 deadline. The Board will not be constrained by this Court's ruling in objections to those candidates, and in fact, could result in decisions inconsistent or even directly contrary to this Court's decision. That is precisely why the Supreme Court has long upheld the legislature's decision to vest original jurisdiction to determine the validity of nomination papers with electoral boards, and not the circuit court.

This Court thus lacks jurisdiction to address this "as applied" challenge because neither the Board, nor anyone else, has applied the Act to them as of yet. The Board has accepted nomination papers from the only Plaintiff who has presented them, and has indicated that it will accept them from any other candidate (including the other Plaintiffs) who may timely present them. As a result, none of the Plaintiffs have had the Act "applied" to them. So, in reality, what Plaintiffs are seeking here, is an order to prevent anyone from *attempting* to apply the Act to them. This renders their Complaint premature, for several reasons:

1. Plaintiffs who have not filed nomination papers may decide not to;
2. Any Plaintiffs who do file nomination papers may not draw an objection;
3. Objections to three of the four plaintiffs will be heard by an electoral Board different from the Defendant Board;
4. Any objections may disqualify Plaintiffs on other grounds (such as an insufficient number of signatures);
5. The Board, if it reaches an objection made pursuant to the Act, may overrule any such objections to all candidates;
6. The Board may overrule the objection to some Plaintiffs, such as any who filed nomination papers prior to the effective date of the Act, and sustain the objections to other Plaintiffs (such as those filing after the Act's effective date), meaning the Act was "applied" to some, but not all, Plaintiffs;
7. Any Plaintiffs to whom the Board "applies" the Act could be restored to the ballot pursuant to the judicial review process provided for in the Election Code.

Not only has the Supreme Court recognized that electoral boards, not courts, have original jurisdiction to hear challenges to nomination papers, but the Supreme Court has also recognized that the Election Code's objection and judicial review process is an exclusive remedy. *Lara v. Schneider*, 75 Ill.3d 63 (1979)(candidate removed from the ballot sought leave mandamus to restore his name to the ballot). In *Lara*, the Supreme Court denied the petitioner's *mandamus* request, concluding that: "*Mandamus* is, of course, not a permissible substitute for direct appeal." *Id.* at 64. The Supreme Court has reiterated that decision in *Jackson v. Board of Election Commissioners for the City of Chicago, et al.,* 2012 IL 111928, ¶¶99-104; *see also Russo v. Village of Winfield*, 331 Ill.App.3d 111 (2nd Dist., 2002)("[a]n action for a writ

of *mandamus* is therefore insufficient to vest the trial court's jurisdiction to review the merits of the electoral board's decision."). Here too, if Plaintiffs are dissatisfied with the Board's determination, they will have every right to seek judicial review.

The Court should recognize this case for what it is: an attempt to preemptively resolve an anticipated objection to their nomination papers. What Plaintiffs seek here is an order "*prohibiting* the Illinois State Board of Elections from *denying* Plaintiffs nomination papers…" Comp., p. 10 (emphasis added). This is precisely the relief an objector seeks in an objection with the Board: an order *denying* the candidate's nomination papers. What Plaintiffs are really seeking from this Court is an order prohibiting the Board from ruling against them in a future objection. Not only is such an order premature, it is unfair to any future objector who is not a party to this case.

Moreover, neither injunctive relief nor mandamus should be a substitute for judicial review of an electoral board decision. Section 10-10.1 of the Election Code contains unique jurisdictional and timing requirements. First, the party seeking judicial review must file the petition within only five days of the board's decision. 10 ILCS 5/10-10.1. The petitioner must serve the petition by registered or certified mail, as opposed to issuing a summons. *Id*. Next, that Section requires the circuit court to conduct a hearing on the petition within 30 days and to issue its decision "promptly." *Id*. These provisions obviously further the urgency with which ballot related questions must be resolved because the election is always approaching. Complaints for injunctions or writs of mandamus, on the other hand, have no such constraints. This is precisely why the Supreme Court has recognized that the administrative and judicial review process set forth in the Election Code is an original and exclusive remedy to resolve which candidates will, and will not, appear on the ballot. *Cinkus*, 228 Ill. 2d at 209 ("A circuit court does not have

original jurisdiction over objections to nomination papers. The legislature has vested the electoral boards, and not the courts, with original jurisdiction to hear such disputes.")

The Election Code establishes a process for expeditious, orderly, and, importantly, consistent resolution of challenges to candidates' nomination papers. Candidates such as Bill Clinton, Barack Obama, Donald Trump, Joe Biden, and countless other federal, state, and local candidates, have all been subject to this process when their nomination papers were challenged. These Plaintiffs should be no different. The circuit court will not have jurisdiction over the issues raised in the Complaint until the administrative process provided by the Election Code has been exhausted and a party files for administrative review. The Complaint should be dismissed for lack of subject matter jurisdiction.

C. This Court should dismiss Plaintiffs Collazo, Kunz, and Kircher from this lawsuit because their petitions will not be reviewed by Defendant Board.

This Court should dismiss Plaintiffs Collazo, Kunz, and Kircher from this lawsuit because although all General Assembly candidates file their nomination papers with the Defendant Board, the Board does not resolve objections to all candidates nomination papers. Section 10-9 of the Election Code sets forth which electoral board (based on the geography of the district) will adjudicate any objections to a candidate's nomination papers. 10 ILCS 5/10-9. In this case, the State Board of Elections makes up the appropriate electoral board in only Representative District 57 (Plaintiff Behr), because it is the only district at issue in the Complaint with territory in more than one county. 10 ILCS 5/10-9. Both Representative Districts 8 (Collazo) and Representative District 31 (Kunz) contain territory within the City of Chicago, and therefore any objections to those Plaintiffs' nomination papers would be heard by Municipal

Officers Electoral Board for the City of Chicago. *Id.*[1] Legislative District 13 (Kircher) contains territory exclusively within the City of Chicago, and therefore any objections to Plaintiff Kirchner's nomination papers would also be heard by Municipal Officers Electoral Board for the City of Chicago. *Id.*[2] In other words, the Defendant Board can neither *deny* nor *affirm* three of the four Plaintiffs' nomination papers because it lacks statutory authority to even take up the question. Even if this Court were to grant the relief Plaintiffs request — that the Defendant Board be prohibited from "denying" their nomination papers — that will not afford three of the four Plaintiffs the relief they seek. This Chicago Electoral Board would, in turn, not be bound by any decision from this Court. Plaintiffs Collazo, Kunz, and Kircher have therefore failed to state a claim against Defendants.

Plaintiffs' proposed Amended Complaint exacerbates the jurisdictional problem. In their proposed Amended Complaint, Plaintiffs seek to add the following additional plaintiffs:

1st Representative District: Camaxtle "Max" Olivo.

3rd Representative District: Juvandy Rivera.

4th Representative District: Nancy Rodriguez.

13th Representative District: Terry Nguyen Le.

19th Representative District: John Zimmers.

53rd Representative District: Ron Andermann.

1st Legislative District: Carlos Gonzalez.

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[1] https://www.elections.il.gov/ElectionOperations/2022StateRepresentativeDistrictMaps.aspx (last visited May 29, 2024). Illinois courts may take judicial notice of facts that are readily verifiable by referring to sources of indisputable accuracy, including governmental websites. *People v. Johnson*, 2021 IL 125738, ¶ 54 (last visited May 29, 2024).

[2] https://www.elections.il.gov/ElectionOperations/2022StateSenateDistrictMaps.aspx (last visited May 29, 2024).

The Defendant Board will consider objections to *none* of these candidates. Instead, the Chicago Board of Elections would consider any objections filed in the 1st, 3rd, 4th and 13th Representative Districts. The Cook County Officers Electoral Board would be the electoral board taking up objections filed in the 53rd Representative District and the 1st Legislative District. 10 ILCS 5/10-9(2.5); 9(6).

As a result, *three* different electoral boards (Defendant State Board, City of Chicago, and Cook County) will adjudicate any challenges to Plaintiffs' and proposed Plaintiffs' nomination papers. Two of the boards are not parties to this case. The Defendant State Board will adjudicate objections concerning only three of the total eleven potential plaintiffs. As result, even if ordered to by this Court, the Defendant Board cannot provide most of the Plaintiffs the relief they seek – a place on the ballot. Instead, each candidate, like every other candidate for public office in the State, will first have to go through the administrative process that the Supreme Court has directed is the exclusive process. This Court should let that process play out as it does in every other election and dismiss the Complaint.

D. Plaintiffs Have No Constitutional Right to Appear on the Ballot Through the Post-Primary Appointment Process, and as result, Their Complaint Should be Dismissed Pursuant to Section 2-615 of the Code of Civil Procedure.

Plaintiffs' Complaint should be dismissed because they have no constitutional right to have their names appear on the ballot through the post-primary appointment process recently repealed by the legislature. Plaintiffs allege they are "prospective candidates" designated to fill vacancies in nomination by their relevant Republican committees. Comp., ¶ 5-9. Plaintiffs sole count, however, alleges P.A. 103-0586 violates Plaintiffs' *right to vote* set forth in Article III, section 1, of the 1970 Illinois Constitution. But the rights of voters are not necessarily the same as the rights of candidates.

The Supreme Court has repeatedly recognized that "[t]hough ballot access is a substantial right, that right is circumscribed by the legislature's authority to regulate elections." *Corbin v. Schroeder*, 2021 IL 127052, ¶ 38; *Jackson-Hicks v. East St. Louis Bd. of Elec. Comm'rs*, 2015 IL 118929, ¶ 32. In both of those cases, the Supreme Court disqualified candidates whose nomination papers contained fewer petition signatures than the statutory minimum. *Corbin*, 2021 IL 127052, ¶ 46; *Jackson-Hicks*, 2015 IL 118929, ¶ 44. In both cases, the Supreme Court required strict, rather than substantial, compliance with the minimum signature threshold. *Id*.

These cases demonstrate that while ballot access is a substantial right, it is not a fundamental right. Had the Supreme Court believed that ballot access was a fundamental right, it would have applied strict scrutiny to these election related laws. The Court did not do so in either case. Strict scrutiny, of course, requires the State to use the least restrictive means possible to achieve its goal, as Plaintiffs urge this Court to hold here. Compl. ¶ 47. If Plaintiffs are correct, then the Supreme Court made the wrong decision in both *Corbin* and *Jackson-Hicks* because substantial compliance would have been less restrictive than strict compliance.

Like all ballot access plaintiffs, Plaintiffs here are trying to conflate their ballot access claim with a voting rights claim. Plaintiffs are incorrect. Illinois courts have long rejected this contention. *See Patton v. Illinois State Bd. of Elections*, 2018 IL App (1st) 180425-U:

> We reject Patton's suggestion that the circuit court's finding that his nominating petitions were invalid under section 8-8 of the Election Code implicates a fundamental right and the application of strict scrutiny.

In fact, the Appellate Court has specifically rejected the very argument that Plaintiffs make here: that the Supreme Court's decision in *Tully v. Edgar*, 171 Ill.2d 291 (1996), dictates that any law impacting the right to vote should be subjected to strict scrutiny. *See Gercone v. Cook County Officers Elec. Bd.*, 2022 IL App. (1st) 220724, ¶ 54:

> Courts have nevertheless drawn a distinction between laws that *impinge* on the right to vote, and are thus subject to strict scrutiny, and laws that merely *affect* the right to vote, and are therefore only subject to rational basis analysis.

citing *Puffer Hefty School Dist. No. 69 v. DuPage County Regional Bd. of School Trustees*; *Orr v. Edgar*, 298 Ill. App. 3d 432, 437 (1st 1998). This is equally applicable to laws that have the effect, like this one, of narrowing the field of candidates who will appear on the ballot. *Nader v. Keith*, 2004 U.S. Dist. LEXIS 16660 (N. D. Ill. 2004), *aff'd* 937 F.2d 415 ("the mere fact that a state's system creates hurdles which tend to limit the field of candidates from which voters can choose by itself does not require that regulations be narrowly tailored to advance a compelling state interest."); see also *Bullock v. Carter*, 405 U.S. 134, 143 (1972) ("The fact that a state's system creates hurdles which tend to limit the field … does not require that regulations be narrowly tailored to advance a compelling state interest.").

The Supreme Court itself has subsequently limited its holding in *Tully*. In 1997, the Court stated that in *Tully* the harm to voters was "the act in question violated the electorate's right to vote, in that it nullified the voters' choice by eliminating, midterm, the right of the elected officials to serve out the balance of their terms." *E. St. Louis Fed'n of Teachers, Local 1220, Am. Fed'n of Teachers, AFL-CIO v. E. St. Louis Sch. Dist. No. 189 Fin. Oversight Panel*, 178 Ill. 2d 399, 414 (1997). In this case, however, no vote has been cast for any candidate nor has anyone been elected—including in the primary because not a single person sought the primary nomination in any of Plaintiffs' districts. The voters effectively abdicated an interest in voting for a Republican candidate when no one sought the nomination in the primary. The true parties at interest here are therefore not the voters, but the local party bosses and potential candidates.

In weighing Illinois ballot access laws, the U.S. Supreme Court has recognized that a "severe" restriction on ballot access must be "narrowly drawn to advance a state interest of compelling importance (*Norman v. Reed,* 502 U.S. 279, 289 (1992)), but "reasonable,

nondiscriminatory restrictions" are generally justified by the state's "important regulatory interests." *Libertarian Party of Illinois v. Rednour,* 108 F.3d 768, 773 (7th Cir.1997).

Turning to the Act, it cannot be said to be a severe restriction on ballot access. It applies equally to vacancies in nomination for seats in the General Election for both the Democratic and Republican parties. Each Plaintiff could have, but chose not to, run in the primary election. In fact, not a single voter in each of Plaintiffs' district filed nomination papers to run in the Republican primary, which is why Plaintiffs are now seeking to be slated to file a vacancy in nomination. None of the Plaintiffs have asserted that they are unable to run as independent or new party candidates, but even if they cannot, they can certainly run as write-in candidates. 10 ILCS 5/17-16.1.

Instead, the Act imposes a reasonable restriction on ballot access. Any candidate seeking to carry an established party's banner in the general election must first prevail in the party's primary election and run the risk that their party's voters may choose someone else. This not only ensures that a party's primary voters, not party bosses, will have the ultimate say in who represents the party in the general election, but it also gives voters dissatisfied with the results of the primary election a real chance to organize an alternative in the form of an independent or third-party candidate. 10 ILCS 5/10-2; 10-3.

Prior to the Act, the vacancy in the nomination process effectively stifled the opportunity for voters to support either independent or third-party candidates. Both independent and new party candidates must file their nomination papers no later than 134 days prior to the general election. 10 ILCS 5/10-6. This year, that date is June 24, 2024. In the ordinary course, if a group of voters is dissatisfied with the winner of their party's primary election, they have more than three months to organize, identify a candidate, and file the necessary nomination papers with the Board in order to qualify for the general election ballot.

If, however, the same group of voters is dissatisfied with the person chosen by the party bosses through the vacancy in nomination process, they have to do the same amount of work in just three weeks. As Plaintiffs recognize, under the vacancy in nomination process, chosen candidates have to file their nomination papers no later than June 3, 2024. Voters dissatisfied with that selection have only three weeks until the June 24, 2024, deadline for independent and new party filings. Not only that, but they have to file *three times* more petition signatures than candidates who run in the primary election or are chosen by party leaders to fill vacancies in nomination: 3,000 for the Senate and 1,500 for the House. 10 ILCS 5/10-3. By eliminating this post-primary selection process, the Act thus has the effect of encouraging, rather than limiting, alternative choices. Giving voters a realistic opportunity to consider independent and third-party candidates can hardly be called unreasonable.

The Act is non-discriminatory – it applies to Democrats and Republicans equally. While there are more Republican vacancies this year, it could be the opposite in the next election cycle. While Plaintiffs may decry the Act as some sort of political dirty trick, that does not make the Act unconstitutional. In upholding an Illinois law that had the effect of disqualifying a candidate, the 7th Circuit Court of appeals noted that "[p]olitics is a rough-and-tumble game, where hurt feelings and thwarted ambitions are a necessary part of robust debate." *Jones v. Markiewicz-Qualkenbush*, 892 F.3d 935, 939 (7th Cir. 2018). The Court went on, through Judge Easterbrook, to say that "[i]t is impossible to imagine the judiciary attempting to decide when a politically retaliatory step goes 'too far' without displacing the people's right to govern their own affairs and making the judiciary just another political tool for one faction to wield against its rivals." *Id*. Finally, the Court concluded "[t]he price of political dirty tricks must be collected at the ballot box rather than the courthouse." *Id*.

This case is assuredly a ballot access case rather than a voter rights case. Plaintiffs seek *exactly* the same thing that the plaintiffs sought in *Corbin, Jackson-Hicks*, and all these other cases: to have their names appear on the ballot. This case impacts the right to vote in *exactly* the same way as the challenged laws did in all of those cases: it narrows the field of candidates appearing on the ballot. In *Corbin*, the Supreme Court concluded: "[t]hough we remain cognizant that ballot access is a substantial right, we believe the best safeguard of that right is fidelity to the Election Code …" *Corbin*, 2021 IL 127052, ¶ 46. This Court should follow the Supreme Court's lead and show the same fidelity to the Election Code.

III. Conclusion.

WHEREFORE, Petitioner, Emanuel "Chris" Welch, prays that this Honorable Court grant his Motion to Dismiss, dismiss the Complaint with prejudice, and provide such other relief as may be just and proper.

Respectfully submitted,
Emanuel "Chris" Welch

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