

FILED

MAY 23 2024

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

38

Joseph B. Rosal Clerk of the
Circuit Court

LESLIE COLLAZO, et al.,)
)
 Plaintiffs,)
)
 v.)
)
 THE ILLINOIS STATE BOARD OF)
 ELECTIONS, et al.,)
)
 Defendants.)

Case No.: 24-CH-32

PRELIMINARY INJUNCTION

This case came before the Court on May 22, 2024 for hearing on Plaintiffs’ Emergency Motion for Temporary Restraining Order and Preliminary Injunction, as it relates to Plaintiffs’ request for a preliminary injunction.¹ Notice was given. The Court, being fully advised, for reasons stated of record, finds that Plaintiffs, who are prospective candidates for seats in the Illinois General Assembly, have met their burden of establishing that they are entitled to preliminary injunctive relief prohibiting Defendant Illinois State Board of Elections and Defendant Kwame Raoul from rejecting Plaintiffs’ nomination petitions for the November 2024 general election based on Public Act 103-0586’s revisions to 10 ILCS 5/8-17. Specifically, the Court finds as follows:

A. Section 5/8-17 of the Election Code addresses ballot vacancies in races for seats in the General Assembly. Until May 3, 2024, 10 ILCS 5/8-17 provided in relevant part as follows:

In the event that a candidate of a party who has been nominated under the provisions of this Article shall die before election (whether death occurs prior to, or on, or after, the date of the primary) or decline the nomination or should the nomination for any other reason become vacant, the legislative or representative committee of such party for such district shall nominate a candidate of such party to fill such vacancy. **However, if there was no**

¹ On May 17, 2024, the Court denied Plaintiffs’ request for a temporary restraining order.

candidate for the nomination of the party in the primary, except as otherwise provided in this Code, no candidate of that party for that office may be listed on the ballot at the general election, unless the legislative or representative committee of the party nominates a candidate to fill the vacancy in nomination within 75 days after the date of the general primary election. Vacancies in nomination occurring under this Article shall be filled by the appropriate legislative or representative committee in accordance with the provisions of Section 7-61 of this Code. In proceedings to fill the vacancy in nomination, the voting strength of the members of the legislative or representative committee shall be as provided in Section 8-6.

(emphasis added). This case arises out of Public Act 103-0586 (effective 5/3/2024) which amended Section 5/8-17. After P.A. 103-0586, Section 5/8-17 now provides in relevant part as follows:

In the event that a candidate of a party who has been nominated under the provisions of this Article shall die before election (whether death occurs prior to, or on, or after, the date of the primary), decline the nomination, or withdraw the candidate's name from the ballot prior to the general election, the legislative or representative committee of such party for such district shall nominate a candidate of such party to fill such vacancy. **However, 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.** In proceedings to fill the vacancy in nomination, the voting strength of the members of the legislative or representative committee shall be as provided in Section 8-6 or as provided in Section 25-6, as applicable.

(emphasis added).

B. For each seat at issue here, there was no candidate for the nomination of the Republican party in the March 2024 primary election. Plaintiffs were in the course of availing themselves of the legislative or representative committee nomination process contained in Section 5/8-17 at the time P.A. 103-0586 amended the statute on May 3, 2024 to delete the language relating to that process for races in which there was no candidate for nomination of a party in the primary.

C. Plaintiffs have shown that they have a clearly ascertainable right in need of protection. The Illinois Supreme Court has recognized that the right to vote is a fundamental constitutional right and “has determined that the right to vote is implicated by legislation that restricts a

candidate's effort to gain access to the ballot.” *Tully v. Edgar*, 171 Ill.2d 297, 306-07 (1996) (citing *Anderson v. Schneider*, 67 Ill.2d 165, 172–73 (1977)).

D. Plaintiffs have shown a fair question on likelihood of success on the merits. Plaintiffs do not contend that the General Assembly cannot amend Section 5/8-17 to remove the slating process for races in which there was no candidate for nomination of the party in the primary. Rather, they assert that the application of the amendment to them during the 2024 election cycle violates their right to vote and to have their names placed on the November ballot. The question before the Court is whether the General Assembly’s exercise of its power to completely eliminate one avenue for ballot access during an election cycle impermissibly burdens the right to vote. As stated in open court, at this stage, applying relevant case law, the Court believes that the challenged amendment as applied to Plaintiffs in the 2024 election cycle places a severe restriction on the fundamental right to vote, and therefore, the proper standard is strict scrutiny. The timing of the amendment, which eliminated one of the methods for ballot access that was available at the beginning of the election cycle after the March primary election had taken place, precludes Plaintiffs from having their names placed on the November ballot under any statutorily available method. Under the strict scrutiny standard, “the court must conclude that the means employed by the legislature to achieve a stated goal were necessary to advance a compelling state interest,” and further, “the statute must be narrowly tailored, that is, the legislature must use the least restrictive means consistent with the attainment of the legislative goal.” *Tully*, 171 Ill.2d at 304–05 (citing *Fumarolo v. Chicago Board of Education*, 142 Ill.2d 54, 73 (1990)). Given the circumstances of this case, Plaintiffs have shown a fair question of likelihood of success on the merits on the issue of whether P.A. 103-0586 as applied to the Plaintiffs in the 2024 election cycle fails a strict scrutiny analysis. The Court further finds that Plaintiffs have shown a fair question of likelihood of success on the merits even if the less stringent *Anderson-Burdick* standard urged by Defendants applies.

Under *Anderson-Burdick*, when a state election law provision imposes only reasonable, nondiscriminatory restrictions on the rights of voters, the State's important interest in regulating elections is generally sufficient to justify the restrictions. However, to withstand *Anderson-Burdick* scrutiny, the statute must not be arbitrary or discriminatory.

E. Plaintiffs have shown that they will suffer irreparable harm if a preliminary injunction does not issue given that the deadline for filing their nomination petitions under the law as it existed prior to P.A. 103-0586 would be June 3, 2024. If Plaintiffs' nomination petitions are rejected based on P.A. 103-0586's revisions to 10 ILCS 5/8-17, they will lose the opportunity to run as party candidates in the 2024 general election. Additionally, the timing of the amendment, which occurred after the March primary election, precludes Plaintiffs from having their names placed on the November ballot under any of the statutorily available routes to ballot access.

F. Plaintiffs have shown that they have no adequate remedy at law.

G. The balance of equities and public interest weigh in favor of a preliminary injunction. The ballots for the November 2024 general election are not certified until August. Allowing Plaintiffs to participate in the election process while awaiting resolution of this case does not present a substantial hardship. In contrast, absent preliminary injunctive relief, Plaintiffs will lose the opportunity to run as party candidates for the seats in question in the November 2024 general election and will be foreclosed from having their names printed on the ballot.

THEREFORE, it is hereby ordered:

1. Plaintiffs' Emergency Motion for Temporary Restraining Order and Preliminary Injunction is ALLOWED, in part.

2. Defendant State Board of Elections and Defendant Kwame Raoul are preliminarily enjoined from rejecting Plaintiffs' nomination petitions for the November 2024 general election

based on P.A. 103-0586's revisions to 10 ILCS 5/8-17. The Emergency Motion is denied in all other respects.

3. This Preliminary Injunction shall remain in full force and effect pending resolution of this case on the merits unless sooner modified or dissolved.

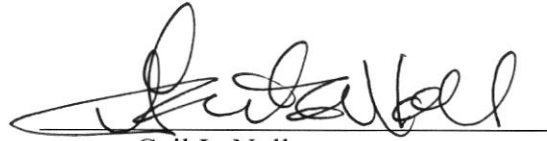
4. Bond is waived for good cause shown.

5. This Preliminary Injunction is entered at 9:00 a.m. on May 23, 2024.

6. The matter is set for final hearing on Plaintiffs' Complaint for Declaratory and Injunctive Relief at 1:30 p.m. on June 3, 2024.

THE CLERK IS DIRECTED TO FORWARD A COPY OF THIS ORDER TO COUNSEL OF RECORD.

Date: May 23, 2024

A handwritten signature in black ink, appearing to read "Gail L. Noll", written over a horizontal line.

Gail L. Noll
Circuit Judge