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

LESLIE COLLAZO, et al.,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	Case No.: 24–CH–32
	)	
THE ILLINOIS STATE BOARD OF ELECTIONS, et al.,	)	
	)	
Defendants.	)	

ORDER

This case came before the Court on June 3, 2024 for hearing on Plaintiffs' Amended Combined Motion for Summary Judgment and Permanent Injunction and Defendant Attorney General Kwame Raoul's Motion for Summary Judgment. Plaintiffs, who are prospective candidates for seats in the Illinois General Assembly, seek a declaratory judgment that Public Act 103-0586's revisions to 10 ILCS 5/8-17, as applied to Plaintiffs for the November 2024 general election, violate their constitutional right to access the ballot as protected by Article II, section 1 of the 1970 Illinois Constitution. Plaintiffs seek a permanent injunction preventing Defendants from enforcing this portion of the Act against Plaintiffs, including using the revisions as a basis for denying Plaintiffs' nomination petitions for the November 2024 general election or otherwise using that provision to prevent Plaintiffs' names from being listed on the November 2024 ballot. Considering the law, the facts, and the arguments of counsel, the Court finds and orders as set forth below.

The material facts are not in dispute. Article 8 of the Election Code governs nominations for election to seats in the Illinois General Assembly. With respect to the 2024 November general election for the seats at issue in the case, potential candidates for the General Assembly from an established political party could begin circulating nominating petitions on September 5, 2023.

These potential candidates were required to file their nominating papers with the State Board of Elections during the filing period, which was from November 27, 2023 to December 4, 2023. The 2024 Illinois primary election was held on March 19, 2024.

At the beginning of the 2024 election cycle, on September 5, 2023, the law of the State of Illinois provided multiple avenues for a candidate to access the ballot for General Assembly races in the November 2024 general election. These same avenues were available on the petition filing deadline, December 4, 2023, and on and after the March 19, 2024 primary. On May 3, 2024, P.A. 103-0586 completely eliminated one of the previously available routes to ballot access; the act removed the post-primary legislative or representative committee nomination process that had been available under Section 5/8-17 for races in which there was no candidate for nomination of a party in the primary.

Section 5/8-17 addresses ballot vacancies in General Assembly races. 10 ILCS 5/8-17. Until May 3, 2024, Section 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 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).

Section 5/8-17's 75-day window to fill vacancies in nominations through the legislative or representative committee nomination process ("slating process") began on the day of the primary election, March 19, 2024, and was to end on June 3, 2024. However, when P.A. 103-0586 became effective on May 3, 2024, the slating process was eliminated in General Assembly races where there was no candidate for the party's nomination in the primary.[1] The law as amended expressly states that when "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."

Under Section 5/8-17 as it existed prior to May 3, 2024, when an established party had a ballot vacancy following the primary election because no one ran in the primary, the legislative or representative committee of the party could nominate a candidate to fill the vacancy. The nominee would then need to gather a sufficient number of signatures under 10 ILCS 5/7-61, which was set at the same number of signatures that an established party candidate would have been required to

[1] The provisions of Section 5/8-17 that allow for slating when a nominated candidate dies before election, declines the nomination, or withdraws his or her name from the ballot remain intact.

file during the original filing period, from November 27, 2023 to December 4, 2023.[2] The circulation period for petitions under the now deleted slating process began on the day the appropriate committee nominated the individual. The nominee was then required to file proper nominating paperwork with the State Board of Elections within 75 days of the primary, i.e. by June 3, 2024.

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 slating 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. Plaintiffs filed this lawsuit on May 10, 2024, seeking declaratory and injunctive relief. Plaintiffs contend that the revisions to 10 ILCS 5/8-17 are unconstitutional as applied to them in the November 2024 general election. On May 23, 2024, this Court entered a preliminary injunction under which Defendant State Board of Elections and Defendant Kwame Raoul were 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. Counsel for the Board represented that the Board accepted for filing all nominating petitions that were tendered to it from potential candidates, Plaintiffs and other individuals, seeking to proceed under the now deleted slating process in General Assembly races. Counsel for the Board also confirmed that subsequent to the March 2024 primary election at least one individual filed nominating petitions for a General Assembly seat with the State Board of Elections under Section 5/8-17 prior to the slating process being removed from the statute on May 3, 2024.

[2] The number of signatures required for an established party candidate for the General Assembly is less than that required for an independent or third-party candidate.

ANALYSIS

Plaintiffs and Defendant Raoul filed cross-motions for summary judgment. Intervening Defendant Welch filed a response opposing Plaintiffs' motion for summary judgment. Summary judgment is appropriate when "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). As a threshold matter, the Court finds that this case is justiciable. While the Defendant Board of Elections has declined to take a position, the matter presents an actual controversy between adverse parties given the Defendant Attorney General's interest in upholding P.A. 103-0586 as passed by the General Assembly. Plaintiffs have a strong interest in the resolution of their constitutional claim to determine whether they may continue to avail themselves of the now deleted slating process. The issues are legal ones, fit for judicial determination, and given the urgent timeline associated with certifying and printing the ballots for the November 2024 general election, both sides would experience hardship if judicial consideration was withheld.

Plaintiffs raise an as-applied constitutional challenge to P.A. 103-0586's revisions to Section 5/8-17. Plaintiffs do not contend that the General Assembly cannot amend Section 5/8-17 to remove the slating process in the future. Rather, they assert that the application of the amendment to them in the middle of the 2024 election cycle violates their right to vote and to have their names placed on the November 2024 ballot. The law as amended is clear. Effective May 3, 2024, when "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. 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 Plaintiffs' right to vote and, if so, whether injunctive relief is appropriate.

In 1974, the United States Supreme Court recognized that, "as a practical matter, there must be a substantial regulation of elections if they are to be fair and honest and if some sort of order, rather than chaos, is to accompany the democratic processes." *Storer v. Brown*, 415 U.S. 724, 730 (1974). The legislature enjoys great freedom in enacting legislation, but that power is subject to constitutional limitation. Legislation challenged in court enjoys a presumption of constitutionality. 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. *See Burdick v. Takushi*, 504 U.S. 428 (1992); *Anderson v. Celebrezze*, 460 U.S. 780 (1983).

However, if an electoral regulation imposes a severe restriction on the right to vote, strict scrutiny applies. The Illinois Supreme Court has held that when "challenged legislation implicates a fundamental constitutional right, . . . such as the right to vote, the presumption of constitutionality is lessened and a far more demanding scrutiny is required." *Tully v. Edgar*, 171 Ill.2d 297, 304 (1996) (*citing Potts v. Illinois Department of Registration & Education*, 128 Ill.2d 322, 329 (1989)). In cases that implicate fundamental constitutional rights, the court examines the challenged statute under a strict scrutiny standard. *Id.* Plaintiffs assert that the strict scrutiny standard applies here. Defendant Raoul and Intervening Defendant Welch argue that the less stringent *Anderson-Burdick* standard applies.

"No right is more precious in a free country than that of having a voice in the election of those who make the laws under which, as good citizens, we must live. Other rights, even the most basic, are illusory if the right to vote is undermined." *Wesberry v. Sanders*, 376 U.S. 1, 17 (1964). The Illinois Supreme Court "has determined that the right to vote is implicated by legislation that restricts a candidate's effort to gain access to the ballot." *Tully*, 171 Ill.2d at 306-07 (*citing Anderson v. Schneider*, 67 Ill.2d 165, 172–73 (1977)). However, the law does not require that

every legislation that places a restriction on ballot access be subject to strict scrutiny. The Court is faced with a unique set of circumstances where a provision of the Election Code establishing a route for ballot access was eliminated during the election cycle. While there is no case law directly on point, the Court finds the instant case to be more similar to *Tully* and *Graves v. Cook Cnty. Republican Party,* 2020 IL App (1st) 181516, than it is to the cases upon which Defendants rely.

Both *Tully* and *Graves* involved timing issues and considered when changes to laws involving elections could be made without impermissibly burdening the right to vote. In *Tully*, the Illinois Supreme Court examined the constitutionality of an act which changed the Board of Trustees of the University of Illinois from an elective to an appointive office. The act in question was to take effect post-election, in the middle of the terms of the duly-elected board members, removing them from office prior to the expiration of their current terms. In *Graves*, the First District Appellate Court examined whether a change relating to candidate eligibility for committeemen in the bylaws of the Cook County Republican Party which was enacted after early voting started in the 2016 March primary election but prior to election day violated the fundamental right to vote. The plaintiff in *Graves* did not dispute whether the Cook County Republican Party could enact such provision, but asserted that the bylaw enacted and applied during the primary election was a violation of the right to vote. Both the *Tully* court and the *Graves* court applied a strict scrutiny analysis.

The challenged amendment as applied to Plaintiffs in the 2024 election cycle places a severe restriction on the fundamental right to vote. 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 2024 ballot under any statutorily available method.[3] A strict scrutiny analysis is appropriate.

Under the strict scrutiny analysis, the Court "must consider three questions: (1) Does the Act advance a compelling state interest? (2) Is the provision . . . necessary to achieve the legislation's asserted goal? and (3) Are the provisions in the legislation the least restrictive means available to attain the legislation's goal?" *Tully*, 171 Ill. 2d at 311. No relevant legislative history associated with P.A. 103-0586 has been identified. Defendant Raoul submits that the important government interest at issue is the need 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.

Assuming the proffered reason satisfies the first prong, P.A. 103-0586's revisions to Section 5/8-17 do not meet the strict scrutiny standard because they fail to satisfy the second and third prongs. As was the case in *Tully* and *Graves*, in the present case the legislation's goal could be achieved by other less restrictive means that would not impinge upon the fundamental right to vote. The General Assembly could make the revisions effective for the next election, rather than in the midst of the current election. Everyone would then be on notice that, in General Assembly races, when there was no candidate for the nomination of the party in the primary, no candidate of that party for that office can be listed on the ballot at the general election. While the election cycle for seats in the General Assembly is long, spanning 14 months, that does not mean that the legislature has only a small window to act, given that the General Assembly can designate an effective date in the future when it enacts legislation. Changing the rules relating to ballot access in the midst of an election cycle removes certainty from the election process and is not necessary to achieve the legislation's proffered goal. As applied to Plaintiffs, P.A. 103-0586's revisions to

[3] "A person . . . who voted the ballot of an established political party at a general primary election may not file a statement of candidacy as a candidate of a different established political party, a new political party, or as an independent candidate for a partisan office to be filled at the general election immediately following the general primary for which the person filed the statement or voted the ballot." 10 ILCS 5/7-43.

Section 5/8-17 do not satisfy the strict scrutiny standard and therefore the act impermissibly violates Plaintiffs' right to vote as guaranteed under the Illinois Constitution. Declaratory judgment is appropriate.

Plaintiffs are entitled to declaratory judgment 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 be reasonable and not arbitrary or discriminatory. P.A. 103-0586's revisions to Section 5/8-17 are not retroactive. The act was effective immediately, which means that the slating process was eliminated in the midst of the 75-day post-primary window previously available to fill vacancies. At least one potential candidate filed nominating petitions for a General Assembly seat with the State Board of Elections under Section 5/8-17 prior to the slating process being removed from the statute on May 3, 2024. The act arbitrarily treats potential candidates seeking to use the now deleted slating process within the 75-day post-primary window differently and does not apply the same rules to all potential candidates.

The Court turns to Plaintiffs request for a permanent injunction. Plaintiffs seek a permanent injunction preventing Defendants from enforcing P.A. 103-0586's revisions to Section 5/8-17 against Plaintiffs, including using the revisions as a basis for denying Plaintiffs' nomination petitions for the November 2024 general election or otherwise using that provision to prevent Plaintiffs' names from being listed on the November 2024 ballot. A party seeking an injunction must demonstrate (1) a clear and ascertainable right in need of protection, (2) that he or she will suffer irreparable harm if the injunction is not granted, and (3) that no adequate remedy at law exists. *Swigert v. Gillespie*, 2012 IL App (4th) 120043, ¶ 27.

The record does not support a finding that a permanent injunction against Defendant Raoul is appropriate. Summary judgment in favor of Defendant Raoul is granted on this issue. The Attorney General is not authorized to deny nominating petitions or to certify a candidate's name for the ballot. The Court adopts Counsel for Defendant Raoul's arguments on this point. The request for permanent injunctive relief enjoining Defendant Raoul is denied and the preliminary injunction entered against him on May 23, 2024 is dissolved.

The Court finds that permanent injunctive relief against the Defendant State Board of Elections and the Defendant Board members is appropriate. The Board is responsible for determining whether a candidate has met the qualifications for appearing on the ballot and for certifying the names of eligible candidates for local county clerks to place on the ballots. Plaintiffs have a clearly ascertainable right to be free from unconstitutional restriction on their right to vote which under the circumstances of this case includes their right to ballot access under the law as it existed prior to May 3, 2024. Under 10 ILCS 5/10-8, "[e]xcept as otherwise provided in this Code, certificates of nomination and nomination papers . . . being filed as required by this Code, and being in apparent conformity with the provisions of this Act, shall be deemed to be valid unless objection thereto is duly made . . . ." The Election Code as amended now provides in Section 5/8-17, 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. If Plaintiffs' nomination petitions are rejected based on P.A. 103-0586's revisions to 10 ILCS 5/8-17, they will suffer irreparable harm in that 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. Under these circumstances, no adequate remedy at law exists.

Furthermore, the balance of hardships weighs in favor of injunctive relief. A permanent injunction does not prevent the General Assembly from amending its own laws, rather it prevents the application of such an amendment in the middle of an election cycle. Absent injunctive relief, Plaintiffs are deprived of an avenue of ballot access that existed prior to May 3, 2024, and under the facts of this case, they face an absolute barrier preventing them from having their names placed on the November 2024 ballot.

The Court is not persuaded by the argument that Plaintiffs are seeking a mandatory injunction or that Plaintiffs have failed to name necessary parties, specifically the local election boards or the State Board sitting as the State Officers Electoral Board. Counsel for the Board requested that if injunctive relief was ordered that there be clarification as to its scope. "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. Vill. of Hinsdale*, 229 Ill. 2d 296, 306 (2008). This Court's permanent injunction is limited to the named Plaintiffs and extends only to the Defendant State Board of Elections and the Defendant Board members.

THEREFORE, for the reasons set forth above, it is hereby ordered:

1. Plaintiffs' Motion for Summary Judgment is ALLOWED, in part.

2. Defendant Raoul's Motion for Summary Judgment is ALLOWED, in part.

3. Declaratory and injunctive relief is entered as follows: The revisions to 10 ILCS 5/8-17 contained in P.A. 103-0586 are unconstitutional as applied to Plaintiffs in the November 2024 general election because the application of the amendment to Plaintiffs during the 2024 election cycle impermissibly burdens their right to vote and to have their names placed on the November ballot. 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. 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, which it does not meet.

The law, which became effective on May 3, 2024, as applied to Plaintiffs in the on-going 2024 election cannot reasonably be construed in a manner that would preserve its validity. The Court is cognizant that it must avoid unnecessary declarations that a statute is unconstitutional; however, here the Plaintiffs bring a constitutional challenge to the application of the revisions to Section 5/8-17 in the midst of the 2024 election cycle. The finding of unconstitutionality is necessary to the Court's decision, and there is no alternative grounds upon which the decision can rest. Attorney General Raoul is a named defendant in this matter; therefore, separate notice under Illinois Supreme Court Rule 19 is not required.

With respect to injunctive relief, based on the Court's declaratory judgment regarding P.A. 103-0586's revisions to 10 ILCS 5/8-17, Defendant State Board of Elections and Defendant Board members are hereby enjoined from applying the provisions of Illinois Public Act No. 103-0586 which revise 10 ILCS 5/8-17 to eliminate the slating process for General Assembly elections as a basis for denying Plaintiffs' nomination petitions for the November 2024 general election and from otherwise using the revisions to prevent Plaintiffs from being listed as candidates on the November 2024 general election ballot. All other requests for relief are denied.

5. This is a final order. There is no just reason for delaying enforcement or appeal of this order, or both. THE CLERK IS DIRECTED TO FORWARD A COPY OF THIS ORDER TO COUNSEL OF RECORD.

Date: 6-5-2024

Gail L. Noll
Circuit Judge