

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

**LIBERTARIAN PARTY OF ILLINOIS,)
LUPE DIAZ, JULIA A. FOX and JOHN)
KRAMER,)**

Plaintiffs,)

v.)

**ILLINOIS STATE BOARD OF ELECTIONS)
and WILLIAM M. McGUFFAGE, JESSE R.)
SMART, HAROLD D. BYERS, BETTY J.)
COFFRIN, ERNEST L. GOWEN, JUDITH)
C. RICE, BRYAN A. SCHNEIDER and)
CHARLES W. SCHOLZ in their Official)
Capacities as Members of the Illinois State)
Board of Elections,)**

Defendants.)

Case Number:

Judge:

Magistrate Judge:

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Introduction

1. The plaintiffs are a minor political party (the Libertarian Party of Illinois, hereinafter “LP-Illinois”); its chairman (Lupe Diaz); its prospective candidate for Kane County Auditor in the general election to be held on November 6, 2012 (Julia A. Fox); and one of Fox’s supporters who wants to circulate Fox’s petitions for nomination and vote for her (John Kramer). Defendant Illinois State Board of Elections (hereinafter “Board”) is sued via its members and is the agency which has general supervision over the administration of the registration and election laws throughout the State of Illinois. The individual defendants are the members of the Board and are sued in their official capacities only.

2. The plaintiffs want to form a new political party within Kane County by means of plaintiff Fox's candidacy. They seek declaratory and injunctive relief from the requirement of 10 ILCS 5/10-2 ¶¶ 4 and 7 that a candidate for an at-large county office, such as plaintiff Fox, be part of a full slate of candidates for county offices (the "full-slate requirement"); from ambiguities in 10 ILCS 5/10-2 relating to the number of petition signatures that must be obtained (the "signature requirement"); and from the June 25, 2012 deadline imposed by 10 ILCS 5/10-6 ¶ 1 for filing nomination petitions (the "filing deadline").

3. Plaintiffs additionally seek such prospective declaratory and injunctive relief as may be necessary and proper to ensure that the instant plaintiffs and similarly situated parties are not burdened in future elections by the laws and practices complained of herein.

Jurisdiction and Venue

4. Federal jurisdiction is claimed under 28 U.S.C. §§ 1331 and 1343 and 42 U.S.C. § 1983.

5. Venue lies in this district under 28 U.S.C. § 1391(b).

Parties

6. Plaintiff LP-Illinois is an affiliation of voters formed for the purpose of influencing public policy by a variety of means, which include running candidates for public office and disseminating the party's views on policy issues through its candidates' campaigns. The party was founded in or about 1972 and is the Illinois affiliate of the national Libertarian Party. It is not an "established political party" within the meaning of 10 ILCS 5/10-2 but is seeking to form an established political party in Kane County by means of plaintiff Fox's candidacy for Kane County Auditor.

7. Plaintiff Lupe Diaz resides in McLean County and is the chairman of the LP-Illinois.

8. Plaintiff Julia A. Fox resides in Kane County and is a candidate of the LP-Illinois for Kane County Auditor in the general election to be held on November 6, 2012. Fox meets all of the qualifications prescribed by law for the office she seeks.

9. Plaintiff John Kramer resides in Kane County, is a supporter of plaintiff Fox, and wants to circulate Fox's petitions for nomination and vote for her.

10. Defendant Board is comprised of the individual defendants, who are the members thereof. The Board maintains a permanent branch office in Chicago, 10 ILCS 5/1A-11, and has general supervision over the administration of the registration and election laws throughout the State of Illinois, 10 ILCS 5/1A-1.

Facts

11. By means of plaintiff Fox's candidacy for Kane County Auditor, plaintiffs want to cause the LP-Illinois to become an established political party in Kane County within the meaning of paragraph 3 of 10 ILCS 5/10-2, which provides:

[a] political party which, at the last election in any congressional district, legislative district, county, township, municipality or other political subdivision or district in the State, polled more than 5% of the entire vote cast within such territorial area or political subdivision, as the case may be, has voted as a unit for the election of officers to serve the respective territorial area of such district or political subdivision [sic], is hereby declared to be an "established political party" within the meaning of this Article as to such district or political subdivision.

12. Paragraphs 4 and 7 of 10 ILCS 5/10-2 require that a petition to form such a new political party within a county must contain a full slate of candidates of the party for all offices to be filled in the county at the next election. Paragraph 4 of 10 ILCS 5/10-2 provides in relevant

part as follows:

* * * Any such petition for the formation of a new political party throughout the State, or in any such district or political subdivision, as the case may be . . . shall at the time of filing contain a complete list of candidates of such party for all offices to be filled in the State, or in such district or political subdivision as the case may be, at the next ensuing election then to be held . . . * * *

Paragraph 7 of 10 ILCS 5/10-2 provides in relevant part as follows:

In the case of a petition to form a new political party within a political subdivision [such as Kane County] in which officers are to be elected from districts and at large, such petition shall consist of separate components for each district from which an officer is to be elected. * * * Each sheet of such petition must contain a complete list of the names of the candidates of the party for all offices to be filled in the political subdivision at large, but the sheets comprising each component shall also contain the names of those candidates to be elected from the particular district. * * *

13. Plaintiffs assert that the full-slate requirement is unconstitutionally burdensome and that they should be permitted to cause the LP-Illinois to become an established political party within Kane County by means of a petition naming plaintiff Fox alone.

14. Plaintiffs further assert that the statutes governing the signature requirement for plaintiff Fox's nomination petition are unconstitutionally vague because they do not specify whether the requirement is based on the votes cast at the preceding election for all offices in Kane County, or for Kane County Auditor only, or on some other vote total. Paragraph 4 of 10 ILCS 5/10-2 provides in relevant part as follows:

* * * If such new political party shall be formed for any district or political subdivision less than the entire State, such petition shall be signed by qualified voters equaling in number not less than 5% of the number of voters who voted at the next preceding regular election in such district or political subdivision in which such district or political subdivision voted as a unit for the election of officers to serve its respective territorial area. However, whenever the minimum signature requirement for a district or political subdivision new political party petition shall exceed the minimum number of signatures for State-wide new political party petitions at the next preceding State-wide general election, such State-wide petition signature requirement shall be the minimum for

such district or political subdivision new political party petition.

15. The full-slate requirement does not apply to nomination petitions for candidates of established political parties or to nomination petitions for independent candidates.

16. Plaintiffs further assert that the filing deadline for nomination papers of candidates running for at-large county offices, such as plaintiff Fox, is unconstitutionally early. Paragraph 1 of 10 ILCS 5/10-6 requires that such nomination papers “. . . be filed with the county clerk of the respective counties not more than 141 but at least 134 days previous to the day of [the] election,” i.e., by June 25, 2012.

17. In sum, plaintiffs assert that Illinois election laws are unconstitutional insofar as they require plaintiffs, in order to form a new political party, to obtain an unknown number of signatures, on a petition containing a slate of candidates for offices plaintiffs do not seek, by a deadline that is too early to serve any legitimate state interest.

18. Plaintiffs therefore seek declaratory and injunctive relief from the Illinois ballot access requirements at issue, which plaintiffs assert unduly burden their rights to speak and associate for the advancement of political ideas, to have equal protection and due process of law, and to cast their votes effectively. They further assert that Illinois has no legitimate state interests which make it necessary to burden their rights or the rights of similarly situated persons and parties in the manner described.

Claims

19. Paragraphs 1-18 are incorporated by reference as if set forth fully herein.

20. Plaintiffs state a claim under 42 U.S.C. § 1983 and the First and Fourteenth Amendments to the Constitution of the United States in that the laws and practices about which

plaintiffs complain impair their rights to have equal protection and due process of law, to cast their votes effectively, and to associate politically, including their “constitutional right . . . to create and develop [a] new political part[y],” *Norman v. Reed*, 502 U.S. 279, 288 (1992), and such impairment of plaintiffs’ rights cannot be justified by a sufficient state interest.

21. Plaintiffs state a claim under 42 U.S.C. § 1983 in that the laws and practices about which plaintiffs complain, as applied, impair plaintiffs’ rights to have equal protection and due process of law, to cast their votes effectively, and to associate politically, including their “constitutional right . . . to create and develop [a] new political part[y],” *Norman v. Reed*, 502 U.S. 279, 288 (1992), and such impairment of plaintiffs’ rights cannot be justified by a sufficient state interest.

22. Plaintiffs state a claim for attorney fees and costs under 42 U.S.C. § 1988.

Additional Averments

23. In applying the restrictions about which plaintiffs complain to the plaintiffs and similarly situated persons and parties, the Board is acting under color of state law, within the meaning of 42 U.S.C. § 1983, to deprive plaintiffs and similarly situated persons and parties of equal protection and due process of law and of speech, voting and associational rights secured by the First and Fourteen Amendments to the Constitution of the United States. The Board is therefore liable to plaintiffs pursuant to 42 U.S.C. § 1983.

24. Plaintiffs have no adequate remedy at law and will suffer irreparable injury unless injunctive relief is granted.

Relief Requested

25. WHEREFORE, plaintiffs request the following relief:

- a. a declaration that the laws and practices about which plaintiffs complain are unconstitutional;
- b. a declaration that the laws and practices about which plaintiffs complain are unconstitutional as applied;
- c. preliminary and permanent injunctions prohibiting the Board from enforcing the laws and engaging in the practices about which plaintiffs complain;
- d. reasonable attorney fees and costs pursuant to 42 U.S.C. § 1983;
- e. such other and further relief as may be just and proper.

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