

STATE OF INDIANA)
)SS:
 COUNTY OF MONROE)
 JOSEPH B. DAVIS,)
 PLAINTIFF,)
)
 VS.)
)
 DIEGO MORALES, THE INDIANA)
 ELECTION DIVISION, AND THE)
 MONROE COUNTY VOTER)
 REGISTRATION OFFICE,)
 DEFENDANTS.)

IN THE MONROE CIRCUIT COURT VIII
 CASE NO. 53C08-2308-MI-1910

**ORDER GRANTING JUDGMENT ON THE PLEADINGS PER TRIAL RULE 12(C)
 IN FAVOR OF DEFENDANTS**

Come now Defendants Diego Morales, as Indiana Secretary of State, and the Indiana Election Division, by counsel, and file a Motion to Dismiss. The Court, being duly advised, hereby finds and orders:

1. Court denies Plaintiff's Trial Rule 12(B)(6) Motion to Dismiss as Plaintiff does state a claim upon which relief could potentially be granted – that he was deprived of ballot access in contravention of his state and federal constitutional rights.
2. Court finds that a ruling on the Purcell Doctrine-based Motion to Dismiss need not be reached for reasons stated below. Purcell does not deprive a trial court of subject matter jurisdiction over election disputes that arise on the eve of elections, but rather cautions trial courts issuing and appellate courts reviewing injunctive relief that alters the rules for elections in the days and weeks leading up to an election when confusion would result. Since this is a ballot access case and not a voter rights case, more information was needed from Defendant, perhaps in the form of summary judgment motions with supporting affidavits, from which the Court could consider the degree of confusion in relation to the purported deprivation to Plaintiff.
3. Court interprets the remainder of the Motion to Dismiss as a Motion to Dismiss and/or render Judgment on the Pleadings per Trial Rule 12(C). Court has considered not only Plaintiff's Complaint, but also Defendants' pleadings in reaching its decision herein.
4. Court has not considered any information outside of the pleadings which would trigger conversion to a Summary Judgment Motion and an opportunity for Plaintiff to respond and supplement the Complaint.
5. Plaintiff concedes that Defendant Monroe County Voter Registration complied with relevant Indiana Code in:
 - a. Calculating the number of registered voter signatures he needed to obtain;
 - b. Verifying the registered voters who signed/petitioned for his being added to the Mayoral Ballot as an Independent candidate; and
 - c. Determining that the number of registered voters who timely signed/petitioned in support of his candidacy and in processing his Petition of Nomination fell short of the 352 Plaintiff needed.

6. Plaintiff argues that Indiana Code 3-7-33-5 is unduly burdensome and unconstitutional in that it operated to deprive him of ballot access rights afforded to him and protected by the Indiana Constitution and the United States Constitution.
7. Indiana Code 3-7-33-5 provides in pertinent part:
 - (b)...“As required under 52 U.S.C. 20507(a)(2), the county voter registration office shall send a notice to each person from whom the county voter registration office receives a voter registration application. The county voter registration office shall send a notice to the applicant at the mailing address provided in the application...”
 - (c)... “If the county voter registration office determines that the applicant appears to be eligible, the notice must state the following:
 - (A)...An applicant is presumed to have received the notice unless the notice is returned...not later than seven (7) days after the notice is mailed to the applicant...
 - (g)... “During the seven (7) days following the mailing of the notice to the voter under this section, the county voter registration office shall indicate in the computerized list...that the application is pending. If the notice:
 - (1) is not returned by the United States Postal Service and received by the county voter registration office at: or
 - (2) is received by the applicant by United States Postal Service delivery and presented in person by the applicant to the county voter registration office before;the expiration of the seven (7) day period under subsection (c), the county voter registration office shall indicate in the computerized list that the applicant is a registered voter at the address set forth by the applicant as the applicant’s current address.
8. Other applicable sections of Indiana Code, which Plaintiff does not challenge, establish a formula for determining the number of signatures prospective candidates must obtain and the deadlines by which they must be submitted, which, in Plaintiff’s case, established a deadline of June 30, 2023, which Plaintiff does not dispute.
9. Plaintiff appears to allege that on June 30, 2023, he submitted his final signatures/petitions in support of his candidacy and his request to be placed on the mayoral ballot; he concedes that many of the signatures/petitioners in his favor were not theretofore registered Monroe County voters but that he (and/or the registration applicants) had on that same day supplemented the signatures with registration applications; and that but for the verification process including the 7-day period encompassed in Indiana Code 3-7-33-5, he would have qualified for placement on the Mayoral Ballot for the City of Bloomington, Indiana.
10. To the extent Plaintiff alleges that the 7-day period is per se unduly burdensome and unconstitutional, that argument fails. The state has a legitimate interest in protecting the integrity of elections, which includes verifying voter registration applications, the statute is not discriminatory, and it is rationally related to the State’s interest in protecting the integrity of elections. Moreover, Plaintiff was not deprived of the right to vote via this process, so he lacks standing to make a constitutional claim other than insofar as his rights were deprived.
11. Plaintiff appears to argue not that IC 3-7-33-5 is per se unconstitutional on its face, but rather that it is unconstitutional in its specific application to bar a candidate for office who turns in signatures and registration applications of theretofore unregistered voters in support of the candidate’s candidacy after June 23 and prior to June 30 and who is determined to have fallen short of the required signatures and who would have not fallen short but for the verification

procedure. Plaintiff appears to argue that the 7-day waiting period is unduly burdensome to such a candidate and not necessarily to a voter registration applicant.

12. While Plaintiff alleges “The work of Election Central would not have been impeded or undermined by allowing all of Plaintiff’s signatures to be counted”, he does not allege that the decision was discriminatory, in contravention of applicable law, or not rationally related to a legitimate state interest.
13. Indiana Code 3-8-6-8 states, “For a petition of nomination to be considered valid by the officer required to receive the petition, the county voter registration office in the county where the petitioner is registered must certify that each petitioner is a voter at the residence address listed in the petition at the time the petition is being processed.”
14. Plaintiff does not allege that Defendant Monroe County Voter Registration was statutorily bound to wait seven days after June 30, 2023, to begin processing his Petition for Nomination; he does not allege that Defendant Monroe County Voter Registration had a duty to treat a “pending” registrant as verified; he does not allege that 352 or more of the signed petitioners in support of his candidacy were registered voters on the date his Petition of Nomination was processed; and he does not allege that Indiana Code 3-8-6-8 is unconstitutional generally or specifically in its application to him.
15. Plaintiff does not allege that he was misinformed or induced to believe by Defendants or by materials promulgated by Defendants that turning in signatures of unregistered voters coupled with voter registration applications between the dates of June 23 and June 30 would result in his qualifying for placement on the City of Bloomington Mayoral Ballot as an Independent candidate for the November, 2023 General Election. Rather, it appears to be simply his own oversight in failing to understand the voter registration and verification process in relation to the Petition of Nomination process that is to blame for his purportedly narrowly missing the timeframe within which to submit a successfully supported Petition of Nomination.
16. Plaintiff’s blanket reference to the 7-day period being “unduly burdensome” is not supported by any other facts or allegations.
17. Other than a reference regarding access to a Voter Access Network, he makes no attempt to explain how the requirement was actually unduly burdensome. Plaintiff cites no statute requiring that he be informed of a Voter Access Network. Plaintiff does not state that his access to a Voter Access Network was limited, restrained, denied, or otherwise affected whatsoever by Defendants. He seems to assert that Defendants and/or the State of Indiana has an affirmative obligation to notify all persons who express interest in or take actions toward filing a Petition of Nomination of the existence of and/or facilitate the access to a Voter Access Network. For the reasons stated in Defendants’ Motion to Dismiss, the Court finds that Plaintiff failed to establish that Defendants’ failure to notify him of a Voter Access Network did not violate his equal protection rights or any other constitutional rights violations alleged in the Complaint.
18. For the reasons stated in Defendants’ Motion to Dismiss and stated herein, the Court finds that IC 3-7-33-5 is not per se unconstitutional, that Plaintiff lacks standing to challenge its impact upon voters and only has standing to challenge its impact upon candidates for office, that it is not unduly burdensome to Plaintiff, that it does rationally relate to and advance the State’s legitimate interest in maintaining the integrity of elections, and that its specific application to Plaintiff and/or those similarly situated who rely upon the June 23-June 30 submission of signatures from theretofore unregistered voters combined with a voter registration application does not violate the rights of Plaintiff and/or similarly situated prospective candidates who file Petitions of Nomination that are ultimately unsuccessful, even if they would have been successful but for the statutory verification process period.

19. The Court is not without sympathy for Plaintiff's predicament and certainly sees how such a result could be remedied by imposing a statutory obligation for voter registration offices to not begin and/or complete signature verification processes of Petitions of Nomination prior to July 7 and/or by providing that signatures provided by June 30 by theretofore unregistered voters who also submit registration applications shall relate back to the submission date once they are verified by the 7-day verification procedure or otherwise; however, in light of the Purcell Doctrine, in light of the fact that Plaintiff has not established that the challenged statute was unduly burdensome, in light of the fact that Plaintiff's constitutional rights were not violated by operation of the challenged statute, in light of the fact that Plaintiff failed to establish any other cognizable constitutional violations of his rights by Defendants and/or by applicable Indiana Code, and in light of this Court's judiciary role, it is not within the purview of this Court to create new laws that change how elections are conducted; that is a function for the Indiana General Assembly with ample notice to all Indiana residents.
20. Even if the burden to Plaintiff were greater than his Petition established, Defendants still prevail for the reasons stated in Defendants' Motion to Dismiss.
21. Plaintiff has failed to show a likelihood of prevailing on the merits.
22. Defendants have timely raised Purcell Doctrine and laches claims that, given additional time for discovery and summary judgment disposition, likely would supply additional bases for this Court to deny Plaintiff the relief requested.
23. For the foregoing reasons, Plaintiff's Complaint and the injunctive relief sought therein hereby is denied.

SO ORDERED, ADJUDGED, AND DECREED this 5th Day of October, 2023.



Luke Rudisill, Special Judge
Monroe Circuit Court VIII

Distribution:

File/RJO

Petitioner

Molly Turner-King, Attorney for Defendant Monroe County Voter Registration Office
Trent Bennett and Kari Morrigan, Attorneys for Defendants Diego Morales/Indiana Secretary of
State and Indiana Election Division