

STATE OF INDIANA	)	IN THE MARION SUPERIOR COURT 6
	) SS:	
COUNTY OF MARION	)	CAUSE NO. 49D06-2402-PL-008892
JOHN RUST,	)	
	)	
Petitioner,	)	
	)	
v.	)	
	)	
INDIANA ELECTION COMMISSION,	)	
MICHAEL NEAL, LARRY SHICKLES,	)	
CAMERON WILLIAMS, DANNY	)	
SHIELDS, DAMIEN STAFFORD, and	)	
KYLE BABCOCK,	)	
	)	
Respondents.	)	

ORDER

In response to Respondent Indiana Election Commission’s (“IEC”) February 27, 2024 decision to remove Petitioner John Rust (“Petitioner”) from the Republican primary ballot for United States Senate, Petitioner filed a Verified Petition for Judicial Review and Complaint for Declaratory and Injunctive Relief on February 28, 2024. In addition to the IEC, Petitioner named the six (6) Challengers to Rust’s candidacy: Michael E. Neal, Larry D. Shickles, Cameron Williams, Danny Shields, Damien Stafford and Kyle Babcock (collectively the “Challengers”). On March 4, 2024, Petitioner also filed a Motion for Preliminary Injunction against the same Respondents seeking to enjoin the IEC from complying with Ind. Code §3-8-2-7(a)(4), commonly called the “Affiliation Statute.”

Challengers and the IEC filed separate responses. On March 12, 2024, the Court heard argument on both the petition for judicial review and request for an injunctive relief.¹

¹ This Court notes that the IEC objected to proceeding with a Judicial Review as a certified transcript of the agency record had not yet been filed with this Court. However, subsequent to the hearing, on March 13, 2024, parties filed a Joint Motion for Stipulation Accepting Agency Record. Under the circumstances, the stipulation is appropriate and appreciated.

For the reasons set forth below, Rust's motion for preliminary injunction and relief from the actions of the IEC are **DENIED**.

PERTINENT FACTUAL AND PROCEDURAL HISTORY OF THIS CASE

Would-be candidates for a major party's primary must file a declaration of candidacy. Ind. Code § 3-8-2-7. For the May 2024 primary, Rust was required to file his declaration of candidacy between January 10 and February 9, 2024. Ind. Code § 3-8-2-4. On February 5, 2024, Rust timely filed his declaration of candidacy.

On his declaration of candidacy for the primary, Rust was required to establish party affiliation by either: (1) verifying his primary voting history or (2) receiving a certification from the political party's county chairperson. The Affiliation Statute, as it is commonly referenced, states:

(4) ...[A] candidate is considered to be affiliated with a political party only if any of the following applies:

(A) The two (2) most recent primary elections in Indiana in which the candidate voted were primary elections held by the party with which the candidate claims affiliation. If the candidate cast a nonpartisan ballot at an election held at the most recent primary election in which the candidate voted, a certification by the county chairman under clause (B) is required.

(B) The county chairman of:

- (i) the political party with which the candidate claims affiliation; and
- (ii) the county in which the candidate resides;

certifies that the candidate is a member of the political party.

Ind. Code § 3-8-2-7(a)(4). The declaration of candidacy informs candidates how party affiliation is determined under this subdivision and permits candidates to indicate on the declaration of candidacy which of clauses A or B applies to the candidate. If a candidate claims party affiliation under clause B, the candidate must attach to the candidate's declaration of candidacy the written

certification of the county chairman required by clause B. Ind. Code § 3-8-2-7(a)(4).

By failing to mark either box, Rust did not establish affiliation with the Republican Party on his declaration of candidacy. Rust certified to the declaration of candidacy's truth and completeness.

On September 18, 2023, Rust filed a lawsuit against the Indiana Secretary of State, the IEC, and Jackson County Republican Chairperson Amanda Lowery in her official capacity, challenging the constitutionality of the Affiliation Statute. On December 7, 2023, the trial court entered an order finding the Affiliation Statute unconstitutional and enjoining its enforcement. The Indiana Secretary of State, IEC, and Lowery appealed this decision directly to the Indiana Supreme Court.

On February 15, 2024—after a briefing and an oral argument—the Indiana Supreme Court voted to “STAY the trial court’s order enjoining enforcement of Indiana Code section 2-8-2-7(a)(4). . . .” On February 27, 2023, the Indiana Supreme Court denied Rust’s motion for relief from stay and reversed the trial court’s judgment. On March 6, 2024, the Indiana Supreme Court issued a full opinion that reversed the trial court’s order and declared that “the Affiliation Statute is not unconstitutional” and that Rust’s remaining arguments “lack merit.” *Morales v. Rust*, __ N.E.3d __, No. 23S-PL-371, slip op. (Ind. Mar. 6, 2024). The Court succinctly summarized the majority position: “Rust should not be on the ballot—full stop.” *Morales*, slip op. at 23.

Prior to the issuance of the Court’s full opinion, on February 27, 2024, the IEC held a hearing (“IEC Hearing”) on the six challenges to Rust’s candidacy. After weighing the evidence, the IEC found that Rust had not voted as a Republican in the two most recent primaries in which he voted, and that Rust had not obtained the county party chair’s certification. The IEC unanimously sustained the challenges and directed the Election Division not to include Rust on

the certified list of primary candidates sent to the county election board and instructed that Rust's name not be printed on the ballot.

JUDICIAL REVIEW

The IEC's decision is before this Court for judicial review. Indiana Code § 4-21.5-5-9 provides the exclusive mechanism for obtaining a stay pending the resolution of a judicial review. In a judicial review proceeding, a trial court may issue an order staying the agency order pending a final determination if "the court finds that the petition for review and the petition for a stay order show a reasonable probability that the order or determination appealed from is invalid or illegal." Ind. Code § 4-21.5-5-9(a). "The burden of demonstrating the invalidity of agency action is on the party to the judicial review proceeding asserting invalidity." Ind. Code § 4-21.5-5-14(a).

To establish this probability, a petitioner must overcome a highly deferential standard of review and set of presumptions which favor the validity of the agency action. In particular, a reviewing court may not try the case de novo, Ind. Code § 4-21.5-5-11; rather, "the court is bound by the agency's findings of fact that are supported by the record." *Bennet v. Ind. Life & Health Ins. Guaranty Ass'n*, 688 N.E.2d 171, 176 (Ind. Ct. App. 1997). An agency's decision is only invalid if the petitioner "has been prejudiced by an agency action that is:

- (1) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law;
- (2) contrary to constitutional right, power, privilege, or immunity;
- (3) in excess of statutory jurisdiction, authority, or limitations, or short of statutory right;
- (4) without observance of procedure required by law; or
- (5) unsupported by substantial evidence."

Ind. Code § 4-21.5-5-14(d).

Pursuant to the Indiana Supreme Court's February 15, 2024 Ruling, all the parties knew that the Order of the trial court had been stayed. Evidence reviewed by this Court suggests that the parties did not yet know that Petitioner's relief from the stay had been denied when he appeared

before the IEC on February 27, 2024. Regardless, the Affiliation Statute did not cease to exist when the trial court enjoined its enforcement. Even when the state was enjoined from *enforcing* the statute, the Affiliation Statute was still duly enacted and effective. Rust was subject to its provisions. When the IEC removed Rust from the ballot, they had full authority to do so because the Indiana Supreme Court had already stayed the trial court's order enjoining enforcement of the statute *before* the IEC's enforcement action occurred. The Indiana Supreme Court's February 27, 2024 Order which denied relief from the stay further supports the IEC's decision made on that same date.

As discussed at the IEC Hearing, Rust did not meet the requirements of the Affiliation Statute through his prior voting record or certification. These are the only two ways to satisfy the Affiliation Statute's requirements. Rust argues he could have complied with the Affiliation Statute if he had known it would be enforceable (i.e., by potentially establishing residency in a different county that may have certified him). But the record before this Court shows that he did not comply with the statute as written. The IEC's straightforward application of the Affiliation Statute as it applied to Rust was not invalid or illegal. As we now know, according to our Indiana Supreme Court, it is also Constitutional.

New authority from the United States Supreme Court in *Trump v. Anderson*, 601 U.S. ____ (2024) does not change the analysis of this case. Our Indiana Supreme Court issued its opinion two days after the U.S. Supreme Court issued the *Trump* decision. *Morales v. Rust*, __ N.E.3d __, No. 23S-PL-371, slip op. (Ind. Mar. 6, 2024). The U.S. Supreme Court engaged in a removal analysis under Section 3 of the Fourteenth Amendment which discusses disqualification from office for insurrection or rebellion. In *Morales v. Rust*, the Indiana Supreme Court focuses on First Amendment associational rights. The cases seem to be birds of a different feather.

The IEC's interpretation of the Affiliation Statute was straightforward: Rust did not meet the voting requirement (which he admits) and he did not receive certification (which he admits).

CONCLUSION

The IEC properly interpreted the Affiliation Statute, and the Indiana Supreme Court has declared that the Affiliation Statute is constitutionally sound. As such, Rust cannot show that the IEC's determination to remove him from the primary ballot for U.S. Senate was:

- (1) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law;
- (2) contrary to constitutional right, power, privilege, or immunity;
- (3) in excess of statutory jurisdiction, authority, or limitations, or short of statutory right;
- (4) without observance of procedure required by law; or
- (5) unsupported by substantial evidence.

Rust's motion for preliminary injunction and request for relief through a judicial review are **DENIED**. John Rust's name cannot appear as a candidate for the United States Senate on the upcoming Republican Primary Ballot.

March 14, 2024
Date


Kurt Eisgruber, Judge
Marion Superior Court