

STATE OF INDIANA)	IN THE MARION _____ COURT
) SS:	
COUNTY OF MARION)	CAUSE NO.: _____
JOHN RUST,)	
)	
Petitioners,)	
v.)	
)	
INDIANA ELECTION COMMISSION,)	
MICHAEL E. NEAL, LARRY D.)	
SHICKLES, CAMERON WILLIAMS,)	
DANNY SHIELDS, DAMIEN)	
STAFFORD and KYLE BABCOCK,)	
)	
Respondents.)	

**VERIFIED PETITION FOR JUDICIAL REVIEW AND COMPLAINT FOR
DECLARATORY AND INJUNCTIVE RELIEF**

Comes now Petitioner, John Rust, by counsel, and for his Verified Petition for Judicial Review and Complaint for Declaratory and Injunctive Relief ("Petition"), states as follows:

1. This action is brought, in part, pursuant to the Indiana Administrative Orders and Procedures Act, Indiana Code 4-21.5-5-1 *et seq.* which governs judicial review of an order, determination or action of an agency. Rust seeks review of the agency decision removing him from the May primary ballot, an injunction of the Indiana Election Commission's (the "Commission") order to the removing Rust from the ballot, a declaration of the validity of Rust's candidacy and preliminary and permanent injunctions, ordering the Commission to put Rust's name on the May 7, 2024 Republican Primary ballot as a candidate for the United States Senate.

THE PARTIES

2. Plaintiff, John Rust, is a Republican who seeks access to the ballot for U.S. Senate in 2024. His mailing address is P.O. Box 190, Seymour, Jackson County, Indiana 47274.

3. The name of the agency whose action is at issue is the Indiana Election Commission (“Commission”). The Commission’s mailing address is 302 W. Washington St., Room E204, Indianapolis, Marion County Indiana 46204.

4. Michael A. Neal is a party to the agency action, as he filed a CAN-1 challenge to Rust’s candidacy. Upon information and belief, his mailing address is 14926 Amkey Ct., Carmel, Indiana, 46032.

5. Larry D. Shickles is a party to the agency action, as he filed a CAN-1 challenge to Rust’s candidacy. Upon information and belief, his mailing address is 560 Main Street NE, Palmyra, Indiana 47164.

6. Cameron Williams is a party to the agency action, as he filed a CAN-1 challenge to Rust’s candidacy. Upon information and belief, his mailing address is 1502 East Sumner Ave., Indianapolis, Indiana 46227.

7. Danny Shields is a party to the agency action, as he filed a CAN-1 challenge to Rust’s candidacy. Upon information and belief, his mailing address is 4628 N. Roxford Drive, Bloomington, Indiana 47404.

8. Damien Stafford is a party to the agency action, as he filed a CAN-1 challenge to Rust’s candidacy. Upon information and belief, his mailing address is 3055 E. Meadow Wood Lane, Columbia City, Indiana 46725.

9. Kyle Babcock is a party to the agency action, as he filed a CAN-1 challenge to Rust's candidacy. Upon information and belief, his mailing address is P.O. Box 7243, Fishers, Indiana 46038.

STANDING, JURISDICTION AND VENUE

10. Rust has standing as Rust was a party to the final agency action pursuant to IC § 4-21.5-5-3(a)(2), and Rust is a person to whom the final agency action is specifically directed, pursuant to IC § 4-21.5-5-3(a)(1).

11. Rust has exhausted administrative remedies and is filing this Petition within the prescribed time period- within thirty (30) days. The agency action occurred on February 27, 2024.

12. Venue is proper in Marion County as this is where the principal office of the Indiana Election Commission is located and where Respondent Cameron Williams resides.

GENERAL ALLEGATIONS COMMON TO ALL COUNTS

13. Rust is seeking to be on the Republican primary ballot for U.S. Senate in 2024.

14. Pursuant to Indiana Code section 3-8-2-7(a)(4)(A), in order to run as a Republican candidate, candidates must include a statement of his party affiliation and such affiliation is established only if the candidate meets one of two conditions:

(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.

OR

(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.

Indiana Code 3-8-2-7(a)(4), as amended by P.L. 193-2021, SEC 17, eff. 1/1/2022 and PL 109-2021, SEC. 8, eff. 1/1/2022.

15. Because Rust does not have the required voting record pursuant to Option A in the statute, on July 19, 2023, Rust met with Jackson County, Indiana Republican chairman, Amanda Lowery, to request she provide written certification of Rust's membership in the Republican party pursuant to Option B.

16. Lowery declined to certify Rust.

17. In September 2023, Rust filed a suit alleging that I.C. § 3-8-2-7(a)(4)(A) is unconstitutional and that Lowery's interpretation of the statute violated the canons of statutory construction. He sought declaratory and injunctive relief.

18. Following a trial, on December 7, 2023, the Honorable Patrick J. Dietrick, Special Judge, issued an order enjoining enforcement of the statute finding that the statute violates our state and federal constitutions, and that Lowery misapplied the statute as to Rust. (See attached Exhibit A- the December 7, 2023 order)

19. State Defendants immediately filed a Notice of Appeal and sought an expedited appeal and a stay of the trial court's order.

20. The Indiana Supreme Court issued an order on December 15, 2023, granting the expedited appeal but holding a ruling on the stay in abeyance. (See attached Exhibit B- Supreme Court order.)

21. In the interim, candidates had from January 10, 2024 to February 9, 2024 to file their CAN-2 Declarations of Candidacy.

22. Each candidate seeking to be on the ballot for a primary election in Indiana must complete a CAN-2 form.

23. Section 3 of the CAN-2 form asks candidates to choose option A or B from the statute noted above with regard to establishing their affiliation with the party pursuant to I.C. § 3-8-2-7(a)(4)(A).

24. Even though the statute was enjoined, the State did not update the CAN-2 form and it still contained Section 3 even though that section was not legally operative.

25. Rust was instructed by staff at the Secretary of State's office in the presence of undersigned counsel that he did not need to check a box regarding his affiliation.

26. Rust completed and submitted his CAN-2 form but did not select either option indicating the basis of his affiliation pursuant to the enjoined statute.

27. The statute remained enjoined the entire candidate filing period.

28. A true and correct copy of Rust's CAN-2 is attached hereto as Exhibit C.

29. After candidates submit their CAN-2 form and declare their intention to run for office, individuals may seek to challenge the eligibility of a candidate by filing a CAN-1 form.

30. Candidate filing challenges for this election cycle were due by noon on February 16, 2024.

31. On February 15, 2023, approximately 23 hours before the deadline to file candidate challenges, the Indiana Supreme Court issued an order staying the trial court's injunction enjoining the enforcement of I.C. § 3-8-2-7(a)(4)(A). (See attached Ex. D.)

32. Thereafter, Respondents, Michael Neal, Larry Shickles, Cameron Williams, Danny Shields, Damien Stafford and Kyle Babcock (collectively, the "Challengers"), filed

their challenges to Rust's candidacy citing his voting record and attaching an affidavit from Jackson County Republican party chair Amanda Lowery which she signed on October 17, 2023 and was part of Rust's lawsuit. True and accurate copies of the challenges are attached as Exhibits E, F, G, H, I and J.

33. On February 27, 2024, the Indiana Election Commission held a hearing on the challenges.

34. Challengers presented Rust's voting record and Lowery's October 17, 2013 affidavit declining to certify Rust, among other things.

35. For his part, Rust argued that the statute was enjoined during the entirety of the candidacy filing period and thus, he did not have to check a box or otherwise comply with the enjoined statute.

36. Further Rust argued that because the stay was lifted after the filing period he had no opportunity to go back to Lowery and see if she would change her mind and certify him.

37. Indeed, the Commission, through counsel, previously argued in court that Lowery could change her mind and that "Ms. Lowery's alleged refusal now is not final and whether Mr. Rust will have a certification on January 10th is speculative and theoretical." (See attached Ex. K, State's Memorandum in Support of Motion to Dismiss at p. 2.)

38. Additionally, Rust presented the affidavit of LaPorte County Republican chair, Allen Stevens, who averred and testified that had Rust established residency in LaPorte County he would have certified Rust pursuant to I.C. § 3-8-2-7(a)(4)(A). (See attached Ex. L.)

39. Indeed Rust had obtained a residence in LaPorte County as well as a bank account and had the statute not been enjoined, he could have and would have relocated to LaPorte County.

40. The only reason Rust did not seek certification from Lowery or move and establish residency in LaPorte county is because the statute was not in effect during the candidacy filing period and thus, he did not have to obtain certification to be on the Republican primary ballot.

41. The timing of the stay—after the candidate filing period—did not allow him time to seek certification or relocate and amend his CAN-2 form.

42. Further, if Rust is Republican in LaPorte county, he is no less Republican in Jackson County.

COUNT I - JUDICIAL REVIEW

43. Rust incorporates the foregoing allegations as fully set forth herein.

44. Rust is entitled to relief pursuant to I.C. § 4-21.5-5-14, because the Election Commission's action is:

- a. arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law;
- b. contrary to constitutional right, power, privilege, or immunity; and
- c. unsupported by substantial evidence.

45. Rust was not required to check a box on his CAN-2 form establishing his affiliation during the entirety of the candidate filing period and the Commission's decision is based entirely on his failure to do something he was not legally required to do.

46. This is true regardless of the stay that came *after* the candidate filing period and any order or change in the law that came *after* that period ran.

47. Additionally, in the alternative, the Commission's decision violates the cannons of statutory construction.

48. The goal of statutory construction is to determine, give effect to, and implement the intent of the Legislature. *City of Carmel v. Steele*, 865 N.E.2d 612, 618 (Ind. 2007). Further, to effectuate legislative intent, we read the sections of an act together in order that no part is rendered meaningless. *Id.*

49. The clear purpose of the statute by its plain language is to determine if a candidate is a *bone fide* member of the party to prevent candidates from claiming they are when that is not the case. The statute does not provide for either the Commission or a county party chairman to make decisions about who should run. It merely provides for a determination of the candidate's party affiliation.

50. I.C. § 3-8-2-7 must also be construed in harmony with I.C. § 3-10-1-2 which states that major political parties, such as the Republican Party,¹ "...shall hold a primary election...to select nominees to be voted for the general election."

51. In other words, to construe I.C. § 3-8-2-7 to permit county party chairs to withhold "certification" in order to protect incumbent candidates from a primary challenge allowing the incumbent to run unopposed, violates the spirit and purpose of I.C. § 3-10-1-2's requirement that such Parties *hold primaries* and allow their members to elect the party's nominee.

¹ "...whose nominees received at least 10% of the votes for Secretary of State in the last election..." See I.C. § 3-10-1-2.

52. Without Rust on the ballot there is no meaningful primary; his opponent will run unopposed.

53. If Rust is Republican in one county; he is Republican in another.

54. Rust presented an affidavit that the LaPorte County chair would have certified him as a Republican had he needed to move to LaPorte County to comply with the enjoined statute at the time of his filing.

55. The Commission ignored this evidence and criticized Rust for not relocating or otherwise seeking certification while the statute was enjoined even though Rust was not legally required to do so.

WHEREFORE, Petitioner, John Rust, prays the Court grant this petition, declare the Commission's decision is contrary to law, reverse the Election Commission's decision, enjoin the Commission's action of removing Rust's name from the ballot and restore his name to the ballot, and enter all relief just and proper in the premises.

COUNT II – DECLARATORY AND INJUNCTIVE RELIEF

56. Rust incorporates the foregoing allegations as fully set forth herein.

57. The Commission's decision is contrary to law, violates Rust's right to freely associate with the Republican party, and is not supported by substantial evidence.

58. The Commission's decision impacts whether Rust will appear on the ballot and the ballots will soon be printed. Rust has invested considerable time, effort and resources into his campaign, time is of the essence, and he will be irreparably harmed with no recourse if his name is not placed back on the ballot.

59. Given the facts in the record and the law, Rust has a reasonable likelihood of success on the merits.

WHEREFORE, Petitioner, John Rust, prays the Court grant this petition, declare the Commission's decision is contrary to law, reverse the Election Commission's decision, enjoin the Commission's action of removing Rust's name from the ballot and restore his name to the ballot, and enter all relief just and proper in the premises.

Verification

I, John Rust, affirm under the penalties of perjury that the foregoing factual representations are true and accurate to the best of my knowledge and belief.



John Rust

Lekse Harter, LLC

By: s/ Michelle C. Harter

Michelle C. Harter, Attorney No. 32657-41

3209 W. Smith Valley Rd., Ste. 134-4
Greenwood, Indiana 46142
Telephone: (908)-307-7570
Email: michelle@leksehart.com

Counsel for John Rust