IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

LIBERTARIAN PARTY OF ILLINOIS, et al., Plaintiffs, v. KAREN YARBROUGH, in her capacity as the COOK COUNTY CLERK, et al., Defendants.	)	No. **2022-cv-0578**
	)	Honorable Robert W. Gettleman
	)	Magistrate Judge Honorable Jeffrey Cole

Plaintiffs' Response to Clerk's Sur-Reply

Introduction

We are now at the end of additional briefing requested by the Clerk, and the Clerk has resorted to generalities to obfuscate her actions, rather than addressing the express provisions of 10 ILCS 5/10-2, 10 ILCS 5/7-2, and 10 ILCS 5/7-4(6). The Clerk offers no support for bifurcating of established political party rights.

The Clerk's application of the law impermissibly enshrines the two party system, through a contorted and absurd application of the Election Code. The Clerk's has yet to reconcile her many inconsistencies and errors of law. For example, she recognized the LPI for nomination of the President of the Cook County Board under the provisions of Article 7 of the Election Code, yet she denied similar recognition of the constituent members of that very unit of government, and even argued that Article 7 of the Election Code applied only to municipal elections.

The Illinois Constitution does not sanctify a two party system, or so restrict elections to Democratic and Republican candidates. The Clerk's insulation of the one dominant political party in Cook County directly contravene the *Timmons* doctrine, which held that "interest in political stability 'does not permit a State to

completely insulate the two-party system from minor parties' or independent candidates' competition and influence." *Timmons v. Twin Cities Area New Party*, 520 U.S. 351, 366-87, 117 S.Ct. 1364 (1977).

A. <u>Clerk's denial of rights under Article 7 of the Election Code violates fundamental statutory construction.</u>

The Illinois Supreme Court has explained that all provisions of Illinois law must be read together for a harmonious application of law, citing its well-known election law decision as follows:

> ¶ 20 "The primary rule of statutory construction is to ascertain and give effect to the intention of the legislature. The best evidence of legislative intent is the language used in the statute itself, which must be given its plain and ordinary meaning. The statute should be evaluated as a whole, with each provision construed in connection with every other section." *Cinkus v. Village of Stickney Municipal Officers Electoral Board*, 228 Ill.2d 200, 216-17, 886 N.E.2d 1011 (2008).

Perez v. Ill. Concealed Carry Licensing, 2016 IL App (1st) 152087, ¶ 20.

The Illinois Supreme Court in *Cinkus* was asked to construe the interplay between the Election Code and the Illinois Municipal Code, 65 ILCS 5/3.1-10-5(b), that defined qualifications for municipal office, and held that all relevant provisions must be read *in pari materia* for purposes of statutory construction. *Cinkus v. Village of Stickney Muni. Officers Electoral Bd.*, 228 Ill.2d 200, 216-17, 886 N.E.2d 1011 (2008).

The principle of applying laws *in pari materia* has been consistently applied because it is presumed that "the legislature, when it enacted the statute, did not intend absurdity, inconvenience, or injustice." *Land v. Board of Education of the City of Chicago*, 202 Ill.2d 414, 422, 781 N.E.2d 249 (2002) quoting *Michigan Avenue National Bank*, 191 Ill.2d at 504, 732 N.E.2d 528.

The *Knolls* court further explained these fundamental tenets of statutory construction as follows:

> The controlling principles of statutory construction are well settled. In construing a legislative enactment, a court should ascertain and give effect to the overall intent of the drafters. *Villegas v. Board of Fire & Police Commissioners*, 167 Ill.2d 108, 123, 656 N.E.2d 1074 (1995). A court presumes that the legislature intended that two or more statutes which relate to the same subject are to be read harmoniously so that no provisions are rendered inoperative. *Henrich v. Libertyville High School*, 186 Ill.2d 381, 391-92, 712 N.E.2d 298 (1998). Statutes relating to the same subject must be compared and construed with reference to each other so that effect may be given to all of the provisions of each if possible. *Henrich*, 186 Ill.2d at 392, 712 N.E.2d 298. Even when an apparent conflict between statutes exists, they must be construed in harmony with one another if reasonably possible. *United Citizens of Chicago & Illinois v. Coalition to Let the People Decide in 1989,* 125 Ill.2d 332, 339, 531 N.E.2d 802 (1988), quoting *People v. Maya*, 105 Ill.2d 281, 287, 473 N.E.2d 1287 (1985). It is also a fundamental rule of statutory construction that where there exists a general statutory provision and a specific statutory provision, either in the same or in another act, both relating to the same subject, the specific provision controls and should be applied. *People v. Villarreal*, 152 Ill.2d 368, 379, 604 N.E.2d 923 (1992); *People ex rel. Kempiners v. Draper,* 113 Ill.2d 318, 321, 497 N.E.2d 1166 (1986).

Knolls Condominium Ass'n v. Harms, 202 Ill.2d 450, 459, 781 N.E.2d 261 (2002).

Notably, where there are general provisions, and more specific provisions of Illinois on the same topic, the more specific provisions control. *Id.* The Illinois Supreme Court further clarified:

> When a general statutory provision and a more specific one relate to the same subject, we will presume that the legislature intended the more specific statute to govern. *Moore*, 219 Ill.2d at 480, 848 N.E.2d 1015, citing *Knolls Condominium Ass'n v. Harms,* 202 Ill.2d 450, 459, 781 N.E.2d 261 (2002). We will also presume that the legislature intended the more recent provision to control. *Moore*, 219 Ill.2d at 480, 848 N.E.2d 1015, citing *State v. Mikusch*, 138 Ill.2d 242, 254, 149 Ill.Dec. 704, 562 N.E.2d 168 (1990).

Abruzzo v. City of Park Ridge, 231 Ill.2d 324, 332, 898 N.E.2d 631 (2008).

The Illinois Supreme Court in *Abruzzo* also confirmed that:

> Where a statutory enactment is clear and unambiguous, a court is not at liberty to depart from the plain language and meaning of the statute by reading into it exceptions, limitations or conditions that the legislature did not express. *Solich*, 158 Ill.2d at 83, 630 N.E.2d 820.

Id.

The Clerk disregards the express provisions of the Election Code that define

the process by which a party becomes established within a county, 10 ILCS 5/10-2 and 10 ILCS 5/7-2, and attempts to interject vagueness through general definitions. In so doing the Clerk, represented by State's Attorney Kimberly Foxx[1], argues for "absurdity, inconvenience, or injustice" relying only upon general definitions and bold misstatements of the law.

Indeed, at the argument before this honorable court on February 23, 2022, the Clerk's attorney argued that Article 7 applied only to "municipal elections" and therefore, did not apply to the current nomination of LPI candidates at a primary election. When confronted with 10 ILCS 5/7-1 which defined the "Application of Article" the Clerk's argument then focused upon the phrase "except as otherwise provided in this Article" which is directly addressed in 10 ILCS 5/7-2.

The Clerk's position, however does not recognize that the Clerk necessarily must apply Article 7 of the Election Code, 10 ILCS 5/7-1, et seq. to the LPI candidacies for which she has recognized established party status, namely, for the office of Cook County Board President, Clerk, Sheriff, Assessor, and Treasurer.

Misstatements of Law

B. Township elected officer nominations/elections are not relevant to committeeperson elections, nor to Cook County Board member nominations.

For the first time in her sur-reply the Clerk brings up municipal elections and the Township Code. The Illinois Township Code defines various township officials that are elected at consolidated (odd numbered year) elections in Illinois. 60 ILCS 1/1-1 et seq. Such elected governmental officials include township

1 Defendant, Karen Yarbrough, and State's Attorney Kimberly Foxx are both endorsed candidates of the Democratic Party, and are on the same slate petition for nomination at the Democratic Party primary election, and would compete against LPI candidates at the general election, if LPI candidates are allowed on the ballot.

supervisor, township assessor, and township trustees. 60 ILCS 1/50-5, et seq.; see also, *Hacker v. Halley,* 2021 IL App (2d) 210050 (general discussion of township official nomination procedures, but not otherwise relevant). The Township Code does not discuss committeepersons, or define their authority, or otherwise discuss election of township committeepersons.

Article 7 of the Election code expressly defines procedures for the election of committeepersons at 10 ILCS 5/7-8(b), and defines the nomination papers that would need to be filed for township committeepersons at 10 ILCS 5/7-10(i).

Committeepersons are internal officers of established political parties – they are not elected government officials – and serve as the party's representatives that would fill vacancies in nomination where a candidate was not nominated at the primary election (and/or resigned or vacated elected office). That is, when an established political party fails to nominate a candidate at the primary election, the appropriate committee for that elected office (as defined in 10 ILCS 5/7-8) would convene its committeepersons and nominate a candidate to be placed upon the general election ballot. See e.g. 10 ILCS 5/7-11.1; 10 ILCS 5/7-61.

The Clerk's argument about "municipal elections" for town officers as discussed in 10 ILCS 5/7-2 has no bearing upon the matters before this honorable court. Indeed, the *Ramirez v. Chicago Board of Election Commissioners*, 2020 IL App (1st) 200240 decision was cited by Plaintiffs for its discussion of statutory interpretation by the appellate court, and specifically that when the Election Code in 10 ILCS 5/7-10(k) stated "the last regular election at which an officer was regularly scheduled to be elected from that ward or district" the legislature intended that election to be the most recent in time election, rather than the last

election at which the same office was elected (as argued by the Clerk).

The Clerk similarly did not follow the guidance of *Ramirez*, supra, when she defined signature requirements for Democratic and Republican township committeepersons in her "General Information" disclosure based upon 2018 or 2021 election results. The appellate court in *Ramirez* expressly defined the correct election to base the signatures upon as being the last in time election, rather than the last election at which the same committeeperson was elected. *Id.*

C. General provisions or definitions do not overcome more specific provisions.

Although represented by four esteemed and well-versed election law attorneys, who are very familiar with statutory construction, the Clerk in her sur-reply for the first time brings up general definitions in support of her argument, from Article 1 of the Election Code.

The question of political or governmental subdivisions was answered by the Illinois Supreme Court when it reviewed 10 ILCS 5/10-2 *in pari materia* with 10 ILCS 5/1-3(6) and (14), and found that "since the Illinois Constitution defines units of local government as including counties (Ill. Const.1970, art. VII, § 1), then a county must logically be a political or governmental subdivision." *Reed v. Kusper,* 154 Ill.2d 77, 607 N.E.2d 1198, 1200-1201 (1992).

Nonetheless, general definitions from Article 1 however, do not support the Clerk's argument or (partial) disregard of Article 7 of the Election Code – that is, disregard of the parts of 10 ILCS 5/7-2 and 7-4 that discuss the election of commissioners to the Cook County Board and election of township committeepersons, while recognizing the same sections as applicable to Cook County Board president and other county-wide offices.

Although a few general definitions were cited by the Clerk, she omitted the preamble, 10 ILCS 5/1-3, that states, "As used in this Act, unless the context otherwise requires [* * *] " that clarifies traditional statutory interpretation that more specific provisions control over general, or catch-all, definitions.

More specific provisions of the Election Code are contained within Article 7 of the Election Code.

Cook County Board members (and the respective districts from which each is elected) are each units of local government, namely, the commissioners are the individual members of the Cook County Board that is overseen by the Cook County Board president. Together, the County Board President and the 17 commissioners comprise the Cook County Board, which enacts ordinances through a majority vote of a quorum of its members. County Board members, individually, or at less than a majority vote of the quorum, would have no authority to make decisions for the Cook County Board.

Therefore, it is utterly illogical for the Clerk to argue – without a good faith basis formed after a reasonable inquiry – that each Cook County Board district is a separate district or political subdivision and that established party status would need to be established in each and every district. The members of the Cook County Board are part of the same unit of government as the Cook County Board president.

This bifurcated approach is directly contrary to the express provisions of 10 ILCS 5/10-2 which reads as follows:

> "A political party which, at the last election in any [* *] county [* *] polled more than 5% of the entire vote cast within such territorial area [* * *], has voted as a unit for the election of officers to serve the respective territorial area of such district [* * *] is hereby declared to be an 'established political party'

within the meaning of this Article as to such district or political subdivision."

That is, Section 10-2 concludes that when a party votes more than 5% of the vote cast within such territorial area, it is deemed for purposes of Section 10-2 as having voted as a unit. See also, *Illinois Liberty PAC v. Madigan,* 902 F.Supp.2d 1113, 1116 (N.D.Ill. 2012) ("Any group whose candidate received over five percent of the total vote cast in the State or a subdivision thereof in the previous general election is recognized as a political party in the next election in the corresponding geographical area. 10 ILCS 5/7-2.")

The Clerk, represented by her current running mate on the Democratic Party slate petition, Kimberly Foxx, takes the illogical position of disregarding Article 7 of the Election Code through a convoluted argument. Yet, neither recognize that Article 7 is indeed the very section of the Election Code that was applied to recognize the LPI as established for county-wide office. There is no support for the Clerk's selective application of Article 7, 10 ILCS 5/7-2, which expressly states that a party that is established in a county "and **shall nominate all county officers in said county** under the provisions hereof, and **shall elect** precinct, **township**, and ward **committeepersons**, as herein provided." *(emphasis added)* Further, despite additional briefing requested by the Clerk she failed to present legal support for her disregard of Section 7-4(6) of the Election Code, 10 ILCS 5/7-4(6) that expressly included "the assessor and board of appeals and county commissioners and president of county board of Cook County" within the definitions of "county office" or "county officer."

The Clerk has yet to offer any support for taking two opposite positions on Article 7 – that it applies to the Cook County Board president, yet does not apply to

the constituent members of that same unit of government. Or a legally cognizable and logical reason for denial of LPI township committeeperson recognition. Indeed, the Election Code is clear – the LPI would be established for all offices elected in Cook County, including but not limited to nomination of candidates for Cook County Board members, Board of Review members, Metropolitan Water Reclamation District of Greater Chicago (all of which are county-wide units of government), as well as election of township committeeperson.

Soon too, at the February 2023 Chicago municipal election, the LPI will be electing its ward committeepersons for the City of Chicago relying upon the same application of the Election Code as relied upon herein for township committeepersons.

D. The Seventh Circuit's decision in *Rednour* does not discuss the Election Code at issue nor address similar facts.

The Clerk's reliance upon the Seventh Circuit's decision in *Libertarian Party of Illinois v. Rednour*, 108 F. 3d 768 (7th Cir. 1997) is misplaced since the court in *Rednour* did not address the facts or provisions of the Election Code relied upon by the Plaintiffs herein.

The Seventh Circuit in *Rednour* addressed the scope of the LPI's established party status based upon receiving more than 5% of the vote for three University of Illinois Trustees, which at that time were elected, but since Jan. 1, 1996 were appointed. *Libertarian Party of Illinois v. Rednour*, 108 F. 3d 768, 771 at Fn. 2 (7th Cir. 1997). The LPI fielded ten candidates for congressional offices that sought sought nomination as established party candidates for the US House of Representatives. *Id*. at 772. The State Board of Elections however refused to accept nomination papers from the LPI candidates for congressional office, and the LPI filed an action

pursuant to 42 USC § 1983 for denial of their First and Fourteenth Amendment rights. *Id.*

One issue presented to the *Rednour* court was whether statewide established party status (through 5% for University of Illinois Trustee votes) conferred established party status on congressional offices. *Id.* at 771-772.

The *Rednour* court reviewed the decision of the State Board of Elections to deny federal established party status for congressional candidates. *Id*. The Election Code however has been amended since *Rednour*, and Univ. of Illinois trustees are no longer elected. The court in *Rednour* also did not address the application of Article 7 of the Election Code, and specifically, did not discuss county-wide established party status under 10 ILCS 5/7-2 and 7-4(6). *Id.*

The question presented herein is distinct from that addressed in *Rednour* – the Plaintiffs herein seek recognition of rights that are expressly stated in the Election Code, rather than by indirect application as was the case in *Rednour*. *Rednour* similarly did not definitively answer the question of established party status, but rather, analyzed the decision of the State Board of Elections to determine if there was a rational basis for the decision of the State Board of Elections to refuse to accept federal nomination papers when there was statewide established party status.

Although the Seventh Circuit also had opportunity to discuss established party status in *Libertarian Party of Illinois v. Scholz*, 872 F. 3d 518 (2017), the Seventh Circuit did not discuss *Libertarian Pty. of Ill. v. Rednour*, 108 F. 3d 768 (7th Cir. 1997).

Although there is no express provision in the Election Code that differentiates statewide established party status, or restricts such status to state

office only and excludes federal offices, this is what the *Rednour* court ultimately affirmed. The Seventh Circuit differentiated state and federal established party status, noting that "because no Libertarian candidate captured more than 5% of the vote in any of the 1994 congressional races, the LPI was not established in those districts in 1996." *Id*. at 772.

In the matter before this honorable court, there are express provisions of the Election Code that support the Plaintiffs' request for relief. Furthermore, the established party status is based upon county-wide (state) office and Plaintiff seek their rights for state office, consistent with the holding in *Rednour*. *Id.*

E. Conclusion.

The Election Code expressly grants rights to established political parties after they show the requisite modicum of support of at least 5% of the vote. 10 ILCS 5/10-2 and 10 ILCS 5/7-2. Section 7-4 of the Election Code, 10 ILCS 5/7-4, specifically defines rights that all county-wide established political parties enjoy, with no restriction or bifurcation, including the right to nominate candidates for all county offices, including commissioners of the Cook County Board, Board of Review, and MWRD, and also the right to elect township committeepersons.

The Clerk's position has now been solidified through her briefs – she has decided that the LPI is only partially established for selected (but not all) county-wide offices being nominated at the primary, but not for commissioners of the same units of government (Cook County Board or Board of Review), and inexplicably, she has determined that the LPI is not established for election of county-wide commissioners for the MWRD. Further, she has denied the LPI its right to elect its township committeepersons, and misunderstood the correct

election to base the signature calculation upon for township committeepersons.

As in *Rednour*, the Clerk will certainly refuse to accept nomination papers, or in the alternative, her party objectors would file objections to the nomination papers, and the Clerk, as the chair of the electoral board, would then make the decision to remove the LPI candidates as not being established. The Clerk would be represented by James Nally, as she was previously and currently, and for circuit court review the Clerk and electoral board would similarly be represented by Kimberly Foxx's office.

The Clerk's action herein is nothing short of a denial of rights expressly granted to established political parties in Cook County. The Clerk's argument for delay of a resolution only further jeopardizes the Plaintiffs' right to seek judicial review before the June 28, 2022 primary election.

The Seventh Circuit has held that such a "complete exclusion" constitutes a "severe" burden on the First and Fourteenth Amendment rights of the affected voters, candidates and parties. *Lee v. Keith*, 463 F.3d 763, 770 (7th Cir. 2006).

Applying the Supreme Court's *Anderson-Burdick* framework confirms that the Clerk's action does not pass strict Constitutional scrutiny, Plaintiffs are likely to prevail yet they have no adequate remedy at law, and the balancing of harms weighs heavily in favor of Plaintiffs.

Respectfully submitted:

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Certificate of Service

The undersigned an attorney, certifies under penalties of perjury that on February 28, 2022, he filed the foregoing Reply with the ECF/CM system for the Northern District of Illinois, Eastern Division, which sends an email with a download link to all counsel of record.

/s/ Andrew Finko