

The gist of Tirio's Complaint for Declaratory Judgment is Tirio's contention that there is a genuine dispute between the McHenry County Clerk and the Libertarian Party as to whether the Libertarian Party is an "established political party" under Illinois law, specifically 10 ILCS 5/10-2.

The first issue to be decided by this Court is whether this matter is properly brought as a declaratory judgment action. Declaratory judgment actions are governed by 735 ILCS 5/2-701, which in relevant part is as follows:

"Sec. 2-701. Declaratory judgment. (a) No action or proceeding is open to objection on the ground that a merely declaratory judgment or order is sought thereby. The court may, in cases of actual controversy, make binding declarations of rights, having the force of final judgments, whether or not any consequential relief is or could be claimed, including the determination, at the instance of anyone interested in the controversy, of the construction of any statute, municipal ordinance, or other governmental regulation, or of any deed, will, contract or other written instrument, and a declaration of the rights of the parties interested. The foregoing enumeration does not exclude other cases of actual controversy. The court shall refuse to enter a declaratory judgment or order, if it appears that the judgment or order, would not terminate the controversy or some party thereof, giving rise to the proceeding." **735 ILCS 5/2-701**

The Court finds that Tirio's Complaint for Declaratory Judgment is properly brought. There is an actual controversy between Tirio and the Libertarian Party. Tirio has concluded that the Libertarian Party did not garner enough votes in the 2022 election to be considered an "established political party" as set out in 10 ILCS 5/10-2. Redpath believes based on the results of the 2020 election that the Libertarian Party should be considered an "established political party". The distinction between an "established political party" and one which is not is the number of signatures on nominating petitions that must be garnered in order to be placed on an election ballot. Thus, the designation of a party as an "established political party" can have real life consequences, i.e. whether that party will be placed on the ballot.

Thus, here, there is an actual controversy between Tirio and the Libertarian Party. Furthermore, the entry of declaratory judgment will terminate the controversy. Once the Court has determined whether the Libertarian Party is an “established political party” for purposes of the 2024 election cycle, Tirio can make a determination, based on the number of signatures the Libertarian Party has garnered on nominating petitions, whether that party should be placed on the ballot.

As referenced above, whether a political party is considered an “established political party” is governed by 10 ILCS 5/10-2, which in relevant part is as follows:

“A political party which continues to receive for its candidate for Governor more than 5% of the entire vote cast for Governor, shall remain an ‘established political party’ as to the State and as to every district or political subdivision thereof. But if the political party’s candidate for Governor fails to receive more than 5% of the entire vote cast for Governor, or if the political party does not nominate a candidate for Governor, the political party shall remain an ‘established political party’ within the State or within such district or political subdivision less than the State, as the case may be, only so long as, and only in those districts or political subdivisions in which, the candidates of that political party, or any candidate or candidates of that political party, continue to receive more than 5% of all the votes cast for the office or offices for which they were candidates at succeeding general or consolidated elections within the State or within any district or political subdivision, as the case may be.” **10 ILCS 5/10-2**

In concluding that the Libertarian Party should not be considered an “established political party” for purposes of the 2024 election cycle, Tirio alleges that no Libertarian Party candidate received more than 5% of the vote in the 2022 election cycle.

In his Answer and supporting brief, Redpath does not dispute Tirio’s allegation that none of the Libertarian Party’s candidates in the 2022 election cycle for McHenry County received more than 5% of the vote but rather contends that the Libertarian Party remains an “established political party” because two of its candidates in the 2020 election received more than 5% of the vote, and those offices were not up for reelection in the 2022 election

cycle. Thus, Redpath contends, those candidates continue to receive more than 5% of the vote until another election involving the specific offices they ran for is completed.

The Court declines to adopt Redpath's tortured interpretation of 10 ILCS 5/10-2. While the terms of certain offices (in this case Auditor and Coroner) may extend past the 2022 election cycle (i.e. Coroner is not up for reelection until 2024), that does not change the fact that there have been general or consolidated elections in between. Here, there was the 2022 general election.

10 ILCS 5/10-2 makes it clear that in order to maintain "established political party" status in a political subdivision (here, McHenry County), a political party must have at least one of its candidates receive in excess of 5% of the vote in each general election. That did not happen here. The Libertarian Party has admitted that none of its candidates received more than 5% of the vote in the 2022 general election. The fact that two offices (Coroner and Auditor) for which Libertarian candidates did receive more than 5% of the vote in the 2020 election were not up for reelection in 2022 does not establish that those candidates "continue to receive more than 5% of all the votes cast for the office or offices for which they were candidates as succeeding general or consolidated election" (10 ILCS 5/10-2).

Accepting Redpath's premise would require creating a legal fiction that the 2022 general election was not in fact a general election, or that it succeeded the 2020 general election. Likewise, it would require the Court to ignore the language "continue to receive more than 5% of all the votes cast for the office or offices for which they were candidates at succeeding general or consolidated elections", given that no Libertarian Party candidate continued to receive more than 5% of the vote in the 2022 election, the succeeding one to the 2020 election. In sum, Redpath's interpretation of the 10 ILCS 5/10-2 would render its

language meaningless, which is contrary to Illinois law. See People v. Figueroa, 2020 IL App (2) 160650, ¶ 48.

As the Court demonstrated through its hyperbolic hypothetical at oral argument, under Redpath's interpretation of 10 ILCS 5/10-2, a Libertarian Party candidate for dog catcher that carries an eight year term that receives more than 5% of the vote would make the Libertarian Party an "established political party" for purposes of all its candidates running for any office in every election that occurs before the dog catcher's eight year term expires. That is patently inconsistent with the intent of 10 ILCS 5/10-2. The intent of that statute is clear: in order to have status as an "established political party" the Libertarian Party must demonstrate that in the last general or consolidated election at least one of its candidates for an office received more than 5% of the vote. That did not happen here. Thus, for purposes of the 2024 election cycle, the Libertarian Party is not an "established political party".

ORDER

IT IS HEREBY ORDERED:

The Court finds, determines, and adjudges that for purposes of the 2024 election cycle for the political subdivision of McHenry County, Illinois, the Libertarian Party of Illinois is not an "established political party" as set out in 10 ILCS 5/10-2.

Entered: _____



KEVIN G. COSTELLO
JUDGE