

**IN THE CIRCUIT COURT OF COLE COUNTY
19TH JUDICIAL CIRCUIT**

STEPHEN D. WEBBER,)
)
Plaintiff,)
)
v.)
)
REPUBLICAN SENATORIAL)
)
COMMITTEE FOR THE)
)
NINETEENTH DISTRICT)
)
and)
)
SECRETARY JOHN R. ASHCROFT,)
)
in his official capacity as)
)
Missouri Secretary of State)
)
Defendants.)

Case No.: 24AC-CCo4243

**MOTION FOR TEMPORARY RESTRAINING ORDER AND COMBINED
SUGGESTIONS IN SUPPORT**

Plaintiff Stephen Webber (“Webber” or “Candidate Webber”) moves for a temporary restraining order (“TRO”) enjoining Defendants from permitting James Coyne to appear on the ballot for the August 6, 2024 primary election or any official election ballot for the 2024 election cycle.

Plaintiff meets all the requirements for a TRO to issue. Rule 92.02(a). Without a TRO in this case, Candidate Webber will face immediate and irreparable harm because he will have to face an unlawfully nominated opponent in his election contest for Senate District 19. Plaintiff has submitted a verified petition reciting the specific facts that entitle him to a TRO. *Id.*

Webber is likely to succeed on the merits. Chuck Basye withdrew as the Republican candidate for Senate District 19 on April 25, 2024. Pet. ¶ 17; Pet. Ex. A. The Secretary of State (the “Secretary”) issued its required notice to the appropriate nominating

committee the same day, with a phone call to the Committee, transmitting an email, as well as mailing a copy of its notice. Pet. ¶¶ 28-33; Pet. Ex. B; Pet. Ex. C. The Republican Senatorial Committee for the Nineteenth Senate District (the “Committee”) was required to call a meeting to nominate a candidate “as soon as possible, but in no case later than two weeks after being notified of the vacancy[.]” § 115.369, RSMo.

Upon receipt of notice from the Secretary on April 25, 2024, the Committee was required to issue its call no later than May 9, 2024. Pet. ¶ 36. The Committee first issued a notice on or before May 1 for a meeting on May 5, 2024. Pet. ¶ 40; Pet. Ex. D. At the May 5 meeting, the Committee failed to nominate a candidate. Pet. ¶ 42. The Committee issued no additional notices until *after* May 9. As of May 9, 2024, the Committee had no notice posted to the Boone County Republican website apprising the public of its intention to meet. Pet. ¶ 44. At some point after May 9, 2024, the Committee issued a call for a meeting and posted meeting details on the website.¹ Pet. ¶ 45. This second meeting was to occur on May 21, 2024. Pet. ¶ 47; Pet. Ex. E. At the May 21 meeting, the Committee nominated James Coyne to fill the vacancy caused by Chuck Basye’s withdrawal as the Republican candidate for Senate District 19. Pet. ¶ 48. The Committee’s actions violated the statute.

Webber will be irreparably harmed absent a temporary restraining order. Webber will continue to face uncertainty about the validity of his opponent’s declaration of candidacy. It is clear the Committee violated the law in nominating James Coyne and Webber must be able to petition the court for review of his opponent’s credentials and secure removal of James Coyne’s name from the primary ballot, and any official election ballot for the 2024 cycle, should the Committee’s process be deemed unlawful.

¹ See <https://boonecountyrepublicans.wordpress.com/2024/04/26/republican-vacancy-in-state-senate-district-19/>.

Defendants face no harm if a TRO issues, and the public has a strong interest in ensuring that candidates for public office are duly qualified and placed before voters for consideration only through lawful means. For all of these reasons and those described in the Verified Petition, a TRO should issue.

A TEMPORARY RESTRAINING ORDER SHOULD ISSUE

“When considering a motion for a [temporary restraining order], a court should weigh the movant’s probability of success on the merits, the threat of irreparable harm to the movant absent the injunction, the balance between this harm and the injury that the injunction’s issuance would inflict on other interested parties, and the public interest.” *State ex rel. Dir. of Revenue v. Gabbert*, 925 S.W.2d 838, 839 (Mo. banc 1996). A petitioner need only “make some showing of probability of success on the merits before a preliminary injunction will be issued.” *Id.*

Additionally, the purpose of a temporary restraining order is to “preserve the subject of the controversy” and “maintain the existing . . . status until the controversy is decided.” *State on Inf. McKittrick v. Am. Ins. Co.*, 173 S.W.2d 51, 52 (Mo. banc 1943). The status quo to be preserved is “the last actual, peaceable, noncontested status which preceded the pending controversy.” *Id.* Here, all four *Gabbert* factors weigh in favor of issuing a temporary restraining order, which will preserve the status quo and protect the public.

I. Plaintiff is likely to succeed on the merits.

Plaintiff is likely to prevail in this action. The question before this Court is a pure question of law – are party nominating committees permitted to flout statutory requirements on issuing calls for a meeting to nominate candidates to fill vacancies? The

answer to this question is straightforward and supported by the plain language of the statute.

A. Party nominating committees must issue a call to meet before the expiration of two weeks after it receives notice of a vacancy.

Section 115.369 requires that the “chair of the nominating committee shall, as soon as possible, but in no case later than two weeks after being notified of the vacancy, call a meeting of the nominating committee for the purpose of selecting a candidate to fill the vacancy.” The Committee received the Secretary’s notice on April 25, 2024 apprising it of the vacancy created by Chuck Basye’s withdrawal as a candidate for Senate District 19. Pet. ¶ 28-33; Pet. Ex. B.; Pet. Ex. C. Two weeks from this date is May 9, 2024. Pet. ¶ 35. To meet the requirements of the statute, the Committee had to issue its call for a meeting to nominate a candidate to fill the vacancy in Senate District 19 on or before May 9, 2024. It was not permitted to issue calls after that date. The Committee issued an initial call on or about May 1, 2024 and met pursuant to that call on May 5, 2024. Pet. ¶¶ 40-42; Pet. Ex. D. At the May 5 meeting, the Committee failed to select a candidate. Pet. ¶ 42. The Committee took no further action to call a meeting until *after* May 9. Pet. ¶¶ 44-46. Sometime on or after May 10, the Committee posted a notice on the Boone County Republican’s website of its intent to “meet on Tuesday, May 21, 2024, at 8 p.m. at Grand Cru Restaurant in Columbia to decide on a replacement candidate.”² Pet. ¶ 45; Pet. Ex. E.

The Committee’s failure to follow its statutory obligations to timely call a meeting invalidates the nomination of James Coyne. It is clear that the legislature intended parties

²<https://boonecountyrepublicans.wordpress.com/2024/04/26/republican-vacancy-in-state-senate-district-19/>

to act quickly in these circumstances to ensure that all other interested parties would be adequately apprised with respect to the filing of a new candidate.

With full knowledge of its statutory obligations, the Committee dragged its feet in issuing its call to nominate a candidate and has now acted out of time in violation of the statute. James Coyne does not have a fundamental right to access the ballot and because the Committee failed to meet its statutory obligations, his candidacy cannot stand. *See Peters v. Johns*, 489 S.W.3d 262, 273 (Mo. banc 2016) (“A candidate’s right to access the ballot (i.e., run for office) is not a fundamental right.”).

This state’s election laws prescribe clear deadlines and timelines to ensure that proper notice is provided to all interested parties. Election officials must be able to print accurate ballots. Candidates must be able to adequately campaign against their opponents. Most importantly, voters must not be put in a position to cast a wasted vote on an unqualified candidate. Time is of the essence in this situation due to quickly approaching deadlines for printing ballots. James Coyne does not have the right to be on the ballot in contravention of the law and must not appear on any official election ballot.

II. A temporary restraining order will preserve the status quo.

Temporary restraining orders are meant to preserve the status quo until a preliminary injunction may be heard. *Hemme v. Evans*, 866 S.W.2d 922, 923 (Mo. App. 1993). Here, the status quo is that Webber is the Democratic candidate for Senate District 19 and there is no Republican candidate for the district as a result of Chuck Basye’s April 25, 2024 withdrawal. Pet. ¶¶ 17-18; Pet. Ex. A. Defendants seek to alter the status quo by permitting an improperly nominated candidate to appear on the August 6, 2024 primary ballot. This change will be disruptive to the primary election and will cause confusion to

voters. As discussed below, this alteration of the status quo will harm Candidate Webber and the voting public.

III. Stephen Webber will be irreparably harmed absent a temporary restraining order.

Candidate Webber will suffer considerable harm if a restraining order is not issued. As the candidate for Senate District 19, Webber has standing to challenge the credentials of his opponent. See § 115.526.1, RSMo. In fact, this is “the exclusive process by which one candidate for office can challenge the qualifications of another for the same office.” *Chastain v. James*, 463 S.W.3d 811, 819 (Mo. App. 2015). The Committee failed to abide by the statutory requirements outlined in Section 115.369 to timely call a meeting to nominate a candidate. It cannot be permitted to flout the rules to put forth a candidate out of time. James Coyne cannot be permitted to appear on the primary ballot, or any official election ballot, because the process by which he was selected was unlawful.

Permitting James Coyne to proceed will invite great uncertainty for Webber as a candidate, and the voting public. Following the primary election, Candidate Webber will have to campaign against an unqualified candidate, dedicating campaign resources to defeating a candidate who is impermissibly running for office. Pet. ¶ 76. And, Candidate Webber will be required to do so with fewer campaign staff than he previously had. Pet. ¶ 77. It appeared that Candidate Webber would not have an opponent for Senate District 19 after the Committee met on May 5 and failed to nominate a candidate to fill the vacancy caused by Basye’s withdrawal. Pet. ¶ 78. As a result, Candidate Webber’s financial director left to pursue another employment opportunity. Pet. ¶ 79. And, based on the information available and interested in protecting his financial and professional interests, Candidate Webber encouraged him to do so. Pet. ¶ 80. In addition, after the Committee met and did

not nominate a candidate, Candidate Webber canceled multiple campaign events, which cannot be timely rescheduled, hamstringing his ability to effectively campaign against an opponent. Pet. ¶ 81. Requiring Candidate Webber to now revive a campaign against an unlawfully submitted opponent should not stand. The uncertainty that exists without a restraining order puts Candidate Webber in an impossible position as to his campaigning efforts.

The Committee, like all others, must follow the law. Its failure to do so obligates this Court to deem its nomination unlawful and remove James Coyne from the primary election ballot or any official ballot for the 2024 election.

IV. Issuing a restraining order will not harm Defendant.

Gabbert instructs the Court to weigh the harm Plaintiff is likely to suffer in the absence of a restraining order against the harm its “issuance would inflict on other interested parties.” 925 S.W.2d at 839. Here, the other interested parties are Defendants and Missouri voters. It is clear that issuance of a temporary restraining order will not harm Defendants or Missouri voters (Missouri voters will be harmed if a temporary restraining order does not issue).

Candidate Webber filed to be a candidate for Senate District 19 on the first day of filing on February 27, 2024. Pet. ¶ 15. Following Basye’s withdrawal, the Committee had two weeks to call a meeting to select a candidate. It did not do so. The Committee clearly understood the requirements because the Secretary’s notice apprised the Committee of its obligations and the timeline by which it must act. It received the notice on April 25 and had until May 9 to call a meeting. Whatever opportunity it had to nominate a candidate was squandered. The Committee will not now be harmed should its unlawfully submitted candidate be removed from the primary ballot. The status quo will be preserved.

V. The public interest favors entry of a restraining order

The public also has several interests that favor issuing a temporary restraining order. First and foremost, voters must be presented with lawfully submitted candidates for consideration. Missouri voters should not be misled into believing that a candidate is lawfully before them for consideration when he is not. Should this Court permit such appearance, voters will be misled. A hallmark of democracy generally and election law specifically is the promise that elections “shall be free and open” and that the process will be fair. Mo. Const. art. I, § 25. Missouri courts are frequently presented with cases addressing fair ballot language to ensure that voters are presented with accurate and legally sound summations of ballot measures. *See generally, Sticker v. Ashcroft*, 539 S.W.3d 702 (Mo. App. 2017); *Pippen v. Ashcroft*, 606 S.W.3d 689 (Mo. App. 2020). The same principles apply to candidates. Missouri voters should not be duped into assuming that James Coyne is lawfully before them when it is clear the Committee knowingly violated the clearly delineated timeline provided in Section 115.369 and nominated a candidate out of time.

Voters must feel confident that the issues and candidates that appear on ballots are lawfully vetted and legally presented. Permitting anything less is incongruous with democratic principles of free, fair, and open elections. James Coyne must be removed from the ballot. Democracy demands it.

CONCLUSION

For the foregoing reasons, all four *Gabbert* factors weigh in favor of issuing a temporary restraining order in this matter to preserve the status quo until the parties can be heard on a request for preliminary injunction.

Dated: May 22, 2024

Respectfully submitted,

STINSON LLP

By: /s/ Alexandra S. Cossette
Alixandra S. Cossette, MO No. 68114
Charles W. Hatfield, MO No. 40363
Greta M. Bax, MO No. 73354
230 W. McCarty Street
Jefferson City, Missouri 65101
Phone: (573) 636-6263
Facsimile: (573) 636-6231
alix.cossette@stinson.com
chuck.hatfield@stinson.com
greta.bax@stinson.com

ATTORNEYS FOR PLAINTIFF

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing will be served upon Defendants via Special Process Server along with the Verified Petition for Declaratory Judgment and Injunctive Relief and Exhibits A-E. We expect service to take place on Thursday, May 23, 2024.

/s/ Alexandra S. Cossette
Attorney for Plaintiff