

2. Rust's county party chair emphatically refuses to do so, citing his voting record. It seems that this is the position of the majority of Republican party chairs in Indiana—they will not certify anyone, as they insist that the only way candidates may be on the ballot is through their voting record, even though the statute expressly allows for certification of party membership, regardless of voting record.

3. I.C. § 3-8-2-7(a)(4) creates a cycle of voter disenfranchisement. There are no choices on the ballot so Hoosiers do not vote in primaries. Then Hoosiers are precluded from running for office because they did not vote in primaries.

4. In February 2022, eight candidates were removed from the ballot pursuant to the statute. Even though many of those candidates testified that the statute violated their constitutional rights, the Commission insisted their recourse was through the courts.¹ Two of those candidates brought suits after they were removed and sought a decision on the constitutionality of this statute. However, our appellate courts declined to address the merits of their cases, citing mootness, as the May 2022 primary election passed by the time they were before the appellate court. *See, Rainey v. Indiana Election Comm'n*, 208 N.E.3d 641 (Ind. Ct. App. 2023), *transfer denied*, 2023 WL 5310878 (Ind. Aug. 10, 2023); *Bookwalter v. Indiana Election Comm'n*, 209 N.E.3d 438 (Ind. Ct. App. 2023), *transfer denied*, 2023 WL 5614405 (Ind. Aug. 24, 2023).

5. As such, there is no jurisprudence to provide guidance regarding the constitutionality of I.C. § 3-8-2-7(a)(4) except that a panel of our Court of Appeals called a

¹ The February 18, 2022 challenge hearings can be viewed here on the Office of the Secretary of State's YouTube page: <https://youtu.be/yK3sqzBGTQ8>. Review the hearing for Thomas Charles Bookwalter, beginning at the 3 hour, 1 minute mark, for example.

prior, less restrictive version of the same statute “not essential to a valid election.” *Wyatt v. Wheeler*, 936 N.E.2d 232, 239-40 (Ind. Ct. App. 2010).

6. Rust brings this case 8 months prior to the primary election so that he may obtain meaningful judicial relief, secure ballot access, and be able to cast his vote effectively.

JURISDICTION AND VENUE

7. This Court is a proper jurisdiction and a preferred venue as two Defendants, the Indiana Secretary of State and the Indiana Election Commission, have their offices in Indianapolis, Marion County, Indiana.

THE PARTIES

8. Plaintiff, John Rust, is a Republican who seeks access to the ballot for U.S. Senate in 2024. He is also a voter who seeks to cast his vote effectively. His address is 6860 North Base Road, Seymour, Jackson County, Indiana 47274.

9. Defendant, Diego Morales, is the Secretary of State of Indiana. The Secretary is the State of Indiana’s chief election official and is responsible for administering and enforcing the Indiana Election Code, including the provisions challenged herein. See I.C. 3-6-4.2-2. The Secretary’s business address is Office of the Indiana Secretary of State, 200 W. Washington St., Room 201, Indianapolis, Marion County, Indiana 46204.

10. Defendant, the Indiana Election Commission, is responsible for holding hearings regarding candidate challenges and deciding whether a candidate will be able to have access to the primary ballot. Its mailing address is: 302 W. Washington St., Room E204, Indianapolis, Marion County, Indiana 46204.

11. Defendant, Amanda Lowery, is chair of the Jackson County Republican Party. I.C. § 3-8-2-7(a)(4)(B) empowers her to certify candidates who are members of the

party. Upon information and belief, her mailing address is 2308 S. St. Louis St., Vallonia, Indiana, Jackson County, Indiana 47281.

GENERAL ALLEGATIONS COMMON TO ALL COUNTS

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

13. Rust is a lifelong Republican and has donated over \$10,000 to Republican candidates. (See Exhibit A- a list of donations made by Rust as posted on the Federal Election Commission website.)

14. Rust voted in the Republican primary in 2016, but did not vote in 2020 as that election was moved due to Covid-19. Further, most Republicans on his Jackson County, Indiana ballot were running unopposed and as such, there was little, if any, incentive to vote.

15. At the time of the 2020 Republican primary, Indiana law only required that a candidate vote in one Republican primary in order to have ballot access and thus, even without voting in 2020, Rust's 2016 vote made him eligible to run for office.

16. However, thereafter, the law was amended. Presently, pursuant to Indiana Code section 3-8-2-7(a)(4), in order to run as a Republican candidate, Rust must include a statement of his party affiliation and such affiliation is established only if he 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.

17. According to Pew Research, 79% of Hoosier adults identify as a Republican or Democrat,² but only 24% of registered Hoosiers voted in the 2020 primaries.³ As such, under the 2022 amendment to I.C. § 3-8-2-7(a)(4), the vast majority of Hoosiers (approximately 81% of them⁴), including Rust, are presumptively ineligible to run for office unless their party chair certifies them.

18. Each candidate seeking to be on the ballot for a primary election in Indiana must complete a CAN-2 form. (See Exhibit B, a blank CAN-2 form.)

19. 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.

20. As noted above, Rust is a resident of Jackson County.

² Pew Research Center. Party affiliation among adults in Indiana. Available at <https://www.pewforum.org/religious-landscape-study/state/indiana/party-affiliation/>, last visited September 15, 2023, 9:57 a.m.

³ Indiana Secretary of State, Elections Division. Primary Election Turnout and Registration. Available at <https://www.in.gov/sos/elections/voter-information/files/2020-Primary.pdf>, last visited September 15, 2023, 9:57 a.m.

⁴ This is a conservative estimate because just because someone votes in one primary, does not mean they vote in two and for the same party. Also, Rust uses the higher 2020 voter turnout in this calculation. There was more turnout in 2020 than in 2018 or 2022. <https://www.in.gov/sos/elections/voter-information/files/2018-Primary-Election-Turnout-and-Registration-20181129>; <https://www.in.gov/sos/elections/voter-information/files/2022-PERT.pdf> last visited September 15, 2023, 9:58 a.m.

21. 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.

22. During that meeting, Rust explained why he wanted to run for office. That is, he has major concerns about the current national democratic leadership and seeks a return to traditional Republican values. For instance, Rust does not believe that biological men should compete in women's sports or that schools should expose children to pornographic material.

23. Rust further expressed his desire to bring a common sense "farmer" approach to the problems facing our country and thought such an approach would appeal to working class Hoosiers who are fed up with inflation and various moral issues, among other things.

24. Lowery expressed concerns about Rust having previously voted in Democratic primaries and Rust explained that those votes were for people he knew personally through church or for those who were pro agriculture. He further explained that he has never contributed to a Democratic candidate financially, but did support Republican candidates financially, and he always votes for Republican candidates in the general elections. (See attached Exhibit C- John Rust's voting record.)

25. Lowery told Rust she would not certify him because of his voting record, a position she reported to the IndyStar newspaper as well. (See attached Exhibit D- August 22, 2023 IndyStar article.)

26. She told IndyStar that she would not sign off on any candidate that did not vote in the two primaries pursuant to Option A in the statute.

27. Once Rust formally announced his candidacy, Lowery contacted him to tell him he was “wasting his money” and that there was “no way” she would ever certify him.

28. Without certification, Rust will not be able to check either box on his CAN-2 form to demonstrate party affiliation pursuant to I.C. § 3-8-2-7 and his candidacy will be challenged.

29. Indeed, candidate Jim Banks’ campaign team has told IndyStar that someone from his team will file a challenge to have Rust not placed on the ballot for failing to comply with I.C. § 3-8-2-7. (See Exhibit C.)

30. At the time of the 2020 primary, Rust had no way of knowing that the statute would be amended to preclude him from running for office based on his voting record.

31. Nevertheless, given that Rust is a Republican he was shocked that his party chair refuses to certify him; she has been his “friend” on social networking site for years and although his opponent is calling him a “Democrat” in the media now, there has never been any controversy about his status as a member of the Republican party previously.

32. Given the considerable time, effort and resources that must be invested to run a successful political campaign, time is of the essence and Rust will be irreparably harmed with no recourse if he is not given ballot access.

33. Rust has a reasonable likelihood of success on the merits.

34. Rust will be harmed more than Defendants should he not be given ballot access. It is not clear what legitimate harm, if any, Defendants will suffer by Rust being on the ballot and the substantial burden placed on Plaintiff by I.C. § 3-8-2-7(a)(4) cannot be justified by the state’s claimed interest in the statute.

35. The community has an interest in having choices on the ballot. Accordingly, the community's interests will not be disserved by Rust being on the ballot.

**COUNT I - ACTION FOR DECLARATORY AND INJUNCTIVE RELIEF
FOR VIOLATION OF THE FIRST AND FOURTEENTH AMENDMENT**

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

37. The First Amendment to the U.S. Constitution provides:

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

38. The Supreme Court has long held that the First Amendment's protection of free speech, assembly, and petition logically extends to include freedom of association, including freedom of political association and political expression. *See, e.g., Kusper v. Pontikes*, 414 U.S. 51, 56-57 (1973) (the First and Fourteenth Amendments guarantee "freedom to associate with others for the common advancement of political beliefs and ideas;" a freedom that encompasses the right to associate with the political party of one's choice.)

39. It is also well-settled that "freedom to engage in association for the advancement of beliefs and ideas is an inseparable aspect of the 'liberty' assured by the Due Process Clause of the Fourteenth Amendment. . . ." *Anderson v. Celebrezze*, 460 U.S. 780, 787 (1983) (*quoting NAACP v. Alabama*, 357 U.S. 449, 460 (1958).) "[T]he right of individuals to associate for the advancement of political beliefs, and the rights of qualified voters, regardless of their political persuasion, to cast their votes effectively. . . rank among our most precious freedoms." *Id.* at 787 (*internal quotations and citations omitted.*)

40. I.C. § 3-8-2-7(a)(4) imposes a severe burden on the rights of free association, ballot access, and voting rights.

41. I.C. § 3-8-2-7(a)(4) is not tailored to meet any legitimate let alone compelling state interest.

42. Denying Rust ballot access violates his constitutionally protected rights to freely associate with the Republican party and to cast his vote effectively.

**COUNT II- ACTION FOR DECLARATORY AND INJUNCTIVE RELIEF
BECAUSE I.C. § 3-8-2-7(a)(4) IS OVERLY BROAD AND VOID FOR VAGUENESS**

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

44. The ‘void for vagueness’ doctrine applies to ballot access restrictions. *Ray v. State Election Board*, 422 N.E.2d 714, 721 (Ind. Ct. App. 1981).

45. I.C. § 3-8-2-7(a)(4) is overbroad and void for vagueness because in Indiana party membership and certification are not statutorily defined, just as party membership was not defined in the statute at issue in *Ray*.

46. In addition, I.C. 3-8-2-7(a)(4)(B) impermissibly delegates to party chairs total discretion to decide who they certify without any guidelines or restrictions, and without regard for actual party membership.

47. I.C. § 3-8-2-7(a)(4) is vague and overbroad as applied to Rust and other candidates.

48. I.C. § 3-8-2-7(a)(4) should be struck down as being unconstitutionally vague and overly broad.

**COUNT III - ACTION FOR DECLARATORY AND INJUNCTIVE RELIEF
FOR VIOLATION
ARTICLE 1, SECTION 23.**

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

50. Article 1, Section 23 of the Indiana Constitution provides that, “The General Assembly shall not grant to any citizen, or class of citizens, privileges or immunities, which upon the same terms, shall not equally belong to citizens.”

51. The statute makes it so only a small percentage of Hoosiers and those hand selected by the party chair are eligible to run for office.

52. Rust is being treated differently than other candidates and this disparate treatment has nothing to do with his inherent characteristics.

53. Denying Rust ballot access violates his constitutionally protected right to equal protection under Article 1, Section 23 of the Indiana Constitution.

**COUNT IV - ACTION FOR DECLARATORY AND INJUNCTIVE RELIEF
FOR VIOLATION OF THE SEVENTEENTH AMENDMANT AND ARTICLE 2,
SECTION 1 RIGHT OF THE PEOPLE TO CHOOSE THEIR ELECTED OFFICIALS**

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

55. The Seventeenth Amendment provides in relevant part:

The Senate of the United States shall be composed of two Senators from each state, elected **by the people thereof**, for six years; and each Senator shall have one vote. The electors in each state shall have the qualifications requisite for electors of the most numerous branch of the state legislatures.

(emphasis added).

56. This amendment supersedes Article I, Section 3, Clauses 1 and 2 of the U.S. Constitution, under which senators were previously elected by state legislatures.

57. Article 2, Section 1 of the Indiana Constitution provides that: “[a]ll elections shall be free and equal.

58. Because of this promise of free and equal elections, Indiana law strongly disfavors disenfranchisement of voters and supports that the people choose their public office holders.

59. I.C. § 3-8-2-7(a)(4) disenfranchises voters by giving the legislature and party chairs the ability to control who is on the ballot for U.S. Senate contrary to the Seventeenth Amendment and Article 2, Section 1.

**COUNT V- ACTION FOR DECLARATORY AND INJUNCTIVE RELIEF
FOR VIOLATION OF ARTICLE 4, SECTION 7**

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

61. Article 4, Section 7 provides:

No person shall be a Senator or a Representative, who, at the time of his election, is not a citizen of the United States; nor any one who has not been, for two years next preceding his election, an inhabitant of this State, and, for one year next preceding his election, an inhabitant of the county or district whence he may be chosen. Senators shall be at least twenty-five, and Representatives at least twenty-one years of age.

62. I.C. § 3-8-2-7(a)(4) adds additional, unnecessary requirements to run for office.

63. The statute serves as a revision to our constitution that did not go through the proper procedures as a constitutional amendment and as such, is unconstitutional on its face.

64. Rust is not able to cast his vote effectively because constitutionally qualified candidates are rendered ineligible due to the statute.

**COUNT VI- ACTION FOR DECLARATORY AND INJUNCTIVE RELIEF
BECAUSE LOWERY’S APPLICATION OF I.C. § 3-8-2-7(a)(4) VIOLATES
MULTIPLE CANONS OF STATUTORY CONSTRUCTION**

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

66. 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).

67. Further, to effectuate legislative intent, we read the sections of an act together in order that no part is rendered meaningless. *Id.*

68. Additionally, when interpreting a statute, courts cannot engraft new words onto the statute. That is, courts will not read into the statute that which is not the expressed intent of the legislature” and “it is just as important to recognize what the statute does not say as to recognize what it does say.” *Wilson v. State*, 189 N.E.3d 231, 233 (Ind. Ct. App. 2022)

69. The clear purpose of the statute by its plain language is to determine if a candidate is a *bone fide* member of the party. The statute does not provide for a county party chair to make decisions about who should run or to endorse or select candidates. It only provides for a determination of the candidate’s party membership.

70. And I.C. § 3-8-2-7 must be construed in harmony with other election statutes, including I.C. § 3-10-1-2 which states that major political parties, such as the Republican Party,⁵ “...shall hold a primary election...to select nominees to be voted for the general election.”

⁵ “...whose nominees received at least 10% of the votes for Secretary of State in the last election...” See I.C. § 3-10-1-2.

71. To construe I.C. § 3-8-2-7(a)(4)(B) to permit county party chairs to withhold certification in order to protect favored candidates from primary challengers is in conflict with I.C. § 3-10-1-2's requirement that such parties hold primaries and allow the voters to elect the party's nominee.

72. Here, the party has already endorsed Jim Banks and Lowery seeks to preclude Rust from even running in contravention of the spirit and purpose of the election law.

73. Lowery has engrafted words on to the statute to the extent that she requires that Rust demonstrate anything more than he is current party membership to obtain her certification.

74. Lowery refuses to certify Rust based on his voting record. However, her interpretation that Option A under the statute is the only means to access the ballot renders Option B meaningless.

75. Lowery's interpretation leads to the absurd result that a Republican, Rust, cannot run as a Republican.

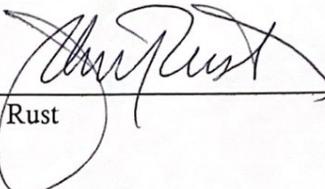
PRAYER FOR RELIEF

WHEREFORE, Plaintiff, John Rust, by counsel respectfully requests that this Court:

1. Declare that I.C. § 3-8-2-7(a)(4) is unconstitutional under our state and federal constitutions for the reasons outlined above;
2. Enter a preliminary injunction, later to be made permanent, enjoining Defendants from taking any action that would prevent Plaintiff from accessing the 2024 Republican ballot;
3. Award attorneys' fees and costs pursuant to I.C. §34-14-1-10; and
4. Award any other just and proper relief.

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

Respectfully submitted,

/s/ Michelle C. Harter
Michelle C. Harter, Attorney No. 32657-41

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CERTIFICATE OF SERVICE

I certify that on September 18, 2023, I electronically filed the foregoing *Complaint* using the Indiana E-Filing System.

I also certify that on the September 18, 2023, the foregoing document was served upon the following via certified mail:

Diego Morales, Indiana Secretary of State
Office of the Secretary of State
200 W. Washington St., Room 201
Indianapolis, Indiana 46204

Indiana Election Commission
c/o Paul Okeson, Chairman
302 W. Washington St., Rm E204
Indianapolis, Indiana 46204

Amanda Lowery
2308 S. St. Louis St.
Vallonia, Indiana 47281

And pursuant to I.C. § 34-14-1-11, I served the following via e-service:

Theodore E. Rokita
Attorney General of Indiana
302 W. Washington St.
Fifth Floor, Indianapolis, IN 46204

/s/ Michelle C. Harter
Michelle C. Harter