2011 IL App (1st) 113375-U

FIFTH DIVISION
December 23, 2011

No. 1-11-3375

IN THE APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

ILLINOIS GREEN PARTY, a voluntary association and political party, and LAUREL LAMBERT SCHMIDT, Plaintiffs-Appellants, v. ILLINOIS STATE BOARD OF ELECTIONS, WILLIAM M. McGUFFAGE, Chairman, JESSE R. SMART, Vice-Chairman, and BRYAN A. SCHNEIDER, BETTY J. COFFRIN, HAROLD B. BYERS, JUDITH C. RICE, CHARLES W. SCHOLZ, and ERNEST L. GOWEN, Members, in their official capacities, Defendants-Appellees.	)	Appeal from the Circuit Court of Cook County 11 CH 36783 Honorable Edmund Ponce De Leon, Judge Presiding.

JUSTICE McBRIDE delivered the judgment of the court.
Presiding Justice Epstein and Justice J. Gordon concurred in the judgment.

O R D E R

¶ 1 HELD: The trial court did not err in dismissing plaintiffs' complaint because the Illinois Green Party is not an "established political party" within districts or political subdivisions under section 10-2 of the Election Code (10 ILCS 5/10-2 (West 2010)) following the change in boundaries after redistricting.

¶ 2 Plaintiffs, Illinois Green Party (ILGP) and Laurel Lambert Schmidt, appeal from the circuit court's order dismissing their complaint for declaratory and injunctive relief against

defendants, the Illinois State Board of Elections, alleging that defendants impermissibly denied the ILGP status as an established political party for the 2012 election cycle. The complaint further alleged that Schmidt was denied the benefits of running as an established political party in her campaign for United States Representative in Illinois' 3rd Congressional District.

¶ 3 Plaintiffs appeal, arguing that the ILGP is entitled to established political party status in districts or political subdivisions after redistricting based on the party's results from the preceding election, prior to redistricting. Plaintiffs further assert that the denial of established political party status offends the first and fourteenth amendments, affecting plaintiffs' ballot access, the ILGP's right to associate as a political party, and the rights of Illinois voters.

¶ 4 In October 2011, plaintiffs filed their complaint for declaratory judgment and preliminary and permanent injunctions in the circuit court. The complaint alleged the following facts.

¶ 5 The ILGP is an association of Illinois voters, united as a political party in Illinois and recognized as a state political party by the Federal Election Commission. The ILGP is also an affiliate of the national Green Party. Schmidt is a member of the ILGP and was the party's candidate for United States Representative for the 3rd Congressional District in the November 2010 election.

¶ 6 In the November 2006 general election, the ILGP's candidate received over 10% of the votes cast for the office of governor. Based on those election results, the ILGP qualified as an "established political party" throughout Illinois until the next gubernatorial election, pursuant to section 10-2 of the Illinois Election Code (10 ILCS 5/10-2 (West 2006)). In the November 2010 general election, the ILGP candidate did not receive more than 5% of the votes cast for governor.

As a result, the ILGP did not qualify as an "established political party" throughout Illinois.

¶ 7 However, ILGP candidates, including Schmidt, received more than 5% of the vote cast in the elections for several congressional races. Schmidt, in particular, received 10,028 votes, accounting for 6% of the votes cast for that office in the 3rd Congressional District. The ILGP also received more than 5% of the vote in elections for several races for representatives to the Illinois General Assembly as well as other local offices.

¶ 8 Under section 10-2, candidates of an "established political party" participate in the primary election and are required to gather fewer petition signatures than required for a new party or independent candidate. 10 ILCS 5/10-2 (West 2010). Schmidt alleged that as an established political party candidate for U.S. Representative in the 3rd Congressional District, she would only need to submit 600 signatures of qualified voters between September 6, 2011, and December 5, 2011, to participate in the March 2012 primary election. However, if Schmidt were to run as a new party candidate or an independent candidate under section 10-2, she must obtain 5,000 signatures of qualified voters between March 27, 2012, and June 25, 2012, in order to appear on the ballot for the general election.

¶ 9 Defendants issued its "Candidate's Guide" for 2012 and did not recognize the ILGP as an established political party for any upcoming congressional elections. In September 2011, the ILGP chair wrote defendants seeking clarification of the defendants' position on the ILGP as an established political party. Defendants advised the ILGP that they will not accept or recognize petitions submitted by ILGP candidates as "established party candidates" for the March 2012 primary election, including those congressional districts in which the ILGP candidate received

5% of the votes cast. Defendants explained that the failure of the ILGP gubernatorial candidate to receive 5% of the votes cast in 2010 resulted in the party losing its state-wide status as an established political party and it only remained an established party in the local areas in which candidates reached the 5% threshold. Defendants stated that "[i]n the absence of redistricting," the ILGP would have remained established "in each of the Congressional and Representative Districts where their candidates polled above the threshold."

¶ 10 In their complaint, plaintiffs alleged that the defendants' position "deprives the ILGP, and its members, voters and candidates, including but not limited to Plaintiff, Schmidt, of their constitutional rights, including, but not limited to their First amendment right to nominate, vote for and elect ILGP candidates." Plaintiffs requested a declaration that the ILGP was an "established political party" in districts and political subdivisions where its candidates obtained more than 5% of the vote in the 2010 general election and an injunction requiring the defendants to amend its Candidates' Guide and to accept nominating papers from ILGP candidates in those areas as established party candidates.

¶ 11 In November 2011, plaintiffs filed a motion for summary judgment on their complaint while defendants filed a motion to dismiss the action for failure to state a claim. Defendants argued in their motion that the issue raised in plaintiffs' complaint had already been addressed and answered in *Vestrup v. Du Page County Election Commission*, 335 Ill. App. 3d 156 (2002). The circuit court granted defendants' motion to dismiss and denied plaintiffs' motion for summary judgment. In its written order, the court stated that "[t]he issue here is whether redistricting of districts alters a party's status when the party is an 'established party' only as to

the previously drawn district." The circuit court held that the *Vestrup* decision addressed this issue and found plaintiffs to be similarly situated to the plaintiff in *Vestrup*. The court discussed the *Vestrup* holding, that " 'a party's status as an established political party in a particular representative district does not outlast in any fashion the existence of that district once it has been altered by redistricting.' 335 Ill. App. 3d at [164.]" The circuit court concluded that, "Although Schmidt did garner enough votes to be an established party candidate in the previously drawn Third Congressional District, that District no longer exists as it did back then, and she can no longer claim established party status on the basis of her performance in the now defunct district."

¶ 12 This appeal followed.

¶ 13 Plaintiffs argue that the ILGP should be an established party in all of the districts and political subdivisions where its candidates received at least 5% of the vote in 2010, and defendants have unconstitutionally and improperly deprived the ILGP and Schmidt of their ballot access and political party associational rights without authority in the Election Code.

¶ 14 The circuit court dismissed plaintiffs' complaint pursuant to defendants' motion to dismiss pursuant to section 2-615 of the Code of Civil Procedure (735 ILCS 5/2-615 (West 2010)). A section 2-615 motion to dismiss challenges the legal sufficiency of a complaint based on defects apparent on its face. *Marshall v. Burger King Corp.*, 222 Ill. 2d 422, 429 (2006). In reviewing the sufficiency of a complaint, we accept as true all well-pleaded facts and all reasonable inferences that may be drawn from those facts and we construe the allegations in the light most favorable to the plaintiff. *Marshall*, 222 Ill. 2d at 429. "Thus, a cause of action

should not be dismissed pursuant to section 2-615 unless it is clearly apparent that no set of facts can be proved that would entitle the plaintiff to recovery." *Marshall*, 222 Ill. 2d at 429. A plaintiff is not required to set forth evidence in his complaint, but he must allege sufficient facts to bring a claim within a legally cognizable cause of action. *Marshall*, 222 Ill. 2d at 429. We review a trial court's grant of section 2-615 motion *de novo*. *Marshall*, 222 Ill. 2d at 429. Further, because the issue on appeal involves a question of statutory construction, we review construction of a statute, which is a question of law, *de novo*. *Ries v. City of Chicago*, 242 Ill. 2d 205, 216 (2011).

¶ 15 The cardinal rule in construing a statute, to which all others are subordinate, is to ascertain and give effect to the intent of the legislature. *Alvarez v. Pappas*, 229 Ill. 2d 217, 228 (2008). To determine legislative intent, we turn to the language of the statute, which is the best indicator of its intent. *Alvarez*, 229 Ill. 2d at 228. We must give the statutory language its "plain, ordinary, and popularly understood meaning," and "[w]here the language is clear and unambiguous, the statute must be given effect as written without resort to further aids of statutory construction." *Alvarez*, 229 Ill. 2d at 228. "[A]ll words and phrases must be interpreted in light of other relevant provisions of the statute and must not be construed in isolation." *Brucker v. Mercola*, 227 Ill. 2d 502, 514 (2007). "Each word, clause and sentence of the statute, if possible, must be given reasonable meaning and not rendered superfluous." *Brucker*, 227 Ill. 2d at 514.

¶ 16 Section 10-2 of the Election Code provides two ways in which a political party may become an "established political party." The first way is when a political party's candidate for

governor in the last general election received more than 5% of the total votes cast, then the political party is "declared to be an 'established political party' as to the State and as to any district or political subdivision thereof." 10 ILCS 5/10-2 (West 2010). A political party will remain an "established political party" so long as the party's candidate for governor continues to receive more than 5% of the entire votes cast for that office. Under the second method, when the political party's candidate in "the last election in any congressional district, legislative district, county, township, municipality or other political subdivision or district in the State" received more than 5% of the "entire vote cast within such territorial area or political subdivision," then the political party is "declared to be an 'established political party' within the meaning of this Article as to such district or political subdivision." 10 ILCS 5/10-2 (West 2010).

¶ 17 In June 2011, the legislature approved a redistricting plan for the Illinois congressional districts. Public Act 97-14 divided Illinois into 18 congressional districts (Pub. Act 97-14 (eff. June 24, 2011)), but previously Illinois had 19 congressional districts (10 ILCS 76/5 (West 2010)). Section 10-2 specifically addresses the signature requirement for a new political party following redistricting. "For the first election following a redistricting of congressional districts, a petition to form a new political party in a congressional district shall be signed by at least 5,000 qualified voters of the congressional district." 10 ILCS 5/10-2 (West 2010). In an election, other than the first election after redistricting, a new political party must file a petition with not less than 5% of the voters who voted in the next preceding general election in that district. 10 ILCS 5/10-2 (West 2010).

¶ 18 In this case, it is uncontested that the ILGP's candidate for governor in the 2010 general

election did not receive more than 5% of the total votes cast. Therefore, the only way for the ILGP to be an "established political party" until the next gubernatorial election is under the second method. It is also uncontested that Schmidt received more than 5% of the votes cast in the election for congressional representative in the 3rd Congressional District. However, the 3rd Congressional District no longer exists as it did at the time of the general election in 2010 because the districts boundaries have been redrawn following the 2010 census. The 3rd Congressional District's boundaries have changed as a result of this redistricting. The issue raised by the ILGP is whether Schmidt, and other ILGP candidates who received more than 5% of the votes in their respective races, can run as an established party candidate when the congressional district that voted no longer exists in the same form. This issue was considered and resolved in *Vestrup v. Du Page County Election Commission*, 335 Ill. App. 3d 156 (2002).

¶ 19 There, the Libertarian candidate for state representative for the 39th Representative District received over 26% of the votes cast in the November 2000 general election. However, the map of the representative districts was subsequently redrawn and the former District 39 then fell within the boundaries of Districts 41, 42, 47, 48, and 95. *Vestrup*, 335 Ill. App. 3d at 158. In May 2002, Vestrup filed a petition to run as the Libertarian candidate for state representative in District 47 in the November 2002 general election. An objection was filed arguing that the Libertarian Party was not an "established political party" in District 47. Vestrup asserted that the Libertarian Party was an established political party in District 47 under section 10-2 because the party polled more than 5% of the vote in District 39 in the 2000 general election for state representative and District 47 includes part of the geographic area of the former District 39.

Vestrup, 335 Ill. App. 3d at 159. The Du Page County Officers Electoral Board (Board) rejected Vestrup's argument and ruled that the Libertarian Party had failed to establish itself as a new political party under section 10-2. The Board found that the results of the 2000 general election in District 39 did not " 'elevate the Libertarian Party to "established political party" status in the newly created 47th District.' " *Vestrup*, 335 Ill. App. 3d at 159. The trial court affirmed the Board's decision.

¶ 20 On appeal, Vestrup argued that a party's status as an established political party within a district or political subdivision remains after a change of the boundaries of that district or political subdivision. The party gains the status of an established political party in any district or political subdivision that contains any portion of the geographic area of the former district or political subdivision. Thus, Vestrup asserted that the Libertarian Party was an established political party in District 47 because a portion of that district was part of the former District 39 in which the Libertarian Party candidate received more than 5% of the vote in the previous general election. The reviewing court disagreed.

> "In our view, the establishment provision of section 10-2 provides that a political party has the status of an established political party in any of several enumerated districts or political subdivisions if, when that district or political subdivision voted as a unit for the election of officers in the last election, that party polled more than 5% of the vote. That status, we emphasize, is conferred with respect to districts and political subdivisions, not

> geographic areas that exist independently of districts and political subdivisions. Necessarily, then, a party's status as an established political party in a particular representative district does not outlast in any fashion the existence of that district once it has been altered by redistricting. As for what a political party must do to obtain a place on the ballot after redistricting, there are specific provisions in the Election Code addressing the consequences of redistricting." *Vestrup*, 335 Ill. App. 3d at 164.

¶ 21 The *Vestrup* court held that the Libertarian Party would have been an established political party in District 39 for the 2002 general election, but it "never reaped the fruit of that status" because District 39 was redistricted before the 2002 election. *Vestrup*, 335 Ill. App. 3d at 164. Moreover, since District 47 had also been redistricted, it had not voted as a unit for the election of officers. Under section 10-2, the Libertarian Party in District 47 had not received established political party status for the 2002 general election. *Vestrup*, 335 Ill. App. 3d at 164.

¶ 22 The court in *Vestrup* further considered the Libertarian Party's constitutional right to ballot access. The court recognized ballot access as a substantial right and was "mindful" of " 'the need to tread cautiously when construing statutory language which restricts the people's right to endorse and nominate the candidate of their choice.' " *Vestrup*, 335 Ill. App. 3d at 164-65 (quoting *Lucas v. Lakin*, 175 Ill. 2d 166, 176 (1997)).

> "Yet, while restrictions on the access of political parties to the ballot implicate rights under the United States Constitution, even

> that document has been interpreted by the United States Supreme Court as permitting a State to 'condition access to the general election ballot by a minor-party or independent candidate upon a showing of a modicum of support among the potential voters for the office.' " *Vestrup*, 335 Ill. App. 3d at 165 (quoting *Munro v. Socialist Workers Party*, 479 U.S. 189, 193 (1986)).

¶ 23 The court found that Vestrup's construction of the statute would grant

> "a political party the status of an established political party in any district that includes any piece of a former district in which that party earned over 5% of the vote in the last election, regardless of what level of voter support the party garnered in the last election in the overlapping portion or in the remaining geographic area comprising the new district. But this would permit a political party to spread from ballot to ballot not through a proportionate showing of public support but through the unpredictable processes of redistricting. This would undermine, not vindicate, 'the people's right to endorse and nominate the candidate of their choice.' " *Vestrup*, 335 Ill. App. 3d at 165 (quoting *Lakin*, 175 Ill. 2d at 176).

¶ 24 The reviewing court acknowledged that its holding would cause established political parties with less than statewide recognition to lose their status when the district or political subdivision in which they were recognized ceased to exist. Such a political party must then

proceed under the portions of section 10-2 relating to the establishment of a new political party following redistricting. *Vestrup*, 335 Ill. App. 3d at 165.

¶ 25 We find the analysis in *Vestrup* to be well reasoned and applicable to the facts of the present case. While Schmidt received more than 5% of the votes cast in 3rd Congressional District in the 2010 general election, the 3rd Congressional District from 2010 has ceased to exist. Following redistricting in 2011, the boundaries of the 3rd Congressional District have changed. As the court in *Vestrup* held, "a party's status as an established political party in a particular representative district does not outlast in any fashion the existence of that district once it has been altered by redistricting." *Vestrup*, 335 Ill. App. 3d at 164. The 3rd Congressional District has been altered by redistricting and as such, the ILGP's status as an established party in that district ended when the district changed. The mere fact that the 3rd Congressional District still exists does not confer established political party status on the district, the current 3rd Congressional District has never voted in a general election as a unit. Section 10-2 focuses on "districts" and "political subdivisions," not geographic areas. Because the boundaries for the 3rd Congressional District have changed since the last general election, the ILGP is no longer an established political party in that district and must proceed as a new political party.

¶ 26 Plaintiffs contend that another portion of section 10-2 applies to political parties that had previously received established political party status. Section 10-2 provides, in relevant part:

> "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 (West 2010).

¶ 27 Plaintiffs argue that the use of the terms "shall remain" and "continue" indicate the continuation of established political party status. However, plaintiffs' argument fails to recognize that in the current 3rd Congressional District, as established under Public Act 97-14, the ILGP has never received established political party status. Absent redistricting, this section would have permitted the ILGP to retain its established political party status in the former 3rd Congressional District. The legislature's inclusion of a specific requirement for proceeding as a new political party following redistricting supports this view. If the legislature had not considered redistricting as a change to a district, then it would not have created a special requirement for the first general election after redistricting. See 10 ILCS 5/10-2 (West 2010).

¶ 28 Plaintiffs also contend that the failure to recognize the ILGP as an established political party unconstitutionally and improperly deprives plaintiffs of their right to ballot access and

associational rights. Plaintiffs assert that the requirements for the establishment of a new political party under section 10-2 creates an unreasonable restriction because the ILGP has already shown "a significant modicum of support" by receiving more than 5% of the vote in a general election. Again, plaintiffs fail to recognize that the ILGP candidates have not received any votes under the new districts following redistricting. The "modicum of support" the ILGP previously received was under the prior district boundaries and cannot be carried over into the new districts.

¶ 29 "It is axiomatic that there cannot be unfettered access to the ballot and that 'states may, and inevitably must, enact reasonable regulations of parties, elections, and ballots to reduce election- and campaign-related disorder.' " *Druck v. Illinois State Board of Elections*, 387 Ill. App. 3d 144, 150 (2008) (quoting *Timmons v. Twin Cities Area New Party*, 520 U.S. 351, 358 (1997)). "States may impose reasonable restrictions upon political parties because states have an interest in requiring a demonstration of qualification in order for the elections to be run fairly and effectively." *Druck*, 387 Ill. App. 3d at 151 (citing *Munro*, 479 U.S. at 193 (citing *Storer v. Brown*, 415 U.S. 724, 730 (1974))).

¶ 30 In *Druck*, the candidate argued that his constitutional rights were violated under the first and fourteenth amendments by the minimum signature requirements for ballot access of a new political party under section 10-2. *Druck*, 387 Ill. App. 3d at 150. The *Druck* court found, "[w]hether an election takes place before or immediately after redistricting, we find that Illinois has an interest in requiring candidates and political parties seeking access to the ballot to demonstrate a modicum of support." *Druck*, 387 Ill. App. 3d at 151 (citing *Vestrup*, 335 Ill.

App. 3d at 165).

¶ 31 "The United States Supreme Court has held that systems like Illinois's of ' "[d]ecennial reapportionment appears to be a rational approach to readjustment of legislative representation in order to take into account population shifts and growth." ' " *Druck*, 387 Ill. App. 3d at 152 (quoting *Political Action Conference of Illinois v. Daley*, 976 F.2d 335, 339 (7th Cir. 1992), quoting *Reynolds v. Sims*, 377 U.S. 533, 583-84 (1964)). The reviewing court further held that "the requirement in section 10-2 of the Election Code of having of a new political party file nominating petitions containing 5,000 signatures in the first election that follows a redistricting is a reasonable and nondiscriminatory way to have a party and its candidate demonstrate a modicum of support." *Druck*, 387 Ill. App. 3d at 152 (citing *Jenness v. Fortson*, 403 U.S. 431, 442 (1971) and *American Party of Texas v. White*, 415 U.S. 767, 782 n. 14 (1974)).

¶ 32 Here, plaintiffs are not being denied ballot access or the right to associate as a political party. They are unable to run in the way they would like to do so. The ILGP can still run candidates in the 2012 general election, but it must do so as a new political party and collect the required number of signatures. As the *Druck* court held, the requirements for a new party following redistricting under section 10-2 is a reasonable way to demonstrate a modicum of support. We agree. Schmidt's, and other ILGP candidates', constitutional rights have not been violated by requiring them to follow the requirements of a new political party after redistricting nor have they been unduly burdened by these requirements. Accordingly, we find that plaintiffs' constitutional rights have not been violated under section 10-2. If Schmidt or other ILGP candidates wish to run in the 2012 general election, they must adhere to the requirements of

section 10-2 for a new political party after redistricting.

¶ 33 Based on the foregoing reasons, we affirm the decision of the circuit court of Cook County.

¶ 34 Affirmed.