

IN THE INDIANA SUPREME COURT
CAUSE NO. 23S-PL-371

DIEGO MORALES, in his official)	
capacity as Indiana Secretary of State, the)	
INDIANA ELECTION COMMISSION)	Appeal from the Marion Superior Court
and AMANDA LOWERY, in her)	
official capacity as Jackson County)	
Republican Party Chair,)	
)	
Appellant)	Trial Court Cause No. 49D12-2309-PL-036487
)	
(Defendants below),)	
)	
v.)	
)	
JOHN RUST,)	The Honorable Patrick J. Dietrick,
)	Special Judge
Appellee)	
(Plaintiff below).)	

VERIFIED MOTION FOR RELIEF FROM STAY

Comes now, Michelle Harter, counsel for John Rust, pursuant to Indiana Appellate Rule 39(F), and files this Verified Motion for Relief from Stay. In support thereof, she states as follows:

BACKGROUND AND APPELLATE RULES REGARDING A STAY

On December 12, 2023, State Defendants filed their Motion for Stay contemporaneously with their Notice of Appeal, and on December 13, 2023, Rust filed his response thereto. In his response, Rust pointed out that the State Defendants did not follow the appellate rules and do not qualify for a stay because in order to obtain a stay from an appellate court, the moving party must show that “extraordinary circumstances exist which excuse the filing of a motion to stay in the trial court.” Ind. App. R. 39(C)(2). That the trial court would likely decide against State Defendants is **not** an extraordinary circumstance

warranting relief from the appellate courts. Indeed, that the trial court is not inclined to stay its own decision is true in **every case** where a trial court has granted injunctive relief. This Court has been historically reluctant to grant any sort of extraordinary relief, and it is unusual that it has done so here where it does not appear to be warranted.

Additionally, State Defendants have not and cannot demonstrate at least two of the four factors required to obtain a stay of the injunction. As State Defendants acknowledge, in order to obtain a stay they must show: (1) irreparable harm; (2) a reasonable likelihood of success on appeal; (3) that the harm to the applicant outweighs the harm to the opposing party; and (4) a stay is in the public interest. *Doe v. O'Connor*, 781 N.E.2d 672, 674 (Ind. 2003). Even assuming irreparable harm to State Defendants and that this Court ultimately agrees with the State Defendants on the merits, the other two factors are certainly not met. That is, the harm to Rust outweighs the harm to the State, and a stay is not in the public interest. As such, a stay is inappropriate.

THE HARM TO RUST OUTWEIGHS THE ALLEGED HARM TO THE STATE

This Court held ruling on State Defendants' Motion for Stay in abeyance for two months until February 15, 2023, approximately 23 hours from the deadline to file candidate challenges. This timing is rather unfortunate for Rust. Since the trial court enjoined the statute, Rust has spent the last few months campaigning and has expended significant time, energy and money to do so and also to obtain the required signatures to run for office. He has gained a significant amount of support as evidenced, in part, by the over 11,000 verified signatures he filed with his Declaration of Candidacy. This is more than double the required 4,500 signatures and many more than his opponent who will now likely run unopposed.

Rust will be irreparably harmed by the Court's stay. That is, his candidacy will be challenged by his opponent (or his opponent's allies) and such challenge will likely be sustained given this Court's order. He will likely be removed from the ballot. Given the timing of the printing of ballots it is likely that even if Rust were to win this appeal, he would not be able to enjoy any meaningful appellate remedy. Time is of the essence and in the case of an adverse ruling from this Court, Rust will likely not have sufficient time to seek review and relief from the U.S. Supreme Court in time to appear on the Republican ballot for May 2024. It bears repeating that Rust is a Republican and he is not willing to lie and state otherwise to obtain ballot access any way possible. Further, if he does so, he will disenfranchise his Republican supporters and risk a ban from the Republican party. *See, Hero v. Lake County Election Bd.*, 43 F.4th 768 (7th Cir. 2022).

It's not clear how the State Defendants will be harmed by Rust appearing on the ballot. They would have to run a primary election. I.C. 3-10-1-2 requires them to do this anyway. Two candidates instead of one does not create any sort of meaningful voter confusion. To the extent the State asserts a host of alleged election management related interests on appeal, none of these alleged interests were significant enough to even be presented to the trial court, and State Defendants have never provided any explanation of how the statute serves those interests except to say these are some interests found in case law, they could someday come to fruition in Indiana, and the statute doesn't have to be a perfect fit. And to the extent the State claims as its interest that the party leadership is harmed by Rust being on the ballot because they do not want him on it and prefer the candidate they endorsed, this ignores the fact that the party is comprised of more than just a

single party chair or a select few; all members of the party compromise the party. *See, Tashjian v. Republican Party*, 478 U.S. 208, 215 (1986).

THE PUBLIC INTEREST IS NOT SERVED BY A STAY

Further, regardless of how this matter ultimately comes out on the merits, the public interest does not support this stay at all. That is, without Rust on the ballot (the likely result of the stay), there will be no choices on the Indiana Republican primary ballot for U.S. Senate, adding to the cycle of voter disenfranchisement. And, thousands of voters who wish to vote for Rust, specifically, will be disenfranchised if Rust is precluded from appearing on the May 2024 ballot as a Republican. This cuts against any argument that the public interest weighs in favor of a stay. Only Rust's opponent and his opponent's political allies benefit from the stay, not Hoosier voters or the state overall.

Jackson County cannot speak for other counties regarding who should be on the ballot for a statewide Senate race. State Defendant, Diego Morales, tacitly acknowledges this as he is actively seeking to protect Indiana voters' rights to vote for presidential candidate Donald Trump in the face of another state trying to remove Trump from the ballot. At the same time, he is arguing that Jackson County can tell other Indiana counties that John Rust cannot be on the ballot. There is no reconciling this disparity. And, at a time when the general American public, particularly Hoosiers, feel that the system is rigged and their vote just does not matter, the public interest is in having choices on the ballot, not being force-fed a candidate by the state's dominant political party.

In sum, because State Defendants have not shown extraordinary circumstances exist to warrant a stay, the harm to Rust outweighs the harm to the State, and the public interest

is not served by a stay, undersigned counsel respectfully requests that this Court grant Rust relief from the stay and enjoin the statute, at least as to him, pending this Court's opinion.

VERIFICATION

I, Michelle C. Harter, affirm under the penalties of perjury that the foregoing factual representations are true and accurate to the best of my knowledge and belief.

s/ Michelle C. Harter
Michelle C. Harter

WORD COUNT CERTIFICATE

I certify that this motion contains no more than 4,200 words.

s/ Michelle C. Harter
Michelle C. Harter

Respectfully submitted,

Lekse Harter, LLC

By: s/ Michelle C. Harter
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CERTIFICATE OF SERVICE

I certify that on February 15, 2024, I electronically filed the foregoing with the Clerk of the Indiana Supreme Court, Court of Appeals, and Tax Court. using the Indiana E-Filing System.

I also certify that on February 15, 2024, the foregoing document was served upon the following via IEFS:

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/s/ Michelle C. Harter

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