

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION

PEOPLE ex rel. MARYAM AHMAD,
Plaintiff,

v.

RHONDA CRAWFORD, ILLINOIS STATE
BOARD OF ELECTIONS, and CHICAGO
BOARD OF ELECTION COMMISSIONERS,
and its Members, MARISEL A. HERNANDEZ,
Chairwoman, WILLIAM J. KRESSE, &
JONATHAN T. SWAIN, and DAVID ORR, in
his official capacity as COOK COUNTY CLERK,
Defendants.

No. 16 CH 14842

Judge Celia Gamrath

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ORDER

This case comes before the court on Maryam Ahmad's petition for leave to file a complaint for *quo warranto*. The court GRANTS Ahmad leave to file the complaint, but unfortunately for Ahmad, her petition is premature. The court DISMISSES the complaint for *quo warranto*, making clear, however, Rhonda Crawford will not be sworn in as a judge on December 5, 2016, and is "enjoined and restrained from taking the judicial oath or assuming the office of judge until further order of the [Illinois Supreme] Court." *In re Rhonda Crawford*, No. MR-28341 (Ill. Oct. 31, 2016).

BACKGROUND

The material facts are not in dispute. Rhonda Crawford entered and won the March 15, 2016, Democratic primary to fill the vacancy created by Judge Vanessa Hopkins' retirement ("Hopkins vacancy"). Pursuant to 10 ILCS 5/7-70, Crawford's name was printed on the November 8, 2016, general election ballot.

Maryam Ahmad, having lost in a different primary contest, sought to enter the race to fill the Hopkins vacancy as a write-in candidate in the general election. On September 6, 2016, she filed a declaration of intent to be a write-in candidate with the Chicago Board of Election Commissioners ("Chicago Board"). Pursuant to the strictures of 10 ILCS 5/17-16.1 and 5/18-9.1, the Chicago Board found Ahmad ineligible. However, on September 21, 2016, the Circuit Court of Cook County granted Ahmad's petition for writ of mandamus, injunctive relief and declaratory judgment to certify her as a valid write-in candidate. The First District Appellate Court affirmed. *Ahmad v. Crawford*, No. 1-16-2811 (1st Dist. Nov. 7, 2016).

On October 21, 2016, Ahmad filed an "Emergency Motion for Supervisory Order or for Leave to File for Writ of Prohibition or Mandamus" with the Illinois Supreme Court. Her emergency motion sought a supervisory order or writ of prohibition or mandamus to compel the

Illinois State Board of Elections ("State Board"), the Chicago Board, and Cook County Clerk David Orr (collectively "Election authorities") to do two things: (1) remove Crawford's name from the ballot; and (2) suppress and not count any votes cast for Crawford. The Election authorities each filed responses objecting to Ahmad's emergency motion.

On October 31, 2016, in connection with an investigation by the Illinois Attorney Registration & Disciplinary Commission ("ARDC"), the Illinois Supreme Court suspended Crawford's law license "effective immediately and until further order of the Court" and "enjoined and restrained [Crawford] from taking the judicial oath or assuming the office of judge until further order of the Court." *In re Rhonda Crawford*, No. MR-28341.

On October 31, 2016, the same day the Illinois Supreme Court entered the suspension order, the Court denied Ahmad's emergency motion for supervisory order or for leave to file a writ of prohibition or mandamus. *Ahmad v. ISBE*, No. 121472 (Ill. Oct. 31, 2016). Ahmad moved to reconsider the Court's decision due to Crawford's suspension, but the Court denied Ahmad's request. *Ahmad v. ISBE*, No. 121472 (Ill. Nov. 3, 2016).

On November 21, 2016, Ahmad filed the instant petition, seeking leave from this court to file a *quo warranto* complaint under 735 ILCS 5/18-101. By way of *quo warranto*, Ahmad seeks findings and orders not only against Crawford, but the Election authorities as well. Specifically, Ahmad seeks: (1) a finding that Crawford was not a legally qualified candidate as of October 31, 2016; (2) a finding that Crawford is exercising her claimed right to be a candidate without lawful authority; (3) an order for Crawford to show by what authority and warrant she exercised her claimed right to be a candidate; (4) an order directing the Election authorities not to count Crawford's general election votes; and (5) an order directing the Election authorities not to certify Crawford as the winner of the Hopkins vacancy, but to certify Ahmad as winner of the vacancy election. (Compl. at 5.)

Defendants Crawford and the Election authorities filed responses to Ahmad's petition. This court heard oral arguments on December 2, 2016. For the reasons stated below, the court grants Ahmad leave to file a complaint for *quo warranto*, but dismisses the complaint.

ANALYSIS

"An independent and honorable judiciary is indispensable to justice in our society. A judge should participate in establishing, maintaining, and enforcing, and should personally observe, high standards of conduct so that the integrity and independence of the judiciary may be preserved...." Ill. Sup. Ct. R. 61 *et seq.* These canons of judicial ethics are critical to justice and cherished by those of us involved in the legal system.

The court is mindful of this creed, and of the many theories and mechanisms under which Ahmad has sought relief. This issue has seen intense public scrutiny and lawyerly talent throughout the condensed, expedited proceedings. The integrity of the judicial system, like the

integrity of the ballot box, warrants the utmost sobriety from all involved. It undergirds the ground from which this very court issues its own findings. The court is likewise aware this is a case of first impression and that *quo warranto* relief is an ancient and drastic remedy to be awarded at a trial court's discretion. This discretion does not extend to disciplining lawyers or judges, nor to presupposing the "worthier" candidate for office. Rather, the task of this court is to decide whether the runner-up, Maryam Ahmad, ought to have leave to file a complaint for *quo warranto*; quash the will of the voters, and have herself declared the winner in Crawford's stead.

I. Ahmad's standing to file the complaint for *quo warranto*

Quo warranto originated as "a writ of right for the crown against one who claimed or usurped any office, franchise or liberty, to challenge by what authority he asserted a right thereto." *People ex rel. Hansen v. Phlegan*, 158 Ill.2d 445, 448 (1994). *Quo warranto* is codified today at 735 ILCS 5/18-101. The statute provides, in pertinent part, that such a proceeding may be brought in case: (1) a person usurps, intrudes into or unlawfully holds or executes any office or franchise; (2) a person holds or claims to hold or exercise any privilege, exemption or license which has been improperly or without warrant of law issued; or (3) a public officer has done, or allowed any act that by law, works as a forfeiture of her office. See 735 ILCS 5/18-101.

A complaint for *quo warranto* to oust a usurper shall be brought by the Attorney General or State's Attorney of the proper county, either of his or her own accord or at the instance of any individual relator. 735 ILCS 5/18-102. A citizen may file suit only where he or she has "an interest in the question on his or her own relation, when he or she has requested the Attorney General and State's Attorney to bring the same, and the Attorney General and State's Attorney have refused or failed to do so." *Id.* Leave of court must be granted for a citizen to file suit. *Id.*

It is undisputed that Ahmad asked the Attorney General and the State's Attorney to pursue a *quo warranto* action and both declined. It is also undisputed she gave proper notice as required by 735 ILCS 5/18-102. The hurdle Ahmad faces is demonstrating Crawford unlawfully holds an office or franchise and that Ahmad has standing to sue in her own stead by showing an invasion of a personal interest which is sufficiently distinct from the interest of the public. *People ex rel. Turner v. Lewis*, 104 Ill. App. 3d 75, 78 (4th Dist. 1982). This "private interest allegedly invaded must be directly, substantially, and adversely affected by the action sought to be challenged in the *quo warranto* proceeding." *Id.* at 77.

"*Quo warranto* is the appropriate remedy to determine the eligibility of a public officer, [citations] and the interest of the rival claimant is sufficient to maintain the action on his own relation." *Frank J. Romano v. Kranz*, 13 Ill.2d 363, 365 (1958); see *Turner*, 104 Ill.App.3d at 80 ("Clearly, a rival claimant to the office would have standing to challenge the present officeholder."). Ahmad qualifies as a rival claimant and has standing to file the complaint for *quo warranto*.

II. Complaint for *quo warranto* is premature

A. Crawford holds no office or franchise

It is undisputed that Crawford does not hold the office of judge, and may never hold the office, depending on the outcome of disciplinary proceedings and criminal charges. Crawford was a candidate for the Hopkins judicial vacancy and received the most votes. However, this does not make her a holder of any office or franchise as used in *quo warranto*.

The power to bring a *quo warranto* commences only after a usurper has taken office. An action is premature when usurpation of office is simply threatened. Illinois law is clear, to proceed *quo warranto* "to test the right or title to an office, there must in all cases have been an actual possession and user of the franchise." *Romine v. Black*, 304 Ill. App. 1, 6 (3rd Dist. 1939); see *Turner*, 104 Ill. App. 3d at 80 (*quo warranto* used to challenge "the present officeholder"). Thus, it is premature for Ahmad to seek to oust Crawford from an office she does not possess.

The parties have not cited to any *quo warranto* case involving a defeated candidate for judge challenging the eligibility of her opponent after commencement of voting in the general election. Ahmad acknowledges this a question of first impression in Illinois and attempts to stretch the word "franchise" to an unrecognizable form.

Franchise is defined as (1) the right to vote; (2) the government-conferred right to engage in a specific business or to exercise corporate powers. *Black's Law Dictionary* 299 (3rd pocket ed. 2006). The right to vote is fundamental; the right to run for elected office is not. Perhaps it is a "privilege" for purposes of 735 ILCS 5/18-101(2), but it is undisputed Crawford's privilege was not improperly granted at the time she filed her nominating papers and was placed on the ballot. Franchise, as used for *quo warranto*, is construed to mean the right of membership in a business or corporation, not the right of candidacy for elected office. The statute was drawn specifically to differentiate between office holders and holders of a corporate or public franchise.

Ahmad cites several cases for the purported proposition that Crawford and the Election authorities intruded upon her interest in a manner entitling her to *quo warranto* relief. Where they are not otherwise factually distinguishable and dealing with matters of annexation, debt collection and alternative traffic programs, these cases can be placed generally into two categories: (1) *quo warranto* actions seeking to oust sitting officials; and (2) suits for mandamus or other injunctive or declaratory relief to disqualify a candidate for a particular office or strike him from the ballot before the election. No case is cited where *quo warranto* is used to oust prospectively a candidate from holding office, suppress votes before certification, or declare the rival runner-up candidate winner of the election without express statutory or constitutional authority.

In a strikingly similar case, the Washington Supreme Court rejected a rival losing candidate's complaint for *quo warranto* on the grounds he did not have a special interest in the office "until the commencement of the term for which he ran as a candidate." *State ex rel. Quick-Ruben v. Verharen*, 136 Wash.2d 888, 901 (1998). The court dismissed the action to oust the electoral winner, finding it was premature as it was filed three weeks before the judicial term was to begin. *Quick-Ruben*, 136 Wash.2d at 905-906. The same is true here.

B. The public is protected without *quo warranto* from having a potentially ineligible officeholder assume the role of judge

Ahmad frames her petition as a means "to protect the public, maintain the integrity of the legal profession, and protect the judicial system itself from the election of [a] constitutionally unqualified, suspended attorney to a judgeship." (Memo at 2.) She elides the fact the Illinois Supreme Court provided exactly this type of protection. On October 31, 2016, the Illinois Supreme Court suspended Crawford's law license and enjoined and restrained her "from taking the judicial oath of office or assuming the office of judge until further order of the Court." *In re Rhonda Crawford*, No. MR-28341.

The Illinois Supreme Court could have, but did not, require Crawford to withdraw her name from the ballot. Nor did it strike her name from the ballot. Nor did it order the suppression of vote totals or make way to declare Ahmad the winner, despite the direct opportunity to do so. *See Ahmad v. ISBE*, No. 121472. Instead, the Court retained jurisdiction over the suspension of Crawford's law license and acted promptly to protect the public and integrity of the judiciary by enjoining her from becoming a judge. *In re Rhonda Crawford*, No. MR-28341.

Absent a sound legal basis for *quo warranto*, this court will not interfere with the Illinois Supreme Court's assumption of jurisdiction over Crawford's fate. In the event the injunction is lifted and Crawford assumes the role of judge, a *quo warranto* action may be ripe to oust her. If successful, it would put Crawford out of office, but not automatically put Ahmad in. The seat would be vacant and filled in accordance with Article VI, section 12 of the Illinois Constitution.

CONCLUSION

IT IS ORDERED: Maryam Ahmad's petition for leave to file a complaint for *quo warranto* is GRANTED, but the complaint is DISMISSED as premature since the question to be determined is not ripe for adjudication. Dismissal of the complaint moots the motion for temporary restraining order and/or preliminary injunction. This order is final and appealable.

ENTERED:



Judge Celia Gamrath, #2031
Circuit Court of Cook County, Illinois
County Department, Chancery Division

Judge Celia G. Gamrath

DEC 02 2016

Circuit Court - 2031