

**IN THE CIRCUIT COURT OF THE EIGHTH JUDICIAL CIRCUIT  
SCHUYLER COUNTY, ILLINOIS**

KATHY SALVI, Candidate for United States Senate and Stan Wallace,	)	
	)	
	)	
Plaintiffs,	)	
	)	
and	)	No.
	)	
MINDY D. GARRETT, COUNTY CLERK OF SCHUYLER COUNTY,	)	
	)	
	)	
Defendant.	)	

**COMPLAINT FOR DECLARATORY JUDGMENT AND INJUNCTIVE RELIEF**

NOW COME the Plaintiffs, KATHY SALVI and Stan Wallace (“Plaintiffs”), by and through their attorneys, and for their Complaint for Declaratory and Injunctive Relief against Defendant, MINDY D. GARRETT (“Defendant”), state as follows:

1. Kathy Salvi is the Republican nominee for the office of United States Senator from the State of Illinois at the 2022 General Election. Kathy Salvi has a substantial interest in this election and seeing that it is conducted in a fair, transparent manner, and in accordance with the Code of Elections of the State of Illinois and the Illinois Constitution.
2. Stan Wallace is a resident of Schuyler County, registered to vote at 503 E. Jefferson Street, Rushville, IL 62681.
3. Mindy Garrett is the County Clerk for Schuyler County (“the Clerk”). In her official capacity as Schuyler County Clerk, Ms. Garrett is responsible for the administration of the 2022 General Election, including the preparation and dissemination of ballots to registered voters in Schuyler County. This action is brought against the Clerk in her official capacity only.

4. Pursuant to the Election Code of the State of Illinois (10 ILCS 5/1 et. seq.), on November 8, 2022, a General Election is being conducted for the purpose of electing a U.S. Senator and other statewide constitutional officers, members of the General Assembly, and local offices.

5. At the Primary Election held on June 28, 2022, Kathy Salvi ran for and won the nomination of the Republican Party for the office of United States Senator from the State of Illinois.

6. Accordingly, on August 26, 2022, the Illinois State Board of Elections certified Kathy Salvi as the Republican Party nominee for the office of United States Senator for the 2022 General Election. A true and correct copy of the pertinent portion of that certification is attached hereto as Exhibit A.

7. Shortly thereafter, the Clerk produced, printed and disseminated the official General Election ballot for Schuyler County.

8. On information and belief, on or about September 23, 2022, the Clerk disseminated seven (7) UOCAVA ballots to Schuyler County residents who are overseas or in the military.

9. On information and belief, shortly thereafter, the Clerk disseminated three hundred seven (307) Vote By Mail ("VBM") ballots to Schuyler County residents who had requested them.

10. On information and belief, shortly thereafter, the Clerk began to conduct in-person Early Voting in her office.

11. On or about October 7, 2022, it was noticed by a Schuyler County voter that his or her ballot listed the name of Peggy Hubbard -- rather than Kathy Salvi -- as the Republican Party's nominee for the office of United States Senator (referred to herein as "the Errant Ballot"). On information and belief, this voter posted a copy of this Errant Ballot on his or her social media.

12. Ms. Hubbard had been a candidate for the Republican nomination for United States Senator in the June 28, 2022 Primary Election. However, Ms. Hubbard lost that election to Kathy Salvi. Despite her loss in the Primary Election, and despite the Illinois State Board of Elections certifying Ms. Salvi as the Republican nominee for U.S. Senate, the Clerk printed Ms. Hubbard's name on the official General Election ballot for Schuyler County as the Republican nominee for that office.

13. Plaintiff Stan Wallace is 72 years old and has voted in every election since he was eighteen years old. Mr. Wallace cast his ballot in-person at the Clerk's office on or about Friday, October 7, 2022. As he was voting, Mr. Wallace recalls thinking that perhaps his ballot was incorrect, and that Salvi had won the Primary, but he could not recall for certain while he was in the voting booth. Mr. Wallace proceeded to vote and cast his ballot. On or about Tuesday, October 11, 2022, Mr. Wallace called the Clerk to report what he believed was an error on his ballot. Mr. Wallace received a call back from the Clerk's Office on Wednesday, October 12, 2022, wherein the office acknowledged the error in listing the name of Peggy Hubbard rather than Kathy Salvi as the Republican nominee for United States Senate on the ballot that he and others had cast.

14. On either Tuesday, October 12<sup>th</sup> or Wednesday, October 13<sup>th</sup>, the Clerk stopped providing Errant Ballots to Schuyler County voters, and began to print and disseminate ballots that contained the name of Kathy Salvi, rather than Peggy Hubbard, as the Republican nominee for the office of United States Senator to voters who came into her office to participate in in-person Early Voting.

15. By this time, forty-five (45) voters had cast ballots in-person in the Clerk's office using the Errant Ballot. As well, by this time, on information and belief, one hundred fifty-four (154) Errant VBM Ballots had been returned to the Clerk's office but had yet to be processed.

16. On information and belief, the Clerk has now set aside, for the time being, the forty-five (45) Errant Ballots cast by individuals during Early Voting.

17. On information and belief, the Clerk has also now set aside, for the time being, the Errant VBM Ballots that have been returned to the Clerk's Office. The Clerk's Office has sent out corrected ballots to all Schuyler County voters, including UOCAVA voters, who had requested and been sent Errant VBM ballots.

18. Even though the Errant Ballots undisputedly contain the incorrect candidates listed for the office of United States Senator, it has been reported that the Clerk still intends to count all votes that are cast for the Democratic and Libertarian nominees for United States Senate, but not to count any votes for the Republican nominee.

19. On October 13, 2022, the Chicago Tribune reported that:

Garrett said she does not expect any of the 45 voters who cast the ballots with Hubbard's name would be able to change their vote, though those ballots were separated in case something changes, she said. Votes on the incorrect ballots for other correctly listed candidates, including incumbent Democratic U.S. Sen. Tammy Duckworth, Libertarian candidate Bill Redpath and candidates in all other races will still count, she added.

Jake Sheridan, *GOP US Senate candidate's name left off of some ballots in rural county in now-corrected error*, CHI. TRIB., Oct.13, 2022.<sup>1</sup>

20. Should the Clerk persist in this proposed course of action – where the votes for the Democrat and Libertarian candidates for US Senate are counted, but not those for the Republican candidate, where the correct candidates for the Senate race were not even listed on the Errant Ballots – she will abridge and violate the rights of Kathy Salvi and of the voters of Schuyler County, especially those who voted Errant Ballots. As a candidate who has been certified by the

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<sup>1</sup> <https://www.chicagotribune.com/politics/elections/ct-schuyler-county-ballot-error-salvi-senate-20221013-gkdr2xkbyna2haweleb7vz3g5a-story.html>

Illinois State Board of Elections, Plaintiff Kathy Salvi is entitled to have her name printed on every General Election ballot throughout the State of Illinois, including Schuyler County, as certified by the Illinois State Board of Elections.

21. Indeed, § 16-3 of the Illinois Election Code requires that a county clerk must print the ballot for his or her county as certified by the Illinois State Board of Elections. Section 16-3 states in pertinent part:

“Any county clerk refusing, neglecting or failing to print on the official ballot the names of candidates of the several political parties in the order certified by the State Board of Elections, and any county clerk who prints or causes to be printed upon the official ballot the name of a candidate, for an office to be filled by the Electors of the entire State, whose name has not been duly certified to him upon a certificate signed by the State Board of Elections shall be guilty of a Class C misdemeanor.”

10 ILCS 5/16-3.

22. In producing, printing and disseminating the Errant Ballots, the Clerk has violated § 16-3 of the Election Code. To the extent the Clerk refuses to take appropriate remedial action with respect to voters to whom she issued Errant Ballots, the Clerk remains in violation of § 16-3 of the Election Code.

23. Moreover, the Clerk’s proposed course of action disenfranchises Schuyler County voters such as Plaintiff Stan Wallace who were provided the Errant Ballots by the Clerk and who voted those Errant Ballots. Stan Wallace, like every Schuyler County resident and voter, has the right to vote a ballot that contains all of the correct candidates on it, and indeed desires the opportunity to cast a correct ballot for all of the proper candidates of his choosing.

24. Pursuant to Article III Section 3 of the Illinois Constitution, “all elections shall be free and equal.” Ill. Const. 1970, art. III, §3. The Clerk’s proposed course of action in counting the Democratic and Libertarian votes on the Errant Ballots – while not providing voters a Republican option -- violates the Free and Equal Clause of the Illinois Constitution.

## JURISDICTION AND VENUE

25. This Court has jurisdiction over the subject matter of this Complaint because the matters alleged herein are governed by the Illinois Election Code, 10 ILCS 5/1 *et seq.*

26. Venue is proper in Schuyler County because the matters alleged occurred in Schuyler County, involve elections occurring in Schuyler County, and the County Clerk is an official of Schuyler County.

## COUNT I

### **INJUNCTIVE RELIEF SOUGHT TO REMEDY VIOLATION OF SECTION 16-3 OF THE ILLINOIS ELECTION CODE**

27. Paragraphs 1 through 26 of the Complaint are hereby incorporated by reference as though the same were fully set forth herein.

28. Section 16-3 of the Illinois Election Code requires that a county clerk must print the ballot for his or her county as certified by the Illinois State Board of Elections, and failure or refusal to do so for a statewide office is a Class C Misdemeanor. 10 ILCS 5/16-3.

29. It is undisputed that the Clerk has failed to print all ballots in Schuyler County as certified by the Illinois State Board of Elections. There currently exist forty-five (45) ballots that have been cast during in-person Early Voting that did not contain the correctly certified candidates for United States Senate. There are an unknown number of VBM ballots that are Errant Ballots that have been returned to the Clerk that did not contain the correctly certified candidates for United States Senate.

30. In order to protect the rights of the Plaintiffs as candidate and voter, at a minimum, the Clerk must be ordered to take corrective action and contact the Schuyler County voters who cast Errant Ballots in-person during Early Voting and to permit those voters to (1) cast their votes

for the certified United States Senate candidate of their choice; or (2) cast new, corrected ballots altogether.

31. In order to protect the rights of Plaintiff Kathy Salvi, no vote for United State Senate should be counted at all if it was cast on an Errant Ballot, whether it was cast during in-person Early Voting, or via Vote By Mail. Because the correct candidates were not listed on the Errant Ballots, and indeed because Kathy Salvi was completely left off the Errant Ballots, it is impossible to discern the true will of the voter as to that particular race.

WHEREFORE, for the reasons set forth above, Plaintiffs pray that this Court grant the following relief:

- (a) Direct the Clerk and all election officials acting in concert with her to contact all individuals who voted an Errant Ballot in-person at the Clerk's Office and permit them an opportunity to cast a new, corrected ballot, or in the alternative, to cast a vote only in the Senate race;
- (b) Direct the Clerk to not count any vote for U.S. Senate that was made on an Errant Ballot;
- (c) Require the Clerk and all election officials acting in concert with her to cause all Errant Ballots, whether cast during Early Voting or Vote By Mail, to be sequestered, apart from all correct returned ballots, to keep all returned Errant VBM Ballots with their return envelopes, and to keep all returned corrected VBM Ballots with their return envelopes;
- (d) Require the Clerk to provide the Court with a list of those individuals who (i) cast a vote on an Errant Ballot during in-person Early Voting; (ii) were sent an Errant VBM Ballot; (iii) were sent an Errant UOCAVA Ballot; (iv) have returned an Errant VBM Ballot; (v) have returned an Errant UOCAVA Ballot; (vi) were sent a replacement corrected VBM

Ballot; (vii) were sent a replacement corrected UOCAVA Ballot; (viii) have returned a corrected VBM ballot and (ix) have returned a corrected UOCAVA Ballot;

(e) Such other and further relief this Court deems just.

## COUNT II

### DECLARATORY JUDGMENT

32. Paragraphs 1 through 31 of the Complaint are hereby incorporated by reference as though the same were fully set forth herein.

33. Plaintiffs, both as candidate and voter, have a tangible legal interest in the proper administration of the election, including the provision of ballots that correctly name the candidates who are legally entitled to appear on the ballot in Schuyler County.

34. “The court may, in cases of actual controversy, make binding declarations of rights, having the force of final judgments, whether or not any consequential relief is or could be claimed, including the determination, at the instance of anyone interested in the controversy, of the construction of any statute, municipal ordinance, or other governmental regulation, or of any deed, will, contract or other written instrument, and a declaration of the rights of the parties interested.” 735 ILCS 5/2-701. Such a declaration of rights “may be obtained... as incident to or part of a complaint... seeking other relief as well.” 735 ILCS 5/2-701(b).

35. The Clerk’s proposed course of action with regard to the Errant Ballots – that the Democratic and Libertarian votes are to be counted, but not the Republican votes -- violates the Free and Equal Clause of the Illinois Constitution, violates Kathy Salvi’s rights as a candidate certified by the Illinois State Board of Elections and disenfranchises Schuyler County voters such as Plaintiff Stan Wallace who were provided the Errant Ballots by the Clerk and who voted those Errant Ballots.



36. Pursuant to Section 16-3 of the Illinois Election Code, "Any county clerk refusing, neglecting or failing to print on the official ballot the names of candidates of the several political parties in the order certified by the State Board of Elections, and any county clerk who prints or causes to be printed upon the official ballot the name of a candidate, for an office to be filled by the Electors of the entire State, whose name has not been duly certified to him upon a certificate signed by the State Board of Elections shall be guilty of a Class C misdemeanor." 10 ILCS 5/16-3.

37. The printing and dissemination of ballots containing the name Peggy Hubbard, rather than Kathy Salvi, is in violation of the Illinois Election Code.

38. There is an actual controversy between the Plaintiffs and the Defendant.

39. There is a concrete dispute in need of an immediate and definitive determination of the parties' rights, the resolution of which will aid in the termination of the controversy.

40. The Plaintiffs are interested in the controversy and possess a personal right which is capable of being affected.

41. By virtue of the County Clerk's Office not properly printing the General Election ballot in Schuyler County, and proposing to count votes cast in races where the correct candidates were not printed on the ballot, an actual controversy concerning the provisions of the Election Code exists that must be resolved pursuant to Section 2-701 of the Code of Civil Procedure.

WHEREFORE, for the reasons set forth above, Plaintiffs pray that this Court grant them declaratory judgment and other relief as set forth more fully above.

### COUNT III

#### PRELIMINARY INJUNCTIVE RELIEF

42. Paragraphs 1 through 41 of the Complaint are hereby incorporated by reference as though the same were fully set forth herein.

43. Plaintiff Kathy Salvi possesses a protectable right in having her name appear on the ballot as certified by the Illinois State Board of Elections;

44. Plaintiff Stan Wallace has a protectable right to cast a vote for the candidate of his choice, particularly when that candidate has earned the right to appear on the ballot.

45. Both Plaintiffs will suffer irreparable injury if injunctive relief is not granted.

46. Neither Plaintiff possesses a remedy at law.

47. Both Plaintiffs possess a high likelihood of succeeding on the merits – it is admitted that the Errant Ballots were indeed incorrect, and omitted the name of Kathy Salvi.

**WHEREFORE**, the Plaintiffs request that this Honorable Court enter an Order in their favor and against the Defendant:

(a) Direct the Clerk and all election officials acting in concert with her to contact all individuals who voted an Errant Ballot in-person at the Clerk's Office and permit them an opportunity to cast a new, corrected ballot, or in the alternative, to cast a vote only in the Senate race;

(b) Direct the Clerk to not count any vote for U.S. Senate that was made on an Errant Ballot;

(c) Require the Clerk and all election officials acting in concert with her to cause all Errant Ballots, whether cast during Early Voting or Vote By Mail, to be sequestered, apart

from all correct returned ballots, to keep all returned Errant VBM Ballots with their return envelopes, and to keep all returned corrected VBM Ballots with their return envelopes;

- (d) Require the Clerk to provide the Court with a list of those individuals who (i) cast a vote on an Errant Ballot during in-person Early Voting; (ii) were sent an Errant VBM Ballot; (iii) were sent an Errant UOCAVA Ballot; (iv) have returned an Errant VBM Ballot; (v) have returned an Errant UOCAVA Ballot; (vi) were sent a replacement corrected VBM Ballot; (vii) were sent a replacement corrected UOCAVA Ballot; (viii) have returned a corrected VBM ballot and (ix) have returned a corrected UOCAVA Ballot;
- (e) Such other and further relief this Court deems just.

Respectfully submitted,

/s/ John G. Fogarty, Jr.

John Fogarty, Jr.  
Counsel for Plaintiffs

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GENERAL ELECTION CERTIFICATE

UNITED STATES OF AMERICA,            )  
  )  SS.           OFFICE OF THE STATE BOARD OF ELECTIONS  
STATE OF ILLINOIS                    )

To the County Clerk of   SCHUYLER County:

We, the undersigned, Members of the State Board of Elections, of the State of Illinois, pursuant to law, do hereby certify that the following is a full, true and correct list of the names of all persons nominated to office, as specified in the certifications of nomination and nomination papers filed in the office of the State Board of Elections, to be voted for by the electors at the General Election to be held on Tuesday, the 8th day of November, 2022, in the county of SCHUYLER:

FOR UNITED STATES SENATOR

(Vote for one)

REPUBLICAN

KATHY SALVI

DEMOCRATIC

TAMMY DUCKWORTH

LIBERTARIAN

BILL REDPATH

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FOR GOVERNOR AND LIEUTENANT GOVERNOR

(Vote for one)

REPUBLICAN	(DARREN BAILEY (STEPHANIE TRUSSELL
DEMOCRATIC	(JB PRITZKER (JULIANA STRATTON
LIBERTARIAN	(SCOTT SCHLUTER (JOHN PHILLIPS

FOR ATTORNEY GENERAL

(Vote for one)

REPUBLICAN	THOMAS G. DeVORE
DEMOCRATIC	KWAME RAOUL
LIBERTARIAN	DANIEL K. ROBIN

FOR SECRETARY OF STATE

(Vote for one)

REPUBLICAN	DAN BRADY
DEMOCRATIC	ALEXI GIANNOULIAS
LIBERTARIAN	JON STEWART

FOR COMPTROLLER

(Vote for one)

REPUBLICAN	SHANNON L. TERESI
DEMOCRATIC	SUSANA A. MENDOZA
LIBERTARIAN	DEIRDRE McCLOSKEY

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FOR TREASURER

(Vote for one)

REPUBLICAN

TOM DEMMER

DEMOCRATIC

MICHAEL W. FRERICHS

LIBERTARIAN

PRESTON NELSON

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FOR REPRESENTATIVE IN CONGRESS  
FIFTEENTH CONGRESSIONAL DISTRICT

(Vote for one)

REPUBLICAN

MARY MILLER

DEMOCRATIC

PAUL J. LANGE

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FOR STATE SENATOR  
FORTY-SEVENTH LEGISLATIVE DISTRICT

(Vote for one)

REPUBLICAN	NEIL ANDERSON
DEMOCRATIC	No Candidate

FOR STATE SENATOR  
FIFTIETH LEGISLATIVE DISTRICT

(Vote for one)

REPUBLICAN	JIL TRACY
DEMOCRATIC	No Candidate

FOR REPRESENTATIVE IN THE GENERAL ASSEMBLY  
NINETY-FOURTH REPRESENTATIVE DISTRICT

(Vote for one)

REPUBLICAN	NORINE K. HAMMOND
DEMOCRATIC	No Candidate

FOR REPRESENTATIVE IN THE GENERAL ASSEMBLY  
NINETY-NINTH REPRESENTATIVE DISTRICT

(Vote for one)

REPUBLICAN	RANDY E. FRESE
DEMOCRATIC	No Candidate



FOR REGIONAL SUPERINTENDENT OF SCHOOLS  
(FULTON, HANCOCK, McDONOUGH AND SCHUYLER COUNTIES)

(Vote for one)

REPUBLICAN

JOHN H MEIXNER

DEMOCRATIC

No Candidate

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FOR JUDGE OF THE CIRCUIT COURT  
EIGHTH JUDICIAL CIRCUIT  
SCHUYLER COUNTY  
(To fill the vacancy of the Hon. Scott J. Butler)

(Vote for one)

REPUBLICAN

No Candidate

DEMOCRATIC

No Candidate

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**Verification**

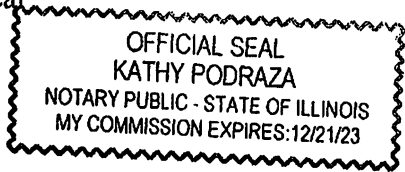
Kathy Salvi being duly sworn on oath says and deposes that she has read the foregoing pleading and knows that its contents are true in substance and in fact except as to the matters alleged on information and belief and as to those matters she believes them to be true based on the best of her knowledge.

  
\_\_\_\_\_

Subscribed before me this 28<sup>th</sup> day of October, 2022

  
\_\_\_\_\_  
Notary Public

Seal



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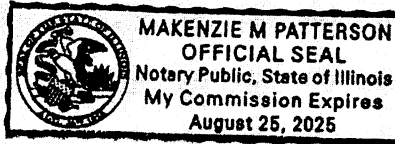
**Verification**

Stan Wallace being duly sworn on oath says and deposes that he has read the foregoing pleading and knows that its contents are true in substance and in fact except as to the matters alleged on information and belief and as to those matters he believes them to be true based on the best of his knowledge.

Stan Wallace

Subscribed before me this 28<sup>th</sup> day of October, 2022

Makenzie M Patterson  
Notary Public



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