



mayoral election. As pertinent to this case, section 7-61 purports to require that the order in which the names of candidates from several political parties are to be placed on an election ballot be determined “by a fair and impartial method of random selection.” (“Facts Common to All Counts” of plaintiffs’ complaint filed March 26, 2009, par.8.) Plaintiffs go on to allege that “for each of the past four elections, [d]efendants have eschewed the ‘fair and impartial method of random selection’ and simply placed the Democratic party (*sic*) first.” (*Id.*, par 9) Paragraph 11 of the “Facts Common to All Counts” portion of plaintiffs’ complaint alleges that, with respect to the upcoming election, defendant Prussing is a candidate to retain her office and that section 7-60.1 was violated by the placement of her name at the top ballot for the upcoming election. (*Id.*, par.11)

On the basis of the foregoing, plaintiffs pursue a three-count complaint for relief. In count I, plaintiffs seek the issuance of a temporary restraining order. In count II, plaintiffs seek, in substance, the issuance of a writ of *mandamus*. In count III, plaintiffs essentially seek permanent injunctive relief.

Count I, as it prays for a temporary restraining order (a so-called “TRO”), is by nature a matter of some urgency. In that count, plaintiffs further allege that they “discovered that the [d]efendants had violated the statute on Tuesday, March 24 at 4. (*sic*) p.m. in a telephone conversation of [p]laintiff Durl Kruse with the Urbana City Attorney, Ron O’Neal, and was (*sic*) informed that he had recommended the [d]efendants would not pursue a lottery (for the placement of names on the ballot) due to ‘utility versus benefit’ reasoning (*sic*) and pivoting on cost to the city, and his determination that ballot position was of no benefit to candidates.” (Plaintiffs’ complaint, count I, par. 16)

Plaintiffs’ complaint for a TRO further alleges that counsel for plaintiffs, “on March 26, 2009, in a hand-delivered letter to [d]efendants at the Urbana City Building[,] documented the violation of the statute and invited contact to attempt to work out details of how compliance could be achieved and how expense and hardship could be eliminated.” (Plaintiffs’ complaint, count I, par. 17)

The issuance of a TRO – a legal process that is truly extraordinary – is governed in great measure by section 11-101 of the Illinois Code of Civil Procedure (735 ILCS 5/11-101). Section 11-101 provides in pertinent part as follows:

**§ 11-101. Temporary restraining order.** No temporary restraining order shall be granted without notice to the adverse party unless it clearly appears from specific facts shown by affidavit or by the verified complaint that immediate and irreparable injury, loss, or damage will result to the applicant before notice can be served and a hearing had thereon.

735 ILCS 5/11-101.

Plaintiffs’ pray for the issuance of a TRO “without full service of process, notice, bond or other procedural requirements, and *ex parte*, if necessary.” (“Facts Common to All Counts” of plaintiffs’ complaint filed March 26, 2009, par.7.) This prayer for relief is both textually and conceptually heedless of section 11-101 in the context of the present record. The very text the first sentence of section 11-101 confirms that the issuance of a TRO is a legal process reserved for situations that are extraordinary, if indeed not drastic. *Hill v. Village of Pawnee*, 16 Ill.App.3d 208 (1973). Indeed, “[i]njunctive relief, without notice . . . is . . . appropriate only under the most extreme circumstances.” *Hirschauer v. Chicago Sun-Times*, 192 Ill.App.3d 193, 201 (1989). Moreover, “even in emergency situations, ‘[s]ome notice, however informal, is greatly to be preferred to none at all.’” *Nagel v. Gerald Dennen & Co.*, 272 Ill.App.3d 516, 521, quoting *Skarpinski v. Veterans of Foreign Wars*, 343 Ill.App. 271, 275 (1951). In this regard the court must note that, if plaintiffs were able to hand-deliver a letter to defendants seeking an extrajudicial resolution of their dispute (Complaint, par. 17), one might expect them to provide defendants some species of notice of their decision to seek legal recourse.

In the present case the court is of the view that a grant of a TRO or injunctive relief on an *ex parte* basis without any species of notice would be inappropriate. The face of plaintiffs’ complaint at the very least suggests that the alleged forbearance of the city clerk to comply with section 7-60.1 was the result of reliance on the legal advice of the Urbana city attorney. (Complaint, par. 16) Thus, the case potentially presents a colorable dispute regarding the appropriate interpretation of section 7-60.1. The relief requested by

plaintiffs would require the court to adopt plaintiffs' proposed interpretation of the statute with no opportunity of defendants to be heard on the matter. Moreover, the court notes that plaintiffs' prayer for a TRO seeks the identical relief sought in the other two counts of the complaint: a court order requiring that the city clerk comply with section 7-60.1. An *ex parte* TRO without notice simply is not the appropriate vehicle for such relief.

For the foregoing reasons plaintiffs' prayer for a temporary restraining order without notice and other *ex parte* injunctive relief is DENIED.

**IT IS SO ORDERED.**

MAR 27 2009  
DATE: \_\_\_\_\_

ENTER: Chase Leonhard  
Chase Leonhard  
Associate Judge