

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

**LIBERTARIAN PARTY OF
ILLINOIS, ET AL.,**

Plaintiffs,

and **KYLE KOPITKE,**

Intervenor,

vs.

J.B. PRITZKER, ET AL,

Defendants,

Case No. 1:20-cv-02112

Judge: Rebecca R. Pallmeyer

**INTERVENOR KOPITKE'S RESPONSE INTO DEFENDANT
BOARD OF ELECTIONS' EMERGENCY MOTION FOR
RECONSIDERATION IN PART**

NOW COMES THE INTERVENOR KYLE KOPITKE, and for his
Response to the Defendant State Board Of Elections Motion For
Reconsideration In Part, states:

1. A motion pursuant to Fed.R. Civ. P. 59 “is not appropriately used to advance argument or theories that could and should have been made before the district court rendered a judgment or to present evidence that was available earlier.” *LB Credit Corp. v. Resolution Trust Corp.*, 49 F.3d 1263, 1267 (7th Cir. 1994). “Instead, a rule 59(e) motion ‘must clearly establish either a manifest error of law or fact or must present newly discovered evidence.’” *Id.* (citing *FDIC v. Meyer*, 781 F.2d 1260, 1268 (7th Cir. 1986). Granting a Rule 59 motion to reconsider is “an unusual measure.” *Firestone v. Firestone*, 76 F.3d 1205, 1208 (D.C. Cir. 1996)

2. Defendant complains that the extension of the filing deadline to August 7th is too long and that the signature reduction to 10 per cent of the statutory required number is too much

3. However, those same arguments were made to and carefully considered by this Court prior to the entry of its Preliminary Injunction Order on April 23, 2020. (Trans. April 21, 2020, pages 27 and 37 -38.)

4. At the April 21, 2020 hearing, after the Court stated it would extend the filing deadline to August 7, 2020 Attorney Kasper for the Defendant Board of Elections stated:

“The Board is very concerned about the August 7th deadline because that bumps up against the other statutory deadlines and the deadlines imposed to get military ballots out under federal law. And so we would sort of ask you to reconsider that and maybe push it forward a little bit.”
(Trans. April 21, 2020 at 37-38)

5. This Court then did carefully reconsider its ruling, and decided against moving the deadline back from August 7th, stating:

“I’d like to push it forward because I do think it’s very difficult to get these things printed but I’m also – I’m really sensitive to the world we’re living in in Illinois and the difficulties that the governor has and the rest of us have in trying to balance our need to proceed with life as we know it on the one hand versus the very significant public health concerns and the need for social distancing and the stay at home even after those orders are lifted....”
(Trans. April 21, 2020 at 38)

6. Thus, the Defendant has already asked this Court to reconsider its decision on the August 7th filing deadline once, and now it is asking to reconsider a second time!

7. It should be noted that Intervenor Kopitke also asked the Court to move the signature reduction from 10 per cent to 5 per cent, but this Court reject that as well. (Trans. April 21, 2020 at 33.)

8. There is nothing in Defendant’s Motion For Reconsideration that was not already raised before this Court, or could have been raised.

9. The U.S. Court of Appeals For the Sixth Circuit majority view in *Esshaki v. Whitmer*, Case No. 20-1336 (6th Cir. May 5, 2020) that lower courts may issue only “prohibitive” rather than “compulsory” injunctions against state officials is not the law in the 7th Circuit. (That view was termed “inaccurate” by dissenting in part, concurring in part Judge Stranch, *Id.* at 5)

10. In *RNC v. DNC*, Case No. 20-1538 (7th Cir. April 3, (2020) the U.S. District Court for the Western District of Wisconsin issued a “prohibitive” and “compulsory” injunction against state officials, enjoining the enforcement of Wis. Stat. Sec. 6.87(6) that absentee ballots must be received by 8:00 p.m. on election day (April 7, 2020). The district court also issued a “compulsory” injunction extending the deadline for receipt of absentee ballots to 4:00 p.m. on April 13 2020. The RNC moved in the 7th Circuit for a stay of that order, but U.S. Court of Appeals for this Circuit denied the request for a stay of that part of the district court’s order. *Id.* at 3. That was a “compulsory” injunction that was just affirmed by the 7th Circuit last month, so clearly the *Esshaki* 6th Circuit decision is not good law in the 7th Circuit. (The U.S. Supreme Court did stay in part the compulsory injunction to the extent

that it allowed absentee ballots postmarked after April 7th to be counted, but it left in place the part of the compulsory injunction that extended the deadline for receipt of absentee ballots to April 13th. Further, the U.S. Supreme Court's partial stay was not based on the district court lacking the authority to issue a "compulsory" injunction. *RNC v. DNC*, 589 U. S. ____, 140 S.Ct. 1205 (No. 19A1016 2020)

11. Judge Stranch's concurring in part and dissenting in part opinion in *Esshaki*, cited numerous authorities supporting a district court's power to issue compulsory injunctions. She concluded that:

"If the Supreme Court believed that a district court could not compel a state to take specific steps to remedy a constitutional voting-rights violation, it would have said so in its recent order addressing Wisconsin's approach to the primary election during the COVID-19 pandemic." *Esshaki, supra* at 7, *citing RNC v. DNC, supra*

11. Pursuant to 10 ILCS 5/28-2 petitions for the submission of questions to referendum must be filed "not less than 92 days prior to a regular election", which according to the Defendant's website is August 3, 2020.

12. Petitions for referendums are subject to the same objections process as petitions for candidates. See 10 ILCS 5/28-4.

13. Thus, the asserted hardship to the Defendant Board of the August 7th filing deadline is misstated.

14. The assertions in the declarations of the elections officials that “based on my experience” the signature requirement ordered by this Court will lead to an increased number of non-viable candidates, an increase in objections, and delay in finalization of the ballot is absurd and unbelievable.

15. The election officials cite no facts to support their assertions, and it would be impossible for such assertions to be based on experience since this will be the first time Illinois has had an election with signature requirements at the level ordered by this Court.

16. In his concurring opinion U.S. Supreme Court Justice Harlan wrote that in light of experience 8 candidates on the ballot carries no significant danger of voter confusion. *Williams v. Rhodes*, 393 U.S. 23, 47 (*Justice Harlan concurring*, 1968)

17. Since 1900 there has never been a general election U.S. House race with more than 8 candidates on the ballot, except for two states with signature requirements of 100 or less. (Affidavit of Richard Winger attached hereto as Exhibit 1).

18. Winger's affidavit also shows that numerous states with signature requirements of less than were ordered in this case have never had a crowded ballot (more than 8 candidates), and that the signature requirements ordered in this case are in the mid-range of state signature requirements for U.S. House races in general elections.

19. After this Court issued its Preliminary Injunction Order, both Defendant Pritzker and Defendant Board Of Elections expressed support for this Court's order. (See Exhibit 2 attached hereto.)

20. A spokesman for the Defendant Board of Elections said its directors "think the order serves the best interests of all parties involved." (See Exhibit 2, page 4.)

21. The same day or the next day after this Court's Preliminary Injunction Order, the Defendant Board of Elections published this Court's ruling on its website and revised its 2020 Candidates Guide with the new filing deadline and signature requirements. (See Exhibit 3 attached hereto and at <https://www.elections.il.gov/>)

22. Almost a month has gone by since then and candidates have and are now acting in reliance on the new rules and it would be patently unfair to now change those rules in the middle of the game.

CONCLUSION

The Defendant's prognostications about the dire consequences of this Court's order are unfounded. This Court's Preliminary Injunction Order is a reasoned common-sense approach to the extraordinary and unprecedented circumstances facing the citizens of Illinois.

WHEREFORE, Intervenor respectfully requests that Defendant Board Of Elections' Motion For Reconsideration In Part be denied.

Respectfully submitted

/s/Samuel J. Cahnman
Attorney for Intervenor

Samuel J. Cahnman
Attorney at Law
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Attorney for Intervenor
IL Bar No. 3121596

CERTIFICATION OF SERVICE

I hereby certify that the foregoing document was filed 4/16/20 using the Court's CM/ECF system, which will effect service on all counsel of record on May 15, 2020.

/s/Samuel J. Cahnman
Attorney at Law

**IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHER DISTRICT OF ILLINOIS EASTERN DIVISION**

Libertarian Party of Illinois, et al.,	)	No. 20-cv-2112
Plaintiffs,	)	
	)	Hon. Charles Norgle, Sr.
and Kyle Kopitke,	)	Presiding Judge
Intervenor,	)	
	)	Hon. Jeffrey Cummings
vs.	)	Magistrate Judge
	)	
J.B. Pritzker, et al.,	)	Hon. Rebecca R. Pallmeyer
Defendants.	)	Emergency Judge

AFFIDAVIT OF RICHARD WINGER

RICHARD WINGER, after first being duly sworn on oath, deposes and says:

1. I am over 18 years old, and a resident of the State of California.
I make this affidavit based on my own personal knowledge and research I have conducted, and if called as a witness in this case, would testify as follows:

2. I graduated from the University of California at Berkeley in 1966 with a B.A. degree in political science. Since 1985 I have been the publisher of *Ballot Access News*, a non-partisan newsletter that reports on developments in ballot access law, and developments in the law which affect political parties.

3. I have researched the ballot access laws of all 50 states from the year 1888 to the present. I have become well versed in how the ballot access laws of each state have worked historically and how those laws compare with the laws of Illinois.

4. As stated in my attached *curriculum vitae* I have testified in ballot access court cases in over half the states.

5. Since 1900 no General Election U.S. House race has had more than 8 candidates on the ballot, except New Jersey and Tennessee, which have very low signature requirements of 100 and 25.

7. Many states with very low signature requirements for the U.S. House for the General Election still have never had a crowded ballot (more than 8 candidates) since 1900. For example: Colorado-800; Idaho-500; Kentucky-400; Minnesota-1,000; Mississippi-200; North Dakota-1,000; Rhode Island-500; Texas-500; Utah-300; Vermont-500; and Virginia-1,000.

8. The typical U.S. House race in the past 50 years has had 3 or fewer candidates on the general election ballot.

9. According to 2020 Candidates Guide, revised to reflect this Court's April 23, 2020 Preliminary Injunction Order, posted on the Illinois State Board Of Elections website, the signature requirements for new political party and independent candidates for the U.S. House range from a low of 856 in the 4th Congressional District to a high of 1,599 in the 6th Congressional District.

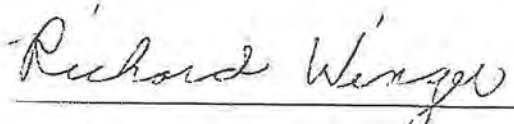
10. Those signature requirements put Illinois in the mid-range of signature requirements among the 50 states.

VERIFICATION

(pursuant to 28 U.S.C. Sec. 1746)

I, Richard Winger, verify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed: May 14, 2020


Richard Winger

Richard Winger Curriculae Vitae
3201 Baker Street
San Francisco, California 94123
Updated Oct. 11, 2019

EDUCATION

BA, Political Science, University of California, Berkeley, 1966
Graduate study, Political Science, UCLA, 1966-67

EMPLOYMENT

Ballot Access News, Editor 1985-Present

Editor of newsletter covering legal, legislative and political developments of interest to minor parties and independent candidates. Researcher of ballot access laws of all 50 states from years 1888-present; well versed in how ballot access laws of each state work historically and how they compare to each other. Responsible for reading all statutes, regulations, legal opinions, and state attorney general opinions on rights of political parties and the publications of minor parties.

On the Editorial Board of *Election Law Journal*, published by Mary Ann Liebert, Inc., Larchmont, N.Y., since 2001.

PUBLICATIONS

Wrote a chapter or two in each of these books:

The Best Candidate: The Law of Presidential Nomination in Polarized Times to be published by the Cambridge University Press, 2020, editors Eugene D. Mazo and Michael R. Dimino. My chapter is "The Nomination of Presidential Candidates by Minor Parties."

America Votes! A Guide to Modern Election Law and Voting Rights, 2nd edition, 2012, published by the American Bar Association's Section of State and Local Government Law, editor Benjamin E. Griffith.

Others, Vol. 2, Third Parties During The Populist Period, by Darcy G. Richardson (2007: iUniverse, Inc., New York). Wrote the book's Appendix, "Early Ballot Access Laws for New and Minor Parties."

Democracy's Moment

edited by Ronald Hayduk and Kevin Mattson (2002: Rowman & Littlefield, Lanham, Md.)

The Encyclopedia of Third Parties in America

edited by Immanuel Ness and James Ciment (2000: M.E. Sharpe, Inc., Armonk, N.Y.)

Multiparty Politics in America

edited by Paul S. Herrnson (1997: Rowman & Littlefield, Lanham, Md.)

The New Populist Reader

edited by Karl Trautman (1997: Praeger, Westport, Ct.)

Additional articles published in these periodicals:

University of Arkansas Little Rock Law Review, Vol. 29, #4, summer 2007

Wall Street Journal, October 1984 and also October 1988 (exact dates unknown)

The Long Term View, Mass. Sch. of Law, vol. 2 #2 (spring 1994)

American Review of Politics, U. of Akron, vol. 16, Winter 1995

California Journal, July 1977

Election Law Journal (two articles), Vol. 1 #2 (2002) and Vol. 5 #2 (2006)

Cleveland State Law Review, Vol. 45 #1 (1997)

Chronicles Magazine, November 1994

Price Costco Connection, Dec. 1995

Fordham Urban Law Journal, Vol. 32 #3 (May 2005)

Fordham Law Review, Vol. 85 #3 (December 2016)

Oklahoma Politics, Vol. 8 (October 1999)

Harvard Law Record, internet, April 25, 2016

Also, I wrote "Election Law Decisions" in all issues of the newsletter of the American Political Science Association's Section on Representation and Electoral Systems, 2005-2014. The publication appeared twice each year.

I wrote articles for "Voice for Democracy", the newsletter of Californians for Electoral Reform, in these issues: Spring 2012, February 2014, August 2014, November 2014, and February 2015.

NATIONAL INTERVIEWS on Minor Parties, Independents, Ballots and Ballot Access

NBC

National Public Radio

ABC

Pacifica Radio

CNN

MSNBC

C-SPAN

CASES: TESTIMONY or AFFIDAVITS (political party or candidate prevailing, or case pending)

Alabama: Hall v Bennett, U.S. Dist. Ct., 212 F.Supp.3d 1148 (m.d. 2016).

Alaska: Libertarian Party v Coghill, state superior court, 3rd dist., 3AN-92-08181, 1992: court enjoined petition deadline for minor party presidential petitions.

Arizona: Campbell v Hull, 73 F Supp 2d 1081 (1999). Az. Libt. Party v Hull, superior ct., Maricopa Co. 96-13996, 1996: deadline for submitting presidential elector candidates too early. Nader v Brewer, 531 F 3d 1028 (9th cir., 2008). De La Fuente v Hobbs, 19-16868 (pending in 9th circuit): signature requirement for independent candidates.

Arkansas: Citizens to Establish a Reform Party v Priest, 970 F Supp 690 (E.D. Ark. 1996). Green Party of Ark. v Priest, 159 F.Supp.2d (E.D. Ark. 2001). Green Party of Ark. v Daniels, U.S. District Court, 448 F.Supp 2d 1056 (E.D.Ark. 2006). Moore v Martin, 854 F 3d 1021. Libertarian Party of Arkansas v Thurston, e.d., 4:19cv-214 (2019): signature requirement for new parties.

California: California Democratic Party v Jones, 530 US 567 (2000). California Justice Committee v Bowen, 2012 WL 5057625 (C.D.Cal.): deadline for new party qualification too early.

Colorado: Ptak v Meyer, 94-N-2250, U.S. Dist. Ct., 1994. Signature requirement for independent legislative candidates.

Florida: Libt. Party of Fla. v Mortham, 4:96cv258-RH, n.d. 1996: Libertarian

vice-presidential candidate put on ballot even though he was not on the petition. *Reform Party v Black*, 885 So.2d 303 (Fla. 2004).

Georgia: *Bergland v Harris*, 767 F.2d 1551 (11th cir., 1985). Remanded case back to U.S. District Court; before District Court acted, legislature substantially eased law, so case became moot. *Green Party of Georgia v Kemp*, 171 F.Supp.3d 1340 (n.d. 2016), affirmed, 674 F.Appx. 974 (11th cir., 2017). *Libertarian Party of Georgia v Raffensperger*, n.d., 1:17cv-4660: number of signatures for U.S. House; law upheld on September 23, 2019 but either a rehearing request or an appeal will be filed.

Hawaii: *Libt. Party of Hi. v Waihee*, cv 86-439, U.S. Dist. Ct., 1986: petition deadline for new parties.

Illinois: *Nader v Ill. State Bd. of Elections*, 00-cv-4401, U.S. Dist. Ct., N.D., 2000: petition deadline enjoined. *Lee v Ill. State Bd. of Elections*, 463 F.3d 763 (7th cir. 2006). *Jones v McGuffage*, 921 F.Supp.2d 888 (N.D. Ill., 2013). *Libertarian Party of Illinois v Scholz*, 164 F.Supp.3d 1023 (n.d. 2016), affirmed 872 F.3d 518 (7th cir., 2017). *Gill v Scholz*, central dist., 3:16cv-3221: case pending in 7th circuit on 5% petition requirement for independent candidates for U.S. House; U.S. District Court put candidate on ballot, but 7th circuit stayed that action. *Jones v McGuffage*, n.d., 1:12cv-9997: number of signatures in special U.S. House elections; judge reduced number of signatures.

Iowa: *Oviatt v Baxter*, 4:92-10513, U.S. Dist. Ct., 1992: signature requirement for U.S. House candidates.

Kansas: *Merritt v Graves*, 87-4264-R, U.S. Dist. Ct., 1988: independent petition deadline, requirement that independent petitions not be circulated outside of circulator's home precinct, and requirement that voters could only register in qualified parties. This case should not be confused with another by the same name decided in December, 1988.

Kentucky: *Libt. Pty. of Ky. v Ehrler*, 776 F.Supp.1200 (E.D. 1991). *Sweeney v Crigler*, e.d., 2:19cv-46 (2019): deadline for declaration of candidacy.

Maine: *Libertarian Party of Me v Dunlap*, 2:16cv-2: deadline for new party.

Maryland: *Dixon v Md. State Adm. Bd. of Elec. Laws*, 878 F.2d 776 (1989, 4th cir.). *Green Party v Bd. of Elections*, 832 A.2d 214 (Md. 2003).

Michigan: *Graveline v Johnson*, 336 F.Supp.3d 801 (e.d. 2018), affirmed, 747 F.Appx. 408 (6th circuit 2018). Number of signatures for independent candidates.

Montana: *Kelly v Johnson*, U.S. Dist. Ct. 08-25 (2012): independent candidate petition deadline. *Breck v Stapleton*, 259 F.Supp.3d 1126 (2017). *Montana Green Party v Stapleton*, 6:18cv-87.

Nebraska: *Bernbeck v Gale*, 4:18cv-3073 (2018). Number of signatures for independent candidates.

Nevada: *Libt Pty. of Nev. v Swackhamer*, 638 F.Supp.565 (1986); *Fulani v Lau*, cv-N-92-535, U.S. Dist. Ct., 1992: minor party and independent petition deadline.

New Jersey: *Council of Alternative Political Parties v Hooks*, 999 F.Supp.607 (1998); *Council of Alternative Political Parties v State Div. of Elections*, 781 A.2d 1041 (N.J.Super. A.D. 2001).

New York: *Molinari v Powers*, 82 F.Supp.57 (E.D.N.Y. 2000). *Schulz w Williams*, 44 F.3d 48 (2nd cir., 1994). *Green Party of N.Y. v N.Y. State Bd. of Elections*, 389 F.3d 411 (2nd cir., 2004).

North Carolina: *Obie v N.C. Bd. of Elections*, 762 F.Supp.119 (E.D. 1991). *DeLaney v Bartlett*, 370 F.Supp.2d 373 (M.D. 2004). *Edwards v Berger*, Wake County Superior Court, 18-cvs-9749 (2018): state could not give party labels to some candidates, but not all candidates, for the same office.

Ohio: *Libertarian Party of Ohio v Blackwell*, 462 F.3d 579 (6th cir. 2006).

Libertarian Party of Ohio v Husted, U.S. Dist. Ct., middle district, 2:13cv-935 (2014): state could not create a new petition in September of odd year before election and expect it to be used in following year.

Oklahoma: *Atherton v Ward*, 22 F Supp 2d 1265 (W.D. Ok. 1998). *De La Fuente v Ziriaux*, had been pending in 10th circuit, 17-6010, then legislature eased requirement for independent presidential candidates so case became moot.

Pennsylvania: *Patriot Party of Pa. v Mitchell*, 826 F Supp 926 (E.D. 1993).

South Dakota: *Nader v Hazeltine*, 110 F Supp 2d 1201 (2000). *Libertarian Party of South Dakota v Krebs*, 2018, 4:15cv-4111.

Tennessee: *Libt Party v Goins*, U.S. Dist. Ct., 793 F Supp 1064 (M.D. 2010). *Green Party of Tennessee v Hargett*, 7 F.Supp.3d 772 (m.d. 2014), aff'm, 791 F.3d 684 (6th cir. 2015): this is the case that struck down the law on how a party remains on the ballot, and should not be confused with the case of the same name on the requirements for a party getting on the ballot.

Texas: *Pilcher v Rains*, 853 F 2d 334 (5th cir., 1988).

Virginia: *Libt. Pty of Va. v Quinn*, 3:01-cv-468, U.S. Dist. Ct., E.D. (2001): court ordered state to print "Libertarian" party label on ballot next to names of candidates.

West Virginia: *State ex rel Browne v Hechler*, 476 SE 2d 559 (Supreme Court 1996). *Nader v Hechler*, 112 F.Supp.2d 575 (S.D.W.V., 2000). *McClure v Manchin*, 301 F Supp 2d 564 (2003).

CASES: TESTIMONY or AFFIDAVITS (political party or candidate not prevailing)

Alabama: *Swanson v Bennett*, 490 F.3d 894 (11th cit. 2007). *Stein v Chapman*, 774 F.3d 689 (11th cir., 2014). *De La Fuente v Merrill*, m.d., 2:16cv-755: whether sore loser law applies to presidential primaries.

Arizona: *Indp. Amer. Party v Hull*, civ 96-1240, U.S. Dist. Ct., 1996: petition deadline for new parties. *Browne v Bayless*, 46 P 3d 416 (2002). *Arizona Libertarian Party v Hobbs*, 925 F.3d.1085 (2019).

Arkansas: *Langguth v McKuen*, LR-C-92-466, U.S. Dist. Ct., E.D., 1992: petition deadline for independent candidates. *Christian Populist Party v Sec. of State*, 650 F Supp 1205 (E.D. 1987). *Green Party of Ark. V Martin*, 649 F.3d 675 (8th cir. 2011).

California: *Socialist Workers Party v Eu*, 591 F 2d 1252 (9th cir., 1978). *Independent Party v Padilla*, 184 F.Supp.3d 791 (Cal.,e.d. 2016). *De La Fuente v Padilla*, 930 F.3d 1101 (9th cir. 2019).

D.C.: *Libertarian Party v D.C. Bd. of Elections*, 682 F.3d 72 (D.C. Cir. 2012).

Florida: *Fulani v Smith*, 92-4629, Leon Co. Circuit Court, 1992: deadline for write-in filing. *Libertarian Party of Fla. v State of Fla.*, 710 F 2d 790 (11th cir., 1983). *U.S. Taxpayers Party v Smith*, 871 F.Supp. 426 (n.d. Fla. 1993).

Georgia: *Libertarian Party of Ga. v Cleland*, U.S. Dist. Ct., n.d., 1:94-cv-1503-CC, U.S. Dist. Ct., N.D. (1994): number of signatures. *Amendola v Miller*, U.S. Dist. Ct, n.d., 1:96cv-2103 (1997): number of signatures. *Esco v Secretary of State*, E-53493, Fulton Co. Superior Court, 1998: number of signatures. *Cartwright v Barnes*, 304 F 3d 1138 (11th cir., 2002): number of signatures. *Coffield v Kemp*, 599 F.3d 1276 (2010): number of signatures.

Idaho: *Nader v Cenarrusa*, cv 00-503, U.S. Dist. Ct., 2000: number of signatures.

Illinois: *Libt Party v Rednour*, 108 F 3d 768 (7th cir., 1997). *Nader v Keith*, 385 F.3d 729 (7th cir. 2006). *Summers v Smart*, 65 F.Supp. 3d 556 (n.d. Ill. 2014).

Kansas: *Hagelin for President Committee v Graves*, 804 F Supp 1377 (1992).

Maine: Maine Green Party v Diamond, 95-318, U.S. Dist. Ct., 1995: definition of qualified party. Maine Green Party v Secretary of State, 96-cv-261, U.S. Dist. Ct., 1996: definition of political party.

Maryland: Ahmad v Raynor, R-88-869, U.S. Dist. Ct., 1988: number of signatures. Creager v State Adm. Bd. of Election Laws, AW-96-2612, U.S. Dist. Ct., 1996: number of signatures.

Missouri: Manifold v Blunt, 863 F 2d 1368 (8th cir. 1988).

New Hampshire: Werme v Gov. of N.H., 84 F 3d 479 (1st cir., 1996).

New Mexico: Parker v Duran, 180 F Supp 3d 851 (2014).

North Carolina: Nader v Bartlett, 00-2040, 4th cir., 2000: number of signatures.

North Dakota: Libertarian Party of N.D. v Jaeger, 659 F 3d 689 (2011).

Ohio: Schrader v Blackwell, 241 F 2d 783 (6th cir., 2001). State ex rel Fockler v Husted, State Supreme Court, 2016-1863: rules for primary ballot access. Libertarian Party of Ohio v Ohio Secretary of State, state appeals court, 10th dist., 16APE-07-496: definition of political party.

Oklahoma: Rainbow Coalition v Okla. State Elec. Bd., 844 F 2d 740 (1988). Nader v Ward, 00-1340, U.S. Dist. Ct., 1996: number of signatures. Clingman v Beaver, 544 U.S.581.

Oregon: Libt Party v Roberts, 737 P 2d 137 (Ore. Ct. of Appeals, 1987).

Tennessee: Green Party of Tennessee v Hargett, 882 F.Supp.2d 959 (m.d. 2012) and 953 F.Supp.2d 816 (m.d. 2013) (not to be confused with the case of the same name on how a party remains on the ballot). The final decisions are not reported and are 2016 US Dist Lexis 109161 (2016) and Sixth Circuit case 16-6299 (2017).

Texas: Texas Indp. Party v Kirk, 84 F 3d 178 (5th cir., 1996). Nat. Comm. of U.S. Taxpayers Party v Garza, 924 F Supp 71 (W.D. 1996). Kennedy v Cascos, 214 F.Supp.3d 559 (w.d. Tex, 2016).

Virginia: Wood v Meadows, 207 F 3d 708 (4th cir., 2000).

Washington: Washington State Republican Party v Washington State Grange, 876 F.3d 794 (2012).

West Virginia: Fishbeck v Hechler, 85 F 3d 162 (4th cir., 1996).

Wyoming: Spiegel v State of Wyoming, 96-cv-1028, U.S. Dist. Ct., 1996: petition deadline.

QUALIFIED EXPERT WITNESS

Fishbeck v Hechler, 85 F 3d 162 (4th cir. 1996, West Virginia case)

Council of Alternative Political Parties v Hooks, 999 F Supp 607 (1998, N.J.)

Citizens to Establish Reform Party v Priest, 970 F Supp 690 (E.D. Ark, 1996)

Atherton v Ward, 22 F Supp 2d 1265 (W.D.Ok. 1998)

Calif. Democratic Party v Jones, 530 US 567 (2000)

Swanson v Bennett, not reported, U.S. Dist. Ct., m.d.Ala. (02-T-644-N)

Clingman v Beaver, 544 U.S. 581.

Green Pty v N.Y. Bd. Elec., 267 F Supp 2d 342 (EDNY 2003), 389 F.3d 411 (2nd 2004)

Lawrence v Blackwell, 430 F.3d 368 (6th cir. 2005)

Hall v Merrill, 212 F.Supp.3d 1148 (Alabama m.d. 2016)

Graveline v Johnson, 336 F.Supp.3d 801 (e.d. Mi. 2018), aff'm 747 F Appx 408 (6th cir. 2018)

Green Party of Tennessee v Hargett, 882 F.Supp.2d 959 (m.d. Tn. 2012); also 953 F.Supp.2d 816 (same)

De La Fuente v Padilla, 930 F.3d 1101 (9th cir. 2019)

De La Fuente v State of Arizona, 2:16cv-2419 (2019)

CASES IN WHICH DECISION MENTIONED MY EVIDENCE AND EITHER STRUCK DOWN OR ENJOINED THE LAW

Hall v Merrill, 212 F.Supp.3d 1148 (m.d. Ala. 2016), footnote 10. Eleventh Circuit later ruled that case was moot when it was decided and therefore vacated the decision, 902 F.3d 1294.

Citizens to Establish a Reform Party in Arkansas v Priest, 970 F.Supp.690 (e.d. 1996) at 695.

Green Party of Arkansas v Priest, 159 F.Supp.2d 1140 (e.d. 2001). Decision cites my evidence at p. 1143 but doesn't name me.

Green Party of Arkansas v Daniels, 445 F.Supp.2d 1056 (e.d. 2006) at 1059ff

Libertarian Party of Arkansas v Thurston, e.d. 4:19cv-214 (July 3, 2019)

California Justice Committee v Bowen, 2012 WL 5057625 (Oct. 18, 2012)

Green Party of Georgia v Kemp, 171 F.Supp.3d 1340 (n.d. 2016); aff'm, 674 F Appx 974 (11th cir. 2017)

Gill v Scholz, U.S. Dist. Ct., n.d. Ill. 16cv-3221. Court enjoined law and put candidate on ballot. Then the 7th circuit issued a one-sentence order removing the candidate from the ballot but not explaining why. Then another U.S. District Court Judge upheld law. Case is pending in the 7th circuit.

Jones v McGuffage, 921 F.Supp.2d 888 (2017) at 893.

Lee v Keith, 463 F.3d 763 (7th cir. 2006) at 766 (decision uses my evidence but does not name me)

Libertarian Party of Illinois v Illinois State Bd. of Elections, 164 F.Supp.3d 1023 (n.d. 2016). See footnote four.

Graveline v Johnson, 336 F.Supp.3d 801, aff'm 747 F Appx 408 (6th cir. 2018)

Breck v Stapleton, 6:18cv-87 (2017).

Green Party of N.Y. v N.Y. State Board of Elections, 389 F.3d 411 (2004) at 421

Libertarian Party of Ohio v Blackwell, 462 F.3d 579 (6th cir. 2006) at 589

Libertarian Party of Ohio v Husted, 2014 WL 11515569 (s.d. Oh. Jan. 7, 2014)(opinion misspells my surname as "Wagner")

Libertarian Party of South Dakota v Krebs, 290 F.Supp.3d 902 (2018)

Libertarian Party of Tennessee v Goins, 793 F.Supp.2d 1064 (m.d. 2010) at 1068

Green Party of Tennessee v Hargett, 882 F.Supp.2d 959 (m.d. 2012) at 976ff; on remand, 953 F.Supp.2d 816 (m.d. 2013) under heading "Parties' Expert Proof)

LIST OF ALL CASES IN LAST FOUR YEARS IN WHICH I TESTIFIED AT TRIAL OR AT DEPOSITION

Green Party of Georgia v Kemp (deposition 2015)

Green Party of Tennessee v Hargett (trial 2016)

Libertarian Party of Illinois v Illinois State Election Board (deposition 2017)

De La Fuente v Padilla (deposition 2017, California)

Kennedy v Cascos (court hearing 2016, Texas)

Libertarian Party of South Dakota v Krebs (trial 2018)

Libertarian Party of Georgia v Raffensperger (deposition 2019)

Montana Green Party v Stapleton (deposition 2019)
Sweeney v Crigler (deposition 2019)

SPEAKING ENGAGEMENTS: Colleges and Scholarly Meetings

Panel of New York City Bar Association, 1994. Ballot access.

Amer. Political Science Assn., nat. conventions of August 1995 and August 1996. Papers.

Capital University School, law school class, Columbus, Ohio, 1996. Guest lecturer.

Cal. State U., course in political science, Hayward, 1993 and 1996. Guest lecturer.

San Francisco City College, course in political science, 1996 and 1997. Guest lecturer.

Providence College, R.I., Oct. 1997, seminar on ballot access.

Harvard U., JFK School of Gov't, Oct. 18, 1995, guest lecturer, ballot access.

Voting Integrity Project national conference, Apr. 1, 2000, speaker on ballot access.

Center for Voting & Democracy nat. conference, Nov. 30, 2003, speaker on ballot access.

Robert Dole Institute of Politics, U. of Kansas, one of 5 panel members, Oct. 25, 2007.

Third-party candidates' ballot access rules officially loosened



Friday, April 24, 2020

Federal judge grants more time and allows fewer signatures during pandemic

Editor's Note: This story has been updated with a response for the attorney general's office.

By REBECCA ANZEL
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SPRINGFIELD — A federal judge's ruling Thursday made official what Capitol News Illinois reported earlier this week: Requirements for third-party candidates to be included on November ballots in the

state are loosened this election cycle.

Rebecca Pallmeyer, chief judge of the Northern District federal court, agreed with the state's Libertarian and Green parties that stay-at-home and social distancing requirements in Illinois have made gathering the required number of petition signatures by June 22 "practically impossible."

The parties filed a lawsuit on April 2, and attorneys for Gov. JB Pritzker and the Illinois State Board of Elections acknowledged in a court filing "the need for some accommodations."

Because both the Libertarian and Green parties are considered "new" under state election rules, their candidates must obtain a greater number of signatures than those with "established" parties — typically, Democrats and Republicans.

Those same regulations dictate "new" party and independent candidates have from March 24 until June 22 to gather enough signatures — in person with a campaign worker watching — to qualify for inclusion on the Nov. 3 general election ballot.

Pritzker instituted his stay-at-home order March 20, and announced Thursday it will extend through at least May 30.

"The combined effect of the restrictions on public gatherings imposed by Illinois' stay-at-home order and the usual in-person signature requirements in the Illinois Election Code is a nearly insurmountable hurdle for new party and independent candidates attempting to have their names placed on the general election ballot," Judge Pallmeyer wrote in her opinion.

For only this election cycle, petition signatures may be collected remotely, Pallmeyer ordered. Candidates may mail voters a petition or share a digital file online or by email. Voters then are able to print it out, sign it and either send a hard copy to the candidate through the mail or electronically in an emailed attachment or as a photograph.

Voters can also electronically sign the forms from their smartphone, with a computer mouse or using a laptop's trackpad.

The deadline for candidates to submit signatures to the Board of Elections was pushed by Pallmeyer to Aug. 7, more than six weeks after the deadline established by law.

Also, the number of signatures that candidates with third parties are required to gather was cut by 90 percent.

Independents or those in a “new” party needed at least 25,000 signatures to run for president or a seat in the U.S. Senate. Under Pallmeyer’s terms, the minimum required number of signatures is 2,500.

In addition, Libertarian and Green candidates who were successfully placed on Illinois’ general election ballot either in 2016 or 2018 immediately qualify for inclusion on the 2020 ballot.

According to the State Board of Elections, the parties are able to nominate a candidate to run for president and the U.S. Senate. Also, Green Party candidates are able to choose a candidate to run in the 5th and 12th Congressional district races.

“The court is satisfied that the ... order will ameliorate (the parties’) difficulty meeting the statutory signature requirement due to the COVID-19 restrictions,” Pallmeyer wrote in her opinion, “...while accommodating the state’s legitimate interest in ensuring that only parties with a measurable modicum of public support will gain access to the 2020 general election ballot.”

The judge, in her opinion, added “numerous states” reduced the signature requirement for candidates, including Michigan, New York and Massachusetts.

A compromise ruling

The final decision is not one that the political parties, nor the state, requested as the lawsuit proceedings began.

The Libertarian and Green parties wanted Illinois’ signature collection mandates to be waived or suspended this general election cycle. And if that was not possible, they wanted the state to develop fair, reasonable rules for candidates to meet petition signature requirements during the coronavirus pandemic.

“Although we appreciate the extraordinary and challenging circumstances from which this case arises, the fact is that it’s the state’s obligation to provide a procedure, a constitutional procedure, by which candidates can demonstrate that they have the modicum of support necessary to qualify for the ballot,” Oliver Hall, the parties’ attorney and founder of the Center for Competitive Democracy, said in a court hearing, according to a transcript.

Attorneys for Pritzker and the elections board initially proposed allowing electronic petition

submissions of hand-written signatures, maintaining the June 22 deadline and reducing the number of signatures by 50 percent.

The Board of Elections was “very concerned” about pushing that deadline to Aug. 7, its representative Michael Kasper said, according to a court transcript.

“That bumps up against the other statutory deadlines and the deadlines imposed to get military ballots out under federal law,” he said.

Representatives of all parties said the judge’s decision addresses their concerns.

“In general, we think Judge Pallmeyer’s order is a well-reasoned and fair resolution of the difficult issues raised by this case, and that it provides the plaintiffs with substantial relief,” Hall said in a statement.

A spokesperson for the State Board of Elections said its directors “think the order serves the best interests of all parties involved.”

A spokesperson for the attorney general’s office, which represented Pritzker, said the opinion is being reviewed and options evaluated. A spokesperson for the governor’s office said Pritzker “supports an open and fair electoral process.”

“In light of the fact that the period for these candidates to gather signatures is occurring during the COVID-19 pandemic, the governor supports the court’s order allowing candidates additional means to obtain actual signatures for their ballot petitions, such as through email, and additional time in which to submit those petitions,” the spokesperson said in an email.

One aspect absent from Pallemeyer’s order is a mandate that the State Board of Elections notifies voters of the ballot requirement changes — namely that voters will be contacted by candidates to electronically sign their petitions.

Sam Cahnman, an attorney representing an independent candidate for president who joined the lawsuit later, said the elections board should “at a minimum post a big alert on the opening page of their website, alerting readers to the new rules ordered by the court.”

 Rebecca Anzel

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News

Press Releases

Thu, April 23, 2020

Court order gives new party and independent candidates later filing date, reduced petition signature requirements amid COVID-19 concerns

Fri, April 17, 2020

State Board of Elections issues official vote totals report for March 17 primary.

Mon, March 16, 2020

Illinois primary election will go on March 17 as scheduled

Fri, March 13, 2020

Amid coronavirus concerns, Illinois joins three other March 17 primary states in statement on election status

Mon, February 3, 2020

Board of Elections, Illinois Dept. of Corrections work to correct data error involving possible erroneous cancellation of ex-inmate voter registrations.

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Upcoming Events

**Next Election
GENERAL ELECTION
Tuesday, November 3,
2020**

**Next Board Meeting
Monday, May 18, 2020**

Calendar

5/15/2020

VOTER REGISTRATION DATA

5/18/2020

VOTER LIST FOR COUNTY CHAIR

5/22/2020

STATEWIDE ADVISORY QUESTION

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VOTER REGISTRATION DATA

6/1/2020

VACANCY IN NOMINATION - MANAGING COMMITTEE

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Exhibit 3



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COURT ORDER CHANGES NEW PARTY, INDEPENDENT CANDIDATE FILING PROCESS

SPRINGFIELD (April 23, 2020) – Independent and new party candidates seeking placement on the Nov. 3 ballot will be required to submit only 10 percent of the normal number of nominating signatures and will file petitions six weeks later than originally scheduled under a court order issued Thursday by Chief U.S. District Judge Rebecca R. Pallmeyer.

The order was in response to a lawsuit by the Libertarian Party of Illinois, the Illinois Green Party and several independent candidates alleging that concerns over COVID-19, including a statewide order limiting social contact, impaired their ability to gather sufficient signatures and meet the June 22 filing deadline for new party and independent candidates. Under the order, new party and independent candidates will file nominating petitions with the State Board of Elections from July 31-Aug. 7.

In addition to reducing the number of signatures required by candidates, the order allows the Libertarian and Green parties to place candidates on the November ballot without filing nominating petitions for any offices in which those parties fielded candidates in either the 2016 or 2018 general elections. This means both parties can place candidates for president and U.S. Senate on the November ballot. The Green Party also can name candidates to the ballot in the 5th and 12th congressional races.

Other independent and new party candidates will be required to submit 10 percent of the statutory signature requirements for offices on the November ballot. This reduces the original 25,000 signature requirement for presidential, U.S. Senate, Illinois Supreme Court and Illinois Appellate Court candidates to 2,500 signatures. Signature requirements for other offices on the November ballot vary

by office, and the original requirements are listed in the 2020 Candidates Guide, which is attached to this release.

The order also drops the requirement that signatures on nominating petitions be original, physical signatures. A physical "wet" signature would still be permitted but not required on the candidate's petition. Petition signers may physically sign a copy of a candidate's petition, or they may electronically sign their handwritten signatures to the petition using a finger or a device such as a computer mouse or stylus. Photocopies of signatures also will be permitted.

For more details, please see the full order below.

The State Board of Elections is an independent state agency charged with the responsibility of having general supervision over the administration of election laws of the State of Illinois. Elections are administered locally by the State's 108 election authorities.

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