NO. 11-1085
IN THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

JAY STONE, FREDRICK K. WHITE, FRANK L. COCONATE, DENISE DENSON, BILL "DOC" WALLLS, HOWARD RAY
Plaintiffs-Appellants
v.
BOARD OF ELECTION COMMISSIONERS FOR THE CITY OF CHICAGO
Defendant-Appellee

BRIEF FOR APPELLANTS

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
CASE NO. 10cv7727
THE HONORABLE [JUDGE] DOW, PRESIDING

JANUARY 11, 2011

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NOW COMES Attorney Christopher C. Cooper, on behalf of Plaintiffs-Appellants and states as follows:

JURISDICTIONAL STATEMENT

Jurisdiction over this appeal is based on 28 U.S.C. § 1291, as the appeal involves a final decision of the district court; specifically, the district court's January 10, 2011 dismissal (Doc. 34-35) of plaintiffs' action (10cv7727 in the U.S. District Court for Northern Illinois). On January 10, 2011, plaintiffs, through counsel, filed a Notice of Appeal with the Seventh Circuit Court of Appeals. The district court had federal question jurisdiction and subject matter jurisdiction of the underlying case pursuant to 28 U.S.C. §§1331, 1343(a)(3) and 2201; as well as pursuant to 42 U.S.C. § 1983 and 28 U.S.C. § 2201 and that plaintiffs-appellants sought relief to redress the deprivation, under color of statute, of rights secured by the First and Fourteenth Amendments to the Constitution of United States, specifically the right to be free from abridgement of free speech and association. Because plaintiffs allege that an Illinois ballot access law unconstitutionally burdens the associational rights of plaintiffs, unknown candidates, unaffiliated candidates and their supporters, federal jurisdiction is proper.

ISSUES PRESENTED FOR REVIEW

I. Genuine Issues of Material Fact: Was the District Court's action proper when it denied plaintiffs' motion for injunctive relief along with plaintiffs' request for declaratory relief, where plaintiffs contend that they have satisfied criteria for injunctive relief; as well as showed that they are entitled to declaratory relief.

II. Whether the 12,500 signature requirement (65 ILCS 20/21-28) is unconstitutional for one or more of the following reasons (?):

a. [whether] the requirement is onerous

b. [whether] the requirement is restrictive

c. [whether] the requirement serves no compelling state interest and is not reasonably necessary to the accomplishment of a state objective.

d. [whether] the requirement unconstitutionally impairs independent voters' core First Amendment rights Freedom of Association

e. [whether] the requirement acts to take away a person's right to petition the government

III. Whether the 12,500 signature requirement should be deemed constitutional where there are [other] ballot access impediments: (a). one signature per nominating petition requirement; (b). that individuals must run as non-partisan; (c). that there is a short, 90-day collection period; (d). a crowded field of persons collecting signatures; and (e) a magnitude of resources (money in particular) needed by a candidate in order to be

able to collect 12,500 certifiable signatures.

IV. Whether the 12,500 signature requirement is deemed constitutional, where an analysis of Chicago's ballot history shows that an unknown and unaffiliated candidate has ever been elected mayor.

V. Whether a reasonably diligent unknown, unaffiliated candidate, and or a candidate of modest financial status [could] be expected to satisfy the 12,500 signature requirement, or will it be only rarely that the candidate of one of these types succeeds in getting on the ballot (hence a ballot access rule that disallows some citizens from participating in the political process).

VI. Whether the number of individuals gaining access to the ballot (less than 50%) for the February 2011 election demonstrates that the 12,500 signature statutory requirement does not pose an unreasonable hurdle to ballot access.

VII. Whether one or more of the plaintiffs\appellants satisfied what the U.S. Supreme Court deems as a an acceptable "modicum of support" (that the candidate is warranted to expect a place on the mayor's election ballot).

VIII. Whether, the 5% threshold established by the U.S. Supreme Court is intended by the Court as "cut and dry" [sic] or is that the Court intends that federal circuit courts recognize 5% as a guide.

STATEMENT OF THE CASE

Plaintiffs filed a lawsuit (10cv7727) for which this appeal is germane. Plaintiffs' amended lawsuit, predicated on 42 U.S.C. 1983,

with three counts in which three of the six plaintiffs, candidates for the office of Mayor of Chicago, joined by Plaintiff Coconate, a candidate for the office of Chicago City Clerk, alleged abridgement of rights to which they are entitled by way of the U.S. Constitution.

The mayor and city clerk hopefuls filed with the Board of Election Commissioners for the City of Chicago, less than the 12,500 signatures required as per 65 ILCS 20/21-28. All six plaintiffs alleged in the underlying lawsuit that the 12,500 signature requirement, along with the Board of Elections holding that their names will not appear on the upcoming February 22, 2011 ballot because of the signature deficiency, is a violation of plaintiffs' First Amendment and Fourteenth Amendment rights; as well as a violation of their "Right to Petition the Government."

The plaintiffs sought declaratory relief from the district court in the form of the court finding that the 12,500 signature requirement is unconstitutional for reasons that include [that] the requirement is onerous, restrictive; serves no compelling state interest; and is not reasonably necessary to the accomplishment of a state objective.

Additionally, plaintiffs asked the district court to provide injunctive relief that would prohibit the Board of Elections for the City of Chicago from barring the names of Plaintiffs' White, Stone, Ray, and Coconate from appearing on the February 22, 2011 ballot.

The district Court established a briefing schedule upon which plaintiffs filed its brief (Doc. 30 & 33). On January 4, 2011, the district

court held oral arguments. On January 10, 2011, the district court denied plaintiffs' injunctive and declaratory relief. Plaintiffs responded by filing this appeal.

STATEMENT OF FACTS

(1) Plaintiffs' Stone, Ray, and White are Chicago mayoral candidates for Chicago's upcoming non-partisan election.

(2) Plaintiff Coconate is a candidate for office of Chicago city clerk.

(3) Pursuant to 10 ILSC 65 ILCS 20/21-28(b), in order for a candidate's name to appear on a municipal election ballot (hereinafter referred to merely as "the ballot") for the office of mayor or city clerk, the candidate must file with the Board of Elections for the City of Chicago, 12,500 Chicago resident signatures (and that the resident is a registered voter in the City of Chicago).

(4) Each of the four aforementioned plaintiffs filed less than 12,500 signatures timely (on or before November 22, 2010). Plaintiff Stone filed 250 signatures. Plaintiff White filed approximately 10,200 signatures. Plaintiff Ray filed approximately 2,625 signatures and Plaintiff Coconate filed 61 signatures.

(5) Plaintiffs, in their capacities as both a voter and candidate, assert that the requirement of 12,500 signatures is onerous, restrictive and unconstitutional.

(6) By law 65 ILCS 20/, the Board of Elections for the City of Chicago is not permitted to allow the names of the aforementioned plaintiffs to

appear on the ballot.

(7) Plaintiff White was told on December 16, 2010, by Board of Election Judge Linda Crane, that his name will not appear on the ballot because Mr. White had not filed 12,500 signatures.

(8) Plaintiff Stone received notice from the Board of Elections dated December 6, 2010 that his name will not appear on the ballot.

(9) Plaintiffs' Ray and Coconate have reasonable belief that the Board of Elections will adhere to 60 ILSC 20/ and not allow the plaintiffs' names to appear on the upcoming February 22, 2011 ballot because of the signature deficiency.

(10) Plaintiff Bill "Doc" Walls is running for the office of mayor of Chicago and that his 12,500 signatures were certified; however, he asserts that he was burdened by having to secure at least 12,500 signatures to qualify for the February 22, 2011 ballot.

(11) Plaintiff Denise Denson and Plaintiff Walls assert [in their capacity as residents of Chicago and as registered voters in the City of Chicago] that if the names Howard Ray, Fredrick White, Frank Coconate and Jay Stone do not appear on the February 22, 2011 ballot, then their (Walls and Denson) First Amendment rights have been abridged.

(12) Chicago's signature requirement to get one's name on the mayoral ballot is unrivaled, an absolute outlier in the United States of America. One can get his\her name placed on the New York City's Mayor's ballot if

he\she collects 3,750 signatures. New York City has three times the population of Chicago.

(13) Chicago had a 5.4% signature requirement before the 2005 Illinois General Assembly reduced the 25,000 signature requirement to 12,500 Although, the amount was lowered the reduction does not follow the trend of other major U.S. cities having signature requirements of 1% or less. The district court misapplied the formula (Doc.35,p.7) when it said Chicago requires 1% or less. Chicago requires 2.7%. The % is based on the # of voters in the previous election, not the # of registered voters.

(14) Only, approximately 50% of the candidates (total of 20) who filed for the office of Chicago mayor for the upcoming election were successful in satisfying the 12,500 signature requirement.

(15) Only 6 of the 20 candidates who filed (to include having submitted signatures) for the office of mayor of Chicago have been certified (that is, their names will appear on the 2011 ballot).[1]

SUMMARY OF ARGUMENT

The 12,500 signature requirement is not miniscule or minimally burdensome. Cf. *Krislov v. Rednour, 226 F. 3d 851 (2000)*. In Krislov at 859- 860, the 7th Circuit criticized the Illinois Board of elections for suggesting that a signature requirement was minimally burdensome. The KRISLOV court wrote:

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[1] First Amended Certification Municipal General Election dated 1/8/2011, Board of Election Commissioners for the City of Chicago. http://www.chicagoelections.com/

"… the number of signatures a candidate is required to obtain is just one of several important considerations. Even though the candidates in this case ultimately obtained ballot access, ------in the process ---their rights were substantially burdened. The uncontested record indicates that their ballot access took a lot of time, money and people, which cannot be characterized as minimally burdensome."

As to the upcoming 2011 election, only 6 of the 20 candidates who filed (to include having submitted signatures) for the office of mayor of Chicago have been certified (that is, their names will appear on the 2011 ballot).[2] The plaintiffs' exhibits marked 6-15 (Doc 33) show that the board did not find that all of the 15 people who had filed at least 12,500 signatures had satisfied the signature requirement.

The requirement of candidates for the office of mayor of Chicago and the office of Chicago City clerk that they obtain 12,500 signatures in order for their names to be placed on the election ballot[3] operates to unconstitutionally burden the freedom of political association of plaintiffs and their supporters and that freedom of political association is guaranteed by the First and Fourteenth Amendments.

The 12,500 signature requirement is best described as a ballot access barrier that is so high that only a few can make it to the ballot. But for a candidate possessing the significant amount of money needed to pay for circulators and or the candidate also having an infra-structure so embedded that hundreds of volunteers will take to the streets and

[2]First Amended Certification Municipal General Election, dated 1/8/2011. Board of Election Commissioners for the City of Chicago.
[3] (65 ILCS 20/21-28(b))

circulate petitions on the candidate's behalf----obtaining 12,500 signatures in 90 days from a pool of perhaps 456,765[4] active voters is daunting. Furthermore, the 12,500 requirement is unconstitutional because it substantially impair voters' core First Amendment rights without any offsetting benefit to a compelling state interest.

All comparable cities to Chicago have determined signature requirements far below 2.7% is reasonable. Other than Chicago, no major U.S. city approaches a 5% signature requirement. Since the 5% threshold was not intended by the Supreme Court as an inflexible standard nor intended to be "cut & dry" [sic] (or "hard & fast" [sic]), the 5% marker is a poor measuring stick. A more reasonable test of Chicago's 2.7% signature requirement (merged with an analysis of Chicago's ballot history) is a comparison to other cities whose signature requirements have survived the ordeal of elections. A 5% signature requirement does not reflect the current realities of elections in major U.S. cities, whereas cities such as Los Angeles and Houston who hold elections with .16% and 0.0% signature requirements do. The "inevitable

[4] This is the number of people who voted in the last (2007) Chicago municipal election. Twelve-thousand five hundred represents approximately 2.7% of that number. The way that the you determine the percentage (e.g., 2.7%) that a jurisdiction requires is based not on the number of registered voters, rather, on the number of people who voted in the previous election. The defendant agrees in its brief at Footnote 2,p.6, Doc.25, that the number is 2.7%; although, it reports that the number of people who voted in the previous election was 456,706 rather than 456,765.

question for judgment" in the instant matter (*Stone v. Board of Elections*) is whether "a reasonably diligent ordinary citizen candidate [could] be expected to satisfy the signature requirements, or will it be only rarely that such a candidate will succeed in getting on the ballot?"

ARGUMENT

Plaintiffs' respectfully disagree with the district court's position at page 13 of Doc. 35 (Opinion) which reads:

"Further, the number of individuals gaining access to the ballot for the February 2011 election demonstrates that the statutory requirement does not pose an insurmountable hurdle to a candidate's access."

Plaintiffs assert that their Exhibit 4 (attachment to their Brief, Doc.30) has been misunderstood by the district court (at p.13 of Doc.35, Op.). It is not the case that simply because a candidate files 12,500 signatures that he or she has satisfied the requirement of 65 ILCS 20/21-28. Five candidates who did submit at least 12,500 were not certified by the Board of Elections as having submitted 12,500 signatures.[5] See Exhibits 6-15 (Doc. 33). Furthermore, only 6 candidates out of 25 who undertook candidacies for the position of mayor made it to the final ballot.

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[5] The Board held that the following candidates had filed 12,500 signatures but that they were not certifiable signatures: Ryan Graves, Rob Halpin, Tommy Hanson, John Hu, Fenton Peterson.

Merely filing 12,500 signatures does not mean that the candidate has satisfied the 12,500 signature burden. It is only after the signature vetting process, that the candidate's success or lack thereof is noticed. Cf. *Krislov v. Rednour* at 859-860 (recognizing that candidates must submit more than the minimum number of signatures required). The fact that so many candidates were not able to meet the signature requirement for the upcoming 2011 election shows that the 12,500 requirement is onerous and burdensome.

The popular 5% threshold should not be read as absolute (or "cut & dry" or hard & fast [sic]); rather, how it is applied depends on the unique circumstances to the facts in issue. This means that the application occurs in the context of the jurisdiction's ballot history and other phenomena that could reasonably be described as limiting ballot access. Boding with this position is that the Storer Court held that impact of a ballot access law is judged by looking to history and to how the state's other ballot access laws may amplify the burden of the signature requirement. *Storer v. Brown, 415 U.S. 724, 739, 743 (1974).* "Past experience will be a helpful, if not always unerring, guide: it will be one thing if independent candidates have qualified with some regularity and quite a different matter if they have not." *Storer*, 415 U.S. at 742.

By way of 60 ILCS 20/21-28(b) (the requirement of 12,500 signatures in order to have one's name placed on the ballot), defendant and the state of Illinois are abridging the core First Amendment rights of

voters and plaintiffs.

By the defendant denying Plaintiffs' Stone, Ray, White and Coconate an opportunity for their names to appear on the ballot, voters who support the plaintiffs have been denied an opportunity to champion their choice of candidate and that the plaintiffs/candidates have been denied an opportunity to espouse their views from the best possible vantage point, that of candidate with his name on the ballot. Cf. " *Lee v. Keith*, 463 F.3d 763, 768 (2006); *Clingman v. Beaver,* 544 U.S. 581, 586, 125 S.Ct. 2029, 161 L.Ed.2d 920 (2005); *Cal. Democratic Party v. Jones,* 530 U.S. 567, 574, 120 S.Ct. 2402, 147 L.Ed.2d 502 (2000)).

By the Board of Elections refusing to put the plaintiffs' names on the ballot, the right of individuals to associate for the advancement of political beliefs, and the right of qualified voters, regardless of their political persuasion, to cast their votes effectively has been abridged. Cf. *Lee v. Keith*, 463 F.3d 763, 768 (2006); *Clingman v. Beaver,* 544 at 586; *Cal. Democratic Party v. Jones, at 574.*

The challenged ballot access law in issue is unconstitutional because it substantially impairs voters' core First Amendment rights without any offsetting benefit to a compelling state interest. Having said this, whether a State's ballot access laws unconstitutionally impair core First Amendment rights must be determined by the test set forth in *Anderson v. Celebrezee, 460 U.S. 780, 789, 103 S. Ct. 1564, 75*

L. Ed. 2d 547 (1983).

Prong one: the court must consider the character and magnitude of the asserted injury to voters' core First Amendment rights. Id.

Prong two: the court must identify and evaluate the precise interests put forward by the State as justifications for any burdens. Id.

Prong Three: "In passing judgment, the Court must not only determine the legitimacy and strength of each of those interests, it also must consider the extent to which those interests make it necessary to burden plaintiff's rights. Only after weighing all these factors is the reviewing court in a position to decide whether the challenged provision is unconstitutional." Id.

The First Amendment, as incorporated against the states by the Fourteenth Amendment, "protects the right of citizens 'to band together in promoting among the electorate candidates who espouse their political views.'" *Lee v. Keith*, 463 F. 3d 763, 767 (quoting *Clingman v. Beaver,* 544 U.S. 581, 586, 125 S. Ct. 2029, 161 L. Ed. 2d 920 (2005) quoting *Cal. Democratic Party v. Jones, 530 U.S. 567, 574, 120 S. Ct. 2402, 147 L. Ed. 2d 502 (2000)*). Accordingly, "the impact of candidate eligibility requirements on voters implicates basic constitutional rights." *Lee v. Keith* at 768 (quoting *Anderson v. Celebrezze*, at 786). "The exclusion of candidates . . . burdens voters' freedom of association, because an election campaign is an effective platform for the expression of views on the issues of the day, and a candidate serves as a rallying point for like-

minded citizens." *Lee v. Keith* at 768 quoting *Anderson v. Celebreeze* at 787-88.

Ballot access lacking a compelling state interest "place burdens on . . . the right of individuals to associate for the advancement of political beliefs, and the right of qualified voters, regardless of their political persuasion, to cast their votes effectively. Both of these rights, of course, rank among our most precious freedoms." *Williams v. Rhodes*, 393 U.S. 23, 30, 89 S. Ct. 5, 21 L. Ed. 2d 24 (1968).

When we ask the question: What is the character and magnitude of the injury to voter's core First Amendment rights in the instant case (*Stone v. Board of Elections*, et. al.)? We arrive at the answers:

-**As to Character**: The fundamental right of freedom of association has been interfered with.

-**As to Magnitude**: Without the 12,500 signature requirement being deemed unconstitutional, the February 22, 2010 ballot and ballots beyond will not be a fair and accurate representation of the voters' choices for consideration for the office of mayor of Chicago and the office of Chicago city clerk (since the names of candidates who have filed less than 12,500 signatures will not appear).

The interference thus far is serious (although the ballots have not yet been printed, the plaintiffs have been notified that their names will not appear on the ballot). The interference will become severe unless there is plaintiff friendly injunctive relief. Severe because without the

plaintiffs' names appearing on the ballot, there will have been an absolute silencing of voters who support the plaintiffs and of many of the views for which the plaintiffs represent residents and registered voters. (Views include not just positions on issues of the day; but as well, the strategy/plan by which a candidate intends to achieve certain objectives for which most Chicago voters [regardless of their choice of candidate] have spoken. By example, most voters desire creation of jobs and have hope of voiding the parking meter lease).

Without injunctive relief and an ever present 12,500 signature requirement, candidacies for those seeking the mayor's or city clerk's office in 2015 and beyond will be doomed without ever getting out of the starting gate. The free speech and right of association that voters and candidates hold dear will be stifled, if these voters so choose to champion for the candidate unable to secure 12,500 signatures.

Further Discussion of the Second Prong of the Test Outlined in *Anderson v. Celebreeze (and ballot clutter)*

The state does not have a compelling interest that justifies the 12,500 burden signature requirement. Yes, unfortunately, the district court agreed with the state's position that the plaintiffs have not showed a requisite modicum of support and that their names appearing would represent "ballot clutter." Of course, the plaintiffs disagree. They contend that they collected an amount of signatures that show "a"

requisite modicum of support.[6] The district court's concerns about ballot clutter (see Doc. 35, pp.6-8) are respected; however, plaintiffs/appellants are not convinced that ballot clutter or confused voters would result if the plaintiffs' names appear on the upcoming ballot. Cf. *Lubin v. Panish, 415 U.S. 709, 718 (1974); and Storer v. Brown, 415 U.S. 724, 732-33 (1974).* After all, only 6 names are slated to appear on the ballot. If the other candidates not eliminated for signature deficiencies were still on the ballot, the total number of mayor hopefuls (to include plaintiffs) would be 14.

Plaintiffs' Stone, White, and Ray recognize that States have an interest in limiting voter confusion by limiting ballot access to candidates who can demonstrate at least some level of political viability. See *Anderson* at 788 n.9; and *Jenness v. Fortson,* 403 U.S. 431, 442, 91 S. Ct. 1970, 29 L. Ed. 2d 554 (1971). Plaintiffs' Stone, Ray and White did show a satisfactory modicum of support through the signatures that they did collect.[7]

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[6] Plaintiffs' White, Ray and Stone contend that the signatures that they did file show a requisite modicum of support. Additionally, they assert that measuring support should include considering what citizens and the press assert about candidates on the Internet. In the 21st century, it would seem odd for the Board of Elections not to give notice (in determining level of support) to third party statements (press, etc.) posted on the Internet.

[7] Plaintiff Stone filed 250 signatures. Plaintiff White filed approximately 10,200 signatures. Plaintiff Ray filed approximately 2625 signatures.

It is Daunting for a Candidate to Collect 12,500 Signatures

According to the Chicago Board of Elections 456,765 people voted in the preceding Chicago mayoral election (2007).[8]

Between August 24, 2010 and November 22, 2010, approximately 25 persons sought the office of mayor and circulated petitions. See below: **The 20 Candidates Who Circulated Petitions and Filed their Petitions**

Roland Burris
Tyrone Carter
Gery Chico
Danny Davis
Miguel del Valle
Wilfredo de Jesus
Rahm Emanuel
William Walls III
Ryan Graves
Rob Halpin
Tommy Hanson
John Hu
M. Tricia Lee
James T. Meeks
Carol Moseley-Braun
Fenton Peterson
Howard Ray
Jay Stone
Patricia Van Pelt Watkins

Source: http://www.chicagoelections.com/page.php?id=8)

The Five Candidates Who Circulated Petitions but did not File their Petitions

Christopher Cooper
Tom Dart
Manny Flores
Luis Gutierrez
Ricky Hendon

Of the 25 people running for mayor, 20 candidates filed petitions with Defendant Board of Elections. (Source: Id.) Nine of the 20 candidates who filed for mayor did not meet Chicago's 12,500 signature requirement. (They were Stone, Hanson, Graves, Lee, White, Howard, Patterson, Carter and Halpin.)

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[8] http://www.chicagoelections.com/

It is known that candidates for mayor should collect more than 12,500 signatures in order to avoid being knocked off the ballot by challenges. Cf. *Krislov v. Rednour* in which this fact is acknowledged by the 7th Circuit. Id. at 859-860. Hypothetically, assume that each mayoral candidate turned in 25,000 signatures. The number of signatures filed would equal approximately 500,000 or more.[9] This is more than the number of people who voted in the last mayoral election. Now consider all of the negative consequences when there are so many candidates competing for signatures in a pool that is not large enough to accommodate all of the candidates. First is the statute that bars voters from signing more than one nominating petition (see Exh.16, Doc.33). Next, devious "hustlers/con-men" [sic] who offer signature collection services and then forge signatures and or facilitate forgeries; and in other instances, candidates who knowingly file with the Board of Elections, signatures that they know to be forgeries. Media news stories of forgeries and "round tabling" [sic] clutter the Internet as to the indiscretions that occurred in the collection period for the Chicago mayoral election for which the instant lawsuit is germane. By example, see below from an Internet query performed December 23, 2010.

Search Results

1. Another notary says name forged on mayoral petitions - **Chicago** Sun **...**
Dec 21, 2010 **...** The **Chicago** Sun-Times earlier this week found suspect notary **...** Meeks has said he too hired Tucker, along with another consultant, Bishop

[9] A total of 564,055 signatures were filed with the Chicago Board of Elections. See Chart marked as Exhibit 4.

C.L. **Sparks**. **...** " **Forgery** of a person's notary stamp or signature is wrong, **...**
www.suntimes.com/news/metro/2941818,CST-NWS-petitions03.article

2. Another notary says name forged on mayoral petitions - **Chicago** Sun **...**
Braun and Watkins are the latest candidates to be stung by the **forgery** **...**
www.suntimes.com/news/.../petitions-caplan-notary-rodriguez-watkins.html
Show more results from suntimes.com

3. Homeless Man Explains How Mayoral Petitions Got Signed « CBS **...**
Dec 2, 2010 **...** At **Chicago** City Hall, The Entrance To The Mayor's Office. **...** Bishop C.L. **Sparks** , who has a consulting business, **Sparks** Group LLC. **...** The Sun-Times also reports the notary signature on the petitions was a **forgery**. **...**
***chicago**.cbslocal.com/.../homeless-man-explains-how-mayoral-petitions-got-signed/* - Cached

When you factor in weather conditions in the collection period which includes October and November and that a circulator must be present when individuals sign,[10] this means that collecting 12,500 signatures is extremely daunting and onerous. Still, there is yet another variable that makes collecting 12,500 extremely daunting and onerous and that is the cost of paying circulators to secure signatures.

The 12,500 signature requirement is best described as a ballot access barrier that is so high that only a few can make it to the ballot. But for a candidate possessing the significant amount of money to pay for circulators and or having an infra-structure so embedded that hundreds of volunteers will take to the streets and circulate petitions on the candidate's behalf----obtaining 12,500 signatures in approximately 90 days from a pool of perhaps 456,765[11] active voters is daunting.

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[10] Section 7-10 of the Election Code, 10 ICLS 5/

[11] This is the number of people who voted in the last (2007) Chicago municipal election.

Germane to daunting and onerous is the issue of whether a candidate is an independent or symbolic of an independent or strikingly similar to the type of candidate referred to as an independent. "Ordinary citizen candidates" are in many ways similar to candidates defined as "independent." The latter are often people unable to garner the support or nomination of the Republican Party or Democratic Party.

Now, front and center are Chicago elections. Chicago's municipal elections are non-partisan. Candidates for mayor of Chicago are burdened by having to run as non-partisan candidates. 65 ILCS 20/21-5 (as well as subjected to the unofficial one signature maximum rule, see PF. Exhibits 3 and 16 of Doc. 33). One could wrongly assert that all candidates for the office of mayor are independent. The more accurate assertion is one that describes a cohort of mayoral hopefuls, some political powerhouses because of massive political affiliations verses ordinary citizen candidates like the plaintiffs in this case. The existence of the 12,500 signature requirement and the enforcement by the Board of Elections for the City of Chicago of a requirement for 12,500 signatures, unconstitutionally abridges the plaintiffs' First Amendment rights by erecting substantial impediments to the **development** of these types of candidacies----as in residents; unknowns and the unaffiliated (e.g.,

plaintiffs) who lack the financial solvency or infrastructure (e.g., unknown candidate) to secure 12,500 signatures.[12]

A *New York Times* article decisively describes the race in Chicago for 12,500 signatures in this recent collection period:

> *"Campaign foot soldiers for Alderman Edward Burke, from the 14th Ward on the Southwest Side, instead helped Gery Chico, whose mayoral campaign gathered about 50,000 signatures. Mr. Burke, the longest-serving alderman and chairman of the City Council's Finance Committee, had not previously declared his preference for mayor. He told the Chicago News Cooperative this week that he directed the 14th Ward Democratic workers whose names appeared as circulators on petitions for Mr. Chico, a native of the Southwest Side."*
>
> *" Democratic patronage armies traditionally provided most of the labor for petition drives and other campaign chores, once helping Mr. Daley amass about 200,000 signatures for a re-election bid. This time, after federal corruption investigations focused on City Hall patronage hiring, virtually all of the major campaigns for mayor had to pay at least some of their petition passers, a practice that election laws allow." Source: By Dan Mihalopoulos, Petitions for Mayor Offer First Clues of Campaign, New York Times, November 25, 2010.*

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[12] Financial solvency is relevant, since common practice is that of paying individuals or companies to circulate petitions for candidates. The average amount of money charged per signature is $2.00 to $4.00. (see attached Exhibit 2 in PFs' Brief [Doc.30]: Free & Equal, a contract for circulator services).

The reference to infra-structure is germane to pre-existing history and relationships in the jurisdiction that often lead to election success; however, that such pre-determinants should not impede an unknown from running for elected office in Chicago, especially when being permitted to appear on the ballot can result in increased name recognition. By the state giving a candidate access to the ballot, his\her opportunities to participate in government and to express ideas and intentions and even charisma if he or she has it, increase the likelihood of his\her formation of infrastructure for what would have been the once unknown candidate.

http://www.nytimes.com/2010/11/26/us/26cncpetitions.html?_r=1&pagewanted=print

The Supreme Court has held that ballot access history is a significant factor in deciding whether ballot access restrictions impermissibly burden the freedom of political association: "Past experience will be a helpful, if not always unerring, guide: it will be one thing if independent candidates have qualified with some regularity and quite a different matter if they have not." *Storer*, 415 U.S. at 742. Chicago's history does not include an "Average Joe" or unknown person or a person unaffiliated with Chicago political circles becoming mayor of Chicago. The 12,500 signature requirement certainly does not in any way make it possible for an "Average Joe"/ordinary citizen to become mayor of Chicago. Here lies the problem. The costs to circulate nominating petitions represent perhaps the most significant challenge. (See PF. Exh. 2, Doc.30). Recall, the aforementioned and cited New York Times article. The article included the additional following passages:

> *Carol Moseley Braun, the former United States senator, claimed more signatures than any other mayoral contender. Her campaign manager, Mike Noonan, said the campaign relied greatly on paid workers to supplement volunteers.*
>
> *Ms. Braun's petitions were circulated mostly by supporters from the South and West Sides, with relatively few from outside the city. "Our work force came from a lot of people who are out looking for jobs in this bad economy," Mr. Noonan said.*
>
> *Mr. Emanuel was aided by operatives for the Democratic organizations in the 36th, 39th, 40th, 44th, 45th and 47th Wards, according to his petitions and other public records.*
>
> *But Mr. LaBolt said volunteers made up the "vast majority" of the almost 850 circulators for Mr. Emanuel, with some campaign staff members paid to coordinate the petition effort. Source: Mihalopoulos, Petitions*

for Mayor Offer First Clues of Campaign, New York Times, November 25, 2010. http://www.nytimes.com/2010/11/26/us/26cncpetitions.html?_r=1&pagewanted=print

Plaintiffs' Stone, White, Coconate and Ray are "outsiders"—"Average Joe's." They are unknowns, unaffiliated and lacking the financial resources of their opponents as well as lacking "Campaign Foot Soldiers" and "Democratic Patronage Armies." By example, Ray is a cop and Fred White, a truck driver. But, each man has a following. The thousands of signatures that they signed filed evince the following of voters. These types of candidacies—Average Joe-- serve an important role in the U.S. democratic process by providing voters with an outlet to express their dissatisfaction with the political status quo. Cf. *Jenness* at 439; and *Rhodes* at 33.

In *Storer v. Brown*, the Court held that the severity of a state's signature requirement must be assessed in light of its "nature, extent, and likely impact" on independent candidates, Id. at 724, 739. Plaintiffs ask that the Storer Court's rationale for looking out for the interests of independent candidacies be understood to extend to "Unknown" "Unaffiliated" and modestly financially solvent candidates (as are the plaintiffs in this case).

The "inevitable question for judgment" in the instant matter (*Stone v. Board of Elections*) is whether "a reasonably diligent ordinary citizen candidate [could] be expected to satisfy the signature requirements, or will it be only rarely that such a candidate will succeed in getting on the ballot?" Id. Ballot access should mean that average people (ordinary

citizens) like the plaintiffs are enabled to participate in the political process. Not just as a member of their neighborhood school board or as a committeeman, but also having the opportunity to have one's name placed on the ballot for the position of mayor of Chicago. If the latter occurs, then the Right to Petition the Government is not abridged and that the freedom of association to which Americans are entitled is engendered.

Comparing Ballot Access Issues As to a Run for Mayor in Other Cities

It makes sense for the district court, in this case (*Stone v. Board of Election Commissioners*) to take note of the signature requirements (or lack thereof) for other large cities (in particular, the 10 largest, Chicago included). And, in doing so, to note that with the exceptions of New York City and Philadelphia, the cities hold non-partisan elections.

TABLE A: Number of Signatures to Run for Mayor

City	Population	Number of Signatures	Number of Days
New York	8,363,710	3,750 Valid Signatures	35 Days
Los Angeles	3,833,995	500 Valid Signatures with $300.00 filing fee	25 Days
Los Angeles	3,833,995	1,000 Valid Signatures if Candidate Pays No Filing Fee	25 Days
Chicago	2,853,114	12,500 Valid Signatures	90 Days
Houston	2,242,193	No Signatures Required if Candidates pay a $1,250 Filing Fee	Does Not Apply
Houston	2,242,193	587 Valid Signatures	90 Days
Phoenix	1,567,924	1,500 Valid Signatures	180 Days
Philadelphia	1,447,395	1,000 Valid Signatures for Partisan Candidates	21 Days
San Antonio	1,351,305	No Signatures Required. Candidate Pays $100 Fee	Does Not Apply
San Antonio	1,351,305	361 Valid Signatures Required if Candidate Pays No Filing Fee	Unavailable
Dallas	1,279,910	473 Valid Signatures	As Soon As the City Council Publishes Election Date
San Diego	1,279,329	200 Valid Signatures with a $500 Filing Fee	29 Days
San Diego	1,279,329	2,200 Signatures if Candidates Pay No Filing Fee	29 Days
San Jose	948,279	50 Minimum Valid Signatures 60 Maximum Valid Signatures	25 Days

TABLE B: Number of Signatures Per Capita

City	Population	Number of Signatures	Number of Signatures Per City Residents
New York	8,363,710	3,750 Valid Signatures	2,230
Los Angeles	3,833,995	500 Valid Signatures with $300.00 filing fee	7,668
Los Angeles	3,833,995	1,000 Valid Signatures if Candidate Pays No Filing Fee	3,834
Chicago	2,853,114	12,500 Valid Signatures	228
Houston	2,242,193	587	3,819
Phoenix	1,567,924	1,500 Valid Signatures	1,045
Philadelphia	1,447,395	1,000 Valid Signatures for Partisan Candidates	1,447
San Antonio	1,351,305	361	3,743
Dallas	1,279,910	473	2,705
San Diego	1,279,329	200 Signatures If Candidate Pays Filing Fee	6,397
San Diego	1,279,329	2,200 Signatures if Candidates Pays No Filing Fee	582
San Jose	948,279	50 Minimum Valid Signatures 60 Maximum Valid Signatures	18,966

Table C: Percent of Required Signatures Based on Votes Cast for Mayor (Sources for tables: See Footnote 14)

City	Number of Voters in Last Election	Number of Required Signatures	Required Signatures in percent
New York	1,178,057	3,750	0.32%
Los Angeles	309,048	1000 No Filing Fee	0.32%
Chicago	456,706	12,500	**2.70%**
Houston	176,968	0	0%
Phoenix	97,973	1,500	1.50%
Philadelphia	291,492	1,000	0.34%
San Antonio	69,271	0 $100.00 Filing Fee	0%
Dallas	84,590	461	0.55%
San Diego	214,572	200 $500 Filing Fee	0.09%
San Jose	134,320	50	0.04%

Table explanation: The table above shows there is a growing trend of cities requiring signatures significantly less than 5%. Six of the above cities with non-partisan elections have signature requirements less than 1% (Los Angeles, Houston, San Antonio, Dallas, San Diego and San

Jose). Cities that reduced the required number of signatures to below 1% have not had to raise the number of required signatures because of ballot clutter of voter confusion. Phoenix requires a percentage less than Chicago but higher that other cities; however, Phoenix allows 180 days to collect [signatures] verses the 90 allowed for Chicago.

Each city's Required Signatures in Percent (Column 4) comes from dividing the number of signatures currently required (Column 3) by the number of voters in the last election (Column 2). For example, San Jose had 134,320 voters participate in the city's last municipal election for mayor, and San Jose required each candidate for mayor to submit 50 signatures. The required signatures in percent is .04% (134,320/.027=.04%).

Sources: 1. New York: http://vote.nyc.ny.us/results.html (See General Election 2009 - November 3, 2009); 2. Los Angeles: http://ens.lacity.org/clk/elections/clkelections309862717_09292009.htm (See Summary of Total Votes Cast by vote, by mail & precinct); 3. Chicago: http://chicagoelections.com/wdlevel3.asp?elec_code=65 (View Mayor); 4. Houston: http://www.houstontx.gov/citysec/elections/ (See Election 11/3/09); 5. Phoenix: http://phoenix.gov/election/resultmore.html (see Sept. 11, 2007 Citywide Summary Results) 6. Philadelphia: (For Democratic Primary Election, see following link) http://www.ourcampaigns.com/RaceDetail.html?RaceID=91002 (For Republican Primary Election see following link) http://www.ourcampaigns.com/RaceDetail.html?RaceID=91003(For General Election see following link) http://www.ourcampaigns.com/RaceDetail.html?RaceID=224123; 7. San Antonio: http://www.sanantonio.gov/clerk/elections/OfficialPastElectionsResults.aspx (View the Official Past Election Results of May, 12, 2007); 8. Dallas: http://enr2.clarityelections.com/Default.aspx?page=S&c=dallas&eid=126 (View Dallas Place 15-Mayor for initial non-partisan election) and http://enr2.clarityelections.com/Default.aspx?c=dallas&eid=143 (View: Dallas Place 15-Mayor for runoff election);9. San Diego: http://www.sandiego.gov/city-clerk/elections/city/past/results.shtml (View Candidates Races, Mayor); 10. San Jose:http://www.smartvoter.org/2010/06/08/ca/scl/race/5200/ and http://www.ourcampaigns.com/RaceDetail.html?RaceID=643292

The governor of Illinois represents approximately 12.9 million people and the mayor of Chicago represents approximately 2.9 million people. It takes 2.5 more times the number of signatures to get on the ballot for mayor of Chicago than it does for governor of Illinois. It takes 2.5 times more signatures to get on the ballot for Chicago city clerk and treasurer than it does to run for governor of Illinois.

The 12,500 signature requirement imposed on Chicago residents by the state of Illinois is unrivaled.

Totality of Ballot Access Laws[13] to include One Signature Requirement

Candidates for mayor of Chicago are burdened by having to run as non-partisan candidates as per 65 ILCS 20/21-5. They are not permitted to run as a part of a political party. If the law were otherwise, perhaps, mayoral candidates would be held to a lower signature requirement as is a partisan candidate running for governor of Illinois. A partisan candidate running for governor needs to collect only 5,000 signatures verses 25,000 signatures. 10 ILCS 5/7-10(a).

The Election Code does not bar Chicago voters from signing more than one petition (as in signing for more than one candidate); however, as evinced by plaintiffs' Exhibits 3 and 16 (Doc.30 & Doc.33), there is evidence (including case law to which the Defendant points, See Exh. 16 in Doc. 33) that the Board of Elections for the City of Chicago interprets ILCS 5-7/10 as applicable to the Chicago mayoral election. Based on reasonable information and belief, enforcement of this statute [adversely] affected the collection period for which this case is germane. Plaintiffs' contend that voters have a First Amendment right to champion for more than one candidate to "get on" the ballot. The petition signature collecting period should be one in which voters need not [to] decide for whom they intend to cast their vote on election day. This democratic,

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[13] The Storer Court held that impact of a ballot access law is judged by looking to history and to how the state's other ballot access laws may amplify the burden of the signature requirement. *Storer* at 739, 743.

First Amendment endowed grace period enables voters to associate with more than one candidate who espouses their views in the days preceding the election. Come voting day, the voter must select just “one” candidate and such a rule is sensible and just. In violation of the U.S. Constitution, ILCS 5-7/10 and 10 ILCS 10/3 (neither or which should apply to the Chicago mayoral election) wrongly deny voters a legal opportunity to sign more than one petition. See Exh. 16 (Doc.33) which shows the Board of Elections applying ILCS 5-7/10 to aldermanic candidates who, like mayoral candidates, fall under the purview of 65 ILCS 20/21-28. Additionally, attached to Doc.30 is PF. Exh. 3, an affidavit from a Chicago area Election attorney. He asserts the prevalence of a Board enforcement and application of ILCS 5-7/10 (1 sig. rule).

<u>Launching</u>

It is not enough that now and then an ordinary citizen manages to get his/her name onto the ballot. Launching a candidate is just as important. Because the 12,500 signature requirement severely burdens the rights of candidates and voters to launch and support ordinary citizen candidacies, long before the Board of Elections certification for the ballot period (comes after petition circulation period), signature requirements must be "narrowly drawn" to advance a "compelling" state interest. *Burdick v. Takushi, 504 U.S. 428 at 434 (1992*), *see also Timmons v. Twin Cities Area New Party, 520 U.S. 351, 358 (1997).*

Through their counsel, Plaintiffs Stone, Ray, and White [in

particular] ask the 7th Circuit agree with them that it is necessary that serious candidates like themselves, who represent a significant number of reasonable people/voters, are permitted to have their name placed on a ballot for the position of mayor.

Issue of Minimally Burdensome

The 12,500 signature requirement is not miniscule or minimally burdensome. Cf. *Krislov v. Rednour, 226 F. 3d 851 (2000).* In Krislov at 859 and 860, the 7th Circuit criticized the Illinois Board of elections for suggesting that a signature requirement minimally burdensome. The Court wrote:

"In arguing that the regulation is only minimally burdensome, the Board mistakenly focuses solely on the fact that Krislov needed only 5,000 signatures statewide to be placed on the ballot, while Sullivan needed only about 660 from the district. In reality a candidate needs a surplus of signatures, because they will likely be challenged on any number of grounds, resulting in some, perhaps many, invalidations." Id. at 859-860.

The court pointed to testimony that a campaign needed to obtain up to six times the required number of signatures to ensure that enough signatures survive technical challenges. Id. at 859-860.

The KRISLOV court continued:

"… the number of signatures a candidate is required to obtain is just one of several important considerations. Even though the candidates in this case ultimately obtained ballot access, ------in the process ---their rights were substantially burdened. The uncontested record indicates that their ballot access took a lot of time, money and people, which cannot be characterized as minimally burdensome." Id. at 859-860.

Chicago's reduction from a 5.4% to a 2.7% signature requirement

does not follow the trend of other major U.S. cities having signature requirements of 1% or less. Chicago by way of 65 ILCS 20/21-28(b) is an outlier.

As to the upcoming 2011 election, once again, only 6 names will appear on the ballot. Six of the 20 candidates who filed (to include having submitted signatures) for the office of mayor of Chicago have been certified (that is, their names will appear on the 2011 ballot).[14]

Since at least 9 of the candidates no longer on the ballot were removed for signature deficiencies, this means that only approximately 50% of the candidates who filed for the office of Chicago mayor [for the upcoming election] were successful in satisfying the 12,500 signature requirement. The plaintiffs' Exhibit 4, attached to its brief (Doc.30) shows that 15 candidates filed 12,500 signatures or more; however, filing at least 12,500 signatures does not mean that a candidate has satisfied the signature requirement (65 ILCS 20/21-28(b)). The plaintiffs' Exhibits 6-15 (attached to their district court brief at Doc 33) show that the board did not find that 15 people had satisfied the signature requirement.

The requirement of candidates for the office of mayor of Chicago and the office of Chicago City clerk, that they obtain 12,500 signatures in order for their names to be placed on the election ballot[15] operates to unconstitutionally burden the freedom of political association of plaintiffs

[14] See document denoted as the First Amended Certification Municipal General Election, dated 1/8/2011. Board of Election Commissioners for the City of Chicago.
[15] (65 ILCS 20/21-28)

and their supporters and that freedom of political association is guaranteed by the First and Fourteenth Amendments.

The 12,500 signature requirement is best described as a ballot access barrier that is so high that only a few can make it to the ballot. But for a candidate possessing the significant amount of money to pay for circulators and or having an infra-structure so embedded that hundreds of volunteers will take to the streets and circulate petitions on the candidate's behalf----obtaining 12,500 signatures in 90 days from a pool of perhaps 456,765[16] active voters is daunting.

<u>Competition</u>

To determine the number of signatures for ballot access, courts have focused more on variables such as "modicum of support" than on political competition. Modicum is defined as "a small, modest or trifling amount." Chicago's 12,500 signature requirement for ballot access exceeds a small, modest, or trifling amount.

Modicum of support applies only to initial ballot access, whereas political competition applies to each stage of an election from start to finish. Thus, when setting the modicum of support required for ballot access, it would be helpful if a court considers whether or not the modicum of support standard enhances or limits political competition.

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[16] This is the number of people who voted in the last (2007) Chicago municipal election. http://www.chicagoelections.com/

Plaintiffs' contend that Chicago's 12,500 signature requirement unduly limits political competition as it stops many candidates from having access to the ballot because they are unable to compete with the "powerhouse" [sic] politically connected candidates.

CONCLUSION

The 12,500 signature requirement severely burdens First and Fourteenth Amendment rights and is not narrowly drawn to advance Illinois's interest. Cf. *Storer*, 415 U.S. at 736. Neither the Board of Election Commissioners for the City for Chicago or the state of Illinois can maintain that the 12,500 signature requirement is not a significant burden on unknown, unaffiliated, ordinary citizen candidates of modest financial means.

Plaintiffs' First and Fourteenth Amendment rights as both candidates and voters have been abridged. Illinois cannot demonstrate that the restrictions imposed by 65 ILCS 20/are narrowly drawn to advance the state's interest in minimizing ballot clutter.

While Illinois is permitted to require candidates for the office of mayor to demonstrate a substantial modicum of support, the state cannot erect such high signature requirements so as to effectively bar the development of candidates who are not financially wealthy, or who are unknown, or who are unaffiliated. *Cf. Jenness, 403 U.S. at 442, citing Rhodes 393 US at 23. Cf. Storer v. Brown, at 739.*

WHEREFORE, plaintiffs respectfully asks this Honorable Court to

reverse the district court; to find, by way of declaratory relief, that the 12,500 signature requirement (65 ILCS 20/21-28) is unconstitutional and to enjoin defendants from disallowing the names of the plaintiffs to appear on the February 22, 2011 ballot.

Respectfully Submitted, Saturday, January 11, 2011
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CERTIFICATE OF COMPLIANCE WITH F.R.A.P. RULE 32(a)(7)

The undersigned, counsel of record for the Plaintiff-Appellant, furnishes the following in compliance with F.R.A.P Rule 32(a)(7): I hereby certify that to the best of my ability and average computer knowledge, this brief conforms to the rules contained in for a brief produced with a proportionally spaced font. The length of this brief is approximately 7440 words. The Cover Page, Table of Contents and Table of Authorities are included have approximately 369 words. With the Proof of Service, 32(a) and 30(d) statements combined with the brief, the total of words is approximately 8150.

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CIRCUIT RULE 30(d) STATEMENT

Pursuant to Circuit Rule 30(d), counsel certifies that all material, to the best of knowledge and required by Circuit Rule 30(a) and (b) are included in the appendix.

Respectfully Submitted, Saturday, January 11, 2011
s\Christopher C. Cooper, ESQ., PHD., Counsel for Plaintiffs-Appellants,

CIRCUIT RULE 31(E) CERTIFICATION

The undersigned hereby certifies that I have filed electronically, pursuant To Circuit Rule 31(e), versions of the brief and all of the appendix items that are available in non-scanned PDF format.

____

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PROOF OF SERVICE

The undersigned, counsel for the Plaintiff-Appellant hereby certifies that on January 12, 2011 the foregoing brief was filed on ECF and defendant is a registered E-filer. On January 12, 2011, hard copies will be placed into the mail addressed to Defendant's attorneys.

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APPENDIX

DOC. 34: DISTRICT COURT MINUTE ORDER..............................38
DOC. 35: DISTRICT COURT MEMORANDUM & OPINION.....39

UNITED STATES DISTRICT COURT
FOR THE Northern District of Illinois – CM/ECF LIVE, Ver 4.2
Eastern Division

Jay Stone, et al.

Plaintiff,

v.

Case No.: 1:10–cv–07727
Honorable Robert M. Dow Jr.

Board of Election Commissioners for the City of Chicago, et al.

Defendant.

NOTIFICATION OF DOCKET ENTRY

This docket entry was made by the Clerk on Monday, January 10, 2011:

MINUTE entry before Honorable Robert M. Dow, Jr: Enter Memorandum Opinion and Order, dated 1/10/2011, Plaintiffs request for injunctive relief [4] is denied. Mailed notice(tbk,)

ATTENTION: This notice is being sent pursuant to Rule 77(d) of the Federal Rules of Civil Procedure or Rule 49(c) of the Federal Rules of Criminal Procedure. It was generated by CM/ECF, the automated docketing system used to maintain the civil and criminal dockets of this District. If a minute order or other document is enclosed, please refer to it for additional information.

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

JAY STONE, FREDERICK K. WHITE, FRANK L. COCONATE, DENISE DENISON, BILL "DOC" WALLS, and HOWARD RAY,	)	
Plaintiffs,	)	Case No. 10-cv-7727
v.	)	Judge Robert M. Dow, Jr.
BOARD OF ELECTIONS COMMISSIONERS FOR THE CITY OF CHICAGO, et al.,	)	
Defendants.	)	

MEMORANDUM OPINION AND ORDER

On December 6, 2010, Plaintiffs Jay Stone, Frederick K. White, Frank L. Coconate, Denise Denison, Bill "Doc" White, and Howard Ray ("Plaintiffs") filed this action challenging the constitutionality of an Illinois statute, 65 ILCS 20/21-28(b), which requires Plaintiffs and other individuals seeking to be placed on the municipal ballot for mayor, city clerk, or city treasurer to obtain 12,500 signatures from legal voters of the City of Chicago. Plaintiffs seek to enjoin Defendant Board of Elections Commissions for the City of Chicago ("Board") from barring certain Plaintiffs who were unable to meet this statutory requirement from the February 22, 2011 ballot. Plaintiffs originally brought five counts, but voluntarily dismissed counts II (Abridgement Equal Protection Clause—14th Amendment Claim) and V (Abridgement of First Amendment) of their first amended complaint. Plaintiffs also have dismissed the individual Defendants, all of whom are Commissioners of the Board. Remaining in Plaintiffs' second amended complaint [32] are three counts – Count I (Abridgement of First Amendment—42 U.S.C. 1983), Count II (Abridgement 14th Amendment, Deprivation of Liberty, Freedoms of Speech and Association), and Count III (Abridgement of Right to Petition the Government)

against Defendant Board. Defendant contends that Plaintiffs' suit lacks merit because the signature requirement does not impermissibly burden ballot access and is based on the State's compelling interest in running a fair, orderly, and effective election, which is advanced by requiring candidates to demonstrate a significant modicum of support.

Currently before the Court is Plaintiff's request for injunctive relief [4] and supporting materials. After taking the parties' briefs on an expedited schedule, on January 4, 2011, the Court heard oral argument on Plaintiffs' request for injunctive relief by virtue of a declaratory ruling that the 12,500 signature ballot access requirement is unconstitutional. For the reasons set forth below, Plaintiffs' request for injunctive relief [4] is denied.[1]

I. Background

Plaintiffs Jay Stone, Frederick K. White, Bill "Doc" Walls, and Howard Ray submitted nominating petitions seeking to be placed on the ballot as candidates for mayor of the City of Chicago in the upcoming municipal election on February 22, 2011. Plaintiff Frank L. Coconate submitted a nominating petition seeking to qualify as a candidate for city clerk. Walls met the statutory requirement of 12,500 presumptively valid signatures and he will be a candidate listed on the February 2011 mayoral ballot. The other Plaintiffs did not meet the requirement and thus the Board has determined that they will not be on the ballot: Stone filed 250 signatures; White filed approximately 10,200 signatures; Ray filed 2,625 signatures; and Coconate filed 61 signatures. Plaintiffs Denise Denson and Walls assert that not having the other Plaintiffs' names on the February ballot will abridge their First Amendment rights.

The 12,500 signature statutory requirement is found in 65 ILCS 20/21-28(b), which became effective August 22, 2005. The statute—"Nomination by petition"—provides in

[1] Since the January 4 oral argument, both Defendant and Plaintiffs have filed motions to supplement the record [28, 31]. Consistent with the Court's minute order of January 5 [29], both motions [28, 31] are granted.

relevant part as follows: "(b) All nominations for mayor, city clerk, and city treasurer in the city shall be by petition. Each petition for nomination of a candidate must be signed by at least 12,500 legal voters of the city." 65 ILCS 20/21-28(b). Prior to the enactment of this 12,500 signature provision, state law required 25,000 signatures or a number not less than five percent of the number of voters who voted in the last election for City office, whichever was less.[2] As further explained below, the prior signature requirement of 25,000—double the current requirement—repeatedly has been upheld by the United States Supreme Court and the Seventh Circuit.

II. Analysis

Plaintiffs' "prayer for injunctive relief & declaratory ruling" does not acknowledge the law that governs the relief they are seeking—a preliminary injunction.[3] Like all forms of injunctive relief, a preliminary injunction is "an extraordinary remedy that should not be granted unless the movant, *by a clear showing*, carries the burden of persuasion." *Mazurek v. Armstrong*, 520 U.S. 968, 972 (1997) (emphasis in original); see also *Goodman v. Ill. Dep't of Financial & Professional Reg.*, 430 F.3d 432, 437 (7th Cir. 2005) (same). A party seeking a preliminary injunction must demonstrate as a threshold matter that (1) its case has some

---

[2] One state representative explained the legislature's approach when discussing the statute in question:

> [W]hat we will have is signature requirements of a good deal less than one-half of one percent for someone running for Mayor of the City of Chicago or other city offices * * * * The earlier requirement to run for Mayor of the City of Chicago, 25 thousand signatures, was almost a full percent of the populous and we thought that was too high. We thought that created a situation which many people who might legitimately stand for that office would not be able to meet the signature requirement. And we think 12,500 gives people a much better opportunity to stand for one of those municipal offices in Chicago.

94th Ill. Gen. Assembly, House Proceedings, May 28, 2005, at 11-12 (Statements of Representative Currie).

[3] In addition to injunctive relief, plaintiffs also request that the Court make a declaratory finding that the 12,500 signature requirement is unconstitutional.

likelihood of succeeding on the merits; (2) no adequate remedy at law exists; and (3) it will suffer irreparable harm if preliminary relief is denied. *Abbott Labs. v. Mead Johnson & Co.*, 971 F.2d 6, 11 (7th Cir. 1992). If the moving party meets its initial burden, then the court must consider the irreparable harm that the nonmoving party will suffer if preliminary relief is granted, balancing such harm against the irreparable harm the moving party will suffer if relief is denied. *Storck USA, L.P. v. Farley Candy Co.*, 14 F.3d 311, 314 (7th Cir. 1994). The court also considers the public interest served by granting or denying the relief, including the effects of the relief on non-parties. *Id.*

A. Likelihood of Success on the Merits

A party seeking a preliminary injunction must demonstrate "that it has a 'better than negligible' chance of success on the merits of at least one of its claims." *Girl Scouts of Manitou Council, Inc. v. Girl Scouts of U.S.A.*, 549 F.3d 1079, 1096 (7th Cir. 2008). This is an "admittedly low requirement." *Id.* However, if a plaintiff fails to demonstrate any likelihood of success on the merits, the motion for preliminary injunction must be denied. See, *e.g., Cox v. City of Chicago,* 868 F.2d 217, 223 (7th Cir. 1989). As described below, Supreme Court and Seventh Circuit precedent makes clear that on these facts and with this signature provision, Plaintiffs have no likelihood of success on the merits of their claims absent a change in the controlling law by either of the aforementioned courts.

1. Framework

Without question, "[t]he First Amendment protects the right of citizens to associate and form political parties for the advancement of common political goals and ideals." *Timmons v. Twin Cities Area New Party*, 520 U.S. 351, 357 (1997). "On the other hand, it is also clear that States may, and inevitably must, enact reasonable regulations of parties, elections, and ballots

to reduce election- and campaign-related disorder." *Id.* at 358. As the Supreme Court has explained, "As a practical matter, there must be a substantial regulation of elections if they are to be fair and honest and if some sort of order, rather than chaos, is to accompany the democratic process." *Storer v. Brown*, 415 U.S. 724, 730 (1974). The right to vote and the right of citizens to associate for political purposes are among the more fundamental constitutionally protected rights, but those rights are not absolute. *Munro v. Socialist Workers Party*, 479 U.S. 189, 193 (1986).

Reasonable restrictions may be imposed on candidates because states have an interest in requiring a demonstration of qualification in order for the elections to be run fairly and effectively. *Id*. This is not only a state's interest; it is a duty to ensure an orderly electoral process. *Libertarian Party of Illinois v. Rednour*, 108 F.3d 768, 774 (7th Cir. 1997). States have a strong interest in preventing voter confusion by limiting ballot access to candidates who can demonstrate a measurable quantum of support or a level of political viability. *Lee v. Keith*, 463 F.3d 763, 769 (7th Cir. 2006). The "preliminary demonstration of a 'significant modicum of support' furthers the state's legitimate interest of 'avoiding confusion, deception, and even frustration of the democratic process at the general election.'" *Rednour*, 108 F.3d at 774 (quoting *Jenness v. Fortson*, 403 U.S. 431, 442 (1971)). The Supreme Court in *Munro* held that a state is not required to make a particularized showing of the existence of voter confusion, ballot overcrowding, or the presence of frivolous candidacies prior to the imposition of such reasonable restrictions on ballot access. *Munro*, 479 U.S. at 194-95. "To demand otherwise would require a state's political system to sustain some damage before it could correct the problem, deprive state legislatures of the ability to show foresight in avoiding potential deficiencies, and inevitably lead to endless litigation regarding the sufficient amount of voter

confusion and ballot overcrowding needed to warrant ballot access restrictions." *Rednour*, 108 F.3d at 774 (citing *Munro*, 479 U.S. at 195-96).

Applying the balancing test articulated in *Anderson v. Celebrezze*, 460 U.S. 780, 788 (1983), a court must weigh "the character and magnitude of the asserted injury to the rights protected by the First and Fourteenth Amendments that the plaintiff seeks to vindicate" against "the precise interests put forward by the State as justifications for the burden imposed by its rule," taking into consideration "the extent to which those interests make it necessary to burden the plaintiffs' rights." *Burdick v. Takushi*, 504 U.S. 428, 434 (1992) (quoting *Anderson*, 460 U.S. at 789). A regulation that severely burdens First Amendment rights must be justified by a compelling interest and must be narrowly tailored to serve that interest. *Anderson*, 460 U.S. at 789. On the other hand, a state law that imposes only "reasonable, nondiscriminatory restrictions" upon the protected rights passes constitutional muster if it serves important state regulatory interests. *Burdick*, 504 U.S. at 434.

2. State's interest in regulating the number of candidates on ballot

Although Plaintiffs contend that they can "only guess" as to the state's interest in setting a signature requirement for municipal candidates, the Supreme Court repeatedly has recognized that states have a legitimate interest in regulating the number of candidates appearing on the ballot as a means "to forestall frivolous candidacies and concomitant 'laundry list' ballots that merely serve to confuse the voter[.]" *Lubin v. Panish*, 415 U.S. 709, 718 (1974). Long lists of potentially frivolous candidates discourage voter participation and confuse and frustrate those who wish to seriously participate in the electoral process. *Id.*; see also *Storer v. Brown*, 415 U.S. at 732-33 ("the State understandably and properly seeks to prevent the clogging of its election machinery, avoid voter confusion, and assure that the

winner is the choice of a majority, or at least a strong plurality, of those voting, without the expense and burden of runoff elections"). As the Seventh Circuit noted in *Protect Marriage Illinois v. Orr*, 463 F.3d 604, 607 (7th Cir. 2006), if a state was required to list everyone who wanted to stand for office, "ballots would be the size of telephone books." In addition to limiting the number of candidates so that states and other governmental bodies can run fair, effective, and organized elections, states have a legitimate interest in "avoiding confusion, deception, and even frustration of the democratic process at the general election." *Rednour*, 108 F.3d at 774 (quoting *Jenness*, 403 U.S. at 442); see also *Lee v. Keith*, 463 F.3d at 769. As the Supreme Court held in *Lubin v. Panish*, "[t]he means of testing the seriousness of a given candidacy may be open to debate; the fundamental importance of ballots of reasonable size limited to serious candidates with some prospects of public support is not." 415 U.S. at 715.

In seeking (among other things) to require the Board to place on the ballot a candidate with only 61 signatures, Plaintiffs appear to be seeking a ballot without restriction. As the Seventh Circuit has held, a state can "impose reasonable restrictions on access, as by requiring * * * that the would-be candidate demonstrate significant support for his candidacy by submitting thousands (or, depending on the size of the electorate, tens or even hundreds of thousands) of petitions in order to prevent the voter confusions that would be engendered by too long a ballot." *Protect Marriage Illinois*, 463 F.3d at 607-08. To reach the requisite 12,500 signatures, a potential candidate need obtain signatures from fewer than 1% of the registered voters in Chicago. Plaintiffs nevertheless contend that the 12,500 signature requirement "is best described as a ballot access barrier that is so high that only a few can make it to the ballot." Pl. Brief at 7.

Both history and the facts arising out of this election tell a different story. In the 2007 Municipal General Election, in which the 12,500 signature requirement first applied, seven candidates appeared on the municipal ballot: three for mayor; three for city clerk; one for treasurer. According to Plaintiffs' own Exhibit 4, there are 15 individuals who obtained at least 12,500 signatures for the 2011 election for the position of mayor alone.[4] The number of candidates meeting the signature requirement "illustrates that the requirements do not pose an insurmountable obstacle" to the municipal ballot. *Rednour*, 108 F.3d at 775. And while acquiring the requisite signatures undoubtedly requires effort and some resources, not every candidate expressing a desire to become a candidate for these offices is entitled as a matter of right to a place on the ballot. As the Supreme Court said in *Lubin*, "[a] procedure inviting or permitting every citizen to present himself to the voters on the ballot without some means of measuring the seriousness of the candidate's desire and motivation would make rational voter choices more difficult because of the size of the ballot and hence would tend to impede the electoral process." 415 U.S. at 715. The 12,500 signature requirement is not an unreasonable means of measuring the seriousness of the candidate's desire and motivation to gain ballot access in a city containing more than 1.3 million registered voters.

2. Burden imposed by requirement

Supreme Court case law demonstrates that more restrictive signature requirements than the one at issue here are constitutionally sound. In the first case to come before the United States Supreme Court on the issue of whether a 5% petition signature was permissible, the Court held, "we cannot say that Georgia's 5% petition requirement [requiring that petition

[4] Although counsel for Plaintiffs suggested at oral argument that some of the 15 candidates may not ultimately be listed on the ballot as a result of challenges to their petitions, the parties appear to be in agreement that the mayoral ballot will include at least 9 names. See Pl. Supp. [31-1], at 1 (contending that "only 9 of the 20 who filed for mayor satisfied the 12,500 signature requirement" on the basis of various challenges to the petitions of certain candidates).

must be signed by a number of electors of not less than 5% of the total number of electors eligible to vote in the last election for the filling of the office the candidate is seeking] violates the Constitution." *Jenness v. Fortson*, 403 U.S. at 438. The Seventh Circuit, relying on the Supreme Court in *Jenness*, specifically found both the previous requirement of 25,000 signatures for a mayoral petition and a 5% requirement to be constitutionally permissible. In *Rednour*, 108 F.3d 768, the Seventh Circuit upheld Illinois' 5% petitioning requirement. Citing *Jenness*, the Seventh Circuit concluded that such a petitioning requirement "neither freezes the status quo of American political life, nor in any way abridges the rights of free speech and association secured by the First and Fourteenth Amendments." *Id*. at 774. As the Seventh Circuit explained, "[b]ecause the Illinois ballot access requirements are nearly identical to those in *Jenness* and *Norman*, and because they similarly further the State's important interests in a rational manner, we find that they do not unconstitutionally burden the [plaintiff's] First and Fourteenth Amendment rights." 108 F.3d at 776. As discussed in *Rednour*, the Supreme Court in *Norman* upheld an Illinois election provision which required a candidate to obtain 5% of the vote or 25,000 petition signatures before the candidate could be placed on a ballot in a particular district. *Id.* (citing *Norman v. Reed*, 502 U.S. at 295). The *Rednour* court further held that Illinois' 5% signature petition requirement as applied to each district advanced the State's separate and additional interest of ensuring a modicum of support for the candidate in the electoral subdivision for which the candidate is nominated. 108 F.3d at 775.

A number of the cases in which federal courts have expressly held or commented that a 5% signature requirement is constitutionally permissible involved Illinois statutes. See, *e.g.*, *Jackson v. Ogilvie*, 325 F. Supp. 864, 868 (N.D. Ill. 1971), *aff'd*, 403 U.S. 925 (1971); *Illinois*

State Board of Elections v. Socialist Workers Party, 440 U.S. 173 (1979); *Black v. Cook County Officers Electoral Board*, 750 F. Supp. 901, 908 (N.D. Ill. 1990); *Norman v. Reed*, 502 U.S. 279; and *Rednour*, 108 F.3d 768, 775-76. Two of these cases—*Jackson* and *Socialist Workers Party*—specifically addressed the 5% signature requirement that previously governed City of Chicago elections. Soon after *Jenness*, the Supreme Court summarily affirmed a decision of a three-judge panel of the United States District Court for the Northern District of Illinois in *Jackson v. Ogilvie*, 325 F. Supp. 864 (N.D. Ill. 1971), *aff'd*, 403 U.S. 925, 91 S.Ct. 2247 (1971). The three-judge panel held: "The question more pointedly is, can the state limit the availability of the ballot to only those candidates who evidence the support of 5% of the electorate? We think it can * * * * While the 5% requirement is higher than the percentage required in a majority of other states [citing *Williams v. Rhodes*] nonetheless we feel it is a reasonable limitation that serves a compelling state interest." 325 F. Supp. at 868.[5]

In 1990, the court in *Black v. Cook County Officers Electoral Board*, considered Illinois' previous 5% or 25,000 signature requirement as applied to candidates in Cook County. The court rejected claims that the 5%/25,000 signature requirement imposed for a city and suburban component was irrational and unreasonable. The court stated: "Nothing in either *Moore* [*v. Ogilvie*] or *Socialist Workers'* counsels this court to find a signature requirement of the lesser of 25,000 or 5% unconstitutional." 750 F. Supp. at 907 (citing *Jenness v. Fortson* and *American Party of Texas v. White*, 415 U.S. 767 (1974)). Then, in a related case, *Norman v. Reed*, the United State Supreme Court held that the same provisions attacked in *Black* could not be used to effectively require a new party to collect a total of 50,000, comprised of 25,000

[5] In view of *Jackson* and the other cases upholding a 5% signature requirement, the fact that it may be more difficult to qualify for a spot on the mayoral ballot in Chicago than in many other large cities raises an issue of public policy for the General Assembly, not a matter for redress under the Constitution.

signatures from each of the city and suburban components of Cook County. In *Norman*, the Court noted that "[T]his is not our first time to consider the constitutionality of an Illinois law governing the number of nominating signatures the organizers of a new party must gather to field candidates in local elections." 502 U.S. at 292. Recalling its earlier decision in the *Socialist Workers' Party* case, the Court observed that subsequent to the decision in that case, the Illinois legislature had acted to cap the 5% signature requirement for "any district or political subdivision" at 25,000, as it already had done for State offices. The Court in *Norman* embraced the reasoning of its decision in *Jenness* and left intact the 25,000 signature requirement for district and political subdivision candidates.[6]

[6] Federal courts have upheld similar provisions in other states' laws as constitutional. In *Storer v. Brown*, the Supreme Court held that a California requirement that independent candidates file nomination papers signed by voters not less in number than 5% nor more than 6% of the entire vote cast in the preceding general election in the area for which the candidate seeks to run did not appear to be excessive. In *American Party of Texas*, 415 U.S. at 789, the Court held that a Texas law requiring signatures that equal 3% or 5% of the vote was not facially invalid. See also *Arutunoff v. Oklahoma State Election Board*, 687 F.2d 1375, 1379 (10th Cir. 1982) (upholding Oklahoma's 5% signature requirement, saying that "to require a new political party to demonstrate that it has some degree of political support by obtaining the signatures of registered voters equal to five percent of the total votes cast in the preceding general election for either President or Governor is not unreasonable."); *Populist Party v. Herschler*, 746 F.2d 656, 660 (10th Cir. 1984) (upholding Wyoming's 5% signature requirement and acknowledging that "[b]oth the Supreme Court and this court have upheld election laws restricting ballot access to independent candidates who file petitions with signatures representing 5% of the voters."); *Rainbow Coalition of Oklahoma v. Oklahoma State Election Board*, 844 F.2d 740, 745 (10th Cir. 1988) (finding that Oklahoma's 5% requirement is "undeniably constitutional" and "we do not believe the [Supreme] Court would attach constitutional significance to the fact that the number of signatures representing five percent fluctuates on the basis of voter interest, as represented by voter turnout."); *Prestia v. O'Connor*, 178 F.3d 86, 89 (2d Cir. 1999) ("[W]e apply the general rule that a ballot access requirement of signatures from five percent of the relevant voter group ordinarily does not violate constitutional rights"); *Hewes v. Abrams*, 718 F. Supp. 163, 167 (S.D. N.Y. 1989), *aff'd*, 884 F.2d 74 (2d Cir. 1989) (New York's requirement that to qualify for mayoral primary a candidate must present a petition signed by either 5% of the persons registered in his party, or by 10,000 persons, whichever is fewer, was sustained, observing that "under *Jenness* a standardized 5% signature requirement would not be unconstitutional"); *Libertarian Party of Kentucky v. Ehrler*, 776 F. Supp. 1200, 1208 (E.D. Ky. 1991) ("The generalization to be distilled from the foregoing cases is that a state can require nominating petitions of independent candidates and minority party candidates to contain signatures equal to five percent (5%) of the total votes cast in the most recent election"); *Marchant v. Umane*, 1997 WL 704923 (E.D.N.Y. 1997) (5% signature requirement does not present a colorable constitutional claim); *Rodriguez v. Pataki*, 2002 WL 1733676 (S.D.N.Y. 2002) ("[I]t is plain that the 5%/1,250 signature requirement remains a generally valid regulation that furthers the important state

Plaintiffs' complaint and briefs closely track *Lee v. Keith*, 463 F.3d 763 (7th Cir. 2006), a case in which the court considered whether a signature requirement for independent candidates of 10% of the voters in the preceding general election was an impermissible burden on those candidates. *Id.* As must be obvious to all parties, the percentage required for ballot access in *Lee* is substantially higher than the percentage resulting from the 12,500 requirement (which is equal to 2.7% of voters in the last election). Moreover, the ballot access restrictions in *Lee* went well beyond a lofty percentage requirement. *Lee* also involved other restrictions, including: a provision that signing an independent candidate's petition disqualified that individual from voting in the primary; a requirement that independents, despite having a higher signature burden, submit their petition at the same time as party candidates (92 days before the primary, and 323 days before the general election); and a requirement that all signatures had to be obtained within the 90 days immediately preceding the filing deadline. As a measure of the severe burden imposed by the combined ballot access restrictions, the *Lee* court found significant that since the provisions had been enacted, competition from independent candidates had been "completely eliminated," whereas before they were able to compete with some regularity. *Id.* at 768-69 ("Not only are unaffiliated legislative candidacies rare in Illinois, in the last 25 years they have been non-existent"). Unlike *Lee*, the only challenge here is to the 12,500 signature requirement (2.7%), which on its face is not severe and which produces a percentage that falls well below higher percentages supported by substantial case law.[7]

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interest of requiring some preliminary showing of a significant modicum of support before a candidate's name will be placed on the ballot.").

[7] In their efforts to mirror *Lee*, Plaintiffs rely on the signature requirements of other jurisdictions. However, Plaintiffs have no case law and no historical record to demonstrate that the 12,500 signature

It is abundantly clear from the long line of cases cited by the Board that Illinois' requirement that candidates for the offices of mayor, clerk and treasurer in the City of Chicago submit petitions containing signatures of 12,500 voters, which is less than 3% of the voters who voted in the last city election and less than 1% of the number of registered voters in Chicago, passes constitutional muster under existing, controlling precedent. In light of the overwhelming case law discussed above, Plaintiffs cannot argue the 12,500 signature requirement is severe on its face. Further, the number of individuals gaining access to the ballot for the February 2011 election demonstrates that the statutory requirement does not pose an insurmountable hurdle to a candidate's access. Because the ballot restriction is not severe, this Court need not determine whether it is narrowly tailored to satisfy the State's compelling interests. *Rednour*, 108 F.3d at 775. The signature requirement here imposes a "reasonable, nondiscriminatory restriction," so it need be supported only by a legitimate state interest. *Burdick*, 504 U.S. at 434. Furthermore, as the Supreme Court held in *Munro*, "there is surely an important state interest in requiring some preliminary showing of a significant modicum of support before printing a name of a [candidate] on the ballot—the interest, if no other, in avoiding confusion, deception and even frustration of the democratic process at the general election." *Munro*, 479 U.S. at 193-94 (addressing and following the Supreme Court's prior holding in *Jenness*, which found that a state has a *compelling* state interest in requiring a preliminary showing of significant support before placing a candidate on the general election ballot).[8]

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requirement is an unconstitutional and impermissible burden. There is ample legal precedent establishing the constitutionality of signature requirements stricter than 65 ILCS 20/21-28(b).

[8] Although the parties appeared to agree at oral argument that there is no provision of the Election Code that permits voters to sign only one mayoral petition, Plaintiffs have submitted an "Index of Electoral Board Decisions" [see 31-1, at 54] that they contend "goes to the reasonable belief and conclusion of

Because the more restrictive provisions of 25,000 signatures for a mayoral candidate in the City of Chicago and/or the 5% rule imposed in a number of jurisdictions across the country are constitutionally sound under Supreme Court and Seventh Circuit precedent, Plaintiffs have no likelihood of success in proving the unconstitutionality of the current 12,500 signature requirement (which is equal to 2.7% of the voters who voted in the last election, or less than 1% of registered voters in Chicago) absent a change in controlling law. And given that Plaintiffs have failed to make a sufficient showing as to the first three requirements for the issuance of an injunction, the Court need not balance the harm that Defendant will suffer against the harm that Plaintiffs would suffer if relief is denied or consider the effect of an injunction on the public interest. See, *e.g.*, *AM General Corp. v. DaimlerChrysler Corp.*, 311 F.3d 796, 830 (7th Cir. 2002) ("That DaimlerChrysler has shown no likelihood of success on the merits is reason enough to deny the motion for preliminary injunction without further discussion"); *Platinum Home Mortgage Corp. v. Platinum Financial Group, Inc.*, 149 F.3d 722, 730 (7th Cir. 1998) ("a district court may decline to address the remaining elements of a preliminary injunction if a plaintiff fails to demonstrate a reasonable likelihood of prevailing on the merits of the underlying claim") (citing *Ping v. Nat'l Educ. Assoc.*, 870 F.2d 1369, 1371 (7th Cir. 1989)).[9]

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the plaintiffs" that voters are limited to signing only one petition [see *id*. at 1]. However, the authority cited in the Board decisions referenced in Plaintiffs' exhibit is Section 10-3 of the Election Code (10 ILCS 5/10-3), which pertains to the nomination of *independent* candidates. The next section of the Code, 10 ILCS 5/10-3.1, appears to apply to petitions for nominations of *nonpartisan* candidates, which the Court understands is the proper classification for candidates for the office of Mayor of Chicago. There is no indication in the exhibit of Board decisions that shows one way or the other how (or even whether) the Board has opined on the matter of how many petitions a voter may sign in a *nonpartisan* election.

[9] Even if Plaintiffs had met their burden of showing the absence of an adequate remedy at law and irreparable harm in the absence of injunctive relief, that factor does not weigh as heavily here as it does in many other cases because of the controlling precedent on the likelihood of success on the merits prong. Furthermore, as the cases explicitly demonstrate, these elections cases inherently balance the

III. Conclusion

For these reasons, Plaintiffs' request for injunctive relief [4] is denied.

Dated: January 10, 2011

Robert M. Dow, Jr.
United States District Judge

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harms that plaintiffs, defendants, and the public would suffer in the event relief is denied. Thus, those concerns are by necessity encompassed in any discussion of the merits of Plaintiffs' claims.