NO. 13-2733
IN THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

JAY STONE, FREDRICK K. WHITE,
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

OCTOBER 9, 2013

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(2) The names of all law firms whose partners or associates have appeared for the party in the case (including proceedings in the district court or before an administrative agency) or are expected to appear for the party in this court:

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JURISDICTIONAL STATEMENT

In this action arising under 42 U.S.C. § 1983 and the First and Fourteenth Amendments to the United States Constitution, the District Court has subject matter jurisdiction under 28 U.S.C. §§ 1331, 1343, and 2201. Jurisdiction is proper, since Appellants allege that Illinois ballot access laws unconstitutionally burden the associational rights of plaintiffs, unknown candidates, unaffiliated candidates, independent candidates, and their supporters.

ISSUES PRESENTED FOR REVIEW

Genuine Issues of Material Fact: Was the District Court's action proper in dismissing Plaintiffs' Third Amended Complaint (Doc. 97) on 12(b)(6) grounds. (Doc 110). In particular, the District Court having concluded that to allow the Complaint to go forward would be futile based on "extensive Supreme Court and Seventh Circuit precedent." Doc. 110:21.

In the event that the 7th Circuit decides that Appellants should show their action was not properly dismissed on futility grounds, the Appellants assert the following Issues of Material Fact:

I. Whether, because the 12,500 signature rule (65 ILCS 20/21-28) operates in unison with a one signature restriction rule (10 ILCS 5/10-3) as well as a 90-day collection rule (10 ILCS 5/10-4), the 12,500 signature requirement is amplified (in the negative), therefore unconstitutional.

II. Whether because the 12,500 signature requirement (65 ILCS 20/21-28) operates in unison with a one signature restriction rule (10 ILCS

5/10-3), as well as a 90-day collection rule (10 ILCS 5/10-4), it is therefore onerous; restrictive; serves no compelling state interest; and, is not reasonably necessary to the accomplishment of a state objective.

STATEMENT OF THE CASE

This is a lawsuit predicated in large part on 42 U.S.C. §1983 and 28 U.S.C. §2201, with three counts in which three of the five plaintiffs, candidates for Mayor of Chicago, allege abridgement of rights to which they are\were entitled by way of the U.S. Constitution. The three mayoral candidates filed [with the Board of Election Commissioners for the City of Chicago (Commissioners or CBOE)], less than the 12,500 signatures required as per 65 ILCS 20/21-28.

All five plaintiffs allege that the 12,500 signature requirement along with the Commissioners not having allowed the mayoral candidates' names to appear on the February 22, 2011 ballot because of signature deficiencies, was\is a violation of their 1st Amendment and 14 Amendment rights; as well, a violation of their "Right to Petition the Government." Plaintiffs assert that the 12,500 signature requirement is unconstitutional for reasons which include that it acts in concert with two other significant ballot restrictions (a one signature requirement and 90 day collection period), and that such additional restrictions amplify the burden of the signature requirement.

The remaining Plaintiffs (Denson and Walls); although one-time candidates themselves, assert their rights [as to the issue of ballot access] in their capacity as residents of the City of Chicago. All plaintiffs seek declaratory

relief in the form of the court holding that the 12,500 signature requirement is unconstitutional for reasons which include [that] the requirement acts in concert with other significant ballot restrictions; and that the Court holds that the 12,500 signature requirement is onerous, restrictive; serves no compelling state interest; and is not reasonably necessary to the accomplishment of a state objective. Additionally, Plaintiffs seek damages pursuant to the CBOE not having allowed the names White, Stone, and Ray to appear on the February 22, 2011 municipal election ballot.

This matter was before the 7th Circuit in the past (see *Stone v. Neal*, 643 F.3d 543 (2011)).[1] In its initial form, the lawsuit sought, in part, injunctive relief (namely to cause Defendant to allow certain Plaintiffs' names to appear on an election ballot). When the District Court dismissed the case the first time (Doc. 34-35), it appeared to Plaintiffs that the District Court had ruled on the merits of the case. Therefore, Plaintiffs' posture at the time, was to present all issues to the 7th Circuit.[2] The 7th Circuit deemed that its jurisdiction extended only to the injunctive relief sought. By the time of oral argument, the injunctive relief sought was moot since the election had passed. The final sentence of the 7th Circuit Opinion reads: "*This is an interlocutory appeal,*

[1] Mr. Neal is no longer a party. Mr. Neal was the Chairman of the Board of Election Commissioners.

[2] Plaintiffs sought injunctive relief before the U.S. District Court. The District Court denied Plaintiffs' request for injunctive relief. The Seventh Circuit denied an expedited briefing schedule. The election having past, the matter was moot when the Plaintiffs went before the Seventh Circuit.

asking us only to review the denial of an injunction that no federal court could now grant. We have no jurisdiction to evaluate the appeal, so it is DISMISSED."

Following the dismissal of the appeal, in dispute between the parties was whether or not the case was remanded back to the District Court for the remaining issues. Plaintiffs said yes, while Defendant said no. There was significant motion practice that followed (see documents 58-66).

Thereafter, Plaintiffs filed a motion for clarification (Doc. 49) in the District Court. The motion stated in part:

"*Plaintiffs seek from this Honorable Court clarification as to whether the instant matter is dismissed or that the district court still has jurisdiction.*
(1) On January 10, 2011, the District Court denied plaintiffs' motion for injunctive relief and ruled as to the constitutionality of the germane 12,500 signature requirement (Documents 34-35).
(2) On that same day, plaintiffs filed a notice of appeal (Doc. 37).
(3) Plaintiffs have assumed that the district court disposed of all matters in the instant case via the holdings represented by Documents 34-35.
(4) ECF is showing the above captioned matter as open. For this reason, this motion for clarification has been filed."

The Court ruled that the case was closed. See below.

03/22/2011	51	MINUTE entry before Honorable Robert M. Dow, Jr: MOTION by Plaintiffs Howard Ray, Jay Stone, Bill "DOC" Walls, Fredrick K. White to clarify 49 is granted. On the basis of the agreement of the parties, as expressed by counsel on the record in open court, that there is no further action to be taken in the district court in this matter absent a remand from the Seventh Circuit following its disposition of the currently pending appeal, this case is administratively closed. Notices Mailed by Judge's Staff (tbk,) (Entered: 03/22/2011)

Plaintiffs filed a motion to reopen the case (Doc. 52). Plaintiffs asserted that there were matters in the jurisdiction of the district court that needed to

be addressed. The Defendant opposed the motion (Doc. 58, 60). Plaintiff filed a reply brief (Doc. 59). On July 8, 2013, Plaintiffs' motion to re-open was denied. See below.

07/08/2011	63	WRITTEN Opinion entered by the Honorable Robert M. Dow, Jr on 7/8/2011: For the reasons stated below, Plaintiffs motion to reopen this case 52 is respectfully denied; the case remains closed based on the agreement of the parties, as memorialized in the Courts March 22, 2011 minute entry 51 granting Plaintiffs motion for clarification 49 . Notices Mailed by Judge' (tbk,) (Entered: 07/08/2011)

Plaintiff filed a motion for reconsideration That motion was granted. See below.

MINUTE entry before Honorable Robert M. Dow, Jr. For the reasons stated on the record in open court, Plaintiffs' motion for reconsideration 64 is granted. The Court's written opinion of July 8, 2011 63 is vacated and this case is ordered reinstated. The case is set for further status hearing on 10/26/2011 at 9:00 a.m. Mailed notice (lw,). (Entered: 07/28/2011)

On October 25, 2011, Plaintiffs filed a motion to amend their Complaint (see Doc. 69). The motion was taken under advisement. There was a flurry of filings that followed, among the most significant below:

03/14/2012	89	WRITTEN Opinion entered by the Honorable Robert M. Dow, Jr on 3/14/2012: For the reasons set forth below, the Court denies without prejudice Plaintiffs motion to amend their complaint 69 . Plaintiff are given until April 4, 2012, to file a motion for leave to amend their complaint, which sets forth the specific claims that Plaintiffs wish to add and the reasons (supported by legal authority) why those claims would not be futile. Plaintiffs request to add Langdon Neal, Richard Cowen, and Marisel Hernandez as Defendants is denied. Mailed notice(tbk,) (Entered: 03/14/2012)

Plaintiffs filed their Third Amended Complaint (Doc. 97). Defendant filed a motion to dismiss (Doc. 102). It was granted on July 8, 2013 (Doc. 110) and the case dismissed.

STATEMENT OF FACTS

(1) Plaintiffs' Stone, Ray, and White were Chicago mayoral candidates for the 2011 election of Mayor.

(2) Defendant enforces 65 ILCS 20/21-28. This statute requires in part that persons running for the office of Chicago Mayor, City Treasurer and City Clerk file 12,500 signatures.

(3) Defendant enforces 10 ILCS 5/10-3. This statue limits voters to the signing of one petition.

(4) The CBOE now asserts (unlike early-on in the litigation in the above captioned matter) that 10 ILCS 5/10-3 applies to the following elections: Chicago mayoral; City Treasurer; and City Clerk.[3]

(5) Pursuant to 10 ILSC 65 ILCS 20/21-28, in order for a candidate's name to appear on a municipal election 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]

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[3] Therefore, the burden is on the CBOE to show that the one-signature rule does **not** amplify the 12,500 signature requirement.

[4] (65 ILCS 20/21-28) (from Ch. 24, par. 21- 28) Sec. 21 28. Nomination by petition. (a) All nominations for alderman of any ward in the city shall be by petition. All petitions for nominations of candidates shall be signed by such a number of legal voters of the ward as will aggregate not less than two per cent of all

(6) Each of the three mentioned Plaintiffs filed less than 12,500 signatures on or before November 22, 2010. Plaintiff Stone filed 250 signatures. Plaintiff White filed approximately 10,200 signatures; and Plaintiff Ray filed approximately 2,625 signatures.

(7) Plaintiffs assert that the requirement of 12,500 signatures is onerous, restrictive, and unconstitutional.

(8) Defendant CBOE would not allow the Plaintiffs' names (White, Ray and Stone) to appear on the February 22, 2011 ballot because of a signature deficiency.

(9) Plaintiff Bill "Doc" Walls was running for the office of mayor of Chicago.

(10) Plaintiff Walls asserts that he was burdened by having to secure at least 12,500 signatures to qualify for the February 22, 2011 ballot. Plaintiff Walls expresses that the burden was onerous and restrictive.[5]

(11) Plaintiff Denise Denson and Plaintiff Walls assert [in their capacity

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the votes cast for alderman in such ward at the last preceding general election. For the election following the redistricting of wards petitions for nominations of candidates shall be signed by the number of legal voters of the ward as will aggregate not less than 2% of the total number of votes cast for mayor at the last preceding municipal election divided by the number of wards. (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. (c) All such petitions, and procedure with respect thereto, shall conform in other respects to the provisions of the election and ballot laws then in force in the city of Chicago concerning the nomination of independent candidates for public office by petition. The method of nomination herein provided is exclusive of and replaces all other methods heretofore provided by law. (Source: P.A. 94 645, eff. 8 22 05.)

[5] Plaintiff Walls did secure at least 12,500 signatures and his name did appear on the February 22, 2011 ballot.

as residents of Chicago and as registered voters in the City of Chicago] that because the names Howard Ray, Fredrick White and Jay Stone did not appear on the February 22, 2011 ballot, their (Walls and Denson) First Amendment rights have been abridged.

SUMMARY OF ARGUMENT

Because the 12,500 signature rule operates in concert with a one signature restriction rule (10 ILCS 5/10-3) as well as a 90-day collection rule (10 ILCS 5/10-4), the 12,500 signature rule is onerous, and, unconstitutionally burdens the freedom of political association of plaintiffs and their supporters and the freedom of political association guaranteed by the First and Fourteenth Amendments. But for the 90-day collection rule and the one signature restriction, the 12,500 signature rule might not be onerous.

ARGUMENT

MOTION TO DISMISS:

The District Court dismissed Plaintiff's case on 12(b)(6) grounds. Plaintiffs understand that "while a complaint attacked by a Rule 12(b)(6) motion to dismiss does not need detailed factual allegations . . . [f]actual allegations must be enough to raise a right to relief above the speculative level." *Bell Atlantic Corporation v. Twombly* at 555 (2007). In considering the sufficiency of a Complaint, the Court must "not require heightened fact pleading of specifics, but only enough facts to state a claim to relief that is plausible on its face." *Id.* at 570.

"A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged. The plausibility standard is not akin to a 'probability requirement,' but it asks for more than a sheer possibility that a defendant has acted unlawfully." *Ashcroft v. Iqbal*, 556 at 678. The Court must accept as true all factual allegations in the Complaint. *See Twombly*, 550 U.S. at 555; *See also Iqbal*, 556 U.S. at 678. "And, of course, a well-pleaded complaint may proceed even if it strikes a savvy judge that actual proof of those facts is improbable, and "that a recovery is very remote and unlikely, *Twombly*, 550 U.S. at 556 (citing *Neitzke v. Williams*, 490 U.S. 319, 327 (1989) ("Rule 12(b)(6) does not countenance . . . dismissals based on a judge's disbelief of a complaint's factual allegations"); *Scheuer v. Rhodes*, 416 U.S. 232, 236 (1974) (a well-pleaded complaint may proceed even if it appears "that a recovery is very remote and unlikely").

BALLOT RESTRICTIONS:

(1) Ballot access restrictions are to be evaluated by a standard that weighs 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 plaintiff's rights.'" *Lee v. Keith,* 463 F. 3d 763, 768 (2006) (quoting *Burdick v. Takushi,* 504 U.S. 428, 434, 112 S. Ct.

2059, 119 L. Ed. 2d 245 (1992)) (quoting *Anderson v. Celebrezee, 460 U.S. 780, 789 (1983)).* "Under this standard, the rigorousness of [the court's] inquiry into the propriety of a state election law depends upon the extent to which a challenged regulation burdens First and Fourteenth Amendment rights." *Lee v. Keith* at 768 (quoting Burdick at 434). Restrictions that "severely" burden the exercise of constitutional rights must be "narrowly drawn to advance a state interest of compelling importance." *Lee v. Keith a*t 768 (quoting *Norman v. Reed,* 502 U.S. 279, 289, 112 S. Ct. 698, 116 L. Ed. 2d 711 (1992)). But "reasonable, nondiscriminatory restrictions" that impose less substantial burdens are generally justified by the state's "important regulatory interests." *Lee v. Keith* at 768 (Id.).

(2) Supreme Court precedent assesses the validity of signature requirements by their historical impact on independent candidacies. *Storer v. Brown,* 415 U.S. 724, 739, 740 (1974). Plaintiffs assert *Storer* represents that in addition, it is necessary to examine how a state's "other" ballot access laws may amplify a particular, significant ballot restriction such as a signature requirement.

<u>First Amendment Claims</u>

By the defendant having denied Plaintiffs Stone, Ray, White and Coconate an opportunity for their names to appear on the ballot, voters (who support the plaintiffs) and the other two plaintiffs have been denied an opportunity to champion their choice of candidate. The plaintiffs 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 at 586; Cal. Democratic Party at 574.

TESTS TO DETERMINE CONSTITUTIONALITY

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).

Further Discussion of the Second Prong of the Test Outlined in *Anderson v. Celebreeze*

Plaintiffs' Stone, White, Ray and Coconate 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). Each of the named plaintiffs did show a satisfactory modicum of support through the signatures that they did collect.[6]

A less burdensome signature requirement and attendant rules (i.e., if a candidate were permitted to run as representative of either the Democratic or Republican party[7]), will pass constitutional muster. (See Footnote 9 for the discussion of a notion of a signature maximum.)

Here is a concise description of just how daunting it is 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 (the date on which petitions were made available) 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
Ryan Graves

[6]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.

[7] Candidates for mayor of Chicago are burdened by having to run as non-partisan candidates. 65 ILCS 20/21-5. They are not permitted to run as a part of a political party.

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

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
William Walls III
Fedrick K. White
The Five Candidates Who Circulated Petitions but did not File their Petitions
Christopher Cooper
Tom Dart
Manny Flores
Luis Gutierrez
Ricky Hendon
Source: http://www.chicagoelections.com/page.php?id=8).

Of the 25 people running for mayor, 20 candidates filed petitions with the 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.) Plaintiffs contend that this is proof that the requirement for 12,500 signatures for ballot access extends far beyond a "modicum of support" (Source: Id.)

It is known that candidates for mayor should collect more than 12,500 in order to avoid being knocked off the ballot by challenges. 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

[9] A total of 564,055 signatures were filed with the Chicago Board of Elections.

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. By example, 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 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. In order to address the cost issue, some other presentation of facts and case law is necessary first.

An interest in eliminating ballot clutter and frivolous candidates does not make it necessary to burden the plaintiffs' First Amendment rights. Cf. *Burdick v. Takushi, 504 U.S. 428, 434, 112 S. Ct. 2059, 119 L. Ed. 2d 245 (1992)* and *Anderson, 460 U.S. at 789.*

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.

Signature collection is daunting and onerous. Germane to daunting and onerous is the issue of whether a candidate is an independent or symbolic of

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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. Source: Chicago Board of Elections. The total number of registered voters in Chicago is approximately 1,357,440. The formula to arrive at this number is total number of voters divided by the voter turnout percentage-- not for the last mayor's race--, rather, for the November 2, 2010 election (705869/.52 = 1,357,440). Sources below and checked Dec. 23, 2010.

http://chicago.cbslocal.com/2010/11/03/officials-report-close-to-52-voter-turnout/

http://www.chicagoelections.com/

an independent or strikingly similar to the type of candidate referred to as an independent. "Ordinary citizen candidates" (a phrase created by the undersigned attorney as a way to describe his clients [the plaintiffs]) are in many ways similar to typical independent type candidates. The latter are often people unable to garner the support or nomination of the Republican Party or Democratic Party. As to Mr. Lee in *Lee v. Keith*, 463 F. 3d 763 (2006), it would not be far-fetched to assert that Plaintiff/Appellant Lee posited, among many other things, that independents lacked the connections and resources of opponents backed by either the Democratic Party or Republican Party. The *Lee v. Keith* action, perhaps, in some part, represented a cry by independents to level the playing field for candidates in Illinois statewide elections.

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, perhaps, an unofficial one signature maximum rule, see Footnote 9). Mayoral candidates are not permitted to run as a part of a political party. 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 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.*
> 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

[12] Financial solvency is relevant, since common practice is that of paying individuals or companies to circulate petitions for candidates. Plaintiffs are informed and believe based on such information that the average amount of money charged per signature is $2.00 to $4.00.

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.

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. 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*

The costs for a candidate to secure signatures is upwards of $1.00 per signature. Perhaps, the average cost of signature is $2.50. As evidence of such cost to a candidate to collect signatures, plaintiffs' counsel has attached a copy of a contract from an entity known as Free & Equal, Inc. It is one of the companies in the Chicago area that supplies circulators. The contract describes the costs involved in circulating petitions. See Exh. 2.

In *Lee v. Keith* and in *Storer v. Brown*, the Seventh Circuit and Supreme Court received pleadings that described the appellants as outsiders. Even in a non-partisan election, a candidate can still be an outsider. Plaintiffs' Stone, White, and Ray are\were "outsiders"—"Average Joe's." They are\were 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 at the time. But, each man has a following. The signed petitions that they 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, *Storer v. Brown,* 415 U.S. 724, 739 (1974). Plaintiffs ask that the Storer Court's rationale for defending independent

candidacies be understood to extend to “Unknown” “Unaffiliated” and modestly financially solvent (another way of saying the “Average Joe” [sic]) candidates.

The "inevitable question for judgment" 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

In *Lee v. Keith* at various points (e.g., at 769), the Seventh Circuit took note of how other jurisdictions, namely Georgia, determined how a candidate came to have his/her name placed on the ballot. The Court concluded that Illinois law was perhaps the most restrictive in the nation. Id. Illinois' signature requirement, at the time, exceeded all other states. Id.

It makes sense for the district court, in this case (*Stone v. Neal*, et. al) to take note of the signature requirements (or lack thereof) for 10 other large cities.

DALLAS (Pop. 1.3 million):

The ninth-largest in the United States. As of 2009, the population of Dallas was about 1.3 million, according to the U.S. Census Bureau. The City Charter requires that a candidate for mayor or the city council must file a petition signed by voters equal in number to the minimum number of signatures required by the Texas Election Code. The Election Code provides that a candidate's petition filed with an application for a place on the ballot for an office of a home-rule city must contain signatures of qualified voters eligible to vote for the candidate equal in number to one-half of one percent of the total votes received in the territory from which the office is elected by all candidates for mayor in the most recent mayoral general election, or 25 signatures, whichever is greater." [City Charter IV§7; Election Code 143.005(d)]

http://www.ci.dallas.tx.us/cso/electGuides.html#qualifications

SAN JOSE (Pop. 948,279):

This city with a population of 948,279 requires 50 signatures to get on the ballot for mayor. San Jose's signature requirement is lower than the number of signatures to run for alderman in every ward in the city of Chicago. The San Jose mayor represents approximately 948,279 people and a Chicago alderman represents approximately 60,000 people.

12.05.040 Nomination petitions.
A. Each candidate for city elective office shall be nominated by not less than fifty registered voters in the city. Not more than sixty signatures of registered voters shall be accepted and counted.
B. Voters signing nomination papers for the office of member of the council, except the mayor, shall be residents of the district by which the member is to be elected.
C. Voters signing nomination papers for the office of mayor shall be

residents of the city and may reside anywhere in the city. (Ord. 25214.)

HOUSTON (Pop. 2.3 million):

This city has the closest population to that of Chicago. It is the fourth-largest city in the United States of America and the largest city in the state of Texas. As of the 2009 U.S. Census estimate, the city had a population of 2.3 million A Houston mayoral candidate submits zero (0) signatures for mayor if the candidate pays a $1,250.00 filing fee. If the Houston candidate for mayor does not pay a filing fee, the signature requirement is 587 signatures.[13]

ARTICLE V. - OFFICERS AND ELECTIONS: Section 6. - Candidates and Filing for Office.
"…Any person duly qualified therefor may file as a candidate for any office herein… Such application shall be accompanied by a filing fee which is hereby fixed and established in the following amounts, to-wit: Each candidate for Mayor shall pay a filing fee of $1,250.00. Each candidate for City Controller shall pay a filing fee of $750.00, and each candidate for Councilman shall pay a filing fee of $500.00. Such payment shall be in cash or by cashier's or certified check to the order of the City of Houston; and the Mayor will not accept the application of any candidate which is not accompanied by the required filing fee. Such filing fees shall be for the use and benefit of the City of Houston and no part thereof shall ever be returned to any candidate."

NEW YORK CITY (Pop. 8.4 million):

By many estimates, the City of New York has nearly 9 million residents and that for a candidate to get his\her name on the ballot as to the election of mayor, he\she needs 3750 signatures.[14] Chicago is 1/3 the size of New York

[13] http://library.municode.com/index.aspx?clientId=10123&stateId=43&stateName=Texas
[14] http://www.nyc.gov/html/charter/html/home/home.shtml
The referendum lowering the signature requirement from 7,500 to 3,750 was approved by voters on November 2, 2010 as evinced by the press release below. A search of the Internet and calls to the City

City, yet a candidate must secure 12,500 signatures as per the Board of Elections for the City of Chicago and 65 ILCS 20/ (see tables below lending to arguments that the 12,500 signature requirement is onerous, restrictive and not necessary).

LOS ANGELES (Pop. 3.83 million, U.S. Census Bureau, 2008)
Source: Los Angeles 2007 Election Code, CHAPTER III - CANDIDATES AND CANDIDATE PROCESSING PROCEDURES

Sec. 310. Nominating Petitions - Filing and Verification.

(a) A candidate may file a nominating petition with the City Clerk no earlier than 115 days nor later than 90 days prior to the Primary Nominating Election, as provided in Charter Section 422. All signatures for filing shall be presented at the same time. No candidate shall file a petition containing fewer than 500 names. .. (c) Filing Fee/In Lieu Petition. Between 115 and 90 days prior to the Primary Nominating Election, each candidate shall do one of the following: (1) Pay a filing fee in the amount of $300.00 and file with the City Clerk a petition for nomination, on the form prepared by the City Clerk, bearing no fewer than 500 and no more than 1,000 signatures; or (2) File a petition for nomination, on the form prepared by the City Clerk, bearing no fewer than 1,000 and no more than 2,000 signatures.[15]

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of New York Charter Revision Commission and to the Board of Elections by counsel for plaintiffs have not yet yielded an official document showing passage. The websites for both the aforementioned, as of December 23, 2010, have not been updated except that the following message is posted on the Charter Revision's webpage:

Press Release

For Immediate Release
Press Release #8
Wednesday, November 3, 2010

STATEMENT OF NYC CHARTER REVISION COMMISSION CHAIR DR. MATTHEW GOLDSTEIN

"The true beneficiaries of the approval of the New York City Charter Revision Commission's recommendations by the voters are the people of our City. They are now assured of long-term structural reforms that will help improve the functioning and accountability of their city government. I want to especially thank Mayor Michael Bloomberg for his steadfast support of an independent review of the City Charter which helped pave the way for today's voter approval."

Contact: Matthew Gorton

[15] http://www.amlegal.com/nxt/gateway.dll?f=templates&fn=default.htm&vid=amlegal:2007election

http://www.amlegal.com/nxt/gateway.dll?f=templates&fn=default.htm&vid=amlegal:2007election

SAN ANTONIO (Pop. 1.4 million, U.S. Census Bureau, 2008):

If candidates pay a $100.00 filing fee, the San Antonio Statue that applies is ARTICLE III. MUNICIPAL ELECTIONS. Sec. 19. Regular and special elections. (http://www.sanantonio.gov/clerk/charter/charter.htm#III)

If candidates don't pay the $100.00 filing fee, the statue that applies is the State of Texas Election Code Sec. 143.005.d (http://www.statutes.legis.state.tx.us/Docs/EL/htm/EL.143.htm)
http://www.sanantonio.gov/clerk/elections/municipalElectionsFAQ.aspx#faq1

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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

The requirement to get on the ballot for a democratic or republican governor candidate for Illinois is 5,000 signatures. 10 ILCS 5/7-10(a). 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[16]

Candidates for mayor of Chicago are burdened by having to run as non-partisan candidates. 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 if running as an independent. 10 ILCS 5/7-10(a).

Launching

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

[16] 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.

petition circulation period), signature requirements must be "narrowly drawn" to advance a "compelling" state interest. *Burdick, 504 U.S. at 434; see also Timmons v. Twin Cities Area New Party, 520 U.S. 351, 358, 117 S. Ct. 1364, 137 L. Ed. 2d 589 (1997).* Through their counsel, Plaintiffs Stone, Ray, White and Coconate ask the district court to 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 or city clerk of Chicago.

Competition

Competition has been one of America's most fundamental guiding principles since our founders declared independence from the British.

To determine the number of signatures for ballot access, courts have focused on variables such as "modicum of support" than on political competition. Once again, 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 helpful if a court determines whether or not the modicum of support standard enhances or limits political competition.

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.

To prevent voter confusion, each candidate must demonstrate a modicum of support so that an excessive number of candidates on the ballot do not confuse the voter. The undersigned counsel is searching for a case involving a claim that the presentation of “too” many candidates' names on a ballot caused voters to become swept into a sea of confusion and or that voters were damaged by the election results. Counsel has not been able to find such a case. The claim that too many candidates confuse voters was dispelled when 135 candidates ran for California governor after the recall of Governor Gray Davis. It does not appear that California voters were confused. See Exh. 5, Cal. Sample ballot.

CONCLUSION

Recall, a court's “inquiry into the propriety of a state election law depends upon the extent to which a challenged regulation burdens First and Fourteenth Amendment rights." *Burdick, 504 U.S. at 434.* Plaintiffs contend that there is no doubt that the 12,500 signature requirement burdens the First and Fourteenth Amendments because it operates in unison with a 90-day collection rule and a one signature restriction. The extent of the burden is tremendous for the reasons enunciated, in particular how the requirement tramples on the right of freedom of political of association.

In any event, an assertion that the 12,500 signature requirement joined by 90 day collection rule and a one signature restriction is not burdensome, is

simply inconsistent with the City of Chicago's political history. Never has an unknown unaffiliated person, as in an "ordinary citizen," been elected mayor of Chicago.[17] The 12,500 requirement has showed itself to completely eliminate competition from candidates who do not have a great deal of financial resources, are unknown, unaffiliated and just plain "Average Joes'." [sic]

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, they 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, 415 U.S. 724, 739 (1974).* Moreover, "Modicum" is defined by Princeton University's in-house dictionary (wordnetweb.princeton.edu/perl/webwn) as a "small or token amount." Twelve-thousand five hundred signatures is not a small or token amount.

The District Court distinguishes Lee from Stone (the instant).

[17]"United States Supreme Court jurisprudence should be interpreted as holding that ballot access restrictions on unaffiliated candidates burden two core First Amendment rights: individuals' right to associate for the advancement of their political beliefs, and voters' right, despite their political persuasion, to cast their votes effectively for a candidate of their choice." See, e.g., Jenness at 439; Williams v. Rhodes, 393 U.S. at 30.

"This case is not *Lee*" wrote the District Court (110:21).

Appellants assert that on some levels, the cases are different; however, applying *Anderson v. Celebrezee and Storer v. Brown* formulaic steps, Stone and Lee do not look so distinguishable The Appellants disagree that the lack of an early filing deadline issue in the instant case attenuates Appellants' claims that three ballot restrictions in unison are unduly burdensome. Granted, the percentage required for ballot access in *Lee* was substantially higher than the percentage resulting from the 12,500 signature requirement; however, in Lee, the appellant was not burdened by a one signature restriction and a 90 day collection period.

WHEREFORE, Appellants respectfully ask this Honorable Court vacate the dismissal and remand instant case to the District Court.

October 9, 2013

Respectfully, by
s\Christopher Cooper, ESQ., PhD., Appellants/Plaintiffs Attorney
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CERTIFICATE OF SERVICE: The undersigned certifies that he filed the foregoing on ECF on October 9, 2013 and that the Defendant is a registered E-filer. s\Christopher Cooper

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 excluding the Cover Page, Table of Contents ,Table of Authorities and Appendix is approximately 7313 words.

CIRCUIT RULE 30(d) STATEMENT

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

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.

s\Christopher Cooper, ESQ., Ph.D., Plaintiff's Attorney

CERTIFICATE OF SERVICE

The undersigned affirms that he filed the foregoing on ECF on October 9, 2013 and that Defendant is a registered e-filer.

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APPENDIX

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

Plaintiffs Jay Stone, Frederick K. White, Frank L. Coconate, Denise Denison, Bill "Doc" White, and Howard Ray 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. In December 2010, Plaintiffs moved for a preliminary injunction prohibiting the Board from enforcing the requirement in the municipal election on February 22, 2011. In ruling on Plaintiffs' motion for a preliminary injunction, the Court concluded that the 12,500 signature requirement of 65 ILCS 20/21-28(b) passes constitutional muster. Plaintiffs appealed, and the Seventh Circuit dismissed Plaintiffs' appeal as moot. Plaintiffs then returned to district court to begin anew.

Plaintiffs' third amended complaint for declaratory, equitable, and monetary relief suggests that two additional statutes, alone or in combination with the minimum signature requirement, create an impermissible burden on ballot access.[1] Currently before the Court is

[1] Plaintiffs' third amended complaint drops Frank Coconate as a plaintiff.

Defendant's motion to dismiss Plaintiff's third amended complaint [102]. For the reasons set forth below, the Court grants Defendant's motion [102].

I. Background

Plaintiffs' first three complaints challenged a statutory requirement that petitions filed by candidates seeking to get on the ballot for election to the office of mayor, clerk or treasurer of the City of Chicago be signed by at least 12,500 registered voters of the City (65 ILCS 20/21-28(b)). Ruling on a preliminary injunction based on the second amended complaint, the Court concluded that "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 * * * passes constitutional muster under existing controlling precedent." See Memorandum Opinion and Order ("Mem. Op.") at 13.[2] Accordingly, the Court held that "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 the registered voters in Chicago) absent a change in controlling law." *Id.* at 14.

Plaintiffs' third amended complaint continues to challenge the constitutionality of the 12,500 signature requirement "for reasons which include that it acts in concert with two other significant ballot restrictions (a one signature requirement and a 90-day collection period), and that such additional restrictions amplify the burden of the signature requirement." Third Amended Complaint ("TAC") at 1-2. Notwithstanding the Court's prior ruling that the statute passes constitutional muster under controlling precedent, Plaintiffs also maintain the 12,500

[2] The Court incorporates by references the legal authorities and analysis set forth in the Court's memorandum opinion and order denying Plaintiffs' motion for preliminary injunction.

signature requirement in and of itself is "onerous, restrictive and unconstitutional." TAC, ¶¶ 13-14, 23-29.

Plaintiffs also contend, as they did in their first and second amended complaints, that the "Election Code does not bar Chicago voters from signing more than one petition as in signing for more than one candidate," but the Board nevertheless imposes such a "notion" or "policy," which adversely affected them. TAC, ¶30. Contradicting that assertion, Plaintiffs also claim that the Board enforces 10 ILCS 5/10-3, a statute that limits voters to signing one petition. TAC, ¶ 34. Plaintiffs assert that the "one signature" rule, independent of the signature requirement (or the 90-day collection rule), is a "significant" ballot restriction and "amplified the restrictive and onerous" signature requirement, thereby abridging their First Amendment rights. TAC, Count I, ¶¶ 34-35.

Plaintiffs' third claim, asserted for the first time, is that the prohibition against obtaining signatures more than 90 days before the last day for filing petitions (10 ILCS 5/10-4), independent of the signature requirement or the one-signature rule, is "a significant ballot restriction." TAC, Count I, ¶ 36. They contend that the 90-day collection rule "amplified the restrictive and onerous" signature requirement and abridges Plaintiffs' First Amendment rights. TAC, Count I, ¶¶ 36-37. Finally, Plaintiffs suggest that the denial of injunctive relief "may not have occurred" but for an alleged "representation" by the Board's counsel that the Board "had not imposed or does not impose a one-signature requirement." TAC, ¶¶ 19-21. Plaintiffs contend that they were harmed by the Board "having mislead [sic] the District Court as to the one-signature requirement," resulting in the abridgement of their rights under the First Amendment. TAC, Count I, ¶ 49.

Count I of the third amended complaint alleges that the 12,500 signature requirement abridges Plaintiffs' rights under the First Amendment; Count II alleges that Plaintiffs were deprived of their substantive due process as to freedom of speech and association, harmed by loss of money, resources and time "attempting to and securing signatures," and deprived of their right to see on the ballot the names of their candidates; and Count III alleges that Plaintiffs were deprived of their right to petition the government. All three counts seek relief in the form of "a declaratory ruling that the 12,500 [signature] requirement is unconstitutional" and judgment against Defendant for costs and attorney's fees.

II. Legal Standard for Rule 12(b)(6) Motion to Dismiss

A motion to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6) tests the sufficiency of the complaint, not the merits of the suit. See *Gibson v. City of Chicago*, 910 F.2d 1510, 1520 (7th Cir. 1990) (citations omitted). To survive a Rule 12(b)(6) motion to dismiss, a complaint must satisfy the requirements of Rule 8. Fed. R. Civ. P. 8. First, the complaint must provide "a short and plain statement of the claim showing that the pleader is entitled to relief," Fed. R. Civ. P. 8(a)(2), such that the defendant is given "fair notice of what the * * * claim is and the grounds upon which it rests." *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 545 (2007) (quoting *Conley v. Gibson*, 355 U.S. 41, 47 (1957). Second, the factual allegations in the complaint must be sufficient to raise the possibility of relief above the "speculative level," assuming that all of the allegations in the complaint are true. *E.E.O.C. v. Concentra Health Servs., Inc.*, 496 F.3d 773, 776 (7th Cir. 2007) (quoting *Bell Atlantic*, 550 U.S. at 555, 569 n.14). "[O]nce a claim has been stated adequately, it may be supported by showing any set of facts consistent with the allegations in the complaint." *Bell Atlantic*, 550 U.S. at 579-80. "While a complaint attacked by a Rule 12(b)(6) motion to dismiss does not

need detailed factual allegations, a plaintiff's obligation to provide the grounds of his entitlement to relief requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do." *Id.* at 555 (citations, quotation marks, and brackets omitted).

III. Analysis

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 municipal election on February 22, 2011. Walls met the statutory requirement of 12,500 presumptively valid signatures and was a candidate listed on the February 2011 mayoral ballot. The other Plaintiffs did not meet the requirement and were not on the ballot: Stone filed 250 signatures; White filed approximately 10,200 signatures; and Ray filed 2,625 signatures. Plaintiffs Denise Denson and Bill Walls asserted 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 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.[3] As

[3] 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.

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.

Plaintiffs, other than Walls, were unable to meet the lower threshold of support required by the Illinois statute and now ask the Court to hold the State's signature requirement unconstitutional. Plaintiffs also contend that the 12,500 signature requirement for mayor, city clerk, and city treasurer of Chicago, together with a "one signature" rule and a "90 day collection period," are individually and collectively unconstitutional.

A. Signature Requirement

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

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> 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).

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.

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 marginal 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.

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. 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.

In rejecting Plaintiffs' identical challenge to the 12,500 signature requirement in their motion for preliminary injunction, the Court cited numerous federal court decisions upholding similar provisions in other states' laws against constitutional attack (see 1/10/11 Mem. Op. at 11, fn. 6). Those decisions make it "abundantly clear from the long line of cases *** 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." *Id.* at 13. Plaintiffs nevertheless once again argue that the 12,500 signature requirement "is onerous and restrictive" and is "so high that it effectively bars the development of candidacies of unknown persons." (TAC, ¶¶ 13, 24, 41). The Court previously rejected that contention, noting that the "history and the facts" arising out of the February 2011 municipal election did not support Plaintiffs. 1/10/11 Mem. Op. at 8. Specifically, this Court observed that 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. *Id.* There were 15 individuals who obtained at least 12,500 signatures for the 2011 election for the position of mayor alone, nine of whom survived petition challenges. *Id.* The Court observed that "[t]he number of candidates meeting the signature requirement 'illustrates that the requirements do not pose an insurmountable obstacle' to the municipal ballot," *Id.* (quoting *Rednour*, 108 F.3d at 775).

Both the Seventh Circuit and the U.S. Supreme Court have addressed similar and more restrictive signature requirements and held them to be constitutionally sound. Based on those decisions, this Court reasoned that 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 over 1.3 million registered voters." 1/10/11 Mem. Op. at 8; see also *Lubin v. Panish*, 415 U.S. 709, 718 (1974) ("[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"). The

Court ruled that Plaintiffs "had no likelihood of success in proving the unconstitutionality of the current 12,500 signature *** absent a change in controlling law." *Id.* There has been no change in the controlling law since that determination by this Court. In the face of the overwhelming Supreme Court and Seventh Circuit case law to the contrary, Plaintiffs cannot establish that 65 ILCS 20/21-28(b) is unconstitutional.

B. 90-Day Collection Period

Plaintiffs' third amended complaint does not identify or reference the source of the "90 day collection period" of which they complain. There is, however, a provision in § 10-4 of the Election Code (10 ILCS 5/10-4), which provides, "No petition sheet shall be circulated more than 90 days preceding the last day provided in Section 10-6 for the filing of such petition." This provision was added to Section 10-4 in 1984 by Public Act 83-1055. Thus, the "90 day collection period" was in effect in four (*Norman v. Reed*, 502 U.S. 279 (1992); *Lee v. Keith*, 463 F.3d 763*; Rednour*, 108 F.3d 768*;* and *Black v. Cook County Officers Electoral Board*, 750 F. Supp. 901 (N.D. Ill. 1990)) of the six cases in which the courts, post-1984, addressed the constitutionality of signature requirements more onerous than the 12,500 signature requirement at issue here. In three of those cases, the courts held that such signature requirements were constitutional, despite the fact those signatures were subject to the 90-day collection period. In the other case, *Lee v. Keith*, the Seventh Circuit decided that Illinois' signature collection procedures, operating in tandem with other ballot access restrictions for independent candidates – characterized by the court as being of "unrivaled severity" – could not withstand constitutional scrutiny. 463 F.3d at 769.

In *Lee*, the Seventh Circuit appeared most concerned with two changes made to Illinois law in 1975 and 1979. First, the deadline for independent candidates to file nominating

petitions was pushed back from 92 days before the November general election to 92 days before the March primary, or 323 days before the November general election. 463 F.3d at 764. The *Lee* court observed this was "by far the earliest filing deadline in the nation" for independent candidates. *Id.* at 768. Second, the signature requirement for independent candidates was doubled, from 5% of the vote in the last general election for the office sought, to 10%. *Id.* at 764. The court noted that among the 28 states in the nation that required independent candidates to collect signatures from registered voters equal to a specified percentage of the vote cast in the previous general election, Illinois' 10% signature requirement stood alone: "it is the only one that exceeds 5%." *Id.* at 766. The *Lee* court noted the "dramatic impact" that these two changes had on ballot access: "Before 1975, independent candidates for the state legislature qualified for the ballot occasionally, though not frequently. Since 1980, however – the year following the second of these changes – not a single independent candidate for state legislative office was qualified for ballot access." *Id.* at 765. The Lee court ultimately held the early filing deadline, the 10% signature requirement, and the restriction disqualifying an independent candidate's petition signers from voting in the primary, combined to severely burden a candidate's rights. *Id.* at 772.

This case is not *Lee*. First, this case does not involve the early filing deadline for certain candidates that *Lee* found to be problematic. Second, the percentage required for ballot access in *Lee* was substantially higher than the percentage resulting from the 12,500 signature requirement.[4] Third, the *Lee* court pointed to the fact that not a single candidate had been able to successfully overcome the hurdles imposed by the combined ballot access restrictions as

[4] This 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 (1/10/11 Mem. Op. at 7, 12) – is far less than the 5% threshold that the Supreme Court and many courts have found to be constitutionally adequate and significantly lower than the 10% threshold at issue in *Lee*.

compelling evidence they were impermissibly burdensome. As this Court previously observed, nine candidates met the requirements for the position of mayor in the February 2011 General Municipal Election, undermining the argument that the restrictions presented an "insurmountable obstacle" to the municipal ballot.

Looking at cases beyond *Lee*, in *American Party of Texas v. White*, the Supreme Court held that a 55-day period for circulating petitions in the State of Texas was not "an unduly short time" for collecting 22,000 signatures. 415 U.S. 767, 787 (1974). The Court estimated 22,000 signatures could have been collected at a rate of 400 per day. "Constitutional adjudication and common sense are not at war with each other, and we are thus unimpressed with arguments that burdens like those imposed by Texas are too onerous, especially where two of the original party plaintiffs themselves satisfied these requirements." *Id*. Particularly pertinent here, the Court determined that 55 days was enough to collect 22,000 signatures notwithstanding the fact Texas had a law providing that a voter may not sign more than one petition for the same office and was barred from signing any petitions if he voted at either primary election of any party at which a nomination was made for that office, thus limiting the available pool of petition signers. *Id.* at 788.

In *Nader v. Keith*, 2004 WL 1880011, *6 (N.D. Ill. 2004), aff'd, 385 F.3d 729 (7th Cir. 2004), the court examined *American Party of Texas* and commented, "In short, the Supreme Court has upheld against constitutional challenge a scheme virtually indistinguishable from the Illinois scheme that is at issue in this case. It is true that Illinois' deadline is twelve days earlier than the one at issue in American Party of Texas—132 days before the election as opposed to 120. But Illinois, unlike the Texas statute examined in that case, does not limit petition circulation to a fifty-five day period." The court also observed, "Illinois provided a

considerably longer period of time to qualify for the ballot than the statutory scheme approved in American Party of Texas *** Nader had at least three good months *** to obtain the necessary signatures—a full month longer than the period approved in American Party of Texas." *Id.* Using a calculation similar to that made by the Supreme Court in *American Party of Texas*, the court estimated that the candidate "had to collect about 280 valid signatures per day for ninety days to qualify; if he had only 100 canvassers for the entire state of Illinois, this would require each canvasser to obtain only three valid signatures per day." *Id.* The court concluded that the requirements were not unduly onerous and did not impose a "severe" restriction on ballot access of the type necessary to trigger heightened scrutiny.

On appeal, the Seventh Circuit assumed that 40,000 petition signatures would need to be collected (to supply a comfortable margin in the event of challenges) and estimated that 100 canvassers could have collected that number averaging 4 or 5 signatures a day. *Nader*, 385 F.3d at 736. The Seventh Circuit concluded, "If Nader could not recruit 100 canvassers in Illinois, his electoral prospects were dismal indeed." *Id.* Here, the Plaintiffs-candidates needed to collect 12,500 signatures in 90 days, which is equivalent to 139 signatures per day. Adopting the same method of calculation as used in *American Party of Texas* and *Nader*, four signatures per day could have been collected by 35 circulators (or "canvassers" as the courts have referred to them) over the 90 days to meet the minimum signature requirement for mayor, clerk, or treasurer of the City of Chicago.

Given the Supreme Court's holding in *American Party of Texas* and subsequent authority, Plaintiffs' challenge to the 90-day circulation period cannot succeed. Plaintiffs' third amended complaint does not plausibly assert facts demonstrating that the 90-day circulation period, either separately or in combination with the 12,500 signature requirement, "severely"

burdens candidates' access to the ballot. Any such burden is not unduly onerous, and moreover, is justified by Illinois' interest in regulating access to the ballot.

C. One-Signature Rule

Plaintiffs contend that the "Election Code does not bar Chicago voters from signing more than one petition as in signing for more than one candidate." TAC at ¶30. They aver that the Board (as opposed to the Code) has implemented such a policy. Notwithstanding this oft-repeated allegation, Plaintiffs later take the irreconcilable position that the Board enforces a state statute, 10 ILCS 5/10-3, which limits voters to the signing of one petition. TAC at ¶34. Defendant maintains that irrespective of which way Plaintiffs have pleaded, their challenge to the constitutionality of a requirement that limits voters to signing only one candidate's petition for the offices of mayor, clerk and treasurer in the City of Chicago fails.

65 ILCS 20/21-28 governs the nomination by petition of candidates for the offices of mayor, city clerk, city treasurer, and alderman in the City of Chicago. The challenged 12,500 minimum signature requirement is found in § 20/21-28(b). Plaintiffs' assertion that the one signature rule found in the Election Code does not apply to nominating petitions governed by § 20/21-28 fails to account for subsection (c) of that statute, which provides that all petitions thereunder "shall conform in other respects to the provisions of the election and ballot laws then in force in the City of Chicago concerning the nomination of independent candidates for public office by petition." 65 ILCS 20/21-28(c). Section 20/21-28(c) by its express terms looks to other statutes for additional requirements, and it specifically looks to and incorporates the statutes applicable to the nomination of independent candidates.

Section 10-3 of the Election Code applies to nomination of independent candidates. 10 ILCS 5/10-3. According to Section 10-3, each voter signing a nomination petition "may subscribe to one nomination for such office to be filled, and no more." *Id.* Consistent with the Board's 2011 Election Information Pamphlet & Calendar, to which Plaintiffs cite in their third amended complaint, § 20/21-28(c) expressly makes applicable the limitation in § 10-3 of the Election Code (that a person may not sign more than one nominating petition for each office) to nominating petitions governed by § 20/21-28. In addition, § 10-3.1 of the Election Code (10 ILCS 5/10-3.1) states, "[T]he provisions of this Article 10 relating to *independent* candidate petition requirements *shall apply to nonpartisan petitions* to the extent they are not inconsistent with the requirements of such other statutes or ordinances" (emphasis added). Elections for mayor, city clerk and city treasurer in the City of Chicago are nonpartisan – no political party affiliation is permitted. 65 ILCS 20/21-5, 20/21-12, 20/21-32. The provisions in Article 10 regarding the nomination of independent candidates are not inconsistent with the requirements for the nomination papers for mayor, city clerk and city treasurer, and therefore apply to those petitions. And as noted above, 65 ILCS 20/21-28(c) incorporates provisions of Article 10 where 65 ILCS 20/21-28 does not otherwise specify. Putting all of this together, the "one signature" rule of Section 10-3 applies to candidates' petitions for the offices of mayor, city clerk and city treasurer in the City of Chicago elections.[5] The requirement that voters may subscribe to only one petition for mayor, clerk and treasurer is, therefore, not a mere "notion" or "policy" (see TAC at ¶30, fn. 4), but rather is Illinois law.

Thus, Plaintiffs must demonstrate that the application of § 10-3 of the Election Code to nominating petitions for Chicago's municipal offices contributed to a constitutionally

[5] The provision limiting each voter to signing "one nomination for each office to be filled and no more" has been a part of Illinois law since at least 1891.

impermissible ballot access burden. As previously noted, far more onerous minimum signature requirements, many with the same "one signature" limitation imposed by Section 5/10-3 or similar statutes (see, *e.g.*, *Storer v. Brown*; *American Party of Texas v. White*; *Jackson v. Ogilvie*), have passed constitutional muster. Furthermore, actual evidence of significant candidate access to the 2011 municipal ballot, discussed at length in the Court's denial of Plaintiffs' motion for preliminary injunction, negates Plaintiffs' contention.

Independent analysis of the "one signature rule" yields the same conclusion. As the Court previously recognized, one of the important state interests in ensuring an orderly electoral process through signature requirements is to limit ballot access to serious candidates who can demonstrate a significant modicum of support. See *Rednour*, 108 F.3d at 774. This interest would be undermined if voters could sign multiple nomination petitions for an unlimited number of candidates for the same office. To ensure that petitions truly reflect a "significant modicum of support" for these municipal offices among the eligible voters of the City electorate, the legislature imposes certain requirements on candidates' petitions. For example, the signatures must come from legal voters who are residents of Chicago. Additionally, and relevant here, each voter is limited to providing only one signature on a petition for each office. Such safeguards ensure that the candidates for office will meet the legislatively determined "modicum of support" (12,500 voters) from the eligible electorate. A minimum signature requirement would not serve this interest if anyone from anywhere could sign a petition. The minimum signature requirement similarly would not have the desired effect if potential voters could sign an unlimited number of petitions.

By way of illustration, suppose Candidate A and Candidate B each obtain 12,500 petition signatures. Assume there are 3,000 people who signed petitions for both candidates,

ostensibly because there is no "one signature rule." Assume further those 3,000 voters will split their votes equally for Candidates A and B. In this hypothetical, each candidate's true support is really only 11,000 voters. In other words, the actual community support for Candidates A and B is less than the minimum level of support (12,500 voters) deemed necessary by the legislature to earn a spot on the ballot. Put another way, the "one signature" rule makes the minimum signature requirement a meaningful restriction.

In a footnote, Plaintiffs advance the proposition that "[v]oters have a First Amendment right to champion for more than one candidate to 'get on' the ballot." TAC at p. 9, fn. 2. The Supreme Court's reasoning in *American Party of Texas* suggests otherwise. There, the Supreme Court upheld a Texas statute prohibiting anyone who voted in a party primary from signing the petition of any candidate of another party. Acknowledging that the pool of possible supporters was reduced, the Court characterized this restriction as "nothing more than a prohibition against any elector's casting more than one vote in the process of nominating candidates for a particular office." 415 U.S. at 785. As the Court explained, "Electors may vote in only one party primary; and it is not apparent to us why the new or smaller party seeking voter support should be entitled to get signatures of those who have already voted in another nominating primary and have already demonstrated their preference for other candidates for the same office the petitioning party seeks to fill." *Id.* The Court summarized, "[t]hus, the state's scheme attempts to ensure that each qualified elector may in fact exercise the political franchise. He may exercise it either by vote or by signing a nominating petition. He cannot have it both ways." *Id.* (quoting *Jackson v. Ogilvie*, 325 F. Supp. at 867). The Court saw nothing invidious in disqualifying those who have voted at a party primary from signing petitions for another party seeking ballot position for its candidates for the same

offices. See also *Storer v. Brown*, 415 U.S. at 741 (confirming the reasoning of *American Party of Texas*: "we have no doubt about the validity of disqualifying from signing an independent candidate's petition all those registered voters who voted a partisan ballot in the primary, although they did not vote for the office sought by the independent").

In this case, the language of the statute in question makes apparent the legislature's intention to limit a voter to one nomination for each office. Voters cannot sign petitions for more than one party (10 ILCS 5/7-10), nor may they vote in more than one primary election (10 ILCS 5/7-44); each voter, by his primary vote, is limited to nominating one candidate for each office for the general election ballot. Likewise, once a voter has signed one independent candidate's petition, he may not sign another candidate's petition. This is consistent with the principle of "one person, one vote."

Plaintiffs have not presented plausible facts demonstrating that the limitation of signing one candidate petition per office, either separately or in combination with the 12,500 signature requirement, "severely" burdens candidates' access to the ballot. Again, ample case law demonstrates the futility of the claims asserted in the third amended complaint. The burden imposed by the legislature—and there is indeed a burden on potential candidates for mayor, clerk, and treasurer of the City of Chicago—is, according to a wealth of precedent, justified by Illinois' legitimate interests in requiring that candidates demonstrate a sufficient modicum of support of voters in the community before access to the ballot is warranted. As the Court pointed out in denying Plaintiffs' motion for preliminary injunction, in view of 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.

D. Alleged Misrepresentation To The Court

Instead of offering legal authority in support of their position, Plaintiffs in their response brief spend the majority of the brief accusing Defendant of intentionally and willfully misleading Plaintiffs, the Court, and the Seventh Circuit about the one-signature rule. The record does not support such a conclusion.

At the preliminary injunction hearing on Plaintiffs' original claim, the Court asked if there was a limitation that a person could sign only one petition in a non-partisan race, and counsel for the Board stated, "I'm not aware there is such." (1/4/11 Transcript, Dkt. #59-1, at p. 30). As subsequently clarified by the Board, there was a rule applicable to the 2011 mayoral election. Contrary to Plaintiffs' repeated accusations, the Court's view is that the Board's counsel did not "misrepresent" anything; rather, he represented that he was unaware of the rule. Under the time constraints of addressing the constitutionality of the 12,500 signature requirement—the Court received this case on December 17, 2010, set a briefing schedule on Plaintiffs' motion for injunctive relief, held a hearing on January 4, 2011, allowed Plaintiffs to amend their complaint on January 6, 2011, and then issued a decision denying the request for injunctive relief on January 10, 2011—the Board's counsel evidently did not focus on the tangential and undeveloped issue of whether a "one signature rule" applied, particularly since Plaintiffs themselves suggested that there was no such rule.[6] The Board's counsel was, at

[6] The pleadings history and record reflect the contradictory positions taken by Plaintiffs as to whether there is such a rule. In Plaintiffs' second amended complaint, filed 1/6/11 (prior to the Court's ruling on Plaintiffs' motion for preliminary injunction), Plaintiffs asserted: "The Election Code does not bar Chicago voters from signing more than one position as in signing for more than one candidate." Then, in the summer of 2011, Plaintiffs argued in a motion to reconsider that "[t]he booklet/pamphlet * * * bolsters the very argument [plaintiffs] made in their District Court Brief * * * that there is a one signature ballot access restriction imposed by the Chicago Board of Elections." See Plaintiffs' Motion to Reconsider, Dkt. #64, pp. 7-8. Then, in direct contradiction to that representation, on July 26, 2011, Plaintiffs' counsel told this Court, "Your Honor, there isn't any legislation in my professional opinion that says to the Board of Elections 'You must impose a one signature rule.'" Finally, in the proposed

worst, simply mistaken and did not "intentionally" or "willfully" mislead the Court. Moreover, as discussed above, the law confirming that there is indeed a "one signature rule" was (and is) equally accessible to both side in this litigation.

III. Conclusion

For the reasons stated above, the Court grants Defendant's motion to dismiss Plaintiffs' third amended complaint [102]. By attempting to assert claims based on arguments and theories soundly rejected by extensive Supreme Court and Seventh Circuit precedent, Plaintiffs fail to demonstrate a viable legal basis for any of those claims. This being Plaintiffs' fourth bite at the apple, no further amendments are warranted and this case is dismissed with prejudice.

Dated: July 8, 2013

Robert M. Dow, Jr.
United States District Judge

third amended complaint, filed 10/25/11, Plaintiffs presented an inherently inconsistent position: Plaintiffs initially allege there is a statutorily imposed one-signature rule enforced by the Board (Dkt. #71, pp. 5-6, ¶¶ 12-13), then, in the same pleading, contend that "the Election Code does not bar Chicago voters from signing more than one petition as in signing for more than one candidate." (*Id.*, p. 9, ¶22).