

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

SCOTT SUMMERS, OMAR N. LOPEZ, BOBBY )  
J. PRITCHETT, Jr., DAVID F. BLACK, )  
SHELDON SCHAFER, TIM CURTIN, JULIE )  
SAMUELS, RITA MANIOTIS, and )  
ILLINOIS GREEN PARTY, a voluntary ) **No. 14-cv-5398**  
association and political party, )  
)  
Plaintiffs, )  
)  
v. )  
)  
JESSE R. SMART, sued in his official capacity as )  
Chairman, Illinois State Board of Elections, )  
CHARLES W. SCHOLZ, sued in his official )  
capacity as Vice-Chairman, Illinois State Board )  
of Elections, BRYAN A. SCHNEIDER, sued in his )  
official capacity as member of Illinois State Board )  
of Elections, BETTY J. COFFRIN, sued in her )  
official capacity as member of Illinois State Board )  
of Elections, HAROLD D. BYERS, sued in his )  
official capacity as member of Illinois State Board )  
of Elections, CASSANDRA B. WATSON, sued in )  
her official capacity as member of Illinois State )  
Board of Elections, WILLIAM M. MCGUFFAGE, )  
sued in his official capacity as member of Illinois )  
State Board of Elections, ERNEST L. GOWEN, )  
sued in his official capacity as member of Illinois )  
State Board of Elections, and RUPERT T. )  
BORGS MILLER, sued in his official capacity as )  
Executive Director, Illinois State Board of )  
Elections, )  
)  
Defendants. )

**COMPLAINT FOR DECLARATORY JUDGMENT**  
**AND PRELIMINARY AND PERMANENT INJUNCTION**

NOW COME the Plaintiffs, Scott Summers, Omar N. Lopez, Bobby J. Pritchett, Jr.,  
David F. Black, Sheldon Schafer, Tim Curtin, Julie Samuels, Rita Maniotis and Illinois Green  
Party, a voluntary association and political party, by and through their attorneys, Christopher D.

Kruger and Andrew Finko, and for their Complaint at Law against Defendants, Jesse R. Smart, sued in his official capacity as Chairman of the Illinois State Board of Elections (hereinafter “ISBE”), Charles W. Scholz, sued in his official capacity as Vice-Chairman of the ISBE, Bryan A. Schneider, sued in his official capacity as member of the ISBE, Betty J. Coffrin, sued in her official capacity as member of the ISBE, Harold D. Byers, sued in his official capacity as member of the ISBE, Cassandra B. Watson, sued in her official capacity as member of the ISBE, William M. McGuffage, sued in his official capacity as member of the ISBE, Ernest L. Gowen, sued in his official capacity as member of the ISBE, and Rupert T. Borgsmiller, sued in his official capacity as Executive Director of the ISBE, state as follows.

### **JURISDICTION AND VENUE**

1. This Complaint is brought pursuant to 42 U.S.C. §§ 1983 and 1988 and the First and Fourteenth Amendments to the United States Constitution. Jurisdiction is founded on 28 U.S.C. §§ 1331 and 1343(3), 1343(a)(4) and the aforementioned statutory and constitutional provisions. Venue in this Court exists and is proper pursuant to 28 U.S.C. § 1391(b), in that one or more Defendants reside within this District and a substantial part of the events and omissions giving rise to Plaintiffs’ claims occurred within the Northern District of Illinois, Eastern Division.

### **PARTIES**

2. Plaintiff Illinois Green Party (hereinafter “ILGP”) is a voluntary association and political party organized in the State of Illinois, for purposes of political advocacy and promoting the election of certain of its members to public office.

3. Plaintiff Scott Summers (hereinafter “Summers”), is a member of the ILGP residing in McHenry County, Illinois. In March 2014, pursuant to the ILGP’s internal procedures, Plaintiff Summers was nominated by the ILGP, and accepted its nomination, to serve

as its candidate for Governor of the State of Illinois, in the General Election to be held November 4, 2014.

4. At the same time, the ILGP also nominated candidates for other statewide offices in Illinois, and for United States Senate, for the same General Election, collectively referred to as its “state slate” or “complete slate.”

5. On March 25, 2014, Plaintiff Summers and members and supporters of the ILGP began circulating petitions to obtain signatures from registered voters in Illinois, for the purpose of placing Summers and the other candidates of the ILGP state slate on the ballot for the November 4, 2014 General Election.

6. Plaintiffs, Omar N. Lopez, Bobby J. Pritchett, Jr., David F. Black, Sheldon Schafer, Tim Curtin, Julie Samuels, are the other candidates for statewide office on the ILGP state slate, whose names appeared on the petitions circulated along with Plaintiff Summers.

7. Plaintiff, Rita Maniotis (hereinafter “Maniotis”), is a duly registered voter and member of the ILGP residing in Cook County, Illinois, who would like the opportunity to vote for Plaintiff Summers, and other Green Party candidates for statewide office, in the November 4, 2014 General Election.

8. Plaintiff, Maniotis, was one of the signatories of the petitions circulated on behalf of Plaintiff Summers and the other candidates for statewide office.

9. Defendant, Jesse R. Smart, is an appointed member of the ISBE, a state agency, and its Chairman, in which capacity he acts under color of state law to administer and enforce the provisions of the Election Code of Illinois, 10 ILCS 5/1-1, et seq., pursuant to 10 ILCS 5/1A-6, 1A-8 and other provisions of the Election Code.

10. Defendant, Charles W. Scholz, is an appointed member of the ISBE, a state agency, and its Vice-Chairman in which capacity he acts under color of state law to administer

and enforce the provisions of the Election Code, pursuant to 10 ILCS 5/1A-6, 1A-8 and other provisions of the Code.

11. Defendants, Bryan A. Schneider, Betty J. Coffrin, Harold D. Byers, Cassandra B. Watson, William F. McGuffage and Ernest L. Gowen, are each presently currently appointed members of the ISBE, in which capacity each acts under color of state law to administer and enforce the provisions of the Election Code, pursuant to 10 ILCS 5/1A-6, 10 ILCS 5/1A-8 and other provisions of the Election Code.

12. Defendants, Jesse R. Smart, Charles W. Scholz, Bryan A. Schneider, Betty J. Coffrin, Harold D. Byers, Cassandra B. Watson, William F. McGuffage and Ernest L. Gowen, together meet and perform the functions of the Illinois State Board of Elections, a statutorily created agency of the State of Illinois, which maintains offices in Springfield and Chicago.

13. When an objection to nomination papers is filed pursuant to Section 10-8 of the Election Code, 10 ILCS 5/10-8, Defendants, Jesse R. Smart, Charles W. Scholz, Bryan A. Schneider, Betty J. Coffrin, Harold D. Byers, Cassandra B. Watson, William F. McGuffage and Ernest L. Gowen, then constitute and meet as the State Officers Electoral Board (“SOEB”), pursuant to 10 ILCS 5/10-9. The SOEB convenes its meetings simultaneously at two locations, via audio and video conferencing equipment, in both Springfield and Chicago.

14. Pursuant to 10 ILCS 5/10-9(1) the SOEB is the electoral board designated pursuant to the Election Code to hear and pass upon objections to the nominations of candidates for State office and congressional office.

15. Defendant, Rupert T. Borgsmiller, presently serves as Executive Director of the ISBE, in which capacity he acts under color of state law to administer, enforce and execute the provisions of the Election Code, pursuant to 10 ILCS 1A-9 and the other provisions of the Code.

### **FACTUAL ALLEGATIONS**

16. The Election Code recognizes two categories of political parties in Illinois. As described in § 7-2 of the Election Code, 10 ILCS 5/7-2, and §§ 10-1 and 10-2, 10 ILCS 5/10-1 and 5/10-2 (West 2014), political parties that received more than 5 percent of the vote in the State, or in a political subdivision of the State, in the election immediately prior to the election in question, are “declared” or recognized as “established” political parties in the State, or in such political subdivision.

17. Pursuant to Article 7 of the Election Code, established parties have their candidates for partisan public office selected via a primary election, and are in other respects treated differently under the Election Code than other political parties.

18. Other political parties, regardless of their history, are categorized as “new” political parties, and can only have their candidates placed on the General Election ballot by collecting a certain requisite number of petition signatures from registered voters in Illinois, during a 90-day petition circulation period that occurs after the primary election, as described in 10 ILCS 5/10-4 (West 2014).

19. Plaintiff ILGP was founded in 1999 and was an established political party in Illinois from 2007 – 2010.

20. However, under the provisions of § 10-2 of the Election Code, it is currently categorized as a “new” political party with respect to statewide offices, and must follow the petitioning process set forth in that section in order to get its candidates for statewide office on the ballot for the November 4, 2014 General Election.

21. Under §§ 10-2 and 10-4 of the Election Code, this meant that Plaintiff Summers, the other state slate candidates of the ILGP, the ILGP and others who support Green Party candidates appearing on the ballot, were required to gather at least 25,000 signatures from

registered voters in Illinois, during the 90-day period beginning March 25, 2014 and ending June 23, 2014.

22. On June 23, 2014, Plaintiff, Summers, timely filed, at the ISBE office in Springfield, Illinois, a statement of candidacy as the ILGP candidate for Governor of the State of Illinois, for the General Election to be held November 4, 2014, in accordance with § 10-5 of the Election Code, 10 ILCS 5/10-5 (West 2014), as did the other slate candidates.

23. Plaintiff, Summers', statement of candidacy was accompanied with a receipt indicating that he had filed a Statement of Economic Interests, as required by §10-5 of the Election Code, 10 ILCS 5/10-5, and by the Illinois Governmental Ethics Act, 5 ILCS 420/1-101 et seq. (West 2014), as did the other slate candidates that were required to do so.

24. In keeping with the requirements of § 10-2 of the Election Code, 10 ICLS 5/10-2, Plaintiff Summers' statement of candidacy was also accompanied by petition signatures and addresses of nearly 30,000 persons representing themselves to be registered voters of the State of Illinois, indicating their intention to form a "new" political party known as the Green Party, and to place Summers' name, and the names of other ILGP candidates for statewide office, on the ballot as the Green Party candidates on the ballot for the November 4, 2014 General Election.

25. Under § 10-8 of the Election Code, the timely filed nominating papers of candidates for public office are deemed valid if they substantially comply with the requirements of the Election Code, unless an objection is filed within five business days of the last day for filing such papers.

26. On June 30, 2014, Karen Yarbrough, of Maywood, Illinois, filed such an objector's petition against the nominations of Plaintiff Summers and the other ILGP state slate candidates, thus triggering an SOEB review and validation process.

27. This process is ostensibly used to determine whether the petition signatures

submitted by Plaintiff Summers and the other ILGP candidates satisfy the requirement of 25,000 signatures from Illinois registered voters.

**COUNT I**  
**Notarization for Circulators Violates the First Amendment**  
**and Fourteenth Amendment Equal Protection Clause of the U.S. Constitution**

28. Plaintiffs restate and incorporate each of the foregoing paragraphs as if fully stated herein.

29. Section 10-4 of the Election Code, 10 ILCS 5/10-4 (West 2014), in describing the form of petition for nomination to be used by candidates of “new” political parties, provides, in pertinent part:

At the bottom of each sheet of such petition shall be added a circulator's statement, signed by a person 18 years of age or older who is a citizen of the United States; stating the street address or rural route number, as the case may be, as well as the county, city, village or town, and state; certifying that the signatures on that sheet of the petition were signed in his or her presence; certifying that the signatures are genuine; and either (1) indicating the dates on which that sheet was circulated, or (2) indicating the first and last dates on which the sheet was circulated, or (3) certifying that none of the signatures on the sheet were signed more than 90 days preceding the last day for the filing of the petition; and certifying that to the best of his knowledge and belief the persons so signing were at the time of signing the petition duly registered voters under Articles 4, 5 or 6 of the Code of the political subdivision or district for which the candidate or candidates shall be nominated, and certifying that their respective residences are correctly stated therein. ***Such statement shall be sworn to before some officer authorized to administer oaths in this State. (Emphasis added.)***

30. Thus, in addition to the requirement that “new” party candidates for statewide office gather 25,000 signatures from registered voters in a 90-day window, Section 10-4 of the Election Code requires that each petition circulator fill out certain identifying and other information at the bottom of each sheet, and must appear before and sign each individual sheet in front of a person authorized to administer oaths, known as a notary public, in order to perfect the documents.

31. In the event that the validity of the petition signatures filed by a candidate are challenged through an objector's petition, the SOEB then has staff members comparing the petition sheets to the ISBE's electronically stored voter registration records and images of signatures obtained from various election authorities throughout the State, to determine whether each objection is sustained or overruled. The SOEB equates this review with the ultimate determination whether each challenged voter is or is not the *bona fide* duly registered voter who signed the petition.

32. Accordingly, no state interest, or, alternatively, no compelling state interest, is served by this *a priori* notarization requirement imposed on each circulator of each of the thousands of petition sheets that must be gathered to satisfy the 25,000 signature threshold imposed on "new" parties and their candidates.

33. Illinois law provides an alternative to the notarization requirement through its Code of Civil Procedure, 735 ILCS 5/1-109, whereby an individual may "certify" to the truth of factual allegations under penalty of perjury, in lieu of a sworn statement before a person authorized to administer oaths (i.e., a notary public).

34. Given that such verification by certification has been deemed adequate under Illinois for the purpose of authenticating all manner of court pleadings, there is no rational basis for imposing an even higher threshold of authentication on circulators gathering petition signatures from persons asserting that they are registered to vote in Illinois.

35. While the state's interest in the notarization requirement is non-existent or *de minimis*, the burden it places on Plaintiffs, voters having an interest in seeing ILGP candidates appear on the ballot, and others similarly situated, is high.

36. Notaries are not always available at times when circulators have an opportunity to seek their services.



37. Even when notaries are available, financial institutions and other places of business often charge for each notarization service.

38. This means that time, and sometimes travel and other expenses will be incurred, in the effort to get each sheet notarized.

39. Circulators who gather more than a few sheets, especially, may need to make repeat trips to get their sheets notarized.

40. While party members may themselves undertake to become notaries, that process also entails time and expense.

41. Although the petition signatures gathered by candidates of established parties contain the same notarization requirement, pursuant to §5/7-10 of the Election Code, 10 ILCS 5/7-10 (West 2014), the impact on the candidates of so-called “new” parties like the ILGP is disproportionately greater, considering that established party candidates are only required to gather 5,000 signatures from registered voters in order to secure a place on their respective primary ballot. 10 ILCS 5/7-10(a) (West 2014).

42. The signature-gathering requirement for new party candidates, five times the number required of established parties, is thus magnified further by the burden of notarizing each and every sheet that is to be filed.

43. While §10-4 of the Election Code requires the circulator of each petition sheet to swear or affirm that the information contained therein is truthful, there is no reciprocal, corresponding requirement under § 10-8 or any other provision of the Election Code.

44. Objectors are not required to swear or affirm the truth, via notarization, of their allegations that certain signatures are not the valid signatures of Illinois registered voters,

45. Thus, objectors are not held to the same standard as circulators, and may challenge petition signatures on a random or arbitrary basis, to harass political opponents and

frustrate and obstruct the electoral process, hoping that if enough signatures are challenged, enough signatures will be invalidated to sustain their objections.

46. Accordingly, the aforestated notarization provision of the Election Code, on its face and as applied, discriminates against the candidates, including Plaintiff, Summers, and the other ILGP state slate candidates of “new” political parties, such as Plaintiff ILGP, by imposing a disproportionate and undue burden on them in contrast to that imposed on the candidates of “established” political parties.

47. The aforestated notarization provision of the Election Code, on its face and as applied, also interferes with the rights of Illinois voters, such as Plaintiff, Maniotis, to associate so as to form a political party, effectively advocate for that party and vote for the candidate or candidates of that party.

48. The aforestated notarization provision of the Election Code, on its face and as applied, therefore violates the Plaintiffs’ Free Speech and associational rights guaranteed by the First Amendment to the United States Constitution, incorporated and made applicable to the State of Illinois by operation of the Fourteenth Amendment to the United States Constitution.

49. The aforestated notarization provision of the Election Code, on its face and as applied, violates the Plaintiffs’ right to Due Process and Equal Protection under the law, as guaranteed by the Fourteenth Amendment to the United States Constitution.

50. The Defendants and their employees have exercised and will continue to exercise their authority under color of state law to enforce the aforestated notarization provision of the Election Code, both facially and as applied to the Plaintiffs, for the November 4, 2014 General Election, and with respect to the pending objection to the nominating papers and petitions filed by Plaintiff Summers, in such a manner as to be in violation of the First and Fourteenth Amendments to the United States Constitution.

WHEREFORE, Plaintiffs respectfully pray that this Court:

A. Issue a declaration that the aforestated provision of the Election Code, both facially and as applied to the Plaintiffs, is unconstitutional, being inconsistent with the First and Fourteenth Amendments to the United States Constitution;

B. Enter a preliminary injunction and permanent order enjoining Defendants from enforcing the aforestated provision of the Election Code as applied to Plaintiffs and enjoining Defendants to direct that the name of Plaintiff, Scott Summers, as the candidate of the Green Party for Governor of Illinois, and the names of the other candidates for statewide office shown on the petitions filed by Plaintiff, Summers, be printed upon the November 4, 2014 General Election ballot, or, in the alternative, afford Plaintiffs additional time in which to gather petition signatures from registered voters, in compensation for the undue burden imposed by the notarization requirement;

C. Award Plaintiffs the reasonable costs and expenses of this action, including attorneys' fees pursuant to the Civil Rights Attorney's Fees and Awards Act of 1976, 42 U.S.C. §1988; and

D. Award such other and further relief as this Court deems just and equitable.

## **COUNT II**

### **“Complete Slate” Requirement for “New” Parties Violates the First Amendment and Fourteenth Amendment Equal Protection Clause of the U.S. Constitution**

51. Plaintiffs repeat and incorporate the above paragraphs, as if fully stated herein.

52. Section 10-2 of the Election Code includes the following provision: “Any such petition for the formation of a new political party throughout the State . . . shall at the time of filing contain a complete list of candidates of such party for all offices to be filled in the State.” 10 ILCS 5/10-2 (West 2014). This has sometimes been described as the “complete slate” requirement.

53. A consequence of the “complete slate” requirement for a “new” party like Plaintiff ILGP and a candidate like Plaintiff Summers is that Plaintiff Summers could not even begin to pursue ballot access for the office of Governor, unless and until the ILGP was able to also recruit candidates to run for the other statewide offices, viz., Lieutenant Governor, Attorney General, Treasurer, Comptroller, Secretary of State and United States Senator.

54. There is no corresponding requirement in the Election Code for established party candidates.

55. No state interest, or, alternatively, no compelling state interest, is served by the imposition of the “complete slate” requirement.

56. Any state interest that might exist as justification of the “complete slate” requirement is substantially outweighed by the burdens it places on Plaintiffs, voters having an interest in seeing ILGP candidates appear on the ballot, and others similarly situated.

57. New, comparatively new, or minor political parties, by their very nature, will naturally tend to have a much smaller pool of persons qualified, willing and able to undertake the sacrifices of time and money required to mount and implement a credible campaign for statewide office.

58. In addition, the “complete slate” requirement also imposes the burden of finding a candidate meeting the special requirements applicable to the office of United States Senator, pursuant to Article I, § 3 of the United States Constitution, namely that the person be over 30 years of age and a United States citizen for at least nine years.

59. The “complete slate” requirement also imposes the burden of finding candidates meeting the special requirement of the office of attorney general, viz., that the candidate be an attorney, as is implied by 15 ILCS 205/4 (West 2014).

60. Such burdens were experienced as a substantial impediment to ballot access by

Plaintiff ILGP and Plaintiff Summers in their efforts to qualify Plaintiff Summers for the November 4, 2014 General Election ballot.

61. While Plaintiff ILGP was ultimately able to field a complete slate after months of effort, some of the candidates were recruited for nomination only during the last two to three weeks prior to the onset of the petition drive that commenced on March 25, 2014, with the final determination not made until March 15, 2014.

62. This necessarily diverted time and effort away from planning for the petition drive itself.

63. Accordingly, the aforestated “complete slate” provision of the Election Code, on its face and as applied, discriminates against the candidates, including Plaintiff Summers and the other state slate candidates, of “new” political parties, such as Plaintiff ILGP, by imposing a disproportionate and undue burden on them in contrast to that imposed on the candidates of “established” political parties.

64. The aforestated “complete slate” provision of the Election Code, on its face and as applied, also interferes with the rights of voters, such as Plaintiff Maniotis, to associate so as to form a political party, effectively advocate for that party and vote for the candidate or candidates of that party.

65. The aforestated “complete slate” provision of the Election Code, on its face and as applied, therefore violates the Plaintiffs’ free speech and associational rights guaranteed by the First Amendment to the United States Constitution, incorporated and made applicable to the State of Illinois by operation of the Fourteenth Amendment to the United States Constitution.

66. The aforestated “complete slate” provision of the Election Code, on its face and as applied, violates the Plaintiffs’ right to due process and equal protection under the law, as guaranteed by the Fourteenth Amendment to the United States Constitution.

WHEREFORE, Plaintiffs respectfully pray that this Court:

A. Issue a declaration that the aforestated “complete slate” provision of the Election Code, both facially and as applied to the Plaintiffs, is unconstitutional, being inconsistent with the First and Fourteenth Amendments to the United States Constitution;

B. Enter a preliminary injunction and permanent order enjoining Defendants from enforcing the aforestated provision of the Election Code as applied to Plaintiffs and enjoining Defendants to direct that the name of Plaintiff, Scott Summers, as the candidate of the Green Party for Governor of Illinois, and the names of the other candidates for statewide office shown on the petitions filed by Plaintiff, Summers, be printed upon the November 4, 2014 General Election ballot, or, in the alternative, afford Plaintiffs additional time in which to gather petition signatures from registered voters, in compensation for the undue burden imposed by the notarization requirement;

C. Award Plaintiffs the reasonable costs and expenses of this action, including attorneys’ fees pursuant to the Civil Rights Attorney’s Fees and Awards Act of 1976, 42 U.S.C. §1988; and

D. Award such other and further relief as this Court deems just and equitable.

### **COUNT III**

#### **“Binder Check” Process Violates the First Amendment and the Fourteenth Amendment Equal Protection Clause of the U.S. Constitution**

67. Plaintiffs restate and incorporate the above paragraphs as if fully stated herein.

68. The aforestated objector’s petition filed by Karen Yarbrough against the nominating papers of Plaintiff Summers and the other ILGP state slate candidates, alleged that certain specified signatures, identified by page and line number, were invalid or defective in some manner, e.g., alleging that the signature was not the voter’s signature, the signatory was not a registered voter, the signatory was not registered at the address listed, etc.

69. The Yarbrough petition challenged approximately 10,000 of the nearly 30,000 signature lines submitted, alleging that they had one or more such defects.

70. After the Yarbrough petition was filed, the members of the ISBE convened as the SOEB, created and adopted its own Rules and Procedures, and acquired jurisdiction over the Yarbrough objection, pursuant to the Election Code, 10 ILCS 5/10-8 and 10 ILCS 5/10-9(1).

71. SOEB appointed a hearing officers to review the objection in detail, review and issue recommendations regarding motions, conduct an evidentiary hearing at the hearing officer's discretion, and issue a recommendation to the SOEB.

72. When presented with an objector's petition like that of Ms. Yarbrough, which contests the validity of a large number of individually specified signature lines on various grounds, the practice of the SOEB is to conduct what is referred to by the SOEB as a "records examination" and is commonly known also as a "binder check."

73. The "records examination" procedure is not defined or otherwise required by the Election Code, but is a creation of the SOEB through its own adopted Rules and Procedures.

74. Under the "records examination" procedure, a line-by-line review of each challenged voter is conducted, often at multiple computer terminals ("stations") simultaneously. This review commences at either the Springfield or the Chicago office of the ISBE as determined by the ISBE's general counsel, with one representative of the objector and one representative of the candidates (referred to by the SOEB as "watchers"), alongside of an ISBE staff member or agent who reviews each challenged voter.

75. At the "records examination" the specific bases for the challenges to each voter are reviewed and compared against the ISBE's current voter registration list, and the IBSE staff member makes a ruling on the merits of the challenged voter. The "watchers" are to participate as observers only, and may not photograph or video record the procedure, but it is commonly

accepted that an ISBE staff member obtain assistance reading a voter name or address from a “watcher.”

76. This line-by-line review process is repeated for the each challenged voter signature line for the entire (in this case) approximately 10,000 challenges. After the ISBE issues its final tally of objection lines sustained, the candidates are permitted only three (3) days thereafter, regardless of the number of voter signatures reviewed, to submit documents, affidavits or evidence to challenge the ISBE's staff member decisions, commonly referred to as “rehabilitating” a voter's signature.

77. The entire “records examination” process may consume many days or weeks, depending upon how many “stations” the ISBE general counsel assigns to each “records examination” to simultaneously review the candidates' petition sheets, during which time, the candidates of the “new” party and its representatives are expected to have “watchers” present at each “station” to represent the interests of the candidate as each voter signature line is reviewed. Otherwise, if a party is unable to have a sufficient number of watchers at each station (possibly twelve or more stations), that party waives its right to observe the process and accepts the risk that rulings may not be correctly made, or properly recorded by an ISBE staff member.

78. After the “records examination” is completed, the ISBE issues a simple spreadsheet tally of the “records examination” rulings to the hearing officer, who may schedule an evidentiary hearing, or issue a recommendation to the SOEB based upon the “records examination” results. SOEB will typically adopt a hearing officers' recommendations that are based upon ISBE “records examination” results, absent some extraordinary evidence.

79. The “records examination” is not provided for by statute. The process is not set forth in any section of the Election Code, nor in any published regulation of the ISBE. Each time it is utilized, it has been proposed and adopted as a purportedly “ad hoc” set of rules by the



SOEB.

80. However, the experience of the ILGP since year 2000 has been that, in fact, the “records examination” process is the process that is invariably used by the SOEB to hear and determine the merits of an objector’s petition like that filed by Ms. Yarbrough.

81. No state interest, or, alternatively, no compelling state interest, is served by the use of the “records examination” process to determine the validity of “new” party candidate petition signatures.

82. The validity of the challenged signature lines could be much more readily determined by a far less cumbersome processes.

83. For example, the goals of the Election Code would be achieved by either allowing a hearing officer to review the nomination papers to determine that they “substantial conform” to the Election Code, or by requiring objectors to submit objections with the same level of proof as candidates submit for their petitions, namely, with a notarized affidavit from objectors attesting to an objector reviewing a petition sheet with a voter in person and/or a good faith basis to believe the voter did not personally sign the candidates' petition, as well as reasonable time for candidates to review hearing officer recommendations, and “rehabilitate” voters, which would be a duration of time that was proportional to the number of signatures at issue, rather than an arbitrary three (3) day time to rehabilitate signatures as under current SOEB Rules and Procedures.

84. A candidate could then “rehabilitate” a challenged signature by providing more up-to-date voter registration information, affidavits of signatories to affirm signatures and/or clarify address change information, correct a scrivener’s errors, or such other competent evidence that demonstrates that the signatory was a duly registered Illinois voter at the time he or she signed the petition and did in person, affix his or her name to a candidates' petition.

85. Another method could be for hearing officers to review a statistically significant random sample of the challenged signature lines, provide a list of the presumptively invalid lines sampled to the candidates and give the candidates a reasonable length of time and opportunity to rehabilitate those signatures and restore statistical confidence that the petitions contain a sufficient percentage of valid signatures.

86. Any of these alternatives would be superior to the “records examination,” in that they would be less burdensome, more fair and more accurate.

87. Any state interest that might exist as justification of the “records examination” process is substantially outweighed by the burdens it places on Plaintiffs, voters having an interest in seeing ILGP candidates appear on the ballot, and others similarly situated.

88. For a new, relatively new, or minor political party, the “records examination” procedure imposes a huge burden on the necessarily limited human and financial resources of its members.

89. The “records examination” procedure essentially requires dozens of party members and supporters to volunteer full days of their time, sometimes having to give up work, vacation days or personal days in the process, and travel to Springfield or Chicago, to tediously review each challenge, line by line, page by page.

90. The “records examination” does not serve the purposes of the Election Code, 10 ILCS 5/10-4, which applies to Candidates' petitions, and requires only that a circulator affirm that the persons signing the petition “were at the time of signing the petition duly registered voters,” and permits candidates to choose between one of three different affirmations regarding the dates on which the petition was circulated.

91. The Election Code, 10 ILCS 5/10-4, does not require persons who signed Candidates' petitions to be registered voters on some future, as yet unspecified “records

examination” date.

92. In contrast, an objector like Ms. Yarbrough, being the Democratic Party Committeeman of Proviso Township, Illinois, will be able to utilize the far greater financial resources of the Democratic Party and arrange payment for individuals to represent those interests during the “records examination” process.

93. On information and belief, a Democratic campaign committee, “Friends of Michael Madigan,” paid individuals to review the petitions filed by Plaintiff, Summers, and the ILGP state slate prior to the filing of the objector’s petition, and objector Yarbrough, personally did not review any voter signatures on Candidates' petition sheets.

94. Accordingly, the “records examination” process, on its face and as applied, discriminates against the candidates, including Plaintiff Summers, of “new” political parties, such as Plaintiff ILGP, by imposing a disproportionate and undue burden on them in contrast to that imposed on the candidates of “established” political parties.

95. The real world impact of the current SOEB procedures for review of nomination papers imposes a much higher signature requirement, far above the substantial conformity required by the Election Code, often such that candidates would be required to submit one and half to two times the number of signatures required by the Election Code.

96. The “records examination” process, on its face and as applied, also interferes with the rights of voters, such as Plaintiff, Maniotis, to associate and form a political party, effectively advocate for that party, and vote for the candidate or candidates of that party.

97. The “records examination” process, on its face and as applied, therefore violates the Plaintiffs’ free speech and associational rights guaranteed by the first amendment to the United States Constitution, incorporated and made applicable to the State of Illinois by operation of the fourteenth amendment to the United States Constitution.

98. The “records examination” process, on its face and as applied, violates the Plaintiffs’ right to due process and equal protection under the law, as guaranteed by the fourteenth amendment to the United States Constitution.

WHEREFORE, Plaintiffs respectfully pray that this Court:

A. Issue a declaration that the “records examination” process, as adopted by the ISBE sitting as the SOEB, both facially and as applied to the Plaintiffs, is unconstitutional, being inconsistent with the first and fourteenth amendments to the United States Constitution;

B. Enter a preliminary injunction and permanent order enjoining Defendants from utilizing the “records examination” process, and instead adopting a more rational and less burdensome method for reviewing nomination papers for substantial conformity with the Election Code, or in the alternative, directing the ISBE to print the name of Plaintiff, Scott Summers, as the candidate of the Green Party for Governor of Illinois, and the names of the other ILGP candidates for statewide office shown on the petitions filed by Plaintiff Summers, on the November 4, 2014 General Election ballot;

C. Award Plaintiffs the reasonable costs and expenses of this action, including attorneys’ fees pursuant to the Civil Rights Attorney's Fees and Awards Act of 1976, 42 U.S.C. §1988; and

D. Award such other and further relief as this Court deems just and equitable.

#### **COUNT IV**

**As Applied Together, the 25,000 Signature Requirement, 90 Day Signature Gathering Period, Notarization Requirement, “Complete Slate” Requirement, and SOEB “Records Examination” and Other Procedures, Violate the First Amendment and the Fourteenth Amendment Equal Protection Clause of the U.S. Constitution**

99. Plaintiffs restate and incorporate the above paragraphs as if fully stated herein.

100. Plaintiffs verily believe that each of the requirements for ballot access enumerated above constitute constitutionally-impermissible barriers to their participation in the democratic

process and violate their rights under the U.S. Constitution.

101. However, even if this Court should find that all of these complained-of requirements are permissible when individually scrutinized, this Court should still find in Plaintiffs' favor, when reviewing the totality of the Election Code and the SOEB Rules and Procedures.

102. This is because all of the complained of practices, when viewed in their totality, constitute a regimen or scheme imposed on Plaintiffs by the Defendants to unconstitutionally limit ballot access to only two established political parties, i.e. the "two party system."

103. However, Defendants' obstructions notwithstanding, Illinois voters desire more, not fewer, choices on the ballot, and a majority of voters disapprove of the "two-party system."

104. The trend away from the "two-party system" was confirmed in Illinois at the last primary election on March 18, 2014, at which only 18% of registered Illinois voters declared themselves to be affiliated with either the Democratic Party or the Republican Party.

105. Voters affiliate with a political party by participating in a primary election, and declaring themselves to be affiliated with an established political party by completing a ballot application at a primary election for an established party's ballot.

106. To illustrate, at the most recent March 18, 2014, general primary election, voters who asked for Democratic Party ballot were deemed to be Democrats, and voters who requested a Republican Party ballot were deemed to be Republicans.

107. Accordingly, in Illinois, as of March 18, 2014, only 18% of registered voters are affiliated with the two currently established parties.

108. Accordingly, in Illinois, as of March 18, 2014, 82% of registered voters did not affiliate with either the Democratic Party or Republican Party.

109. As such, through a phenomenon sometimes referred to as "voting with your feet,"

82% of voters disapprove of the two party system and its candidates, and desire to see candidates on the ballot who are not affiliated with either established party.

110. The ISBE's and SOEB's enforcement of the aforestated Election Code and the SOEB's Rules and Procedures, including but not limited to its "records examination" procedure, in their totality and cumulatively, impose heightened and excessive burdens upon the Plaintiffs and their free speech and associational rights that are not narrowly tailored and the least restrictive means to achieve the goals of the Election Code.

111. The ISBE's and SOEB's enforcement of the aforestated Election Code and the SOEB's Rules and Procedures, including but not limited to its "records examination" procedure, in their totality and cumulatively, on their face and as applied, violate the Plaintiffs' free speech and associational rights guaranteed by the first amendment to the fourteenth amendment equal protection clause of the United States Constitution.

WHEREFORE, Plaintiffs respectfully pray that this Court:

A. Issue a declaration that the cumulative effect of requiring the gathering in excess of 25,000 signatures on petition sheets that must be each individually notarized, within 90 days, for a full slate of candidates, and facing the SOEB's "records examination" process and the Rules and Procedures, enforced by the ISBE sitting as the SBOE, both facially and as applied to the Plaintiffs, is unconstitutional, being inconsistent with the first and fourteenth amendments to the United States Constitution;

B. Enter a preliminary injunction and permanent order enjoining Defendants from enforcing the aforestated provisions of the Election Code and SOEB Rules as applied to Plaintiffs, and enjoining Defendants to direct that the name of Plaintiff, Scott Summers, as the candidate of the Green Party for Governor of Illinois, and the names of the other candidates for statewide office shown on the petitions filed by Plaintiff, Summers, be printed upon the

November 4, 2014 General Election ballot, or, in the alternative, to afford Plaintiffs additional time in which to gather petition signatures from registered voters, in compensation for the undue burden imposed by the cumulative impact of Election Code and SOEB Rules and Procedures;

C. Award Plaintiffs the reasonable costs and expenses of this action, including attorneys' fees pursuant to the Civil Rights Attorney's Fees and Awards Act of 1976, 42 U.S.C. §1988; and

D. Award such other and further relief as this Court deems just and equitable.

RESPECTFULLY SUBMITTED,

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