

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

WILLIAM MORGAN, ELIZABETH)	
NORDEN, DAVID VAUGHT, DORIS)	CASE NO. 1:20-cv-02189
DAVENPORT, ANDREA RAILA,)	
JACKSON PALLER, and the)	
COMMITTEE FOR THE ILLINOIS)	
DEMOCRACY AMENDMENT, an)	
unincorporated political association,)	
)	
Plaintiffs,)	
)	Honorable Judge Charles R. Norgle, Sr.
JESSE WHITE, in his official capacity)	
as Illinois Secretary of State, DEVON)	Magistrate Judge M. David Weisman
REID, in his official capacity as the)	
Evanston City Clerk, KAREN A.)	
YARBROUGH, in her official capacity)	
as Cook County Clerk, and WILLIAM)	
J. CADIGAN, KATHERINE S. O'BRIEN,))	
LAURA K. DONAHUE, CASSANDRA)	
B. WATSON, WILLIAM R. HAINE,)	
IAN K. LINNABARY, CHARLES W.)	
SCHOLZ, WILLIAM M. MCGUFFAGE,)	
in their official capacities as Board)	
Members for the Illinois State Board of)	
Elections,)	
)	
Defendants.)	

MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFFS' EMERGENCY
MOTION FOR A PRELIMINARY OR PERMANENT INJUNCTION AND
DECLARATION AS A MATTER OF LAW

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INTRODUCTION

This is an action to enjoin or modify Illinois' petition collection requirements for initiative referendums to be placed on the November 3, 2020 general election ballot and to enable and require the Defendants to accommodate the constitutional rights and interests of the Plaintiffs and the general public in light of the current public health emergency caused by the coronavirus and the Governor's shelter-in-place emergency orders. Under current circumstances, the Plaintiffs and Illinois voters are forced to choose between their health and their rights to petition and vote. Reforms and modifications to Illinois' initiative referendum election procedures in light of the COVID-19 pandemic are appropriate. The key facts in support of this action are set forth in Plaintiffs' Verified Complaint. Dkt. 001.

PRELIMINARY EQUITABLE RELIEF STANDARD

To determine whether a preliminary injunction should be granted, the Court must weigh the following four factors: (1) the likelihood the Plaintiffs will succeed on the merits; (2) the potential for irreparable harm to the Plaintiffs if the injunction is denied; (3) the balance of relevant impositions — the hardship to the Defendants if enjoined as contrasted with the hardship to the Plaintiffs if no injunction issues; and (4) the effect of the Court's ruling on the public interest. *Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008).

ARGUMENT

All four factors necessary for a preliminary injunction weigh in favor of this Court entering an immediate order in favor of the Plaintiffs as set forth below in the prayer for relief.

I. The Plaintiffs are Likely to Succeed on the Merits.

The United States Supreme Court has held that “Petition circulation . . . ‘is core political speech,’ because it involves ‘interactive communication concerning political change.’” *Buckley v. American Constitutional Law Foundation, Inc.*, 525 U.S. 182, 186 (1999). “First Amendment protection for such interaction,” therefore, is at its “zenith.”

Id. The right to petition is further enshrined in the Illinois Constitution. Article XIV, Section 3 of the Illinois Constitution provides that

Amendments to Article IV of this Constitution may be proposed by a petition signed by a number of electors equal in number to at least eight percent of the total votes cast for candidates for Governor in the preceding gubernatorial election. Amendments shall be limited to structural and procedural subjects contained in Article IV. A petition shall contain the text of the proposed amendment and the date of the general election at which the proposed amendment is to be submitted, shall have been signed by the petitioning electors not more than twenty-four months preceding that general election and shall be filed with the Secretary of State at least six months before that general election. The procedure for determining the validity and sufficiency of a petition shall be provided by law. If the petition is valid and sufficient, the proposed amendment shall be submitted to the electors at that general election and shall become effective if approved by either three-fifths of those voting on the amendment or a majority of those voting in the election.

Moreover, Article VII, Section 11 of the Illinois Constitution provides that

(a) Proposals for actions which are authorized by this Article or by law and which require approval by referendum may be initiated and submitted to the electors by resolution of the governing board of a unit of local government or by petition of electors in the manner provided by law.

(b) Referenda required by this Article shall be held at general elections, except as otherwise provided by law. Questions submitted to referendum shall be adopted if approved by a majority of those voting on the question unless a different requirement is specified in this Article.

Plaintiffs' constitutional rights to petition and political speech are well established.

In 1980, the Illinois Supreme Court declared that "clearly, the rights of those who seek to exercise their constitutional privilege to initiate an amendment to that constitution are *intertwined* with the rights of those who vote thereon." *Coalition for Political Honesty v State Board of Elections II*, 83 Ill. 2d 230, 248 (1980). The Court further stated that strict scrutiny is appropriate regarding Illinois' legislative restrictions on the Article XIV imitative right. Furthermore, the free and equal elections clause of Article III, Section 3 of the Illinois Constitution gives constitutional priority to Illinois' public policy of encouraging the full and effective participation of the entire electorate. Any plan or design whose result might impede or frustrate full participation in the electoral process cannot endure. See *Orr v. Edgar*, 283 Ill. App3d. 1088, 1097 (1st Dist. 1996).

The current health crisis and the Governor's executive orders to shelter in-place and to social distance, however, make it impossible for Plaintiffs and others to comply with the requirements and procedures necessary to exercise their right to petition. Because

the State currently prohibits everyone from gathering in public, Plaintiffs simply have no way to gather the 363,813 signatures they need before the May 3, 2020 deadline.¹

The Plaintiffs are entitled to injunctive relief because there is no legal option available to them by which they could exercise their constitutional rights without endangering their lives or the lives of others. The State has refused or neglected to make any modification to the current petition collection requirements thereby effectively stripping the Plaintiffs of their rights, along with the rights of innumerable Illinois voters who would be deprived of the opportunity to vote on important referendums. Simply put, the State is constitutionally required to provide an alternate procedure by which its citizens can place initiative referendums on the general election ballot and it has failed to do so here.

Because the Plaintiffs have no possible way to exercise their constitutional rights, the burdens imposed by the State can only be described as severe. As stated by the Seventh Circuit, “the severity of the burden imposed is what determines whether strict scrutiny or a less demanding level of review applies.” *Stone v. Board of Election Com’rs for City of Chicago*, 750 F.3d 678, 681 (7th Cir. 2014). “Restrictions that ‘severely’ burden the exercise of constitutional rights must be ‘narrowly drawn to advance a state interest of compelling importance.’” *Lee v. Keith*, 463 F.3d 763, 768 (7th Cir. 2006). Although the State may have a compelling interest to justify its executive orders, the complete

¹ Copies of the petitions the Plaintiffs wish to circulate are attached hereto as **Exhibit A**.

prohibition on in-person petitioning, and therefore the complete exclusion of initiative referendums from the general election ballot, is not narrowly tailored.

That the State's current procedures are not narrowly tailored is most evident when contrasted with the voluntary actions of other states during this pandemic. For instance, on March 19, 2020, the Governor of New Jersey issued an executive order to the Secretary of State to implement online petitioning and signature collection.² On April 2, 2020, Florida's Secretary of State signed an emergency order allowing for the collection of petition signatures online.³ Moreover, the Arizona Secretary of State has provided an online petitioning mechanism for candidates since 2015 and has recently stated she "wouldn't oppose" use of that system for ballot measures during the pandemic as a "reasonable option for protecting public health and supporting continuity in our democratic processes."⁴ On March 14, 2020, the Governor of New York issued an executive order reducing the required number of petition signatures for all petitions for ballot access to 30% of the state threshold.⁵ It is evident, therefore, that narrowly tailored options which protect both the health of the general public as well as their constitutional rights are readily available and have been voluntarily implemented by other states. Thus far, Illinois has failed to follow suit which this Court can, and should, remedy with injunctive and declaratory relief.

² <https://www.state.nj.us/state/elections/assets/pdf/candidate/EO-105.pdf>

³ <https://dos.myflorida.com/media/702874/1ser20-2.pdf>

⁴ <https://thefulcrum.us/voting/coronavirus-ballot-initiatives>

⁵ <https://www.governor.ny.gov/news/amid-covid-19-pandemic-governor-cuomo-signs-executive-order-temporarily-modifying-election>

II. The Plaintiffs are Suffering, and Will Continue to Suffer, Irreparable Harm if the Injunction is Denied.

Under the current circumstances, the Plaintiffs are prohibited from approaching voters for the purposes of collecting their signatures. The inability to collect signatures to place important referendums on the general election ballot no doubt constitutes irreparable harm. It is well settled that “the loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury.” *Elrod v. Burns*, 427 U.S. 347, 373 (1976); *Murphy v. Zoning Comm’n of the Village of New Milford*, 148 F.Supp.2d 173, 180-81 (D.Conn. 2001). Prevented by the COVID-19 pandemic and the Governor’s executive orders from gathering signatures, the Plaintiffs are suffering irreparable damage to the very core of their constitutional rights to petition and engage in political speech each day. Moreover, the State of Illinois has thus far refused or neglected to take any action with respect to protecting the rights of petition passers and Illinois voters who wish to vote on referendums in the general election. With the May 3, 2020 deadline quickly approaching, the Plaintiffs have no adequate remedy but to seek the requested injunctive and declaratory relief from this Court.

III. The Balance of The Harms Favors The Plaintiffs.

Any speculative harm to the Defendants from the requested relief would be far outweighed by the actual harm that the Plaintiffs would suffer by being deprived of their constitutional freedoms to petition and speak. Injunctive and declaratory relief here would merely require the Defendants to make reasonable modifications to their

election procedures in light of the current pandemic as a number of states have already voluntarily done.

As demonstrated by other states, discussed above, there is minimal burden associated with protecting the rights of petition and speech in this case. In fact, the tools necessary to implement Plaintiffs' requested relief are already available to the State. Other states have paved the way and are available to offer assistance if needed. The State may choose to avail itself of those resources if it chooses. Nevertheless, the Plaintiffs' requested relief is reasonable in light of the impossibility of gathering any signatures and the balance of the harms favors the Plaintiffs.

IV. Granting the Requested Relief Will Serve the Public Interest.

"Vindicating First Amendment freedoms is clearly in the public interest." *Pacific Frontier v. Pleasant Grove City*, 414 F.3d 1221, 1237 (10th Cir. 2005). *See also*, *ACLU of Georgia v. Miller*, 977 F.Supp. 1228, 1235 (N.D. Ga. 1997) ("No long string of citations is necessary to find that the public interest weighs in favor of having access to a free flow of constitutionally protected speech.") (quotation and citation omitted). The requested relief is in the public interest because it will give the Plaintiffs and Illinois voters an opportunity to vote on important matters of public policy. As one court stated, "injunctions protecting First Amendment freedoms are always in the public interest." *Am. Civil Liberties Union of Illinois v. Alvarez*, 679 F.3d 583, 590 (7th Cir. 2012)(quoting *Christian Legal Soc'y v. Walker*, 453 F.3d 853, 859 (7th Cir. 2006).

CONCLUSION

For all the reasons set forth above, the Plaintiffs respectfully request that this Court:

- A. Assume original jurisdiction over this matter;
- B. Issue a temporary restraining order and/or preliminary injunction (i) enjoining or modifying enforcement of Illinois' petition collection requirements for initiative referendums for Illinois' November 3, 2020 general election; and (ii) enabling and requiring the Defendants to allow for petitions to be submitted electronically via names of qualified electors collected by an online form to be created by the Secretary of State; extend the May 3, 2020 deadline for an Article XIV, Section 3 referendum to August 3, 2020; and reduce by 50% the number of signatures required to qualify Article XIV statewide and Article VII local government initiative referendums for the general election ballot or reduce by some percentage of required signatures necessary to demonstrate substantial public support;
- C. Issue a declaratory judgment stating that, in light of the current public health emergency caused by the novel coronavirus and executive orders requiring that Illinois citizens stay at home and shelter in place, Illinois' petition collection requirements for qualifying Article XIV and Article VII referendums for the general election ballot cannot be constitutionally enforced;

- D. Issue a permanent injunction prohibiting enforcement of Illinois' petition collection requirements for Article XIV and Article VII referendums for the November 3, 2020 general election;
- E. Order Defendants to pay to Plaintiffs their costs and reasonable attorneys' fees under 42 U.S.C. § 1988(b);
- F. Grant such other relief as this Court deems appropriate.

Respectfully submitted this 9th day of April, 2020.

/s/ WILLIAM MORGAN, ET AL.,

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