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

LIBERTARIAN PARTY OF ILLINOIS, et al.,	)	
	)	
Plaintiffs,	)	No. **2022-cv-0578**
v.	)	
	)	Honorable Robert W. Gettleman
KAREN YARBROUGH, in her capacity as the	)	
COOK COUNTY CLERK, et al.,	)	Magistrate Judge
	)	Honorable Jeffrey Cole
Defendants.	)	

Amended Memorandum in Support of
Amended Emergency Motion For Preliminary Injunction

Plaintiffs submit their amended memorandum of law in support of their amended emergency motion for preliminary injunction, as follows.

A. Established political party status as defined in the Illinois Election Code.

Article 10 of the Election Code, 10 ILCS 5/10-1, *et seq*., defines ballot access requirements for new political parties and independent candidates. Article 10 also defines how a new political party attains established political party status at 10 ILCS 5/10-2. Please see attached **Exhibit A** for pertinent sections of Election Code text.

Section 10-1 also prohibits the nomination of candidates by any established political party under Article 10 of the Election Code. 10 ILCS 5/10-1 ("No nominations may be made under this Article 10, however, by any established political party which, at the general election next preceding, polled more than 5% of the entire vote cast in the State, district, or unit of local government for which the nomination is made.")

According to the Seventh Circuit (with emphasis added),

> "[a] party becomes established through a strong electoral performance. If a party's candidate in the most recent gubernatorial election received more than 5% of the vote, the party is established throughout the state. 10 ILCS 5/10-2 (2010). A party can also attain established status on a more limited basis. If its candidate (or candidates collectively)

> received more than 5% of the vote in a particular race in the most recent statewide election —for example, the race for Illinois Comptroller or Illinois Secretary of State — then the party becomes established for statewide elections. Likewise, **if a party received more than 5%** of the vote in a congressional or **county race** in the last election, **it becomes established** for congressional districts or **for that county**."

Libertarian Party of Illinois v. Scholz, 872 F.3d 518, 521 (7th Cir. 2017).

Once a political party is established its candidates then enjoy various benefits including lower signature requirements, nomination of its candidates at a primary election as well as the election of its committeepersons, and the authority to fill vacancies at the general election. Article 7 of the Election Code, 10 ILCS 5/7-1, *et seq*. governs the ballot access requirements for established political party candidates[1] for nomination of Cook County Board members.

Section 7-2 of the Election Code, 10 ILCS 5/7-2, confirms that an established political party "is declared to be a political party within the meaning of this Article, within said county, and shall nominate all county officers in said county under the provisions hereof, and shall elect precinct, township, and ward committeepersons, as herein provided." Please see **Exhibit A**.

Section 7-4 of the Election Code, 10 ILCS 5/7-4, then confirms that "county office" also "includes the assessor and board of appeals and **county commissioners and president of county board of Cook County."** Please see **Exhibit A.**

The Election Code defines one equal set of rights for all established political parties – there is no "lesser class" of an established political party in the Election Code for an established party that has fewer rights than a "fully" established party.

Defendant, Clerk Yarbrough, through her employees, confirmed that the Libertarian Party of Illinois ("LPI) achieved established political party status within Cook County, IL by receiving over 5% of the vote at the last election. Please see Clerk's "General Information" attached to

1 Article 8 of the Election Code, 10 ILCS 5/8-1, *et seq*. governs nomination of established political party candidates for the General Assembly exclusively, and does not apply to the nomination of Cook County officers or committeepersons at the June 28, 2022 primary election.

Plaintiffs' Complaint as **Exhibit B**, and email from Clerk's staff attached as **Exhibits D** and **E**.

Defendant, Clerk Yarbrough, has willfully, intentionally, and erroneously denied ballot access to the Plaintiffs and deprived the Libertarian Party of its rights to nominate its candidates to the Cook County Board, of electing its committeepersons, and is anticipated to also deny nominations to fill vacancies.

B. Plaintiffs' core First Amendment and Fourteenth Amendment rights are being denied by the Clerk's interpretation and application of the Election Code.

The U.S. Supreme Court declared in *Reynolds v. Sims* that "[t]he right to vote freely for the candidate of one's choice is of the essence of a democratic society, and any restrictions on that right strike at the heart of representative government." *Reynolds v. Sims,* 377 U.S. 533, 555, 84 S.Ct. 1362 (1964).

The First and Fourteenth Amendments afford candidates vying for elected office, and their voting constituencies, the fundamental right to associate for political purposes and to participate in the electoral process. See, e.g., *Clingman v. Beaver,* 544 U.S. 581, 586 (2005); *Burdick v. Takushi*, 504 U.S. 428, 433 (1992); *Anderson v. Celebrezze*, 460 U.S. 780, 787-88 (1983); *Williams v. Rhodes*, 393 U.S. 23, 30 (1968). Ballot-access requirements that place more burdensome restrictions on certain types of candidates than on others implicate rights under the Equal Protection Clause as well. See *Williams v. Rhodes*, 393 U.S. 23, 30-31 (1968).

Defendant, Clerk Yarbrough, failed to define a procedure for Libertarian Party candidates to attain ballot access as members of the Cook County Board, and for township committeepersons. This has the appearance of a partisan act taken to protect or insulate the predominant party in Cook County, that was prohibited by the Supreme Court:

> Our U.S. Supreme Court has observed that interest in political stability 'does not permit a State to completely insulate the two-party system from minor parties' or independent candidates' competition and influence.

Timmons v. Twin Cities Area New Party, 520 U.S. 351, 366-87, 117 S.Ct. 1364 (1977).

In 1983 the Supreme Court reiterated the fundamental constitutional rights that were implicated by overly burdensome legislation, explained as follows:

> The impact of candidate eligibility requirements on voters implicates basic constitutional rights.[7] Writing for a unanimous Court in *NAACP v. Alabama ex rel. Patterson,* 357 U. S. 449, 460 (1958), Justice Harlan stated that it "is beyond debate that freedom to engage in association for the advancement of beliefs and ideas is an inseparable aspect of the 'liberty' assured by the Due Process Clause of the Fourteenth Amendment, which embraces freedom of speech." In our first review of Ohio's electoral scheme, *Williams v. Rhodes*, 393 U. S. 23, 30-31 (1968), this Court explained the interwoven strands of "liberty" affected by ballot access restrictions:
>
> > "In the present situation the state laws place burdens on two different, although overlapping, kinds of rights — 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."
>
> As we have repeatedly recognized, voters can assert their preferences only through candidates or parties or both. "It is to be expected that a voter hopes to find on the ballot a candidate who comes near to reflecting his policy preferences on contemporary issues." *Lubin v. Panish*, 415 U. S. 709, 716 (1974). The right to vote is "heavily burdened" if that vote may be cast only for major-party candidates at a time when other parties or other candidates are "clamoring for a place on the ballot." *Ibid*.; *Williams v. Rhodes*, supra, at 31. The exclusion of candidates also 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.

Anderson v. Celebrezze, 460 U.S. 780, 786-788 (1983).

The *Anderson* court, citing to the landmark case *Storer v. Brown* 415 U.S. 724 (1974), went on to explain a federal district court's process of evaluating challenged litigation as follows:

> Constitutional challenges to specific provisions of a State's election laws therefore cannot be resolved by any "litmus-paper test" that will separate valid from invalid restrictions. *Storer*, supra, at 730. Instead, a court must resolve such a challenge by an analytical process that parallels its work in ordinary litigation. It must first consider the character and magnitude of the asserted injury to the rights protected by the First and Fourteenth Amendments that the plaintiff seeks to vindicate. It then must identify and evaluate the precise interests put forward by the State as justifications for the burden imposed by its rule. 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 the plaintiff's rights. Only after weighing all these factors is the

> reviewing court in a position to decide whether the challenged provision is unconstitutional. See *Williams v. Rhodes*, supra, at 30-31; *Bullock v. Carter*, 405 U. S., at 142-143; *American Party of Texas v. White*, 415 U. S. 767, 780-781 (1974); *Illinois Elections Bd. v. Socialist Workers Party*, 440 U. S. 173, 183 (1979). The results of this evaluation will not be automatic; as we have recognized, there is "no substitute for the hard judgments that must be made." *Storer v. Brown*, supra, at 730.[10]

Anderson v. Celebrezze, 460 U.S. 780, 789-790 (1983).

A court's " 'primary concern is with the tendency of ballot access restrictions 'to limit the field of candidates from which voters might choose.' Therefore, '[i]n approaching candidate restrictions, it is essential to examine in a realistic light the extent and nature of their impact on voters.'" *Anderson*, 460 U.S. at 786. (Internal citation omitted.)

The Supreme Court has repeatedly observed that, "[h]istorically political figures outside the two major parties have been fertile sources of new ideas and new programs; many of their challenges to the *status quo* have in time made their way into the political mainstream." *Anderson*, 460 U.S. at 794; *Ill. Bd. of Elec. v. Socialist Workers Pty*, 440 U.S. 173, 185-86 (1979).

C. <u>Plaintiffs are in dire need of immediate preliminary injunctive relief.</u>

(i) Plaintiffs have no adequate remedy at law and will suffer irreparable harm if this honorable court does not grant them relief.

Plaintiffs seek to exercise their First Amendment right to associate as an established political party, to gather signatures for the candidates of their choice, and to vote for their candidates at the June 28, 2022 primary election. Petition circulation commenced on January 13, 2022, and the filing deadline for established political party candidate is March 14, 2022.

Plaintiffs have requested that Defendant, Clerk, provide to them the LPI's petitioning requirements, but Defendant has refused to provide ballot access procedures for LPI candidates for members of the Cook County Board and for township committeepersons, and refused to fully recognize the LPI as an established political party.

Consequently, Plaintiffs have no adequate remedy except to seek the requested injunctive

relief from this Court. See *Girl Scouts of Manitou v. Girl Scouts of America*, 549 F.3d 1079, 1095 (7th Cir. 2008) (a party has no adequate remedy at law where "traditional legal remedies, i.e., money damages, would be inadequate"); *American Civil Liberties Union of Il. v. Alvarez* ("ACLU of Il."), 679 F.3d 583, 589 (7th Cir. 2012) (in First Amendment cases, the "quantification of injury is difficult and damages are therefore not an adequate remedy")

Plaintiffs will undoubtedly suffer irreparable harm in the absence of injunctive relief. It is well settled that "the 'loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury.'" *ACLU of Il.*, 679 F.3d at 589 (quoting *Elrod v. Burns*, 427 U.S. 347, 373 (1976)). Plaintiffs are suffering such ongoing harm at present because the statutory petitioning period for established political party candidates started on January 13, 2022. However, due to the Clerk failure to recognize the LPI as being established for Cook County Board members and township committeepersons, the LPI is hobbled in its ability to gather signature petitions, and in its ability to promote its platform and grow the LPI.

"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) (quoting Meyer v. Grant, 486 U.S. 414, 422 (1988)). First Amendment protection is therefore "at its zenith" with respect to Plaintiffs' right to circulate petitions in support of their respective candidates. *Id*. Consequently, each day that the Clerk fails to recognize the LPI's established status continues to hamper and deny Plaintiffs their recognition and right to gather signatures and nominate the candidates of their choice, and they suffer irreparable harm and damage to their core First Amendment rights. See *Buckley*, 525 U.S. at 186; *Elrod*, 427 U.S. at 373. See also, *Eu v. San Francisco County Democratic Central Comm.,* 489 US 214, 223 (1989) (" the First Amendment 'has its fullest and most urgent application' to speech uttered during a campaign for political office" and "[b]arring political

parties from endorsing and opposing candidates not only burdens their freedom of speech but also infringes upon their freedom of association.")

Plaintiffs will suffer further injury to their First Amendment rights in the absence of relief because Plaintiffs' candidates for Cook County Board and committeepersons will be excluded from the June 28, 2022 primary, despite the LPI being recognized by the Clerk as an established party in Cook County.

As the Court of Appeals for the Seventh Circuit has explained:

> [* * *] the impact of candidate eligibility requirements on voters implicates basic constitutional rights. 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. Also, because voters can assert their preferences only through candidates or parties or both, . . . the right to vote is heavily burdened if that vote may be cast only for major-party candidates at a time when other parties or other candidates are clamoring for a place on the ballot.

Lee v. Keith, 463 F.3d 763, 768 (7th Cir. 2006) (citations, quotation marks and brackets omitted).

Accordingly, the Clerk's exclusion of Plaintiffs' Cook County Board member candidates from the June 28, 2022 primary election (and the anticipated denial of Plaintiffs' right to nominate candidates to fill vacancies in nominations for the general election) is causing ongoing and irreparable harm to Plaintiffs through the denial of voting, speech and associational rights – rights held by the Plaintiffs as a political party, as candidates, and as voters.

(ii) Clerk Yarbrough's refusal to define a procedure for ballot access for all Libertarian Party offices within the territorial boundaries of Cook County confirms a strong likelihood of success on the merits.

Clerk Yarbrough recognized that the LPI achieved established political party status within Cook County as defined in 10 ILCS 5/10-2 and 10 ILCS 5/7-2.

The territorial boundaries of Cook County have not been changed through redistricting, and remain static. Indeed, the Election Code expressly identifies "county" as one of six

categories of "territorial areas" or "political subdivisions" when defining an established political party. *See* 10 ILCS 5/10-2. The unit of government at issue is the Cook County Board which serves the entire territorial area of Cook County. That is, the Cook County Board does not serve an individual district – it serves the entire county, by a majority vote of the entire Board.

Furthermore, pursuant to Illinois law, the Plaintiffs' established party status exists under the Election Code for the entirety of Cook County, including but not limited to all of the Cook County Board districts. 10 ILCS 5/7-2, 7-4.

Defendant, Clerk Yarbrough's interpretation of the Election Code, as applied, creates a restriction upon the Plaintiffs' established party status that is contrary to the Election Code. The Clerk's action recognized that the LPI may nominate one member of the Cook County Board – its president – but then denied the right to nominate the remaining members of that same body.

Plaintiffs' right to nominate candidates for the Cook County Board is squarely addressed within the plain language 10 ILCS 5/7-4 which states that when a party "is hereby declared to be a political party within the meaning of this Article, **within said county**, and **shall nominate all county officers** in said county under the provisions hereof, and **shall elect** precinct, township, and ward committeepersons, as herein provided."

The definitions of "county office" and "county officer" are expressly defined in 10 ILCS 5/7-4(6), which states " **'County office' or 'County officer' also include** the assessor and board of appeals and **county commissioners and president of county board of Cook County . . . "**

Despite discussions with the Clerk's staff (Complaint Exh. D and E) seeking to obtain recognition of the Libertarian Party as an established political party for all offices and committeepersons, the Clerk has refused to do so, citing *Vestrup v. Du Page County Election Comm'n*, 335 Ill.App.3d 156, 779 N.E.2d 376, 377 (2nd Dist. 2002). Defendant's reliance upon

the *Vestrup* case is erroneous and misplaced[2], as well as contrary to the express provisions of 10 ILCS 5/10-2, 10 ILCS 5/7-2, 10 ILCS 5/7-4(6), as discussed further below.

When states fail to provide candidates and parties with a procedure by which they may qualify for the ballot, the United States Supreme Court and lower federal courts have not hesitated to remedy the defect by placing candidates and parties on the ballot by Court Order. In 1976, for instance, several states provided no procedure for independent candidates to qualify for the ballot. In each of these states, independent presidential candidate Eugene McCarthy sought relief in federal court, and without exception federal courts ordered that he be placed on the ballot[3]. As Justice Powell noted in *McCarthy v. Briscoe* the Supreme Court had followed the same procedure in 1968 when it ordered that several candidates who successfully challenged the constitutionality of Ohio's ballot access laws be placed on its ballot. See *McCarthy v. Briscoe*, *supra*, citing *Williams v. Rhodes*, 89 S.Ct. 1 (1968).

In *Williams*, the Supreme Court explained the rationale for federal courts to grant such relief as follws: the Constitution does not permit states to restrict access to the ballot in a manner that "favors two particular parties – the Republicans and the Democrats – and in effect tends to give them a complete monopoly." *Williams v. Rhodes,* 393 U.S. 23, 32 (1968)).

Plaintiffs similarly request that their candidates for Cook County Board members who are Plaintiffs herein be placed directly upon the Libertarian Party primary ballot by order of court.

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2 In *Preuter v. State Officers Electoral Bd.,* 334 Ill.App.3d 979 (1st Dist. 2002) the Illinois Appellate Court construed 10 ILCS 5/10-2 in relation to Libertarian Party candidates seeking ballot placement as state representatives for the 41st, 48th and 95th Representative Districts in Cook County at the same election as in *Vestrup*, supra. The *Preuter* court allowed the Libertarian Party's candidates to gain ballot access in Cook County based upon equitable estoppel. *Id.*

3 See *McCarthy v. Briscoe*, 429 U.S. 1317, 97 S.Ct. 10 (1976) (Powell, J. in Chambers) (placing McCarthy on Texas ballot) and related decisions of the Court of Appeals. See also *Libertarian Party of Illinois v. William J. Cadigan, et al.* No. 20-1961 (7th Cir. Aug. 20, 2020) (Court of Appeals affirmed preliminary injunction order entered by Hon. Rebecca R. Pallmeyer in case 20-cv-2112 which placed candidates directly upon the ballot by court order).

(iii) Defendants' actions do not pass strict Constitutional scrutiny.

Plaintiffs are also entitled to relief because the Clerk's interpretation of the Election Code, as applied, cannot withstand constitutional scrutiny under the Supreme Court's *Anderson-Burdick* framework. Under that analysis, a reviewing court must:

> [* * *] first consider the character and magnitude of the asserted injury to the rights protected by the First and Fourteenth Amendments that the plaintiff seeks to vindicate. It then must identify and evaluate the precise interests put forward by the State as justifications for the burden imposed by its rule. 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 the plaintiff's rights. Only after weighing all these factors is the reviewing court in a position to decide whether the challenged provision is unconstitutional.

Anderson, 460 U.S. at 789.

This framework establishes a "flexible standard," according to which "the rigorousness of our inquiry into the propriety of a state election law depends upon the extent to which a challenged restriction burdens First and Fourteenth Amendment rights." *Burdick*, 504 U.S. at 434. Under this standard, "reasonable, nondiscriminatory restrictions" are subject to less exacting review, whereas laws that imposes "severe" burdens are subject to strict scrutiny. See *id*. (citations omitted). But in every case, "However slight [the] burden may appear ... it must be justified by relevant and legitimate state interests sufficiently weighty to justify the limitation." *Crawford v. Marion County Election Bd.*, 128 S.Ct. 1610, 1616 (2008) (citation and quotation marks omitted). Defendants have no such legitimate state interest for their exclusion of LPI candidates from the ballot.

As the Seventh Circuit has explained, "[m]uch of the action takes place at the first stage of *Anderson's* balancing inquiry," because 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) (citing *Burdick*, 504 U.S. at 534).

In the matter presented to this Honorable Court the burden imposed by the Defendants

could not be more severe – complete denial of ballot access for nomination of members to the Cook County Board, and denial of the right to elects committeepersons. Without intervention of this Honorable Court, it is anticipated that the Defendants will also refuse certifications to fill vacancies at the general election from the LPI seeking to fill vacancies at the primary election.

The Seventh Circuit has held that such a "complete exclusion" constitutes a "severe" burden on the First and Fourteenth Amendment rights of the affected voters, candidates and parties. *Lee v. Keith*, 463 F.3d 763, 770 (7th Cir. 2006). Restrictions that 'severely' burden the exercise of constitutional rights must be narrowly focused and have a compelling state interest. *Lee*, 463 F.3d at 768 (quoting *Burdick*, 504 U.S. at 434).

The Clerk's decision to exclude LPI candidates severely burdens the Plaintiffs' exercise of their Constitutional rights. And there is no compelling state interest. Certainly, there is no ballot overcrowding or confusion on the Libertarian Party ballot, and no cost or inconvenience concerns since the Defendants will be overseeing a LPI primary election on June 28, 2022.

(iv) Balancing of harms weighs heavily in Plaintiffs' favor.

Plaintiffs are being denied ballot access, and Defendant Clerk's position also harms the growth and promotion of the Libertarian Party within Cook County. Despite the party receiving thousands of votes in the prior election, voters will be deprived of the opportunity to vote for Libertarian Party candidates to be their representatives at the Cook County Board, and deprived of the opportunity to hear Libertarian Party political views. The Libertarian Party will further be denied the opportunity that other established political parties enjoy, including promoting its platform for all elected offices at the primary election. Such promotion of a political party and its candidates is an invaluable opportunity to disseminate information about the Libertarian Party, and grow support.

The Supreme Court has expressly found that such irreparable harms justify granting the

relief that Plaintiffs request here. See, e.g., *Norman v. Reed*, 502 U.S. 279, 288-89 (1992); *Anderson*, 460 U.S. at 793-94; *Williams*, 393 U.S. at 30-31.

The Court's admonition in *Williams* speaks to grave injustice and harm that the Plaintiffs suffer through the Clerk's denial of their rights:

> The right to form a party for the advancement of political goals means little if a party can be kept off the election ballot and thus denied an equal opportunity to win votes. So also, the right to vote is heavily burdened if that vote may be cast only for one of two parties at a time when other parties are clamoring for a place on the ballot.

Williams, 393 U.S. at 31.

Similarly, balancing the harms with the requested relief confirms that Plaintiffs, James Humay, Jason Ross Decker, and Brandon Sizelove, should be placed upon the ballot. The Illinois legislature has already adopted a shortened 60 day circulation time for the June 28, 2022 primary election, which also coincides with Chicago's winter weather and poses a separate challenge to gathering signatures. The Clerk's decision to deny ballot access was made in January. The current deadline for filing nomination papers is March 14, 2022, and this matter may not be resolved on the merits prior to the filing deadline.

The Defendants will already by preparing and holding a contested primary election for the Libertarian Party, including printing ballots, programming voting machines, canvassing votes for Libertarian Party candidates, and otherwise administering a primary election. There is no added cost to print the names of Plaintiffs, Humay, Decker, and Sizelove, upon the primary ballot, nor others who may submit nomination papers by March 14, 2022.

The requested relief for the Clerk to revise and publicly disseminate her "General Information" disclosure is a nominal cost. Indeed, disseminating such information will also help candidates and voters obtain accurate and complete information, have greater choices at the ballot, and protect their rights to vote effectively.

(v) *Vestrup v. DuPage County Election Comm'n* is factually and legally distinguishable, and does not support the Clerk's decision to deny ballot access to the Libertarian Party.

Defendant, Clerk Yarbrough's reliance upon *Vestrup v. Du Page County Election Comm'n*, 335 Ill.App.3d 156, 779 N.E.2d 376, 377 (2nd Dist. 2002) is misplaced. In *Vestrup* the Libertarian Party had received 26% of the vote for its candidate for state representative for the 39th Representative District. *Id.* After redistricting, the 39th Representative District was numerically relocated to Cook County, and the territory of the former 39th Representative District was divided up into five Districts: 41, 42, 47, 48, and 95. *Id*.

Candidate Vestrup filed nomination papers as a candidate for state representative for the 47th District, to which an objection was filed claiming that the Libertarian Party was not an established political party in the remapped 47th Representative District. *Id.* Subsequently, the appellate court held that the Libertarian Party was not established in the remapped 47th Representative District because "the current District 47 could not have voted as a unit in the last election because the current District 47 did not exist in the last election, or, to be more precise, District 47's boundaries were different in the last election." *Id*. at 381.

The *Vestrup* appellate court discussed the definition of "territorial area" within 10 ILCS 5/10-2, and concluded "in our view this use of 'territorial area' merely was to underscore the necessity that the entire district or political subdivision voted as a unit in the last election for a party to qualify for the status of established political party in that district or political subdivision." *Id*. at 381.

Significantly, the *Vestrup* court did not analyze the applicability of Article 7 of the Election Code, but rather focused upon 10 ILCS 5/10-2 as the provision of the Election Code governing established party status. Article 8 of the Election Code governed the *Vestrup* candidacy but 10 ILCS 5/8-2 states only "The term 'political party' as used in this article shall

mean a political party which, at the next preceding election for governor, polled at least five per cent of the entire vote cast in the State' [* * *]." Section 8-2 of the Election Code, 10 ILCS 5/8-2, contains a narrower definition of established political party, as compared to the broader definition of 10 ILCS 5/10-2 in *pari materia* with 10 ILCS 5/7-2 and 10 ILCS 5/7-4(6).

The *Vestrup* decision is factually distinguishable since *Vestrup* did not address county-wide established party status, and is legally distinguishable since the *Vestrup* court did not address 10 ILCS 5/10-2 in *pari materia* with 10 ILCS 5/7-2 and 5/7-4(6).

(vi) The Requested Relief is in the Public Interest.

Preliminary relief will benefit the public because it will protect the First Amendment rights of Illinois voters to cast their votes effectively and to associate with candidates and parties they support. As the Seventh Circuit has repeatedly recognized "injunctions protecting First Amendment freedoms are always in the public interest." *ACLU of Il.*, 679 F.3d at 590 (quoting *Christian Legal Soc'y v. Walker*, 453 F.3d 853, 859 (7th Cir. 2006)). This factor therefore weighs in Plaintiffs' favor.

(vii) No Security is Required.

The Seventh Circuit has observed that security is not mandatory under Rule 65(c), and can be dispensed with in the discretion of the court. See *Scherr v. Volpe*, 466 F.2d 1027 (7th Cir. 1972); see also *Moltan Co. v. Eagle-Picher Industries, Inc.*, 55 F.3d 1171, 1176 (6th Cir. 1995). No security is needed in this case, as it threatens no financial harm to Defendants.

D. <u>Conclusion.</u>

Wherefore, Plaintiffs, for the foregoing reasons respectfully request entry of a preliminary injunction directing Defendant, Clerk Yarbrough and to the extent necessary for implementation within the boundaries of the City of Chicago, Defendant, Chicago Board of Election Commissioners, to fully recognize the Libertarian Party as an established political party

and further relief as shown on the proposed order attached as Exhibit A attached to their Amended Emergency Motion for Preliminary Injunction and/or Temporary Restraining Order.

Respectfully submitted:

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Certificate of Service

The undersigned an attorney, certifies under penalties of perjury that on February 7, 2022, he served the foregoing Memorandum upon the following persons via email delivery

James Nally, Clerk's attorney	james.nally@cookcountyil.gov
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Adam Lasker, CBEC attorney	ElectionAttorney@gmail.com
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/s/ Andrew Finko

EXHIBIT A

Selected Election Code Provisions

10 ILCS 5/10-2

Sec. 10-2. The term "political party", as hereinafter used in this Article 10, shall mean any "established political party", as hereinafter defined and shall also mean any political group which shall hereafter undertake to form an established political party in the manner provided for in this Article 10: [* * *]

A political party which, at the last general election for State and county officers, polled for its candidate for Governor more than 5% of the entire vote cast for Governor, is hereby declared to be an "established political party" as to the State and as to any district or political subdivision thereof.

A political party which, at the last election in any congressional district, legislative district, county, township, municipality or other political subdivision or district in the State, **polled more than 5% of the entire vote cast within such territorial area or political subdivision**, as the case may be, has voted as a unit for the election of officers to serve the respective territorial area of such district or political subdivision, **is hereby declared to be an "established political party" within the meaning of this Article as to such district or political subdivision.**

[* * *]

10 ILCS 5/7-2

Sec. 7-2. A political party, which at the general election for State and county officers then next preceding a primary, polled more than 5 per cent of the entire vote cast in the State, is hereby declared to be a political party within the State, and shall nominate all candidates provided for in this Article 7 under the provisions hereof, and shall elect precinct, township, ward, and State central committeepersons as herein provided.

A political party, which at the general election for State and county officers then next preceding a primary, cast more than 5 per cent of the entire vote cast within any congressional district, is hereby declared to be a political party within the meaning of this Article, within such congressional district, and shall nominate its candidate for Representative in Congress, under the provisions hereof. A political party, which at the general election for State and county officers then next preceding a primary, cast more than 5 per cent of the entire vote cast in any county, is hereby declared to be a political party within the meaning of this Article, **within said county, and shall nominate all county officers in said county under the provisions hereof, and shall elect precinct, township, and ward committeepersons, as herein provided.**

10 ILCS 5/7-4

Sec. 7-4. The following words and phrases in this Article 7 shall, unless the same be inconsistent with the context, be construed as follows:

[* * *]

6. The words "**county office**" or "**county officer**," include an office to be filled or an officer to be voted for, by the qualified electors of the entire county. "**County office**" or "**county officer**" also include the assessor and board of appeals and **county commissioners and president of county board of Cook County**, and county board members and the chair of the county board in counties subject to Division 2-3 of the Counties Code.