

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

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

**RESPONSE OF PROPOSED INTERVENORS ILLINOIS GREEN PARTY, ET AL.,
TO DEFENDANT COOK COUNTY CLERK’S OPPOSITION TO EMERGENCY
MOTION TO INTERVENE**

Now come the proposed intervenors, Illinois Green Party, et al., by their attorney, Scott K. Summers, who submits this Response of Proposed Intervenor Illinois Green Party, et al., to Defendant Cook County Clerk’s Response in Opposition to Emergency Motion to Intervene, and who respectfully states as follows:

INTRODUCTION

Pursuant to Federal Rules of Civil Procedure 24(a) and 24(b), the Proposed Intervenor are entitled, both permissively and of right, to intervene in the subject case. In that the protections afforded to them by the Illinois Election Code and the First and Fourteenth Amendments to the Constitution of the United States are wrongly being abridged by the Defendants, the Proposed Intervenor face immediate and irreparable harm in their quests for access to the ballot in the upcoming June 28, 2022 primary and

in the November 03, 2022 general election. A preliminary injunction is both proper and necessary in order to protect and preserve the rights of the Proposed Intervenors.

BACKGROUND

A brief timeline may be helpful. On February 01, 2022, this lawsuit was filed by the Libertarian Party of Illinois, et al.. On February 22, 2022, the Illinois Green Party, et al. (hereafter, “Green Party” or “Green” or “Greens”) sought to intervene pursuant to 24(a) and 24(b) of the Federal Rules of Civil Procedure. An emergency telephonic hearing was conducted the next day (February 23rd). At that time, the Libertarian Party was granted a preliminary injunction against the defendants. The Illinois Green Party, et al., as proposed intervenors, were given leave to file a proposed complaint for emergency declaratory and injunctive relief. They did so on February 25th. Subsequently, the defendant and the proposed intervenors duly filed memoranda in opposition and in support. A telephonic hearing on the proposed intervenors’ request is scheduled for March 16, 2022.

ARGUMENT

Pursuant to the Illinois election code, and by dint of their performance in the November 03, 2020 general election (i.e., three candidates for Commissioner each receiving more than 5% of the vote), the Illinois Green Party attained established party status within the boundaries of the Metropolitan Water Reclamation District of Greater Chicago (hereafter, “MWRDGC”).

In their *Defendant Cook County Clerk’s Response in Opposition to Emergency Motion to Intervene*, counsels allege inordinate delay in the Green filing of its request to intervene. Rather, the proposed intervenors’ motion is timely: prior to its filing, the court had entered no dispositive orders in the case. Apart from the defendants’ blithe (and unsubstantiated) assertion that the Greens somehow “should have known” about the suit (page 3), there appears to be absolutely nothing spread upon the record – in particular, from the plaintiffs – that would “...unduly delay or prejudice the adjudication of the original

parties' rights." (Rule 24(b)(3).) In short, there is ample time for the court to weigh the issues posited by the Greens without prejudice to any other party.

By way of mere conjecture, the defendants assert – incorrectly – that "...taking action was clearly not a priority for the Green Party." (Page 4.) It is, of course, axiomatic that a possible threat or injury first must be identified, and retention of counsel contemplated and discussed, before a legal action is undertaken. This process is not sudden; even in an emergency, it can take some modicum of time.

Defendants do not seem to grasp the totality of the primary-to-general-election process. "Significantly, Intervenors are not being denied ballot access instead (sic) candidates may file their petitions to be placed on the General Election ballot." (Page 4.) The threat of harm to the Greens is profound and immediate. For all that it is styled a *primary* election, the fact is that township committeepersons will be *elected outright* on June 28th. All other winning candidates will stand for the general election on November 3rd.

Defendants state vaguely that "...the County Clerk will suffer considerable prejudice should this Motion (to intervene) be granted." (Page 5.) Specificity and elaboration about the alleged harms that might be visited upon the clerk are sorely lacking.

The defendants assert that 42 U.S.C. 1983 and 1988(b) and 28 U.S.C. 2201 "...do not provide (the Greens) with an unconditional right to intervene." (Page 5.) Even if this were to be true (and the Greens contend that it is not; each of these statutes is predicated on constitutional provisions), the Greens have cognizable interests that are protectable as a matter of right. "All election laws necessarily implicate the First and Fourteenth Amendments." *Gonsalves v. New York State Bd. of Elections*, 974 F.Supp. 2d 191, 197 (E.D.N.Y. 2013)

By wrongfully withholding recognition in twenty-four (out of thirty) Cook County townships, the clerk is effectively denying complete and unfettered ballot access for the Greens. In doing so, the clerk deprives the Greens of their First Amendment rights of free speech and association and of their Fourteenth Amendment guarantees of due process and equal protection. If left unchallenged, the Greens will be foreclosed entirely from electing twenty-four township committeepersons on June 28th. The issue of Green committeepersons is not among those raised by the plaintiffs and defendants. Apart from the possibility of filing a separate lawsuit (which would be identical in most respects to the one before the court), there is no way other than intervention for the Greens to be heard.

Defendant clerk Yarbrough acknowledges that the Illinois Green Party is indeed established with respect to the MWRDGC's Commissioner seats, all of which are elected at large. Of the thirty townships, however, she recognizes as established only six of them – specifically, the six in which Green township committeepersons were elected in 2020. She deems the other twenty-four as not established due to vacancy and, accordingly, not open for petitioning and election.

The nub of the issue is this. The Illinois Green Party asserts that once a governmental body is deemed established as to any political party, that recognition extends in umbrella fashion to *all* elected offices within the jurisdiction. The defendant clerk takes an inopposite view about the Greens: established party status is to be conferred only on an office-by-office basis. This, then, is a “use it or lose it” strategy. If the Greens were to elect, say, four township committeepersons during this election cycle rather than the current six that are recognized based on 2020 results, then only those four would, in future elections, continue to be recognized.

In effect, the clerk, for her own reasons, shuns the umbrella view with respect to the Illinois Green Party. Her scheme to hamper and hobble and harass the Greens for political gain is to extend

established party status to them only on a granular basis – indeed, one in which she picks and chooses among the grains.

Some credence to the sought-after granular effect may be seen in the clerk's Exhibit 2, a listing of sixty-three precincts that lie within Cook County but outside the boundaries of the MWRDGC. The Greens stipulate that the reach of the MWRDGC extends only partially into seven Cook County townships: Barrington, Palatine, Hanover, Bremen, Thornton, Rich, and Bloom. Would the clerk further compromise the established party status of the Greens in those seven townships by either (1) denying it altogether or (2) devolving recognition to the *precinct* level?

In other words, does the clerk seek to frustrate the Greens by edging them into organizing these seven townships only partially, i.e., solely by precincts lying within the MWRDGC? A plain reading of 10 ILCS 5/7-8(b) renders this prospect moot:

Each candidate for township committeeperson must be a resident of and in the township **or part of a township**...and in which township **or part of a township** he seeks to be elected township committeeperson. (Emphasis added.)

Accordingly, the Greens, as an established party, are entitled to elect township committeepersons in all thirty Cook County townships, irrespective of the fact (by stipulation) that seven of those townships lie only partially within the MWRDGC. The intimation of Defendant's Exhibit 2 that the Greens may have to organize those townships by precinct becomes irrelevant: 10 ILCS 5/7-8(b) speaks only of township committeepersons, and omits precinct functions and functionaries.

Taken together, the clerk's granular approaches to established party recognition of the Greens amount to insidious and deliberate attempts to weaken the party through balkanization and forced attrition. If

the clerk's practices were allowed to continue, they would, over time, render the Greens completely irrelevant as an electoral force.

The clerk's actions, then, represent direct assaults on the Greens' Fourteenth Amendment rights to due process and equal protection. As demonstrated in the Memorandum of Law tendered previously by the proposed intervenors, township committee positions for other established parties occasionally go entirely uncontested: no candidates are fielded and no votes are cast (not even write-ins). Yet the Defendants continue to recognize those townships as established in future elections for political parties other than the Greens.

CONCLUSION

- The First and Fourteenth Amendment rights of the proposed intervenors are being abridged, compromised, and denied by the Cook County Clerk through misinterpretation and misapplication of the Illinois Election Code (10 ILCS 5/1-1 et seq.)
- The proposed intervenors have no adequate remedy at law and will suffer irreparable harm if this Court does not grant relief, first by way of leave to intervene and second, by way of preliminary injunction or other action.
- A balancing of harms weighs heavily in favor of the proposed intervenors.

Respectfully submitted,

/s/ Scott K. Summers

Scott K. Summers

CERTIFICATE OF SERVICE

The undersigned, an attorney, certifies that on March 14, 2022, he caused to be filed through the Court's CM/ECF system the foregoing document, a copy of which will be electronically mailed to the parties of record.

/s/ Scott K. Summers
Scott K. Summers

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March 14, 2022

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DRAFT ORDER

This matter coming on to be heard this 16th day of March, 2022 for telephonic hearing on the Proposed Intervenor's Proposed Verified Intervening Complaint for Emergency Declaratory and Injunctive Relief for preliminary injunction and/or temporary restraining order, the parties having submitted their respective memoranda and presented oral argument, due notice given, and the Court being fully advised in the premises;

IT IS ORDERED:

1. The court finds that it has subject matter jurisdiction and personal jurisdiction over this matter, and makes the following findings of facts and applications of law:

(a) The proposed intervenors, Illinois Green Party, et al., meet the criteria established by Federal Rule of Civil Procedure 24(a) for intervention in the captioned matter as a matter of right *(and/or meet the criteria established by Federal Rule of Civil Procedure 24(b) to intercede permissively)* and, accordingly, are granted standing as Intervenors herein.

(b) Within the territorial boundaries of the Metropolitan Water District of Greater Chicago (“MWRDGC”), the Illinois Green Party attained established political party status through application of the Illinois Election Code, 10 ILCS 5/10-2, when their three candidates for MWRDGC Commissioner each received more than 5% of the vote at the last general election held on November 3, 2020;

(c) Defendant, Cook County Clerk Karen Yarbrough, has acknowledged and recognized that the Illinois Green Party is an established party within the boundaries of the MWRDGC, but only for the purposes of nominating (i) MWRDGC Commissioners and (ii) township committeepersons in six (out of the thirty) townships lying either completely or partially within the boundaries of the MWRDGC. **Fn1**

(c) Based upon application of the Illinois Election Code, 10 ILCS 5/10-2, 10 ILCS 5/7-2, and 10 ILCS 5/7-4(6), Intervenors are likely to prevail on their assertions that the Illinois Green Party is a duly established political party within the boundaries of the MWRDGC for the purposes of (i) nominating MWRDGC Commissioners; (ii) nominating township committeepersons in all thirty (as differentiated from the Defendants’ previously acknowledged six) Cook County townships lying either completely or partially within the boundaries of the MWRDGC and (iii) electing Illinois Green Party township committeepersons at the June 28, 2022 primary election;

(d) Intervenor has no adequate remedy at law since Defendant, Cook County Clerk Yarbrough, is currently denying their First Amendment rights to associate as a political party, to nominate candidates of their choice, to promote the political party and its platform for elected offices, and to vote for all candidates and committeepersons of their choice at the June 28, 2022 primary election; further, that the clerk is compromising the Fourteenth Amendment rights of the Illinois Green Party and its candidates to due process and equal protection, in that political parties established under the Illinois Election Code are treated by the clerk in disparate fashions with respect to township committeepersons.

(e) Since the Defendants are already preparing for a primary election, and the cost associated with implementing the relief requested in Intervenor's complaint is negligible, and other good cause exists to waive posting bond, no bond will be required.

2. Based upon (a) the circumstances and facts set forth in the Intervenor's Proposed Verified Intervenor Complaint for Emergency Declaratory and Injunctive Relief and (b) for the reasons contained in the parties' briefs and as stated on the record, a preliminary injunction is proper and necessary to preserve the rights of the Intervenor, and their motion is granted.

3. Defendant, Karen Yarbrough, in her capacity as the Cook County Clerk, is directed as follows:

(a) to amend again her public "Primary Election General Information" disclosure (previously amended on February 23, 2022) to identify the Illinois Green Party as an established political party for all elective MWRDGC offices, including (i) Commissioners (elected at large) and (ii) township committeepersons in all thirty (not just six) of the townships lying entirely or partially within the corporate boundaries of the MWRDGC;

(b) to prominently notify the public at Clerk Yarbrough's website and at all physical office locations of the aforementioned additions to the amended "General Information" disclosure;

(c) Upon receipt of the requisite number of signatures for established party candidates, to accept the nomination papers of any Illinois Green Party candidates seeking election as township committeepersons only (specifically, those in any and all of the aforementioned twenty-four Cook County townships previously omitted by the Clerk) and to place their names on the June 28, 2022 primary election ballot.

(d) to extend the filing deadline for Illinois Green Party candidates for township committeepersons (only) in the aforementioned twenty-four previously omitted townships for _____ days following the date of the entry of this order, i.e., until the end of the Clerk's business hours on March _____, 2022.

(e) to commence all preparations for an Illinois Green Party primary election to be held on June 28, 2022, to include candidates for (i) MWRDGC commissioners and (ii) township committeepersons.

(f) in accordance with the Illinois Election Code, to accept, subsequent to the June 28, 2022 primary election, certifications from the Illinois Green Party to fill vacancies in nomination that occur within the boundaries of the MWRDGC for the November 8, 2022 general election.

4. The court retains jurisdiction to enforce this order, and to enter further relief as necessary; further,

this order shall remain in effect until further order.

So ordered.

Honorable Robert W. Gettleman

Date: March _____, 2022

Fn1: The six Cook County townships already designated as established by Defendant Yarbrough are: Berwyn, Bremen, Oak Park, Rich, River Forest, and Worth. The twenty-four townships previously omitted by Yarbrough and subject to this order are: Barrington, Bloom, Calumet, Cicero, Elk Grove, Evanston, Hanover, Lemont, Leyden, Lyons, Maine, New Trier, Niles, Northfield, Norwood Park, Orland, Palatine, Palos, Proviso, Riverside, Schaumburg, Stickney, Thornton, and Wheeling.

Prepared by:

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