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

Jan Kowalski and Ziff Sistrunk,	)	
	)	
Plaintiffs,	)	
	)	16 cv 1891
v.	)	Judge John W. Darrah
Cook County Officers Electoral Board, *et al.*,	)	
	)	
	)	
Defendants.	)	

DEFENDANTS' MOTION FOR LEAVE TO FILE DEFENDANTS' MOTION TO DISMISS PLAINTIFFS' AMENDED COMPLAINT

Defendants, Cook County Officers' Electoral Board ("CCOEB"), David Orr, in his official capacity as Cook County Clerk ("Clerk Orr"), Anita Alvarez, in her official capacity as Cook County State's Attorney and Member, and Dorothy Brown, in her official capacity as Clerk of the Circuit Court of Cook County and Member, by their attorney ANITA ALVAREZ, State's Attorney of Cook County, through her assistant, Marie D. Spicuzza, seeks leave to file Defendants' Motion to Dismiss Plaintiffs' Amended Complaint and states:

1. On March 21, 2016 Defendants filed a Motion to Extend Time to Answer, Motion to Dismiss or Other Responsive Pleading.

2. The above Motion was originally noticed for March 25, 2016 and re-noticed for April 5, 2016.

3. The undersigned counsel was unable to complete the attached Motion by the due date of March 22, 2016.

4. Defendants seek leave of court to file the attached Defendants' Motion to Dismiss Plaintiffs' Amended Complaint.

WHEREFORE, Defendants request that this Honorable Court grant leave to file the

attached Defendants' Motion to Dismiss Plaintiffs' Amended Complaint.

Respectfully submitted,
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BACKGROUND

Plaintiff Ms. Kowalski was removed from the March 15, 2016 Primary Election ballot for the office of the Recorder of Deeds by the CCOEB after a signature check "registration record examination" determined that Ms. Kowalski's nomination petition lacked a sufficient number of valid signatures. (Complaint at ¶ 31.) Subsequently, Ms. Kowalski failed to meet the deadline under CCOEB Rule 8 to contest the results of a petition signature check. (Complaint at ¶¶ 35-37.) Plaintiff Mr. Sistrunk is an African American voter who signed Ms. Kowalski's nomination

petition. (Complaint at ¶ 4.) (In Illinois, a potential candidate seeks a place on the ballot by filing a nomination petition containing, *inter alia*, sheets of signatures of registered voters. Nearly all candidacy challenges are disputes over whether the petition has a sufficient number of valid signatures.) Two state appellate court appeals by Ms. Kowalski, 16-0217 and 16-0528, and the instant Amended Complaint ("Complaint") followed. The instant Complaint alleges three claims against the CCOEB and its Members: a civil rights violation under 42 U.S.C. §§ 1983 and 1985, a violation of the Voting Rights Act of 1965 and a violation of the Racketeer Influenced and Corrupt Organizations Act ("RICO") under 18 U.S.C. § 1962(c). The CCOEB and its Members move to dismiss all claims pursuant to Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6).

STATEMENT OF RELEVANT FACTS

On February 16, 2016, Plaintiffs filed their Complaint. Plaintiffs re-allege the same facts already ruled upon by the Illinois Appellate Court in case nos. 16-0217 and 16-0528 (Complaint at ¶¶ 16-19, 24-50, attached Amended Complaint in 16 COEL 1 & CM/ECF Document #s 24 & 33 at Exs. 1.) As claims related to facts already ruled upon by the Illinois Appellate Court are barred by standing and *res judicata* as argued below, they are not recited herein. New facts alleged in the instant case by Plaintiffs include: the CCOEB invalidated 8,600 of Ms. Kowalski's signers, 95% of whom are African-American voters, Mr. Sistrunk's signature was disallowed by the CCOEB, Mr. Sistrunk's signature was not located in the computerized voting records maintained by the CCOEB, Mr. Sistrunk's signature was located in the computerized voting records maintained by the City of Chicago Board of Election. (Complaint at ¶¶ 20-23.)

ARGUMENT

I. Plaintiffs Lack Standing to Bring a First and Fourteenth Amendment Challenges to CCOEB Decision.

A. Standard for 12(b)(1) Motions to Dismiss.

A motion to dismiss for lack of Article III standing is considered under Rule 12(b)(1). *Muehlbauer v. General Motors Corp.*, 431 F. Supp. 2d 847, 865 (N.D. Ill. 2006). This Court may properly look beyond the jurisdictional allegations of the complaint and view whatever evidence has been submitted on the issue to determine whether subject matter jurisdiction exists. *Capitol Leasing Co. v. F.D.I.C.*, 999 F.2d 188, 191 (7th Cir. 1993). Plaintiff bears the burden of proof as to standing. *Apex Digital, Inc. v. Sears, Roebuck & Co.*, 572 F.3d 440, 443 (7th Cir. 2009). "Under Article III of the Constitution, federal courts may adjudicate only actual, ongoing cases or controversies." *Lewis v. Continental Bank Corp.*, 494 U.S. 472, 477 (1990). Abstract injury is not enough to confer Article III standing. *City of Los Angeles v. Lyons*, 461 U.S. 95, 101-02 (1983).

B. Plaintiffs have failed to establish Article III standing.

From the face of Plaintiffs' Complaint and the documents referenced therein, it is apparent that Plaintiffs have failed to meet its burden to establish standing for its First and Fourteenth Amendment claims. "Standing ensures that the parties have a vested interest in the case and guarantees that the court only adjudicate 'cases and controversies.'" *Cabral v. City of Evansville*, 759 F.3d 639, 641 (7th Cir. 2014). In *Lujan v. Defenders of Wildlife*, 504 U.S. 555 (1992), the United States Supreme Court recognized "the irreducible constitutional minimum of standing" as the following three elements:

1. the plaintiff must have suffered an injury in fact, which is the invasion of a legally protected interest that is concrete and particularized and actual or imminent;
2. a causal connection exists between the injury and the challenged conduct; and
3. the alleged injury is likely to be redressed by a favorable decision.

Id. at 560-61; *see also Summers v. Earth Island Inst.*, 555 U.S. 488, 493 (2009). Plaintiff fails to satisfy all three elements.

As to the first element, there has been no injury in fact to a legally protected interest of Plaintiffs. The alleged injury is a violation of First and Fourteenth Amendment rights by unconstitutionally implementing or executing a policy, custom, usage, regulation, rule or decision promulgated by the CCOEB. (Complaint ¶¶ at 52-65.) Plaintiffs have not suffered any injury as the Illinois Appellate Court concluded in its Orders in case numbers 16-0217 and 16-0528, nor can she establish that a causal connection exists.

Plaintiffs do not explain what First or Fourteenth Amendment rights have been violated. Plaintiffs allege that the political climate, custom and usage disenfranchised 8,500 voters from Ms. Kowalski's nominating petition. However, if the voters were disenfranchised, it was by Ms. Kowalski's failure to avail herself of her due process remedies to appeal the alleged disenfranchisement. While Mr. Sistrunk's signature is alleged to have been disallowed by the CCOEB and not in the CCOEB computerized voter registration database, he was in the City computerized database. No free speech or due process violations are properly alleged because both plaintiffs were able to participate in the nomination process. Mr. Sistrunk participated by signing Ms. Kowalski's nomination papers and Ms. Kowalski participated, through counsel, in the signature check "registration record examination" and by having the procedural right to appeal the disallowance of Mr. Sistrunk's and any other disallowed signature. Absent a cognizable First or Fourteenth Amendment injury, Plaintiffs lack standing to bring this suit.

With respect to the second element, there is no causal connection between the injury and the denial of Ms. Kowalski's Motion for Extension of Time to File her Rule 8 challenge to the signature check "registration record examination." Again, Ms. Kowalski's actions in failing to

file a timely Rule 8 challenge caused her removal from the ballot and her inability to challenge the disallowance of Mr. Sistrunk's signature. Any injury suffered by either of the Plaintiffs was caused by Ms. Kowalski's own actions in failing to timely file a challenge to the signature check "registration record examination." As the Supreme Court has observed, "The injury in fact test requires more than an injury to a cognizable interest. It requires that the party seeking review be himself among the injured." *Lujan*, 504 U.S. at 563. Plaintiffs cannot establish the causation element for standing.

Third, Plaintiffs also failed to plead how their claimed injury would be redressed by a decision in its favor. As the Supreme Court has cautioned, standing requires that such redress must be "likely" and not "speculative." *Lujan*, 405 U.S. at 561. "The relevant inquiry is whether . . . the plaintiff has shown an injury to himself that is likely to be redressed by a favorable decision." *Simon v. E. Ky. Welfare Rights Org.*, 426 U.S. 26, 38 (1976). As this Court has already ruled in denying Plaintiffs' request for injunctive relief, they did not demonstrate a likelihood of success on the merits. (*See* Memorandum Opinion and Order 7, CM/ECF Document #29.) Plaintiffs have not plead how their claimed injury would be redressed by a decision in their favor. In the absence of such likelihood, Plaintiffs lacks standing.

Further, Plaintiffs do not have standing under Section 2 of the Voting Rights Act of 1965. An unsuccessful candidate in primary for President of Board of Alderman did not have standing to sue for alleged actions of Board of Election Commissioners under Voting Rights Act (former 42 USCS §§ 1973 *et seq.*), since the purpose of Act is to protect minority voters rather than to give unsuccessful candidates federal forum to challenge elections. *Roberts v. Wamser* 883 F.2d 617 (8th Cir. 1989). Plaintiff's claims under Voting Rights Act, former 42 USCS § 1973, failed as matter of law where plaintiff, as unsuccessful candidate attempting to challenge election

results, lacked standing and did not otherwise qualify as "aggrieved person" under Act. *White-Battle v. Democratic Party* 323 F. Supp. 2d 696, (E.D. Va. 2004).

B. Plaintiffs' Claims Are Barred By The Eleventh Amendment.

The Eleventh Amendment prohibits federal courts from deciding suits for damages brought by private litigants against states or their agencies, and that prohibition extends to state officials acting in their official capacities. *Kentucky v. Graham*, 473 U.S. 159, 165 (1985); *Garcia v. City of Chicago*, 24 F.3d 966, 969 (7th Cir. 1994). The Eleventh Amendment also prohibits federal courts from hearing pendent state claims for damages against state officers who are sued in their official capacities. *See Pennhurst State School & Hospital v. Halderman*, 465 U.S. 89, 106 (1984). (Respondent, a resident of petitioner Pennhurst State School and Hospital, a Pennsylvania institution for the care of the disabled, brought a class action in Federal District Court against Pennhurst, certain of its officials, the Pennsylvania Department of Public Welfare, and various state and county officials (also petitioners). It was alleged that conditions at Pennhurst violated various federal constitutional and statutory rights of the class members as well as their rights under the Pennsylvania Mental Health and Mental Retardation Act of 1966. The Eleventh Amendment prohibited the District Court from ordering state officials to conform their conduct to state law.) Under Illinois law, the CCOEB and its members are state officials and, therefore, all of Plaintiffs claims against CCOEB and its Members in their official capacity are barred by the Eleventh Amendment.

Under the language of the Illinois Constitution, the Clerk of the Circuit Court is a nonjudicial member of the judicial branch of State government, and not a county officer. *See* ILL. CONST. (1970) art. VI, § 18; *Drury v. County of McLean*, 89 Ill. 2d 417, 420, 424 (Ill. 1982); *County of Kane v. Carlson*, 116 Ill. 2d 186, 200 (1987). Consequently, suits against the

Clerk in her official capacity are barred by the Eleventh Amendment. *Farrar v. Glantz*, 2000 U.S. Dist. LEXIS 6499, ** 8-10 (N.D. Ill. May 10, 2000) (Norgle, J.) ("Because the Clerk of the Court is a member of state government and not the local government, Eleventh Amendment immunity is triggered.").

D. Plaintiffs' Claims are Barred by *Res Judicata* Because the Identical Claims WereRaised in State Court.

Under the doctrine of *res judicata*, a final judgment on the merits rendered by a court of competent jurisdiction acts as a bar to subsequent suit between the parties involving the same cause of action. *River Park, Inc. v. City of Highland Park*, 184 Ill. 2d 290, 302 (1998). The Supreme Court has ruled that "a federal court must give the same preclusive effect to a state-court judgment as another court of that State would give." *Parsons Steel, Inc. v. First Ala. Bank*, 474 U.S. 518, 523 (1986) (applying the Full Faith and Credit Act, 28 U.S.C. § 1738). Therefore, to determine that a state-court judgment precludes a case filed in federal court: (1) *res judicata* must apply under state law; and (2) the defendant must have had an opportunity to fully and fairly litigate the federal claims in state court. *Kremer v. Chem. Constr. Corp.*, 456 U.S. 461, 481-82 (1982); *Garcia v. Vill. of Mount Prospect*, 360 F.3d 630, 634-35 (7th Cir. 2004).

Thus, this Court needs to determine whether *res judicata* would apply under state law. Under Illinois law, *res judicata* applies when: "(1) there was a final judgment on the merits rendered by a court of competent jurisdiction, (2) there is an identity of cause of action, and (3) there is an identity of parties or their privies." *River Park, Inc.*, 184 Ill. 2d at 302. "[T]he doctrine of *res judicata* extends not only to every matter that was actually determined in the prior suit but to every other matter that might have been raised and determined in it." *Girot v. Municipal Officers Electoral Bd.*, 2006 U.S. Dist. LEXIS 1381 (N.D. Ill. 2006) (Plaintiff restored to ballot in state court barred by *res judicata* from subsequent §

1983 claim); *Torcasso v. Standard Outdoor Sales, Inc.*, 157 Ill. 2d 484 (1993); *see also Aaron v. Mahl*, 550 F.3d 659, 664 (7th Cir. 2008) ("The doctrine of "*[r]es judicata* bars not only those issues actually decided in the prior suit, but all other issues which could have been brought.") The principle underlying *res judicata*—or claim preclusion—is to minimize "the expense and vexation attending multiple lawsuits, conserve[] judicial resources, and foster[] reliance on judicial action by minimizing the possibility of inconsistent decisions." *Montana v. United States*, 440 U.S. 147, 153-54 (1979).

Ms. Kowalski's claims in the instant lawsuit were raised in the Cook County Circuit Court and were voluntarily dismissed. As Ms. Kowalski could have amended her complaint after these counts were stricken and proceeded in state court, the doctrine of *res judicata* precludes her raising the identical claim in federal court. *Res judicata* prevents Plaintiffs from proceeding on the same claims in multiple lawsuits both in the instant lawsuit, previously in Cook County Circuit Court and the Illinois Appellate Court, and raises both forum shopping and the possibility of inconsistent decisions. *See Torcasso v. Standard Outdoor Sales, Inc.*, 157 Ill. 2d 484 (1993); *see also Aaron v. Mahl*, 550 F.3d 659, 664 (7th Cir. 2008); *Montana v. United States*, 440 U.S. 147, 153-54 (1979).

II. Defendants are Entitled to Qualified Immunity With Respect to the CCOEB Decision.

Qualified immunity "protects government officials 'from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known.'" *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982). The central purpose of affording public officials qualified immunity from suit is to protect them "from undue interference with their duties and from potentially disabling threats of liability." *Id.* at 806. "The qualified immunity doctrine recognizes that officials can act without

fear of harassing litigation only if they reasonably can anticipate when their conduct may give rise to liability for damages and only if unjustified lawsuits are quickly terminated." *Davis v. Scherer*, 468 U.S. 183, 195 (1984), citing *Harlow*, 457 U.S. at 814, 818-819. "Higher level executives who enjoy only qualified immunity, routinely make close decisions in the exercise of the broad authority that necessarily is delegated to them." *Id.* Such officials are subject to a plethora of rules, "often so voluminous, ambiguous, and contradictory, and in such flux that officials can only comply with or enforce them selectively. In these circumstances, officials should not err always on the side of caution." *Id.*

Analysis of whether qualified immunity applies requires a two-step inquiry. First, viewing the facts in the light most favorable to the plaintiff, the Court must determine whether the official violated a constitutional right. *Tun v. Whitticker*, 398 F.3d 899, 901-02 (7th Cir. 2005). If so, the Court must determine whether that right was clearly established at the time of the violation. *Id.*

As argued in more detail in below and incorporated herein, the CCOEB did not violate Plaintiffs First and Fourteenth Amendment rights because Plaintiffs were not denied free speech or their due process rights by the CCOEB. Plaintiffs cannot show that their First or Fourteenth Amendment rights were violated. Therefore, the CCOEB and its Members are entitled to qualified immunity for such actions.

III. PLAINTIFF FAILS TO STATE A CLAIM FOR RELIEF.

A. Standard on a 12(b)(6) motion to dismiss.

Under Rule 12(b)(6), dismissal is proper "if the complaint fails to set forth sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 129 S. Ct. 1937, 1949 (2009) (quoting *Bell Atlantic v. Twombley*, 550 U. S. 544, 555

(2007)). The Court must accept as true all of plaintiff's well-pleaded factual allegations, as well as all reasonable inferences, but "naked assertions" devoid of further "factual enhancement" are not sufficient. *Iqbal* at 1949, quoting *Bell Atlantic*, 550 U.S. at 557.

Plaintiffs' Complaint does not present a plausible case that the CCOEB violated 42 U.S.C. §§ 1983 and 1985, the Voting Rights Act of 1965 or RICO.

B. Plaintiffs Have Failed to State a Cause of Action Under Section 2 of the Voting Rights Act of 1965.

Plaintiffs have failed to state a cause of action under Section 2 of the Voting Rights Act of 1965 ("Voting Rights Act") because there is no allegation of any voting procedure or practice resulting in a denial of or abridgement of the right to vote on account of race or color. 42 U.S.C. § 1973(2). Even accepting all of Plaintiffs' allegations as true, there is no allegation that any of the disallowed African-American signatures on the nomination petition were disallowed because of their race or color. The Voting Rights Act does not protect Ms. Kowalski's right to be on the ballot or Mr. Sistrunk's right to vote for a candidate removed from the ballot for failure to follow the CCOEB Rules of Procedure to contest the results of a petition signature check. Secondly, Plaintiffs have failed to allege that any failure of the CCOEB to follow its own procedural rules resulted in a denial of the right to vote because of the race or color of either of the Plaintiffs, or that any of the disallowed African-American signatures on the nomination petition were disallowed because of their race or color. Nor does Plaintiffs' allegation that Mr. Sistrunk's signature was not in the Cook County computerized system state a cause of action under the Voting Rights Act, because Plaintiffs next allegation is that his signature was located in the City of Chicago Board of Elections computerized system. Therefore, Plaintiffs have failed to state a cause of action under the Voting Rights Act and this count should be dismissed with prejudice.

C. Plaintiffs Have Failed to State a Cause of Action Under 42 U.S.C. §§ 1983 and 1985.

As set out in the Complaint, the §§1983 and 1985 Counts rests on the denial of Plaintiff's Rule 8 Motion. As set out above, Plaintiff's motion was denied because it failed to meet the filing deadline rules imposed on all parties before the CCOEB. Plaintiff twice attempted to convince the Hearing Officer that her lateness should be excused, but she could not produce a legally-cognizable basis for him to do so. Merely enforcing a neutral, universally-applied procedural rule does not rise to the level of a §1983 violation. Plaintiff's other possible §1983 basis is the argument that the CCOEB was improperly constituted because the elected office holders who ex officio make up the Board sent designees to exercise their powers. This argument is barred by *res judicata* as discussed above in Section I.D.

D. Plaintiffs have failed to show a valid due process right was violated.

Section 1983 does not provide a cause of action for every improper or wrongful deprivation of liberty by a state. *See Lundblade v. Franzen*, 631 F. Supp. 214, 217 (N.D. Ill. 1986). Only if other procedural safeguards, including any safeguards provided by state law, are inadequate may there be a valid Section 1983 cause of action. *See Parratt v. Taylor*, 451 U.S. 527, 537 (1981), *overruled on other grounds, FEC v. Wis. Right to Life, Inc.*, 551 U.S. 449 (2007). In this case, judicial review under the Illinois Election Code provides an adequate procedural safeguard for a candidate who has been removed from the ballot. *See Toney-El v. Franzen*, 777 F.2d 1224, 1228 (7th Cir. 1985).

In *Thompson v. Sheahan*, 2001 U.S. Dist. LEXIS 2207 (N.D. Ill. Feb. 27, 2001) (Castillo, J.), the plaintiff was found guilty of a misdemeanor and sentenced to Time Considered Served. *Id.* at ** 2-3. The plaintiff was then returned to the Cook County Jail for processing before his release. *Id.* Upon his release, the plaintiff filed suit against the Cook County Sheriff alleging

violations of the Eighth and Fourteenth Amendments under 42 U.S.C. § 1983 for the alleged excessive fourteen-hour period that elapsed between the time the court authorized his release and* the time he actually was released. *Id.* at * 3. The defendants filed a motion to dismiss both of these counts and the motion was granted. *Id.* at ** 6-8. The court ruled that a § 1983 action was appropriate only if other procedural safeguards, including those found under state law, are not adequate. *Id.* Because the Illinois state law tort of false imprisonment was available to the plaintiff in *Thompson*, the court held that both claims brought under § 1983 must be dismissed. *Id.*; *see also Turner v. Godinez*, 2012 U.S. Dist. LEXIS 41307, at * 3 (N.D. Ill. Mar. 26, 2012) (Aspen. J.). In this case, Plaintiff has alleged a claim under the First and Fourteenth Amendment for the CCOEB unconstitutionally implementing or executing a policy, custom, usage, regulation, rule or decision promulgated by the CCOEB. (Complaint at ¶ 53.) The *Thompson* rationale is equally applicable here: Plaintiff's claim is barred because of the availability of a remedy under state law, specifically judicial review under the Illinois Election Code, of which Ms. Kowalski availed herself. (*See* CM/ECF Document #s 24 & 33 at Exs. 1.)

Even when viewing the Complaint in a light most favorable to Plaintiffs and accepting Plaintiffs' allegations as true, the CCOEB's conduct is not "so brutal and offensive that it does not comport with traditional ideas of fair play and decency." *Breithaupt v. Abram*, 352 U.S. 432, 435 (1957). The CCOEB's conduct does not shock the conscience, and therefore, Plaintiffs have failed to state a substantive due process violation, and the substantive due process claim should be dismissed.

E. Plaintiffs' RICO Claim Fails As A Matter Of Law.

Count III sets forth RICO claims against Defendants. Plaintiffs seek exemplary damages from Defendants pursuant to 18 U.S.C. §1964(c). (Complaint at ¶ 74.) As an initial matter, neither

the CCOEB, nor its Members can be held liable for damages under 18 U.S.C. §1964(c). *Pelfresne v. Village of Rosemont*, 22 F. Supp.2d 756, 761 (N.D. Ill. 1998); *Lancaster Community Hosp. v. Antelope Valley Hosp. Dist.*, 940 F.2d 397, 404-405 (9th Cir. 1991) (holding civil RICO claims against a public hospital district were properly dismissed because government entities are incapable of forming the malicious intent necessary to support a RICO action and because civil RICO damages are exemplary). Indeed, local municipal entities are not subject to suit pursuant to RICO, as they are not the intended targets of the statute. *Genty v. Resolution Trust Corp.*, 937 F.2d 899, 914 (3rd Cir. 1991). Thus, neither the CCOEB, nor any individual defendant from the Cook County Clerk, State's Attorney, or the Clerk of the Circuit Court's Office named in his or her official capacity can, as a matter of law, be named as a defendant is a suit alleging violations of RICO.

In any event, Plaintiffs have failed to plead facts sufficient to state a claim under RICO. In order to state a cause of action under RICO, Plaintiffs must allege that they suffered an injury resulting from: (1) conduct (2) of an enterprise (3) through a pattern (4) of racketeering activity. *Sedima S.P.R.L. v. Imrex Co., Inc.*, 473 U.S. 479, 496 (1985). Here, Plaintiffs allege that the CCOEB and its Members engaged in a pattern of racketeering activity by repeated violations of the Voting Rights Act of 1965, Sections 1983 and 1985 and the first, eighth, fourteenth and fifteenth amendments to U.S. and Illinois Constitutions. (Complaint at ¶ 78.) As argued above, there are no facts alleged that support any of the above violations and therefore, for all the above reasons, Plaintiffs have also failed to state a RICO claim. Additionally, Plaintiffs' purported RICO claim fails as a matter of law.[1]

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1 In addition, under the *Rooker-Feldman* doctrine, a plaintiff cannot complain about a state court judgment through a lawsuit in the federal courts. *See Garcia v. Village of Mt. Prospect*, 360 F.3d 630, 634, n. 5 (7th Cir. 2004). This Court, therefore, lacks subject matter jurisdiction to hear Plaintiffs' claims that: Ms. Kowalski's nomination papers contained more than the required

CONCLUSION

For all of the above-stated reasons, the Cook County Officers' Electoral Board, Clerk Orr, Anita Alvarez and Dorothy Brown respectfully request that this Court dismiss Plaintiffs' claims with prejudice pursuant to Rules 12(b)(1) and 12(b)(6) of the Federal Rules of Civil Procedure and grant any other relief it deems necessary and just.

Respectfully submitted,

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amount of signatures, the CCOEB was improperly constituted; its Members had conflicts; it violated its own procedural rules -- matters already ruled upon by the Illinois Appellate court in case numbers 16-0217 and 16-0528 -- violates RICO. (*See* CM/ECF Document #s 24 & 33 at Exs. 1.)