

**IN THE  
UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF INDIANA  
INDIANAPOLIS DIVISION**

**JOHN P. SCHMITZ, ANNA SVEC,** )  
**GOLDA BAU, and JUAN RAMOS,** )  
Plaintiffs, )

Case No. 1:19-cv-03314-TWP-MPB

v. )

**MARION COUNTY BOARD OF** )  
**ELECTIONS, CONNIE LAWSON, and** )  
**MYLA ELDRIDGE,** )  
Defendants. )

**PLAINTIFFS' EMERGENCY  
MOTION FOR A PRELIMINARY INJUNCTION**

Plaintiffs seek targeted emergency relief for the November 2019 municipal election for the office of Mayor of Indianapolis to permit the name of John P. Schmitz ("Schmitz"), a candidate independent from any political party, to appear on the ballot. Ballots are expected to be printed on or before August 23, and that is the nature of the emergency.

Schmitz collected more than the requisite number of signatures of voters registered to vote in Marion County by the July 1, 2019, deadline. The Marion County Election Board ("Board") voted 3-0 to disallow the signatures of One Thousand One Hundred Fifteen (1,115) registered voters because the address given by each of those voters did not match the address the voter gave at the time she or he registered to vote. That each of these voters was registered to vote in Marion County at the time she or he signed the petition is undisputed. The Board based its decision on one (1) section of I.C. § 3-8-6-1, *et seq.*, Indiana's statute for "Nomination by Petition for Independent or Minor Party Political Candidates," I.C. § 3-8-6-6. However, the form for the petition is issued by the Indiana Secretary of State, and is titled "Petition of Nomination for City or Town Office in

2019." Denominated as "State Form 49024 (R6/6-18)" (CAN-44), instructions on that form state, in relevant part, that each "of the undersigned represents that ... the individual resides at the address after the individual's signature..." Two other sections of the statute require that a voter who signs the petition list the address at which the voter resides at the time of signing the petition. I.C. §§ 3-8-6-2 and 3-8-6-8. Under Federal law, Marion County's Board of Elections and the individual defendants are required to update voters registration lists. 52 U.S.C. §§ 20507 and 21083(a)(2)(A).

As Plaintiffs explain in the corresponding Memorandum of Law, the ambiguous and contradictory Indiana statutes place an unconstitutional impediment and burden on the fundamental right to vote, and the statutes serve no purpose. That the One Thousand One Hundred Fifteen (1,115) signatures are of Marion County registered voters not only is undisputed, but the means by which the address of an individual was determined to be "wrong" was by means of checking the list of registered voters. Rather than allow one (1) statute section to outweigh two (2) other sections of the same statute as well as the instructions on the State-issued form, Plaintiffs respectfully request the Court grant the following preliminary injunctive relief for the 2019 November municipal election for Mayor of the City of Indianapolis:

1. On or before August 23, 2019, order Defendants to allow all of the One Thousand One Hundred Fifteen (1,115) signatures, including those of Plaintiff voters, to be counted for purposes of the petitions submitted by Plaintiff Schmitz on July 1, 2019.

2. Require Defendants to list John P. Schmitz as a candidate for Mayor of Indianapolis on the November, 2019, ballot.

Date: August 9, 2019

Respectfully submitted,

/s Mark Small.

Mark Small.

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**Certificate of Service**

I hereby certify that on the 12<sup>th</sup> day of August, 2019, a copy of the foregoing Emergency Motion for a Preliminary Injunction was served upon all counsel of record through the EM/ECF electronic filing system.

/s Mark Small.

Mark Small.



## PETITION OF NOMINATION FOR CITY OR TOWN OFFICE IN 2019

State Form 49024 (R6 / 6-18)

Indiana Election Division (IC 3-8-6-5; IC 3-8-6-10)

(CAN-44)

COUNTY: \_\_\_\_\_

**INSTRUCTIONS:** This petition is used to nominate independent candidates or candidates of a minor political party not already entitled to have its candidates placed on the ballot. Petitioners are not required to provide precinct/ward information. The county voter registration office will complete this information after the petition is filed. Except in cases of disability, the petitioner must complete this information in the petitioner's own handwriting. If assistance is provided due to disability, the assister must complete the affidavit on the reverse of this form. Each candidate must also complete a Candidate's Consent form (CAN-45). The political party affiliation, if any, of each candidate with any other candidate or group of candidates is set forth on the CAN-45 form. This petition must be filed with the appropriate county voter registration office for processing no earlier than January 9, 2019 and no later than NOON, July 1, 2019. Democratic and Republican Party candidates running in a municipal primary should use a CAN-42 form, not this form. Democratic, Libertarian, and Republican Party candidates in a town which is not conducting a municipal primary use a CAN-16 form, not this form.

**TO THE \_\_\_\_\_ COUNTY VOTER REGISTRATION OFFICE:**

Each of the undersigned represents that: 1) the individual resides at the address after the individual's signature; 2) the individual is a duly qualified registered voter in Indiana; and 3) the individual desires to be able to vote for the candidates listed below; and each of the undersigned respectfully requests you to place the following named legally qualified candidates on the November 5, 2019 Municipal Election Ballot as (check only one box please) ☐ independent candidates or ☐ as candidates on the \_\_\_\_\_ Party ticket.

Candidate Name (as established on CAN-45 form)	Complete Candidate Address (If different from residence, include mailing address)	Office Sought	Insert here any political party device to be printed on the ballot under IC 3-8-7-11
1			
2			
3			
4			

	SIGNATURE	PRINTED NAME		DATE OF BIRTH MM/DD/YYYY	RESIDENCE ADDRESS (No P.O. Boxes)		CITY or TOWN & ZIP CODE	Office Use Only Precinct/Ward
		First	Last		Number	Street Apartment		
1								
2								
3								
4								
5								
6								
7								
8								
9								
10								

**Petition Carrier Certification**

I affirm under the penalties for perjury that I have no reason to believe that any individual whose signature appears on this page is ineligible to sign this petition or did not properly complete and sign this page.

CARRIER'S SIGNATURE \_\_\_\_\_

CARRIER'S PRINTED NAME \_\_\_\_\_

CARRIER'S DATE OF BIRTH (month, day, year) \_\_\_\_\_, 20 \_\_\_\_

DATE SIGNED BY CARRIER (month, day, year) \_\_\_\_\_

CARRIER'S FULL ADDRESS, INCLUDING ZIP CODE (number and street, city, state, and ZIP code) \_\_\_\_\_

EXHIBIT 1

County Voter Registration Office Certification				(Complete if petition includes signatures from individuals in a <u>second</u> county. Otherwise, leave blank.) County Voter Registration Office Certification			
County:		Number of Valid Signatures:		County:		Number of Valid Signatures:	
I certify that, in accordance with IC 3-8-6-10(c), I have reviewed the registration records of the petitioners on this petition and certify the above number to be registered voters of this County.				I certify that, in accordance with IC 3-8-6-10(c), I have reviewed the registration records of the petitioners on this petition and certify the above number to be registered voters of this County.			
Witness my/our hand and seal this _____ day of _____, 2019, at _____, Indiana.		COUNTY SEAL HERE		Witness my/our hand and seal this _____ day of _____, 2019, at _____, Indiana.		COUNTY SEAL HERE	
Signature 1		<input type="checkbox"/> Clerk of the Circuit Court or <input type="checkbox"/> Member of the Board of Registration		Signature 1		<input type="checkbox"/> Clerk of the Circuit Court or <input type="checkbox"/> Member of the Board of Registration	
Signature 2		<input type="checkbox"/> Member of the Board of Registration		Signature 2		<input type="checkbox"/> Member of the Board of Registration	

Affidavit of Assistance Provided to Petitioner(s)		
I affirm under the penalties for perjury that I assisted the following petitioners, due to disability, in writing the petitioner's signature, printed name, and residence address on this petition:		
Names of Petitioners Assisted by me: _____ _____		
DATE ASSISTANCE PROVIDED (month, day, year) _____, 20____		
ASSISTER'S SIGNATURE _____	ASSISTER'S PRINTED NAME _____	ASSISTER'S ADDRESS (number and street, city, state, and ZIP code) _____



**DECLARATION OF JOHN P. SCHMITZ**

Comes now the Affiant and, under the penalties for perjury, deposes and states as follows, that:

1. My name is John P. Schmitz, I am a Plaintiff in Schmitz, et al v Marion County Board of Elections, et al, pending before the United States District Court for the Southern District of Indianapolis, I am over eighteen (18) years of age, am otherwise competent to testify and, unless indicated otherwise, the information contained in this affidavit is based upon my personal knowledge.

2. I am seeking to be on the November 2019 ballot as an independent candidate for Mayor of Indianapolis and, pursuant to I.C. § 3-8-6-1, *et seq.*, Indiana's statute for "Nomination by Petition for Independent or Minor Party Political Candidates," sought voters to sign a petition for my candidacy.

3. The petition that I and others who have volunteered to help me in my campaign used "Petition of Nomination for City or Town Office in 2019" denominated as "State Form 49024 (R6/6-18" issued by the Office of the Secretary of State of Indiana, and we followed the instructions on the form.

4. The number of voters' signatures I was required to obtain was Six Thousand One Hundred Six (6,106), and I submitted, on or before the July 1, 2019, deadline, Eight Hundred Fifty-One original sheets of the form petition, issued by the Office of the Secretary of State of Indiana, on which were a total, as noted by the Marion County Election Board ("Board") on July 30, 2019, of Eight Thousand Two Hundred Ninety-Five (8,295) signatures.

5. Of those signatures, according to my understanding, One Thousand One Hundred

Fifteen (1,115) signatures were disallowed because the address listed by the voter on the form did not match the address the voter gave when the voter registered to vote.

6. I filed a challenge of that decision and that challenge was heard by the Marion County Board of Elections on July 30, 2019.

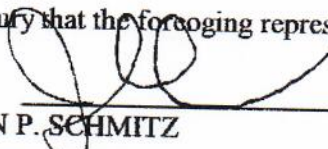
7. It was my belief, after the Board voted 3-0 to disallow One Thousand One Hundred Fifteen (1,115) signatures, was based on the address listed by the voter on the form did not match the address the voter gave when the voter registered to vote.

8. Every person who signed the petition, including Plaintiffs Anna Svec, Golda Bau and Juan Ramos, as I understood the Board's decision, was determined to be registered to vote in Marion County.

AND FURTHER THE AFFIANT SAYETH NOT.

I affirm under the penalties for perjury that the foregoing representations are true.

Date: August 11, 2019

  
\_\_\_\_\_  
JOHN P. SCHMITZ

**DECLARATION OF MARILYN PENNY BIGELOW**

Comes now the Declarant and, under the penalties for perjury, deposes and states as follows, that:

1. My name is Marilyn Penny Bigelow, I am campaign chairperson for John P. Schmitz ("Schmitz") for Mayor, I am over eighteen (18) years of age, I am otherwise competent to testify and, unless indicated otherwise, the information contained in this affidavit is based upon my personal knowledge.

2. I helped to gather signatures of registered voters, pursuant to I.C. § 3-8-6-1, *et seq.*, Indiana's statute for "Nomination by Petition for Independent or Minor Party Political Candidates," to meet the requirements for Schmitz to be on the 2019 ballot for the Office of Mayor of Indianapolis.

3. The petition that I and others in the campaign used was "Petition of Nomination for City or Town Office in 2019" denominated as "State Form 49024 (R6/6-18" (CAN-44) issued by the Office of the Secretary of State of Indiana, and we followed the instructions on the form.

4. The number of voters' signatures Schmitz was required to obtain was Six Thousand One Hundred Six (6,106), and we submitted, on or before the July 1, 2019, deadline, Eight Hundred Fifty-One (851) original sheets of the CAN-44 form petition, issued by the Office of the Secretary of State of Indiana, on which were a total, as noted by the Marion County Election Board ("Board") on July 30, 2019, of Eight Thousand Two Hundred Ninety-Five (8,295) signatures.

5. Of those signatures, according to my understanding, One Thousand One Hundred Fifteen (1,115) signatures were disallowed because the address listed by the voter on the form did



not match the address the voter gave when the voter registered to vote.

6. Schmitz's challenge of that decision was heard by the Marion County Board of Elections on July 30, 2019, and I was present for that hearing.

7. It was my belief that the Board voted 3-0 to disallow One Thousand One Hundred Fifteen (1,115) signatures, based on the address listed by the voter on the CAN-44 form did not match the address the voter gave when the voter registered to vote.

8. Every one of the One Thousand One Hundred Fifteen (1,115) persons who signed the petition, as I understood the Board's decision, was acknowledged by the Board to be registered to vote in Marion County.

AND FURTHER THE DECLARANT SAYETH NOT.

I affirm under the penalties for perjury that the foregoing representations are true.

Date: August 9, 2019

Marilyn Penny Bigelow  
MARILYN PENNY BIGELOW