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

TEAM KENNEDY, LIBERTARIAN PARTY OF ILLINOIS, ROBERT F. KENNEDY JR., WILLIAM REDPATH, and ANGEL OAKLEY	:	
	:	**No. 24-cv-7027**
Plaintiffs,	:	
vs.	:	
ILLINOIS STATE BOARD OF ELECTIONS, and, BERNADETTE MATTHEWS, in her official capacity as the Executive Director of the Illinois State Board of Elections,	:	
Defendants.	:	

MEMORANDUM OF LAW IN SUPPORT OF
PLAINTIFFS' MOTION FOR EMERGENCY INJUNCTIVE RELIEF

I. INTRODUCTION

Plaintiffs Team Kennedy and Robert F. Kennedy Jr. requested expedited and/or emergency preliminary injunctive relief prohibiting Defendants from enforcing 10 ILCS 5/10-4 banning petition circulators from circulating ballot access petitions for independent candidates in Illinois for the sole reason they previously circulated ballot access petitions for major or minor political party candidates outside of Illinois.

II. RELEVANT FACTS

In 2024, independent elector candidates for the office of President and Vice President of the United States may secure ballot access to Illinois' general election ballot by filing nomination papers containing 25,000 valid signatures of registered voters with Defendants no later than June

24, 2024. After nomination papers are filed and accepted by Defendants, any registered voter may contest the validity of nomination papers by filing objections to the nomination papers with Defendants within five business day after the nomination papers are filed with Defendants, or by July 1, 2024. Voters filing objections to nomination papers are commonly referred to as "objectors." Objectors must fully state the nature of the objection, including any basis for striking and not counting signatures toward the 25,000 minimum required to secure ballot access.

After objections to nomination papers are filed, Defendants first review the specific objections to individual signatures to determine if the signature line complies with all statutory requirements such as that the voter is registered to vote at the address written, and whether the signature upon the nomination papers matches the signature on the voter's registration record. Defendants either sustain a signature line objection (thereby striking the signatures as invalid) or deny the objection (thereby ruling the signature valid and counted toward the 25,000 valid signatures required for ballot access). Certain objections, if sustained, act to invalidate all signatures recorded on an individual petition page – these are commonly referred to as global objections. Global objections typically relate to the alleged conduct of the petition circulator, or the validity of the notarization required for each petition page. Each nomination petition page has up to 10 signatures.

On or about June 24, 2024, Plaintiffs timely filed nomination paper with Defendants to place the name of electors for Plaintiff Robert F. Kennedy Jr., an independent candidate for the office of President of the United States and his vice-presidential running mate, Nicole Shanahan on Illinois' 2024 general election ballot (hereinafter the "Petition"). The Petition contained 63,931 petition signatures of registered Illinois voters seeking to place Plaintiff Kennedy's elector candidates upon the 2024 general election ballot. Two Illinois voters timely filed

objections to the Petition with Defendants. After Defendants' review of the individual signature line objections to the Petition it was determined that Plaintiffs had filed over 43,000 valid petition signatures. The only remaining objections to be adjudicated are the global objections.

Plaintiffs request emergency preliminary relief as to one of the global objections to Plaintiffs' Petition – the attempted (and unprecedented) extension of 10 ILCS 5/10-4 to ban petition circulators from circulating the Petition based on the sole fact that they had previously circulated ballot access petitions for major or minor political party candidates in states other than Illinois. 10 ILCS 5/10-4 provides in relevant part:

> Provided, further, that no person shall circulate or certify petitions for candidates of more than one political party, or for an independent candidate or candidates in addition to one political party, to be voted upon at the next primary or general election, or for such candidates and parties with respect to the same political subdivision at the next consolidated election.

The term "political party" is defined by Illinois statute with respect to conduct within the state of Illinois. 10 ILCS 5/10-2. A political party is created under Illinois statute when nomination papers are filed for a new political group within a specific district or a political subdivision of Illinois. If a new party receives more than 5% of the total votes cast at a general or consolidated election, it becomes an established political party as to any district or political subdivision thereof. *See* 10 ILCS 5/7-2, 10-2. No political party or candidate running for a political party organized outside the state of Illinois has ever, or could ever, file a nomination paper for a candidate inside Illinois. For instance, no state affiliate of the Republican or Democratic party organized in states other than Illinois have ever filed a nomination paper for any of their candidates inside the state of Illinois. No candidate, whether for a major or minor political party or as an independent seeking political office outside the state of Illinois has ever

filed a nomination paper in Illinois with respect to ballot access for any of the other 49 state election contests, whether primary or general.

Accordingly, 10 ILCS 5/10-4 fails to include or contemplate ballot access petition circulation for political organizations outside the state of Illinois or for the circulation of ballot access petitions for any candidate outside the jurisdiction of Illinois. Therefore, it is not within the contemplation of 10 ILCS 5/10-4 that ballot access petition circulation outside the state of Illinois can disqualify anyone from subsequently circulating for any candidate in Illinois.

The objectors to Plaintiffs' Petition have filed objections to 2,043 of Plaintiffs' 9,115 page Petition for the sole reason that each such Petition page was circulated by a petition circulator who had previously circulated for a major or minor political party candidate outside of Illinois. The objectors do not have enough remaining objections to lower Plaintiffs' Petition below the required 25,000 valid signatures without their unconstitutional attempt to extend 10 ILCS 5/10-4 to out-of-state petition circulation activity. Accordingly, resolution of this issue resolves the challenge to the Petition in Plaintiffs' favor and immediately terminates any further need to defend the Petition with costly legal counsel.

III. STANDARD OF REVIEW

In order to prevail on a motion for a preliminary injunction in this district, the moving party must demonstrate: (1) a likelihood of success on the merits; (2) a lack of adequate remedy at law; and, (3) an irreparable harm will result if the injunction is not granted. *Lambert v. Buss*, 498 F.3d 446, 451 (7th Cir. 2007), quoting *Foodcomm Intern. v. Barry*, 328 F.3d 300, 303 (7th Cir. 2003). If the party seeking the injunction meets all three requirements, the district court must then balance the relative harms that could be caused to either party. *Lambert*, 498 F.3d at 451. Forms of equitable, interlocutory relief such as preliminary injunctions are an exercise of a very

far-reaching power which is not to be indulged in except in a case clearly demanding the requested relief. *Girl Scouts of Manitou Council, Inc. v. Girl Scouts of U.S. of America, Inc.*, 549 F.3d 1079, 1085 (7th Circuit 2008).

Protecting core political speech from improper invalidation by Defendants is precisely the kind of case in which courts have historically intervened to grant preliminary injunctive relief.

IV. ARGUMENT

While Plaintiffs advance several constitutional challenges to Illinois ballot access restrictions, all the other challenges are not amenable to immediate review and injunctive relief. Plaintiffs agree that the remaining claims demand more intense factual development through litigation and are not proper subjects for expedited preliminary relief.

A. Plaintiffs are Likely to Succeed on the Merits of their First Amendment Claim.

The United States Supreme Court established the analytical framework to determine if a ballot access statute is an unconstitutional restraint of speech protected under the First Amendment. In all cases, a ballot access restriction which fails to advance any legitimate state interest is unconstitutional under the First and Fourteenth Amendments to the United States Constitution. Illinois has zero interest in enforcing the "dual circulator" provision in 10 ILCS 5/10-4 to prohibit any petition circulator from circulating a ballot access petition for an independent candidate seeking access to the Illinois general election ballot for the sole reason that the petition circulator previously circulated a ballot access petition for a candidate outside the state of Illinois. Period. Accordingly, extension of 10 ILCS 5/10-4 to ban petition circulators from circulating Illinois ballot access petitions for independent candidates for the sole reason they circulated ballot access petitions for candidates outside the state of Illinois is flatly

unconstitutional under the First and Fourteenth Amendments to the United States Constitution and demands the immediate imposition of the requested preliminary injunctive relief.

Under the test announced by the Court in *Anderson v. Celebrezze*, 460 U.S. 780 (1983) and *Burdick v. Takushi*, 504 U.S. 428 (1992), a ballot access restriction adjudged to be a severe burden on protected speech must be narrowly tailored to advance a compelling governmental interest to survive constitutional scrutiny. However, a ballot access restriction which imposes a less than severe impairment on protected speech still must advance some state interest which is important enough to outweigh the burden it imposes on protected speech. Therefore, even a less than severe burden on speech must advance some legitimate state interest to survive constitutional scrutiny.

The Court explained in *Anderson*:

> "[T]he rights of voters and the rights of candidates do not lend themselves to neat separation; laws that affect candidates always have at least some theoretical, correlative effect on voters." *Bullock v. Carter*, 405 U.S. 134, 143 (1972). Our 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." *Id*.
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> The impact of candidate eligibility requirements on voters implicates basic constitutional rights. 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." ….
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> 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." *Willimas v. Rhodes*, 393 U.S. 23, 31 (1968). 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 likeminded citizens.

Although these rights of voters are fundamental, not all restrictions imposed by the States on candidates' eligibility for the ballot impose constitutionally suspect burdens on voters' rights to associate or to choose among candidates. We have recognized that, "as a practical matter, there must be a substantial regulation of elections if they are to be fair and honest and if some sort of order, rather than chaos, is to accompany the democratic process." *Storer v. Brown*, 415 U.S. 724, 730 (1974). To achieve these necessary objectives, States have enacted comprehensive and sometimes complex election codes. Each provision of these schemes, whether it governs the registration and qualification of voters, the selection and eligibility of candidates, or the voting process itself, inevitably affects – at least to some degree – the individual's right to vote and his right to associate with others for political ends. Nevertheless, the State's important regulatory interests are generally sufficient to justify reasonable, nondiscriminatory restrictions.

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* 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 must then 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."

….

As our cases have held, it is especially difficult for the State to justify a restriction that limits political participation by an identifiable political group whose members share a particular viewpoint, associational preferences, or economic status. "Our ballot access cases…focus on the degree to which the challenged restrictions operate as a mechanism to exclude certain classes of candidates from the electoral process. The inquiry is whether the challenged restriction unfairly or unnecessarily burdens the 'availability of political opportunity.'" *Clements v. Fashing*, 457 U.S. 957, 964 (1982) (plurality opinion), quoting *Lubin v. Panish*, 415 U.S. at 716.

A burden that falls unequally on new or small political parties or on independent candidates impinges, by its very nature, on associational choices protected by the

> First Amendments. It discriminates against those candidates and – of particular importance – against those voters whose political preferences lie outside the existing political parties.
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> ….
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> Furthermore, in the context of a Presidential election, state-imposed restrictions implicate a uniquely important national interest. For the President and Vice President of the United States are the only elected officials who represent all the voters in the Nation. Moreover, the impact of the votes cast in each State is affected by the votes cast for the various candidates in other States. Thus, in a Presidential election a State's enforcement of more stringent ballot access requirements…has an impact beyond its own borders. Similarly, the State has a less important interest in regulating Presidential elections than statewide or local elections, because the outcome of the former will be largely determined by voters beyond the State's boundaries. This Court, striking down a state statute unduly restricting the choices made by a major party's Presidential nominating convention, observed that such conventions serve "the pervasive national interest in the selection of candidates for national office, and this national interest is greater than any interest of an individual State. *Cousins v. Wigoda*, 419 U.S. 477, 490 (1975).

Anderson, 460 U.S. at 786-87, 793-95. The Court then explained the balancing analysis under *Anderson* resolves that ballot access restrictions which impose a "severe" restriction on rights must be "narrowly drawn to advance a state interest of compelling importance." *Burdick*, 504 U.S. at 434 quoting *Norman v. Reed*, 502 U.S. 279, 289 (1992). The Court then explained that when a state election law provision imposes only "reasonable, nondiscriminatory restrictions" upon the First and Fourteenth Amendment rights of voters, "the State's important regulatory interest are generally sufficient to justify" the restriction. *Burdick*, 504 U.S. at 434; *Anderson*, 460 U.S. at 788. As such, even less than severe burdens on the rights of voters to associate with candidates of their choice demand some legitimate "important regulatory interest" to survive constitutional scrutiny. Naked restrictions on ballot access, devoid of any state interest, therefore, are always unconstitutional if they impair rights guaranteed under the First and Fourteenth Amendments. Defendants may not enforce a ballot access restriction or apply an

existing ballot access restriction in any manner which is not tethered to protecting an "important regulatory interest" of Illinois.

Plaintiffs properly contend 10 ILCS 5/10-4, to the extent it is extended to ban petition circulators in Illinois based solely on their out-of-state circulation of ballot access petitions for candidates in other states, imposes a severe burden on the ability of Illinois candidates to successfully circulate ballot access petitions – especially with respect to the exercise of their constitutional right to hire professional petition circulators announced by the United States Supreme Court in *Meyer v. Grant*, 486 U.S. 414 (1988).

The plain text of the Supreme Court's decision of *Anderson* requires a determination that extension of 10 ILCS 5/10-4 to ban circulators who circulated for out-of-state candidates is a severe burden on Plaintiffs' and voter's rights because banning petition circulators from circulating for independent presidential candidates in Illinois for the sole reason that they previously circulated ballot petitions for other candidates in other states directly "operate[s] as a mechanism to exclude certain classes of candidates from the electoral process and unfairly or unnecessarily burdens the 'availability of political opportunity' " and "[b]y limiting the opportunities of independent-minded voters to associate in the electoral arena to enhance their political effectiveness as a group, such restrictions threaten to reduce diversity and competition in the marketplace of ideas." *Anderson*, 460 U.S. at 793-94.

Independent presidential candidates are required to collect 25,000 valid petition signatures of Illinois registered voters on nomination papers to secure ballot access in the general election. The ability to collect an order of magnitude larger number of signatures by independent candidates to secure ballot access for the general election, in the same amount of time, as that imposed on Republican and Democratic candidates for their primary election requires

independent candidates to rely on professional petition circulators to collect most of their ballot access signatures. Professional petition circulators, in turn, travel from state to state and collect ballot access petition signatures for both major and minor party and independent candidates, in many cases, before they are permitted to collect ballot access petition signatures for independent candidates in Illinois – a circulation window which opens only 90 days before the late-June deadline for independent candidates to file their ballot access petitions.

Under the attempted extension of 10 ILCS 5/10-4 no independent candidate can hire any professional petition circulator who previously circulated ballot access petitions for any major or minor political party candidate in any other state. This imposes a direct limit on the ability of an independent candidate to associate with other like-minded petition circulators to assist the independent candidate to secure ballot access.

Unlike Republican and Democratic candidates seeking access to the primary election ballot, independent candidates do not have the ability to tap into a preexisting political organization of volunteers to collect their ballot access petition signatures. Independent (and new party) candidates rely on both volunteer and professional petition circulators to attempt to collect the required 25,000 valid signatures in just 90 days. Banning professional petition circulators, the most effective group to collect large number of valid petition signatures in short periods of time, from circulating independent ballot access petitions just because they did the same for major or minor party candidates in other states imposes a severe burden on protected speech and virtually guarantees that the independent candidate will fail to secure ballot access.

Furthermore, extending the ban to exclude petition circulators based solely on their out-of-state circulation activity operates to invalidate otherwise valid petition signatures of thousands of Illinois registered voters – core political speech afforded the highest protection under the First

Amendment – through no fault of their own. And to be clear, a petition circulator is not much more than a person holding a clipboard offering voters an opportunity to sign (or not sign) a ballot access petition. The only substantively operative signatures on a ballot access petition are the signatures of registered voters – it is their signatures which demonstrate that a candidate has sufficient support in Illinois to warrant ballot access and to prevent frivolous candidates from gaining access to the general election ballot, the sole function of the ballot access petition. Silencing their speech just because, without their knowledge, the petition circulator who offered them the ballot access petition had previously circulated a ballot access petition for a major or minor political party candidate in a different state is a severe burden on protected speech.

Even if the burden on speech is not severe, Defendants cannot possibly articulate an actual state interest in extending 10 ILCS 5/10-4 to ban circulators based solely on out-of-state ballot access petition work. To the extent 10 ILCS 5/10-4 seeks to protect Illinois political parties from factionalism (which Plaintiffs contest is not a valid interest – an issue to be litigated on the merits of Plaintiffs' other claims), Illinois has no such interest vis-à-vis out-of-state political parties. Under the *Anderson-Burdick* analysis, if a ballot access restriction impairs speech but is not severe, it is nevertheless unconstitutional if the restriction is not reasonable or fails to advance an "important regulatory interest." *Burdick*, 504 U.S. at 434.

Even the structure of the restriction itself shows how an extension of the ban on petition circulators based solely on their out-of-state petition work demonstrates how 10 ILCS 5/10-4 fails to support any legitimate regulatory interest. Under the proposed extension of the restriction, previous petition work for out-of-state party candidates bans a petition circulator from circulating ballot access petitions in Illinois for any independent candidate – but it does not ban future petition work by petition circulators for out-of-state party candidates. So, what gives?

Does Illinois have an interest in protecting out-of-state political parties only in states which have circulation periods before Illinois' circulation period for independent candidates but no such interest in protecting out-of-state political parties in states which have circulation periods after Illinois' circulation period for independent candidates? This shows the utter nonsense of any alleged Illinois regulatory interest to ban petition circulators based solely on their out-of-state conduct. The clear answer is that Illinois lacks any legitimate regulatory interest in the conduct of petition circulators outside the jurisdiction of Illinois at any time. As such, Plaintiffs are very likely to succeed on the merits of its claim as applied to the extension of 10 ILCS 5/10-4 to out-of-state petition circulator conduct.

B. Plaintiffs Satisfy the Other Prongs of the Preliminary Injunction Test.

1. Plaintiffs Will Suffer Continuing Irreparable Harm.

Except for the threatened challenged extension of 10 ILCS 5/10-4 to the conduct of out-of-state petition activity, Plaintiff Kennedy would be able to declare victory, concede all remaining global objections to the Petition and pull the plug on further participation by legal counsel in the remaining administrative proceedings. Furthermore, should Defendants sustain the challenged objections, Plaintiff Kennedy (or rather, his elector candidates) will be denied access to the general election ballot absent further expensive litigation. Accordingly, the instant emergency preliminary injunction is necessary to protect further harm.

As this Court is aware, "the loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury." *Elrod v. Burns*, 427 U.S. 347, 373 (1976); *See also Nat'l People's Action v. Vill. of Wilmette*, 914 F.2d 1008 (7th Cir. 1990).

2. Plaintiffs Have No Adequate Remedy at Law.

Defendants' enforcement of 10 ILCS 5/10-4 will invalidate over 14,000 otherwise valid signatures and deprive Plaintiff Kennedy (and his elector candidates) access to Illinois' general election ballot. Only the requested injunction offers adequate relief to protect rights guaranteed to Plaintiff Kennedy. Money damages is an insufficient remedy for the loss of First Amendment freedoms. *See Flower Cab Co. v. Petitte*, 685 F.2d 192, 195 (7th Cir. 1982) ("In [First Amendment] cases the quantification of injury is difficult, and damages are therefore not an adequate remedy."); *Nat'l People's Action v. Vill. Of Wilmette*, 914 F.2d 1008, 1013 (7th Cir. 1990) ("[I]njunctions are especially appropriate in the context of First Amendment violations because of the inadequacy of money damages."). Therefore, the only adequate remedy in this case is equitable, injunctive relief.

3. Balance of Hardships Favors a Preliminary Injunction.

In the Seventh Circuit, the Court must consider "the irreparable harm the nonmoving party will suffer if preliminary relief is granted, balancing that harm against the irreparable harm to the moving party if relief is denied," and "the public interest, meaning the consequences of granting or denying the injunction to non-parties." *Abbott Labs v. Mead Johnson & Co.*, 971 F.2d 6, 11-12 (7th Cir. 1992) This factor has involves what has been called "the 'sliding scale' approach: the more likely it is the plaintiff will succeed on the merits, the less likely the balance of irreparable harms needs to weigh towards its side." *Id*. at 12. In this case, where Defendants can show no legitimate interest in the challenged application of 10 ILCS 5/10-4, there is no hardship visited upon Defendants that could outweigh the harm Plaintiffs will suffer if the requested injunction is not granted.

The irreparable harm Plaintiffs will suffer if the preliminary injunction is not granted is far greater than any imaginary harm that Defendants will suffer if the requested preliminary injunction is granted. As set forth above, there is a substantial First Amendment issue at stake in this action. Plaintiff Kennedy is threatened with the denial of ballot access in the state of Illinois if the challenged application of 10 ILCS 5/10-4 is sustained by Defendants. Further, the failure of Defendants to immediately reject the challenged application of 10 ILCS 5/10-4 continues to cause Plaintiffs unnecessary and increasing legal costs that the injunction will truncate. Defendants, on the other hand, will suffer no harm should the requested injunction be granted. In fact, the requested injunction will maintain the status quo, in that the challenged extension of 10 ILCS 5/10-4 is a novel application of the rule devised by the objectors precisely to inflict excessive legal costs on Plaintiff Kennedy's Petition defense. Accordingly, the balance of the hardships favor granting the requested emergency preliminary injunctive relief.

4. A Preliminary Injunction Serves the Public Interest.

Lastly, "[t]he public interest is clearly served by strong and vigorous protection of the First Amendment." *O'Brien v. Town of Caledonia*, 748 F.2d 403, 408 (7th Cir. 1984); *United Food & Commercial Workers Union, Local 1099 v. Southwest Ohio Reg'l Transit Auth.*, 163 F.3d 341, 363-64 (6th Cir. 1998). Furthermore, as discussed in *Anderson* and noted above, the requested injunction serves the public interest in placing Plaintiff Kennedy (through his elector candidates' petitions) on Illinois' general election ballot affording voters with additional ballot choice in this election cycle.

V. CONCLUSION

For the foregoing stated reasons, Plaintiffs respectfully request that the Court preliminarily enjoin Defendants from enforcing 10 ILCS 5/10-4 to ban petition circulators from

circulating ballot access petitions for independent presidential candidates based solely on their ballot access conduct outside the state of Illinois.

Respectfully submitted,

/s/ Christopher D. Kruger
Law Office of Christopher Kruger
2022 Dodge Avenue
Evanston, IL 60201
847.420.1763
chris@kruger-law.com