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,	)	
Plaintiffs,	)	No. 24-cv-7027
v.	)	Judge John F. Kness
ILLINOIS STATE BOARD OF ELECTIONS, and BERNADETTE MATTHEWS, in her official capacity as the Executive Director of the Illinois State Board of Elections,	)	
Defendants.	)	

THE DEFENDANTS' MEMORANDUM OF LAW
IN OPPOSITION TO PLAINTIFFS' MOTION FOR
EMERGENCY PRELIMINARY INJUNCTIVE RELIEF

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INTRODUCTION

Robert F. Kennedy, Jr. and Team Kennedy, his political committee,[1] seek to place Kennedy on the Illinois ballot for President. In their zeal for that cause, they seek to short-circuit the State Officers Electoral Board's process for reviewing objections to the candidate's nominating petition. Illinois law provides a swift but thorough procedure for evaluating objections to candidates' nomination papers. The Electoral Board assigns a hearing officer, who conducts an evidentiary hearing and makes a recommendation to the Electoral Board. The Electoral Board then sustains or overrules the objection; based on that decision, the Illinois State Board of Elections either certifies the candidate to the ballot or strikes him. The losing party (either the candidate or the objector) can then seek judicial review in the Illinois circuit court on an expedited schedule.

In that administrative proceeding before the Electoral Board, objectors have asserted that 10 ILCS 5/10-4 ("Section 10-4") bars petition circulators from circulating petitions for independent candidates like Kennedy if they previously circulated petitions, both in-state and out-of-state, for Republican, Democratic, or other political party candidates in the same election cycle. Dkt. 1 ¶¶ 23-24. While the hearing officer has completed the evidentiary hearing, the Electoral Board has yet to rule on whether Section 10-4 applies to out-of-state conduct. Rather than allowing the Electoral Board to decide this issue, Plaintiffs ask this Court to dictate a result in their favor. Such high-handed actions would trample on the principles of federalism and comity that underlie our federalist system, and the Court should therefore abstain from interfering with ongoing state administrative proceedings under *Younger* or under general principles of federalism and comity, as recently set forth in *J.B. v. Woodard*, 997 F.3d 714, 722 (7th Cir. 2021).

[1] The Complaint is brought by five plaintiffs, but only Kennedy and Team Kennedy bring this preliminary injunction motion. *See* Dkt. 2, Plaintiffs' Mtn. for Prelim. Inj. Relief, at 1; Dkt 3, Supporting Mem., at 1.

Even if the Court were to hear this case, Plaintiffs have not shown a likelihood of success on the merits because they have not suffered any injury. Plaintiffs' motion is founded on the assumption that the Electoral Board will rule against them on this issue, but this assumption is speculative at best. Plaintiffs thus lack standing to bring their claims. Nor can they show irreparable harm. As Judge Daniel recently held in *Oakley*, where an overlapping set of plaintiffs also sought[2] to block the Electoral Board from ruling on the objection to Kennedy's petition:

> The plaintiffs also claim irreparable harm through the denial of voting, speech, and associational rights. But the Board has not yet ruled. That means that the plaintiffs have been denied nothing at this point. . . . Put differently, to the extent they have shown anything—the only evidence submitted at this point is the Objector's Petition—they have show[n] nothing more than the mere possibility of harm

Order on Plaintiffs' TRO motion, *Oakley v. Illinois State Board of Elections*, No. 24-cv-6627, Dkt. 24 at 2 (attached as Exhibit 1). Here, too, Plaintiffs cannot show any harm at all, much less irreparable harm. Plaintiffs' motion should be denied for this reason alone.

Even if Plaintiffs could slip past the twin obstacles of lack of standing and lack of irreparable harm, they still have no chance of success on the merits because the Eleventh Amendment bars their claims against both the Illinois State Board of Elections and Defendant Matthews. Finally, the balance of harms weighs heavily in favor of the State, as any injunction would directly interfere with the State's ability to regulate elections and enforce its own laws. As Judge Daniels explained, "there is time to allow the Board to complete its review" and avoid disturbing the balance of our federal system. Ex. 1, *Oakley* TRO Order, at 3. So too here. Because each factor in the preliminary injunction balancing test favors the State, Plaintiffs' motion for preliminary injunction should be denied.

[2] On August 19, 2024, the *Oakley* plaintiffs moved for a voluntarily dismissal of their case. *See Oakley v. Illinois State Board of Elections*, No. 24-cv-6627, Dkt. 26.

BACKGROUND

On June 24, 2024, Kennedy submitted nomination papers to the Illinois State Board of Elections to appear on the ballot in the November 2024 general election as an independent candidate for the office of President of the United States. Ex. 2, Excerpt from the Nomination Papers for Robert F. Kennedy, Jr.[3] On July 1, 2024, Joseph Mullen Duffy and Zach Koutsky (the "Objectors") filed their objection petition against the Candidates, asserting various deficiencies in the Candidates' nomination papers pursuant to 10 ILCS 5/10-8. Ex. 3, Objectors' Petition in *Duffy et al. v. Kennedy et al.*, No. 24 SOEB GE 508. The members of the Illinois State Board of Elections then convened as the State Officers Electoral Board (the "Electoral Board") to review and rule on the objections. *Id*. at 4. The Electoral Board assigned a hearing officer, who issued an Initial Case Management Order on July 9, 2024. Ex. 4, Initial Case Management Order in *Duffy et al. v. Kennedy et al.*, No. 24 SOEB GE 508. After conducting a records examination, the hearing officer set an evidentiary hearing which ran from August 6 through August 16, 2024. *See* Ex. 5, Third Case Management Order in *Duffy et al. v. Kennedy et al.*, No. 24 SOEB GE 508, at 2.

The hearing officer will shortly make a written recommendation to the Electoral Board, and the Electoral Board will then make a ruling on the objection petition and notify the State Board of Elections whether to certify Kennedy's name on the ballot on August 23, 2024. *See* Ex. 6, Public Notice of Aug. 23, 2024 State Board of Elections meeting; 10 ILCS 5/10-10 (stating that the State Board of Election "shall abide by and comply with the ruling so made to all intents and purposes."). The State Board of Elections must certify the ballot by August 23, 2024. *See* Ex. 6; Ex. 7, 2024

[3] This Court may take judicial notice of the external sources cited in this brief because they are public records "not subject to reasonable dispute." *Ennenga v. Starns*, 677 F.3d 766, 774 (7th Cir. 2012); *see also Radaszewski v. Maram*, 383 F.3d 599, 600 (7th Cir. 2004) (allowing judicial notice of records of administrative proceedings); Fed. R. Evid. 201(b)(2) (allowing judicial notice of facts "whose accuracy cannot reasonably be questioned"); Fed. R. Evid. 902(6) (official documents are self-authenticating).

Election & Campaign Finance Calendar,[4] at 38; 10 ILCS 5/1A-8(14), 7-60, and 10-14. Pursuant to the Uniformed and Overseas Citizens Absentee Voting Act, election authorities must mail overseas ballots by September 20, 2024. *See* 52 U.S.C. § 20302(a)(8)(A); 10 ILCS 5/16-5.01; Ex. 7 at 41.

One of the objections raised by the Objectors is that some circulators violated Section 10-4 and thus the signatures submitted by those circulators should not be counted. Ex. 3 ¶¶ 14, 23. Section 10-4 provides, in relevant part, that:

> 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.

10 ILCS 5/10-4. The Objectors claim that some circulators violated this provision by circulating petitions for political party candidates in other states. *See* Ex. 3 ¶ 23(g) – (z). The hearing officer has not yet recommended, nor has the Electoral Board ruled, on whether such activity violates Section 10-4. *See* Ex. 6, Ex. 7 at 38; Dkt. 1 ¶ 70; Ex. 1, *Oakley* TRO Order at 3. Plaintiffs seek a preliminary injunction barring Defendants "from extending 10 ILCS 5/10-4 to ban petition circulators from circulating ballot access petitions for independent candidates in Illinois based solely on the fact that the petition circulators had previously circulated ballot access petitions for major or minor political party candidates or independent candidates outside the state of Illinois." *Id*. Plaintiffs allege that application of Section 10-4 to apply to "ballot access conduct outside the state of Illinois" (Dkt. 3 at 15) would violate their First Amendment rights. *Id*. at 5, 9.

[4] *Available at* Illinois State Board of Elections, "Running for Office," https://www.elections.il.gov/RunningForOffice.aspx?MID=rOlNCTNZd9A%3d (last visited Aug. 20, 2024).

ARGUMENT

Injunctive relief is "an extraordinary and drastic remedy, one that should not be granted unless the movant, *by a clear showing*, carries the burden of persuasion." *Mazurek v. Armstrong*, 520 U.S. 968, 972 (1997) (internal quotations omitted). Accordingly, "applicant[s] for preliminary relief bears a significant burden": they must make a "strong showing" that they are likely to succeed on the merits as well as showing "that "irreparable injury is likely in the absence of an injunction,'" "the balance of equities tips in [their] favor, and that an injunction is in the public interest." *Illinois Republican Party v. Pritzker*, 973 F.3d 760, 762 (7th Cir. 2020), *quoting Winter v. Nat. Res. Def. Council*, 555 U.S. 7, 20 (2008).

If the plaintiffs satisfy all these requirements, then the court must weigh the harm that the plaintiffs will incur without an injunction against the harm to the defendant if one is entered, and "consider whether an injunction is in the public interest." *GEFT Outdoors, LLC v. City of Westfield*, 922 F.3d 357, 364 (7th Cir. 2019) (internal quotations omitted). This analysis is done on a "sliding scale"— if the plaintiffs are less likely to win on the merits, then the balance of harms must weigh more heavily in their favor, and vice versa. The court should pay "particular regard for the public consequences in employing the extraordinary remedy of injunction." *Winter*, 555 U.S. at 24. A preliminary injunction is "never awarded as of right" and "never to be indulged in except in a case clearly demanding it." *Orr v. Shicker*, 953 F.3d 490, 501 (7th Cir. 2020).

Here, Plaintiffs' burden is even greater than usual because the interim injunction they request in their present motion would (they assert) give them substantially all the relief they seek through this lawsuit. *See, e.g., Boucher v. Sch. Bd. of Sch. Dist. of Greenfield*, 134 F.3d 821, 827 n.6 (7th Cir. 1998) ("A preliminary injunction that would give the movant substantially all the relief he seeks is disfavored, and courts have imposed a higher burden on a movant in such cases."); *W.A. Mack, Inc.*, 260 F.2d at 890 ("A preliminary injunction does not issue which gives to a

plaintiff the actual advantage which would be obtained in a final decree."). While Plaintiffs have brought other claims, they assert that the interpretation of Section 10-4 "is dispositive of the validity" of Kennedy's petition. Dkt. 1 ¶ 71. In another ballot access case, the court observed that this factor counted against the plaintiffs because "a victory at [the preliminary injunction] stage would effectively win the case for the [plaintiff] by putting its candidates on the November ballot regardless of the eventual outcome." *Tripp v. Smart*, No. 14-CV-0890, 2014 WL 4457200, at *6 (S.D. Ill. Sept. 10, 2014). "A plaintiff should not gain, via preliminary injunction, the actual advantage which would be obtained in a final decree." *Id*.

Here, Plaintiffs cannot meet the high bar set for issuing a preliminary injunction. But in any case, the Court should abstain from hearing this matter to avoid violating the principles of federalism and comity underlying our federal system.

I. The Court should abstain from hearing Plaintiffs' case.

A. The Court should abstain from this case under *Younger* abstention.

Plaintiffs seek injunctive relief against the state agency charged with administering Illinois election law, the State Board of Elections. As such, this is a classic case for the invocation of the *Younger* abstention doctrine. The *Younger* doctrine, first announced in *Younger v. Harris*, 401 U.S. 37 (1971), requires that federal courts stay or dismiss certain cases to avoid interfering in certain types of important state proceedings. In *Younger*, the plaintiff brought a federal suit challenging the constitutionality of California's Criminal Syndicalism Act and sought injunctive relief from the pending state court criminal case in which he was a defendant. The Supreme Court held that the federal court should not have considered the case based on an important federalist principle: in a federalist system, federal courts must respect and refrain from interfering with ongoing state court proceedings. *Id*. at 43-45. The Supreme Court stressed the importance of comity and federalism, which it described as:

> [A] proper respect for state functions, a recognition of the fact that the entire country is made up of a Union of separate governments and a continuance of the belief that the National Government will fare best if the states and their institutions are left free to perform their separate functions in their separate ways.

Id. at 44. *Younger* abstention applies in three types of cases: (1) ongoing state criminal proceedings, (2) certain civil enforcement proceedings (judicial or administrative) akin to criminal prosecutions, or (3) civil proceedings "that implicate a State's interest in enforcing the orders and judgments of its courts." *Mulholland v. Marion County Election Bd.*, 746 F.3d 811, 815 (7th Cir. 2014), *citing Sprint Communications, Inc. v. Jacobs*, 571 U.S. 69, 72-73 (2013). *Younger* abstention applies to state administrative proceedings. *See Ohio Civil Rights Comm'n v. Dayton Christian Schs., Inc.*, 477 U.S. 619, 627 (1986).

Younger abstention applies when the state proceeding: (1) is ongoing and judicial in nature, (2) implicates important state interests, and (3) offers an adequate opportunity for review of constitutional claims. *Green v. Benden*, 281 F.3d 661, 666 (7th Cir. 2002), *citing Middlesex County Ethics Comm. v. Garden State Bar Ass'n*, 457 U.S. 423, 432 (1982). If all three factors are present, the Court should then determine whether extraordinary circumstances exist which would make abstention inappropriate. *Green*, 281 F.3d at 666. If the Court determines that all three of these factors are met, and that there are no extraordinary circumstances present, then the Court *must* abstain from hearing the case. *Gakuba v. O'Brien*, 711 F.3d 751, 753 (7th Cir. 2013).

Application of the *Younger* abstention test is straightforward in this case. First, there is an ongoing administrative proceeding before the Electoral Board (*see* Ex. 1 at 3, Ex. 3, Ex. 5) that is "judicial in nature": parties are represented by counsel, evidentiary hearings are conducted before a hearing officer, witnesses testify under oath and are subject to cross-examination, and the Board's final order may be appealed in state court. *See, e.g., Wilson v. Kalelkar*, No. 99 C 6590,

1999 WL 1101211, at *2 (N.D. Ill. Dec. 1, 1999) (IDPR hearing regarding suspension of medical license was judicial in nature); *see generally* Ex. 3, Initial Case Mgmt. Order in *Duffy*.

Second, the ongoing proceeding implicates important state interests. Every state regulates the electoral process and access to the ballot through the administration of detailed election laws. Illinois is no exception. States have a legitimate interest in regulating the number of candidates on the ballot: "In so doing, the State understandably and properly seeks to prevent the clogging of its election machinery, avoid voter confusion, and assure that the winner is the choice of a majority, or a strong plurality of those voting, without the expense and burden of runoff elections." *Bullock v. Carter*, 405 U.S. 134, 145 (1972). Moreover, "as a practical matter, there must be 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).

Finally, Plaintiffs have ample opportunity to raise federal constitutional challenges in the state administrative proceedings. "[I]t is sufficient… that constitutional claims may be raised in state-court judicial review of the administrative proceedings." *Ohio Civil Rights Commission*, 477 U.S. at 629; *see also Green*, 281 F.3d at 666-67. Under Illinois law, a plaintiff seeking administrative review of an agency's final decision pursuant to 10 ILCS 5/10-10.1 may bring Section 1983 claims against the agency at the same time, and the Seventh Circuit has repeatedly held that this administrative review process affords plaintiffs in Illinois an adequate opportunity for review of these federal claims. *See Green*, 281 F.3d at 666-67.

In short, all of the requisite elements are present for the application of *Younger* abstention to this case, and there are no "extraordinary circumstances" such that *Younger* abstention should not apply. *See Jacobson Vill. of Northbrook Mun. Corp.*, 824 F.2d 567, 569 (7th Cir. 1987). Plaintiffs may point to *Nader v. Keith*, 385 F.3d 729, 731 (7th Cir. 2004), in which the Court declined to apply *Younger* abstention. But in that case, the Electoral Board's proceeding was

complete—the district court had previously stated that it "had no intention of making substantive rulings in the case in advance of the Board's decision." *Nader v. Keith*, No. 04 C 4913, 2004 U.S. Dist. LEXIS 16660, at *11 (N.D. Ill. Aug. 23, 2004). By the time the Seventh Circuit issued that decision, the Electoral Board had ruled and Nader had filed for judicial review under state law. *Nader*, 385 F.3d at 731. The Seventh Circuit found that *Younger* did not prevent Nader from pursuing parallel state and federal remedies, even though other abstention doctrines such as *Colorado River* might do so. *Id*. Here, though, Plaintiffs are not pursuing parallel proceedings; rather, they seek to enjoin the Electoral Board from interpreting an Illinois statute in a particular way. Moreover, while *Nader* seems to limit *Younger* to violations of criminal law (*id*.), as discussed above, *Younger*'s "scope has been expanded to apply to state judicial and administrative proceedings in which important state interests are at stake" (*Forty One News, Inc. v. Cty. of Lake*, 491 F.3d 662, 665 (7th Cir. 2007)), and the State has important interests in regulating ballot access. *Lee v. Keith*, 463 F.3d 763, 769 (7th Cir. 2006) (State has a "strong interest in preventing voter confusion by limiting ballot access to serious candidates.").

Moreover, while the *Nader* court noted that abstention "would almost certainly moot Nader's case" (385 F.3d at 732), the "[d]enial of a preferred federal forum for federal claims is often the result of the application of *Younger* abstention, . . . as well as other doctrines promoting comity." *Forty One News*, 491 F.3d at 667. The Supreme Court has:

> [R]epeatedly held, to the contrary, that issues actually decided in valid state-court judgments may well deprive plaintiffs of the 'right' to have their federal claims relitigated in federal court. This is so even when the plaintiff would have preferred not to litigate in state court, but was required to do so by statute or prudential rules.

San Remo Hotel, L.P. v. City & County of San Francisco, Cal., 545 U.S. 323, 342 (2005).

Finally, Plaintiffs may also argue that *Younger* does not apply "because this case is not quintessentially *Younger*." *Berrada Props. Mgmt. Inc. v. Romanski*, 608 F. Supp. 3d 746, 751 (E.D. Wis. 2022). But as one court recently explained:

> While this may be true, *Younger* abstention is not subject to Cinderella's glass slipper test. *See J.B. v. Woodard*, 997 F.3d 714, 722 (7th Cir. 2021) ("it falls short to say that none of the abstention doctrines is a literal or perfect fit"). Rather, *Younger* abstention applies when federal intervention would improperly disrupt ongoing state court proceedings, accomplishing the kind of interference that *Younger* sought to prevent, even if the specifics are distinguishable.

Berrada, 608 F. Supp. 3d at 751. As in *Berrada*, "the intervention Plaintiffs seek is doubly offensive" because it would "require[] the Court to make the first pass at several [state] statutory provisions and then, based upon federal construction of those state provisions, apply federal law to determine whether" one *possible* interpretation of a state statute would violate the First Amendment. *Id*. Thus, even if this case is "perhaps not a dead ringer for *Younger*, this case nevertheless fits neatly into the abstention canon." *Id*. This Court should thus "abstain and allow the state courts to settle the dispute." *Id*.

Unlike some abstention doctrines where the court retains discretion as to their application, *Younger* abstention is considered so important that its application is not discretionary. *Tr. & Inv. Advisers v. Hogsett*, 43 F.3d 290, 294 (7th Cir. 1994). Whenever the elements for *Younger* abstention are present, the court must abstain. *Green*, 281 F.3d at 667. It should do so here.

B. In the alternative, the Court should abstain from hearing this case based on general principles of federalism and comity.

Even if this Court determines that *Younger* does not apply here, it should still abstain from hearing Plaintiffs' claims. As the Seventh Circuit explained in *J.B.*, even if a recognized abstention doctrine is not an exact fit, abstention can be appropriate because "[t]o insist on literal perfection" based on a complaint's allegations "risks a serious federal infringement." 997 F.3d at 723 (declining to exercise federal jurisdiction in a due process custody claim). "A common thread

underlying the Supreme Court's abstention cases is that they all implicate (in one way or another and to different degrees) underlying principles of equity, comity, and federalism foundational to our federal constitutional structure." *Id.* at 722. "In short, abstention law doesn't demand an exact fit with the precise parameters of a doctrinal category…. Instead, the abstention inquiry is flexible and requires a practical judgment informed by principles of comity, federalism, and sound judicial administration." *Driftless Area Land Conservancy v. Valcq*, 16 F.4th 508, 527 (7th Cir. 2021). Thus, even where *Younger* or other abstention doctrines are not a perfect fit, "federal courts may decline to exercise jurisdiction where denying a federal forum would 'clearly serve an important countervailing interest,' including 'regard for federal-state relations.'" *Hadzi-Tanovic v. Johnson*, No. 20-cv-3460, 2021 U.S. Dist. LEXIS 226663 at *15 (N.D. Ill. Nov. 24, 2021), *quoting Courthouse News Serv. v. Brown*, 908 F.3d 1063, 1071 (7th Cir. 2018).

Here, Plaintiffs request that this Court insert itself into (indeed, short-circuit) a state administrative proceeding, but to do so "would intrude upon the independence of the state courts and their ability to resolve the cases before them." *J.B.*, 997 F.3d at 721-22. While *J.B.* itself dealt with a state court proceeding, the same principles apply to quasi-judicial proceedings like the proceeding currently before the Board. *See Ament v. Kusper*, 370 F. Supp. 65, 68 (N.D. Ill. 1974) (refusing to intervene in pending Board hearing); *Rizzo v. Goode*, 423 U.S. 362, 379-80 (1976) ("principles of equity, comity, and federalism" counsel against intruding on state agencies). As one court explained:

> [W]here a state statute provides for judicial review of administrative practices under a state statute, federal courts should allow state courts an opportunity to legally and equitably resolve the controversy even though the controversy might have putative constitutional dimensions. Federal court patience and reservation in such cases not only serves to minimize federal-state friction, but also avoids premature and perhaps unnecessary constitutional adjudication. . . . Such federal restraint is especially proper in cases such as the instant action which involve a fairly complex state statutory scheme designed to protect the integrity of the political party system.

Ament, 370 F. Supp. at 68. Thus, this Court should thus abstain from hearing this case because Plaintiffs' request for an injunction against the State Board of Elections would upend the delicate balance between state and federal systems.

II. Plaintiffs have no likelihood of success on the merits.

"A plaintiff seeking a preliminary injunction must establish that he is likely to succeed on the merits." *Winter*, 555 U.S. at 20. A plaintiff must make a "strong" showing that he will succeed on the merits, meaning he must demonstrate how he proposes to prove the key elements of the case. *Illinois Republican Party*, 973 F.3d at 762. Even if a plaintiff makes the required showing, the court must determine how likely it is that the plaintiff will actually succeed: "The more likely the plaintiff is to win, the less heavily need the balance of harms weigh in his favor; the less likely he is to win, the more need it weigh in his favor." *Roland Mach. Co. v. Dresser Indus., Inc.*, 749 F.2d 380, 387 (7th Cir. 1984). When there are "two equally credible versions of the facts the court should be highly cautious in granting an injunction without the benefit of a full trial." *Lawson Prods., Inc. v. Avnet, Inc*., 782 F.2d 1429, 1440 (7th Cir. 1986) (citation omitted). Here, Plaintiffs fail to establish a likelihood of success on the merits.

A. Plaintiffs lack standing because their claim is speculative and unripe.

Even if the Court were to hear Plaintiffs' claims, they have no likelihood of success because they lack standing to bring their claims. It is well established that "Article III restricts the judicial power to actual 'Cases' and 'Controversies,' a limitation understood to confine the federal judiciary to the traditional role of Anglo-American courts, which is to redress or prevent actual or imminently threatened injury." *Ezell v. City of Chicago*, 641 F.3d 684, 694-95 (7th Cir. 2011). Accordingly, to assert standing for injunctive relief, Plaintiffs must show that they are "under an actual or imminent threat of suffering a concrete and particularized 'injury in fact'"; that this injury is fairly traceable to the defendant's conduct; and that it is likely that a favorable judicial decision

will prevent or redress the injury." *Common Cause Indiana v. Lawson*, 937 F.3d 944, 947 (7th Cir. 2019). Plaintiffs bear the burden of establishing these elements. *Id.*

Importantly, the alleged threatened injury in fact must be "actual and imminent, not conjectural or hypothetical." *Summers v. Earth Island Institute*, 555 U.S. 488, 493 (2009). The requirements for standing ensure that there is a real need for courts to exercise judicial review to protect the interests of the complaining party. *Id.* "Where that need does not exist, allowing courts to oversee legislative or executive action would significantly alter the allocation of power . . . away from a democratic form of government." *Id.* (internal quotation marks omitted).

Here, Plaintiffs assert that *if* the Electoral Board were to interpret Section 10-4 to apply to out-of-state ballot circulation, and *if* the State Board of Elections were to refuse to certify Kennedy as a candidate based on that interpretation, *then* the Plaintiffs' First Amendment rights would be violated. Dkt. 1 ¶¶ 75-78, Dkt. 3 at 9 ("Plaintiffs. . . 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."). But the Electoral Board has not yet ruled on this issue, and the State Board of Elections has yet to certify the ballot for this election. *See* Ex. 6, Ex. 7 at 38; Dkt. 1 ¶ 70; Ex. 1, *Oakley* TRO Order at 3. The asserted injury is therefore entirely speculative and unripe for decision. *See Wisconsin Right to Life State Political Action Committee v. Barland*, 664 F.3d 139, 148 (7th Cir. 2011) ("Ripeness concerns may arise when a case involves uncertain or contingent events that may not occur as anticipated, or not occur at all.") (internal citations omitted); Ex. 1, *Oakley* TRO Order at 2 ("But the Board has not yet ruled. That means that the plaintiffs have been denied nothing at this point."). Because Plaintiffs lack an injury-in-fact that is ripe for decision, they lack standing to bring their claims.

B. All of Plaintiffs' claims are barred under the Eleventh Amendment.

Even if Plaintiffs had standing to bring their claims, the Eleventh Amendment bars their claims against the Defendants. First, the Eleventh Amendment bars Plaintiffs' claims against the Illinois State Board of Elections. It is well-established that the Eleventh Amendment provides immunity to states and state agencies (as "arms of the state"). *Joseph v. Bd. of Regents of Univ. of Wisconsin Sys.*, 432 F.3d 746, 748 (7th Cir. 2005), *citing Kroll v. Bd. of Trustees of Univ. of Ill.*, 934 F.2d 904, 907 (7th Cir. 1991) and *Will v. Michigan Dep't of State Police*, 491 U.S. 58, 70-71 (1989). The Eleventh Amendment applies with full force against both federal and state law claims. *Pennhurst State Sch. & Hosp.*, 465 U.S. at 120-21 (1984); *see also Stoner v. Wis. Dep't of Agric.*, 50 F.3d 481, 482-83 (7th Cir. 1995) (holding that state's decision to indemnify employees does not abrogate Eleventh Amendment immunity). Thus, Plaintiffs' claims against the State Board of Elections are barred by the Eleventh Amendment. Moreover, the State Board of Elections is not a "person" subject to suit under Section 1983. *Will*, 491 U.S. at 70-71.

Under the doctrine of *Ex Parte Young*, Plaintiffs may sue officials like Defendant Matthews for prospective injunctive relief to remedy an ongoing violation of federal law. *See Council 31 of the American Fed. of State, County, and Mun. Employees, AFL-CIO v. Quinn*, 680 F.3d 875, 882 (7th Cir. 2012). But to fall under this exception, "a plaintiff must show that the named state official plays some role in enforcing the statute in order to avoid the Eleventh Amendment." *Doe v. Holcomb*, 883 F.3d 971, 975 (7th Cir. 2019), *citing Ex Parte Young*, 209 U.S. 123, 157 (1908).

Here, Plaintiffs' Complaint includes no allegations against Defendant Matthews at all, other than the statement in the caption that she is sued "in her official capacity as the Executive Director of the Illinois State Board of Elections." Dkt. 1 at Caption. Plaintiffs do not allege that Defendant Matthews plays *any* role in enforcing the challenged statute, other than generic references to "Defendants." *See generally* Dkt. 1. This is insufficient under *Ex Parte Young*.

Moreover, Defendant Matthews does not, in fact, enforce the challenged provision. The Executive Director is the State Board of Elections' subordinate hired pursuant to 10 ILCS 5/1A-7 and 10 ILCS 5/1A-9. The Executive Director is not a member of the Electoral Board and she cannot vote on objections to petitions. 10 ILCS 5/1A-8, 10-9. Moreover, while the Election Code allows the State Board of Elections to delegate certain duties to the Executive Director, only the State Board of Elections may certify a candidate to the ballot under 10 ILCS 5/1A-8. No statute or regulation gives the Executive Director the authority to issue directions to the State Board of Elections; to the contrary, the Board may remove the Executive Director from office "any time by a vote of at least 5 members of the Board." 10 ILCS 5/1A-9. Because Defendant Matthews does not have the authority to determine how the Electoral Board will interpret Section 10-4, and cannot order the State Board of Elections to place or remove a candidate from the ballot, she is not a proper defendant for Plaintiffs' claims under *Ex Parte Young*. The Eleventh Amendment thus bars all claims against Defendant Matthews as well.

There is also no case or controversy between Plaintiffs and Defendant Matthews. The proper defendant to name in a case seeking injunctive relief is "the person whose actions cause injury." *Travis v. Reno*, 163 F.3d 1000, 1007 (7th Cir. 1998); *see also Quinones v. City of Evanston, Illinois*, 58 F.3d 275, 277 (7th Cir.1995). As discussed above, to the extent that Plaintiffs have *any* injury, it was not caused by Defendant Matthews, nor does she have the authority to remedy that injury. Thus, Plaintiffs cannot succeed on their claims against Matthews.

III. The other preliminary injunction factors weigh against granting a preliminary injunction.

Because Plaintiffs fail to establish a likelihood of success on the merits of their claims, the balance of harms must weigh very heavily in their favor to merit relief. But as discussed below, the balance of harms weighs strongly *against* granting a preliminary injunction.

A. Plaintiffs cannot demonstrate irreparable harm.

Plaintiffs have failed to establish that they will suffer irreparable harm if the Court denies their motion. Plaintiffs assert that the interpretation of Section 10-4 is "dispositive" (Dkt. 1 ¶ 70), *i.e.*, that if Section 10-4 were interpreted not to include out-of-state conduct, then "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." Dkt. 3 at 12. But Plaintiffs have provided no evidence to support this argument. And even if this statement were true, it would not be sufficient to show irreparable harm. As Judge Daniels recently held, "the Board has not yet ruled. That means that the plaintiffs have been denied nothing at this point." Ex. 1, *Oakley* TRO Order, at 2. Moreover, the requirement that Plaintiffs participate in an administrative hearing to defend Kennedy's petition cannot constitute irreparable harm. *See Stroman Realty, Inc. v. Grillo*, 438 F. Supp. 2d 929, 936 (N.D. Ill. 2006) ("Merely appearing at the administrative hearing or appealing in state court will not cause irreparable harm or injury."); *Kids Hope United v. Montgomery*, No. 09 C 1491, 2010 U.S. Dist. LEXIS 13257, at *10 (N.D. Ill. Feb. 12, 2010) ("Nor are we persuaded that [plaintiff] will be irreparably harmed if it is required to appear before the IWCC and defend itself should there be any such claims."). Similarly, "the expense incurred in litigating a position is not the type of 'irreparable harm' for which injunctive relief may be granted." *Singer Co. v. P. R. Mallory & Co.*, 671 F.2d 232, 235 (7th Cir. 1982), *citing Renegotiation Bd. v. Bannercraft Clothing Co.*, 415 U.S. 1, 24 (1974).

Plaintiffs also assert that any infringement on their First Amendment rights automatically constitutes irreparable harm. Dkt. 3 at 12. But Plaintiffs have failed to show that their First Amendment rights have been violated at all, and it is well established that the *possibility* of irreparable harm is not sufficient to warrant a preliminary injunction. *Orr v. Shicker*, 953 F.3d 490,

502 (7th Cir. 2020); *see also* Ex. 1, *Oakley* TRO Order, at 2. Because they have not shown any harm at all, Plaintiffs' motion must be denied.

Even if the Plaintiffs could establish irreparable harm, "the threat of irreparable harm does not automatically trigger a preliminary injunction." *Del. State Sportmen's Ass'n. Inc. v. Del. Dep't of Safety & Homeland Sec.*, 108 F.4th 194, 2024 U.S. App. LEXIS 17214, at *14 (3d Cir. 2024). The purpose of a preliminary injunction is not to prevent any interim harm, but to prevent irreparable harm that "threatens to moot a case, as when one party's conduct could destroy the property under dispute, kill the other party, or drive it into bankruptcy, 'for otherwise a favorable final judgment might well be useless.'" *Id.* Where the "plaintiff's alleged injury does not threaten to moot the case" the "wiser course" is "often, perhaps usually," the denial of a preliminary injunction. *Id.* at *15. Here, even if the Board rules in the Objectors' favor, that it not the end of the matter—Plaintiffs can seek judicial review of that decision in state court. *See* 10 ILCS 5/10-10.1. Because "there is time to allow the Board to complete its review," there is "no reason at this time for this Court to interfere with that process." Ex. 1, *Oakley* TRO Order, at 3.

B. Plaintiffs have an adequate remedy at law.

Plaintiffs assert that they have no adequate remedy at law because money damages is an insufficient remedy, and that the only adequate remedy is "equitable, injunctive relief." Dkt. 3 at 13. But the federal courts have repeatedly held that there is an adequate remedy at law in election cases like these because judicial review is available in the state court. *See Ament*, 370 F. Supp. at 67-68; *Ewell v. Bd. of Election Comm'rs*, No. 96 C 823, 1996 U.S. Dist. LEXIS 2549, at *10 (N.D. Ill. Mar. 4, 1996) ("[T]he Court must agree with the defendants that the state procedure of judicial review of the decisions of state electoral boards is an adequate remedy at law."). Thus, this factor also weighs against a preliminary injunction.

C. The balance of harms weighs decidedly against injunctive relief.

Under the "balance of harms" portion of the analysis, Plaintiffs must establish that "the harm they would suffer without the injunction is greater than the harm that preliminary relief would inflict on the defendants." *Mich. v. U.S. Army Corps of Eng'g*, 667 F.3d 765, 769 (7th Cir. 2011). As Plaintiffs' claims are unlikely to succeed on their merits, they "must compensate for the lesser likelihood of prevailing by showing the balance of harms tips *decidedly* in favor of the movant." *Boucher v. Sch. Bd. of Sch. Dist. of Greenfield*, 134 F.3d 821, 826 n. 5 (7th Cir. 1998) (emphasis in original). The court also should consider whether a preliminary injunction would cause harm to the public interest. *Platinum Home Mort. Corp. v. Platinum Fin. Group, Inc.*, 149 F.3d 722, 726 (7th Cir. 1998). When the government is the opposing party, the final two factors in the preliminary injunction analysis—the balance of the equities and the public interest -- merge. *Nken v. Holder*, 556 U.S. 418, 435 (2009); *see also Pursuing America's Greatness v. FEC*, 831 F.3d 500, 511 (D.C. Cir. 2016) ("The government's interest *is* the public interest.") (emphasis in original).

Here, the harm to Defendants and the public is significant if preliminary injunctive relief is granted. As discussed above, states "have a strong interest in preventing voter confusion by limiting ballot access to serious candidates." *Lee*, 463 F.3d at 769. "Light regulation of ballot access could lead to an unmanageable number of frivolous candidates qualifying for the ballot, thereby confusing voters." *Navarro v. Neal*, 716 F.3d 425, 431 (7th Cir. 2013); *see also Nader*, 385 F.3d at 733 ("terminal voter confusion might ensue from having a multiplicity of Presidential candidates on the ballot"). Contrary to Plaintiffs' claim that the public interest is served by this Court ordering that Kennedy be placed on the ballot (Dkt. 3 at 14), "the public interest of the citizens of Illinois is not best served when a federal court intervenes to override a valid ballot-access requirement . . . and impose candidates by judicial fiat." *Summers v. Smart*, 65 F. Supp. 3d

556, 569 (N.D. Ill. 2014). The federal courts should avoid unwarranted interference with state elections. *Id., citing Gjersten v. Bd. of Election,* 791 F.2d 472, 479 (7th Cir. 1986).

Moreover, the State has a strong interest in enforcing its own democratically enacted laws. *Del. State Sportmen's Ass'n. Inc.*, 2024 U.S. App. LEXIS 17214, at *25. "Any time a State is enjoined by a court from effectuating statutes enacted by representatives of its people, it suffers a form of irreparable injury." *Maryland v. King*, 567 U.S. 1301, 1303 (2012) (Roberts, C.J., in chambers) (quotations omitted). "Without the clarity of a full trial on the merits," the Court should "err on the side of respecting state sovereignty." *Del. State Sportmen's Ass'n. Inc.*, 2024 U.S. App. LEXIS 17214, at *25. Even after a trial, a federal court should issue injunctions against the State only "sparingly." *Rizzo*, 423 U.S. at 378. This strong preference against such intrusive injunctive relief is primarily founded on "delicate issues of federal state relationships" (*id*. at 380 (quotation omitted)), which are premised on "the principles of equity, comity, and federalism." *Id*. at 379 (quotation omitted). The State's interests in enforcing its own ballot access laws far outweighs the Plaintiffs' speculative injuries. The preliminary injunction should be denied for this reason as well.

CONCLUSION

For the foregoing reasons, Defendants respectfully request that the Court deny Plaintiffs' motion for a preliminary injunction.

Respectfully submitted,

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