

No. 20-1961

**IN THE
UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT**

Libertarian Party of Illinois, et al.,
Plaintiffs,

v.

William Cadigan, et al.,
Defendants.

) Appeal from the United
) States District Court for the
) Northern District of Illinois,
) Eastern Division
)
) Case No. 20-cv-2112
)
) Honorable Rebecca Pallmeyer,
) Judge Presiding, in her capacity as
) Emergency Judge
)

**STATEMENT ADDRESSING NEED FOR FURTHER BRIEFING
AND ORAL ARGUMENT**

Defendants-Appellants, Individual Members of the Illinois State Board of Elections (the “Board”), respectfully submit this statement addressing whether further briefing and oral argument are necessary, pursuant to this Court’s June 21, 2020 order.

BACKGROUND

On April 2, 2020, plaintiffs, Illinois Green Party, Libertarian Party of Illinois, and individual independent and third party candidates, filed a Complaint against Governor JB Pritzker and the individual members of the Illinois State Board of Elections (the “Board”) alleging the global coronavirus pandemic caused Illinois’s ballot-access requirements to violate Plaintiffs’ First and Fourteenth Amendment rights. (R.36) Plaintiffs also filed a Motion for Preliminary Injunction and/or Temporary Restraining Order that sought to prohibit enforcement of the provisions

of the Illinois Election Code that require Plaintiffs to meet certain conditions to qualify for the general election ballot. (R.75)

Plaintiffs specifically requested that the Court enjoin Defendants from enforcing the following statutory provisions as applied to Plaintiffs in the 2020 election cycle: 10 ILCS 5/7-10; 10 ILCS 5/7-10-2; and 10 ILCS 5/7-10-3. *Id.* Finally, Plaintiffs requested that the Court direct Defendants to accept Plaintiffs Green Party's and Libertarian Party's candidates' and Plaintiff Throneburg's nominating papers for the November 3, 2020 general election without requiring supporting signatures from voters, and place Plaintiffs candidates for Plaintiffs Green Party and Libertarian Party as well as Plaintiff Throneburg's names on Illinois' November 3, 2020 general election ballot. *Id.*

On April 23, 2020, Chief Judge Pallmeyer, in her capacity as Emergency Judge, granted plaintiffs' motion in part delaying the filing deadline from June 22, 2020 to August 7, 2020, permitting the submission of electronic petition signatures, and reducing the number of signatures required to 10% of the number required in the Illinois Election Code. (R.1; R.11)

On May 8, 2020, Defendants filed an Emergency Motion for Reconsideration In Part of Order Granting Preliminary Injunction. (R.147) After Plaintiffs filed their response and a telephonic hearing, the District Court granted Defendants' Motion insofar as it set the deadline for submission of petition signatures as July 20, 2020 rather than August 7, 2020 but denied the remainder of the Motion. (R.15).

The Board filed their notice of appeal on June 6, 2020, and their Motion to Expedite the Appeal and Motion for Stay of the District Court's Order on June 9, 2020. The Board then filed their opening brief on June 15, 2020. On June 21, 2020, this Court denied the Motion for Stay and ordered the parties to file statements addressing whether further briefing and oral argument are necessary.

ARGUMENT

The Board respectfully requests that this Court enter an order setting the briefing schedule for appellee's response brief and appellant's reply. The Board does not seek oral argument.

Recently, COVID 19 cases have again increased throughout the nation.¹ It is unknown how long the pandemic will last. It is possible it could last beyond the 2020 election and into future elections. The outcome of this appeal will therefore provide critical guidance from this Court on a District Court's authority to rewrite Illinois' statutory requirements that govern how the Board conducts an orderly election during the COVID 19 global pandemic.

The District Court's Order reduced the number of signatures a third party or independent candidate is required to submit to the Board to qualify for the November 2020 ballot to 10% of the number required in the Illinois Election Code and delayed the deadline for filing those signatures to July 20, 2020. (R.1; R.11)

¹ See, e.g., <https://www.wbez.org/stories/covid-19-cases-on-the-rise-in-parts-of-illinois/9b3ec039-11dc-436d-b1e4-4bf55672fd70>; <https://abc13.com/coronavirus-new-numbers-texas-what-are-the-latest-in-covid-cases-houston/6300183/>; <https://urbanmilwaukee.com/2020/07/04/wi-daily-wisconsin-reports-biggest-one-day-covid-19-case-increase/>.

While the July 20, 2020 deadline is quickly approaching, it has not passed. As such, the appeal currently presents a live controversy.

Even after the July 20, 2020 deadline passes, this Court may consider the issues presented in this appeal. A case is “capable of repetition, yet evading review” where: (1) the challenged action was in its duration too short to be fully litigated prior to its cessation or expiration, and (2) there was a reasonable expectation that the same complaining party would be subjected to the same action again.” *United States v. Fischer*, 833 F.2d 647, 648-49 (7th Cir. 1987). A “mere physical or theoretical possibility of repetition is not sufficient; there must be a ‘demonstrated probability that the same controversy will recur involving the same complaining party.’” *Id.* While the Court typically requires that the dispute be capable of repetition by the same plaintiff, this requirement is not interpreted literally in election cases. *See Moore v. Ogilvie*, 394 U.S. 814, 816 (1969) (deciding whether the burdens placed on independent candidates by requiring the established petition signatures was constitutionally permissible even though the 1968 election was over because those requirements remain and control future elections); *Majors v. Abell*, 317 F.3d 719, 723 (7th Cir. 2003) (“the courts, perhaps to avoid complicating lawsuits with incessant interruptions to assure the continued existence of a live controversy, do not interpret the requirement literally, at least in abortion and election cases”); *McIntyre v. Fallahay*, 766 F.2d 1078, 1082-1083 (7th Cir. 1985) (deciding whether which rules Indiana should use to resolve controversies about future elections even though the election results were already final).

Here, the continuously changing circumstances surrounding the State's response to the COVID 19 global pandemic created a severely truncated proceeding below and did not allow the Board sufficient time to fully weigh the impact of the changes to the Election Code as well as the impact on the public. With the November 2020 election approaching, it is likely that additional Election Code provisions will be challenged in light of the COVID-19 pandemic. These cases will also be severely truncated and based on a continuously changing landscape. Thus, the Board respectfully requests that this Court enter an order setting the briefing schedule for plaintiff's appellee brief and the Board's reply brief, and ultimately issue an order providing guidance to the Board and the public as to the authority of the federal courts to modify the Election Code in light of situations such as the COVID 19 pandemic.

CONCLUSION

For these reasons, the Board respectfully requests that this Court enter an order setting a briefing schedule for appellee's brief and appellant's reply brief to provide guidance on the scope of the federal courts' authority to rewrite the Illinois Election Code.

Respectfully submitted,

DEFENDANTS, MEMBERS OF THE
ILLINOIS STATE BOARD OF
ELECTIONS

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CERTIFICATE OF COMPLIANCE

This document complies with the word limit of Fed. R. App. P. 27(d)(2)(A) because, excluding the parts of the document exempted by Fed. R. App. P. 32(f), this document contains 1,042 words.

/s/ Adam R. Vaught

CERTIFICATE OF SERVICE

I certify that on July 6, 2020, the foregoing document was filed electronically using the court's CMF/ECF system, which will cause service to be made on all counsel of record.

/s/Adam R. Vaught