

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

LIBERTARIAN PARTY OF ILLINOIS, :  
et al., :

Plaintiffs, :

v. :

Civil Action No. 12-cv-02511

ILLINOIS STATE BOARD OF  
ELECTIONS, et al., :

Defendants. :

**CONSENT MOTION FOR A STATUS HEARING**

Plaintiffs respectfully request that a status hearing be set in the above-captioned cause as soon as the same is convenient for the Court.

As the Court is aware, this case raises vitally important constitutional rights of both voters and candidates in Illinois and those rights are directly and immediately impacted by Illinois's unique "full slate" law challenged here.

In March of 2016, the ballot access petitioning period begins for the Plaintiff Libertarian Party of Illinois and its candidates and supporters (and similarly situated parties) under Illinois law. The Plaintiff needs a decision in this case as soon as possible to know whether in order to seek access to the ballot for any office it will have to field a full slate of candidates. In any event, preparation time in advance of the start of the petitioning period is required and the Plaintiff's ability to attract and organize candidates interested in running under its banner will depend in major part on the decision in this case.

Additionally, if the Court were to rule against the Plaintiff in this case, time will be required for Plaintiff to attempt to appeal any such decision before the

petitioning period begins. Accordingly, time is of the essence.

Both sides seek a decision in the case as soon as possible.

Briefing in this case on the pending cross motions for summary judgment was completed two years ago. The following is a summary of the procedural history:

This case was filed on April 5, 2012. On September 5, 2012, Judge Gottschall, to whom the case originally was assigned, issued a significant Memorandum and Order on the Defendants' motion to dismiss. [DE 22] Three months later a discovery schedule was established. [DE 29]

Soon thereafter, on January 14, 2013, this case was reassigned to Judge Durkin [DE 31] and, following the filing of a status report, [DE 33], cross motions for summary judgment were filed. [DE 40; 44] On September 4, 2013, all briefing on the cross motions for summary judgment was completed. [DE 61]

On November 18, 2013, this case was reassigned to this Court. [DE 64] A joint status report was filed by the parties on December 4, 2013. [DE 66] A status hearing was held on December 10, 2013, the cross motions for summary judgment were taken under advisement, and a second status hearing was set for March 11, 2014. [DE 67] The March 11, 2014 status hearing was stricken on the Court's motion and a new status hearing was set for May 8, 2014. [DE 68] The May 8, 2014 status hearing was stricken at the request of counsel, with the proviso that notice of a new status hearing would follow shortly. [DE 69]

No notice of a new status hearing was issued and, sadly, Plaintiff's original

lead counsel, Gary Sinawski, passed away.

On December 9, 2014, the undersigned entered the case as new counsel for the Plaintiffs, [DE 70] and arranged with counsel for the Defendants to ask the Court to set a status hearing.

On January 16, 2015, an Order was entered setting a status hearing for February 12, 2015, [DE 71], and on February 12, 2015, a status hearing was held. The Court advised the parties during that status hearing that the Court anticipated issuing a decision on the cross motions for summary judgment soon thereafter, and set a follow-up status hearing for March 11, 2015, for the purpose of discussing the decision the Court anticipated rendering before then. [DE 72]

On March 10, 2015, the March 11, 2015 status hearing was stricken on the Court's own motion and was reset for March 24, 2015. [DE 74] On March 23, 2015, the March 24, 2015 status hearing was stricken on the Court's own motion, the Court advised that it would issue a ruling on the cross motions for summary judgment within the week, and a follow up status hearing was set for April 7, 2015. [DE 75] On April 6, 2015, the April 7, 2015 status hearing was stricken on the Court's own motion and was rescheduled for April 16, 2015, with the docket entry advising that the Court needed additional time to complete the ruling on the pending motions. [DE 76]

On April 16, 2015, a status hearing was held. The Court explained that a number of pressing matters had come before the Court and that, while the Court had not yet been able to complete the ruling on the pending cross motions for

summary judgment, the Court would issue its ruling in short order. The Court set a status hearing for May 14, 2015 for the purpose of following up on the ruling that it anticipated rendering before then. [DE 77] On May 13, 2015, the May 14, 2015 status hearing was stricken on the Court's own motion and no further proceedings have been scheduled. [DE 78]<sup>1</sup>

Plaintiffs respectfully request the opportunity for a status hearing at the earliest practicable date. The ideal, of course, would be for the Court to enter its decision on the cross motions for summary judgment as soon as possible, thereby obviating the need for a status hearing or making the purpose for such status hearing the purpose that the Court indicated it had in mind in setting the earlier canceled status hearings.

Plaintiffs believe they have made a compelling showing in support of the motion for summary judgment and that Illinois's unique "full slate" law must be struck down as unconstitutional.

As demonstrated in the motion papers, the "full slate" law at issue in this case has a tremendous impact both on the Libertarian Party itself and on prospective Libertarian candidates and voters. Unfortunately, the partisan odd-year elections for municipal and township offices already have occurred for this year and the "full slate" law obviously remained in force and its impact already has been felt.

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<sup>1</sup> On July 2, 2015, Plaintiffs filed a notice of recent authority. [DE 79] Defendants sought leave to file a memorandum concerning that recent authority, [DE 80], and the same was granted on July 13, 2015 [DE 82]. The parties filed their respective memoranda on July 21, 2015. [DE 83; DE 84].

As noted above, petitioning for the next set of relevant elections begins in March of 2016, just a short time from now. The Plaintiffs and others similarly situated need time to plan petitioning strategy, attract candidates, organize petitioners, and for all sorts of other relevant tasks. A decision in this case is of key significance to prepare for petitioning and to enable the Plaintiffs to attract candidates for elective office. Additionally, this is a short period of time even for an expedited appeal, if an appeal is necessary.

Among other organizing challenges posed by the “full slate” law, prospective candidates whose preference would be to run as a Libertarian Party candidate, but who are deterred from doing so because of the “full slate” law, might well conclude that if they intend to run as candidates their only viable course, in light of the “full slate” law, is to run instead as a Democrat or Republican. If so, they had to have made that decision this past month.

In short, each day that passes without a decision has consequences for the electoral process. Time is of the essence.

The undersigned conferred by email with opposing counsel in advance of filing this motion and opposing counsel advised that the Defendants share Plaintiffs’ wish for a decision in this case as soon as possible and have no objection to this motion for a status hearing.

Based on all of the foregoing, Plaintiffs respectfully request that a status hearing be set in the cause at the Court's earliest convenience.

Respectfully Submitted,

/s/ David I. Schoen  
Counsel for Plaintiffs

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that the foregoing Consent Motion for a Status Hearing has been served on all counsel of record by filing the same on this 3<sup>rd</sup> day of September through this Court's ECF system.

/s/ David I. Schoen  
Counsel for Plaintiffs

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