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**IN THE UNITED STATES DISTRICT COURT**
**FOR THE CENTRAL DISTRICT OF ILLINOIS**
**SPRINGFIELD**

| | | |
|---|---|---|
| DAVID M. GILL, | ) | |
| | ) | |
| Plaintiffs, | ) | No. 16 CV 3221 |
| | ) | |
| v. | ) | Judge Sue E. Myerscough |
| | ) | |
| CHARLES W. SCHOLZ, et al., | ) | |
| | ) | |
| Defendants. | ) | |

**DEFENDANTS' COMBINED MOTION FOR SUMMARY JUDGMENT**
**AND RESPONSE TO PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT**

Defendants Charles W. Scholz, Ernest L. Gowen, Betty J. Coffrin, Cassandra B. Watson, William M. McGuffage, John R. Keith, Andrew K. Carruthers, and William J. Cadigan, the members of the Illinois State Board of Elections in their official capacities, by their attorney, Lisa Madigan, Attorney General of the State of Illinois, hereby move the court, pursuant to Rule 56(b) of the Federal Rules of Civil Procedure, to grant summary judgment in their favor on the grounds that there is no genuine dispute as to any material fact and the Defendants are entitled to judgment as a matter of law. This motion also serves as the Defendants' response in opposition to Plaintiffs' motion for summary judgment.

## I. INTRODUCTION

This case is governed by a recent Seventh Circuit case virtually identical to this one: *Tripp v. Scholz*, 872 F.3d 857 (7th Cir. 2017) (attached as Exhibit A). The Seventh Circuit considered the same issues—notarization, the 5% requirement, the rural nature of a legislative district, the cumulative effect of all the requirements—that Plaintiffs raise here. Judge Reagan in the Southern District wrote a comprehensive opinion granting the defendants' motion for summary judgment. *Tripp v. Smart*, No. 14-cv-890, 2016 WL 4379876 (S.D. Ill. Aug. 17, 2016)

(attached as Exhibit B). The Seventh Circuit affirmed unanimously in a detailed opinion. Essentially, this case can be decided with a citation to the Seventh Circuit's decision in *Tripp.*

Plaintiffs have not cited or discussed *Tripp* in their memorandum of law, but it simply cannot be ignored. It is controlling precedent, *the* controlling precedent, and it requires that Plaintiffs' motion be denied, and that Defendants' cross-motion be granted. When reviewing plaintiffs' brief and statement of facts, one might get the impression that Plaintiffs believe the Court can write on a clean slate in deciding this case. In their statement of uncontested facts, for example, Plaintiffs cite comments from Illinois legislators opposing a bill that was enacted, as if those comments have controlling legal significance over Seventh Circuit precedent. Plaintiffs' implicit assumption is that this Court should make an overall judgment, as if this was a case of first impression, on the reasonableness of a percentage enacted into law by the state legislature and that in doing so it should compare signature requirements for independents to major party candidates, or compare signature requirements for other federal offices like the U.S. Senate to those for the U.S. House. But given the Seventh Circuit's holding in *Tripp*, this approach is an analytical dead-end as a matter of law.

## II. RESPONSE TO UNDISPUTED MATERIAL FACTS

### A. Undisputed Material Facts

Defendants do not dispute the following paragraphs from Plaintiffs' Statement of Undisputed Material Facts ("PSF") (Dkt. 38) and concedes that these facts are material: Paragraphs 1-15, 24-25, 28, 40, 41, and 54.

### B. Disputed Material Facts

**Response to Plaintiffs' Paragraph 23:** This statement contains both disputed and undisputed facts. Defendants do not dispute that Mr. Fant collected 16,292 signatures; Mr. Reams collected 12,919 signatures; or that Mr. Gargan collected 12,141 signatures. Defendants

dispute that the Florida period was 198 days. According to the supplemental affidavit and deposition testimony of Richard Winger, Plaintiffs' expert, the Florida period was 189 days. *See* Supp. Aff. of Richard Winger, Ex. 5 to PSF (Dkt. 38-5) ¶ 4; Deposition of Richard Winger ("Winger Dep."), Exhibit 6 to PSF (Dkt. 38-6) at 27:6-9.

**Response to Plaintiffs' Paragraph 42**: This statement contains both disputed and undisputed facts. Defendants do not dispute that Gill enlisted the help of 18 other petition circulators and does not dispute that Gill collected 11,348 signatures. Defendants dispute Plaintiffs' conclusory assertion that all of Gill's circulators "worked very hard."

### C. Disputed Immaterial Facts

**Response to Plaintiffs' Paragraph 18**: This statement contains both disputed and undisputed facts. Defendants do not dispute the first sentence. Defendants dispute the second sentence because these alleged impediments are endemic to all political campaigns and districts. All districts have border lines. Weather impacts everybody. *See Tripp*, 872 F.3d at 871-872. Both sentences of Paragraph 18 are immaterial and not determinative of the underlying issues.

**Response to Plaintiffs' Paragraph 22**: Defendants do not dispute that ballot history is sometimes discussed in the cases. Defendants dispute that is a legally determinative factor, particularly where there is precedential authority upholding the challenged ballot access percentage requirement.

**Response to Plaintiffs' Paragraph 27**: Defendants dispute this paragraph; not all members of political parties vote in primary elections, and turnout can vary from election to election. Defendants further assert that this paragraph is immaterial and not legally determinative of any issues in the case.

**Response to Plaintiffs' Paragraph 34**: Defendants dispute this paragraph, which presents conclusory assertions rather than facts. *See* PSF ¶ 23, listing three candidates who

gathered more than 10,754 signatures, and Defendants' Additional Material Facts ("DAF") (Section II.E below), ¶¶ 3-10, which lists candidates in other states who collected significant numbers of signatures, some over 10,000.

**Response to Plaintiffs' Paragraph 44**: Defendants dispute that the population of the district is all scattered; the 13th Congressional District contains population centers. This alleged fact is immaterial because of pre-existing legal authority.

**Response to Plaintiffs' Paragraph 45**: Defendants dispute the conclusory allegation that the notarization requirement is an "obstacle." This alleged fact is immaterial because of pre-existing legal authority.

**Response to Plaintiffs' Paragraph 46**: Defendants do not dispute that paid circulators may charge $3 per signature. However, no paid circulators were used in this case or even attempted to be used. Defendants dispute that the use of paid circulators would cause any greater difficulty in employing them compared to the use of volunteer circulators. Because of preexisting legal authority, these facts are immaterial.

**Response to Plaintiffs' Paragraph 48**: Defendants dispute the conclusory assertion that the filing deadline for independent candidates constitutes a "severe restriction." This alleged fact is immaterial because Plaintiffs have not challenged the filing deadline in this case.

**Response to Plaintiffs' Paragraph 50**: Defendants dispute Plaintiffs' conclusory assertion that there is no "ballot overcrowding" because Plaintiffs do not provide any accepted definition of "ballot overcrowding." And even if the asserted fact is true, it is immaterial because the State is not legally required to make a showing of "ballot overcrowding." *Tripp*, 872 F.3d at 866.

**Response to Plaintiffs' Paragraph 51**: Defendants do not dispute that, in election years following redistricting, independent candidates for U.S. House districts are required to submit 5,000 signatures. Defendants dispute Plaintiffs' conclusory assertion that there is no "ballot overcrowding" because Plaintiffs do not provide any accepted definition of "ballot overcrowding." And even if the asserted fact is true, it is immaterial because the State is not legally required to make a showing of "ballot overcrowding." *Tripp,* 872 F.3d at 866.

**Response to Plaintiffs' Paragraph 52**: Defendants dispute this statement as a legal conclusion, which has been rejected in numerous controlling Seventh Circuit and U.S. Supreme Court cases and is therefore immaterial.

**Response to Plaintiffs' Paragraph 53**: Defendants dispute Plaintiffs' conclusory assertion that there is no "ballot overcrowding" because Plaintiffs do not provide any accepted definition of "ballot overcrowding." And even if the asserted fact is true, it is immaterial because the State is not legally required to make a showing of "ballot overcrowding." *Tripp,* 872 F.3d at 866.

### D. Undisputed Immaterial Facts

Defendants do not dispute the following paragraphs from Plaintiffs' Statement of Undisputed Material Facts (Dkt. 38), but asserts that these facts are immaterial and not determinative of the underlying issues: Paragraphs 16-21, 26, 29-33, 35-39, 43, 47, 49. Defendants offer more detailed discussions regarding Paragraph 35 and 43:

**Response to Paragraph 35**. While this statement is undisputed, it is immaterial because the Seventh Circuit acknowledged this fact in its opinion, *see Libertarian Party of Illinois v. Rednour,* 108 F.3d 768, 775 n.11 (7th Cir. 1997). However, this fact had no effect on the decision, has no effect on the precedential authority of the opinion, and cannot be used to overrule, limit, or distinguish a controlling precedent of the Seventh Circuit.

**Response to Paragraph 43**: While this statement is undisputed, it is immaterial because of pre-existing legal authority. In addition, many congressional districts are rural in nature.

### E. Defendants' Additional Material Facts ("DAF")

The following additional facts are material to the determination of both Plaintiffs' and Defendants' motions for summary judgment:

1. Other states have signature requirements in the range of what Illinois requires for independent candidates running for Congress. In particular, South Carolina requires 5% of the total electorate, not to exceed 10,000 signatures. Winger Dep. (Dkt. 38-6) at 35:24-36:21.

2. Georgia's standard is the most severe in the nation. It requires five percent of the number of registered voters as of the proceeding election year. *Id*. at 18:23-25.

3. North Carolina had a requirement of 4% of registered voters. Last year it lowered its requirement to 1.5% of registered voters. *Id*. at 20:1-5.

4. In 2008, Cindy Sheehan collected 10,198 signatures in a California congressional district. *Id*. at 37:16-18.

5. In 1994, Steve Kelly collected 10,186 signatures in a Montana congressional election. *Id*. at 37:19-20. The entire state is one district. *Id.* at 37:21-22.

6. In 1996, Steve Wheeler collected 10,191 signatures in a California congressional election. *Id.* at 38:6.

7. In 1996, David Golding collected 9,803 signatures in a Florida congressional election. *Id.* at 38:12.

8. In 2010, John Hager collected 9,758 signatures in a California congressional election. *Id.* at 38: 16-17.

9. In 1984, Samuel Grove collected 9,100 signatures for a congressional election in Maryland. *Id.* at 38:12-15.

10. In 1974, H. Douglas Lassiter collected 9,698 signatures for a congressional election in Illinois. *Id.* at 24:15-25:24.

11. In 1954, Frazier Reams collected 12,919 signatures in an Ohio congressional election. Winger dep. at 27-28.

12. In 1998, Jack Gargan 12,141 signatures in a Florida congressional election. Winger dep. at 27-28.

13. In 2010, Wendell Fant collected 16,292 signatures in a congressional election in North Carolina. Winger dep. at 27-28.

14. The 13th Congressional District comprises over 5,793 square miles. *See* U.S. Census map for the 13th Congressional District, available online at https://www2.census.gov/geo/maps/cong_dist/cd113/cd_based/ST17/CD113_IL13.pdf (Ex. C).

15. The 15th Congressional District of Illinois comprises over 14,695 square miles. *See* U.S. Census map for the 13th Congressional District, available online at https://www2.census.gov/geo/maps/cong_dist/cd113/cd_based/ST17/CD113_IL15.pdf (Ex. D).

16. The 16th Congressional District of Illinois comprises over 7,917 square miles. *See* U.S. Census map for the 13th Congressional District, available online at https://www2.census.gov/geo/maps/cong_dist/cd113/cd_based/ST17/CD113_IL16.pdf (Ex. E).

17. The 17th Congressional District of Illinois comprises over 6,933 square miles. *See* U.S. Census map for the 18th Congressional District, available online at https://www2.census.gov/geo/maps/cong_dist/cd113/cd_based/ST17/CD113_IL17.pdf (Ex. F)

18. The 18th Congressional District of Illinois comprises over 10,515 square miles. *See* U.S. Census map for the 18th Congressional District, available online at https://www2.census.gov/geo/maps/cong_dist/cd113/cd_based/ST17/CD113_IL18.pdf (Ex. G).

## III. BACKGROUND

In 2016, David Gill was a candidate for the U.S. House of Representatives in the 13th Congressional District, running as an independent. Dkt. 38, PSF ¶ 1. Under Illinois law, in order to get on the ballot he needed to collect 10,754 signatures of registered voters in the district, representing 5% of the turnout in the previous election. *Id.* ¶¶ 5-6. He collected over 11,000 signatures, but after a records examination, was left with about 8,500 signatures, short of the number he needed. *Id.* ¶¶ 8, 11-12. He did not appear on the ballot. *Id.* ¶ 12.

Gill and several of his political supporters filed this action challenging various ballot-access provisions of the Illinois Election Code that he claims unconstitutionally limit his right to seek elective office. *Id.* ¶¶ 1-2; *see generally* Complaint (Dkt. 1). Specifically, Gill challenges the following provisions in his four count complaint as unconstitutional: the requirement that every sheet of petitions be separately notarized by the circulator (Count I); the 5% signature requirement on its face and as applied in the 13th Congressional District, which is rural and has a widely dispersed population (Count II); an additional challenge to the 5% requirement, on the grounds that it is irrational and imposes too heavy a burden (Count III); and finally that these requirements considered cumulatively— the notarization requirement, the 5% requirement, the 90 period for gathering signatures, the "splitting of population centers" in the largely rural 13th District—impose an unconstitutional burden on the independent candidate (Count IV).

## IV. ARGUMENT

Summary judgment should be granted when, viewing all the facts in the light most favorable to the non-moving party, there is no genuine dispute regarding any material fact. "Irrelevant or unnecessary facts do not preclude summary judgment even when they are in dispute." *Logan v. Commercial Union Ins. Co.*, 96 F.3d 971, 978 (7th Cir. 1996). If there are no genuine issues of material fact when evaluated under the substantive law, and that substantive

law dictates a result favoring movant, then the motion should be granted. "Only factual disputes that could affect the outcome of the suit under governing law will properly preclude the entry of summary judgment." *McGinn v. Burlington Northern R.R. Co.*, 102 F.3d 295, 298 (7th Cir. 1996).

In this case, that standard is met. Controlling precedent, most notably *Tripp v. Scholz,* 872 F.3d 857 (7th Cir. 2017), demonstrates that Defendants are entitled to judgment as a matter of law and Plaintiffs' motion for summary judgment should be denied.

### A. The General Governing Standard: Reasonable, Nondiscriminatory Ballot Access Laws Will Be Upheld.

In cases of this type, the governing standards are well established. First Amendment rights involved with running for office and associating with political candidates are not absolute. Elections are highly regulated affairs, and ballot space is finite. "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 processes." *Tripp,* 872 F.3d at 863, *citing Storer v. Brown,* 415 U.S. 724, 730 (1974). "[T]he mere fact that a State's system creates barriers. . . tending to limit the field of candidates from which voters might choose. . . does not of itself compel close scrutiny." *Tripp,* 872 F.3d at 863, *quoting Burdick v. Takushi,* 504 U.S. 428, 433 (1991) (internal citation omitted).

Independent candidates and new political parties have always been required to demonstrate a sufficient modicum of support before being allowed access to the ballot. Signature requirements which are designed to demonstrate this level of support have also been upheld. *Libertarian Party of Illinois v. Rednour*, 108 F.3d 768,775 (7th Cir. 1997).

The governing test derives from *Burdick*. If the burden is severe, a state's regulation must be narrowly drawn to advance a compelling state interest. On the other hand, if the burden is

merely "reasonable" and "nondiscriminatory," then "the government's legitimate regulatory interests will generally carry the day." *Tripp,* 872 F.3d at 864, *quoting Burdick,* 504 U.S. at 434.

### *B.* The Five Percent Signature Requirement is Reasonable and Constitutional.

We will address the claims in the same order as the Seventh Circuit in *Tripp,* starting with the five percent signature requirement. Under Section 10-3 of the Election Code, 10 ILCS 5/10-3, with some exceptions and qualifications not applicable here, independent candidates must submit nomination papers signed in the aggregate by at least 5% of the number of persons who voted at the next preceding general election in that district. For the 13th Congressional District in 2016, that number was 10,754. Dkt. 38, PSF ¶ 38.

The 5% standard has been upheld repeatedly. In *Tripp,* the Seventh Circuit held that "Illinois's 5% signature requirement, standing alone, does not violate the First or Fourteenth Amendment." 872 F.3d at 866. The Court noted: "On multiple occasions, the Supreme Court has upheld signature requirements equaling 5% of the eligible voting base." *Id.* at 864. For example, in *Norman v. Reed,* 502 U.S. 279 (1992), the Court upheld the Illinois requirement that individuals running in a new political party in districts of Cook County had to meet a threshold of 5% or 25,000, whichever was less. *Id.* at 282 n.2, 295. The Court noted that the 25,000 figure was only about 2% in the political subdivision in question, considerably less than the 5% upheld in other cases. In *Jenness v. Fortson,* 403 U.S. 431 (1971), a requirement of 5% of all the registered voters in the district (a considerably larger number than 5% of those voting in the preceding election) was also upheld. In *Libertarian Party of Illinois v. Rednour,* 108 F.3d 768 (7th Cir. 1997), the Seventh Circuit concluded that in light of *Reed* and *Jenness,* plaintiff "cannot argue that the 5% petitioning requirement is severe on its face." *Id.* at 775.

*Tripp* discusses these cases at length, and concludes, as did the other cases, that the burden imposed by the signature requirement is not severe. 872 F.3d at 866. The Court also concluded that signature requirements further the legitimate state interest of showing that the candidate or new political party can make a preliminary showing of some modicum of support—"the interest, if no other, in avoiding confusion, deception, and even frustration of the democratic process at the general election." *Id.*, *quoting Munro v. Socialist Workers Party,* 479 U.S. 189, 193-94 (1986).

Plaintiffs' other arguments attacking the 5% standard are also unavailing. Count III raises the argument that the 13th district is rural and spread out. In *Tripp*, the Seventh Circuit addressed the fact that the state legislative districts at issue, while larger than a compressed urban district, still paled in comparison to districts found in other parts of the United States. 872 F.3d at 871. We can make the same point about the 13th Congressional District. The entire state of Montana, for example, is one congressional district. DAF ¶ 5. Closer to home, the 15th, 16th, 17th, and 18th Congressional Districts are all larger than the 13th Congressional District. *Id*. ¶¶ 14-18. In particular, the 15th Congressional District (over 14,695 square miles) is nearly 2½ times larger than the 13th Congressional District (over 5,793 square miles). *Id*. ¶¶ 14-15. Moreover, we are unaware of any case that holds that an otherwise generally applicable and facially constitutional signature requirement can be ignored, and a lower number or percentage applied, simply because of the geographic size of the district. There cannot be different rules depending on the geographic size of a district. As Judge Reagan explained:

> To be sure, both Tripp and Shephard lived in spread-out districts with some cities that were split with other districts, and that kind of district makeup presents some challenges to signature collection efforts. But the kinds of challenges that come with campaigning in a rural district—namely a bit more drive time to pound the pavement and solicit signatures and some added questioning of voters concerning

> their district residency—are the kinds of challenges endemic to political campaigning.

*Tripp*, 2016 WL 4379876 at *4.

Plaintiffs argue that historically few independent candidates have been able to meet the signature requirements for Congress, suggesting the bar is too high. They further argue that this ballot history should be lead to a finding of unconstitutionality. Yet Plaintiffs' argument is overstated. First, Gill testified he alone collected nearly 5,000 signatures. PSF (Dkt. 38) ¶ 41. Running for office depends on dedicated volunteers and in some political campaigns candidates supplement this effort with paid staff to collect signatures. *See American Party of Texas v. White*, 415 U.S. 767, 787 (1974) ("Hard work and sacrifice by dedicated volunteers are the lifeblood of any political organization"). If Gill, working alone, gathered that many, with additional resources the task of colleting 10,754 signatures was achievable. In 1974, an independent Illinois candidate did get on the ballot for Congress, collecting 9,698 signatures. PSF (Dkt. 38) ¶ 24. Plaintiff's expert Richard Winger in his deposition noted a number of other candidates who obtained signatures comparable to what Gill needed here:

| Year | State | Number of Signatures |
|---|---|---|
| 2010 | North Carolina | 16,292 |
| 1954 | Ohio | 12,919 |
| 1998 | Florida | 12,141 |
| 2008 | California | 10,198 |
| 2008 | California | 10,191 |
| 2008 | Montana | 10,186 |
| 1996 | Florida | 9,803 |
| 2010 | California | 9,758 |
| 1974 | Illinois | 9,698 |
| 1984 | Maryland | 9,100 |

*Id*. ¶¶ 4-13. In some or all of the other states there may have been longer circulation periods than the 90 days allowed in Illinois, but the point remains that signature totals in this range can be achieved with a committed effort. And it should also be noted that Georgia's requirements, which Mr. Winger testified were the strictest in the nation (*id*. ¶ 2), were upheld by the Supreme Court in *Jenness.*

Even more to the point, the Seventh Circuit has considered such arguments in other contexts and reached conclusions contrary to the position advocated by plaintiff. For example, to run for mayor of Chicago requires 12,500 signatures, rather than a percentage of the last election's turnout. Numerous candidates have succeeded in reaching this target, as the Court noted in *Stone v. Board of Election Commissioners for City of Chicago,* 750 F.3d 678, 684 (7th Cir. 2014), when it upheld this number. "Ninety days does not strike us as an excessively short time to gather 12,500 signatures." *Id.* If 12,500 passes meets the constitutional test, then so does 10,754. *See also Tripp,* 872 F.3d at 871; *Nader v. Keith,* 385 F.3d 729, 733 (7th Cir. 2004) (ninety days to collect 25,000 signatures); *Emrit v. Lawson*, No. 17-cv-3624, 2017 WL 4699279, at *2 (S.D. Ind. Oct. 19, 2017) (citing *Tripp,* rejecting challenge to Indiana signature number).

Gill argues that the number of signatures he needs as an independent is a lot more than what major party candidates need. But this comparative argument has never succeeded. Major party candidates have to run in a primary election before they can get on the general election ballot. Independents and new parties petition for direct access to the general election ballot. Independents and major party candidates are not similarly situated. *See Tripp*, 872 F.3d at 865 ("As this Court has stated previously, however, 'comparing the petitioning requirements for an 'established' party's candidate in a primary election and a 'new' party's candidate in a general election' is to 'compare apples with oranges.'"), *quoting Rednour*, 108 F.3d at 776.

Although not argued in his brief, Gill also suggests in his statement of facts that a flat 5,000 signature requirement, which is used in years ending in 2 after redistricting based on the decennial census, should be the standard. Dkt. 38 at ¶¶ 51-52. Again, the Seventh Circuit has rejected this approach when it considered a flat 5,000 number as an alternative. *Stevo v. Keith*, 546 F.3d 405, 408-09 (7th Cir. 2008).

Plaintiffs' statement of facts also raises an argument that there has been no history of ballot overcrowding to justify the statutory signature requirement. Dkt. 38 at ¶¶ 50, 53. But *Tripp*, responding to the same argument regarding the lack of "ballot clutter," again provides the answer: "The Supreme Court…'has never required a State to make a particularized showing of the existence of voter confusion, ballot overcrowding, or the presence of frivolous candidates prior to the imposition of reasonable restrictions on ballot access.'" *Tripp*, 872 F.3d at 866, *quoting Munro v. Socialist Workers Party*, 479 U.S. 189, 194-95 (1986).

In short, the overwhelming legal authority upholding the 5% requirement is not undermined by any specific factual showing that the number of 10,754 is "impossible" to achieve. Plaintiffs' claim should be rejected as a matter of law.

### C. The Notarization Requirement for Petition Sheets is Reasonable and Constitutional.

Plaintiffs challenge the requirement that petitions be notarized. Section 10-4 of the Election Code requires that "at the bottom of each sheet" the circulator must: (1) certify that the signatures on the sheet are genuine and were signed in his presence; (2) either indicate the dates on which the sheet was circulated or certify that none of the signatures were signed more than 90 days before the filing deadline; and (3) certify that to the best of the circulator's knowledge the persons signing were registered voters of the correct political subdivision. 10 ILCS 5/10-4. "Such statement shall be sworn to before some officer authorized to administer oaths in this

State." *Id.* A sample petition sheet from the 2016 General Election with the relevant language is attached as Exhibit H.

Again, in analyzing this claim, it is unnecessary to go beyond the district court and Seventh Circuit opinions in *Tripp*. Both Judge Reagan and the Court of Appeals found the notarization requirement constitutional and rejected the claim that having to notarize each sheet imposed a severe and unjustifiable burden on the candidate. Both Judge Reagan and the Seventh Circuit noted Illinois has a history of election fraud, 872 F.3d at 869, and in fact there is even a term used by the Illinois Supreme Court to describe one particular type of fraud associated with circulating petitions—"roundtabling," where people sit around a table falsely signing petitions. *In re Armentrout*, 99 Ill.2d 242, 245, 457 N.E.2d 1262, 1264 (1983). *See Tripp*, 2016 WL 4379876 at *7. The Seventh Circuit's bottom-line conclusion was that "Illinois's notarization requirement, standing alone, also does not impose a severe burden on plaintiffs' constitutional rights." 872 F.3d at 866.

The supporting rationale for this conclusion is strong. First, becoming a notary in Illinois is not that difficult. Campaign members can become notaries at minimal cost[1] and perform the notarizations on petitions without a great expenditure of time. The logistical and time burdens are not severe. Second, the state interests supporting the requirement are legitimate and strong. "Notarization ensures that circulators can be easily identified, questioned, and potentially prosecuted for perjury." *Tripp*, 872 F.3d at 869. This is a legitimate deterrent to fraud, and a stronger deterrent than the "certification" that lawyers make to pleadings. Plaintiffs suggest lesser or "easier" alternatives. For example, one notarization for an entire batch of signatures

[1] To become a notary in Illinois, an individual must purchase a $5,000 notary bond (available for $30 at https://www.notaryrotary.com/illinois/notary-bonds-and-insurance) and a pay a $10 filing fee to the Illinois Secretary of State. 5 ILCS 312/2-103, 5 ILCS 312/2-105.

might be suggested as an alternative, "but even that method wouldn't protect circulator fraud as well as a notarization on each signature sheet." *Tripp,* 2016 WL 4379876 at *7. "A notarization on each page insures that the person responsible for that sheet can be questioned by authorities should any of the signatures on that page have questionable provenance." *Id.* The Seventh Circuit fully endorsed these reasons for the notarization requirement and upheld it, despite the existence of any less restrictive alternatives that might be suggested.[2] *Tripp,* 872 F.3d at 870.

### D. The Challenged Restrictions Cumulatively Do Not Constitute a Severe and Unconstitutional Burden.

Plaintiffs' final claim also mirrors the final claim in *Tripp.* Taking all the earlier claims together—the 5% requirement, the size of the district, the notarization requirement, and the 90-day circulation period—plaintiffs allege that their cumulative effect imposes a severe burden on ballot access. Again, the Seventh Circuit rejected the identical claim in *Tripp.* 872 F.3d at 870-71. For example, nothing prevents circulators from having all their petitions notarized at the same time. *Id.* As noted earlier, the 90-day circulation window and the 5% benchmark have been upheld many times. *Id.* at 871. District size and the fact that larger population centers may be divided between districts is not a fact that weighs toward a finding of severe burden. The plaintiffs in *Tripp,* like Gill, alleged that these map lines caused confusion for circulators. The Court disagreed:

> [S]uch confusion—which impacts *all* political parties and generally follows *every* redistricting that results from the decennial census—is a necessary side effect of an electoral scheme that must evolve to fit the ever-changing footprint of the nation's citizenry. It does not, therefore, form the basis of a viable constitutional challenge.

[2] The notarization requirement has been strictly enforced in the Illinois appellate courts as an important measure to deter fraud. *See, e.g., Huskey v. Mun. Officers Electoral Bd.,* 156 Ill.App.3d 201, 205 (1st Dist. 1987); *Canter v. Cook County Officers Electoral Bd.,* 170 Ill.App.3d 364,369 (1st Dist. 1988); *Fortas v. Dixon,* 122 Ill.App.3d 697, 700 (1st Dist. 1984).

*Id.* at 872.

## V. CONCLUSION

The Seventh Circuit has, essentially, already decided this case. *Tripp* is controlling; it requires that Defendants' motion for summary judgment be granted, and that Plaintiffs' motion be denied.

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Respectfully submitted,

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