

type of interactive communication concerning political change that is appropriately described as ‘core political speech’” *Meyer*, 489 U.S. at 421–22. When a state’s restriction on a citizen’s ability to circulate a petition “significantly inhibit[s] communication with voters about proposed political change,” it must, like all “severe burdens” on speech, “be narrowly tailored to serve a compelling state interest.” *Buckley*, 525 U.S. at 192 n. 12.

Morgan at Pages 9-10.

Judge Pallmeyer then went on to analyze the relief Plaintiffs here ask for – to allow for electronic signatures and to waive the circulator and notary requirements, stating that, “In current circumstances (of the COVID-19 pandemic and the Governor’s order requiring social distancing), the combination of the handwritten signature, number of signatures, and witness requirements arguably inhibit communicative conduct—specifically, Plaintiffs’ ability to circulate petitions.” *Morgan* at Page 10. Additionally, “Plaintiffs’ challenge to the handwritten signature, number of signatures, and witness requirements is more weighty because, under the circumstances of the COVID-19 pandemic, the combined effect of these requirements arguably limit Plaintiffs’ ability to circulate petitions—a type of core political speech. See *Meyer*, 489 U.S. at 422.” *Morgan* at Page 11. Ultimately, Judge Pallmeyer did not grant the *Morgan* plaintiffs’ Motion to Reconsider because those plaintiffs did not show any evidence of having collected any signatures before the pandemic emergency executive orders, and because of the heavy burden that would have been caused to the state defendants by extending the filing deadline. *Morgan* at Pages 12-13. The instant Plaintiffs do not seek to extend the filing deadline and have shown evidence of collecting signatures before the pandemic.

Therefore, while states are not required to authorize petitioning for referenda, once they do, the Supreme Court has said that the act of circulating is itself free speech fully protected by the First Amendment. While Plaintiffs do not have a right to put their referenda on the ballot, they have a First and Fourteenth Amendment right to engage in the act of circulation. However,

the Governor's Executive Orders, which have been extended to June 28, 2020, make the core free speech act of circulating petitions illegal because of the social distancing requirement, which is still in the Governor's latest Executive Order at Paragraph 2(a). Dkt 27-2.

The Appropriate remedy is to grant the relief given in *Libertarian Party Et al. v. Pritzker Et al*, (20-cv-2112 N.D. Ill) with regard to circulating itself – that is allowing Plaintiffs to exercise their First Amendment right to circulate by letting them circulate electronically – that is collect electronic signatures and lifting the circulator and notary requirements. Plaintiffs also point out that many municipal and county boards have been meeting by videoconference. Therefore, they are allowed, because of the restrictions of the Governor's Executive Order, to meet electronically to vote to place a referendum on the ballot. Plaintiffs merely ask the same, to conduct their First Amendment activity by electronic means.

II. THE NEW EXECUTIVE ORDER IS A MATERIAL CHANGE IN FACT

The Responses argue that the Governor's new Executive Orders (Dkt 27-1, 27-2) are not a change in facts that make reconsideration appropriate. They also note that the current Executive Order is less restrictive than the previous order. However, this Court did not grant relief on the local referenda in its past order because it found that the Plaintiffs were premature, and we did not know if there would be another Executive Order. We do now know that there is a new Executive Order that will last until June 28. This means that the Plaintiffs have lost over three months that they could not exercise their First and Fourteenth Amendment right to circulate. Additionally, the new Executive Order has the same six-foot social distancing at Paragraph 2(a). Therefore, it is still impossible for Plaintiffs to exercise their Constitutional Rights while complying with the new EO and protecting their health.

Even if Plaintiffs and their supporters wore face masks while collecting signatures and getting within six feet of the potential signers in violation of the EO, there is no guarantee that a voter opening their door would be wearing a face mask. Further, the COVID-19 coronavirus could be transmitted on the clipboard, petition paper or pen that would have to be exchanged in the signature collection process. All this would be avoided by allowing electronic signatures in the same manner that county boards and city councils can meet electronically due to COVID-19 and can vote to put referendums on the ballot.

III. MCGORRAY V. PRITZKER IS NOT RELEVANT TO THIS CASE

The Macon County Clerk has stated that a certain representation made by the Governor in a Joint Motion for Voluntary Dismissal in a different case, *McGorray v. Pritzker* (C.D.Ill. 20-cv-2118) (in the Docket at 29-1) means that the Governor's Executive Order does not apply to circulating petitions. However, that is not applicable to the current case, where the Governor is not a party and because that case dealt with different issues and interpreted the last Executive Order, not the current one. The question for that case was whether signatures collected in violation of the Governor's Order on Social Distancing could be challenged for that reason in an objection. The answer to that is no, but that has no bearing on the instant case. Paragraph 2(a) of the Governor's current Executive Order clearly mandates social distancing of 6 feet, meaning that even if the Plaintiffs were willing to get within 6 feet of potential signers, the signers will still keep their distance and may not be willing to touch a shared pen or clipboard. Dkt 27-2. There is no exemption for political activity in the Executive Order. This is contrasted with the Ohio Executive Order which "specifically exempted conduct protected by the First Amendment from its stay-at-home orders." *Thompson v. Dewine*, 20-3526, 2020 WL 2702483, at *3 (6th Cir. May 26, 2020). In fact, the Ohio Department of Health's April 30th Order declared specifically

that its stay-at-home restrictions did not apply to “petition or referendum circulators[.]” *Id.* Unlike Ohio, however, Illinois has provided no exemption for petition passers.

IV. RELIEF SOUGHT BY PLAINTIFFS CREATES NO BURDEN FOR DEFENDANTS

Defendant Kim Althoff, Decatur City Clerk argued that this Court found the Plaintiffs’ requested relief would place a heavy burden on Defendants, and that nothing in the new EO alters that “heavy burden.” The City Clerk is mistaken. This Court’s May 1, 2020 Order only talked about the hardships that would be imposed on the state Defendants, the Secretary of State and the State Board of Elections. This Court said nothing of any burden that would be cause on the local government Defendants in its Order. None of the local Defendants has articulated any harm or burden that would be caused to them if the limited relief the Plaintiffs are seeking was granted, and there is none.

PRAYER FOR RELIEF

For all the reasons set forth above and in their previous filings, the Plaintiffs respectfully request that this Court:

- A. Assume original jurisdiction over this matter;
- B. Issue a temporary restraining order and/or preliminary injunction (i) enjoining or modifying enforcement of Illinois' petition collection requirements for initiative referendums for Illinois' November 3, 2020 general election; and (ii) granting certain elements of the same relief as Judge Pallmeyer granted in No. 20-cv-2112 in the Northern District, to wit:
 - a. eliminating requirement that voters sign in the presence of a circulator, and that the circulator’s notarized signature be at the of each petition sheet;
 - b. eliminating the requirement that only original sheets with original signatures be filed;

- c. allowing electronic signatures;¹
 - d. for whatever other or different relief this Court deems just.
- C. Issue a declaratory judgment stating that, in light of the current public health emergency caused by the COVID-19 and executive orders requiring that Illinois citizens stay at home and shelter in place, Illinois' petition collection requirements for qualifying Article VII referendums, and question of public policy referendums per 10 ILCS 5/28-5 for the general election cannot be constitutionally enforced;
- D. Issue a permanent injunction prohibiting enforcement of those Illinois' petition collection requirements set forth in Par. B for Article VII referendums and question of public policy question per 10 ILCS 5/28-6 for the November 3, 2020 general election;
- E. Order Defendants to pay to Plaintiffs their costs and reasonable attorneys' fees under 42 U.S.C. § 1988(b);
- F. Grant such other relief as this Court deems appropriate.

Respectfully submitted this 12th Day of June, 2020.

/s/ JOHN BEMBENEK, ET AL.,

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¹ For reference, here is an example of a Green Party Candidate Electronic Petition: <https://www.ilgp.org/annapetition>

PROOF OF SERVICE

The undersigned certifies that he served the foregoing motion on the below attorneys, who have all filed appearances, through the e-filing system on June 12, 2020:

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