

No. 20-1961

IN THE  
UNITED STATES COURT OF APPEALS  
FOR THE SEVENTH CIRCUIT

**LIBERTARIAN PARTY OF  
ILLINOIS, ET AL.,**

Plaintiffs/Appellees,

and **KYLE KOPITKE,**

Intervenor/Appellee,

vs.

**WILLIAM CADIGAN, ET AL,**

Defendants/Appellants.

Appeal from the United States  
District Court for the  
Northern District of Illinois  
Eastern Division

Case No. 1:20-cv-02112

Honorable Rebecca R.  
Pallmeyer, Judge Presiding

**INTERVENOR-APPELLEE'S RESPONSE IN OPPOSITION  
TO MOTION TO STAY AND MOTION TO EXPEDITE**

NOW COMES THE INTERVENOR-APPELLEE, KYLE

KOPITKE, and for his Response to the Defendants-Appellants' Motion

To Stay and Motion To Expedite, states:

## Introduction

Intervenor-Appellee (hereinafter: “Intervenor”) agrees with everything stated in the Plaintiffs-Appellees’ Opposition To Motion To Stay And Motion To Expedite, and therefore adopts it and incorporates it by reference. Therefore in his Response, Intervenor will only make make points and arguments not stated in Plaintiffs-Appellees’ (hereinafter Plaintiffs) Response.

### **I. THE FILINGS BY THE 12 CANDIDATES DO NOT ESTABLISH THAT THEY COMPLIED WITH THE GOVERNOR’S EXECUTIVE ORDERS**

While Intervenor agrees with Plaintiffs that the 12 filings on May 29 and June 1, 2020 should not be considered because this was not brought before the District Court and is not part of the record, to the extent that this Court considers the filings, it proves nothing.

The District Court granted the preliminary injunction because it correctly found that complying with the stay-at-home and public gatherings restrictions of the Governor’s Executive Order created a “nearly insurmountable hurdle” for new party and independent

candidates attempting to comply with the usual in-person signature requirements in the Election Code. Opinion, R7. The fact that 12, persons filed signatures to fill vacancies in nominations does not establish that they collected those signatures while complying with the stay-at-home orders. In fact, for the last four days prior to the June 1<sup>st</sup> filing deadline to fill vacancies in nomination, the stay-at-home order wasn't even in effect. The Governor lifted the stay-at-home order on May 29, 2020. Executive Order 2020-38 (COVID-19 Executive Order 36).

For the period prior to May 29, 2020 when those 12 filers may have collected signatures, there is no evidence in the record that they did so while complying with the Governor's stay-at-home. The Defendants-Appellees (hereinafter: "Defendants") argue at page 7 of their Motion To Expedite that the filings belie the Plaintiffs' (and presumably Intervenor's) assertion that petitions could not be gathered during the coronavirus pandemic. But the Plaintiffs and Intervenor did not argue that the signatures could not be gathered. Their argument was, and the basis of Judge Pallmeyer's ruling was that those signatures could not be gathered while complying with the stay-at-home restrictions.

In *Elim Romanian Pentecostal Church et al. v. Pritzker* (No. 20-1811) this Court upheld the constitutional validity of the Executive Order's restrictions on public gatherings when it denied the plaintiff's emergency motion for injunction pending appeal. The District Court had denied an injunction of the order's application to church services.

Further, comparing the signature burden of the established political party candidates, who filed on May 29<sup>th</sup> and June 1<sup>st</sup>, to that of new political party and independent candidates is like comparing apples and oranges. Section 7-8 of the Illinois Election Code provides that the established political parties have a network of Ward and Township Committeeman in Cook County, and Precinct Committeeman in the rest of the state. (10 ILCS 5/7-8). No such network exists for the independent and new political party candidates, who have to start from scratch.

## **II. THE SIGNATURE REQUIREMENTS ESTABLISHED IN THE PRELIMINARY INJUNCTION ORDER ARE NOT DE MINIMUS**

The Defendants' assertion that signature requirement set in the preliminary injunction order is *de minimus*; would invite a slew of non-serious candidates, lacking a modicum of support; and lead to an overly



cluttered and confusing ballot, is utterly without merit. (Motion To Stay, at 10). In his Affidavit, Dkt. 33-1, and attached hereto as Exhibit 1, expert Richard Winter, swears that the signature requirements provided by the preliminary injunction order for U. S. House candidates puts Illinois in the mid-range of signature requirements among the 50 states. (Winger Affidavit, at 3). The Affidavit cites the Defendants' 2020 Candidate's Guide, revised to reflect the preliminary injunction order, posted on the Defendants' website. According, to the affidavit and the Guide, the signature requirements for U.S. House candidates in Illinois now range from 856 to 1,599.

In his concurring opinion, U.S. Supreme Court Justice Harlan wrote that in light of experience 8 candidates on the ballot carries no significant danger of voter confusion. *Williams v. Rhodes*, 393 U.S. 23, 47 (*Justice Harlan concurring*, 1968). Since 1900, no General Election U.S. House race has had more than 8 candidates, except New Jersey and Tennessee, which have signature requirements of 100 and 25, far lower than the signature requirements imposed by Judge Pallmeyer's order. (Winger affidavit at 2)

The assertions in the declarations of the election officials (attached to Motion To Stay) that “based on my experience” the signature requirements ordered by this (the U.S. District) Court will lead to an increased number of non-viable candidates, an increase in objections, and delay in finalization of the ballot is absurd and unbelievable. The officials cite no facts to support their assertions, and it would be impossible for such assertions to be based on experience since this will be the first time Illinois has had an election with signature requirements at the level ordered by the District Court.

### CONCLUSION

WHEREFORE, Intervenor-Appellee respectfully requests that Defendants-Appellants Motion For Stay and Motion To Expedite be denied.

Respectfully submitted

/s/Samuel J. Cahnman  
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*CERTIFICATION OF SERVICE*

I hereby certify that the foregoing document was filed 6/15/20 using the Court's CM/ECF system, which will effect service on all counsel of record on June 15, 2020.

*/s/Samuel J. Cahnman*  
Attorney at Law