

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 SUPPLEMENTAL RESPONSE
IN OPPOSITION TO MOTION TO STAY**

NOW COMES THE INTERVENOR-APPELLEE, KYLE
KOPITKE, and for his Supplemental Response to the Defendants-
Appellants' Supplemental Memorandum In Support Of Their Motion To
Stay, states:

I. NO IRREPARABLE HARM WILL RESULT TO IF THIS COURT DOES NOT ENTER A STAY.

A. August 21 Certification Date In Not Crucial

Defendants-Appellants' (hereinafter: "Defendants") Supplemental Memorandum is a classic example of the straw man argument.

Defendants argue that the sky will fall if they cannot get the ballot certified by statutory certification date of August 21, 2020, citing two consent decrees with the United States Justice Department on the Defendants' failure to comply with the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA), 42 U.S.C. Sec. 1973ff to 1973ff-7.

But those consent decrees, involving the 2010 November General Election, and a Special Election for the U.S. House in 2013, have absolutely nothing to do with certifying the ballot by the August statutory certification deadline. The reason for the consent decrees was the Defendants failure to comply with the UOCAVA's mandate the overseas ballots get out 45 days prior to the election. Instantly, that date is September 19, 2020.

Nothing in the consent decrees states that the failure to get ballots out by the UOCAVA deadline had anything to do with late filing dates or ballot objections.

The Defendants' Supplemental Memorandum fails to make any showing at all that the July 20th filing deadline ordered by Judge Pallmeyer would impinge on the Defendants' ability to get ballots out by the September 19th UOCAVA deadline. That is because there is no reason why they can't get the ballots out by September 19th with current July 20th filing deadline

In fact, Section 28-2 of the Illinois Election Code provides a later date for the filing of petitions for the submission of questions to referendum. 10 ILCS 5/28-2 requires such petition to be filed "not less than 92 days prior to a regular election," which according to the Defendants' website is August 3, 2020. Petitions for referendums are subject to the same objection process as petitions for candidates. See 10 ILCS 5/28-4.

Prior to January 1, 1998 Section 10-6 of the Election Code provided that the filing deadline for independent and new political party candidates was 92 days before the election, which would be much later than July 20th. Illinois Public Act 91-0317. 10 ILCS 5/10-6. This later

than July 20th filing deadline existed after the enactment of the UOCAVA by the 99th Congress in 1986.

The Defendants' 2020 election calendar on their website, attached hereto as Exhibit 1, states that the filing deadline for the March 17, 2020 primary election for most candidates was on December 2, 2019, and for Presidential candidates on January 2, 2020. The ballot certification deadline is stated as being on January 9, 2020. That means 38 day from filing deadline to certification of ballot for most candidates, and only 6 days for the Presidential candidates. In the instant case with a July 20th filing deadline and August 21st ballot certification date, it is 32 days from filing to certification. This is a lot more time than for the Presidential candidates in the primary and a little less (32 versus 38) than for most candidates. Therefore, the Defendants' pleas that the July 20th filing deadline does not give them enough time to certify the ballot should fall on deaf ears.

The Defendants fear that ballot challenges of the July 20th filings could last beyond the August 21st statutory certification date is only hypothetical. No one knows if there will be any challenges. Due to COVID-19, there are likely to be fewer independent and new political

candidates filing. To the extent that such candidates do file, the lower signature requirements ordered by Judge Pallmeyer will make the review of those petitions much quicker. The Defendants routinely hire lawyers as hearing officers to hear the fact evidence in objections. The hearings are likely to be by video conference due to COVID-19.

Document exchanges will likely all be electronic, so instantaneously.

Thus, there is no reason why the Defendants cannot direct their hearing officers to expedite the hearings process, so it should be possible for the objections process to be completed between the July 27th deadline to file objections and the August 21st certification date.

To the extent that some of the objections may not be finished by August 21st if they are appealed to the Circuit or Appellate Court, this happens routinely in Illinois election cases, and does not prevent a free and fair election from occurring. In *Coalition For Political Honesty v. The State Board of Elections*, 83 Ill.2d 236, 415 N.E.2d 368 (1980) the Illinois Supreme Court on September 2, 1980 ordered a constitutional amendment referendum to be placed on the ballot for the November 1980 election. In *Raila v. Cook Co. Officers Electoral Board*, 2018 IL App (1st) 180400-U, the Illinois Appellate on March 14 2018, a few days

before the primary election, reversed the judgment of the Board, restoring Raila's name to the ballot.

Further, according the Intervnor's Declaration, attached hereto as Exhibit 2, more than half the states have filing deadlines for Presidential candidates after July 20, 2020. The dates of the Democratic Convention are August 17 -10, 2020, just one day before the statutory ballot certification deadline, and there will be no Democratic candidate for President until that date, or later if the Convention is delayed further. See:

https://www.google.com/search?q=date+of+democratic+national+convention+2020&sxsrf=ALeKk00sVhe-WuhkEzeed25xqRbu_hx1Og:1592600471394&tbm=isch&source=iu&ictx=1&fir=ILxZKLi1SU89bM%253A%252Cd

II. THE MAY 29-JUNE 1 FILIERS LIKELY VIOLATED THE COVID-19 RESTRICTIONS

One of those filers was Charles Mc Gorry, who filed to fill the vacancy in the Republican nomination for State Representative in the 96th District. Mc Gorry on May 12, 2020 Mc Gorry filed a complaint and motion for injunctive relief in Macon County Circuit Court. A copy

of the motion is attached hereto as Exhibit 3. In Par. D. of his prayer for relief, Mc Gorray asked the court to enjoin the Defendant State Board of Elections “from entertaining any challenge based on an assertion that a Petition was circulated in an unlawful manner in violation of COVID EO 30.” Obviously, this indicates that Mc Gorray was planning to circulate in violation of the COVID-19 restrictions. In fact, he alleged in his lawsuit that said restrictions were unconstitutional and invalid even though they have to some extent been upheld by this Court *Elim Romanian Pentecostal Church et al. v. Pritzker* (No. 20-1811)

III. SIGNATURE REQUIREMENTS IN DISTRICT COURT ORDER ARE PROPER.

For this argument, Intervenor-Appellee relies on Argument II of his Response to Motion To Stay and Motion To Expedite.

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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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. 32(f), this document contains less than 1,237 words.

/s/Samuel J. Cahnman

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 19, 2020.

/s/Samuel J. Cahnman
Attorney at Law