No. 20-1961

IN THE
UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

Libertarian Party, et al. *Plaintiff-Appellee,* v. William Cadigan, et al, *Defendants-Appellants.*	Appeal from the United States District Court for the Northern District of Illinois, Eastern Division No.: 20-cv-2112 The Honorable Chief Judge Rebecca R. Pallmeyer, in her capacity as Emergency Judge, Judge Presiding

APPELLANTS' REPLY BRIEF

Attorneys for Appellants-Defendants, the individual members of the Illinois State Board of Elections

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CIRCUIT RULE 26.1 DISCLOSURE STATEMENT

Appellate Court No: 20-1961

Short Caption: Libertarian Party of Illinois, et al. v. William Cadigan, et al.

To enable the judges to determine whether recusal is necessary or appropriate, an attorney for a non-governmental party, amicus curiae, intervener or a private attorney representing a government party, must furnish a disclosure statement providing the following information in compliance with Circuit Rule 26.1 and Fed. R. App. P. 26.1.

The Court prefers that the disclosure statements be filed immediately following docketing; but, the disclosure statement must be filed within 21 days of docketing or upon the filing of a motion, response, petition, or answer in this court, whichever occurs first. Attorneys are required to file an amended statement to reflect any material changes in the required information. The text of the statement must also be included in the front of the table of contents of the party's main brief. **Counsel is required to complete the entire statement and to use N/A for any information that is not applicable if this form is used.**

[X] PLEASE CHECK HERE IS ANY INFORMATION ON THIS FORM IS NEW OR REVISED AND INDICATE WHICH INFORMATION IS NEW OR REVISED.

(1) The full name of every party that the attorney represents in the case (if the party is a corporation, you must provide the corporate disclosure information required by Fed. R. App. P. 26.1 by completing item #3):
William J. Cadigan, Katherine S. O'Brien, Laura K. Donahue, Casandra B. Watson, William R. Haine, Ian K. Linnabary, Charles W. Scholz, William M. McGuffage

(2) The names of all law firms whose partners or associates have appeared for the party in the case (including proceedings in the district court or before an administrative agency) or are expected to appear for the party in this court:):
Kasper & Nottage, P.C., Hinshaw & Culbertson, LLP

(3) If the party, amicus or intervener is a corporation:

i) Identify all its parent corporations, if any; and

N/A

ii) list any publicly held company that owns 10% or more of the party's, amicus' or intervener's stock:

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(4) Provide information required by FRAP 26.1(b) – Organizational Victims in Criminal Cases:

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(5) Provide Debtor information required by FRAP 26.1 (c) 1 & 2:

N/A

Attorney's Signature: /s/Adam R. Vaught Date: 6/8/20

Attorney's Printed Name: Adam R. Vaught

Please indicate if you are Counsel of Record for the above listed parties pursuant to Circuit Rule 3(d). Yes X [REVISED] No ___

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Attorney's Signature: /s/Lari A. Dierks Date: 8/3/20

Attorney's Printed Name: Lari A. Dierks

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Plaintiffs argue the District Court used its "broad equitable powers" to modify Illinois' ballot access requirements. Dkt. 33, pgs. 19-20. In support, plaintiffs rely on comparably minor modifications made by other district courts in the wake of COVID-19. Dkt. 33, pg. 24. Here, the District Court reduced the number of required signatures to qualify for the ballot by 90%. The decisions cited by plaintiffs reduced the required signatures to qualify for the ballot by a maximum of 50%. Additionally, none of these cases ordered a reduction of signatures in addition to suspension of the in-person signature requirement *and* extension of the filing deadline. Plaintiffs argue that this Court should affirm the District Court's broad modifications to the Illinois Election Code unless the Court finds that the "factual findings" related to COVID-19 were clearly erroneous. Dkt. 33, pg. 20. Finally, plaintiffs argue that the Board lacks standing to appeal the District Court's order.

These arguments ignore the State's interest in regulating the ballot to promote an orderly election and prevent voter confusion. Further, the District Court abused its discretion in entering an injunction that effectively eliminated Illinois' ballot access requirements. Finally, the District Court denied the Board's motion to reconsider the entry of such sweeping relief, and the Board has standing to appeal the Order. Thus, the Board respectfully requests this Court vacate the District Court's Order for the following reasons.

I. Illinois has a legitimate interest in regulating the ballot to promote an orderly election and prevent voter confusion.

A. The District Court exceeded its authority by ordering relief that micromanaged Illinois' elections.

Plaintiffs misstate the Board's argument by claiming that the Board has argued that federal courts in the Seventh Circuit have *no* authority to remedy unconstitutional ballot access restrictions. Dkt. 33, pg. 11. Instead, the Board argued that the federal courts do not have the authority to rewrite Illinois' election laws in a manner that exceeds any constitutional violation suffered by plaintiffs as the District Court did here. Plaintiffs argue "federal courts routinely grant relief in ballot access cases by lowering signature requirements and fashioning other remedies as necessary to vindicate plaintiffs' constitutional rights." Dkt. 33, pg. 38. This is not a "routine" practice.

"[C]andidacy itself is not a fundamental right, and the Court has held 'that the existence of barriers to a candidate's access to the ballot does not of itself compel close scrutiny.'" *Judge v. Quinn*, 624 F.3d 352, 361 (7th Cir. 2010) citing *Clements v. Fashing*, 457 U.S. 957, 963 (1982). To protect the rights of voters, ballot access requirements imposing severe burdens on plaintiffs' rights must be narrowly tailored and advance a compelling state interest. *Navarro*, 716 F.3d at 430. "But when a state election law provision imposes only reasonable, nondiscriminatory restrictions upon the First and Fourteenth Amendment rights of voters, the State's important regulatory interests are generally sufficient to justify the restrictions."

Burdick, 504 U.S. at 434 (internal citations omitted). In assessing the "character and magnitude" of the asserted injury, the Court must evaluate the alleged burden not "in isolation, but within the context of the state's overall scheme of election regulations." *Lerman v. Bd. of Elections in City of New York*, 232 F.3d 135, 145 (2d Cir. 2000).

Plaintiffs ignore that "States have a legitimate interest in regulating the number of candidates on the ballot." *Illinois State Bd. of Elections v. Socialist Workers Party*, 440 U.S. 173, 184-185 (1979). "As the Supreme Court repeatedly has held, States have a legitimate interest in 'protecting the integrity of the electoral process' by ensuring that 'all candidates for nomination make a preliminary showing of substantial support' among voters in the relevant electoral districts." *Libertarian Party of Me. v. Diamond*, 992 F.2d 365, 371 (1st Cir. 1993). "The means of testing the seriousness of a given candidacy may be open to debate; the fundamental importance of ballots of reasonable size limited to serious candidates with some prospects of public support is not. Rational results within the framework of our system are not likely to be reached if the ballot for a single office must list a dozen or more aspirants who are relatively unknown or have no prospects of success." *Lubin v. Panish*, 415 U.S. 709, 715-716 (1974).

The State, not the federal courts, determines the appropriate means to ensure a candidate has shown public support in order to provide the public

with a manageable ballot. The Board understands the COVID-19 pandemic has impacted our daily life. However, that does not mean there should be *no* ballot access limitations. Effectively removing all limitations overwhelms the ballot, creates unnecessary hurdles for viable candidates, and results in voter confusion.

B. *Esshaki* and *Thompson* follow Supreme Court precedent by holding that federal courts do not have the authority to rewrite State election laws.

Plaintiffs argue that *Esshaki v. Witmer,* 2020 U.S. App. LEXIS 14376 (6th Cir. May 5, 2020) and *Thompson v. Dewine*, 959 F.3d 804, 2020 U.S. App. LEXIS 16650 (6th Cir. May 26, 2020) "are inconsistent with the Sixth Circuit's own precedent; and they are inconsistent with the well-settled precedent recognizing that federal courts have authority to grant the relief the District Court awarded here." Dkt. 33, pg. 36. Plaintiffs provide no further explanation on this point.

In *Esshaki,* the Sixth Circuit followed the well-established principle that "federal courts have no authority to dictate to the States precisely how they should conduct their elections." *Esshaki,* 2020 U.S. App. LEXIS 14376, *5 *citing Clingman v. Beaver*, 544 U.S. 581, 586 (2005) ("The Constitution grants States broad power to prescribe the 'Times, Places and Manner of holding Elections for Senators and Representatives,' Art. I, § 4, cl. 1, which power is matched by state control over the election process for state offices." (citations and quotation marks omitted)).

The Seventh Circuit has similarly found that the State has a legitimate interest in regulating elections, and has upheld Illinois' ballot access requirements. *Navarro v. Neal*, 716 F.3d 425, 431 (7th Cir. 2012) ("Light regulation of ballot access could lead to an unmanageable number of frivolous candidates qualifying for the ballot, thereby confusing voters."); *Nader v. Keith*, 385 F.3d 729, 733 (7th Cir. 2004) ("terminal voter confusion might ensue from having a multiplicity of Presidential candidates on the ballot"); *see also Huskey v. Mun. Officers Electoral Bd. for Vill. of Oak Lawn*, 509 N.E.2d 555, 557–58 (Ill. App. 1987) ("The primary purpose of the signature requirement is to reduce the electoral process to manageable proportions by confining ballot positions to a relatively small number of candidates who have demonstrated initiative and at least a minimal appeal to eligible voters."). The COVID-19 pandemic does not justify the District Court's effective suspension of all ballot access requirements for independent and third party candidates in Illinois for the 2020 General Election.

C. This Court's previous decisions, and recent decisions from other federal District Courts, show that the District Court exceeded its authority in this case.

Plaintiffs also argue that these prior decisions have "little bearing" on the relief granted here solely because they arose before the COVID-19 pandemic. Dkt. 33, pg. 39. Although plaintiffs' case arose in unique times, the underlying principle of each of these decisions remains. The State has

a legitimate interest in regulating elections. The District Court's drastic reduction in required signatures for ballot access, coupled with suspension of the in-person signature requirement and delay of the filing deadline, undermine that interest so severely the Order has effectively taken away Illinois' power to regulate ballot access.

Plaintiffs also cite several cases to argue that "The vast majority of Courts, moreover, have agreed with the District Court's legal conclusion that the obstacles presented by COVID-19 and/or stay-at-home orders are unconstitutional and demand relief." Dkt. 33, pg. 24, *citing SawariMedia, LLC v. Whitmer*, 2020 WL 3097266, *15 (W.D. Mich., June 11, 2020) (directing the state to present proposed changes to ballot access requirements); *Reclaim Idaho v. Little*, 2020 WL 3490216 (D. Idaho, June 26, 2020) (enjoining the in-person signature requirement but not changing the signature threshold) *stay granted Little v. Reclaim Ohio,* 591 U.S. ___ (July 30, 2020); *Acosta v. Restrepo*, 2020 WL 3495777, *5 (D. R.I., June 25, 2020) (same); *Miller v. Thurston*, 2020 WL 2617312, *4 (W.D. Ark., May 25, 2020) *stay granted in Miller v. Thurston,* 2020 U.S. App. LEXIS 23143, *23 (8th Cir. July 23, 2020) (same); *People Not Politicians v. Clarno*, 2020 WL 3960440, * 7 (D. Oregon, July 13, 2020) (reducing the signature threshold by 50%, which would equal 58,789 signatures, and allowing Plaintiffs an extension until August 17 to file nomination papers); *Esshaki v. Whitmer,* 2020 WL 1910154 (E.D. Mich., Apr. 20, 2020) (reducing the

signature threshold by 50% and requiring the after the appellate court rejected the District Court's initial attempt to dictate to the State "precisely how they should conduct their elections").

The Supreme Court recently granted a stay of the preliminary injunction entered by the District Court in *Reclaim Idaho v. Little,* cited by plaintiffs. *Little v. Reclaim Ohio,* 591 U.S. ___, 1 (July 30, 2020). The District Court's order required the state to either certify an initiative for inclusion on the ballot without the requisite number of signatures, or to allow the initiative sponsor additional time to gather digital signatures through an online process of solicitation and submission never before used by the state. *Id.* at 1. The Supreme Court explained that Idaho's requirements for ballot access were "certainly justified by the important regulatory interests in combating fraud and insuring that ballots are not cluttered with initiatives that have not demonstrated sufficient grassroots support." *Id.* at 3. The Court also explained that the "District Court did not accord sufficient weight to the State's discretionary judgment about how to prioritize limited state resources across the election system as a whole" when it ordered the State to verify digital signatures through an entirely new system. *Id.* at 4.

In *People Not Politicians v. Clarno*, cited by plaintiffs, the Court determined that requiring a coalition of reform organizations to obtain 58,789 signatures during the COVID-19 pandemic was a permissible

remedy.

Here, the District Court reduced the number of required signatures by *90%*, to 10% of the statutory requirement, suspended the in-person signature requirement, and delayed the filing deadline. Plaintiffs cite *no* case where the Court has granted plaintiffs the extreme relief of reducing the signature requirement by 90%, suspending the in-person signature requirement, *and* delaying the filing deadline. The District Court abused its discretion in mandating how Illinois must administer the election, effectively eliminating the ballot access requirements.

Now, to qualify as a candidate for President of the United States on the ballot in Illinois, an individual is required to obtain only 2,500 valid signatures. Before the District Court's order was entered, the law required that a potential candidate obtain valid signatures equaling 1% of the number of voters who voted at the next preceding statewide general election, or 25,000, whichever is less. 10 ILCS 5/10-3. The number of registered voters in Illinois as of the 2020 primary election was 8,036,534.[1] Thus, a person may now qualify for the ballot as a candidate for President by obtaining signatures from approximately 0.03% of registered Illinois voters. This cannot reasonably be interpreted as a "showing of substantial

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[1] https://www.elections.il.gov/ElectionOperations/DownloadVoteTotals.aspx?MID=vvc3ru6lLPI%3d&T=637317484143921923. The Court may take judicial notice of the Board records cited throughout this brief as matters of public record, reports of administrative bodies, and documents contained in the public record. See *Cause of Action v. Chi. Transit Auth.,* 815 F.3d 267, 277 n. 13 (7th Cir. 2016).

support." *See also Whitfield v. Thurston*, 2020 U.S. Dist. LEXIS 110373, *60 (E.D. Ark. June 24, 2020) (finding Arkansas ballot access laws did not impose a severe burden on plaintiffs during the COVID-19 pandemic where plaintiffs were required to obtain signatures equal to approximately 0.58% of registered Arkansas voters).

After the District Court's severe reduction of signatures required to qualify for the ballot in Illinois, 41 new party candidates and 10 independent candidates filed nominating petitions, for a total of 51 candidates.[2] Besides plaintiffs, Libertarian Party and Green Party, this year new parties include Party for Socialism and Liberation, American Solidarity Party, Constitution Party, Willie Wilson Party, Democracy in America Party, Bullmoose Party, Pro-Gun Pro-Life Party, Patriot Party, and Lincoln Heritage Party. *Id.* In comparison, for the 2016 general election, 25 new party candidates and 6 independent candidates filed nominating petitions, for a total of 31 candidates.[3] In 2016, new parties

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[2] Exhibit A, attached, is the print version of the 2020 candidate information available on the Board's website at: https://www.elections.il.gov/ElectionOperations/CandidateList.aspx?ElectionID=LGvwekppoCc%3d&BegDate=WvQgtVVtZ7nyaeZiOHwCF2rURE5c6Pib&EndDate=%2fOq7tro98MAh8DQdWi9g%2busdfUKAodJt&Status=DdSSw6Nhyxg%3d&QueryType=CcQXm4UCsmFqbZ2ZLinavFuDxkx55TTO&T=637320711589878090; *See supra Note 1.*

[3] Exhibit B, attached, is the print version of the 2016 candidate information available on the Board's website at: https://www.elections.il.gov/ElectionOperations/CandidateList.aspx?ElectionID=KAmCBFMQVlI%3d&BegDate=WvQgtVVtZ7nyaeZiOHwCF9SRwa2%2beLbs&EndDate=WvQgtVVtZ7nyaeZiOHwCF8gzfnhnDImQ&Status=DdSSw6Nhyxg%3d&QueryType=CcQXm4UCsmFqbZ2ZLinavFuDxkx55TTO&T=637320710556658252; *See supra Note 1.*

included plaintiffs, Human Rights Party, Socialist Party USA, and The Tea Party. *Id.* In line with the increased number of candidates filing, 29 objections were filed against new party and independent candidates this year.[4] Importantly, due to the District Court's delay of the filing date, the Board now has half the time to process these objections, using an entirely new system for verification of digital signatures, by the August 21, 2020, ballot certification deadline. Even assuming the Board is able to process all objections in the required timeframe, the ballot access requirements under the District Court's order provide a much lower bar for a candidate to meet without being removed from the ballot.

If the Board prevails in this appeal, it will have the authority to disqualify candidates who did not meet the statutory requirements for ballot access. Such a result is necessary to ensure the Board is able to conduct an orderly election, and that voters will not be faced with a laundry list ballot of candidates who have not shown a modicum of public support. Thus, the District Court's Order reducing the signature threshold by 90%, suspending the in-person signature requirement, *and* delaying the filing deadline undermined the State's interest in protecting the integrity of the electoral process.

Additionally, the Board had adopted a policy that requires "apparent

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[4] https://www.elections.il.gov/ElectionOperations/ObjectionsFiled.aspx?MID=ar5HqNOFYOs%3d&T=637320721624528486; *See supra Note 1.*

conformity" reviews of candidate petitions to determine whether nominating papers include: 1) a statement of candidacy in whatever form; and 2) at least 10% of the minimum required signatures for the office sought.[5] The District Court's reduction in signatures is underscored by the fact that, based on the number of signatures now required, the Board would have, on its own volition, determined that the potential candidate's nomination papers did not comply with Illinois' ballot access requirements.

Plaintiffs also conspicuously neglect to include other federal district court cases that have denied similar relief. In *Libertarian Party of Conn. v. Merrill*, the Court found that the plaintiffs failed to show that the state's ballot access requirements severely burdened their rights where they were required to obtain signatures equal to 0.7% of the voters in the last election. 2020 U.S. Dist. LEXIS 113922, *34 (D. Ct. June 27, 2020). Similarly, in *Hawkins v. DeWine*, the Court found that Ohio's ballot access requirements, requiring candidates to procure 5,000 valid, "wet" signatures, did not pose a significant burden on plaintiffs' access to the ballot. 2020 U.S. Dist. LEXIS 111037, *4 (S.D. Oh. June 24, 2020). In *Bond v. Dunlap,* the Court denied plaintiffs' request to enjoin Maine's ballot access requirements, explaining "[t]he public and the State have a strong interest in the continued adherence to the numeric signature requirement,

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[5] 6/20/17 Board Minutes, https://elections.il.gov/AboutTheBoard/MeetingMinutes.aspx?Year=8VpLTWuKXWtmv4X85nT0pA%3d%3d&T=637320053936280020; *See supra Note 1.*

even during the challenging times presented by the COVID-19 pandemic." *Bond v. Dunlap*, 2020 U.S. Dist. LEXIS 131389, *39 (D. Me. July 24, 2020).

D. This Court's recent decision in *Morgan v. White* further shows that the District Court exceeded its authority.

Plaintiffs argue that "This Court's recent denial of relief to circulators of initiatives in *Morgan v. White"* "has no bearing" on this case. Dkt. 33, pg. 30. But in *Morgan,* this Court explained that the ability to gather signatures outside of the timeframe that the stay-at-home order was in place was "good reason to conclude that they are not entitled to emergency relief." *Morgan v. White,* No. 20-1801 (7th Cir. July 8, 2020). Here, Illinois lifted its stay-at-home order on May 29, 2020. Citizens have adapted to using virtual means to perform advocacy that would ordinarily occur in person absent COVID-19 restrictions. As these circumstances continue to change, the Board, not the federal court, is in the best position to determine the necessary election modifications that will balance the rights of candidates to access the ballots with the public interest in limiting the field of candidates to avoid ballot confusion. *Libertarian Party of Illinois v. Rednour*, 108 F.3d 768, 775 (7th Cir. 1997).

II. The District Court abused its discretion when it entered a preliminary injunction effectively rewriting the Illinois Election Code.

Plaintiffs argue that "The District Court concluded as a factual matter that COVID-19 and the Governor's emergency orders impeded Plaintiffs-Appellees' ability to gather signatures." Dkt. 33, pg. 22. Thus, according to

plaintiffs, the District Court's grant of a preliminary injunction cannot be disturbed unless its findings were clearly erroneous. *Id.* The Board disagrees.

A preliminary injunction is "an extraordinary and drastic remedy, one that should not be granted unless the movant, *by a clear showing*, carries the burden of persuasion." *Mazurek v. Armstrong*, 520 U.S. 968, 972 (1997) (emphasis in original). An injunction is "an exercise of a very far-reaching power, never to be indulged in except in a case clearly demanding it." *Id.* at 1085.

This Court reviews the grant of a preliminary injunction for an abuse of discretion, which can result from legal or factual error. *Knapp v. Northwestern Univ.*, 101 F.3d 473, 478 (7th Cir. 1996). Legal determinations are reviewed *de novo*, and factual determinations are reviewed for clear error, *id.*, where the Court is left with the "definite and firm conviction that a mistake has been committed." *Girl Scouts*, 549 F.3d at 1086. Ultimately, the question is "whether the judge exceeded the bounds of permissible choice in the circumstances." *Id.*

Plaintiffs' argument ignores the balancing inquiry the District Court conducted to determine whether Illinois' ballot access requirements were so severe as to be constitutionally impermissible *as a matter of law*. As the District Court recognized in its April 23, 2020 Order, "courts apply the framework articulated in *Anderson*, 460 U.S. 780, 103 S. Ct. 1564, 75 L.

Ed. 2d 547, and *Burdick v. Takushi*, 504 U.S. 428, 112 S. Ct. 2059, 119 L. Ed. 2d 245 (1992)" to determine whether a ballot access restriction survives constitutional scrutiny. "The *Anderson-Burdick* framework directs courts to 'make a practical assessment of the challenged scheme's justifications and effects.'" R.5, c*iting Stone v. Bd. of Election Comm'rs for City of Chicago*, 750 F.3d 678, 681 (7th Cir. 2014).

Even accepting the District Court's determination that Illinois' "signature requirements present an obvious obstacle for candidates like Plaintiffs Libertarian Party of Illinois and Illinois Green Party as well as for independent candidates," plaintiffs did not provide any evidence to support the finding that "[t]he combined effect of the restrictions on public gatherings imposed by Illinois' stay-at-home order and the usual in-person signature requirements in the Illinois Election Code is a nearly *insurmountable hurdle* for new party and independent candidates attempting to have their names placed on the general election ballot." R.4. (emphasis added). Thus, the District Court abused its discretion by ordering a 90% reduction in the number of signatures required for ballot access, suspending the in-person signature requirement, and extending the deadline for submitting nominating papers to the Board as this relief effectively removed Illinois' ballot access requirements. The District Court further abused its discretion in denying the Board's request that the Court enter an order permitting it to determine the best relief that would balance

the interests of the plaintiffs (and other candidates) while still being able to meet its obligation to conduct an orderly election.

III. The Board is not precluded from appealing the District Court's order as it was not a consent order between the parties.

Plaintiffs argue that "'As a general rule, a party has no standing to appeal an order or judgment to which he consented.'" Dkt. 33, pg. 20 c*iting* *Hoffman v. DeMarchena Kaluche & Asociados,* 657 F.3d 1184, 1187 (11th Cir. 2011). In *Hoffman,* the Court also stated that "A party may appeal such an order, however, if the order allegedly deviates from the terms of the parties' agreement, or was never consented to in the first place." *Id.* Further, plaintiffs cite *Martin Marietta Corp. v. FTC*, 376 F.2d 430, 433 (7th Cir. 1967), to argue that this Court has adopted this rule. Dkt. 33, pg. 20. But, in *Martin Marietta Corp.,* the parties entered into a consent decree that expressly waived any further procedural steps. *Martin Marietta Corp*, 376 F.2d at 433.

Even if plaintiffs' argument did not misconstrue the cases they cite, those cases would not be applicable here. The District Court held a hearing on April 21, 2020. The August 7, 2020 filing deadline was raised by the Court for the first time at this hearing. R.139. No party had proposed such a late filing deadline before this time. When the prospect of an August 7,

2020 filing deadline was first raised, the Board's attorney had the following exchange with the District Court:

> MR. KASPER: And, your Honor, this is Michael Kasper again. I'm sorry to raise one last point. The Board is very concerned about the August 7th deadline because that bumps up against the other statutory deadlines and the deadlines imposed to get military ballots out under federal law. And so we would sort of ask you to reconsider that and maybe push it forward a little bit.
>
> THE COURT: You know, I'd like to push it forward because I do think it's very difficult to get these things printed but I'm also — I'm really sensitive to the world we're living in in Illinois and the difficulties that the governor has and that the rest of us have in trying to balance our need to proceed with life as we know it on the one hand versus the very, very significant public health concerns and the need for social distancing and stay at home even after those orders are lifted. I don't think I can be any more generous than that.
>
> R.144-45.

Due to the expeditious nature of the preliminary injunction proceedings, the Board was unable to fully assess the impact of an August 7, 2020 petition filing on the orderly administration of the election. After the April 23, 2020 Order, the Board further consulted with other election authorities throughout the state who expressed that the District Court's order would cause significant issues for the authorities in administering the November election.

On May 5, 2020, the Sixth Circuit directed "the State to select its own adjustments so as to reduce the burden on ballot access, narrow the restrictions to align with its interest, and thereby render the application of

the ballot-access provisions constitutional under the circumstances." *Esshaki v. Witmer,* 2020 U.S. App. LEXIS 14376, *4 (May 5, 2020).

On May 8, 2020, the Board filed an Emergency Motion for Reconsideration In Part of Order Granting Preliminary Injunction. R.147. The Board, in their Motion for Reconsideration, asked the District Court to provide the same relief as the Sixth Circuit had ordered in *Esshaki*, but that request was denied. Alternatively, the Board asked the District Court to move the filing deadline to July 6, 2020 and to modify the signature requirement to 25% of the statutory requirement, as 10% was *de minimus.* R.20. After Plaintiffs filed their response and a telephonic hearing, the District Court granted Defendants' Motion insofar as it set the deadline for submission of petition signatures as July 20, 2020 rather than August 7, 2020 but denied the remainder of the Motion. R.15. In the hearing on the Motion to Reconsider, the District Court recognized that it was imposing the requirements of the Order on the Board. R.22. The Board appealed the District Court's denial of the Motion to Reconsider. Thus, the Board did not consent to the Order currently on appeal before this Court, and this Court has jurisdiction to review it.

CONCLUSION

For the foregoing reasons, the Board respectfully requests this Court reverse the District Court's decision and vacate the preliminary injunction. In the alternative, the Board requests that this Court reverse the District Court's decision, vacate the preliminary injunction, and enter an order

providing the Board the authority to determine the necessary modifications to balance the rights of candidates to access the ballots with the public interest in limiting the field of candidates.

Respectfully submitted,

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CERTIFICATES

Fed.R.App.P.32(a)(7) Certificate

This brief complies with the type-column limitation of Fed.R.App.P.32(a)(7)(B) because this brief contains 4,211 words, excluding the parts of the brief exempted by Fed.R.App.P.32(a)(7)(B)(iii).

/s/*Adam R. Vaught*

CERTIFICATE OF SERVICE

Certificate of Service When All Case Participants Are CM/ECF Participants

I certify that on August 3, 2020, I electronically filed the foregoing Reply Brief with the Clerk of the Court for the United States Court of Appeals for the Seventh Circuit by using the CM/ECF system. I certify that all participants in this case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

/s/*Adam R. Vaught*
Adam R. Vaught