IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION

KELLI MERRICK, CARMEN SENDEJAS, KEITH LOTT, ERRICK STRINGFELLOW, JESSICA MANGIACARINA, TRACY SYLVESTER, Mayor DAVID GONZALEZ,	)
Plaintiffs,	)
v.	)
LORI J. WILCOX, Bloom Township Democratic Committeeperson, BLOOM TOWNSHIP DEMOCRATIC ORGANIZATION, KELLEY D. NICHOLS, LARECIA BYRD TUCKER, FRANCISCO PEREZ, LEONARD MORGAN, RICARDO LEON, ROBERT BENEVIDES, LESHAWN RIDLEY,	)
Defendants.	)

PLAINTIFFS' MOTION FOR A PRELIMINARY INJUNCTION

NOW COME the Plaintiffs, KELLI MERRICK, CARMEN SENDEJAS, KEITH LOTT, ERRICK STRINGFELLOW, JESSICA MANGIACARINA, TRACY SYLVESTER, Mayor DAVID GONZALEZ (together as the "Plaintiffs"), by and through their attorneys, and in support of their Motion for a Preliminary Injunction pursuant to Fed. R. Civ. P. 65, argue:

INTRODUCTION & FACTUAL BACKGROUND

This case arises out of Bloom Township's virtual democratic party primary caucus held by the Bloom Township Democratic Organization on December 1, 2020 in advance of the upcoming April 6, 2021 general consolidated election. *See* Dkt. No 11 ¶ 1. This virtual primary caucus, put on in the midst of the COVID-19 pandemic

and solely at the behest of Bloom Township Democratic Committeeperson Lori J. Wilcox,[1] unfairly and unconstitutionally required that candidates could only be nominated as part of a "full slate" of candidates for all of the eight public offices up for election in the general consolidated election. This effectively denied ballot access and choice of candidate to every potential candidate as well as qualified elector, such as Plaintiffs, who, for whatever reason, could not find seven other candidates to run with as part of a "full slate" for every office up for election.

During the caucus, a motion to amend the rules was made by Plaintiff City of Chicago Heights Mayor David Gonzalez to strike the "full slate" requirement put forth by Committeewoman Wilcox, meaning that any person submitting candidates for nomination at the Caucus must present candidates for every open office, which include the Township Supervisor, Clerk, Assessor (which requires a special license), Highway Commissioner, and four Trustees. R. 578-579 *attached as Exhibit C.* After the motion to amend was made and seconded, a motion to approve the Rules was made. *Exhibit C,* R. 384-85, 397-98. The motion to approve was voted on and approved before the motion to amend was presented for a vote. *See Exhibit C*, R. 448. The

[1] Under the Illinois Election Code, a Township primary for an established primary party may be via a caucus or a February primary. *See, e.g.,* 65 ILCS 1/45-10(a); 65 ILCS 1/45-55. Despite the petition of nearly 70 elected officials and qualified electors within the Township, Wilcox continued to insist on holding a caucus as opposed to a primary. *See Somer, et al. v. Bloom Township Democratic Organization,* 2020 IL App (1st) 201182, 2020 WL 6582243 (Ill. App. 1st Dist. 11/10/2020); https://www.chicagotribune.com/suburbs/daily-southtown/opinion/ct-sta-slowik-township-caucus-complaint-st-1120-20201119-tb4vsddha5bxbdsc6ddwnp3f6i-story.html (Wilcox continuing to state that an in-person caucus could be done safely in November of 2020).

motion to amend was then presented to the Electors after the Rules were approved without amendment, despite a point of order being made by Gonzalez which was allegedly ruled upon by Marva Campbell Pruitt, who was appointed as the Caucus secretary and acted as the Caucus parliamentarian. *Exhibit C,* R. 383-84, 566-567. The motion to amend failed by four votes. *See Exhibit B,* R. 116. The rules also included a provision that all submissions for consideration must be by a "full slate" and must be submitted by 6:15 p.m., despite these rules not being approved until after 7:00 p.m. *See Exhibit B,* R. 133-135, Group Ex. 20A. The 6:15 p.m. rule, which was approved and not stricken from the Rules, was allegedly not enforced even though no announcement was made to the Electors that it would not be enforced and was otherwise illegal. *Exhibit C,* R. 364.

After the motion failed and Wilcox and her supporters had proposed their "full slate" of candidates, Gonzalez tried to nominate candidates for the Offices, specifically Plaintiff Kelli Merrick was a proposed candidate for Township Supervisor, Carmen Sendejas for Clerk, Keith Lott, Errick Stringfellow, Jessica Mangiacarina, and Tracy Sylvester for Trustees, except that he did not have a candidate for the offices of Assessor and Highway Commissioner. *Exhibit C,* R. 568; *See also* Dkt. No. 11, ¶4. After the two or three individuals submitted each of the Wilcox candidates separately for consideration to the Electors, and after Pruitt denied Gonzalez the opportunity to submit any candidates because he did not have a "full slate", the Wilcox Candidates were nominated at the Caucus. *Exhibit C;* R. 451. On or about December 21, 2020, the Wilcox Candidates filed their Certificate of

Nomination by Caucus and their statements of candidacy with the Bloom Township Clerk's office. *Exhibit B,* R. 008-033.

Objections, along with the constitutional objections, were timely brought to the certification of Wilcox's slate as the caucus' nominees to their local electoral board on December 30, 2020. However, the electoral board declined to set aside the caucus' results on the basis that Defendants violated the Objectors' First and Fourteenth Amendment rights, opining that they could not rule on the constitutional objections. *See* Bloom Township Electoral Bd. Opinion *attached as Exhibit A.* The electoral board decision, along with certain other procedural Illinois Election Code concerns, has since been appealed to the Circuit Court of Cook County pursuant to section 10-10.1 of the Illinois Election Code and to ensure that all administrative remedies are appropriately exhausted, to raise certain procedural "garden variety" objections that are more appropriately raised under the Illinois Election Code as opposed to as a constitutional violation, and to avoid piecemeal litigation. *See, e.g., Whitten, et al. v. Rochester Township Republican Central Committee*, 2021 WL 529782, *3 (C.D. Ill. 02/12/2021, Mills, J.)(holding that Plaintiffs could not bring constitutional challenges to the Township Caucus procedures for the first time in federal court when they had failed to raise the issue before the electoral board via objections); *See Cinkus v. Village of Stickney Municipal Officers Electoral Bd.,* 228 Ill. 2d 200, 214 (2008)(holding that a constitutional challenge should first be brought via electoral board proceedings so as to give the opposing party a full opportunity to refute the challenge and avoid piecemeal litigation); *See Geer v. Kadera*, 173 Ill. 2d 398, 409 (1996) ("failure to file a

timely, pre-election objection to a candidate's nomination papers results in those papers being deemed valid by virtue of Section 10-8]of the Illinois Election Code]."); *Hennings v. Grafton*, 523 F. 2d 861, (7th Cir. 1975) (upholding district court's refusal to order special election because plaintiff's allegations concerning malfunctioning of electronic voting devices, a number of which failed to record votes properly, and election officials permitting voters to vote a second time at some polling places because of said malfunctions, did not state a claim for deprivation of constitutional rights under section 1983). The Cook County case is set for ruling on March 5, 2021 at 9:30 a.m.[2] But, with the general consolidated election only a little over a month away and time running out, the Plaintiffs now bring this motion for a preliminary injunction in an effort to resolve the constitutional issues.[3]

LEGAL STANDARD

A party seeking entry of a preliminary injunction must show that (1) there is some likelihood of success on the merits; (2) without such relief, he will suffer irreparable harm; (2) and (3) he has no adequate remedy at law. *Wisconsin Right to Life, Inc. v. Barland*, 751 F. 3d 804, 830 (7th Cir. 2014). Assuming these elements are satisfied, a court must then (4) "weigh the harm that the plaintiff will suffer absent an injunction against the harm to the defendant from an injunction; and also (5) determine whether the injunction is in the public interest. *Geft Outdoors, LLC v. City*

[2] Plaintiffs will file a copy of the Cook County ruling with the Court as soon as it is issued.

[3] The Cook County Clerk has advised us that the ballot printing and early voting begins March 10, 2021 and overseas and military ballots have gone out. Thus, we are filing this motion now in an effort to be as expeditious as possible given the circumstances.

of Westfield, 922 F. 3d 357, 364 (7th Cir. 2019). The Seventh Circuit "employs a sliding scale approach" to this balancing, *i.e.*, the more likely a plaintiff is to succeed on the merits, the less the balance of harms needs to weigh in his favor, and vice-versa. *Id*. The standards for granting a temporary restraining order and/or a preliminary injunction are identical. *Illinois Republican Party v. Pritzker*, 470 F. Supp. 3d 813, 819 n.6 (N.D. Ill. 2020).

ARGUMENT

Plaintiffs demonstrate that all of the elements required for entry of a preliminary injunction are present here because (I) Defendants usage of the unconstitutional "full slate" requirement during the virtual democratic caucus gives Plaintiffs a "better than negligible" chance of succeeding on their First & Fourteenth Amendment claims; (II) the harm to Plaintiffs' First and Fourteenth Amendment rights caused by Defendants' unconstitutional conduct necessarily becomes "irreparable" should the status quo resulting from such conduct be allowed to stand; (III) with the general consolidated election little more than a month away, Plaintiffs simply have no adequate remedy at law; (IV) because Plaintiffs merely request that Defendants not be designated with a (D) on the ballot to rectify the constitutional issues raised, the balance of equities weighs in favor of the Plaintiffs in relation to ballot access and candidate choice; and (V) entry of a preliminary injunction to protect constitutional rights, particularly First Amendment rights, are always in the public interest.

I. Plaintiffs' Claims Made Pursuant to Section 1983 are Likely to Succeed on the Merits Because the "Full Slate" Requirement, Both as Written and as Applied by Defendants, Violated Plaintiffs' First & Fourteenth Amendment Rights

In First Amendment cases, "the likelihood of success on the merits is usually the decisive factor." *Wisconsin Right to Life, Inc.*, 751 F. 3d at 830. The "threshold for demonstrating a likelihood of success on the merits is low." *D.U. Rhoades*, 825 F. 3d 331, 338 (7th Cir. 2016). A "plaintiff's chances of prevailing need only be better than negligible" in order to establish a likelihood of success on the merits. *Illinois Republican Party*, 470 F. Supp. 3d at 820.

It is well-established that states play a "major role" to play in structuring and monitoring primary elections. *California Democratic Party v. Jones*, 530 U.S. 567, 572 (2000). When the state prescribes an election process in which parties are assigned a special role or traditional state function, such as administration of a primary election, party action becomes state action. *Id.*; *see also Sherman v. Community Consol. School Dist. 21 of Wheeling Tp.*, 8 F. 3d 1160, 1169 (7th Cir. 1993) (citing *Terry v. Adams*, 345 U.S. 461, 476-477 (1953) to note that the holding of primary elections constitutes a governmental function).

Also, to assess the "constitutionality of a state election law," the court must "first examine whether it burdens rights protected by the First and Fourteenth Amendments." *Eu v. San Francisco Democratic Cent. Committee*, 489 U.S. 214, 222 (1989). If the challenged law burdens such rights, it must then survive strict constitutional scrutiny, *i.e.*, the state actor must show that the challenged law is "narrowly tailored to serve" a "compelling state interest." *Id.*

In this case, Plaintiffs can demonstrate a likelihood of success on the merits because the "full slate" requirement, both as written and as applied by the Defendant state actors, violates Plaintiffs' "core" constitutional rights guaranteed by the First and Fourteenth Amendments, and is not narrowly tailored to advance any compelling state interest.

A. The "Full Slate" Requirement Violates the First Amendment and Cannot Survive a Strict Scrutiny Analysis

An individual's participation in the process of and ability to nominate and vote for a chosen candidate is "core political speech," which is where First Amendment protection is "at its zenith." *Meyer v. Grant*, 486 U.S. 414, 422, 425 (1988); *Lee v. Keith*, 463 F.3d 763, 768 (7th Cir. 2006). Likewise, a candidate's right "to promote [his] political views is intimately connected with [his] rights of political association," *Krislov v. Rednour*, 226 F. 3d 851, 860 (7th Cir. 2000). The right of political association lies "at the core of the First Amendment, and even practices that only potentially threaten political association are highly suspect." *Id*. Laws that restrict a party or candidate's access to the ballot burden the core First Amendment rights of political speech and political association. *Williams v. Rhodes*, 393 U.S. 23, 30 (1968). "The right of a party or an individual to a place on the ballot is entitled to protection and is intertwined with the rights of voters." *Lubin*, 415 U.S. at 716.

Here, section 45-50 of the Illinois Township Code provides that an established political party's township caucus may adopt certain rules of procedures, including the requirement that potential nominees or candidates can only be considered for election if they are nominated as part of a "full slate." 60 ILCS 1/45-50. The requirement of a

"full slate" has long been used to suppress challengers and potential third parties from becoming viable candidates, and here it was employed to prevent the Plaintiffs from being considered as potential nominees for various township offices because they were one candidate short of a "full slate." Until recently, no court had directly held that the "full slate" requirement was unconstitutional. However, in 2017, the Seventh Circuit in *Libertarian Party of Illinois v. Scholz* declared that the "full slate" requirement violated the First Amendment. 872 F.3d 518 (7th Cir. 2017).

In *Scholz*, the Court held that it had "little difficulty concluding that the full-slate requirement severely burdens the First Amendment rights of minor parties, their members, and voters" because the "core fundamental right to political association" and "candidates' rights to appear on the ballot under the party banner" are completely "extinguished" if they cannot satisfy the "full slate" requirement. *Id.* at 521, 524 (emphasis added). The Court also explained that the "full slate" requirement forces candidates "to find and recruit candidates for races they want nothing to do with," and similarly compels them to "devote to each candidate [in the slate] the funding and resources necessary to operate a full-fledged campaign. *Id.* at 524.

While the Seventh Circuit interpreted the "full slate" requirement through the lens of its burden on a minor political party's access to the ballot, the Court provided a logical basis for extending its rationale to the facts of this case as follows:

> The full-slate requirement similarly burdens the right of a candidate to run as the standard bearer for his party. Although a party's failure to submit a full slate doesn't prevent the candidate from accessing the ballot as an independent, party-affiliated campaigns and independent

> campaigns 'are entirely different and neither is a satisfactory substitute for the other.' To give just one example, a party loyal who must run an independent campaign is denied the ability to quickly communicate information about his views and values through association with his party.

Id. at 524 (emphasis added).

Because the "full slate" requirement severely burdened the plaintiffs' First Amendment rights, the Scholz Court then examined whether the requirement of a "full slate" was "narrowly drawn to advance a state interest of compelling importance." *Id*. at 525. In response, the defendants offered three "state interests" in defense of the "full slate" requirement: "promoting political stability, avoiding overcrowded ballots, and preventing voter confusion." *Id*. The Court dismissed each of these purported "state interests," noting that such "interests are compelling in the abstract, but the full slate requirement doesn't advance them." *Id*. In fact, as the Court explained, and as is clearly applicable in this case:

> Whatever its aim, the requirement forces a minor party to field unserious candidates as a condition of nominating a truly committed candidate. . . .
>
> In reality, then, the full-slate requirement does not ensure that only parties with a modicum of support reach the ballot. Instead it ensures that the only minor parties on the ballot are those that have strong public support or are willing and able to find enough frivolous "candidates" to comply with the law. . . . the full-slate requirement [also] doesn't prevent ballot overcrowding or voter confusion; to the contrary—it clutters the ballot with numerous candidates who wouldn't otherwise run and who may or may not be sincerely interested in public office.

Id. at 525-526 (emphasis added). Thus, the Court, affirming the District Court, concluded that the "full-slate requirement severely burdens fundamental

constitutional rights and is not narrowly tailored to a compelling state interest." *Id*. at 526.

Applying the analysis of *Scholz,* the full slate requirement for primary caucuses is equally unconstitutional in this case. Just like the plaintiffs in *Scholz,* here, the plaintiffs as well as any caucus participant who desired to submit an individual candidate for nomination to a specific Township office was required to find seven other candidates for the remaining township offices, some of which are equally as obscure. The "full slate" requirement thus had a chilling effect on the Plaintiffs First Amendment rights to political speech and political association because it deprived them of their right to consider and vote for candidates other than the ones proposed by Wilcox. It also essentially prohibited anyone else who want to be considered as a nominee or that wanted to make nomination from being able to do so.

Moreover, for the reasons explained in *Scholz*, the "full slate" requirement simply does not advance any conceivable state interest, and, even if it did, it is not sufficiently "narrowly tailored" such that it could survive strict scrutiny.

Furthermore, Plaintiffs recognize the Defendants also have important First Amendment rights to association that are implicated by a party's nomination of candidates. *California Democratic Party*, 530 U.S. at 594-595. However, although "the state may not dictate a party's choice of its nominee, it may not stand by, nor openly endorse or foster, a process which freezes out the right of party members to participate in the process." *Campbell v. Bysiewicz*, 242 F. Supp. 164, 175 (D. Conn. 2003). Thus, the rules by which a party "selects its nominees must be subject to the

same limits as limits on state action." *Id*. In sum, while a State cannot interfere with a party's rights of association, it similarly cannot either allow parties to "unduly burden members' meaningful opportunities to become [a] party's nominee" or unduly burden members' "right to choices of nominees within a spectrum of ideas consistent with the party's and its members' views. *Id.* As such, operation of the "full slate" requirement gave Defendants the power to impermissibly deny Plaintiffs their core First Amendment rights to ballot access in this case.

B. The "Full Slate" Requirement Violates the Fourteenth Amendment and Cannot Pass Strict Scrutiny

The "concept of 'liberty' protected against state impairment" by the Fourteenth Amendment's Due Process Clause includes those very "freedoms of speech and association," and "[a]ccess to official election ballots represents an integral element in effective exercise and implementation of those activities." *Briscoe v. Kusper*, 435 F.2d 1046, 1053 (7th Cir. 1970). The Equal Protection Clause also "confers the substantive right to participate on an equal basis with other qualified voters whenever the State has adopted an electoral process for determining who represent any segment of the State's population." *Lubin v. Panish*, 415 U.S. 709, 713 (1974). When determining whether a restriction unduly burdens Fourteenth Amendment rights, a court "must be conscious of the broad interest which is to be served, namely, the rights of individual candidates to avail themselves of political opportunity and those of voters to be given the opportunity to exercise an effective choice." *Anderson v. Schneider*, 67 Ill. 2d 165, 175-176 (1977).

Here, the Defendants' decision to impose the "full slate" requirement burdened the Plaintiffs' Fourteenth Amendment rights. *See Anderson*, 67 Ill. 2d at 175 (holding that "[c]ertainly the right to vote is 'heavily burdened if an entire party and its candidates are removed from the ballot because an eighth candidate has not satisfied the residency requirement" and that removal of the remaining seven candidates "was a violation of the first amendment and of the equal protection clauses of both the State and Federal constitutions").

In addition, while the *Scholz* Court did not determine whether the "full slate" requirement violated the Fourteenth Amendment, the District Court opinion, which the *Scholz* Court affirmed, held that the requirement violated the Fourteenth Amendment's right to equal protection because it imposed a greater burden on minor parties than it did on established parties and was not narrowly tailored to advance a compelling state interest. *Libertarian Party of Illinois v. Illinois State Board of Elections*, 164 F. Supp. 3d 1023, 1029-1030.

C. Plaintiffs will suffer irreparable injury if injunctive relief is not granted

The loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparably injury. ACLU of Il. V. Alvarez, 679 F.3d 583, 589 (7th Cir. 2012). In this case, as discussed in the preceding section, injunctive relief is necessary to protect the Plaintiffs' "core" constitutional rights to ensure that they retain the ability to engage in freedom of speech and association unrestricted by actual and imminent threats to public health and safety. If this injunction is not granted, the Plaintiffs will be put in the untenable position of choosing between

exercising their constitutional rights, on the one hand, and maintaining their health and safety, on the other.

D. *Any remedy at law is inadequate*

Courts regularly find that plaintiffs do not have an adequate remedy at law where monetary damages would be difficult to calculate. In cases involving constitutional rights, particularly First Amendment rights, it is well settled that the quantification of an injury is difficult, and damages are therefore not a remedy. *ACLU of Il. V. Alvarez*, 679 F.3d 583, 589 (7th Cir. 2012).

I. Waiver of Bond Requirement

Pursuant to the Court's discretion, the Plaintiffs' request that any bond requirement be waived as this action is in the public interest. Specifically, it is in the public interest as this action involves the right to a free and fair election as well as other core constitutional rights. *See also ACLU of Il. V. Alvarez*, 679 F.3d 583, 590 (7th Cir. 2012) ("injunctions protecting First Amendment freedoms are always in the public interest."). Further, as this is an injunction to protect constitutional rights as opposed to an injunction, for example, restraining a company from operating a business, Defendants would not have any costs or damages related to the injunction within the meaning of the Federal Rules of Civil Procedure. *See* Fed. R. Civ. P. 65(c); *See also Habitat Educ. Ctr. V. United States Forest Serv.,* 607 F.3d 453, 458 (7th Cir. 2010).

II. Conclusion

WHEREFORE, the Plaintiffs-Petitioners respectfully request that their Motion for a Preliminary Injunction be granted and that:

(1) That the Court enjoin the Defendants from being placed on the ballot as designated members of the Democratic party.

(2) That the Court permit the Plaintiff and Defendant candidates to be placed on the ballot as independent candidates despite not submitting nomination petitions in accordance with Article 10 of the Illinois Election Code (10 ILCS 5/10-1, et seq.).

(3) That any need for security for purposes of injunctive relief be waived under Fed. R. Civ. P. 65(c) as Plaintiffs are seeking to protect constitutional rights in the public interest and said security is routinely waived under such circumstances.

(4) For such further relief as is deemed equitable and just.

Respectfully submitted,

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