IN THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF ILLINOIS
URBANA

DAVID M. GILL, *et al.*,	)	
	)	
Plaintiffs,	)	
	)	Case No.: 3:16-cv-03221
v.	)	
	)	Judge Colin S. Bruce
CHARLES W. SCHOLZ, *et al.*,	)	
	)	
Defendants.	)	

PLAINTIFFS' NOTICE OF SUPPLEMENTAL AUTHORITY

PLEASE TAKE NOTICE THAT on March 29, 2021, the United States District Court for the Northern District of Georgia entered a decision granting summary judgment to the plaintiffs in *Cowen v. Raffensperger*, No. 1:17-CV-04660 (N.D. Ga. March 29, 2021) ("Slip Op.") (attached as Exhibit A). *Cowen* is directly relevant to this case because it holds Georgia's 5 percent signature requirement for independent and "political body" candidates for the United States House of Representatives unconstitutional. (Slip Op. at 41-42.) As the Court observed in *Cowen*, Georgia's 5 percent requirement was the highest in the nation, and Illinois' 5 percent requirement was the second highest. (*Id*. at 22.) Now that Georgia's requirement has been held unconstitutional, therefore, Illinois' requirement stands alone as the highest in the nation.[1]

Cowen is also relevant to this case because it arises from a similar factual and procedural background. In *Cowen*, no candidate had complied with Georgia's 5 percent requirement since it was enacted in 1943, (*id*. at 6), while in this case no candidate has overcome the 5 percent requirement since 1974, when the 90-day period did not apply. (Pl. SUMF (Dkt. 62-1) ¶¶ 23-24,35.) The Court in *Cowen* nonetheless initially granted summary judgment to the defendants,

[1] Plaintiffs previously characterized South Carolina's 5 percent requirement as "roughly equal" to Illinois' 5 percent requirement, (Pl. Rep. in Supp. of Pl. MSJ (Dkt. 69) ("Pl. Rep.") at 3), but there is a critical distinction: South Carolina's statute provides that "no petition candidate is required to furnish the signatures of more than ten thousand qualified registered electors for any office." S.C. Code § 7-11-70 (Unannotated). Here, Illinois' 5 percent requirement as applied to Plaintiff Gill was equal to 10,754 signatures. (Pl. SUMF ¶¶ 23-24.)

reasoning that the plaintiffs' challenge was "foreclosed" by a Supreme Court decision upholding Georgia's 5 percent requirement in 1971. (Slip Op. at 8 (citing *Jenness v. Fortson*, 403 U.S. 431 (1971).) The 11th Circuit Court of Appeals reversed and remanded with instructions to conduct the analysis prescribed by *Anderson v. Celebrezze*, 460 U.S. 780, 789 (1983). (Slip Op. 8-9 (citing *Cowen v. Ga. Sec. of State*, 960 F.3d 1339, 1343, 1347 (11th Cir. 2020).)

In holding Georgia's 5 percent requirement unconstitutional, the Court in *Cowen* relies on many of the points that Plaintiffs raise in support of their claims here. The plaintiffs in *Cowen* challenged the "cumulative effect" of the 5 percent requirement as applied in combination with other provisions, (Slip Op. at 11), and the Court accordingly found a "severe burden" because the "cumulative effect of Georgia's requirements on independent and political-body candidates has frozen the political status quo in Georgia as to congressional races." (*Id*. at 15.) Here, too, Plaintiffs argue that the combined effect of the challenged provisions is the "complete exclusion" of independent candidates for Congress from Illinois' general election ballot, (Pl. MSJ (Dkt. 62) at 11-14), and as such, the challenged provisions are unconstitutional because they "have frozen Illinois' political status quo for 45 years." (Pl. Opp. to Def. MSJ (Dkt. 61) at 23; Pl. Rep. at 3.)

Defendants suggest that the failure of any candidate to overcome Illinois' 5 percent requirement in 45 years may mean that few candidates have made "serious attempts" to do so, (Def. Rep. in Supp. of Def. MSJ (Dkt. 67) at 16), but the defendants in *Cowen* made similar assertions and the Court rejected them. (Slip Op. at 19-20.) Many candidates do not make "genuine efforts" to comply, it found, "for the simple reason that Georgia's ballot access requirements were too high to be worth their effort." (Slip Op. at 19.)

Finally, the Court in *Cowen* recognized that *Anderson* requires a "factual, context-based" analysis, and concluded that "the robust factual record showing the burden faced by aspiring candidates for office" justified its departure from Supreme Court and 11th Circuit precedent

upholding Georgia's 5 percent requirement. (Slip Op. at 33-35 (citing cases).) The Court further observed that *Anderson* requires it "to take a closer look at the State's asserted interest…" (Slip Op. at 33.) In following that guidance, the Court found that "Defendant has offered little support for the reasonableness of [the challenged] restrictions besides citation to precedent." (Slip Op. at 37 (citation omitted).) The Court therefore held that:

> Defendant has not shown that Georgia's ballot-access requirements for non-statewide office are narrowly tailored to advance a compelling state interest. While Georgia has an undeniable interest in regulating elections by bringing order to its ballots and screening out frivolous candidates, its chosen method of accomplishing that goal is overbroad. Georgia's 5% petition signature requirement for non-statewide candidates screens out legitimate candidates in addition to frivolous ones, and it does so without a reasonable justification. Georgia's own election scheme includes a more narrowly tailored means of screening out frivolous candidates—namely, the 1% petition signature requirement of O.C.G.A. § 21-2-180, which the State established in 1986. However, this 1% threshold only applies to statewide candidates, while candidates for non-statewide office must still clear the 5% hurdle established in 1943. Simply put, the State offers no justification for the higher threshold imposed on candidates for non-statewide office.

Here, too, Plaintiffs argue that the challenged provisions are not narrowly tailored on several grounds, including that Illinois' own statutory scheme demonstrates that less burdensome alternatives are available. (Pl. MSJ at 14-18.)

Respectfully submitted,

s/Oliver B. Hall
Oliver B. Hall
CENTER FOR COMPETITIVE DEMOCRACY
P.O. Box 21090
Washington, D.C. 20009
(202) 248-9294
oliverhall@competitivedemocracy.org

Samuel J. Cahnman
Attorney at Law
915 S. Second St.
Springfield, IL 62704
Ph (217) 528-0200
Em samcahnman@yahoo.com

Andrew Finko
166 W. Washington St. Suite 400
Chicago, IL 60602
Ph (773) 480-0616
Fx (773) 453-3266
Em Finkolaw@fastmail.FM

CERTIFICATE OF SERVICE

I hereby certify that on April 1, 2021, I filed the foregoing document using the Court's CM/ECF filing system, which will effect service upon all counsel of record.

s/Oliver B. Hall
Oliver B. Hall