**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS**
**COUNTY DEPARTMENT, CHANCERY DIVISION**

| | | |
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| WILLIAM WAGNER, WILLIAM MORGAN, ELIZABTH NORDEN, ANDREA RAILA, TYLER BRUMFIELD, GEORGE OTTO, YUFFUF EL METENNANI, DAVID VAUGHT, HORACIO ESPARZA, AND THE COMMITTEE FOR THE ILLINOIS DEMOCRACY AMENDMENT, an unincorporated political association, | ) | |
| Plaintiffs, | ) | No. 22 CH 01285 |
| v. | ) | Hon. Sophia Hall<br>Calendar 12 |
| JESSE WHITE, in his official capacity as the Illinois Secretary of State, JB PRITZKER, in his official capacity as the Illinois Governor, and IAN K. LINNABARY, CASSANDRA B. WATSON WILLIAM J. CADIGAN, LAURA K. DONAHUE, TONYA L. GENOVESE, CATHERINE S. MCCORY, WILLIAM M. MCGUFFAGE, and RICK S. TERVEN SR., in their official capacities as Board Members of the Illinois State Board of Elections, | ) | |
| Defendants. | ) | |

**STATE BOARD OF ELECTIONS DEFENDANTS' UNOPPOSED MOTION FOR LEAVE TO FILE AN OVERSIZED COMBINED MOTION TO DISMISS AND RESPONSE TO PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION**

Defendants Ian Linnabary, Cassandra B. Watson, William J. Cadigan, Laura K. Donahue, Tonya L. Genovese, Catherine S. McCory, William M. McGuffage, and Rick S. Terven, Sr., in their official capacities as members of the Illinois State Board of Elections (hereinafter, the "Board Defendants"), by their attorney, Kwame Raoul, the Illinois Attorney General, respectfully moves this Court for leave to file an oversized Combined Motion to Dismiss and Response to Plaintiff's

Motion for Preliminary Injunction. In support of this unopposed motion, the Board Defendants state as follows:

1. On February 15, 2022, Plaintiffs, their Verified Complaint For Emergency Declaratory and Injunctive Relief.

2. March 3, 2022, Plaintiffs their Motion and Request for Preliminary Injunction.

3. Plaintiffs' Complaint and Motion alleges that certain provisions of the Illinois Election Code are unconstitutional as-applied to their ability to gather signatures for a ballot initiative to amend the Illinois Constitution during the COVID-19 pandemic.

4. On March 9, 2022, the Court granted Defendants until March 23, 2022 to file a responsive pleading to Plaintiffs' Complaint and a Response to the Motion for Preliminary Injunction. Undersigned counsel advised the Court that the Board Defendants intend to file a single brief combining their Motion to Dismiss and Response to the Motion for Preliminary Injunction.

5. Given the complexity and time-sensitive material contained within the briefs, the Court will benefit from a comprehensive analysis addressing the claims presented in the Complaint and the arguments put forth in the Motion for Preliminary Injunction.

6. Accordingly, Defendant requests leave to file a 28-page Combined Motion to Dismiss and Response to Motion for Preliminary Injunction. The Defendant's proposed Response is attached as Exhibit A.

7. Plaintiffs do not object to this request for leave to file an oversized brief.

WHEREFORE, for the foregoing reasons, Defendant respectfully requests that this Honorable Court grant him leave to file the attached Combined Motion to Dismiss and Response to the Plaintiffs' Motion for Preliminary Injunction.

Respectfully Submitted,

KWAME RAOUL
*Attorney General*
*State of Illinois*
Atty. Code 99000

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# Exhibit A

**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS**
**COUNTY DEPARTMENT, CHANCERY DIVISION**

| | | |
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| WILLIAM WAGNER, WILLIAM MORGAN, ELIZABTH NORDEN, ANDREA RAILA, TYLER BRUMFIELD, GEORGE OTTO, YUFFUF EL METENNANI, DAVID VAUGHT, HORACIO ESPARZA, AND THE COMMITTEE FOR THE ILLINOIS DEMOCRACY AMENDMENT, an unincorporated political association, | ) | |
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| Defendants. | ) | |

**STATE BOARD OF ELECTIONS DEFENDANTS'**
**COMBINED MOTION TO DISMISS PURSUANT TO 735 ILCS 5/2-619.1 AND**
**RESPONSE TO PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION**

# Table of Contents

## INTRODUCTION

As this Court is well aware, for more than two years the global COVID-19 pandemic has disrupted the normal operations of life. In March 2020, when cases were rising rapidly, there was no vaccine, testing was hard to come by, high-quality masks were in short supply, and the science was not yet clear as to whether there was a significant difference between indoor and outdoor transmission rates, Governor JB Pritzker issued an executive order prohibiting individuals from leaving their homes, except for "essential" activities, throughout the State (the "stay at home order").[1] This stay at home order happened to coincide with the 90-day period provided for under the Illinois Election Code for new parties and independent candidates to gather signatures to get onto the ballot for the 2020 general election. *Libertarian Party of Illinois v. Pritzker*, 455 F. Supp. 3d 738, 742 (N.D. Ill. 2020). Signature gathering for ballot access was not listed as an "essential activity."[2]

The Libertarian Party, the Green Party, and others filed suit in federal court, alleging that the stay at home order prevented them from meeting the signature requirements under the Election Code and seeking relief from these requirements. In light of the circumstances, Judge Rebecca Pallmeyer entered an injunction suspending certain requirements for the Election Code regarding ballot access for independent candidates and new parties and extending the filing deadline. *Libertarian Party*, 455 F. Supp. 3d at 745-46.

Around this same time, several of the Plaintiffs of this lawsuit filed suit in federal court seeking similar relief as in the *Libertarian Party* case, but pertaining to the signature requirements for petitions to add an amendment to the Illinois Constitution. *Morgan v. White*, No. 20-cv-2189,

[1] *See* Executive Order 2020-10 (COVID-19 Executive Order No. 8) (Mar. 20, 2020), *available at* https://www2.illinois.gov/Documents/ExecOrders/2020/ExecutiveOrder-2020-10.pdf (last visited Mar. 22, 2022).

[2] *See supra* note 1.

2020 U.S. Dist. LEXIS 86618 (N.D. Ill. May 18, 2020). Plaintiffs sought then, as they do now, to add a proposed amendment to the Illinois Constitution via ballot initiative pursuant to Article XIV, Section 3 of the Illinois Constitution. This matter was also heard by Judge Pallmeyer, who denied the requested relief in that case. *Id.* at *25. The Seventh Circuit affirmed. *Morgan v. White*, 964 F. 3d 649, 652 (7th Cir. 2020).

Now, two years later, after the stay at home order was lifted nearly two years ago,[3] after Illinois moved into Phase 5 of its reopening plan nine months ago,[4] with 72.1% of the Illinois residents above age five being fully vaccinated,[5] the science on outdoor transmission being clearer,[6] and testing and high-quality masks more readily available, Plaintiffs bring similar claims in state court. Although the relief Plaintiffs seek in this case is not as drastic as the relief they sought in 2020, they nonetheless still seek to suspend several long-standing requirements of the Election Code. Specifically, Plaintiffs seek to enjoin enforcement of the following provisions of Section 28-3 of the Election Code, which governs petitions to amend the Constitution by ballot initiative:

1. The requirement that at the bottom of each signature page the circulator sign a statement stating that the signatures on that sheet of the petition were signed in his or her presence,

[3] *See* Executive Order 2020-38 (COVID-19 Executive Order No. 36) (May 29, 2020) *available at* https://www.illinois.gov/content/dam/soi/en/web/coronavirus/documents/executiveorder-2020-38.pdf (last visited Mar. 22, 2022).

[4] *See* Executive Order 2021-12 (COVID-19 Executive Order No. 81) (June 11, 2021) *available at* https://www.illinois.gov/government/executive-orders/executive-order.executive-order-number-12.2021.html (last visited Mar. 18, 2022).

[5] *COVID-19 Vaccine Administration Data*, ILLINOIS DEPARTMENT OF PUBLIC HEALTH (Mar. 16, 2022) available at https://dph.illinois.gov/covid19/vaccine/vaccine-data.html?county=Illinois (last visited Mar. 16, 2022).

[6] Eldred, Sheila M., *Coronavirus FAQ: What's the risk of catching omicron outdoors?*, *NPR*, (Jan. 21, 2022 2:54 PM ET), https://www.npr.org/sections/goatsandsoda/2022/01/21/1069904184/omicron-outdoor-transmission-risk (last visited Mar. 16, 2022).

are genuine, and that to the best of his or her knowledge and belief the persons so signing were at the time of signing the petition registered voters State of Illinois;

2. The requirement that this signed statement by the circulator be sworn to and notarized; and

3. The requirement that the originals of the signature pages be filed with the Board in a securely bound book.

10 ILCS 5/28-3. Plaintiffs also request that petition signers be allowed to sign electronically using a finger or a computer device such as a stylus. The basis for this requested relief is Plaintiffs' claim that it is not safe to gather signatures in person in light of the ongoing pandemic.[7]

Plaintiffs' claim relies largely on their belief that the circumstances in March 2022 are substantially the same as the circumstances in March 2020. Although the pandemic is not over, it is in a substantially different place than it was two years ago when Judge Pallmeyer issued the injunction in *Libertarian Party*. Although Plaintiffs make vague statements about safety, at no point in either the Complaint or the attached affidavits do they explain why gathering signatures outside, where transmission rates are low, while wearing a high-quality mask, is not sufficiently safe.

Plaintiffs' Complaint should be dismissed for three reasons. *First*, Plaintiffs lack standing. With the stay at home order lifted, Plaintiffs' alleged injury, their alleged inability to gather signatures, is not fairly traceable to any action by the Board, nor is it fairly traceable to the provisions of the Election Code. *Second*, Plaintiffs fail to state a cause of action on any of the four counts of the Complaint. *Third*, the proposed amendment to the Illinois Constitution that Plaintiffs

[7] Plaintiffs' focus is on the safety of gathering signatures in person and therefore the arguments mainly focus on the requirement that signature sheets contain handwritten signatures, and the circulator statement and notarization requirements. Although the requirements that the signature sheets be originals and produced in a single bound book are also challenged, Plaintiffs never develop any argument as to why this requirement is unsafe. Accordingly, this brief will focus on the request that petition signers be allowed to sign remotely and circulators not be subject to the notarization requirements. References to these challenged provisions of the Election Code shall hereinafter be referred to as the "handwritten signature" and the "circulator notarization" requirements.

propose adding to the ballot does not satisfy constitutional requirements for amendments to the Constitution via ballot initiative.

Likewise, Plaintiffs' Motion for Preliminary Injunction should be denied. Plaintiffs seek to change, not maintain, the *status quo*. They do not have a likelihood of success on the merits for the same reasons that the complaint should be dismissed. They have not shown that they will suffer irreparable harm without an injunction. And the balance of hardships favors the Board Defendants. The Motion for Preliminary Injunction should be denied and this matter should be dismissed.

## BACKGROUND

The Illinois Constitution permits its voters to amend certain provisions of the Constitution through ballot initiative. ILL. CONST. Art. XIV § 3. Article XIV, Section 3 allows amendments to the Constitution to be placed on the ballot of a general election for consideration of the voters if a petition containing signatures equivalent to at least eight percent of the total votes from the last gubernatorial election is filed with the Secretary of State at least six months before that general election. *Id.* For the 2022 general election, petitions must contain at least 363,813 signatures. Petitioners are allowed to begin collecting signatures 24 months prior to that general election, giving them an 18-month window to collect signatures. *Id.* Amendments pursuant to Article XIV, Section 3 must be limited to structural and procedure subjects contained in Article IV. *Id.*

Plaintiffs seek to utilize this procedure to amend the Constitution. As previously noted, several of these Plaintiffs filed suit in federal court relating to their ability to gather signatures to place this same amendment on the 2020 general election ballot. Judge Pallmeyer denied that relief. *Morgan*, 2020 U.S. Dist. LEXIS 86618 at *25. Plaintiffs then could have started gathering signatures for the 2022 general election beginning in November 2020. Based on their Complaint and attached affidavits, Plaintiffs have not taken much, if any, action in the ensuing months to

gather signatures for the 2022 general election. Plaintiffs allege that because of the pandemic, it is not safe to gather signatures, and seek the relief previously discussed that would allow them to collect electronic signatures remotely. For unexplained reasons, Plaintiffs waited 15 months to file this lawsuit and seek this relief. Plaintiffs also do not explain why it is unsafe to gather signatures given the current state of the pandemic and the low probability of transmission in outdoor settings, which can also be improved upon by wearing a high-quality mask. Ultimately, Plaintiffs have not stated any plausible claims, the Complaint should be dismissed, and the motion for preliminary injunction denied.

## MOTION TO DISMISS PURSUANT TO 735 ILCS 5/2-619.1

### LEGAL STANDARD

Section 2-619.1 of the Code of Civil Procedure allows a party to move for dismissal under both sections 2-615 and 2-619. 735 ILCS 5/2-619.1. A section 2-615 motion to dismiss attacks the legal sufficiency of a complaint. *Carr v. Koch*, 2012 IL 113414, ¶ 27. A motion brought pursuant to section 2-619 admits the sufficiency of the complaint, but asserts an affirmative defense or other matter that avoids or defeats that claim. *Id.* Section 2-619.1 of the Code "explicitly requires that a motion combining both sections 2-615 and 2-619(a) (1) must be in parts, (2) must 'be limited to and shall specify that it is made under' either section 2-615 or 2-619, and (3) must 'clearly show the points or grounds relied upon under the [s]ection upon which it is based.'" *Reynolds v. Jimmy John's Enterprises, LLC*, 2013 IL App (4th) 120139, ¶ 20 (citations omitted).

A Section 2-619 motion to dismiss affords a means of obtaining a summary disposition of issues of law or of easily proved issues of fact. *Kedzie & 103rd Currency Exch., Inc. v. Hodge*, 156 Ill. 2d 112, 115 (1993). In achieving this end, a Section 2-619 motion raises defects, defenses, or other affirmative matters that negate a cause of action completely or refute conclusions of law

or material fact that are unsupported by allegations of specific fact. *Spillyards v. Abboud*, 278 Ill. App. 3d 663, 668 (1st Dist. 1996). The granting of a Section 2-619 motion is proper if it appears that no set of facts can be proved that would entitle the plaintiff to recover. *Welch v. Ill. Supreme Court*, 322 Ill. App. 3d 345, 350 (3d Dist. 2001). Section 2-619(a)(9) provides for dismissal where there exists some affirmative matter defeating the alleged claims. *Muirhead Hui LLC v. Forest Pres. Dist. Of Kane Cnty*, 2018 IL App (2d) 170835 ¶ 21.

A motion to dismiss pursuant to Section 2-615 is an appropriate vehicle to challenge the legal sufficiency of the facts and legal theories in Plaintiffs' Complaint. *See Ill. Graphic Co. v. Nickum*, 159 Ill. 2d 469, 484 (1994). To state a cause of action under Section 2-615, a complaint must be both legally and factually sufficient; it must set forth a legally recognizable claim as its basis for recovery; and it must plead facts which bring the claim within a legally recognized cause of action. *Colmar, Ltd. v. Fremantlemedia No. Am., Inc.*, 344 Ill. App. 3d 977, 994 (1st Dist. 2003). Importantly, the cause of action stated in a complaint must be one upon which relief may be granted. *See Connick v. Suzuki Motor Co., Ltd.*, 174 Ill. 2d 482, 490 (1996). If, after disregarding any legal and factual conclusions, the complaint does not allege facts sufficient to state a cause of action, the trial court must grant the motion to dismiss. *Colmar*, 344 Ill. App. 3d at 994. "In ruling on a section 2-615 motion, '[e]xhibits attached to the complaint are included as part of the complaint and must also be considered.'" *Lipinski v. Martin J. Kelly Oldsmobile, Inc.*, 325 Ill. App. 3d 1139, 1147 (1st Dist. 2001) (citation omitted). Section 2-615 of the Illinois Code of Civil Procedure allows this Court to dismiss Plaintiffs' Complaint if it is apparent that no set of facts can be proven to entitle Plaintiffs to recovery. *See Claire Assoc. v. Pontikes*, 151 Ill. App. 3d 116, 123 (1st Dist. 1986).

## ARGUMENT

### A. The Complaint Should Be Dismissed Pursuant To Section 2-619(a)(9) Because Plaintiffs Lack Standing.

Lack of standing is an affirmative matter properly raised in a motion to dismiss pursuant to Section 2-619(a)(9) of the Code of Civil Procedure. *Murihead Hui*, 2018 IL App (2d) 170835 ¶ 21. In Illinois, a party must have some "injury in fact" to a legally cognizable interest in order to have standing. *Greer v. Ill. Hous. Dev. Auth.*, 122 Ill. 2d 462, 492 (1988). An injury in fact means that the claimed injury, whether actual or threatened, must be: (1) distinct and palpable; (2) fairly traceable to the defendants' actions; and (3) substantially likely to be prevented or redressed by the grant of the requested relief. *Id.* Plaintiffs lack standing because their alleged injury is not fairly traceable to the Board Defendants' actions and Plaintiffs' requested relief is not likely to redress their alleged injury.

Plaintiffs' alleged injury in this case is their alleged inability to place their petition on the ballot because they claim it is not safe to gather signatures. However, Plaintiffs have not alleged that the Board Defendants have taken any action that hinders their ability to obtain signatures. Plaintiffs would likely respond that the handwritten signature and circulator notarization requirements hinder their ability to collect signatures. But these provisions of the Election Code are not new. The Illinois Court of Appeals has long recognized that the affidavit of a circulator of a petition that the signatures on each page were signed in his or her presence is one of the primary safeguards against fraudulent petitions, that these requirements are essential to preventing fraud, and the Court has strictly enforced these provisions. *See, e.g., Huskey v. Mun. Officers Electoral Bd.*, 156 Ill. App. 3d 201, 205 (1st Dist. 1987); *Canter v. Cook County Officers Electoral Bd.*, 170 Ill. App. 3d 364, 369 (1st Dist. 1988); *Fortas v. Dixon*, 122 Ill. App. 3d 697, 700 (1st Dist. 1984). Indeed, the Illinois Supreme Court has held that, "the failure of the circulator to personally appear

before the notary public invalidates the petition." *Bowe v. Chicago Electoral Bd.*, 79 Ill. 2d 469, 470 (1980). Therefore, these provisions of the Election Code, on their face, cannot be said to have caused the Plaintiffs' alleged injury.

Consequently, Plaintiffs' alleged injury vis-à-vis the Election Code must be an as-applied challenge. An as-applied challenge requires a showing that the statute is unconstitutional as it applies to the challenging parties' specific circumstances. *People v. Harris*, 2018 IL 121932 ¶ 38. Plaintiffs' "specific circumstances" in this case include the existence of the pandemic and their apparent apprehension to collect signatures outside while wearing high-quality masks. But that circumstance is not unique to Plaintiffs; on the contrary, it could be applied to literally anyone. It's a temporal circumstance, not a personal one.

Assuming this is a proper basis for an as-applied challenge, the alleged injury is not fairly traceable to either the Board Defendants or the Election Code. As discussed, Plaintiffs do not allege that the Board Defendants have taken any action that hinders their ability to collect signatures. Judge Pallmeyer's decision in *Morgan* is instructive. There, Judge Pallmeyer had "grave doubts" as to whether the *Morgan* plaintiffs had standing, but ultimately denied the motion for preliminary injunction on the merits. *Morgan*, 2020 U.S. Dist. LEXIS 86618 at *13-14. Judge Pallmeyer did not find the standing issue decisive in *Morgan* because at that time the Governor's stay at home order was in effect. That executive order prohibited leaving one's home except for "essential" activities, which did not include petition circulation. *Id.* at 15. Here, there is no executive order in place prohibiting gatherings of any type. In the time since *Morgan*, Illinois has gradually eased restrictions before moving into Phase 5 of the Governor's "Restore Illinois" plan on June 11, 2021, which ended gathering restrictions entirely.[8] Moreover, previous executive orders prior to

[8] *See supra* notes 3-4.

November 8, 2020 (the date that Plaintiffs could begin gathering signatures to put a referendum on the November 2022 ballot) had gradually increased the number of people who could gather in outdoor settings.[9] Thus, at no time during the relevant period has there been any state action preventing Plaintiffs from gathering signatures in person.

Additionally, in *Morgan* the relative safety of circulating the petition was not considered an injury that could be fairly traceable to the defendants. *Morgan*, U.S. Dist. LEXIS 86618 at *9-14. Indeed, when discussing the merits of the preliminary injunction sought in *Morgan*, Judge Pallmeyer noted that a petition circulator's understandable unwillingness to seek out signatures during a pandemic are "circumstances. . . caused by the virus itself, however, not by state law." *Id.* at *19. Plaintiffs' fears are even less related to state action today. As discussed above, the number of positive cases of COVID 19 is low.[10] Hospitalizations are down.[11] The Governor has repealed his previously issued mask mandate for non-healthcare, transit, or congregate facilities,[12] and the CDC has adjusted its guidelines on masking such that 98% of Americans live in counties where they do not need to wear a mask indoors,[13] although they of course may choose to wear masks both inside and outside.

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[9] *See, e.g.*, Executive Order 2020-43 (COVID-19 Executive Order No. 36) (June 26, 2020) (allowing public gatherings of up to 50 people), *available at* https://www.illinois.gov/government/executive-orders/executive-order.executive-order-number-43.2020.html (last visited Mar. 18, 2022).

[10] *Illinois COVID-19 Community Level*, ILLINOIS DEPARTMENT OF PUBLIC HEALTH (Mar. 16, 2022), *available at* https://dph.illinois.gov/covid19/data/community-level.html (last visited Mar. 16, 2022).

[11] Statewide Metrics, Illinois Department of Public Health, (Mar. 16, 2022), *available at* https://dph.illinois.gov/covid19/data/statewide-metrics.html (last visited Mar. 16, 2022).

[12] Executive Order 2022-06 (COVID-19 Executive Order No. 101) (Feb. 28, 2022), *available at* https://www.illinois.gov/government/executive-orders/executive-order.executive-order-number-06.2022.html (last visited Mar. 16, 2022).

[13] Smith-Schoenwalder, Cecelia, *CDC Guidance: 98% of U.S. Population Can Drop Masks Indoors*, US NEWS & WORLD REPORT (Mar. 11, 2022 1:29 PM), *available at* https://www.usnews.com/news/health-news/articles/2022-03-11/cdc-guidance-98-of-u-s-population-can-drop-masks-indoors (last visited Mar. 16, 2022).

Moreover, it has been well-known for over a year that transmission is substantially less likely to occur in outdoor settings than indoor settings.[14] High-quality masks, such as N95 respirators, provide protection for the wearer of the mask in addition to others.[15] Nowhere in either Plaintiffs' Complaint or their affidavits do they allege that circulating petitions outside, while wearing high-quality masks, is not sufficiently safe. Nor can they. In any event, Plaintiffs' apparent apprehension of this method of signature gathering is not fairly traceable to any action of any Defendants or the Election Code. For this reason alone, Plaintiffs' claims should be dismissed.

Plaintiffs also lack standing because even if an injunction were entered allowing Plaintiffs to collect e-signatures outside of the personal presence of the signer, this relief is not substantially likely to redress Plaintiffs' alleged injury. Plaintiffs' ultimate goal is to put their proposed amendment on the ballot for this year's general election. The Illinois Constitution provides that petitions to amend Article IV of the Constitution by ballot initiative must be filed with the Secretary of State at least six months before the general election. ILL. CONST. Art. XIV § 3. This year's general election is on November 8, 2022, making the deadline May 8, 2022. May 8, 2022 falls on a Sunday, making the effective deadline May 6, 2022.

To amend the Constitution via ballot initiative, petitioners must first gather signatures of electors equal in number to 8% of the number of total votes cast in the last gubernatorial election. ILL. CONST. Art. XIV § 3. For the 2022 election, this requirement means that Plaintiffs must gather

[14] Bulfone, Tommaso C., *et al*., *Outdoor Transmission of SARS-COV-2 and Other Respiratory Viruses: A Systematic Review*, THE JOURNAL OF INFECTIOUS DISEASES, Vol. 223, Issue 4 at 550-561 (Feb. 15, 2021) *available at* https://academic.oup.com/jid/article/223/4/550/6009483?login=true (last visited Mar. 16, 2022).

[15] *N95 Respirators, Surgical Masks, Face Masks, and Barrier Face Coverings*, U.S. FOOD & DRUG ADMINISTRATION (Sep. 15, 2021), *available at* https://www.fda.gov/medical-devices/personal-protective-equipment-infection-control/n95-respirators-surgical-masks-face-masks-and-barrier-face-coverings (last visited Mar. 16, 2022).

363,813 signatures of electors to place their ballot initiative on the ballot. Even if the ultimate relief sought in this case were entered on the same day Plaintiffs filed this lawsuit, February 15, 2022, Plaintiffs would have needed to gather 4,548 signatures a day, every day, to reach the required 363,813 signatures.[16] Of course, the number of signatures per day that Plaintiffs must acquire increases every day they do not meet this number. Although Plaintiffs' affidavits state that they generally have access to computers and the internet, at no point do Plaintiffs allege how they will be able to locate more than 4,548 unique Illinois voters each day to sign their petition without physically entering public spaces. Accordingly, Plaintiffs have not alleged any facts from which the Court can reasonably infer that they are substantially likely to have their alleged injury redressed by their requested relief. Therefore, Plaintiffs lack standing for this reason as well and their Complaint should be dismissed.

**B. The Complaint Should Be Dismissed Pursuant To Section 2-615 Because Plaintiffs Have Failed To State Any Plausible Cause Of Action In Any Count Of The Complaint.**

The Complaint brings four causes of action. Count I is styled "Right of Initiative and Right To Ballot Access." Count II brings a claim under the Free Speech and Petition Clauses of the Illinois Constitution. Count III alleges a claim under the Equal Protection Clause of the Illinois Constitution. Count IV alleges a claim under the Due Process Clause of the Illinois Constitution. However, none of these counts state a plausible cause of action under Illinois law. Additionally, even if Plaintiffs did state a plausible claim under any of these counts, the underlying ballot initiative does not comply with the requirements of Article 14, Section 3 of the Illinois Constitution because it pertains to substantive policy, not only structural and procedural changes to the

[16] Several of Plaintiffs' affidavits allege that they have already begun circulating petitions, but Plaintiffs do not provide the number of signatures that have been provided to date, or as of the day the Complaint was filed.

legislature. Thus, even if Plaintiffs could theoretically state a cause of action as to any of their individual counts, Plaintiffs nonetheless cannot state a cause of action because the ballot initiative they are petitioning for would not stand up to judicial scrutiny if challenged.

**A. Counts I & IV fail to state a plausible cause of action for ballot access because neither the notarization requirement nor the original handwritten signature requirement is unreasonably restrictive.**

Plaintiffs' primary claim in this matter, Count I, is based on the right to ballot access for petitions to amend the Illinois Constitution. Count IV alleges denial of due process based on an alleged denial of a fundamental right, specifically the right to ballot access for petitions to amend the Illinois Constitution. Accordingly, these claims are duplicative and may be analyzed together.

The main case Plaintiffs rely on is *Coalition for Political Honesty v. State Bd. Of Elections*, where the Illinois Supreme Court held that because the United State Supreme Court has subjected legislative restrictions on the right to vote to strict scrutiny, that strict scrutiny was the appropriate method of review in that case. 83 Ill. 2d 236, 249 (1980). Based on this single line, Plaintiffs conclude that the Court should apply strict scrutiny to the provisions of the Election Code at issue and that, in the face of the pandemic, those provisions fail strict scrutiny.

However, Plaintiffs read *Coalition for Political Honesty* much too broadly and that case is not dispositive of the issues here. In *Coalition for Political Honesty*, the Illinois Supreme Court did hold that procedures for determining the validity and sufficiency of a petition "cannot unnecessarily restrict the initiative process." *Id*. at 248. But the procedures at issue here do not unnecessarily restrict the initiative process. To the contrary, as discussed below, Illinois courts have regularly and strictly enforced these provisions as critical anti-fraud measures. Moreover, the Seventh Circuit has held that the circulator notarization requirement does not impose a severe

burden and therefore need not be narrowly tailored. *Tripp v. Scholz*, 972 F. 3d 857, 870 (7th Cir. 2017).

> Although courts may sometimes talk the language of least drastic means, they only strike down non-severe ballot-access regulations that are unreasonable. Of course the existence of a less restrictive alternative may be relevant to an assessment of reasonableness; one way in which a requirement may be unreasonable is that it is unnecessary in light of another requirement that could be imposed instead. Nevertheless, as stated below, this case does not present the kind of far-afield restriction that suggests that Illinois is behaving unreasonably in dealing with the problem of circulator fraud.

*Id.* (internal quotations and citations omitted). Likewise, the *Tripp* court also recognized that the nature of handwritten signatures in particular plays a crucial role in combatting fraud by petition circulators and unknown signers. *Id.* at 869–70. The handwritten signature requirement (and number of signatures required) also ensures the State is not "forced to undertake the substantial preparation and expense of conducting a referendum unless the requisite number of qualified voters have actually signed the petitions and done so only after exercising due deliberation." *Kendall v. Balcerzak*, 650 F.3d 515, 525 (4th Cir. 2011) (citing *Howlette v. City of Richmond, Va.*, 580 F.2d 704 (4th Cir. 1978)).

To illustrate the differences between a severe and unreasonable restriction that is subject to strict scrutiny and a reasonable ballot access regulation that is not, one may look no further than the difference between the restriction at issue in *Coalition for Political Honesty* and the handwritten signature and circulator notarization requirements. In *Coalition for Political Honesty*, the challenged section of the Election Code provided that if *any single* signature on a page did not conform to the signature requirements, then *the entire page* of signatures was invalidated. *Coalition for Political Honesty*, 83 Ill. 2d at 251. So if a page had 25 signatures, 24 of which conformed to the rule but the 25th did not, then all 25 signatures were invalidated. *Id.* at 253. The

Illinois Supreme Court ruled this was too harsh of a sanction because it threw out compliant signatures. *Id.*

Meanwhile, the same year that *Coalition for Political Honesty* was decided, the Illinois Supreme Court also strictly enforced the Election Code's requirement that a petition circulator sign a statement certifying that the signatures on the page were signed in his presence and are genuine. *Bowe*, 79 Ill. 2d. at 470. The Supreme Court held that "[t]he requirements of this section are mandatory and not directory. . . The Appellate Court. . . held that the failure of the circulator to personally appear before the notary public invalidates the petition. In our opinion, this is a correct interpretation of the statute." *Id.*

In the following years, courts have continued to strictly enforce these provisions of the Election Code. *See, e.g.*, *Huskey*, 156 Ill. App. 3d at 205; *Canter*, 170 Ill. App. 3d at 369; *Fortas*, 122 Ill. App. 3d at 700. Consequently, *Coalition for Political Honesty* cannot be read as casting doubt on the requirement that circulators personally witness petition signers adding their signatures and then certifying that they did so at the bottom of each page.

Plaintiffs are likely to respond that although the notarization requirement is generally permissible, it has become severe and unreasonable in the face of the pandemic. But this argument has the same flaws as discussed with regard to Plaintiffs' lack of standing. There is nothing stopping Plaintiffs from gathering signatures outside while wearing high-quality masks. As discussed, transmission of the virus in such a setting is very low. Just because some proposed method of petition circulation is safer, does not make the current procedures unreasonably restrictive. Moreover, because Plaintiffs do not address why circulating a petition outside while wearing a high-quality mask is not sufficiently safe, they have not stated sufficient facts from which the Court can reasonably infer that they are being denied ballot access. Therefore, Plaintiffs

have failed to state a claim that they have been denied ballot access and Counts I and IV should be dismissed.

**B. Count II fails to state a plausible free speech or petition claim because the handwritten signature and circulator notarization requirements are reasonable content-neutral provisions.**

The handwritten signature and circulator notarization requirements are not content-based restrictions because these regulations have no bearing on the topic, idea, or message of the Plaintiffs' petition. *C.f. Same Condition, LLC v. Codal, Inc.*, 2021 IL App (1st) 201187, ¶ 33 (defining a content-based restriction). A content-neutral restriction on speech limits the time, place, or manner of speech. *Id.* The provisions of the Illinois Constitution and the Election Code at issue regulate the time (between 24 months and 6 months before an election), place (in person), and manner (utilizing original wet signatures) for a proper petition to amend the Constitution via ballot initiative. Moreover, these requirements apply to all ballot referenda equally regardless of their content. Therefore, it is a content-neutral regulation. Content-neutral regulations on speech are reviewed under intermediate scrutiny. *Id.* (citing *City of Chicago v. Alexander*, 2017 IL 120350, ¶ 66). The Illinois Supreme Court applies this test in lock-step with federal precedent. *City of Chicago*, 2017 IL 120350 at ¶ 66. Under this standard, a time, place, or manner regulation must not only be content-neutral, but also be "narrowly tailored to serve a significant government interest, and must leave open ample alternative channels for communication of the information." *Id.* Here, as discussed, the challenged provisions of the Election Code are anti-fraud measures that have been strictly enforced by Illinois Courts for decades. *See, e.g., Huskey*, 156 Ill. App. 3d at 205; *Canter*, 170 Ill. App. 3d at 369; *Fortas*, 122 Ill. App. 3d at 700. Clearly, Illinois courts consider the notarization requirement to be narrowly tailored to serve its anti-fraud purposes. And considering the 18-month window to collect signatures, with no limitations on how information

about ballot initiatives may be disseminated, there clearly are ample channels for the communication of information about ballot initiatives.

Plaintiffs may respond that the requirements are not narrowly tailored in light of the pandemic, but as previously discussed, Judge Pallmeyer rejected this reasoning two years ago in *Morgan*. She noted that the circumstances complained about "are caused by the virus itself . . . not by state law. It is only when state law prevents individuals from circulating petitions that First Amendment harms are implicated." *Morgan*, 2020 U.S. Dist. LEXIS 86618 at *19.

The Complaint cites *Florida Dem. Party v. Scott*, 215 F. Supp. 3d 1250 (N.D. Fla. 2016) as supporting Plaintiffs' requested relief, but *Florida Democratic Party* is distinguishable. There, a federal court enjoined the Florida Governor and Secretary of State from enforcing voter registration deadlines shortly after Hurricane Mathew. *Id.* at 1258-59. However, these are not comparable situations. The Florida court was responding to the devastation brought on by a hurricane that happened only four days before, and only five days before the voter registration deadline. *Id.* at 1254. This sudden and devastating event placed a severe burden on the right to vote. The Court noted that hundreds of thousands of aspiring eligible Florida voters were likely to have registered to vote in the final week of voter registration. *Id.* at 1257. "Hurricane Matthew not only forced many of those voters to evacuate the state, but also foreclosed the only methods of registering to vote: in person or by mail." *Id.*

In this case, the pandemic started over two years ago. Its effects, while significant, are not sudden. Its dangers have largely receded for those who take the appropriate precautions, and the Illinois Department of Public Health ("IDPH") and the CDC's guidance reflect this. And as discussed, signature gathering can be accomplished safely if the circulator is outside and wearing a high-quality mask. And while Hurricane Matthew upended the voter registration process only

five days before the deadline, here Plaintiffs have had a nearly 18-month window to collect signatures for the 2022 election. *Florida Democratic Party* is in no way supports Plaintiffs' claims.

The notarization requirement is a content-neutral regulation that satisfies the Free Speech and Petition Clauses' standards for time, place, and manner regulations. Therefore, Count II should be dismissed.

**C. Count III fails to state an Equal Protection Clause claim because no distinctions have been made between similarly situated parties, and alternatively the handwritten signature and notarization requirements satisfy rational basis review.**

Count III alleges that the handwritten signature and circulator notarization requirements violate the Equal Protection Clause of the Illinois Constitution because accommodations were made to candidates in 2020 to gather signatures remotely and for the General Assembly to take votes remotely. However, neither of these instances raises an equal protection issue.

"Equal Protection guarantees that similarly situated individuals will be treated similarly, unless the government demonstrates an appropriate reason to do otherwise." *Hope Clinic for Woman, Ltd. v. Flores*, 2013 IL 112673, ¶ 81. The Equal Protection Clause prohibits the State from according unequal treatment to persons placed by a statute into different classes for reasons wholly unrelated to the purpose of the legislation. *Id.* There is no statutory difference in treatment at issue in this case.

Instead, Plaintiffs point to extra-statutory actions to allege they are being treated differently than others who are similarly situated. These claims are flawed. *First*, while independent and new party candidates were permitted to obtain signatures electronically, that accommodation was only made for the 2020 election and was done pursuant to judicial fiat. *See Libertarian Party*, 455 F. Supp. 3d 738. Considering that Plaintiffs are seeking to place an initiative on the ballot for the 2022 election, they cannot claim they are similarly situated as candidates two years ago. As

discussed, those candidates received that accommodation under vastly different circumstances than exist today. The more similarly situated candidates are those candidates petitioning to be on the 2022 ballot, and those candidates are not receiving the accommodations that were granted in 2020. Thus, Plaintiffs are being treated exactly the same as candidates petitioning for the 2022 election.

Plaintiffs' claim that they are similarly situated with the members of the General Assembly is even more flawed. *First*, Plaintiffs' claim that they are similarly situated to the members of the General Assembly is completely without citation to prior case law. The sole case cited in this count, *Coalition for Political Honesty*, does not state that this is the case. Indeed, a similar claim was rejected by the Tenth Circuit Court of Appeals in *Campbell v. Buckley*, 203 F. 3d 738, 748 (10th Cir. 2000):

> Citizens who propose legislation through the initiative process and members of the general assembly who pass bills are not similarly situated classes. Members of the general assembly must win an election to even serve in that body, and, unlike initiatives, general assembly bills are subject to veto by the governor. Before a vote on a bill, it is subject to committee consideration, amendment, and debate according to the rules of the general assembly. The legislative process and the initiative process are so fundamentally different that we cannot read the Equal Protection Clause of the federal Constitution to require the state to afford the same title setting treatment to these two processes.

203 F. 3d 738, 748 (10th Cir. 2000). While *Buckley* pertained to proposed legislation, rather than amendments to a state constitution, the same logic applies. Article XIV of the Illinois Constitution provides different rules for submitting amendments to the Illinois Constitution to the voters depending on if the amendment originates from the General Assembly or by ballot initiative. *See generally* ILL. CONST. Art. XIV §§ 2, 3. Notably, amendments submitted by ballot initiative are limited to structural and procedural subjects contained in Article IV of the Constitution, while amendments submitted by the General Assembly are not subject to any such restriction. *Compare*

ILL. CONST. Art. XIV § 2 *with* ILL. CONST. Art. XIV § 3. Because there are not similarly situated classes being treated differently, the equal protection inquiry may end here.

However, even if the Court were to find that Plaintiffs are similarly situated to the General Assembly and that the allowance for members of the General Assembly to vote remotely is a distinction meriting review under the Equal Protection Clause, Plaintiffs' claim still fails. When analyzing the constitutionality of a statute under the Equal Protection Clause, courts apply rational basis review where the statute does not implicate a fundamental right and does not discriminate on the basis of a suspect classification. *People v. Hollins*, 2012 IL 112754, ¶ 40.

The fundamental right alleged in this case is the right to petition for an amendment to the Constitution by ballot initiative and the right to free speech and petition. This is the same claim that was previously discussed in Sections I and II above, and this claim fails for the same reasons discussed in those section. Nor is there a suspect classification at issue in this case. Suspect classifications are classifications based on race, ethnicity, sex, gender, religion, or country of origin. *People v. Ellis*, 57 Ill. 2d 127, 131-32 (1974); *see also United States v. Carolene Products Co.*, 304 U.S. 144, 152 n.4 (1938). Thus, rational basis is the appropriate standard of review.

Under the rational-basis test, if a statute is reasonably related to a legitimate state interest, the means or methods that the legislature has chosen to serve that interest will also be reasonable. *People v. Pepitone*, 2018 IL 122034 at ¶ 16. This test is highly deferential to the legislature. *Id.* at ¶ 17.

> The legislature's judgments in drafting a statute are not subject to judicial fact finding and may be based on rational speculation unsupported by evidence or empirical data. If there is any conceivable set of facts to justify the statute, it must be upheld. This court will not second-guess the wisdom of the legislative enactments or dictate alternative means to achieve the desired result.

*Id.* (internal quotations and citations omitted). "Under rational-basis review, a statute is not fatally infirm merely because it may be somewhat underinclusive or overinclusive." *People v. Avila-Briones*, 2015 IL App (1st) 132221 at ¶ 83.

Here, the difference complained about – the General Assembly members are allowed to vote remotely while signature gathering must be done in person – easily passes rational basis review. *First*, members of the General Assembly meet and vote indoors, as opposed to signature gathering that may be conducted outside. As previously discussed, COVID transmission is much less likely to occur in outdoor settings than indoor settings.[17] *Second*, members of the General Assembly are known to their constituents, and their votes are recorded so their constituents may hold them accountable. Accordingly, there is minimal concern of fraudulent voting by members of the General Assembly. Meanwhile, as previously discussed, the handwritten signature and circulator notarization requirements are two of the primary anti-fraud measures to ensure the integrity of ballot petitions. The fact that the circulator must personally witness the signer of the petition and certify to having done so ensures that the signer, at a minimum, is physically located within the State at the time of signing, giving the circulator a basis to believe that the signer is a resident of Illinois. This safeguard is removed if circulators may circulate petitions online to strangers who may be located anywhere in the world. And if circulators are not required to provide a certification, then there is no one who may be held accountable if it turns out that signatures, or whole pages of signatures, do satisfy the signature requirements. Therefore, the handwritten signature and circulator notarization requirements pass rational basis review and Count III should be dismissed.

[17] *See supra* note 14.

**D. Plaintiffs have not stated a plausible cause of action because their proposed ballot initiative does not comply with the requirements of the Article XIV of the Illinois Constitution.**

Finally, Plaintiffs have not stated a cause of action because their proposed ballot initiative does not comply with the requirements of Article XIV, Section 3 of the Illinois Constitution. The Illinois Supreme Court has held that Article XIV, Section 3 of the Constitution limits the scope of ballot initiatives to structural and procedural changes to the procedures contained in Article IV; this means that ballot referenda under Article XIV, Section 3 of the Constitution are limited to structure, size, organization, and procedures—not matters of substantive policy. *Hooker v. Ill. State Bd of Elections*, 2016 IL 121077 at ¶ 79; *Chicago Bar Association v. State Bd. of Elections*, 137 Ill. 2d 394, 403 (1990). Here, the proposed amendment crosses the line into substantive policy by only pertaining to one specific type of proposed statute that must be voted on by the General Assembly.

*Chicago Bar Association* is directly on point. In that case, there was a proposed amendment to the Constitution providing that revenue bills may only become law by a vote of three-fifths of the members of each house of the General Assembly, and establishing revenue committees in each house. 137 Ill. 2d at 397. The Illinois Supreme Court found that the amendment was not limited to structure and procedural issues because a substantive issue not found in Article IV, *i.e.*, the subject of revenue and taxes, was included in the amendment. *Id.* at 406. Likewise, the proposed amendment here deals with the substantive issue of ethics reform. So similar to *Chicago Bar Association,* this ballot initiative does not comply with the standards of Article XIV, Section 3. Because Plaintiffs' proposed ballot initiative does not comply with the requirements of the Illinois Constitution, they have not stated a claim that they are wrongfully being denied ballot access and their claims should be dismissed for this reason as well.

## RESPONSE TO PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION

### LEGAL STANDARD

The purpose of a preliminary injunction is to preserve the status quo until a decision on the merits can be entered. *Scheffel & Co., P.C. v. Fessler*, 356 Ill. App. 3d 308, 313 (5th Dist. 2005). "A preliminary injunction is an extreme remedy that should be used only where an emergency exists and serious harm would result if the injunction is not issued." *Id.* To be entitled to a preliminary injunction, plaintiffs must demonstrate that they: (1) possess an ascertainable right in need of protection; (2) will suffer irreparable harm without the protection of an injunction; (3) have no adequate remedy at law; (4) are likely to be successful on the merits of their action; and (5) the benefits of granting the injunction outweigh the injury to defendants. *Id.*

Irreparable harm does not mean injury that is beyond repair or beyond compensation in damages; rather, it denotes transgressions of a continuing nature. *SSA Foods, Inc. v. Giannotti*, 105 Ill. App. 3d 424, 428 (1st Dist. 1982). Generally, an available remedy at law is considered adequate if it is concise, complete, and would provide the same practical and efficient resolution as the equitable remedy would provide. *Diamond Sav. & Loan Co. v. Royal Glen Condo. Ass'n*, 173 Ill. App. 3d 431, 435 (2d Dist. 1988). To show a likelihood of success on the merits, a party must lead the court to believe that it will probably be entitled to the relief prayed if the proof sustains the party's allegations. *Oscar George Electric Co. v. Metro. Fair & Exposition Auth.*, 104 Ill. App. 3d 957, 966 (1st Dist. 1982).

### ARGUMENT

#### I. Plaintiffs seek to change, not maintain, the status quo.

As previously noted, the purpose of a preliminary injunction is to preserve, not change, the status quo. The status quo is the "last actual, peaceable, uncontested status preceding the

controversy." *Limestone Dev. Corp. v. Village of Lemont*, 284 Ill. App. 3d 848, 860 (1st Dist. 1996). The status quo here is that the handwritten signature and circulator notarization requirements of the Election Code remain in place and enforceable, as they have been for decades. Plaintiffs may argue that this is not the status quo in light of the pandemic. However, Plaintiffs were permitted to begin collecting signatures 24 months before the 2022 general election, *i.e.*, November 2020. *See* ILL. CONST. Art. XIV § 3. The pandemic began nearly a year before then. Plaintiffs then waited 16 months to seek injunctive relief. Even if the Court agrees that the pandemic represents a change to the status quo that existed for decades, the current status quo would nonetheless be the 16-month period between Plaintiffs' ability to start collecting signatures and the filing of the motion for preliminary injunction, when Plaintiffs first sought to change the requirements a mere two months before the filing deadline. The Court should not change the status quo at the eleventh hour.

**II. Plaintiffs do not have a likelihood of success on the merits.**

Plaintiffs have not raised a fair question as to the success of any of their claims. As discussed above in the Motion to Dismiss, the Complaint should be dismissed because Plaintiffs lack standing, have not stated a plausible cause of action on any of the four counts of the Complaint, and the proposed ballot initiative does not comply with the requirements of the Illinois Constitution. Plaintiffs do not have a likelihood of success on the merits for those same reasons and those arguments are incorporated herein.

**III. Plaintiffs have not shown they will suffer irreparable harm.**

Plaintiffs have not shown they will suffer irreparable harm absent an injunction. "The complaint must allege facts from which the court can ascertain the act to be enjoined constitutes a continuing harm." *SSA Food, Inc.*, 105 Ill. App. 3d at 464. Plaintiffs do not allege such facts.

Plaintiffs' alleged irreparable harm is based on their safety concerns regarding the pandemic. But the facts alleged pertain to the pandemic as a whole, not this specific point in time. As discussed above, case counts are currently low and IDPH and the CDC have eased their public health guidelines.[18] Plaintiffs provide no argument as to why they are irreparably harmed *right now*. Moreover, there is ample evidence that transmission is low in outdoor settings and that high-quality masks can also protect the wearer from contracting the virus.[19] None of the allegations or affidavits provided by Plaintiffs explain why petitioning for signatures outside while wearing high-quality masks is not sufficiently safe. Meanwhile Plaintiff Yussuf El Metennani, for example, is employed as a waiter and coaches soccer. (Compl. Ex. 7). It is curious that this Plaintiff's safety concerns are limited solely to signature gathering and not to his employment or recreational activities.

Additionally, most of the Plaintiffs have averred that they have already begun circulating petitions. (Compl. Exs. 1-6, 8). Although no details are provided as to how Plaintiffs are circulating petitions, presumably they are doing so in person. But because Plaintiffs do not provide any details, they have not shown why this is not a sufficiently safe method moving forward. Indeed, the Court may reasonably infer that in-person signature gathering is sufficiently safe. Because Plaintiffs have not shown irreparable harm, their motion for preliminary injunction should be denied.

## IV. The balance of hardships favors denying injunctive relief.

The final element courts consider when determining whether to issue a preliminary injunction is whether the benefits of granting an injunction outweigh the potential harm to the defendants. To assess this element, courts balance the hardships of the parties and consider the public interests involved. *JL Props. Grp., LLC v. Pritzker*, 2021 IL Ap (3d) 200305, ¶ 57. This test

[18] *See supra* notes 3-4, 10-13.

[19] *See supra* notes 14-15.

requires the court to determine the relative inconvenience to the parties and whether the burden upon the requesting party if an injunction does not issue outweighs the burden to the opposing party if an injunction does issue. *Guns Save Life, Inc. v. Raoul*, 2019 IL App (4th) 190334, ¶ 64. In other words, "Plaintiffs are…required to show in the trial court that they would suffer more harm without an injunction than defendants will suffer with it." *Id.* Courts also consider the effect of the injunction on the public. *Id.*

As previously discussed, Plaintiffs have not shown that they will suffer irreparable harm without an injunction because they have not shown that gathering signatures outside while wearing high-quality masks is not sufficiently safe. Also as discussed, Plaintiffs delayed 15 months in bringing this lawsuit, and then an extra three weeks in bringing this motion. If the handwritten signature and circulator notary requirements present such a strong hardship in the face of the pandemic that they are unable to gather signatures, then one would expect Plaintiffs to bring this lawsuit within three months of November 2020, when they were permitted to begin gathering signatures, not within three months of the deadline to gather signatures. This extreme lack of urgency weighs against the handwritten signature and circulator notarization requirements presenting a significant hardship.

The entry of an injunction, however, would present a significant hardship on Defendants and be contrary to the public interest. Plaintiffs seek to amend the Illinois Constitution. This is a serious task and it is vital to ensure that the process is not tainted. Article XIV, Section 3 of the Constitution places significant requirements on this task. Namely, petitioners must gather signatures of electors equal in number to 8% of the number of total votes cast in the last

gubernatorial election. ILL. CONST. Art. XIV § 3. For 2022, this means Plaintiffs must gather 363,813 signatures of electors to place their ballot initiative on the ballot.

It is primarily the State Board of Elections' responsibility to ensure that the petitions to amend the Constitution meet the requirements of the Illinois Constitution and the Election Code. The Election Code requires signers to be Illinois voters at the time of signing and for their respective residences to be stated correctly. *See* 10 ILCS 5/28-3.

Because of the high number of signatures required to amend the Constitution, and the Board's other duties, the Board utilizes a sampling procedure to check the validity of the signatures on a percentage of the pages as representative of the whole petition. As discussed, one of the safeguards against fraud in this context are the handwritten signature and circulator notarization requirements, which together ensure at minimum that circulators gather signatures from unique individuals who were physically located in the State at the time they signed the petition. This requirements help ensure that for the pages not sampled by the Board, there is at least some basis to believe the signers are registered Illinois voters. The handwritten signature requirement helps prevent fraud because original wet signatures are hard for out of state persons to fake. The circulator notarization requirement also ensures that the Board has individuals who can be held accountable if a suspiciously high number of signers end up not being registered Illinois voters. If these safeguards are removed, then there is no basis to believe that signers who sign electronically over the internet are registered Illinois or that they are who they say they are. And without a notarized statement by the petition circulator, there is no one who may be held accountable if the Board suspects fraud.

Plaintiffs argue that in the modern world e-signatures are common and should be permitted under the circumstances. But just because e-signatures are appropriate in some contexts does not

mean they are appropriate in this one. In the examples Plaintiffs list, the parties and counter-parties are known to each other ahead of time and have a preexisting relationship, which helps ensure accountability. In contrast, petition signing is largely done by strangers to the petition circulators.

Plaintiffs also argue that two years ago electronic signatures were permitted and the system worked. However, the circumstances of two years ago were extraordinary and merited extraordinary relief. Although COVID-19 has not disappeared, the extraordinary circumstances of spring 2020 do not currently exist. Case counts are low, transmission is unlikely to occur outside, high-quality masks are easily available, and there is no Governor-mandated stay at home order in effect. If the current state of the pandemic is not sufficiently safe to gather signatures outside while wearing high-quality masks, then it is unclear when it would be safe to do so. If Plaintiffs' requested relief is appropriate under these circumstances, at what point may these critical anti-fraud provisions of the Election Code once again be enforced? Plaintiffs do not have an answer for this. It is sufficiently safe to gather signatures outside while wearing high-quality masks *right now*. The present hardships on Plaintiffs are minimal, while the hardships on the Board Defendants, and the public interest, are significant. For this reason, Plaintiffs' Motion for a Preliminary Injunction should be denied.

## CONCLUSION

Plaintiffs' Complaint should be dismissed in its entirety. Plaintiffs lack standing. They have not stated a plausible cause of action on any of the four counts of the Complaint. And their proposed ballot initiative does not satisfy Constitutional requirements. Additionally, the Motion for Preliminary Injunction should be denied because Plaintiffs do not have a likelihood of success on the merits for the same reasons. The Motion for Preliminary Injunction should also be denied because Plaintiffs are attempting to change, not preserve, the status quo, Plaintiffs have not shown

they will suffer irreparable harm without an injunction, and the balance of the hardships favors denying the injunction.

WHEREFORE, the Board Defendants respectfully request that this Honorable Court deny Plaintiffs' Motion for Preliminary Injunction, grant their Motion to Dismiss, and dismiss this matter with prejudice.

Respectfully Submitted,

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