

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

WILLIAM WAGNER, <i>et al.</i>)		
)		
Plaintiffs,)	CASE NO.	2022 CH 01285
)		
v.)		
)		
JESSE WHITE, <i>et al.</i>)	Hon. Judge	Sophia H. Hall
)		
)		
Defendants.)	Calendar 12	

DECISION

This matter comes on to be heard on Plaintiffs’ Motion for a Preliminary Injunction seeking to change the manner of obtaining signatures on petitions to place a proposed amendment to the Illinois Constitution on the November 8, 2022 Ballot. Defendants filed a response to the Motion, and have filed separate Motions to Dismiss the Complaint.

Plaintiffs request this Court to order the State Board of Election to accept electronic signatures on the petitions required to be filed by Article XIV Section 3 to place the proposed amendment on the ballot. Illinois law provides for an in person signature collection process. Plaintiffs argue that this Court should enter an order allowing for an electronic signature collection process to be used due to Plaintiffs’ concerns about their health because of the presence of Covid-19 in the community. The Plaintiffs claim that because of the presence of the virus, the in person collection of signatures is a severe burden on the collection process, and therefore violates their rights to participate in the political process, as specified in the counts

Plaintiffs’ main argument, in support of their request that this Court order the electronic signature collection process, is the case of *Libertarian Party of Illinois v. Pritzker* 455 F. Supp. 3d 738 (2020). In that case, the court entered an agreed preliminary injunction enjoining the enforcement of the in person signature collection process as to new parties and independent candidates seeking to be on the ballot in the November 2020 general election.

Prior to the entry of that preliminary injunction order, as stated in the Memorandum Opinion, Governor Pritzker had issued an Executive Order requiring people to stay at home due to Covid 19. The effect of the Executive Order was to legally prohibit in person collection of signatures. As the court stated in her opinion, there was a “public health emergency resulting from the spread of the novel coronavirus, COVID 19.” Apparently, after the entry of the preliminary injunction, an electronic signature collection process was used. The Memorandum Opinion does not state that the court considered the nature of any electronic signature collection process, nor evaluated any.

This Court denies Plaintiffs' Motion for Preliminary Injunction. Plaintiffs have failed to satisfy the requirement that they show a likelihood of success on the merits of their claim that the Illinois statute providing for in person collection of signatures violates their constitutional rights to participate in the political process, or that there is a violation of equal protection of the law due to the distinctions between General Assembly members and Illinois citizens as to their process in placing amendments to the Constitution on the ballot.

Specifically, as to Counts I, II and IV, this Court finds that Plaintiffs have failed to present sufficient evidence of the burden that the present status of the presence of Covid-19 in the community places on the in person signature collection process. Plaintiffs have also failed to present any evidence concerning any electronic signature collection process from which to determine how such a process addresses the compelling State interest of preventing fraudulent signatures.

As to Count III, equal protection of the law, this Court finds that Plaintiffs have failed to present sufficient evidence that General Assembly Members and Illinois citizens are similarly situated with respect to the process to have proposed constitutional amendments placed on the ballot.

Accordingly, based on the evidence presented on this preliminary injunction hearing this Court finds no likelihood of success on the merits of the constitutional claims to warrant the entry of a preliminary injunction.

The Complaint

The Plaintiffs in the Complaint are William Wagner; William Morgan; Elizabeth Norden; Andrea Raila; Tyler Brumfield; George Otto; Yussuf El Metennani; David Vaught; Horacio Esparza; and The Committee for the Illinois Democracy Amendment, an unincorporated political association.

The Defendants are JB Pritzker, in his official capacity as Governor of Illinois; Jesse White, in his official capacity as the Illinois Secretary of State; and Ian K. Linnabary, William J. Cadigan, Laura K. Donahue, Cassandra B. Watson, Tonya L. Genovese, Catharine S. McCrory, William M. McGuffage, and Rick S. Terven, Sr. in their official capacities as members of the Illinois State Board of Election.

The Complaint raises four claims challenging the constitutionality of applying the in person collection of signatures as required by 10 ILCS 5/28-3. That section mandates that physical petitions be signed by registered voters and include signers address. 10 ILCS 5/28-3 (LexisNexis, 2022). Further, that section mandates that:

At the bottom of each sheet of such petition shall be added a circulator's statement, signed by a person 18 years of age or older who is a citizen of the United States, stating the street address or rural route number, as the case may be, as well as the county, city, village or town, and state; certifying that the signatures on that sheet of the petition were signed in his or her presence and 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 of the political subdivision or district or precinct or combination of precincts in which the question of public policy is to be submitted and that their respective residences are correctly stated therein. Such statement shall be sworn to before some officer authorized to administer oaths in this State.

10 ILCS 5/28-3 (LexisNexis, 2022).

Counts I, II and IV, in the complaint claim that Illinois law, requiring in person signature collection, violates the right to access to the ballot, the right to petition and speech, and right to due process of law. The claims are addressed to the requirement of an in person signature before the circulator as unconstitutional as applied to the facts in the instant case.

In Count III, the complaint claims that the different process for members of the General Assembly to place a referendum on the ballot by using a remote vote due to Covid 19, is unconstitutional because the circulation of petitions to Illinois voters must be done in person even though the circulators are also subject to the Covid-19 risk. Plaintiffs claim they should have the same “remote” option.

The Facts

As evidence presented in support of the motion for preliminary injunction, Plaintiffs rely on the allegations in the Verified Complaint and the declarations of the Plaintiffs attached to the complaint. (comp. Ex. 1-9).

All individual Plaintiffs state they are Illinois registered voters who are vaccinated and have or will receive booster shots. None mentioned anything about masks. They all state that they are “very concerned about the ongoing Covid-19 pandemic which is a serious threat to my health and the public health.” (comp. Ex. 1-9).

Each individual Plaintiff, with the exception of Horacio Esparza (who is blind), states they are currently circulating the petition to place their proposed amendment on the November 8, 2022, ballot. Also, each individual Plaintiff, again with the exception of Plaintiff Esparza, states they have signed the petition themselves. (comp. Ex. 1-9). Only Plaintiff William Morgan states that he has actually collected any signatures other than his own prior to the filing of this action. (comp. Ex. 2). Plaintiff Morgan states he began collecting signatures on November 3, 2021, but does not specify how many signatures he has collected to the date of the declaration. (comp. Ex. 2)

Further, all individual Plaintiffs state they have a computer they regularly use and would collect electronic signatures online for the Illinois Democracy Amendment to protect their health and the public health. (comp. Ex. 1-9).

Article XIV, Section 3 of the Illinois Constitution, provides that Amendments to Article IV of the Constitution may be proposed by a petition signed by a number of electors equal in number to at least eight percent of the total votes cast for candidates for Governor in the preceding gubernatorial election. (Illinois Const., Art. XIV, § 3). Also, the petition must not be signed more than twenty-four months preceding the general election that it seeks to be placed. The petitions

must be filed with the Secretary of State at least six months before that general election. (Illinois Const., Art. XIV, § 3)

Plaintiffs state this means that they must submit 363,813 handwritten petition signatures in person to the Illinois Secretary of State by May 8, 2022, in order to place their proposed amendment on the ballot. (comp. ¶ 59; 10 ILCS 5/28-9).

No evidence has been presented by the plaintiffs describing an electronic petition collection procedure to be used to obtain electronic signatures. Plaintiffs attached two exhibits which are print outs which they represent show digital signatures in 2020 after the April 23, 2020 Order entered in *Libertarian Party of Illinois, et al. v. Pritzker* which was used after the preliminary injunction. (comp. Ex. 14, 15).

ANALYSIS

A preliminary injunction is an extraordinary remedy that should not be granted unless the movant by a clear showing, carries the burden of persuasion. *Mazurek v. Armstrong*, 520 U.S. 968, 972 (1997). To be entitled to the extreme remedy of a preliminary injunction, the 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 not adequate remedy at law; are likely to be successful on the merits of their action; and (5) the benefits outweigh the injury to the defendants. *Scheffel & Company*, 356 Ill. App. 3d 308, 313 (2005). A mandatory injunction is not favored and is issued only when the plaintiff has established a clear right to the relief, and the court determines that the urgency of the situation necessitates the action. *Lewis E. v. Spagnolo*, 186 Ill. 2d 198, 234-35 (1999).

Likelihood of Success on the Merits

Counts I, II and IV Access to the Ballot, Free Speech, Due Process of Law

This Court finds that plaintiffs have failed to provide sufficient evidence to show a likelihood of success on the merits that the in person signature selection process requirement of the Election Code is unconstitutional as applied to the present circumstances of Covid-19.

In an as applied challenge the plaintiffs must show how an enactment was applied in the particular context in which the plaintiff acted or proposes to act, and must show the facts surrounding the plaintiff's particular circumstances. *Napleton v. Village of Hinsdale* 229 Ill 2d 296, 306-309 (2008). Statutes are presumed to be constitutional, and the burden of rebutting that presumption is on the party challenging the validity to clearly demonstrate the constitutional violation. *Id.* Where a violation of due process of law is raised, a court must first determine the nature of the right alleged to have been infringed. *Id.* Where a fundamental right is challenged, like the right to freedom of speech or participation in the political process, the court must strictly construe the measures employed by the governmental body. *Id.* However, if the burden on the exercise of speech is content-neutral, then there must only be a substantial relationship to the governmental interest, which here is fraudulent signatures. *Id.*

To survive strict scrutiny, the measures must be necessary to serve a compelling state interest, and must be narrowly tailored thereto, that is the government must use the least restrictive means consistent with obtaining its goal. *Id.*; see also *Coalition for Political Honesty v. State Board of Elections* 83 Ill 2d 236 (1980) (Initiative petition circulation is a fundamental voting right subject to strict scrutiny).

The parties do not dispute that the in person signature requirement in the Election Code present a burden on the circulation of petitions. Nor is it disputed that Illinois' regulation of the manner of collecting signatures has been upheld by the courts under various circumstances. See *Libertarian Party v. Rednour*, 108 F.3d 768, 775 (7th Cir. 1997); see also *Tripp v. Scholz*, 872 F.3d 857, 866 (7th Cir. 2017) (holding Illinois Election Code's signature and notarization requirements, even when considered in conjunction with the ninety-day petitioning window and geographic layouts of the 118th and 115th districts, do not violate the First or Fourteenth Amendment).

In this case, since Plaintiffs seek a mandatory preliminary injunction to order the State to use an electronic signature collection process, this Court must determine whether that process serves the compelling interest of protecting against fraudulent signatures. This Court must first strictly evaluate the circumstances of the present impact of Covid-19 on circulators under the in person signature collection process provided by the statutory provision. This Court must, second, evaluate how the proposed electronic signature collection process addresses the compelling state interest of preventing fraudulent signatures which the present in person signature collection process has been upheld as constitutional.

Plaintiffs' reliance on *Libertarian Party of Illinois, et al. v. Pritzker, et al.* is not precedent for Plaintiffs request for ordering an electronic signature collection process. In that case, because of the public health emergency that the novel corona virus presented, and Governor Pritzker's stay at home Executive Order, the Judge entered an agreed order to enjoin the use of the in person signature collection process provided for in state law for new parties and independent candidates. The Court did not adjudicate whether the electronic signature collection process thereafter used prevented fraud.

Plaintiffs have failed to present any evidence to what extent an electronic signature process addresses the compelling state interest of preventing fraud. Accordingly, they have not presented evidence to show a likelihood of success on the merits of their claim that the in person signature collection process is an unconstitutional burden of the political process under the present circumstances of the impact of Covid 19.

Moreover, the entry of a mandatory injunction is not favored, and thus to support that extraordinary and drastic relief the necessity of doing so must be clear. Plaintiffs have failed to show that necessity.

Count III Equal Protection of the Law

Plaintiffs claim that the Equal Protection of the Law of the Illinois Constitution is violated because they are similarly situated and are not being treated similarly to the members of the

General Assembly or the plaintiff candidates in the 2020 case *Libertarian Party of Illinois, et al. v. Pritzker, et al.*

Illinois courts apply the same equal protection analysis under both the United States and Illinois Constitutions. *People v. Hollins*, 2012 IL 112754, ¶ 40. It is axiomatic that equal protection “does not forbid all classifications” rather “it simply keeps governmental decision makers from treating differently persons who are *in all relevant respects alike*.” *Nordlinger v. Hahn*, 505 U.S. 1, 10 (1992) (emphasis added). A “threshold matter in addressing an equal protection claim is determining whether the individual claiming an equal protection violation is similarly situated to the comparison group”. *People v. M.A. (In re M.A.)*, 2015 IL 118049, ¶ 25. If a party fails to show that he is similarly situated to the comparison group, his equal protection challenge fails. *Id.* Generally, in the context of equal protection claims, a determination of whether individuals are similarly situated requires an analysis of the purpose of the legislation at issue. *Id.*

Here, the purpose of Section 2 and Section 3 of Article XIV is to provide a process of initiating Amendments to the Constitution. Section 2 of Article XIV governs the General Assembly’s process of initiating Amendments to the Constitution. It requires the vote of three fifths of the members elected to each house in order to propose an amendment to the Constitution. Illinois Const., Art. XIV, § 2. Section 3 of Article XIV governs the process of Illinois citizens seeking to amend the Constitution. It states proposed constitutional amendments may be placed on the ballot via petition signed by electors. Illinois Const., Art. XIV, § 3.

As to the members of the General Assembly, Plaintiffs claim that to require them to collect in person signatures on referenda petitions results in treating them differently than General Assembly members. They argue that the members of the General Assembly, who have the power with respect to the exercise of their power to place referenda on the ballot pursuant to the right set forth in Article XIV, under Section 2, accommodated themselves with an electronic remote voting option to safely, because of Covid 19, exercise their legislative powers to propose constitutional amendments for referenda for the November 2022 General Election. Thus, Plaintiffs, argue that they are similarly situated because they also have that power under Section 3 and being treated differently by not having that electronic safety option.

Plaintiffs argument that they are similarly situated “in all relevant respects” to members of the General Assembly is not persuasive. Plaintiffs are not similarly situated to the members of the General Assembly. General Assembly members are few in number, are elected by the people, and are all known by the public at large through their election and participation in the General Assembly and the process of casting their votes. Illinois citizens who sign the petitions are not all known by the public at large, and thus, this difference is served by the requirement that the circulator certify their identity. Accordingly, plaintiffs have not shown a likelihood of success on the merits of this claim.

This Court finds that Plaintiffs have not shown a likelihood of success on the merits of this claim because they have provided no evidence that they are similarly situated to members of the General Assembly, and therefore have not shown a likelihood of success on the merits of the Equal Protection claim.

As to the 2020 petitioners, Plaintiffs argue that they are similarly situated to the Plaintiffs in the 2020 case *Libertarian Party of Illinois, et al. v. Pritzker, et al.*. In that case the plaintiffs were to circulate petitions in person. After the preliminary injunction order was entered an electronic signature collection process was utilized for candidates of new parties or independent candidates for the November 2020 Ballot.

Plaintiffs' argument that they are similarly situated to the 2020 plaintiffs is not persuasive. The circumstances do not support the conclusion that they are similarly situated "in all relevant respects". *Nordlinger v. Hahn*, 505 U.S. 1, 10 (1992). The candidate petition circulators in 2020 were subject to the Governor's stay at home order issued because of the public health emergency with the appearance of the novel corona virus. Plaintiffs have presented no evidence that there is currently a similar mandate which prevents Plaintiffs' from circulating their petition in person or that the status of the Covid-19 virus then is comparable to now when a vaccine is available.

Accordingly, this Court finds that Plaintiffs have not shown a likelihood of success on the merits of this basis for their Equal Protection of the Laws claim.

Conclusion

This Court finds that as to Counts I, II, III, and IV Plaintiffs have failed to show they have a likelihood of success on the merits.

This Court having found no likelihood of success on the merits of the claims based on the facts submitted so far by the Plaintiffs in the evidence provided in support of the extraordinary relief of a mandatory preliminary injunction, this Court need not consider the remaining requirements for the issuance of a preliminary injunction. The remaining preliminary injunction requirements all depend on there being a likelihood of success on the merits of the claim that requiring electronic signatures is the least restrictive method to protect the fundamental right to free speech and assembly under the Covid-19 circumstances herein balanced against the compelling interest of rooting out fraud in the electoral process. This Court will nevertheless address both an ascertainable right in need of protection and irreparable harm and damage.

Ascertainable right in need of Protection

To show a clear and ascertainable right, Plaintiffs must raise a fair question that they have a substantive interest recognized by statute or common law. See *Delta Medical Systems v. Mid-America Medical Systems*, 331 Ill. App. 3d 777, 789-90 (1st Dist. 2002). Here, Plaintiffs have an ascertainable right under the constitution as alleged in the verified complaint and their affidavits due to their expressed interest in collecting and seeking to collect signatures for their petition to place referenda on the ballot. Under the present in person regulatory scheme they are able to do that. They have failed however to provide sufficient evidence to show that they have a likelihood of success on proving that electronic signatures are necessary to exercise that right under the current Covid-19 circumstances.

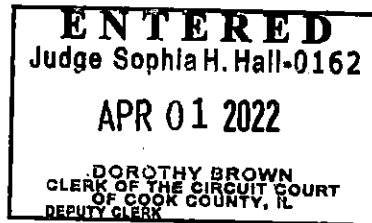
Irreparable Harm and Damage

Plaintiffs argue that once a protectable interest is established, irreparable injury is presumed if the interest remains unprotected. *A-Tech Comp Serv. v. Soo Hoo*, 254 Ill. App. 3d 392, 400 (1st Dist. 1983) *ACLU of Ill. v. Alvarez* 679 F3d 583, 589. In the instant case, a protectable interest has been established by virtue of the evidence that plaintiffs are seeking to circulate petitions for signature to place a proposed constitutional provision on the ballot. The facts alleged do support a claim that their ability to gather signatures is affected by the circumstances alleged. The evidence does not support a likelihood of success on the merits, that in addition to in person circulation, the option of electronic signatures under the current Covid-19 circumstances is necessary, therefore for that reason also they have not shown irreparable harm and damage.

CONCLUSION

For the foregoing reasons, the Court denies Plaintiffs' Motion for Preliminary Injunction.

ENTERED: April 1, 2022



Judge Sophia H. Hall

No. 0162

4/1/22