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

TEAM KENNEDY, LIBERTARIAN PARTY OF ILLINOIS, ROBERT F. KENNEDY JR., WILLIAM REDPATH, and ANGEL OAKLEY:	:	
Plaintiffs,	:	**Civil Action No. 24 CV 7027**
vs.	:	
ILLINOIS STATE BOARD OF ELECTIONS, and, BERNADETTE MATTHEWS, in her official capacity as the Executive Director of the Illinois State Board of Elections,	:	**Honorable John Kness** **Magistrate Judge Jeannice Appenteng**
Defendants.	:	

Plaintiffs' Reply In Support Of Their
Motion For Emergency Preliminary Injunction

Plaintiffs, through their attorney, file their reply in support of their motion for a preliminary injunction, and respectfully request that their motion be granted.

Defendants Illinois State Board of Elections and its Executive Director (hereinafter, "State Defendants) filed a 205-page response that addressed almost every legal topic under the sun except the one dispositive issue, namely how the following clause in § 10-4 of the Illinois Election Code, 10 ILCS § 5/10-4 –

> *Provided, further, that no person shall circulate or certify petitions for candidates of more than one political party, or for an independent candidate or candidates in addition to one political party, to be voted upon at the next primary or general election…*

-may be reconciled with the Supreme Court's holdings in *Buckley v. Valeo*, *Meyer v. Grant*, *American Constitutional Legal Foundation v. Buckley*, *U.S. Term Limits v. Thornton*, and *Trump v. Anderson*.

A. Younger Abstention is Inapposite to this Election Civil Rights Case

The abstention doctrine is an authority that precludes federal courts from hearing cases within its jurisdictions, instead giving state courts authority over the

case. The policy behind this doctrine is rooted in federalism, and the interest of allowing state courts to adjudicate matters that are particular significance to the state or its laws. These cases include *Younger v. Harris*, 401 U.S. 37 (1971). The facts of *Younger* involved a *criminal* defendant that challenged the state (California) criminal statute for which he was indicted. While the defendant's criminal case was pending in the state, he challenged the constitutionality of the criminal statute in federal district court, obtaining a favorable holding. The United States Supreme Court, however, reversed. Id.

Notwithstanding the core holding in *Younger,* there are also exceptions to the *Younger* doctrine. In *Younger*, as the Court declined to award an injunction, it explained that the plaintiff in that case "failed to make any showing of bad faith, harassment, or any other unusual circumstance that would call for equitable relief." *Younger*, 401 U.S. at 54. Thus, when there is bad faith, or harassment as is the case here, the likely harm is "irreparable," Id. at 48, and a person is entitled to "equitable relief under the long-established standards." Id. at 50.

Notably, it has been held that federal courts may exercise authority over a state proceeding where (1) the state brought the criminal proceeding in bad faith (i.e., brought as a means of harassing the defendant); (2) the statute challenged is patently unconstitutional; or (3) the state forum's is incompetent to adjudicate because of, for example, bias. The *Younger* case itself acknowledged that irreparable harm or "extraordinary circumstances" would sometimes require federal intervention in state criminal proceedings. 401 U.S. 37, 53 (1971). And throughout the 1970s, the Court reaffirmed and refined these principles, holding that courts should not block a suit when state officials are acting in bad faith or engaging in harassment, when, as here, state adjudicators have a real or reasonably

perceived stake in the outcome, when there is no timely forum in which to raise constitutional claims, and when state officials are attempting to wield a patently unconstitutional law, as is the case here.

B. Plaintiffs' requested relief is narrowly tailored to stem the flow of irreparable harm.

While there can be no doubt that the dual circulator clause is repugnant in its entirety, the narrow request before this honorable court is to enjoin enforcement of the clause against those who circulated petitions outside the State of Illinois. As an example, objectors sought to strike all voter signatures contained upon sheets circulated by an Illinois circulator, who previously had also circulated for a U.S. Senate candidate in Michigan. The objectors' argument based upon out of state circulation seeks to strike every sheet and each voter signature based upon this circulation, regardless of the validity of the affected signatures of Illinois registered voters that exercised their First amendment right to sign those petition sheets.

The Kennedy Plaintiffs (Team Kennedy & Robert F. Kennedy), continue to score victories in their state election challenge, including, earlier today, August 23rd, 2024, all elector candidates being unanimously certified for the ballot by the Illinois State Board of Elections. However, the Kennedy Plaintiffs are not yet free of the challenges or risk of ballot forfeiture, since the Clear Choice-oriented Objectors have this evening confirmed that they will be filing a petition for judicial review in the Circuit Court to reverse the decision of electoral board. That is, they persist in seeking to deny the Kennedy Plaintiffs ballot access. As such the Plaintiffs' First Amendment harms are ongoing and irreparable and they have no adequate remedy at law. Per statute, only a party "aggrieved" by the Board's

decision may seek judicial review, and since the objection was overruled, there would be no standing for the prevailing party. 10 ILCS 5/10-10.1.

C. Section 10-10-4 is a "patently unconstitutional law" at least as applied to presidential candidates.

As applied against a presidential candidate, section 10-4's dual circulation provision is a portion of a 1975 statute passed eight years before *Anderson v. Celebrezze*, (460 U.S. 780, 103 S.Ct. 1564 (1983)), thirteen years before *Meyer v. Grant*, (486 U.S. 414, 420, 424, 108 S.Ct. 1886 (1988)), seventeen years before *Burdick v. Takushi,* (504 U.S. 428, 433, 112 S.Ct. 2059 (1992)), twenty years before *U.S. Term Limits, Inc. v. Thornton*, (514 U.S. 779 (1995)), twenty-four years before *Buckley v. Am. Constitutional Law Found., Inc*., (525 U.S. 182, 195-97, 119 S.Ct. 636 (1999)), and forty-nine years before *Trump v. Anderson*, (601 U.S. 100, 144 S.Ct. 662 (2024)). The use of section 10-4 "dual circulation" prohibition must be enjoined immediately to stop the ongoing cloud over the Kennedy Plaintiffs' candidacy, which deters fundraising, debates, and endorsements, while simultaneously draining financial resources from an independent campaign that is supported by millions of American voters.

This honorable court should not be misled by incorrect representations in the media that the Kennedy campaign has ended, "suspended," or ceased its campaign in the State of Illinois or that Kennedy and Shanahan's Electors are not actively campaigning for him. This is neither true, nor is this issue properly before this court. Kennedy and Shanahan's Electors have earned a spot on the Illinois ballot, and that is beyond dispute or challenge – they overcame Illinois' burdensome 25,000 signature threshold – and are "clamoring to be on the ballot" The petition signers desire to see the candidate of their choice on the ballot. See

e.g. *Williams* v. Rhodes 393 U.S. 23, 31 (1968) ("…the right to vote is heavily burdened if that vote may be cast only for one of two parties at a time when other parties are clamoring for a place on the ballot").

In 1975 Illinois could be forgiven for not foreseeing *Grant v. Meyer* and its progeny. Nevertheless, States were forbidden from sewing a patchwork quilt of different laws in each state, thus creating an obstacle course with hidden and differing traps that deprive the voters of their own state and those of the Several States from effectively casting their vote for president. But now the veil has fallen on section 10-4, and it can be easily recognized for what it is: an impermissible burden on speech that serves no legitimate State interest. Any further delay does immeasurable harm to the Plaintiffs. "The loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury." *Elrod v. Burns*, 427 U.S. 347, 373 (1976), citing *New York Times Co. v. United States,* 403 U. S. 713 (1971). Especially since June 26th is a long, long time to a presidential campaign, and like an eternity given the pace of the presidential election of 2024.

D. <u>Section 10-4 cannot be reconciled with *Buckley v. Valeo* & *Meyer v. Grant*</u>

The holdings in *Meyer* and *American Constitutional Law,* are premised on *Buckley v. Valeo*, as follows. Provisions which place substantial and direct restrictions on the ability of candidates, citizens, and associations to engage in protected political expression, are restrictions that the First Amendment cannot tolerate. *Buckley*, 424 U. S. 39-59. In *Buckley v. Valeo* the Court reiterated its prior conclusion in *Monitor Patriot Co. v. Roy,* 401 U. S. 265, 401 U.S. 272 (1971), that "it can hardly be doubted that the constitutional guarantee has its fullest and most urgent application precisely to the conduct of campaigns for political office." *Id.* Section

10-4's dual circulation provision serves no State interests and is nothing more than an extension of the two-party hegemony.

The appellees in *Buckley v. Valeo* contended that the law establishing the Federal Election Commission merely regulated conduct, and that its effect on speech and association was incidental, at most. *Buckley*, 424 U. S. 39-59. The appellants therein responded that contributions and expenditures are at the very core of political speech, and that the Act's limitations thus constitute restraints on First Amendment liberty that are both gross and direct. *Id.* The appellants carried the day. *Id.*

Thus *Buckley* demostrates that expenditures are an indispensable instrumentality of speech; as we will see, *Meyer v. Grant* then extended that reasoning to expenditures related to paying circulators as instruments to proliferate speech. *Buckley* noted that "Some forms of communication made possible by the giving and spending of money involve speech alone, some involve conduct primarily, and some involve a combination of the two. Yet this Court has never suggested that the dependence of a communication on the expenditure of money operates…to reduce the exacting scrutiny required by the First Amendment." *Id.* at 424 U. S. 17. Section 10-4's dual circulator language will never pass the exacting scrutiny required of this court because its only justification is to disadvantage independent and third-party candidates, even presuming that those candidates can afford to pay circulators.

Because section 10-4's dual circulation ban on out-of-state petitioners discriminates in favor of established parties and against third parties and independents, it also violates equal protection. Equal protection analysis in the

Fifth Amendment area is the same as that under the Fourteenth Amendment. *Weinberger v. Wiesenfeld*, 420 U. S. 636, 420 U. S. 638 n. 2 (1975), and cases cited.

D. This District Court, in reviewing the Motion for Preliminary Injunction, must apply "exacting scrutiny" to section 10-4.

In its jurisprudence related to the electoral process, the Supreme Court developed the principle, that restrictions on access to the electoral process must survive exacting scrutiny. The restriction can be sustained only if it furthers a "vital" governmental interest, *American Party of Texas v. White*, 415 U. S. 767, 415 U.S. 780-781 (1974), and that interest must be "achieved by a means that does not unfairly or unnecessarily burden either a minority party's or an individual candidate's equally important interest in the continued availability of political opportunity." Application of section 10-4's circulation ban based upon out of state circulation cannot pass a rational review, much less "exacting scrutiny," the term which originated with the Court in Footnote 4 of *United States v Carolene Products*, at paragraph 2:

> It is unnecessary to consider now whether legislation which restricts those political processes which can ordinarily be expected to bring about repeal of undesirable legislation is to be subjected to more exacting judicial scrutiny under the general prohibitions of the Fourteenth Amendment than are most other types of legislation. On restrictions upon the right to vote, see *Nixon v. Herndon*, 273 U.S. 536; *Nixon v. Condon*, 286 U.S. 73; on restraints upon the dissemination of information, see *Near v. Minnesota ex rel. Olson*, 283 U. S. 697, 283 U.S. 713-714, 283 U.S. 718-720, 283 U.S. 722; *Grosjean v. American Press Co.*, 297 U.S. 233; *Lovell v. Griffin*, supra; on interferences with political organizations, see *Stromberg v. California*, supra, 283 U.S. 369; *Fiske v. Kansas*, 274 U.S. 380; *Whitney v. California*, 274 U. S. 357, 274 U.S. 373-378; *Herndon v. Lowry*, 301 U. S. 242, and see Holmes, J., in *Gitlow v. New York*, 268 U.S. 652, 268 U.S. 673; as to prohibition of peaceable assembly, see *De Jonge v. Oregon*, 299 U.S. 353, 299 U. S. 365.

United States v. Carolene Products Co., 304 U.S. 144, fn. 4 (1938) *(emphasis added)*.

All five of the enumerated protected bases in Footnote 4 that call for exacting scrutiny are implicated in line of cases which ultimate in petition

circulator cases. For example, *Grosjean v. American Press Co*., supra, is also cited in *Buckley v. Valeo* at fn. 79.

In *Meyer v. Grant,* the Court noted that the ban on paid circulators burdened such speech in two ways: (1) it limits the number of voices that will be able to convey the message and limits the hours that they can speak, which therefore limits the size of the audience they can reach; (2) it makes it less likely that circulators will garner the number of necessary signatures. The statute's burden on speech, the *Meyer* Court held, "was not relieved by the fact that other avenues of expression remained open, since the use of paid circulators was the most effective, fundamental, and perhaps economical means of achieving direct, one-on-one communication." 486 U. S. At 415. This is particularly true for independent candidates who do not have a stable of party volunteers, yet face the daunting 25,000 signature requirement, which realistically is at least 50,000 signatures due to Illinois objector-biased electoral board process (and the reality that handwritten signatures are no longer consistent or reliable as they were a century ago).

The Supreme Court in *Meyer* cited the appellate court below approvingly, which had noted: "the [circulator] speech at issue is at the core of our electoral process and of the First Amendment freedoms – an area of public policy where protection of robust discussion is at its zenith." *Grant v. Meyer,* 28 F.2d 1446, 1453-1454 (10th Cir. 1987). Internal citations and quotations omitted.

E. <u>"Time is of the essence," and there is no adequate remedy at law.</u>

The ballot was certified on August 23, 2024, and election authorities will commence with preparation to print ballots, and mail out overseas and military ballots in mid-September 2024. It will be difficult for election authorities to re-print ballots in the future, particularly since any changes to Elector candidates for

President and Vice President of the United States would require re-printing every ballot statewide.

The parties have exhausted their administrative remedies at the electoral board, which is essentially the "trial" court proceeding where all evidence would need to have been submitted. No new evidence may be added to the proceedings that have taken place.

Only a candidate or objector aggrieved by the proceeding may seek judicial review, or a quasi-appellate review, in the circuit court. See 10 ILCS 5/10-10.1. Since the damage has already been done through removal of signatures based upon the dual circulator restriction in Section 10-4, objectors have confirmed on August 23, 2024 that they will seek judicial review. The process would entail a review of dual circulator signatures that were not allowed by the hearing officer, and could result in the removal of additional signatures, and potential ballot disqualification.

If removed from the ballot at this late juncture, it would be very difficult to obtain review by the Kennedy Plaintiffs in sufficient time to allow reprinting of ballots. The Kennedy Plaintiffs have no recourse, as they cannot seek judicial review since they prevailed, but nevertheless face the imminent risk of ballot disqualification. They have no recourse through state court proceedings.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that this Court-

GRANT the Plaintiffs Emergency Motion for Emergency Injunction;

GRANT All Available Relief.

Respectfully submitted,

Dated: August 23rd, 2024

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