

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

BYRON SIGCHO LOPEZ,	)	
JOSE GUERRA,	)	
	)	
Plaintiff,	)	No. 26-cv-9156
v.	)	
	)	
ILLINOIS STATE BOARD OF ELECTIONS,	)	Hon. Franklin U. Valderrama
and its members, in their official capacities,	)	
LAURA K. DONAHUE, Chair, RICK S.	)	
TERVEN, SR., Vice Chair, JENNIFER M.	)	
BALLARD CROFT, CRISTINA D. CRAY,	)	
TONYA L. GENOVESE, CATHERINE S.	)	
McCRORY, JACK VRETT, and CASSANDRA	)	
B. WATSON,	)	
	)	
Defendants.	)	

Plaintiffs' Memorandum of Law in support of
Plaintiffs' Emergency Motion for Preliminary Injunction

Plaintiffs, Byron Sigcho Lopez and Jose Guerra, submit their memorandum of law in support of their emergency motion for preliminary injunction and respectfully request expedited review of their motion because this case pertains to the November 3, 2026 general election, and the First Amendment rights of Plaintiffs and their supporters have been denied by the Defendants, Illinois State Board of Elections.

A. Preliminary injunction is appropriate to avoid irreparable harm to Plaintiffs and all petition signers if Candidate's name is not on the ballot.

A trial court's decision on a motion for preliminary injunction includes a threshold phase, and then a balancing phase. The Seventh Circuit provided a detailed discussion of this analysis as follows:

To survive the threshold phase, a party seeking a preliminary injunction must satisfy three requirements. See *Ty, Inc. v. Jones Group, Inc.*, 237 F.3d 891, 895 (7th Cir.2001); *Lawson Prods., Inc. v. Avnet, Inc.*, 782 F.2d 1429, 1433 (7th Cir. 1986). First, that absent a preliminary injunction, it will suffer irreparable harm in the

interim period prior to final resolution of its claims. *Ty*, 237 F.3d at 895. Second, that traditional legal remedies would be inadequate. *Id.* And third, that its claim has some likelihood of succeeding on the merits. *Id.* If the court determines that the moving party has failed to demonstrate any one of these three threshold requirements, it must deny the injunction. *Abbott Labs. v. Mead Johnson & Co.*, 971 F.2d 6, 11 (7th Cir.1992). If, however, the court finds that the moving party has passed this initial threshold, it then proceeds to the balancing phase of the analysis. *Id.*

In this second phase, the court, in an attempt to minimize the cost of potential error, see *Am. Hosp. Supply Corp. v. Hosp. Prods. Ltd.*, 780 F.2d 589, 593-94 (7th Cir.1986), “must somehow balance the nature and degree of the plaintiff’s injury, the likelihood of prevailing at trial, the possible injury to the defendant if the injunction is granted, and the wild card that is the ‘public interest,’” *Lawson Prods.*, 782 F.2d at 1433. Specifically, the court weighs the irreparable harm that the moving party would endure without the protection of the preliminary injunction against any irreparable harm the nonmoving party would suffer if the court were to grant the requested relief. *Abbott Labs.*, 971 F.2d at 11-12. In so doing, the court employs a sliding scale approach: “[t]he more likely the plaintiff is to win, the less heavily need the balance of harms weigh in his favor; the less likely he is to win, the more need it weigh in his favor.” *Roland Mach.*, 749 F.2d at 387; see also *Ty*, 237 F.3d at 895; *Abbott Labs.*, 971 F.2d at 12. Where appropriate, this balancing process should also encompass any effects that granting or denying the preliminary injunction would have on nonparties (something courts have termed the “public interest”). *Ty*, 237 F.3d at 895; *Roland Mach.*, 749 F.2d at 388. Taking into account all these considerations, the district court must exercise its discretion “to arrive at a decision based on a subjective evaluation of the import of the various factors and a personal, intuitive sense about the nature of the case.” *Lawson Prods.*, 782 F.2d at 1436.

Girl Scouts of Manitou v. Girl Scouts, America, 549 F. 3d 1079, 1086 (7th Cir. 2008). See also, *Wisconsin Right to Life, Inc. v. Barland*, 751 F.3d 804, 830 (7th Cir. 2014).

(1) Plaintiffs will suffer irreparable harm if their motion for preliminary injunction is denied.

Candidate filed over 17,000 signatures from petition signers that exercised their First Amendment right to sign his petition for the purpose of seeing the candidate of *their choice* upon the general election ballot, and being able to vote for the candidate of their choice. Defendants denied Plaintiffs their First Amendment rights by removing Candidate’s name from the general election ballot. “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). See also, *ACLU v. Alvarez*, 679 F.3d 583, 589, 590 (7th Cir.2012) (“[T]he loss of First Amendment freedoms [* * *] unquestionably constitutes irreparable injury,” and “injunctions protecting First Amendment freedoms are always in the public interest.”)

As the Court of Appeals for the Seventh Circuit has explained:

[* * *] the impact of candidate eligibility requirements on voters implicates basic constitutional rights. The exclusion of candidates [* * *] burdens voters’ freedom of association, because an election campaign is an effective platform for the expression of views on the issues of the day, and a candidate serves as a rallying point for like-minded citizens. Also, because voters can assert their preferences only through candidates or parties or both [* * *] the right to vote is heavily burdened if that vote may be cast only for major-party candidates at a time when other parties or other candidates are clamoring for a place on the ballot.

Lee v. Keith, 463 F.3d 763, 768 (7th Cir. 2006) (citations omitted).

Between the two independent candidate for US Representative, Candidate Sigcho Lopez and Macias, who were removed by Defendants, there were over 35,000 voters who associated and signed independent candidate petitions because they wanted more candidates on the ballot. Over 35,000 petition signers are being denied their First and Fourteenth Amendment rights by Defendants.

If Candidate’s name is not printed upon the general election ballot, Candidate and all his petition signers will be irreparably harmed by not being able to support and vote for the candidate of their choice for US Representative for the 4th Congressional Dist. Plaintiffs have met the irreparable harm requirement.

(2) Plaintiffs have no recourse to the law, since traditional legal remedies and money damages are inadequate to address their irreparable harm.

An electoral board is a creature of statutory construction and is limited to the authority expressly authorized by the Election Code, 10 ILCS 5/10-10. *Solomon v.*

Scholefield, 2015 IL App (1st) 150685; *Delay v. Board of Election Commissioners*, 312 Ill.App.3d 206, 209, 726 N.E.2d 755 (2000) (citing *Kozel v. State Board of Elections*, 126 Ill.2d 58, 68, 533 N.E.2d 796 (1988)) (“As an administrative agency established by statute, an electoral board may exercise only the powers conferred upon it by the legislature.”); *Wiseman v. Elward*, 5 Ill.App.3d 249, 257, 283 N.E.2d 282 (1972) (interpreting section 10-10 “as limiting the Electoral Board’s scope of inquiry to the sole issue of whether a challenged nominating petition complies with the provisions of the Election Code pertaining thereto”).

Thus, Defendants’ were bound by the Election Code to enforce the 5% to 8% signature requirement in 10 ILCS 5/10-4, and other provisions of the Election Code. Defendants had no authority to review the constitutionality of 10 ILCS 5/10-4, or otherwise deviate from the requirements of the Election Code.

Plaintiffs could not have challenged the constitutionality of the Election Code before the Defendant, Illinois State Board of Elections, convened as the State Officers Electoral Board.

Similarly, money damages are an insufficient remedy for the loss of First Amendment rights. See *Flower Cab Co. v. Petite*, 685 F.2d 192, 195 (7th Cir. 1982) (“In [First Amendment] cases the quantification of injury is difficult, and damages are therefore not an adequate remedy.”); *Nat’l People’s Action v. Vill. of Wilmette*, 914 F.2d 1008, 1013 (7th Cir. 1990) (“[I]njunctive relief is especially appropriate in the context of First Amendment violations because of the inadequacy of money damages.”).

Therefore, the only adequate remedy in this case can be through a decision on the merits of their complaint, and issuance of a preliminary injunction to preserve their First amendment rights until such time.

- (3) **Plaintiffs have some likelihood of success on the merits, because the Election Code already defines a less burdensome signature requirement.**

The Seventh Circuit confirmed that this is “an admittedly low requirement” when it explained that a plaintiff “must show that it has a ‘better than negligible’ chance of success on the merits of at least one of its claims. *Ty*, 237 F.3d at 897; *Omega Satellite Prods. Co. v. City of Indianapolis*, 694 F.2d 119, 123 (7th Cir.1982).” *Girl Scouts of Manitou v. Girl Scouts, America*, 549 F. 3d 1079, 1096 (7th Cir. 2008).

Plaintiffs’ complaint alleges facial and as applied violations of the First and Fourteenth Amendment through application of the 5% to 8% signature requirement, as well as the combined effect of this signature requirement alongside other provisions of the Election Code, violations of their right to Equal Protection, and the State’s unauthorized addition of qualifications for independent candidates for the office of US Representative.

When evaluating legislation, courts must engage in a balancing test to weigh the State’s right to condition access to the ballot against the right of citizens to support and vote for the candidate of their choice. The *Anderson-Burdick* analysis confirms that the 5% to 8% signature requirement for independent candidates, on its face, poses a severe and unnecessary burden on First amendment rights. *Anderson v. Celebrezze*, 460 U.S. 780 (1983); *Burdick v. Takushi*, 504 U.S. 428, 434 (1992).

When reviewing constitutional challenges to election laws, a court must:

[F]irst consider the character and magnitude of the asserted injury to the rights protected by the First and Fourteenth Amendments that the plaintiff seeks to vindicate. It then must identify and evaluate the precise interests put forward by the State as justifications for the burden imposed by its rule. In passing judgment, the Court must not only determine the legitimacy and strength of each of those interests, it also must consider the extent to which those interests make it necessary to burden the plaintiff’s rights. Only after weighing all these

factors is the reviewing court in a position to decide whether the challenged provision is unconstitutional.

Anderson, 460 U.S. at 789.

Under this “Anderson-Burdick” framework, the State’s important regulatory interests are generally sufficient to justify reasonable, nondiscriminatory restrictions but “when a challenged regulation imposes ‘severe’ burdens on First and Fourteenth Amendment rights,” strict scrutiny applies. *Anderson*, 460 U.S. at 788 (quoting *Burdick v. Takushi*, 504 U.S. 428, 434 (1992)). When strict scrutiny applies, challenged restrictions are unconstitutional unless the state can show they are “narrowly drawn to advance a state interest of compelling importance.” *Burdick*, 504 U.S. at 434 (citation omitted). Moreover, “the Court has reiterated ‘that courts must identify and evaluate the interests put forward by the State as justifications for the burden imposed by its rule.’ ” *Crawford v. Marion County Election Bd.*, 553 U.S. 181, 190 (2008). Thus, “[h]owever slight that burden may appear [* * *] it must be justified by relevant and legitimate state interests sufficiently weighty to justify the limitation.” *Crawford*, 553 U.S. at 190.

Even where the States may argue a compelling state interest, it must “adopt the least drastic means to achieve their ends.” *Illinois State Board of Elections v. Socialist Workers Party*, 440 U.S. 173, 185, 99 S. Ct. 983 (1979).

Applying the constitutional analysis to determine whether a City of Chicago signature requirement was unconstitutionally severe, the Court of Appeals for the Seventh Circuit explained that:

What is ultimately important is not the absolute or relative number of signatures required but whether a “reasonably diligent candidate could be expected to be able to meet the requirements and gain a place on the ballot.” *Bowe v Bd. of Election Comm’rs of City of Chicago*, 614 F.2d 1147, 1163 (7th Cir. 1980) (citing *Storer*, 415 U.S. at 742).

Stone v. Bd. of Elections Comm'rs of City of Chicago, 750 F. 3d 678, 682 (7th Cir 2014).

There can be no doubt Candidate is a reasonably diligent candidate. He started petition gathering on the first day of the 90 day-period, and continued through the 89th day. He raised over \$180,000 for his candidacy and the signature gathering process, and collected almost 20,000 signatures in support of his candidacy. See Declaration of Candidate, Exh. A to Motion. Due to the 8% restriction 17,227 signatures were ultimately filed with the Defendant, ISBE. *Id.* At the end of the signature review, the ISBE sitting as the SOEB determined that Candidate had 9,594 valid signatures, or almost twice the number that he would have needed to file at a post-redistricting election for the same office.

Another independent candidate for US Representative, Mayra Macias, was similarly diligent, but was did not have at least 10,816 valid signature according to the SOEB, and was also removed from the general election ballot. Only one other candidate, Chris Getty, filed in this district, but his ballot access petitions were not challenged by an objection. Getty's petitions were accepted by the ISBE under its 10% apparent conformity review, which looked to see if he had at least 1,082 signatures, and that was sufficient for the Defendants to allow ballot access.

No other independent candidates filed for US Representative in the other 16 congressional districts at the November 3, 2026 general election – and all other congressional districts required more signatures than the 4th Congressional Dist.

Historically, few independent candidates for US Representative have been able to reach the Illinois ballot. See Winger Declaration, Exh. B to Motion. Only three states require 10,000 or more signatures for US Representative, and Candidate Sigcho Lopez would have met the independent signature requirements

for US Representative with his 9,594 valid signatures in **91.3%** of the 435 congressional districts. *Id.*

The 5% to 8% signature requirement poses a severe burden to ballot access, as confirmed by history where very few independent candidates could overcome the objection challenge process to reach the ballot, and strict scrutiny would govern. *Stone v. Board of Election Com'rs for City of Chicago*, 750 F.3d 678, 681 (7th Cir. 2014) (quoting *Burdick*, 504 U.S. at 534).

Furthermore the 5% to 8% signature requirement is not “narrowly drawn to advance a state interest of compelling importance.” *Burdick*, 504 U.S. at 434. This is confirmed by the 5,000 signature requirement with no maximum for post-redistricting elections. The arguable State requirement that a candidate demonstrate a modicum of support from voters is met through the 5,000 signature requirement. There has never been ballot overcrowding in Illinois, or frivolous candidates, particularly since the Defendant ISBE adopted a 10% apparent conformity review that screened out candidates that had less than 10% of the signatures required under the Election Code.

The 5,000 requirement is enacted legislation that is less burdensome and meets all legitimate state interests. The post-redistricting 5,000 signature requirement is also “the least drastic means to achieve their ends.” *Illinois State Board of Elections v. Socialist Workers Party*, 440 U.S. 173, 185, 99 S. Ct. 983 (1979).

In addition, the two different signature requirements – 5,000 or 5% to 8% and Defendants application of the higher signature requirement to Candidate is discriminatory and violates his right to Equal Protection. The Supreme Court explained this equal rights analysis as follows:

In determining whether the Illinois signature requirements for new parties and independent candidates as applied in the city of Chicago violate the Equal Protection Clause, we must examine the character of the classification in question, the importance of the individual interests at stake, and the state interests asserted in support of the classification. See *Memorial Hospital v. Maricopa County*, 415 U. S. 250, 253-254 (1974); *Dunn v. Blumstein*, 405 U. S. 330, 335 (1972); *Kramer v. Union School Dist.*, 395 U. S. 621, 626 (1969); *Williams v. Rhodes*, 393 U. S. 23, 30 (1968).

Illinois State Bd. of Elec. v. Socialist Workers Party, 440 U.S. 173, 184, 99 S.Ct. 983 (1979).

The individual interests at stake are the First and Fourteenth amendment rights of Plaintiffs, versus the State's interest in an orderly election, requiring a modicum of voter support, and avoiding ballot overcrowding by deterring frivolous candidates. State interests are met with a 5,000 signature requirement – the General Assembly would not have enacted this number if it did not do so.

The disparity between post-redistricting elections where 5,000 signatures meets all state interests, and over 10,000 signatures required by applications of the 5% to 8% requirement is considerable. The burden to gather more than double the number of signature poses a severe burden upon Plaintiffs' First amendment rights. There is no reason why Candidate would be required to submit the higher number of signatures this election, when 5,000 would have sufficed post-redistricting.

The disparate signature requirements violate Plaintiffs' right to equal protection. There is no reason to discriminate against independent candidates seeking election during in-between redistricting election, as compared to independent candidates seeking election after redistricting.

There is no need in Illinois for a signature requirement of over 10,000 signatures, when 5,000 works just fine. Plaintiffs have presented a likelihood of success on the merits.

(4) Balancing of hardships and public interest factors support Plaintiffs' request for issuance of a preliminary injunction.

Balancing of harms and interests on a sliding scale analysis favors issuance of a preliminary injunction. As noted above, denial of First Amendment rights causes Plaintiffs' irreparable harm. Defendant ISBE is not an election authority, so it does not administer (or pay for) the general election – they are the “enforcer” of the Election Code for independent US Representative candidates as the SOEB, and they certify candidates to the general election ballot. There is no harm to Defendants from allowing Plaintiffs' preliminary injunction, and Defendants have routinely amended the ballot certification without cost or harm.

The balancing the harms of Plaintiffs versus the harms of Defendants strongly favors the Plaintiffs, particularly since the Election Code has already defined 5,000 signatures as a less restricting ballot access provision than the 5% to 8% signature requirement enforced by Defendants.

There are three election authorities that oversee the election of candidates for the 4th Congressional Dist. – City of Chicago, Cook County, and DuPage County. Each election authority is well-versed in preparing their ballots and addressing litigation that often impacts ballots. These election authorities will not be preparing ballots until late September or October 2026, and a change to the ballot can be implemented either before printing without cost.

Most significantly, the granting of the preliminary injunction would recognize and validate the First Amendment right of over 17,000 petition signers who signed Candidate's petition for the purpose of supporting his candidacy, and seeing Candidate's name on the ballot so they could vote for the candidate of their choice. Over 17,000 petition signers throughout the 4th Congressional Dist. will

jump for joy and loudly proclaim, Democracy works!

Lastly, “[t]he public interest is clearly served by strong and vigorous protection of the First Amendment.” *O’Brien v. Town of Caledonia*, 748 F.2d 403, 408 (7th Cir. 1984); *United Food & Commercial Workers Union, Local 1099 v. Southwest Ohio Reg’l Transit Auth.*, 163 F.3d 341, 363-64 (6th Cir. 1998); *ACLU of Ill.*, 679 F.3d at 590 (quoting *Christian Legal Soc’y v. Walker*, 453 F.3d 853, 859 (7th Cir. 2006)) (“injunctions protecting First Amendment freedoms are always in the public interest.”).

Furthermore, as discussed in *Anderson* and noted above, the requested injunction serves the public interest because the Plaintiffs’ and their supporting petition signers’ First Amendment rights will be validated and recognized, and allow a meaningful election – more candidate choices benefits all voters. There has never been ballot overcrowding in Illinois, so adding one more candidate will neither overcrowd the ballot, nor confuse voters. Certainly, Candidate has been diligent, has demonstrated a hearty modicum of support from constituents of the 4th Congressional Dist. and has earned a spot on the general election ballot.

(4) No security required.

The Seventh Circuit has observed that security is not mandatory under Rule 65(c), and can be dispensed with in the discretion of the court. See *Scherr v. Volpe*, 466 F.2d 1027 (7th Cir. 1972); see also *Moltan Co. v. Eagle-Picher Industries, Inc.*, 55 F.3d 1171, 1176 (6th Cir. 1995). Security is not needed, as there is no financial harm to Defendants (or any election authority) since the election will proceed at the same cost if Candidate’s name is added to the ballot. Granting Plaintiffs’ motion and printing Candidate’s name upon the ballot would avoid the cost for a special

election later, should Candidate prevail on the merits.

B. Injunctive relief requested.

Plaintiffs respectfully request that this Honorable Court enjoin the Defendants from applying and enforcing the signature requirement for independent candidates of at least 5% but not more than 8% of the total votes cast at the last general election as contained in 10 ILCS 5/10-3, and direct Defendants to certify the name of Candidate, Byron Sigcho Lopez to the Nov. 3, 2026 general election ballot as an independent candidate for US Representative for the 4th Congressional Dist. until such time as a decision on the merits is issued.

WHEREFORE, Plaintiffs respectfully request that this honorable Court allow expedited consideration of this emergency motion for preliminary injunction, and grant Plaintiffs' motion, or for any other relief that is just and appropriate.

Respectfully submitted:

By: /s/ Andrew Finko
One of Plaintiffs' attorneys

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Certificate of Service

I, the undersigned attorney, certifies under penalty of perjury under the laws of the United States of America, 28 U.S.C. § 1746, that on August 12, 2026 the undersigned emailed a copy of the foregoing Memorandum directly to the following attorneys:

Defendants, Illinois State Board of Elections and its members:

c/o: Sarah H. Newman, Civil Rights Unit Supervisor
Office of the Illinois Attorney General
sarah.newman@ilag.gov

c/o: Marnie Malowitz, General Counsel
Illinois State Board of Elections
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Notice to election authorities for the 4th Congressional Dist.:

Chicago Board of Election Commissioners

c/o: Adam Lasker, General Counsel
Chicago Board of Election Commissioners
ElectionAttorney@gmail.com

Cook County Clerk

c/o: Kierra Williams, General Counsel, Elections
Cook County Clerk, Elections Division
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DuPage County Clerk

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/s/ Andrew Finko