

Plaintiffs respectfully submit this Memorandum of Law in support of their motion, pursuant to Rule 65 of the Federal Rules of Civil Procedure, to preliminarily enjoin the enforcement of the Illinois Board of Elections' July 17 Order striking Ralph Nader's name from Illinois' presidential ballot and to enjoin Ill. Gen. St. 10 Sect. 5/10-6 insofar as it imposes an undue burden, under the First and Fourteenth Amendments, on new party and independent Presidential candidate seeking access to the Illinois ballot for the November 7, 2000 election.

### **PRELIMINARY STATEMENT**

On November 7, 2000, there will be a federal election for President of the United States conducted throughout the 50 states. In Illinois, however, unless this Court intervenes, voters will walk into the voting booth on November 7 and be denied the opportunity to vote for Ralph Nader as their choice for the nation's chief executive officer. Nader is *the most popular* third party candidate for president, but Illinois' election law, specifically its June 26 petition deadline, denies Nader the opportunity to demonstrate his significant support throughout the state and the nation and will deny Illinois voters the chance to vote for him. This filing deadline, which imposes an undue burden on candidates outside the two major parties and their supporters, simply will not pass constitutional muster under the controlling Supreme Court authority of *Anderson v. Celebrezze*, 460 U.S. 780 (1982).

Nader is seeking ballot status as a new party presidential candidate. In Illinois, a new party or independent presidential candidate must present 25,000 signatures to the Board of Elections by June 26. Until last year, when the legislature amended the statute, the deadline was 42 days later; this year's deadline would have been August 7. *See* Declaration of Richard Winger ("Winger Decl.") at ¶ 7 [Tab 4]. This new deadline is the one of the earliest in the country. The vast majority of states have filing deadlines in August and September. It is this new deadline that places an undue burden on new party and independent presidential candidates, and it is this new deadline that is unconstitutional.

Despite the heavy burden of the new deadline, the Nader campaign collected a significant number of signatures by the June 26 date and submitted them to the Board of Elections. At a hearing on July 17, the Board found that the Nader campaign had submitted 22,841 signatures —

just shy of the 25,000 required by state law. As of July 20, the campaign had collected approximately 9,000 additional signatures and continues to circulate petitions.

Illinois' unreasonably early deadline — on its own and when coupled with the state's substantial signature requirement — operates to deny voters a reasonable choice on Illinois' presidential ballot, cuts off late-emerging candidates, and transforms the petition process from a gauge of public support to a gauge of the candidate's financial ability. Illinois' ballot access rules place an undue burden on new party and independent presidential candidates that unconstitutionally infringes on the associational choices protected by the First Amendment and discriminates against candidates and voters whose political preferences lie outside the major political parties. *Anderson v. Celebrezze*, 460 U.S. 780 (1983).

Plaintiffs in this case are not asking this Court to strike down the new deadline in Ill. Gen. St. 10 Sect. 5/10-6 for all purposes. It may well be that, in the context of elections that are statewide or local only, the deadline could pass constitutional muster. However, in the context of a federal election for President of the United States, the defendants simply cannot justify the high hurdles that have been imposed on minor party candidates.

## **STATEMENT OF FACTS**

### **A. Ralph Nader's Presidential Campaign**

Ralph Nader is the most popular third party presidential candidate in the country. Recent polls show that 6-8 percent of likely voters will cast their ballots for Nader, while likely Reform Party nominee Patrick Buchanan is predicted to receive only 2-4 percent of the vote. *See* Declaration of Theresa Amato ("Amato Decl.") ¶17 and Ex. C [Tab 1]. Indeed, if Nader receives this proportion of the vote in November, he will be only the seventh independent or third party presidential candidate since 1900 to garner such a significant percentage of the vote. Declaration of J. David Gillespie ("Gillespie Decl.") ¶ 12 [Tab5].

Not only is Nader receiving significant support across the county, but observers and commentators have recently credited Nader's candidacy with injecting issues of corporate accountability and fair trade, among other issues, into the campaign. Amato Decl. ¶ 6 and Ex. A. He is seen as an important force in shaping the nationwide debate that takes place during a

presidential election year. Finally, his candidacy is providing a significant expressive outlet for voters who are dissatisfied with the candidates and likely platforms of the major parties.

Nader, who is a well-known citizen activist, lawyer, author, and organizer, announced his intention to run for President on February 21. Amato Decl. at ¶ 2. Nader immediately began building a national campaign staff and organization in all fifty states and the District of Columbia. In keeping with the candidate's goals, the campaign is emphasizing active citizen participation and relying heavily (although not exclusively) on volunteers rather than paid political field organizers and petition circulators. *Id.* at ¶¶ 2-4.

Throughout February and March, however, the Nader campaign received little publicity. The national media's political attention focused almost exclusively on the Democratic and Republican primary races. *See id.* ¶ 12. This early lack of media attention hampered the campaign's ability to build significant volunteer organizations during those months. Declaration of Todd Maine ("Maine Decl.") at ¶ 8 [Tab 2]. It was not until May and June that national press coverage of the Nader campaign began to improve dramatically. *Id.* at ¶16. Indeed, the national media's interest in Nader's campaign was really just beginning as the Illinois deadline approached, and the Illinois press hardly covered Nader at all until late June. *Id.*

Nader's June 25 acceptance of the Green Party nomination received nationwide coverage on network news shows and in newspapers. After this coverage, telephone calls to Nader campaign headquarters and messages to the campaign website surged. Maine at ¶ 13. Of course, that media exposure, relatively early in the election cycle, was nevertheless the *day before* the Illinois deadline. Thus, although media coverage indicated that the Presidential campaign season was just beginning for third-party and independent Presidential candidates, the time for getting on the ballot in Illinois was over.

Despite the tremendous burden of organizing a volunteer campaign without the benefit of media coverage or an existing party structure, the Nader campaign made a valiant effort in Illinois to qualify for the ballot. The Nader campaign submitted approximately 22,841 signatures to the Board of Elections on June 26, just short of the 25,000 required by the deadline. In the several weeks after the deadline, the campaign has collected approximately 9,000 additional signatures.

Declaration of Peter D'Alessandro (D'Alessandro Decl.) ¶ 18 [Tab 3]. Among the other presidential candidates who have submitted a significant number of signatures in Illinois, each relied extensively on paid petitioners. *Id.* at 14. ¶

**B. Illinois' New Ballot Access Scheme for Presidential Candidates is Significantly More Burdensome Than Most States' Because the Deadline is so Early.**

For more than 30 years, Illinois allowed independent and new party presidential candidates to file their petitions for ballot access in early August — up to 92 days before the general election. Winger Decl. ¶ 7. Under that law, Illinois' presidential ballots usually included a handful of new party and independent candidates in addition to the major parties. In 1996, for instance, there were four candidates in addition to the major parties and in 1992, there were six. *See id.* ¶ 9.

In 1999, however, Illinois' legislature, made up of Democrats and Republicans, changed the filing deadline for new party candidates, including presidential candidates. The deadline was moved up by 42 critical days. Public Act 91-317. The legislature left other petition filing deadlines — such as the petition deadline for ballot status in the Republican and Democratic presidential primaries — untouched. *See id.* at ¶ 7. The deadline for filing candidate petitions for the major party presidential primaries is, like the old deadline, 92 days before the election.

This new early deadline for presidential candidates makes Illinois' ballot access scheme for presidential candidates one of the most burdensome in country. According to one measure of petition deadlines, Illinois now has the fourth earliest petition deadline in the country, and according to the other measure, Illinois has the sixth earliest. *See id.* at ¶10 and App. A. Whichever method is used, Illinois' June 26 deadline clearly makes it an outlier among the states. Indeed, 33 states and the District of Columbia have deadlines in August and September.

Finally, the petition process is further burdened by the state's requirement that only registered voters can petition in Illinois. Particularly, when a campaign is working on a tight time frame — as presidential candidacies always are — this limitation on the pool of potential volunteers severely burdens the campaign.

## ARGUMENT

### **PLAINTIFFS ARE ENTITLED TO A PRELIMINARY INJUNCTION ENJOINING THE ENFORCEMENT OF THE BOARD'S JULY 17 ORDER STRIKING NADER FROM THE NOVEMBER 7 GENERAL ELECTION BALLOT**

In determining whether to grant a preliminary injunction, the Seventh Circuit looks first to two threshold factors: (1) whether the plaintiffs have some likelihood of success on merits and (2) whether plaintiffs will suffer irreparable harm if the preliminary injunction is not granted. *See Abbott Labs. v. Mead Johnson & Co.*, 971 F.2d 6, 11 (7th Cir. 1992) If the plaintiffs meet this threshold test, the court then balances plaintiffs' irreparable harm against the likelihood of harm to the defendant if relief is improvidently granted and considers the public interest. *Id*; *Lawson Prods., Inc. v. Avnet, Inc.*, 782 F.2d 1429, 1433 (7th Cir. 1986). This balancing test is the "critical consideration in deciding whether to grant a preliminary injunction." *Ayres v. City of Chicago*, 125 F.3d 1010, 1011 (7th Cir. 1997). That balancing test sets up sliding scale with which the court considers the likelihood of success on the merits. In other words, if the balance of harms tips strongly in plaintiffs' favor, the court does not require a "high probability of eventual success of the merits," *Ayres*, 125 F.3d 1014, but a showing that the chance of success is "better than negligible." *International Kennel Club v. Might Star, Inc.*, 846 F.2d 1079, 1084 (7th Cir. 1988); *Curtis Thompson*, 840 F.2d 1291, 1296 (1988). In addition, the court will look to the fourth factor — public interest — when determining whether to grant an injunction.

Plaintiffs certainly meet the threshold test. It is well-established that a violation of First Amendment rights constitutes *per se* irreparable harm. *Elrod v. Burns*, 427 U.S. 347, 373 (1976); *Citizens for a Better Environment v. City of Park Ridge*, 567 F.2d 689, 691 (7th Cir. 1975); *Chicago Acorn v. Metropolitan Pier and Expo. Auth.*, 941 F. Supp. 692, 705 (N.D. Illinois 1996). If Nader is not on the ballot in November, there will be no remedy for the harm caused to

him, the voters of Illinois, and the country. As discussed in more detail below, plaintiffs are likely to succeed on the merits here. The controlling Supreme Court precedent, *Anderson v. Celebrezze*, 460 U.S. 780 (1983), found that a petition deadline for presidential candidates before the time when the major parties hold their national conventions is unlikely to withstand constitutional scrutiny. Here, Illinois requires minor party presidential candidates to file on June 26 — well before the Republican and Democratic conventions.

Having satisfied the two threshold factors, plaintiffs now turn to the balance of harms. Because plaintiffs can show that the rules keeping Ralph Nader off the ballot in Illinois will cause irreparable harm to their First Amendment rights, and because the remedy sought will cause little if any harm to defendants, plaintiffs bear only the minimal burden of demonstrating that their chance of success on the merits is “better than negligible.” In this case, however, plaintiffs can satisfy the even higher standard of demonstrating a probability of success on the merits. Thus, this Court should issue a preliminary injunction enjoining the enforcement of the Board’s July 17 order striking Ralph Nader’ name from the ballot and enjoining Ill. Gen. St. 10 Sect. 5/10-6 as it applies to presidential candidates.

**I. THE BALANCE OF HARMS TIPS OVERWHELMINGLY IN FAVOR OF PLAINTIFFS — NADER AND HIS SUPPORTERS WILL SUFFER DEVASTATING HARM IF VOTERS IN ILLINOIS CANNOT EXERCISE THEIR FIRST AMENDMENT RIGHT TO SUPPORT THE CANDIDATE OF THEIR CHOICE AT THE BALLOT.**

On November 7, 2000, voters throughout the United States will cast their votes for President. However, unless this Court intervenes now, Illinois voters who support Ralph Nader will be denied the opportunity to vote for the candidate of their choice. Likewise, Ralph Nader will be denied the opportunity to compete for votes in the nation’s sixth most populous State. Additionally, voters outside of Illinois who support Ralph Nader will have their votes effectively diluted by defendants’ actions. The harm that will be suffered by Ralph Nader and his supporters is quintessentially “irreparable harm.” No monetary damages, no retroactive relief, no settlement will make any difference. In short, nothing that happens after November 7, 2000, can give voters back their choice. It is no surprise, then, that infringement upon plaintiffs’ right to vote

has long been held to give rise to irreparable harm of the sort necessitating injunctive relief. *See Gray v. Sanders*, 372 U.S. 368 (1968); *Rockefeller v. Powers*, 78 F.3d 44 (2d Cir. 1996); *Smith v. Board of Elect. Comm'rs*, 587 F. Supp. 1136, 1142 (N.D. Ill. 1984); *Citizens Party of Illinois v. Illinois State Board of Elections*, 546 F. Supp. 1050, 1053-54 (N.D. Ill. 1982).

In addition to the undeniable First Amendment harms plaintiffs will suffer, defendants' refusal to allow Ralph Nader to compete for votes in Illinois will also prejudice the Green Party's ability to receive federal matching funds for its current and future presidential campaigns. Ralph Nader has pledged that he will participate in the voluntary public funding program established for Presidential candidates under the Federal Election Campaign Act (FECA). Under this voluntary program, major party candidates, in exchange for agreeing to limit their campaign expenditures, are eligible to receive \$67.56 million from the government to fund their presidential campaigns. Minor party candidates, however, are entitled to lesser amounts of public funding, based on the party's vote totals in the last preceding federal presidential election. Thus, the nominee of the Reform Party is eligible this year to receive \$13.2 million, based on Ross Perot's showing in the 1996 election.

Nader can qualify the Green Party to receive federal funds only if he receives at least 5 percent of the nationwide Presidential vote on November 7, 2000. 26 U.S.C. § 9004(a)(3). Once that threshold is crossed, the Party receives reimbursement, post-election in direct proportion to the vote total of the candidate, and the Green Party nominee will automatically be eligible for federal funds the 2004 election. *Id.* Of course, if Nader is prohibited by Illinois from even being on the ballot, he will receive a lower percentage of the nationwide vote by virtue of this exclusion, and his ability to reach the 5 percent threshold will likewise have been reduced. Illinois's unduly restrictive ballot access laws, in the context of a federal election for President, operate to frustrate this national scheme, which explicitly pegs a candidate's level of federal public funding to the percentage of the vote received in a nationwide election.

In contrast to the very real harm that will be suffered by plaintiffs if Nader is denied ballot access, the State will not be harmed in the slightest if he is on the ballot. If the Court grants the injunction "improvidently," the only harm to the state is that Nader is on the ballot — that is, a

candidate with nationwide support who was unable to comply with the State's brand new early filing deadline will be allowed on the ballot. Given that Nader expects to be on the ballot in some 45 other states, and the fact that until this year, Illinois functioned with a much later deadline, the injury, if it is any injury at all, is negligible. The balance of harms analysis tips overwhelmingly in favor of plaintiffs.

**II. PLAINTIFFS' FIRST AMENDMENT ARGUMENTS ARE "BETTER THAN NEGLIGIBLE." INDEED, THEY ARE LIKELY TO SUCCEED ON THE MERITS.**

This case can be decided based on a direct application of a controlling Supreme Court precedent — *Anderson v. Celebrezze*, 460 U.S. 780 (1983). In 1980, John Anderson, running as an independent candidate for President of the United States, challenged Ohio's requirement that he submit a statement of candidacy and nominating petitions in March in order to appear on the general election ballot in November. The Supreme Court held that Ohio's filing deadline placed an unconstitutional burden on the voting and associational rights of Anderson's supporters. The Supreme Court's reasoning and holdings in *Anderson* control the result in this case.

There are three lessons that *Anderson* teaches, all of which are directly relevant to the present case. First, petition deadlines that are prior to the time when the major parties are holding their conventions and adopting their nominees and platforms are unlikely to withstand constitutional scrutiny. Second, state ballot access restrictions that may be constitutional when applied to candidates for statewide political office, may nevertheless be unconstitutional when applied to candidates running for President of the United States. Third, minor party candidates play an important, constitutionally-protected role in federal political contests that is unrelated to the candidate's likelihood of success on election day.

The Supreme Court in *Anderson* made it clear that state filing deadlines cannot operate to cut off a "*late-emerging* Presidential candidate outside the major parties." 460 U.S. at 792 (emphasis added). The Court recognized that an early deadline for alternative presidential candidates not only excludes any candidate who decides to run after the deadline, but, like the application of the June 26 deadline to Ralph Nader here, severely burdens those candidates who have decided to run but must organize a campaign and gather signatures to meet the early

deadline. *Id.* The Court recognized the democratic importance of “newly-emergent” candidates who might serve as the focal point for voters who become dissatisfied with the major parties during the election season. *Id.* at 790-91. *See also* Gillespie Decl. ¶ at 13. “[T]his disaffected ‘group’ will rarely if ever be a cohesive or identifiable group until a few months before the election.” *Anderson*, 460 U.S. at 791 (*quoting* *Williams v. Rhodes*, 393 U.S. 23, 33 (1968)). Thus, *Anderson* makes it clear that petition deadlines which are prior to the time when the major parties hold their nominating conventions and adopt their platforms are unlikely to withstand constitutional scrutiny.<sup>1</sup> *Accord Blomquist v. Thomson*, 739 F.2d 525, 528-29 (10th Cir. 1984).

Second, *Anderson* recognized that state ballot access restrictions which may be wholly justifiable in the context of elections for statewide political office, may nevertheless be unconstitutional when applied in the context of ballot access for independent and third-party candidates for President of the United States. “[I]n the context of a Presidential election, state-imposed restrictions implicate a uniquely important national interest.” *Id.* at 794-95. The Court noted that “the State has a less important interest in regulating Presidential elections than statewide or local elections,” *id.* at 795, and that the challenged filing deadline “places a significant state-imposed restriction on a nationwide electoral process.” *Id.* at 795. *Accord*

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<sup>1</sup> Additionally, in discussing the political science literature, the Supreme Court cited with approval the work of Professor Alexander Bickel, who “perceptively observed” that American third parties typically consist of a group of people who form a new political party *after* having failed to exert influence within one of the major parties. *Anderson*, 460 U.S. at 805. “States in which there is an early qualifying date tend to force such groups to create minor parties without first attempting to influence the course taken by a major one. For a dissident group is put to the choice of foregoing major-party primary and other prenomination activity by organizing separately early on in an election year, or losing all opportunity for action as a third party later.” *Id.* (*quoting* A. Bickel, *Reform and Continuity* (1971)). This remains true. *See* Gillespie Decl. at ¶¶8-9.

*Wood v. Meadows*, 207 F.3d 708, 711 n.1 (4th Cir. 2000); *The Council of Alternative New Parties v. Hooks*, 179 F.3d 64, 72 (3d Cir. 1999).

Third, *Anderson* recognized the unique and important role that third party and independent candidates traditionally have played in American politics. “[S]everal important third-party candidacies in American history were launched after the two major parties staked out their positions and selected their nominees at national conventions during the summer.” *Id.* at 791-92.

The value of these third-party candidacies does not depend on the likelihood that the party’s particular candidate will meet with electoral success; rather the First Amendment right stems from the candidate’s ability to infuse the campaign with new issues and ideas. “Historically political figures outside the two major parties have been fertile sources of new ideas and new programs; many of their challenges to the status quo have in time made their way into the political mainstream. In short, the primary values protected by the First Amendment — ‘a profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open’ — are served when election campaigns are not monopolized by the existing political parties.” *Id.* at 794 (citations omitted). *See also* Gillespie Decl. ¶ 13

Thus, despite the fact that John Anderson in the end polled less than 7 percent of the Presidential vote, the Supreme Court made it abundantly clear that the First Amendment protects his constitutional right to be on the ballot and the rights of citizens to vote for him. Early filing deadlines and other restrictions that act to frustrate such choices must be struck down. There is no legally relevant way to distinguish John Anderson’s 1980 candidacy for President from Ralph Nader’s candidacy this year. Illinois’s ballot access rules are unconstitutional as applied to independent or third-party Presidential candidates.

**A. Illinois’ Ballot Access Rules Pose An Undue Burden On Plaintiffs’ First And Fourteenth Amendment Rights.**

The Supreme Court in *Anderson* established the test for determining whether a State’s ballot access requirements place an unconstitutional “undue burden” on First Amendment rights. The Court eschewed a “litmus-paper” test for separating valid from invalid restrictions and devised a three-step balancing test. First, a reviewing court “must consider the character and the

magnitude of the asserted injury to the rights protected by the First and Fourteenth Amendments.” *Anderson*, 460 U.S. at 789. Second, the court must “identify and evaluate the precise interests put forward by the state as justification for the burden imposed by its rule.” *Id.* Third, and finally, the reviewing court must “determine the legitimacy and strength of each of those interests,” while also considering “the extent to which those interests make it necessary to burden the plaintiff’s rights.” *Id.* An application of the *Anderson* balancing test demonstrates that Illinois’ ballot access scheme, as applied to federal Presidential candidates, places an undue burden on candidates who are not affiliated with the major political parties.

**1. The Burdens On Ballot Access For Independent and Third Party Presidential Candidates In Illinois Are Substantial, Especially When Compared With Those Imposed By Other States.**

In deciding whether a state's burdens on ballot access are undue, the Supreme Court naturally looks to the practices of other states. *Anderson*, 460 U.S. at 795 n.20, *Storer v. Brown*, 415 U.S. 724, 739 (1974), *Jenness v. Fortsen*, 403 U.S. 431, 442 (1971). There can be no reasonable dispute that Illinois has one of the most burdensome ballot access requirements in the nation for independent or third-party Presidential candidates.

Illinois' new petition deadline is one of the earliest in the nation for third party and independent Presidential candidates.<sup>2</sup> As the Court noted in *Anderson*, even prior to the Supreme Court litigation on petition deadlines, two-thirds of the states and the District of Columbia had signature gathering deadlines in August or September. *Anderson*, 460 U.S. at 795 n.20. *See also Cromer v. State of South Carolina*, 917 F.2d 819, 825 (4th Cir. 1990) ("most states seem to have fixed on 75 to 90 days as a reasonable period"). As of today, 33 states and the District of Columbia have petitioning deadlines in August or September. *See* Winger Decl. App. A. In addition, of course, the number of signatures required in Illinois is substantial and requires a significant undertaking to satisfy. *See* Main Decl at ¶¶18-19. The early deadline combined with

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<sup>2</sup> The fact that at least two other candidates may have submitted a sufficient number of signatures by the deadline does not detract from the Green Party's argument. As the Supreme Court observed, the ability of some parties to surmount the high hurdles imposed by a state cannot be determinative. *See Anderson*, 460 U.S. at 792 n.12 (upholding *Anderson's* ballot access challenge despite noting that five other individuals did qualify as independent candidates in Ohio); *Anderson v. Morris*, 636 F.2d 55, 57 n.5 (4th Cir. 1980) (upholding *Anderson's* challenge despite noting that a Libertarian candidate had qualified for the ballot). This is particularly true in Illinois where the State Board is to certify any candidate whose petition is not challenged and candidates who are unlikely to pose a threat to the major parties often go unchallenged.

the substantial signature requirement places an undue burden on independent and third party candidates seeking to run for President.

*Anderson's* discussion of the burden an early deadline imposes on a candidate's ability to organize a petition drive and gather signatures accurately describes the burden faced by the Nader campaign in its Illinois petition drive. When the election is remote, "[v]olunteers are more difficult to recruit and retain, media publicity and campaign contributions are more difficult to secure, and voters are less interested in the campaign." 460 U.S. at 792. *See also Stoddard v. Quinn*, 593 F. Supp. 300, 305 (D. Maine 1984). The declarations of Theresa Amato, Todd Main, and Peter D'Alessandro amply demonstrate that the Nader campaign faced exactly these difficulties.

Because these early organizational problems are particularly severe for campaigns that are relying on the energy of volunteers, by moving its deadline earlier, Illinois has essentially turned a process that is supposed to weed out frivolous candidates into a process that weeds out candidates who cannot afford to pay a substantial admission fee. It is quite likely that the only way for a new party or independent Presidential candidate to qualify for the ballot in Illinois is to rely primarily on professional signature gatherers. *See D'Alessandro Decl.* at ¶ 14. Forcing candidates to spend excessive amounts of money on a petition drive not only subverts the alleged purpose of such a drive but it deletes the campaign coffers before the campaign has even started.<sup>3</sup> This is not what ballot access laws or Presidential campaigns are supposed to be about.

## **2. Unconstitutional Petition Circulator Requirements Also Contributed to the Undue Burden on Parties Seeking Ballot Access**

In 1999, the Supreme Court held that a Colorado law requiring that a ballot access petition circulator be a registered voter was unconstitutional. *Buckley v. American Const. Law Foundation*, 525 U.S. 182 (1999). Shortly after the Supreme Court's decision in *Buckley*, a district court held that Illinois' law was similarly unconstitutional. *Krsislov v. Rednour*, 1999 WL

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<sup>3</sup>Ballot access drives for alternative presidential candidates require an enormous amount of resources. It's been estimated that Ross Perot spent \$10 million in his effort to get the Reform Party on the ballot in all 50 states in 1996. In 1980, John Anderson spent more than half of the \$7.3 million he raised on petition drives and ballot access litigation. *See Gillespie Decl.* at ¶ 7.

1794035 (N.D. Ill. July 7, 1999) (Attached at Tab 6). According to material from the Board of Elections, enforcement of this decision has been stayed pending appeal and the Board “recommends that candidates use only registered voters as circulators.” *See Candidate’s Guide*, State Board of Elections (Attached at Tab 7).

This unconstitutional requirement continues to impose an undue and unjustified burden on candidates. It is particularly burdensome in light of the early deadline when a campaign is scrambling to recruit as many volunteers as possible. *See* D’Alessandro Decl. ¶ 15; Main Decl. ¶ 20. It makes little practical difference that the Board of Elections states in its materials that it “recommends” the use of registered voters. No petition drive organizer could ignore such a recommendation. The practical effect of the “recommendation,” which is a “note” following the statement that circulator must be a registered voter, is that the pool of potential circulators remains severely limited.

Illinois’ requirement that all circulators be registered voters imposes a severe burden on minor party and independent presidential candidacies, the continued enforcement of which cannot be justified.

### **3. The State Has No Interest That Can Remotely Justify The Severe Burdens Imposed.**

Because it is clear that Illinois’ restrictions on minor parties are “severe,” the challenged regulations are subject to “strict scrutiny.” *See Burdick v. Takushi*, 504 U.S. 428, 434 (1992) (if the burden is severe, regulation must be “narrowly drawn to advance a state interest of compelling importance”). However, even if the Court were to apply a simple balancing test, it is clear that defendants cannot come forward with any interest that would remotely justify the significant burdens that they have imposed on Presidential candidates seeking ballot access. *See New Alliance Party of Alabama v. Hand*, 933 F.2d 1568, 1576 (11th Cir. 1991) (although burdens imposed on minor parties seeking non-presidential ballot access were “not insurmountable” and did not “freeze the political status quo,” they were nevertheless unconstitutional because “less drastic means” were available to achieve the state’s ends).

The traditional government interests put forward by states in support of ballot access restrictions include allowing sufficient time for voters to learn about the candidates, administrative convenience, and avoiding ballot confusion. None of these interests justify the significant hurdles that Illinois has placed in the path of independent and minor party candidates who wish to run for President of the United States. As the Supreme Court has made clear, “the State has a less important interest in regulating Presidential elections than statewide or local elections.” *Anderson*, 460 U.S. at 795. Additionally, in assessing these interests, at least one court has recognized that legislature is hardly a disinterested actor when it imposes ballot access requirements for third parties and independent candidates: “The Court cannot be blind to the fact that restrictions on independent candidacies are enacted by members of the major parties, who have some direct level of interest in the success or failure of independent candidates.” *Stoddord v. Quinn*, 593 F. Supp. 300, 307 (D. Me. 1984).

One of the most common justifications for early filing deadlines, voter education, *see Anderson*, 460 U.S. at 795, has no weight here. During a Presidential election, candidates and races receive substantial publicity, giving voters ample opportunity to familiarize themselves with their options. In addition, it is unlikely that Illinois voters even realize they should be paying attention to third party candidacies this early. Finally, the validity of this interest is undermined “by the State’s willingness to place major-party nominees on the November ballot” even though they are not named until August and “even if they never campaigned in” Illinois. *Anderson*, 460 U.S. at 798. Most states apparently have decided that 90 days or less is ample time for the public to become adequately educated about their choices, *see Cromer*, 917 F.2d at 825 (citing the practices in other states to strike down South Carolina’s early declaration requirement), and there is nothing unique about Illinois that justifies harsher deadlines.

Nor can the deadlines be justified by the State’s need for administrative convenience. The State cannot even begin to prepare the Presidential election ballots until the major party Presidential and Vice-Presidential candidates are chosen in late July and August. The requirement that petitions be filed by June 26 is governed by legislative fiat, not administrative necessity.

The issue of ballot confusion is also a non-starter for the State. Illinois has had only a handful of third party and independent presidential candidates on the ballot in the last two presidential elections when the deadline was 42 days later than it is today. *See Winger Decl.* ¶ 9; E. Joshua Rosenkranz, *Voter Choice '96*, page 69 (1996). There is certainly no evidence to support the belief that Illinois voters would somehow be confused if they were able to select from among six to seven presidential candidates, which is the norm throughout the country. *Voter Choice* at 69. What will be confusing to voters, especially those who want to support Nader's candidacy, is the prospect of entering the voting booth, looking for his name, and not finding it.

While the State has an interest in requiring a candidate to demonstrate a modicum of support, a filing deadline that precedes the major party conventions actually disserves that goal. It is during and immediately after the major party primaries that third-party and independent candidacies are likely to gather support. "When the primary campaigns are far in the future and the election itself is even more remote the obstacles facing an independent candidate's organizing efforts are compounded. Volunteers are more difficult to recruit and retain, media publicity and campaign contributions are more difficult to secure, and voters are less interested in the campaign." *Anderson*, 460 U.S. at 792.

The defendants will be unable to bear their burden of demonstrating that the onerous burdens imposed by Illinois on ballot access for third party and independent candidates for President are justified by any sufficiently weighty state interests. Although plaintiffs need only demonstrate that their likelihood of success on the merits is "better than negligible," it is clear that they have also established a likelihood of success on the merits of their claim.

### **CONCLUSION**

Plaintiffs have shown that Ill. Comp. Stat. 10/5-6 places an unconstitutional undue burden on their First Amendment and Equal Protection rights. Because the balance of the harms analysis tips decidedly in favor of plaintiffs, this Court should issue a preliminary injunction enjoining enforcement of the Board of Election's order striking Nader from the ballot and enjoining the enforcement of Ill. Gen St. 10 Sect. 5/6 as it applies to presidential candidates.

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