

Ballot-Petition Signature Requirements in Illinois During a Pandemic

Libertarian Party of Illinois v. Pritzker (1:20-cv-2112) and Morgan v. White (1:20-cv-2189) (Rebecca R. Pallmeyer and Charles R. Norgle, Sr., N.D. Ill.) and Bambenek v. White (Sue E. Myerscough, C.D. Ill. 3:20-cv-3107)

Lawsuits filed in two of Illinois's districts sought modifications to ballot-petition signature requirements in light of social distancing made necessary by the global Covid-19 infectious pandemic. An agreed order modified the requirements for candidates. The district judge gave election officials part of the adjustments from the agreed order that they requested, and the court of appeals declined to stay the district judge's decision. District judges in both districts denied relief from the signature requirements for ballot measures.

Subject: Getting on the ballot. *Topics:* Getting on the ballot; ballot measure; Covid-19; case assignment; interlocutory appeals; intervention.

Election officials in Illinois agreed to an injunction modifying the ballot-petition signature requirements for candidates in the November 3, 2020, general election in light of social distancing made necessary by the global Covid-19 infectious pandemic. District judges in two of Illinois's districts declined to modify the requirements for ballot measures.

Ballot-Petition Signatures for Candidates

Minor parties, prospective independent candidates, and others affiliated with them filed a federal complaint in the Northern District of Illinois on April 2, 2020, against the governor and state election officials seeking modifications to in-person and witnessing ballot-petition signature requirements for the November 3 general election in light of social distancing made necessary by Covid-19.¹ On the next day, the plaintiffs filed a motion for a temporary restraining order or a preliminary injunction.²

The court assigned the case to Charles R. Norgle, Sr., but on April 10, Judge Robert M. Dow, Jr., acted as emergency judge and set the case for a telephonic hearing at 9:30 a.m. on April 17.³

1. Complaint, *Libertarian Party of Ill. v. Pritzker*, No. 1:20-cv-2112 (N.D. Ill. Apr. 2, 2020), D.E. 1; *Libertarian Party of Ill. v. Pritzker*, 455 F. Supp. 3d 738, 740 (N.D. Ill. 2020); see Amended Complaint, *Libertarian Party of Ill.*, No. 1:20-cv-2112 (N.D. Ill. Apr. 16, 2020), D.E. 17.

2. Motion, *Libertarian Party of Ill.*, No. 1:20-cv-2112 (N.D. Ill. Apr. 3, 2020), D.E. 2.

3. Minutes, *id.* (Apr. 10, 2020), D.E. 5.

Judge Dow became Chief Justice John G. Roberts, Jr.'s counselor in October 2022. Federal Judicial Center Biographical Directory of Article III Federal Judges, www.fjc.gov/history/judges; Press Release, Oct. 3, 2022, www.supremecourt.gov/publicinfo/press/pressreleases/pr_10-03-22.

The court had accommodated the pandemic by assigning a few judges rotating duty days for emergency proceedings.⁴ The emergency judge assigned to the case was Judge Rebecca R. Pallmeyer, and Judge Dow was on duty for the motion.⁵

Ballot-Petition Signatures for Ballot Measures

An organization and six persons supporting an amendment to Illinois's constitution filed a federal complaint in the Northern District on April 7 against state and local election officials, seeking modifications to the ballot-petition signature requirements for initiatives.⁶ Two days later, the plaintiffs filed a motion for a preliminary or permanent injunction.⁷

This case also was assigned to Judge Norgle; Judge Pallmeyer acted as emergency judge on April 9 and set the case for a telephonic hearing at 9:30 a.m. on April 17.⁸

Emergency Proceedings

A prospective independent candidate for President sought to join the first action on April 13.⁹ Judge Pallmeyer set the intervention motion for a telephonic hearing at 9:30 a.m. on April 17, noting that the parties should contact the court for the call-in number.¹⁰ Members of the public were permitted to attend the hearing by telephone as well.¹¹

On April 17, Judge Pallmeyer presided over the motions in the candidate case from 9:32 to 10:11 a.m.¹² She granted the intervention motion, and she invited the parties to continue discussing a settlement proposal and to reconvene on April 21.¹³

4. Interview with Judge Rebecca R. Pallmeyer, Oct. 7, 2020.
Tim Reagan interviewed Judge Pallmeyer for this report by telephone.

5. *Id.*

6. Complaint, *Morgan v. White*, No. 1:20-cv-2189 (N.D. Ill. Apr. 7, 2020), D.E. 1; *see* Amended Complaint, *id.* (Apr. 27, 2020), D.E. 26.

7. Injunction Motion, *id.* (Apr. 9, 2020), D.E. 4.

8. Minutes, *id.* (Apr. 9, 2020), D.E. 8.

9. Intervention Motion, *Libertarian Party of Ill. v. Pritzker*, No. 1:20-cv-2112 (N.D. Ill. Apr. 13, 2020), D.E. 7; *see* Intervention Injunction Motion, *id.* (Apr. 13, 2020), D.E. 10; Intervention Complaint, *id.* (Apr. 13, 2020), D.E. 8.

10. Minutes, *id.* (Apr. 14, 2020), D.E. 11.

11. Interview with Judge Rebecca R. Pallmeyer, Oct. 7, 2020 (noting that proceedings early in the pandemic were especially likely to be conducted by telephone rather than by videoconference, and noting that an advantage of that was that the technological success of the proceeding did not depend on individual participants' home bandwidth resources).

12. Transcript, *Libertarian Party of Ill.*, No. 1:20-cv-2112 (N.D. Ill. Apr. 17, 2020, filed Apr. 20, 2020), D.E. 22.

13. *Id.* at 27–28; Minutes, *id.* (Apr. 17, 2020), D.E. 21; *Libertarian Party of Ill. v. Pritzker*, 455 F. Supp. 3d 738, 740 (N.D. Ill. 2020); *see* Transcript, *Libertarian Party of Ill.*, No. 1:20-cv-2112 (N.D. Ill. Apr. 21, 2020, filed Apr. 21, 2020), D.E. 25; Minutes, *id.* (Apr. 21, 2020), D.E. 24.

Especially for injunction cases, Judge Pallmeyer looked for resolutions that the parties could agree to.¹⁴ Generally, injunctions agreed to are more likely to be obeyed than injunctions imposed.¹⁵

Judge Pallmeyer presided over the ballot-measure case from 10:11 to 10:39 a.m.¹⁶ She did not find support for an injunction before Judge Norgle could preside over the case.¹⁷ The plaintiffs had not shown diligent signature-collection efforts.¹⁸

The court of appeals affirmed the injunction denial on July 8.¹⁹ “One important question, when a plaintiff seeks emergency relief, is whether the plaintiff has brought the emergency on himself. . . . Plaintiffs had plenty of time to gather signatures before the pandemic began.”²⁰ The court observed also that because there is no constitutional requirement for states to provide for ballot measures in the first place, Illinois could legally suspend ballot measures altogether during the pandemic.²¹ The plaintiffs dismissed their action voluntarily in August.²²

An Agreed Injunction

Meanwhile, in the candidate case, Judge Pallmeyer entered an agreed order on April 23 reducing the signature requirement, extending the deadline, allowing for electronic signatures, and qualifying parties and independent candidates for the November 2020 ballot if they had qualified either in 2016 or in 2018.²³

On May 8, however, Illinois’s state board of elections asked Judge Pallmeyer to reconsider the injunction it had agreed to, objecting to an August 7 filing deadline and a 90% reduction in the number of signatures required.²⁴ At a May 15 telephonic hearing, Judge Pallmeyer agreed to move up the deadline to July 20 but leave the number of signatures required as previously agreed.²⁵

14. Interview with Judge Rebecca R. Pallmeyer, Oct. 7, 2020.

15. *Id.*

16. Transcript, *Morgan v. White*, No. 1:20-cv-2189 (N.D. Ill. Apr. 17, 2020, filed Apr. 24, 2020), D.E. 25 [hereinafter Apr. 17, 2020, *Morgan* Transcript]; Minutes, *id.* (Apr. 17, 2020), D.E. 24.

17. Apr. 17, 2020, *Morgan* Transcript, *supra* note 16, at 19.

18. Opinion, *Morgan*, No. 1:20-cv-2189 (N.D. Ill. May 18, 2020), D.E. 50, 2020 WL 2526484 (denying reconsideration); *see* Minutes, *id.* (May 7, 2020), D.E. 38 (same); *see also* Transcript, *id.* (May 7, 2020, filed May 9, 2020), D.E. 39.

19. *Morgan v. White*, 964 F.3d 649 (7th Cir. 2020).

20. *Id.* at 651–52.

21. *Id.* at 652.

22. Minutes, *Morgan*, No. 1:20-cv-2189 (N.D. Ill. Aug. 13, 2020), D.E. 67; Stipulation, *id.* (Aug. 11, 2020), D.E. 61.

23. Order, *Libertarian Party of Ill. v. Pritzker*, No. 1:20-cv-2112 (N.D. Ill. Apr. 23, 2020), D.E. 27; *Libertarian Party of Ill. v. Pritzker*, 455 F. Supp. 3d 738 (N.D. Ill. 2020); *see* Rick Pearson, *Judge Oks Skipping of Signatures for Election*, Chi. Trib., Apr. 25, 2020, at C3.

24. Reconsideration Motion, *Libertarian Party of Ill.*, No. 1:20-cv-2112 (N.D. Ill. May 8, 2020), D.E. 31.

25. Transcript at 20, *id.* (May 15, 2020, filed May 15, 2020), D.E. 35; Minutes, *id.* (May

Three weeks and a day later, the board filed a notice of appeal.²⁶ The court of appeals denied a stay on Sunday, June 21, noting how long it took the board to seek one and noting that the board did not first seek a stay in the district court.²⁷ On August 20, the court of appeals affirmed the injunction.²⁸

Central District

Four days after Judge Pallmeyer entered the original agreed order, a federal complaint filed in the Central District against state and local election officials sought modifications to the ballot-petition signature requirements for initiatives.²⁹ With their complaint, filed on Monday, April 27, the plaintiffs filed a motion for a preliminary injunction.³⁰ On Tuesday, the plaintiffs filed a motion for an expedited hearing.³¹ Judge Sue E. Myerscough set the case for hearing by videoconference on Friday, posting contact information in the public record.³²

On May 1, Judge Myerscough denied the plaintiffs immediate relief.³³ Following Judge Pallmeyer's lead, Judge Myerscough determined that ballot measures do not present the same constitutional concerns as candidates do with respect to ballot-petition signature requirements.³⁴ "Lastly, the Court notes that Plaintiffs simply delayed their suit too long to allow the Court to meaningfully tailor injunctive relief without throwing Illinois' electoral system into disarray during an already tumultuous time."³⁵

The case was dismissed voluntarily as moot on November 9.³⁶

Judge Norgle

On September 10, Judge Norgle denied intervention to a prospective candidate with very case-specific difficulties qualifying for the ballot.³⁷

15, 2020), D.E. 36.

26. Notice of Appeal, *id.* (June 6, 2020), D.E. 38.

27. *Libertarian Party of Ill. v. Cadigan*, 820 F. App'x 446 (7th Cir. 2020); *see* Rick Pearson, *U.S. Appeals Court Rejects Effort to Delay Candidate Filing Rules*, Chi. Trib., June 23, 2020, at C4.

28. *Libertarian Party of Ill. v. Cadigan*, 824 F. App'x 415 (7th Cir. 2020).

29. Complaint, *Bambenek v. White*, No. 3:20-cv-3107 (C.D. Ill. Apr. 27, 2020), D.E. 1; *Bambenek v. White*, 613 F. Supp. 3d 1112, 1114 (C.D. Ill. 2020); *see* Amended Complaint, *Bambenek*, No. 3:20-cv-3107 (C.D. Ill. Apr. 30, 2020), D.E. 20.

30. Preliminary-Injunction Motion, *Bambenek*, No. 3:20-cv-3107 (C.D. Ill. Apr. 27, 2020), D.E. 2; *Bambenek*, 613 F. Supp. 3d at 1114.

31. Expedited Hearing Motion, *Bambenek*, No. 3:20-cv-3107 (C.D. Ill. Apr. 28, 2020), D.E. 4.

32. Order, *id.* (Apr. 28, 2020), D.E. 5; *see Bambenek*, 613 F. Supp. 3d at 1114; *see* Transcript at 5, *Bambenek*, No. 3:20-cv-3107 (C.D. Ill. May 1, 2020, filed May 15, 2020), D.E. 26 ("THE COURT: . . . We will have several observers present for today's hearing.").

33. *Bambenek*, 613 F. Supp. 3d 1112; *see* Opinion, *Bambenek*, No. 3:20-cv-3107 (C.D. Ill. July 2, 2020), D.E. 35, 2020 WL 6556004 (denying reconsideration).

34. *Bambenek*, 613 F. Supp. 3d at 1115.

35. *Id.* at 1116.

36. Docket Sheet, *Bambenek*, No. 3:20-cv-3107 (C.D. Ill. Apr. 27, 2020).

37. Opinion, *Libertarian Party of Ill. v. Pritzker*, No. 1:20-cv-2112 (N.D. Ill. Sept. 10, 2020), D.E. 76, 2020 WL 6600960.

A stipulation to dismiss the case as settled was filed on March 2, 2021.³⁸ The prospective presidential candidate allowed to intervene at the beginning of the case challenged the stipulated dismissal to preserve an opportunity to seek attorney fees,³⁹ but Judge Norgle denied the challenge and dismissed the case on July 8 because the dismissal did not affect the candidate's ability to seek fees.⁴⁰

Speed and Correctness

Judge Pallmeyer strove to rule both quickly and correctly.⁴¹ Among other things, that combination improves public confidence in the courts.⁴² Her law clerks were very helpful.⁴³ They dialed in to the proceedings, and she found it beneficial for more than one clerk to assist her with the emergency matters.⁴⁴

38. Stipulated Dismissal, *id.* (Mar. 2, 2021), D.E. 84; Status Report, *id.* (Feb. 5, 2021), D.E. 82 (noting settlement negotiations).

39. Motion, *id.* (Mar. 2, 2021), D.E. 85.

40. Order, *id.* (July 8, 2021), D.E. 90; Reply, *id.* (Apr. 12, 2021), D.E. 89.

41. Interview with Judge Rebecca R. Pallmeyer, Oct. 7, 2020.

42. *Id.*

43. *Id.*

44. *Id.* (noting that law clerks really shine when they work together).