

More Signatures Required to Get on a Local Ballot Than to Get on a Statewide Ballot

Acevedo v. Cook County Officers Electoral Board
(*Elaine E. Bucklo, 1:18-cv-293*) and *Kowalski McDonald v. Cook County Officers' Electoral Board*
(*John J. Tharp, Jr., 1:18-cv-1277*) (N.D. Ill.)

Two cases challenged the larger number of signatures required to get on a primary-election ballot in Cook County than would be required to get on a primary-election ballot for statewide office. Both district judges and the court of appeals ruled against the plaintiffs.

Subject: Getting on the ballot. *Topics:* Getting on the ballot; pro se party; case assignment.

Is it proper to require more signatures to get on a ballot for a local election than to get on a ballot for statewide office? Perhaps, if the burden is not severe, according to the U.S. Court of Appeals for the Seventh Circuit.

First Case

A January 15, 2018, federal complaint filed in the Northern District of Illinois alleged,

This Civil Rights case challenges as unconstitutional the Illinois Election Code's ballot access requirement that 2018 Democratic Primary Candidates for Countywide offices in the Cook County submit 8,236 valid signatures . . . and that Candidates for Commissioner of the Metropolitan Water Reclamation District of Greater Chicago submit 8,075 valid signatures . . . while Democratic Primary candidates for Illinois Statewide office such as Governor only need to submit 5,000 signatures for access to the ballot.¹

The reason for the discrepancy was that primary-election ballot petitions for statewide office required 5,000 signatures, but primary-election ballot petitions for local offices required signatures totaling 0.5% of the number of votes received by a candidate of the party in the most recent general election.² Seven would-be candidates—five for water commissioner, one for county sheriff, and one for county assessor—filed the federal complaint.³

With their complaint, the plaintiffs filed a motion for a temporary restraining order,⁴ set for hearing on the following day.⁵ At the hearing, Judge Elaine

1. Complaint at 1, *Acevedo v. Cook Cty. Officers Electoral Bd.*, No. 1:18-cv-293 (N.D. Ill. Jan. 15, 2018), D.E. 1 [hereinafter *Acevedo* Complaint].

2. 10 Ill. Comp. Stat. 5/7–10(a), (d)(1), (g).

3. *Acevedo* Complaint, *supra* note 1.

4. Temporary-Restraining-Order Motion, *Acevedo*, No. 1:18-cv-293 (N.D. Ill. Jan. 15, 2018), D.E. 2.

5. Notice, *id.* (Jan. 15, 2018), D.E. 3; *Acevedo v. Cook Cty. Officers Electoral Bd.*, 286 F. Supp. 3d 929, 930 (N.D. Ill. 2018).

E. Bucklo ordered defense responses by January 22 and set the case for another hearing on January 23.⁶

In 1979, the Supreme Court found an equal-protection violation in Illinois because new political parties and independent candidates needed 25,000 signatures to get on a statewide ballot but over 35,000 signatures to get on a local ballot, measured as 5% of the total votes in the locality's previous election.⁷

On January 24, 2018, Judge Bucklo ruled against the plaintiffs in light of decisions by the Supreme Court and the U.S. Court of Appeals for the Seventh Circuit clarifying application of the Supreme Court's 1979 case and the considerably smaller number of signatures required in the case before her.⁸

Second Case

A similar case was filed in February 2018. A candidate for the office of county clerk filed her pro se federal complaint in the Northern District on February 20, challenging her exclusion from the March 20 primary-election ballot.⁹ The plaintiff attributed the high requirement for Cook County to a candidate in the plaintiff's party running unopposed in the last county general election, which was also a presidential election.¹⁰

One day after the complaint was filed, Judge Joan Humphrey Lefkow exercised her prerogative as a senior judge and declined assignment of the case, which was reassigned to Judge John J. Tharp, Jr.¹¹ A week after filing her complaint, the plaintiff filed a motion for an expedited status conference,¹² which Judge Tharp granted a day later by setting one for the morning of March 2.¹³

At the status conference, Judge Tharp set a deadline of that day for a temporary-restraining-order motion, to be fully briefed for a March 13 hearing by March 9.¹⁴ The plaintiff was represented by counsel at the hearing.¹⁵ On the next day, Judge Tharp announced that he would deny immediate relief with an opinion to follow one day later.¹⁶

Judge Tharp ruled against the defendants on their request for abstention pursuant to *Younger v. Harris*, because "the defendants have not and cannot show that the [Cook County Officers Electoral] Board's review of [the plaintiff's] petition implicates the state's interests in investigating, enforcing, and

6. Minutes, *Acevedo*, No. 1:18-cv-293 (N.D. Ill. Jan. 16, 2018), D.E. 8; see *Acevedo*, 286 F. Supp. 3d at 930; Minutes, *Acevedo*, No. 1:18-cv-293 (N.D. Ill. Jan. 23, 2018), D.E. 15.

7. Ill. State Bd. of Elections v. Socialist Workers Party, 440 U.S. 173 (1979).

8. *Acevedo*, 286 F. Supp. 3d at 929; see *Acevedo v. Cook Cty. Officers Electoral Bd.*, 925 F.3d 944, 947 (7th Cir. 2019).

9. Complaint, *Kowalski McDonald v. Cook Cty. Officers' Electoral Bd.*, No. 1:18-cv-1277 (N.D. Ill. Feb. 20, 2018), D.E. 1.

10. *Id.* at 4–5.

11. Transfer, *id.* (Feb. 21, 2018), D.E. 6; Docket Sheet, *id.* (Feb. 20, 2018).

12. Motion, *id.* (Feb. 27, 2018), D.E. 8.

13. Minutes, *id.* (Feb. 28, 2018), D.E. 10.

14. Minutes, *id.* (Mar. 2, 2018), D.E. 17.

15. Transcript at 2, *id.* (Mar. 13, 2018, filed June 11, 2018), D.E. 40; Appearance, *id.* (Mar. 13, 2018), D.E. 23.

16. Minutes, *id.* (Mar. 14, 2018), D.E. 25.

sanctioning violations of its laws.”¹⁷ Judge Tharp decided that a judgment in the defendant’s favor in the state courts did not preclude the plaintiff’s claims as res judicata, because the state-court judgment was still on appeal.¹⁸ But Judge Tharp ruled against the plaintiff on the merits, because she could show no intention to disfranchise women and minorities.¹⁹ The fact that the higher requirement for county offices than for state offices that election cycle was an anomaly further weighed against the plaintiff’s merits.²⁰

Affirmance by the Court of Appeals

On June 5, 2019, the court of appeals affirmed Judge Bucklo’s dismissal of the first case because the plaintiffs “have not alleged any facts supporting an inference that the burden imposed by [the signature] requirement is severe.”²¹

Strict scrutiny is not triggered by the existence of a less burdensome restriction—it is triggered only when the challenged regulation itself imposes a severe burden. Because Acevedo has not alleged that the burden imposed by the Cook County signature requirement is severe, the defendants need not show any justification for it beyond Illinois’s interest in orderly and fair elections. That interest easily justifies the signature requirement here.²²

An appeal in the second case was dismissed as moot on January 2.²³ Judge Tharp dismissed the case on July 10 following a scheduled hearing at which neither party appeared.²⁴

17. Opinion at 5, *id.* (Mar. 25, 2018), D.E. 26, 2018 WL 1334931.

18. *Id.* at 5–7.

19. *Id.* at 10.

20. *Id.* at 9–10.

21. *Acevedo v. Cook Cty. Officers Electoral Bd.*, 925 F.3d 944, 948 (7th Cir. 2019).

22. *Id.* at 946–47; *see id.* at 947–48 (“Though the election is over, [the] claim is not moot because it is capable of repetition, yet evading review.”).

23. *McDonald v. Cook Cty. Officers Electoral Bd.*, 758 F. App’x 527 (7th Cir. 2019).

24. Notification, *Kowalski McDonald*, No. 1:18-cv-1277 (N.D. Ill. July 10, 2019), D.E. 50.