No. _____

In The
Supreme Court of the United States

THADDEUS JONES, et al.,

Petitioners,

v.

MICHELLE MARKIEWICZ-QUALKINBUSH, et al.,

Respondents.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Seventh Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether the reasoning and decision of *Engquist v. Oregon Department of Agriculture*, 553 U.S. 591 (2008), extends to the political context, where political animus is the basis for a class-of-one equal protection cause of action, thereby exempting or precluding such class-of-one equal protection causes of action.

2. Whether a facially-neutral statute, when purposefully utilized by a municipality as a "political dirty trick" to preclude an individual citizen's competing referendum question from appearing on the ballot, is unconstitutional as applied, as it infringes on citizens' First Amendment rights, and therefore requires a strict scrutiny analysis.

PARTIES TO THE PROCEEDING

Petitioners Thaddeus Jones, Stevon Grant, and Calumet City Concerned Citizens were appellants in the court below and plaintiffs in the District Court.

Respondents Michelle Markiewicz-Qualkinbush, individually and in her official capacity as Mayor of the City of Calumet City, Illinois, Nyota Figgs, individually and in her official capacity as City Clerk for the City of Calumet City, Illinois, Magdalena "Leni" Wosczynski, in her official capacity as the alderman of the 2nd Ward of the City of Calumet City, Illinois, Ramonde D. Williams, individually and in his official capacity as the Alderman of the 4th Ward of the City of Calumet City, Illinois, Roger Munda, individually and in his official capacity as the Alderman of the 5th Ward of the City of Calumet City, Illinois, Nick Manousopoulos, individually and in his official capacity as the Alderman of the 6th Ward of the City of Calumet City, Illinois, Samuel Bullocks, individually and in his official capacity as the Alderman of the City of Calumet City, Illinois, and David Orr, solely in his official capacity as the elected county clerk for Cook County, Illinois, were appellees in the court below and defendants in the District Court.

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PETITION FOR WRIT OF CERTIORARI

Petitioners Thaddeus Jones, Stevon Grant, and Calumet City Concerned Citizens petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the Seventh Circuit.

OPINIONS BELOW

The opinion of the court of appeals affirming the district court is reported at 892 F.3d 935 (7th Cir. 2018), and is reproduced in the appendix. App. 1. The district court did not issue a written opinion, but its order dismissing the case is reproduced in the appendix. App. 11. A prior opinion of the court of appeals is reported at 842 F.3d 1053 (7th Cir. 2016). App. 13.

JURISDICTION

The Seventh Circuit opinion was filed on June 14, 2018. App. 1. No petition for rehearing was filed. This Court's jurisdiction is timely invoked under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The First Amendment to the United States Constitution states: "Congress shall make no law respecting an establishment of religion, or

> prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances."

U.S. Const. amend. I.

> The Fourteenth Amendment to the United States Constitution, Section 1 states: "All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

U.S. Const. amend. XIV.

The Illinois Election Code's "Rule of Three" provides:

> Irrespective of the method of initiation, not more than 3 public questions . . . may be submitted with respect to a political subdivision at the same election. If more than 3 propositions are timely initiated or certified for submission at an election with respect to a political subdivision, the first 3 validly initiated, by the filing of a petition or by the adoption of a resolution or ordinance of a political

> subdivision, as the case may be, shall be printed on the ballot at that election.

10 ILCS 5/28-1 (2016).

STATEMENT OF THE CASE

A. Statutory Background

Illinois law provides two ways by which referendum questions may appear on a local election ballot. The first way is by citizen initiative; Illinois law permits citizens to formulate ballot referendum questions that may appear on a local election ballot, if the proponents gather the required amount of voter signatures ("at least 8% of the total votes cast for candidates for Governor in the preceding gubernatorial election"). 10 ILCS 5/28-7. The second way is by local government initiative; a local city council may include referendum questions on a local election ballot simply by passing a resolution. 5 ILCS 120/2.02(a). Referendum questions may be binding or advisory.

Regardless of how the referendum questions are generated, whether by citizen initiative or by local government resolution, the county clerk is charged with certifying the referendum questions that will appear on the ballot. Further, those certified questions are limited to three, on a first-come first-certified basis, pursuant to 10 ILCS 5/28-1, as follows:

> Irrespective of the method of initiation, not more than 3 public questions . . . may be

> submitted to referendum with respect to a political subdivision at the same election. If more than 3 propositions are timely initiated or certified for submission at an election with respect to a political subdivision, the first 3 validly initiated, by the filing of a petition or by the adoption of a resolution or ordinance of a political subdivision, as the case may be, shall be printed on the ballot and submitted at that election.
>
> This limit is often referred to as the "Rule of Three."

B. Statement of Facts

On June 18, 2016, Petitioners Grant and Calumet City Concerned Citizens began circulating a petition to place a referendum question creating mayoral term limits for Calumet City on the next local ballot for the upcoming election in November 2016. Petitioners' referendum stated:

> Shall . . . Calumet City be subject to a term limit prohibiting all people from serving more than three (3) terms of office as Mayor, where a term of office includes partial terms of office of two years or more, including all past terms of office served and any term of office currently being served, effective immediately upon approval and passage of this binding referendum? Yes [or] No.

App. 15.

If this referendum had appeared on the ballot and been approved by the voters, it would have precluded

Respondent Michelle Markiewicz-Qualkinbush, the then incumbent mayor, from seeking reelection in April 2017. App. 15.

Upon learning the Petitioners were circulating their petition seeking ballot access, on June 23, 2016, the City Council quickly passed a resolution placing three referendum questions on the next local ballot, one of which also provided for a competing mayoral term limits question. It stated:

> Shall the City of Calumet City, Cook County, Illinois, adopt the following term limits for the Office of Mayor to be effective for and applicable to all persons who are candidates for Mayor being elected at the Consolidated Election to be held on April 4, 2017, and subsequent elections: Mayor – no person shall be eligible to seek election to, or hold the office of mayor where that person has held the elected office of either Mayor or Alderman of . . . Calumet City for [four] or more consecutive full four (4) year terms.

App. 16.

Prior to learning of Petitioners' referendum petition, the City Council had no plans to put any referendum on the ballot and had never discussed imposing mayoral term limits. In fact, in the past 27 years, the City had only placed four referenda on the ballot that were initiated by City Council resolution. App. 15.

Once the Respondents learned of the Petitioners' referendum petition, and knowing of the Rule of Three, the City Council immediately and quickly held a series

of sessions to pass three referenda by resolution. Of the three referenda, only the mayoral term limits referendum question, provided above, was binding; the other two referenda were advisory. App. 16. The Seventh Circuit subsequently characterized the City's action as a "political dirty trick." App. 10.

Petitioners obtained 2,137 voter signatures on their referendum petition prior to the filing deadline and successfully filed their petition with the County Clerk. However, pursuant to the Rule of Three, Petitioners' referendum question was preempted from placement on the ballot by the three referendum questions passed by the City Council, as the City Council was able to pass the necessary resolutions within a 48-hour period. But for the Respondents' utilization of the Rule of Three, Petitioners' term limits referendum would have appeared on the November 2016 ballot in the City of Calumet City and would have been voted on by the Calumet City voters. Thus, Petitioners' question did not appear on the ballot and had no effect on Respondent Markiewicz-Qualkinbush's ability to subsequently run for mayor. App. 2, 17-18.

However, the City Council's mayoral term limits referendum question did affect Petitioner Thaddeus Jones's ability to run for mayor in the April 2017 election. Petitioner Jones, a five-term Calumet City Alderman and a State Representative, had announced his intention to run for mayor in the April 2017 election prior to the creation of the referendum questions noted above. App. 2, 18. The City Council's mayoral term limits referendum passed, and Petitioner Jones was

precluded from running for mayor. Respondent Markiewicz-Qualkinbush ran and was re-elected. App. 2.

C. Proceedings Below

On September 15, 2016, Petitioners filed an action in the United States District Court, Northern District of Illinois, and moved for an injunction precluding the application of the Rule of Three to the placement of referendum questions on the April 2017 ballot and in the future and an order removing the City's term-limits referendum question from the ballot and/or nullifying the voters' approval of that referendum question. On September 22, 2016, the District Court denied Petitioners' motion, which ruling was affirmed by the United States Court of Appeals, Seventh Circuit, on December 2, 2016. (*Jones v. Markiewicz-Qualkinbush*, Case No. 16-3514, 842 F.3d 1053 (7th Cir. 2016)).

On February 2, 2017, the District Court granted Defendants'/Respondents' motion to dismiss Plaintiffs'/Petitioners' complaint. On appeal, the Seventh Circuit affirmed the dismissal. (*Jones v. Markiewicz-Qualkinbush*, Case No. 17-1227, 892 F.3d 935 (7th Cir. 2018)).

On appeal, Petitioners argued that the Rule of Three violated their First Amendment right, as utilized by Respondents, by precluding any private citizens', including Petitioners', referendum questions from appearing on the ballot. Specifically, Petitioners have argued and continue to argue that Respondents, knowing Petitioners were in the process of obtaining sufficient signatures to get their referendum question

on the ballot, simultaneously passed a resolution approving three referendum questions and submitting them to the County Clerk before Petitioners could submit their question with supporting signatures in an effort to preclude Petitioners' question from appearing on the ballot. In short, Petitioners argue that Illinois did not have to expand its electoral process to give citizens the right to place referenda on the ballot, but when it did, it cannot avoid compliance with First Amendment strictures and permit governments to effectively censor that speech by permitting a system which would let governments quickly trump the citizens' competing speech every time.

In addition, Petitioner Jones argued below that Respondents purposefully utilized the Rule of Three to direct their mayoral term-limits referendum question and the other two referendum questions at him specifically, which constituted a violation of the Equal Protection Clause of the Fourteenth Amendment, in that this "political dirty trick" treated him as a prohibited class of one.

As to the First Amendment question, the Seventh Circuit reasoned that the ballot is not a public forum and there is no constitutional right to place referendum questions on the ballot. The Court continued, determining whether "the Rule of Three [is] an unconstitutional condition on the exercise of a state-created right." App. 6. The Court determined it is not, applying the rational basis test and determining the Rule of Three is rationally related to a legitimate state

objective in limiting the number of referendum questions on a ballot. App. 6-7.

As to Petitioner Jones's class-of-one claim, the Court applied the rational basis test and held that "[a] class-of-one claim cannot be used to attack political practices that are valid as a general matter but bear especially hard on one politician." App. 10. In essence, the Court reasoned that courts should not be the referees in ruling on political dirty tricks or the outcomes of same. The Court stated, "courts don't use the Equal Protection Clause to regulate the outcome" of political maneuvering. App. 8-9.

In addition, the Court applied the holding and reasoning of *Engquist v. Oregon Department of Agriculture*, 553 U.S. 591 (2008), to the case at bar to support its rejection of Petitioner Jones's class-of-one claim. The Court noted that *Engquist* "holds that a fired public employee cannot use a class-of-one claim to contest the discharge or otherwise to ask a federal court to govern management of the workplace." App. 9. The Court applied the reasoning of *Engquist* regarding "using constitutional law to regulate personnel management in a public workforce" in this situation involving political dirty tricks. App. 9-10. The Court weighed the benefits of a determination of a class-of-one claim as against the potential violation of the First Amendment as follows: "Any effort by the judiciary to stop one politician from proposing and advocating steps that injure another politician would do more to violate the First Amendment (the right to advocate one's view of good

policy is the core of free speech) than to vindicate the Equal Protection Clause." App. 10.

REASONS FOR GRANTING THE PETITION

I. AS TO CLASS-OF-ONE EQUAL PROTECTION CAUSES OF ACTION, THERE IS GREAT CONFUSION AND CONFLICT AMONG THE CIRCUIT COURTS, AS NOTED BY THE SEVENTH CIRCUIT, AS TO WHICH STANDARD APPLIES SINCE THIS COURT'S DECISIONS IN *VILLAGE OF WILLOWBROOK V. OLECH* AND *ENGQUIST V. OREGON DEPARTMENT OF AGRICULTURE*, AND IT IS UNCLEAR WHETHER THE HOLDING OF *ENGQUIST* WOULD APPLY TO PRECLUDE CLASS-OF-ONE EQUAL PROTECTION CLAIMS IN THE POLITICAL CONTEXT.

In its analysis of Petitioner Jones's class-of-one equal protection cause of action, the Court below relied on this Court's decision in *Village of Willowbrook v. Olech*, 528 U.S. 562 (2000), for the proposition that "governmental action in class-of-one situations requires a rational basis." Further, the Court below applied the reasoning of *Engquist v. Oregon Department of Agriculture*, 553 U.S. 591 (2008), which holds "a fired public employee cannot use a class-of-one claim to contest the discharge or otherwise to ask a federal court to govern management of the workplace" in a public employment setting, to the case at bar, which involves an individual precluded from running for mayor by

a government entity's purposeful utilization of the facially-neutral Rule of Three, in an election setting.

Prior to and since this Court's decisions in *Olech* and *Engquist*, the circuit courts have failed to reach any consensus as to the standard to be applied in class-of-one equal protection claim cases, and depending on the context. Some circuit courts have required plaintiffs to show evidence of some personal animus or intent to injure, while others have applied a strict rational basis review. *See, e.g.*, *SBT Holdings, LLC v. Town of Westminster*, 547 F.3d 28 (1st Cir. 2008) (malicious or bad faith intent to injure required); *Golodner v. City of New London*, 443 Fed.Appx. 622 (2d Cir. 2011) (rational basis); *Eichenlaub v. Township of Indiana*, 385 F.3d 274 (3d Cir. 2004) (rational basis); *Shipp v. McMahon*, 234 F.3d 907 (5th Cir. 2000) (overruled on other grounds by *McClendon v. City of Columbia*, 305 F.3d 314 (5th Cir. 2002)) (personal animus required); *Loesel v. City of Frankenmuth*, 692 F.3d 452 (6th Cir. 2012) (rational basis or personal animus required); *Mimics, Inc. v. Village of Angel Fire*, 394 F.3d 836 (10th Cir. 2005) (personal animus required).

In addition, some courts have extended this Court's decision and reasoning in *Engquist* to other contexts, while other courts declined to do so. *See, e.g.*, *United States v. Moore*, 543 F.3d 891 (7th Cir. 2008) (extended to prosecutorial discretion); *Adams v. Meloy*, 287 Fed.Appx. 531 (7th Cir. 2008) (extended to parole decisions/discretion); *Flowers v. City of Minneapolis*, 558 F.3d 794 (8th Cir. 2009) (extended to police officer discretion); *Douglas Asphalt Co. v. Qore, Inc.*, 541 F.3d

1269 (11th Cir. 2008) (extended to public contract bidding); *Analytical Diagnostic Labs, Inc. v. Kusel*, 626 F.3d 135 (2d Cir. 2010) (not extended to license revocation and suspension); *Hanes v. Zurick*, 578 F.3d 491 (7th Cir. 2009) (not extended to law enforcement discretion).

For example, due to the fact that the "law concerning 'class of one' equal-protection claims is in flux," the Seventh Circuit issued opinions in *Del Marcelle v. Brown County Corp.*, 680 F.3d 887 (7th Cir. 2012) (*en banc*), where the court, sitting *en banc*, affirmed the decision below as a result of being equally split. One group of jurists (Judge Posner's opinion, joined by Judges Kanne, Sykes, and Tinder) opined that the plaintiff should be required to show that "he was the victim of *discrimination intentionally visited on him by state actors who knew or should have known that they had no justification, based on their public duties, for singling him out for unfavorable treatment – who acted in other words for personal reasons, with discriminatory intent and effect*." *Del Marcelle*, *supra*, 680 F.3d at 889 (emphasis in original). In this opinion, the Seventh Circuit noted that this Court did not "mak[e] clear what role if any motive should play in such cases" in its affirmance in *Olech*, *supra*, 528 U.S. 562. *Id*., at 890. Additionally, the Court delineated the tension and confusion of the standards applied by different circuits in class-of-one cases. *Id*., at 892-93.

Judge Easterbrook, concurring in the judgment, opined that personal animus or motive has "no role at all" in the class-of-one equal protection analysis. *Id*., at

900. (It should be noted that Judge Easterbrook wrote the opinion at issue here). Judge Easterbrook explained that the absence of a rational basis would be determinative. *Id*.

The other group of jurists (Judge Wood, joined by Judges Flaum, Rovner, Williams, and Hamilton) opined that the plaintiff should be required to show: "(1) plaintiff was the victim of intentional discrimination, (2) at the hands of a state actor, (3) the state actor lacked a rational basis for so singling out the plaintiff, and (4) the plaintiff has been injured by the intentionally discriminatory treatment." *Id*., at 913. This group of jurists likewise delineated the different standards applied by different circuits in class-of-one cases. *Id*., at 912-13.

It is clear that there is tension and a lack of consensus among the circuits as to the standard to be applied in cases involving class-of-one equal protection claims.

Returning to the Court's opinion in this case below, the Court applied the rational basis test of *Olech* and applied the reasoning of *Engquist* to affirm the dismissal of Petitioners' claims. However, *Engquist* involved a public employee who claimed discrimination in her termination. *Engquist*, *supra*, 553 U.S. at 595. There, this Court ruled that a class-of-one claim may not be utilized to challenge public employment decisions. *Id*., at 594. It is not clear, particularly given the confusion among the circuits noted above, that the reasoning of *Engquist* should apply in this case, involving

utilization of a facially-neutral state statute to preclude a citizen's proposed binding referendum question to appear on a ballot in an elections context.

Further, it is not clear that the Court below engaged in any meaningful analysis of the state's rational basis for the Rule of Three. The Court below merely utilized *Engquist* to support its proposition that because this case arose in a political context (that use of the Rule of Three was a political dirty trick), that it would thereby be automatically precluded. In other words, it appears the Court below created an exception to class-of-one equal protection claims in the context of elections, by applying reasoning of a public employment context case (*Engquist*).

Given the clear confusion and inconsistent standards applied by the circuit courts in cases involving class-of-one equal protection claims, this Court should grant the petition in this case to provide the circuit courts and the legal community with some clear guidance as to the proper standard to be applied in this context.

II. AS TO THE CONSTITUTIONALITY OF THE RULE OF THREE, THE DECISION AND REASONING BELOW CONFLICTS WITH DECISIONS AND REASONING OF THIS COURT AND OTHER CIRCUITS AND PRIOR REASONING OF THE SEVENTH CIRCUIT.

In its analysis of the constitutionality of the Rule of Three, the Court below failed to address the

constitutionality of the Rule of Three *as applied* or purposefully utilized by Respondents to preclude Petitioners' binding referendum question from appearing on the ballot and allowing the voters to vote on it. The Court below found that because the Rule of Three was on its face viewpoint- or content-neutral, a rational basis analysis was required, rather than a First Amendment strict scrutiny analysis. Ultimately, the Court referred to *Georges v. Carney*, 691 F.2d 297 (7th Cir. 1982) to reject Petitioners' claim that the Rule of Three is unconstitutional. The rational basis analysis utilized by the Court below is contrary to strict scrutiny analysis called for by this Court and utilized by other circuits.

In *Georges*, the Seventh Circuit upheld the Rule of Three and the conduct of a county similar to the conduct of the City at issue here, but the reasoning there requires a strict scrutiny analysis here. There, the county used the Rule of Three to block an advisory referendum question obtained by citizens through the petition process calling for adoption of an endorsement to end the nuclear arms race by beating the citizens to the county clerk with three binding referenda. *Id*., at 300. Even though the Seventh Circuit upheld the Rule of Three in *Georges*, the Court explained its ruling was based on and limited to the facts presented in *Georges* and that the facts presented in the case at bar would raise a constitutional issue. *Id*., at 301. Specifically, the Court stated:

> This assumes that public bodies submit no advisory questions. The case would be different

> if they did – and particularly if, as a result, the challenged provisions of the Illinois Election Code could be viewed as a device by which the state (or county) was taking sides in the nuclear arms debate. . . . [I]f the DuPage County Board had submitted a question expressing opposition to a nuclear arms freeze while the plaintiffs were laboring vigilantly but hopelessly to get the necessary signatures for their question, a serious constitutional issue would be raised.

Id., at 301.

Here, the Court below appears to have ignored its own prior reasoning. The City Council took specific action to block the citizens' referenda on term limits and introduced its own competing term limits referenda. The *Georges* Court found that a constitutional question would be presented, requiring strict scrutiny, where a municipality presents a binding referendum question that squares off and blocks a binding referendum question proposed by citizens on the same issue, as is the case here. *Id*., at 301.

Even though a state has no obligation or duty to provide its citizens with an initiative or referendum process, once a state provides such a right to its citizens, it is "obligated to do so in a manner consistent with the Constitution because [the referendum process] involves 'core political speech.'" *Meyer v. Grant*, 486 U.S. 414, 420 (1988). While there are many cases addressing statutory limits placed on the referendum process and in which strict scrutiny is applied, and

decided since the Seventh Circuit's *Georges* opinion, there is no case from either this Court or any circuit court addressing the issue of limiting the number of binding referenda on a given ballot, either in terms of an alleged violation of First Amendment rights or an Equal Protection violation. *See, e.g.*, *Meyer*, *supra*, 486 U.S. 414; *Buckley v. American Constitutional Law Foundation*, 525 U.S. 182 (1999); *Yes on Term Limits, Inc. v. Savage*, 550 F.3d 1023 (10th Cir. 2008) (overturn Oklahoma prohibition on nonresident petition circulators); *Nader v. Blackwell*, 545 F.3d 459 (6th Cir. 2008) (overturn Ohio prohibition on nonresident circulators); *Libertarian Party of Virginia v. Judd*, 718 F.3d 308 (4th Cir. 2013) (overturn Virginia witness residency requirement). Such cases call for a strict scrutiny analysis in this case.

Strict scrutiny is applied in these process limitation cases because the referendum process, the process of citizens contacting other citizens and discussing political issues of public import, involves "core political speech." *Meyer*, *supra*, 486 U.S. at 414, 422-23. Further, "restrictions on this sort of 'core political speech' can affect the ultimate goal of ballot access." *Judd*, *supra*, 718 F.3d at 314, *citing Meyer*, *supra*, 486 U.S. at 422-23.

It is pointless to protect "core political speech" in the referendum process if in the end that process leads to a binding referendum question on the same issue that is purposefully and specifically blocked by a municipality via the Rule of Three and does not appear on the ballot. In other words, it is fruitless to protect the

referendum process, involving "core political speech," if a municipality may utilize the Rule of Three with impunity to run-around and preclude the results of that political process. As noted by Judge Cudahy in his dissent in *Georges*:

> I believe that the three question limit, combined with the first-come-first-served principle and the fact that local governing bodies can put questions on the ballot with simple resolution makes it both possible and likely that the [governmental board] will preempt the ballot spaces at its whim. And the Board can render the rights of private citizens who have obtained sufficient signatures, especially those citizens who espouse controversial causes, quite meaningless.

Georges, *supra*, 691 F.2d at 303.

Further, the Eleventh Circuit has had similar reservations about state statutory limitations: "We obviously would be concerned about free speech and freedom-of-association rights were a state to enact initiative regulations that were content based or had a disparate impact on certain political viewpoints. We also would be troubled were a state to apply facially neutral regulations in a discriminatory manner." *Biddulph v. Mortham*, 89 F.3d 1491, 1500 (11th Cir. 1996).

In addition, in *Smith v. Cherry*, 489 F.2d 1098 (7th Cir. 1973), the Seventh Circuit reversed the district court's granting of a motion to dismiss finding the conspiracy, as alleged by plaintiff, of the defendant Democratic Committeemen to keep plaintiff off of the ballot

as a candidate, stated a viable cause of action for a First Amendment violation claim. *Id*., at 1099-1100, 1103. There, plaintiff alleged the defendant Democratic Committeemen posited a sham candidate against him in the primary, who had no intention of running in the general election, thereby allowing the Committeemen to designate their choice, which was not plaintiff. *Id*., at 1100. The Court explained that "[t]his deception on the face of the ballot clearly debased the rights of all voters in the election. Such an abridgment of the right to vote is impermissible." *Id*., at 1102. The actions of the Committeemen "enabled [the candidate] to win an election he could not have won had he openly been on the ballot"; "the conspiracy worked 'in favor of the ins and against the outs.'" *Id*., at 1102, *quoting Shakman v. Democratic Organization*, 435 F.2d 267, 270 (7th Cir. 1970).

Here, the Seventh Circuit's application of a rational basis test runs contrary to a strict scrutiny analysis as called for by this Court and as applied by other circuits in referendum limitation cases. Thus, this Court should grant the instant petition to resolve the dispute as to whether a strict scrutiny or a rational basis analysis should be utilized. While the Court should not be a pawn in "political dirty tricks," laws permitting such tricks must fail when they trample on the constitutional guarantees.

CONCLUSION

The petition for writ of certiorari should be granted.

Dated: September 12, 2018

Respectfully submitted,

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