No. 21-

IN THE

Supreme Court of the United States

CLINT KRISLOV AND MICHAEL POWERS,

Petitioners,

v.

COOK COUNTY OFFICERS ELECTORAL BOARD, HON. KAREN A. YARBROUGH, BY SISAVANH BAKER, HON. KIMBERLY FOXX, BY JESSICA M. SCHELLER, AND HON. DOROTHY BROWN, BY MEREDITH HAMMER,

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

CLINTON A. KRISLOV
Counsel of Record
KENNETH T. GOLDSTEIN
KRISLOV & ASSOCIATES, LTD.
20 North Wacker Drive, Suite 1006
Chicago, IL 60606
(312) 606-0500
clint@krislovlaw.com

Counsel for Petitioners

306166

COUNSEL PRESS
(800) 274-3321 • (800) 359-6859

QUESTIONS PRESENTED

Whether federal courts recognize a public interest exception to mootness, such that Petitioners' challenge to the Cook County Election Board's policy refusing to accept statistical evidence of sufficient signatures showing should have been permitted to proceed, since the likelihood of signature challenges decided by narrow margins is certain to recur in virtually every year's ballot access?

Should Petitioners have been permitted to amend their complaint challenging Cook County's ballot procedures based on his denial of a position on the ballot?

Whether, in light of this Court's *Uzuegbunam v. Preczewski*, ___U.S.___, 141 S. Ct. 792 (2021) decision, holding that damages are presumed in Constitutional deprivation cases, the dismissal of a candidate's challenge to the County's existing procedures should be reversed, affording the candidate the opportunity to amend the complaint, in light of the candidate's intention to run for future office and likelihood facing a similar challenge?

Whether it is a violation of the First Amendment or Due Process to refuse to permit candidates' statistical evidence to prove their actual compliance with statutory signature requirements?

PARTIES TO THE PROCEEDING BELOW

Petitioners are Clint Krislov and Michael Powers.

Respondents are the Cook County Officers Electoral Board, Hon. Karen A. Yarbrough (Cook County, Illinois, Clerk), Hon. Kimberly M. Foxx (Cook County, Illinois, States Attorney) and Hon. Dorothy A. Brown (Cook County, Illinois, Clerk of the Circuit Court) (in their public official capacities).

CORPORATE DISCLOSURE STATEMENT

There are no parent corporations or publicly held companies in this case.

RELATED PROCEEDINGS

Krislov v. Yarbrough, 20-1928, United states Court of Appeals for the Seventh Circuit. Judgement Date – February 22, 2021.

Krislov, Power v. Cook County Officer Electoral Board, et al, No. 20 C 469, United States District Court, of the Northern District of Illinois, Eastern District (Kendall, J.) Judgment Date – May 4, 2020.

TABLE OF CONTENTS

Table of Contents

Table of Contents

TABLE OF APPENDICES

Page

TABLE OF CITED AUTHORITIES

Page

Cases

Page

Cited Authorities

Page

Page

Page

Page

Page

Statutes and Other Authorities

Clint Krislov and Michael Powers respectfully petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the Seventh Circuit in this case.

OPINION BELOW

The opinion of the Court of Appeals for the Seventh Circuit, is reported at *Krislov v. Yarbrough*, 988 F.3d 975 (7th Cir. 2021), and is reprinted in the appendix hereto at 1a.

The opinions of the United States District Court, of the Northern District of Illinois, Eastern District (Kendall, J.) granting and entering judgment for Cook County Officers Electoral Board, *et al,* is reprinted in the appendix hereto at 7a and 11a (the March 10, 2020, final decision and judgment of the U.S. District Court for the Northern District of Illinois and denial to vacate May 4, 2020).

STATEMENT OF JURISDICTION

The District Court had jurisdiction as a civil action arising under the laws of the United States pursuant to: (i) 42 U.S.C. §1983 to redress the deprivation under color of law of Plaintiffs' rights as secured by the United States Constitution and applicable State law, (ii) 28 U.S.C. §1331 (federal question) for the federal claim and (iii) over the State law claim by 28 U.S.C. §1367(a) (Supplemental Jurisdiction over other claims that are so related that they form part of the same case or controversy).

The Appellate Court had jurisdiction pursuant to 28 U.S.C.§1291. The Opinion of the Seventh Circuit Court of Appeals was entered February 22, 2021.

Jurisdiction of the Supreme Court of the United States to review the judgment of the Seventh Circuit is invoked under 28 U.S.C. §1254(1). On March 19, 2020 and April 15, 2020 the Court extended the deadline to file petitions for writs of certiorari in all cases to 150 days from the lower court judgment, and modified/rescinded that order on July 19, 2021 – per these Orders, this Petition is timely.

STATUTES INVOLVED

42 U.S.C. §1983:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

U.S. Constitution - Amendment I

> 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.

Amendment XIV - Section 1.

> 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.

STATEMENT OF THE CASE

Plaintiff Krislov was a candidate for the Democratic nomination for the Illinois Supreme Court in the March 17, 2020 primary election. Plaintiff Powers is one of the circulators and signers of petitions supporting Krislov's candidacy for the March 17, 2020 primary election.

In compliance with Illinois election laws requiring 5,050 registered voter signatures, Krislov submitted 9,555 signatures of voters supporting his candidacy for Illinois Supreme Court Justice in the March 17, 2020 Illinois

primary election. Krislov's signature petitions were challenged by "objectors" funded by one of his opponents, who chose not to disclose his identity.[1]

The "objectors" challenged thousands, virtually all of Krislov's signatures and registrations. In the process, which occurs over a very short time, the challengers succeeded in challenging 4,601 signatures, leaving 4,954 valid, or 108 (2.01%) short of the 5,050 required signatures.

Krislov challenged the on the fly/seat of the pants determination process used in Cook County, in which minimally trained evaluators are forced to make expert evaluative examination decisions in very short order, without objective standards, ("It's just a matter of judgment"[2] and "there's no going back") and with no consideration for the actual statistical margins of error.

Both the hearing officer and the defendant Hearing Board rejected Krislov's challenges to this process as not assertable in that proceeding, and rejected as well, Krislov's offer of statistical evidence to show that Krislov's

1. Illinois State Election Board filings subsequently show that this was funded by competing candidate Sheldon Harris, who, despite spending over a hundred thousand of dollars to knock Krislov from the ballot, and more than $1.8 million in commercials, https://www.elections.il.gov/CampaignDisclosure/ItemizedExpenditures.aspx?FiledDocID=trPWfoWMyVoRiSGCqxoeVQ%3d%3d&ExpenditureType=VAImtPqPgy1OCIplmE2dX9gBL3kY%2blD4r9uiFqDOEbc%3d) nonetheless came in a distant third place in the March 17, 2020 primary election.

2. *E.g.*, one voter signing as "Betsy" was rejected because she was registered as "Elizabeth" as was an "Anastacia" signing as "Stacy".

presented signatures were sufficient, when considered within the margin of error rate for Professional Document Examiners, using actual objective standards, at least 2.97%, 3.4% to 6.97%, plus or minus, (showing significantly higher error rates in rejecting valid signatures, than for accepting invalid signatures, and contrasted with the error rate for lay personnel, such as those who do the Cook County evaluation, which is actually plus or minus 19%).

Thus, considering even the most stringent margin of error for Professional Document Examiners, Krislov's offered proof showed that he should have been statistically regarded as having submitted the necessary 5,050 signatures to secure his place on the ballot, such that he and his supporters have been deprived of their First Amendment rights of ballot access. *See*, *Krislov v. Rednour*, 226 F.3d 851 (7th Cir. 2000) (invalidating restrictions on petition circulators) and *Moy v. Cowen*, 958 F.2d 168 (7th Cir. 1992).

Since pursuing these challenges within the Cook County review would have been futile and untimely in its impact, Krislov and Powers sued in the United States District Court, asserting that the Cook County procedures violate the First Amendment's ballot access protection, with Supplemental Jurisdiction under 28 U.S.C. § 1367(a) for the State law claims.

The County defendants moved to dismiss the complaint, as lacking federal jurisdiction. Following delays for the initially assigned judge's *sua sponte* recusal and reassignment of the case, the Honorable Virginia M. Kendall, U.S. District Judge on March 10, 2020, after briefing, rejected the First Amendment claim, dismissed

the complaint but commented that Krislov's claim might have rather been asserted as a due process claim:

> But Plaintiffs do not apparently dispute the constitutionality of Illinois's statutory signature requirements; instead, they complain that the means by which the Board invalidated signatures was unlawful because: (1) "the records examiners have little training," or "special expertise", (2) there was a "lack of an objective standard" applied to the review of signatures, and (3) "the shortfall is well within the margin of error" such that the total number of accepted signatures should suffice. These objections do not sound in First Amendment law, but rather in state administrative law.[5]
>
> [5]Krislov might have some sort of Due Process claim, but he does not allege a Due Process claim, and the Court has received no briefing on whether the facts alleged state such a claim.

Accordingly, on April 3, 2020, Krislov and Powers moved to vacate the dismissal and amend the Complaint, to assert it as a Due Process claim), which Judge Kendall denied May 4, 2020, as moot.

Krislov and Powers thereupon filed a timely Notice of Appeal on June 2, 2020.

The United States Court of Appeals for the Seventh Circuit on February 22, 2021, ignoring the offered evidence showing erroneous exclusions to be far greater than erroneous exclusions, declared the dispute moot,

vacated the judgment of the district court and remanded with instructions to dismiss for lack of a justiciable controversy.

REASONS FOR GRANTING THIS PETITION FOR CERTIORARI

Statistical accuracy of ballot access petitions is a recurring issue facing candidates nationwide in all election cycles, such that this court should grant review to determine whether ballot petition boards must permit the submission of statistical evidence showing a candidate's having satisfied the minimum indicia of support to be on the ballot, such that the public interest exception to mootness should have been recognized by the courts below.

Alternatively, it would be appropriate to issue a "GVR" order, remanding with instructions to permit the plaintiffs' requested leave to amend their Complaint, in light of this court's recent decision in *Uzuegbunam v. Preczewski*, ___U.S.___, 141 S. Ct. 792 (2021), such that an amendment seeking nominal damages would have sufficed for justiciability.

I. Ballot access is a nationwide concern, impacting fundamental rights in which those seeking office must be afforded the opportunity to statistically show their having attained the necessary number of signatures.

Ballot access litigation arises in every election cycle, and the ability to statistically demonstrate a candidate's fulfillment of the signatures necessary to appear on the ballot presents a fundamental right.

The Seventh Circuit's holding that the public interest exception to mootness applies only if the particular plaintiff can show that the shortfall in this candidate's *next* petition effort will be sufficiently narrow to require statistical evidence of compliance and satisfaction, is far too limiting, such that a petitioner need only show, as here, that he will likely be subjected to similar challenges in future election cycles.

II. Mootness and the Public Interest Exception to Mootness.

While most States recognize a public interest exception to mootness, the Seventh Circuit's total rejection of the concept as *federaly* nonjusticiable needs to be addressed by this court.

The public interest exception is especially well-recognized in ballot petition signature disputes, and has been recognized by this Court:

> We may exercise jurisdiction over this action if "'(1) the challenged action [is] in its duration too short to be fully litigated prior to its cessation or expiration, and (2) there [is] a reasonable expectation that the same complaining party would be subjected to the same action again.'" *Murphy* v. *Hunt*, 455 U.S. 478, 482, 71 L. Ed. 2d 353, 102 S. Ct. 1181 (1982) *(per curiam)*, quoting *Weinstein* v. *Bradford*, 423 U.S. 147, 149, 46 L. Ed. 2d 350, 96 S. Ct. 347 (1975) *(per curiam)*

Meyer v. Grant, 486 U.S. 414, 417 n.2 (1988).

And recognized by other federal Circuits[3] in ballot access/petition signature cases, and Illinois as well. [4]

1. *Every* election cycle has someone who ostensibly "comes up short" by a very small number of signatures, whose count is almost never reliably certain, and should be permitted to offer evidence of statistical margins to prove their having produced their necessary signatures. A candidate's ballot access is a fundamental right, and different from disputes over the final election vote count.

Supporting a heightened level of scrutiny, *Tripp v. Scholz*, 872 F.3d 857, 862-64 (7th Cir. 2017) holds, "*It is well-settled that '[t]he impact of candidate eligibility requirements on voters implicates basic constitutional rights' to associate politically with like-minded voters and to cast a meaningful vote.*" (Emphasis added)[5].

---

3. *See*, e.g., *Pool v. City of Houston*, -F.3d-, 2020 U.S. App. LEXIS 33581, 2020 WL 6253444 (5th Cir. October 23, 2020) (reversing dismissal and remanding for circulators' concerns about signature requirements in future elections), and *Reclaim Idaho v. Little*, -Fed. Appx.-, 2020 U.S. App. LEXIS 27832, 2020 WL 5202080 (9th Cir. Sept. 1, 2020) (remanding for the parties' opportunity to brief or develop the record below on the likely recurrence of the in-person signature controversy in the November 2022 future election).

4. *Jackson-Hicks v. East St. Louis Bd. Of Election Commrs.*, 2015 IL 118929

5. *Citing*, *Stone v. Bd. of Election Comm'rs for City of Chi.*, 750 F.3d 678, 681 (7th Cir. 2014) (*quoting Anderson v. Celebrezze*, 460 U.S. 780, 786, 103 S. Ct. 1564, 75 L. Ed. 2d 547 (1983).

Different from an election vote count (where the final number determines the winning candidate), a candidate aspiring to the ballot can be reasonably required to demonstrate his/her attaining the necessary modicum of support to be on the ballot[6].

And, that is why in the vast number of federal decisions, where the issue is whether a required quantity had been met, statistical margins of error must be permitted, in order to accurately determine whether the required standard has been met.

A long line of cases recognize that structural ballot access obstacles inherently implicate the First Amendment:

> A plethora of cases have resolved that a state's regulation of procedures for nominating candidates to appear on an election ballot implicates the First Amendment, see *Anderson v. Celebrezze*, 460 U.S. 780, 75 L. Ed. 2d 547, 103 S. Ct. 1564 (1983), due process, see *Briscoe v. Kusper*, 435 F.2d 1046 (7th Cir. 1970); and equal protection, *Illinois Elections Board v. Socialist Workers Party*, 440 U.S. 173, 59 L. Ed. 2d 230, 99 S. Ct. 983 (1979); *Gjersten v. Board of Election Commissioners*, 791 F.2d 472 (7th Cir. 1986), rights of individuals who sign

6. The reality is that most restrictions to ballot access are imposed by the "regular" political organizations, seeking to raise the barriers against entry by "non-organization" candidates and their supporters, and should be subjected to strict scrutiny in most cases. *See:* Cofsky, Pruning the Political Thicket: The Case for Strict Scrutiny of State Ballot Access Restrictions, 145 Univ. of Pennsylvania L. Rev. 353 (1996).

> nominating petitions. Plaintiffs here claim that the Illinois election rules, and the actions of the Electoral Board in enforcing them, violated these rights. Accordingly, plaintiffs have standing to bring this action. See, e.g., *Citizens for John W. Moore v. Board of Election Commissioners*, 794 F.2d 1254 (7th Cir. 1986).

Johnson v. Cook County Officers Electoral Bd., 680 F. Supp. 1229, 1230 (N.D. Ill. 1988).

2. The procedures for challenging petition signatures are a recurring problem in every election cycle.

This case challenges the process by which candidate's signatures are challenged in each cycle. Although the Krislov candidacy's competitive viability was irreparably harmed for the March, 2020 primary election, the issue of whether the process violates his, and his supporters' First Amendment rights, remains a viable claim, and the issue is certain to recur.

It is also clear that challenges to the electoral system on First Amendment grounds should not be mooted or depend on whether the candidate remains in the race or not. *Krislov v. Rednour*, 226 F.3d 851 (7th Cir. 2000).[7]

---

7. *Milwaukee Police Ass'n v. Board of Fire & Police Commissioners of Milwaukee*, 708 F.3d 921, 931 (7th Cir. 2013) denying standing case did not fall within the standard capable of repetition, yet evading review doctrine with deep analysis of exception for "mootness when a suit challenges a policy with the kind of lasting effects discussed in *Super Tire Engineering Co. See, e.g., Reno v. Bossier Parish Sch. Bd.*, 528 U.S. 320, 327-28,

Indeed, the issue is likely to recur in the future, numerous candidates get challenged and/or knocked off the ballot each election cycle.[8]

The well-accepted "capable of review, yet evading review" exception in *Gill v. Scholz*, 962 F.3d 360, 363 n.3 (7th Cir. 2020) applies here. ("Although the appeal of the stay was dismissed as moot, a justiciable controversy remained under the "capable of repetition, yet evading review" doctrine. Under that well-recognized exception to mootness, a claim still presents a justiciable controversy if "(1) the challenged action is in its duration too short to be fully litigated prior to cessation or expiration, and (2) there is a reasonable expectation that the same complaining party will be subject to the same action again."). The rule applied there because Gill was "unable to litigate his claims before the November 2016 election was held, and he has expressed his intent to run for office in 2020." *Id.*

---

120 S. Ct. 866, 145 L. Ed. 2d 845 (2000) (declaratory judgment on the propriety of electoral redistricting is not moot, even when the next election will not occur until after data from the next census becomes available, because the previous redistricting, if valid, will form the baseline upon which to judge future redistricting), *superseded on other grounds by statute*, 42 U.S.C. § 1973c(c); *Del Monte Fresh Produce Co. v. United States*, 570 F.3d 316, 321 (D.C. Cir. 2009)("a plaintiff's challenge will not be moot where it seeks declaratory relief as to an ongoing policy")."

8. *See, e.g.* Hearing Officer recommends Ald. Anthony Beale be kicked off March committeeperson ballot, Chicago Sun Times, January 14, 2020: https://chicago.suntimes.com/elections/2020/1/14/21065676/anthony-beale-committeeperson-petition-challenge-march-ballot and see: https://www.injusticewatch.org/news/2020/supreme-court-candidate-krislov-9-other-judicial-candidates-off-ballot-after-signature-disputes/

The issue remains and recurs that a challenge to the Illinois State and local procedures which stand as obstacles to candidates' access to the ballot, and which will be faced by this Plaintiff, future candidates and their supporters in future election cycles meets the public interest exception. Indeed, this satisfies *Tobin*'s "capable of repetition" exception, because there is a "reasonable expectation that the same complaining party will be subjected to the same action again" (*Tobin for Governor v. Ill. Bd. of Elections*, 268 F.3d 517, 529 (7th Cir. 2001)), and the Court below has itself previously ruled that Krislov's intention to run in the future is sufficient to defeat mootness and preserve justiciability:

> As to mootness, everyone concedes the obvious, that the date of the primary election in which Krislov and Sullivan wished to participate has long since passed. Nevertheless, because the use of non-resident, non-registered solicitors is still prohibited by Illinois with respect to future elections, this case is capable of repetition yet evading review, a recognized exception to the mootness doctrine. *Rosario v. Rockefeller,* 410 U.S. 752, 756 n.5, 36 L. Ed. 2d 1, 93 S. Ct. 1245 (1973) (case was not moot although date of primary had passed and plaintiffs were eligible to participate in the election where their case was capable of repetition but likely to evade review); *Patriot Party of Allegheny County v. Allegheny City of Dept. of Elections,* 95 F.3d 253, 257 (3d Cir. 1996). This exception to the mootness doctrine is applicable, as in the present case, where the challenged situation is likely to recur and the same complaining party

> would be subjected to the same adversity. *In re Associated Press,* 162 F.3d 503, 511 (7th Cir. 1998); *Orion Sales, Inc. v. Emerson Radio Corp.,* 148 F.3d 840, 842 (7th Cir. 1998). Because at least Krislov has articulated an interest in pursuing the Democratic Party's nomination for other elective offices, we have no doubt that this case meets these requirements. Hence, the candidates have standing to bring this action and mootness is not a bar to the suit.

Krislov v. Rednour, 226 F.3d 851, 857-58 (7th Cir. 2000).

3. The Challenge to the Process distinctly survives even if this candidacy ends.

As this Court has explicitly declared[9], while the candidate's challenge to the decision on *the instant* candidacy might be required to proceed in the State system, *the* candidate's *challenge to the State's procedures and requirements* may be asserted in a federal district court proceeding:

> [6B]The remaining allegations in the complaints, however, involve a general attack on the constitutionality of Rule 46I(b)(3). See n. 3, *supra*. The respondents' claims that the rule is unconstitutional because it creates an irrebuttable presumption that only graduates of accredited law schools are fit to practice law,

9. The Rooker-Feldman doctrine. *See Rooker v. Fidelity Trust Co.*, 263 U.S. 413 (1923) and *District of Columbia v. Feldman*, 460 U.S. 462 (1983)

> discriminates against those who have obtained equivalent legal training by other means, and impermissibly delegates the District of Columbia Court of Appeals' power to regulate the bar to the American Bar Association, do not require review of a judicial decision in a particular case. The District Court, therefore, has subject-matter jurisdiction over these elements of the respondents' complaints. *D.C. Court of Appeals v. Feldman*, 460 U.S. 462, 487, 103 S. Ct. 1303 (1983)[10]

III. Statistical Issues: Where numerical standards are applied, virtually all courts recognize that statistical margins of error must be considered.

In virtually all other situations where numerical standards are applied, federal and state courts at all levels recognize that they must consider the statistical margins of error: *See Patino v. City of Pasadena*, 230 F.Supp.3d 667, 688 n.6 (S.D. Texas 2017) (Lee H. Rosenthal USDJ) ("margins of error [in calculating voter numbers] must be taken into account" for voter redistricting map); *In re Countrywide Fin. Corp. Mortgage-Backed Secs. Litig. v. Countrywide Fin. Corp.*, 984 F.Supp.2d 1021, 1029, esp. n.5 (C.D. Cal. 2013) (samplings of securitizations, analysis of numerous experts with varying margins of error); *Williams v. Allstate Ins. Co.*, 2017 Cal. App. Unpub. LEXIS 8510 (Cal. App. 2d Dist. 2017) (wage and hour

10. The "Rooker" portion of the doctrine merely held that the review of a decision of the Indiana Supreme Court between two parties was reviewable only by certiorari, rather than an original challenge in a federal district court. *Rooker v. Fid. Tr. Co.*, 263 U.S. 413 (1923).

class action, analysis of varying sample sizes to reach acceptable confidence level and margin of error); *Bell v. Farmers Ins. Exchange*, 115 Cal. App. 4th 715, 723 and 753 (Cal. App. 1st Dist. 2004) (wage and hour overtime; need for evaluation of appropriate class size, margin of error); *Bushnell v. State*, 5 P.3d 889 Ct. of App. Alaska (2000) (acceptable margin of error in blood alcohol testing instrument; and dissent noting, that "failure to apply the inherent margin of error in favor of the person subject to license revocation violates due process, citing *Haynes v. Dept of Public Safety*, 865 P.2d 753, at 756 (Alaska 1993)); *Conn. Light & Power Co. v. Conn. Dep't of Pub. Util. Control*, 2010 Conn. Super. LEXIS 321 (Conn. Superior Ct. 2010) (critical elements of the margin of error calculation in rate litigation, remand for review of margin of error calculation.); *United States v. Wilson*, 170 F.Supp.3d 347 (E.D.N.Y. 2016) (margin of error in IQ test score in federal death penalty case); *Hall v. Florida*, 572 U.S. 701 (2014) (where defendant IQ test fell within margin of error, defendant should be able to present additional evidence of intellectual disability); *Motor Vehicle Admin. v. Lytle*, 374 Md. 37 (Ct. of App. Md. 2002) (describing split among State Supreme Courts over whether to require adjustment of tested person's Blood Alcohol Content by standard 0.01 margin of error; sides with State in this situation due to interest in safety and speedy testing); *Smith v. Schriro*, 813 F.3d 1175 (9th Cir. 2016) (margin of error in evaluating defendant's intellectual disability); *McDaniel v. DOT* (*In re McDaniel*), 2010 Ida. App. LEXIS 72 (Idaho App. 2010) (margin of error in breathalyzer); *State v. Escalante-Orozco*, 241 Ariz. 254 (Ariz. Sup. Ct. 2017) (death penalty case courts must consider the margin of error for each IQ test, regardless of number of tests); *Cochran v. Schwan's Home Service, Inc.*, 228 Cal. App. 4th 1137 (Cal App. 2d

Dist. 2014) (employee wage claim class action; evaluation of sampling-based conclusion must consider whether margin of error in the statistical analysis is reasonable); *People v. Axell*, 235 Cal. App. 3d 836 (Cal. App. 1991) (murder case, DNA analysis took into account a margin for error in measurement, so admittance into evidence affirmed.); and *State v. Finch*, 291 Kan. 665 (Supreme Ct. Kansas 2011) (DUI breathalyzer reversed for trial court's refusal to permit defendant to mount a margin of error defense).

Margin of error statistical analysis is also recognized and accepted "in cases in which the existence of discrimination is a disputed issue." *Chavez v. Illinois State Police*, 251 F.3d 612, 637-38 (7th Cir. 2001) ("While few opinions directly acknowledge that statistics may be used to prove discriminatory effect, the Court has repeatedly relied on statistics to do just that.") *citing, Int'l Bhd. of Teamsters v. United States*, 431 U.S. 324, 339 (1977).

A. The Defendants' current signature challenge process fails the standard of Strict Scrutiny with a preference in favor of the candidate seeking access to the ballot.

In ballot access cases, the courts routinely apply strict scrutiny analysis to State restrictions:

> "the burden on Plaintiffs' rights is so severe that Strict scrutiny applies. But even if strict scrutiny does not apply, the States' interest in regulating presidential elections is not sufficiently important to warrant the restrictions imposed."

Green Party of Georgia v. Kemp, 2016 WL, 1057022,19 (U.S. Dist. Ct, N.D. GA 2016).

> In determining whether a burden on ballot access is severe,
>
> "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, 1152 (7th Cir. 1980) citing *Storer*, 415 U.S. at 742).

Stone v. Bd. Of Elections Comm'rs of City of Chicago, 750 F.3d 678-82 (7th Cir 2014).

B. Need for uniform rules with a presumption in favor of the challenged candidate.

The Constitution's First and Fourteenth Amendment protections are for *candidates'* meaningful access to the ballot, invalidating severe restrictions on obstacles to ballot access, balanced against a State's interest in orderly elections with reasonable showing of a candidate's support. *See Tripp. v. Smart*, 2016 U.S. Dist. LEXIS 109216 (S.D. Ill. August 17, 2016) that challengers have no Constitutional right to block another person from the ballot; *Moy v. Cowen*, 958 F.2d 168, 170-171 (7th Cir. 1992). Here, where the Court would apply a high level of judicial review, it is inconceivable that Krislov's signatures were so deficient that thousands of signatures were found invalid.

IV. Leave to Amend should have been granted under common circuit rules, and since amendment would have sufficed under *Uzuegbunam v. Preczewski*, ___U.S.___, 141 S. Ct. 792 (2021).

Denying leave to amend even once is contrary to most Circuit law, especially where it would not be futile, and herein, in light of the District Court's own view that a due process claim could be asserted (and futher underscored by the fact that this was early in the case, before anything has been done that would make such an amendment prejudicial). *Runnion v. Girl Scouts of Greater Chi. & Nw. Ind.*, 786 F.3d 510 (7th Cir. 2015).

But merely asserting what the court considered as the *wrong* cause of action is not a basis for dismissal at all. A federal complaint need not allege the right cause of action; it need only allege facts that can support a claim for recovery. *Whitaker v. Milwaukee County*, 772 F.3d 802, 808 (7th Cir. 2014); *King v. Kramer*, 763 F.3d 635 (7th Cir. 2014).

CONCLUSION

Accordingly, this court should grant the petition, vacate and reverse the dismissal below, and remand with instructions to permit Plaintiffs to amend their Complaint, seeking a declaration that the County Board's petition challenge procedures, in order to be valid, must adopt uniform signature challenge standards, with the burden on the challenger, and with consideration for statistical margins of error, with nominal damages, per *Usuegbunam v Preczewski*.

Dated: July 22, 2020

Respectfully submitted:

Clinton A. Krislov
Counsel of Record
Kenneth T. Goldstein
Krislov & Associates, Ltd.
20 North Wacker Drive,
Suite 1006
Chicago, IL 60606
(312) 606-0500
clint@krislovlaw.com

Counsel for Petitioners

APPENDIX

APPENDIX A — OPINION OF THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT, FILED FEBRUARY 22, 2021

UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

No. 20-1928

CLINTON A. KRISLOV AND MICHAEL POWERS,

Plaintiffs-Appellants,

v.

KAREN A. YARBROUGH, CLERK OF COOK COUNTY, ILLINOIS, *et al.*,

Defendants-Appellees.

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.
No. 20 C 469. **Virginia M. Kendall**, *Judge.*

February 18, 2021, Argued;
February 22, 2021, Decided

Before EASTERBROOK, WOOD, and ST. EVE, *Circuit Judges.*

EASTERBROOK, *Circuit Judge.* In March 2020 Clinton Krislov sought to run in the Democratic primary for a position on the Supreme Court of Illinois. To get on

the ballot he needed 5,050 valid signatures, or 0.4% of the votes cast in the same district for the same party's candidate in the most recent gubernatorial election. 10 ILCS 5/7-10(h). He submitted about 9,500 signatures, but many were ruled invalid and his total fell about 100 short. (Six other candidates passed the mark.) Krislov could have protested the election officials' decision in state court, which is required by law to render a prompt decision. 10 ILCS 5/10-10.1(a). Instead he sued in federal court, contending that Illinois violated the Constitution by not giving him the benefit of the doubt. Krislov contends that even professional document examiners have an error rate in authenticating (or not) signatures purporting to be those of registered voters, and that falling 100 signatures short of 5,050 is within the margin of error for document examiners. Krislov also observed that the people who examine signatures in Illinois are not professionals and doubtless have higher error rates (though in a large sample false negatives and false positives may offset).

The district court saw this as a state-law challenge to a state-law requirement, which Krislov had forfeited by not using his state remedies. The judge observed that "close enough for government work" is not an available doctrine in Illinois, which requires candidates to submit all of the required signatures. *Jackson-Hicks v. East St. Louis Board of Election Commissioners*, 2015 IL 118929 ¶31, 390 Ill. Dec. 1, 28 N.E.3d 170 (S. Ct. Ill. 2015). Someone worried about the inevitable errors in examining signatures can gather more. Instead of stopping with 0.7% of the votes for the Democratic candidate in the last race for Governor, Krislov could have gathered 1% of that

number, the better to ensure that the signatures deemed valid met the 0.4% threshold. The Supreme Court has held that a state does not violate the Constitution by requiring a would-be candidate to present signatures equal to 5% of the total electorate. *Jenness v. Fortson*, 403 U.S. 431, 91 S. Ct. 1970, 29 L. Ed. 2d 554 (1971). A requirement of 0.4% of one party's turnout in an election is *much* lower than 5% of all registered voters, so a candidate can't have a constitutional objection to a state law that may induce someone to gather 1% of the party's votes in a recent election. The federal Constitution does not require states to ensure that their laws are accurately administered. An error of state law is just that—an error of state law. See, e.g., *Snowden v. Hughes*, 321 U.S. 1, 11, 64 S. Ct. 397, 88 L. Ed. 497 (1944); *Davis v. Scherer*, 468 U.S. 183, 192-96, 104 S. Ct. 3012, 82 L. Ed. 2d 139 (1984); *Nordlinger v. Hahn*, 505 U.S. 1, 16 n.8, 112 S. Ct. 2326, 120 L. Ed. 2d 1 (1992).

By the time the case had been briefed and argued in this court, the election was over. That poses the question whether the suit, which seeks only injunctive relief, is moot. Krislov contends that there is a "public interest" exception to the requirement that a suit remain justiciable at all times, but he does not cite any federal source for this supposed exception. Accurate adjudication always is in the public interest—as is accurate administration of state law—but that does not mean that federal courts can proceed even if the plaintiff lacks standing or the proposed remedy would not redress the plaintiff's injury. State courts may be authorized to act in the absence of a live controversy; federal courts are not.

Consider *Carney v. Adams*, 141 S. Ct. 493, 208 L. Ed. 2d 305 (2020). The Supreme Court granted review to resolve a dispute about the constitutionality of Delaware's requirement that its judicial system reflect partisan balance—that no more than a bare majority of judges belong to one political party and that, for three courts, all judges be either Democrats or Republicans. But the Court did not reach the merits. James Adams, the plaintiff, switched his registration to Independent so that he could try to contest the state's rules. But he could not show any prospect of appointment to any of the courts in the foreseeable future, no matter his party affiliation, so the Court held that he lacks standing and dismissed the suit without reaching the merits. If there were a "public interest" exception to the justiciability rules, the Court would have decided the constitutionality of Delaware's laws. But there isn't, so it didn't.

Krislov, unlike Adams, is ready, willing, and able to run for judicial office in the future. But whether he will be affected by the 0.4% signature requirement (or the means by which Illinois administers it) is uncertain. To contest that requirement now, in the absence of a fight about how it affects a run for office, Krislov must satisfy the requirements of the doctrine under which a dispute does not become moot if it is capable of repetition yet bound to evade review. See, e.g., *Meyer v. Grant*, 486 U.S. 414, 417 n.2, 108 S. Ct. 1886, 100 L. Ed. 2d 425 (1988). He says that this dispute is capable of repetition because hundreds of candidates need to gather signatures in every election cycle, and some of those signature-gathering efforts are sure to fall just short. But the question is not whether the

issue will matter to *someone*, but whether it will matter *to him, in particular*. See *Weinstein v. Bradford*, 423 U.S. 147, 96 S. Ct. 347, 46 L. Ed. 2d 350 (1975).

For this dispute to recur with respect to Krislov, he has to run again. We accept his word that he will do so—though there may not be another opening in the First District, where Krislov resides, until 2028. (Justices of the Supreme Court of Illinois are elected from districts for ten-year terms. The term of one Justice from the First District expires in 2022, but she is eligible to run for retention, and if she gathers enough votes her term will be extended until 2032.) We also accept Krislov's assertion that other candidates, or their supporters, are bound to contend that he has not gathered enough valid signatures. Still, for the current dispute to recur, Krislov would have to stop short of gathering enough signatures (say, 1% of the number cast for a Democrat in the First District in the 2026 gubernatorial election) to be confident of surviving a challenge—and, what's more, the outcome of his effort would have to come *so* close to the line (say, 0.4% ± 0.02%) that it would be within the margin of error to be expected if all signatures were to be vetted by professional document examiners. Krislov has not tried to estimate the chance that this would occur. That likelihood seems to us as low as the probabilities deemed insufficient in *Carney* and *Weinstein*.

Suppose that the signature count in Krislov's next candidacy again comes quite close to the 0.4% mark. The exception to the mootness rule also requires that a legal dispute be incapable of review when it next arises.

Contests to the number of signatures raised to get on the ballot are routinely resolved before ballots are printed. The dispute about Krislov's own candidacy was resolved in 2020 by the Cook County Officer's Electoral Board with time to spare, and Krislov was entitled to prompt review in state court. He told us at oral argument that he abjured state court because he was sure that he would lose. Yet having a dim view of one's prospects differs from inability to obtain timely review.

Because the 2020 election season is over, Krislov is entitled to decision in federal court only if the legal issues that arose in 2020 are both capable of repetition with respect to Krislov personally and bound to evade judicial review if they recur. He has not satisfied either of these requirements, so this litigation is moot. We vacate the judgment of the district court and remand with instructions to dismiss for lack of a justiciable controversy.

APPENDIX B — ORDER OF THE UNITED STATES DISTRICT COURT, NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION, FILED MAY 4, 2020

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

No. 20 C 469

CLINT KRISLOV, MICHAEL POWERS,

Plaintiffs,

v.

COOK COUNTY OFFICERS
ELECTORAL BOARD, *et al,*

Defendants.

Judge Virginia M. Kendall

ORDER

On March 10, 2020, the Court granted Defendants' Motion to Dismiss Plaintiffs' two-count Complaint because neither count stated a claim upon which this Court can grant relief. (Dkt. 17.) Specifically, the rule requiring candidates to acquire a fixed number of signatures in order to gain ballot access does not violate the First Amendment, and Plaintiffs needed to have filed their 10 ILCS 5/10-10.1 claim in state court. In the Order dismissing the case, the Court noted

that Plaintiffs' contentions about the process Defendants used to invalidate signatures read more like a Due Process claim but that the Complaint included no Due Process count. (Dkt. 17 at p. 5 n. 5.) Illinois held its primary election on March 17, 2020, and Krislov did not appear on the ballot. Now Plaintiffs move to vacate the Court's dismissal of their Complaint and entry of judgment in order to file an amended complaint raising a Due Process claim. For the reasons set forth below, the Motion to Vacate (Dkt. 19) is denied.

The election for which Krislov sought placement on the ballot has come and gone. Ordinarily, that would mean that this case is moot because there is no way for the Court to grant the requested injunctive relief. Some election-related disputes, however, fall under the "capable of repetition yet evading review" mootness exception. *See Tobin for Governor v. Ill. State Bd. of Elections,* 268 F.3d 517, 528 (7th Cir. 2001) ("We are well aware that the passage of an election does not necessarily render an election-related challenge moot and that such challenges may fall within the 'capable of repetition yet evading review' exception to the mootness doctrine."). In *Tobin for Governor,* the plaintiffs sued an Illinois election board after the election had already passed on the grounds that the process by which the board struck petition signatures was invalid. *Id.* at 529. According to the Seventh Circuit, such a case would only satisfy the "capable of repetition yet evading review" exception if "(1) the challenged action is too short in duration to be fully litigated prior to its cessation or expiration, and (2) there is a reasonable expectation that the same complaining party will be subjected to the same action again." *Id.* The challenge in *Tobin for Governor* satisfied neither of these prongs because

(1) "judicial review of the Board's decision is available by statute if the proper procedural steps are followed, and the state courts to which that review is directed can order a new election if the case is not fully litigated prior to election day" and (2) "numerous contingencies" would need to occur for the plaintiffs to have found themselves in the same situation again; it was "pure speculation" whether all those contingencies would occur. *Id.* In *Krislov v. Rednour,* 226 F.3d 851 (7th Cir. 2000), by contrast, the Seventh Circuit held that Krislov (the same Krislov as in the instant case) could challenge an Illinois election law-even after the election had been held-that required signature gatherers to be voters in the relevant political subdivision. This was because Krislov expressed his intention to run again and there was no question that as a candidate in the future, he-like any candidate in Illinois-would be forced to hire signature gatherers from within the political subdivision for which he sought elected office. *Krislov,* 226 F.3d at 858.

The facts of the instant case are indistinguishable from *Tobin for Governor.* First, just as in *Tobin,* had Plaintiffs filed this case in state court pursuant to the relevant Illinois statute, the state court could have ordered a new election had the case not been fully litigated prior to election day. Second, it is pure speculation to assume that Krislov would have these same events happen to him again. Namely, (1) he would have to run for office again and (2) ostensibly collect the adequate number of petition signatures. Then, a heating officer would have to (3) use the same process that Krislov deems statistically invalid to (4) strike a sufficient number of signatures such that Krislov no longer meets the minimum signature threshold, and (5) the election board would then

have to affi1m that decision. That all of these events will recur for Krislov is pure speculation. This case is unlike *Krislov v. Rednour* in that the only relevant contingency needed in that case for the injury to recur was for Krislov to run for office again. If he ran for office again, his campaign would have had to follow the signature-gatherer residency rule. Here, the Court does not doubt that Krislov intends to tun again, but there are multiple additional contingencies that stand in the way of Krislov being injured like this again in the future. This case satisfies neither of the prongs of the capable of repetition yet evading review mootness exception as laid out in *Tobin for Governor*.

This case is moot and no mootness exception applies. The Motion to Vacate Judgment and Amend Complaint [19] is therefore denied.

/s/_____
Virginia M. Kendall
United States District Judge

Date: May 4, 2020

APPENDIX C — OPINION OF THE UNITED STATES DISTRICT COURT, NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION, FILED MARCH 10, 2020

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

CLINT KRISLOV, MICHAEL POWERS,

Plaintiffs,

v.

COOK COUNTY OFFICERS
ELECTORAL BOARD, *et al.*,

Defendants.

No. 20 C 469

Judge Virginia M. Kendall

MEMORANDUM ORDER AND OPINION

Clint Krislov sought placement on the March 17, 2020 ballot for the Democratic nomination for the Illinois Supreme Court. Krislov submitted 9,555 signatures to the Cook County Officers Electoral Board ("the Board"). Powers is one of those signatures. Objectors successfully challenged 4,601 of those signatures, leaving Krislov 108[1]

1. The Complaint suggests that Krislov was 108 signatures short, but that arithmetic is incorrect. (9,555 – 4,601 = 4954; 5,050 – 4954

signatures short of the 5,050 signatures required to make the ballot. Plaintiffs argue that the Board's decision to strike these signatures violated Illinois law and their First Amendment right of free association. The Complaint (Dkt. 1) seeks to have this this Court order the Board to place Krislov's name on the primary ballot.

Two motions are currently pending before the Court. First, three individuals who filed an objector's petition with the Board contesting the validity of some of Krislov's signatures move to intervene as necessary defendants in this case pursuant to Federal Rule of Civil Procedure 24(a)(2). (Dkt. 3.) Second, Defendants move to dismiss the case on the grounds that the Complaint fails to state claims upon which relief can be granted. (Dkt. 10.) For the reasons set forth below, the Motion to Dismiss is granted and the Motion to Intervene is denied as moot.

BACKGROUND

The Court assumes that the following facts taken from Plaintiffs' Complaint are true for purposes of this motion. *See W. Bend Mut. Ins. Co. v. Schumacher*, 844 F.3d 670, 675 (7th Cir. 2016).

= 96). The Court also notes that the signature and objection counts provided in the Complaint differ from those listed in the Board's decision. (Dkt. 1-3.) According to the Board's written opinion rejecting Krislov's challenge, he originally submitted 9,542 signatures, 4,610 of which were originally excluded. Ten of those 4,610 signatures were later rehabilitated. (Dkt. 1-3 at pp. 2–3) However, for purposes of this Motion, the Court is required to assume the factual accuracy of the facts alleged in the Complaint.

Appendix C

Krislov seeks placement on the March 17, 2020 Democratic Party primary ballot for nomination to the Illinois Supreme Court. (Dkt. 1 ¶ 2.) In order to secure placement on that ballot, Krislov needed to file a petition with the Board containing 5,050 valid signatures. (*Id.* ¶ 4.)[2] Krislov submitted a petition containing 9,555 signatures in support of his candidacy. (*Id.* ¶ 3.) Plaintiff Michael Powers is among the individuals who circulated and signed Krislov's petition. (*Id.* ¶ 2.) Objectors challenged thousands of the signatures that Krislov submitted with his petition, and the Board excluded 4,601 of those signatures as invalid. (*Id.* ¶ 4.) After the Board excluded those signatures, Krislov did not have enough signatures to satisfy the 5,050 threshold. (*Id.*) Before the Board, Krislov challenged the process by which signatures were excluded. (*Id.* ¶ 5.) As part of his challenge, he explained that the number of valid signatures he still had placed him within the margin of error for professional document examiners. (*Id.*) The Board rejected this argument and continues to exclude him from the ballot. (*Id.*)

2. Illinois law requires judicial candidate petitions to contain a number of signatures totaling 0.4% of the total votes cast in the district for the candidate for Governor from that political party in the most recent gubernatorial election. 10 ILCS 5/7-10(h). The Illinois Board of Elections calculated that figure as 5,050 for the 2020 Democratic election for Supreme Court Justice in District 1. ILL. STATE BD. OF ELECTIONS, 2020 CANDIDATE'S GUIDE, at p. 35, https://www.cookcountyclerk.com/sites/default/files/pdfs/2020%20IL%20Candidates%20Guide_0.pdf.

Appendix C

LEGAL STANDARD

When considering a motion to dismiss under Rule 12(b)(6), the Court must accept as true all factual allegations in the complaint and draw all permissible inferences in the non-moving party's favor. *Bible v. United Student Aid Funds, Inc.*, 799 F.3d 633, 639 (7th Cir. 2015). To state a claim upon which relief may be granted, a complaint must contain a "short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2). Detailed factual allegations are not required, but the plaintiff must allege facts that when "accepted as true . . . 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). In analyzing whether a complaint meets this standard, the "reviewing court [must] draw on its judicial experience and common sense." Iqbal, 556 U.S. at 679. When there are well-pleaded factual allegations, the Court assumes their veracity and then determines whether they plausibly give rise to an entitlement to relief. *Id.*

ANALYSIS

A. Violation of 10 ILCS 5/10-10

Illinois law provides a cause of action for candidates aggrieved by the decision of an election board. 10 ILCS 5/10-10.1(a). That cause of action specifically requires candidates to seek judicial review "in the circuit court of the county in which the hearing of the electoral board

was held," i.e., not in federal court. *Id.*[3] Even if the Illinois statute allowed aggrieved candidates to sue in this Court for violations of Illinois election law, this Court would lack jurisdiction over such a claim because "[f]ederal courts have 'no supervisory powers and no authority to instruct the Board on how to follow state law.'" *Shipley v. Chi. Bd. of Comm'rs*, 947 F.3d 1056 (7th Cir. 2020) (quoting *Kasper v. Bd. of Election Comm'rs*, 814 F.2d 332, 342 (7th Cir. 1987). Thus, this Court lacks jurisdiction over Plaintiffs' claim that the Board violated Illinois law by excluding Krislov from the ballot.[4]

B. First Amendment Claim Under 42 U.S.C. § 1983

The ability of a candidate for public office to gain access to the ballot implicates the Constitutional rights to "associate politically with like-minded voters and to cast a meaningful vote." *Stone v. Bd. of Election. Com'rs for City of Chi.*, 750 F.3d 678 (7th Cir. 2014) (citing *Anderson v. Celebrezze*, 460 U.S. 780, 786 (1983)). But not all restrictions "on candidates' eligibility for the ballot impose constitutionally-suspect burdens." *Anderson*, 460 U.S. at 788. Indeed, signature requirements are valid prerequisites to ballot access if they are "reasonable" and

3. The Board's decision denying Krislov's petition also contains a notice that Illinois law requires any party aggrieved by its decision to seek judicial review in the Circuit Court of Cook County within five days of the Board's decision. (Dkt. 1-3 at p. 4.)

4. Because the Court is also dismissing the First Amendment claim, the Court also lacks supplemental jurisdiction over the state statutory claim.

"nondiscriminatory." *Stone*, 750 F.3d at 681 (quoting *Burdick v. Takushi*, 504 U.S. 428, 434 (1992)). In *Stone*, for example, the Seventh Circuit upheld a 12,500 signature requirement for making the Chicago mayoral ballot. 750 F.3d 678. Also n *Jenness v. Fortson*, 403 U.S. 431 (1971), the Supreme Court upheld a requirement of signatures accounting for more than 5% of the eligible voting population. Thus, there is no question that the Illinois statute—which requires signatures from .4% of the number of people who voted in a political party's most recent gubernatorial primary within the relevant electoral district—is constitutional.

But Plaintiffs do not apparently dispute the constitutionality of Illinois's statutory signature requirements; instead, they complain that the means by which the Board invalidated signatures was unlawful because: (1) "the records examiners have little training," or "special expertise", (2) there was a "lack of an objective standard" applied to the review of signatures, and (3) "the shortfall is well within the margin of error" such that the total number of accepted signatures should suffice. (Dkt. 1 ¶¶ 14, 20.) These objections do not sound in First Amendment law, but rather in state administrative law.[5] As with the claim brought under the state statute, this Court lacks jurisdiction over a claim about the individuals a State agency hires or the statistical techniques those individuals use to implement the State's constitutionally valid election law. This Court cannot tell a State agency how to interpret

5. Krislov might have some sort of Due Process claim, but he does not allege a Due Process claim, and the Court has received no briefing on whether the facts alleged state such a claim.

the State's laws, but Plaintiffs' "First Amendment" claim asks this Court to do just that, by arguing that the agency must use only highly-trained document professionals and must account for margins of error in determining whether the statutory signature thresholds have been satisfied. This Court is without authority to redress a grievance of this nature, so Plaintiffs lack Article III standing. *See Groshek v. Time Warner Cable, Inc.*, 865 F.3d 884, 886 (7th Cir. 2017) (quoting *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992)) ("The 'irreducible constitutional minimum of standing' consists of three elements: injury-in-fact, causation, and redressability."). Even if Plaintiffs had standing to bring this claim about the Board's administrative processes, the Illinois Supreme Court has already foreclosed the arguments brought in this count. *See Jackson-Hicks v. E. St. Louis Bd. of Election Com'rs*, 28 N.E.3d 170, 180 (Ill. 2015) ("As we have explained, the clear and unambiguous [signature] standard adopted by the General Assembly requires compliance with a specific numerical threshold determined according to a specific mathematical formula. A candidate either meets that minimum threshold or does not. There is no close enough. . . . [S]ubstantial compliance is not a valid justification for deviating from the clear and unambiguous minimum signature threshold set by the legislature.")

CONCLUSION

This Court lacks jurisdiction over Count I of Plaintiffs' Complaint because it is a state statutory claim that can only be heard in state court. Plaintiffs also fail to state a First Amendment claim in Count II. Defendants' Motion

to Dismiss [10] is therefore granted. As the Court is dismissing the Complaint in its entirety, the Court need not consider whether Michael Powers has independent standing nor whether the intervenors are necessary parties to this suit. The Motion to Intervene [3] is dismissed as moot.

/s/
Virginia M. Kendall
United States District Judge

Date: March 10, 2020