

No. _____

In The
Supreme Court of the United States

HAL PATTON,

Applicant,

v.

ILLINOIS STATE BOARD OF ELECTIONS, SITTING AS THE DULY CONSTITUTED
STATE OFFICERS ELECTORAL BOARD, AND CHARLES A. YANCEY, *et. al.*,

Respondents.

To the Honorable Elena Kagan, Associate Justice of the United States and
Circuit Justice for the Seventh Circuit

**EMERGENCY APPLICATION FOR A STAY OF ENFORCEMENT OF THE
JUDGMENT BELOW PENDING THE FILING AND DISPOSITION OF A
PETITION FOR A WRIT OF CERTIORARI TO THE
ILLINOIS SUPREME COURT**

Burton S. Odelson

Counsel of Record

Ross D. Secler

ODELSON & STERK, LTD.

3318 W. 95th Street

Evergreen Park, IL 60805

Telephone: (708) 424-5678

Facsimile: (708) 424-5755

Email: attyburt@odelsonsterk.com

Email: rsecler@odelsonsterk.com

Counsel for Applicant

TABLE OF CONTENTS

TABLE OF AUTHORITIES	iii
OPINIONS AND ORDERS BELOW	2
JURISDICTION.....	3
STATEMENT OF THE CASE.....	4
REASONS FOR GRANTING THE STAY	8
I. There is Imminent, Irreparable Harm that will Result Absent a Stay of the Decision Below	9
II. There is Reasonable Probability that the Court will Grant Certiorari and there is a Fair Prospect that the Court Will Vacate or Reverse the Decision Below.....	11
CONCLUSION.....	16
APPENDIX	
Appendix A	
Order of the Illinois Supreme Court, <i>Patton v. Illinois State Board of Elections</i> , No. 12337, (March 13, 2018)	
Appendix B	
Order of the Illinois Supreme Court, <i>Patton v. Illinois State Board of Elections</i> , No. 12337, (March 13, 2018)	
Appendix C	
Order and decision of the Illinois Appellate Court, <i>Patton v. Illinois State Board of Elections, et al.</i> , 2018 IL App (1st) 180425-U, (March 8, 2018)	
Appendix D	
Order of the Illinois Supreme Court, <i>Patton v. Illinois State Board of Elections</i> , No. 123245, (Feb. 8, 2018)	
Appendix E	
Orders of the Illinois Appellate Court, <i>Patton v. Illinois State Board of Elections, et al.</i> , No. 1-18-0222 (Feb. 9, 2018) and No. 1-18-0425, (March 2, 2018)	

Appendix F

Application for Ballot and Voting History, Harold R. Patton (Feb. 8, 2018)

Appendix G

Correspondence from Debra D. Ming-Mendoza, County Clerk, Madison
County, State of Illinois (March 16, 2018)

CERTIFICATE OF SERVICE

TABLE OF AUTHORITIES

Cases

<i>Bush v. Gore</i> , 531 U.S. 98, 104 (2000)	14
<i>California Democratic Party v. Jones</i> , 530 U.S. 567, 572, 575 (2000)	11
<i>Cousins v. Wigoda</i> , 419 U.S. 477, 487 (1975)	14
<i>Eu v. San Francisco County Democratic Cent. Comm.</i> , 489 U.S. 214, 224, (1989)	13
<i>Hollingsworth v. Perry</i> , 558 U.S. 183, 190 (2010)	9
<i>Illinois State Bd. of Elections v. Socialist Workers Party</i> , 440 U.S. 173, 184 (1979)	12, 15
<i>Kusper v. Pontikes</i> , 414 U.S. 51, 57, 58 (1973)	4, 12, 13
<i>League of Women Voters of Chicago v. City of Chicago</i> , 757 F.3d 722, 726 (7th Cir. 2014)	14
<i>Lucas v. Townsend</i> , 486 U.S. 1301, 1304 (1988)	9
<i>Norman v. Reed</i> , 498 U.S. 931 (1990); 502 U.S. 279, 287 (1992)	2, 11, 16
<i>Purcell v. Gonzalez</i> , 549 U.S. 1, 4-5 (2006)	8, 10
<i>Reynolds v. Sims</i> , 377 U.S. 533, 554-555 (1964)	9, 14

Constitutional Provisions

U.S. Const. Amend. I 1, 3, 11, 12, 13

U.S. Const. Amends. XIV 3, 12, 13

Statutes

22 U.S.C. § 2101 (f) 2, 4

28 U.S.C. § 1651 2, 4

28 U.S.C. § 1257 3

10 ILCS 5/7-10 6

10 ILCS 5/7-43 5

10 ILCS 5/7-44 5

10 ILCS 5/8-8 3, 6, 12, 13, 15, 16

10 ILCS 5/19-4 7

10 ILCS 5/19A-15 7

10 ILCS 5/19A-20 7

Ill. Sup. Ct. R. 304(a) 6

Other Authorities

Madison, *Federalist Papers*, Number 51, 1788 12

TO THE HONORABLE ELENA KAGAN, ASSOCIATE JUSTICE OF THE SUPREME COURT OF THE UNITED STATES AND CIRCUIT JUSTICE FOR THE SEVENTH CIRCUIT:

With less than one week until Election Day (March 20, 2018) for the Illinois General Primary Election, hundreds, and possibly thousands, of voters in Illinois are in jeopardy of having their votes nullified and their rights to political association quashed. By declining to review this matter, the Illinois Supreme Court, has allowed the decision below to stand. The Illinois Appellate Court's order below judicially legislates invalidation of votes based on a vestige left in the Illinois Election Code, which this Honorable Court, in part, has found to be unconstitutional, and which impermissibly infringes upon the rights of voters, candidates, and political parties to associate and advance their political ideology and preferences. The decision below violates the First Amendment to the United States Constitution and defies the precedent set by this Honorable Court, putting in jeopardy the votes already cast and votes that will be cast at the March 20, 2018 election.

Although Applicant's candidacy had been invalidated based on the circuit court's interpretation of Applicant's party affiliation, the Illinois Supreme Court directed that the lower court's order be stayed, maintaining the status quo, and allowing voting to proceed, unhindered. *See* App. D; *see also* App. E (Illinois Appellate Court Orders entering the stays).

Following the Illinois Appellate Court's March 8, 2018 decision removing Applicant from the ballot, *see* App. C, the Illinois Supreme Court's subsequent denial of the petition for leave to appeal and for a further stay, causes imminent and ongoing

voter confusion and potential chaos for the voting electorate who will be voting through March 20, 2018. Similar to this Court's granting the application for stay in *Norman v. Reed*, 498 U.S. 931 (1990); 502 U.S. 279, 287 (1992), the only way to ensure that the voters' rights are preserved is to stay enforcement of the decision below and allow voting to proceed, and for votes to be counted, pending the filing and disposition of a petition for writ of certiorari.

Therefore, pursuant to United States Supreme Court Rules 22 and 23, 28 U.S.C. § 2101 (f), and 28 U.S.C. § 1651, Applicant, Hal Patton, respectfully requests an emergency stay of enforcement of the judgement below pending the filing and disposition of a petition for writ of certiorari to the Illinois Supreme Court in this case. Applicant intends to file the petition for writ of certiorari to the Illinois Supreme Court, but, given that (i) Election Day is imminent and (ii) early voting and vote-by-mail has commenced and is continuing, a stay pending this Honorable Court's review of the substantial federal questions presented herein is essential to prevent Applicant and the people of the State of Illinois from suffering irreparable injury as a direct result of the erroneous decision below.

OPINIONS AND ORDERS BELOW

The unreported order of the Illinois Supreme Court, the court of last resort, entered March 13, 2018 in *Patton v. Illinois State Board of Election*, No. 12337, allowing the Emergency motion for expedited consideration of the petition for leave to appeal but denying the petition for leave to appeal is reproduced in Appendix ("App.") A. The March 13, 2018 unreported order of the Illinois Supreme Court

denying the emergency motion for stay of the Appellate Court's order pending disposition of the petition for leave to appeal is reproduced in App. B.

The order and decision of the Illinois Appellate Court rejecting Applicant's constitutional challenges, invalidating Applicant's candidacy, and ordering the circuit court to "craft[] a remedy to invalidate any votes cast for [Petitioner]" is unreported but available at *Patton v. Illinois State Board of Elections, et al.*, 2018 IL App (1st) 180425-U, and is reproduced in App. C. The Illinois Supreme Court's unreported order in *Patton v. Illinois State Board of Election*, No. 123245, directing the Illinois Appellate Court to enter an order staying the circuit court's judgment is reproduced as App. D. The Appellate Court's unreported orders staying enforcement of the circuit court's judgment are reproduced as App. E. Any previous stay was lifted when the Illinois Supreme Court denied leave to appeal, *see* App. A, and denied the motion for stay, *see* App. B.

JURISDICTION

Petitioner intends to seek a writ of certiorari pursuant to 28 U.S.C. § 1257, and United States Supreme Court Rule 10, from an order of the Illinois Supreme Court, the state court of last resort, denying Petitioner's leave to appeal and review the decision of the Illinois Appellate Court, which upheld the constitutional validity of Section 8-8 of the Illinois Election Code, 10 ILCS 5/8-8, and was decided in a manner repugnant to the Constitution of the United States and questions of federal law regarding the First and Fourteenth Amendment rights of a political party, its candidate and voters.

Given the immanency of the Illinois March 20, 2018 General Primary Election, pursuant to 28 U.S.C. § 2101 (f) and 28 U.S.C. § 1651, Applicant seeks an emergency stay of the decision below, pending the filing and disposition of a petition for writ of certiorari, to the extent that a stay would order Applicant's name to remain on the Republican Party primary ballot and votes cast in his favor would be counted.

STATEMENT OF THE CASE

This case concerns the imminent, extraordinary, and unconstitutional deprivation of voting rights and rights of political affiliation. Voters in Illinois have been able to cast ballots for the March 20, 2018 General Primary Election since February 8, 2018. In the 56th Legislative District of the State of Illinois, Republican Party primary voters have cast their votes in Applicant's favor and those votes are now subject to unconstitutional nullification. *See* App. G; *see also* App. F.

This is not a “garden variety” ballot access case where one candidate is alleged to have failed to comply with reasonable, ministerial requirements to have his or her name printed on the ballot. This case presents an important, federal, and frequently recurring question of law: To what extent may a state regulate voters’ and political parties’ ability to “affiliate” in order to nominate and vote for desired candidates and advance common political ideas. This case presents a fundamental challenge to core, democratic principles at the heart of the United States Constitution that warrants this Court’s intervention as it did in its 1973 decision in *Kusper v. Pontikes*, 414 U.S. 51 (1973), where it invalidated a portion of the Illinois Election Code.

This appeal arises from an objection made to the candidacy of Applicant, Dr. Hal Patton, a lifelong Republican, who seeks the nomination of the Republican Party for the office of State Senator in the 56th Legislative District, State of Illinois at the March 20, 2018 General Primary Election. In order to appear on the Republican Party ballot, Applicant filed nominating petitions, including his verified Statement of Candidacy and petition sheets containing over 1,600 uncontested signatures of qualified primary voters of the Republican Party, wishing to nominate Applicant as the Republican Party candidate for nomination to the office of State Senator of the 56th Legislative District, State of Illinois. App. C, ¶ 4. Respondent, Objector below, Charles A. Yancey, filed objections to Dr. Patton’s nominating petitions alleging, inter alia, that Applicant falsely stated he is a “qualified primary voter of the Republican Party” in his Statement of Candidacy, as required by the Illinois Election Code. *Id.*

The objection was based on the allegation that Applicant first signed the petition for nomination of an incumbent State Representative seeking re-election as a Democratic Party candidate for the office of Representative in the General Assembly in the same election cycle that Applicant subsequently filed to run for the nomination of the Republican Party for State Senator. *See* App. C, ¶ 2.

Illinois election law does not require voters to declare party allegiance at the time they register to vote; instead, voters “affiliate” with their political party through their actions when requesting a party’s ballot in a primary election, *see* 10 ILCS 5/7-43, 5/7-44. Illinois law further mandates that, “A ‘qualified primary elector’ of a party

may not sign petitions for or be a candidate in the primary of more than one party.”
10 ILCS 5/8-8, 5/7-10.

On January 11, 2018, the Illinois State Board of Elections, acting as the State Officers Electoral Board, failed to adopt their hearing officer’s recommendation to invalidate Applicant’s candidacy; the motion failing to pass by a statutorily required, majority vote. App. C, ¶ 5-6. On January 30, 2018, the Circuit Court of Cook County agreed with the Electoral Board’s Hearing Officer and entered its final order granting Objector’s Petition for Judicial Review and declaring Applicant’s nomination papers invalid and denying Applicant’s request to stay enforcement of its order. App. C, ¶ 7.

On February 8, 2018, on appeal, the Illinois Supreme Court directed the Illinois Appellate Court to enter an order staying the circuit court’s judgment and to expedite consideration of the appeal. App. C, ¶ 10; App. D. The Illinois Appellate Court entered a corresponding order on February 9, 2018 staying the Applicant’s removal from the ballot and allowing voters to continue voting for Applicant. App. C, ¶ 10; App. E. The matter was fully briefed before the Illinois Appellate Court by February 14, 2018. *See* App. E.

On March 1, 2018, the Illinois Appellate Court dismissed the appeal for lack of jurisdiction because, the court found, the court’s order did not resolve all pending claims and lacked the requisite language required under Illinois Supreme Court Rule 304(a). App. C, ¶ 11. Applicant immediately filed an Emergency Motion to Clarify and Amend the circuit court’s January 30, 2018 order, which was granted on March 2, 2018. *See* App. C, ¶ 12. Applicant then filed his (second) Notice of Appeal on March

2, 2018, App. C, ¶ 14, along with an emergency motion to expedite consideration and to stay enforcement of the circuit court's order. *See* App. E. The Illinois Appellate Court granted the motion to expedite consideration and granted the stay of the circuit court's order. *Id.*

On March 8, 2018, the Appellate Court entered its Order affirming the circuit court's decision to invalidate Applicant's nominating petitions and candidacy. App. C. On March 13, 2018, the Illinois Supreme Court declined to review the case or to order a further stay. App. D.

Early voting for the Illinois March 20, 2018 General Primary Election began February 8, 2018. *See* 10 ILCS 5/19-4; 10 ILCS 5/19A-15, 5/19A-20. As of March 15, 2018, in Madison County, Illinois, which comprises a substantial part of the district, approximately 1,288 Republican Party voters have requested vote by mail ballots or have already voted early. *See* App. G. All of these early voting ballots contain Applicant's name, as the only candidate in the Republican Party primary for State Senator in the 56th Legislative District, State of Illinois. *See* App. D, App. E.

On February 8, 2018, during the pendency of the appeal below, Dr. Patton again declared his affiliation with the Republican Party by filing a verified application to vote with the Madison County Clerk and then voted the Republican Party ballot for the 2018 General Primary Election. App. F. Dr. Patton has never voted in the primary, or sought the nomination of, a different political party. *Id.* It was undisputed below that: Applicant had previously voted a Republican Party ballot in the 2000, 2002, 2006, 2008, 2012, 2014, and, 2016 General Primary Elections;

Applicant has never voted in the primary, or sought the nomination of, a different political party; Applicant currently the Mayor of Edwardsville, Illinois, previously ran as a Republican Party Candidate for Madison County Board, served as member of the Madison County Board for 10 years, previously served as a member of the Edwardsville City Council, and previously served as Republican Party Precinct Committeeman.

The decision of the Illinois Appellate Court below, while recognizing that early and absentee (or “vote-by-mail”) voting has commenced, has remanded the case to the “circuit court for the purpose of crafting a remedy to invalidate any votes case for [Applicant].” App. C, ¶ 35. This extraordinary direction, issued on the eve of Election Day, readily warrants interim relief by this Court. Maintaining the status quo by allowing Applicant’s name to remain on the Republican Party primary ballot and allowing the election authorities to count and report the votes cast in his favor will help avoid “voter confusion and consequent incentive to remain away from the polls.” *Purcell v. Gonzalez*, 549 U.S. 1, 5 (2006). There is no reason to believe that a stay will have any detrimental effect on voters or the election authorities (which would be able to maintain a consistent procedure without having to reprint or reprogram ballots and tabulation machines).

REASONS FOR GRANTING THE STAY

This case presents an imminent affront to the right to vote and have one’s vote counted, to freely participate in the political process and “affiliate” with the political party or group of one’s choosing; and jeopardizes the integrity of the electoral process.

No right is more precious than the right of free speech and the ability to associate and vote for the candidate of one's choice. *Reynolds v. Sims*, 377 U.S. 533, 555 (1964) (“The right to vote freely for the candidate of one's choice is of the essence of a democratic society, and any restrictions on that right strike at the heart of representative government.”). No right is more deserving of protection and full consideration by our Nation's highest Court.

The decision below warrants a stay pending the imminent filing and disposition of a petition for writ of certiorari to the Illinois Supreme Court in order to protect fundamental voting rights and allow the full consideration of the important federal questions raised by this case. To obtain a stay pending the filing and disposition of a petition for a writ of certiorari, an applicant must show: (1) a reasonable probability that four Justices will consider the issue sufficiently meritorious to grant certiorari; (2) a fair prospect that a majority of the Court will vote to reverse the judgment below; and (3) a likelihood that irreparable harm will result from the denial of a stay. *Hollingsworth v. Perry*, 558 U.S. 183, 190 (2010). In appropriate cases, a Circuit Justice will balance the equities to determine whether the injury asserted by the applicant outweighs the harm to other parties or to the public. *Lucas v. Townsend*, 486 U.S. 1301, 1304 (1988). Those factors are readily satisfied here and a stay to preserve the status quo is warranted.

I. There is Imminent, Irreparable Harm that Will Result Absent a Stay of the Decision Below

Election Day is imminent, early voting is occurring, and vote-by-mail ballots have been and continue to be returned. Without a stay of the decision below,

irreparable harm is certain. As of the filing of this Application for Stay, Applicant's name has been printed on the Republican Party ballot for the March 20, 2018 General Primary Election because the Circuit Court of Cook County's order (on administrative review) invalidating Applicant's candidacy was stayed throughout the course of the appeal below. *See* App. D, App. E. Applicant is the only candidate seeking the Republican Party nomination for the office of State Senator for the 56th Legislative District, State of Illinois at the March 20, 2018 General Primary Election. App. C, ¶ 35. Votes have already been cast in his favor (including the Applicant himself, on February 8, 2018, App. Ex. F) and the election administration authorities and the voters are without instruction as how to proceed. *See* App. C, ¶ 35.

The decision below creates confusion as voters do not know who they can (or cannot) validly vote for, or whether their votes will count. Court orders affecting elections, especially conflicting orders, can themselves result in voter confusion and consequent incentive to remain away from the polls; as an election draws closer, that risk will increase. *Purcell v. Gonzalez*, 549 U.S. 1, 4–5 (2006). The election administration authorities herein, in Madison, St. Clair, and Jersey Counties, Illinois, hundreds of miles away from the Circuit Court of Cook County, must wait for direction as how to “invalidate” duly cast votes. *See id.* The Republican Party, and its supporters, are also left to guess whether they will be able to select the nominee of their choice or if they will be left with a vacancy in nomination.

Like the election at issue in *Purcell*, the imminence of the election herein warrants the preservation of the status quo, with voting for Applicant unhindered (as

it has been throughout the early voting and vote-by-mail periods). The present case is further akin to *Norman v. Reed*, where this Court stayed a decision invalidating candidacies pending the time of filing and disposition of a petition for a writ of certiorari. 498 U.S. 931 (1990). Specifically, in *Norman*, a stay was granted immediately prior to the November 1990 General Election and the candidates appeared on the ballot with all votes counted. *Id.*; 502 U.S. 279, 287 (1992). The same result should be allowed in Applicant's case, especially where the voting process has already commenced and the ballots have been finalized.

Given the immanency of the Illinois March 20, 2018 General Primary Election, magnitude to the important, constitutional rights involved, a stay preserving the status quo is warranted against the irreparable harm certain to occur if the decision below is left to stand.

II. There is Reasonable Probability that the Court will Grant Certiorari and there is a Fair Prospect that the Court will Vacate and Reverse the Decision Below

In addition to the immanency of the harm posed by the decision below, this case raises important federal constitutional questions regarding the rights of voters, political parties, and candidates, of sufficient substance to merit full consideration and reversal by the Court.

This Court continuously “affirm[ed] the special place the First Amendment reserves for, and the special protection it accords, the process by which a political party ‘selects a standard bearer who best represents the party's ideologies and preferences.’ *California Democratic Party v. Jones*, 530 U.S. 567, 575 (2000). This

Court has further held that the right to associate with the political party of one's choice is an integral part of basic constitutional freedoms protected by the First and Fourteenth Amendments. *Kusper v. Pontikes*, 414 U.S. 51, 57 (1973).

The decision below is plainly in contrast with the unabrogated opinions of this Court recognizing the freedom to associate with a political party as a fundamental right under the United States Constitution. *See Illinois State Bd. of Elections v. Socialist Workers Party*, 440 U.S. 173, 184 (1979); *C.f.* App. C, ¶ 29 (rejecting that the appeal implicates a fundamental right).

This case's implication of these First Amendment liberties, and the derogation of same by the decision below, constitutes reasonable probability that the Court will grant certiorari in this case and, ultimately, find in Applicant's favor.

At its core, this is a cause is the standard bearer for the right of freedom of political association and what it means to "affiliate" with the political party of one's choosing, as a candidate, as a petition signer, and as a voter. Critical to the rights of voters and unaddressed by the decision below, is the fact that votes have already been cast (and continue to be cast) in this election – something the decision below simply seeks to "invalidate" without further justification or recourse. *See* App. C, ¶ 35.

At the bedrock of our democracy is the right to freely participate, vote, and affiliate as political parties – it represents the principal check against one part of society inflicting injustice on the other part. Madison, *Federalist Papers*, Number 51, 1788. As applied by the decision below, the "party-switching" restriction(s) in Section 8-8 of the Illinois Election Code violate the First Amendment to the United States

Constitution. This Court, in *Kusper*, held that the First and Fourteenth Amendments to the US Constitution protect the right to associate with the political party of one's choice. *Kusper*, 414 U.S. at 57. Freedom of association means not only that an individual voter has the right to associate with the political party of her choice but also that a political party has a right to 'identify the people who constitute the association and to select a 'standard bearer who best represents the party's ideologies and preferences.'" *Eu v. San Francisco County Democratic Cent. Comm.*, 489 U.S. 214, 224, (1989) (internal citations omitted). The decision below ignores these core teachings.

Contrary to the reasoning in the decision below, Section 8-8 of the Illinois Election Code does not prevent "party-raiding" in any legitimate sense where (i) Applicant is clearly an affiliated member of one political party, (ii) has received the outward, explicit support from other members of that political party, and (iii) is currently being voted for as the political party's designated nominee. *C.f.* App. C, ¶ 30 ("party raiding,' a process in which dedicated members of one party formally switch to another party to alter the outcome of that party's primary", citing *Jones*, 530 U.S. at 572).

Section 8-8 of the Illinois Election Code, as was applied here, effectively eliminates the ability of one party's supporters to vote for, and nominate, a candidate if their choice. A prime objective of most voters in associating themselves with a particular political party must surely be to gain a voice in the selection process. *Kusper*, 414 U.S. at 58. Any interference with the freedom of a party is simultaneously

an interference with the freedom of its adherents. *Cousins v. Wigoda*, 419 U.S. 477, 487 (1975). This Court has “continually stressed that when States regulate parties’ internal processes they must act within limits imposed by the Constitution. *Jones*, 530 U.S. at 573.

This case is not simply about the ballot access of one candidate or the association rights of a political party. This case further implicates the fundamental right to vote and have that vote counted. *See Reynolds v. Sims*, 377 U.S. 533, 554 (1964) (“it is ‘as equally unquestionable that the right to have one’s vote counted is as open to protection . . . as the right to put a ballot in the box’”). “The Constitution ‘guarantees the opportunity for equal participation by all voters in the election of [their representatives].’” *League of Women Voters of Chicago v. City of Chicago*, 757 F.3d 722, 726 (7th Cir. 2014) (quoting *Reynolds*, 377 U.S. at 566). Constitutional protections apply to the fundamental rights of voters themselves in the electoral process generally. *See Bush v. Gore*, 531 U.S. 98, 104 (2000) (“The right to vote is protected in more than the initial allocation of the franchise. Equal protection applies as well to the manner of its exercise”). The decision below simply asserts that, contrary to these fundamental rights, the votes cast by Republican Party voters should, somehow, be “invalidated.” *See* App. C, ¶ 35. The basis for this invalidation is that their desired nominee violated a statutory vestige of unconstitutional party-switching restrictions in the Illinois Election Code by placing his unverified signature on a nominating petition of a dental patient and friend. App. C, ¶ 23. This deprivation of the fundamental right to vote cannot withstand constitutional scrutiny.

Overall, balancing the proffered, state “interest” to prevent “party-raiding,” against the severe restraint being placed upon Applicant’s rights and the rights of the voters who signed Applicant’s nominating petitions, and who already cast their votes in his favor in exercising their federal and state constitutional rights to associate with their desired political party and vote for the candidate of their choosing, reveals the unconstitutionality of the “qualified primary voter” sentence in Section 8-8, as applied here. In fact, the “interest” to prevent party-raiding is being used in the reverse as the Respondent-Objector is “raiding” the opposite party to eliminate any opposition. Here, the elimination of the only Republican Party candidate for State Senator essentially “elects” the only Democratic Party candidate seeking the same office at the primary by eliminating any competition at the General Election. This tactic and result cannot withstand constitutional muster.

Here, as found in, *Socialist Workers Party*, 440 U.S. 173, there is no compelling, important or rational basis for enacting a statute that could be interpreted to prohibit a candidacy based on an unsworn, unverified signature on a nominating petition. Applicant has an undeniable affiliation with one political party. To deprive him of ballot access and the 1,600 voters who signed his petitions (and the hundreds of voters who have already voted for him in addition to those who will vote for him on March 20, 2018) from being able to nominate the candidate of their choice, defies the basic tenants of democratic government. There is no compelling, or any, state interest in having no candidate on one party’s primary ballot.

Similar to the case of *Norman v. Reed* where this Court entered a stay preventing a whole political party from being unconstitutionally denied ballot access before an election, 502 U.S. at 287, the present case warrants similar, emergency action in order to preserve the status quo and allow these important federal questions their full review.

Further, if a stay were granted and the election held, this case would continue to warrant full consideration and resolution given that this case, like many election cases are “ ‘capable of repetition, yet evading review.’ *Norman*, 502 U.S. at 288. As this Court observed in *Norman*, “[t]here would be every reason to expect the same parties to generate a similar, future controversy subject to identical time constraints if we should fail to resolve the constitutional issues that arose” herein. *Id.* Therefore, this matter, presenting important, federal, constitutional questions warrants an immediate stay to allow the election to proceed and for full resolution by this Honorable Court. Because the decision below abridges these rights for no compelling, important, or any rational reason, Section 8-8 of the Illinois Election Code, as applied herein, should be deemed invalid the decision of the Illinois Appellate Court reversed.

CONCLUSION

Under the circumstances presented by this case, the effect of a failure to grant a stay would be to deny Applicant, and the voters affiliated with him, full, effective relief with material harm on the electoral process in Illinois. A stay is further justified by the fundamental importance of the rights and questions involved and the extremely time-sensitive nature of relief requested. Applicant, and the voters of the

State of Illinois, are threatened with immediate injury, with a stay being the only means of protecting the integrity of the electoral process while ensuring proper and orderly access to the judicial system.

For the foregoing reasons, Applicant respectfully requests that this Court grant this emergency application for a stay of enforcement of the judgment below pending the filing and disposition of a petition for writ of certiorari to the Illinois Supreme Court. Given that Election Day is Tuesday March 20, 2018, Applicant respectfully requests, if possible, that the Court rule on the emergency application at its earliest possible convenience.

Respectfully submitted,



Burton S. Odelson

Burton S. Odelson
Counsel of Record
Ross D. Secler
ODELSON & STERK, LTD.
3318 W. 95th Street
Evergreen Park, IL 60805
Telephone: (708) 424-5678
Facsimile: (708) 424-5755
attyburt@aol.com
rsecler@odelsonsterk.com

Counsel for Applicant

March 16, 2018