

Nos. 16-3547 & 16-3597

**IN THE
UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT**

PATRICK HARLAN and CRAWFORD
COUNTY REPUBLICAN CENTRAL
COMMITTEE,

Plaintiffs-Appellees,

v.

CHARLES W. SCHOLZ, Chairman of the
Illinois State Board of Elections; ERNEST
L. GOWEN, Vice-Chairman of the Illinois
State Board of Elections; BETTY J.
COFFRIN, CASSANDRA B. WATSON,
WILLIAM M. McGUFFAGE, JOHN R.
KEITH, ANDREW K. CARRUTHERS,
and WILLIAM J. CADIGAN, Members of
the Illinois State Board of Elections,

Defendants-Appellants.

) Appeal from the United States
) District Court for the Northern
) District of Illinois, Eastern
) Division.

) No. 16 C 7832

) The Honorable
) SAMUEL DER-YEGHIAYAN,
) Judge Presiding.

**BRIEF AND SHORT APPENDIX OF DEFENDANTS-APPELLANTS
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CASSANDRA B. WATSON, WILLIAM M. McGUFFAGE, JOHN R. KEITH,
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JURISDICTIONAL STATEMENT

Plaintiffs-Appellees Patrick Harlan, the Republican candidate for the U.S. House of Representatives for the 17th Congressional District of Illinois in the 2016 general election, and the Crawford County (Illinois) Republican Central Committee filed this action against Defendants-Appellants, who are the Chairman, Vice-Chairman, and Members of the Illinois State Board of Elections (Board). R. 1-12. Plaintiffs brought their complaint pursuant to 42 U.S.C. § 1983, alleging that an Illinois law requiring election day registration at precinct polling places in some counties and permitting it in other counties violated their right to equal protection under the Fourteenth Amendment. *Id.* Because plaintiffs' complaint raises a federal question, the district court has jurisdiction pursuant to 28 U.S.C. § 1331.

On September 27, 2016, the district court granted plaintiffs' motion for a preliminary injunction and ordered defendants to direct Illinois's election authorities not to implement election day registration at precinct polling places. R. 496, 500-12. On September 27, 2016, defendants filed a notice of appeal from the preliminary injunction order. R. 497-99. That notice of appeal was timely pursuant to Federal Rule of Appellate Procedure 4(a)(1)(A) because it was filed within 30 days of the entry of the order appealed from. This Court has jurisdiction over this interlocutory appeal from a preliminary injunction pursuant to 28 U.S.C. § 1292(a)(1).

ISSUE PRESENTED FOR REVIEW

Whether the district court erred in granting a preliminary injunction prohibiting election day registration (EDR) at all polling places in Illinois when the challenged statute implementing EDR is a reasonable and nondiscriminatory regulation that enhances rather than burdening the right to vote.

STATEMENT OF THE CASE

Factual Background

Elections in Illinois are administered by county clerks in the State's 102 counties, as well as by Boards of Election Commissioners in certain cities. 10 ILCS 5/1-3(8) (defining "election authority" as "a county clerk or a Board of Election Commissioners"). The State Board of Elections has the power and duty to supervise and administer the registration and election laws throughout the State. 10 ILCS 5/1A-8(12).

Under Illinois law, the traditional deadline to register to vote, or to note a change of address for voting, was 28 days before the election. 10 ILCS 5/5-5. In recent years, however, the Illinois legislature has expanded voting opportunities by making registration available at special early voting locations in every county at progressively later points during the 28-day "grace period" preceding the election. Specifically, in 2005, the Illinois General Assembly extended grace-period registration from 28 days to 14 days before the election, P.A. 93-1082; in 2010 from 14 days to seven days before the election, P.A. 96-441; and in 2012 from seven days to three days before the election, P.A. 97-766.

In 2014, the General Assembly established a pilot program for election-day registration (EDR), which was implemented in the 2014 general election. P.A. 98-691. Under this pilot program, a person could register in person at the office of the local election authority (usually the county clerk's office or a city Board of Election Commissioners office) or at another location designated by the election authority,

“until the polls close on election day.” 10 ILCS 5/4-50 (2014).¹ A person could also register at “any permanent polling place for early voting established under Section 19A-10 through election day.” *Id.*

The legislature expanded grace-period registration once again by a further amendment to 10 ILCS 5/4-50 that became law on January 12, 2015 and took effect on June 1, 2015. P.A. 98-1171. Under this latest expansion, which was in effect for the 2016 primary and general elections, a person may register to vote through election day at expanded locations including polling places:

During this grace period, an unregistered qualified elector may register to vote, and a registered voter may submit a change of address form, in person at the office of the election authority, at a permanent polling place established under section 19A-10, at any other early voting site beginning 15 days prior to the election, *at a polling place on election day*, or at a voter registration location specifically designed for this purpose by the election authority.

Id. (emphasis added).

The statute contains an opt-out provision for some counties with a population under 100,000. *Id.* Counties that have electronic poll books are required to offer EDR at all precinct polling places. *Id.*² Counties with a population under 100,000

¹ There are two versions of the relevant statute, 10 ILCS 5/4-50. The first version, P.A. 98-691, was effective until June 1, 2015, and was administered during the 2014 general election. The newer version, which is the subject of this litigation and is described below, was adopted by P.A. 98-1171, which became law on January 12, 2015. Section 4-50 applies to counties with a population under 500,000. Identical provisions are contained in 10 ILCS 5/5-50 for counties with a population over 500,000 and in 10 ILCS 5/6-100 for cities that have their own Boards of Election Commissioners. All are reproduced in the Appendix bound with this brief.

² An electronic poll book (or “e-pollbook”) “is an electronic version of the paper pollbook. It is simply a list of eligible voters in the relevant jurisdiction, which traditionally has been organized alphabetically or by address of the voter. The e-pollbooks provide poll

that do not have electronic poll books are permitted to opt out of offering EDR at polling places so long as they offer it at “the election authority’s main office” and “a polling place in each municipality where 20% or more of the county’s residents reside if the election authority’s main office is not located in that municipality.” *Id.* The statute also provides that “[t]he election authority may establish other grace period registration and voting sites on election day provided that the election authority has met the notice requirements of section 19A-25 for permanent and temporary early voting sites.” *Id.* People who register at a designated EDR site must be permitted to vote at that site; they do not need to return to their regular polling place to vote. *Id.*

According to the 2010 census, 20 of Illinois’s 102 counties have a population of more than 100,000; together, these high-population counties account for 83.9% of the State’s population. R. 98. In addition, Grundy County (population 50,173), Bureau County (population 34,361), Brown County (population 6,878), Stark County (population 5,888), and the city of Danville (population 33,027) offered EDR in all polling places on election day in 2016. Menzel Declaration (SA 14). In total, then, under Section 4-50, polling-place EDR is currently available in jurisdictions accounting for more than 84.9% of the State’s population. This proportion does not include residents of low-population counties whose regular polling place is at the election authority’s main office or at a designated location in a municipality where

workers with the ability to locate a voter’s information quickly and accurately, to confirm a voter’s registration status, and to prescribe the appropriate ballot.” The American Voting Experience: Report and Recommendations of the Presidential Commission on Election Administration, at 44, available at <https://www.supportthevoter.gov/files/2014/01/Amer-Voting-Exper-final-draft-01-09-14-508.pdf> (last visited November 10, 2016).

more than 20% of the county's population resides, where EDR is also required to be made available. *See* 10 ILCS 5-4/50.

District Court Proceedings

Plaintiff Harlan is a Republican candidate for the United States House of Representatives in the 17th Illinois Congressional District. R. 501 (SA2). The 17th Congressional District includes one high-population county, portions of three other high-population counties, and ten low-population counties. R. 501 (SA2). The District runs along the State's western border from Jo Daviess and Stephenson Counties in the north to Fulton County in the south.³ The District encompasses parts of Winnebago, Peoria, and Tazewell Counties and all of Jo Daviess, Stephenson, Carroll, Whiteside, Rock Island, Henry, Mercer, Henderson, Warren, Knox, and Fulton Counties. *Id.* Plaintiff Crawford County Republican Central Committee is a political party based in Crawford County, Illinois. R 3. Crawford County is in southeastern Illinois and is part of the 15th Congressional District.⁴

On August 4, 2016, more than 18 months after P.A. 98-1171 became law, and about four and a half months after it was implemented in Illinois's March 2016 primary elections, plaintiffs filed this action contending that the current version of Section 4-50 violates the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution by infringing the voting rights of residents of low-

³ www.elections.il.gov/Downloads/ElectionInformation/PDF/2012CongFrontisde.pdf (last visited November 10, 2016).

⁴ www.elections.il.gov/Downloads/ElectionInformation/PDF/2012CongFrontisde.pdf (last visited November 10, 2016).

population counties that do not have electronic poll books. R. 1-12. On August 9, plaintiffs moved for a preliminary injunction ordering defendants to direct “the election authority of each county in Illinois” not to implement the EDR option at precinct polling places. R. 65. The requested injunction was not limited to the 2016 general election. *Id.*

In support of their motion, plaintiffs submitted the opinion of M. V. Hood III. R. 95-109. Hood examined EDR statutes in eleven other States and the District of Columbia in addition to Illinois and concluded that “Illinois is the only state that employs a two-tiered system for EDR based on where a voter may reside.” R. 98. He then summarized academic studies of EDR, concluding that “a general consensus exists that EDR has a positive effect on turnout.” R. 101. There was no similar consensus, Hood concluded, on the question of which groups use EDR most heavily, although “[t]he bulk of evidence would point to the young, the residentially mobile, and those with moderate levels of income and education.” R. 103. Turning to the possible partisan effects of the EDR statute, Hood calculated the Democratic and Republican share of the two-party vote in the last 22 statewide races for which data was available. R. 104. Breaking these results down by county size, he calculated that Democratic candidates received an average of 62.1% of the two-party vote in counties with populations over 100,000, while Republicans received 54.1% of the two-party vote in counties with populations under 100,000. R. 104-06. Based on these calculations, Hood concluded that “[i]t is quite possible then that Illinois’ EDR scheme will have the added effect of diminishing GOP votes.” R. 107.

On September 27, the district court granted the preliminary injunction, ordering “election authorities in all 102 Illinois counties not to implement the EDR option of registration at precinct polling locations.” R. 502, 512 (SA3, SA13). The injunction, like plaintiffs’ request, was not limited to the 2016 general election. *Id.* Defendants filed a notice of appeal the same day, R. 497-99, and moved for a stay of the injunction under Federal Rule of Civil Procedure 62(c), R. 546-47. The district court denied this motion on September 29. R. 567. This Court granted defendants’ stay motion on October 4. App. Dkt. 9. On October 7, this Court denied plaintiffs’ request for expedited briefing and consolidated this appeal with No. 16-3597, filed by intervenor-defendant David Orr, Clerk of Cook County, Illinois. App. Dkt. 15.

SUMMARY OF ARGUMENT

Plaintiffs are not entitled to the extraordinary remedy of a preliminary injunction. To begin with, they will not be irreparably harmed in the absence of interim relief because the 2016 election has already taken place and there is ample time for the district court to resolve the merits of their claims before the next scheduled statewide election in 2018.

In any event, plaintiffs cannot show a likelihood of success on the merits. Illinois's EDR statute does not violate the Equal Protection Clause. The statute does not deny anyone the ability to register or vote; on the contrary, it enhances voting opportunities by expanding the availability of voter registration in every county in the State. Indeed, it is the district court's injunction that would impair the right to vote by prohibiting EDR at polling places throughout the State.

But even if the EDR statute could be viewed as imposing a burden on voting, any such burden is far from severe. Plaintiffs have not shown that residents of smaller counties will be inconvenienced, let alone severely burdened, by having to travel to a county clerk's office or another designated EDR site to register and vote. The district court's finding to the contrary is unsupported by the record.

Nor have plaintiffs shown that the EDR statute is discriminatory. They cannot and do not claim that the statute discriminates on the basis of race or any other suspect classification. The distinctions it draws between counties are amply justified and, in any event, courts have long recognized that variations among localities with respect to registration and voting mechanisms are pervasive and raise

no constitutional concerns. And plaintiffs' claim of partisan discrimination has no merit; membership in a major political party is not a suspect classification, and plaintiffs have introduced no evidence of intentional partisan discrimination.

The EDR statute easily satisfies the Supreme Court's balancing test for reasonable, nondiscriminatory regulations of the electoral process. The State has a compelling interest in ensuring that its citizens can vote. The distinctions between counties that are drawn by the statute are justified by differences with respect to availability of technology and demand for in-precinct EDR.

Finally, the balance of the hardships and the public interest tilt strongly against granting a preliminary injunction. The EDR statute does not harm anyone, irreparably or otherwise, because it does not impair anyone's right to vote. Plaintiffs' delay in moving for a preliminary injunction also undermines the equities of their claim. And the public interest would be gravely harmed by maintenance of an injunction that bans election day registration in all polling places throughout the State.

ARGUMENT

I. A Preliminary Injunction Is An Extraordinary Remedy.

A preliminary injunction is "an extraordinary and drastic remedy, one that should not be granted unless the movant, *by a clear showing*, carries the burden of persuasion." *Mazurek v. Armstrong*, 520 U.S. 968, 972 (1997) (emphasis in original); *see also Boucher v. Sch. Bd. of Sch. Dist. of Greenfield*, 134 F.3d 821, 823 (7th Cir. 1998); *Roland Mach. Co. v. Dresser Indus.*, 749 F.2d 380, 389 (7th Cir. 1984). To

obtain a preliminary injunction, a party must establish that (1) it is likely to succeed on the merits; (2) it is likely to suffer irreparable harm in the absence of preliminary relief; (3) the balance of equities tips in its favor; and (4) an injunction is in the public interest. *Winter v. Natural Res. Def. Council*, 555 U.S. 7, 20 (2008); *Judge v. Quinn*, 612 F.3d 537, 546 (7th Cir. 2010). The court “must balance the competing claims of injury and must consider the effect on each party of granting or withholding the requested relief,” showing “particular regard for the public consequences in employing the extraordinary remedy of injunction.” *Winter*, 555 U.S. at 24. In determining whether plaintiffs are entitled to a preliminary injunction, this Court applies “a sliding scale approach: ‘[t]he more likely the plaintiff is to win, the less heavily need the balance of harms weigh in his favor; the less likely he is to win, the more need it weigh in his favor.’” *Girl Scouts of Manitou Council, Inc. v. Girl Scouts of U.S. of America, Inc.*, 549 F.3d 1079, 1086 (2008) (quoting *Roland Mach. Co.*, 749 F.2d at 389). If the harm to the other parties or the public is “sufficiently weighty,” the injunction should be denied. *BBL, Inc. v. City of Angola*, 809 F.3d 317, 323-24 (7th Cir. 2015).

When reviewing an order granting or denying a preliminary injunction, this Court reviews the district court’s legal conclusions *de novo*, its findings of fact for clear error, and its balancing of the injunction factors for an abuse of discretion. *Stuller, Inc. v. Steak N Shake Enterprises, Inc.*, 695 F.3d 676, 678 (7th Cir. 2012).

II. Plaintiffs Are Not Entitled To A Preliminary Injunction.

A. Plaintiffs will not suffer irreparable harm without a preliminary injunction because the 2016 election has already taken place.

Irreparable harm is a “harm that cannot be prevented or fully rectified by the final judgment after trial.” *Roland Mach. Co.*, 749 F.3d at 386. “The irreparable harm requirement helps the court weigh the costs of denying a preliminary injunction to a plaintiff who goes on to win on the merits against the costs of granting the injunction to one who goes on to lose.” *Bedrossian v. Northwestern Mem’l Hosp.*, 409 F.3d 840, 845 (7th Cir. 2005). As the Supreme Court has held, the mere “possibility” of irreparable harm is not enough to entitle plaintiffs to preliminary relief; instead, they must “demonstrate that irreparable injury is *likely* in the absence of an injunction.” *Winter*, 555 U.S. at 22 (emphasis in original).

Plaintiffs cannot meet that standard here. There is no risk that they will suffer an irreparable harm in the absence of a preliminary injunction because the 2016 general election has already come and gone. The next scheduled election in which the availability of EDR in different counties could even arguably affect plaintiffs is the statewide primary election in March 2018, sixteen months from now. *See* 10 ILCS 5/2A-1.1. That is more than enough time for the district court to address the merits of their claims. This Court’s observation in *Judge v. Quinn* is thus equally apt here: “The district court can easily reach and resolve the merits of this request before any of the harm that the plaintiffs forecast comes to pass.” 612 F.3d at 557; *see also Anderson v. U.S.F. Logistics (IMC), Inc.*, 274 F.3d 470, 474 (7th

Cir. 2001) (“The purpose of a preliminary injunction is to minimize the hardship to the parties pending resolution of their lawsuit.”); *id.* (party must show that “it will suffer irreparable harm if the preliminary injunction is denied”). If the district court has not resolved the case by the time another election becomes imminent, the plaintiffs can renew their request for a preliminary injunction. At present, however, there is no realistic danger that plaintiffs will suffer any harm, irreparable or otherwise, in the absence of interim relief. For this reason alone, the extraordinary remedy of a preliminary injunction is not justified and the district court’s judgment should be reversed.

It should be noted that, although the 2016 general election has occurred, this appeal is not moot. This Court retains jurisdiction over the appeal because the preliminary injunction requested by plaintiffs, R. 65, and granted by the district court, R. 502, 512 (SA3, SA13), was by its terms not limited to that election. *Cf. Stone v. Bd. of Election Comm’rs for City of Chi.*, 643 F.3d 543 (7th Cir. 2011) (appeal dismissed as moot where only relief sought pertained to mayoral election that had passed).

B. Plaintiffs do not have a likelihood of success on the merits.

The Constitution “confers on the states broad authority to regulate the conduct of elections, including federal ones.” *Griffin v. Roupas*, 385 F.3d 1128, 1130 (7th Cir. 2004); *see also Shelby County, Ala. v. Holder*, 133 S. Ct. 2612, 2623 (2013) (“States have broad powers to determine the conditions under which the right of suffrage may be exercised.”) (citation and internal quotation marks omitted)).

Accordingly, regulations of the electoral process are subject to a “flexible standard,” *Libertarian Party of Illinois v. Rednour*, 108 F.3d 768, 773 (7th Cir. 1997), that has come to be known as the *Anderson-Burdick* standard, after the two Supreme Court cases in which it was developed. *See Burdick v. Takushi*, 504 U.S. 428 (1992), and *Anderson v. Celebrezze*, 460 U.S. 789 (1983); *see also Crawford v. Marion Cty. Election Bd.*, 553 U.S. 181, 190, 202-03 (2008) (opinion of Stevens, J.) (applying *Anderson-Burdick* standard to regulation of voting procedures); *id.* at 204-05 (Scalia, J., concurring in the judgment) (same).

Under this standard, the reviewing court must weigh the “character and magnitude of the asserted injury to the rights protected by the First and Fourteenth Amendments...” against ‘the precise interests put forward by the State as justifications for the burden imposed by its rule.’” *Burdick*, 504 U.S. at 434 (quoting *Anderson*, 460 U.S. 789 (1983)). If an electoral regulation imposes a “severe” restriction on First or Fourteenth Amendment rights, strict scrutiny applies. *Timmons v. Twin Cities Area New Party*, 520 U.S. 351, 358 (1997). If, on the other hand, the State has imposed “reasonable, nondiscriminatory restrictions on these rights... the [S]tate’s important regulatory interests will generally be sufficient to justify the regulations.” *Libertarian Party*, 108 F.3d at 773 (citing *Burdick*, 504 U.S. at 434); *see also Timmons*, 520 U.S. at 358.

1. Illinois’s EDR statute enhances rather than burdens the right to vote.

The statute challenged in this case does not deny, infringe, or inhibit anyone’s right to vote. On the contrary, it enhances the right to vote by making it possible for

more people at more locations than ever before, in both large and small counties, to register on election day. In that regard, Section 4-50 represents the latest in an incremental series of expansions of opportunities to register in Illinois compared to an era when registration closed 28 days before the election. *See* P.A. 93-1082 (enacted in 2005, expanding registration from 28 days to 14 days before election); P.A. 96-441 (enacted in 2010, expanding registration from 14 days to seven days before election); P.A. 97-766 (enacted in 2012, expanding registration from seven days to three days before election); P.A. 98-691 (enacted in 2012, establishing EDR on a pilot-program basis). Even in low-population counties without electronic poll books where polling-place EDR is not required, Section 4-50 expands registration opportunities by requiring for the first time that EDR be offered in “a polling place in each municipality where 20% or more of the county’s residents reside if the election authority’s main office is not located in that municipality.” 10 ILCS 5/4-50. Thus, the district court had no basis for stating—without any citation to the record or any authority—that “in a low-population county without electronic polling books there will be a significant decrease in voter turnout,” R. 506 (SA7), or concluding that the challenged law “severely restricts voters’ rights,” R. 508 (SA9). On the contrary, voter turnout may well increase in those counties due to the expansion of EDR to additional sites.

Heightened constitutional scrutiny does not apply to legislation that enhances voting rights as opposed to burdening them. That is the message of decisions by the Supreme Court and this Court rejecting efforts by litigants to use the Constitution to

expand the availability of absentee ballots beyond what the Illinois legislature had already provided. For example, in *McDonald v. Board of Election Commissioners of Chicago*, 394 U.S. 802 (1969), pretrial detainees in Cook County Jail asserted that the Equal Protection Clause obligated Illinois to make absentee ballots available to them in view of the fact that it had already made such ballots available to, *inter alia*, people who were physically incapacitated for medical reasons. A unanimous Court concluded that heightened scrutiny was inappropriate for two reasons: first, Illinois's absentee provisions did not classify voters by wealth or race, and second, the record did not indicate any impact on the detainees' "ability to exercise the fundamental right to vote," because the State could allow them to vote in person, perhaps by setting up special polling booths in the jail or providing guarded transportation to the polls. *Id.* at 807, 808 n.6.

Instead, *McDonald* subjected the challenged absentee provisions to rational basis scrutiny. *Id.* at 809. In particular, the Court noted that "a legislature traditionally has been allowed to take reform 'one step at a time, addressing itself to the phase of the problem which seems most acute to the legislative mind.'" *Id.* (quoting *Williamson v. Lee Optical of Oklahoma, Inc.*, 348 U.S. 483, 489 (1955)). To that end, the Court commented that it was "ironic[]" that "Illinois' willingness to go further than many States in extending the absentee voting privileges" had exposed it to a constitutional challenge seeking to force it to go further still. *Id.* at 810-11. In the end, the Court observed, the record disclosed "not an arbitrary scheme or plan

but, rather, the very opposite—a consistent and laudable state policy of adding, over a 50-year period, groups to the absentee coverage.” *Id.* at 811.

To be sure, *McDonald* predated the Court’s development of the *Anderson-Burdick* standard. But none of the Supreme Court’s or this Court’s cases applying *Anderson-Burdick* has ever called *McDonald* into question, and for good reason: those cases deal with voting “restrictions,” *Anderson*, 460 U.S. at 789, or “burdens,” *Burdick*, 504 U.S. at 434, while *McDonald* continues to stand for the proposition that laws that do not restrict or burden the right to vote are not subject to heightened judicial scrutiny.

This Court’s more recent decision in *Griffin* reinforces the point. In *Griffin*, the plaintiffs were working mothers who alleged they were unable to get to the polling place on election day. 385 F.3d at 1130. As in *McDonald*, the plaintiffs argued that the Constitution required Illinois to extend to them the same absentee voting rights it had extended to others. This Court, without citing *Anderson* or *Burdick*, had little difficulty rejecting their challenge. How far to extend absentee voting, it held, was “quintessentially a legislative judgment with which we judges should not interfere unless strongly convinced that the legislative judgment is grossly awry.” *Id.* at 1131.

McDonald and *Griffin* are dispositive here. As described above, Section 4-50 is the latest in a series of laws incrementally expanding the availability of grace-period registration in Illinois. It does not burden or restrict anyone’s ability to register or

vote, and should not be subjected to heightened scrutiny under the Equal Protection Clause.

Indeed, if one were to conclude that not requiring the availability of EDR for some voters counts as a burden, then it is the district court's sweeping injunction that burdens voting far more seriously than the statute. According to plaintiffs' own expert, the high-population counties that are required by the statute to provide EDR at polling places "account for 83.9% of the state's total population." R. 98. And the percentage of Illinois residents with access to in-precinct EDR becomes even higher when one includes residents of Grundy, Bureau, Brown and Stark Counties and the city of Danville (low-population jurisdictions that offer EDR at all polling places). In other words, on the plaintiffs' own theory, the district court's extraordinary remedy—which would shut down in-precinct EDR in *all* counties for *all* elections—would make it harder for more than five out of every six Illinois citizens to vote, while eliminating burdens on voting for precisely no one. Thus, the district court got it backwards when it stated, in denying a stay that was later granted by this Court, "This court did not restrict the rights of any voters. The legislation did." R. 567. It would be ironic indeed if plaintiffs were permitted to obtain such an injunction in the name of vindicating voting rights.

2. Even if the EDR statute could be viewed as imposing a burden on the right to vote, any such burden is neither severe nor discriminatory.

The Supreme Court has made clear that strict scrutiny of electoral regulations is reserved for laws that impose "severe burdens" on plaintiffs' constitutional rights,

and that “reasonable, nondiscriminatory restrictions” are evaluated instead under the *Anderson-Burdick* balancing test. *See Burdick*, 504 U.S. at 434 (“[W]hen a state election law provision imposes only reasonable, nondiscriminatory restrictions upon the First and Fourteenth Amendment rights of voters, the State’s important regulatory interests are generally sufficient to justify the restrictions.”) (citation and internal quotation marks omitted); *Timmons*, 520 U.S. at 358; *Crawford*, 553 U.S. at 190 (opinion of Stevens, J.); *id.* at 205 (Scalia, J., concurring in the judgment) (“Burden is severe if it goes beyond the merely inconvenient.”). Even if Section 4-50’s opt-out provision for counties with populations under 100,000 that do not have electronic poll books could somehow be viewed as imposing a burden on voting rights, any such burden is neither severe nor discriminatory.

There is no basis to conclude that Section 4-50 imposes a severe burden on the right to vote. Residents of counties without polling-place EDR may register up to three days before election day on the same terms as anyone else in the State, and those wishing to register on election day may do so at the headquarters of the local election authority or at permanent or temporary early voting sites. 10 ILCS 5/4-50. In addition, any municipality that is not the location of the election authority but contains at least 20% of the county’s population is required to provide an EDR site of its own. *Id.* In plaintiff Harlan’s home district (the 17th), for example, three of the ten low-population counties (Fulton, Henry, and Whiteside) contain a city large enough to be required to provide a secondary EDR site (the cities of Canton, Kewanee, and Sterling, respectively), and in three of the remaining seven low-

population counties (Knox, Stephenson, and Monmouth) more than half of the population lives in the municipality where the county election authority is headquartered.⁵

Plaintiffs have not provided any evidence showing that this arrangement imposes any burden, let alone a severe one, on residents of counties without polling-place EDR. Common sense would suggest that many residents of sparsely populated counties already have to drive to get to their polling places. The record is devoid of any evidence as to the added inconvenience to such residents, if any, of driving to an available EDR site to register and vote, much less that they encounter long lines or delays when they do so. *Cf. Crawford*, 553 U.S. at 198 (opinion of Stevens, J.) (“For most voters who need them, the inconvenience of making a trip to the [department of motor vehicles], gathering the required documents, and posing for a photograph surely does not qualify as a substantial burden on the right to vote, or even represent a significant increase over the usual burdens of voting.”); *Frank v. Walker*, 768 F.3d 744, 749 (7th Cir. 2014) (“[A]ny procedural step filters out some potential voters. No one calls this effect disfranchisement, even though states could make things easier by, say, allowing everyone to register or vote from a computer or smartphone without travel or standing in line.”) (emphasis in original).

The district court’s findings that Section 4-50 will have an “enormous” negative impact on residents of low-population counties, cause a “significant decrease” in their turnout, and “severely burden their right to vote,” R. 506-7 (SA7-

⁵ See www.illinois.gov/census/pages/Census2010Data.aspx (follow “Within a County” link under “Municipalities”) (last visited November 10, 2016).

SA8), are unsupported by the record. The district court relied on the opinion of plaintiffs' expert, M.V. Hood III, which was the only evidence plaintiffs offered on this issue, but that opinion does not provide a sufficient evidentiary basis for these findings.

Hood's opinion, based entirely on a review of academic literature rather than any research he performed himself, stated that the consensus of peer-reviewed academic studies is that EDR has a "positive effect on turnout." R. 101. He also described a single study that sought to determine whether this effect depends on the type of EDR available (for instance, "polling-place" as opposed to "centralized" EDR). R. 102-03. Based on this single study, Hood offered the following opinion: "*If* one were to apply these findings to Illinois, it is *quite possible* voters in larger counties with precinct EDR would benefit to a larger extent from this reform option than would voters in smaller counties using centralized EDR." R. 102 (emphasis added). Then, without giving any explanation for offering a different opinion on the same issue, his summary of his conclusions stated: "Limiting access in 82 of the state's counties, therefore, will *likely* dampen any positive turnout effect relative to larger counties where EDR will be implemented at all voting precincts." R. 108 (emphasis added). Notably, Hood never offered any opinion on the degree or magnitude of any such difference in turnout.

Even if a predicted difference in turnout were seen as tantamount to a burden on voting rights, Hood's opinion falls far short of providing a basis for a finding of a severe burden—and it certainly does not support the district court's speculative

finding that the “magnitude” of the difference in turnout would be “enormous.” R. 507 (SA8). *See Winkler v. Eli Lilly & Co.*, 101 F.3d 1196, 1204 (7th Cir. 1996) (“an injunction based on nothing but speculation and conjecture is as much an abuse of discretion as an injunction based on clearly erroneous facts”); *E. St. Louis Laborers’ Local 100 v. Bellon Wrecking & Salvage Co.*, 414 F.3d 700 (7th Cir. 2005) (“speculative injuries do not justify th[e] extraordinary remedy” of a preliminary injunction”); *Narragansett Indian Tribe v. Guilbert*, 934 F.2d 4, 6 (1st Cir. 1991) (“Likelihood of success cannot be woven from the gossamer threads of speculation and surmise.”); *Winter*, 555 U.S. at 21-22 (“Issuing a preliminary injunction based only on a possibility of irreparable harm is inconsistent with our characterization of injunctive relief as an extraordinary remedy that may only be awarded upon a clear showing that the plaintiff is entitled to such relief.”).

Nor is there any basis to conclude that Section 4-50 is discriminatory in a constitutionally cognizable sense. The statute does not classify people on the basis of any suspect classification such as race, and plaintiffs do not assert that it does. Indeed, it does not classify people at all; rather, it distinguishes between high-population counties and other counties with electronic poll books on the one hand and low-population counties without electronic poll books on the other. As described below in Section II.A.3, the legislature could reasonably conclude that larger and smaller counties are differently situated in many relevant respects, including access to technology and demand for in-precinct EDR. In any event, the distinction between different areas of a State has no salience in itself under the Equal Protection Clause.

“The Fourteenth Amendment does not prohibit legislation merely because it is special, or limited in its application to a particular geographical or political subdivision of the state.” *Holt Civic Club v. City of Tuscaloosa*, 439 U.S. 60, 70-71 (1978) (quoting *Fort Smith Light Co. v. Paving Dist.*, 274 U.S. 387, 391 (1927)); cf. *Hearne v. Board of Educ. of City of Chicago*, 185 F.3d 770, 774 (7th Cir. 1999) (“the Illinois statute books are riddled with laws that treat communities with more than 500,000 residents—*i.e.*, Chicago—differently from smaller ones”).

The district court appeared to believe that the Equal Protection Clause mandates strict geographic uniformity with respect to every aspect of the registration and voting process. But courts have recognized that variations among States and local entities with respect to voting mechanisms are ubiquitous and do not present federal constitutional concerns. See, e.g., *Bush v. Gore*, 531 U.S. 98, 109 (2000) (*per curiam*) (noting that “[t]he question before the Court is not whether local entities, in the exercise of their expertise, may develop different systems for implementing elections”); *Griffin*, 385 F.3d at 1132 (“Anyway, unavoidable inequalities in treatment, even if intended in the sense of being known to follow ineluctably from a deliberate policy, do not violate equal protection.”); *Southwest Voter Registration Educ. Project v. Shelley*, 344 F.3d 914 (9th Cir. 2003) (en banc) (affirming denial of preliminary injunction challenging use in some counties of punch cards, which had a higher vote-rejection rate than alternative means used in other counties). If the use of different voting mechanisms, without more, does not deny equal protection, it is

difficult to see how differences as to registration—one step removed from the act of voting itself—could constitute a violation.

A requirement of strict geographic uniformity would raise a host of judicially unmanageable issues with respect to matters such as the introduction of more reliable voting machines in some precincts or counties, the siting of additional polling places for early or same-day voting, funding for disabled access ramps at some polling places before others, selective access to absentee ballots, the rollout of mail-in voting for some counties, and so on. Under the district's court theory, such one-step-at-a-time reforms would be placed under a constitutional microscope whenever they could be shown to correlate with turnout or vote totals. That cannot be the law. In this regard, it should be noted that the plaintiff's expert erred in concluding that "Illinois is the only state that employs a two-tiered system for EDR based on where a voter may reside." R. 98. In fact, Utah has launched a three-year pilot program offering EDR at polling places; counties are permitted to opt into the program, and thus far eight of that State's 29 counties have done so, including during the 2016 general election.⁶

Like Utah's program, Section 4-50 does not compel any variation between counties as to the availability of EDR. As the district court recognized, the statute does not prohibit low-population counties from offering EDR at polling places; it

⁶ See Marjorie Cortez, *Today is the last day to register to vote in most Utah counties; Eight counties allow registration on Election Day at the polls*, DESERET NEWS, November 1, 2016, available at <http://www.deseretnews.com/article/865666135/Today-is-the-last-day-to-register-to-vote-in-most-Utah-counties.html?pg=all> (last visited November 10, 2016). The eight counties are Salt Lake, Davis, Weber, Cache, Kane, Millard, San Juan and Sanpete. *Id.* In addition, 21 Utah counties permit voting by mail. *Id.*

leaves it up to them to decide whether to do so. See R. 508 (SA 9) (noting that statute “does not technically prohibit low population counties without electronic polling books from instituting the EDR”). If voters in such counties want in-precinct EDR, they can pressure their elected officials to provide the technology necessary to implement it, as authorities in Grundy, Bureau, Stark and Brown Counties and the city of Danville have done.

The district court cited *Reynolds v. Sims*, 377 U.S. 533 (1964), and *Bush v. Gore*, R. 504-05 (SA5, SA6) but those cases do not support a finding that Illinois’s EDR statute is discriminatory. *Reynolds* established the one-person, one-vote principle, which prohibits States from diluting votes through malapportionment of legislative districts, as Alabama had done by failing to redistrict for more than 60 years. 377 U.S. at 569-70. As the Court recognized, voters in overpopulated districts were undervalued in the political process compared to voters in underpopulated districts solely because of where they lived. *Id.* at 562-63. Nothing of the sort is present here. Residents of small and large counties in Illinois may register at a variety of locations up to and including election day and, of course, the resulting votes are weighted fully and equally. Discrepancies in the ease or convenience of registration cannot be equated with the systematic distortion of the political process that was rectified by *Reynolds* and its progeny.

As for *Bush v. Gore*, the Court there was careful to note that “[t]he question before the Court is not whether local entities, in the exercise of their expertise, may develop different systems for implementing elections,” 531 U.S. at 109, but whether

the 2000 Florida recount was being conducted without the “rudimentary requirements of equal treatment and fundamental fairness,” *id.*, because of the lack of a uniform standard for ascertaining the meaning of ballots already cast. In addition, the Court in *Bush v. Gore* cautioned that its “consideration [was] limited to the present circumstances, for the problem of equal protection in election processes generally presents many complexities,” *id.*—and, indeed, the case has never been cited for any proposition by a majority of the Supreme Court or by any member of this Court. In any event, it can hardly be claimed that requiring residents of some counties to register and vote at a county clerk’s office or another EDR site as opposed to the polling place violates the “rudimentary requirements of equal treatment and fundamental fairness.” *Id.*

In their complaint, plaintiffs alleged that the EDR statute was “likely to have partisan effects”; that “it is quite possible that Illinois’ EDR scheme will have the effect of diminishing Republican votes relative to Democratic votes”; and that the statute “appears designed to tilt the political playing field to benefit the Democratic Party at the expense of the Republican Party.” R. 7-8. The district court mentioned these contentions, R. 501 (SA 2), but did not specifically rely on them as a basis for its preliminary injunction order. In any event, these allegations are inadequate both as a matter of law and fact.

Membership in a major political party is not a suspect classification for equal protection purposes. *See, e.g., Vieth v. Jubelirer*, 541 U.S. 267, 287 (2004) (plurality opinion) (“Political affiliation is not an immutable characteristic, but may shift from

one election to the next; and even within a given election, not all voters follow the party line.”); *id.* at 307 (Kennedy, J., concurring in the judgment) (to prevail in constitutional challenge to political classifications, plaintiffs must show that such classifications, “though generally permissible, were applied in an invidious manner or in a way unrelated to any legitimate legislative objective”). And even when a suspect class is involved, a plaintiff must prove discriminatory purpose in order to succeed in an equal protection challenge to a law or policy that does not classify people on its face. *Vill. of Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252, 265 (1977). Discriminatory purpose is present only when “the decisionmaker, in this case a state legislature, selected or reaffirmed a particular course of action at least in part ‘because of,’ not merely ‘in spite of,’ its adverse effects upon an identifiable group.” *Personnel Adm’r of Mass. v. Feeney*, 442 U.S. 256, 279 (1979).

Here, the plaintiffs offered no evidence in support of a finding of discriminatory purpose. Their expert concluded only that it is “*quite possible* then that Illinois’ EDR scheme will have the added *effect* of diminishing GOP votes,” R. 108 (emphasis added), without attempting to quantify the magnitude, or degree, of such an effect (if it exists) or examining whether would-be GOP registrants in smaller counties—in light of their age, residential stability, socioeconomic status, or other factors—would be likely to benefit more from polling-place EDR than from centralized EDR. His bare, tentative conclusion about *possible effects* falls far short of establishing a *prima facie* case of discriminatory *purpose*.

3. The EDR statute is justified by important state interests.

Illinois's EDR legislation easily passes the balancing test set forth in *Anderson* and *Burdick* for reasonable, nondiscriminatory regulations of the electoral process. The State, of course, has a powerful interest in ensuring that its citizens can exercise the right to vote. As the Fourth Circuit has observed, "By definition, '[t]he public interest . . . favors permitting as many qualified voters to vote as possible.'" *League of Women Voters of N. Carolina v. N. Carolina*, 769 F.3d 224, 247 (4th Cir. 2014), *cert. denied*, 135 S. Ct. 1735 (2015) (quoting *Obama for Am. v. Husted*, 697 F.3d 423, 437 (6th Cir. 2012)). The EDR statute does just that by increasing the availability of voter registration for all citizens of the State.

Likewise, important regulatory interests justify the geographic scope of the statute's in-precinct EDR requirement. Legislators could reasonably conclude that requiring EDR at all polling places would be administratively unmanageable for election officials in smaller counties that do not yet have electronic poll books. Indeed, the legislative history of the current version of Section 4-50 indicates that the Illinois Association of County Clerks & Recordors (IACCR), which represents local election administrators throughout the State, pressed for enactment of the opt-out provision for just this reason. Before the opt-out provision became part of the bill, IACCR's government relations representative declined to support it; after the opt-out was added, he filed a Senate committee witness slip in support.⁷ The chief sponsor of the legislation explained the origins of the opt-out provision as follows:

⁷ Compare R. 327 (Mike Hoffman, Government Relations, Research Consulting, IACCR, filing a witness slip as "no position" on House Amendment #1 before the House

[W]hile we're requiring in-precinct opportunities to register and vote on Election Day, for those jurisdictions of a hundred thousand or fewer people that do not have electronic poll books, they will not have to require it in every precinct until they begin to catch up with the 21st century. So, that came from a clerk . . . from the clerk [*sic*] themselves who were concerned about being required to offer in-precinct registration and vote opportunities on Election Day itself.⁸

The EDR statute was enacted in the wake of the November 2014 election, which saw overwhelming demand for same-day registration in high-population counties. Contemporaneous news reports document that in cities like Chicago and Evanston, voters attempting to register faced long lines and up to nine-hour wait times at the select EDR locations, with some voters waiting until 3 a.m. to register and vote and others turning away out of frustration.⁹ Legislators could reasonably conclude that in-precinct EDR in populous counties was necessary to meet this demonstrated high demand, or to spare would-be voters in urban areas the arduous and time-consuming task of trekking via public transportation to centralized EDR

Executive Committee (December 1, 2014)) *with* R. 325 (Mike Hoffman, Government Relations, Research Consulting, IACCR, filing a subject matter witness slip as “proponent” on House Amendment #2 before the Senate Executive Committee (December 3, 2014)).

⁸ H. 98, 151st Leg. Sess. at 27-28 (Ill. 2014) (statement of Rep. Currie), available at <http://www.ilga.gov/house/transcripts/htrans98/09800151.pdf> (last visited November 10, 2016).

⁹ See Quinn Ford & Lolly Bowean, *Some voters in Chicago wait 9 hours to vote: 'I just didn't want to be denied,'* CHICAGO TRIBUNE, May 11, 2014, available at <http://www.chicagotribune.com/chi-sameday-registration-voters-20141105-story.html> (last visited November 10, 2016); ABC7 I-Team Investigation, *Same-Day Registration, 'New Dirty Trick' Slow Chicago Elections*, ABC7 (Nov. 4, 2014), <http://abc7chicago.com/politics/same-day-registration-new-dirty-trick-slowchicagoelections-/380061/> (last visited November 10, 2016); Paige Leskin & Hal Jin, *Evanston same-day registration results in long lines*, THE DAILY NORTHWESTERN (Nov. 6, 2014), available at <http://dailynorthwestern.com/2014/11/06/city/evanston-same-day-registration-draws-most-insuburban-county-results-in-long-lines/> (last visited November 10, 2016).

sites, where lines and wait times could well be very long. Plaintiffs, meanwhile, have introduced no evidence of comparable demand or delays for EDR in more sparsely populated counties, nor any evidence that voters in such counties would be meaningfully inconvenienced by having to drive to the county clerk's office, to a permanent or temporary early voting site, or to a required EDR site in a city with 20% or more of the county's population, to register and vote on election day. See *Crawford*, 553 U.S. at 198 (opinion of Stevens, J.); *id.* at 205 (Scalia, J., concurring).

In any event, this Court's precedent recognizes that disparities in the ease or convenience of voting are ubiquitous and raise no equal protection concerns. In *Griffin*, this Court noted that "unavoidable inequalities in treatment, even if intended in the sense of being known to follow ineluctably from a deliberate policy, do not violate equal protection." 385 F.3d at 1132. The same rationale applies here, where individuals are not foreclosed from voting or even registering to vote on election day. Individuals in less populous counties can take advantage of the pre-election-day registration provisions as can all Illinois voters, and they can still register to vote on election day at the local election authority's headquarters and at other required EDR sites. The decision how to allocate EDR locations throughout the State "is quintessentially a legislative judgment" that this Court should not overturn "unless strongly convinced that the legislative judgment is grossly awry." *Id.* at 1131.

The Equal Protection Clause should not be read to forbid a State to expand voter registration incrementally in view of such legitimate administrative concerns.

At all events, the district court's injunction—which eliminates EDR at the polls *for the entire State*—is surely not responsive to any constitutional concerns the statute might theoretically raise.

C. The balance of the harms and the public interest favor denial of the preliminary injunction.

As noted above in Section II.A, plaintiffs cannot demonstrate a likelihood of irreparable harm in the absence of a preliminary injunction because the 2016 election is over and there is ample time before the next scheduled statewide election for the district court to resolve the merits of this case. But even if a new election were looming too soon for the district court to resolve their claims, plaintiffs would suffer no harm from the absence of an injunction. Section 4-50 does not harm anyone, irreparably or otherwise, because it does not prevent anyone from registering or voting. Residents of low-population counties may register on election day at the county clerk's office, a permanent or temporary early voting site, or an additional required EDR site in a municipality with 20% or more of the county's residents if the election authority's main office is not located in that municipality. Any resulting inconvenience is lessened by the fact that they can vote immediately after registering, rather than returning to their polling place to vote. 10 ILCS 5/4-50. As one district court observed with respect to early voting locations, “[w]hile it may be true that having to drive to an early voting site and having to wait in line may cause people to be inconvenienced, inconvenience does not result in a denial of meaningful access to the political process.” *Jacksonville Coal. For Voter Prot. v. Hood*, 351 F. Supp. 2d 1326, 1335 (M.D. Fla. 2004) (quotations omitted). Similarly here, residents of low-

population counties are not denied meaningful access to the political process. On the contrary, access in the form of election-day registration has been extended to them. Any inconvenience occasioned by traveling to a centralized EDR location has not been quantified by plaintiffs and in any event does not rise to the level of an irreparable harm sufficient to justify the extraordinary remedy of preliminary injunctive relief.

Plaintiffs' lengthy delay in moving for a preliminary injunction also undercuts their claims of irreparable harm. Public Act 98-1171 became law on January 12, 2015 (R. 4), more than *18 months* before plaintiffs filed the present motion for a preliminary injunction. Nothing prevented them from filing this lawsuit and moving for injunctive relief earlier, such as before the use of election-day registration in the March 2016 primary election, and their delay further confirms that they cannot establish irreparable harm. *Cf. Nader v. Keith*, 385 F.3d 729, 736 (7th Cir. 2004) (concluding that "it would be inequitable" to grant preliminary relief to a candidate who filed suit seeking access to the ballot "so gratuitously late in the campaign season").

In addition, plaintiffs must establish that "the harm they would suffer without the injunction is greater than the harm that preliminary relief would inflict on the defendants." *Mich. v. U.S. Army Corps of Eng'rs*, 667 F.3d 765, 769 (7th Cir. 2011). Because a movant need not establish that it is more likely than not that it will succeed on the merits to obtain injunctive relief, a movant "must compensate for the

lesser likelihood of prevailing by showing the balance of harms tips *decidedly* in favor of the movant.” *Boucher*, 134 F.3d at 826 n.5 (emphasis in original).

Balanced against the minimal harm to plaintiffs, the harm to defendants and the public would be significant if preliminary injunctive relief were granted. As the Fourth Circuit has observed, “[b]y definition, ‘[t]he public interest ... favors permitting as many qualified voters to vote as possible.’” *League of Women Voters of N. Carolina*, 769 F.3d at 247. Over the years, the Illinois legislature has created and then extended grace-period registration, both in duration and by location, from 28 to 14 days before election day (P.A. 93-1082), then to seven days before election day (P.A. 96-441), then to three days before election day (P.A. 97-766), and finally to election day itself, and from a more limited set of locations to a more expansive set of locations. These incremental expansions demonstrate the State’s compelling interest in enabling as many qualified voters as possible to register and vote while avoiding excessive burdens on low-population counties that do not yet have electronic poll books. That interest will be frustrated if the district court’s injunction remains in place.

CONCLUSION

For these reasons, Defendants-Appellants request that this Court reverse and vacate the district court's order granting a preliminary injunction.

Respectfully submitted,

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**CERTIFICATE OF COMPLIANCE WITH TYPE-VOLUME LIMITATION,
TYPEFACE REQUIREMENTS, and TYPE STYLE REQUIREMENTS**

I hereby certify that this brief complies with the typeface requirements of Federal Rule of Appellate Procedure 32(a)(5) and Circuit Rule 32 and the type style requirements of Federal Rule of Appellate Procedure 32(a)(6) because the brief has been prepared in a proportionally spaced typeface using Microsoft Word, in 12-point Century Schoolbook BT font, and 11.5-point Century Schoolbook BT font in the footnotes, and complies with Federal Rule of Appellate Procedure Rule 32(a)(7)(B) in that the brief contains 8655 words.

s/ *David L. Franklin*

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CERTIFICATE OF COMPLIANCE WITH CIRCUIT RULE 30(d)

I, David L. Franklin, certify that all of the materials required by Circuit Rule 30(a) and (b) are contained in the Short Appendix.

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

PATRICK HARLAN, et al.,	)	
	)	
Plaintiff,	)	
	)	
v.	)	No. 16 C 7832
	)	
CHARLES W. SCHOLZ, et al.	)	
	)	
Defendants.	)	

MEMORANDUM OPINION

SAMUEL DER-YEGHIAYAN, District Judge

This matter is before the court on Plaintiff Patrick Harlan's (Harlan) and Plaintiff Crawford County Republican Central Committee's motion for a preliminary injunction. For the reasons stated below, the motion for a preliminary injunction is granted.

BACKGROUND

In 2014, the Illinois General Assembly passed legislation for a pilot program for Election Day Registration, and the legislation was signed by the Governor. After the 2014 general election, new legislation (SB 172) passed for a permanent Election Day Registration System (EDR) on strict party-line votes in both houses of the General Assembly, with all affirmative votes coming from Democratic legislators

and all “nay” votes coming from Republican legislators. SB 172 was signed into law by the outgoing Democratic Governor. Under the terms of the EDR, counties with a population of 100,000 or more and/or counties with electronic polling books are required to provide voters with the option of registering at any polling place on election day. Counties with a population of 100,000 or less that do not have electronic polling books are not required to provide voters with the option of registering at any polling place on election day. Plaintiffs have provided evidence showing that EDR options such as the polling place registration option significantly increases voter turnout. Plaintiffs contend that, as a result, voter turnout in small counties without electronic polling books will not be properly represented in the elections. Plaintiffs also contend that the EDR will likely have partisan effects, benefitting Democratic candidates who primarily draw their support from counties with populations of 100,000 or more. Harlan is a Republican candidate for the United States House of Representatives in the 17th Illinois Congressional District, which includes one high population county and portions of three other high-population counties and the entirety of ten low-population counties. Plaintiffs have brought this lawsuit to protect the rights of United States citizens in the low-population counties without electronic polling books to ensure that they have the same opportunity to vote as voters in high-population counties. Plaintiffs contend that the EDR violates the equal protection rights of voters in low-population counties without electronic polling books. Plaintiffs request that the court enter a preliminary

injunction ordering Defendants to direct election authorities in all 102 Illinois counties not to implement the EDR option of registration at precinct polling locations. An amicus brief has been filed in this case on behalf of the Action Now Institute, Asian Americans Advancing Justice - Chicago, Change Illinois, Chicago Votes, Common Cause Illinois, The Illinois Coalition for Immigrants and Refugee Rights, and the Illinois Public Interest Research Group (collectively referred to as “AAAJ Parties”). An amicus brief has also been filed by the American Civil Liberties Union of Illinois and other voting rights organizations (collectively referred to as “ACLU Parties”). The court has considered all the arguments made in the Amicus Briefs in ruling on the instant motion.

DISCUSSION

I. Initial Requirements

A party seeking a preliminary injunction must initially establish: (1) “that absent a preliminary injunction, it will suffer irreparable harm in the interim period prior to final resolution of its claims,” (2) “that traditional legal remedies would be inadequate,” and (3) “that its claim has some likelihood of succeeding on the merits.” *Girl Scouts of Manitou Council, Inc. v. Girl Scouts of U.S. of America, Inc.*, 549 F.3d 1079, 1086 (7th Cir. 2008); *Turnell v. CentiMark Corp.*, 796 F.3d 656, 661-62 (7th Cir. 2015). If the moving party fails to satisfy any of the above

elements, the court must deny the motion for a preliminary injunction. *Girl Scouts*, 549 F.3d at 1086.

A. Irreparable Harm/ Inadequate Legal Remedy

Plaintiffs contend that if a preliminary injunction is not granted they will suffer irreparable harm and will have no adequate legal remedy. Plaintiffs have shown that in the upcoming election Illinois citizens in low-population counties without electronic polling books will have their right to vote significantly curtailed in comparison to citizens in high-population counties and counties with electronic polling books. Plaintiffs have shown that Illinois voters will suffer a concrete harm that is much more than speculative. The impairment of that right to vote in the upcoming election and loss of the ability to effectively participate in choosing elected officials cannot be later rectified in this action. It would not be practical for this court to order all elections in Illinois to be redone at the conclusion of this case if Plaintiffs succeed in the instant action. Nor can the impairment of the fundamental and intangible right to vote be quantified in money damages at the conclusion of this case. Plaintiffs have shown that absent the entry of a preliminary injunction certain United States citizens in Illinois will suffer irreparable harm and will lack an adequate legal remedy.

B. Likelihood of Success on the Merits

Plaintiffs argue that there is a likelihood of success on the merits in this case. The “Constitution and the laws of the United States are the supreme law of the land.” *Shelby County, Ala v. Holder*, 133 S.Ct. 2612, 2623 (2013)(quoting U.S. Const., Art. VI, cl. 2). The Supreme Court has referred to the “right to vote” as “one of the most fundamental rights of our citizens.”¹ *Bartlett v. Strickland*, 556 U.S. 1, 10 (2009); *Griffin v. Roupas*, 385 F.3d 1128, 1132 (7th Cir. 2004)(stating that there is an implied constitutional right to vote). The 15th, 19th, 24th, and 26th Amendments of the United States Constitution all provide that the rights of citizens of the United States to vote shall not be denied or abridged based on various classifications. The States in this federal system are given “broad powers to determine the conditions under which the right of suffrage may be exercised.” *Shelby County, Ala*, 133 S.Ct. at 2623 (internal quotations omitted)(quoting *Carrington v. Rash*, 380 U.S. 89, 91 (1965)). However, the Equal Protection Clause continues to protect the right to vote and “the manner of its exercise.” *Bush v. Gore*, 531 U.S. 98, 104-05 (2000)². Voters have “the right to vote on equal terms” and

¹ The founding fathers suggested that the right to vote was not only a fundamental right but a sacred right. Samuel Adams stated that a citizen who is voting should remember that the citizen “is executing one of the most solemn trusts in human society for which he is accountable to God and his country.” <http://foundersquotes.com>.

² The founders of this nation relied in part on the concept of equality in voting in a democracy as first recorded in Ancient Greece. The casting of ballots in a voting process is seen as early as 490 B.C. in a painting on terracotta cup on which Greek leaders are shown using stones to vote as to whether Ajax or Odysseus should receive Achilles’ armor. Ancient Greeks in fact used voting pebbles called ψήφος (psephos) which were believed to have been dropped into urns to execute a vote. www.getty.edu/art/collection/objects/12078; blogs.getty.edu/iris/voting-with-the-ancient-greeks; Gavin Betts and Alan Henry, *Complete Ancient Greek* 438 (2010).

“the State may not, by later arbitrary and disparate treatment, value one person’s vote over that of another.” *Id.*

Under the United States Constitution, the right to equal protection does not belong to any political party or group. The right to equal protection belongs to all United States citizens without regard to their background or political affiliation. The Supreme Court has held that in evaluating “a law respecting the right to vote - whether it governs the voter qualifications, candidate selection, or the voting process,” the court should employ the standard set forth in *Burdick v. Takushi*, 504 U.S. 428 (1992). *Crawford v. Marion County Election Bd.*, 553 U.S. 181, 204 (2008)(Scalia, J. concurring). Under that standard, a balancing test is applied to assess whether the burden to voting rights is a severe burden. *Id.*; *Bush*, 531 U.S. at 104-05 (quoting *Reynolds v. Sims*, 377 U.S. 533 (1964) for the proposition that “the right of suffrage can be denied by a debasement or dilution of the weight of a citizen’s vote just as effectively as by wholly prohibiting the free exercise of the franchise”). A burden is deemed to be a severe burden if it “go[es] beyond the mere inconvenient.” *Crawford*, 553 U.S. at 205. A court should “weigh the character and magnitude of the asserted injury to the rights protected by the” Constitution “that the plaintiff seeks to vindicate against the precise interests put forward by the State as justifications for the burden imposed by its rule.” *Burdick*, 504 U.S. at 434 (internal quotations omitted)(quoting *Anderson v. Celebrezze*, 460 U.S. 780, 789 (1983)).

In the instant action, Plaintiffs have provided ample evidence showing that the availability of polling place registration as part of the EDR results in a significant increase in voter turnout. That in turn shows that in a low-population county without electronic polling books there will be a significant decrease in voter turnout. The voters in such counties would thus be at a severe disadvantage under the EDR as it stands in Illinois. The EDR would result in much more than an inconvenience to such voters. The EDR would severely burden their right to vote. Defendants argue that the availability of polling place registration is merely an inconvenience because EDR will still be available in all counties in certain locations other than polling places. However, Defendants and the Amicus Briefs make clear how important the polling place registration option is to voters in Illinois. That in turn shows how important it is that voters in low-population counties without electronic polling books not be denied that option. The polling place registration option is applied in an arbitrary and disparate fashion among low-population counties in Illinois and is not the type of “[o]rdinary and widespread” burden that was considered not to be severe. *Crawford*, 553 U.S. at 205. The Intervening Party argues that the position advocated by Plaintiffs will result in fewer United States citizens in Illinois voting. (Orr Resp. 15). While it may be true that the polling place registration option can assist voters in certain populous counties, that option cannot be provided at the expense of lower population counties, thereby decreasing their political representation in Illinois. The application of this legislation favors the urban citizen

and dilutes the vote of the rural citizen. The Supreme Court has made it clear that legislation cannot “restrict the political participation of some in order to enhance the relative influence of others.” *McCutcheon v. Federal Election Com’n*, 134 S.Ct. 1434, 1441 (2014). The magnitude of the impact of the EDR upon voters in low-population counties without electronic voting books will be enormous and Defendants have not provided sufficient justification to support imposing such a hardship on United States citizens in Illinois. Defendants argue that the geographical classifications are necessary for the implementation of the EDR. It is possible for Illinois to implement voting registration laws in a disparate fashion among geographical areas without violating the Equal Protection Clause. *See Griffin*, 385 F.3d at 1132 (stating when considering absentee ballot rules that “unavoidable inequalities in treatment, even if intended in the sense of being known to follow ineluctably from a deliberate policy, do not violate equal protection”). However, at this preliminary stage in these proceedings, Defendants have not provided adequate support for their position in this regard as to the facial classification of the EDR and the disparate effect of its implementation. Defendants and the Amicus Briefs both argue that the EDR promotes that goal in large-population counties. While it is a desirable goal to make the voting process more readily available to United States citizens in Illinois and to encourage them to vote, that goal must apply equally to all United States citizens in Illinois.

Defendants also argue that the EDR merely imposes requirements on certain

counties and does not prohibit any county from employing the EDR. Although the EDR does not technically prohibit low population counties without electronic polling books from instituting the EDR, as Defendants acknowledge themselves, lower population counties have limited resources. (DE 29:7). The de facto effect of the EDR thus is to ensure that persons in certain larger and wealthier counties are provided with EDR options that those in less affluent counties do not have. The Intervening Party explains in its response that Cook County has expended large sums of money to implement the EDR. (Orr Resp. 14). In fairness and equity, such other less affluent counties should not have their representation in elections lessened based on their lack of such funds. The Intervening Party also argues that it will be difficult to change the election registration rules at this juncture close to the elections. Such an argument is not persuasive. This court should not be asked to wait until the next election to address this issue of fairness and equality in voters' rights. Ensuring equal protection of voters' rights knows no deadline. Justice demands that this court act now in order to prevent unfairness in the upcoming elections. Constitutional protections cannot be compromised solely for the purpose of expedience or convenience. The court has balanced all pertinent interests under the *Anderson-Burdick* balancing of interests test. Plaintiffs have thus shown that the EDR as it stands with the polling place registration option severely restricts voters' rights under the *Anderson-Burdick* balancing of interests test.³ Thus, based on the limited

³ If Harlan were merely bringing the instant action solely to protect his candidacy rights, the rational basis test would be applicable since "candidacy itself is not a fundamental right."

evidence presented at this early preliminary injunction stage, Plaintiffs have shown a likelihood of success on the merits. When fundamental rights, such as voting, are restricted, the courts generally apply the strict scrutiny standard and the court notes that even under the rational basis test, at this phase of the proceedings, Plaintiffs have presented sufficient evidence to show a likelihood of success on the merits.

II. Balancing Phase

If the moving party satisfies all of the initial requirements for a preliminary injunction, the court must “proceed[] to the balancing phase of the analysis.” *Girl Scouts*, 549 F.3d at 1086. During this phase, the court should balance: (1) the potential harm to the parties, (2) the likelihood of success on the merits, and (3) the public interest. *Id.*; *Turnell*, 796 F.3d at 662. The court should employ “a sliding scale approach: [t]he more likely the plaintiff is to win, the less heavily need the balance of harms weigh in his favor; the less likely he is to win, the more need it weigh in his favor.” *Girl Scouts*, 549 F.3d at 1086 (internal quotations omitted)(quoting *Roland Mach. Co. v. Dresser Indus., Inc.*, 749 F.2d 380, 389 (7th Cir. 1984)).

A. Balancing of Harms and Likelihood of Success

Plaintiffs contend that a balancing of the harms favors the entry of a

Judge v. Quinn, 624 F.3d 352, 361 (7th Cir. 2010).

preliminary injunction. Plaintiffs have shown that a significant number of United States citizens in low-population counties without electronic polling books will be harmed by the EDR. While Defendants and the Amicus Briefs argue that limiting the EDR will reduce the available options for voting in certain populous counties, the unavailability of such an option for citizens in certain counties is not actually a harm. It is in reality the removal of an unfair advantage from some United States citizens in Illinois that levels the election playing field, and is consistent with the Equal Protection Clause. The equal protection under the United States Constitution does not disappear or evaporate just because a legislation might be a benefit to certain United States citizen voters in a certain geographic area. Plaintiffs have shown that a balancing of the harms favors granting the motion for a preliminary injunction. On the consideration of the likelihood of success, Plaintiffs have made a *prima facie* showing that SB172, and more specifically the EDR on its face is unconstitutionally discriminatory to United States citizen voters in low-population counties, and that the application of such legislation dilutes the votes in low-population counties. Defendants have failed to provide any rational basis for the discriminatory legislation or the disparate application of the legislation. In regard to the likelihood of success, Plaintiffs have shown at this initial stage of these proceedings that there is a strong likelihood that they will prevail in this action.

B. Public Interest

Plaintiffs contend that the public interest supports the entry of a preliminary injunction. The public interest is served by ensuring that all Illinois voters have an equal opportunity to vote in Illinois. The EDR polling place registration option as it now stands gives an unfair advantage to voters in certain counties. While Defendants and the Amicus Briefs provide extensive analysis on the needs of voters in the populous counties in Illinois, Illinois is made up of more than the Chicago metropolitan area and other high population areas. Equality under the law does not end at the city limits. The Constitution guarantees equal voting rights to all United States citizens in Illinois, not simply those in counties that have the highest populations and have organizations such as those represented in the Amicus Briefs to stand up for their enhanced voting rights. Defendants themselves acknowledge that “smaller-population counties” have “more limited resources.” (Orr Resp. 7). The ability of United States citizens to vote should not be determined by the level of financial resources of the county in which they reside

Based upon the evidence presented, the harm to Plaintiffs is irreparable in the absence of any alternative remedy. The Amicus Brief by the ACLU Parties has elected to take no position on the merits of Plaintiffs’ claim that the current EDR system violates the Equal Protection Clause, but suggests that if this court were to enter injunctive relief, the court should simply grant an injunction that extends EDR to local polling places statewide. (DE 25: 1). While ACLU Parties’ suggestion might or might not be an alternative remedy, this court will not legislate as to voters’

rights. Illinois has acted to institute the legislation for EDR and this court's proper role is to determine whether such legislation and/or implementation of such legislation violates the Constitution. The court also notes that such a step might also impose an untenable financial burden on various counties in the State of Illinois. Defendants argue that a preliminary injunction is an extraordinary remedy. Such a remedy is precisely the relief that is most appropriate in a case such as this where a fundamental right under the Constitution is impacted. Therefore, the public interest factor clearly supports the entry of a preliminary injunction. Based on all of the above, Plaintiffs' motion for a preliminary injunction is granted.

CONCLUSION

Based on the foregoing analysis, Plaintiffs' motion for a preliminary injunction is granted.

A handwritten signature in black ink, appearing to read "Samuel Der-Yeghiayan", written over a horizontal line.

Samuel Der-Yeghiayan
United States District Court Judge

Dated: September 27, 2016

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

DECLARATION

I, Kenneth R. Menzel, state the following: .

1. I am the General Counsel of the Illinois State Board of Elections.
2. In my capacity as General Counsel of the Illinois State Board of Elections I am familiar with which Illinois election authorities opted to provide in-precinct election day registration on November 8, 2016. The election authorities provided that information to the State Board of Elections via electronic mail or telephone for purposes of the State Board's election day hotlines and website listings.
3. Specifically, the election authorities for Brown County, Bureau County, Grundy County, Stark County, and the City of Danville informed the State Board that they opted to provide in-precinct election day registration on November 8, 2016.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information, and belief.

Executed on November 10, 2016



Kenneth R. Menzel
General Counsel
Illinois State Board of Elections
100 West Randolph, Suite 14-100
Chicago, Illinois 60601



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Proposed Legislation

West's Smith-Hurd Illinois Compiled Statutes Annotated**Chapter 10. Elections****Act 5. Election Code (Refs & Annos)****Article 4. Registration of Electors in Counties Having a Population of Less than 500,000 (Refs & Annos)****10 ILCS 5/4-50****5/4-50. Grace period**

Effective: June 1, 2015

Currentness

§ 4-50. Grace period. Notwithstanding any other provision of this Code to the contrary, each election authority shall establish procedures for the registration of voters and for change of address during the period from the close of registration for an election until and including the day of the election. During this grace period, an unregistered qualified elector may register to vote, and a registered voter may submit a change of address form, in person in the office of the election authority, at a permanent polling place established under Section 19A-10, at any other early voting site beginning 15 days prior to the election, at a polling place on election day, or at a voter registration location specifically designated for this purpose by the election authority. The election authority shall register that individual, or change a registered voter's address, in the same manner as otherwise provided by this Article for registration and change of address.

If a voter who registers or changes address during this grace period wishes to vote at the election or primary occurring during the grace period, he or she must do so by grace period voting. The election authority shall offer in-person grace period voting at the authority's office, any permanent polling place established under Section 19A-10, and at any other early voting site beginning 15 days prior to the election, at a polling place on election day, where grace period registration is required by this Section; and may offer in-person grace period voting at additional hours and locations specifically designated for the purpose of grace period voting by the election authority. The election authority may allow grace period voting by mail only if the election authority has no ballots prepared at the authority's office. Grace period voting shall be in a manner substantially similar to voting under Article 19A.

Within one day after a voter casts a grace period ballot, or within one day after the ballot is received by the election authority if the election authority allows grace period voting by mail, the election authority shall transmit by electronic means pursuant to a process established by the State Board of Elections the voter's name, street address, e-mail address, and precinct, ward, township, and district numbers, as the case may be, to the State Board of Elections, which shall maintain those names and that information in an electronic format on its website, arranged by county and accessible to State and local political committees. The name of each person issued a grace period ballot shall also be placed on the appropriate precinct list of persons to whom vote by mail and early ballots have been issued, for use as provided in Sections 17-9 and 18-5.

A person who casts a grace period ballot shall not be permitted to revoke that ballot and vote another ballot with respect to that primary or election. Ballots cast by persons who register or change address during the grace period at a location other than their designated polling place on election day must be transmitted to and counted at the election authority's central ballot counting location and shall not be transmitted to and counted at precinct polling places. The grace period ballots determined to be valid shall be added to the vote totals for the precincts for which they were cast in the order in which the ballots were opened.

In counties with a population of less than 100,000 that do not have electronic poll books, the election authority may opt out of registration in the polling place if the election authority establishes grace period registration and voting at other sites on election day at the following sites: (i) the election authority's main office and (ii) a polling place in each municipality where 20% or more of the county's residents reside if the election authority's main office is not located in that municipality. The election authority may establish other grace period registration and voting sites on election day provided that the election authority has met the notice requirements of Section 19A-25 for permanent and temporary early voting sites.

Credits

Laws 1943, vol. 2, p. 1, § 4-50, added by P.A. 93-1082, § 5, eff. July 1, 2005. Amended by P.A. 94-1000, § 5, eff. July 3, 2006; P.A. 96-441, § 5, eff. Jan. 1, 2010; P.A. 97-766, § 5, eff. July 6, 2012; P.A. 98-115, § 5, eff. July 29, 2013; P.A. 98-691, § 900, eff. July 1, 2014; P.A. 98-1171, § 5, eff. June 1, 2015.

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Proposed Legislation

West's Smith-Hurd Illinois Compiled Statutes Annotated**Chapter 10. Elections****Act 5. Election Code (Refs & Annos)****Article 5. Registration of Electors in Counties Having a Population of 500,000 or More (Refs & Annos)****10 ILCS 5/5-50****5/5-50. Grace period**

Effective: June 1, 2015

Currentness

§ 5-50. Grace period. Notwithstanding any other provision of this Code to the contrary, each election authority shall establish procedures for the registration of voters and for change of address during the period from the close of registration for an election until and including the day of the election. During this grace period, an unregistered qualified elector may register to vote, and a registered voter may submit a change of address form, in person in the office of the election authority, at a permanent polling place established under Section 19A-10, at any other early voting site beginning 15 days prior to the election, at a polling place on election day, or at a voter registration location specifically designated for this purpose by the election authority. The election authority shall register that individual, or change a registered voter's address, in the same manner as otherwise provided by this Article for registration and change of address.

If a voter who registers or changes address during this grace period wishes to vote at the election or primary occurring during the grace period, he or she must do so by grace period voting. The election authority shall offer in-person grace period voting at his or her office, any permanent polling place established under Section 19A-10, and at any other early voting site beginning 15 days prior to the election, at a polling place on election day, where grace period registration is required by this Section; and may offer in-person grace period voting at additional hours and locations specifically designated for the purpose of grace period voting by the election authority. The election authority may allow grace period voting by mail only if the election authority has no ballots prepared at the authority's office. Grace period voting shall be in a manner substantially similar to voting under Article 19A.

Within one day after a voter casts a grace period ballot, or within one day after the ballot is received by the election authority if the election authority allows grace period voting by mail, the election authority shall transmit by electronic means pursuant to a process established by the State Board of Elections the voter's name, street address, e-mail address, and precinct, ward, township, and district numbers, as the case may be, to the State Board of Elections, which shall maintain those names and that information in an electronic format on its website, arranged by county and accessible to State and local political committees. The name of each person issued a grace period ballot shall also be placed on the appropriate precinct list of persons to whom vote by mail and early ballots have been issued, for use as provided in Sections 17-9 and 18-5.

A person who casts a grace period ballot shall not be permitted to revoke that ballot and vote another ballot with respect to that primary or election. Ballots cast by persons who register or change address during the grace period at a location other than their designated polling place on election day must be transmitted to and counted at the election authority's central ballot counting location and shall not be transmitted to and counted at precinct polling places. The grace period ballots determined to be valid shall be added to the vote totals for the precincts for which they were cast in the order in which the ballots were opened.

In counties with a population of less than 100,000 that do not have electronic poll books, the election authority may opt out of registration in the polling place if the election authority establishes grace period registration and voting at other sites on election day at the following sites: (i) the election authority's main office and (ii) a polling place in each municipality where 20% or more of the county's residents reside if the election authority's main office is not located in that municipality. The election authority may establish other grace period registration and voting sites on election day provided that the election authority has met the notice requirements of Section 19A-25 for permanent and temporary early voting sites.

Credits

Laws 1943, vol. 2, p. 1, § 5-50, added by P.A. 93-1082, § 5, eff. July 1, 2005. Amended by P.A. 94-1000, § 5, eff. July 3, 2006; P.A. 96-441, § 5, eff. Jan. 1, 2010; P.A. 97-766, § 5, eff. July 6, 2012; P.A. 98-115, § 5, eff. July 29, 2013; P.A. 98-691, § 900, eff. July 1, 2014; P.A. 98-1171, § 5, eff. June 1, 2015.

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Proposed Legislation

West's Smith-Hurd Illinois Compiled Statutes Annotated**Chapter 10. Elections****Act 5. Election Code (Refs & Annos)****Article 6. Registration of Electors in Certain Cities, Villages and Incorporated Towns (Refs & Annos)****10 ILCS 5/6-100****5/6-100. Grace period**

Effective: June 1, 2015

Currentness

§ 6-100. Grace period. Notwithstanding any other provision of this Code to the contrary, each election authority shall establish procedures for the registration of voters and for change of address during the period from the close of registration for an election until and including the day of the election. During this grace period, an unregistered qualified elector may register to vote, and a registered voter may submit a change of address form, in person in the office of the election authority, at a permanent polling place established under Section 19A-10, at any other early voting site beginning 15 days prior to the election, at a polling place on election day, or at a voter registration location specifically designated for this purpose by the election authority. The election authority shall register that individual, or change a registered voter's address, in the same manner as otherwise provided by this Article for registration and change of address.

If a voter who registers or changes address during this grace period wishes to vote at the election or primary occurring during the grace period. The election authority shall offer in-person grace period voting at the authority's office, any permanent polling place established under Section 19A-10, and at any other early voting site beginning 15 days prior to the election, at a polling place on election day, where grace period registration is required by this Section; and may offer in-person grace period voting at additional hours and locations specifically designated for the purpose of grace period voting by the election authority. The election authority may allow grace period voting by mail only if the election authority has no ballots prepared at the authority's office. Grace period voting shall be in a manner substantially similar to voting under Article 19A.

Within one day after a voter casts a grace period ballot, or within one day after the ballot is received by the election authority if the election authority allows grace period voting by mail, the election authority shall transmit by electronic means pursuant to a process established by the State Board of Elections the voter's name, street address, e-mail address, and precinct, ward, township, and district numbers, as the case may be, to the State Board of Elections, which shall maintain those names and that information in an electronic format on its website, arranged by county and accessible to State and local political committees. The name of each person issued a grace period ballot shall also be placed on the appropriate precinct list of persons to whom vote by mail and early ballots have been issued, for use as provided in Sections 17-9 and 18-5.

A person who casts a grace period ballot shall not be permitted to revoke that ballot and vote another ballot with respect to that primary or election. Ballots cast by persons who register or change address during the grace period at a location other than their designated polling place on election day must be transmitted to and counted at the election authority's central ballot counting location and shall not be transmitted to and counted at precinct polling places. The grace period ballots determined to be valid shall be added to the vote totals for the precincts for which they were cast in the order in which the ballots were opened.

In counties with a population of less than 100,000 that do not have electronic poll books, the election authority may opt out of registration in the polling place if the election authority establishes grace period registration and voting at other sites on election day at the following sites: (i) the election authority's main office and (ii) a polling place in each municipality where 20% or more of the county's residents reside if the election authority's main office is not located in that municipality. The election authority may establish other grace period registration and voting sites on election day provided that the election authority has met the notice requirements of Section 19A-25 for permanent and temporary early voting sites.

Credits

Laws 1943, vol. 2, p. 1, § 6-100, added by P.A. 93-1082, § 5, eff. July 1, 2005. Amended by P.A. 94-1000, § 5, eff. July 3, 2006; P.A. 96-441, § 5, eff. Jan. 1, 2010; P.A. 97-766, § 5, eff. July 6, 2012; P.A. 98-115, § 5, eff. July 29, 2013; P.A. 98-691, § 900, eff. July 1, 2014; P.A. 98-1171, § 5, eff. June 1, 2015.

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CERTIFICATE OF SERVICE

I certify that on November 10, 2016, I electronically filed the foregoing Brief and Short Appendix of Defendants-Appellants with the Clerk of the Court for the United States Court of Appeals for the Seventh Circuit by using the CM/ECF system.

Participants in the case who are registered CM/ECF users will be served by the CM/ECF system.

Respectfully submitted,

s/ David L. Franklin

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