

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS  
COUNTY DEPARTMENT, CHANCERY DIVISION

ILLINOIS GREEN PARTY, a voluntary	)	
association and political party, and	)	
LAUREL LAMBERT SCHMIDT,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	Court No. 2011-CH-36783
	)	
ILLINOIS STATE BOARD OF ELECTIONS,	)	- F I L E D -
and WILLIAM M. McGUFFAGE, Chairman,	)	10/24/2011
JESSE R. SMART, Vice-Chairman, BRYAN A.	)	
SCHNEIDER, BETTY J. COFFRIN, HAROLD D.	)	
BYERS, JUDITH C. RICE, CHARLES W.	)	
SCHOLZ, ERNEST L. GOWEN, in their	)	
official capacities as Members of the Illinois	)	
State Board of Elections,	)	
Defendants.	)	

**COMPLAINT FOR DECLARATORY JUDGMENT AND  
PRELIMINARY AND PERMANENT INJUNCTIONS**

NOW COME the Plaintiffs, ILLINOIS GREEN PARTY and LAUREL LAMBERT SCHMIDT, through their attorney, Andrew Finko, and file their complaint for declaratory and injunctive relief against Defendants, ILLINOIS STATE BOARD OF ELECTIONS and WILLIAM M. McGUFFAGE, Chairman, JESSE R. SMART, Vice-Chairman, BRYAN A. SCHNEIDER, BETTY J. COFFRIN, HAROLD D. BYERS, JUDITH C. RICE, CHARLES W. SCHOLZ, ERNEST L. GOWEN, in their official capacities as Members of the Illinois State Board of Elections, as follows.

1. Plaintiff, ILLINOIS GREEN PARTY (“ILGP”) is an association of Illinois voters that are united as a political party in the State of Illinois, is recognized as a state political party by the Federal Election Commission, and is an affiliate of the national

political party, Green Party of the United States.

2. The ILGP undertakes political and issue advocacy and promotes its candidates for election to public office throughout the State of Illinois.

3. The ILGP's platform differs from those of the Democratic Party and Republican Party in many ways; for example, the ILGP and its candidates do not accept money from corporations or PACs, and the ILGP is focused on advancing positions that would bring economically sound, progressive change to Illinois. Please see "Platform of the Illinois Green Party (2010)," attached hereto and incorporated herein as *Exhibit A*.

4. After the general election of November 7, 2006 through the general election on November 2, 2010, the ILGP was a duly recognized "established political party" throughout the State of Illinois, as defined in §10-2 of the Illinois Election Code, 10 ILCS 5/10-2, after the ILGP's candidate for Illinois Governor, Rich Whitney, received over 10% of the votes cast for the office of Governor at the November 7, 2006, general election which included the Republican Party's contender, Judy Baar Topinka and the Democratic Party's candidate, Rod Blagojevich.

5. Plaintiff, LAUREL LAMBERT SCHMIDT ("Schmidt"), is a member of the ILGP residing in Riverside, Cook County, Illinois.

6. Plaintiff, Schmidt, was the recognized ILGP candidate seeking the office of Representative to the U.S. Congress for the Third Congressional District, and was a duly qualified candidate, whose name was printed upon the ballot for the November 2, 2010 general election.

7. As a matter of public record, Plaintiff, Schmidt, received 10,028 votes that

were cast for her as candidate for Representative to the U.S. Congress for the Third Congressional District, representing six percent (6.0%) of the total votes cast for that office at the November 2, 2010 general election.

8. The Defendant, ILLINOIS STATE BOARD OF ELECTIONS (“Board”) was created by the legislature in 1973, and is a bi-partisan agency of the State of Illinois that is currently comprised of four members of the Democratic Party and four members of the Republican Party, who are appointed by the Governor of the State of Illinois in accordance with the provisions of the Illinois Election Code, 10 ILCS 5/1A-1, et seq.

9. Defendants, WILLIAM M. MCGUFFAGE, Chairman, HAROLD D. BYERS, JUDITH C. RICE, CHARLES W. SCHOLZ, are the four Democratic Party members of the Board, and Defendants, JESSE R. SMART, Vice-Chairman, BRYAN A. SCHNEIDER, BETTY J. COFFRIN, ERNEST L. GOWEN, are the four Republican Party members of the Board, and all are named in their official capacities as members of the Board (“Members”).

10. The Election Code expressly creates a bi-partisan Board by restricting membership on the Board to only two political parties; as such, the Election Code does not permit the appointment of any ILGP members to the Board, nor does the Election Code allow the appointment of non-partisan or politically-independent members to the Board.

11. Pursuant to the Illinois Election Code, 10 ILCS 5/1A-8, the Board is statutorily charged with the following duties and obligations:

*Sec. 1A-8.* The State Board of Elections shall exercise the following powers and perform the following duties in addition to any powers or duties otherwise provided for by law:

*(1) Assume all duties and responsibilities of the State Electoral Board and the Secretary of State as heretofore provided in this Act;*

*(2) Disseminate information to and consult with election authorities concerning the conduct of elections and registration in accordance with the laws of this State and the laws of the United States;*

*(3) Furnish to each election authority prior to each primary and general election and any other election it deems necessary, a manual of uniform instructions consistent with the provisions of this Act which shall be used by election authorities in the preparation of the official manual of instruction to be used by the judges of election in any such election.* In preparing such manual, the State Board shall consult with representatives of the election authorities throughout the State. The State Board may provide separate portions of the uniform instructions applicable to different election jurisdictions which administer elections under different options provided by law. The State Board may by regulation require particular portions of the uniform instructions to be included in any official manual of instructions published by election authorities. Any manual of instructions published by any election authority shall be identical with the manual of uniform instructions issued by the Board, but may be adapted by the election authority to accommodate special or unusual local election problems, provided that all manuals published by election authorities must be consistent with the provisions of this Act in all respects and must receive the approval of the State Board of Elections prior to publication; provided further that if the State Board does not approve or disapprove of a proposed manual within 60 days of its submission, the manual shall be deemed approved.

*(4) Prescribe and require the use of such uniform forms, notices, and other supplies not inconsistent with the provisions of this Act as it shall deem advisable which shall be used by election authorities in the conduct of elections and registrations;*

(5) Prepare and certify the form of ballot for any proposed amendment to the Constitution of the State of Illinois, or any referendum to be submitted to the electors throughout the State or, when required to do so by law, to the voters of any area or unit of local government of the State;

(6) Require such statistical reports regarding the conduct of elections and registration from election authorities as may be deemed necessary;

(7) Review and inspect procedures and records relating to conduct of elections and registration as may be deemed necessary, and to report violations of election laws to the appropriate State's Attorney or the Attorney General;

*(8) Recommend to the General Assembly legislation to improve the administration of elections and registration;*

*(9) Adopt, amend or rescind rules and regulations in the performance of its duties provided that all such rules and regulations must be consistent with the provisions of this Article 1A or issued pursuant to authority otherwise provided by law;*

(10) Determine the validity and sufficiency of petitions filed under Article XIV, Section 3, of the Constitution of the State of Illinois of 1970;

(11) Maintain in its principal office a research library that includes, but is not limited to, abstracts of votes by precinct for general primary elections and general elections, current precinct maps and current precinct poll lists from all election jurisdictions within the State. The research library shall be open to the public during regular business hours. Such abstracts, maps and lists shall be preserved as permanent records and shall be available for examination and copying at a reasonable cost;

*(12) Supervise the administration of the registration and election laws throughout the State;*

(13) Obtain from the Department of Central Management Services, under Section 405-250 of the Department of Central Management Services Law (20 ILCS 405/405-250), such use of electronic data processing equipment as may be required to perform the duties of the State Board of Elections and to provide election-related information to candidates, public and party officials, interested civic organizations and the general public in a timely and efficient manner; and

(14) To take such action as may be necessary or required to give effect to directions of the national committee or State central committee of an established political party under Sections 7-8, 7-11 and 7-14.1 or such other provisions as may be applicable pertaining to the selection of delegates and alternate delegates to an established political party's national nominating conventions or, notwithstanding any candidate certification schedule contained within the Election Code, the certification of the Presidential and Vice Presidential candidate selected by the established political party's national nominating convention.

\* \* \* *[Emphasis added.]*

12. At all times relevant herein, §10-2 of the Election Code, 10 ILCS 5/10-2,

provided in pertinent part as follows:

**Sec. 10-2.** The term "political party", as hereinafter used in this Article 10, shall mean any "established political party", as hereinafter defined and shall also mean

any political group which shall hereafter undertake to form an established political party in the manner provided for in this Article 10

\* \* \* \*

A political party which, at the last general election for State and county officers, polled for its candidate for Governor more than 5% of the entire vote cast for Governor, is hereby declared to be an "established political party" as to the State and as to any district or political subdivision thereof.

A political party which, at the last election in any congressional district, legislative district, county, township, municipality or other political subdivision or district in the State, polled more than 5% of the entire vote cast within such territorial area or political subdivision, as the case may be, has voted as a unit for the election of officers to serve the respective territorial area of such district or political subdivision, *is hereby declared to be an "established political party" within the meaning of this Article as to such district or political subdivision.*

\* \* \* \*

A political party which continues to receive for its candidate for Governor more than 5% of the entire vote cast for Governor, shall remain an "established political party" as to the State and as to every district or political subdivision thereof. But if the political party's candidate for Governor fails to receive more than 5% of the entire vote cast for Governor, or if the political party does not nominate a candidate for Governor, *the political party shall remain an "established political party" within the State or within such district or political subdivision less than the State*, as the case may be, only so long as, and only in those districts or political subdivisions in which, the candidates of that political party, or any candidate or candidates of that political party, continue to receive more than 5% of all the votes cast for the office or offices for which they were candidates at succeeding general or consolidated elections within the State or within any district or political subdivision, as the case may be.

Any such petition shall be filed at the same time and shall be subject to the same requirements and to the same provisions in respect to objections thereto and to any hearing or hearings upon such objections that are hereinafter in this Article 10 contained in regard to the nomination of any other candidate or candidates by petition. If any such new political party shall become an "established political party" in the manner herein provided, the candidate or candidates of such new political party nominated by the petition hereinabove referred to for such initial election, shall have power to select any such party committeeman or committeemen as shall be necessary for the creation of a provisional party organization and provisional managing committee or committees for such party within the State, or in any district

or political subdivision in which the new political party has become established; and the party committeeman or committeemen so selected shall constitute a provisional party organization for the new political party and shall have and exercise the powers conferred by law upon any party committeeman or committeemen to manage and control the affairs of such new political party until the next ensuing primary election at which the new political party shall be entitled to nominate and elect any party committeeman or committeemen in the State, or in such district or political subdivision under any parts of this Act relating to the organization of political parties.

\* \* \* \*

13. Although the ILGP candidate for Governor, in a five-candidate race, did not receive more than five percent of all votes cast for Governor at the November 2, 2010 general election, other ILGP candidates seeking elected office in various districts and political subdivisions throughout the State of Illinois did receive more than five percent of the total votes cast for their respective offices at the November 2, 2010 general election.

14. The Board's certified election results confirm that Plaintiff, Schmidt, received more than five percent of the total votes cast for the office of Representative to the U.S. Congress for the Third Congressional District at the November 2, 2010 general election.

15. The Board's certified election results confirm that ILGP candidates for the elected office of Representative to the U.S. Congress received more than five percent of the total votes cast at the November 2, 2010 general election in the elections for Representative to the U.S. Congress for the First, Second, Third, Fourth, Fifth, Seventh, Eleventh, Thirteenth, Sixteenth, Seventeenth and Eighteenth Congressional Districts.

16. The Board's certified election results confirm that ILGP candidates for the elected office of Representative to the Illinois General Assembly received more than five percent of the total votes cast at the November 2, 2010 general election in the elections for

Representative to the General Assembly from the 29<sup>th</sup>, 39<sup>th</sup>, 68<sup>th</sup>, 79<sup>th</sup>, 105<sup>th</sup> and 115<sup>th</sup> Representative Districts.

17. In addition, at the November 2, 2010 general election, ILGP candidates obtained more than five percent of the total votes cast for the following elected offices, including Sheriff of McHenry County (22<sup>nd</sup> Judicial Circuit), Commissioner to the Metropolitan Water Reclamation District of Greater Chicago, and various county board positions in Cook, Jackson, Kendall, McHenry and McLean Counties, as publicly known through election results certified by the governing election authorities.

18. Under the Election Code, candidates of “established political parties” participate in a primary election, with the further consequences that they circulate the required petitions for their candidacy more than five months prior to “new party” candidates, appear on a primary ballot in a March primary election and are allowed to gather and submit substantially fewer petition signatures than “new party” candidates.

19. Plaintiff, Schmidt, as an “established political party” candidate seeking nomination as Representative to the U.S. Congress for the Third Congressional District at the March 20, 2012 primary election would only need to submit 600 signatures of qualified voters obtained between September 6, 2011 and December 5, 2011.

20. If Plaintiff, Schmidt, were to seek nomination for Representative to the U.S. Congress for the Third Congressional District as a “new party” candidate or “independent” candidate, the Election Code, 10 ILCS 5/10-3 and 10 ILCS 5/10-2, respectively, requires Schmidt to then obtain at least 5,000 signatures of qualified voters, between March 27, 2012 and June 25, 2012.

21. In addition to dramatically reduced petition signature requirements and eligibility for a primary election in contested elections, “established political parties” are also eligible under the Election Code to vote upon their ward, precinct, county or district political party committee structure at their primary election, which in turn provides a procedure for a political party to fill vacancies in nomination upon the general election ballot, and other benefits, including but not limited to statewide voter data.

22. Plaintiff, Schmidt, is again seeking nomination to the ballot as an ILGP candidate for the office of Representative to the U.S Congress for the Third Congressional District at the 2012 general election, and Schmidt is circulating petitions as an “established political party” candidate of the ILGP to be voted upon at the Green Party primary on March 20, 2012, pursuant to the provisions of the Election Code, 10 ILCS 5/10-2, which recognize the ILGP as an “established political party” in the “district or political subdivision” in which ILGP candidates received more than five percent of the total votes cast at the November 2, 2010, general election.

23. Other members of the ILGP are also circulating petitions as “established political party” candidates of the ILGP, pursuant to the Election Code, 10 ILCS 5/10-2, which recognizes the ILGP as an “established political party” in the “district or political subdivision” in which ILGP candidates received more than five percent of the total votes cast at the November 2, 2010, general election.

24. Due to state-wide redistricting, unilaterally determined by the Democratic Party, the Defendant, Board and its Members, have refused to acknowledge the ILGP as an “established political party” within those districts and political subdivisions of the State

where ILGP candidates received more than five percent of the total votes cast for the respective elections voted upon at the November 2, 2010 general election.

25. The Board's "Candidate's Guide – 2012," a copy of which is attached hereto as *Exhibit B*, sets forth filing requirements and petition signature requirements for candidates of the Democratic Party and Republican Party as "established political parties," but does not identify the ILGP as an "established political party" within those districts and political subdivisions wherein the ILGP should be recognized as an "established political party" under the Election Code, 10 ILCS 5/10-2.

26. On September 12, 2011, the ILGP, through its chair, Phil Huckelberry, wrote to the Board expressly requesting clarification of the Board's position regarding ILGP status in its "Candidate's Guide – 2012" and requested revisions to include filing requirements and petition signature requirements for ILGP candidates in all districts and political subdivisions wherein the ILGP should be recognized as an "established political party" under the Election Code, 10 ILCS 5/10-2. Please see ILGP Letter to Board, attached and incorporated herein as *Exhibit C*.

27. The Board, through its Deputy General Counsel verbally advised the ILGP chair, Phil Huckelberry, that the Board will not accept or recognize petitions submitted by ILGP candidates as "established party candidates" for the March 20, 2012 primary election, even from ILGP candidates seeking nomination as candidates for election to offices in districts or political subdivisions wherein ILGP candidates received more than five percent of the total votes cast for the respective offices at the November 2, 2010 general election.

28. In response to the ILGP chair's September 12, 2011 letter to the Board, Deputy

General Counsel, Kenneth Menzel, prepared a memorandum dated October 3, 2011 to General Counsel, Steven Sandvoss, which was presented to the Board by the Executive Director at its meeting on October 18, 2011, and acknowledged by the Board as the Board's understanding of the Election Code as it pertains to the ILGP. Please see October 28, 2011, Amended Agenda and October 3, 2011, Memorandum, attached hereto as *Exhibit D*.

29. The Board has predicated its refusal to accept nominating petitions submitted by ILGP candidates on the proposition that, since the *geographic boundaries* of districts are being altered through redistricting, the First amendment ballot access rights of the ILGP, and its members and candidates, including Schmidt, are thereby nullified and denied.

30. The Board has expressly stated that it will refuse to accept nomination papers from ILGP candidates, even in those districts and political subdivisions where the geographic boundaries have remained substantially the same as they existed at the November 2, 2010, and/or where the prior ILGP candidate plainly received more than five percent of the total votes cast in such majority portion of the geographic boundaries that carried over into the newly drawn district or subdivision.

31. For the reasons set forth herein, Plaintiff, Schmidt, other prospective candidates seeking the nomination of the ILGP in the primary election, and other ILGP members who either are circulating, or intend to circulate petitions as candidates seeking nomination as "established political party" candidates, are injured and harmed, and will suffer further injury and harm, when the Board refuses to accept and recognize petitions and other nomination documents submitted by Plaintiff, Schmidt, and other ILGP candidates as "established political party" ILGP candidates.

32. The Election Code must yield to the constitutional rights of voters, candidates and political parties, and the least restrictive regulatory means and interpretation of the Election Code must be adopted, such that constitutional rights are not infringed.

33. The position taken by the Board in refusing to accept nomination papers from ILGP candidates deprives the ILGP, and its members, voters and candidates, including but not limited to Plaintiff, Schmidt, of their constitutional rights, including but not limited to their First amendment right to nominate, vote for and elect ILGP candidates.

34. The plain language of §10-2 of the Election Code, 10 ILCS 5/10-2, taken in light of the constitutional ballot access protections afforded to the ILGP, and its members and candidates, provides that any newly drawn district or political subdivision which includes any geographic area which was, as of November 2, 2010, within the boundaries of a district in which an ILGP candidate received more than five percent of the total votes cast at the November 2, 2010 general election, is and should be recognized as a district or political subdivision in which the ILGP is an “established political party.”

35. Plaintiffs have a clearly ascertainable right in need of protection, namely First amendment ballot access rights, yet no adequate remedy at law, and face irreparable harm, of being denied the opportunity to seek nomination for election at the 2012 elections.

36. Plaintiffs are not, and will not be able to seek judicial review of administrative proceedings through the Election Code, 10 ILCS 5/10-10 and 10 ILCS 5/10-10.1, since the Board will not accept nomination papers from ILGP candidates, and therefore, the Board will not determine the sufficiency of nomination papers of ILGP candidates and will not issue decisions from which Plaintiffs could seek judicial review.

37. Accordingly, Plaintiffs have exhausted their administrative remedies by submitting a request to the Board through the ILGP's letter to the Board of September 12, 2011, and the Board's response through its memorandum of October 3, 2011 and acknowledgment of the Board's policy and position at its October 18, 2011 Board meeting.

38. The dispute between Plaintiffs and Defendant represents an actual case or controversy that is ripe for adjudication within the meaning of 735 ILCS 5/2-701.

WHEREFORE, Plaintiffs, ILLINOIS GREEN PARTY and LAUREL LAMBERT SCHMIDT, through counsel, Andrew Finko, respectfully request entry of an order granting the following relief:

- (a) Finding and declaring that the Board's failure to recognize the ILGP as an "established political party" in districts and political subdivisions where ILGP candidates received more than five percent of the total votes cast, and the the Board's refusal to accept petitions and nomination papers from Plaintiff, Schmidt, and other ILGP candidates seeking nomination for election at the March 20, 2012 Green Party primary election, to be unlawful, unconstitutional and contrary to the Election Code, including 10 ILCS 5/10-2;
- (b) Entry of a preliminary injunction and permanent order directing the Board to: (i) immediately revise its "Candidate's Guide – 2012" to reflect that the ILGP is an "established political party" and ILGP candidates are governed under the provisions of the Election Code applicable to "established political parties" in all districts and political subdivisions or redistricted portions thereof, in which ILGP candidates received more than five percent of the total

votes cast for the respective elections at the November 2, 2010 general election, and *(ii)* immediately issue appropriate notifications to all election authorities throughout the State to reflect the foregoing changes, and *(iii)* immediately issue notification to all election authorities in the State directing them to accept nomination papers submitted by ILGP candidates and review such nomination papers under the provisions of the Election Code applicable to “established political parties,” and *(iv)* immediately issue notification to all election authorities that they must take necessary steps in order to prepare for a Green Party primary election on March 20, 2012;

- (c) Any other equitable relief this court deems just and appropriate to reconcile the provisions of the Election Code with the requirements of the constitution, and to reach a just and appropriate remedy in favor of the Plaintiffs that preserves their duly entitled First amendment ballot access rights; and
- (d) Reimbursing Plaintiffs for their costs and expenses of this action.

Respectfully submitted:  
*Illinois Green Party and Laurel Lambert Schmidt*

By: \_\_\_\_\_  
Andrew Finko, attorney for Plaintiffs

Andrew Finko  
P.O. Box 2249  
Chicago, IL 60690-2249  
Tel (773) 480-0616  
Fax ((773) 453-3266  
Attorney No. 30263