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Clerk
Marion County, Indiana

STATE OF INDIANA	)	IN THE MARION _____ COURT
	) SS:	
COUNTY OF MARION	)	CAUSE NO.: _____

THOMAS CHARLES BOOKWALTER,
Petitioner,
v.
INDIANA ELECTION COMMISSION, GREGORY L. IRBY, and CODY ECKERT,
Respondents.

BRIEF IN SUPPORT OF VERIFIED PETITION FOR EMERGENCY STAY PENDING JUDICIAL REVIEW AND REQUEST FOR THE COURT TO SET BOND

Comes now Petitioner, Thomas Charles Bookwalter ("Bookwalter"), by counsel, and for his Brief in Support of Verified Petition for Emergency Stay Pending Judicial Review and Request for the Court to Set Bond, states as follows:

INTRODUCTION

Bookwalter is a decorated veteran of the United States Army Special Forces who is a servant at his church, and a small businessman who employs members of his community in Indiana's Congressional District 4. It is undisputed that Bookwalter has been long been a loyal member and supporter of the Republican Party. Bookwalter seeks to run in the Republican Party's primary as a candidate for United States Representative.

It is undisputed that Bookwalter is a "qualified" candidate, as that term is defined by Indiana Code § 3-8-1-8 and Federal law. I.C. § 3-8-1-8, is located in Title 3, Article 8, Chapter 1, entitled "Qualifications of Candidates." I.C. § 3-8-1-8 states, "[a] candidate for United States Representative must have the qualifications provided in Article 1, Section 2,

Clause 2 of the Constitution of the United States."[1] However, the Indiana Election Commission removed Bookwalter from the ballot, pursuant to Indiana Code § 3-8-2-7.

I.C. § 3-8-2-7 requires that candidates for public office file a Declaration of Candidacy. The Indiana legislature amended I.C. § 3-8-2-7 in July 2021. *See* I.C. § 3-8-2-7 as amended by P.L. 193-2021, SEC 17, eff. 1/1/2022 and PL 109-2021, SEC. 8, eff. 1/1/2022. Previously, I.C. § 3-8-2-7 required major party candidates to certify that they had voted in their respective party's primary in the most recent primary election in which they voted. I.C. § 3-8-2-7 now requires major party candidates to certify that they had voted in their respective party's primary in the *two* most recent primaries in which they voted.

However, incumbents, and candidates favored by the party, can bypass this requirement, by attaching a written "certification," by their party's County Chair, stating that candidate is a member of the party. Hoosiers without the requisite primary-voting record, and who fail to obtain certification, are barred from running in their party's primary. By its terms, I.C. § 3-8-2-7 provides no rules or standards to govern or guide County Party chairs in determining who is a party member. Rep. Curt Nisly, R-Milford, describes the statute as "…blatantly unconstitutional…," and "…[not] vetted properly."[2]

In the process of preparing his Declaration of Candidacy, Bookwalter learned of the new two-primary rule, and obtained his primary voting. After learning his record shows he only voted in the Republican Party Primary, in 2016, Bookwalter contacted Ottinger and asked for her to provide him with written certification that he is a member of the Party.

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[1] Article 1, Section 2, Clause 2 of the U.S. Const. states, "No Person shall be a Representative who shall not have attained to the Age of twenty five Years, and been seven Years a Citizen of the United States, and who shall not, when elected, be an Inhabitant of that State in which he shall be chosen.
[2] See KPCNews.com, Candidates removed from ballot as Indiana's two-primaries law takes effect, Feb.23, 2002, *available at https://www.kpcnews.com/news/state/article_90b2235f-74ad-5870-abba-2b5b12afde32.html*, last visited March 5, 2022 at 7:53 PM.

Bookwalter sent Ottinger a letter requesting her certification, and attached a sworn Affidavit and documentation of his long-time membership in and support of the Republican Party and related organizations, and his life-long commitment to core Republican values. See Exhibit A Letter and Affidavit. Bookwalter asked to meet with Ottinger and Ottinger agreed. At their meeting, Ottinger expressed dismay regarding Bookwalter's desire to run against the Republican incumbent, Jim Baird. Ottinger stated that running for United States Representative was a "big step" for someone such as Bookwalter. Ottinger suggested that Bookwalter run for another office such as city council, and stated that she would support Bookwalter's candidacy, but only if Bookwalter agreed to run for a different office.

Bookwalter filed a Declaration of Candidacy with the Indiana Elections Division, but did not check either box indicating the basis of his party "affiliation;" *i.e.,* that: 1) he had voted in two Republican primaries; or 2) that he had attached Ottinger's written certification of his Party membership . Thereafter, two separate GOP officeholders from Bookwalter's District, Greg Irby ("Irby"), and Cody Eckert ("Eckert"), filed challenges. Neither alleged that Bookwalter is not a member of the Republican party; only that he does not have two-primaries, or Ottinger's certification. See Exhibit B, Challenges.

On February 18, 2022, the Indiana Election Commission ("Commission") held a hearing where it consolidated and upheld the challenges, and ordered that Bookwalter be removed from the Republican Party Primary Ballot. Bookwalter, however, remains on the Republican Party Primary Ballot, as a candidate for Republican Convention Delegate, as the Party apparently saw no reason he should not be a candidate for that position.

THE COURT SHOULD STAY THE COMMISSION'S ORDER

The Commission's decision is invalid and illegal because it violates Bookwalter's freedom of association and due process, as guaranteed by the First and Fourteenth Amendments to the United States Constitution. Pursuant to Indiana Code § 4-21.5-5-14, the burden of demonstrating the invalidity of agency action is on the party asserting invalidity, and the Court shall grant relief…only if it determines that a person seeking judicial relief has been prejudiced by an agency action that is:

1) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law;
2) contrary to constitutional right, power, privilege, or immunity;
3) in excess of statutory jurisdiction, authority, or limitations, or short of statutory right;
4) without observance of procedure required by law; or
5) unsupported by substantial evidence.

IC § 4-21.5-5-14(d).

Bookwalter avers[3] that the Commission's determination is invalid and illegal, under IC § 4-21.5-5-14(d)(2), as it is "…[c]ontrary to constitutional right, power, privilege or immunity;" "not in accordance with the law" under IC § 4-21.5-5-14(d)(1); and "[u]nsupported by substantial evidence" under IC § 4-21.5-5-14(d)(5), because:

a) the Commission's Order applying IC § 3-8-2-7 violates Bookwalter and voters' freedom of association, as guaranteed by the First and Fourteenth Amendments of the United States Constitution;[4]

b) I.C. § 3-8-2-7 is vague and overbroad as applied to Bookwalter and other candidates, and in conflict with § 3-10-1-2, which states that major political parties, such as the Republican Party,[5] "…shall hold

[3] In his *Verified Petition for Judicial Review and Complaint for Declaratory and Injunctive Relief*, filed contemporaneously herewith.
[4] And the corollary privileges and immunities clause in Article I, Section 23 of The Indiana Constitution.
[5] "…whose nominees received at least 10% of the votes for Secretary of State in the last election…" *See* I.C. § 3-10-1-2.

a primary election…to select nominees to be voted for the general election."

c) I.C. § 3-8-2-7, as applied to Bookwalter, is an invalid *ex post facto* law, because no primaries have been held since I.C. § 3-8-2-7 was amended and became effective, months later, implementing the two-primary rule.

I. Freedom of Association

The Commission's application of Indiana Code § 3-8-2-7(a)(4)(A) to bar Bookwalter's candidacy violates his freedom of association. "It is well-settled that freedom to engage in association for the advancement of beliefs and ideas is an inseparable aspect of the 'liberty' assured by the Due Process Clause of the Fourteenth Amendment… *Anderson v. Celebrezze*, 460 U.S. at 780, 787 (1983) (citing *NAACP ex. Rel. Patterson*, 357 U.S. 449, 460 (1958)). "The right of individuals to associate for the advancement of political beliefs, and the rights of qualified voters, regardless of their political persuasion, to cast their votes effectively '…rank among our most precious freedoms.'" *Id*. at 787 (citing *Williams v. Rhodes*, 393 U.S. 23, 30-31 (1968)). "If…ballot access restrictions treat similarly situated parties or candidates unequally, they may also violate the Fourteenth Amendment right to equal protection of the laws." *Libertarian Party of Illinois v. Illinois State Bd. of Elections*, No. 12 C 2511, at *6 (N.D. Ill. Sep. 5, 2012) (citing *Anderson v. Celebrezze*, 460 U.S. 780, 786 n.7 (1983); *Lubin v. Panish*, 415 U.S. 709, 713-14 (1974)). "A court is 'required to evaluate challenged ballot access restrictions together, not individually, and assess their combined effect on voters' and candidates' political association rights." *Id.* at *7 (citing *Nader v. Keith*, 385 F.3d 729, 735 (7th Cir. 2004).

In *Anderson v. Celebrezze* 460 U.S. 780, (1983), the Court set its test for evaluating ballot access restrictions. The court struck down an Ohio law that required independent

candidates to register in March, prior to the primary, the same deadline as for party-candidates, even though independent candidates do not run in primaries. *Id.* 783.[6] This impermissibly burdened the First Amendment rights of the candidate and his supporters. *Id.* 783; see also *id.* at n.1

The Court noted that ballot access laws "…always have at least some theoretical, correlative effect on voters." *Id.* at 786 (citing *Bullock v. Carter*, 405 U.S. 134, 143 (1972)). Thus, the Court's "…primary concern is with the tendency of ballot access restrictions 'to limit the field of candidates from which voters might choose.'" *Id.* That is because:

> …voters can assert their preferences only through candidates or parties or both. Voters hope to find on the ballot a candidate who comes near to reflecting his policy preferences on contemporary issues. **The right to vote is heavily burdened if that vote may be cast only for major-party candidates at a time when other parties or candidates are 'clamoring for a place on the ballot.'** The exclusion of candidates also burdens voters' freedom of association, because an election campaign is an effective platform for the expression of views on issues of the day, and a candidate serves as a rallying point for likeminded citizens.

Id. (cleaned up and emphasis added). "Therefore, in approaching candidate restrictions, it is essential to examine in a realistic light the extent and nature of their impact on voters." *Id.* 786 citing *Bullock v. Carter*, 405 U.S. 134, 143 (1972).

Not all restrictions on candidate eligibility impose constitutionally suspect burdens. "…[T]he State's important regulatory interests are generally sufficient to justify reasonable, nondiscriminatory restrictions. *Id.* 788-89; id. n 9. However, there "…is no litmus test…" to distinguish valid from invalid restrictions. *Id.* 789. Instead, courts:

> …must first consider the character and magnitude of the asserted injury to the rights protected by the First and Fourteenth Amendments… It then must identify and evaluate the precise interests put forth by the State as justifications for the burden imposed by its rule. In passing judgement, the Court must not only determine the legitimacy and strength of each of those

[6] Independent candidates also had to file a petition with at least 5,000 signatures at that time. *Id.* n.1.

> interests, it also must consider the extent to which those interest make it necessary to burden the plaintiff's rights. Only after weighing all these factors is the reviewing court in a position to decide whether a challenged provision is unconstitutional. The results of this evaluation will not be automatic…there is no substitute for the hard judgments that must be made.

Id. 789-90. The Court found that Ohio's March deadline had a substantial impact on voters, because election laws must be flexible enough to allow voters to respond to events in a changing political environment:

> In election campaigns…the candidates and the issues simply do not remain static… Various candidates rise and fall in popularity; domestic and international developments bring new issues to center stage and may affect voters' assessments of national problems. Such developments will certainly affect the strategies of candidates who have already entered the race; they may also create opportunities for new candidates.

Id. citing A. Bickel, Reform and Continuity 87-89 (1971).

While, "…there has to be a cutoff date sometime…there is more than a little of the capricious in laws that force a commitment to act…before such an upheaval as President Johnson's withdrawal on March 31, 1968, and in many states before important primaries, not to mention such an event as the assassination of Robert F. Kennedy on June 5, 1968." *See id.* at n. 11. "…[A] late-emerging…candidate…whose positions on the issues could command widespread community support…[would be]… excluded." Thus, by requiring independent candidates to register in March, "the Ohio system…denies the disaffected not only a choice of leadership but a choice on the issues as well." *Id.* (cleaned up). The law also made it more difficult for candidates to fundraise, generate media interest, recruit volunteers, and generate interest in the campaign. *Id.* 793.

The State identified three interests as informing its early registration law: 1) voter education; 2) equal treatment for partisan and independent candidates; and 3) political stability. The Court dismissed the State's claimed interest in voter education, citing greater

literacy and availability of information, and noted that its cases reflect a greater faith in the ability of individual voters to inform themselves about campaign issues. *Id.* 797. The Court also found "no merit," in the State's claim that equal treatment required the same deadline for independent and major party candidates, noting that these types of candidates are subject to different benefits and burdens, as a consequence of declaring their candidacy. *Id.* 799.

Regarding political stability, the State argued it had an interest "…in protecting the two major political parties from 'damaging intraparty feuding,'" and argued that Anderson's candidacy "…threatened to 'splinter' the Ohio Republican Party…" *Id.* The Court dismissed these arguments as, "…amount[ing] to a desire to protect existing political parties from competition…," and held that they cannot justify excluding other political aspirants from the political arena. *Id.* 802 (citation omitted). The Court noted that, "…even when pursuing a legitimate interest, a State may not choose means that unnecessarily restrict constitutionally protected liberty." *Id.* 806 (cleaned up). "Precision of regulation must be the touchstone…[i]f the State has open to it a less drastic way of satisfying its legitimate interests, it may not choose a legislative scheme that broadly stifles the exercise of fundamental personal liberties." *Id.* 806 (cleaned up). Thus, the Court held that the burdens imposed on the candidate, and voters, by Ohio's statute, exceeded the scope of regulation that could be justified. *Id.* 807 ("…under any realistic appraisal," the "'extent and nature'"… of the burdens imposed by Ohio's law "…on the voters' freedom of choice and freedom of association … unquestionably outweigh the State's minimal interest in imposing a March deadline on independent candidates.")

Like the Ohio statue in *Anderson v. Celebrezze*, I.C. § 3-8-2-7(a)(4) imposes a temporal barrier to ballot access. But instead of requiring independent candidates to register a few months earlier than necessary, I.C. § 3-8-2-7(a)(4) imposes a four-year waiting-period on major party candidacies by Hoosiers who are not primary voters, regardless of their party membership, unless their Party Chair approves of their candidacy. As a result, *most Hoosiers are likely now unqualified to run for office*. According to Pew Research, 79% of Hoosier adults identify as a Republican or Democrat,[7] but only 24% of Hoosiers voted in the 2020 primaries.[8] And while one might expect that County Party Chairs would gladly provide their constituents with certification, in fact, County Chairs protect incumbents.[9]

In addition, candidates like Bookwalter, who are major Party members, risk being banned from their party and subject to disqualification if they decide to run as an independent. Rule 1-25 of the Indiana GOP defines "Republican in Good-Standing" as "…a Republican who supports Republican nominees and who does not actively or openly support another candidate against a Republican nominee." Indiana GOP. Rules of The Indiana Republican State Committee, 5 (September 22, 2021).[10] 5. Per Rule 3-3, Republican Precinct Committeemen, Vice Precinct Committeemen and State Convention Delegate must "…pledge[] full support to the Republican Party and the candidates of the Republican

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[7] Pew Research Center. Party affiliation among adults in Indiana. *Available at* https://www.pewforum.org/religious-landscape-study/state/indiana/party-affiliation/, *last visited* March 9, 2020, 6:33 PM.

[8] Indiana Secretary of State, Elections Division. Primary Election Turnout and Registration. Available at https://www.in.gov/sos/elections/voter-information/files/2020-Primary.pdf, *last visited* March 9, 2020, 6:36 PM.

[9] In a similar case, Petitioner Amy Rainey, who is also represented by undersigned counsel, and who is listed on the Elkhart County GOP website as a "Platinum Sponsor," was told by her County GOP Chair that "…the job of County Chairs is to support incumbents."

[10] *Available* at *http://indiana.gop/sites/default/files/REAL%20Party%20Rules_0.pdf, last visited March 8*, 2022, at 7:35 PM.

Party." *See id.* at 12, 35. The Indiana Republican Party does enforce these rules, including by issuing ten-year membership bans, and has successfully challenged at least one candidate that attempted to run in spite of a ban by the Party. *See Hero v. Lake Cnty. Election Bd.*, 2:19-cv-319 DRL, at *1 (N.D. Ind. Sep. 21, 2021).[11] In that case the Election Board upheld the challenge, *even though the candidate satisfied I.C. § 3-8-2-7's test for Party affiliation. Id.*

Presumably, IC § 3-8-2-7 was amended to prevent "party-raiding."[12] However, the United States Supreme Court, in its cases dealing with ballot access, has never upheld a temporal restriction greater than one year, and even then, only in the context of closed-primary states. *See Rosario v. Rockefeller*, 10 U.S. 752 (1973) (upholding law requiring party registration 8 and 11 months prior to primary); *Storer v. Brown*, 415 U.S. 724 (1974) (upholding 'anti-sore loser law' requiring that independent candidates not have been registered as a member of either party in previous year). And in *Kusper v. Pontikes*, 414 U.S. 51 (1973), the Court struck down an Illinois statute that "locked" voters into their pre-existing party affiliation for a 23-month period following their vote in any primary. *Id.* With I.C. § 3-8-2-7, the legislature has imposed a temporal restriction that is far in excess of what the U.S. Supreme Court declared to be unconstitutional in *Kusper*, as it restricts party members' ability to run for office for at least 24, and as many as 48 months. I.C. § 3-8-2-7 requires strict scrutiny. *Id.* 57.

While the burden is on the state to assert what legitimate state interest I.C. § 3-8-2-7 is intended to serve, the statute's overbreadth is obvious in this election where, among

[11] The *Hero* case was dismissed for lack of standing, as the Plaintiff sought a declaratory judgement to ensure he could run as a Republican in future elections. *See id.* at *6-7.

[12] "…the organized switching of blocs of voters from one party to another to manipulate the outcome of the other party's primary election. *Anderson v. Celebrezze*, 460 U.S. at 780, 787 (1983) at n.9 (citing *Rosario v. Rockefeller*, 410 U.S. 752 (1973)).

Indiana's nine Congressional Districts, of the six Districts with Republican incumbents who are running for re-election, in only one will the incumbent Republican face a primary challenge. This number should and would be three, but for the disqualifications of Bookwalter in District 4, and of Gabriel Whitley in District 8—both based on the two-primary rule.

II. Indiana Code § 3-8-2-7 is Void For Vagueness

The 'void for vagueness' doctrine applies to ballot access restrictions. *Ray v. State Election Board*, 422 N.E.2d 714, 721 (Ind. Ct. App. 1981). The void for vagueness doctrine can be summarized as follows:

> …if arbitrary and discriminatory enforcement is to be prevented, laws must provide explicit standards for those who apply them. A vague law impermissibly delegates basic policy matters to Boards, policemen, judges, and juries for resolution on an *ad hoc* and subjective basis, with the attendant dangers of arbitrary and discriminatory application. …Where a vague statute abuts upon sensitive areas of basic First Amendment freedoms, it operates to inhibit the exercise of those freedoms.

Id. (cleaned up). *In Ray v. State Election Board*, the Indiana Court of Appeals reversed the Marion Superior Court's affirmance of the State Election Board's order striking the plaintiff from both the Democratic and the Republican primary ballots as a candidate for United States Representative. *Ray v. State Election Boa*rd, 422 N.E.2d 714, 715 (Ind. Ct. App. 1981). The trial court, affirming the Board, took the position that dual-filing was prohibited by I.C. § 3-1-9-6, which required that major parties have separate primary ballots. *Id.* I.C. § 3-1-9-6 stated that "the name of no candidate belonging to any other party shall be printed or written thereon." *Id.* The trial court read this in the context of IC 3-1-9-3, which it interpreted as defining "membership in a political party," for purposes of determining what primary one is allowed to vote in pursuant to I.C. § 3-1-9-6, by stating that one is a member

of the party to which the majority of the candidates they voted for in the last general election belong, or, if they did not vote in the last general election, the majority of the candidates they intend to vote for at the next election belong. *Id.*

The Court of Appeals reversed the trial court, stating that it did not believe that I.C. § 3-1-9-3, which sets for the 'qualifications of voters' to vote in a primary, was intended to define party membership for purposes of I.C. § 3-1-9-6. *Id.* The court observed that "Ray apparently considers himself to be a 'member' of both…Parties…[and]…[w]e cannot say…that…[these]…are mutually exclusive, that a person may not be a member of both…" The Court held that the statute was unconstitutionally vague,[13] and that its overbroad language infringed on Ray's freedom of association. *Id.*

The Court surmised that, in enacting IC § 3-1-9-6, the legislature was either attempting to prevent cross-filing, or to prevent Democrat candidates from running on the Republican ballot, or vice versa (*i.e.* to prevent party-raiding). *Id.* 719. The Court noted the United States Supreme Court upheld a one-year 'anti-sore loser law,' in *Storer v. Brown*. *Id.* 720. However, the Court observed, Indiana is an open-primary state. *Id.* ("[t]he decisive difference between California's constitutional scheme and Indiana's unconstitutional scheme is that…[the California elections code]…provides a definite statutory means of determining party membership.") Moreover, "…today's voter…may contribute financially or in kind to candidates of different parties and who splits his votes among several parties rather than voting a straight party ticket. Herein lies the heart of IC 3-1-9-6's overbreadth

[13] While most commonly discussed in the context of criminal ordinances, the void for vagueness doctrine also applies to election restrictions. *Ray v. State Election Board*, 422 N.E.2d 714, 721 (Ind. Ct. App. 1981).

problem." *Ray v. State Election Board*, 422 N.E.2d 714, 722 (Ind. Ct. App. 1981) (emphasis added).

The overbreadth problem identified by the Indiana Court of Appeals in *Ray* has returned with the 2021 amendments to I.C. § 3-8-2-7. The four-year waiting period imposed by the 'two-primary rule' is far in excess of the 23-month waiting period that the U.S. Supreme Court struck down in *Kusper v. Pontikes*, 414 U.S. 51, 52 (1973). This burden is not relieved by I.C. § 3-8-2-7(a)(4)(B)'s provision for certification of party membership by the candidate's County Party Chair, because, as in *Ray*, "party membership" is not defined by the relevant statutes. Thus, whether to provide certification is left to the whims of the County Party Chairs, who have now proven their willingness to disqualify candidates without regard for their party membership, or lack thereof. "Whenever an overbroad law covering first amendment activities and formless standards of first amendment privilege are conjoined, the result is an operative, injurious legal reality suffering due process vagueness." *Id.* at 720 (Ind. Ct. App. 1981) (citing *The First Amendment Overbreadth Doctrine*, 83 Harv.L.Rev. 844, 871 (1969)) (emphasis added). The legislature's failure to define or provide meaningful guidelines for determining party membership:

> …offends several important values. It may trap the innocent potential candidate by not providing fair warning of what may be sufficient to keep him or her off a primary ballot. It may inhibit the exercise of fundamental 1st Amendment freedoms and it accounts for the arbitrary treatment Ray has received in this case.

Id. 722. The vagueness problem is enhanced by the fact that Indiana law requires major political parties[14] to select their nominees for the general election by holding a

[14] "…whose nominees received at least 10% of the votes for Secretary of State in the last election…" *See* I.C. § 3-10-1-2.

primary election. I.C. § 3-10-1-2. Yet under I.C. § 3-8-2-7, most major party members are likely now ineligible to run in the primary, as shown above.[15] As a result, the Indiana GOP is using I.C. § 3-8-2-7 to relieve itself of its obligation under I.C. § 3-10-1-2 to select candidates by holding primaries, even in races where, as here, candidates who the challengers admit[16] to be Party members are "…clamoring to be on the ballot." *See Anderson v. Celebrezze*, 460 U.S. at 786. Thus, I.C. § 3-8-2-7 imposes a heavy burden on the freedom of association and due process, and strict scrutiny is required. *See id.* "…[S]tandards of permissible statutory vagueness are strict in the area of free expression…" That is because the freedoms at stake:

> **…are delicate and vulnerable, as well as supremely precious in our society.** The threat of sanctions may deter their exercise almost as potently as the actual application of sanctions. **Because First Amendment freedoms need breathing space to survive, government may regulate in the area only with narrow specificity.**
>
> *Ray v. State Election Boa*rd, 422 N.E.2d at 722 (cleaned up, emphasis added).

III. I.C. § 3-8-2-7 Is Invalid As Ex Post Facto Law, As Applied To Bookwalter.

While the application of overbreadth and vagueness doctrines does not depend on absence of fair notice (*see id.*), I.C. § 3-8-2-7 fails basic notice requirements as applied to Bookwalter, and others who have proof of their having voted in one primary, because the law was made effective prior to this year's primary, thus it operates to disqualify previously qualified candidates like Bookwalter due to no fault of their own, and without giving them an opportunity to satisfy the requirement prior to this year's primary.

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[15] See supra at 9, and n. 7-8 (noting that 79% of Hoosiers identify as a Republican or a Democrat, but only 24% voted in the 2020 primaries).

[16] As Bookwalter testified: 1) neither of Bookwalter's challengers allege that he is not a Republican, or objected to his testimony to that fact; 2) his County Party Chair asked him to run for a different office; and 3) Bookwalter remains on the ballot for Republican State Convention Delegate, having received no challenges.

BOOKWALTER IS ENTITLED TO A STAY

Because the agency action impacts whether Bookwalter will appear on the ballot less than two months from now and Bookwalter has invested considerable time, effort and resources into his campaign, time is of the essence and he will be irreparably harmed with no recourse if his name is not placed back on the ballot. Bookwalter believes that he has shown, at least, that there is a reasonable probability, if not a high probability, that the agency determination is invalid or illegal, as described above. Bookwalter agrees he will pay all Court costs and abide by the agency determination if it is not set aside.

WHEREFORE, Petitioner, Thomas Charles Bookwalter, prays the Court grant a stay of the agency determination, restore his name to the ballot, set bond as required by the statute and enter all relief just and proper in the premises.

Respectfully submitted,
Lekse Harter, LLC

By: s/ Michelle C. Harter
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Pro Hac Vice Admission pending

Attorneys for Bookwalter

CERTIFICATE OF SERVICE

I certify that on the 14th day of March, 2022, I electronically filed the foregoing *Verified Petition for Emergency Stay Pending Judicial Review and Request for the Court to Set Bond* using the Indiana E-Filing System.

I also certify that on the 14th day of March, 2022, the foregoing document was served upon the following via certified mail:

Indiana Election Commission,
c/o Paul Okeson, Chairman,
302 W. Washington St., Rm E204,
Indianapolis, IN 46204

Gregory L. Irby
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/s/ Michelle C. Harter
Michelle C. Harter