In the

United States Court of Appeals

For the Seventh Circuit

No. 22-1653

DAVID M. GILL, *et al.*,

Plaintiffs-Appellants,

v.

IAN K. LINNABARY, *et al.*,

Defendants-Appellees.

Appeal from the United States District Court for the
Central District of Illinois.
No. 3:16-cv-03221-SLD-EIL — **Sara Darrow**, *Chief Judge*.

ARGUED DECEMBER 5, 2022 — DECIDED MARCH 22, 2023

Before BRENNAN, SCUDDER, and ST. EVE, *Circuit Judges*.

BRENNAN, *Circuit Judge*. In 2016, David Gill ran as an independent candidate for the U.S. House of Representatives in Illinois's 13th Congressional District. He came up 2,000 signatures short of qualifying for the general election ballot. Gill then sued members of the Illinois State Board of Elections, claiming that portions of the Illinois Election Code violated the U.S. Constitution.

The district court granted summary judgment to the defendants, and Gill appealed. We reviewed that decision in *Gill v. Scholz*, 962 F.3d 360 (7th Cir. 2020), and remanded with instructions to evaluate the ballot access provisions for independent candidates under the fact-intensive balancing test set forth in *Anderson v. Celebrezze*, 460 U.S. 780 (1983), and *Burdick v. Takushi*, 504 U.S. 428 (1992). The district court did so and again granted the defendants summary judgment, which Gill now appeals.

While this litigation was pending, Illinois adopted a redistricting plan that changed the boundaries of the 13th District. Because that district's geographic features have changed, this court can no longer offer Gill any effectual relief. Any declaratory or injunctive relief would speak to a congressional district that no longer exists, and Gill's circumstances are not capable of repetition yet evading review. We therefore dismiss Gill's as-applied challenge as moot.

I

The Illinois Election Code sets forth certain nomination requirements for independent candidates to appear on the general election ballot. An independent candidate must obtain the petition signatures of "not less than 5%" of "the number of persons who voted at the next preceding regular election" within a 90-day window.[1] 10 ILL. COMP. STAT. 5/10-3, 5/10-4. In addition, a petition circulator must certify before a notary public that, to the best of the circulator's knowledge, the signatures on each page are genuine and were signed in the circulator's presence by individuals registered to vote in the

[1] In the first election following redistricting, independent candidates are required to obtain 5,000 signatures. 10 ILL. COMP. STAT. 5/10-3.

district. 10 ILL. COMP. STAT. 5/10-4. Unchallenged signatures are presumed valid. 10 ILL. COMP. STAT. 5/10-8.

Gill decided to run as an independent candidate in Illinois's 13th Congressional District in the 2016 election. Under the 5% requirement, he needed to collect a minimum of 10,754 signatures to qualify for the general election ballot. With the help of other circulators, Gill collected and filed 11,348 petition signatures with the Board. His submission was challenged, and after review the Board found 8,491 signatures valid. Because the number of valid signatures submitted fell below the number required, the Board decided that Gill would not appear on the November 2016 general election ballot.

In August 2016, Gill, along with several of his supporters registered to vote in the district, sued the members of the Board under 42 U.S.C. § 1983. The suit challenged the state's petitioning requirements for independent candidates. Gill argued that the notarization requirement and the 5% requirement each standing alone violate the First and Fourteenth Amendments of the U.S. Constitution. He also challenged the constitutionality of the notarization requirement, the 5% requirement, and the 90-day window in combination and as applied to the 13th Congressional District. Gill sought both declaratory and injunctive relief.

The district court granted summary judgment in favor of the Board members, concluding that this court's decision in *Tripp v. Scholz*, 872 F.3d 857 (7th Cir. 2017), controlled. In *Tripp*, this court had held that the same provisions of the Illinois Election Code—standing alone and in combination—did not violate the constitutional rights of two Green Party candidates running for the Illinois House of Representatives. *Id.* at

870. The district court here had not addressed the specific characteristics of the 13th Congressional District, which differed from the state house districts in *Tripp*. *Gill*, 962 F.3d at 365. We therefore reversed the district court's decision and remanded with instructions to perform "the fact-intensive analysis required by the *Anderson-Burdick* balancing test." *Id.* at 366.

On remand, the parties renewed their motions for summary judgment. After the parties completed briefing but before the district court ruled, the 2020 decennial census resulted in Illinois enacting a new congressional map. This redistricting substantially altered the boundaries of the 13th Congressional District. 10 ILL. COMP. STAT. 78/10.

The district court then applied the *Anderson-Burdick* balancing test and concluded that the notarization requirement, the 5% requirement, and those requirements in combination with the 90-day window and the geographic characteristics of the 13th Congressional district did not violate the First and Fourteenth Amendments. So, the court granted the defendants' motion and denied the plaintiffs' motion.

Gill appeals.[2] We review "a district court's grant of summary judgment de novo. … Where, as here, both parties filed cross-motions for summary judgment, all reasonable inferences are drawn in favor of the party against whom the motion was granted." *Gill*, 962 F.3d at 363.

[2] This case's caption has been modified to reflect changes in the membership of the Board.

II

On appeal, Gill narrows his previous constitutional challenge. He alleges that the cumulative burden of the provisions he contests, in combination and as applied to the 13th District, violates the First and Fourteenth Amendments. He requests a declaratory judgment and an injunction prohibiting the Board's enforcement of the contested provisions.[3] The Board responds that the 2020 redistricting, which changed the boundaries of the 13th District, rendered Gill's appeal moot. Gill replies that his claim falls within the "capable of repetition yet evading review" exception to the mootness doctrine.

We first address our jurisdiction over Gill's remaining claim. Article III grants federal courts jurisdiction over "[c]ases" and "[c]ontroversies." U.S. CONST. art. III, § 2. "An actual controversy must exist at every phase of litigation." *Hero v. Lake Cnty. Election Bd.*, 42 F.4th 768, 772 (7th Cir. 2022). "Mootness is a constitutional doctrine designed to avoid the issuance of advisory opinions." *Trinity 83 Dev., LLC v. ColFin Midwest Funding, LLC*, 917 F.3d 599, 601 (7th Cir. 2019). A claim becomes moot "when it is impossible for a court to grant any effectual relief." *Watkins v. United States Dist. Ct. for the Cent. Dist. of Illinois*, 37 F.4th 453, 457 (7th Cir. 2022) (quoting *Chafin v. Chafin*, 568 U.S. 165, 172 (2013)). "If this occurs, federal courts lose subject matter jurisdiction over the case." *E.F.L. v. Prim*, 986 F.3d 959, 962 (7th Cir. 2021).

In support of their mootness claim, the defendants cite several cases where redistricting mooted an election

[3] Gill's request that the court compel the Board to place his name on the 2016 general election ballot "is obviously moot." *Acevedo v. Cook Cnty. Officers Electoral Bd.*, 925 F.3d 944, 948 n.1 (7th Cir. 2019).

challenge. *See Growe v. Emison*, 507 U.S. 25, 39 (1993); *Davis v. Abbott*, 781 F.3d 207, 215 (5th Cir. 2015); *Larios v. Perdue*, 306 F. Supp. 2d 1190, 1201 (N.D. Ga. 2003); *Johnson v. Mortham*, 926 F. Supp. 1460, 1469–70 (N.D. Fla. 1996). The issuance of new maps, with different district lines, meant that challenges under the Voting Rights Act were "no longer cognizable." *Mortham*, 926 F. Supp. at 1470. But as Gill points out, the cases the defendants cite deal with vote-dilution claims or the preclearance of redistricting maps under the Voting Rights Act.

A claim is not moot if it is capable of repetition yet evading review. *See Federal Election Comm'n v. Wisconsin Right to Life, Inc.*, 551 U.S. 449, 462 (2007). This exception applies when "(1) the challenged action is in its duration too short to be fully litigated prior to cessation or expiration, and (2) there is a reasonable expectation that the same complaining party will be subject to the same action again." *Id.* (quoting *Spencer v. Kemna*, 523 U.S. 1, 17 (1998)). "These requirements are often met in ballot-access cases," *Acevedo*, 925 F.3d at 947, because "[e]lections often happen too quickly for meaningful judicial review to occur before a dispute is resolved." *Hero*, 42 F.4th at 773.

In election cases, the capable of repetition yet evading review exception remains "appropriate when there are 'as applied' challenges as well as in the more typical case involving only facial attacks." *Storer v. Brown*, 415 U.S. 724, 737 n.8 (1974). In *Wisconsin Right to Life*, the Supreme Court held that an as-applied challenge to the Federal Election Commission's blackout period for political and issue advertisements "fit comfortably within the established exception to mootness for disputes capable of repetition, yet evading review." 551 U.S. at 462. The Court rejected the defendant's argument that the

plaintiffs needed to show any future advertisements would share all the characteristics of the previous ones to satisfy the exception's second prong. *See id.* "Requiring repetition of every 'legally relevant' characteristic of an as-applied challenge—down to the last detail—would effectively … [make] this exception unavailable for virtually all as-applied challenges." *Id.* Because Wisconsin Right to Life "credibly claimed that it planned on running 'materially similar' future targeted broadcast ads," the Court held that there existed a reasonable expectation that the same controversy would recur. *Id.* at 463–64.

In the previous appeal, we ruled—notwithstanding that the 2016 election had passed—that this case presented a justiciable controversy. *Gill*, 962 F.3d at 363 n.3. Both requirements of the capable of repetition yet evading review exception to mootness were satisfied because "Gill was unable to litigate his claims before the November 2016 election was held, and he has expressed his intent to run for office in 2020." *Id.* On remand, the district court agreed with our decision for the same reasons. Gill says he again falls within this exception, citing several ballot-access cases. But those cases do not address how redistricting could impact the mootness of such a claim or the application of the exception. *See Acevedo*, 925 F.3d at 948 n.1; *Krislov, v. Rednour*, 226 F.3d 851, 858 (7th Cir. 2000).

Gill has stated his intent to run for Congress as an independent candidate in future Illinois elections. The Illinois Election Code provisions that Gill challenges remain in effect. And the time span between the Board denying Gill ballot access and the November 2016 general election—approximately three and one-half months—was too short a period to litigate this controversy. By these measures, Gill could "again be

subjected to the alleged illegality." *Wisconsin Right to Life*, 551 U.S. at 463. Should he run for office in the future, he would have to abide by the notarization and 5% requirements as well as collect signatures within a 90-day window.

But this appeal presents a critical difference. Gill brings an as-applied challenge to these Illinois election provisions for a district that, due to the 2020 redistricting, no longer exists. The district's characteristics have changed due to redistricting. On one hand, the features of the 13th District may be "legally relevant" to Gill's as-applied challenge and under *Wisconsin Right to Life* need not be identical to fall within the mootness exception. If Gill had found himself running for Congress in a district of approximately similar geographic size, population density, and distribution of municipalities, then there may have been a reasonable expectation that the "same controversy involving the same party will recur." *Id.* at 464.

Yet we remanded this case because the district court did not consider the specific factual and geographical features of the 13th District when it analyzed the severity of the burden placed on Gill by the challenged provisions of the Illinois Election Code. *See Anderson*, 460 U.S. at 789; *Burdick*, 504 U.S. at 434. We stated, "the burden the 5% signature requirement imposes on candidates (and possibly the interests Illinois possesses in regulating those candidates) varies between elections and between districts," and "[i]t is precisely these sorts of factual differences that the Supreme Court has stated must be considered by district courts when applying the *Anderson-Burdick* balancing test." *Gill*, 962 F.3d at 365–66.

Gill emphasizes the relevance of the 13th District's specific geographic features throughout his arguments. He contends the challenged requirements in combination with the splitting

of population centers in his large, rural district create a severe burden on his candidacy. For Gill, the division of cities and counties and the "lack of population density" within the district "created confusion, errors, and impediments to collecting signatures and substantial loss of signature gathering opportunities at public events." The "rural" and "geographically large" nature of the 13th District also made collecting signatures by going door-to-door not "practical or feasible." Gill contends the district court erred by not engaging with these features of the district, which he argues place an unconstitutional burden on independent candidates. Crucially, Gill offers these arguments about the district as it existed in 2016.

The specific geography of the 13th District is important to the fact-based evaluation of Gill's claim. Since Illinois's 2020 redistricting, the district boundaries have changed significantly as shown when contrasting the 13th District map before and after redistricting. The district appears smaller. Its shape and the population centers within it have changed considerably. The district no longer includes certain metropolitan areas and contains new ones. In 2016, the district included the cities of Decatur, Urbana, and Champaign, while stretching north to cover portions of the cities of Springfield, Bloomington, and Normal. Now the district no longer runs north to Normal and Bloomington, and it contains only a portion of Decatur. Instead, it runs further south to include East St. Louis and most of its densely populated metro region.

In Gill's as-applied challenge, the constitutionality of the challenged provisions necessarily depends on the district's characteristics, such as its geography and its rural versus urban demographics. But because of redistricting, that has changed. In any future election, Gill will not have to abide by

the challenged provisions in the 2016 version of the district. As a result of these changes to the district's boundary lines, federal courts can no longer provide him any effectual relief. Any declaration as to the constitutionality of the challenged provisions would speak to a district that no longer exists. And any injunctive relief would keep the Board from enforcing the challenged provisions in a district that no longer exists. Accordingly, there is no reasonable expectation that Gill "will be subject to the same action again." *Wisconsin Right to Life*, 551 U.S. at 462. In an as-applied challenge, the specifics of the district are important. The 2020 redistricting mooted Gill's appeal.

Now, not all election challenges following a decennial redistricting will be moot. *See, e.g.*, *Lux v. Judd*, 651 F.3d 396, 401 (4th Cir. 2011) (holding that redistricting did not moot a challenge to a residency requirement because the defendant "will be adversely affected by the residency requirement in future elections whether or not he lives in the Seventh District"). Time can pass quickly, and Supreme Court case law often recognizes that the mootness doctrine may be somewhat looser in election law cases. But here, the different characteristics of the district are a result of more than just the passage of time. An intervening redistricting has refuted the arguments Gill makes about the burden caused by the challenged provisions.

Changes to the 13th Congressional District because of redistricting have moved this case outside of the capable of repetition yet evading review exception to the mootness doctrine. This case is thus moot and not justiciable. We need not review, therefore, the district court's application of the *Anderson-Burdick* test. For these reasons, we VACATE and REMAND with instruction to dismiss this case as moot.