E-FILED
Friday, 01 May, 2020 06:10:16 PM
Clerk, U.S. District Court, ILCD

**IN THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF ILLINOIS
SPRINGFIELD DIVISION**

JOHN BAMBENEK, LISA KENDALL, JOHN PHILLIPS, REFORM CHAMPAIGN COUNTY, an unincorporated political association, and DECATUR DISPENSARY PROJECT, an unincorporated political association,	)	
Plaintiffs,	)	
v.	)	**Case No. 3:20-cv-3107**
JESSE WHITE, in his official capacity As Illinois Secretary of State, KIM ALTHOFF, in her official capacity as the Decatur City Clerk, AARON AMMONS, in his official capacity as Champaign County Clerk, JOSH TANNER, in his official capacity as Macon County Clerk, and WILLIAM J. CADIGAN, KATHERINE S. O'BRIEN, LAURA K. DONAHUE, CASSANDRA B. WATSON, WILLIAM R. HAINE, IAN K. LINNABARY, CHARLES W. SCHOLZ, WILLIAM M. MCGUFFAGE, in their official capacities as Board Members for the Illinois State Board of Elections,	)	
Defendants.	)	

ORDER

SUE E. MYERSCOUGH, U.S. District Judge:

Before the Court is an Emergency Motion for Preliminary or

Permanent Injunction and Declaration as a Matter of Law (d/e 2) filed by Plaintiffs John Bambenek, Lisa Kendall, John Phillips, Reform Champaign County, an unincorporated political association, and Decatur Dispensary Project, an unincorporated political association (collectively "Plaintiffs"). For the reasons set forth below, Plaintiffs' motion is DENIED.

I. BACKGROUND

On April 27, 2020, Plaintiffs filed their Verified Complaint for Emergency Declaratory and Injunctive Relief (d/e 1). On April 30, 2020, Plaintiffs filed a First Amended Verified Complaint for Emergency Declaratory and Injunctive Relief (d/e 20) seeking to enjoin or modify Illinois petition collection requirements for initiative referenda to be placed on the November 3, 2020, general election ballot. Plaintiffs assert the relief they seek is necessary in light of the current public health emergency caused by the COVID-19 pandemic and the Governor of Illinois' emergency shelter-in-place orders, which Plaintiffs claim force them to choose between protecting their health and exercising their rights to petition and vote. In conjunction with the complaint, Plaintiffs filed the Emergency Motion for Preliminary of Permanent Injunction now

before the Court.

On April 29, 2020, Defendant Josh Tanner filed an Answer (d/e 9) and Memorandum in Opposition to the Motion for Preliminary Injunction (d/e 10). On April 30, 2020, Defendants Jesse White and Kim Althoff filed responses in opposition to the Motion for Preliminary Injunction. d/e 15, 16. On that same date, Defendants William J. Cadigan, Laura K. Donahue, William R. Haine, Ian K. Linnabary, William M. McGuffage, Katherine S. O'Brien, Charles W. Scholz, Cassandra B. Watson (collectively the "ISBE Board Member Defendants") also filed response in opposition to the Motion. d/e 17. Finally, Plaintiffs filed a Reply in support of their motion. d/e 22.

On May 1, 2020, the Court held a hearing on the Motion for Preliminary Injunction at which the Court heard arguments from counsel.

II. LEGAL STANDARD

A party seeking to obtain a preliminary injunction must demonstrate: (1) a reasonable likelihood of success on the merits; (2) that no adequate remedy at law exists; and (3) the party will suffer irreparable harm if the injunction is not granted. See

Planned Parenthood of Ind., Inc., v. Comm'n of Ind. State Dep't of Health, 699 F.3d 962, 972 (7th Cir. 2012). If these threshold conditions are met, the district court then weighs the balance of the harm to the parties if the injunction is granted or denied. Id. Finally, the court must consider the public interest (non-parties) in denying or granting the injunction. Id.; see also Ty, Inc. v. Jones Grp. Inc., 237 F.3d 891, 895-96 (7th Cir. 2001).

The likelihood of success on the merits affects the balance of the harms. That is, the more likely the plaintiff will win on the merits the less the balance of irreparable harm needs to favor the plaintiff's position. Planned Parenthood, 699 F.3d at 972; see also Girl Scouts of Manitou Council, Inc. v. Girl Scouts of U.S., Inc., 549 F.3d 1079, 1100 (7th Cir. 2008). Whether to grant a preliminary injunction is within this Court's discretion. Ashcroft v. ACLU, 542 U.S. 656, 664 (2004) (noting that the Supreme Court and appellate courts review preliminary injunctions for an abuse of discretion).

Plaintiffs seek a mandatory preliminary injunction—an injunction requiring an affirmative act by Defendants. Such injunctions are "cautiously viewed and sparingly issued." Graham v. Med. Mut. of Ohio, 130 F.3d 293, 295 (7th Cir. 1997) (internal

quotation marks omitted).

III. ANALYSIS

The Court finds that Plaintiffs have not the threshold requirements for an injunction, as the likelihood of success on the merits is low, and conversely the burden Plaintiffs' proposed injunction would place on Defendants is high. Plaintiffs rely primarily on Judge Pallmeyer's decision in Libertarian Party of Illinois v. Pritzker, Case No. 20-cv-2112 (N.D. Ill. Apr. 23, 2020), but that case is inapposite. Libertarian Party concerns placing candidates on the ballot, which implicates unique constitutional concerns, as opposed to this case, which involves placing a proposed constitutional amendment and various referenda on the ballot and therefore does not implicate precisely the same constitutional concerns. Compare Anderson v. Celebrezze, 460 U.S. 780, 786 (7th Cir. 2006) (quoting Bullock v. Carter, 405 U.S. 134, 143 (1972)) ("The impact of candidate eligibility requirements on voters implicates basic constitutional rights" because "the tendency of ballot access restrictions [is] "to limit the field of candidates from which voters might choose.") with Georges v. Carney, 691 F.2d 297,

200 (7th Cir. 1982) ("Illinois therefore has no constitutional obligation to allow advisory questions to be placed on the ballot.").

Rather, this case is more closely analogous to Judge Pallmeyer's more recent decision in Morgan v. White, Case No. 20-CV-2189 (N.D. Ill. Apr. 17, 2020) in which Judge Pallmeyer similarly denied a motion for preliminary injunction related to signature collection requirements for placing a different referendum on a local election ballot. Given the different constitutional concerns implicated in these two cases, the Court finds Morgan to be more instructive here than Libertarian Party. In Morgan, Judge Pallmeyer made the same distinction that the Court makes here between a federal constitutional right to candidates' ballot access, which clearly implicates First Amendment rights, and a state-created right to non-binding ballot initiatives. See Jones v. Markiewicz-Qualkinbush, 892 F.3d 935, 937 (7th Cir. 2018) (holding the U.S. Constitution does not create "a constitutional right to place referenda on the ballot").

Additionally, the extraordinary relief Plaintiffs request would result in hardships being imposed on the defendants which would weigh far more heavily than the harms Plaintiffs may suffer in the

absence of an injunction. The Illinois constitution and state and federal law set out duties that must be performed by the ISBE Defendants and the Secretary of State. See, e.g., 42 U.S.C. 1973-ff-1 et seq. (mandating that military ballots are sent to troops overseas at least forty-five days prior to the election); ILL. CONST. art. XIV, § 3 (requiring petition for constitutional amendment to be filed "at least six months" before the general election); 10 ILL. COMP. STAT. 5/28-5 (State Board of Elections must certify any proposed constitutional amendment seventy-four days before the general election). The three-month extension of the May 3, 2020 deadline Plaintiff Bambenek seeks would make it extremely difficult, if not impossible, for those defendants to fulfill their constitutionally and statutorily mandated obligations.

Finally, with regards to the Plaintiffs who seek to place referenda on the ballots for their local elections, Plaintiffs assert that the Governor's shelter in place orders preclude them from gathering the signatures needed, but the Governor's current order extends only through this month, while the deadlines Plaintiffs must meet for the local referenda are not until August 3, 2020. Moreover, as Plaintiffs themselves noted in their oral arguments,

signature collection efforts for referenda drives like Plaintiffs' tend to ramp up in the final weeks. For that reason, any potential harms to Plaintiffs Kendall, Phillips, Reform Champaign County, and Decatur Dispensary Project are too speculative to support issuance of a preliminary injunction in this case. See Winter v. Nat. Res. Def. Council, Inc., 555 U.S. 7, 22 (2008) ("Issuing a preliminary injunction based only on a possibility of irreparable harm is inconsistent with [the Supreme Court's] 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.").

Lastly, the Court notes that Plaintiffs simply delayed their suit too long to allow the Court to meaningfully tailor injunctive relief without throwing Illinois' electoral system into disarray during an already tumultuous time. See Nader v. Keith, 385 F.3d 729, 737 (7th Cir. 2004) (upholding district court's denial of preliminary injunction where the plaintiff "created a situation in which any remedial order would throw the state's preparations for the election into turmoil").

IV. CONCLUSION

For the foregoing reasons, Plaintiffs have not met their burden in showing that a preliminary injunction is warranted. Therefore, Plaintiffs' Emergency Motion for Preliminary or Permanent Injunction and Declaration as a Matter of Law (d/e 2) is DENIED.

ENTER: May 1, 2020

/s/ Sue E. Myerscough
SUE E. MYERSCOUGH
UNITED STATES DISTRICT JUDGE