

IN THE COURT OF COMMON PLEAS
FRANKLIN COUNTY, OHIO

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| Ohioans for Raising the Wage, et al., | : | |
| | : | Case No. 20 CV 2381 |
| Plaintiffs, | : | |
| | : | |
| v. | : | Judge David C. Young |
| | : | |
| Ohio Secretary of State Frank LaRose, | : | Magistrate Mark Petrucci |
| | : | |
| Defendant. | : | |

Decision & Entry

I. Introduction

This matter is before the Court on Plaintiffs’ Motion for a Preliminary Injunction filed March 30, 2020. Intervenors filed a Motion for Preliminary Injunction on March 31, 2020. Defendant filed a combined Memorandum in Opposition to both motions on April 13, 2020. The movants then filed two separate replies on April 20, 2020. The parties also filed several Notices of Supplemental Authority.

A status conference was held by telephone on April 14, 2020. Counsel for all parties appeared. At that time, the parties consented to submitting these motions on the briefings. Based upon that consent, no hearing or oral argument was held.

II. Background & Facts

Ohioans for Raising the Wage (“OFRW”) is the ballot issue committee assisting and funding a petition effort for to put a proposed constitutional amendment titled “Raise the Wage Ohio” (“the Petition”) on the November 2020 ballot. (Comp., ¶ 1, March 20, 2020.) Plaintiffs Anthony A. Caldwell, James E. Hayes, David G. Latanick, and Pierrette M. Talley are OFRW committee members. (*Id.* at ¶ 2-5.)

Plaintiffs completed the initial procedural steps required for a citizen-initiated constitutional amendment. (*Id.* at ¶ 9-12.) On February 28, 2020, Plaintiffs began circulating the final version of the Petition. (*Id.* at ¶ 15.) To circulate the Petition, Plaintiffs contracted with FieldWorks, LLC (“FieldWorks”), a petition circulation firm. (*Id.* at ¶ 13.) FieldWorks opened six regional offices and recruited petition circulators for the purposes of circulating the Petition. (*Id.* at ¶ 14, 16.) As of March 12, 2020, Plaintiffs had collected approximately 73,968 signatures on the Petition. (*Id.* at ¶ 42.) This is about 16.7% of the required 442,958 signatures. (*Id.* at ¶ 29.)

Intervenors are Ohioans for Secure and Fair Elections (“Ohio-SAFE”), Darlene L. English, Laura A. Gold, Hasan Kwame Jeffries, Isabel C. Robertson, Ebony Speakes-Hall, Paul Moke, Andre Washington, Scott, Campbell, and Susan Zeigler. (*See generally* Int. Comp., March 31, 2020.) The individuals include all of Ohio-SAFE’s committee members and individuals who are intended petition circulators and signatories. (*Id.* at ¶ 1.) Ohio-SAFE is also endeavoring to place a proposed constitutional amendment on the November 2020 ballot. (*Id.* at ¶ 16.)

Ohio-SAFE filed an action in the Ohio Supreme Court seeking writs of mandamus against Secretary of State LaRose, the Ohio Ballot Board, and Attorney General Dave Yost. It also requested an extension of time to circulate the petitions. *State ex rel. Ohioans for Secure & Fair Elections v. LaRose*, 2020-Ohio-1459, ¶ 1. The Ohio Supreme Court granted writs of mandamus “directing the secretary of state to convene a meeting of the ballot board at the earliest possible date” and “directing the ballot board to certify the Ohio-SAFE amendment as a single amendment.” *Id.* at ¶ 23. The request for a writ of mandamus against the Attorney General Yost was denied, and the request for an extension of time to collect signatures was denied. *Id.* at ¶ 18-22.

Both parties seek a preliminary injunction based upon COVID-19, which has been declared a global pandemic. On March 9, 2020, Governor Mike DeWine declared a state of emergency in Ohio. (Governor's Executive Order 2020-01D, March 9, 2020¹.) Dr. Amy Acton, Director of Health for the Ohio Department of Health, issued a Stay at Home Order that went into effect at 11:59 p.m. on March 23, 2020. (Director's Stay at Home Order, March 22, 2020².) That order requires residents of Ohio to stay home, unless they are engaged in an essential work or activity. (*Id.*) The Stay at Home Order was later amended to remain in full force and effect until 11:59 p.m. on May 1, 2020. (Director's Amended Stay at Home Order, April 2, 2020.³)

In the instant action, the movants do not challenge the preliminary procedure for proposed constitutional amendments. That procedure was explained by the Ohio Supreme Court as follows:

The Ohio Constitution reserves to the people the right to propose amendments to the Constitution by initiative petition. Ohio Constitution, Article II, Section 1. The process for proposing a constitutional amendment begins with the submission of a petition, signed by at least 1,000 Ohio electors, to the Ohio attorney general, along with a summary of the proposed amendment. R.C. 3519.01(A), paragraph two. Within ten days of receiving the petition, the attorney general must determine whether the summary is a fair and truthful summary of the proposed amendment. *Id.* If the summary is fair and truthful, the attorney general must certify that fact and then forward the petition to the ballot board. *Id.*

The ballot board consists of the secretary of state, who serves as chairperson, and four appointed members, no more than two of whom may be of the same political party. R.C. 3505.061(A) and (D). Within ten days after receiving a petition from the attorney general under R.C. 3519.01, the board must examine it "to determine whether it contains only one proposed * * * constitutional amendment so as to enable the voters to vote on a proposal separately." R.C. 3505.062(A). If the board so determines, then the board will certify its approval to the attorney general, who

¹ Publicly available at: <https://coronavirus.ohio.gov/wps/portal/gov/covid-19/resources/public-health-orders/executive-order-2020-01d>

² Publicly available at: <https://coronavirus.ohio.gov/static/DirectorsOrderStayAtHome.pdf>

³ Publicly available at: <https://coronavirus.ohio.gov/static/publicorders/Directors-Stay-At-Home-Order-Amended-04-02-20.pdf>

will in turn file with the secretary of state a verified copy of the proposed amendment, along with the summary and the attorney general's certification. R.C. 3519.01(A); R.C. 3505.062(A). At that point, the petitioners may begin circulating petitions to gather the necessary signatures to qualify for the ballot.

However, if the board determines that the initiative petition contains more than one proposed constitutional amendment, then the board shall "divide the initiative petition into individual petitions containing only one proposed * * * constitutional amendment so as to enable the voters to vote on each proposal separately." R.C. 3505.062(A), paragraph two. The petitioners must then submit separate summaries for each proposal to the attorney general for approval, R.C. 3519.01(A); R.C. 3505.062(A), before they may begin circulating petitions.

Ohioans for Secure & Fair Elections, 2020-Ohio-1459, at ¶ 2-4.

Instead, the movants challenge the signature gathering requirements contained in the next step of the process set forth in the Ohio Constitution. The Ohio Constitution then requires that the petition be filed with the Ohio Secretary of State not later than 125 days before the general election to qualify for the ballot. Oh. Const. Art. II, § 1a. In order to qualify for the November general-election ballot this year, petitions must be submitted on or before July 1, 2020. *Ohioans for Secure & Fair Elections* at ¶ 5. It must contain signatures equal to at least 10 percent of the total vote case for the office of governor in the last gubernatorial election. Oh. Const. Art. II, § 1a, 1g. Those signatures must be from at least 44 of Ohio's 88 counties, and from within each of the 44 counties, there must be signatures equal to at least five percent of the total vote case for governor in the last gubernatorial election. *Id.* To be valid, each signature must be in ink, and it must be the original signature of the elector, signed in their "own hand." Ohio Const. Art. II, § 1g; R.C. 3501.011, 3501.38. Each part-petition must contain a statement from the circulator "that he witnessed the affixing of every signature". Oh. Const. Art. II, § 1g.

III. Preliminary Injunction Standard

The purpose of a preliminary injunction is to preserve the status quo pending a resolution of the case on the merits. *Intralot, Inc. v. Blair*, 10th Dist. Franklin No. 17AP-444, 2018-Ohio-3873, ¶ 31, quoting *Proctor & Gamble Co. v. Stoneham*, 140 Ohio App.3d 260, 267, 747 N.E.2d 268 (1st Dist.2000). A court must consider four factors in determining whether to grant a preliminary injunction:

1) whether there is a substantial likelihood that plaintiff will prevail on the merits; 2) whether plaintiff will suffer irreparable injury if the injunction is not granted; 3) whether third parties will be unjustifiably harmed if the injunction is granted; and 4) whether the public interest will be served by the injunction.

Intralot, 2018-Ohio-3873, at ¶ 31, quoting *Youngstown City School Dist. Bd. of Edn. v. State*, 10th Dist. No. 15AP-941, 2017-Ohio-555, ¶ 50, quoting *Vanguard Transp. Sys., Inc. v. Edwards Transfer & Storage Co.*, 109 Ohio App.3d 786, 790, 673 N.E.2d 182 (10th Dist.1996). The party seeking a preliminary injunction has the burden and must establish a right to the preliminary injunction by demonstrating clear and convincing evidence of each factor. *Id.*, quoting *Youngstown* at ¶ 50. None of the four preliminary injunction factors is dispositive. *Id.*, quoting *Youngstown* at ¶ 50. In determining whether to grant injunctive relief, a court should balance the factors. *Id.*, quoting *Youngstown* at ¶ 50.

"Courts should take particular caution * * * in granting injunctions, especially in cases affecting a public interest where the court is asked to interfere with or suspend the operation of important works or control the action of another department of government."

Id. at ¶ 32, quoting *Danis Clarkco Landfill Co. v. Clark Cty. Solid Waste Mgt. Dist.*, 73 Ohio St.3d 590, 604, 1995-Ohio-301, 653 N.E.2d 646 (1995).

i. Likelihood of Success on the Merits

Common pleas courts are established by the Ohio Constitution. Oh. Const. Art. IV, § 4. “The courts of common pleas and divisions thereof shall have such original jurisdiction over all justiciable matters and such powers of review of proceedings of administrative officers and agencies as may be provided by law.” Oh. Const. Art. IV, § 4(B).

A common pleas court is a “court of general jurisdiction, with subject-matter jurisdiction that extends to ‘all matters at law and in equity that are not denied to it.’” *Ohio High School Ath. Assn. v. Ruehlman*, 157 Ohio St.3d 296, 2019-Ohio-2845, 136 N.E.3d 436, ¶ 7, quoting *Bank of Am., N.A. v. Kuchta*, 141 Ohio St.3d 75, 2014-Ohio-4275, 21 N.E.3d 1040, ¶ 20, quoting *Saxton v. Seiberling*, 48 Ohio St. 554, 558-559, 29 N.E. 179 (1891). The Ohio Supreme Court has “interpreted Article IV’s mandate that the courts of common pleas have jurisdiction ‘as may be provided by law’ to mean that ‘[t]he general subject matter jurisdiction of Ohio courts of common pleas is defined *entirely by statute*[.]’” (Emphasis in original.) *Id.*, quoting *State v. Wilson*, 73 Ohio St.3d 40, 42, 1995-Ohio-217, 652 N.E.2d 196 (1995). As to civil cases, subject-matter jurisdiction over “all civil cases in which the sum or matter in dispute exceeds the exclusive original jurisdiction of county courts and appellate jurisdiction from the decisions of boards of county commissioners” has been granted by statute⁴. R.C. 2305.01.

The Ohio Constitution, by its plain language, reserves to the people the right to amend any of its provisions for the people. Oh. Const. Art. II, § 1. It states:

The legislative power of the state shall be vested in a general assembly consisting of a senate and house of representatives but *the people reserve to themselves the power to propose to the general assembly laws and amendments to the constitution*, and to adopt or reject the same at the polls on a referendum vote as hereinafter provided. *They also reserve the power to adopt or reject any law, section of any law or any item in any law appropriating money*

⁴ Limited exceptions apply, none of which are applicable in the instant case.

passed by the general assembly, except as hereinafter provided; and *independent of the general assembly to propose amendments to the constitution and to adopt or reject the same at the polls.*

(Emphasis added.) *Id.* The Ohio Supreme Court has explained as follows:

The purpose of our written constitution is to define and limit the powers of government and secure the rights of the people. *It controls as written unless changed by the people themselves* through the amendment procedures established by Article XVI of the Ohio Constitution. The Ohio Constitution is the paramount law of this state, and we recognize that the framers chose its language carefully and deliberately, employed words in their natural sense, and intended what they said[.]

(Emphasis added.) *City of Cleveland v. State*, 157 Ohio St.3d 330, 2019-Ohio-3820, 136 N.E.3d 466, ¶ 16.

The relief and remedies sought by the movants through preliminary injunction would create an exception in the Ohio Constitution, where one does not otherwise exist. It is well-established that the plain language of an enacted text is the best indicator of intent. *Id.* at ¶ 17, quoting *Nixon v. United States*, 506 U.S. 224, 232, 113 S.Ct. 732, 122 L.Ed.2d 1 (1993). The plain language of the statute sets forth the requirements for ballot access. The ability to change those requirements is reserved only to the people.

The undersigned is mindful that the current public health pandemic creates an extremely unique situation. However, the constitutional language does not include an exception for extraordinary circumstances or public health emergencies.

[I]t is very clear that we have no power to amend the constitution, under the color of construction, by interpolating provisions not suggested by the language of any part of it. We cannot supply all omissions, which we may believe have arisen from inadvertence on the part of the constitutional convention.

Walker v. Cincinnati, 21 Ohio St. 14, 53 (1871). This Court does not have the power to order an exception or remedy that was not contemplated or intended by the plain language of the Ohio Constitution.

Further, the case law provided by movants regarding the Court's authority was unpersuasive. Those cases are distinguishable and do not demonstrate that this Court has the authority to issue the relief sought.

Based on the foregoing, the Court finds that there is little likelihood that movants will prevail on the merits, and this factor weighs in favor of denying injunction relief.

Moreover, even if the Court had authority, Plaintiffs and Intervenors failed to establish by clear and convincing evidence that there is a substantial likelihood of success on the merits. The precedent cited in support of their constitutional arguments was not persuasive. Many of the cases dealt with voting statutes, rather than state constitutional provisions.

ii. Irreparable Harm

Irreparable harm "must be 'both certain and immediate, rather than speculative or theoretical.'" *Ohio Contrs. Assn. v. City of Akron*, N.D. Ohio No. 5:14CV0923, 2014 U.S. Dist. LEXIS 61313, at *19 (May 1, 2014), quoting *Welch v. Brown*, 551 F. App'x 804, 2014 U.S. App. LEXIS 131, 2014 WL 25641, at *8 (6th Cir. 2014), quoting *NACCO Materials Handling Grp. v. Toyota Material Handling USA, Inc.*, 246 F. App'x 929, 943 (6th Cir. 2007). Alleging only a possibility of irreparable harm does not suffice and undermines the characterization of a preliminary injunction as an extraordinary remedy. *Id.* Further, monetary damages do not, generally, constitute irreparable harm. *Id.* at *21; *Franks v. Rankin*, 10th Dist. Franklin No. 11AP-962, 2012-Ohio-1920, ¶ 36.

Because there is a low likelihood of success on the merits, a presumption of irreparable harm does not arise based upon the parties' alleged constitutional violations. Irreparable harm may be presumed if a claim is based upon a violation of a plaintiff's constitutional rights. *Id.* "If, however, it is 'unlikely' that plaintiff can demonstrate 'a cognizable constitutional claim[.],' the court need not presume irreparable harm based on the alleged constitutional violation." *Id.* at *21-22, quoting *Overstreet v. Lexington-Fayette Urban Cty. Govt.*, 305 F.3d 566, 578 (6th Cir.2002).

The only harm alleged in this action is speculative and theoretical. Plaintiffs and Intervenor do not yet know if they will have the required number of signatures by the deadline and otherwise meet the constitutional requirements. There is also no way to know if they would have been able to collect the necessary signatures regardless of the stay at home order. At this time, there is a possibility of harm, but nothing more.

Both Plaintiffs and Intervenor have contracted with companies or otherwise invested money in their efforts to get on the ballot. However, the monetary investments made in the petition process do not constitute irreparable harm sufficient to justify a preliminary injunction.

Based on the foregoing, this factor weighs in favor of denying the requests for preliminary injunction.

iii. Harm to Third Parties

The moving parties have established that third parties will not be unjustifiably harmed if an injunction is issued. This factor weighs in favor of granting an injunction. Still, the Court must be mindful that court orders impacting elections may result in voter confusion. *Purcell v. Gonzalez*, 549 U.S. 1, 4-5, 127 S.Ct. 5, 166 L.Ed.2d 1 (2006). The closer an election draws, the more that risk will increase. *Id.* at 5.

iv. Public Interest

The Intervenors and Plaintiffs have pointed to strong interests in favor of the preliminary injunction, such as ballot access. The right to vote and ballot access are incredibly important public interests. However, those interests must be balanced against the public interest in seeing the Ohio Constitution enforced as adopted by the people. *See Maryland v. King*, 567 U.S. 1301, 133 S.Ct. 1, 3, 183 L.Ed.2d 667 (2012), quoting *New Motor Vehicle Bd. of Cal. v. Orrin W. Fox Co.*, 434 U.S. 1345, 1351, 98 S. Ct. 359, 54 L. Ed. 2d 439 (1977) (Rehnquist, J., in chambers) ("[A]ny time a State is enjoined by a court from effectuating statutes enacted by representatives of its people, it suffers a form of irreparable injury.")

Because there are vitally important public interests on both sides, this factor neither weighs in favor nor against the granting of a preliminary injunction.

v. Balancing of Factors

Upon a balancing of the factors, the Court finds that movants have failed to meet their burden and preliminary injunctions are not appropriate. The likelihood of success on the merits is the predominant concern, and the Court found a low likelihood of success on the merits in this case. *Ohio Contrs. Assn.*, 2014 U.S. Dist. LEXIS 61313, at *11. The COVID-19 pandemic has presented an unusual, extraordinary circumstance. However, it is important to note that the Ohio ballot access requirements are contained in the Ohio Constitution, not the Ohio Revised Code. This Court does not have the authority to insert an exception or supply what it believes may have been an omission because the plain language of the Ohio Constitution does suggest or support it. *Walker*, 21 Ohio St. at 53; *City of Cleveland v. State*, 2019-Ohio-3820, at ¶ 16-17. Further, the movants failed to meet their burden by demonstrating that they will suffer irreparable harm.

The public interest factor neither weighs in favor nor against granting injunctive relief. There are incredibly important public interests on both sides of this analysis, and these competing interests offset each other.

While the movants did meet their burden in showing that no third parties will be unjustifiably harmed if the injunction is granted, this factor alone is not enough to justify injunctive relief.

vi. **Purpose of Preliminary Injunctions**

Moreover, injunctive relief would disrupt, rather than preserve, the status quo. In general, the purpose of a preliminary injunction is to preserve the status quo. *Intralot*, 2018-Ohio-3873, at ¶ 31.

Although "status quo" has apparently not been defined by the General Assembly or by Ohio courts in the context of preliminary injunctions, the Supreme Court of Illinois has held that "[t]he status quo to be preserved by a preliminary injunction is the last, actual, peaceable, uncontested status which preceded the pending controversy." *Postma v. Jack Brown Buick, Inc.* (1993), 157 Ill.2d 391, 626 N.E.2d 199, 202, 193 Ill. Dec. 166. The holdings of cases decided in Ohio courts evince a similar precedent for determining the status quo. See *Hootman*, 2007-Ohio-5619, at P17 (finding that the trial court was maintaining the status quo by ordering parties to remove an obstruction from a drainage ditch pursuant to a preliminary injunction order); *Neamonitis v. Gilmour Academy*, 8th Dist. No. 92452, 2009-Ohio-2023, PP11-12 (finding that the trial court was maintaining the status quo by ordering a school, via temporary restraining order, to reinstate a student it had expelled, and then granting preliminary injunction indefinitely extending the temporary restraining order); but, see, *Neamonitis*, 2009-Ohio-2023, at P22 (Kilbane, P.J., dissenting).

Obringer v. Wheeling & Lake Erie Ry., 3d Dist. Crawford No. 3-09-08, 2010-Ohio-601, ¶ 19.

IV. **Conclusion**

The Court hereby **DENIES** the Motions for Preliminary Injunction filed by Plaintiffs and Intervenor.

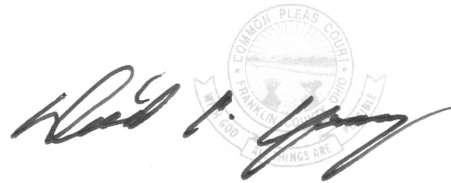
IT IS SO ORDERED.

Copies electronically to counsel for all parties.

Franklin County Court of Common Pleas

Date: 04-28-2020
Case Title: OHIOANS FOR RAISING THE WAGE ET AL -VS- FRANK LAROSE
Case Number: 20CV002381
Type: DECISION/ENTRY

It Is So Ordered.

A handwritten signature in black ink, appearing to read "David C. Young", is written over a circular official seal. The seal features a central emblem and the text "COMMON PLEAS COURT" at the top and "FRANKLIN COUNTY OHIO" at the bottom.

/s/ Judge David C. Young

Court Disposition

Case Number: 20CV002381

Case Style: OHIOANS FOR RAISING THE WAGE ET AL -VS-
FRANK LAROSE

Motion Tie Off Information:

1. Motion CMS Document Id: 20CV0023812020-03-3199950000
Document Title: 03-31-2020-MOTION FOR PRELIMINARY
INJUNCTION - NON-PARTY: OHIOANS FOR SECURE & FAIR
ELECTIONS
Disposition: MOTION DENIED
2. Motion CMS Document Id: 20CV0023812020-03-3099710000
Document Title: 03-30-2020-MOTION FOR PRELIMINARY
INJUNCTION - PLAINTIFF: OHIOANS FOR RAISING THE WAGE
Disposition: MOTION DENIED