824 Fed.Appx. 415
This case was not selected for publication in West's Federal Reporter.
See Fed. Rule of Appellate Procedure 32.1 generally governing citation of judicial decisions issued on or after Jan. 1, 2007. See also U.S.Ct. of App. 7th Cir. Rule 32.1.
United States Court of Appeals, Seventh Circuit.

LIBERTARIAN PARTY OF ILLINOIS, et al.,
Plaintiffs-Appellees,
v.
William J. CADIGAN, individual member of the Illinois State Board of Elections, et al.,
Defendants-Appellants.

No. 20-1961
|
Submitted August 18, 2020
|
Decided August 20, 2020

Synopsis
Background: Independent and third-party candidates who wanted to run for state or federal office, political parties with which they were associated, and persons who wanted to vote or gather signatures for them brought action under § 1983 against Illinois State Board of Elections, alleging that Illinois's signature collection requirements violated First and Fourteenth Amendments. The United States District Court for the Northern District of Illinois, Rebecca R. Pallmeyer, Chief Judge, 2019 WL 6841768, entered preliminary injunction. Board appealed.

The Court of Appeals held that Illinois State Board of Elections could not challenge injunctive relief that it initially agreed was necessary and proper.

Affirmed.

Procedural Posture(s): On Appeal; Motion for Preliminary Injunction.

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division. No. 20-cv-2112, Rebecca R. Pallmeyer, *Chief Judge*.

Attorneys and Law Firms

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ORDER

By the Court

The eight members of the Illinois State Board of Elections (the "Board") appeal from the district court's preliminary injunction and its partial denial of the Board's motion to reconsider. The Board argues that the district court had no authority to rewrite Illinois's statutory requirements governing ballot access and deadlines, but ignores the specific circumstances leading to the preliminary injunction. We conclude that the district court did not abuse its discretion when it entered ***416** a preliminary injunction drafted by the Board and agreed to by the parties or when it granted reconsideration in part.

I

The procedural history is important to the merits of this appeal, so we recount much of the detail included in this court's June 21, 2020 order denying the Board's motion to stay the preliminary injunction.

On April 2, 2020, the Libertarian Party of Illinois, the Illinois Green Party, and several individuals who wanted to run for state or federal office in the November 2020 election or to vote or gather signatures for independent candidates, invoked 42 U.S.C. § 1983 and brought claims under the First and Fourteenth Amendments. The next day they moved for a preliminary injunction, seeking to enjoin or modify Illinois's signature collection requirements for independent and third-party candidates in light of the public health emergency caused by the novel coronavirus COVID-19 and Governor Pritzker's emergency executive orders that effectively shut down the state.

The Board responded and expressly agreed that some relief was warranted due to the pandemic. It proposed an order that enjoined the in-person signature requirement, circulator statement, and notarization requirement in 10 ILCS 5/10-4 and reduced the number of signatures required for any new party or independent candidate to 50% of the number set forth in the Candidate's Guide for each office. Appellants' App. at R96–97. The Board later submitted a proposal that further reduced the required signatures to 33% and extended the filing deadline (to some date in July). *Id.* at R113. At the preliminary injunction hearing, the district court's emergency judge reviewed the parties' proposals regarding electronic signatures, the deadline for submitting signatures, the number of signatures required, and whether some candidates could forego the signature requirement. *Id.* at R137–40. The court suggested a middle ground between the proposals and asked the parties to "draft an order along those lines." *Id.* at 140. The parties reached agreement and submitted a proposed order which the record indicates the Board itself drafted.

The district court entered an order and the preliminary injunction on April 23. It recognized that a court considering a challenge to state election laws must carefully balance "the character and magnitude of the asserted injury to the rights protected by the First and Fourteenth Amendments that the plaintiff seeks to vindicate" against "the precise interests put forward by the State as justifications for the burden imposed by its rule." Op & Order at 5 (quoting *Anderson v. Celebrezze*, 460 U.S. 780, 789, 103 S.Ct. 1564, 75 L.Ed.2d 547 (1983)). The district court also considered "the extent to which those interests make it necessary to burden the plaintiff's rights." *Id.* (quoting *Burdick v. Takushi*, 504 U.S. 428, 434, 112 S.Ct. 2059, 119 L.Ed.2d 245 (1992)). The district court said it did not need to devote significant attention to constitutional questions, however, because the parties "proposed an order that grants appropriate relief in these unprecedented circumstances." *Id.* at 7–8. The district court found that the combination of restrictions on public gatherings imposed by Governor Pritzker, which started at nearly the same time as the window for gathering signatures, and the statutory in-person signature requirements presented "a nearly insurmountable hurdle for new party and independent candidates attempting to have their names placed on the general election ballot." *Id.* at 7. The district court concluded that the parties' agreed order would ameliorate plaintiffs' difficulty meeting the signature ***417** requirement while accommodating the State's interest in ensuring that only parties with measurable public support will gain access to the 2020 general election ballot. The district court adopted the parties' proposed order as the preliminary injunction.

By its terms, the preliminary injunction addressed four main points:

> (1) Plaintiff political parties are permitted to nominate candidates without petitions in any race in which they had nominated a candidate in either 2016 or 2018, and the three individual candidates are permitted to appear on the ballot for any office they qualified for in 2016 or 2018 without a petition;
>
> (2) New political party and independent candidates not subject to item (1) are required to file nomination petitions signed by not less than 10% of the statutory minimum number required;
>
> (3) Petition signers are permitted to affix their signatures to a petition electronically, by using a computer mouse, a stylus, or their finger; and
>
> (4) The statutory petition filing deadline is moved from June 22, 2020, to August 7, 2020.

Despite agreeing to each of these terms, the Board filed a motion to reconsider on May 8. The Board stated that it had consulted with local election officials and come to believe that the extended filing deadline would impact its ability to conduct an accurate and orderly election. It therefore asked the district court to amend its preliminary injunction order and direct the Board to establish appropriate ballot access requirements for independent and new political party candidates. Alternatively, the Board asked the court to move the deadline for candidate nomination and petition filings from August 7 to July 6

and set the minimum petition signature threshold at 25% of the statutory minimum. On May 15, after a hearing, the district court granted the motion in part by resetting the deadline for candidate nomination and petition filings to July 20, but it denied the motion to reconsider in all other respects.

Over three weeks later, on June 6, the Board appealed. A few days later, on June 9, the Board asked this court to stay the modified preliminary injunction order. The appeal and request for a stay came with no explanation for the Board's delay in challenging the district court's modified order. We denied the motion, concluding that the Board had not made a strong showing that it is likely to succeed on the merits of its appeal, given its initial agreement to the terms of the preliminary injunction, and that the balance of harms did not favor a stay.

All of this history brings us to the Board's appeal.

II

We review a district court's decision to grant a preliminary injunction for an abuse of discretion. *Girl Scouts of Manitou Council, Inc. v. Girl Scouts of U.S., Inc.*, 549 F.3d 1079, 1086 (7th Cir. 2008). The Board broadly argues that district courts have no authority to rewrite state election laws. Of course that is correct, for the Constitution grants states "broad power" to conduct elections. U.S. CONST., Art. I, § 4, cl. 1; see *Clingman v. Beaver*, 544 U.S. 581, 586, 125 S.Ct. 2029, 161 L.Ed.2d 920 (2005). As we pointed out in our order denying the Board's motion for stay, however, a state's broad power also encompasses the ability to agree to the terms of a preliminary injunction. That is exactly what happened here: the Board agreed to each of the terms of the preliminary injunction entered by the district court. Even though the Board does not contest ***418** that fact, it never accounts for that reality in its arguments to this court.

The Board relies on recent decisions from the Sixth Circuit, but because the Board agreed to the terms of the preliminary injunction, we see no conflict with those decisions. In *Esshaki v. Whitmer*, 813 F. App'x 170, 171 (6th Cir. 2020), the Sixth Circuit held that the district court properly applied the *Anderson-Burdick* test, and correctly determined that Michigan's strict enforcement of ballot-access provisions and the stay-at-home orders imposed a severe burden. It also agreed with the district court that the State's strict application of the ballot-access provisions was unconstitutional as applied in light of the circumstances posed by the pandemic. *Id.* at 171–72. The Sixth Circuit held that the State was likely to succeed in its appeal from the preliminary injunction, however, because the district court exceeded its authority when it ordered the State to make specific changes to its ballot-access provisions. *Id.* at 172. Similarly, in *Thompson v. Dewine*, 959 F.3d 804, 812 (6th Cir. 2020), the Sixth Circuit reiterated that "the federal Constitution provides States—not federal judges—the ability to choose among many permissible options when designing elections." Because state election officials must implement any new election procedures, the decision to alter regulations should be made by elected officials, not the courts. *Id.*

In contrast to the district courts in *Esshaki* and *Thompson*, the district court here did not rewrite the election code or order state officials to make specific changes to its ballot-access provisions. Instead it asked the parties to confer and draft an order addressing the ballot-access issues discussed at the preliminary injunction hearing. The Board consistently recognized the challenges presented by the COVID-19 pandemic and expressed willingness to alter Illinois's election procedures. It does not argue that it was coerced into agreement by the district court or that it was prevented from raising any objections at the hearing or before submitting the preliminary injunction it drafted. The district court appropriately allowed the Board to determine what changes to Illinois's ballot-access provisions would balance the rights of candidates and state election officials.

At the preliminary injunction hearing, the district court made appropriate legal and factual findings before concluding that changes to the ballot access requirements were necessary. The court specifically found that the Governor's orders requiring most individuals to stay at home and closing many public establishments impeded the plaintiffs' ability to gather signatures, and that this situation was exacerbated by the fact that the window for gathering signatures opened at nearly the same time as the restrictions went into place. The district court concluded that the parties' agreed order would ameliorate plaintiffs' difficulty meeting the signature requirement while accommodating the State's interest in ensuring that only parties with measurable public support will gain access to the ballot. The Board does not argue that these factual findings are clearly erroneous, and we conclude that they are not.

The Board does not explicitly challenge in its opening brief the district court's order granting in part and denying in part its motion for reconsideration, so we address it only briefly. In its request for reconsideration, the Board continued to agree that the ongoing challenges presented by COVID-19 meant that some modifications to Illinois's ballot access requirements were necessary. More specifically, the Board asked the district court to allow it to establish appropriate ballot access requirements for independent and new political ***419** party candidates, or alternatively, to move the deadline for candidate nomination and petition filings to July 6 and increase the signature requirement to 25% of the statutory minimum. The primary concern expressed by the Board was its ability to comply with deadlines imposed by state and federal law to ensure an orderly election. Appellants' App. at R148. The order entered by the district court adjusted the filing deadline from August 7 to July 20. On this record—and especially against the positions the Board has taken in the litigation—we see nothing close to an abuse of discretion by the district court.

Once again in its appellate briefs the Board asks this court to reverse the district court's decisions and permit the Board to determine the best options for balancing the plaintiffs' interests with the statutory ballot access requirements in Illinois. In doing so, the Board devotes not a word to addressing the harm this would cause to candidates and parties who have relied on the agreed preliminary injunction order. Nor does the Board explain how it would make the relevant determinations regarding ballot access, but any change made now, after the deadline for submitting signatures has passed, is certain to severely limit or prevent third-party or independent candidates from accessing the November ballot. The Supreme Court has instructed that federal courts should refrain from changing state election rules as an election approaches. *See, e.g.*, *Republican Nat'l Comm. v. Democratic Nat'l Comm.*, —— U.S. ——, 140 S. Ct. 1205, 1207, 206 L.Ed.2d 452 (2020) (per curiam); *Purcell v. Gonzalez*, 549 U.S. 1, 4–5, 127 S.Ct. 5, 166 L.Ed.2d 1 (2006) (per curiam). In reviewing the claims before us, we decline to allow the Board to change the ballot-access requirements on the eve of the deadline for certifying the final contents of the ballot. Indeed, the *Purcell* principle takes on added force where, as here, the Board seeks to challenge injunctive relief that it initially agreed was necessary and proper. And only after engaging in meaningful delay, including in pursuing this appeal, did the Board change course and put at risk the reliance the plaintiffs have placed in the orders entered by the district court.

The district court's orders entering a preliminary injunction and granting reconsideration in part are AFFIRMED.

All Citations

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