

**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION**

DONALD W. WOJTOWICZ; BARBARA J.)
McGANN; JOHN E. SUTHERLAND; and the)
ILLINOIS POLICY INSTITUTE, an Illinois)
not-for-profit corporation,)

Plaintiffs,)

v.)

JESSE WHITE, in his Official Capacity as)
Illinois Secretary of State; the ILLINOIS)
STATE BOARD OF ELECTIONS; CHARLES)
W. SCHOLZ, in his Official Capacity as Chair)
of the Illinois State Board of Elections; IAN K.)
LINNABARY, in his Official Capacity as Vice)
Chair of the Illinois State Board of Elections;)
and WILLIAM J. CADIGAN, LAURA K.)
DONAHUE, WILLIAM R. HAINE, WILLIAM)
M. McGUFFAGE, KATHERINE S. O'BRIEN,)
and CASANDRA B. WATSON, in their Official)
Capacities as Members of the Illinois State)
Board of Elections,)

Defendants.)

Case No. 2020 CH 06120

Honorable Celia G. Gamrath

**ORDER DENYING ENTRY OF TEMPORARY RESTRAINING ORDER WITH
NOTICE**

This cause coming before the Court on Plaintiffs' Motion for Emergency Temporary Restraining Order and Preliminary Injunction, notice having been given and Defendants having appeared through counsel; the Court having considered Plaintiffs' Verified Complaint for Declaratory and Injunctive Relief, Plaintiffs' Motion for Temporary Restraining Order and Preliminary Injunction, the Affidavit of Adam Schuster, and Plaintiffs' Memorandum of Law, the Memoranda of Law filed in response by both the Secretary of State and the State Board of Elections, and the Court having considered the arguments of counsel in a thirty-five minute hearing, finds as follows:

A. Entry of an emergency temporary restraining order is a drastic remedy designed to preserve the status quo until an evidentiary hearing can be conducted. However, Plaintiffs' emergency motion for temporary restraining order goes far beyond the scope by asking the Court to grant the ultimate relief pled in the Verified Complaint on an emergency basis without an evidentiary hearing. In order for the Court to grant the relief Plaintiffs seek, the Court would have to first adjudicate Plaintiffs' rights and declare the ballot and pamphlet language either unconstitutional or so misleading and confusing that it requires immediate corrective action. There is nothing temporary about this type of relief. Instead such relief would amount to a permanent mandatory injunction that would drastically alter, not preserve, the status quo.

B. The status quo in this case was established in May of 2020 when the General Assembly approved language for the ballot and pamphlet. The language Plaintiffs complain about was published, spread of record, and made widely known to the public months ago, long before early voting began. Plaintiffs waited until October to file suit, after hundreds of thousands of votes had been cast, and ran into court three weeks before election day to say there is an emergency that demands affirmative relief on a summary non-evidentiary basis. Not so. Plaintiffs' delay indicates a lack of urgency and suggests their perceived harm is neither immediate nor irreparable. Moreover, Plaintiffs have not demonstrated a clear right to relief to warrant entry of emergency injunctive relief.

C. Plaintiffs argue that to prevail on their motion they need only raise a fair question about the existence of their right and need not make out a case that will entitle them to the ultimate relief they seek. Ordinarily, this is true. However, Plaintiffs are not seeking a typical temporary restraining order, but a permanent mandatory injunction that disrupts the status quo and grants them the ultimate relief sought in their Verified Complaint. Mandatory injunctions of

this nature are disfavored and should not be granted absent rare and extraordinary circumstances. They will only be issued on the clearest equitable grounds where there is a distinct right to relief demonstrated, no adequate remedy at law, irreparable harm, and an extreme urgency. The Court finds Plaintiffs failed to prove these elements to justify the imposition of a mandatory injunction on an emergency basis.

D. While Plaintiffs have a clear right to a free and equal election, they have not demonstrated a clear right to corrective action on an emergency basis, for it is not patently clear the language on the ballot or pamphlet is so misleading that it abridges a constitutional right in need of protection. Like it or not, the proposed amendment *does* give the State the ability to impose higher tax rates on those with higher income levels and lower income tax rates on those with middle or lower income levels, just as the ballot describes. Plaintiffs have not shown on the clearest of grounds that this language is so misleading and confusing to give rise to a constitutional violation. Plaintiffs merely conclude and speculate that the language is deceiving and confusing to voters without any specific evidence demonstrating confusion or obstruction to a particular individual or group of voters.

E. In addition, as noted above, Plaintiffs' delay cuts against the argument of irreparable harm, for if it was truly immediate and irreparable, they could have acted sooner, long before early voting began so that if corrective action was deemed necessary, there would be time to effectuate it without interfering with the integrity of the voting process. Delay notwithstanding, Plaintiffs make no showing they have or will suffer irreparable harm in the absence of immediate corrective action being taken. They present no evidence as to how they would be irreparably harmed. They point to no case law to support the notion that the Free and Equal Elections clause applies to the pamphlet language. They do not even allege they

themselves are confused by the ballot or pamphlet language or that their right to vote would be obstructed in the interim without injunctive relief.

F. Further, Plaintiffs do not show there is no adequate legal remedy for the alleged harm they will suffer in the absence of corrective action, particularly since voters are being asked to vote on the adoption or rejection of a proposition to amend Section 3 of Article IX of the Illinois Constitution, not specifically what is written on the ballot or in the pamphlet. Finally, as mentioned below, the Court agrees with the Secretary of State's contention that the remedy Plaintiffs seek is unworkable at this late stage and the balance of hardships do not weigh in favor of granting relief.

G. As discussed at oral argument, the cases Plaintiffs cite in support of their motion are distinguishable. *Chicago Bar Association ("CBA") v. White*, 386 Ill. App. 3d 955 (1st Dist. 2008), is different procedurally and factually from the instant case. In 2008, early voting was in its infancy and had not yet begun when the *CBA* plaintiffs filed their lawsuit. Here, Plaintiffs did not file suit until after voting had begun. Also, absentee or mail-in voting was limited in 2008 to those with an excuse. Today the early voting system and mail-in ballots have expanded exponentially, especially in light of the COVID-19 pandemic. It is undisputed that hundreds of thousands of people have already voted using the ballot language approved five months ago - language Plaintiffs now want to change mid-stream for voters. Accordingly, the emergency relief Plaintiffs seek does not appear to be practical or feasible today at this late stage in the election process. To the contrary. The Court believes such relief, even if granted, would cause (not cure) confusion among voters, reach a limited number of voters by the time corrective action was taken, create an unworkable and untimely publication mandate on the Secretary of State that would come at great expense to taxpayers, and undoubtedly invite a legal challenge to the

validity of the ultimate vote based on the disparities between the ballot language and ballots cast pre- and post-injunction.

H. The *CBA* case is further distinguishable insofar as the misleading language on the ballot was procedural, not substantive, and all parties agreed the language was misleading or confusing and required some sort of corrective action. Here, Defendant, the Secretary of State, disagrees with the Plaintiffs' allegation that any of the language on the ballot or in the pamphlet is misleading or warrants corrective action. And while the *CBA* plaintiffs argued that substantive language in the form of the ballot was misleading, the *CBA* Court dismissed that count of the Complaint. Above all, in *CBA*, the matter was decided after an evidentiary hearing, not on motion for entry of an emergency temporary restraining order.

I. Additionally, the two cases Plaintiffs cited at oral argument, *People ex rel Hudson v. Cleveland, C.C. § St. L. Ry. Co.*, 360 Ill. 180 (1935) and *Lunde v. Rockford Public Library*, 153 Ill. App. 3d 803 (2d Dist. 1987), as well as the case of *Samour, Inc. v. Bd. Of Elections Com'rs of City of Chicago*, 224 Ill. 2d 530 (2007), are distinguishable. All three cases are factually and procedurally inapposite and none were decided on an emergency temporary restraining order basis.

J. Nothing in the case law, pleadings or Plaintiffs' supporting affidavit supports a finding that an emergency exists or that injunctive "corrective" relief is appropriate on an emergency non-evidentiary basis. A permanent mandatory injunction cannot be granted by seeking to disguise it as an emergency temporary restraining order. For these reasons, and reasons stated in open Court on October 9, 2020, the Court denies Plaintiffs' motion.

WHEREFORE, IT IS ORDERED: (1) Defendant Secretary of State's Motion for Leave to File an Oversized Brief is granted; and (2) Plaintiffs' Motion for Emergency Temporary Restraining Order is denied.

ENTERED:



Honorable Celia G. Gamrath #2031

Judge Celia G. Gamrath

OCT 09 2020

Circuit Court - 2031