

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED

JUL 23 2020

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

PEOPLE NOT POLITICIANS OREGON; et
al.,

Plaintiffs-Appellees,

v.

BEVERLY CLARNO, Oregon Secretary of
State,

Defendant-Appellant.

No. 20-35630

D.C. No. 6:20-cv-01053-MC
District of Oregon,
Eugene

ORDER

Before: THOMAS, Chief Judge, SCHROEDER and CALLAHAN, Circuit Judges.

Dissent by Judge CALLAHAN

Appellant's motion (Docket Entry No. 2) to stay the district court's July 13, 2020 order pending appeal is denied. *See Nken v. Holder*, 556 U.S. 418, 425–26 (2009).

CALLAHAN, Circuit Judge, dissenting:

I again dissent from the Court’s denial of a motion to stay a preliminary injunction altering state election laws on the eve of an election.¹ The Appellant has demonstrated that a stay is warranted. *See Nken v. Holder*, 556 U.S. 418, 425–26 (2009).

The Appellant has made a strong showing that adherence to Oregon’s constitutionally mandated signature threshold for ballot initiatives either does not implicate the First Amendment at all or does not do so in a way that runs afoul of the Appellees’ rights. *Cf. Angle v. Miller*, 673 F.3d 1122, 1127, 1132–35 (9th Cir. 2012) (acknowledging that “[a] state may decline to grant a right to legislate through ballot initiatives” and holding that state’s geographic signature requirement did not impermissibly burden core political speech (internal quotation marks omitted)).

The remaining factors also support a stay. *See Abbott v. Perez*, 138 S. Ct. 2305, 2324 (2018) (explaining that absent a constitutional violation, an injunction

¹ I similarly dissented from the denial of a stay motion in *Reclaim Idaho v. Little*, 20-35584. *See Reclaim Idaho v. Little*, 20-35584, CM/ECF Docket Entry No. 14 (July 9, 2020). Local press incorrectly reported that the Court’s denial in that case was unanimous. *See* Nathan Brown, *Reclaim Idaho to resume signature gathering on school funding initiative*, POST REGISTER (July 9, 2020), https://www.postregister.com/news/education/reclaim-idaho-to-resume-signature-gathering-on-school-funding-initiative/article_b548b864-aaf5-5702-a5ea-f6769621fd17.html.

barring a state from conducting its election pursuant to its laws “would seriously and irreparably harm the State”); *Purcell v. Gonzalez*, 549 U.S. 1, 4 (2006) (“A State indisputably has a compelling interest in preserving the integrity of its election process.”).

I would grant the Appellant’s motion and stay the preliminary injunction pending resolution of the appeal.