

2020 WL 6556004

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United States District Court, C.D. 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.

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.

Case No. 3:20-cv-3107

Signed 07/02/2020

Attorneys and Law Firms

Pericles Camberis Abbasi, The Pericles Organization,
Chicago, IL, Samuel J. Cahnman, Attorney At Law,
Springfield, IL, for Plaintiffs.

John T. Robinson, City of Decatur, Barbara Joan Mann,
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B. Baggett, Decatur, IL, Erin Walsh, Michael Thomas
Dierkes, Office of the Illinois Attorney General, Chicago,
IL, for Defendants.

ORDER

SUE E. MYERSCOUGH, UNITED STATES DISTRICT
JUDGE

*1 Before the Court is Plaintiffs' Emergency Motion of
Reconsideration With Regards to Local Referenda. d/e
27. 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 due to the current public health emergency
caused by the COVID-19 pandemic and the Governor of
Illinois' emergency stay-at-home 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 an
Emergency Motion for Preliminary or Permanent
Injunction. After setting an expedited briefing schedule on
the Motion for Preliminary or Permanent Injunction, on
May 1, 2020, the Court held a hearing on the Motion, at
which the Court denied the Motion. See Minute Entry
May 1, 2020; Order, d/e 24. At the hearing and in the
subsequently issued order, the Court found that Plaintiffs
had not met their burden in showing that a preliminary
injunction was warranted. See Order 9. Specifically, the
Court found that Plaintiffs' "likelihood of success on the
merits is low" and "the burden Plaintiffs' proposed
injunction would place on Defendants is high." Order 5.

Plaintiffs have now filed the Emergency Motion of
Reconsideration With Regards to Local Referenda
("Motion for Reconsideration"), d/e 27, that is before the
Court. In the Motion for Reconsideration, Plaintiffs argue
that the Governor's issuance of a new Executive Order,
extending social distancing guidelines for an additional
thirty days, constitutes newly discovered material
evidence that warrants reconsideration of the Court's
earlier decision. Mot. Reconsideration 2.

In the Motion for Reconsideration, Plaintiffs seek reconsideration of the Court’s earlier decision only as that decision relates to the local referenda—that is, the Cannabis Dispensary Advisory Question of Public Policy Referendum in the City of Decatur and the Binding Referendum to eliminate the office of Recorder of Deeds in Champaign County. Id. at 1.

The Defendants have filed responses to the Motion for Reconsideration. d/e 28, 29, 30. Plaintiffs sought and were granted leave to file a reply. d/e 32. Finally, Plaintiffs filed a Notice of Supplemental Authority, d/e 34, to bring to the Court’s attention an Order entered by the Court of Appeals for the Seventh Circuit in Libertarian Party of Illinois v. Cadigan, which this Court cited to in its prior order denying Plaintiffs’ Motion for Preliminary or Permanent Injunction. The Motion for Reconsideration is therefore fully briefed and ripe for ruling.

II. LEGAL STANDARD

*2 Motions to reconsider serve a limited purpose in federal litigation. In general, motions to reconsider allow a party to bring to the court’s attention manifest errors of fact or law, a significant change in the facts or law, a court’s misunderstanding of a party’s argument, or a court’s decision on an issue that was not properly before it. United States v. Ligas, 549 F.3d 497, 501 (7th Cir. 2008). “A ‘manifest error’ is not demonstrated by the disappointment of the losing party.” Oto v. Metro. Life Ins. Co., 224 F.3d 601, 606 (7th Cir. 2000). Motions for reconsideration should not be used to “rehash[] previously rejected arguments or argu[e] matters that could have been heard during the pendency of the previous motion,” and a party may not use a motion for reconsideration to present evidence that could have been presented earlier. Caisse National de Credit Agricole v. CBI Indus., Inc., 90 F.3d 1264, 1269– 70 (7th Cir. 1996).

III. ANALYSIS

As an initial matter, the Court takes judicial notice that Executive Order 2020-38 (“E.O. 2020-38”) issued by the Governor— on which Plaintiffs’ Motion for Reconsideration is premised—has since been superseded

by Executive Order 2020-43. Although the new Executive Order 2020-43 may have rendered some of Plaintiffs’ contentions moot, the new Executive Order also extends much of the same guidance regarding social distancing and prohibitions on certain activities, which are the basis of Plaintiffs’ complaint. In the Motion for Reconsideration, Plaintiffs note that “after June 28, it is expected that the State will be in Phase 4 of the Restore Illinois Plan” which will continue to mean that face coverings and social distancing are the norm. Mot. Reconsideration 3. The Court therefore proceeds to the merits on Plaintiffs’ Motion for Reconsideration on the record now before the Court.

The signature filing deadlines Plaintiffs must meet with respect to the local referenda fall on August 3, 2020. In denying Plaintiffs’ Motion for Preliminary or Permanent Injunction, the Court noted that the Executive Order then in effect would expire on May 29, 2020. For that reason, the Court found that Plaintiffs’ claims of irreparable harm as they related to the local referenda were too speculative to support the grant of mandatory injunctive relief. Order, 7-8.

Plaintiffs contend that E.O. 2020-38 is newly discovered material evidence that warrants reconsideration of the Court’s earlier decision because E.O. 2020-38 extended the previously imposed social distancing measures through June 28, 2020. Mot. Reconsideration 1-2. Plaintiffs claim that these measures will continue to prevent them from collecting signatures for at least another month and, therefore, their request for relief is no longer premature. Id. at 2.

Even accepting Plaintiffs’ contention that E.O. 2020-38 is newly discovered material evidence, the Court’s analysis is unchanged. Plaintiffs’ likelihood of success on the merits remains low (and may be even lower now), while the burden that the mandatory injunctive relief sought would impose on the defendants remains high (and may be even higher now as the election draws closer).

Still today, as before, Plaintiffs “assume[] that the ballot is a public forum and that there is a constitutional right to place referenda on the ballot[;] [b]ut there is no such right.” Jones v. Markiewicz-Qualkinbush, 892 F.3d 935, 937 (7th Cir. 2018). The law only requires that once a state does open the ballot to referenda like those proposed by Plaintiffs, the state cannot impose unconstitutional restrictions on the right the state has created. Id. Here, Plaintiffs only assert that “mandatory social distancing” makes it “impossible for the plaintiffs to circulate

petitions for their local referenda.” Mot. Reconsideration 2-3.

*3 In regards to social distancing, E.O. 2020-38 states: “To the extent individuals are using shared spaces when outside their residence, including when outdoors, they must at all times and as much as reasonably possible maintain social distancing of at least six feet from any other person who does not live with them.” E.O. 2020-38 further states that individuals “shall be required to cover their nose and mouth with a face covering when in a public place and unable to maintain a six-foot social distance.” “This requirement applies whether in an indoor space, such as a store, or in a public outdoor space where maintaining a six-foot social distance is not always possible.” E.O. 2020-38.

Nothing in those provisions places an unconstitutional burden on Plaintiffs’ rights to circulate their petitions. Plaintiffs seem to suggest that E.O. 2020-38 mandates that no person may ever come within six feet of any other person, but that is not what the Executive Order says, nor would such a rule be workable. Indeed, E.O. 2020-38 recognizes that maintaining a six-foot social distance is not always possible. E.O. 2020-38 does not prevent Plaintiffs from attempting to collect signatures, the Executive Order only suggests the precautions that ought to be taken when doing so. Plaintiffs are free to circulate their petitions as they please. Under either E.O. 2020-38 or Phase 4 Plaintiffs can practice social distancing where practicable or wear a mask when social distancing is not possible.

Similarly, Plaintiffs claim that because E.O. 2020-38 states that “those with health conditions that may make them vulnerable are urged to stay in their residence and minimize in-person contact with others to the extent possible” that prevents two of the plaintiffs who are immunocompromised from collecting signatures. By its own language though, E.O. 2020-38 only “urges” these precautions; the Executive Order does not mandate them.

Furthermore, as the State of Illinois has moved into Phase 4 of the Restore Illinois Plan as Plaintiffs anticipated, Plaintiffs have even more opportunities than before to circulate petitions. Under E.O 2020-38, gatherings of up to ten people were permitted. Under the current rules, gatherings of 50 or fewer people are allowed. Under E.O. 2020-38, non-essential retail stores and barbershops and salons have reopened. Under Phase 4, restaurants and bars can reopen, as can gyms and fitness centers. If anything, Plaintiffs’ claim that they cannot circulate their petitions is even weaker now than it was before given these expanded opportunities to collect signatures.

Finally, while Plaintiffs’ Motion for Reconsideration is largely premised on the argument that E.O. 2020-38 constitutes newly discovered material evidence, Plaintiffs also suggest that the Court may have made a manifest error of fact in its earlier ruling by considering both of the petitions for local referenda to be seeking advisory referenda, when one petition seeks to place a binding referendum on the ballot. Mot. Reconsideration 3. In its prior ruling the Court referred to a “state-created right to non-binding ballot initiatives.” Order 6 (citing Jones, 892 F.3d at 937). Jones, however, made no distinction between binding and non-binding referenda, so any claimed error is of no consequence.

IV. CONCLUSION

For the foregoing reasons, Plaintiffs’ Emergency Motion of Reconsideration With Regards to Local Referenda, d/e 27, is DENIED.

All Citations

Slip Copy, 2020 WL 6556004