

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

RALPH NADER, PETER MIGUEL	:	
CAMEJO, HERMAN BLANKENSHIP,	:	
KIM BLANKENSHIP, JULIE COYLE,	:	
LOGAN MARTINEZ, AND	:	Case No. C2-04-1052
LARRY SNIDER,	:	
	:	
Plaintiffs,	:	
	:	JUDGE SMITH
-v-	:	
	:	
J. KENNETH BLACKWELL,	:	
OHIO SECRETARY OF STATE,	:	
	:	
Defendant.	:	

ORDER

Plaintiffs seek a temporary restraining order (“TRO”) directing defendant to keep and count all write-in votes for Presidential and Vice-Presidential candidates Ralph Nader and Peter Miguel Camejo cast in Ohio on November 2, 2004. For the following reasons the Court denies plaintiffs’ TRO motion.

I. Facts

Plaintiffs are Ralph Nader and Peter Miguel Camejo, candidates for President and Vice-President of the United States, and five Ohio electors who intended to cast write-in votes for Nader and Camejo. Defendant is the Ohio Secretary of State.

On August 18, 2004, Nader and Camejo filed with defendant to be placed on the ballot for the November 2, 2004 election. As required by Ohio law, Nader and Camejo submitted a

nominating petition. On August 28, 2004, protesters challenged the validity of the petition.

On September 8, 2004, defendant communicated to Nader and Camejo that the petition was valid, but did so conditionally because of the protest. The deadline for filing a declaration of intent to be write-in candidates was September 13, 2004. Nader and Camejo did not attempt to file such a declaration, believing that under Ohio law they could apply to be placed on the ballot, or file to become write-in candidates, but not both.

Defendant's hearing officer conducted a three-day hearing concerning the protest, and determined that Nader and Camejo had failed properly to collect 5,000 voter signatures as required by Ohio law. Defendant then ordered local boards of elections to remove or redact Nader and Camejo's names from their general election ballots on September 28, 2004.

Plaintiffs challenged defendant's decision in this Court. On October 12, 2004, the Court upheld defendant's decision. The United States Court of Appeals for the Sixth Circuit upheld the decision of this Court on October 18, 2004.

Plaintiffs also sought mandamus relief in the Ohio Supreme Court. On October 22, 2004, the Ohio Supreme Court denied plaintiffs' petition.

Plaintiffs filed the instant lawsuit and TRO motion at 10:20 a.m. on the day of the election, November 2, 2004.

II. Standard of Review

The Court considers four factors in determining whether to issue a TRO or preliminary injunction:

- 1) whether the movant has a strong likelihood of success on the merits;
- 2) whether the movant would

suffer irreparable injury without the injunction; (3) whether issuance of the injunction would cause substantial harm to others; and (4) whether the public interest would be served by issuance of the injunction.

Chabad of S. Ohio & Congregation Lubavitch v. City of Cincinnati, 363 F.3d 427, 432 (6th Cir. 2004). The factors are not prerequisites; rather, they must be balanced. Capobianco, D.C. v. Summers, 377 F.3d 559, 561 (6th Cir. 2004).

III. Discussion

A. Likelihood of success on the merits

The Court finds that plaintiffs are unlikely to succeed on the merits for two reasons. First, the Court concludes that plaintiffs' claims are barred under the doctrine of laches. Plaintiffs have been aware of their legal position and the facts giving rise to this lawsuit since no later than October 22, 2004. Yet, plaintiffs offer no explanation as to why they waited until mid-morning on the very day of the election to seek relief.

Second, the Court finds that plaintiffs are unlikely to succeed on the merits. The thrust of plaintiffs' argument is constitutional estoppel. That is, plaintiffs argue that because defendant initially conditionally approved of the petition to be placed on the ballot, and in reliance thereon Nader and Camejo refrained from filing a petition of intent to be write-in

candidates, defendant should not now be permitted to exclude Nader and Camejo from being write-in candidates. Plaintiffs rely on Cox v. Louisiana, 379 U.S. 559 (1964). In Cox, local authorities told protestors that they could use the sidewalk across the street from the local courthouse. The protestors were nevertheless arrested for picketing around the courthouse. The Supreme Court reversed the conviction, however, on the basis of the advise the local authorities had given the protestors.

The Court finds plaintiffs' estoppel argument to be unpersuasive. Here, plaintiffs were aware of the protester's challenge to their petition before defendant's representation on September 8, 2004. Second, plaintiffs do not dispute that defendant's representation as to the validity of Nader and Camejo's petition was *conditional*. The Court concludes that such a conditional statement cannot support an estoppel in these circumstances. The Court further finds that Ohio's fifty-day advance filing requirement to become a write-in candidate, Ohio Rev. Code § 3513.041, is sufficiently narrowly drawn to serve an important state interest, and survives close scrutiny.

B. Irreparable harm

The Court finds that because no constitutional violation has

occurred, plaintiffs will not suffer irreparable harm.

C. Harm to others and public interest

The Court finds that in these circumstances, on the very day of the election, the interests of voters and the public interest would be harmed by the issuance of a TRO. The relief plaintiffs seek would disrupt the ongoing electoral process. As a practical matter, for example, such relief would require defendant to contact, interrupt, and instruct election officials, whose hands are already quite full, in the midst of the election.

IV. Disposition

For the above reasons, the Court DENIES plaintiffs' motion for a TRO.

IT IS SO ORDERED.

/s/ George C. Smith
GEORGE C. SMITH, JUDGE
UNITED STATES DISTRICT COURT