

No. 10-4481

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FILED
Nov 24, 2010
LEONARD GREEN, Clerk

TRACIE HUNTER, Committee to Elect Tracie M.)
 Hunter for Judge,)
)
 Plaintiff - Appellee,)
)
)
 NORTHEAST OHIO COALITION FOR THE)
 HOMELESS; OHIO DEMOCRATIC PARTY,)
)
 Intervenor - Appellee,)
)
)
 v.)
)
 HAMILTON COUNTY BOARD OF)
 ELECTIONS, et al.,)
)
 Defendants,)
)
)
 JOHN WILLIAMS,)
)
)
 Intervenor - Appellant.)

ORDER

This appeal involves the election of a judge to the Juvenile Court of Hamilton County, Ohio. John Williams, who has been certified as the winner, appeals a preliminary injunction that directs the Hamilton County Board of Elections (“Board”) to immediately begin an investigation as to whether certain provisional ballots that were cast in the correct polling location but in the wrong precinct were cast as a result of error by poll workers. Williams moves to stay that injunction and seeks expedited review of the appeal. Because of the exigent nature of the request and the approaching Thanksgiving holiday, this motion has been submitted to a single judge for review. Fed. R. App. P. 8(a)(2)(D), 27(c).

No. 10-4481

- 2 -

Ultimately, whether to stay the district court's preliminary injunction is governed by the four-part test for injunctive relief: "(1) whether the movant has a strong likelihood of success on the merits, (2) whether the movant would suffer irreparable injury absent a stay, (3) whether granting the stay would cause substantial harm to others, and (4) whether the public interest would be served by granting the stay." *United States Student Ass'n Found. v. Land*, 546 F.3d 373, 380 (6th Cir. 2008) (quoting *Ne. Ohio Coal. for the Homeless v. Blackwell*, 467 F.3d 999, 1009 (6th Cir. 2006)). Williams claims that immediate irreparable harm will occur if the Board takes the first step in the investigation that the district court has ordered and opens the provisional ballots in question. In light of the fact that the earliest date that the successful candidate could take office is January 1, 2011, this potential harm outweighs any immediate harm to the plaintiff. Thus, in order to permit a reasoned period for response and review by a full panel of this court in light of the four-factor test for injunctive relief, a temporary stay will issue.

The district court's order is therefore temporarily stayed pending review by a full panel of this court. Any party wishing to respond to the motion for a stay must do so no later than Monday, November 29, 2010, at 5:00 p.m. Thereafter, a ruling by a full panel of this court shall promptly issue.

ENTERED BY ORDER OF THE COURT



Clerk