

No. 12-2184

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

WILLIAM GELINEAU; GARY E. JOHNSON;)
 LIBERTARIAN PARTY OF MICHIGAN,)
)
 Plaintiffs-Appellants,)
)
 v.)
)
 RUTH JOHNSON, Secretary of State of Michigan,)
 in her official capacity,)
)
 Defendant-Appellee.)

FILED
Sep 19, 2012
 DEBORAH S. HUNT, Clerk

Before: KEITH, MARTIN, and ROGERS, Circuit Judges.

PER CURIAM. Plaintiffs William Gelineau, Gary E. Johnson, and the Libertarian Party of Michigan seek to compel the Michigan Secretary of State to include Gary E. Johnson and James Gray on Michigan’s ballots for the November 6, 2012, election as the Libertarian Party’s candidates for President and Vice President of the United States. They appeal the district court’s denial of their motion for a temporary restraining order and a preliminary injunction.

Before us is the plaintiffs’ emergency motion for an injunction pending appeal in which they ask us to issue an injunction directing that the Gary E. Johnson/James Gray ticket be included on Michigan ballots, or that no ballots be distributed or printed pending a further decision of the court. They also indicate their willingness “to stand on this motion as their briefing on the merits of the appeal.” The Michigan Secretary of State opposes the motion. Because the printing of the ballots is either underway or will be shortly, we have expedited this appeal.

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On May 2, 2012, the Libertarian Party of Michigan was advised that the Michigan Secretary of State would reject Gary Johnson, former Governor of New Mexico (Governor Johnson), as a presidential candidate based on Mich. Comp. Laws § 168.695. The statute prohibits a candidate who appears on the primary ballot for one political party from appearing as a candidate for any other political party at the general election following the primary. At its convention the following month, the Party nominated Governor Johnson as its candidate for President, and also nominated Gary E. Johnson, a citizen of Texas, as its “stand-in” presidential candidate. The Party, along with Governor Johnson, subsequently brought an action in the United States District Court for the Eastern District of Michigan against the Michigan Secretary of State seeking to compel the inclusion of Governor Johnson on the ballot as the Libertarian presidential candidate. *Libertarian Party of Mich. v. Johnson*, No. 2:12-cv-12782, 2012 WL 3930557, at *1 (E.D. Mich. Sept. 10, 2012). The district court denied relief and dismissed the action. The plaintiffs in that action appealed, and we have denied their motion for an emergency injunction pending appeal. *Libertarian Party of Mich. v. Johnson*, No. 12-2153 (6th Cir. Sept. 12, 2012) (order).

On the same day that the Party moved for an emergency injunction in that appeal, the plaintiffs filed the instant action in the United States District Court for the Western District of Michigan seeking to compel the Michigan Secretary of State to include stand-in candidate Gary E. Johnson on Michigan’s ballots. They also moved for a temporary restraining order and a preliminary injunction. On September 17, 2012, the district court denied that relief. The plaintiffs appealed and now move this court for emergency relief.

The denial of injunctive relief is reviewed for an abuse of discretion. *Hunter v. Hamilton Cnty. Bd. of Elections*, 635 F.3d 219, 233 (6th Cir. 2011). The district court concluded that the plaintiffs’ claims were barred by the doctrine of laches. As the district court stated, the doctrine of

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laches applies where both the party against whom the defense of laches is asserted has demonstrated a lack of diligence in asserting its claims and the party asserting the defense of laches will be prejudiced if the injunction is granted. A candidate may be barred from equitable relief on this basis when he has failed to seek relief expeditiously. *Kay v. Austin*, 621 F.2d 809, 813 (6th Cir. 1980).

In this case, the plaintiffs knew as early as May 2012 that the Michigan Secretary of State would not include Governor Johnson on Michigan's ballots. Further, the Party's suit in the the Eastern District of Michigan afforded it a clear opportunity to request the alternative relief of including its stand-in candidate on Michigan ballots. The plaintiffs in this case have thus failed to exercise proper diligence in asserting their claims.

Furthermore, granting the plaintiffs a temporary injunction would prejudice the defendants. With the passage of time, the Secretary of State's preparations for the November election have escalated in order to meet deadlines imposed by both federal and state law. These preparations include printing of ballots and coordination with eighty-three individual Boards of County Election Commissioners. Injunctive relief at this late date would bring disruption to the "integrity, fairness, and efficiency" of the Michigan electoral process. *Timmons v. Twin Cities Area New Party*, 520 U.S. 351, 364 (1997). We agree with the district court that the plaintiffs' request for an injunction is barred by laches.

The motion for an emergency injunction is DENIED, and the district court's denial of injunctive relief is AFFIRMED.

ENTERED BY ORDER OF THE COURT



Clerk