League of Women Voters of N.Y. State v New York State Bd. of Elections
2020 NY Slip Op 33134(U)
September 25, 2020
Supreme Court, New York County
Docket Number: 160342/2018
Judge: J. Machelle Sweeting
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. J. MACHELLE SWEETING** **PART** **IAS MOTION 62**

Justice

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INDEX NO. 160342/2018

LEAGUE OF WOMEN VOTERS OF NEW YORK STATE, NICHOLAS DINNERSTEIN

MOTION DATE 07/28/2020

MOTION SEQ. NO. 002

Plaintiff,

- v -

NEW YORK STATE BOARD OF ELECTIONS, BOARD OF ELECTIONS IN THE CITY OF NEW YORK,

DECISION + ORDER ON MOTION

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 002) 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 106, 107, 108

were read on this motion to/for PREL INJUNCTION/TEMP REST ORDR.

Upon the foregoing documents, it is ORDERED that Plaintiff's request for a preliminary injunction to enjoin the New York State Board of Elections and New York City Board of Elections from enforcing the provisions of the New York Election Law (the "Cutoff Law") that requires voters to register at least 25 days before the November 2020 election in order to exercise their right to vote is hereby DENIED.

As noted by the Hon. Julio Rodriguez III, in an earlier decision in this case (Decision and Order on Motion #001, dated September 30, 2019), there is a "strong presumption of constitutionality" accorded to "legislative enactments." The United States Supreme Court held in Washington State Grange v. Washington State Republican Party, 552 U.S. 442 (2008) that "Facial challenges are disfavored […] facial challenges threaten to short circuit the democratic process by preventing laws embodying the will of the people from being implemented in a manner consistent with the Constitution. We must keep in mind that a ruling of unconstitutionality frustrates the

intent of the elected representatives of the people." Further, the New York Court of Appeals held in Cohen v. State, 94 N.Y.2d 1 (N. Y. Ct. of Appeals 1999):

> *Because the plaintiffs seek facial invalidation of chapter 635, they must initially overcome the presumption of constitutionality accorded to all enactments of a co-equal Branch of government [citations omitted]. In seeking facial nullification, plaintiffs bear the burden to demonstrate that "in any degree and in every conceivable application," the law suffers wholesale constitutional impairment [citation omitted].*
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> *Statutes are quintessentially the product of the democratic lawmaking process. These threshold hurdles are, therefore, erected in the public interest to provide a prudent set of procedural safeguards for enactors and defenders of statutes. They are set in place doctrinally and precedentially because of a fundamental premise that "[b]alancing the myriad requirements imposed by both the State and the Federal Constitution is a function entrusted to the Legislature ..., the elective representatives of the people" [citations omitted].*
>
> *[…]*
>
> *We have elsewhere declared that it is unwise for the courts "to substitute our own determination for that of the Legislature even if we would have struck a slightly different balance on our own," for it "is not the role of this, or indeed any, court to second-guess the determinations of the Legislature, the elective representatives of the people, in this regard" [citations omitted].*

Further, "a preliminary injunction substantially limits a defendant's rights and is thus an extraordinary provisional remedy requiring a special showing […] Accordingly, a preliminary injunction will only be granted when the party seeking such relief demonstrates a likelihood of ultimate success on the merits, irreparable injury if the preliminary injunction is withheld, and a balance of equities tipping in favor of the moving party (1234 Broadway LLC v West Side SRO Law Project, 86 AD3d 18 [1st Dept. 2011]). Whether to grant a preliminary injunction is a matter to be determined in the broad discretion of the court (Madden Int'l., Ltd. v Lew Footwear Holdings Pty Ltd., 143 AD3d 418 [1st Dept. 2016]; Cityfront Hotel Assoc. Ltd. Partnership v Starwood Hotels & Resorts Worldwide, Inc., 142 AD3d 873 [1st Dept. 2016]).

Here, Plaintiff has failed to demonstrate a likelihood of success on the merits because, for as cited above, there is a strong presumption of constitutionality accorded to legislative enactments.

Additionally, Plaintiff's argument with respect to irreparable harm is, primarily, a claim that "If preliminary relief is not granted, tens of thousands of New Yorkers will miss the registration deadline for a critical election in November [2020]." With respect to injunctive relief, "the irreparable harm must be shown by the moving party to be imminent, not remote or speculative" (Golden v. Steam Heat, Inc., 216 A.D.2d 440 [2nd Dept. 1995]). More than unsupported speculation is required before a preliminary injunction can issue (Shearson Lehman Bros. Holdings v. Schmertzler, 116 A.D.2d 216 [1986]).

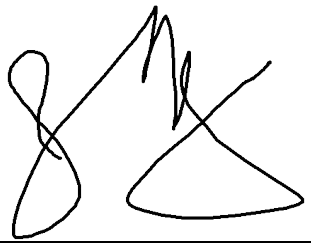
Furthermore, Plaintiff has not demonstrated that the equities weigh in its favor, as Plaintiff's argument is, fundamentally, that the equities tilt in favor of "the right to vote." There is simply no showing here that the failure to grant the injunction would necessarily deprive any eligible voter of the right to vote, as any eligible voter could simply register to vote by the legal deadline. *See* Rosario v. Rockefeller, 410 U.S. 752 (1973) (finding that "The petitioners do not say why they did not enroll prior to the cutoff date; however, it is clear that they could have done so, but chose not to. Hence, if their plight can be characterized as disenfranchisement at all, it was not caused by s186 [*sic*], but by their own failure to take timely steps to effect their enrollment.")

Finally, "it is well settled that the ordinary function of a preliminary injunction is not to determine the ultimate rights of the parties, but to maintain the status quo until there can be a full hearing on the merits" (Spectrum Stamford, LLC v. 400 Atl. Title, LLC, 162 A.D.3d 615 [1st Dept. 2018]) and "[the United States Supreme] Court has repeatedly emphasized that lower federal courts should ordinarily not alter the election rules on the eve of an election" (Republican Nat'l Comm. v. Democratic Nat'l Comm., 140 S. Ct. 1205 [2020]).

In light of the foregoing, it is hereby:

ORDERED that plaintiff's motion for a preliminary injunction is denied.

This constitutes the decision and order of the court.



9/25/2020
DATE

J. MACHELLE SWEETING, J.S.C.

CHECK ONE:	X	CASE DISPOSED				NON-FINAL DISPOSITION		
		GRANTED	X	DENIED		GRANTED IN PART		OTHER
APPLICATION:		SETTLE ORDER				SUBMIT ORDER		
CHECK IF APPROPRIATE:		INCLUDES TRANSFER/REASSIGN				FIDUCIARY APPOINTMENT		REFERENCE