Williams v Cuomo
2021 NY Slip Op 30483(U)
February 23, 2021
Supreme Court, New York County
Docket Number: 151355/2021
Judge: Frank P. Nervo

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK, PART IV
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JUMAANE WILLIAMS et al,

Plaintiffs,

-against-

ANDREW M. CUOMO et. al,

Defendants.
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DECISION AND ORDER

Index Number

151355/2021

Mot. Seq. 001 & 002

NERVO, J.

The matter before the Court presents a narrow question: does the January 2021 amendment to the election law, reducing the number of signatures required during petitioning, violate the New York Constitution. On this motion, plaintiffs seek to preliminarily enjoin defendants from enforcing in-person petitioning required for the upcoming primary elections in June.

Irrespective of the multitude of procedural irregularities in plaintiffs' papers, the Court finds, for the reasons below, that the plaintiffs have failed to demonstrate a probability of success on the merits, as required (*Nobu Next Door, LLC v. Fine Arts Housing, Inc.*, 4 NY3d 839 [2005]). Likewise, a preliminary injunction suspending the enforcement of the election law's petitioning requirements does not preserve the status quo (*Spectrum Stamford, LLC v. 400 Atlantic Title, LLC*, 162 AD3d 615 [1st Dept 2018]). Rather, continuing in-person petitioning serves to preserve the status quo, as the statutes challenged as unconstitutional represent a reduction to the number of signatories required during petitioning not a suspension of in-person petitioning (*id.*).

A showing of irreparable harm, in the absence of showing a party's likely success on the merits or preservation of the status quo is insufficient to grant a temporary injunction (*id.*). Consequently, a preliminary injunction here is inappropriate.

Turning to plaintiff's constitutional claims, the bedrock principle of the doctrine of separation of powers provides that each branch of government should be free to discharge its lawful duties without interreference from either of the other two branches *(Matter of New York State Inspection, Sec. & Law Enforcement Empls., Dist. Council 82, AFSCME, AFL–CIO v. Cuomo*, 64 NY2d 233, 239 [1984]). Simply put, this Court's review of Executive and Legislative action is done to "protect rights, not make policy" (*Campaign for Fiscal Equity v. State of New York*, 8 NY3d 14, 28 [2006]). Furthermore, as a matter of policy, where the Court is ill-equipped to take responsibility for questions, and another branch of government is better suited, the matter is nonjusticiable (*Roberts v. Health and Hosps. Corp.*, 87 AD3d 311 [1st Dept 2011]; *Jones v. Beame*, 45 NY2d 402 [1978]).

To the extent that plaintiffs ask this Court to direct a co-ordinate branch of government exercise its lawful duties -directing the legislature and executive further modify the Election Law- such request violates the separation of powers. It is beyond cavil that the legislature's modification of the Election Law, as signed into law by the Governor, reducing the number of signatures required in petitioning for public office are questions of judgment. This Court cannot and will not direct a co-ordinate branch of government to exercise discretionary power reserved to it (*see e.g. Roberts v. Health & Hosps. Corp.*, 87 AD3d 311 [1st Dept 2011]). Insomuch as the modifications of the

election law at issue are lawful policy judgments within a co-ordinate branch of government's lawful duties, they are beyond judicial review (*id*. at 325).

To the extent that the issue is justiciable, plaintiffs would have this Court substitute their judgment -suspending physical petitioning- for that of the legislature and executive -reducing the number of signatures required during petitioning- under the pretext of unconstitutionality. This is not the standard by which constitutionality is measured. That plaintiffs disagree with defendants' exercise of judgment or believe another State's modification to petitioning better addresses COVID-19 threats, does not render the modified Election Law unconstitutional.[1] In any event, the Court does not find the statutes and orders at issue unconstitutional.

Duly enacted state legislation, as well as local law, rule, and regulation, is presumed constitutional (*Korotun v. Incorporated Village of Bayville*, 26 AD3d 311 [2d Dept 2006]; *see also Wilner v. Beddoe*, 33 Misc.3d 900 [Sup. Ct. NY, Gische, J. [2011]). Furthermore, the State has plenary power to regulate the conduct of elections, including primaries (*Moody v. New York State Bd. of Elections*, 165 AD3d 479 [1st Dept 2018]; *see also Davis v. Bd. of Elections for City of NY*, 5 NY 2d 66 [1958]). Stated differently, the legislature has "broad authority ... to establish rules regulating the manner of conducting both special and general elections" (*Eber v. Bd. of Elections of County of Westchester*, Misc2d 334, 336 [Sup. Ct. Westchester County, 1975] appeal dismissed 35

[1] At oral argument, plaintiffs were unable to provide information regarding New Jersey's online petitioning process, allegedly in use, which they contend is a more appropriate response to COVID-19 than New York's reduction in signatories.

NY2d 848[1974]). Where the constitutionality of a voter franchise law is challenged, the Court reviews it under rational basis (*Moody*, 165 AD3d at 480.) "The New York Constitution's voter franchise protection provisions do not require that any heightened scrutiny... be applied" (*id.*). Thus, the statute will be determined unconstitutional only if it is not rationally related to any legitimate state interest (*see e.g.* Walsh v. Katz, 17 NY3d 336 [2011]).

Plaintiffs contend that the in-person petitioning requirements violate the right to free speech, equal protection, and public health under the State Constitution (Art. 1, § 8; Art. 1 § 11; Art. 2, § 1; Art 17 § 3). However as plaintiffs note, "[w]e cannot 'intrude upon the policy-making and discretionary decisions that are reserved to the legislative and executive branches'" (Memorandum of Law in Support at 36 [NYSCEF Numbering], quoting *Klostermann v. Cuomo*, 61 NY2d 525 [1984]). Despite plaintiffs' contention otherwise, their action seeks exactly this. The amendments to the election law reducing the number of signatories for a candidate's petition have a rational basis, namely the impact of COVID-19. That the plaintiffs would address the impact of COVID-19 differently, is a disagreement of judgment, not constitutionality. To the extent that plaintiffs cite the Federal Courts for support, those courts have rejected similar challenges to petitioning requirements under similar Federal Constitution provisions or applied standards other than rational basis (*see e.g. Libertarian Party of Connecticut v. Lamont*, 977 F3d 173 [2nd Cir. 2020]; *see Moody*, *supra* rational basis review appropriate for New York voter franchise laws).

There is no dispute that the impacts of COVID-19 have made in-person petitioning more difficult and demand plaintiffs and signatories take additional safety measures not required in prior years. However, legislators from across the State have determined that reducing the number of signatories required on a petition is the appropriate response to these impacts. The legislature and executive are the branches of government best equipped to exercise judgment in response to COVID-19's impact on the electoral process. To have this Court oversee and/or manage the legislature's and executives' exercise of judgment, as plaintiffs' relief effectively seeks, is to ask the Court to monitor a nonjusticiable issue (*see generally*, *Roberts*, 87 AD3d 311).[2]

Given the foregoing, the Court need not reach the defendants' arguments that they are not the proper parties to this suit or that service was otherwise defective. Likewise academic, are the defendants' claims that laches bars the plaintiffs' claims here. The Court notes, however, that plaintiffs brought this action after the legislature reduced the number of signatories required. The plaintiffs, sophisticated and experienced politicians and attorneys, knew the petitioning process was looming. However, they did not bring an action in the many months prior to the legislature's

[2] The Court notes that were it to grant the instant application, find the statutes at issue unconstitutional, and direct the legislature and executives to issue new legislation, several significant issues would arise. Initially, there is the issue of whether the legislature is currently in session, and the potential recall of hundreds of legislators to reconvene if the legislature is not in session. Second, the legislature would need sufficient time to create committees, debate the issue, and pass new legislation – all of which would be subject to potential subsequent review by this Court, in violation of the doctrines of separation of powers and justiciability, should plaintiffs claim these new amendments were unreasonable or otherwise unconstitutional.

action, when petitioning required approximately triple the number of signatures, and thus the difficulties of in-person petitioning were multiplied.

Accordingly, it is

ORDERED that the motion is denied; and it is further

ORDERED that the action is dismissed; and it is further

ORDERED that motion sequence 002 is academic in light of the dismissal of this action; and it is further

ORDERED that the Clerk of the Court is directed to enter judgment in favor of defendants dismissing the action.

THIS CONSTITUTES THE DECISION AND ORDER OF THE COURT.

Dated: February 23, 2021

ENTER:

Hon. Frank P. Nervo, J.S.C.