IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ROME DIVISION

CATOOSA COUNTY REPUBLICAN PARTY, and JOANNA HILDRETH, Plaintiffs, v. CATOOSA COUNTY BOARD OF ELECTIONS AND VOTER REGISTRATION, *et al.*, Defendants.	CIVIL ACTION FILE NO. 4:24-cv-00095-WMR

ORDER

Before the Court is Plaintiffs Catoosa County Republican Party and Joanna Hildreth's Motion for Temporary Injunction and Restraining Order ("TRO") [Doc. 2]. The Plaintiffs contend that their First Amendment rights will be violated by the Defendants' decision to include four candidates on the Republican Party ballot in the Georgia primary despite the Catoosa County Republican Party's opposition and the Defendants' decision to exclude requested ballot questions. The Plaintiffs ask the Court to strike the candidates' names, to order that no ballots cast for the candidates be counted, and to order that the requested questions be included on the ballot. After review, the Court **DENIES** the TRO because the requested relief would not be in the public's best interest.

I. Background

The four candidates that the Plaintiffs seek to remove from the Republican primary ballot are Larry C. Black, Steven M. Henry, Jeffrey K. Long, and Vanita Hullander (the "Candidates").[1] On March 4, 2024, the Candidates attempted to qualify as Republican candidates for the May 2024 primary pursuant to O.C.G.A. § 21-2-153, but the Catoosa County Republican Party refused to qualify the Candidates. On March 5, the Candidates filed suit in the Superior Court of Catoosa County, seeking injunctive relief against the Catoosa County Republican Party. The Candidates obtained a TRO from Judge Don Thompson in that case, ordering the Catoosa County Republican Party to qualify the Candidates for the primary.

The Defendants did not comply with this order and instead filed an Emergency Motion to Lift the TRO. After a hearing on March 7, Judge Thompson denied this motion and ordered Catoosa County Sheriff deputies to escort the Candidates to the Catoosa County Republican Party to be qualified. [Doc. 13-1]. The Defendants still did not comply. On March 8, Judge Thompson held a compliance hearing and ordered that the Candidates were "entitled to qualify" with the Catoosa County Board of Elections pursuant to O.C.G.A. § 21-2-153(c)(2). [Doc. 13-2]. The Board

[1] Black and Henry are currently qualified to appear as Republican candidates for the position of Chairman of the Catoosa County Board of Commissioners, Long is qualified to appear as a Republican candidate for the position of Commissioner for District 1, and Hullander is qualified to appear as a Republican candidate for Commissioner for District 3. Each of these candidates have appeared and prevailed on a past Republican primary ballot. Black, Long, and Hullander are incumbents, and Henry is a past Chairman of the Board of Commissioners.

of Elections ultimately qualified the Candidates on March 8, and the Plaintiffs appealed Judge Thompson's order that same day. The appeal is currently pending before the Supreme Court of Georgia.[2]

The next week, the Plaintiffs filed written challenges for the Candidates' qualifications pursuant to O.C.G.A. § 21-2-6(b). On April 2, the Catoosa County Board of Elections held a hearing on the challenges as required by O.C.G.A. § 21-2-6(c). At the hearing, the Board voted 4-1 that the Candidates are qualified to seek and hold the local offices for which they are offering. This decision was appealed to the Catoosa County Superior Court on April 11, and this appeal is pending.

After Judge Thompson's March 8 order, Plaintiff Hildreth as Chairman of the Catoosa County Republican Party submitted ballot questions for placement on the primary ballot. [Doc. 11 at 46]. These questions were processed by the County, but the Georgia Secretary of State's Office sent an email to Hildreth explaining that the "Secretary of State cannot publish party questions on the ballot that contain the names of candidates or commentary regarding those candidates, as that constitutes unlawful electioneering." [Doc. 13-5]. The Secretary of State gave Plaintiff Hildreth the option of submitting new ballot questions by March 18, but Hildreth did not do so. The questions were as follows:

[2] The appeal was originally filed in the Court of Appeals of Georgia, but was subsequently transferred to the Georgia Supreme Court. [Docs. 13-3, 13-4].

1. Do you think anti-Trump Democrats should be able to get a court order to force the elections board to qualify them as Republican candidates for office?

2. Did you know that Steven Henry, Vanita Hullander, Jeff Long, and Larry Black were not approved to run as Republicans by the Republican Party?

[Doc. 13 at 46].

II. Discussion

The Plaintiffs seek a TRO, asking the Court to strike the Candidates' names from the ballot, order the Defendants to not credit any votes for the Candidates, and order that the questions proposed by the Plaintiffs be included on the ballot. But, the Plaintiffs have failed to establish all of the necessary elements for a TRO.[3] A party seeking a temporary restraining order must establish: "(1) a substantial likelihood of success on the merits; (2) that irreparable injury will be suffered if the relief is not granted; (3) that the threatened injury outweighs any harm relief would inflict on the non-movant; and (4) that entry of relief would serve the public interest." *Schiavo ex rel. Schindler v. Schiavo,* 403 F.3d 1223, 1225–26 (11th Cir. 2005). And, the Court finds that granting the Plaintiffs' requested relief so close to the election would not serve the public interest. *See Siegel v. LePore*, 234 F.3d 1163, 1176 (11th Cir. 2000) ("[Injunctive relief] is an extraordinary and drastic remedy not to be granted unless

[3] The Court notes that because of the limited briefing received at this time, this Order is limited to the consideration of a TRO. The Court is not considering whether a preliminary or interlocutory injunction would be appropriate.

the movant clearly established the 'burden of persuasion' as to each of the four prerequisites.").

Just as courts "ordinarily should not enjoin state election laws in the period close to an election," courts generally should not order changes to the ballot close to an election. *League of Women Voters of Fla., Inc. v. Fla. Sec'y of State*, 32 F.4th 1363, 1371 (11th Cir. 2022); *New Ga. Project v. Raffensperger*, 976 F.3d 1278, 1284 (11th Cir. 2020) ("The Supreme Court has repeatedly emphasized that lower federal courts should ordinarily not alter the election rules on the eve of an election."). And, this Motion was filed too close to the election for the Court to order the requested changes to the Republican primary ballot without adversely impacting the public interest. The Plaintiffs filed the Motion for TRO on April 5. Since then, overseas and military ballots were mailed out on April 6, absentee ballots were mailed out on April 22, and early voting is scheduled to begin on April 29. Therefore, the Court finds that, in addition to the limited time and high costs for the State to implement any changes to the ballots at this point, "[i]ssuing new ballots could disrupt the integrity of the voting process and potentially lead to confusion and disenfranchisement of[ ]voters who might be confused by receiving a second ballot, might have already submitted the first ballot before receiving the second, and likely would not receive their new ballots in time to cast a timely vote." *Burrell v. Tipton Cnty. Election Comm'n*, No. 22-5867, 2022 U.S. App. LEXIS, at *14–15 (6th Cir.

Oct. 18, 2022) (relying in part on overseas ballots having already been shipped when determining that "the public interest weigh[ed] heavily against injunctive relief" in a case concerning the qualification of a candidate). Accordingly, issuing the requested relief would not be in the public's best interest, and the Plaintiffs have failed to establish the required showings for injunctive relief.

In so finding, the Court notes that it does not appear that the Plaintiffs have shown "a substantial likelihood of success on the merits." The Plaintiffs raise two arguments. First, they argue that their First Amendment right of association will be violated by the inclusion of the Candidates' names on the Republican primary ballot despite their opposition. The Eleventh Circuit has established that the "Republican Party has a First Amendment right to freedom of association and an attendant right to identify those who constitute the party based on political beliefs." *Duke v. Massey*, 87 F.3d 1226, 1234 (11th Cir. 1996). But, it is unclear whether the Plaintiffs rights will be violated here.

Notably, the Plaintiffs never qualified the Candidates. Instead, the trial court's order directed the Board of Elections to vote on the Candidates' qualifications without the Plaintiffs' approval. And, the Plaintiffs conceded at oral argument that their rights would not be violated if the State Republican Party qualified the Candidates following Judge Thompson's order because it would be the State party, and not the Catoosa County Republican Party, qualifying the Candidates. So, how

the Plaintiffs' freedom of association is being violated when they have not endorsed, or even qualified, the Candidates remains unclear. The Plaintiffs argue that voters will assume that the Plaintiffs endorse the Candidates by virtue of their names being on the Republican ballot. But, the Court is not convinced that a candidates' name simply being on a party's ballot during a primary election implies such association. Accordingly, the Court is hesitant to find that the Plaintiffs have shown a substantial likelihood of success on the merits on this count.

Second, the Plaintiffs argue that their First Amendment rights will be violated by the Defendants' refusal to include the requested ballot questions. O.C.G.A. § 21-2-284(d) broadly provides that when a party submits a question to its members to be voted upon according to the terms of the statute, the "Secretary of State shall have such language printed on the ballot form." Even assuming that a violation of this statute would be a First Amendment violation, its application is not without limitation. The Secretary of State rejected the Plaintiffs' questions as "unlawful electioneering." [Doc. 13-5]. Two statutes are potentially relevant here. The first is that: "[n]o person, when within the polling place, shall electioneer or solicit votes for any political party or body or candidate or question, nor shall any written or printed matter be posted within the room, except as required by this chapter." O.C.G.A. § 21-2-413(d). The second is that "[n]o person shall solicit votes in any

manner or by any means or method, . . . [w]ithin any polling place . . . .” O.C.G.A. § 21-2-414(a).

The Court first notes that the questions do appear to be an improper attempt to use the ballot to influence voters—for example, the questions imply that the Candidates are “anti-Trump Democrats . . . .” [Doc. 13 at 46]. *Cf. Minn. Voters All. v. Mansky*, 585 U.S. 1, 15 (2018) (“Casting a vote is a weighty civic act, akin to a jury’s return of a verdict, or a representative’s vote on a piece of legislation. It is a time for choosing, not campaigning. The State may reasonably decide that the interior of the polling place should reflect that distinction.”); *Timmons v. Twin Cities Area New Party*, 520 U.S. 351, 363 (1997) (“Ballots serve primarily to elect candidates, not as fora for political expression.”). But, despite this, it is not clear whether the proposed ballot questions would be prohibited as “electioneer[ing]” or “solicit[ing] votes” under Georgia law or whether the Catoosa County Republican Party would be considered a “person” for purposes of these statutes. However, the Court need not answer these questions today. In fact, given the limited briefing and time for the Court’s consideration of these complex issues, the Court reserves ruling on them for now.[4]

[4] The Court also notes that the Defendants argued in their response that this Court should abstain under *Younger v. Harris*, 401 U.S. 37 (1971), or, alternatively, should dismiss the Complaint for failure to join the Candidates as necessary parties under Rule 19 of the Federal Rules of Civil Procedure. But, given that the Court is denying the Plaintiffs’ Motion and considering the limited briefing at this stage, the Court declines to rule on these defenses at this time.

IV. Conclusion

The Plaintiffs' Motion for TRO [Doc. 2] is **DENIED**.

IT IS SO ORDERED, this 23rd day of April, 2024.

William M. Ray II

WILLIAM M. RAY, II
UNITED STATES DISTRICT JUDGE