

IN THE CHANCERY COURT FOR THE STATE OF TENNESSEE
TWENTIETH JUDICIAL DISTRICT, DAVIDSON COUNTY

TENNESSEE DEMOCRATIC PARTY and)
MARQUITA BRADSHAW FOR SENATE,)

Plaintiffs,)

v.)

MARK GOINS, Coordinator of Elections, and)
TRE HARGETT, Secretary of State for the)
State of Tennessee,)

Defendants.)

No. 20-1073-I

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ORDER ON PLAINTIFFS' MOTION FOR INJUNCTIVE RELIEF

This matter came before the Court for expedited hearing on November 2, 2020, by videoconference, on Plaintiffs Tennessee Democratic Party ("TNDP") and Marquita Bradshaw for Senate's ("Bradshaw Campaign") Motion for Expedited Hearing, Preliminary Injunction, and Petition for Extraordinary Relief ("Motion"). Plaintiffs filed a Verified Complaint and request on Sunday afternoon, November 1, 2020, and the Court entered an order, also on Sunday afternoon, setting today's hearing. Plaintiffs seek emergency injunctive relief against Defendants Mark Goins, Coordinator of Elections, and Tre Hargett, Secretary of State, in their official capacities. Plaintiffs seek the production of certain Tennessee voter information from Defendants under the Tennessee Public Records Act, Tenn. Code Ann. § 10-7-503 ("TPRA"). Participating in the hearing were Attorneys Benjamin A. Gastel and Alexander C. Wharton, representing Plaintiffs, and Deputy Attorney General Janet M. Kleinfelter, representing Defendants Goins and Hargett.

The hearing was conducted based on the allegations of Plaintiffs' Verified Complaint, with the declaration of Ken Taylor, campaign manager for the Bradshaw Campaign, Plaintiffs'

Motion, Defendants' Response with the declarations of Defendant Mark Goins and Mary Beth Thomas, general counsel and public records request coordinator for the Department of State, and the arguments of counsel for the parties.

I. FACTS

At this preliminary stage of the lawsuit, the Court finds the following facts are shown by the record in this matter:

1. Plaintiff TNDP is a political party organized under the laws of Tennessee.
2. Plaintiff Bradshaw Campaign is the official campaign committee for Marquita Bradshaw, who is the democratic candidate for U.S. Senate for the State of Tennessee for the November 3, 2020 general election. Ms. Bradshaw is a resident of Shelby County, Tennessee.
3. Defendant Mark Goins is the Coordinator of Elections for the State of Tennessee.
4. Defendant Tre Hargett is the Secretary of State of the State of Tennessee and authorized to appoint the Coordinator of Elections.
5. Early voting in Tennessee for the November 3, 2020 general election ended on October 29, 2020.
6. On the following day, October 30, 2020, the Bradshaw Campaign requested from county election officials in Shelby, Davidson, Knox, Madison, and Washington Counties "to be provided absentee voter information" consisting of the names of individuals that had "requested a mail-in ballot but have yet to return such a ballot."
7. The Bradshaw Campaign requested the voter information under Tenn. Code Ann. §2-6-202(c)(6)¹ and the TPRA.

¹ Tenn. Code Ann. § 2-6-202(c)(6) provides: Any information regarding absentee requests and applications shall be confidential and not subject to open records law, compiled in title 10, chapter 7, until the end of the early voting period.

8. The Bradshaw Campaign seeks this information to contact those voters who requested an absentee or mail-in ballot but have not returned their ballot and educate them on the process and manner for timely returning their absentee ballots.

9. Knox County provided the requested information within approximately 45 minutes of the request.

10. Shelby, Davidson, Madison, and Washington Counties did not provide the requested information to Plaintiffs.

11. The Bradshaw Campaign states that a campaign worker contacted Defendants' offices about the requested information, but does not know with whom they spoke.

12. Defendant Goins and Defendant Hargett's general counsel and public records request coordinator declare, under penalty of perjury, that they did not receive any public records requests from the Bradshaw Campaign.

II. ANALYSIS

Pursuant to Rule 65.04 of the Tennessee Rules of Civil Procedure, "[a] temporary injunction may be granted during the pendency of an action if it is clearly shown by verified complaint, affidavit or other evidence that the movant's rights are being or will be violated by an adverse party and the movant will suffer immediate and irreparable injury, loss or damage pending a final judgment in the action" Tenn. R. Civ. P. 65.04. In determining whether injunctive relief is appropriate, a court is to consider four-factors: (1) the threat of irreparable harm to plaintiff if the injunction is not granted; (2) the balance between this harm and the injury that granting the injunction would inflict on the defendant; (3) the probability that plaintiff will succeed on the merits; and (4) the public interest. *Gentry v. McCain*, 329 S.W.3d 786, 793 (Tenn. Ct. App.), *perm. app. denied* (Tenn. 2010) (internal citations omitted). All factors are to be considered, and no single factor is controlling.

A. Likelihood of Success on the Merits

Plaintiffs assert that they are entitled to a temporary injunction because Plaintiffs made a public records request to Defendants under the TPRA, the information requested is public because it is no longer deemed confidential under Tenn. Code Ann. § 2-6-202(c)(6), Plaintiffs' request has been denied, and Defendants have the requested information in their custody and control. Specifically, Plaintiffs ask the Court to order Defendants to: (1) direct county election commissions across the State to release information regarding absentee ballot requests and returns for the November 3, 2020 general election within one hour of the entry of the Court's order, and (2) to inform the county election commissions across the State that they must release the requested information to Plaintiffs within two hours of the Court's order.

Defendants argue that Plaintiffs have not stated any claim and are not entitled to any relief under the TPRA because they did not make a request for public records to Defendants or their offices. Defendants also argue that Plaintiffs' claims are barred by the doctrine of sovereign immunity.

As a threshold matter, Plaintiffs bring their claims for declaratory and injunctive relief under Tenn. Code Ann. § 1-3-121, which provides: "Notwithstanding any law to the contrary, a cause of action shall exist under this chapter for any affected person who seeks declaratory or injunctive relief in any action brought regarding the legality or constitutionality of a governmental action. A cause of action shall not exist under this chapter to seek damages." The Court concludes that a plain reading of this statute, which was enacted and became effective April 2, 2018 (after the date of several of the cases cited by Defendants), permits Plaintiffs to bring causes of action for declaratory and injunctive relief regarding the legality of Defendants' actions under the TPRA for which they do not seek damages, and the claims are not barred by the doctrine of sovereign immunity.

Under the TPRA and by rule of the Department of State, Division of Elections, lists of early voters are open for inspection by any citizen of the state. Tenn. Code Ann. § 10-7-503(a)(2); Tenn. R. & Regs. 1360-2-16-.03 and .05. Also under Tennessee law, information relating to absentee requests and applications “shall be deemed confidential and not subject to the open records law . . . until the end of the early voting period.” Tenn. Code Ann. § 2-6-202(c)(6). By operation of these provisions, the voter information requested by the Bradshaw Campaign was deemed confidential through October 29, 2020, and became open records as of October 30, 2020. It appears that the Bradshaw campaign’s request was not limited to a request for inspection of public records, but sought the production of voter lists containing the requested information.

Assuming that the public record requests for the subject voter information was properly made to county election officials in Davidson, Shelby, Knox, Madison and Washington Counties on October 30, 2020, none of those county election officials is named as a defendant in this lawsuit. Plaintiffs instead named Defendants Goins and Hargett as Defendants and claim that they contacted Defendants’ offices to obtain the requested information, and further claim that the information is in Defendants’ custody and control.

The Court finds that Plaintiffs have not demonstrated a likelihood of success on the merits as to their TPRA claim against Defendants Goins and Hargett, and this factor weighs against granting the requested injunctive relief. There is insufficient proof in the record that the Bradshaw campaign complied with the requirements of the TPRA and made a public records request to either named Defendant. Defendants submitted a copy of their public records policy, attached to the Declaration of Mary Beth Thomas, that requires requests for copies of public records, or requests for inspection and copies, to be in writing as permitted under the TPRA. *See* Tenn. Code Ann. § 10-7-503(a)(7)(A). Both Defendants have denied under penalty of perjury

that any such requests were received by their offices. Plaintiffs claim, upon information and belief, that Defendants directed county election officials to deny requests about absentee ballot voters; however, Defendant Goins in his declaration denies having given any such instructions.

While the Division of Elections requires each county election commission to prepare a daily list of early voters for each day of the early voting period (including in-person voters and voters by absentee ballots), and Defendants acknowledged that such lists of early voters are transmitted to the Division of Elections, there is nothing in the record to demonstrate that the specific voter information requested—regarding absentee voters’ requests for ballots who have not yet submitted their ballots—is compiled by county election commissions and transmitted to the Division of Elections.

B. Irreparable Harm

Plaintiffs claim that the Bradshaw Campaign will be irreparably harmed if the injunction is not granted because the campaign will be unable to learn which absentee voters “need not be bothered” about returning their ballots and which absentee voters might need further information. Defendants argue that Plaintiffs cannot be irreparably harmed under the TPRA when they have not made a public records request directed to Defendants. Because Plaintiffs offer no facts in support of their claim of irreparable harm, the Court finds this factor weighs against granting injunctive relief.

C. Balance of Harm

Defendants claim that on the eve of the November 3, 2020 general election, if this Court were to order Defendants to extract the information requested from the daily list of early voting, it would be impracticable to do so within the short time period requested. They further argue that it would be disruptive to the functioning of Defendants’ offices in preparing for tomorrow’s general election to the detriment of all other citizens of the State. Defendants argue that had they

received a direct request from Plaintiffs as early as October 30, 2020, they may have been able to generate the requested information, but in the absence of a public records request, it is now impracticable for them to do so. Plaintiffs have failed to make a clear showing that the balance of harm weighs in favor of granting the injunction.

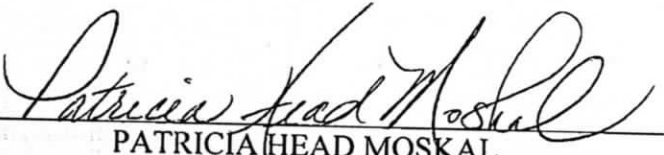
D. The Public Interest

The Court finds that the public interest in a fair, open, and transparent election process is fundamental. It is essential that the public have confidence and trust in the integrity of our government officials charged with responsibility for administering and enforcing our State election laws. The TPRA is to be "broadly construed to give the fullest possible public access to public records." Tenn. Code Ann. § 10-7-505 (d). To the extent the requested public record information is readily available, it is the statutory duty and responsibility under the TPRA, of those in lawful possession of those public records to provide the information promptly upon request. Tenn. Code Ann. § 10-7-503. While this factor weighs heavily in favor of the requested injunctive relief, it does not overcome the statutory requirements imposed for making a proper public records request to the appropriate records custodian.

III. CONCLUSION

Based on Plaintiffs' Verified Complaint, Plaintiffs' Motion, Defendants' Response, declarations, the arguments of counsel, and the entire record in this cause, the Court finds that Plaintiffs have not made the clear showing required under Rule 65.04 of the Tennessee Rules of Civil Procedure that they have a likelihood of success on the merits, the threat of immediate and irreparable harm, or that the balance of harm weighs in their favor.

It is, accordingly, ORDERED, that Plaintiffs' request for temporary injunctive relief under Rule 65.04 of the Tennessee Rules of Civil Procedure is DENIED. All other matters are reserved.


PATRICIA HEAD MOSKAL
CHANCELLOR, PART I

CERTIFICATE OF SERVICE

I hereby certify that a true and exact copy of the foregoing is being forwarded via U.S. Mail, first-class postage pre-paid, with a courtesy copy by email, to the parties or their counsel named below.

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Deputy Clerk & Master

11/2/20
Date