

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Judge William J. Martínez**

Civil Action No. 20-cv-1268-WJM

LORENA GARCIA,
LORENA FOR COLORADO,

Plaintiffs,

v.

JENA GRISWOLD, Colorado Secretary of State, in her official capacity,

Defendant.

**ORDER DENYING MOTION FOR TEMPORARY RESTRAINING ORDER AND
PRELIMINARY INJUNCTION**

Before the Court is Plaintiffs' Motion for Temporary Restraining Order and Preliminary Injunction (ECF No. 7) and Proposed Intervenor Maya Wheeler's Emergency Motion to Intervene (ECF No. 10). The Court will enter a detailed written order in due course regarding its findings of fact and legal conclusions, but because of the extremely urgent nature of the relief requested, the Court issues this Order now to summarize the major bases (although not all of the bases) of its forthcoming decision.

Defendant has already responded to Plaintiffs' motion so there is no need to consider issuing an order "before the adverse party can be heard in opposition." Fed. R. Civ. P. 65(b)(1)(A). Thus, the temporary restraining order portion of Plaintiffs' motion is DENIED.

As for the preliminary injunction portion, "[a] plaintiff seeking a preliminary injunction must establish [1] that he is likely to succeed on the merits, [2] that he is likely

to suffer irreparable harm in the absence of preliminary relief, [3] that the balance of equities tips in his favor, and [4] that an injunction is in the public interest.” *Winter v. NRDC*, 555 U.S. 7, 20 (2008). And the standard is even more strict for a “disfavored” injunction:

[A] disfavored injunction may exhibit any of three characteristics: (1) it mandates action (rather than prohibiting it), (2) it changes the status quo, or (3) it grants all the relief that the moving party could expect from a trial win. To get a disfavored injunction, the moving party faces a heavier burden on the likelihood-of-success-on-the-merits and the balance-of-harms factors: She must make a strong showing that these tilt in her favor.

Free the Nipple-Fort Collins v. City of Fort Collins, 916 F.3d 792, 797 (10th Cir. 2019) (citations and internal quotation marks omitted).

Plaintiffs seek at least an injunction changing the status quo. Accordingly, Plaintiffs must make a strong showing of likelihood of success on the merits and that the balance of harms tips in their favor. Plaintiffs cannot make either showing.

First, Plaintiffs have not made a strong showing of likelihood of success on the merits because they have not made a strong showing that they can overcome Defendants’ equitable defense of laches. For the same reasons, Plaintiffs have not made a strong showing that the balance of harms tips in their favor. Plaintiffs knew as of the March 17, 2020 submission deadline (seven weeks ago) that they did not have the required 1,500 signatures in *each* of Colorado’s seven congressional districts. Plaintiffs did not seek relief even in Colorado state court until April 24, 2020, after a state court granted another candidate the sort of indulgence Plaintiffs now seek. Plaintiffs have instead forced Defendant to proceed on a highly compressed timeline, when Defendant’s timeline has already been compressed. But Defendant and the

various election officials who must design and print ballots have the narrowest of windows to prepare those ballots before the May 16, 2020 deadline imposed by the federal Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA), 52 U.S.C. § 20302(a)(8)(A). Issuing the order Plaintiffs now seek could easily throw that process into chaos—not only just to accommodate Plaintiffs, but perhaps to accommodate others, *i.e.*, if this Court were to grant Plaintiffs relief, it would call into question whether every other candidate claiming a similar impediment should also be placed on the ballot.

Second, Plaintiffs have not made a strong showing of likelihood of success because they have established, at most, that the only timeframe in which the currently ongoing COVID-19 pandemic significantly limited their ability to obtain signatures was roughly the last week before the March 17, 2020 submission deadline, subsequent to Governor Jared Polis's state of emergency declaration on March 10, 2020. Of even greater harm to Plaintiffs' claims here in terms of the factual record is that the petition submission deadline was a full eight days *before* Governor Polis issued his state-wide stay-at-home order.

Third, Plaintiffs have not made a strong showing of likelihood of success because they were fully aware of their failure to meet the per-district signature requirement at a time when they could still seek ballot access by participating in the state assembly.

Fourth, the cases Plaintiffs cite and attach from other courts are readily distinguishable based on the different effects of COVID-19 in those jurisdictions, particularly when those effects are considered in the context of the materially divergent deadlines and petition submission processes at issue in those jurisdictions. In addition, the various candidates' often highly disparate efforts, and the timing of those efforts, in

attempting to comply with the applicable state electoral laws in those jurisdictions are further reasons why those decisions are of little persuasive value to the Court.

Accordingly, the Court finds and holds that Plaintiffs have not met the standard for a disfavored preliminary injunction, and the preliminary injunction portion of Plaintiffs' Motion for Temporary Restraining Order and Preliminary Injunction (ECF No. 7) is therefore DENIED.

As for Proposed Intervenor's motion, the Court suspects that this Order takes the proverbial wind out of her sails as much as it does Plaintiffs'. However, the Court is not issuing any final orders at this time and so, as far as the intervention standard goes, Proposed Intervenor may still have a case for intervention. Accordingly, Defendant is DIRECTED to respond to Proposed Intervenor's motion no later than **Monday, May 11, 2020**. No reply in support of this motion may be filed without prior leave or order of this Court.

SO ORDERED at Denver, Colorado this 7th day of May, 2020 at 6:15 PM, MDT.

BY THE COURT:

A handwritten signature in blue ink, appearing to read 'William J. Martinez', is written over a horizontal line.

William J. Martinez
United States District Judge