

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2020-010553

09/03/2020

HONORABLE M. SCOTT MCCOY

CLERK OF THE COURT
S. Ortega
Deputy

RASEAN CLAYTON

JOSEPH N ROTH

v.

KANYE WEST, et al.

TIMOTHY A LASOTA

TIMOTHY BERG
MATTHEW BLACK
CRAIG C CAMERON
JEFFERSON R DALTON
RYAN N DOOLEY
RYAN ESPLIN
JEREMY O FORD
KIMBERLY HUNLEY
DANIEL JURKOWITZ
KARA MARIE KARLSON
WILLIAM J KEREKES
JOSEPH EUGENE LA RUE
JASON MOORE
JOSEPH YOUNG
JOSHUA D BENDOR
DUSTIN ROMNEY
CELESTE MARIE ROBERTSON
ANDREA CUMMINGS
KEITH J MILLER
BRITT W HANSON
COURT ADMIN-CIVIL-ARB DESK
DOCKET-CIVIL-CCC
JUDGE MCCOY

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MINUTE ENTRY

East Court Building – Courtroom 613

1:39 p.m. This is the time set for Oral Argument regarding Plaintiff's August 31, 2020 Application for Temporary and Permanent Injunctive Relief – With Notice.

The following parties appear virtually through GoToMeeting and/or telephonically:

- Plaintiff, Rasean Clayton, is represented by counsel, Joseph N. Roth and Joshua D. Bendor.
- Defendant Kanye West is represented by counsel, Timothy A. LaSota.
- Defendants, Kanye West, Donald Anglin, Kristin Anglin, Kelli Whitehead, Brittani Quale, William Quale, Rachel Wallace-Sassarini, Patrick Wallace-Sassarini, Keith Gilbert, Marilyn Tuck, Michele Vrabel, and Mark Renberg are represented by counsel, Timothy Berg and Keith Miller.
- Defendant, Katie Hobbs (in her official capacity as the Secretary of State of Arizona), is represented by counsel, Dustin Romney and Kara Karlson. Bo Dul, Elections Director, is also present.
- Defendant David W. Stevens (in his official capacity as the Cochise County Recorder) and Defendant Cochise County Board of Supervisors are represented by counsel, Britt Hanson.
- Defendants Edison J. Wauneka (in his official capacity as the Apache County Recorder) and Apache County Board of Supervisors (in their official capacity) are represented by counsel, Joseph Young and Celeste Robertson.
- Defendants Richard Garcia (in his official capacity as the La Paz County Recorder) and La Paz County Board of Supervisors (in their official capacity) are represented by counsel, Ryan Dooley.
- Defendants F. Ann Rodriguez (in her official capacity as the Pima County Recorder) and Pima County Board of Supervisors (in their official capacity) are represented by counsel, Daniel Jurkowitz.
- Defendants Virginia Ross (in her official capacity as the Pinal County Recorder) and Pinal County Board of Supervisors (in their official capacity) are represented by counsel, Craig Cameron.
- Defendants Leslie M. Hoffman (in her official capacity as the Yavapai County Recorder) and Yavapai County Board of Supervisors (in their official capacity) are represented by counsel, Matthew Black.

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- Defendants Adrian Fontes (in his official capacity as the Maricopa County Recorder) and Maricopa County Board of Supervisors (in their official capacity) are represented by counsel, Andrea Cummings.

A record of the proceedings is made digitally in lieu of a court reporter.

The Court is in receipt of and has considered the pleadings filed on September 3, 2020 including (1) Defendants' Brief in Opposition to Plaintiff's Application for Temporary and Permanent Injunction; (2) Defendants' Notice of Supplemental Authority; and (3) Plaintiff's Reply in Support of Application for Injunction.

LET THE RECORD REFLECT that the parties have stipulated to all attachments to the pleadings filed in this matter, and that they are admissible and appropriate for the Court's consideration.

Argument is presented.

Based on the matters presented,

IT IS ORDERED taking Plaintiff's August 31, 2020 Application for Temporary and Permanent Injunctive Relief – With Notice under advisement.

Counsel for Pima County comments on irreparable harm and the different options for relief.

2:31 p.m. Matter concludes.

LATER:

Plaintiff's Application for Temporary and Permanent Injunctive Relief – With Notice, filed August 31, 2020, is before the Court. The Court has considered Defendant West's Brief in Opposition, filed on September 2, 2020, and Plaintiff's Reply filed this date, the argument of counsel this date and by stipulation all exhibits attached to the various filings.

Plaintiff seeks to enjoin the nominal defendant county recorders from "placing [Defendant Kanye] West and his putative presidential electors on the ballot." Application at 14. Plaintiff alleges that Mr. West, who seeks nomination as a candidate for President via Arizona's nonpartisan nomination process set forth in A.R.S. § 16-341, is ineligible to be placed on the ballot.

To obtain the extraordinary relief sought, Plaintiff must show:

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[A] strong likelihood of success on the merits, a possibility of irreparable injury if the injunction is not granted, a balance of hardships weighing in his favor, and public policy favoring the requested relief. *Shoen v. Shoen*, 167 Ariz. 58, 63, 804 P.2d 787, 792 (App.1990). The critical factor is relative hardship, for which the movant must show either “1) probable success on the merits and the possibility of irreparable injury; or 2) the presence of serious questions and ‘the balance of hardships tips sharply’ in his favor.” *Id.*

TP Racing, L.L.L.P. v. Simms, 232 Ariz. 489, 495, ¶ 21, 307 P.3d 56, 62 (App. 2013) (citations omitted).

Applying these standards, the Court finds:

- **Probability of Success on the Merits.** Arizona law allows candidates for office to be nominated through both a partisan process (via A.R.S. § 16-314) and nonpartisan process (via A.R.S. § 16-341). Mr. West seeks nomination via the nonpartisan process, which is available to “[a]ny qualified elector who *is not a registered member of a political party that is recognized pursuant to this title . . .*” A.R.S. § 16-341(A) (emphasis added).[1][1]

Plaintiff argues that Mr. West cannot be nominated under A.R.S. § 16-341(A) because he is a registered member of the Republican Party in Wyoming. Plaintiff also contends that ten of Mr. West’s eleven “presidential electors” under A.R.S. § 16-341 are registered Republicans and that they have failed to file “statements of interest” under A.R.S. § 16-341(I).

Mr. West argues that A.R.S. § 16-341(A) prohibits nomination only of members of the Arizona Republican Party, the Arizona Democratic Party or the Arizona Libertarian Party. He notes, further, that he registered with the Federal Elections Commission as a member of “The Birthday Party” (abbreviated as “BDY”). Opposition, Exhibit A.

Regarding his designated presidential electors, Mr. West argues that the office of President is exempted from the statement of interest requirement under A.R.S. § 16-341(I)(3) and that, for these purposes, Mr. West and his electors are “a single entity”. To the extent that is not so, Mr. West has offered evidence that his electors have now changed their voter registrations to Independent.

Though no statutory definition, legislative history or case explains what the legislature meant by “political party that is recognized pursuant to this title,” the most sensible reading

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is that it prohibits Mr. West's nomination. The status of his presidential electors, too, is problematic. Accordingly, the Court finds Plaintiffs have a significant probability of success on the merits.

- **Possibility of Irreparable Injury/Balance of Hardships/Public Policy.** Plaintiff note that the "drop dead" deadline for printing ballots is imminent and that, if not enjoined, counties will have to print ballots with Mr. West's name. "And if West is included on the ballot, the harm is done." More to the point, Plaintiff worries that confused "[v]oters risk throwing away a vote on a disqualified candidate." Application at 13.

Mr. West sees things differently. He argues that he will be irreparably harmed if he is not on the ballot and ultimately prevails, as was the case with Ralph Nader in election cycles past. Mr. West argues, further, that public policy weighs in favor of access to the ballot and does "not look kindly on incumbent major political parties eliminating their potential competitors." Opposition at 15.

The Court finds that public policy cuts both for and against issuing an injunction in the circumstances, and that Plaintiff has demonstrated a possibility of irreparable injury.

Turning to the issue of relative hardships, *see TP Racing*, ¶ 21, the Court finds that Plaintiff has established both "probable success on the merits and the possibility of irreparable injury." *Id.* Accordingly, Plaintiff has established that the relative hardships favor him, the "critical factor" under Arizona law.

For all these reasons,

IT IS ORDERED granting the application, all in accordance with the formal Order For Temporary and Permanent Injunctive Relief (With Notice) signed by the Court September 3, 2020 and filed (entered) by the clerk September 3, 2020.

[1][1] The Secretary of State's website lists three recognized parties in Arizona: Republican, Democratic and Libertarian. Verified Complaint, ¶ 25.