

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MAINE**

JANE DOE, JILL DOE AND )  
JUNE DOE, by and through their )  
guardian, Department of Human Services, )  
and THE DISABILITY RIGHTS CENTER )  
OF MAINE, INC., )  
 )  
Plaintiffs )  
 )  
v. )  
 )  
ANDREW KETTERER, Attorney General )  
for the State of Maine, ET AL., )  
 )  
Defendants )

Docket No. 00-CV-206-B-S

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

**ON PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION**

SINGAL, J.

Before the Court is Plaintiffs' Motion for Preliminary Injunction (Docket #2). After holding oral argument on October 24, 2000, the Court sets out its findings of fact and conclusions of law below.

I. FINDINGS OF FACT

1. Plaintiff, Jane Doe, is a thirty-three year old resident of Limestone, Maine with bipolar disorder. Since 1987, she has been under guardianship because of her mental illness. Maine Department of Human Services ("DHS") is currently Jane Doe's appointed guardian.

2. Plaintiff, Jill Doe, is a seventy-four year old resident of the Bangor Mental Health Institute. Since 1996, DHS has served as Jill Doe’s appointed guardian because of her mental illness.

3. Plaintiff, June Doe, is a sixty-seven year old resident of Bangor Mental Health Institute. She has been under guardianship due to mental illness since 1985. DHS currently serves as the guardian for June Doe.

4. Plaintiff, Disability Rights Center (“DRC”), is a non-profit corporation organized pursuant to Maine law that protects and advocates for the legal and civil rights of Maine residents with mental disabilities.<sup>1</sup>

5. Defendant, Andrew Ketterer, is the Attorney General for the State of Maine. As Attorney General, Defendant Ketterer is responsible for enforcing the Maine Constitution and Maine statutes that currently disenfranchise persons under guardianship by reason of mental illness.

6. Defendant, Dan Gwadosky, is the Secretary of State for the State of Maine. As Secretary of State, Defendant Gwadosky issues rules regarding voter registration and election procedures.

7. Defendant, Donna Bernier, is Registrar for the Town of Limestone, Maine. As Registrar, Defendant Bernier is responsible for determining whether a person is qualified to register to vote in Maine.

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<sup>1</sup> The Court notes that DRC was first named as a plaintiff in the Plaintiffs’ Amended Complaint (Docket # 8) filed with the Court on October 12, 2000. DRC represented at oral argument that it believes it has standing pursuant to a recent decision in another District of Maine case finding DRC had standing to sue on behalf of mentally disabled children. See Risinger v. Concannon, No. CIV. 00-116-B-C, 2000 WL 1532842 at 7-\*8 (D. Me. October 12, 2000). Defendants suggest that DRC does not have standing but propose the Court deal with this issue after ruling on the pending Motion for Preliminary Injunction. Similarly, Plaintiffs made clear at oral argument that they are only seeking injunctive relief for Jane Doe, Jill Doe and June Doe. Therefore, the Court in this decision states no opinion as to the standing of DRC and limits its consideration to the three named Plaintiffs.

8. Defendant, Gail Campbell, is Registrar for the City of Bangor, Maine. As Registrar, Defendant Campbell is responsible for determining whether a person is qualified to register to vote in Maine.
9. Plaintiffs Jane Doe, Jill Doe and June Doe, all of whom are under full guardianship because of mental illness, wish to vote in the upcoming election to be held on Tuesday, November 7, 2000.
10. Pursuant to Maine's Constitution and relevant implementing statute, persons who are "under guardianship for reasons of mental illness" are prohibited from registering to vote or voting in any election. ME CONST. Art. 2 § 1; see also 21-A M.R.S.A. § 115 (1).
11. Maine statute makes it a Class C crime for a person to vote or attempt to vote "knowing that the person is not eligible to do so." 21-A M.R.S.A. § 674(3)(B).
12. Jane Doe, Jill Doe and June Doe are all aware of the fact that because they are under guardianship for mental illness, they are prohibited from voting on November 7, 2000, pursuant to the Maine Constitution.
13. Therefore, Jane Doe, Jill Doe, and June Doe could be subject to criminal prosecution if they attempt to vote on November 7, 2000.
14. In addition to voting on candidates for local, state and federal office, including the next President of the United States, the ballot for the November 7<sup>th</sup> election also contains six referendum questions.
15. Referendum Question 5 asks the voters to vote yes or no on the following question: "Do you favor amending the Constitution of Maine to end discrimination against persons under guardianship for mental illness for the purpose of voting?"
16. A similar referendum question failed when it was on the ballot three years ago.

### III. CONCLUSIONS OF LAW

1. Because this case presents a federal question, this Court has jurisdiction pursuant to 28 U.S.C. § 1331.
2. Based on the record as presently developed, Plaintiffs have not established a substantial likelihood of success on the merits.
3. There is significant risk of irreparable harm to the Plaintiffs absent an injunction.
4. Granting a preliminary injunction allowing the Plaintiffs to vote on November 7<sup>th</sup> will negatively affect the public interest.
5. The balance of hardships tilts in the Defendants' favor.
6. Therefore, Plaintiffs have not established the necessary criteria for a preliminary injunction.

### IV. DISCUSSION

#### A. Background & Procedural History

Plaintiffs filed this case on October 4, 2000, only 33 days before the November 7<sup>th</sup> election. The case challenges the constitutionality of Article 2, Section 1 of the Maine Constitution, which disenfranchises those under guardianship by reason of mental illness. This provision of the Maine Constitution has existed in its current form since 1965 without any previous challenge to its constitutionality.

Before considering the constitutionality of Maine's constitutional provision, it is important to recognize its limited applicability to those under guardianship by looking at Maine's Probate Code. See 18-A M.R.S.A. § 1-101 et seq. Under Maine's Probate Code, the Probate Court is directed to make appointments or other orders only "to the extent necessitated by the incapacitated person's actual mental and adaptive limitations

...." 18-A M.R.S.A. § 5-304(a). To fulfill this directive, there are provisions for both full and limited guardianship for "incapacitated persons." 18-A M.R.S.A. § 5-101(1).<sup>2</sup>

Persons subject to limited guardianship "retain[] all legal and civil rights except those which have been suspended in the decree or court order." 18-A M.R.S.A. § 5-105. Thus, an incapacitated person under limited guardianship because of mental illness retains his or her right to vote, unless that right is specifically suspended by the Probate Court.

Similarly, according to the State Attorney General's interpretation of Maine's prohibition on voting by persons under guardianship due to mental illness, the prohibition does not apply if the incapacitated person is subject to full guardianship but the court order appointing the guardian explicitly reserves the individual's right to vote. (See Andrew Ketterer Aff. ¶ 3 (Defs. Ex. 3).) Therefore, Maine's voting prohibition applies only to those persons under full guardianship by reason of mental illness who do not have their right to vote specifically reserved.

Although the State only applies the current prohibition to those under full guardianship due to mental illness, it also has attempted to change the disenfranchising provision by amending the Maine Constitution. Three years ago a referendum that would have deleted the relevant disenfranchising provision from the Constitution appeared on the ballot but failed by a narrow margin. In the upcoming election, the ballot contains a revised referendum, which, if it passes, would give all Maine citizens under guardianship for mental illness the right to vote.

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<sup>2</sup> The statute defines "incapacitated person" as a person "who is impaired by reason of mental illness, mental deficiency, physical illness or disability, chronic use of drugs, chronic intoxication or other cause except minority to the extent he lacks sufficient understanding or capacity to make or communicate responsible decisions concerning his person." 18-A M.R.S.A. § 5-101(1).

However, wishing to vote in the upcoming election, Jane Doe, Jill Doe and June Doe (“Plaintiffs”) filed a motion seeking a preliminary injunction along with their complaint. In order to decide Plaintiffs’ Motion before November 7<sup>th</sup>, the Court ordered expedited briefing on October 6, 2000 (Docket #7) and set oral argument for October 23, 2000.

B. Standard of Review

Having briefly sketched the background and procedural history leading up to this ruling, the Court must now apply the traditional four-part test for a preliminary injunction. The test requires Plaintiffs to establish: (1) a substantial likelihood of success on the merits, (2) a significant risk of irreparable harm absent an injunction, (3) that the balance of hardships tilts in their favor, and (4) that granting the injunction will not negatively affect the public interest. See TEC Eng’g Corp. v. Budget Molders Supply, 82 F.3d 542, 544 (1st Cir. 1996).

C. Likelihood of Success on the Merits

The First Circuit has described likelihood of success as “the touchstone of the preliminary injunction inquiry.” Philip Morris v. Harshbarger, 159 F.3d 670, (1st Cir. 1998). In this case, determining Plaintiffs’ likelihood of success is complicated by the fact that Plaintiffs’ claims present difficult questions of law on an undeveloped factual record. See, e.g., Riley v. Snyder, 72 F. Supp. 2d 456, 460 (D. Del. 1999) (concluding that “complex issues of law and fact” prevented Plaintiff from establishing a substantial likelihood of success on the merits). At the same time, Plaintiffs’ claim alleges deprivation of a fundamental right—the right to vote. As the Supreme Court has explained, “No right is more precious in a free country than that of having a voice in the

election of those who make the laws under which, as good citizens, we must live. Other rights, even the most basic, are illusory if the right to vote is undermined.” Wesberry v. Sanders, 376 U.S. 1, 17 (1964).

1. Equal Protection Claim (Count I)

In assessing the likelihood of success on Plaintiffs’ constitutional claim, the Court does not presume that the relevant state provision disenfranchising a portion of Maine’s citizenry is constitutional. See Kramer v. Union Free Sch. Dist. No. 15, 395 U.S. 621, 627-28 (1969) (“when . . . reviewing statutes which deny some residents the right to vote, the general presumption of constitutionality . . . [is] not applicable.”) Without any presumption, the Court must consider the likelihood that Maine’s disenfranchisement of persons under guardianship due to mental illness will pass strict scrutiny because it is narrowly tailored to meet a compelling state interest. See Dunn v. Blumstein, 405 U.S. 330, 337 (1972) (“[I]f a challenged statute grants the right to vote to some citizens and denies the franchise to others, ‘the Court must determine whether the exclusions are necessary to promote a compelling state interest.’”) (*quoting Kramer*, 395 U.S. at 627); see also Manhattan State Citizens’ Group, Inc. v. Bass, 524 F. Supp. 1270 (S.D.N.Y. 1981) (applying strict scrutiny to a New York law that disenfranchised adjudged incompetents and persons who had been involuntarily committed).<sup>3</sup>

For purposes of this motion, Plaintiffs concede that Defendants’ stated interest of ensuring that “those who cast a ballot have the mental capacity to make their own

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<sup>3</sup> The Court notes, however, that the Supreme Court has not recognized the mentally disabled as a suspect or quasi-suspect class under the Equal Protection Clause of the Fourteenth Amendment. See City of Cleburne v. Cleburne Living Ctr., Inc., 473 U.S. 432, 442-47 (1985). Thus, the Court’s application of strict scrutiny is based not upon the Plaintiffs belonging to a suspect class, but rather upon the Supreme Court decisions cited above applying strict scrutiny to state actions that selectively disenfranchise certain persons from voting. See, e.g., Dunn, 405 U.S. at 337.

decision by being able to understand the nature and the effect of the voting act itself," is compelling. (Defs. Mem. of Law in Opp. to Pls. Mot. for Preliminary Inj. at 8 (Docket #10).) Thus, in considering whether to grant a preliminary injunction, the Court assumes that Maine's interest is compelling and focuses on whether Plaintiffs can establish a substantial likelihood that that the provision is not narrowly tailored to meet the State's interest. See Manhattan State Citizens' Group, 524 F. Supp. at 1274 n.9 (discussing some arguments against finding the state's interest in ensuring "intelligent and interested voters" compelling.)

On its face, Maine's voting prohibition appears to be tailored in two respects. First, it applies only to those who have been adjudicated as incapacitated persons pursuant to an individualized hearing by a probate judge and, therefore, put under full guardianship. See 18-A M.R.S.A. §§ 5-303, 5-304. However, Plaintiffs argue that the hearing does not narrowly tailor the prohibition to meet Maine's stated interest because probate judges are not required to specifically inquire as to the individual's capacity to vote. Rather, Plaintiffs argue that a guardianship hearing focuses on "whether the person can balance her checkbook, buy food, take medication, choose the right place to live or wear the right clothes for the right season." (Pls. Reply at 5 (Docket #13).)

Second, Maine's prohibition appears to be further tailored because it applies only to those under guardianship "by reason of mental illness." On the record presently before the Court, exactly how this language tailors Maine's voting prohibition is not clear. Defendant initially argued that by reading this language in accordance with its 1965 legislative history it was clear that "the phrase mental illness was intended to encompass anyone who had a mental condition or an unsoundness of mind . . . includ[ing] someone

with mental retardation, or someone in a coma, or someone so disabled that they did not know their own name.” (Defs. Mem. of Law in Opp. to Pls. Mot. for Preliminary Injunction at 11.) At oral argument, the State Attorney General maintained this position. However, Plaintiffs have submitted a letter from Maine’s Deputy Secretary of State James S. Henderson, dated March 31, 1980, in which Maine’s Department of State clearly adopted a narrow reading of the phrase.<sup>4</sup> (See Pls. Ex. 4.) Thus, it does not appear that the various Defendants in this case agree on how the phrase “mental illness” tailors Maine’s restrictions on voting.<sup>5</sup>

Under Maine’s Probate Code, mental illness is just one of the various impairments that can serve as grounds for adjudicating a person “incapacitated” and appointing a guardian. Specifically, the statute lists the following impairments: “mental illness, mental deficiency, physical illness or disability, chronic use of drugs, chronic intoxication, or other cause except minority.” 18-A M.R.S.A. § 5-101(1). However, Maine’s Guide to Voter Registration Laws and Procedures (Defs. Ex. 2) offers registrars,

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<sup>4</sup> In relevant part, the letter reads:

A person otherwise qualified, who is under guardianship for any reason except that of mental illness, is also eligible to register and vote. People who appear “senile”, “retarded”, or have some other physical or mental handicap are also eligible to vote. . . . Based on consultations with the Commissioner of Mental Health and Corrections and with the Attorney General, a person who is mentally retarded should not be considered to have a mental illness solely because of their retardation.

Letter from James S. Henderson, Deputy Secretary of State, Maine Department of State (Mar. 31, 1980) (Pls. Ex. 4) (Docket #13).

<sup>5</sup> Because these disparate interpretations of Maine’s voter disqualification provision only came to light at oral argument, the parties have not had an opportunity to brief whether either the Secretary of State’s narrow interpretation or the Attorney General’s broad interpretation avoids the constitutional question raised by the Plaintiffs. See Erznoznik v. Jacksonville, 422 U.S. 205, 216 (1975) (“[A] state statute should not be deemed facially invalid unless it is not readily subject to a narrowing construction by the state courts”); Frisby v. Schultz, 487 U.S. 474, 482 (1988) (“The precise scope of the ban is not further described within the text of the ordinance, but in our view the ordinance is readily subject to a narrowing construction that avoids constitutional difficulties”).

who must determine whether a person is qualified to vote, no advice on how to determine when someone is under guardianship for mental illness as compared to any of the other listed impairments. Rather, registrars are told to request documentation of the guardianship in the form of the court order. (See Pls. Ex. 2 at 8.) With court order in hand, registrars apparently are left to determine on their own whether an individual is under guardianship “by reason of mental illness.”

Quite simply, the Court is forced to conclude at this point that to the extent the phrase, “by reason of mental illness,” tailors Maine’s restrictions on voting, it appears that this specific limitation may be applied arbitrarily.<sup>6</sup> Until there is further factual development of the record the Court can only speculate how the phrase “by reason of mental illness” has tailored Maine’s limitation on voting. Thus, the Court is left to consider whether Plaintiffs can establish a substantial likelihood of success because, by disenfranchising only those subject to guardianship, Maine has failed to narrowly tailor its disenfranchising provisions to fit its compelling state interest.

By providing an individualized hearing rather than simply excluding a class of persons, the State takes substantial steps to disenfranchise only those who lack the mental capacity to make an individual decision regarding the candidate and questions on the ballot. However, the record before the Court does not allow for adequate consideration of how hearings are conducted or when limited guardianships, rather than full guardianships, are considered. Thus, at this early juncture, the Court cannot say there is a substantial likelihood that Maine’s restriction on voting is not narrowly tailored and,

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<sup>6</sup> In fact, without the court orders adjudicating the Plaintiffs as incapacitated and subjecting them to full guardianship, the Court cannot say definitively that Plaintiffs are “under guardianship by reason of mental illness” although it does appear from their affidavits that their impairments fall under the phrase “mental illness” even if the phrase is narrowly interpreted. (See Pls. Sealed Exs. A, B, C. (Docket #1).)

therefore, violates the Equal Protection Clause. That said, the Court finds that Maine's failure to require Probate Judges to specifically inquire and consider a person's ability to vote during a guardianship hearing is problematic, however, this deficiency likely raises due process rather than equal protection concerns.

2. The ADA Claim (Count II) & Rehabilitation Act Claim (Count III)

To establish a claim under Title II of the Americans with Disabilities Act ("ADA"), 42 U.S.C. § 12101 et seq., Plaintiffs must establish: (1) that they are qualified individuals with a disability; (2) that they were excluded from participation in some public entity's services, programs or activities and (3) that the exclusion was by reason of their disabilities. See Parker v. Universidad de Puerto Rico, 225 F.3d 1, 4 (1st Cir. 2000).

Defendants argue that Plaintiffs do not have a substantial likelihood of success on Counts II and III because they cannot establish that they are "qualified individuals with disabilities."<sup>7</sup> Specifically, Defendants suggest that the Plaintiffs do not meet one of the essential eligibility criteria, because, as a result of being adjudicated an incapacitated person by reason of mental illness, Plaintiffs do not have the mental capacity to make their own decision and understand the nature and effect of voting.

Having the mental capacity to understand the nature and effect of voting such that one can make an individual decision regarding the candidates and questions on the ballot appears to be a necessary and valid eligibility criteria. See 29 C.F.R. 35.130(b)(8). The question is whether Plaintiffs meet this criteria.

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<sup>7</sup> Section 504 of the Rehabilitation Act is substantially similar to Title II of the ADA. However, the Rehabilitation Act only applies to entities that receive federal financial assistance. See 29 U.S.C. § 794. In all other respects, the two laws are interchangeable as they relate to the claims in this case. See Parker v. Universidad de Puerto Rico, 225 F.3d 1, 4 (1st Cir. 2000).

Thus far, the Court has received a one or two page affidavit from each of the Plaintiffs briefly explaining their mental illness and their desire to vote. (See Pls. Sealed Exs. A, B, C (Docket #1).) Additionally, the Court has received letters regarding each named Plaintiff updating the Probate Court on the continued need for public guardianship without modification in each case. (See Pls. Sealed Ex. 1 (Docket # 13).) The Court has not received any orders or transcripts from the Probate Court explaining what factors contributed to each Plaintiff being adjudicated incapacitated, nor has there been an opportunity for the Court or the Defendants to question any of the Plaintiffs. Because of this lack of factual development, the Court cannot say that there is a substantial likelihood that the Plaintiffs are “qualified individuals with disabilities” who meet the eligibility criteria.

C. Risk of Irreparable Harm Absent an Injunction

The denial of a fundamental constitutional right, such as voting, is undeniably an irreparable harm. See Manhattan State Citizens’ Group, 524 F. Supp. at 1275; see also Wright, Miller & Kane, Federal Practice and Procedure: Civil 2d § 2948.1 at 161 (1995) (“When an alleged deprivation of a constitutional right is involved, most courts hold that no further showing of irreparable injury is necessary.”) Thus, the Court must acknowledge that Plaintiffs may suffer irreparable harm without a preliminary injunction.

Nonetheless, the Court notes that preliminary injunctions are often denied “if it appears the applicant has an adequate alternate remedy in the form of money damages *or other relief.*” Wright, Miller & Kane, Federal Practice and Procedure: Civil 2d § 2948.1 at p. 150-51 (1995) (emphasis added). In this case, Plaintiffs decided not to pursue alternative relief brought to their attention during the Court’s October 6<sup>th</sup> phone

conference with the parties. Namely, Plaintiffs could have gone back to Probate Court to seek modifications of their guardianship that reserved their right to vote.<sup>8</sup>

Plaintiffs have argued that such exhaustion of state judicial remedies is not required because they allege deprivation of a constitutional right. (See Pls. Reply at 1 (citing Steffel v. Thompson, 415 U.S. 452, 472-73 (1974).) In Steffel, the Supreme Court was not faced with a challenge relating to injunctive relief, rather the Court only held that exhaustion was not a prerequisite to a challenge seeking declaratory relief. See id. at 456 n.6 & 472-73. Therefore, the Court may still consider Plaintiffs' decision to not pursue a possible state judicial remedy in balancing Plaintiffs' potential for irreparable harm without the effect on the public.

#### D. The Public Interest

In addition to the harm that Plaintiffs may suffer absent an injunction, the Court must consider the harm to the Defendants and the public if an injunction is issued.<sup>9</sup> Namely, the Court's injunction could either directly or indirectly affect the outcome of the November 7<sup>th</sup> election, although it may be determined later that Maine's current voting limitations are valid as applied to the Plaintiffs.

By issuing an injunction, the Court would essentially order that the Plaintiffs be allowed to participate in the upcoming election, thereby overriding the plain language of Maine's Constitution that has been in place for 35 years. As voters, Plaintiffs not only

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<sup>8</sup> The Court notes that to pursue a modification Plaintiffs would need to give 14 days notice to all interested parties prior to any modification hearing. See 18-A M.R.S.A. § 5-309. Ultimately, Plaintiffs would bear the burden of proof in a modification hearing, which would require appointment of guardians ad litem and consultation with various experts. See 18-A M.R.S.A. §§ 5-303(b) & 5-307(c); Guardianship of Lander, 697 A.2d 129, 1300 (Me. 1997). The Court does consider the administrative burden posed by this alternative remedy when balancing Plaintiffs' potential for irreparable harm against the effect on the public.

would cast votes for national candidates but also would have an opportunity to vote in local races and to vote on state referendum questions. Thus, Plaintiffs votes would directly impact state policy. Considering the scenario in which a candidate was elected or a ballot initiative passed by only three votes, this Court's order could be partially responsible for changing the outcome of the election. However, the actual effect of the Plaintiffs votes would never be known. Thus, if it were later determined that the disenfranchisement of the Plaintiffs was constitutionally valid, there would be no way to change or delete the votes that had been improperly cast. This effect on the outcome of the election would undeniably have a negative effect on the public.

Additionally, the Court notes the potential for a preliminary injunction to indirectly impact the vote on Question 5. By challenging the constitutionality of Maine's disqualification of voters because they are under guardianship for mental illness, Plaintiffs ask this Court to void this provision of Maine's Constitution. Similarly, Question 5 on the November 7<sup>th</sup> ballot, asks voters whether they favor amending the Maine Constitution to delete this provision. Any decision by this Court granting Plaintiffs a preliminary injunction could be read as suggesting that the provision is unconstitutional. While the Court declines to speculate how such a suggestion would impact the vote on Question 5, the Court is troubled by the possibility that its action would impact the democratic process on a matter of state policy. Cf. Richardson v. Ramirez, 418 U.S. 24, 55 (1974) (explaining in the context of a challenge to a state statute disenfranchising felons that it was not the Court's role to "choose one set of

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<sup>9</sup> In this case, the named Defendants are agencies and officers of the state government who enforce public policy, so the Court finds that any harm to the named Defendants is synonymous in all respects to the potential harm to the public.

values over the other”). Given this potential adverse effect, the best course of action is for the Court to exercise judicial restraint.

E. Balancing the Hardships

Faced with difficult questions of law, the Court must conclude that on the current record it is not clear that either party has a substantial likelihood of success on the merits. Additionally, it is clear that there is the potential for irreparable harm on both sides. Thus, the Court weighs the harm done to the Plaintiffs if they are denied the right to participate in the democratic process on November 7<sup>th</sup>, even if the Court later determines that such a denial was unconstitutional. On the other side of the scale, the Court weighs the possibility that the democratic process is undermined by the Court having ordered that three persons be treated as qualified voters, although it is later found that the State’s exclusion of the Plaintiffs was valid. Stripped to its essence, there is an equal opportunity for harm to the democratic process on both sides—one harm caused by wrongful exclusion, one harm caused by wrongful inclusion. The sole difference lies in the cause of the harm.

Plaintiffs’ hardship is caused, at least in part, by their late arrival at the courthouse to challenge a provision that has been on the books for 35 years and was the subject of a failed referendum three years ago. Comparatively, the public harm would be caused solely by premature judicial intervention in the democratic process. See Dunn, 405 U.S. at 333 n.2 (noting that the District Court had refused to grant Plaintiffs a preliminary injunction allowing them to vote in the upcoming election because, according to the District Court, “to do so would be ‘so obviously disruptive as to constitute an example of judicial improvidence.’”).

In light of the potential for an adverse effect on the public in the upcoming election and the undeveloped record that does not allow this Court to conclude that Plaintiffs' have a substantial likelihood of success on the merits, the Court finds that it cannot issue a preliminary injunction at this stage in the proceedings.

V. CONCLUSION

For these reasons, the Court DENIES Plaintiffs' Motion for Preliminary Injunction.

SO ORDERED.

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George Z. Singal  
United States District Judge

Dated on this 27<sup>th</sup> day of October 2000.

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    plaintiff  
[term 10/12/00]

KRISTIN L. AIELLO, ESQ.  
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[COR LD NTC]

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