

No. 12-2153

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUITLIBERTARIAN PARTY OF MICHIGAN; GARY)
JOHNSON; DENEEN ROCKMAN-MOON,)

Plaintiffs - Appellants,)

v.)

RUTH JOHNSON,)

Defendant - Appellee,)

REPUBLICAN PARTY OF MICHIGAN,)

Third Party - Intervenor.)

FILED
Sep 12, 2012
DEBORAH S. HUNT, ClerkO R D E R

Before: KEITH, MARTIN, and ROGERS, Circuit Judges.

The Libertarian Party of Michigan, Gary Johnson, and Deneen Rockman-Moon brought this action to compel the Michigan Secretary of State to place Johnson on Michigan ballots as the Libertarian Party's candidate for President of the United States. The Secretary had excluded Johnson's name as a presidential candidate based upon MCL § 168.695, a "sore loser" statute that prohibits a candidate appearing on the primary ballot for one political party from appearing as a candidate for any other political party at the election following the primary. The plaintiffs appeal the district court's order that grants motions to dismiss filed by the Secretary and an intervenor, the Republican Party of Michigan. An expedited briefing schedule has been entered.

The plaintiffs seek an emergency injunction to enjoin the Secretary of State from issuing any ballot for the November 6, 2012 election that does not name Gary Johnson and James P. Gray as the Libertarian Party candidates for President and Vice President of the United States. The Secretary of State and the Republican Party of Michigan have responded in opposition.

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A party seeking an injunction while an appeal is pending must ordinarily first move for such relief in the district court. Fed. R. App. P. 8(a)(1)(C). The plaintiffs have not done so, nor do they argue that doing so would be impracticable. Fed. R. App. P. 8(a)(2)(A). This failure weighs against our granting the relief sought.

We may issue an injunction pending appeal in the exercise of discretion. *Overstreet v. Lexington-Fayette Urban Cnty. Gov't*, 305 F.3d 566, 572 (6th Cir. 2002). “In granting such an injunction, the Court is to engage in the same analysis that it does in reviewing the grant or denial of a motion for a preliminary injunction.” *Id.* The relevant factors are: “(1) whether the movant has shown a strong likelihood of success on the merits; (2) whether the movant will suffer irreparable harm if the injunction is not issued; (3) whether the issuance of the injunction would cause substantial harm to others; and (4) whether the public interest would be served by issuing the injunction.” *Id.* at 573; *see also Baker v. Adams Cnty./Ohio Valley Sch. Bd.*, 310 F.3d 927, 928 (6th Cir. 2002). These factors do not support the entry of an injunction.

The plaintiffs’ likelihood of success on the merits does not appear strong in light of *Timmons v. Twin Cities Area New Party*, 520 U.S. 351 (1997). Further, the entry of injunctive relief at this late date, when the Secretary’s intentions have long been clear, would cause substantial harm to the orderly processing of the election and would not serve the public interest.

The emergency motion for an injunction pending appeal is DENIED. The expedited briefing schedule previously entered by the clerk remains in effect.

ENTERED BY ORDER OF THE COURT



Clerk