

**SUPERIOR COURT OF THE DISTRICT OF COLUMBIA  
CIVIL DIVISION**

PAUL ZUKERBERG,	*	
Plaintiff,	*	
	*	2013 CA 8004 B
v.	*	Judge Laura A. Cordero
	*	
DISTRICT OF COLUMBIA BOARD OF	*	
ELECTIONS AND ETHICS, <i>et al.</i> ,	*	
Defendants.	*	

**ORDER DENYING PLAINTIFF’S MOTION FOR PRELIMINARY INJUNCTION**

Before the Court is Plaintiff’s Motion for Preliminary Injunction, filed on December 20, 2013. Defendant’s Motion to Dismiss and Opposition (“Opposition”) to Plaintiff’s Motion for Preliminary Injunction was deemed filed *nunc pro tunc* to January 10, 2014. Plaintiff filed an Opposition to Defendant’s Motion on February 3, 2014. The parties appeared for a Hearing on Preliminary Injunction on February 6, 2014. For the following reasons, Plaintiff’s Motion is denied.

**1. BACKGROUND**

This Motion centers on a dispute between Plaintiff and Defendants regarding the timing of the election for the District of Columbia’s first elected Attorney General. In 2010, the D.C. Council passed legislation entitled the Attorney General for the District of Columbia Clarification and Elected Term Amendment Act of 2009. Pl. Mem. of P. & A. to Mot. at 2. This legislation (“2010 Act”) states that the “Attorney General for the District of Columbia shall be elected on a partisan basis by the registered qualified electors of the District,” that “[t]he term of office of the Attorney General shall coincide with the term of office of the Mayor,” and, most importantly for purposes of this case, that “[t]he first election for the position of Attorney General shall be after January 1, 2014.” *Id.* at 2-3. This legislation was then approved by voters

in the District of Columbia in a referendum. *Id.* at 2; Compl. at ¶ 2. The description of the law that was placed on the voters' ballots stated, in relevant part, that "[i]f voters approve of this amendment . . . residents of the District of Columbia would begin voting for the Attorney General in 2014." Ex. 3 to Pl. Mot.

In 2013, the D.C. Council passed legislation ("2013 Act"), which implemented certain campaign procedures for the election of the Attorney General, partially restructured the Office of the Attorney General, and provided that the first election for the Attorney General "shall not be before January 1, 2018." Def. Mem. of P. & A. to Mot & Opp'n at 2. The 2013 Act recently became law. Compl. at ¶ 9. Thus, in his Complaint for Declaratory Relief, Plaintiff alleges that the 2013 Act contravenes the D.C. Charter because, under his interpretation, the 2010 Act requires that the Attorney General election take place in 2014. *Id.* at ¶ 12. Plaintiff is a candidate for the Attorney General position. *Id.* at ¶¶ 13-14.

## **2. PLAINTIFF IS NOT ENTITLED TO A PRELIMINARY INJUNCTION**

A preliminary injunction "is an extraordinary remedy never awarded as of right." *Winter v. NRDC, Inc.*, 555 U.S. 7 (2008). A request for preliminary injunction can be granted only when the moving party has clearly demonstrated:

that there is a substantial likelihood that he will prevail on the merits; (2) that he is in danger of suffering irreparable harm during the pendency of the action; (3) that more harm will result to him from the denial of the injunction than will result to the defendant from its grant; and, in appropriate cases, (4) that the public interest will not be disserved by the issuance of the requested order."

*Zirkle v. D.C.*, 830 A.2d 1250, 1255 (D.C. 2003) (citing *Wieck v. Sterenbuch*, 350 A.2d 384, 387 (D.C. 1976)).

In considering a motion for preliminary injunction, "the most important inquiry is that concerning irreparable injury." *Wieck*, 350 A.2d at 387. "[A]n injunction should not

be issued unless the threat of injury is imminent and well-founded . . . .” *Zirkle*, 830 A.2d at 1256. Speculation “is insufficient to demonstrate a need for immediate equitable relief.” *Wieck*, 350 A.2d at 388. Mere economic harm is also insufficient to make out a claim of irreparable harm. *Zirkle*, 830 A.2d at 1256. “The possibility that adequate compensatory or other corrective relief will be available at a later date, in the ordinary course of litigation, weighs heavily against a claim of irreparable harm.” *Id.* Additionally, as Plaintiff conceded at the February 6, 2014 hearing, he is seeking a mandatory injunction, for which a higher standard applies than the ordinary preliminary injunction standard. *See Fountain v. Kelly*, 630 A.2d 684, 689 (D.C. 1993). When a mandatory injunction is sought, a “strong showing of irreparable injury” must be made because relief “changing the status quo is not favored unless the facts and law clearly support the moving party.” *Id.* at 689 (citing 666 F.2d 761, 773 (2d Cir. 1981) (internal citations omitted)).

In the instant case, Plaintiff has not “clearly demonstrated,” much less made a “strong showing” that he will be in danger of suffering irreparable harm if the Attorney General election is not held in 2014. Plaintiff argues that the rights of voters and the rights of other potential candidates are at stake. Pl. Mem. of P. & A. to Mot. at 18. However, as Plaintiff acknowledged at the February 6, 2014 hearing, he does not and cannot legally represent anyone’s interest other than his own.

In terms of Plaintiff’s actual claims of harm to his personal interests, Plaintiff complains that Defendants have abridged his right to seek elected office for the position of Attorney General in 2014. Plaintiff notes that he submitted his petition for candidacy and collected signatures, and thus duly qualified as a candidate for office. But, “[m]ere

injuries, however substantial, in terms of money, time, and energy necessarily expended in the absence of a stay, are not enough.” *Zirkle*, 830 A.2d at 1257. While Plaintiff speculates and offers no evidence that the Attorney General election may be postponed indefinitely, there is no indication from the record that the Attorney General election will not coincide with the next mayoral election in 2018. In addition, Plaintiff recognized that he could potentially be placed on the ballot during the 2014 general election and that such legislative proposals are currently under consideration. Thus, “adequate compensatory or other corrective relief will be available at a later date . . . .” *Id.* As Plaintiff has not made a strong showing of irreparable harm, this factor weighs against him.

Additionally, Plaintiff has not shown that more harm will result to him by the denial of this Motion than will result to Defendants by its grant. Plaintiff can potentially seek elected office, if not during the 2014 general election, certainly after January 2018. In contrast, issuance of a preliminary injunction at this juncture would prolong the uncertainty for Defendants, potential candidates, and the public. It would result in confusion both for voters and the District of Columbia regarding the validity of casting a vote for a candidate who may not assume office. As Plaintiff has failed to demonstrate any irreparable harm that would result from the denial of this Motion, it cannot be said that more harm will result to Plaintiff than will result to Defendants. Therefore, this factor also weighs against granting Plaintiff’s Motion.

Plaintiff argues that granting his Motion is in the public interest based on the approval of the Attorney General election provision on the 2010 ballot. Pl. Mem. of P. & A. to Mot. at 18-19. Defendants argue in their Opposition that the public has an interest in the implementation of laws passed by their elected representatives and that public

funds will be wasted on an “unlawful Attorney General election” if Plaintiff’s injunction succeeds. Def. Mem. of P. & A. to Mot. & Opp’n at 37. Here, there is a public interest in each branch of government acting in accordance with its own processes and procedures. Plaintiff had the opportunity to object to the 2013 Act before its passage, but did not avail himself of this option. Instead, Plaintiff declared his candidacy after the 2013 Act was passed. Therefore, Plaintiff has not demonstrated that issuance of a preliminary injunction would disserve the public interest, as the 2013 Act was passed by duly elected representatives who invited comment from the public.

Finally, an analysis of Plaintiff’s likelihood of success on the merits does not support the injunctive relief Plaintiff seeks. Both Plaintiff and Defendants acknowledge that the first step in statutory construction is to look at the plain meaning of the statute and construe its words according to their ordinary sense. Pl. Mem. of P. & A. to Mot. at 9 (citing *Peoples Drug Stores, Inc. v. District of Columbia*, 470 A.2d 751, 753 (D.C. 1983)); Def. Mem. of P. & A. to Mot. & Opp’n at 15 (citing *Peoples Drug Stores, Inc. v. District of Columbia*, 470 A.2d 751, 753 (D.C. 1983)). Indeed, *Peoples Drug Stores, Inc.* states that “[t]he primary and general rule of statutory construction is that the intent of the lawmaker is to be found in the language that he has used.” 470 A.2d at 753 (quoting *Varela v. Hi-Lo Powered Stirrups, Inc.*, 424 A.2d 61, 64 (D.C. 1980)). Furthermore, the Court is required to give effect to a statute’s plain meaning if the words are clear and unambiguous. *District of Columbia v. Bender*, 906 A.2d 277, 281-82 (D.C. 2006). “[W]hen two statutes are capable of co-existence, it is the duty of the courts, absent a clearly expressed [legislative] intention to the contrary, to regard each as effective” and the intention of the legislature to repeal must be “clear and manifest” when

there are two acts upon the same subject. *See Morton v. Mancari*, 417 U.S. 535, 550 (1974).

However, Plaintiff urges the Court to look beyond the ordinary meaning of the words “after January 1, 2014” and interpret this phrase as requiring an Attorney General election in 2014. Plaintiff argues that the Court may look beyond the plain meaning where (1) "a review of the legislative history or an in-depth consideration of alternative constructions" of the statutory language reveals ambiguities that the court must resolve; (2) the literal meaning of the statute "produces absurd results"; (3) the plain meaning construction leads to an "obvious injustice"; or (4) refusal to adhere to plain meaning is necessary in order to "effectuate the legislative purpose" of the statute as a whole. Pl. Mem. of P. & A. to Mot. at 9 (quoting *Dobyns v. United States*, 30 A.3d 155, 159 (D.C. 2011)).

Plaintiff does not argue that the 2010 Act and 2013 Act contain language that facially conflicts nor does he dispute that the language can be interpreted using the commonly understood meaning of the word “after.” A plain reading of the language would render the Acts entirely consistent. Canons of statutory construction require that Courts discern the intent of the legislature from the very words they chose to enact and in a manner that would not render other sections, such as Section 102, superfluous. Def. Mem. of P. & A. to Mot. & Opp’n at 17 (citing *Colautti v. Franklin*, 439 U.S. 379, 392 (1979); *Dunn v. Commodity Futures Trading Com’n*, 519 U.S. 465, 472 (1997)). Section 102 of the 2010 Act provides for the appointment and reappointment of Attorney Generals, “until such time as an Attorney General is elected under section 201 . . . .” Therefore, Plaintiff has not clearly demonstrated that he is likely to succeed on the merits.

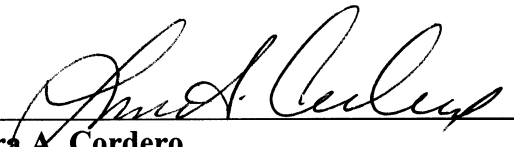
Plaintiff cannot satisfy the elements required for the granting of a preliminary injunction. Accordingly, the Motion for Preliminary Injunction is denied.

### **3. CONCLUSION**

Wherefore, it is this 7<sup>th</sup> day of February, 2014, hereby:

**ORDERED**, that Plaintiff's Motion for Preliminary Injunction is **DENIED**.

**SO ORDERED.**

  
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**Laura A. Cordero**  
Associate Judge  
(Signed in Chambers)

Copies to:

Gary S. Thompson, Esq.  
Matthew R. Blecher, Esq.  
Keith D. Parsons, Esq.