UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
CENTRAL DIVISION

STEVEN M. PRYE, et al.,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	No.: 04-4248-CV-C-ODS
	)	
MATT BLUNT, et al.,	)	
	)	
Defendants.	)	

ORDER DENYING PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION

Pending is Plaintiffs' Motion for Preliminary Injunction (Doc. # 3). For the following reasons, Plaintiffs' motion is denied.

I. FINDINGS OF FACT

1. Plaintiffs in this case, Steven M. Prye and his guardian, Office of State Guardian, have filed a Motion for Preliminary Injunction against Defendants Secretary of State Matt Blunt, Attorney General Jeremiah W. (Jay) Nixon, the Board of Elections for the City of St. Louis, and several of its members, requiring the defendants to register Prye to vote before the November 2, 2004 election, and allowing Prye to vote in the November 2, 2004 election and future elections.
2. On July 1, 2003, a Petition for Adjudication of Disability and Appointment of Guardian for Prye was filed in the Circuit Court for the Seventh Judicial Circuit of Illinois, Sangamon County.
3. On December 12, 2003, the Circuit Court appointed the Office of State Guardian as guardian of Prye because, as a result of his disability, he was unable to dress, bathe, maintain personal hygiene, do household chores, or manage money without assistance. According to the Order Adjudicating Need For and Appointment of Guardian, the Office of State Guardian was to have the powers and duties as

provided by 755 Ill. Comp. Stat. 5/11-1 et seq., and certain enumerated powers. According to an affidavit from Prye's appointed guardian, Penny Rausch, from the Office of State Guardian, the Illinois Court did not inquire as to whether he had the capacity to vote.

4. On March 11, 2004, the Office of the State Guardian was appointed guardian of Prye's estate.
5. In April of 2004, Prye was relocated to St. Alexius Hospital in St. Louis, Missouri.
6. St. Alexius Hospital brought a Petition for Appointment of a Guardian for Prye in the 22nd Judicial Circuit of Missouri, Probate Division, City of St. Louis, on September 30, 2004. A hearing on the petition was held on October 19, 2004, and continued until October 29, 2004.
7. Prye attempted to register to vote on September 24, 2004. On his voter registration form, he crossed out the portion of the certification on the application that read: "I have not been adjudged incapacitated by any court of law."
8. In a letter dated September 28, 2004, the Board of Election Commissioners for the City of St. Louis informed Prye that his voter registration application had been denied because, based on his application, he apparently had been adjudged incapacitated by a court of law.
9. Prye presented affidavits from Luis Giuffra, M.D., Ph.D., Thawn Han, M.D., and Bryce F. Sullivan, Ph.D. All three individuals testified that Prye "has the capacity to vote. He can understand and appreciate what it means to vote."
10. Defendants presented an affidavit from Dr. Bruce Harry, who reviewed certain records reflecting Prye's condition, including a psychological evaluation prepared by Dr. Sullivan, additional evaluations prepared by other doctors, and various discharge summaries. Dr. Harry testified that Prye has "markedly impaired capacity for receiving and processing information, understanding and evaluating information received, avoiding the influence of others in his decision-making process. . . and, hence, there is a significant question regarding his competency

to vote and available information strongly suggest that he lacks such competency."

II. CONCLUSIONS OF LAW

The Missouri Constitution prohibits any individual from voting who has "a guardian of his or her estate or person by reason of mental incapacity, appointed by a court of competent jurisdiction. . . ." Mo. Const. art. 8, § 2. By statute, Missouri restricts any person who has been "adjudicated incapacitated" from registering to vote. Mo. Rev. Stat. § 115.133.2 (2000). An incapacitated person is one:

> [U]nable by reason of any physical or mental condition to receive and evaluate information or to communicate decisions to such an extent that he lacks capacity to meet essential requirements for food, clothing, shelter, safety or other care such that serious physical injury, illness, or disease is likely to occur.

Mo. Rev. Stat. § 475.010(9). An adjudication of incapacity operates to impose upon the ward or protectee the legal disabilities provided by law. Mo. Rev. Stat. § 475.078.2. Persons adjudicated incapacitated are presumed to be incompetent. § 475.078.3. By contrast, someone who has been adjudicated partially incapacitated or partially disabled or both is presumed competent, and the law imposes no legal disabilities on the person. Id.; § 475.078.1. Judges are to declare an individual fully incapacitated and to appoint a guardian as a last resort. § 475.075.10. Before addressing the Motion for Preliminary Injunction, it is necessary to address the issues of Prye's residency and whether this Court should abstain in this matter.

A. Prye's Residency

Missouri law permits only Missouri residents to register and vote in Missouri. Mo. Rev. Stat. § 115.133.1 (Supp. 2003). For purposes of this motion, the Court will assume that Prye is a resident of Missouri.

B. Abstention

Prye is the Respondent in a proceeding for the appointment of a guardian filed in the City of St. Louis. Allegheny County v. Frank Mashuda Co. authorizes federal courts to postpone the exercise of its jurisdiction when a federal constitutional issue may be mooted by a state court determination of pertinent state law. 360 U.S. 185, 189 (1959). The resolution of the state court proceeding may directly impact Plaintiffs' federal constitutional claims that are pending in this Court. Nevertheless, the Court concludes that it should not abstain from the resolution of Plaintiffs' request for a preliminary injunction because the next hearing in the state proceeding is not scheduled to occur until after the deadline by which Prye must request an absentee ballot.

C. Preliminary Injunction

The standard for issuing a preliminary injunction involves consideration of the following factors: (1) the threat of irreparable harm to the movant; (2) the probability that the movant will succeed on the merits; (3) the state of the balance between the plaintiff's harm and the injury that granting the injunction will inflict on other parties litigant; and (4) the public interest. Dataphase Sys., Inc. v. C L Sys., Inc., 640 F.2d 109, 113 (8th Cir. 1981) (en banc). The burden on the moving party is particularly heavy where granting the motion for preliminary injunction will give him substantially the same relief as he would obtain after a trial on the merits. Sanborn Mfg. Co. v. Campbell Hausfelt/Scott Fetzer Co., 997 F.2d 484, 486 (8th Cir. 1993). Plaintiffs seek a preliminary injunction against Defendants requiring them to register Prye to vote before the November 2, 2004 election, and allowing Prye to vote in the November 2, 2004 election and future elections.

(A) Irreparable Harm to Prye

Prye alleges that he is interested in politics, has regularly voted in the past, has voted in every presidential election for which he was eligible, and is interested in and concerned about the upcoming presidential election. Prye, absent this Court's

intervention, will be unable to vote in the upcoming election. For purposes of this motion, the Court will assume that Prye faces a threat of irreparable harm.

(B) Probability of Success on the Merits

(1) Due Process Claim

The right to vote is a "fundamental political right. . . preservative of all rights." Reynolds v. Sims, 377 U.S. 533, 562 (1964). When assessing challenges to laws that burden the right to vote, a court must apply the standard set forth in Burdick v. Takushi:

> A court considering a challenge to a state election law must weigh the character and magnitude of the asserted injury to the rights protected by the First and Fourteenth Amendments that the plaintiff seeks to vindicate against the precise interests put forward by the State as justifications for the burden imposed by its rule, taking into consideration the extent to which those interests make it necessary to burden the plaintiff's rights.

504 U.S. 428, 434 (1992) (internal citations and quotations omitted).

Missouri is denying Prye the right to register to vote because the State of Illinois adjudged him mentally incapacitated and appointed him a guardian. In Illinois, such a judgment does not automatically deprive a person of his or her right to vote, but in Missouri it does. Plaintiffs argue that Prye was not given notice or the opportunity to be heard before his right to vote was taken from him in Missouri but does not contend that he was denied due process during the Illinois hearing that established his guardianship or in the pending Missouri guardianship proceeding. This leaves the Court unable to ascertain when Prye was denied due process. Prye insists he should have received notice that the Illinois adjudication would effect his rights in Missouri, but he cannot seriously argue that the Constitution required (1) Illinois to advise him of the affect of its adjudication should he move to Missouri, or (2) Missouri to advise him that the Illinois adjudication would affect his right to vote in Missouri. In other words, Plaintiffs have not

identified the notice that should have been given or, more importantly, by whom and when it should have been given.

Prye can only challenge Missouri's recognition of the Illinois adjudication of mental incapacity and application of Missouri's laws to determine the affect of that adjudication; however, Prye had and still has avenues to pursue limitations on the guardianship. Because existing procedures, if utilized, afforded Prye an opportunity to be heard on the issue of his right to vote, the Court finds that Plaintiff is unlikely to succeed on the merits of this claim. No decision has been rendered in the Missouri proceeding, so a due process challenge to it is not ripe.

(2) ADA and Rehabilitation Act Claims

Preliminarily, it should be noted that the ADA and the Rehabilitation Act do not explicitly address the issue of competency requirements for voting in federal, state or local elections.[1] Nevertheless, the Court will examine Plaintiffs' likelihood of success of their claims under the ADA and Rehabilitation Act.

Title II of the Americans with Disabilities Act (ADA) provides that "no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity." 42 U.S.C. § 12132. To establish a violation of Title II, an individual must show: (1) he is a qualified individual with a disability; (2) he was excluded from participation in or denied the benefits of a public entity's services, programs or activities, or was otherwise discriminated against by the entity; and (3) the exclusion, denial or other discrimination was by reason of his disability. Layton v. Elder, 143 F.3d 469, 472 (8th Cir. 1998). Title II's enforcement remedies, procedures and rights are the same as under section 504. Pottgen v. Mo.

[1] In addition, the National Voter Registration Act explicitly provides that a state may remove a voter's name from the official list of eligible voters "as provided by State law, by reason of criminal conviction or mental incapacity." 42 U.S.C. § 1973gg-6(a)(3)(B) (Supp. 2002).

State High Sch. Activities Ass'n, 40 F.3d 926, 930 (8th Cir. 1994) (citing 42 U.S.C. § 12133). A "qualified individual with a disability" or "otherwise qualified individual" is "an individual with a disability who, with or without reasonable modifications to rules, policies, or practices, . . . meets the essential eligibility requirements for. . . participation in programs or activities provided by a public entity." 42 U.S.C. § 12131(2); Pottgen, 40 F.3d at 929.

It is uncontested that Prye has a disability, but it is unclear if he is a "qualified individual with a disability." Plaintiffs argue that Prye meets all of Missouri's essential eligibility requirements, and the requirement that a prospective voter not be adjudge incapacitated is not an essential eligibility requirement. Plaintiffs concede that the State has an interest in ensuring the integrity of elections and preventing voting by individuals who do not have the mental capacity to understand the nature and effect of the election. Pls.' Suggestions in Supp. of Mot. for Prelim. Inj. at 7. Nevertheless, Plaintiffs argue that an adjudication of incapacity does not demonstrate whether a person has the capacity to understand the nature and effect of an election. Plaintiffs ignore the effect of their ability to present this argument to the Missouri Probate Court. Prye has the opportunity to demonstrate that he retains the capacity to vote and is entitled to a limited guardianship, and until this is done Prye cannot be considered a "qualified individual with a disability" under the ADA or an "otherwise qualified individual" under the Rehabilitation Act.

(3) Equal Protection Claim

Plaintiffs contend that Missouri's use of the absence of adjudicated mental incapacity as an elector qualification for federal and state elections violates the equal protection clause. The Equal Protection Claim of the Fourteenth Amendment restrains states from fixing voter qualifications that invidiously discriminate. Harper v. Virginia State Bd. of Elections, 383 U.S. 663, 665 (1996). Similar to a due process claim, a claim that state election laws deny equal protection require courts to weigh the character and magnitude of the asserted injury with the rights that the plaintiff seeks to vindicate. Burdick, 504 U.S. at 434. When a state grants the right to vote to some citizens and

denies franchise to others, the exclusions must be necessary to promote a compelling state interest. Dunn v. Blumstein, 405 U.S. 330, 337 (1972).

Plaintiffs seek to vindicate Prye's ability to vote in the same manner as other individuals who a court has not adjudged incapacitated. The applicable legal analysis will not permit the Court to overlook this important distinction. As stated earlier, Prye concedes that the State has an important interest in the administration of its elections and assuring its citizens that participants in its elections are able to understand the choices they make, and the effect of those choices, when voting on a particular candidate or issue. However, Prye had and still has the opportunity to pursue limitations on the Illinois guardianship, and he also has the opportunity to argue that the petition for guardianship pending in Missouri should be a limited guardianship, entitling him to vote. Consequently, he is unlikely to prevail on his equal protection claim.

(C) Balance between the harm and the injury that granting the injunction will inflict on other parties and the public interest

Granting the relief requested by Plaintiffs requires the Court to either presume Prye is competent to vote or conduct judicial proceedings designed to determine that fact on its own. The former option carries with it substantial risks that a person lacking the mental capacity to vote will do so in this election. Any outcome that permits a potentially invalid ballot to be cast should be avoided in order to protect the integrity of the electoral process and the public's confidence in the election's outcome. The latter option disrupts the process typically used for such determinations and creates unnecessary tension and duplication of effort between the federal and state courts. While this harm may seem slight, it must also be remembered that it can be easily avoided by requiring Plaintiffs to adhere to the processes available to him in state court. The public's interests are ill-served by granting Plaintiffs' motion for injunctive relief.

III. CONCLUSION

For the foregoing reasons, Plaintiffs' Motion for Preliminary Injunction is DENIED.

IT IS SO ORDERED.

DATE: October 26, 2004

/s/ Ortrie D. Smith
ORTRIE D. SMITH, JUDGE
UNITED STATES DISTRICT COURT