

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2022-001546

02/23/2022

HONORABLE JOAN M. SINCLAIR

CLERK OF THE COURT
S. Motzer
Deputy

KATIE HOBBS

ROOPALI HARDIN DESAI

v.

MARK BRNOVICH, et al.

MICHAEL S CATLETT

KRISTEN YOST
SAMBO DUL
JENNIFER JAYNE WRIGHT
JUDGE SINCLAIR

MINUTE ENTRY

East Court Building – Courtroom 911

10:59 a.m. This is the time set for a virtual Oral Argument. Plaintiff is represented by counsel, Roopali Hardin Desai, Kristen Yost, and Sambo Dul. Defendant is represented by counsel, Michael S. Catlett and Jennifer Wright. All parties appear via Court Connect.

A record of the proceedings is made by audio and/or videotape in lieu of a court reporter.

Argument is presented to the Court.

Based on the foregoing,

IT IS ORDERED denying the request for consolidation.

Argument is presented to the Court on the Motion for Preliminary Injunction filed February 7, 2022.

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11:20 a.m. Court stands at recess due to technical issues.

11:32 a.m. Court reconvenes with respective counsel and parties present.

A record of the proceedings is made by audio and/or videotape in lieu of a court reporter.

Argument continues to be presented to the Court.

Based on the argument presented.

IT IS ORDERED taking this matter under advisement.

12:13 a.m. Matter concludes.

Later:

On February 7, 2022, the Secretary of State (“Secretary”) of the State of Arizona, Katie Hobbs, filed a Complaint and an Application for an Order to Show Cause seeking declaratory and injunctive relief. This Complaint outlines her plan to take the secure online nomination petition portal (“E-Qual”) offline for several weeks starting March 11, 2022. According to the Complaint, such maintenance is necessary so that the new legislative redistricting maps can be integrated into the system. Prior to the filing of this action, the Arizona Attorney General (“AG”) Mark Brnovich’s office sent a letter to the Secretary. See Letter from Assistant Attorney General Jennifer Wright attached as Exhibit D to the AG’s Response. The Secretary characterizes this January 14, 2022 letter as “threatening” her with “unprecedented civil and criminal enforcement actions.” Complaint, ¶ 98. The Court heard oral argument on the preliminary injunction on February 23, 2022 and took the matter under advisement. The Court now rules.

The Secretary seeks a preliminary injunction prohibiting the AG’s office from “investigating or initiating civil or criminal actions against the Secretary for temporarily taking E-Qual offline to allow counties to incorporate the new legislative and congressional district maps.” Complaint, Prayer for Relief, p. 14, section B.

Preliminary injunctions normally seek to maintain the status quo until the issues at hand can be fully litigated. See *Cracchiolo v. State*, 135 Ariz. 243, 247 (App. 1983). The status quo as the Court sees it is the secure portal remaining online. Courts often defer to “an agency’s interpretation and application of statutes that it implements.” *Bridgestone Retail Tire Operations v. Industrial Comm’n of Arizona*, 227 Ariz. 453, 456, ¶ 12 (App. 2011) (citations omitted). Here,

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however, the Secretary seeks the court's imprimatur on actions she plans to take imminently. This is not maintaining the status quo; nor is it simply a matter of deference to an agency's interpretation. The Secretary wants this Court to issue an order to protect her from something that has not occurred yet or may never occur. If the Secretary goes forward with her plan and takes E-Equal offline, the AG may or may not file any civil or criminal complaint against her. If she takes her planned action, and he responds with a civil or criminal complaint, then the matter would be ripe for adjudication.

Under the ripeness doctrine, courts should exercise judicial restraint and refrain from issuing advisory opinions; cases should be ripe for decision and be fully developed between adversaries. See *Bennett v. Brownlow*, 211 Ariz. 193, 196, ¶ 16 (2005) (citations omitted); *Armory Park Neighborhood Ass'n v. Episcopal Community Services in Arizona*, 148 Ariz. 1, 6 (1985). "Ripeness is a prudential doctrine that prevents a court from rendering a premature decision on an issue that may never arise." *Brush & Nib Studio, LC v. City of Phoenix*, 247 Ariz. 269, 280, ¶ 36 (2019) (citation omitted).

The AG is the chief enforcement officer in any election for state office. A.R.S. § 16-1021. Injunctions shall not be granted to "prevent enforcement of a public statute by officers of the law for the public benefit" or to "prevent the exercise of a public or private office in a lawful manner by the person in possession." A.R.S. §12-1802 (4), (6). It is simply unknown if action taken in the future by the AG would be lawful or not. Any ruling by the court would be mere speculation.

The Court is aware that "A.R.S. §12-1802(4) does not prevent a court from granting injunctive relief when a public officer enforces a public statute in a manner that *exceeds the officer's power... .*" *Boruch v. State ex rel. Halikowski*, 242 Ariz. 611, 616, ¶ 16 (App. 2017) (emphasis added), review denied. Whether or not pursuing legal action, criminally or civilly, against the Secretary equates to the AG exceeding the power of his office is the underlying issue for the declaratory judgment action. That question has yet to be answered.

The letter itself notifies the Secretary that in the AG's opinion, taking E-Equal offline during the candidate filing period would be "contrary to law." It further informs the Secretary that when a duty is imposed by Title 16 on a public officer, knowingly failing or refusing to perform that duty can be either a class 6 felony or a class 3 misdemeanor. See Letter from Assistant Attorney General Jennifer Wright attached as Exhibit D to the AG's Response. While the Secretary clearly viewed this as a threat, the letter did not promise or guarantee prosecution and thus does not create a controversy properly before the court.

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The Court makes no determination today on the merits of the underlying declaratory judgment action. The only issue before this Court now is whether a preliminary injunction should issue prohibiting some possible future action by the Attorney General.

The Court finds this request premature and therefore,

IT IS ORDERED denying the Secretary's request for a preliminary injunction.